[2 col][ch]Chapter 8

Home Equity Lines of Credit (HELOCs) and Reverse Mortgages

[box]Note: The Federal Reserve Board issued a proposed rule in August 2009,[[1]](#footnote-2) that includes substantial changes to Regulation Z’s disclosure requirements for open-end, home-secured credit. As of the writing of this treatise that proposal is still pending, now under the Consumer Financial Protection Bureau. When a final rule is issued, the changes will be examined more comprehensively in a future update to this chapter.[end box]

[1n]8.1 [m]General Considerations

[2n]8.1.1 [m]Introduction

This chapter discusses open-end credit secured by a residence, i.e., home equity lines of credit (HELOCs).[[2]](#footnote-4) HELOCs are governed by the general TILA rules that apply to all consumer credit and rules limited to open-end credit, including some rules specific to just open-end credit secured by a consumer’s principal dwelling. Reverse mortgages, discussed at the end of this chapter,[[3]](#footnote-5) have their own set of special rules.

Like closed-end creditors, HELOC creditors must abide by the disclosure requirements in TILA sections 1631/-/1635.[[4]](#footnote-6) But HELOC disclosures are also subject to parts of section 1637 (general open-end credit provisions) and all of section 1637a (HELOCs secured by the consumer’s principal dwelling). TILA imposes substantive requirements on HELOCs in sections 1635[[5]](#footnote-7) and 1647.[[6]](#footnote-8) Regulation Z implements these provisions through parts of subpart B (“Open-End Credit”) and parts of subpart E (“Special Rules for Certain Home Mortgage Transactions”). HELOCs are subject to disclosure requirements at four different points in time:

[b]In advertising, examined at § 8.2, *infra*;

[b]At application (the “early disclosures”) detailed at § 8.3, *infra*;

[b]At account opening,[[7]](#footnote-9) described at § 8.4, *infra*; and

[b]After account opening, including periodic statements and changes to the credit line , described at § 8.5, *infra*.

[text]The new closed-end disclosures that become mandatory in August 2015[[8]](#footnote-10) do not apply to HELOCs. Substantive limitations on HELOCs are covered at § 8.6, *infra*. Consumer remedies for HELOC violations are discussed at § 8.7, *infra*.

[2n]8.1.2 [m]History

HELOCs have become increasingly common since Congress passed the Home Equity Loan Consumer Protection Act in 1988,[[9]](#footnote-11) covering any agreement to open a HELOC plan or any application to open a HELOC made after November 7, 1989 (as implemented by Regulation Z).[[10]](#footnote-12) At that time less than six percent of homeowners had a HELOC. But, by 2007, that number had more than tripled.[[11]](#footnote-13)

Recent years have seen changes to the HELOC rules. In July 2008, the FRB issued new HELOC advertising rules[[12]](#footnote-14) and proposed extensive additional changes in August 2009.[[13]](#footnote-15) In 2009 and 2010, Congress and the FRB significantly altered the disclosure and substantive rules for open-end credit available through credit cards.[[14]](#footnote-16) At the same time, the FRB relocated numerous provisions of Regulation Z.[[15]](#footnote-17) Although the FRB claimed to have left the HELOC rules unchanged at that time,[[16]](#footnote-18) this was not quite correct. Among other matters, the Board eliminated the requirement to disclose the effective APR on periodic statements[[17]](#footnote-19) and removed an exception from the subsequent-notice requirement for changes in late-payment fees.[[18]](#footnote-20) In 2011, the Bureau recodified section 226.5b (regarding HELOCs) as section 1026.40, consistent with its general renumbering of Regulation Z.[[19]](#footnote-21)

More changes to HELOC regulation are likely in the near future.

[2n]8.1.3 [m]Closed-End Credit Disguised As HELOCs

The weaker disclosure regime for HELOCs can encourage disreputable creditors to disguise over-priced closed-end mortgages as HELOCs. Disclosures for open-end credit do not provide consumers with the bottom-line cost information required for closed-end credit. And the annual percentage rate disclosure for a HELOC does not include any finance charges other than interest,[[20]](#footnote-22) which can make a HELOC appear deceptively cheaper than a closed-end loan. In addition, HOEPA until recently exempted open-end credit from its coverage,[[21]](#footnote-23) and HELOCs are also exempt from the good-faith-estimate requirement in Real Estate Settlement Procedures Act (RESPA).[[22]](#footnote-24) Lenders sometimes abuse these differences to obscure the cost of their credit by casting closed-end loans as open-end credit.

Practitioners should first assess whether a HELOC is really a closed-end loan in disguise, known as “spurious” open-end credit.[[23]](#footnote-26) Indications of a spurious open-end transaction are listed in § 6.2.3.5, supra. Misdisclosing a closed-end loan as open-end violates TILA because the creditor will not have made the proper disclosures for closed-end credit. Practitioners should also consider a state UDAP claim that the creditor deceptively disguised the credit as open-end to circumvent consumer protections.[[24]](#footnote-28)

[2n]8.1.4 [m]Scope of HELOC Rules

Regulation Z’s HELOC rules, except for the right of rescission, apply to open-end credit plans secured by the consumer’s dwelling.[[25]](#footnote-29) The commentary emphasizes that section 1026.40 [section 226.5b] “is not limited to plans secured by the consumer’s *principal* dwelling.”[[26]](#footnote-31) While the Act refers to “principal dwelling,” that phrase is defined to include any second or vacation home of the consumer for purposes of sections 1647 and 1665b.[[27]](#footnote-32) But the right to rescind a HELOC is, as with closed-end mortgages, based on section 1635 and thereby limited to principal dwellings.[[28]](#footnote-33) Whether the transaction qualifies as open-end credit, and thus is a HELOC, will depend on the terms of the note, not the mortgage.[[29]](#footnote-34)

HELOC disclosures must also be made if a “spreader” clause in a previous loan with the same lender results in a pre-existing security interest being extended to a new open-end loan.[[30]](#footnote-35) Spreader clauses (also known as a “dragnet” or cross-collateralization clauses) provide that any future loans by the same creditor will also be secured by the collateral securing that loan.[[31]](#footnote-36)

[2n]8.1.5 [m]HELOC APR

The HELOC APR only includes interest; it does not include any other fees.[[32]](#footnote-37) By comparison, closed-end APRs reflect costs other than interest, such as “points,” which are ordinarily included in the finance charge, as well as interest.[[33]](#footnote-38) As a result, the APR for a HELOC is not comparable to the APR on a closed-end loan. The HELOC APR, because it does not include fees other than interest, will appear (falsely) cheaper than a closed-end mortgage with the same APR.

[1n]8.2 [m]HELOC Advertising Disclosures

[2n]8.2.1 [m]Introduction

Creditors offering HELOCs must comply with all standard TILA provisions for advertising open-end credit.[[34]](#footnote-39) There are also special requirements for advertising HELOCs.[[35]](#footnote-40) Significant changes in the advertising rules took effect October 1, 2009.[[36]](#footnote-41) Note, however, that TILA provides no private remedy for violations of its advertising rules.[[37]](#footnote-42)

[2n]8.2.2 [m]Trigger for HELOC Advertising Disclosures

Generally, the HELOC advertising requirements are “triggered” by any reference in a HELOC advertisement to payment terms (including the length of the plan, how the minimum payments are determined, and the timing of such payments) or by any reference to finance charges, APRs, or other charges (i.e., terms required to be disclosed in the account-opening disclosures under sections 1026.6(a) and 1026.6(b) [sections 226.6(a) and 226.2(b)] of Regulation Z).[[38]](#footnote-43)

Once the advertising disclosures are triggered, the creditor must set forth:

[nb](a) *Fees*. Any loan fee that is a percentage of the plan’s credit limit (e.g., “points”) as well as an estimate of other fees that may be imposed for opening the plan. That estimate may be stated as a single dollar amount or a reasonable range.[[39]](#footnote-44)

[nb](b) *APR*. Any periodic rate used to compute the finance charge expressed as an APR.[[40]](#footnote-45)

[nb](c) *Maximum APR*. The highest APR that may be imposed in a variable-rate plan.[[41]](#footnote-46)

[text]In addition to these affirmative disclosures, TILA and Regulation Z prohibit the use of the term “free money” or other similarly misleading terms to refer to a HELOC plan.[[42]](#footnote-47)

[2n]8.2.3 [m]Disclosures Must Be Clear and Conspicuous

The HELOC advertising disclosures must be made in a clear and conspicuous manner. While this standard is not rigid,[[43]](#footnote-48) there are specific requirements for the HELOC promotional rate disclosures[[44]](#footnote-49) and for Internet, television, or oral advertising.

Clear and conspicuous in the context of Internet and television advertising means that the required disclosures must not be obscured by graphical displays, shading, coloration, or other devices.[[45]](#footnote-50) Television and oral advertisements have additional requirements:

[b]*Television advertisements.* The disclosures must be displayed in a manner that allows the consumer to read them.[[46]](#footnote-51) Very fine print in a television advertisement would not meet the clear and conspicuous standard if consumers cannot see or read the required disclosures.[[47]](#footnote-52)

[b]*Oral advertisements*. To be clear and conspicuous, the required disclosures must be made at a speed and volume sufficient for a consumer to hear and comprehend them.[[48]](#footnote-53) Information stated rapidly at a low volume in a radio or television advertisement would likely not meet the clear and conspicuous standard.[[49]](#footnote-54)

[2n]8.2.4 [m]Teaser Rate Disclosures

[3n]8.2.4.1 [m]General

One of the most common abuses in advertising HELOCs was the use of “teaser rates.” Creditors would often advertise very low rates for HELOCs without also clearly disclosing that the HELOCs were variable-rate plans and that the discounted teaser rates would soon be replaced by substantially higher rates based on the index and margin of the plan.

As a result, the regulations provide for special disclosures in two cases: (1) where the creditor states an initial rate that is not based on the index and margin used to make later adjustments (the initial rate may be either lower or higher than the rate that would result from using the formula set out in the note and is referred to as a “discounted or premium” rate); or (2) where the creditor offers a rate that is lower than the rate that would result from using the formula set out in the note at any time during the life of the loan (a so-called “promotional” rate). Teaser rates are distinguished from promotional rates because teaser rates are only applicable at the inception of the plan, while promotional rates may apply at any point during the life of the plan.

[3n]8.2.4.2 [m]Initial Discounted and Premium Rate Disclosures

If a creditor states an initial rate that is not based on the index and margin used to make later rate adjustments in a variable rate plan, the creditor must make certain disclosures.[[50]](#footnote-55) This initial rate can be lower *or* higher than the rate that would have resulted from application of the plan’s usual index and margin.

For an initial discounted or premium rate, the creditor must disclose:

[b]The period of time that rate will be in effect until the non-discounted or non-premium rate is imposed;[[51]](#footnote-56) and

[b]A “reasonably current” APR that would have been in effect using the plan’s usual index and margin.[[52]](#footnote-57)

[text] These disclosures must be stated with equal prominence and in close proximity to initial rate.[[53]](#footnote-58) The rules also establish what constitutes a reasonably current index and margin. A reasonably current index and margin must be:

[b]In effect within sixty days of mailing, for direct mail advertisements;[[54]](#footnote-59)

[b]In effect within thirty days before the advertisement was printed, e-mailed, or displayed on a website, for advertisements available to the general public or electronic advertisements.[[55]](#footnote-60)

[3n]8.2.4.3 [m]Promotional Rate and Promotional Payment Disclosures

Special disclosures apply to HELOC advertisements with promotional rates or payments.

A promotional rate is a rate that is not based on the plan’s usual index and margin in a variable rate plan and is less than a reasonably current APR that would result from application of the usual index or margin.[[56]](#footnote-61) A promotional rate does not have to be the first or initial rate that applies in a plan, but can occur at any point in the plan.

A promotional payment is any minimum payment during a promotional period that is less than the payment that would be derived by applying a reasonably current usual margin and index to the outstanding balance in a variable rate plan.[[57]](#footnote-62) For fixed rate plans, a promotional payment is any minimum payment during a promotional period that is less than other payments required under the plan given an assumed balance.[[58]](#footnote-63)

A fixed rate conversion option for a variable rate HELOC plan does not, by itself, create a promotional rate or promotional payment if exercised.[[59]](#footnote-64) Neither does a preferred rate provision, which is a rate that increases upon the occurrence of some event.[[60]](#footnote-65)

If a HELOC advertisement, after October 1, 2009, includes a promotional rate or promotional payment, it must disclose:

[b]The period of time during which the promotional rate or promotional payment will apply;[[61]](#footnote-66)

[b]In the case of a promotional rate, any APR that will apply under the plan;[[62]](#footnote-67)

[b]In the case of a promotional payment, the amounts and time periods of any payments that will apply under the plan.[[63]](#footnote-68) In variable rate plans, payments based on the application of an index or margin must be disclosed based upon a reasonably current index and margin.[[64]](#footnote-69) This provision may require disclosure of several payment amounts, including any balloon payment.[[65]](#footnote-70)

[text] For direct mail advertisements, a reasonably current index and margin is one in effect within sixty days of a mailing.[[66]](#footnote-71) For electronic and printed advertisements, a reasonably current index and margin is one in effect within thirty days before the advertisement was e-mailed or displayed on a website or printed, as applicable.[[67]](#footnote-72) For printed advertisements available to the general public, a reasonably current index and margin is one in effect within thirty days of printing.[[68]](#footnote-73)

The promotional rate disclosures must be stated with equal prominence and in close proximity to each listing of the promotional rate or payment.[[69]](#footnote-74) A disclosure is equally prominent if it is in the same type size as the promotional rate or payment.[[70]](#footnote-75) A disclosure is closely proximate if it is immediately next to or directly above or below the promotional rate or payment. A disclosure is not closely proximate if it is disclosed in a footnote.[[71]](#footnote-76)

The promotional disclosures are not required for television and radio advertisements.[[72]](#footnote-77) Envelopes containing an advertisement or solicitation and Internet banner or pop-up advertisements are similarly excluded.[[73]](#footnote-78)

[2n]8.2.5 [m]Tax Deductibility Disclosures

Creditors have often pushed HELOCs by promoting their tax-deductible status. TILA and Regulation Z prohibit misleading statements about tax deductibility.[[74]](#footnote-79)

TILA requires certain disclosures in print and Internet advertisements for any HELOC “extension of credit that may exceed the fair market value of the dwelling” that secures the HELOC.[[75]](#footnote-80) While the language in TILA itself would seem to require disclosures for any HELOC advertisement in which there is a potential that credit extensions under the plan might exceed the fair market value of the dwelling, the FRB limited the requirement to only advertisements that actually state that the extension may exceed the fair market value.[[76]](#footnote-81)

Covered advertisements must state:

[b]The interest on the portion of the credit extension that is greater than the fair market value of the home is not tax deductible for federal income tax purposes;[[77]](#footnote-82) and

[b]The consumer should consult a tax adviser for further information about deductibility of interest and charges.[[78]](#footnote-83)

[text] The tax deductibility disclosures are not required for television or radio advertisements.[[79]](#footnote-84)

[2n]8.2.6 [m]Balloon Payment Disclosures

A balloon payment is any repayment option under which:

[nb](1)The account holder is required to repay the entire amount of an outstanding balance as of a specified date or at the end of a specified period of time, as determined in accordance with the terms of the agreement pursuant to which such credit is extended; and

[nb](2)The aggregate amount of the minimum periodic payments required would not fully amortize such outstanding balance by such date or at the end of such period.[[80]](#footnote-85)

[text] If a HELOC advertisement refers to a minimum periodic payment that may ultimately result in a balloon payment, the advertisement must disclose that fact, even if the payment is uncertain or unlikely.[[81]](#footnote-86) Specifically, the advertisement must disclose:

[b]That a balloon payment will result;[[82]](#footnote-87) and

[b]The amount and timing of the balloon payment that will result if the consumer makes only the minimum payments for the maximum period of time allowable.[[83]](#footnote-88)

[text] The balloon payment disclosures must be made with equal prominence and in close proximity to the minimum payment statement.[[84]](#footnote-89)

[2n]8.2.7 [m]Alternative Disclosures for Television and Radio Advertisements

HELOC creditors may, in television and radio advertisements, disclose only the APR if they also list a toll-free number where consumers can obtain additional cost information.[[85]](#footnote-90) This toll-free number can be a multi-purpose telephone number, but the required disclosures should be provided early in the call to ensure that the consumer receives the required disclosures.[[86]](#footnote-91)

[1n]8.3 [m] “Early” Disclosures at Loan Application

[2n]8.3.1 [m]General; Proposed Changes

Creditors are required to make special “early” disclosures at the time an application is provided to the consumer.[[87]](#footnote-92) These disclosures are in addition to the HELOC-specific and general “account-opening” disclosures.[[88]](#footnote-93)

In 2009 the FRB proposed significant changes to the form, content, and, to a lesser extent, the timing of HELOC disclosures.[[89]](#footnote-94) The proposed early disclosures required at application would be more concise than what is currently required, but creditors would also be required to give new transaction-specific disclosures within three days after receiving the application. Consumers would then receive a final set of disclosures no later than account opening, using the same format as the account-opening disclosures. The proposal closely tracks the changes already made for open-end credit generally, but unfortunately would further diverge the HELOC disclosures from the closed-end mortgage disclosures.[[90]](#footnote-95)

The proposal is still pending and responsibility for it has been transferred to the Consumer Financial Protection Bureau (CFPB). This section will focus on the existing early disclosure requirements. Any changes adopted by the CFPB will be examined in an update to this treatise.

[2n]8.3.2 [m]Form of Disclosures

[3n]8.3.2.1 [m]General

As with most TILA disclosures, the HELOC early disclosures must be clear and conspicuous, and in writing.[[91]](#footnote-96) Unlike TILA requirements for closed-end and most other open-end credit, however, the disclosures provided at the time of application need not be in a form the consumer may keep.[[92]](#footnote-97) Thus, although the disclosures must be in writing, creditors are permitted to place the first set of disclosures on the application form the consumer returns to the creditor to apply for the plan.[[93]](#footnote-98)

Most of the early disclosures must be grouped together and conspicuously segregated from unrelated information provided to the consumer in connection with the application.[[94]](#footnote-99) The brochure and the variable-rate information may be provided either separately from or with the other disclosures. Creditors choosing to provide a description of the conditions under which the creditor may prohibit additional extensions of credit or take other adverse action, may give this information separately from or with the other disclosures.[[95]](#footnote-100) Similarly, creditors choosing to provide a good faith itemization of fees imposed by third parties also may give those disclosures separately from or with the other disclosures.[[96]](#footnote-101)

Regulation Z applies a more liberal standard for the segregation of HELOC disclosures than for closed-end credit. HELOC creditors may include information that explains or expands on the required disclosures. Information on aspects of the plan unrelated to the required disclosures, such as underwriting criteria is not permitted to be interspersed with the disclosure. As a result of this looser standard, disclosures for HELOC plans tend to be less concise and more narrative in form than those for closed-end credit, with the predictable result that the existing application disclosures are difficult to read and understand.[[97]](#footnote-102)

In these early disclosures, certain items must precede other disclosures.[[98]](#footnote-103) Consumers should first be notified, for example, that:

[nb](1) They should keep a copy of the disclosures;[[99]](#footnote-104)

[nb](2) They have a right to obtain a refund of fees if terms change and they decide not to enter into the contract as a result;

[nb](3) They risk losing their dwelling in the event of default; and

[nb](4) A creditor may terminate a plan or suspend future advances under certain circumstances (creditors need not, however, include the description of the circumstances under which a plan may be terminated prior to the other disclosures).

[text] With regard to the last item, if a creditor describes these circumstances, the creditor need not place its description of the circumstances under which a plan may be terminated prior to the other disclosures.

If creditors give a single disclosure form covering all of their HELOC offerings, all aspects of their plans must be described in the first set of disclosures.[[100]](#footnote-105) For example, if a creditor offers several payment options, all options have to be set forth. Furthermore, if aspects of a plan are linked together--for example, if certain payment options are available only in conjunction with a particular variable rate feature--the creditor must clearly disclose the relation among those plan features.[[101]](#footnote-106) Creditors need not, however, show all payment options in providing the minimum payment example, the “worst case” example, and the historical table.[[102]](#footnote-107)

Alternatively, creditors may prepare separate disclosure forms for each HELOC offering. These separate disclosures must each state that the consumer should ask about the creditor’s other home equity programs.[[103]](#footnote-108)

[3n]8.3.2.2 [m]Brochure

Both creditors and third parties providing applications must furnish consumers with a brochure prepared by the CFPB describing HELOC plans[[104]](#footnote-109) The current brochure was written by the FRB.[[105]](#footnote-110) The CFPB has not issued a revision or a suitable substitute. The FRB’s brochure describes HELOC plans, including their potential advantages and disadvantages. The brochure also provides guidance on how to compare HELOC plans with closed-end credit. Any substitutes must be comparable in substance and comprehensiveness, although lenders’ brochures may contain more detailed descriptions of their particular programs than are in the FRB’s brochure.[[106]](#footnote-113)

If an application is given to the consumer by a third party, such as a broker, the third party must give the consumer the brochure.[[107]](#footnote-114) The creditor’s duty to provide the brochure is met if the third party provides the brochure to the consumer.

[2n]8.3.3 [m]Time of Disclosures

[3n]8.3.3.1 [m]General

Apart from the exceptions discussed in the following subsection, the disclosures and the brochure must be given to the consumer at the time an application is provided to the consumer.[[108]](#footnote-115)

The consumer is entitled to receive the disclosures after getting an application, whether or not the consumer completes and returns the application.[[109]](#footnote-116) If the creditor sends applications through the mail, the creditor must send the disclosures and a brochure along with the application. Applications made available to the public without a request, such as “take-ones,” must include the disclosures and a brochure.[[110]](#footnote-117)

Some creditors use a general purpose application for their various credit programs. If the application or materials accompanying a general purpose application indicate that it can be used to apply for a home equity line of credit, the application must include the HELOC disclosures. In addition, if a general purpose application is provided to a consumer as a result of an inquiry about a HELOC plan, the disclosures and brochure must accompany the application, even if the application or accompanying materials do not specify that it can be used to apply for a HELOC plan.[[111]](#footnote-118)

If the consumer applies electronically, other than through an on-site computer kiosk at the creditor’s or an affiliate’s office, the disclosures must be provided electronically at the time of application. If the consumer applies electronically through a kiosk, the creditor may either deliver the disclosures electronically, at that time, or via paper disclosures, subject to the usual timing requirements.[[112]](#footnote-119)

[3n]8.3.3.2 [m]Exceptions: When the Creditor Can Delay for Three Days

In the case of applications contained in publications, such as magazines, or those received by the creditor through third parties, the creditor has three business days from its receipt of the application to mail or deliver the disclosures and brochure to the consumer.[[113]](#footnote-120)

The three-day delay also applies where the creditor takes an application over the telephone. But, if the consumer requests that an application be mailed, the creditor must provide the disclosures and a brochure with the application sent to the consumer.[[114]](#footnote-121)

In any situation in which delayed disclosures are permitted, the creditor may determine within the three-day period that the application will not be approved. In such a case, the creditor need not provide the disclosures or the brochure. The same would be true if the consumer withdraws the application within that time period.[[115]](#footnote-122)

[2n]8.3.4 [m]Duties of Third Parties

Third-party originators (e.g., mortgage brokers) often provide HELOC applications to consumers. They must provide the HELOC brochure.[[116]](#footnote-123) But they need only provide the early HELOC disclosures if the creditor has provided the originator with the disclosures.[[117]](#footnote-124)

Third-party originators do not have an obligation to obtain the disclosures from the creditors nor do creditors have an obligation to supply the disclosures to third-party originators along with the application.[[118]](#footnote-125)

Neither third parties nor creditors can collect a nonrefundable fee from the consumer until after the consumer receives the disclosures.[[119]](#footnote-126)

It is not clear whether third parties, who are generally not “creditors” under TILA, may be subject to civil or administrative liability under TILA for failing to provide HELOC disclosures.[[120]](#footnote-127)

[2n]8.3.5 [m]Content of Application Disclosures

[3n]8.3.5.1 [m]General

Regulation Z lists the information to be given to consumers when they receive an application for a HELOC plan.[[121]](#footnote-128) Information need be provided only to the extent applicable. For example, if negative amortization cannot occur in a program, no mention of it need be made.

Appendix G of Regulation Z includes two sample HELOC disclosures and one set of HELOC model disclosure clauses.[[122]](#footnote-129) As with other model forms, proper use of the HELOC model disclosure clauses will generally place a creditor in compliance with TILA.[[123]](#footnote-130) The FRB proposed improved model forms, based in part on consumer testing that shows many consumers are confused by the disclosures,[[124]](#footnote-131) but it is not clear whether the CFPB will adopt these changes.

[3n]8.3.5.2 [m]Retention of Information

If the disclosures are not in a form the consumer may keep (e.g., if the disclosures are printed on an application form the consumer must return), the creditor must advise the consumer to make and retain a copy of the disclosures.[[125]](#footnote-132)

[3n]8.3.5.3 [m]Conditions for Disclosed Terms

Creditors must include a clear and conspicuous statement of any deadline for submitting an application to obtain specific, disclosed terms.[[126]](#footnote-133) Creditors need not guarantee any terms, in which case they must indicate that all of the terms are subject to change and no time to submit the application need be given. If creditors choose to guarantee only some of the terms, they must indicate which terms may change prior to opening the plan.

Creditors can either give a specific date or use a time period to state the deadline for returning the application, so long as the consumer can determine the deadline from the disclosure.[[127]](#footnote-134) The FRB’s consumer testing, however, shows consumers strongly prefer to be given a specific date and have difficulty calculating deadlines on their own.[[128]](#footnote-135)

Creditors also must notify the consumer of the right to a refund of all fees paid in connection with the application if any disclosed term changes before opening the plan and the consumer chooses not to enter into the plan, excepting changes resulting from fluctuations in the index value in a variable rate plan.[[129]](#footnote-136) Examples of such changes include changes in the APR or changes in the maximum rate, if the cap is a fixed amount over the initial interest rate.

[3n]8.3.5.4 [m]Security Interest and Risk to Home

Creditors must disclose that a security interest is being taken in the consumer’s dwelling and that the consumer may lose the home in the event of default.[[130]](#footnote-137)

[3n]8.3.5.5 [m]Possible Actions by Creditor

The creditor must inform the borrower of the possibility that it may:

[b]Terminate the plan and accelerate any outstanding balance;

[b]Prohibit additional advances;

[b]Reduce the credit limit;

[b]Implement modifications to the original terms, as provided for in the initial agreement;[[131]](#footnote-138) or

[b]Impose fees if the account is terminated by the lender.

[text] Creditors must either tell homeowners the conditions under which it may take these actions or inform consumers that they may request this information.[[132]](#footnote-139) Upon receiving a request from a consumer for such information before the consumer opens the plan, the creditor must provide this information as soon as reasonably possible.

The FRB suggested that one way to make this disclosure is to provide a highlighted copy of the contract, security agreement or other document containing such information.[[133]](#footnote-140) A creditor could use a cover sheet that specifically points out which contract provisions contain this information or could mark the relevant items. The list of conditions may appear with the segregated disclosures or apart from those disclosures.

[3n]8.3.5.6 [m]Payment Terms

[4n]8.3.5.6.1 [m]General

Creditors are required to describe the payment terms of the plan, including the length of the draw period and any repayment period (but not the combined length of the draw period and any repayment period ).[[134]](#footnote-141) If the length of either is indefinite, creditors should state that fact. If a creditor retains the right at the end of the specified draw period to determine whether to renew or extend the original draw period, such provisions should be ignored for purposes of the disclosures.[[135]](#footnote-142)

Where a creditor provides a single disclosure form for all of its HELOC offerings, all payment options must be stated, including any different payment terms that exist during the draw period and repayment period, as well as any differences that apply within either period.[[136]](#footnote-143)

The disclosures must set forth how the minimum periodic payment is determined, the frequency of payments, and whether the minimum payments are sufficient to repay the principal balance by the end of the plan.[[137]](#footnote-144) Creditors must also disclose an example, based on an assumed $10,000 outstanding balance and a recent APR,[[138]](#footnote-145) showing the time it would take to pay off the balance if the consumer made only minimum payments (and the amount of the minimum payments).[[139]](#footnote-146) If a creditor offers only lines of credit under $10,000, the creditor may use an alternative assumed outstanding balance of $5,000.[[140]](#footnote-147)

[4n]8.3.5.6.2 [m]Balloon payments

Any possible balloon payment must be disclosed.[[141]](#footnote-148) Regulation Z states that “[a] balloon payment results if paying the minimum periodic payments does not fully amortize the outstanding balance by a specified date or time, and the consumer must repay the entire outstanding balance at such time.”[[142]](#footnote-149) The commentary says a final payment is not a balloon payment unless it is more than twice the amount of other minimum payments under the plan.[[143]](#footnote-150)

The likelihood of a balloon payment depends on the structure of the program. Under some programs, a balloon payment may occur under certain circumstances but is not certain or even likely. In such cases the disclosure would indicate that a balloon payment *may* occur. In other cases, such as programs where payments include interest only, a balloon payment *will* occur as a matter of course and the disclosures should reflect that fact. If repayment of the entire outstanding balance would be required only in the case of termination and acceleration, the balloon disclosure would not apply. Regulation Z does not require the amount of any balloon to be provided.[[144]](#footnote-151)

[4n]8.3.5.6.3 [m]Multiple payment option disclosures

In plans that have multiple payment options within the draw period or within any repayment period, creditors may provide representative examples as an alternative to providing examples for each payment option. For purposes of this disclosure, as well as for the variable rate disclosures,[[145]](#footnote-152) the Official Interpretations describe three categories of payment options:[[146]](#footnote-153)

[nb]1. Plans that permit minimum payment of only accrued finance charges (“interest only” plans).

[nb]2. Plans in which a fixed percentage or a fixed fraction of the outstanding balance or credit limit (for example, two percent of the balance or 1/180th of the balance) is used to determine the minimum payment.

[nb]3. All other types of minimum payment options, such as a specified dollar amount plus any accrued finance charges.

[text]Creditors may classify their minimum payment arrangements within one of these three categories, even if other features exist, such as varying lengths of a draw or repayment period, required payment of any past due amounts, minimum dollar amounts, and the payment of late charges.

The creditor may use a single example within each category to represent the payment options in that category. The example used must be an option commonly chosen by consumers. Separate examples must be given for the draw and repayment periods unless the payments are determined the same way during both periods.[[147]](#footnote-154) This approach of allowing a single example to represent a category of payment options does not apply to the other disclosure requirements.

[4n]8.3.5.6.4 [m]Negative amortization

If negative amortization may occur under the plan, the creditor must say so and explain that negative amortization will increase the principal balance and reduce the consumer’s equity in the dwelling.[[148]](#footnote-155) Negative amortization generally occurs when minimum periodic payments do not fully cover interest that has accrued since the last payment, thereby increasing the principal balance. A negative amortization disclosure is required whether or not the unpaid interest is added to the outstanding balance on which interest is computed.[[149]](#footnote-156)

[4n]8.3.5.6.5 [m]Reverse mortgages

Open-end reverse mortgages secured by the consumer’s dwelling are subject to the HELOC rules.[[150]](#footnote-157) Reverse mortgages typically only require repayment when certain events occur, such as the homeowner’s death. The payment disclosures will reflect that a single payment is due when one of the specified events happens. The single payment may be considered the “minimum periodic payment” and not a balloon payment. The example of the minimum payment under section 1026.40(d)(5)(iii) [section 226.5b(d)(5)(iii)] should assume a single, $10,000 advance to the consumer when the plan is opened and should assume repayment will occur upon the consumer’s death, if that is one of the events requiring repayment.

Some reverse mortgages provide that some or all of the appreciation in the value of the property will be shared between the consumer and the creditor. In that case, the creditor also must describe the shared appreciation feature in disclosing the payment terms.[[151]](#footnote-158)

[3n]8.3.5.7 [m]Annual Percentage Rate

Regulation Z § 1026.40(d)(6) [§ 226.5b(d)(6)] provides that a recent APR will be provided.[[152]](#footnote-159) For fixed-rate plans, a recent APR is one that has been in effect under the plan within the twelve months prior to the date the disclosures are provided to the consumer. For variable-rate plans, a recent APR is the most recent index value and margin provided in the historical table or a more recent rate.[[153]](#footnote-160)

Consumers also must be told that the APR does not include costs other than interest.[[154]](#footnote-161) Unfortunately, consumer testing suggests that consumers do not understand this disclosure.[[155]](#footnote-162) When the APR is required to be disclosed with a number, the term must be more conspicuous than the other required disclosures.[[156]](#footnote-163)

[3n]8.3.5.8 [m]Fees Imposed by the Creditor

[4n]8.3.5.8.1 [m]Generally

Creditors must provide a description and the amount of charges to open, use, and maintain the account, and a statement of when the consumer must pay the charges.[[157]](#footnote-164) These charges include items such as application fees, points, annual fees, transaction fees, and fees imposed when the plan converts to a repayment phase (if the conversion is provided for in the original agreement). Fees imposed by third parties, which are initially paid by the consumer to the creditor, may be included in this disclosure or in the third-party fee disclosures.[[158]](#footnote-165)

The consumer must be told both the amount of any fee and when it is payable under this section. Charges may be stated as an estimated dollar amount for each fee, or as a percentage of a typical or representative amount of credit. Fees imposed for late payment, stop payment, exceeding the credit limit, or closing out an account would not have to be disclosed under this section. However, if closing costs are imposed--even if possibly rebated later--creditors must disclose such costs.[[159]](#footnote-166)

[4n]8.3.5.8.2 [m]Fees charged upon account termination

The creditor must disclose whether it charges a fee or penalty if the creditor terminates the plan prior to normal expiration.[[160]](#footnote-167) The disclosure is not required for fees imposed when the plan expires in accordance with the agreement or when the consumer terminates early. The actual amount of such fees need not be provided.

The FRB took the position that this disclosure is not required if the only fees that may be imposed upon termination are fees such as attorney fees or court costs involved with the collection of the debt. Additionally, an increase in the APR--such as a higher rate of interest if the consumer fails to make payments--does not trigger this disclosure.[[161]](#footnote-168)

[3n]8.3.5.9 [m]Fees Imposed by Third Parties to Open a Plan

HELOCs are exempt from RESPA’s good-faith estimate requirement[[162]](#footnote-169) and TILA’s requirement for closed-end mortgages.[[163]](#footnote-170) Instead, Regulation Z requires that the early disclosures include a good faith estimate of the total fees imposed by third parties to open the account, stated as a single dollar amount or a reasonable range,[[164]](#footnote-171) listing charges such as appraisal, credit report, government agency and attorney fees. Even if such fees may be rebated they must be disclosed.

This requirement covers only those fees imposed by third parties to open the plan. Fees imposed at the *end* of a plan, such as a fee to record the release a security interest, need not be disclosed.

Creditors must either provide an itemization of fees (by type and amount) with the early disclosures[[165]](#footnote-172) or tell the consumer that she may request more specific cost information about such fees from the creditor.[[166]](#footnote-173) If provided, the itemization may appear together with or separate from the other disclosures.[[167]](#footnote-174) Upon receiving a consumer’s request for such an itemization before the consumer opens the plan, the creditor must respond as soon as reasonably possible. Where it is impractical to provide the dollar amount, fees may be expressed on a unit cost basis, such as $.50 per $100 of the credit line.

[3n]8.3.5.10 [m]Credit Limits

Creditors are required to state any limitations on the number of extensions or amount of credit that can be obtained during any time period, and any minimum draw or minimum outstanding balance requirement stated as a dollar amount or as a percentage.[[168]](#footnote-175) A limit on automatic teller usage need not be disclosed unless this is the only method by which the consumer can get funds.[[169]](#footnote-176) Creditors need not disclose the maximum credit limit.

[3n]8.3.5.11 [m]Tax Implications

Consumers must be told to consult a tax advisor regarding the deductibility of interest and charges under the plan.[[170]](#footnote-177) When an extension of credit from the HELOC exceeds the fair market value of the dwelling, the creditor must tell the consumer that the interest on that portion of the credit extension which exceeds the fair market value of the home is not tax-deductible for federal income tax purposes.[[171]](#footnote-178) The CFPB has not yet issued final regulations on this issue, but the FRB proposed adding a new paragraph specifying the necessary disclosures regarding tax deductions.[[172]](#footnote-179) The FRB implemented similar requirements for advertisements in its July 2008 HOEPA final rule.[[173]](#footnote-180)

[3n]8.3.5.12 [m]Disclosures for Variable Rate Plans

Creditors must provide information about any variable rate feature contained in a plan.[[174]](#footnote-181) Many of these disclosures are similar to the disclosures currently required for closed-end variable rate transactions secured by a consumer’s principal dwelling.[[175]](#footnote-182) Information must be provided as to variable rate features of both the draw period and any period in which repayment occurs with no further ability to obtain advances. There is, however, some flexibility regarding the timing of the disclosures about the repayment period. These disclosures need be provided only as applicable.[[176]](#footnote-183)

*APR may change*. Creditors are required to state that the APR may change and that the payment or term may change due to the fact that the APR is variable.[[177]](#footnote-184)

*APR includes only interest*. A statement that the APR does not include costs other than periodic interest, such as points, must be provided.[[178]](#footnote-185)

*Identification of index*. Creditors have to identify the index used to determine rate adjustments and a source of information about the index.[[179]](#footnote-186)

*A description of how the APR is determined*. Creditors have to describe how the APR will be determined, for example, by stating that a margin is added to the index value.[[180]](#footnote-187) This provision does not require disclosure of the specific amount of the margin.[[181]](#footnote-188)

*Direction to ask about current rate information*. Because the rate information may be out of date, consumers must be told to ask about the current index value, margin, discount or premium (if applicable), and the APR.[[182]](#footnote-189)

*Discounted or premium rate*. As discussed in the advertising section,[[183]](#footnote-190) one of the most common HELOC abuses has been the use of “teaser” interest rates, also called discounted or premium initial interest rates. Creditors must disclose if they are offering a discounted or premium rate, as well as the time period that rate will be in effect.[[184]](#footnote-191)

*Frequency of changes in the APR*. The frequency of changes in the APR must be stated, for example, monthly or quarterly.[[185]](#footnote-192)

*Rules relating to the index value, APR, and related changes*. Creditors must set forth the rules relating to changes in the index value and the APR and any resulting changes in the payment amount.[[186]](#footnote-193) Creditors must explain preferred-rate provisions in variable rate plans, where the rate will increase upon the occurrence of some event unrelated to changes in the index, such as a borrower-employee leaving the creditor’s employment, or the consumer’s closing an existing account with the creditor. Similarly, an explanation must be given if the plan has a conversion feature that would permit the consumer to switch from a variable rate to a fixed rate. This includes disclosure of whether a fee may be imposed for such a change. Any payment limitations and the possibility of rate carryover also must be provided.

*Rate limitations*.[[187]](#footnote-194) Regulation Z provides that an annual rate cap (or more frequent periodic cap) must be stated if there is one. If there are no periodic limits on rate increases, that fact must be stated. Maximum rates for the plan must also be stated for HELOCs.[[188]](#footnote-195) The maximum rate that may be imposed under each payment option over the life of the plan must be provided.[[189]](#footnote-196) The life of the plan includes the draw period and any repayment period that is provided for in the original agreement. This rate may be stated as a specific rate (for example, 18%) or as a stated amount above an initial rate (for example, five percentage points above the initial interest rate).

In either circumstance, the early disclosures given at application may use a range of the lowest and highest rate limitations in disclosing both the periodic limitations and the maximum overall rate. Creditors that disclose the caps as ranges and those that disclose the maximum rate as a stated amount above an initial rate must include a statement that the consumer should ask about the rate limitations that are currently applicable.

*Worst case example*. Creditors must show the minimum periodic payment required when the maximum rate for each payment option is in effect, based on a $10,000 outstanding balance.[[190]](#footnote-197) If a range is used to disclose the maximum cap, the highest rate in the range must be used for this disclosure. The disclosure also must state the earliest time the maximum rate could be imposed reflecting, for example, the effect of periodic rate caps. The creditor must assume that the interest rate increases as rapidly as possible under the loan program.

Creditors may choose a representative example within each payment option categories upon which to base this disclosure.[[191]](#footnote-198) Separate examples must be provided for the draw period and for any repayment period unless the payment is determined the same way in both periods.

In a single-payment open-end reverse mortgage, creditors should assume that the APR reaches the maximum as quickly as permitted under the plan and that the maximum rate stays in effect until repayment is called for.

*Historical example*. A fifteen-year historical table, based on an assumed $10,000 initial extension of credit, showing how the APRs and payments would have been affected by the index value changes under the plan, must be provided.[[192]](#footnote-199) Creditors must assume that the consumer takes no subsequent draws, and that the initial $10,000 advance is reduced according to the terms of the plan.

Index values and APRs must be shown for the most recent fifteen years. The example must be updated annually to reflect the most recent fifteen years of index values as soon as reasonably possible after the new index value becomes available.[[193]](#footnote-200) If the length of the plan is less than fifteen years, however, payments need only be shown for as long as the plan lasts. If the values for an index have not been available for fifteen years, creditors need only go back as far as the values have been available and may start the example at the year for which values are first available. The history must reflect the method of choosing values for the plan.

Only one index value per year need be shown, even if the plan provides for adjustments to the APR or payment more than once in a year. The creditor may choose to use any day or period for reporting the index value, as long as the creditor uses the same day or period consistently for each year in the index history.

A value for the margin must be assumed in order to prepare the example. Creditors must select a margin that they have used during the six preceding months. The margin selected may be used for a year, until the creditor annually updates the disclosure form.[[194]](#footnote-201)

The payment figures in the example must reflect all significant program terms. For example, features such as rate and payment caps, a discounted APR, negative amortization, and rate carryover must be taken into account in calculating the payment figures if these would have been applicable.[[195]](#footnote-202) Both periodic and overall rate limitations must be reflected in the example.[[196]](#footnote-203)

Creditors need not provide the required historical disclosure for all of the payment options, but may select an example within each of payment options upon which to base their disclosure.[[197]](#footnote-204)

An historical example is required for single payment plans such as reverse annuity mortgages.[[198]](#footnote-205) Although fifteen years of index values and APRs would be shown, the payment column would be blank until the year that the single payment would be required, assuming that payment is estimated to occur within fifteen years.[[199]](#footnote-206)

*Periodic statement*. The creditor must state that rate information will be provided on or with each periodic statement.[[200]](#footnote-207)

[1n]8.4 [m]HELOC Account-Opening Disclosures

[2n]8.4.1 [m]General

In addition to the early disclosures given with an application,[[201]](#footnote-208) creditors must also provide disclosures at the time a HELOC plan is opened,[[202]](#footnote-209) before the first transaction.[[203]](#footnote-210) Creditors are subject to statutory liability if any of the essential disclosures are not made properly, when applicable.[[204]](#footnote-211)

The Truth in Lending Act requires eight account-opening disclosures, as applicable:[[205]](#footnote-212)

[b]The conditions under which a finance charge may be imposed together with either the time period, in which the customer may pay without incurring additional finance charges or the fact that there is no such free ride or “grace” period;

[b]The method of determining the balance on which the finance charge is imposed;

[b]The method of determining the amount of the finance charge, including any minimum or fixed amount;

[b]Each “periodic rate,” the range of balances to which it is applicable, and the corresponding nominal annual percentage rate;

[b]Identification of other charges which may be imposed and their method of computation in accordance with CFPB regulations;

[b]A statement that the indebtedness is or will be secured by the consumer’s dwelling, with an appropriate identification of the collateral and re-disclosure of all of the application disclosures specified in 15 U.S.C. § 1637a(a);[[206]](#footnote-213)

[b]Notice of the consumer’s right to rescind;[[207]](#footnote-214)

[b]A statement as to billing error rights and the right to assert claims and defenses in a form prescribed by the CFPB (with periodic transmittal of a statement of such rights).

[text]Regulation Z describes these requirements somewhat differently, requiring disclosure of information regarding finance charges, “other charges,” “home-equity plan information,” security interests, and a statement of the consumer’s billing rights.[[208]](#footnote-215)

A separate statute, the Competitive Equality Banking Act of 1987, also requires disclosure of the maximum interest rate.[[209]](#footnote-216)

&&&

[2n]8.4.2 [m]Finance Charges

[3n]8.4.2.1 [m]Disclosure of the Finance Charge Accrual Date

The account-opening disclosure must contain a statement of when finance charges begin to accrue.[[210]](#footnote-217) This may be a general statement that refers, for example, to a time period that the consumer can figure out from other information, instead of a particular date.[[211]](#footnote-218) Creditors may choose to say finance charges begin to accrue thirty days from the close of the billing cycle or may reference the date on which the billing cycle starts, if it is a fixed date (i.e., a first-of-the-month billing cycle).[[212]](#footnote-219)

One court decided that a creditor need not disclose that interest on penalty fees accrues from the date the penalty is imposed.[[213]](#footnote-220) It was enough that the creditor disclosed that the fees were treated as purchases and explained how finance charges are calculated based on purchases.[[214]](#footnote-221)

Many HELOCs offer a “free ride” or “grace” period during which any credit extended may be repaid without incurring a finance charge. For example, under some plans a consumer may avoid all finance charges by making payment in full within twenty days of the closing date of the billing cycle.

While the statute seems quite specific in requiring disclosure of the “fact” that no free ride or grace period exists,[[215]](#footnote-222) Regulation Z modifies this to “an explanation” of whether there is any grace period.[[216]](#footnote-223) The commentary permits a statement as to when the finance charge begins to accrue as an adequate explanation of whether there is a grace period.[[217]](#footnote-224)

The commentary provides that creditors need not highlight the grace period.[[218]](#footnote-225) As a result, homeowners must read between the lines to discover that there is no grace period.

[3n]8.4.2.2 [m]Disclosure of the Periodic Rate, Range of Balances, and APR

The creditor must disclose:[[219]](#footnote-226)

[b]*Each periodic rate that may be used to compute the finance charge.* A periodic rate is defined as a rate of finance charge that is or may be imposed by a creditor on a balance for a day, a week, a month, or other subdivision of a year.[[220]](#footnote-227) A periodic rate does not include a transaction charge that is unconnected to a period of time, even if it is computed as a percentage of the transaction amount.[[221]](#footnote-228)

[b]*The range of balances to which each rate is applied.*  This disclosure must be made as to a split rate, for example, if the creditor charges 21% on the first $500 and 18% on the balance above that amount. It is inapplicable if there is only one periodic rate for the account.[[222]](#footnote-229) A creditor need not reflect the balance below which a minimum charge accrues in this “range of balances” disclosure.[[223]](#footnote-230)

[b]*The corresponding annual percentage rate.* This APR includes only periodic interest. It does not include the impact of any fees, even those fees that issuers know will be charged (such as an annual fee) or that their business models predict will be charged (such as a late fee).[[224]](#footnote-231) Even though disclosing the average cost of credit or a typical effective APR might better inform consumers of the cost of a HELOC,[[225]](#footnote-232) neither the FRB nor the CFPB have chosen to require such a disclosure.

[b]*If different rates apply to different types of transactions, the type of transaction to which each rate applies.*

[b]*If a penalty rate may be imposed, the initial rate, increased penalty rate, and the specific event or events that may trigger the increased rate.[[226]](#footnote-233)* If the penalty rate is based on an index and an increased margin, the index and margin must be disclosed. If the penalty rate cannot be determined at the time disclosures are given, the card issuer must provide an explanation of the specific event or events that may result in the increased rate. The creditor may, but need not, disclose the period during which the increased rate will remain in effect. However, a penalty rate imposed when the credit privileges are permanently terminated need not be disclosed. Change-in-terms provisions that permit creditors to increase the interest rate when the consumer’s credit score decreases or the creditor otherwise believes the consumer is more “risky” must be disclosed.[[227]](#footnote-234)

[text] Variable rate transactions must include additional disclosures.[[228]](#footnote-235) A general reservation of the right to make changes in the rate, without reference to a particular index or formula, is not a variable rate plan.[[229]](#footnote-236)

[3n]8.4.2.3 [m]Disclosure of the Balance Method

The creditor must explain in the initial disclosures the method of determining the balance on which the finance charge is to be computed.[[230]](#footnote-237) This explanation must be more detailed than the shorthand phrases the CFPB allows on applications and solicitations.[[231]](#footnote-238)

The CFPB’s model disclosure forms for HELOCs, found at Appendix G-1 of Regulation Z, provide examples of suitable disclosures.[[232]](#footnote-239) Variations in the method, such as subtracting any unpaid finance charge from the previous balance before applying the finance charge (to avoid usury problems)[[233]](#footnote-240) call for a more detailed explanation.[[234]](#footnote-241)

How much more detailed is not entirely clear. Compounding (charging a finance charge on a principal balance that includes a finance charge) apparently need not be reflected in the annual percentage rate disclosure.[[235]](#footnote-242) The creditor need not disclose how the payments are allocated, such as first to late charges, then to finance charges, then to principal.[[236]](#footnote-243) One court has ruled that the creditor need not disclose how it treats credit balances.[[237]](#footnote-244) A commentator has opined that creditors need not disclose that overdrafts, for instance, will be credited to the account in multiples of $100, even though this information is crucial to determining the balance on which the finance charge will be imposed.[[238]](#footnote-245)

For the most part, however, the consumer should be able to duplicate the figures that appear on the periodic statement. If the consumer cannot make the numbers balance, the disclosure is unlikely to pass muster as an adequate explanation (or the disclosure may be wrong).

A detailed explanation of the various methods creditors may use in determining the balance upon which the finance charge is computed is beyond the scope of this treatise. A description of the methods, and sample calculations appear elsewhere in this series.[[239]](#footnote-246)

[3n]8.4.2.4 [m]Determination of the Amount of the Finance Charge

The account-opening disclosures must explain how the dollar amount of any finance charge will be determined.[[240]](#footnote-247) Stating that the amount of the finance charge is determined by applying a periodic rate of, for example, 1.5% per month to the average daily balance is sufficient. This information should be clear enough to enable the consumer to verify the creditor’s figures. A creditor may refrain from imposing a finance charge on small balances. This practice need not be disclosed.[[241]](#footnote-248)

The disclosure of how the finance charge is determined is not limited to the obvious finance charge: the periodic rate(s) applicable to a range of balances.[[242]](#footnote-249) The creditor must also disclose how the amount of other finance charges will be determined.[[243]](#footnote-250) One court has held that a creditor need not disclose that interest accrues on penalty fees before the fees show up on a statement.[[244]](#footnote-251)

What is and is not a finance charge is discussed in detail at Chapter 3, *supra.*

[2n]8.4.3 [m]Disclosure of “Other Charges”

[3n]8.4.3.1 [m]General

Some (but not all) non-finance charges must also be disclosed. The Regulation and Official Interpretations create a bizarre structure, mandating the disclosure of finance charges and “other charges,” while specifically exempting some charges from disclosure.

“Other charges,” which must be disclosed, are defined by Regulation Z as “any charge other than a finance charge that may be imposed as part of the plan.”[[245]](#footnote-252) The commentary narrows the definition of “other charges” to “significant charges related to the plan (that are not finance charges).”[[246]](#footnote-253) The commentary includes a list of “other charges” that must be disclosed,[[247]](#footnote-254) and a list of items that are excluded from “other charge” status and need not be disclosed.[[248]](#footnote-255) The list of required “other charge” disclosures is not exclusive.

The presumption should be that a fee not specifically excluded in the commentary is an “other charge” that must be disclosed. Thus, for example, for HELOCs accessed by a credit card, the fees charged to cardholders by the Visa and MasterCard networks (not the card issuers) should be required to be disclosed as an “other charge.”[[249]](#footnote-256)

The commentary provides the following examples of other charges:[[250]](#footnote-257)

[b]Membership fees, unless such fees are imposed on both cash and credit customers and the membership has some substantive purpose other than access to the credit feature.[[251]](#footnote-258) If the primary benefit of membership is the opportunity to apply for open-ended credit and other benefits are incidental, the membership must be disclosed, even if the fee technically could be charged to members who did not seek credit.[[252]](#footnote-259)

[b]Unanticipated late charges, and default or delinquency charges (disclosure of late charges that exceed those allowed by state law may be considered an inaccurate disclosure and a TILA violation).[[253]](#footnote-260) Note that in some circumstances, a late charge may not be truly unanticipated and must be disclosed as a finance charge, not an “other charge.”[[254]](#footnote-261)

[b]Charges for exceeding the credit limit on an account.[[255]](#footnote-262)

[b]Fees for providing copies of documents in connection with billing error procedures.[[256]](#footnote-263)

[b]Taxes imposed on the credit transaction itself; for instance, a documentary stamp tax on a cash advance.

[b]Charges in connection with a real estate transaction that have been excluded from the finance charge by Regulation Z § 1026.4(c)(7) [§ 226.4(c)(7)], such as title fees, appraisal fees, etc.[[257]](#footnote-264)

[b]And, other charges imposed in credit transactions, such as charges for the use of an ATM to obtain a cash advance where the charge to credit customers does not exceed the charge to cash customers.[[258]](#footnote-265)

[3n]8.4.3.2 [m]Excluded Charges

Creditors are not required to disclose charges that are neither finance charges nor “other charges.”[[259]](#footnote-266) These excluded charges are:[[260]](#footnote-267)

[b]Fees for providing copies of documents for tax or personal purposes outside the scope of the billing error procedures.

[b]Collection charges such as attorney fees (even if imposed automatically), foreclosure costs, and postjudgment interest.

[b]Reinstatement fees or fees for reissuing a card.

[b]Voluntary insurance premiums.[[261]](#footnote-268) But the initial disclosure statement must have made proper disclosures as to the voluntary nature of the credit insurance and its unit cost basis, to exclude the credit insurance from the finance charge.

[b]Application fees uniformly charged to all applicants, whether they are granted credit or not.

[b]Monthly service charges for a checking account with an overdraft feature which are the same as applied to checking accounts irrespective of the overdraft feature.

[b]ATM charges imposed by another institution, for instance, in a shared or interchange system.

[b]Taxes and filing or notary fees, if excluded from the finance charge under Regulation Z § 1026.4(e) [§ 226.4(e)].

[b]Charges for submitting as payment a check that is later returned as unpaid.

[b]Fees to expedite a single payment on a credit account, upon a consumer’s request, if the credit plan provides that the consumer may make payments on the account by another reasonable means without paying a fee.[[262]](#footnote-269)

[b]Fees to expedite delivery of credit card, either at account opening or during the life of the account, provided that delivery of the card is also available by standard mail service (or other means at least as fast) without paying a fee.[[263]](#footnote-270)

[b]And, any fees imposed for terminating an open-end credit plan.[[264]](#footnote-271)

[3n]8.4.3.3 [m]Real-Estate-Related Charges

The commentary treats real-estate-related charges that are not finance charges in two different ways, depending on which section of Regulation Z excludes them from the definition of a finance charge. Title fees, appraisal fees, and credit report fees excluded by Regulation Z § 1026.4(c)(7) [§ 226.4(c)(7)] are costs that must be disclosed as “other charges” in real estate transactions.[[265]](#footnote-272) However, taxes and filing or notary fees, if excluded from the finance charge under section 1026.4(e) [section 226.4(e)], are examples of what is not an “other charge.”[[266]](#footnote-273)

[2n]8.4.4 [m]Home-Equity Plan Information

HELOC account-opening disclosures must generally repeat, as applicable, some of the early HELOC disclosures. Regulation Z refers to these disclosures as “home-equity plan information.”[[267]](#footnote-274) Creditors must provide these disclosures in a form the consumer may keep, subject to the general format requirements for open-end credit disclosures, but the disclosures need not be segregated:[[268]](#footnote-275)

[b]Conditions under which the creditor may terminate the plan or change its terms.[[269]](#footnote-276)

[b]Payment terms of the plan.[[270]](#footnote-277)

[b]Negative amortization.[[271]](#footnote-278)

[b]Transaction requirements.[[272]](#footnote-279)

[b]Tax implications.[[273]](#footnote-280)

[b]The fact that the APR does not include costs other than interest.[[274]](#footnote-281)

[b]An example showing how long it would take to repay a hypothetical balance of $10,000 if the consumer made only the minimum payments.[[275]](#footnote-282)

[b]Variable rate disclosures, including the “worst case” scenario.[[276]](#footnote-283)

[text]The last two items need not be re-disclosed if the disclosures provided with the application were in a form the consumer could keep and included an example of how long it would take to repay a $10,000 balance under the payment option chosen by the consumer.[[277]](#footnote-284)

While the “early” disclosures must be “segregated from all unrelated information,”[[278]](#footnote-285) the account-opening disclosures need not be segregated and may be integrated into the contract.[[279]](#footnote-286) However, the account-opening disclosures must be in a form the consumer may keep.[[280]](#footnote-287)

[2n]8.4.5 [m]Security Interest Disclosure

Creditors must disclose that they are taking a security interest in any property used for security, whether owned by the consumer or a third party.[[281]](#footnote-288) The creditor may identify the property by type or address.[[282]](#footnote-289)

Credit contracts sometimes take a security interest in the same collateral used for a preexisting extension of credit from the same lender. This is variously known as a “spreader,” “dragnet,” or cross-collateralization clause. A creditor using this type of security interest is not required to identify the collateral again--assuming it was properly identified in the original credit agreement. Instead, the CFPB says the creditor may simply use a “reminder” as a disclosure, such as “collateral securing other loans with us may also secure this loan[.]”[[283]](#footnote-290)

[2n]8.4.6 [m]Statement of Billing Rights

As discussed in greater detail at § 6.8.2, *supra*, the account-opening disclosures must include a statement describing the consumer’s rights and the creditor’s responsibilities as defined under sections 1026.12(c) and 1026.13 [sections 226.12(c) and 226.13].

[2n]8.4.7 [m]Disclosure of Maximum Interest Rate

[3n]8.4.7.1 [m]Overview

Under the Competitive Equality Banking Act of 1987, any adjustable rate loan must have a disclosed maximum interest rate.[[284]](#footnote-291) Determination of the maximum rate is within the creditor’s discretion, but failure to set a maximum rate is a violation of TILA.[[285]](#footnote-292)

Open-end plans that are subject to the maximum rate disclosure include:

[b]Dwelling-secured open-end lines of credit in which the creditor has the contractual right to make interest rate changes during the plan, even if the adjustments apply to new advances only;

[b]Dwelling-secured credit obligations to which a variable rate feature is added;

[b]Credit obligations allowing for interest rate changes to which a security interest in a dwelling is added.[[286]](#footnote-293)

[text] The maximum rate disclosure requirement does *not* apply to open-end credit plans in which the interest rate may *not* change during the term of the obligation. Therefore, the following type of plan is *not* subject to the maximum rate regulation:

[b]Fixed-rate multiple advance transactions in which each advance is disclosed as a separate transaction.[[287]](#footnote-294)

[3n]8.4.7.2 [m]Changes to the Maximum Interest Rate

A new maximum interest rate can be set only if an open-end plan is terminated and a new one opened. Modifications of an existing agreement that do not constitute a new plan cannot change the maximum interest rate cap set under the original agreement, even if additional credit is extended. If an open-end plan subject to section 1026.30 [section 226.30] has a fixed maturity and a creditor renews the plan at maturity, without having a legal obligation to do so, a new maximum interest rate may be set at that time.[[288]](#footnote-295)

[1n]8.5 [m]Disclosures After Account-Opening

[2n]8.5.1 [m]Periodic Statements

[3n]8.5.1.1 [m]General Requirements

HELOC creditors are required to send periodic statements disclosing the following information:[[289]](#footnote-296)

[b]The beginning balance;

[b]The amount and date of each credit transaction with an identification of each;[[290]](#footnote-297)

[b]The amount credited during the billing period;

[b]The amount of the finance charge, itemized to show the application of various rates, and the amount of any minimum or fixed charges;

[b]Each periodic rate, the range of balances to which each applies and the corresponding annual percentage rate;

[b]The total finance charge and the range of balances to which it applies;

[b]The balance on which the finance charge is computed and how the balance was determined;

[b]The outstanding balance at the end of the period;

[b]The “grace period,” or time within which payment must be made to avoid additional finance charges;

[b]The date on which the payment is due or the earliest date on which a late payment fee may be charged and the amount of the fee; and

[b]The creditor’s address for billing error purposes.

[text] Disclosure of the effective APR has been optional since July 2010.[[291]](#footnote-298) In addition, HELOC creditors have the option of sending periodic statements that meet the rules for non-home-secured credit.[[292]](#footnote-299)

[3n]8.5.1.2 [m]Disclosure of the Amount of the Finance Charge

For HELOCs, the periodic statement must disclose the dollar amount of the finance charge added to the account during the billing cycle, and must use the term “finance charge.”[[293]](#footnote-300) Each component of the finance charge must be identified as to type and itemized to show:

[b]*The finance charge attributable to the application of periodic rates*. If the creditor uses different periodic rates, it can show the finance charge attributable to each rate, or merely give the total finance charge arising from the application of the rates.[[294]](#footnote-301)

[b]*Other finance charges*. Other finance charges, such as a transaction charge or a minimum charge, must be listed, individually.[[295]](#footnote-302) Even if a finance charge is not included in the new balance because it is payable to a third party, such as required insurance or documentary taxes, it must be disclosed here.[[296]](#footnote-303) Finance charges assessed at the time an account is opened (e.g., points, loan fees) must be disclosed on the periodic statement if they are financed under the plan (included are charges that are paid out of the first advance).[[297]](#footnote-304)

[text] Each type of finance charge can be further itemized, or can be disclosed as a total for that type. The total of all finance charges need not be shown, but the total for each type of charge is required.[[298]](#footnote-305)

If a creditor deducts the finance charge from each payment as it is made, and then applies the rest of the payment to the principal of the debt, the finance charge need not be disclosed in the previous balance. The finance charge that has accrued during the billing cycle need not be shown either, because it is not added as part of the new balance.[[299]](#footnote-306)

What constitutes a finance charge is discussed in detail at Chapter 3, *supra.*

[3n]8.5.1.3 [m]Disclosure of Other Charges

The periodic statement must include the amount of any other charges debited to the account, itemized and identified by type.[[300]](#footnote-307) Each type must be separately itemized; all charges of the same type may be disclosed individually or as a total of that type. Neither the total of all the types of other charges nor the date of debiting need be disclosed.[[301]](#footnote-308)

“Other charges” are significant charges imposed on the account other than finance charges.[[302]](#footnote-309) The commentary refers to the comment for the account-opening disclosures to provide a list of required “other charges” disclosures.[[303]](#footnote-310)

[3n]8.5.1.4 [m]Charges Excluded from “Other Charges”

Certain charges are not considered “other charges” for purposes of the initial disclosure.[[304]](#footnote-311) But it is less clear whether these charges are excluded from the periodic statement. The commentary for the periodic statement disclosure does not actually cross-reference the corresponding account-opening disclosures provision for excluded charges.[[305]](#footnote-312) Furthermore, these charges may need to be disclosed on the periodic statement if they are added to the outstanding balance of the cardholder’s account, pursuant to the requirement that each transaction be properly identified on a periodic statement.[[306]](#footnote-313)

The charges excluded from “other charges” for the initial disclosure are listed at §§ 6.6.6, 8.4.3.2, *supra*.

[2n]8.5.2 [m]Credit Limit Increases

The commentary explicitly exempts credit-limit increases from the ban on changing the HELOC terms because it is perceived to “unequivocally benefit the consumer.”[[307]](#footnote-314) The commentary also says no change-in-terms notice is required when increasing a consumer’s credit limit.[[308]](#footnote-315)

The only disclosure explicitly required when increasing a borrower’s credit limit is notice of the right to cancel the increase.[[309]](#footnote-316) At least one court has interpreted the law as requiring creditors to provide *all* the material disclosures described in the Act and Regulation Z[[310]](#footnote-317) in addition to the notice of the right to cancel, or the borrower will have an extended right to cancel the increase.[[311]](#footnote-318)

[2n]8.5.3 [m]Change of Terms Notices

[3n]8.5.3.1 [m]Change of Terms--Fifteen Days’ Advance Notice

In addition to the subsequent disclosures required of all creditors extending open-end credit, such as periodic statements,[[312]](#footnote-319) Regulation Z specifies when creditors must notify HELOC borrowers of a change in terms. HELOC creditors are required to mail written notice of a change in terms[[313]](#footnote-320) before:

[b]Increasing the minimum payment;[[314]](#footnote-321)

[b]Changing any of the terms subject to the HELOC-specific account-opening disclosures;[[315]](#footnote-322)

[b]Resuming the normal rate or payments after a temporary reduction or suspension--if there is no explanation of how or when this resumption will occur in the initial disclosure statement;[[316]](#footnote-323)

[b]Changing the security interest;[[317]](#footnote-324) or

[b]A change in the billing cycle[[318]](#footnote-325) that affects any of the account-opening disclosures, increases the minimum payment, or makes even a temporary reduction in the grace period.

[text] This notices must be provided at least fifteen days before the change, unless the borrower has agreed to the change.

[3n]8.5.3.2 [m]Change of Terms--Notice By the Effective Date

When the borrower agrees to a change in terms, the creditor may mail or deliver the notice as late as the effective date of the change.[[319]](#footnote-326) This exception, however, only applies to “unusual” changes that are “relatively unique” to an individual homeowner, such as replacing the collateral for a loan.[[320]](#footnote-327) Creditors are not permitted to presume assent to the changes through the consumer’s use of the account.[[321]](#footnote-328)

The Official Interpretations appear to add another exception. The commentary says creditors can provide notice as late as the effective date “[i]f there is an increased periodic rate or any other finance charge” because the consumer is delinquent or in default.[[322]](#footnote-329) But this exception does not make sense in the overall context of Regulation Z and is probably an accidental remnant from a previous version of the rule.

In February 2010, the FRB amended Regulation Z to implement the Credit Card Accountability Responsibility and Disclosure Act of 2009 (Credit CARD Act).[[323]](#footnote-330) The rules prior to amendment applied equally to home-secured and non-home-secured forms of open-end credit.[[324]](#footnote-331) When the FRB adopted new rules to implement the Credit CARD Act, which only affected non-home-secured credit, preserving the existing HELOC rules required some adjustments to the structure of the regulations (primarily re-numbering), but the Board stated that it was not changing the rules for home-secured credit (i.e., HELOCs).[[325]](#footnote-332)

The regulations make clear that HELOC creditors are not allowed to increase the periodic rate or do anything else that would increase the APR upon a consumer’s default.[[326]](#footnote-333) This should cover increases to other finance charges upon default, as well, under Regulation Z’s general ban on changing any term in a HELOC plan, other than those changes expressly permitted.[[327]](#footnote-334) That means the commentary’s reference to a notice about a rate increase upon the consumer’s default is superfluous in the HELOC context, but would have had meaning in the pre-2010 version of the comments that applied equally to home-secured and non-home-secured open-end credit. Thus, it appears likely that this “exception” was originally intended to apply only to non-home-secured open-end credit and was overlooked when the FRB implemented the Credit CARD Act.

In contrast to the above-described commentary, the plain text of the HELOC rule sensibly does not refer to a notice that could never be given. But the commentary retains the prior language that would have been applicable for non-home-secured open-end credit. Given the great deference courts show to the staff interpretation of TILA as expressed in the commentary,[[328]](#footnote-335) advocates may need to be prepared to explain why the second exception in the commentary is in fact irrelevant and a vestigial remnant of a prior regime.[[329]](#footnote-336)

[3n]8.5.3.3 [m]Change of Terms--Notice by Three-Business Days After Taking Action

Creditors must also provide notice when prohibiting additional credit extensions or reducing the consumer’s credit line pursuant to section 1026.40(f)(3)(i) or (vi) [section 226.5b(f)(3)(i) or (vi)].[[330]](#footnote-337) The notice must provide specific reasons for the action taken and must be mailed to each affected consumer no more than three business days *after* taking action. But, according to the commentary, creditors are not required to provide this notice when freezing or reducing a credit limit in lieu of termination and acceleration for one of the reasons listed in Regulation Z § 226.5b(f)(2).[[331]](#footnote-338) If the consumer must request reinstatement to regain the restricted credit privileges, the creditor must also provide notice of that fact.[[332]](#footnote-339)

[3n]8.5.3.4 [m]Change of Terms--No Notice Required

HELOC creditors are not required to provide a change-of-terms notice when reducing any finance charge or other charges[[333]](#footnote-340) or when making changes resulting from an agreement involving a court proceeding (such as a settlement).[[334]](#footnote-341)

The commentary says no change-in-terms notice is required when changing the consumer’s credit limit or when terminating or suspending credit privileges.[[335]](#footnote-342) This would appear to contradict other parts of Regulation Z. Indeed, Regulation Z specifically requires notice when reducing a consumer’s credit limit in some circumstances.[[336]](#footnote-343) Both TILA and Regulation Z also require creditors to give notice of the right to cancel when increasing a borrower’s credit limit.[[337]](#footnote-344) In fact, one court has held that creditors must provide all the material disclosures defined in Regulation Z when increasing the credit limit.[[338]](#footnote-345) Therefore, this part of the commentary should be read as meaning “where not otherwise required.”

The Supreme Court has added that no change-of-terms notice is required for credit cards when there is an increase in the periodic rate or fees if the increase is pursuant to a contractual term authorizing such an increase.[[339]](#footnote-346) As discussed at § 8.6.4, *infra*, however, HELOC contracts may not provide for an increase in the APR in response to a consumer’s default or delinquency. The same rule should apply to fee increases, although it is somewhat less clear.[[340]](#footnote-347)

[1n]8.6 [m]Substantive Limitations on HELOCs

[2n]8.6.1 [m]General

Although TILA is primarily a disclosure statute, the Act and Regulation Z impose important substantive limitations on HELOC contracts and HELOC creditors. The limitations apply to assignees and holders, as well as the original creditors. The limitations apply to the draw period of a HELOC, the repayment period, and to any renewal or modification of the HELOC agreement.[[341]](#footnote-348)

In addition, the Fair Credit Billing Act provides additional substantive rights to dispute billing errors under a HELOC plan. These are discussed at § 7.9, *supra*. The provisions of RESPA requiring mortgage servicers to respond to qualified written requests and to correct account errors do not apply to HELOCs.[[342]](#footnote-349)

[2n]8.6.2 [m]Fees

[3n]8.6.2.1 [m]Refund of Fees

A creditor must refund all fees paid by the consumer to anyone in connection with an application for a HELOC if any disclosed term changes (other than one resulting from a variable rate index change) before the plan is opened, and if, as a result of the change, the consumer decides not to enter into the plan.[[343]](#footnote-350) All fees paid in connection with the plan are subject to this requirement, including fees paid to third parties (e.g., insurance premiums, appraisal fees) as well as those paid directly to the creditor.[[344]](#footnote-351) This refund requirement may be triggered, for example, by a change in the maximum rate cap or in creditor fees (even if the creditor has only estimated its fees).

A consumer is entitled to a refund of fees whether or not terms were guaranteed by the creditor.[[345]](#footnote-352) However, the Official Interpretations state that if third-party fees are disclosed as estimates, and these fees increase, then the consumer is not entitled to a refund.[[346]](#footnote-353) The commentary also suggests that the creditor refund the fees “as soon as reasonably possible” after it has been notified of the consumer’s decision.[[347]](#footnote-354)

[3n]8.6.2.2 [m]Nonrefundable Fees

Neither the creditor nor any other person may impose a nonrefundable fee in connection with an application for a HELOC until three business days after the disclosure and required brochure have been received by the consumer.[[348]](#footnote-355) If the disclosures are mailed, the consumer is considered to have received them three business days after they were mailed.[[349]](#footnote-356)

The practical effect of this provision is limited to application fees, because no other fees may be collected prior to receiving the account-opening disclosures.[[350]](#footnote-357) After the three-day period expires, an application fee may become nonrefundable unless the consumer decides not to enter into a plan because of a change in terms[[351]](#footnote-358) or the consumer rescinds.[[352]](#footnote-359)

[2n]8.6.3 [m]Indices for Variable Rate HELOCs

HELOCs may not have a variable rate unless the controlling index is both publicly available and not under the control of the creditor.[[353]](#footnote-360) A publicly available index need not always be published in a newspaper, but it must be independently verifiable by a consumer.[[354]](#footnote-361)

[2n]8.6.4 [m]Changes in the APR

While Regulation Z allows changes to the APR based on changes in a public index, further changes to APR are limited.[[355]](#footnote-362) Changes to the APR, not based on a change in the index, are only permitted if the contract provides for the changes “upon the occurrence of specific events,”[[356]](#footnote-363) and those triggering events are not expressly addressed in a different manner in the regulation.[[357]](#footnote-364) Material changes in the consumer’s financial condition and the consumer’s default are both listed as triggering events for a reduction in the credit limit.[[358]](#footnote-365) Thus, the most common pretexts a creditor might give for increasing the APR--default on the HELOC or a decline in the consumer’s credit score or income--cannot be the basis of increasing the APR.[[359]](#footnote-366) Another example of a triggering event specifically addressed in the regulation and therefore impermissible as the basis for an increase in the APR is a decline in the value of the home.[[360]](#footnote-367)

Other increases in the APR may be permitted, beyond those occasioned by an index, if they are specified in the original contract.[[361]](#footnote-368) The primary example given in the regulation and commentary is a specified increase in the APR if the consumer had a preferential rate as an employee of the creditor and then leaves the creditor’s employ.[[362]](#footnote-369) The creditor may also increase the rate pursuant to a step-rate schedule provided for in the original contract where specified increases are set on specific dates.[[363]](#footnote-370)

In addition, the commentary provides that the creditor may increase the rate in lieu of early termination of the contract, assuming the rate increase is provided for in the contract, in the event of the consumer’s fraud or misrepresentation, or impairment of the security interest caused by the consumer’s action or inaction.[[364]](#footnote-371) Finally, the commentary presumes that the APR could be increased, if the initial contract so specified, if a linked savings account drops below the “specified minimum.”[[365]](#footnote-372)

Decreases in the APR, so long as they “unequivocally benefit” the consumer, are permissible.[[366]](#footnote-373)

[2n]8.6.5 [m]Early Termination of HELOCs

With the exception of the three circumstances described below, creditors may not terminate a HELOC (except for reverse mortgage transactions subject to Regulation Z § 1026.33 [§ 226.33]) and accelerate payment of the outstanding balance before the scheduled expiration of the HELOC plan.[[367]](#footnote-374) For example, unlike non-home-secured open-end credit, a HELOC may not be terminated simply because the interest rate has reached the maximum rate cap.[[368]](#footnote-375)

1. *Fraud*. A creditor may terminate the plan if there has been fraud or material misrepresentation, as determined by state law and agreements between the consumer and the creditor, by the consumer in connection with the plan.[[369]](#footnote-376) The creditor may base its termination on fraud or material misrepresentation that occurs at any time in the transaction, including during the application process, the draw period, and the repayment period.[[370]](#footnote-377) The consumer must have had intent to deceive the creditor.[[371]](#footnote-378)

2. *Default*. A creditor may also terminate the plan and accelerate the balance if the consumer has failed to meet the repayment terms of the agreement.[[372]](#footnote-379) This exception is aimed at the actual failure to make payments (including bankruptcy), rather than a minor lapse, such as inadvertently sending payments to the wrong address. This exception does not override any state or other law that requires a right-to-cure notice or otherwise places a duty on a creditor before it can terminate and accelerate the balance.[[373]](#footnote-380) The FRB proposed prohibiting termination unless the consumer has failed to make a required minimum periodic payment within thirty days of the due date.[[374]](#footnote-381)

3. *Security endangered*. A creditor may terminate the plan and accelerate the balance based on any action or inaction by the consumer that adversely affects the creditor’s security for the HELOC plan, or any right of the creditor in such security.[[375]](#footnote-382) The commentary interprets this catch-all provision to include: sale of the property without the creditor’s permission; failure to maintain required insurance on the dwelling; failure to pay property taxes; permitting the filing of a lien senior to the creditor’s lien; loss of the property through eminent domain; foreclosure by a prior lien holder; death of the sole obligor; death of one of two co-obligors; the sole obligor moving-out of the dwelling; and other events or acts.[[376]](#footnote-383) A creditor may only terminate or accelerate based on one of these reasons if the action or inaction adversely affects the creditor’s security.[[377]](#footnote-384) Obviously, the impact of some of these events will be more readily apparent than others.

Creditors may take other actions short of terminating an account or accelerating payment of the outstanding balance based on these exceptions.[[378]](#footnote-385) For example, if one of the exceptions applies, a creditor may prohibit additional extensions of credit or reduce the credit limit (if otherwise allowed in the contract). Creditors also do not lose their right to terminate or accelerate if they delay termination, provided that one of the three exceptions is still in existence at the time the creditor terminates the plan.[[379]](#footnote-386) This provision should not allow a creditor to escape the consequences of waiver or estoppel if a consumer justifiably relies on the creditor’s failure to terminate the plan in a timely manner.

[2n]8.6.6 [m]Early Termination of Reverse Mortgage HELOCs

Reverse mortgages may not be terminated before the original term expires except when the consumer (i) defaults; (ii) transfers title to the property that secures the loan; (iii) stops using the property that secures the loan as the “primary” dwelling; or (iv) dies.[[380]](#footnote-387) Nothing in the regulations or the official commentary explains why subparagraph (iii) uses the word “primary” rather than “principal.” In fact the phrase “primary dwelling” does not appear anywhere else in Regulation Z or the commentary.[[381]](#footnote-388) This inconsistent use of terminology is probably nothing more than a drafting error. Presumably, “primary” should be given the same meaning as “principal.”

Like other HELOCs, the plan may be terminated upon default.[[382]](#footnote-389) Unlike other HELOCs, the creditor’s right to terminate the plan is unconditional upon death, transfer of the property, or ceasing to use the property as a primary dwelling; creditors need not show that the event adversely impacts their security.

[2n]8.6.7 [m]Unilateral Change in Terms

[3n]8.6.7.1 [m]General

Except for the circumstances described below, a creditor may not unilaterally change the terms of a HELOC plan, including increasing or adding any fees, after the account has been opened.[[383]](#footnote-390) This includes third-party fees for services.[[384]](#footnote-391) Creditors may, however, pass on increases in taxes and property or credit insurance that is otherwise properly excluded from the finance charge.[[385]](#footnote-392) A creditor may also have the right to change the terms where it would otherwise be entitled to terminate the contract and accelerate the balance.[[386]](#footnote-393)

[3n]8.6.7.2 [m]Change in Terms for Events Provided for in the Contract

A creditor may implement changes set forth in the contract that are contemplated on the occurrence of an event, as long as the triggering event and the resulting change are stated with specificity.[[387]](#footnote-394) For example, in an employee loan program, the contract could provide for a higher rate if the consumer’s employment with the creditor ends. Similarly, a creditor also could have a step rate schedule in which specified changes in the rate would occur on certain dates.

The creditor may also provide in the initial agreement that it may deny additional advances or reduce the credit limit during any period in which the maximum rate cap is reached.[[388]](#footnote-395)

However, a creditor may not include a general or “boilerplate” provision in its contract reserving the right to change the fees imposed by the plan or other terms of the plan.[[389]](#footnote-396) Similarly a creditor may not include in the initial agreement any “triggering events” or permissible responses to events otherwise expressly addressed by Regulation Z. For example, a creditor could not terminate the plan under the contract except in the circumstances described above.[[390]](#footnote-397)

[3n]8.6.7.3 [m]Change Where Index or Margin Becomes Unavailable

A creditor may change the index and margin used under a variable rate HELOC if the original index becomes unavailable, as long as historical fluctuations in the two indices were substantially similar and the new index and margin will produce a “substantially similar” new APR.[[391]](#footnote-398)

[3n]8.6.7.4 [m]Changes Made by Written Agreement

Creditors may change the terms after a plan is opened if the consumer expressly agrees in writing to the change at that time.[[392]](#footnote-399) For example, a consumer and creditor could agree in writing to change repayment terms from interest-only payments to amortizing payments that reduced the principal balance.[[393]](#footnote-400) The written agreement, however, remains subject to the other provisions of Regulation Z. For example, a creditor and consumer could not agree to use a variable rate index controlled by the creditor.[[394]](#footnote-401) Nor may creditors assume the consumer’s consent to a change because the consumer uses an account, even if use of an account constitutes acceptance under state law.[[395]](#footnote-402) While the consumer could agree in writing to a new credit limit, the agreement could not authorize the creditor to freely make changes to the credit limit in the future, other than changes accepted in a new written agreement or changes permitted by section 1026.40(f)(3)(vi) [section 226.5b(f)(3)(vi)].[[396]](#footnote-403)

[3n]8.6.7.5 [m]Beneficial Changes

After the plan has been entered into, creditors may make changes that “unequivocally benefit” the consumer for the remainder of the plan.[[397]](#footnote-404) Examples of such beneficial changes include offering the consumer the option of lower monthly payments, extending the plan on the same terms, and temporarily reducing rates or fees (as long as they are not increased later to levels higher than originally disclosed).[[398]](#footnote-405) But a change-in-terms notice may be required if, after a temporary reduction, the creditor returns a rate or fee to its original level.[[399]](#footnote-406) Creditors may also add a new access device to the HELOC plan, with a fee for its use, provided the consumer may continue to use the prior access methods on their original terms.[[400]](#footnote-407)

[3n]8.6.7.6 [m]Insignificant Changes

The Act allows unilateral changes in “insignificant terms,” while Regulation Z permits “insignificant changes” to terms.[[401]](#footnote-408) Regardless of that distinction, this exception is “intended to address operational problems that would otherwise result if literal compliance with the blanket prohibition were required.”[[402]](#footnote-409) It includes changes in the creditor’s billing address, billing cycle date, and payment due date (as long as the grace period, if any, is not reduced). An “insignificant change” does not include, for example, a unilateral change in the late payment fee.[[403]](#footnote-410)

[3n]8.6.7.7 [m]Temporary Suspensions of Credit and Reductions of Credit Limit

[4n]8.6.7.7.1 [m]Basis for temporary suspensions of credit and reductions of credit limit

Homeowners may rely on their HELOCs to fund emergency expenses or pay recurring costs, such as a child’s college tuition. In either case, the sudden and unexpected reduction in credit availability may leave a homeowner in desperate straits.[[404]](#footnote-411) As a result, TILA and Regulation Z specify only six circumstances where a creditor may unilaterally suspend credit or reduce the credit limit:[[405]](#footnote-412)

[b]*Significant decline in appraised value*. Creditors may suspend a line of credit or reduce the credit limit if the value of the borrower’s dwelling declines significantly.[[406]](#footnote-413) Creditors began to exercise this right in droves, after the housing bubble burst in 2006.[[407]](#footnote-414) The FRB publishes a brochure offering consumers advice on HELOC freezes and reductions.[[408]](#footnote-415)

[nb]-- Neither the statute nor the regulation defines “significant.” And the commentary says the significance of a decline in value “will vary according to the individual circumstances.”[[409]](#footnote-416) Nevertheless, the commentary creates a safe harbor for creditors by declaring that a fifty percent decline in “the initial difference between the credit limit and the available equity” will constitute a significant decline in value for purposes of the rule.[[410]](#footnote-417) The “available equity,” as used in this formula, refers to the equity in the dwelling as measured immediately before the HELOC was originated.

[nb]-- While a fifty percent reduction sounds impressive, it could translate into a relatively small amount. According to the example in the commentary, a homeowner with a $50,000 mortgage and a $30,000 HELOC on a home valued at $100,000 (at origination) could see her credit suspended after only a ten percent drop in the value of her home, to $90,000.

[nb]-- A creditor’s evaluation of “available equity” should take into account the actual existing encumbrances on the property at the time of the evaluation. For example, prepayment or amortization of higher-priority liens increases the available equity for a subordinate HELOC creditor. If the first mortgage in the previous example had been reduced to $40,000 by the time the home was re-appraised, the amount of equity in the home would still be $20,000, even if the principal balance on the HELOC had not been reduced. The HELOC creditor would have exactly the same dollar value of security as at the loan’s inception.[[411]](#footnote-418)

[b]*Material change in consumer’s circumstances*. A creditor may also take reduce the available credit if it reasonably believes the consumer will be unable to fulfill the repayment obligations under the plan because of a “material change in the consumer’s financial circumstances.”[[412]](#footnote-419) Both conditions--a material change in consumer’s circumstances and a reasonable belief that consumer will be unable to pay--must be present.[[413]](#footnote-420) Examples of material changes include a significant decrease in the consumer’s income or increase in expenses.[[414]](#footnote-421) Another example would be if the consumer files for bankruptcy.[[415]](#footnote-422)

[nb]-- The FRB’s 2009 proposed rulemaking suggests that creditors could rely on derogatory information in credit reports, such as late payments, delinquencies, defaults, or derogatory collections related to the consumer’s failure to pay other obligations.[[416]](#footnote-423) The creditor’s ability to restrict access to the line of credit precisely when the consumer may need it most raises a troubling dichotomy between consumer expectations and creditor rights--especially if consumers are encouraged by creditor advertising to rely on HELOCs precisely as a “rainy day” fund.

[b]-- *Default of material obligations*. A creditor may prohibit additional extensions of credit or reduce the credit limit if the consumer is in default on any “material obligation” under the agreement.[[417]](#footnote-424) While “material obligation” is not defined in the Act or Regulation Z, a creditor is required by the Act to disclose a list of the categories of contract obligations it deems to be “material.”[[418]](#footnote-425) The Official Interpretations give examples of such conditions as the consumer moving out of the home or a tax lien achieving a higher priority than the HELOC.[[419]](#footnote-426)

[b]*Governmental action on rate*. Such action may also be taken if a government (federal, state, or local) precludes the creditor from imposing the APR otherwise agreed upon.[[420]](#footnote-427) A clear example of such governmental action is the enactment of a state usury law prohibiting the imposition of the contractual APR.

[b]*Governmental action on security interest*. This exception permits a creditor to act if action by a governmental body adversely affects the priority of the creditor’s security interest so that the value of the security interest is less than 120% of the credit line.[[421]](#footnote-428)

[b]*Unsafe/unsound practice*. A creditor may suspend further advances if it is notified by its regulatory agency (e.g., a state banking department) that continued advances constitute an unsafe and unsound practice.[[422]](#footnote-429)

[b]*Consumer request.*  If the HELOC plan had two cosigners, each having the ability to borrow on the plan, the agreement may permit any of the consumers to request suspension of future advances. A creditor could require all cosigners to request reinstatement.[[423]](#footnote-430) This may be a particular problem in cases of divorce or domestic violence.

[4n]8.6.7.7.2 [m]Notice and duration of temporary suspensions of credit and reductions of credit

When prohibiting additional extensions of credit or reducing the credit limit for one of the above reasons, the creditor must give each affected consumer written notice with “specific reasons” for the action.[[424]](#footnote-431) (Creditors are not required to provide this notice when freezing or reducing a credit limit in lieu of termination and acceleration for one of the reasons listed in Regulation Z § 1026.40(f)(2) [§ 226.5b(f)(2)], as described in the commentary to that paragraph.[[425]](#footnote-432)) When providing the specific reason for the action, creditors may not simply send a form letter with a laundry list of potential reasons.[[426]](#footnote-433)

Creditors may prohibit additional extensions or reduce the credit limit only as long as any of the above circumstances exist. The creditor must either monitor these circumstances on a periodic basis or require the consumer to request reinstatement of credit privileges. Either way, the creditor must reinstate the consumer’s credit privileges as soon as reasonably possible if the condition that permitted the creditor to take such action ceases to exist.[[427]](#footnote-434)

[4n]8.6.7.7.3 [m]Challenging the creditor’s temporary suspensions of credit and reductions of credit

Consumers may dispute a creditor’s decision to restrict credit privileges by requesting reinstatement of the privilege.[[428]](#footnote-435) If the restriction was imposed for one of the reasons listed in Regulation Z § 1026.40(f)(3)(i) or (vi) [§ 226.5b(f)(3)(i) or (vi)],[[429]](#footnote-436) the creditor must provide a written a notice with specific reason for the creditor’s action.[[430]](#footnote-437) If the creditor requires the consumer to request reinstatement of the privileges, the notice will explain the procedure for doing so.[[431]](#footnote-438) The type of information necessary to show that the consumer is entitled to reinstatement will depend on the reason for the restriction.

If the restriction was imposed because the consumer’s home allegedly declined in the value, for example, a recent appraisal showing a higher value should be sufficient.[[432]](#footnote-439) Mortgage servicers often use less expensive, and less reliable, computerized appraisals called automated valuation models (AVMs). Reductions in credit limits based on AVMs may be especially susceptible to challenge with a traditional appraisal.[[433]](#footnote-440) Reliance on AVMs, however, does not by itself constitute a violation.[[434]](#footnote-441) It is also possible to obtain a retrospective appraisal that identifies the appraised value at a given point in the past, such as the month in which the creditor notified the consumer of the reduction. A subsequent appraisal showing a property value sufficient to merit reinstatement will not necessarily establish that the creditor illegally suspended the borrower’s credit limit. On the other hand, an appraisal showing the property value had never declined in the first place may be sufficient to state a cause of action.[[435]](#footnote-442)

Creditors sometimes ask borrowers with existing HELOCs to provide updated proof of income. If the borrower’s income was inflated on the loan application, as commonly happened with brokered loans, the creditor may claim there has been a material decline in the borrower’s income after comparing the updated information with the inflated income on the loan application. At least one court has, nevertheless, held that a borrower may challenge a creditor’s decision, in such circumstances, by showing that there was no material change in income or that the creditor’s reliance on the falsified application was unreasonable.[[436]](#footnote-443)

A creditor’s privilege to reduce the credit limit does not permit reducing the limit below the amount of the outstanding balance if this would require the consumer to make a higher payment.[[437]](#footnote-444)

[1n]8.7 [m]TILA Damages and Rescission Are Available for HELOC Violations

Statutory damages, actual damages, and attorney fees will be available for violations of TILA’s disclosure requirements, to the extent the disclosures are mandated by 15 U.S.C. § 1637a.[[438]](#footnote-445) To the extent the disclosures are mandated under the general open-end credit rules under 15 U.S.C. § 1637, the analysis is more complicated. Actual damages and attorney fees will still be available, but the availability of statutory damages depends on which provision of section 1637 requires the disclosure at issue. A full discussion of interplay between section 1637 and statutory damages can be found at § 11.6.7, *infra.*

HELOCs borrowers, like closed-end mortgagors, may also have the right to cancel transactions in some circumstances. There are, however, some important differences between rescinding HELOCs and closed-end loans. These differences and rescission in general are discussed at Chapter 10, *infra*.[[439]](#footnote-446)

[box]Note: The Federal Reserve Board issued a proposed rule on September 24, 2010 that includes substantial changes to Regulation Z’s provisions governing reverse mortgages.[[440]](#footnote-447) As of the writing of this supplement, the rule has yet to be finalized and responsibility for Regulation Z has been transferred to the Consumer Financial Protection Bureau.[[441]](#footnote-448) Future updates of this chapter will discuss any final changes adopted by the Bureau.

[end box]

[1n]8.8 [m]Reverse Mortgages

[2n]8.8.1 [m]Overview

Reverse mortgages are non-recourse loans intended to allow older homeowners to convert the equity in their homes into cash, while deferring repayment.[[442]](#footnote-449) The loan principal in a reverse mortgage may be advanced as a lump-sum, in monthly payments, as a line of credit, or a combination of these options. Unlike a “forward” mortgage, a reverse mortgage borrower is not expected to repay the principal or interest until maturity. Maturity may either be at the end of a specific term (as in term reverse mortgages) or when the borrower dies, sells, or permanently moves out of the home (as in tenure reverse mortgages).[[443]](#footnote-450) Reverse mortgages are discussed more extensively in Chapter 9 of NCLC’s *Mortgage Lending* treatise.[[444]](#footnote-451)

[2n]8.8.2 [m]Exemptions

Reverse mortgages are subject to most of the same substantive and disclosure requirements as other loans covered by TILA,[[445]](#footnote-452) with a number of important exceptions.

*Home Ownership and Equity Protection Act*. Reverse mortgages are excluded from the definition of high-cost loan under HOEPA, so creditors are not required to make any of the special HOEPA disclosures, nor do consumers benefit from any of HOEPA’s substantive protections either.[[446]](#footnote-453) The exclusion only applies, however, to the extent the loan meets the definition of “reverse mortgage transaction.”[[447]](#footnote-454) If a reverse mortgage meeting one of HOEPA’s triggers allows recourse against the consumer, the loan will be subject to all of HOEPA’s substantive and disclosure requirements.[[448]](#footnote-455)

*Home Equity Lines of Credit*. Regulation Z prohibits creditors from terminating HELOCs unless certain conditions exist.[[449]](#footnote-456) But for reverse mortgages structured as a line of credit, the list of acceptable conditions is more limited. Creditors may only terminate or accelerate the balance on an open-end reverse mortgage if the consumer defaults; transfers ownership of the secured property; stops using the property as “the primary dwelling;” or upon the consumer’s death.[[450]](#footnote-457)

*Dodd-Frank Act Provisions*. Reverse mortgage are also exempt from a number of provisions added by the Dodd-Frank Act, specifically the:

[b]Negative amortization disclosures described in section 1639c(f);[[451]](#footnote-458)

[b]Escrow-account requirement, in section 1639d;[[452]](#footnote-459)

[b]Ability-to-repay requirement, in section 1639c(a);[[453]](#footnote-460) and

[b]Appraisal requirement for higher-risk mortgages, in section 1639h.[[454]](#footnote-461)

[text] [2n]8.8.3 [m]Total Annual Loan Cost Rate Disclosure

In addition to the required disclosures for open- and closed-end mortgages,[[455]](#footnote-462) reverse mortgage creditors must also disclose the total annual loan cost (TALC) rate. The TALC rate is the projected annual average cost of the credit, including all itemized costs, expressed as a percentage rate.[[456]](#footnote-463) Unlike the annual percentage rate (APR), which takes into account only the finance charges in a credit transaction (or just the periodic interest for HELOCs), the TALC rate is a single rate that includes all costs and affords an apples-to-apples comparison between reverse mortgages.[[457]](#footnote-464) Creditors must provide the TALC disclosure not less than three days before consummation of the transaction.[[458]](#footnote-465)

TALC rates are expressed as a table based on various projected appreciation rates and loan terms. Projections must be based on at least three loan terms: a two-year term, a term equal to the youngest consumer’s life expectancy, and a term equal to 1.4 times the youngest consumer’s life expectancy.[[459]](#footnote-466) Creditors also have the option of disclosing a loan term equal to half the youngest consumer’s life expectancy.

In addition to the loan term, TALC rates must also be based on assumed annual property appreciation rates of 0%, 4%, and 8%. The 4% annual appreciation rate comes from HUD’s assessment of long-term averages of historical housing appreciation. The 0% and 8% annual appreciation rates were included to help consumers understand the potential costs and benefits if the property does not appreciate in value at all or if it appreciates at a rate faster than the average.[[460]](#footnote-467)

When determining the projected total cost of a reverse mortgage the creditor must take into account:

[b]Any shared appreciation or equity the lender will be entitled to receive under the contract;

[b]All costs and charges to the consumer, including the costs of any associated annuity that the consumer elects or is required to purchase as part of the transaction;

[b]Any payments to or for the benefit of the consumer, including annuity payments received by the consumer and financed from the proceeds of the loan; and

[b]Any limitations on liability of the consumer under reverse mortgage transactions (such as non-recourse limits and equity conservation agreements).[[461]](#footnote-468)

[text] The TALC rate depends on how long the consumer lives in the home, what happens to the home’s value during that time, and the type of loan advances. The cost is greatest when the loan is repaid within a few years after closing. The cost is lowest if the consumer remains in the home and lives beyond his or her projected life span, or if the home’s value grows little or declines.

There are two reasons why the home value can affect the TALC rate. First, for shared appreciation loans, a higher increase in home value means that more money will be added to the outstanding debt amount, resulting in a higher TALC rate. Second, for all reverse mortgages, with the required payoff usually limited to the value of the home, a longer-term loan with little or no home appreciation will cause debt to exceed value, lowering the ultimate TALC rate.

Some key assumptions may limit the value of a TALC rate disclosure for consumers. If the consumer has a credit line, the disclosures will be based on the assumption that fifty percent of the principal loan amount is advanced and that no further advances are made during the remaining term of the loan. While this assumption provides a convenient way to compare different credit lines, it often masks the true cost of the loan, which depends in large part on the size and timing of the cash advances requested by the borrower.

For variable-rate reverse mortgage transactions, creditors will assume that the initial interest rate will not increase. If the initial interest rate is a discounted rate, the discounted rate will first be applied to the period that it will be in effect. For the remaining term, the creditor will apply the original rate without the discount to compute the TALC rate. If the consumer gets a reverse mortgage when the interest rates are historically low, and those rates increase, the TALC rate disclosure would have underestimated the true cost of the mortgage.

[2n]8.8.4 [m]Other Reverse Mortgage Disclosures

In addition to the TALC rate, reverse mortgage creditors must provide a notice saying the consumer is not required to complete the transaction merely because the consumer received the disclosures or signed a loan application.[[462]](#footnote-469) Creditors must also provide an explanation of the TALC rate table and an itemized list of the loan terms, charges, age of the youngest borrower, and the appraised value of the property.[[463]](#footnote-470) These disclosures must be in a form substantially similar to the model form in Regulation Z’s Appendix K(d).[[464]](#footnote-471)

Creditors must provide all reverse mortgage disclosures at least three business days before the consummation of a closed-end transaction, or the first transaction under an open-end plan.[[465]](#footnote-472) Like other important TILA disclosures, creditors must make these disclosures clearly and conspicuously, in writing, and in a form that the consumer may keep.[[466]](#footnote-473)

[2n]8.8.5 [m]Reverse Mortgage Remedies

Failure to comply with Regulation Z’s requirements for reverse mortgages, may subject creditors to civil liability under TILA, including the remedy of rescission. Regulation Z does not provide an accuracy tolerance for TALC rate disclosures, as it does for APR disclosures, so the smallest variation from the actual rate may trigger a violation.

1. 74 Fed. Reg. 43,427 (Aug. 26, 2009). [↑](#footnote-ref-2)
2. *See generally* National Consumer Law Center, Mortgage Lending §§ 2.3.3.1, 2.3.5.2, 2.6.3 (2012 and Supp.) (discussing the basics of HELOCs). [↑](#footnote-ref-4)
3. § 8.8, *infra*. [↑](#footnote-ref-5)
4. *See generally* Chs. 4/-/5, *supra*. [↑](#footnote-ref-6)
5. *See generally* Ch. 10, *infra* (discussing rescission). Sections 10.2.3.2, 10.2.6.3, 10.2.6.5, and 10.4.3.3, *infra*, address rescission issues that are unique to HELOCs. [↑](#footnote-ref-7)
6. *See* § 8.6, *infra*. [↑](#footnote-ref-8)
7. These were known as “initial” disclosures until February 22, 2010. *See* 75 Fed. Reg. 7657 (Feb. 22, 2010). [↑](#footnote-ref-9)
8. *See* § ??? DENISE - PLEASE COMPLETE - FROM CH. 5??? [↑](#footnote-ref-10)
9. Pub. L. No. 100-709, 102 Stat. 4725 (Nov. 23, 1988), *codified at* 15 U.S.C. § 1637a. [↑](#footnote-ref-11)
10. 12 C.F.R. pt. 1026, supp. I, § 1026.40 cmt. 3 (hereinafter cited as Official Interpretations § 1026.40-3 [§ 226.5b-3]). *See* Consumers Union v. Fed. Reserve Bd., 938 F.2d 266 (D.C. Cir. 1991) (upholding the FRB’s authority to issue the HELOC rules published in 54 Fed. Reg. 24,670 (June 9, 1989)). [↑](#footnote-ref-12)
11. 74 Fed. Reg. 43,429, 43,429 (Aug. 26, 2009) (noting increase to 18.4%). [↑](#footnote-ref-13)
12. 73 Fed. Reg. 44,522 (July 30, 2008) (effective Oct. 1, 2009). [↑](#footnote-ref-14)
13. 74 Fed. Reg. 43,427 (Aug. 26, 2009). [↑](#footnote-ref-15)
14. Credit Card Accountability Responsibility and Disclosures (CARD) Act of 2009, Pub. L. No. 111-24, 123 Stat. 1735 (May 22, 2009); 75 Fed. Reg. 7925 (Feb. 22, 2010) (withdrawing 74 Fed. Reg. 5244 (Jan. 29, 2009)); 75 Fed. Reg. 7657 (Feb. 22, 2010) (implementing the Credit CARD Act). *See generally* Ch. 7, *supra* (discussing the Credit CARD Act). [↑](#footnote-ref-16)
15. *See* 74 Fed. Reg. 5244, 5393/-/5397 (Jan. 29, 2009) (notice of Regulation Z changes for non-home-secured open-end credit and relocation of HELOC provisions; providing a redesignation table for the relocated HELOC provisions).

    Although the January 2009 rulemaking was later withdrawn, the relocations were incorporated by reference into a February 2010 rulemaking. *See* 75 Fed. Reg. 7925, 7659 (Feb. 22, 2010) (noting that the relocation done by 74 Fed. Reg. 5244 was solely to ensure that the existing HELOC regulations remained unaffected by the rule changes). [↑](#footnote-ref-17)
16. *See* 75 Fed. Reg. 7925, 7659 (Feb. 22, 2010). [↑](#footnote-ref-18)
17. *See* §§ 6.7.6.4, *supra*, 7.6, *infra.* [↑](#footnote-ref-19)
18. *See* § 8.5.5.8, *infra.* [↑](#footnote-ref-20)
19. 76 Fed. Reg. 79,768 (Dec. 22, 2011) (effective Dec. 30, 2011). [↑](#footnote-ref-21)
20. *See* §§ 6.5.3.2, *supra*, 8.1.5, *infra*. [↑](#footnote-ref-22)
21. *See* Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, § 1431, 124 Stat. 1376 (July 21, 2010), *codified at* 15 U.S.C. § 1602(aa) (removing the requirement that the credit be closed-end in order to qualify as “high-cost”). *See generally* §§ 1.3, *supra* (discussing the effective date of the Dodd-Frank amendments), 9.6.2.4.3, *infra* (discussing HOEPA coverage). [↑](#footnote-ref-23)
22. 12 C.F.R. § 1024.7(h). *See* § 8.3.5.9, infra (describing the equivalent disclosure for HELOCs). [↑](#footnote-ref-24)
23. *See* § 6.2.3, supra (discussing spurious open-end credit). [↑](#footnote-ref-26)
24. *See* Reg. Z § 1026.34(b) [§ 226.34(b)] (prohibiting structuring a home-secured loan as an open-end account to evade the requirements of HOEPA). *See generally* § 9.6.11.6, *infra.* [↑](#footnote-ref-28)
25. Reg. Z §§ 1026.15(a) [§ 226.15(a)], 1026.40 [§ 226.5b]. [↑](#footnote-ref-29)
26. Official Interpretations § 1026.40-1 [§ 226.5b-1] (emphasis in original). [↑](#footnote-ref-31)
27. 15 U.S.C. § 1637a(d). [↑](#footnote-ref-32)
28. 15 U.S.C. § 1635(a); Reg. Z § 1026.15(a) [§ 226.15(a)]. *See generally* ch. 10 (discussing rescission). [↑](#footnote-ref-33)
29. *See* § 6.2.2, *supra* (elements of the definition of open-end credit). [↑](#footnote-ref-34)
30. Official Interpretations § 1040-6. [↑](#footnote-ref-35)
31. *See* § 5.8.6, *supra.* [↑](#footnote-ref-36)
32. Reg. Z §§ 1026.6(a)(3)(vi), 1026.14(c)(3) [§§ 226.6(a)(3)(vi), 226.14(c)(3]. *See generally* § 6.5.3.2, *supra* (open-end credit APR disclosure). [↑](#footnote-ref-37)
33. *See* § 5.5.6.2, *supra*. [↑](#footnote-ref-38)
34. Official Interpretations § 1026.16(d)-7 [§ 226.16(d)-7]. *See* § 6.4, *supra* (describing these requirements). [↑](#footnote-ref-39)
35. 15 U.S.C. § 1665b; Reg. Z § 1026.16(d) [§ 226.16(d)]. [↑](#footnote-ref-40)
36. 73 Fed. Reg. 44,522 (July 30, 2008). [↑](#footnote-ref-41)
37. *See* § 11.6.5.4, *infra*. [↑](#footnote-ref-42)
38. 15 U.S.C. § 1665b(a); Reg. Z § 1026.16(d)(1) [§ 226.16(d)(1)]; Official Interpretations § 1026.16(b)-7 [§ 226.16(b)-7] (listing examples of triggering terms for open-end credit generally), § 1026.16(d)-1 [§ 226.16(d)-1] (listing examples of triggering terms for HELOCs, including “No annual fee,” “no points,” and “we waive closing costs”). [↑](#footnote-ref-43)
39. 15 U.S.C. § 1665b(a)(1); Reg. Z § 1026.16(d)(1)(i) [§ 226.16(d)(1)(i)]. [↑](#footnote-ref-44)
40. 15 U.S.C. § 1665b(a)(2); Reg. Z § 1026.16(d)(1)(ii) [§ 226.16(d)(1)(ii)]. [↑](#footnote-ref-45)
41. 15 U.S.C. § 1665b(a)(3); Reg. Z § 1026.16(d)(1)(iii) [§ 226.16(d)(1)(iii)]. [↑](#footnote-ref-46)
42. 15 U.S.C. § 1665b(c); Reg. Z § 1026.16(d)(5) [§ 226.16(d)(5)]. [↑](#footnote-ref-47)
43. *See* §§ 4.2.4, 6.4.4, *supra*. [↑](#footnote-ref-48)
44. *See* § 8.2.4, *infra*. [↑](#footnote-ref-49)
45. Official Interpretations § 1026.16-3 [§ 226.16-3] (Internet), § 1026.16-4 [§ 226.16-4] (television). [↑](#footnote-ref-50)
46. *Id.* [↑](#footnote-ref-51)
47. *Id.* [↑](#footnote-ref-52)
48. Official Interpretations § 1026.16-5 [§ 226.16-5]. [↑](#footnote-ref-53)
49. *Id.* [↑](#footnote-ref-54)
50. 15 U.S.C. § 1665b(d); Reg. Z § 1026.16(d)(2) [§ 226.16(d)(2)]. [↑](#footnote-ref-55)
51. 15 U.S.C. § 1665b(d)(3); Reg. Z § 1026.16(d)(2)(i) [§ 226.16(d)(2)(i)]. [↑](#footnote-ref-56)
52. 15 U.S.C. § 1665b(d)(1), (2); Reg. Z § 1026.16(d)(2)(ii) [§ 226.16(d)(2)(ii)]. [↑](#footnote-ref-57)
53. Reg. Z § 1026.16(d)(2) [§ 226.16(d)(2)]. [↑](#footnote-ref-58)
54. Official Interpretations § 1026.16(d)-6.i [§ 226.16(d)-6.i]. [↑](#footnote-ref-59)
55. Official Interpretations § 1026.16(d)-6.ii [§ 226.16(d)-6.ii] (electronic advertisements), § 1026.16(d)-6.iii [§ 226.16(d)-6.iii] (advertisements to the general public). [↑](#footnote-ref-60)
56. Reg. Z § 1026.16(d)(6)(i)(A) [§ 226.16(d)(6)(i)(A)]. [↑](#footnote-ref-61)
57. Reg. Z § 1026.16(d)(6)(i)(B)(1) [§ 226.16(d)(6)(i)(B)(1)]. [↑](#footnote-ref-62)
58. Reg. Z § 1026.16(d)(6)(i)(B)(2) [§ 226.16(d)(6)(i)(B)(2)]. [↑](#footnote-ref-63)
59. Official Interpretations § 1026.16(d)-5.v [§ 226.16(d)-5.v]. [↑](#footnote-ref-64)
60. Official Interpretations § 1026.16(d)-5.vi [§ 226.16(d)-5.vi]. [↑](#footnote-ref-65)
61. Reg. Z § 1026.16(d)(6)(ii)(A) [§ 226.16(d)(6)(ii)(A)]. [↑](#footnote-ref-66)
62. Reg. Z § 1026.16(d)(6)(ii)(B) [§ 226.16(d)(6)(ii)(B)]. [↑](#footnote-ref-67)
63. Reg. Z § 1026.16(d)(6)(ii)(C) [§ 226.16(d)(6)(ii)(C)]. [↑](#footnote-ref-68)
64. *Id.* [↑](#footnote-ref-69)
65. Official Interpretations § 1026.16(d)-5.iii [§ 226.16(d)-5.iii]. [↑](#footnote-ref-70)
66. Official Interpretations § 1026.16(d)-6.i [§ 226.16(d)-6.i]. [↑](#footnote-ref-71)
67. Official Interpretations § 1026.16(d)-6.ii [§ 226.16(d)-6.ii]. [↑](#footnote-ref-72)
68. Official Interpretations § 1026.16(d)-6.iii [§ 226.16(d)-6.iii]. [↑](#footnote-ref-73)
69. Reg. Z § 1026.16(d)(6)(ii) [§ 226.16(d)(6)(ii)]. [↑](#footnote-ref-74)
70. Official Interpretations § 1026.16-2, (d)-5.ii [§§ 226.16-2, (d)-5.ii]. [↑](#footnote-ref-75)
71. Official Interpretations § 1026.16(d)-5.ii [§ 226.16(d)-5.ii]. [↑](#footnote-ref-76)
72. Reg. Z § 1026.16(d), (e) [§ 226.16(d), (e)]. [↑](#footnote-ref-77)
73. Reg. Z § 1026.16(d)(6)(iii) [§ 226.16(d)(6)(iii)]. [↑](#footnote-ref-78)
74. 15 U.S.C. § 1665b(b)(1); Reg. Z § 1026.16(d)(4) [§ 226.16(d)(4)]. [↑](#footnote-ref-79)
75. 15 U.S.C. § 1665b(b)(2). [↑](#footnote-ref-80)
76. Reg. Z § 1026.16(d)(4) [§ 226.16(d)(4)]. [↑](#footnote-ref-81)
77. Reg. Z § 1026.16(d)(4)(i) [§ 226.16(d)(4)(i)]. [↑](#footnote-ref-82)
78. Reg. Z § 1026.16(d)(4)(ii) [§ 226.16(d)(4)(ii)]. [↑](#footnote-ref-83)
79. Reg. Z § 1026.16(d)(4) [§ 226.16(d)(4)]. [↑](#footnote-ref-84)
80. 15 U.S.C. § 1665b(f); Reg. Z § 1026.16(d)(3) [§ 226.16(d)(3)]. *See also* Reg. Z § 1026.40(d)(5)(ii) [§ 226.5b(d)(5)(ii) n.10b]. [↑](#footnote-ref-85)
81. 15 U.S.C. § 1665b(e); Reg. Z § 1026.16(d)(3) [§ 226.16(d)(3)]. [↑](#footnote-ref-86)
82. Reg. Z § 1026.16(d)(3)(i) [§ 226.16(d)(3)(i)]. [↑](#footnote-ref-87)
83. Reg. Z § 1026.16(d)(3)(ii) [§ 226.16(d)(3)(ii)]. [↑](#footnote-ref-88)
84. Reg. Z § 1026.16(d)(3) [§ 226.16(d)(3)]; Reg. Z § 1026.16(d)(3) [§ 226.16(d)(3)]. *Cf.* § 8.2.4.3, *supra* (discussing prominence and proximity requirements for promotional rate disclosures). [↑](#footnote-ref-89)
85. Reg. Z § 1026.16(e) [§ 226.16(e)]. [↑](#footnote-ref-90)
86. Official Interpretations § 1026.16(e)-1 [§ 226.16(e)-1]. [↑](#footnote-ref-91)
87. Reg. Z § 1026.40(b) [§ 226.5b(b)]. *See* § 8.3.3*, infra* (time of disclosures). [↑](#footnote-ref-92)
88. *See* § 6.6, *supra*. [↑](#footnote-ref-93)
89. 74 Fed. Reg. 43,427 (Aug. 26, 2009). [↑](#footnote-ref-94)
90. *See* § 6.5, *supra*. [↑](#footnote-ref-95)
91. Official Interpretations § 1026.40(a)(1)-1 [§ 226.5b(a)(1)-1]. [↑](#footnote-ref-96)
92. Reg. Z § 1026.5(a)(1)(ii)(B) [§ 226.5(a)(1)(ii)(B)]. [↑](#footnote-ref-97)
93. 15 U.S.C. § 1637a(b)(2)(A); Reg. Z § 1026.40(a)(1) [§ 226.5b(a)(1)]; Official Interpretations § 1026.40(a)(1)-1 [§ 226.5b(a)(1)-1]. [↑](#footnote-ref-98)
94. 15 U.S.C. § 1637a(b)(2)(B); Reg. Z § 1026.40(a)(1) [§ 226.5b(a)(1)]; Official Interpretations § 1026.40(a)(1)-3 [§ 226.5b(a)(1)-3]. [↑](#footnote-ref-99)
95. *See* Reg. Z § 1026.40(d)(4)(iii) [§ 226.5b(d)(4)(iii)]. [↑](#footnote-ref-100)
96. *See* Reg. Z § 1026.40(d)(8) [§ 226.5b(d)(8)]. [↑](#footnote-ref-101)
97. ICF Macros, Summary of Findings: Design and Testing of Truth in Lending Disclosures for Home Equity Lines of Credit 7/-/8, 13 (July 16, 2009). [↑](#footnote-ref-102)
98. 15 U.S.C. § 1637a(b)(2)(C); Reg. Z § 1026.40(a)(2) [§ 226.5b(a)(2)]. [↑](#footnote-ref-103)
99. Reg. Z § 1026.40(d)(1) [§ 226.5b(d)(1)]. [↑](#footnote-ref-104)
100. Official Interpretations § 1026.40(a)(1)-4 [§ 226.5b(a)(1)-4]. [↑](#footnote-ref-105)
101. Official Interpretations § 1026.40(a)(1)-4 [§ 226.5b(a)(1)-4]. [↑](#footnote-ref-106)
102. *See* Reg. Z § 1026.40(d)(5)(iii), (12)(x), and (12)(xi) [§ 226.5b(d)(5)(iii), (12)(x), and (12)(xi)] respectively. [↑](#footnote-ref-107)
103. Official Interpretations § 1026.40(a)(1)-4 [§ 226.5b(a)(1)-4]. [↑](#footnote-ref-108)
104. 15 U.S.C. § 1637a(e); Reg. Z § 1026.40(e) [§ 226.5b(e)]. [↑](#footnote-ref-109)
105. Bd. of Governors of the Federal Reserve Bd., What You Should Know About Home Equity Lines of Credit, *available at* http://files.consumerfinance.gov/f/201204\_CFPB\_HELOC-brochure.pdf (last viewed Aug. 27, 2014). [↑](#footnote-ref-110)
106. *See* 74 Fed. Reg. 43,428, 43,429 (Aug. 26, 2009) (proposing replacement of the brochure with a one-page list of “Key Questions to Ask About Home Equity Lines of Credit”). [↑](#footnote-ref-113)
107. *See* § 8.3.4, *infra.* [↑](#footnote-ref-114)
108. 15 U.S.C. § 1637a(b)(1)(A); Reg. Z § 1026.40(b) [§ 226.5b(b)]. *See* § 8.3.2.2, *supra* (discussing of the brochure). *See* § 12.2.2.3, infra (discussing the statute of limitations for violations of open-end credit disclosure requirements). [↑](#footnote-ref-115)
109. 54 Fed. Reg. 24,670 (June 9, 1989). [↑](#footnote-ref-116)
110. Official Interpretations § 1026.40(b)-3 [§ 226.5b(b)-3]. [↑](#footnote-ref-117)
111. Official Interpretations § 1026.40(b)-2 [§ 226.5b(b)-2]. [↑](#footnote-ref-118)
112. Official Interpretations § 1026.40(a)(3)-1 [§ 226.5b(a)(3)-1]. *See* § 6.3.5, *supra* (discussing electronic disclosures in open-end credit generally). [↑](#footnote-ref-119)
113. 15 U.S.C. § 1637a(b)(1)(B); Reg. Z § 1026.40(b) [§ 226.5b(b) n.10a]. [↑](#footnote-ref-120)
114. Official Interpretations § 1026.40(b)-1 [§ 226.5b(b)-1]. [↑](#footnote-ref-121)
115. Official Interpretations § 1026.40(b)-5 [§ 226.5b(b)-5]. [↑](#footnote-ref-122)
116. 15 U.S.C. § 1637a(c)(1)(B); Reg. Z § 1026.40(c) [§ 226.5b(c)]. *See* § 8.3.2.2, *supra* (discussion of the brochure). [↑](#footnote-ref-123)
117. 15 U.S.C. § 1637a(c); Reg. Z § 1026.40(c) [§ 226.5b(c)]. [↑](#footnote-ref-124)
118. Official Interpretations § 1026.40(c)-1 [§ 226.5b(c)-1]. [↑](#footnote-ref-125)
119. 15 U.S.C. § 1637a(c)(2). *See* § 8.6.2.2, *supra*. [↑](#footnote-ref-126)
120. *See* § 2.3.5.4, *supra* (discussing application of TILA definition of “creditor” to arrangers); § 11.6.9, *infra* (discussing liability of originators for TILA violations). *Compare* 15 U.S.C. § 1639b (imposing duties and liabilities upon originators of “residential mortgage loans”), *with* 15 U.S.C. § 1602(cc), (defining “residential mortgage loan” as excluding any consumer credit transaction under an open-end credit plan, apparently protecting originators of HELOCs from liability). [↑](#footnote-ref-127)
121. Reg. Z § 1026.40(d) [§ 226.5b(d)]. [↑](#footnote-ref-128)
122. Reg. Z app. G, G-14A, G-14B, G-15. [↑](#footnote-ref-129)
123. 15 U.S.C. § 1604(b). *See* §§ 12.4.2, 12.4.3, *infra*. [↑](#footnote-ref-130)
124. 74 Fed. Reg. 43,428, 43,445 (Aug. 26, 2009). [↑](#footnote-ref-131)
125. Reg. Z § 1026.40(d)(1) [§ 226.5b(d)(1)]. *See* § 8.3.2, *supra*. [↑](#footnote-ref-132)
126. 15 U.S.C. § 1637a(a)(6)(A); Reg. Z § 1026.40(d)(2)(i) [§ 226.5b(d)(2)(i)]. [↑](#footnote-ref-133)
127. Official Interpretations § 1026.40(d)(2)(i)-2 [§ 226.5b(d)(2)(i)-2]. [↑](#footnote-ref-134)
128. ICF Macro, Design and Testing of Truth in Lending Disclosures for Rescission Notices (July 2010), at v, 8, 13/-/14, 18, *available at* www.federalreserve.gov/newsevents/press/bcreg/20100816e.htm (regarding consumer testing of rescission notices). [↑](#footnote-ref-135)
129. 15 U.S.C. § 1637a(a)(6)(B); Reg. Z § 1026.40(d)(2)(ii) [§ 226.5b(d)(2)(ii)]. *See* *also* § 8.5.2.1, *supra*. [↑](#footnote-ref-136)
130. 15 U.S.C. § 1637a(a)(5); Reg. Z § 1026.40(d)(3) [§ 226.5b(d)(3)]. [↑](#footnote-ref-137)
131. 15 U.S.C. § 1637a(a)(7)(A); Reg. Z § 1026.40(d)(4)(i) [§ 226.5b(d)(4)(i)]. *See* § 8.6.6, *supra* (discussion of the TILA restrictions on unilateral changes of terms in HELOCs). [↑](#footnote-ref-138)
132. 15 U.S.C. § 1637a(a)(7)(B); Reg. Z § 1026.40(d)(4)(ii), (iii) [§ 226.5b(d)(4)(ii), (iii)]. [↑](#footnote-ref-139)
133. Official Interpretations § 1026.40(d)(4)(iii)-1 [§ 226.5b(d)(4)(iii)-1]. [↑](#footnote-ref-140)
134. 15 U.S.C. § 1637a(a)(8)(B); Reg. Z § 1026.40(d)(5)(i) [§ 226.5b(d)(5)(i)]. [↑](#footnote-ref-141)
135. Official Interpretations § 1026.40(d)(5)(i)-2 [§ 226.5b(d)(5)(i)-2]. [↑](#footnote-ref-142)
136. 15 U.S.C. § 1637a(a)(8)(A); Official Interpretations § 1026.40(a)(1)-4 [§ 226.5b(a)(1)-4]. *See* § 8.3.2.1, *supra.* [↑](#footnote-ref-143)
137. 15 U.S.C. § 1637a(a)(8)(C); Reg. Z § 1026.40(d)(5)(ii) [§ 226.5b(d)(5)(ii)]. [↑](#footnote-ref-144)
138. *See* § 8.3.5.7, *infra.* [↑](#footnote-ref-145)
139. 15 U.S.C. § 1637a(a)(9); Reg. Z § 1026.40(d)(5)(iii) [§ 226.5b(d)(5)(iii)]. [↑](#footnote-ref-146)
140. Official Interpretations § 1026.5(d)(5)(iii)-1 [§ 226.5(d)(5)(iii)-1].

     The question of how many creditors would offer a HELOC for as little as $10,000 these days is an entirely different subject. [↑](#footnote-ref-147)
141. 15 U.S.C. § 1637a(a)(10); Reg. Z § 1026.40(d)(5)(ii) [§ 226.5b(d)(5)(ii)]. [↑](#footnote-ref-148)
142. Reg. Z § 1026.40(5)(ii) [§ 226.5b(5)(ii) n.10b].

     “Balloon payment” is defined at § 1665b(f). *See* Eastern Sav. Bank v. Mara, 2006 WL 3691418 (Conn. Super. Ct. Nov. 22, 2006). *See generally* § 8.2, *supra*. [↑](#footnote-ref-149)
143. Official Interpretations § 1026.40(d)(5)(ii)-3 [§ 226.5b(d)(5)(ii)-3]. [↑](#footnote-ref-150)
144. Official Interpretations § 1026.40(d)(5)(ii)-3 [§ 226.5b(d)(5)(ii)-3]. [↑](#footnote-ref-151)
145. *See* § 8.3.5.12, *infra*. [↑](#footnote-ref-152)
146. Official Interpretations § 1026.40(d)(5)(iii)-2 [§ 226.5b(d)(5)(iii)-2]. [↑](#footnote-ref-153)
147. Reg. Z § 1026.40(d)(5) [§ 226.5b(d)(5)]. [↑](#footnote-ref-154)
148. 15 U.S.C. § 1637a(a)(11); Reg. Z § 1026.40(d)(9) [§ 226.5b(d)(9)]. [↑](#footnote-ref-155)
149. Official Interpretations § 1026.40(d)(9)-1 [§ 226.5b(d)(9)-1]. [↑](#footnote-ref-156)
150. *See* § 8.6.6, *supra*. *See generally* § 8.8, *infra*. [↑](#footnote-ref-157)
151. Official Interpretations § 1026.40(d)(5)(iii)-4 [§ 226.5b(d)(5)(iii)-4]. [↑](#footnote-ref-158)
152. 15 U.S.C. § 1637a(a)(1); Reg. Z § 1026.40(d)(6) [§ 226.5b(d)(6)]. [↑](#footnote-ref-159)
153. Reg. Z § 1026.40(d)(5)(iii) [§ 226.5b(d)(5)(iii) n.10c]. [↑](#footnote-ref-160)
154. Reg. Z § 1026.40(d)(6) [§ 226.5b(d)(6)]. *See* §§ 8.1.2, 8.1.3, 8.1.5, *supra*. [↑](#footnote-ref-161)
155. *See* ICF Macros, Summary of Findings: Design and Testing of Truth in Lending Disclosures for Home Equity Lines of Credit 12, 21 (July 16, 2009). [↑](#footnote-ref-162)
156. Official Interpretations § 1026.40(a)(1)-2 [§ 226.5b(a)(1)-2]. [↑](#footnote-ref-163)
157. 15 U.S.C. § 1637a(a)(3); Reg. Z § 1026.40(d)(7) [§ 226.5b(d)(7)]. [↑](#footnote-ref-164)
158. *See* § 8.3.5.9, *infra*. Official Interpretations § 1026.40(d)(7)-1 [§ 226.5b(d)(7)-1]. [↑](#footnote-ref-165)
159. Official Interpretations § 1026.40(d)(7)-4 [§ 226.5b(d)(7)-4]. [↑](#footnote-ref-166)
160. Official Interpretations § 1026.40(d)(4)(i)-1 [§ 226.5b(d)(4)(i)-1]. [↑](#footnote-ref-167)
161. Official Interpretations § 1026.40(d)(4)(i)-1 [§ 226.5b(d)(4)(i)-1]. [↑](#footnote-ref-168)
162. Reg. X, 12 C.F.R. § 1024.7(h) [24 C.F.R. § 3500.7(h)]. [↑](#footnote-ref-169)
163. Reg. Z § 1026.19(a)(1)(i). [↑](#footnote-ref-170)
164. 15 U.S.C. § 1637a(a)(4)(A); Reg. Z § 1026.40(d)(8) [§ 226.5b(d)(8)]. [↑](#footnote-ref-171)
165. Reg. Z § 1026.40(d)(8) [§ 226.5b(d)(8)]. [↑](#footnote-ref-172)
166. 15 U.S.C. § 1637a(a)(4)(B); Reg. Z § 1026.40(d)(8) [§ 226.5b(d)(8)]. [↑](#footnote-ref-173)
167. Reg. Z § 1026.40(a)(1). [↑](#footnote-ref-174)
168. 15 U.S.C. § 1637a(a)(12)(A), (B); Reg. Z § 1026.40(d)(10) [§ 226.5b(d)(10)]. [↑](#footnote-ref-175)
169. Official Interpretations § 1026.40(d)(10)-1 [§ 226.5b(d)(10)-1]. [↑](#footnote-ref-176)
170. 15 U.S.C. § 1637a(a)(13); Reg. Z § 1026.40(d)(11) [§ 226.5b(d)(11)]. [↑](#footnote-ref-177)
171. *Id.* [↑](#footnote-ref-178)
172. 74 Fed. Reg. 43,428, 43,462 (Aug. 26, 2009) (proposing a new § 226.5b(c)(8), combining the current § 226.5b(d)(11) with technical revisions and additions ). [↑](#footnote-ref-179)
173. *See* § 8.2.5, *supra.* [↑](#footnote-ref-180)
174. 15 U.S.C. § 1637a(a)(2); Reg. Z § 1026.40(d)(12) [§ 226.5b(d)(12)]. [↑](#footnote-ref-181)
175. *See* § 5.13, *supra*. [↑](#footnote-ref-182)
176. Reg. Z § 1026.40(d)(12) [§ 226.5b(d)(12)]. [↑](#footnote-ref-183)
177. Reg. Z § 1026.40(d)(12)(i) [§ 226.5b(d)(12)(i)]. [↑](#footnote-ref-184)
178. 15 U.S.C. § 1637a(a)(2)(A); Reg. Z § 1026.40(d)(12)(ii) [§ 226.5b(d)(12)(ii)]. *See* *also* §§ 8.1.2, 8.1.3, 8.1.5, *supra*. [↑](#footnote-ref-185)
179. 15 U.S.C. § 1637a(a)(2)(B)(iii), (iv); Reg. Z § 1026.40(d)(12)(iii) [§ 226.5b(d)(12)(iii)]. *See* *also* § 8.6.3, *supra*. [↑](#footnote-ref-186)
180. 15 U.S.C. § 1637a(a)(2)(A); Reg. Z § 1026.40(d)(12)(iv) [§ 226.5b(d)(12)(iv)]. [↑](#footnote-ref-187)
181. Official Interpretations § 1026.40(d)(12)(iv) [§ 226.5b(d)(12)(iv)]. [↑](#footnote-ref-188)
182. 15 U.S.C. § 1637a(a)(2)(D); Reg. Z § 1026.40(d)(12)(v) [§ 226.5b(d)(12)(v)]. [↑](#footnote-ref-189)
183. *See* § 8.2, *supra*. [↑](#footnote-ref-190)
184. 15 U.S.C. § 1637a(a)(2)(C)(i); Reg. Z § 1026.40(d)(12)(vi) [§ 226.5b(d)(12)(vi)]. [↑](#footnote-ref-191)
185. 15 U.S.C. § 1637a(a)(2)(B)(ii); Reg. Z § 1026.40(d)(12)(vii) [§ 226.5b(d)(12)(vii)]. [↑](#footnote-ref-192)
186. Reg. Z § 1026.40(d)(12)(viii) [§ 226.5b(d)(12)(viii)]. [↑](#footnote-ref-193)
187. 15 U.S.C. § 1637a(a)(2)(E); Reg. Z § 1026.40(d)(12)(ix) [§ 226.5b(d)(12)(ix)]. [↑](#footnote-ref-194)
188. 12 U.S.C. § 3806(a); Reg. Z § 1026.30 [§ 226.30]; Official Interpretations § 1026.30(7) [§ 226.30(7)]. *See* *also* § 5.13, *supra*. [↑](#footnote-ref-195)
189. 15 U.S.C. § 1637a(a)(2)(F); Reg. Z § 1026.40(d)(12)(ix) [§ 226.5b(d)(12)(ix)]. [↑](#footnote-ref-196)
190. 15 U.S.C. § 1637a(a)(2)(H), Reg. Z § 1026.40(d)(12)(x) [§ 226.5b(d)(12)(x)]. [↑](#footnote-ref-197)
191. *See* § 8.3.5.6, *supra*. [↑](#footnote-ref-198)
192. 15 U.S.C. § 1637a(a)(2)(G); Reg. Z § 1026.40(d)(12)(xi) [§ 226.5b(d)(12)(xi)]. [↑](#footnote-ref-199)
193. Official Interpretations § 1026.40(d)(12)(xi)-1 [§ 226.5b(d)(12)(xi)-1]. [↑](#footnote-ref-200)
194. Official Interpretations § 1026.40(d)(12)(xi)-3 [§ 226.5b(d)(12)(xi)-3]. [↑](#footnote-ref-201)
195. *See* Official Interpretations § 1026.40(d)(12)(xi)-6 [§ 226.5b(d)(12)(xi)-6]. [↑](#footnote-ref-202)
196. *See* Official Interpretations § 1026.40(d)(12)(xi)-8 [§ 226.5b(d)(12)(xi)-8]. [↑](#footnote-ref-203)
197. *See* Official Interpretations § 1026.40(d)(12)(xi)-7 [§ 226.5b(d)(12)(xi)-7]. [↑](#footnote-ref-204)
198. *See* § 8.3.5.6, *supra.* [↑](#footnote-ref-205)
199. Official Interpretations § 1026.40(d)(12)(xi)-10 [§ 226.5b(d)(12)(xi)-10]. [↑](#footnote-ref-206)
200. 15 U.S.C. § 1637a(a)(2)(I); Reg. Z § 1026.40(d)(12)(xii) [§ 226.5b(d)(12)(xii)]. [↑](#footnote-ref-207)
201. *See* § 8.3, *supra*. [↑](#footnote-ref-208)
202. *See* *generally* 15 U.S.C. § 1637(a)(8); Reg. Z § 1026.6(a) [§ 226.6(a)]. *See* § 6.6.2, *supra* (timing of account-opening disclosures). [↑](#footnote-ref-209)
203. Reg. Z § 1026.5(b)(1)(i) [§ 226.5(b)(1)(i)]. [↑](#footnote-ref-210)
204. 15 U.S.C. § 1640(a) (second sentence of paragraph following (a)(4)); Reg. Z § 1026.6(a) [§ 226.6(a)]. [↑](#footnote-ref-211)
205. 15 U.S.C. § 1637(a). [↑](#footnote-ref-212)
206. *See* § 8.3.5, *supra* (discussing application disclosures). [↑](#footnote-ref-213)
207. 15 U.S.C. § 1635; Reg. Z § 1026.15(b) [§ 226.15(b)]. *See* Horton v. California Credit Corp. Retirement Plan, 835 F. Supp. 2d 879, 888 (S.D. Cal. 2011) (holding borrowers had right to rescind for failure to properly provide notice of right to cancel for HELOC). *See generally* Ch. 10, *infra* (discussing rescission). [↑](#footnote-ref-214)
208. Reg. Z § 1026.6(a) [§ 226.6(a)]. *See generally* § 5.13.2, *supra.* [↑](#footnote-ref-215)
209. 12 U.S.C. § 3806. *See* § 8.4.7, *infra*. [↑](#footnote-ref-216)
210. Reg. Z § 1026.6(a)(1)(i) [§ 226.6(a)(1)(i)]; Official Interpretations § 1026.6(a)(1)(i)-1 [§ 226.6(a)(1)(i)-1]. [↑](#footnote-ref-217)
211. Official Interpretations § 1026.6(a)(1)-1 [§ 226.6(a)(1)-1]. [↑](#footnote-ref-218)
212. *Id.* [↑](#footnote-ref-219)
213. Van Slyke v. Capital One Bank, 2007 WL 2874417 (N.D. Cal. Sept. 28, 2007) (Van Slyke III) (creditor not required to disclose precisely when interest begins to accrue). [↑](#footnote-ref-220)
214. *Id.* [↑](#footnote-ref-221)
215. 15 U.S.C. § 1637(a)(1). [↑](#footnote-ref-222)
216. Reg. Z § 1026.6(a)(1)(i) [§ 226.6(a)(1)(i)]. [↑](#footnote-ref-223)
217. Official Interpretations § 1026.6(a)(1)(i)-2 [§ 226.6(a)(1)(i)-2]. [↑](#footnote-ref-224)
218. *But see* § 6.5.3.6, *supra* (discussing required grace period disclosures where there is a credit card linked to the account). [↑](#footnote-ref-225)
219. Reg. Z § 1026.6(a)(1) [§ 226.6(a)(1)]. [↑](#footnote-ref-226)
220. Reg. Z § 1026.2(a)(21) [§ 226.2(a)(21)]. [↑](#footnote-ref-227)
221. Official Interpretations § 1026.2(a)(21) [§ 226.2(a)(21)]. *See* Janos v. Wells Fargo Bank N.A., 2006 WL 359758 (D. Ariz. Feb. 14, 2006). *Cf.* Reg. Z §§ 1026.6(a)(1)(iv) [§ 226.6(a)(1)(iv)] (requiring disclosure of finance charges), 1026.6(2) [§ 226.6(2)] (requiring disclosure of “other charges”). *See* *generally* § 6.6.6.6, *infra*. [↑](#footnote-ref-228)
222. Official Interpretations § 1026.6(a)(1)(ii)-1 [§ 226.6(a)(1)(ii)-1]; or as to a particular feature of an account if there is only one rate applicable to that feature. [↑](#footnote-ref-229)
223. Reg. Z § 1026.6(a)(1)(ii) [§ 226.6(a)(1)(ii)]. [↑](#footnote-ref-230)
224. *See* Elizabeth Renuart and Diane Thompson, *The Truth, the Whole Truth, and Nothing but the Truth: Fulfilling the Promise of Truth in Lending*, 25 Yale J. on Reg. 181, 188/-/189 (Summer 2008). [↑](#footnote-ref-231)
225. *See id.* [↑](#footnote-ref-232)
226. Official Interpretations § 1026.6(a)(1)(ii)-11 [§ 226.6(a)(1)(ii)-11]. [↑](#footnote-ref-233)
227. *See* Barrer v. Chase Bank, USA, N.A., 566 F.3d 833 (9th Cir. 2009) (finding consumers stated claim by alleging that change-in-terms provision was disclosed only on pages 10/-/11 of account agreement, five dense pages after APR disclosure; failing to consider specific penalty rate disclosure provisions). *See* § 6.7.3.4, *infra* (regarding change-in-terms notices). [↑](#footnote-ref-234)
228. *See* § 6.5.5.10, *infra*. [↑](#footnote-ref-235)
229. Official Interpretations § 1026.6(a)(1)(ii)-2(i) [§ 226.6(a)(1)(ii)-2(i)]. [↑](#footnote-ref-236)
230. Reg. Z § 1026.6(a)(1)(iii) [§ 226.6(a)(1)(iii)]. [↑](#footnote-ref-237)
231. Hale v. MBNA Am. Bank, 2000 U.S. Dist. LEXIS 13403 (S.D.N.Y. Sept. 18, 2000). [↑](#footnote-ref-238)
232. *See* Appx. B, *infra*. [↑](#footnote-ref-239)
233. *See* National Consumer Law Center, Consumer Credit Regulation § 5.5.1 (2012 and Supp.). [↑](#footnote-ref-240)
234. *See* Reg. Z app. G-1. [↑](#footnote-ref-241)
235. *See* Official Interpretations § 1026.14(a)-4 [§ 226.14(a)-4]; Town & Country Co-op v. Lang, 286 N.W.2d 482 (N.D. 1979). [↑](#footnote-ref-242)
236. Official Interpretations § 1026.6(a)(3) [§ 226.6(a)(3)]. [↑](#footnote-ref-243)
237. Hale v. MBNA Am. Bank, 2000 U.S. Dist. LEXIS 13403 (S.D.N.Y. Sept. 18, 2000). [↑](#footnote-ref-244)
238. Ralph J. Rohner and Fred H. Miller, Truth in Lending ¶ 7.05[1][a][6] (2000). [↑](#footnote-ref-245)
239. *See* National Consumer Law Center, Consumer Credit Regulation § 5.3.5 (2012 and Supp.). [↑](#footnote-ref-246)
240. Reg. Z § 1026.6(a)(1)(iv) [§ 226.6(a)(1)(iv)]. [↑](#footnote-ref-247)
241. Official Interpretations § 1026.6A(a)(1)(iv)-1 [§ 226.6A(a)(1)(iv)-1]. [↑](#footnote-ref-248)
242. For a description of different methodologies to calculate the periodic interest component of the finance charge, see National Consumer Law Center, Consumer Credit Regulation § 5.3.5 (2012 and Supp.). [↑](#footnote-ref-249)
243. Official Interpretations § 1026.6(a)(1)(iv)-1 [§ 226.6(a)(1)(iv)-1]. [↑](#footnote-ref-250)
244. Van Slyke v. Capital One Bank, 2007 WL 2874417 (N.D. Cal. Sept. 28, 2007) (Van Slyke III) (sufficient to disclose that penalty fees were treated as purchases with an explanation about how finance charges are calculated based on purchases). [↑](#footnote-ref-251)
245. Reg. Z § 1026.6(a)(2) [§ 226.6(a)(2)]. [↑](#footnote-ref-252)
246. Official Interpretations § 1026.6(a)(2)-1 [§ 226.6(a)(2)-1] (emphasis added). [↑](#footnote-ref-253)
247. *Id.*  [↑](#footnote-ref-254)
248. Official Interpretations § 1026.6(a)(2)-2 [§ 226.6(a)(2)-2]. [↑](#footnote-ref-255)
249. *See, e.g.*, *In re* Currency Conversion Fee Antitrust Litig., 265 F. Supp. 2d 385 (S.D.N.Y. 2003) (dismissing TILA claims against Visa and MasterCard, but not the card issuers, for failure to disclose the currency conversion charge). *See* National Consumer Law Center, Consumer Credit Regulation § 8.4.4.2 (2012 and Supp.) (discussing currency conversion fees). [↑](#footnote-ref-256)
250. Official Interpretations § 1026.6(a)(2)-1 [§ 226.6(a)(2)-1]. [↑](#footnote-ref-257)
251. Official Interpretations § 1026.6(a)(2)-1(v) [§ 226.6(a)(2)-1(v)]. [↑](#footnote-ref-258)
252. *See* Mitchell v. Bankfirst, N.A., 2001 WL 1485854 (9th Cir. Nov. 21, 2001) (when a consumer was required to give ninety days’ notice to terminate membership in an organization affiliated with a credit card, the membership fees for those ninety days might be a charge for which TILA required disclosure, if the benefits of membership were merely incidental to the credit card). [↑](#footnote-ref-259)
253. *See, e.g.,* Amaro v. Capital One Bank, 1998 WL 299396 (N.D. Ill. May 19, 1998) (finding no TILA violation on the ground that the disclosed late charges fell within state law limits). *Cf.* Smiley v. Citibank (South Dakota), N.A., 517 U.S. 735, 116 S. Ct. 1730, 135 L. Ed. 2d 25 (1996) (exportation of the late charge limit from the state where the lender is incorporated is permitted under federal law); National Consumer Law Center, Consumer Credit Regulation § 4.8 (2012 and Supp.) (discussing late charges). [↑](#footnote-ref-260)
254. *See* § 3.9.3.4, *supra.* [↑](#footnote-ref-261)
255. Household Credit Servs. v. Pfennig, 541 U.S. 232, 124 S. Ct. 1741 (2004). *See* §§ 3.9.3.2, *supra* and 6.5.3.2.2, *infra.*

     For an analysis of how over-the-limit fees actually operate, and the unfairness of their imposition, see National Consumer Law Center, Consumer Credit Regulation § 8.4.3.2 (2012 and Supp.). [↑](#footnote-ref-262)
256. If a billing error has occurred, any such charge must be refunded. Official Interpretations § 1026.13-2 [§ 226.13-2]. [↑](#footnote-ref-263)
257. *See* §§ 3.9.6, *supra,* 6.6.2.4.1, *infra*. [↑](#footnote-ref-264)
258. Official Interpretations §§ 1026.6(a)(2)-1(vi), 1026.4(a)-4 [§§ 226.6(a)(2)-1(vi), 226.4(a)-4]. *See generally* § 3.6.5, *supra.* [↑](#footnote-ref-265)
259. Although Regulation Z does not specifically exempt the excluded charges from disclosure, the exemption can be inferred by the fact that § 1026.6(a) [§ 226.6(a)] only requires disclosure of “finance charges” and “other charges.” By taking the excluded charges out of the “other charge” category, the commentary gives creditors a back-door exemption from disclosing them. [↑](#footnote-ref-266)
260. Official Interpretations § 1026.6(a)(2)-2 [§ 226.6(a)(2)-2]. [↑](#footnote-ref-267)
261. Reg. Z § 1026.4(d) [§ 226.4(d)]. *See* § 3.9.4, *supra*. [↑](#footnote-ref-268)
262. Official Interpretations § 1026.6(a)(2)-2(x) [§ 226.6(a)(2)-2(x)].

     The FRB staff initially proposed treating these expedited payment fees as “other charges” but ultimately chose to exclude them. 68 Fed. Reg. 16,185 (Apr. 3, 2003). In the supplementary information, the FRB urged creditors to continue their practice of informing consumers of the amount of the charge at the time the service is requested. *Id.* at 16,186. [↑](#footnote-ref-269)
263. Official Interpretations § 1026.6(a)(2)-2(ix) [§ 226.6(a)(2)-2(ix)]. [↑](#footnote-ref-270)
264. Official Interpretations § 1026.6(a)(2)-1(vii) [§ 226.6(a)(2)-1(vii)]. [↑](#footnote-ref-271)
265. Official Interpretations § 1026.6(a)(2)-1(iii) [§ 226.6(a)(2)-1(iii)]. *See* § 3.9.6, *supra*. [↑](#footnote-ref-272)
266. Official Interpretations § 1026.6(a)(2)-2 [§ 226.6(a)(2)-2]. *See* § 3.9.7, *supra*. [↑](#footnote-ref-273)
267. Reg. Z § 1026.6(a)(3) [§ 226.6(a)(3)]. [↑](#footnote-ref-274)
268. Official Interpretations § 1026.6(a)(3)-2 [§ 226.6(a)(3)-2]; *see* Reg. Z § 1026.5(a)(1) [§ 226.5(a)(1)]. [↑](#footnote-ref-275)
269. Reg. Z § 1026.6(a)(3)(i) [§ 226.6(a)(3)(i)]. *See* *also* Reg. Z § 1026.40(d)(4)(i) [§ 226.5b(d)(4)(i)]; §§ 8.6.5, 8.6.7, *supra*. [↑](#footnote-ref-276)
270. Reg. Z § 1026.6(a)(3)(ii) [§ 226.6(a)(3)(ii)]. *See* Reg. Z § 1026.40(d)(5)(i), (ii) [§ 226.5b(d)(5)(i), (ii)]. *See* *also* § 8.3.5.6, *supra*. [↑](#footnote-ref-277)
271. Reg. Z § 1026.6(a)(3)(iii) [§ 226.6(a)(3)(iii)]. *See* Reg. Z § 1026.40(d)(9) [§ 226.5b(d)(9)]. *See* *also* § 8.3.5.6.4, *supra*. [↑](#footnote-ref-278)
272. Reg. Z § 1026.6(a)(3)(iv) [§ 226.6(a)(3)(iv)]. *See* Reg. Z § 1026.40(d)(10) [§ 226.5b(d)(10)]. *See* *also* § 8.3.5.10, *supra*. [↑](#footnote-ref-279)
273. Reg. Z § 1026.6 (a)(3)(v) [§ 226.6 (a)(3)(v)]. *See* Reg. Z § 1026.40(d)(11) [§ 226.5b(d)(11)]. *See* *also* § 8.3.5.11, *supra*. [↑](#footnote-ref-280)
274. Reg. Z § 1026.6 (a)(3)(vi) [§ 226.6 (a)(3)(vi)]. *See* Reg. Z §§ 1026.40(d)(6), 1026.40(d)(12)(ii) [§§ 226.5b(d)(6), 226.5b(d)(12)(ii)]. *See* *also* §§ 8.3.5.7, 8.3.5.12, *supra*. [↑](#footnote-ref-281)
275. Reg. Z §§ 1026.6 (a)(3)(vii), 1026.40(d)(5)(iii) [§§ 226.6 (a)(3)(vii), 226.5b(d)(5)(iii)]. [↑](#footnote-ref-282)
276. Reg. Z §§ 1026.6 (a)(3)(vii), 1026.40(d)(12)(viii), (x), (xi), and (xii) [§§ 226.6 (a)(3)(vii), 226.5b(d)(12)(viii), (x), (xi), and (xii)]. *See* § 5.13, *supra* (detailed discussions on variable rate disclosures)*.* [↑](#footnote-ref-283)
277. Reg. Z § 1026.6(a)(3)(vii) [§ 226.6(a)(3)(vii)]. *See* Official Interpretations § 1026.40(d)(12)(xi)-8 [§ 226.5b(d)(12)(xi)-8] (examples of payment options). [↑](#footnote-ref-284)
278. Reg. Z § 1026.40(a)(1) [§ 226.5b(a)(1)]. *See* § 8.3.2, *supra*. [↑](#footnote-ref-285)
279. Official Interpretations § 1026.6(a)(3)-2 [§ 226.6(a)(3)-2]. [↑](#footnote-ref-286)
280. Reg. Z § 1026.5(a)(1) [§ 226.5(a)(1)]. [↑](#footnote-ref-287)
281. Reg. Z § 1026.6(a)(4) [§ 226.6(a)(4)]; Official Interpretations § 1026.6(a)(4)-5 [§ 226.6(a)(4)-5]. [↑](#footnote-ref-288)
282. Official Interpretations § 1026.6(a)(4)-2 [§ 226.6(a)(4)-2]. [↑](#footnote-ref-289)
283. Official Interpretations § 1026.6(a)(4)-3 [§ 226.6(a)(4)-3]. [↑](#footnote-ref-290)
284. 12 U.S.C. § 3806(a). Reg. Z § 1026.30(b) [§ 226.30(b)]. *See generally* § 5.13.2, *supra.* [↑](#footnote-ref-291)
285. 12 U.S.C. § 3806(c). [↑](#footnote-ref-292)
286. Official Interpretations § 1026.30-1 [§ 226.30-1]. [↑](#footnote-ref-293)
287. 52 Fed. Reg. 43,178 (Nov. 9, 1987). [↑](#footnote-ref-294)
288. Official Interpretations § 1026.30-11 [§ 226.30-11]. [↑](#footnote-ref-295)
289. Reg. Z § 1026.7(a) [§ 226.7(a)]. [↑](#footnote-ref-296)
290. *See* § 6.7.4, *supra*. [↑](#footnote-ref-297)
291. Reg. Z § 1026.7(a)(7) [§ 226.7(a)(7)]. *See generally* § 6.7.6.4, *supra.* [↑](#footnote-ref-298)
292. Reg. Z § 1026.7(a) [§ 226.7(a)]. [↑](#footnote-ref-299)
293. 15 U.S.C. § 1637(b)(4); Reg. Z § 1026.7(a)(6) [§ 226.7(a)(6)]. [↑](#footnote-ref-300)
294. Official Interpretations § 1026.7(a)(6)(i)-3 [§ 226.7(a)(6)(i)-3]. [↑](#footnote-ref-301)
295. Official Interpretations § 1026.7(a)(6)(i)-2 [§ 226.7(a)(6)(i)-2]. [↑](#footnote-ref-302)
296. Official Interpretations § 1026.7(a)(6)(i)-5 [§ 226.7(a)(6)(i)-5]. [↑](#footnote-ref-303)
297. Official Interpretations § 1026.7(a)(6)(i)-8 [§ 226.7(a)(6)(i)-8]. [↑](#footnote-ref-304)
298. Official Interpretations § 1026.7(a)(6)(i)-1, 2 [§ 226.7(a)(6)(i)-1, 2]. [↑](#footnote-ref-305)
299. Official Interpretations § 1026.7(a)(6)(i)-7 [§ 226.7(a)(6)(i)-7]. [↑](#footnote-ref-306)
300. Reg. Z § 1026.7(a)(6)(ii) [§ 226.7(a)(6)(ii)]. [↑](#footnote-ref-307)
301. Official Interpretations § 1026.7(a)(6)(ii)-2, (ii)-3 [§ 226.7(a)(6)(ii)-2, (ii)-3]. [↑](#footnote-ref-308)
302. Official Interpretations § 1026.6(b)-1 [§ 226.6(b)-1]. [↑](#footnote-ref-309)
303. Official Interpretations § 1026.7(a)(6)(ii)-1 [§ 226.7(a)(6)(ii)-1], referring to Official Interpretations § 1026.6(a)(1)-1 [§ 226.6(a)(1)-1]. *See* §§ 6.6.6.1, 8.4.3, *supra* (discussing “other charges”). [↑](#footnote-ref-310)
304. Official Interpretations § 1026.6(a)(2)-2 [§ 226.6(a)(2)-2]. *See* § 8.4.3.2, *supra.* [↑](#footnote-ref-311)
305. Official Interpretations § 1026.7(a)(6)(ii) [§ 226.7(a)(6)(ii)]. [↑](#footnote-ref-312)
306. *See* § 6.7.4, *supra*. [↑](#footnote-ref-313)
307. Official Interpretations 1026.40(f)(3)(iv)-1 [§ 226.5b(f)(3)(iv)-1].

     Whether giving heavily indebted consumers more rope to hang themselves is “unequivocally benefi[cial]” is an open question. [↑](#footnote-ref-314)
308. *See* Official Interpretations § 1026.9(c)(1)(i)-1 [§ 226.9(c)(1)(i)-1] (“The following are examples of changes that do not require a change-in-terms notice: . . . A change in the consumer’s credit limit.” *See* § 8.5.3.4, *infra* (discussing this provision in more detail)). *See* § 8.5.3, *infra* (discussing the change-in-terms notice). [↑](#footnote-ref-315)
309. 15 U.S.C. § 1635(a); Reg. Z § 1026.15(a)(1)(i) [§ 226.15(a)(1)(i)]. *See* § 10.2.6.5, *infra* (rescission and open-end credit). [↑](#footnote-ref-316)
310. *See* 15 U.S.C. § 1602(v); Reg. Z §§ 1026.6(a), 1026.40 [§§ 226.6(a), 226.5b] (defining material disclosures). [↑](#footnote-ref-317)
311. Fernandes v. JPMorgan Chase Bank, N.A., 818 F. Supp. 2d 1086, 1095 (N.D. Ill. 2011) (finding borrower may rescind increase in credit limit where creditor failed to provide new disclosures). [↑](#footnote-ref-318)
312. *See* §§ 6.7, 6.8, *supra*. [↑](#footnote-ref-319)
313. Reg. Z § 1026.9(c)(1)(i) [§ 226.9(c)(1)(i)]. [↑](#footnote-ref-320)
314. Reg. Z § 1026.9(c)(1) [§ 226.9(c)(1)]. [↑](#footnote-ref-321)
315. Reg. Z § 1026.9(c)(1)(i) [§ 226.9(c)(1)(i)]. *See* Reg. Z § 1026.6(a) [§ 226.6(a)]; § 8.4, *supra*. [↑](#footnote-ref-322)
316. Official Interpretations § 1026.9(c)(1)(ii)-2 [§ 226.9(c)(1)(ii)-2]. [↑](#footnote-ref-323)
317. *See* Official Interpretations § 1026.9(c)(1)(i)-5 [§ 226.9(c)(1)(i)-5]. *But see In re* Watson, 286 B.R. 594 (Bankr. D.N.J. 2002) (credit union did not violate TILA by adding vehicle as security interest to open-end account; issue not raised of whether a change-in-terms notice was properly provided). [↑](#footnote-ref-324)
318. Official Interpretations § 1026.9(c)(1)-3 [§ 226.9(c)(1)-3]. [↑](#footnote-ref-325)
319. Reg. Z § 1026.9(c)(1)(i) [§ 226.9(c)(1)(i)]; Official Interpretations § 1029.9(c)(1)(i)-3 [§ 229.9(c)(1)(i)-3]. [↑](#footnote-ref-326)
320. Official Interpretations § 1026.9(c)(1)(i)-3 [§ 226.9(c)(1)(i)-3]. [↑](#footnote-ref-327)
321. Official Interpretations § 1026.9(c)(1)(i)-3 [§ 226.9(c)(1)(i)-3]. [↑](#footnote-ref-328)
322. Official Interpretations § 1026.9(c)(1)(i)-3(i) [§ 226.9(c)(1)(i)-3(i)]. [↑](#footnote-ref-329)
323. 75 Fed. Reg. 7658 (Feb. 22, 2010); Pub. Law No. 111-24, 123 Stat. 1734 (2009). [↑](#footnote-ref-330)
324. *See* Old Reg. Z § 226.9(c) (2008). [↑](#footnote-ref-331)
325. 75 Fed. Reg. 7658, 7658/-/7659 (Feb. 22, 2010). [↑](#footnote-ref-332)
326. *See* § 8.6.4, *infra*. *See also* 74 Fed. Reg. 5244, 5305 (Jan. 29, 2009) (noting that the proposed revised commentary for HELOC accounting opening disclosures does not provide for disclosure of when rates may be changed, because creditors may not reserve the rights to change rates for HELOCs). [↑](#footnote-ref-333)
327. Reg. Z § 1026.40(f)(3) [§ 226.5b(f)(3)]. [↑](#footnote-ref-334)
328. *See generally* § 1.5.3.2, *supra*. [↑](#footnote-ref-335)
329. Penalty fees in the contract should also be forbidden, under the same rationale, but it is somewhat less clear. While there is a specific ban on a change in the APR, there is no similar ban on increases in fees. In at least one point, the commentary appears to contemplate the imposition of penalty fees. Official Interpretations § 1026.40(f)(2)-2 [§ 226.5b(f)(2)-2] (providing for penalty fees in lieu of early termination). This may also be a vestigial rule, applying to non-home-secured loans pre-February 2010. [↑](#footnote-ref-336)
330. Reg. Z § 1026.9(c)(1)(iii) [§ 226.9(c)(1)(iii)]. *See* § 8.6.5, *supra*. [↑](#footnote-ref-337)
331. Official Interpretations § 1026.9(c)(1)(iii)-2 [§ 226.9(c)(1)(iii)-2]. *See generally* § 8.5.3.4, *infra.* [↑](#footnote-ref-338)
332. Reg. Z § 1026.9(c)(1)(iii) [§ 226.9(c)(1)(iii)]. [↑](#footnote-ref-339)
333. Reg. Z § 1026.9(c)(1)(ii) [§ 226.9(c)(1)(ii)]. [↑](#footnote-ref-340)
334. Reg. Z § 1026.9(c)(1)(ii) [§ 226.9(c)(1)(ii)]. [↑](#footnote-ref-341)
335. Official Interpretations § 1026.9(c)(1)(ii)-1 [§ 226.9(c)(1)(ii)-1]. [↑](#footnote-ref-342)
336. Reg. Z § 1026.9(c)(1)(iii) [§ 226.9(c)(1)(iii)]. § 8.5.3.3, *supra* (describing this notice requirement). [↑](#footnote-ref-343)
337. 15 U.S.C. 1635(a); Reg. Z § 1026.15(a)(1)(i), (b) [§ 226.15(a)(1)(i), (b)]. [↑](#footnote-ref-344)
338. Fernandes v. JPMorgan Chase Bank, N.A., 818 F. Supp. 2d 1086, 1095 (N.D. Ill. 2011) (holding consumer “has a right to rescind each increase in the credit limit for an open-end credit plan where a creditor fails to provide material disclosures.”). [↑](#footnote-ref-345)
339. Chase Bank USA, N.A. v. McCoy, 131 S. Ct. 871, 178 L. Ed. 2d 716 (2011) (addressing application of pre-2010 rule to credit card contracts and whether credit card issuers were required to issue any notice when increasing rates pursuant to a contractual provision authorizing a rate increase upon the cardholder’s delinquency or default). [↑](#footnote-ref-346)
340. 75 Fed. Reg. 7657 (Feb. 22, 2010).

     While there is a specific ban on a change in the APR, there is no similar ban on increases in fees. In at least one point, the commentary appears to contemplate the imposition of penalty fees. Official Interpretations § 1026.40(f)(2)-2 [§ 226.5b(f)(2)-2] (providing for penalty fees in lieu of early termination). [↑](#footnote-ref-347)
341. Official Interpretations § 1026.40(f)-1 [§ 226.5b(f)-1]. [↑](#footnote-ref-348)
342. While there is nothing in RESPA itself that exempts HELOCs, HUD has issued a rule creating this exemption. Reg. X, 12 C.F.R. § 1024.21(a) [24 C.F.R. § 3500.21(a)]. *See* National Consumer Law Center, Foreclosures § 9.2.1 (4th ed. 2012 and Supp.). [↑](#footnote-ref-349)
343. 15 U.S.C. § 1647(d); Reg. Z § 1026.40(g) [§ 226.5b(g)]. [↑](#footnote-ref-350)
344. Official Interpretations § 1026.40(g)-1 [§ 226.5b(g)-1]. [↑](#footnote-ref-351)
345. Official Interpretations § 1026.40(g)-1 [§ 226.5b(g)-1]. [↑](#footnote-ref-352)
346. Official Interpretations § 1026.40(g)-3 [§ 226.5b(g)-3]. [↑](#footnote-ref-353)
347. Official Interpretations § 1026.40(g)-4 [§ 226.5b(g)-4]. [↑](#footnote-ref-354)
348. 15 U.S.C. § 1647(e)(1); Reg. Z § 1026.40(h) [§ 226.5b(h)]. *See* § 8.3.2.2, *supra* (discussing the consumer brochure). [↑](#footnote-ref-355)
349. 15 U.S.C. § 1647(e)(2); Reg. Z § 1026.40(h) [§ 226.5b(h) n.10d]. [↑](#footnote-ref-356)
350. *See* Official Interpretations § 1026.5(b)(1)-1 [§ 226.5(b)(1)-1]. [↑](#footnote-ref-357)
351. *See* § 8.5.3, *supra*. [↑](#footnote-ref-358)
352. *See* Reg. Z § 1026.15 [§ 226.15]; Ch. 10, *infra*. [↑](#footnote-ref-359)
353. 15 U.S.C. § 1647(a); Reg. Z § 1026.40(f)(1)(i), (ii) [§ 226.5b(f)(1)(i), (ii)]. [↑](#footnote-ref-360)
354. Reg. Z § 1026.40(f)(1) [§ 226.5b(f)(1)]; Official Interpretations § 1026.40(f)(1)-2 [§ 226.5b(f)(1)-2](stating that an index is verifiable if the consumer may obtain it over the telephone). [↑](#footnote-ref-361)
355. Reg. Z § 1026.40(f)(1) [§ 226.5b(f)(1)]. *Cf.* 74 Fed. Reg. 5244, 5305 (Jan. 29, 2009) (noting that the proposed revised commentary for HELOC accounting opening disclosures does not provide for disclosure of when rates may be changed, because creditors may not reserve the rights to change rates for HELOCs). *See generally* § 8.6.3, *supra* (discussing rate changes linked to an index)*.* [↑](#footnote-ref-362)
356. Official Interpretations § 1026.40(f)(3)(i)-1 [§ 226.5b(f)(3)(i)-1]. [↑](#footnote-ref-363)
357. Official Interpretations § 1026.40(f)(3)(i)-2 [§ 226.5b(f)(3)(i)-2]. [↑](#footnote-ref-364)
358. Reg. Z § 1026.40(f)(3)(vi)(B), (C) [§ 226.5b(f)(3)(vi)(B), (C)]. [↑](#footnote-ref-365)
359. Penalty fees in the contract should also be forbidden, under the same rationale, but it is somewhat less clear. While there is a specific ban on a change in the APR, there is no similar ban on increases in fees. In at least one point, the commentary appears to contemplate the imposition of penalty fees. Official Interpretations § 1026.40(f)(2)-2 [§ 226.5b(f)(2)-2] (providing for penalty fees in lieu of early termination). [↑](#footnote-ref-366)
360. Reg. Z § 1026.40(f)(2), (3) [§ 226.5b(f)(2), (3)]. [↑](#footnote-ref-367)
361. Reg. Z § 1026.40(f)(3)(i) [§ 226.5b(f)(3)(i)]. [↑](#footnote-ref-368)
362. Reg. Z § 1026.40(f)(3)(i) [§ 226.5b(f)(3)(i)]; Official Interpretations § 1026.40(f)(3)(i)-1 [§ 226.5b(f)(3)(i)-1]. [↑](#footnote-ref-369)
363. Official Interpretations § 1026.40(f)(3)(i)-1 [§ 226.5b(f)(3)(i)-1]. [↑](#footnote-ref-370)
364. Official Interpretations § 1026.40(f)(2)-2 [§ 226.5b(f)(2)-2]. [↑](#footnote-ref-371)
365. Official Interpretations § 1026.9(c)(1)-1 [§ 226.9(c)(1)-1]. [↑](#footnote-ref-372)
366. Reg. Z § 1026.40(f)(3)(iv) [§ 226.5b(f)(3)(iv)]. [↑](#footnote-ref-373)
367. 15 U.S.C. § 1647(b); Reg. Z § 1026.40(f)(2) [§ 226.5b(f)(2)]. *See* Flagstar Bank v. Charter One Bank, 2005 WL 2045907 (Mich. Ct. App. Aug. 25, 2005) (lender may not unilaterally terminate HELOC except in limited circumstances as set forth in TILA). Early termination of reverse mortgages is controlled by Reg. Z § 1026.40(f)(4) [§ 226.5b(f)(4)]. [↑](#footnote-ref-374)
368. *Compare* Reg. Z § 1026.40(d)(4) [§ 226.5b(d)(4)] (non-home-secured open-end credit), *with* Reg. Z § 1026.40(f)(2) [§ 226.5b(f)(2)], *and* Official Interpretations § 1026.40(f)(2)-1 [§ 226.5b(f)(2)-1] (home-secured open-end credit). [↑](#footnote-ref-375)
369. 15 U.S.C. § 1647(b)(1); Reg. Z § 1026.40(f)(2)(i) [§ 226.5b(f)(2)(i)]. [↑](#footnote-ref-376)
370. Official Interpretations § 1026.40(f)(2)(i)-1 [§ 226.5b(f)(2)(i)-1]. [↑](#footnote-ref-377)
371. *Id*. [↑](#footnote-ref-378)
372. 15 U.S.C. § 1647(b)(2); Reg. Z § 1026.40(f)(2)(ii) [§ 226.5b(f)(2)(ii)]. *See* Cunningham v. National City Bank, 2009 WL 69325 (D. Mass. Jan. 7, 2009) (permitting bank to terminate credit line for payment made ten days late), *aff’d*, 588 F.3d 49 (1st Cir. 2009). [↑](#footnote-ref-379)
373. Official Interpretations § 1026.40(f)(2)(ii)-1 [§ 226.5b(f)(2)(ii)-1]. [↑](#footnote-ref-380)
374. 74 Fed. Reg. 43,428, 43,485 (Aug. 26, 2009). [↑](#footnote-ref-381)
375. 15 U.S.C. § 1647(b)(3); Reg. Z § 1026.40(f)(2)(iii) [§ 226.5b(f)(2)(iii)]. [↑](#footnote-ref-382)
376. Official Interpretations § 1026.40(f)(2)(iii)-2 [§ 226.5b(f)(2)(iii)-2].

     By contrast, the filing of a judgment against the property would permit termination and acceleration only if the amount of the judgment and collateral subject to the judgment is such that the creditor’s security is affected. *Id*. Many judgments would be recorded subsequent in time to the HELOC mortgage, hence subsequent in priority. [↑](#footnote-ref-383)
377. Official Interpretations § 1026.40(f)(2)(iii)-1 [§ 226.5b(f)(2)(iii)-1]. [↑](#footnote-ref-384)
378. Official Interpretations § 1026.40(f)(2)-2 [§ 226.5b(f)(2)-2]. [↑](#footnote-ref-385)
379. *Id.* [↑](#footnote-ref-386)
380. Reg. Z § 1026.40(f)(4) [§ 226.5b(f)(4)]. [↑](#footnote-ref-387)
381. The only other use of “primary dwelling” appears in 15 U.S.C. § 1635(i)(1). No court opinion mentions the difference between “primary” and “principal” in either location. [↑](#footnote-ref-388)
382. *See* § 8.6.5, *supra*. [↑](#footnote-ref-389)
383. U.S.C. § 1647(c)(1); Reg. Z § 1026.40(f)(3) [§ 226.5b(f)(3)]; Passantino-Miller v. Wells Fargo Bank, N.A., 2013 WL 57024, at \*3/-/4 (E.D. Cal. Jan. 3, 2013) (finding TILA claim stated where defendant added the premium for force-placed insurance beyond the amount permitted in the contract to principal, without consent and proper notice); Hofstetter v. Chase Mone Fin., L.L.C., 751 F. Supp. 2d 1116, 1124/-/1128 (N.D. Cal. 2010) (finding TILA claim stated on allegations that lenders force-placed $175,000 worth of flood insurance coverage when her principal loan balance and available line of credit were both zero dollars, without her consent, and absent any agreement by borrower to obtain flood insurance); Peace v. Bank of Am., N.A., 2010 WL 996005, at \*3 (E.D. Ark. Mar. 17, 2010) (finding TILA claim adequately alleged where defendant increased the minimum payments on the plaintiff’s HELOC without prior notification). *Cf.* Pierce v. JP Morgan Chase Bank, N.A., 2012 WL 3610776, at \*7/-/9, n.8 (S.D. Ala. Aug. 21, 2012) (finding for defendant assignee on summary judgment that the method of applying payments by the HELOC assignee did not violate the HELOC terms, even though the method differed from that used by the original HELOC lender; noting that, if the method resulted in payments in excess of accrued interest and fees not being applied to reduce the loan balance, that would be a change in terms in violation of HOEPA).

     The prohibition on changing terms applies to all terms of the contract. Official Interpretations § 1026.40(f)(3)-1 [§ 226.5b(f)(3)-1]; Corrigan v. First Horizon Home Loan Corp., 2010 WL 728780, at \*7 (E.D. Mich. Feb. 25, 2010) (change in minimum payment and late fee due dates). [↑](#footnote-ref-390)
384. Official Interpretations § 1026.40(f)(3)-1 [§ 226.5b(f)(3)-1]. [↑](#footnote-ref-391)
385. Official Interpretations § 1026.40(f)(3)-2 [§ 226.5b(f)(3)-2]. *See* § 3.9.4, *supra*. [↑](#footnote-ref-392)
386. *See* § 8.6.5, *supra*. [↑](#footnote-ref-393)
387. Reg. Z § 1026.40(f)(3)(i) [§ 226.5b(f)(3)(i)]. [↑](#footnote-ref-394)
388. *Id.* [↑](#footnote-ref-395)
389. Official Interpretations § 1026.40(f)(3)(i)-2 [§ 226.5b(f)(3)(i)-2]. [↑](#footnote-ref-396)
390. *See* § 8.6.5, *supra*. Official Interpretations § 1026.40(f)(3)(i)-2 [§ 226.5b(f)(3)(i)-2]. [↑](#footnote-ref-397)
391. 15 U.S.C. § 1647(c)(2)(A); Reg. Z § 1026.40(f)(3)(ii) [§ 226.5b(f)(3)(ii)]; Official Interpretations § 1026.40(f)(3)(ii)-1 [§ 226.5b(f)(3)(ii)-1]. [↑](#footnote-ref-398)
392. Reg. Z § 1026.40(f)(3)(ii) [§ 226.5b(f)(3)(ii)]. [↑](#footnote-ref-399)
393. Official Interpretations § 1026.40(f)(3)(iii)-1 [§ 226.5b(f)(3)(iii)-1]. [↑](#footnote-ref-400)
394. *See* § 8.6.3, *supra*. Official Interpretations § 1026.40(f)(3)(iii)-1 [§ 226.5b(f)(3)(iii)-1]. [↑](#footnote-ref-401)
395. Official Interpretations § 1026.40(f)(3)(iii)-2 [§ 226.5b(f)(3)(iii)-2]. [↑](#footnote-ref-402)
396. Official Interpretations § 1026.40(f)(3)(iii)-1 [§ 226.5b(f)(3)(iii)-1]. [↑](#footnote-ref-403)
397. 15 U.S.C. § 1647(c)(2)(F), (c)(4)(A); Reg. Z § 1026.40(f)(3)(iv) [§ 226.5b(f)(3)(iv)]. [↑](#footnote-ref-404)
398. Official Interpretations § 1026.40(f)(3)(iv)-1 [§ 226.5b(f)(3)(iv)-1]. *Cf.* Pierce v. JP Morgan Chase Bank, N.A., 2012 WL 3610776, at \*7/-/9 (S.D. Ala. Aug. 21, 2012) (accepting, without analysis, assignee’s assertion that provision of “principal only” payment option provided a benefit to the homeowner in permitting the homeowner to make payments of principal, even when there were accrued fees). [↑](#footnote-ref-405)
399. Official Interpretations § 1026.40(f)(3)(iv)-1 [§ 226.5b(f)(3)(iv)-1]. *See* § 6.8.4, *supra*. [↑](#footnote-ref-406)
400. *Id*. [↑](#footnote-ref-407)
401. *Compare* 15 U.S.C. § 1647(c)(1), *with* Reg. Z § 1026.40(f)(3)(v) [§ 226.5b(f)(3)(v)]. [↑](#footnote-ref-408)
402. 134 Cong. Rec. H4468-02, 1988 WL 171775 (Remarks of Rep. Price) (June 20, 1988). [↑](#footnote-ref-409)
403. Official Interpretations § 1026.40(f)(3)(v)-1, 2 [§ 226.5b(f)(3)(v)-1, 2].

     The creditor may make insignificant changes in its rounding practices; the balance computation method, however, may be changed only if the change produces an insignificant difference in the finance charge paid by the consumer. *Id*. [↑](#footnote-ref-410)
404. *See* Pamela MacLean, *The Big Chill: Homeowners Claim That Mortgage Lenders Are Unfairly Freezing Home Equity Lines of Credit*, California Lawyer, May 2010, *available at* www.callawyer.com/story.cfm?eid=909473&evid=1 (last visited Oct. 6, 2010) (noting “[m]any homeowners who had used HELOCs as a financial lifeline were caught without warning” by restrictions on existing HELOCs in 2008 and 2009); Bob Tedeschi, *Why Credit Lines Are Drying Up*, New York Times, Apr. 19, 2009 (“Helocs, have been a popular financial tool for homeowners precisely for times like now, when it helps to have a monetary cushion in case of job loss or some other unforeseen fiscal glitch. These lines of credit essentially replaced savings accounts as the fallback, with many financial advisers counseling homeowners to keep a $50,000 line open at all times.”). [↑](#footnote-ref-411)
405. 15 U.S.C. § 1647(c)(2)(B)/-/(E); Reg. Z § 1026.40(f)(3)(vi) [§ 226.5b(f)(3)(vi)]. *See* Schulken v. Washington Mut. Bank, Henderson, 2010 WL 3987680 (N.D. Cal. Oct. 12, 2010) (creditor’s inability to verify the borrower’s income is not one of authorized reason). *See also* OTS, Home Equity Line of Credit Account Management Guidance (Aug. 2008), *available at* http://files.ots.treas.gov/481121.pdf (last viewed Aug. 15, 2012) (guidance for federal savings associations on terminating, suspending, and reducing HELOCs). [↑](#footnote-ref-412)
406. 15 U.S.C. § 1647(c)(2)(B); Reg. Z § 1026.40(f)(3)(vi)(A) [§ 226.5b(f)(3)(vi)(A)]; Vess v. Bank of Am., N.A., 2012 WL 113748, at \*5 (S.D. Cal. Jan. 13, 2012) (consumer stated valid claim by alleging that bank violated TILA by suspending and reducing HELOCs without significant decline in home value); *In re* Citibank HELOC Reduction Litig., 2010 WL 3447724 (N.D. Cal. Aug. 30, 2010); Hickman v. Wells Fargo Bank, N.A., 683 F. Supp. 2d 779 (N.D. Ill. 2010). [↑](#footnote-ref-413)
407. *See* Sara Lepro and Kate Berry, Pipeline: *A Roundup of Credit Market News and Views*, Am. Banker, Jan. 28, 2010 (describing uproar over reductions in HELOCs); Pamela MacLean, *The Big Chill: Homeowners Claim That Mortgage Lenders Are Unfairly Freezing Home Equity Lines of Credit*, California Lawyer, May 2010, *available at* www.callawyer.com/story.cfm?eid=909473&evid=1 (discussing numerous class actions alleging TILA and other violations arising from restrictions on existing HELOCs); Bob Tedeschi, *Why Credit Lines Are Drying Up*, New York Times, Apr. 19, 2009. [↑](#footnote-ref-414)
408. Bd. of Governors of the Fed. Reserve Sys., 5 Tips for Dealing with a Home Equity Line Freeze or Reduction (May 2012), *available at* www.federalreserve.gov/pubs/brochure.htm (last viewed Aug. 15, 2012). [↑](#footnote-ref-415)
409. Official Interpretations § 1026.40(f)(3)(vi)-6 [§ 226.5b(f)(3)(vi)-6]. [↑](#footnote-ref-416)
410. Official Interpretations § 1026.40(f)(3)(vi)-6 [§ 226.5b(f)(3)(vi)-6]; Raeth v. National City Bank, 755 F. Supp. 2d 899, 903/-/904 (W.D. Tenn. 2010) (discussing commentary, describing provision as a “safe harbor”); Malcolm v. JPMorgan Chase Bank, N.A., 2010 WL 934252 (N.D. Cal. Mar. 15, 2010) (describing rule, stating without analysis that $174,000 decline from $1,000,000 value could be considered significant.). *See* Walsh v. Washington Mutual Bank, 2010 WL 8971768, at \*2 (C.D. Cal. Mar. 5, 2010) (finding that allegations of an 83% reduction in available credit on a 5% reduction in the property value stated a TILA claim; noting that there is no determinate formula in TILA for assessing whether the reduction in the value of the real estate is significant). [↑](#footnote-ref-417)
411. *See* *In re* JPMorgan Chase Bank Home Equity Line of Credit Litig., 794 F. Supp. 2d 859 (N.D. Ill. 2011) (discussing issue in *dicta* and concluding “[i]n this court’s view, present available equity should in fact play some role in a responsible creditor’s lending decision . . . .”); *In re* Citibank Heloc Reduction Litig., 2010 WL 3447724 (N.D. Cal. Aug. 30, 2010) (homeowner stated claim by alleging no significant decline in value because he had satisfied first mortgage). *But see* Raeth v. National City Bank, 755 F. Supp. 2d 899, 903/-/904 (W.D. Tenn. 2010) (“the present level of equity is irrelevant”). [↑](#footnote-ref-418)
412. 15 U.S.C. § 1647(c)(2)(C); Reg. Z § 1026.40(f)(3)(vi)(B) [§ 226.5b(f)(3)(vi)(B)]; Official Interpretations § 1026.40(f)(3)(vi)-7 [§ 226.5b(f)(3)(vi)-7] (describing two requirements, a material change and reasonable belief that the consumer will be able to repay); Schulken v. Washington Mut. Bank, 2012 WL 28099, at \*9 (N.D. Cal. Jan. 5, 2012) (Reg. Z requires both a material change in income and reasonable belief that consumer will be unable to pay). *See* Schulken v. Washington Mut. Bank, Henderson, 2010 WL 3987680 (N.D. Cal. Oct. 12, 2010) (describing rule). [↑](#footnote-ref-419)
413. *See* Official Interpretations § 1026.40(f)(3)(vi)-7 [§ 226.5b(f)(3)(vi)-7]. [↑](#footnote-ref-420)
414. Peterson v. JPMorgan Chase Bank, N.A., 2010 WL 1741590 (N.D. Ill. Apr. 29, 2010). [↑](#footnote-ref-421)
415. *See* Official Interpretations § 1026.40(f)(3)(vi)-7 [§ 226.5b(f)(3)(vi)-7]. [↑](#footnote-ref-422)
416. 74 Fed. Reg. 43,437 (Aug. 26, 2009). [↑](#footnote-ref-423)
417. 15 U.S.C. § 1647(c)(2)(D); Reg. Z § 1026.40(f)(3)(vi)(C) [§ 226.5b(f)(3)(vi)(C)]. [↑](#footnote-ref-424)
418. 15 U.S.C. § 1647(c)(3). [↑](#footnote-ref-425)
419. Official Interpretations § 1026.40(f)(3)(vi)-8 [§ 226.5b(f)(3)(vi)-8]. [↑](#footnote-ref-426)
420. 15 U.S.C. § 1647(c)(2)(E)(i); Reg. Z § 1026.40(f)(3)(vi)(D) [§ 226.5b(f)(3)(vi)(D)]; Official Interpretations § 1026.40(f)(3)(vi)-9 [§ 226.5b(f)(3)(vi)-9]. [↑](#footnote-ref-427)
421. 15 U.S.C. § 1647(c)(2)(E)(ii); Reg. Z § 1026.40(f)(3)(vi)(E) [§ 226.5b(f)(3)(vi)(E)].

     For example, the imposition of a tax lien reduces the value of the security. [↑](#footnote-ref-428)
422. Reg. Z § 1026.40(f)(3)(vi)(F) [§ 226.5b(f)(3)(vi)(F)]. [↑](#footnote-ref-429)
423. Official Interpretations § 1026.40(f)(3)(vi)-5 [§ 226.5b(f)(3)(vi)-5]. [↑](#footnote-ref-430)
424. Reg. Z § 1026.9(c)(1)(iii) [§ 226.9(c)(1)(iii)] (requiring written notice “if the creditor prohibits additional extensions of credit or reduces the credit limit pursuant to § 1026.40(f)(3)(i) or (f)(3)(vi) [§ 226.5b(f)(3)(i) or (f)(3)(vi) . . . .”); Hickman v. Wells Fargo Bank, N.A., 683 F. Supp. 2d 779 (N.D. Ill. 2010) (discussing degree of specificity required). *See* Schulken v. Washington Mut. Bank, Henderson, 2010 WL 3987680 (N.D. Cal. Oct. 12, 2010) (complaint adequately pleaded that reason stated in notice was not valid reason for suspension); Walsh v. Washington Mutual Bank, 2010 WL 8971768, at \*2 (C.D. Cal. Mar. 5, 2010) (finding letter that stated that a “decline in value” based on a “proven valuation method” provided sufficiently specific notice). [↑](#footnote-ref-431)
425. Official Interpretations § 1026.9(c)(1)(iii)-2 [§ 226.9(c)(1)(iii)-2]. [↑](#footnote-ref-432)
426. *See* Malcolm v. JPMorgan Chase Bank, N.A., 2010 WL 934252, at \*5 (N.D. Cal. Mar. 15, 2010). [↑](#footnote-ref-433)
427. Official Interpretations § 1026.40(f)(3)(vi)-2, -4 [§ 226.5b(f)(3)(vi)-2, -4]. [↑](#footnote-ref-434)
428. Official Interpretations § 1026.40(f)(3)(vi)-4 [§ 226.5b(f)(3)(vi)-4]. *See* Malcolm v. JPMorgan Chase Bank, N.A., 2010 WL 934252 (N.D. Cal. Mar. 15, 2010). Note that HELOCs are exempt from RESPA’s provisions regarding qualified written requests. *See* National Consumer Law Center, Foreclosures § 9.2.1 (4th ed. 2012 and Supp.). [↑](#footnote-ref-435)
429. *See* § 8.6.6.7.1, *supra.* [↑](#footnote-ref-436)
430. Reg. Z § 1026.9(c)(1)(iii) [§ 226.9(c)(1)(iii)]. [↑](#footnote-ref-437)
431. Reg. Z § 1026.9(c)(1)(iii) [§ 226.9(c)(1)(iii)]. *See* Walsh v. Washington Mutual Bank, 2010 WL 8971768, at \*2 (C.D. Cal. Mar. 5, 2010) (describing letter’s representation of appeals process, including phone number to call for an independent appraiser). [↑](#footnote-ref-438)
432. *See, e.g.,* Malcolm v. JPMorgan Chase Bank, N.A., 2010 WL 934252 (N.D. Cal. Mar. 15, 2010) (appraisal performed during same month as creditor notice). [↑](#footnote-ref-439)
433. Yakas v. Chase Manhattan Bank, U.S.A., N.A., 2010 WL 367475 (N.D. Cal. Jan. 25, 2010) (discussing use of AVM to justify suspension of HELOC). [↑](#footnote-ref-440)
434. Brigliadora v. Wells Fargo Bank, N.A., 447 Fed. Appx. 941 (11th Cir. 2011) (use of AVM does not, alone, violate TILA); *In re* JPMorgan Chase Bank Home Equity Line of Credit Litig., 794 F. Supp. 2d 859 (N.D. Ill. 2011) (AVM use not per se violation but may be factor in improper decision). [↑](#footnote-ref-441)
435. *See, e.g., In re* JPMorgan Chase Bank Home Equity Line of Credit Litig., 794 F. Supp. 2d 859 (N.D. Ill. 2011). [↑](#footnote-ref-442)
436. Schulken v. Washington Mut. Bank, 2011 WL 4804063, at \*7/-/9 (N.D. Cal. Oct. 11, 2011). [↑](#footnote-ref-443)
437. Official Interpretations § 1026.40(f)(3)(vi)-1 [§ 226.5b(f)(3)(vi)-1]. [↑](#footnote-ref-444)
438. *See* § 11.6.5.3, *infra*. [↑](#footnote-ref-445)
439. Aspects of rescission that are unique to HELOCs are discussed at § 10.2.6.5, *infra*. [↑](#footnote-ref-446)
440. 75 Fed. Reg. 58,539 (Sept. 24, 2010). [↑](#footnote-ref-447)
441. In February 2011 the Federal Reserve Board issued a press release saying it would not finalize the proposed regulations before they were transferred to the Consumer Financial Protection Bureau in July 2011. Press Release, Federal Reserve Bd. (Feb. 1, 2011), *available at* www.federalreserve.gov/newsevents/press/bcreg/20110201a.htm. [↑](#footnote-ref-448)
442. *See* 15 U.S.C. § 1602(cc); Reg. Z § 1026.33(a) [§ 226.33(a)] (defining “reverse mortgage transaction”).

     The Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (July 21, 2010), changed subsection from (bb) to (cc) and then, through an apparent drafting error, added a second subsection (cc). The definition of “reverse mortgage transaction” is found in the first of the two (cc)s. *See also* Official Interpretations § 1026.33(a)-1 [§ 226.33(a)-1] (discussing non-recourse transaction requirement). [↑](#footnote-ref-449)
443. 15 U.S.C. § 1602(cc)(2); Reg. Z § 1026.33 [§ 226.33]; Official Interpretations § 1026.33(a)(2)-2 [§ 226.33(a)(2)-2] (mortgage loan can meet definition of reverse mortgage even if it states definite maturity date as long as maturity date would not operate to call in loan prior to maturity events listed in Reg. Z); 62 Fed. Reg. 10,193, 10,198 (Mar. 6, 1997). [↑](#footnote-ref-450)
444. National Consumer Law Center, Mortgage Lending (2012 and Supp.). [↑](#footnote-ref-451)
445. 15 U.S.C. §§ 1648(a) (requiring certain disclosures “[i]n addition to the disclosures required under this title [Title 15]”). [↑](#footnote-ref-452)
446. 15 U.S.C. § 1602(bb)(1)(A) (“The term ‘high-cost mortgage’, and a mortgage referred to in this subsection [1602(bb)], means a consumer credit transaction that is secured by the consumer’s principal dwelling, other than a reverse mortgage transaction . . . .”). *See generally* § 9.6, *infra* (describing HOEPA protections). ???Author: 9.6 was deleted in the 2013 Supp.??? [↑](#footnote-ref-453)
447. *See* 15 U.S.C. § 1602(cc) (defining reverse mortgage transaction). [↑](#footnote-ref-454)
448. Official Interpretations § 1026.33(a)-1 [§ 226.33(a)-1]. [↑](#footnote-ref-455)
449. *See* § 8.6.5, *supra*. [↑](#footnote-ref-456)
450. Reg. Z § 1026.40(f)(4) [§ 226.5b(f)(4)]. Rescission rights, in contrast, apply to the consumer’s “principal dwelling.” *See, e.g.,* Reg. Z § 1026.15 [§ 226.15]. *See generally* § 10.2.4, *infra.* [↑](#footnote-ref-457)
451. 15 U.S.C. § 1639c(f). [↑](#footnote-ref-458)
452. 15 U.S.C. § 1639d(a). [↑](#footnote-ref-459)
453. 15 U.S.C. § 1639c(a)(8). [↑](#footnote-ref-460)
454. 15 U.S.C. § 1639h(f). [↑](#footnote-ref-461)
455. *See generally* Ch. 4 and §§ 8.2/-/8.5, *supra*. [↑](#footnote-ref-462)
456. Reg. Z § 1026.33(b)(2) [§ 226.33(b)(2)]. [↑](#footnote-ref-463)
457. Official Interpretations § 1026.33(c)(1)-1 [§ 226.33(c)(1)-1]. [↑](#footnote-ref-464)
458. 15 U.S.C. § 1648; Reg. Z § 1026.31(c)(2) [§ 226.31(c)(2)]. [↑](#footnote-ref-465)
459. Reg. Z § 1026.33 [§ 226.33]. [↑](#footnote-ref-466)
460. The drafters obviously overlooked the possibility that housing prices could decline nationally. [↑](#footnote-ref-467)
461. 15 U.S.C. § 1648(b).

     An equity conservation agreement is an agreement limiting the consumer’s liability to a specific percentage of the net proceeds available from the sale of the home. [↑](#footnote-ref-468)
462. Reg. Z § 1026.33(b)(1) [§ 226.33(b)(1)]. [↑](#footnote-ref-469)
463. Reg. Z § 1026.33(b)(3)/-/(4) [§ 226.33(b)(3)/-/(4)]. [↑](#footnote-ref-470)
464. Reg. Z § 1026.33(b) [§ 226.33(b)]. [↑](#footnote-ref-471)
465. Reg. Z § 1026.31(c)(2) [§ 226.31(c)(2)]. [↑](#footnote-ref-472)
466. Reg. Z § 1026.31(b) [§ 226.31(b)]. *See generally* Ch. 4, *supra.* [↑](#footnote-ref-473)