were made, when violations were identified, whether the violations were repeat violations, and other factors.

There is no time limitation on willful violations intended to mislead the consumer. A summary of the various time limitations follows.

- For open-end credit, reimbursement applies to violations not older than two years.
- For closed-end credit, reimbursement is generally directed for loans with violations occurring since the immediately preceding examination.

Rescission Rights (Open-End and Closed-End Credit) §226.15 and §226.23

TILA provides that for certain transactions secured by the consumer's principal dwelling, a consumer has three business days after becoming obligated on the debt to rescind the transaction. The right of rescission allows consumer(s) time to reexamine their credit agreements and cost disclosures and to reconsider whether they want to place their homes at risk by offering it/them as security for the credit. Transactions exempt from the right of rescission include residential mortgage transactions (§226.2(a)(24)) and refinancings or consolidations with the original creditor where no "new money" is advanced.

If a transaction is rescindable, consumers must be given a notice explaining that the creditor has a security interest in the consumer's home, that the consumer may rescind, how the consumer may rescind, the effects of rescission, and the date the rescission period expires.

To rescind a transaction, a consumer must notify the creditor in writing by midnight of the third business day after the latest of three events: (1) consummation of the transaction, (2) delivery of material TILA disclosures, or (3) receipt of the required notice of the right to rescind. For purposes of rescission, business day means every calendar day except Sundays and the legal public holidays (§226.2(a)(6)). The term "material disclosures" is defined in §226.23(a)(3) to mean the required disclosures of the annual percentage rate, the finance charge, the amount financed, the total of payments, the payment schedule, and the disclosures and limitations referred to in §226.32(c) and (d).

The creditor may not disburse any monies (except into an escrow account) and may not provide services or materials until the three-day rescission period has elapsed and the creditor is reasonably satisfied that the consumer has not rescinded. If the consumer rescinds the transaction, the creditor must refund all amounts paid by the consumer (even amounts disbursed to third parties) and terminate its security interest in the consumer's home.

A consumer may waive the three-day rescission period and receive immediate access to loan proceeds if the consumer has a "bona fide personal financial emergency." The consumer must give the creditor a signed and dated waiver statement that describes the emergency, specifically waives the right, and bears the signatures of all consumers entitled to rescind the transaction. The consumer provides the explanation for the bona fide personal financial emergency, but the creditor decides the sufficiency of the emergency.

If the required rescission notice or material TILA disclosures are not delivered or if they are inaccurate, the consumer's right to rescind may be extended from three days after becoming obligated on a loan to up to three years.

Examination Objectives

1. To appraise the quality of the financial institution's compliance management system for the Truth in Lending Act and Regulation Z.
2. To determine the reliance that can be placed on the financial institution's compliance management system, including internal controls and procedures performed by the person(s) responsible for monitoring the financial institution's compliance review function for the Truth In Lending Act and Regulation Z.
3. To determine the financial institution's compliance with the Truth In Lending Act and Regulation Z.
4. To initiate corrective action when policies or internal controls are deficient, or when violations of law or regulation are identified.
5. To determine whether the institution will be required to make adjustments to consumer accounts under the restitution provisions of the Act.

Examination Procedures

General Procedures

1. Obtain information pertinent to the area of examination from the financial institution's compliance management system program (historical examination findings, complaint information, and significant findings from compliance review and audit).
2. Through discussions with management and review of the following documents, determine whether the financial institution's internal controls are adequate to ensure compliance in the area under review. Identify procedures used daily to detect errors/violations promptly. Also, review the procedures used to ensure compliance when changes occur (e.g., changes in interest rates, service charges, computation methods, and software programs).
   - Organizational charts.
   - Process flowcharts.
   - Policies and procedures.

- Loan documentation and disclosures.
- Checklists/worksheets and review documents.
- Computer programs.

3. Review compliance review and audit work papers and determine whether:
   a. The procedures used address all regulatory provisions (*see* Transactional Testing section on page V-1.27).
   b. Steps are taken to follow up on previously identified deficiencies.
   c. The procedures used include samples that cover all product types and decision centers.
   d. The work performed is accurate (through a review of some transactions).
   e. Significant deficiencies, and the root cause of the deficiencies, are included in reports to management/board.
   f. Corrective actions are timely and appropriate.
   g. The area is reviewed at an appropriate interval.

Disclosure Forms

4. Determine if the financial institution has changed any preprinted TILA disclosure forms or if there are forms that have not been previously reviewed for accuracy. If so:
   - Verify the accuracy of each preprinted disclosure by reviewing the following:
     - Note and/or contract forms (including those furnished to dealers).
     - Standard closed-end credit disclosures (§226.17(a) and §226.18).
     - ARM disclosures (§226.19(b)).
     - High cost mortgage disclosures (§226.32(c)).
     - Initial disclosures (§226.6(a)-(d)) and, if applicable, additional HELOC disclosures (§226.6(e)).
     - Credit card application/solicitation disclosures (§226.5a(b)-(e)).
     - HELOC disclosures (§226.5b(d) and (e)).
     - Statement of billing rights and change in terms notice (§226.9(a)).
     - Reverse mortgage disclosures (§226.33(b)).

Closed-End Credit Forms Review Procedures

a. Determine the disclosures are clear, conspicuous, grouped, and segregated. The terms Finance Charge and APR should be more conspicuous than other terms. (§226.17(a))

b. Determine the disclosures include the following as applicable. (§226.18)
   1. Identity of the creditor;
   2. Brief description of the finance charge;
   3. Brief description of the APR;
   4. Variable rate verbiage (§226.18(f)(1) or (2));
   5. Payment schedule;
   6. Brief description of the total of payments;
   7. Demand feature;
   8. Description of total sales price in a credit sale;
   9. Prepayment penalty's or rebates;
   10. Late payment amount or percentage;
   11. Description for security interest;
   12. Various insurance verbiage (§226.4(d));
   13. Statement referring to the contract;
   14. Statement regarding assumption of the note; and
   15. Statement regarding required deposits.

c. Determine all variable rate loans with a maturity greater than one year secured by a principal dwelling are given the following disclosures at the time of application. (§226.19)
   1. Consumer handbook on adjustable rate mortgages or substitute;
   2. Statement that interest rate payments and or terms can change;
   3. The index/formula and a source of information;
   4. Explanation of the interest rate/payment determination and margin;
   5. Statement that the consumer should ask for the current interest rate and margin;
   6. Statement that the interest rate is discounted, if applicable;
   7. Frequency of interest rate and payment changes;
   8. Rules relating to all changes;
   9. Either a historical example based on 15 years, or the initial rate and payment with a statement that the periodic payment may substantially increase or decrease together with a maximum interest rate and payment;
   10. Explanation of how to compute the loan payment, giving an example;
   11. Demand feature, if applicable;
   12. Statement of content and timing of adjustment notices; and
   13. Statement that other variable rate loan program disclosures are available, if applicable.

d. Determine that the disclosures required for high-cost mortgage transactions clearly and conspicuously include the items below. [§226.32(c), *see* Form H-16 in Appendix H.]

1. The required statement "you are not required to complete this agreement merely because you have received these disclosures or have signed a loan application. If you obtain this loan, the lender will have a mortgage on your home. You could lose your home, and any money you have put into it, if you do not meet your obligations under the loan".
2. Annual percentage rate.
3. Amount of the regular monthly (or other periodic) payment and the amount of any balloon payment. The regular payment should include amounts for voluntary items, such as credit life insurance or debt-cancellation coverage, only if the consumer has previously agreed to the amount. [*See* staff commentary to 32(c)(3)]
4. Statement that the interest rate may increase, and the amount of the single maximum monthly payment, based on the maximum interest rate allowed under the contract, if applicable.
5. For a mortgage refinancing, the total amount borrowed, as reflected by the face amount of the note; and where the amount borrowed includes premiums or other charges for optional credit insurance or debt-cancellation coverage, that fact shall be stated (grouped together with the amount borrowed).

Open-End Credit Forms Review Procedures

a. Determine the initial disclosure statement is provided before the first transaction under the account and ensure the disclosure includes the items below as applicable. (§226.6)
   1. Statement of when the finance charge is to accrue and if a grace period exists;
   2. Statement of periodic rates used and the corresponding APR;
   3. Explanation of the method of determining the balance on which the finance charge may be computed;
   4. Explanation of how the finance charge would be determined;
   5. Statement of the amount of any other charges;
   6. Statement of creditor's security interest in the property;
   7. Statement of billing rights (§226.12 and §226.13); and
   8. Certain home equity plan information if not provided with the application in a form the consumer could keep. [§226.6(e)(7)]

b. Determine the following credit card disclosures were made clearly and conspicuously on or with a solicitation or an application. Disclosures in 12-point type are deemed to comply with the requirements. *See* staff comment 5a(a)(2)-1. The APR for purchases (other than an introductory rate that is lower than the rate that will apply after the introductory rate expires) must be in at least 18-point type. [§226.5a]
   1. APR for purchases, cash advances, and balance transfers, including penalty rates that may apply. If the rate is variable, the index or formula, and margin must be identified;
   2. Fee for issuance of the card;
   3. Minimum finance charge;
   4. Transaction fees;
   5. Length of the "grace period";
   6. Balance computation method;
   7. Statement that charges incurred by use of the charge card are due when the periodic statement is received

   NOTE: The above items must be provided in a prominent location in the form of a table. The remaining items may be included in the same table or clearly and conspicuously elsewhere on the same document. An explanation of specific events that may result in the imposition of a penalty rate must be placed outside the table with an asterisk inside the table (or other means) directing the consumer to the additional information.

   8. Cash advance fees;
   9. Late payment fees; and
   10. Fees for exceeding the credit limit.

c. Determine that disclosure of items 1-7 in "b" above are made orally for creditor-initiated telephone applications and pre-approved solicitations. Also, determine for applications or solicitations made to the general public that the card issuer makes one of the optional disclosures. (§226.5a(d) and (e))

d. Determine the following home equity disclosures were made clearly and conspicuously, at the time of application. (§226.5b)
   1. Home equity brochure;
   2. Statement that the consumer should retain a copy of the disclosure;
   3. Statement of the time the specific terms are available;
   4. Statement that terms are subject to change before the plan opens;
   5. Statement that the consumer may receive a full refund of all fees;

6. Statement that the consumer's dwelling secures the credit;
7. Statement that the consumer could loose the dwelling;
8. Creditors right to change, freeze, or terminate the account;
9. Statement that information about conditions for adverse action are available upon request;
10. Payment terms including the length of the draw and repayment periods, how the minimum payment is determined, the timing of payments, and an example based on $10,000 and a recent APR;
11. A recent APR imposed under the plan and a statement that the rate does not include costs other than interest (fixed rate plans only);
12. Itemization of all fees paid to creditor;
13. Estimate of any fees payable to third parties to open the account and a statement that the consumer may receive a good faith itemization of third party fees;
14. Statement regarding negative amortization, as applicable;
15. Transaction requirements;
16. Statement that the consumer should consult a tax advisor regarding the deductibility of interest and charges under the plan; and
17. For variable rate home equity plans, disclose the following:
    - i. That the APR, payment, or term may change;
    - ii. The APR excludes costs other than interest;
    - iii. Identify the index and its source;
    - iv. How the rate will be determined;
    - v. Statement that the consumer should request information on the current index value, margin, discount, premium, or APR;
    - vi. Statement that the initial rate is discounted and the duration of the discount, if applicable;
    - vii. Frequency of APR changes;
    - viii. Rules relating to changes in the index, APR, and payment amount;
    - ix. Lifetime rate cap and any annual caps, or a statement that there is no annual limitation;
    - x. The minimum payment requirement, using the maximum APR, and when the maximum APR may be imposed;
    - xi. A table, based on a $10,000 balance, reflecting all significant plan terms; and
    - xii. Statement that rate information will be provided on or with each periodic statement.

e. Determine when the last statement of billing rights was furnished to customers and whether the institution used the short form notice with each periodic statement. (§226.9(a))

f. Determine that the notice of any change in terms was provided 15 days prior to the effective date of the change. (§226.9(b))

g. Determine that disclosure of items 1-7 in "b" above are provided if the account is renewed. Additionally, the disclosure provided upon renewal must disclose how and when the cardholder may terminate the credit to avoid paying the renewal fee. (§226.9(e))

h. Determine that a statement of the maximum interest rate that may be imposed during the term of the obligation is made for any loan in which the APR may increase during the plan. (§226.30(b))

Reverse Mortgage Forms Review Procedures (Both open and closed-end)

a. Determine that the disclosures required for reverse mortgage transactions are substantially similar to the model form in Appendix K and include the items below.
   1. A statement that the consumer is not obligated to complete the reverse mortgage transaction merely because he or she has received the disclosures or signed an application.
   2. A good faith projection of the total cost of the credit expressed as a table of "total annual loan cost rates" including payments to the consumer, additional creditor compensation, limitations on consumer liability, assumed annual appreciation, and the assumed loan period.
   3. An itemization of loan terms, charges, the age of the youngest borrower, and the appraised property value.
   4. An explanation of the table of total annual loan costs rates.

   NOTE: Forms that include or involve current transactions, such as change in terms notices, periodic billing statements, rescission notices, and billing error communications, are verified for accuracy when the file review worksheets are completed.

Timing of Disclosures

5. Review financial institution policies, procedures, and systems to determine, either separately, or when completing the actual file review, whether the applicable disclosures listed below are furnished when required by Regulation Z. Take into account products that have different features, such as closed-end loans or credit card accounts that are fixed or variable rate.

a. Credit card application and solicitation disclosures—On or with the application. [§226.5a(b)]

b. HELOC disclosures--At the time the application is provided or within three business days under certain circumstances. (§226.5b(b))

c. Open-end credit initial disclosures --Before the first transaction is made under the plan. (§226.5(b)(1))

d. Periodic disclosures--At the end of a billing cycle if the account has a debit or credit balance of $1 or more or if a finance charge has been imposed. (§226.5(b)(2))

e. Statement of billing rights--At least once per year. (§226.9(a))

f. Supplemental credit devices-- Before the first transaction under the plan. (§226.9(b))

g. Open-end credit change in terms-- 15 days prior to the effective change date. (§226.9(c))

h. Finance charge imposed at time of transaction--Prior to imposing any fee. (§226.9(d))

i. Disclosures upon renewal of credit or charge card--30 days or one billing cycle, whichever is less before the delivery of the periodic statement on which the renewal fee is charged. Alternatively, notice may be delayed until the mailing or delivery of the periodic statement on which the renewal fee is charged to the accounts if the notice meets certain requirements. (§226.9(e))

j. Change in credit account insurance provider--Certain information 30 days before the change in provider occurs and certain information 30 days after the change in provider occurs. The institution may provide a combined disclosure 30 days before the change in provider occurs. (§226.9(f))

k. Closed-end credit disclosures-- Before consummation. (§226.17(b))

l. Disclosures for certain closed-end home mortgages--Three business days prior to consummation. (§226.31(c)(1))

m. Disclosures for reverse mortgages --Three days prior to consummation of a closed-end credit transaction or prior to the first transaction under an open-end credit plan. (§226.31(c)(2))

n. Disclosures for adjustable-rate mortgages—At least once each year during which an interest rate adjustment is implemented without an accompanying payment change, and at least 25, but no more than 120 calendar days before a new payment amount is due, or in accordance with other variable-rate subsequent-disclosure regulations issued by a supervisory agency. (§226.20(c))

Record Retention

6. Review the financial institution's record retention practices to determine whether evidence of compliance (for other than the advertising requirements) is retained for at least two years after the disclosures was required to be made or other action was required to be taken. (§226.25)

Electronic Delivery of Disclosures

7. Review the financial institution's policies and procedures with regard to the electronic delivery of disclosures. If disclosures are provided electronically, determine if the procedures adequately ensure compliance with §226.36.

Transactional Testing

NOTE: When verifying APR accuracies, use the OCC's APR calculation model or other calculation tool.

Advertising

8. Sample advertising copy, including any Internet advertising, since the previous examination and verify that the terms of credit are specific. If triggering terms are used, determine the required disclosures are made. (§226.16 and §226.24)

   For advertisements for closed-end credit, determine:

   - if a rate of finance charge was stated, that it was stated as an APR.
   - if an APR will increase after consummation, a statement to that fact is made.

Closed-End Credit

9. For each type of closed-end loan being tested, determine the accuracy of the disclosures by comparing the disclosures to the contract and other financial institution documents. (§226.17)

10. Determine whether the required disclosures were made before consummation of the transaction and ensure the presence and accuracy of the items below, as applicable. (§226.18)

    a. Amount financed;
    b. Itemization of the amount financed (RESPA GFE may substitute);
    c. Finance charge;
    d. APR;
    e. Variable rate verbiage as follows for loans not secured by a principal dwelling or with terms of one year or less:
        1. Circumstances which permit rate increase;
        2. Limitations on the increase (periodic or lifetime);
        3. Effects of the increase;
        4. Hypothetical example of new payment terms;

f. Payment schedule including amount, timing and number of payments.

g. Total of payments.

h. Total sales price (credit sale).

i. Description of security interest.

j. Credit life insurance premium included in the finance charge unless:

1. Insurance is not required;
2. Premium for the initial term is disclosed; and
3. Consumer signs or initials an affirmative written request for the insurance.

k. Property insurance available from the creditor excluded from the finance charge if the premium for the initial term of the insurance is disclosed.

l. Required deposit.

11. Determine for adjustable rate mortgage loans secured by the borrower's principal dwelling with maturities of more than one year that the required early and subsequent disclosures are complete, accurate, and timely. Early disclosures required by §226.19(a) are verified during the closed-end credit forms review. Subsequent disclosures should include the items below, as applicable. (§226.20(c))

a. Current and prior interest rates;

b. Index values used to determine current and prior interest rates;

c. Extent to which the creditor has foregone an increase in the interest rate;

d. Contractual effects of the adjustment (new payment and loan balance); and

e. Payment required to avoid negative amortization.

NOTE: The accuracy of the adjusted interest rates and indexes should be verified by comparing them with the contract and early disclosures. Refer to the Additional Variable Rate Testing section of these examination procedures on page V-1.29.

12. Determine, for each type of closed-end rescindable loan being tested, two copies of the rescission notice are provided to each person whose ownership interest is or will be subject to the security interest. The rescission notice must disclose the items below. (§226.23(b))

a. Security interest taken in the consumer's principal dwelling;

b. Consumer's right to rescind the transaction;

c. How to exercise the right to rescind, with a form for that purpose, designating the address of the creditor's place of business;

d. Effects of rescission; and

e. Date the rescission period expires.

13. Ensure funding was delayed until the rescission period expired. (§226.23(c))

14. Determine if the institution has waived the three-day right to rescind since the previous examination. If applicable, test rescission waivers. (§226.23(e))

15. Determine whether the maximum interest rate in the contract is disclosed for any adjustable rate consumer credit contract secured by a dwelling. (§226.30(a))

Open-End Credit

16. For each open-end credit product tested, determine the accuracy of the disclosures by comparing the disclosure with the contract and other financial institution documents. (§226.5(c))

17. Review the financial institution's policies, procedures, and practices to determine whether it provides appropriate disclosures for creditor-initiated direct mail applications and solicitations to open charge card accounts, telephone applications and solicitations to open charge card accounts, and applications and solicitations made available to the general public to open charge card accounts. (§226.5a(b), (c), and (d))

18. Determine for all home equity plans with a variable rate that the APR is based on an independent index. Further, ensure home equity plans are terminated or terms changed only if certain conditions exist. (§226.5b(f))

18. Determine that, if any consumer rejected a home equity plan because a disclosed term changed before the plan was opened, all fees were refunded. Verify that non-refundable fees were not imposed until three business days after the consumer received the required disclosures and brochure. (§226.5b(g) and (h))

20. Review consecutive periodic billing statements for each major type of open-end credit activity offered (overdraft and home-equity lines of credit, credit card programs, etc.). Determine whether disclosures were calculated accurately and are consistent with the initial disclosure statement furnished in connection with the accounts (or any subsequent change in terms notice) and the underlying contractual terms governing the plan(s). The periodic statement must disclose the items below, as applicable. (§226.7)

a. Previous balance;

b. Identification of transactions;

c. Dates and amounts of any credits;

d. Periodic rates and corresponding APRs, if variable rate plan, must disclose that the periodic rates may vary;

e. Balance on which the finance charge is computed and an explanation of how the balance is determined;

f. Amount of finance charge with an itemization of each of the components of the finance charge;

g. Annual percentage rate;
h. Itemization of other charges;
i. Closing date and balance;
j. Payment date, if there is a "free ride" period; and
k. Address for notice of billing errors.

21. Verify the institution credits a payment to the open-end account as of the date of receipt. (§226.10)

22. Determine institution's treatment of credit balances. Specifically, if the account's credit balance is in excess of $1, the institution must disclose the items below. (§226.11)
    a. Credit the amount to the consumer's account;
    b. Refund any part of the remaining credit balance within seven business days from receiving a written request from the consumer; and
    c. Make a good faith effort to refund the amount of the credit to a deposit account of the consumer if the credit remains for more than six months.

23. Review a sample of billing error resolution files and a sample of consumers who have asserted a claim or defense against the financial institution for a credit card dispute regarding property or services. Verify the following. (§226.12 and §226.13)
    a. Credit cards are issued only upon request;
    b. Liability for unauthorized credit card use is limited to $50;
    c. Disputed amounts are not reported delinquent unless remaining unpaid after the dispute has been settled;
    d. Offsetting credit card indebtedness is prohibited; and
    e. Errors are resolved within two complete billing cycles.

24. Determine, for each type of open-end rescindable loan being tested, two copies of the rescission notice are provided to each person whose ownership interest is or will be subject to the security interest and perform items 11, 12, and 13 under Closed-End Credit.

Additional Variable Rate Testing

25. Verify that when accounts were opened or loans were consummated that loan contract terms were recorded correctly in the financial institution's calculation systems (e.g., its computer). Determine the accuracy of the following recorded information:
    a. Index value;
    b. Margin and method of calculating rate changes;
    c. Rounding method; and
    d. Adjustment caps (periodic and lifetime).

26. Using a sample of periodic disclosures for open-end variable rate accounts (e.g., home equity accounts) and closed-end rate change notices for adjustable rate mortgage loans:
    a. Compare the rate-change date and rate on the credit obligation to the actual rate-change date and rate imposed.
    b. Determine that the index disclosed and imposed is based on the terms of the contract (example: the weekly average of one-year Treasury constant maturities, taken as of 45 days before the change date.). (§226.7(g) and §226.20(c)(2))
    c. Determine that the new interest rate is correctly disclosed by adding the correct index value with the margin stated in the note, plus or minus any contractual fractional adjustment. (§226.7(g) and §226.20 (c)(1))
    d. Determine that the new payment disclosed (§226.20(c)(4)) was based on an interest rate and loan balance in effect at least 25 days before the payment change date (consistent with the contract). (§226.20(c))

Certain Home Mortgage Transactions

27. Determine whether the financial institution originates consumer credit transactions subject to Subpart E of Regulation Z; specifically, certain closed-end home mortgages (high-cost mortgages (§226.32) and reverse mortgages (§226.33).

28. Examiners may use the attached worksheet as an aid for identifying and reviewing high-cost mortgages. (Page V-1.32)

29. Review both high-cost and reverse mortgages to ensure the following:
    a. Required disclosures are provided to consumers in addition to, not in lieu of, the disclosures contained in other subparts of Regulation Z. (§226.31(a))
    b. Disclosures are clear and conspicuous, in writing, and in a form that the consumer may keep. (§226.31(b))
    c. Disclosures are furnished at least three business days prior to consummation of a mortgage transaction covered by §226.32 or a closed-end reverse mortgage transaction (or at least three business days prior to the first transaction under an open-end reverse mortgage). (§226.31(c))
    d. Disclosures reflect the terms of the legal obligation between the parties. (§226.31(d))
    e. If the transaction involves more than one creditor, only one creditor shall provide the disclosures. Where the obligation involves multiple consumers, the disclosures may be provided to any consumer who is primarily liable on the obligation. However, for rescindable transactions, the disclosures must be provided to each consumer who has the right to rescind. (§226.31(e))

f. The APR is accurately calculated and disclosed in accordance with the requirements and within the tolerances allowed in §226.22. (§226.31(g))

30. For high-cost mortgages (§226.32), ensure that:

a. In addition to other required disclosures, the creditor discloses the following at least three business days prior to consummation: [*See* model disclosure at App. H-16]

1. Notice containing the prescribed language.(§226.32(c)(1))
2. Annual percentage rate. (§226.32(c)(2))
3. Amount of regular loan payment and the amount of any balloon payment. (§226.32(c)(3))
4. For variable rate loans, a statement that the interest rate and monthly payment may increase, and the amount of the single maximum monthly payment allowed under the contract. (§226.32(c)(4))
5. For a mortgage refinancing, the total amount the consumer will borrow (the face amount) and if this amount includes premiums or other charges for optional credit insurance or debt-cancellation coverage, that fact is stated. This disclosure shall be treated as accurate if within $100. (§226.32(c)(5))
6. A new disclosure is required if, subsequent to providing the additional disclosure but prior to consummation, there are changes in any terms that make the disclosures inaccurate. For example, if a consumer purchases optional credit insurance and, as a result, the monthly payment differs from the payment previously disclosed, redisclosure is required and a new three-day waiting period applies. (§226.31(c)(1)(i))
7. If a creditor provides new disclosures by telephone when the consumer initiates a change in terms, then at consummation: (§226.31(c)(1)(ii))

   The creditor must provide new written disclosures and both parties must sign a statement that these new disclosures were provided by telephone at least three days prior to consummation.

8. If a consumer waives the right to a three-day waiting period to meet a bona fide personal financial emergency, the consumer's waiver must be a dated written statement (not a pre-printed form) describing the emergency and bearing the signature of all entitled to the waiting period (a consumer can waive only after receiving the required disclosures and prior to consummation). (§226.31(c)(1)(iii))

b. High-cost mortgage transactions do not provide for any of the following loan terms:

1. Balloon payment (if term is less than 5 years, with exceptions). (§226.32(d)(1)(i) and (ii))
2. Negative amortization. (§226.32(d)(2))
3. Advance payments from the proceeds of more than 2 periodic payments. (§226.32(d)(3))
4. Increased interest rate after default. (§226.32(d)(4))
5. A rebate of interest, arising from a loan acceleration due to default, calculated by a method less favorable than the actuarial method. (§226.32(d)(5))
6. Prepayment penalties (but permitted in the first five years if certain conditions are met). (§226.32(d)(6) and (7))
7. A due-on-demand clause permitting the creditor to terminate the loan in advance of maturity and accelerate the balance, with certain exceptions. (§226.32(d)(8))

c. The creditor is not engaged in the following acts and practices for high-cost mortgages:

1. *Home improvement contracts* – paying a contractor under a home improvement contract from the proceeds of a mortgage unless certain conditions are met. (§226.34(a)(1))
2. *Notice to assignee* – selling or otherwise assigning a high-cost mortgage without furnishing the required statement to the purchaser or assignee. (§226.34(a)(2))
3. *Refinancing within one year of extending credit* – within one year of making a high-cost mortgage loan, a creditor may not refinance any high-cost mortgage loan to the same borrower into another high-cost mortgage loan that is not in the borrower's interest. This also applies to assignees that hold or service the high-cost mortgage loan. Commentary to 34(a)(3) has examples applying the refinancing prohibition and addressing "borrower's interest." (§226.34(a)(3))
4. *Consumers' ability to repay* – engaging in a pattern or practice of extending high-cost mortgages based on the consumer's collateral without regard to repayment ability, including the consumer's current and expected income, current obligations, and employment. A violation is presumed if there is a pattern or practice of making such mortgage loans without verifying and documenting consumers' repayment ability.

   A. A creditor may consider any expected income of the consumer, including:

      i. Regular salary or wages;
      ii. Gifts;
      iii. Expected retirement payments; and
      iv. Income from self-employment.

B. Equity income that would be realized from the collateral may not be considered.

C. Creditors may verify and document a consumer's income and obligations through any reliable source that provides the creditor with a reasonable basis for believing that there are sufficient funds to support the loan. Reliable sources include:

i. Credit reports;

ii. Tax return;

iii. Pension statements; or

iv. Payment records for employment income.

D. If a loan transaction includes a discounted introductory rate, the creditor must consider the consumer's ability to repay based on the non-discounted or fully indexed rate.

NOTE: Commentary to 34(a)(4) contains guidance on income that may be considered, on "pattern or practice," and on "verifying and documenting" income and obligations. (§226.34(a)(4))

31. Ensure that the creditor does not structure a home-secured loan as an open-end plan ("spurious open-end credit") to evade the requirements of Regulation Z. *See* staff commentary to 34(b) for factors to be considered. (§226.34(b))

Administrative Enforcement

32. If there is noncompliance involving understated finance charges or understated APRs subject to reimbursement under the FFIEC Policy Guide on Reimbursement (policy guide), continue with step 33.

33. Document the date on which the administrative enforcement of the TILA policy statement would apply for reimbursement purposes by determining the date of the preceding examination.

34. If the noncompliance involves indirect (third-party paper) disclosure errors and affected consumers have not been reimbursed:

a. Prepare comments, discussing the need for improved internal controls to be included in the report of examination.

b. Notify your supervisory office for follow up with the regulator that has primary responsibility for the original creditor.

If the noncompliance involves direct credit:

c. Make an initial determination whether the violation is a pattern or practice.

d. Calculate the reimbursement for the loans or accounts in an expanded sample of the identified population.

e. Estimate the total impact on the population based on the expanded sample.

f. Inform management that reimbursement may be necessary under the law and the policy guide, and discuss all substantive facts including the sample loans and calculations.

g. Inform management of the financial institution's options under §130 of the TILA for avoiding civil liability and of its option under the policy guide and §108 (e)(6) of the TILA for avoiding a regulatory agency's order to reimburse affected borrowers.

High-Cost Mortgage (§226.32) Worksheet

Borrower's Name: Loan Number:

Coverage		
	Yes	**No**
Is the loan secured by the consumer's principal dwelling? [§226.2(a), §226.32(a)(1)]		
If the answer is No, STOP HERE		
Is the loan for the following purpose?		
1. Residential Mortgage Transaction—[§226.2(a)(24)]		
2. Reverse Mortgage Transaction—[§226.33]		
3. Open-End Credit Plan—Subpart B [note prohibition against structuring loans as open-end plans to evade §226.32—[§226.34(b)]		
If the answer is yes to Box 1, 2, or 3, STOP HERE. If No, continue to Test 1.		

Test 1—Calculation of APR		
A. Disclosed APR		
B. Treasury Security Yield of Comparable Maturity Obtain the Treasury Constant Maturities Yield from the FRB's Statistical Release, H-15—Selected Interest Rates (the "Business" links will display daily yields). Use the yield that has the most comparable maturity to the loan term and is from the 15th day of the month that immediately precedes the month of the application. If the 15th is not a business day, use the yield for the business day immediately preceding the 15th. If the loan term is exactly halfway between two published security maturities, use the lower of the two yields.) Note: Creditors may use the FRB's Selected Interest Rates or the actual auction results. *See* Staff Commentary to Regulation Z for further details. [§226.32(a)(1)(i)] **http://www.federalreserve.gov/releases/H15/data.htm**		
C. Treasury Security Yield of Comparable Maturity (Box B) **Plus:** 8 percentage points for first-lien loan; or 10 percentage points for subordinate-lien loan		
	Yes	**No**
D. Is Box A greater than Box C?		
If Yes, the transaction is a High-Cost Mortgage. If No, continue to Test 2, Points and Fees.		

Test 2—Calculation of Points and Fees		
STEP 1: Identify all Charges Paid by the Consumer at or before Loan Closing		
A. Finance Charges - §226.4(a) and (b)—(Interest, including per-diem interest, and time price differential are excluded from these amounts.)		
	Fee	**Subtotals**
Loan Points		
Mortgage Broker Fee		
Loan Service Fees		
Required Closing Agent/3rd Party Fees		
Required Credit Insurance		
Private Mortgage Insurance		
Life of Loan Charges (flood, taxes, etc.)		
Any Other Fees Considered Finance Charges		
Subtotal		
B. Certain Non-Finance Charges Under §226.4(c)(7)—Include fees paid by consumers **only** if the amount of the fee is unreasonable or if the creditor receives direct or indirect compensation from the charge or the charge is paid to an affiliate of the bank. (*See* the example in §226.32(b)(1)(ii) of the commentary for further explanation.)		
Title Examination		
Title Insurance		
Property Survey		
Document Preparation Charge		
Credit Report		
Appraisal		
Fee for "Initial" Flood Hazard Determination		
Pest Inspection		
Subtotal		
C. Premiums or Other Charges for Optional Credit Life, Accident, Health, or Loss-of-Income Insurance, or Debt-Cancellation Coverage		
D. Total Points & Fees: Add Subtotals for A, B, C		

Test 2—Calculation of Points and Fees (continued)		
STEP 2: Determine the Total Loan Amount for Cost Calculation [226.32(a)(1)(ii)]		
A. Determine the Amount Financed [§226.18(b)]		
Principal Loan Amount		
Plus: Other Amounts Financed by the Lender (*not already included in the principal and not part of the finance charge*)		
Less: Prepaid Finance Charges [§226.2(a)(23)]		
Equals: Amount Financed		
B. Deduct costs included in the points and fees under §226.32(b)(1)(iii) and (iv) (Step 1, Box B and Box C) that are financed by the creditor		
C. Total Loan Amount (Step 2, Box A minus Box B)		
STEP 3: Perform High-Fee Cost Calculation		
A. Eight Percent of the Total Loan Amount (Step 2, Box C)		
B. Annual Adjustment Amount - [§226.32(a)(1)(ii)] The Federal Reserve sets a new threshold for each year. Refer to the FRB website for approppriate years' amounts and use the dollar amount corresponding to the year of the loan's origination.		
C. Total Points & Fees (Step 1, Box D)		
	Yes	**No**
In Step 3, does Box C exceed the greater of Box A or Box B?		
If Yes, the transaction is a High-Cost Mortgage. **If No, the transaction is not a High-Cost Mortgage under Test 2, Points and Fees.**		