

## Federal Reserve System

## § 226.34

the dwelling that the creditor is entitled by contract to receive.

(4) *Limitations on consumer liability.* Any limitation on the consumer's liability (such as nonrecourse limits and equity conservation agreements).

(5) *Assumed annual appreciation rates.* Each of the following assumed annual appreciation rates for the dwelling:

- (i) 0 percent.
- (ii) 4 percent.
- (iii) 8 percent.

(6) *Assumed loan period.* (i) Each of the following assumed loan periods, as provided in appendix L of this part:

(A) Two years.

(B) The actuarial life expectancy of the consumer to become obligated on the reverse mortgage transaction (as of that consumer's most recent birthday). In the case of multiple consumers, the period shall be the actuarial life expectancy of the youngest consumer (as of that consumer's most recent birthday).

(C) The actuarial life expectancy specified by paragraph (c)(6)(i)(B) of this section, multiplied by a factor of 1.4 and rounded to the nearest full year.

(ii) At the creditor's option, the actuarial life expectancy specified by paragraph (c)(6)(i)(B) of this section, multiplied by a factor of .5 and rounded to the nearest full year.

### § 226.34 Prohibited acts or practices in connection with credit subject to § 226.32.

(a) *Prohibited acts or practices for loans subject to § 226.32.* A creditor extending mortgage credit subject to § 226.32 shall not—

(1) *Home improvement contracts.* Pay a contractor under a home improvement contract from the proceeds of a mortgage covered by § 226.32, other than:

(i) By an instrument payable to the consumer or jointly to the consumer and the contractor; or

(ii) At the election of the consumer, through a third-party escrow agent in accordance with terms established in a written agreement signed by the consumer, the creditor, and the contractor prior to the disbursement.

(2) *Notice to assignee.* Sell or otherwise assign a mortgage subject to § 226.32 without furnishing the fol-

lowing statement to the purchaser or assignee: "Notice: This is a mortgage subject to special rules under the federal Truth in Lending Act. Purchasers or assignees of this mortgage could be liable for all claims and defenses with respect to the mortgage that the borrower could assert against the creditor."

(3) *Refinancings within one-year period.* Within one year of having extended credit subject to § 226.32, refinance any loan subject to § 226.32 to the same borrower into another loan subject to § 226.32, unless the refinancing is in the borrower's interest. An assignee holding or servicing an extension of mortgage credit subject to § 226.32, shall not, for the remainder of the one-year period following the date of origination of the credit, refinance any loan subject to § 226.32 to the same borrower into another loan subject to § 226.32, unless the refinancing is in the borrower's interest. A creditor (or assignee) is prohibited from engaging in acts or practices to evade this provision, including a pattern or practice of arranging for the refinancing of its own loans by affiliated or unaffiliated creditors, or modifying a loan agreement (whether or not the existing loan is satisfied and replaced by the new loan) and charging a fee.

(4) *Repayment ability.* Extend credit subject to § 226.32 to a consumer based on the value of the consumer's collateral without regard to the consumer's repayment ability as of consummation, including the consumer's current and reasonably expected income, employment, assets other than the collateral, current obligations, and mortgage-related obligations.

(i) *Mortgage-related obligations.* For purposes of this paragraph (a)(4), mortgage-related obligations are expected property taxes, premiums for mortgage-related insurance required by the creditor as set forth in § 226.35(b)(3)(i), and similar expenses.

(ii) *Verification of repayment ability.* Under this paragraph (a)(4) a creditor must verify the consumer's repayment ability as follows:

(A) A creditor must verify amounts of income or assets that it relies on to determine repayment ability, including

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expected income or assets, by the consumer's Internal Revenue Service Form W-2, tax returns, payroll receipts, financial institution records, or other third-party documents that provide reasonably reliable evidence of the consumer's income or assets.

(B) Notwithstanding paragraph (a)(4)(ii)(A), a creditor has not violated paragraph (a)(4)(ii) if the amounts of income and assets that the creditor relied upon in determining repayment ability are not materially greater than the amounts of the consumer's income or assets that the creditor could have verified pursuant to paragraph (a)(4)(ii)(A) at the time the loan was consummated.

(C) A creditor must verify the consumer's current obligations.

(iii) *Presumption of compliance.* A creditor is presumed to have complied with this paragraph (a)(4) with respect to a transaction if the creditor:

(A) Verifies the consumer's repayment ability as provided in paragraph (a)(4)(ii);

(B) Determines the consumer's repayment ability using the largest payment of principal and interest scheduled in the first seven years following consummation and taking into account current obligations and mortgage-related obligations as defined in paragraph (a)(4)(i); and

(C) Assesses the consumer's repayment ability taking into account at least one of the following: The ratio of total debt obligations to income, or the income the consumer will have after paying debt obligations.

(iv) *Exclusions from presumption of compliance.* Notwithstanding the previous paragraph, no presumption of compliance is available for a transaction for which:

(A) The regular periodic payments for the first seven years would cause the principal balance to increase; or

(B) The term of the loan is less than seven years and the regular periodic payments when aggregated do not fully amortize the outstanding principal balance.

(v) *Exemption.* This paragraph (a)(4) does not apply to temporary or "bridge" loans with terms of twelve months or less, such as a loan to purchase a new dwelling where the con-

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sumer plans to sell a current dwelling within twelve months.

(b) *Prohibited acts or practices for dwelling-secured loans; open-end credit.* In connection with credit secured by the consumer's dwelling that does not meet the definition in § 226.2(a)(20), a creditor shall not structure a home-secured loan as an open-end plan to evade the requirements of § 226.32.

[Reg. Z, 66 FR 65618, Dec. 20, 2001, as amended at 73 FR 44603, July 30, 2008]

### § 226.35 Prohibited acts or practices in connection with higher-priced mortgage loans.

(a) *Higher-priced mortgage loans*—(1) For purposes of this section, except as provided in paragraph (b)(3)(v) of this section, a higher-priced mortgage loan is a consumer credit transaction secured by the consumer's principal dwelling with an annual percentage rate that exceeds the average prime offer rate for a comparable transaction as of the date the interest rate is set by 1.5 or more percentage points for loans secured by a first lien on a dwelling, or by 3.5 or more percentage points for loans secured by a subordinate lien on a dwelling.

(2) "Average prime offer rate" means an annual percentage rate that is derived from average interest rates, points, and other loan pricing terms currently offered to consumers by a representative sample of creditors for mortgage transactions that have low-risk pricing characteristics. The Board publishes average prime offer rates for a broad range of types of transactions in a table updated at least weekly as well as the methodology the Board uses to derive these rates.

(3) Notwithstanding paragraph (a)(1) of this section, the term "higher-priced mortgage loan" does not include a transaction to finance the initial construction of a dwelling, a temporary or "bridge" loan with a term of twelve months or less, such as a loan to purchase a new dwelling where the consumer plans to sell a current dwelling within twelve months, a reverse-mortgage transaction subject to § 226.33, or a home equity line of credit subject to § 226.5b.