

**Proposed Amendments to
209 CMR 32.00: Disclosure of Consumer Credit Costs and Terms**

209 CMR 32.00 is hereby amended by striking out 209 CMR 32.00 in its entirety and inserting in place thereof the following:

209 CMR: DIVISION OF BANKS AND LOAN AGENCIES

209 CMR 32.00: DISCLOSURE OF CONSUMER CREDIT COSTS AND TERMS

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32.01: Purpose and Scope

(1) The purpose of 209 CMR 32.00 is to promote the informed use of consumer credit by requiring disclosures about its terms and cost. 209 CMR 32.00 also gives consumers the right to cancel certain transactions that involve a lien on a consumer's principal dwelling, regulates certain credit card practices, and provides a means for fair and timely resolution of credit billing disputes. 209 CMR 32.00 does not govern charges for consumer credit. In addition, 209 CMR 32.00 requires a maximum interest rate to be stated in variable rate contracts secured by the consumer's dwelling, and imposes limitations on home equity plans that are subject to the requirements of 209 CMR 32.05B and mortgages that are subject to the requirements of 209 CMR 32.32. 209 CMR 32.00 prohibits certain acts or practices in connection with credit secured by a consumer's principal dwelling. The regulation also regulates certain practices of creditors who extend private education loans as defined in 209 CMR 32.46(2)(e.)

(2) In general, 209 CMR 32.00 applies to each individual or business that offers or extends credit when four conditions are met:

- (a) the credit is offered or extended to consumers;
- (b) the offering or extension of credit is done regularly;¹
- (c) the credit is subject to a finance charge or is payable by a written agreement in more than four installments; and
- (d) the credit is primarily for personal, family, or household purposes.

(3) If a credit card is involved, however, certain provisions apply even if the credit is not subject to a finance charge, or is not payable by a written agreement in more than four installments, or if the credit card is to be used for business purposes.

(4) In addition, certain requirements of 209 CMR 32.05B apply to persons who are not creditors but who provide applications for home equity plans to consumers.

¹ The meaning of "regularly" is explained in the definition of "creditor" in 209 CMR 32.02.

32.02: Definitions and Rules of Construction

(1) Definitions. For purposes of 209 CMR 32.00, the following definitions apply:

Act means M.G.L. c. 140D.

Advertisement means a commercial message in any medium that promotes, directly or indirectly, a credit transaction.

[Reserved]²

Billing Cycle or Cycle means the interval between the days or dates of regular periodic statements. These intervals shall be equal and no longer than a 1/4 of a year. An interval will be considered equal if the number of days in the cycle does not vary more than four days from the regular day or date of the periodic statement.

Board means the Board of Governors of the Federal Reserve System.

Business Day means a day on which a creditor's offices are open to the public for carrying on substantially all of its business functions. However, for purposes of rescission under 209 CMR 32.15 and 32.23, and for the purposes of 209 CMR 32.19(1)(a)2., 32.19(1)(b) and 32.31 and 32.46(4)(d), the term means all calendar days except Sundays and the legal federal public holidays specified in 5 U.S.C. 6103(a), such as New Year's Day, The Birthday of Martin Luther King, Jr., Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, and Christmas Day, and any legal holiday under the laws of the Commonwealth.

Card Issuer means a person that issues a credit card or that person's agent with respect to the card.

Cardholder means a natural person to whom a credit card is issued for consumer credit purposes, or a natural person who has agreed with the card issuer to pay consumer credit obligations arising from the issuance of a credit card to another natural person. For purposes of 209 CMR 32.12(1) and (2) the term includes any person to whom a credit card is issued for any purpose, including business, commercial, or agricultural use or a person who has agreed with the card issuer to pay obligations arising from the issuance of such a credit card to another person.

Cash Price means the price at which a creditor, in the ordinary course of business, offers to sell for cash the property or service that is the subject of the transaction. At the creditor's option, the term may include the price of accessories, services related to the sale, service contracts and taxes and fees for license, title, and registration. The term does not include any finance charge.

Closed-end credit means consumer credit other than "open-end credit" as defined in 209 CMR 32.02.

Consumer means a cardholder or a natural person to whom consumer credit is offered or extended. However, for purposes of rescission under 209 CMR 32.15 and 32.23 the term also includes a natural person in whose principal dwelling a security interest is or will be retained or acquired, if that person's ownership interest in the dwelling is or will be subject to the security interest.

32.02: continued

Consumer credit means credit offered or extended to a consumer primarily for personal, family, or household purposes.

Consummation means the time that a consumer becomes contractually obligated on a credit transaction.

Credit means the right to defer payment of debt or to incur debt and defer its payment.

Credit card means any card, plate, coupon book, or other single credit device that may be used from time to time to obtain credit. Charge card means a credit card on an account for which no periodic rate is used to compute a finance charge.

Credit sale means a sale in which the seller is a creditor. The term includes a bailment or lease (unless terminable without penalty at any time by the consumer) under which the consumer:

- (a) Agrees to pay as compensation for use a sum substantially equivalent to, or in excess of, the total value of the property and services involved; and
- (b) Will become (or has the option to become), for no additional consideration or for nominal consideration, the owner of the property upon compliance with the agreement.

Creditor means:

- (a) A person (A) who regularly extends a consumer credit³ that is subject to a finance charge or is payable by written agreement in more than four installments (not including a downpayment), and (B) to whom the obligation is initially payable, either on the face of the note or contract, or by agreement when there is no note or contract.
- (b) For purposes of 209 CMR 32.04(3)(h) (Discounts), 32.09(4) (Finance Charge Imposed at Time of Transaction), and 32.12(5) (Prompt Notification of Returns and Crediting of Refunds), a person that honors a credit card.
- (c) For purposes of 209 CMR 32.05 through 32.16, any card issuer that extends either open-end credit or credit that is not subject to a finance charge and is not payable by written agreement in more than four installments.
- (d) For purposes of 209 CMR 32.05 through 32.16 (except for the credit and charge card disclosures contained in 209 CMR 32.05A and 32.09(5) and (6), the finance charge disclosures contained in 209 CMR 32.06(1) and 32.07(4) through (7) and the right of rescission set forth in 209 CMR 32.15) and 209 CMR 32.17 through 32.24, any card issuer that extends closed-end credit that is subject to a finance charge or is payable by written agreement in more than four installments.

Downpayment means an amount, including the value of any property used as a trade-in, paid to a seller to reduce the cash price of goods or services purchased in a credit sale transaction. A deferred portion of a downpayment may be treated as part of the downpayment if it is payable not later than the due date of the second otherwise regularly scheduled payment and is not subject to a finance charge.

³ A person regularly extends consumer credit only if it extended credit (other than credit subject to the requirements of 209 CMR 32.32) more than 25 times (or more than five times for transactions secured by a dwelling) in the preceding calendar year. If a person did not meet these numerical standards in the preceding calendar year, the numerical standards shall be applied to the current calendar year. A person regularly extends consumer credit if, in any 12-month period, the person originates more than one credit extension that is subject to the requirements of 209 CMR 32.32 or one or more such credit extensions through a mortgage broker.

32.02: continued

Dwelling means a residential structure that contains one to four units, whether or not that structure is attached to real property. The term includes an individual condominium unit, cooperative unit, mobile home, and trailer, if it is used as a residence.

Open-end credit means consumer credit extended by a creditor under a plan in which --

- (a) The creditor reasonably contemplates repeated transactions;
- (b) The creditor may impose a finance charge from time to time on an outstanding unpaid balance; and
- (c) The amount of credit that may be extended to the consumer during the term of the plan (up to any limit set by the creditor) is generally made available to the extent that any outstanding balance is repaid.

Periodic rate means a rate of finance charge that is or may be imposed by a creditor on a balance for a day, week, month, or other subdivision of a year.

Person means a natural person or an organization, including a corporation, partnership, proprietorship, association, cooperative, estate, trust, or government unit.

Prepaid finance charge means any finance charge paid separately in cash or by check before or at consummation of a transaction, or withheld from the proceeds of the credit at any time.

Regulation Z means regulations issued by the Board to implement the Federal Truth in Lending and Fair Credit Billing Acts, which are contained in Title I of the Consumer Credit Protection Act, as amended (15 USC 1601 *et seq.*).

Residential mortgage transaction means a transaction in which a mortgage, deed of trust, purchase money security interest arising under an installment sales contract, or equivalent consensual security interest is created or retained in the consumer's principal dwelling to finance the acquisition or initial construction of that dwelling.

Security interest means an interest in property that secures performance of a consumer credit obligation and that is recognized by state or federal law. It does not include incidental interests such as interests in proceeds, accessions, additions, fixtures, insurance proceeds (whether or not the creditor is a loss payee or beneficiary), premium rebates, or interests in after-acquired property. For purposes of disclosure under 209 CMR 32.06 and 32.18, the term does not include an interest that arises solely by operation of law. However, for purposes of the right of rescission under 209 CMR 32.15 and 32.23, the term does include interests that arise solely by operation of law.

(2) Rules of construction. For purposes of 209 CMR 32.00, the following rules of construction apply:

- (a) Where appropriate, the singular form of a word includes the plural form and plural includes singular.
- (b) Where the words "obligation" and "transaction" are used in 209 CMR 32.00, they refer to a consumer credit obligation or transaction, depending upon the context. Where the word "credit" is used in 209 CMR 32.00, it means "consumer credit" unless the context clearly indicates otherwise.

32.02: continued

- (c) Unless defined in 209 CMR 32.00, the words used have the meanings given to them by state law or contract.
- (d) Footnotes have the same legal effect as the text of 209 CMR 32.00.
- (e) Where the word “amount” is used in this regulation to describe disclosure requirements, it refers to a numerical amount.

32.03: Exempt Transactions

209 CMR 32.00 does not apply to the following:⁴

- (1) Business, Commercial, Agricultural, or Organizational Credit.
 - (a) An extension of credit primarily for a business, commercial or agricultural purpose.
 - (b) An extension of credit to other than a natural person, including credit to government agencies or instrumentalities.
- (2) Credit over \$25,000. An extension of credit in which the amount financed exceeds \$25,000 or in which there is an express written commitment to extend credit in excess of \$25,000 unless the extension of credit is:
 - (a) Secured by real property, or by personal property used or expected to be used as the principal dwelling of the consumer; or
 - (b) A private education loan as defined in 209 CMR 32.46(2)(e).
- (3) Public Utility Credit. An extension of credit that involves public utility services provided through pipe, wire, other connected facilities, or radio or similar transmission (including extensions of such facilities), if the charges for service, delayed payment, or any discounts for prompt payment are filed with or regulated by any government unit. The financing of durable goods or home improvements by a public utility is not exempt.
- (4) Securities or Commodities Accounts. Transactions in securities or commodities accounts in which credit is extended by a broker-dealer registered with the Securities and Exchange Commission or the Commodity Futures Trading Commission.
- (5) Home Fuel Budget Plans. An installment agreement for the purchase of home fuels in which no finance charge is imposed.
- (6) Student Loan Programs. Loans made, insured, or guaranteed pursuant to a program authorized by Title IV of the Higher Education Act of 1965 (20 USC 170 *et seq.*).
- (7) Employer-sponsored retirement plans. An extension of credit to a participant in an employer-sponsored retirement plan qualified under section 401(a) of the Internal Revenue Code, a tax-sheltered annuity under section 403(b) of the Internal Revenue Code, or an eligible governmental deferred compensation plan under section 457(b) of the Internal Revenue Code (26 U.S.C. 401(a); 26 U.S.C. 403(b); 26 U.S.C. 457(b)), provided that the extension of credit is comprised of fully vested funds from such participant's account and is made in compliance with the Internal Revenue Code (26 U.S.C. 1 *et seq.*).

⁴ The provisions in 209 CMR 32.12(1) and (2) governing the issuance of credit cards and the liability for their unauthorized use apply to all credit cards, even if the credit cards are issued for use in connection with extensions of credit that otherwise are exempt under 209 CMR 32.04.

32.04: Finance Charges

(1) Definitions. The finance charge is the cost of consumer credit as a dollar amount. It includes any charge payable directly or indirectly by the consumer and imposed directly or indirectly by the creditor as an incident to or a condition of the extension of credit. It does not include any charge of a type payable in a comparable cash transaction.

(a) Charges by third parties. The finance charge includes fees and amounts charged by someone other than the creditor unless otherwise excluded under 209 CMR 32.04 if the creditor:

1. requires the use of the third party as a condition of or incident to the extension of credit, even if the consumer can choose the third party; or
2. retains a portion of the third-party charge, to the extent of the portion retained.

(b) Special rule; closing agent charges. Fees charged by a third-party that conducts the loan closing (such as a settlement agent, attorney, or escrow or title company) are finance charges only if the creditor:

1. Requires the particular services for which the consumer is charged;
2. Requires the imposition of the charge; or
3. Retains a portion of the third-party charge, to the extent of the portion retained.

(c) Special rule; mortgage broker fees. Fees charged by a mortgage broker (including fees paid by the consumer directly to the broker or to the creditor for delivery to the broker) are finance charges even if the creditor does not require the consumer to use a mortgage broker and even if the creditor does not retain any portion of the charge.

(2) Examples of Finance Charges. The finance charge includes the following types of charges, except for charges specifically excluded by 209 CMR 32.04(3) through (5):

(a) Interest, time price differential, and any amount payable under an add-on or discount system of additional charges.

(b) Service, transaction activity, and carrying charges, including any charge imposed on a checking or other transaction account to the extent that the charge exceeds the charge for a similar account without a credit feature.

(c) Points, loan fees, assumption fees, finder's fees, and similar charges.

(d) Appraisal, investigation, and credit report fees.

(e) Premiums or other charges for any guarantee or insurance protecting the creditor against the consumer's default or other credit loss.

(f) Charges imposed on a creditor by another person for purchasing or accepting a consumer's obligation, if the consumer is required to pay the charges in cash, as an addition to the obligation, or as a deduction from the proceeds of the obligation.

(g) Premiums or other charges for credit life, accident, health, or loss-of-income insurance, written in connection with a credit transaction.

(h) Premiums or other charges for insurance against loss of or damage to property or against liability arising out of the ownership or use of property, written in connection with a credit transaction.

(i) Discounts for the purpose of inducing payment by a means other than the use of credit.

(j) Debt Cancellation Fees. Charges or premiums paid for debt cancellation coverage written in connection with a credit transaction, whether or not the debt cancellation coverage is insurance under applicable law.

- (3) Charges Excluded from the Finance Charge. The following charges are not finance charges:
- (a) Application fees charged to all applicants for credit, whether or not credit is actually extended.
 - (b) Charges for actual unanticipated late payment, for exceeding a credit limit, or for delinquency, default, or a similar occurrence.
 - (c) Charges imposed by a financial institution for paying items that overdraw an account, unless the payment of such items and the imposition of the charge were previously agreed upon in writing.
 - (d) Fees charged for participation in a credit plan, whether assessed on an annual or other periodic basis.
 - (e) Seller's points.
 - (f) Interest forfeited as a result of an interest reduction required by law on a time deposit used as a security for an extension of credit.
 - (g) Real-estate related fees. The following fees in a transaction secured by real property or in a residential mortgage transaction, if the fees are bona fide and reasonable in amount:
 - 1. Fees for title examination, abstract of title, title insurance, property survey, and similar purposes.
 - 2. Fees for preparing loan-related documents, such as deeds, mortgages, and reconveyance or settlement documents.
 - 3. Notary and credit report fees.
 - 4. Property appraisal fees or fees for inspection to assess the value or condition of the property if the service is performed prior to closing, including fees related to pest infestation or flood hazard determinations.
 - 5. Amounts required to be paid into escrow or trustee accounts if the amounts would not otherwise be included in the finance charge.
 - (h) Discounts offered to induce payment for a purchase by cash, check, or other means, as provided in M.G.L. c. 140D, § 28A(b).
- (4) Insurance and debt cancellation coverage.
- (a) Voluntary credit insurance premiums. Premiums for credit life, accident, health, or loss-of-income insurance may be excluded from the finance charge if the following conditions are met:
 - 1. The insurance coverage is not required by the creditor, and this fact is disclosed in writing.
 - 2. The premium for the initial term of insurance coverage is disclosed. If the term of insurance is less than the term of the transaction, the term of insurance also shall be disclosed. The premium may be disclosed on a unit-cost basis only in open-end credit transactions, closed-end credit transactions by mail or telephone under 209 CMR 32.17(7), and certain closed-end credit transactions involving an insurance plan that limits the total amount of indebtedness subject to coverage.
 - 3. The consumer signs or initials an affirmative written request for the insurance after receiving the disclosures specified in 209 CMR 32.04(4)(a)1. and 2. Any consumer in the transaction may sign or initial the request.

(b) Premiums for insurance against loss of or damage to property, or against liability arising out of the ownership or use of property⁵, may be excluded from the finance charge if the following conditions are met:

1. The insurance coverage may be obtained from a person of the consumer's choice⁶, and this fact is disclosed.
2. If the coverage is obtained from or through the creditor, the premium for the initial term of insurance coverage shall be disclosed. If the term of insurance is less than the term of the transaction, the term of insurance shall also be disclosed. The premium may be disclosed on a unit-cost basis only in open-end credit transaction, closed-end credit transactions by mail or telephone under 209 CMR 32.17(7) and certain closed-end credit transactions involving an insurance plan that limits the total amount of indebtedness subject to coverage.

(c) Voluntary debt cancellation fees. Charges or premiums paid for debt cancellation coverage of the type specified in 209 CMR 32.04(4)(c) 4. may be excluded from the finance charge, whether or not the coverage is insurance, if the following conditions are met.

1. The debt cancellation agreement or coverage is not required by the creditor, and this fact is disclosed in writing;
2. The fee or premium for the initial term of coverage is disclosed. If the term of coverage is less than the term of the credit transaction, the term of coverage also shall be disclosed. The fee or premium may be disclosed on a unit-cost basis only in open-end credit transactions, closed-end credit transactions by mail or telephone under 209 CMR 32.17(7), and certain closed-end credit transactions involving a debt cancellation agreement that limits the total amount of indebtedness subject to coverage;
3. The consumer signs or initials an affirmative written request for the coverage after receiving the disclosures specified in this paragraph. Any consumer in the transaction may sign or initial the request.
4. 209 CMR 32.04(4)(c) applies to fees paid for debt cancellation coverage that provides for cancellation of all or part of the debtor's liability for amounts exceeding the value of the collateral securing the obligation, or in the event of the loss of life, health, or income in a case of accident.

(5) Certain Security Interest Charges. If itemized and disclosed, the following charges may be excluded from the finance charge:

- (a) Taxes and fees prescribed by law that actually are or will be paid to public officials for determining the existence of or for perfecting, releasing, or satisfying a security interest.
- (b) The premium for insurance in lieu of perfecting a security interest to the extent that the premium does not exceed the fees described in 209 CMR 32.04(5)(a) that otherwise would be payable.
- (c) Taxes on Security Instruments. Any tax levied on security instruments or on documents evidencing indebtedness if the payment of such taxes is a precondition for recording the instrument securing the evidence of indebtedness.

(6) Prohibited Offsets. Interest, dividends, or other income received or to be received by the consumer on deposits or investments shall not be deducted in computing the finance charge.

⁵ This includes single interest insurance if the insurer waives all right of subrogation against the consumer.

⁶ A creditor may reserve the right to refuse to accept, for reasonable cause, an insurer offered by the consumer.

32.05: General Disclosure Requirements -- OPEN END CREDIT

(1) Form of Disclosure.

(a) The creditor shall make the disclosures required by 209 CMR 32.05 through 32.16 clearly and conspicuously in writing,⁷ in a form that the consumer may keep.⁸ The disclosures required by 209 CMR 32.05 through 32.16 may be provided to the consumer in electronic form, subject to compliance with the consumer consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. §7001 *et seq.*). The disclosures required by 209 CMR 32.05A, 32.05B, and 32.16 may be provided to the consumer in electronic form without regard to the consumer consent or other provisions of the E-Sign Act in the circumstances set forth in those sections.

(b) The terms "finance charge" and "annual percentage rate," when required to be disclosed with a corresponding amount or percentage rate, shall be more conspicuous than any other required disclosure.⁹

(c) Certain disclosures required under 209 CMR 32.05A for credit and charge card applications and solicitations must be provided in a tabular format or in a prominent location in accordance with the requirements of that section.

(d) For rules governing the form of disclosures for home equity plans, see 209 CMR 32.05B(1).

(2) Time of Disclosures.

(a) Initial disclosures. The creditor shall furnish the initial disclosure statement required by 209 CMR 32.06 before the first transaction is made under the plan.

(b) Periodic statements.

1. The creditor shall mail or deliver a periodic statement as required by 209 CMR 32.07 for each billing cycle at the end of which an account has a debit or credit balance of more than \$1 or on which a finance charge has been imposed. A periodic statement need not be sent for an account if the creditor deems it uncollectible, or if delinquency collection proceedings have been instituted, or if furnishing the statement would violate Massachusetts or federal law or regulations.

⁷ The disclosure required by 209 CMR 32.09(4) when a finance charge is imposed at the time of a transaction need not be written.

⁸ The disclosures required under 209 CMR 32.05A for credit and charge card applications and solicitations, the home equity disclosures required under 209 CMR 32.05B(4), the alternative summary billing rights statement provided for in 209 CMR 32.09(1)(b), credit and charge card renewal disclosures required under 209 CMR 32.09(5), and the disclosures made under 209 CMR 32.10(2) about payment requirements need not be in a form that the consumer can keep.

⁹ The terms need not be more conspicuous when used under 209 CMR 32.05A for credit and charge card applications and solicitations, under 209 CMR 32.07(4) on periodic statements, under 209 CMR 32.09(5) in credit and charge card renewal disclosures, and under 209 CMR 32.16 in advertisements. (But see special rule for annual percentage rate for purchases, 209 CMR 32.05A(2)(a).)

2. Creditors must adopt reasonable procedures designed to ensure that periodic statements are mailed or delivered at least 21 days prior to the payment due date and the date on which any grace period expires.¹⁰ A creditor that fails to meet this requirement shall not treat a payment as late for any purpose or collect any finance or other charge imposed as a result of such failure. For purposes of this paragraph, “grace period” means a period within which any credit extended may be repaid without incurring a finance charge due to a periodic interest rate.

(c) Credit and charge card application and solicitation disclosures. The card issuer shall furnish the disclosures for credit and charge card applications and solicitations in accordance with the timing requirements of 209 CMR 32.05A.

(d) Home equity plans. Disclosures for home equity plans shall be made in accordance with the timing requirements of 209 CMR 32.05B(b).

(3) Basis of Disclosures and Use of Estimates. Disclosures shall reflect the terms of the legal obligation between the parties. If any information necessary for accurate disclosure is unknown to the creditor, it shall make the disclosure based on the best information reasonably available and shall state clearly that the disclosure is an estimate.

(4) Multiple Creditors; Multiple Consumers. If the credit plan involves more than one creditor, only one set of disclosures shall be given, and the creditors shall agree among themselves which creditor must comply with the requirements that 209 CMR 32.00 imposes on any or all of them. If there is more than one consumer, the disclosures may be made to any consumer who is primarily liable on the account. If the right of rescission under 209 CMR 32.15 is applicable, however, the disclosures required by 209 CMR 32.06 and 32.15(2) shall be made to each consumer having the right to rescind.

(5) Effect of Subsequent Events. If a disclosure becomes inaccurate because of an event that occurs after the creditor mails or delivers the disclosures, the resulting inaccuracy is not a violation of 209 CMR 32.00, although new disclosures may be required under 209 CMR 32.09(c).

¹⁰ Reserved.

32.05A: Credit and Charge Card Applications and Solicitations

(1) General Rules. The card issuer shall provide the disclosures required under 209 CMR 32.05A on or with a solicitation or an application to open a credit or charge card account.

(a) Definition of solicitation. For purposes of 209 CMR 32.05A, term "solicitation" means an offer by the card issuer to open a credit or charge card account that does not require the consumer to complete an application.

(b) Form of disclosures.

1. The disclosures in 209 CMR 32.05A(2)(a) through (g) shall be provided in a prominent location on or with an application or a solicitation, or other applicable document, and in the form of a table with headings, content, and format substantially similar to any of the applicable tables found in Appendix G.

2. The disclosures in 209 CMR 32.05A(2)(h) through (k) shall be provided either in the table containing the disclosures in 209 CMR 32.05A(2)(a) through (g), or clearly and conspicuously elsewhere on or with the application or solicitation.

3. The disclosure required under 209 CMR 32.05A(2)(e) shall contain the term "grace period."

4. The terminology in the disclosures under 209 CMR 32.05A(2)) shall be consistent with that to be used in the disclosures under 209 CMR 32.06 and 32.07.

5. For an application or a solicitation that is accessed by the consumer in electronic form, the disclosures required under this section may be provided to the consumer in electronic form on or with the application or solicitation.

(c) Exceptions. 209 CMR 32.05A does not apply to home equity plans accessible by a credit or charge card that are of the type subject to the requirements of 209 CMR 32.05B; overdraft lines of credit tied to asset accounts accessed by check guarantee cards or by debit cards; or lines of credit accessed by check guarantee cards or by debit cards that can be used only at automated teller machines.

(d) Fees based on a percentage. If the amount of any fee required to be disclosed under this section is determined on the basis of a percentage of another amount, the percentage used and the identification of the amount against which the percentage is applied may be disclosed instead of the amount of the fee.

(e) Certain fees that vary by state. If the amount of any fee referred to in 209 CMR 32.05A(2)(h) through (k) varies from state to state, the card issuer may disclose the range of the fees instead of the amount for each state, if the disclosure includes a statement that the amount of the fee varies from state to state.

(2) Required disclosures. The card issuer shall disclose the items in 209 CMR 32.05A(2) on or with an application or a solicitation in accordance with the requirements of 209 CMR 32.05A(3), (4), or (5). A credit card issuer shall disclose all applicable items in this paragraph except 209 CMR 32.05A(2)(g). A charge card issuer shall disclose the applicable items in 209 CMR 32.05A(2)(b), (d) and (g) through (k).

(a) Annual percentage rate. Each periodic rate that may be used to compute the finance charge on an outstanding balance for purchases, a cash advance, or a balance transfer, expressed as an annual percentage rate (as determined by 209 CMR 32.14(2)). When more than one rate applies for a category of transactions, the range of balances to which each rate is applicable shall also be disclosed. The annual percentage rate for purchases disclosed pursuant to 209 CRM 32.05A(2)(a) shall be in at least 18-point type, except for the following: a temporary initial rate that is lower than the rate that will apply after the temporary rate expires, and a penalty rate that will apply upon the occurrence of one or more specific events.

32.05A: continued

1. If the account has a variable rate, the card issuer shall also disclose the fact that the rate may vary and how the rate is determined.
 2. When variable rate disclosures are provided under 209 CMR 32.05A(3), an annual percentage rate disclosure is accurate if the rate was in effect within 60 days before mailing the disclosures. When variable rate disclosures are provided under 209 CMR 32.05A(5), an annual percentage rate disclosure is accurate if the rate was in effect within 30 days before printing the disclosure. Disclosures provided by electronic communication are subject to 209 CMR 32.05A(2)(a)3..
 3. When variable rate disclosures are provided by electronic communication, an annual percentage rate disclosure is accurate if the rate was in effect within 30 days before mailing the disclosures to a consumer's electronic mail address. If disclosures are made available at another location such as the card issuer's Internet web site, the annual percentage rate must be one in effect within the last 30 days.
- (b) Fees for issuance or availability. Any annual or other periodic fee, expressed as an annualized amount, or any other fee that may be imposed for the issuance or availability of a credit or charge card, including any fee based on account activity or inactivity.
 - (c) Minimum finance charge. Any minimum or fixed finance charge that could be imposed during a billing cycle.
 - (d) Transaction charges. Any transaction charge imposed for the use of the card for purchases.
 - (e) Grace period. The date by which or the period within which any credit extended for purchases may be repaid without incurring a finance charge. If no grace period is provided, that fact must be disclosed. If the length of the grace period varies, the card issuer may disclose the range of days, the minimum number of days, or the average number of days in the grace period, if the disclosure is identified as a range, minimum, or average.
 - (f) Balance computation method. The name of the balance computation method listed in 209 CMR 32.05A(7) that is used to determine the balance for purchases on which the finance charge is computed, or an explanation of the method used if it is not listed. The explanation may appear outside the table if the table contains a reference to the explanation. In determining which balance computation method to disclose, the card issuer shall assume that credit extended for purchases will not be repaid within the grace period, if any.
 - (g) Statement on charge card payments. A statement that charges incurred by use of the charge card are due when the periodic statement is received.
 - (h) Cash advance fee. Any fee imposed for an extension of credit in the form of cash.
 - (i) Late payment fee. Any fee imposed for a late payment.
 - (j) Over-the-limit fee. Any fee imposed for exceeding a credit limit.
 - (k) Balance transfer fee. Any fee imposed to transfer an outstanding balance.
- (3) Direct mail and electronic applications applications and solicitations. The card issuer shall disclose the applicable items in 209 CMR 32.05(2) on or with an application or solicitation that is mailed to consumers or provided by electronic communication.
- (4) Telephone applications and solicitations.
- (a) Oral disclosure. The card issuer shall orally disclose the information in 209 CMR 32.05A(2)(a) through (g), to the extent applicable, in a telephone application or solicitation initiated by the card issuer.
 - (b) Alternative disclosure. The oral disclosure under 209 CMR 32.05A(4)(a) need not be given if the card issuer either does not impose a fee described in 209 CMR 32.05A(2)(b) does not impose such a fee unless the consumer uses the card, and the card issuer discloses in writing within 30 days after the consumer requests the card (but in no event later than the delivery of the card) the following:

32.05A: continued

1. The applicable information in 209 CMR 32.05A(2); and
2. The fact that the consumer need not accept the card or pay any fee disclosed unless the consumer uses the card.

(5) Applications and solicitations made available to general public. The card issuer shall provide disclosures, to the extent applicable, on or with an application or solicitation that is made available to the general public, including one contained in a catalog, magazine, or other generally available publication. The disclosures shall be provided in accordance with 209 CMR 32.05A(5)(a), (b), or (c).

(a) Disclosure of required credit information. The card issuer may disclose in a prominent location on the application or solicitation the following:

1. The applicable information in 209 CMR 32.05A(2); and
2. The date the required information was printed, including a statement that the required information was accurate as of that date and is subject to change after that date; and
3. A statement that the consumer should contact the card issuer for any change in the required information since it was printed, and a toll-free telephone number or a mailing address for that purpose.

(b) Inclusion of certain initial disclosures. The card issuer may disclose on or with the application or solicitation the following:

1. The disclosures required under 209 CMR 32.06(1) through (3); and
2. A statement that the consumer should contact the card issuer for any change in the required information, and a toll-free telephone number or a mailing address for that purpose.

(c) No disclosure of credit information. If none of the items in 209 CMR 32.05A(2) is provided on or with the application or solicitation, the card issuer may state in a prominent location on the application or solicitation the following:

1. There are costs associated with the use of the card; and
2. The consumer may contact the card issuer to request specific information about the costs, along with a toll-free telephone number and a mailing address for that purpose.

(d) Prompt response to requests for information. Upon receiving a request for any of the information referred to in 209 CMR 32.05A, the card issuer shall promptly and fully disclose the information requested.

(6) Special charge card rule -- card issuer and person extending credit not the same person. If a cardholder may by use of a charge card access an open-end credit plan that is not maintained by the charge card issuer, the card issuer need not provide the disclosures in 209 CMR 32.05A(3), (4), or (5) for the open-end credit plan if the card issuer states on or with an application or a solicitation the following:

- (a) The card issuer will make an independent decision whether to issue the card;
- (b) The charge card may arrive before the decision is made about extending credit under the open-end credit plan; and
- (c) Approval for the charge card does not constitute approval for the open-end credit plan.

(7) Balance computation methods defined. The following methods may be described by name. Methods that differ due to variations such as the allocation of payments, whether the finance charge begins to accrue on the transaction date or the date of posting the transaction, the existence or length of a grace period, and whether the balance is adjusted by charges such as late fees, annual fees and unpaid finance charges do not constitute separate balance computation methods.

32.05A: continued

- (a) 1. Average daily balance (including new purchases). This balance is figured by adding the outstanding balance (including new purchases and deducting payments and credits) for each day in the billing cycle, and then dividing by the number of days in the billing cycle.
2. Average daily balance (excluding new purchases). This balance is figured by adding the outstanding balance (excluding new purchases and deducting payments and credits) for each day in the billing cycle, and then dividing by the number of days in the billing cycle.
- (b) 1. Two-cycle average daily balance (including new purchases). This balance is the sum of the average daily balances for two billing cycles. The first balance is for the current billing cycle, and is figured by adding the outstanding balance (including new purchases and deducting payments and credits) for each day in the billing cycle, and then dividing by the number of days in the billing cycle. The second balance is for the preceding billing cycle and is figured in the same way as the first balance.
2. Two-cycle average daily balance (excluding new purchases). This balance is the sum of the average daily balances for two billing cycles. The first balance is for the current billing cycle, and is figured by adding the outstanding balance (excluding new purchases and deducting payments and credits) for each day in the billing cycle, and then dividing by the number of days in the billing cycle. The second balance is for the preceding billing cycle and is figured in the same way as the first balance.
- (c) Adjusted balance. This balance is figured by deducting payments and credits made during the billing cycle from the outstanding balance at the beginning of the billing cycle.
- (d) Previous balance. This balance is the outstanding balance at the beginning of the billing cycle.

32.05B: Requirements for Home Equity Plans

The requirements of this section apply to open-end credit plans secured by the consumer's dwelling. For purposes of this section, an annual percentage rate is the annual percentage rate corresponding to the periodic rate as determined under 209 CMR 32.14(2).

(1) Form of disclosures.

- (a) General. The disclosures required by 209 CMR 32.05B(4) shall be made clearly and conspicuously and shall be grouped together and segregated from all unrelated information. This disclosure may be provided on the application form or on a separate form. The disclosure described in 209 CMR 32.05B(4)(d)3., the itemization of third-party fees described in 209 CMR 32.05B(4)(h), and the variable-rate information described in 209 CMR 32.05B(4)(l) may be provided separately from the other required disclosures.
- (b) Precedence of certain disclosures. The disclosures described in 209 CMR 32.05B(4)(a) through (d)2. shall precede the other required disclosures.
- (c) For an application that is accessed by the consumer in electronic form, the disclosures required under this section may be provided to the consumer in electronic form on or with the application.

(2) Time of disclosures. The disclosures and brochure required by 209 CMR 32.05B(4) and (5).^{10a} shall be provided at the time an application is provided to the consumer.

(3) Duties of third parties. Persons other than the creditor who provide applications to consumers for home equity plans must provide the brochure required under 209 CMR 32.05B(5) at the time an application is provided. If such persons have the disclosures required under 209 CMR 32.05B(4) for a creditor's home equity plan, they also shall provide the disclosures at such time.^{10a}

(4) Content of disclosures. The creditor shall provide the following disclosures, as applicable:

(a) Retention of information. A statement that the consumer should make or otherwise retain a copy of the disclosures.

(b) Conditions for disclosed terms.

1. A statement of the time by which the consumer must submit an application to obtain specific terms disclosed and an identification of any disclosed term that is subject to change prior to opening the plan.

2. A statement that, if a disclosed term changes (other than a change due to fluctuations in the index in a variable-rate plan) prior to opening the plan and the consumer therefore elects not to open the plan, the consumer may receive a refund of all fees paid in connection with the application.

(c) Security interest and risk to home. A statement that the creditor will acquire a security interest in the consumer's dwelling and that loss of the dwelling may occur in the event of default.

(d) Possible actions by creditor.

1. A statement that, under certain conditions, the creditor may terminate the plan and require payment of the outstanding balance in full in a single payment and impose fees upon termination; prohibit additional extensions of credit or reduce the credit limit; and, as specified in the initial agreement, implement certain changes in the plan.

2. A statement that the consumer may receive, upon request, information about the conditions under which such actions may occur.

3. In lieu of the disclosure required under 209 CMR 32.05B(4)(d)2., a statement of such conditions.

(e) Payment terms. The payment terms of the plan, including:

1. The length of the draw period and any repayment period.

2. An explanation of how the minimum periodic payment will be determined and the timing of the payments. If paying only the minimum periodic payments may not repay any of the principal or may repay less than the outstanding balance, a statement of this fact, as well as a statement that a balloon payment may result.^{10b}

^{10a} The disclosures and the brochure may be delivered or placed in the mail not later than three business days following receipt of a consumer's application in the case of applications contained in magazines or other publications, or when the application is received by telephone or through an intermediary agent or broker.

^{10b} 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.

3. An example, based on a \$10,000 outstanding balance and a recent annual percentage rate,^{10c} showing the minimum periodic payment, any balloon payment, and the time it would take to repay the \$10,000 outstanding balance if the consumer made only those payments and obtained no additional extensions of credit.

If different payment terms may apply to the draw and any repayment period, or if different payment terms may apply within either period, the disclosures shall reflect the different payment terms.

(f) Annual percentage rate. For fixed-rate plans, a recent annual percentage rate^{10c} imposed under the plan and a statement that the rate does not include costs other than interest.

(g) Fees imposed by creditor. An itemization of any fees imposed by the creditor to open, use, or maintain the plan, stated as a dollar amount or percentage, and when such fees are payable.

(h) Fees imposed by third parties to open a plan. A good faith estimate, stated as a single dollar amount or range, of any fees that may be imposed by persons other than the creditor to open the plan, as well as a statement that the consumer may receive, upon request, a good faith itemization of such fees. In lieu of the statement, the itemization of such fees may be provided.

(i) Negative amortization. A statement that negative amortization may occur and that negative amortization increases the principal balance and reduces the consumer's equity in the dwelling.

(j) Transaction requirements. Any limitations on the number of extensions of credit and the amount of credit that may be obtained during any time period, as well as any minimum outstanding balance and minimum draw requirements, stated as dollar amounts or percentages.

(k) Tax implications. A statement that the consumer should consult a tax advisor regarding the deductibility of interest and charges under the plan.

(l) Disclosures for variable-rate plans. For a plan in which the annual percentage rate is variable, the following disclosures, as applicable:

1. The fact that the annual percentage rate, payment, or term may change due to the variable-rate feature.
2. A statement that the annual percentage rate does not include costs other than interest.
3. The index used in making rate adjustments and a source of information about the index.
4. An explanation of how the annual percentage rate will be determined, including an explanation of how the index is adjusted, such as by the addition of a margin.
5. A statement that the consumer should ask about the current index value, margin, discount or premium, and annual percentage rate.
6. A statement that the initial annual percentage rate is not based on the index and margin used to make later rate adjustments, and the period of time such initial rate will be in effect.
7. The frequency of changes in the annual percentage rate.
8. Any rules relating to changes in the index value and the annual percentage rate and resulting changes in the payment amount, including, for example, an explanation of payment limitations and rate carry over.

^{10c}

For fixed-rate plans, a recent annual percentage rate is a rate that has been in effect under the plan within the twelve months preceding the date the disclosures are provided to the consumer. For variable-rate plans, a recent annual percentage rate is the most recent rate provided in the historical example described in 209 CMR 32.05B(4)(l)11. or a rate that has been in effect under the plan since the date of the most recent rate in the table.

9. A statement of any annual or more frequent periodic limitations on changes in the annual percentage rate (or a statement that no annual limitation exists), as well as a statement of the maximum annual percentage rate that may be imposed under each payment option.

10. The minimum periodic payment required when the maximum annual percentage rate for each payment option is in effect for a \$10,000 outstanding balance, and a statement of the earliest date or time the maximum rate may be imposed.

11. An historical example, based on a \$10,000 extension of credit, illustrating how annual percentage rates and payments would have been affected by index value changes implemented according to the terms of the plan. The historical example shall be based on the most recent 15 years of index values (selected for the same time period each year) and shall reflect all significant plan terms, such as negative amortization, rate carry over, rate discounts, and rate and payment limitations, that would have been affected by the index movement during the period.

12. A statement that rate information will be provided on or with each periodic statement.

(5) Brochure. The home equity brochure published by the Board or a suitable substitute shall be provided.

(6) Limitations on home equity plans. No creditor may, by contract or otherwise:

(a) Change the annual percentage rate unless:

1. such change is based on an index that is not under the creditor's control; and
2. such index is available to the general public.

(b) Terminate a plan and demand repayment of the entire outstanding balance in advance of the original term (except for reverse mortgage transactions that are subject to 209 CMR 32.04 (6)(d)) unless:

1. there is fraud or material misrepresentation by the consumer in connection with the plan;
2. the consumer fails to meet the repayment terms of the agreement for any outstanding balance; or
3. any action or inaction by the consumer adversely affects the creditor's security for the plan, or any right of the creditor in such security.
4. federal or state law dealing with credit extended by a depository institution to its executive officers specifically requires that as a condition of the plan the credit shall become due and payable on demand, provided that the creditor includes such a provision in its initial agreement.

(c) Change any term, except that a creditor may:

1. Provide in the initial agreement that it may prohibit additional extensions of credit or reduce the credit limit during any period in which the maximum annual percentage rate is reached. A creditor also may provide in the initial agreement that specified changes will occur if a specified event takes place (for example, that the annual percentage rate will increase a specified amount if the consumer leaves the creditor's employment).
2. Change the index and margin used under the plan if the original index is not longer available, the new index has an historical movement substantially similar to that of the original index, and the new index and margin would have resulted in an annual percentage rate substantially similar to the rate in effect at the time the original index became unavailable.

32.05B: continued

3. Make a specified change if the consumer specifically agrees to it in writing at that time.
4. Make a change that will unequivocally benefit the consumer throughout the remainder of the plan.
5. Make an insignificant change to terms.
6. Prohibit additional extensions of credit or reduce the credit limit applicable to an agreement during any period in which:
 - a. the value of the dwelling that secures the plan declines significantly below the dwelling's appraised value for purposes of the plan;
 - b. the creditor reasonably believes that the consumer will be unable to fulfill the repayment obligations under the plan because of a material change in the consumer's financial circumstances.
 - c. the consumer is in default of any material obligation under the agreement;
 - d. the creditor is precluded by government action from imposing the annual percentage rate provided for in the agreement;
 - e. the priority of the creditor's security interest is adversely affected by government action to the extent that the value of the security interest is less than 120% of the credit line; or
 - f. the creditor is notified by its regulatory agency that continued advances constitute an unsafe and unsound practice.
- (d) for reverse mortgage transactions that are subject to 209 CMR 32.33, terminate a plan and demand repayment of the entire outstanding balance in advance of the original term except
 1. in case of default;
 2. if the consumer transfers title to the property securing the note;
 3. if the consumer ceases using the property securing the note as the primary dwelling; or
 4. upon the consumer's death.

(7) Refund of fees. A creditor shall refund all fees paid by the consumer to anyone in connection with an application if any term required to be disclosed under 209 CMR 32.05B(4) changes (other than a change due to fluctuations in the index in a variable-rate plan) before the plan is opened and, as a result, the consumer elects not to open the plan.

(8) Imposition of nonrefundable fees. Neither a creditor nor any other person may impose a nonrefundable fee in connection with an application until three business days after the consumer receives the disclosures and brochure required under 209 CMR 32.05B.^{10d}

32.06: Initial Disclosure Statement

The creditor shall disclose to the consumer, in terminology consistent with that to be used on the periodic statement, each of the following items, to the extent applicable:

(1) Finance Charge. The circumstances under which a finance charge will be imposed and an explanation of how it will be determined, as follows:

^{10d}

If the disclosures and brochure are mailed to the consumer, the consumer is considered to have received them three business days after they are mailed.

32.05B: continued

(a) A statement of when finance charges begin to accrue, including an explanation of whether or not any time period exists within which any credit extended may be repaid without incurring a finance charge. If such a time period is provided, a creditor may, at its option and without disclosure, impose no finance charge when payment is received after the time period's expiration.

(b) A disclosure of each periodic rate that may be used to compute the finance charge, the range of balances to which it is applicable,¹¹ and the corresponding annual percentage rate.¹² When different periodic rates apply to different types of transactions, the types of transactions to which the periodic rates apply shall also be disclosed.

(c) An explanation of the method used to determine the balance on which the finance charge may be computed.

(d) An explanation of how the amount of any finance charge will be determined,¹³ including a description of how any finance charge other than the periodic rate will be determined.

(2) Other Charges. The amount of any charge other than a finance charge that may be imposed as part of the plan, or an explanation of how the charge will be determined.

(3) Security Interests. The fact that the creditor has or will acquire a security interest in the property purchased under the plan, or in other property identified by item or type.

(4) Statement of Billing Rights. A statement that outlines the consumer's rights and the creditor's responsibilities under 209 CMR 32.12(3) and 32.13 and that is substantially similar to the statement found in appendix G.

(5) Home Equity Plan Information. The following disclosures described in 209 CMR 32.05B(4) as applicable:

(a) A statement of the conditions under which the creditor may take certain action, as described in 209 CMR 32.05B(4)(d)1., such as terminating the plan or changing the terms.

(b) The payment information described in 209 CMR 32.05B(4)(e)1. and 2. for both the draw period and any repayment period.

(c) A statement that negative amortization may occur as described in 209 CMR 32.05B(4)(i).

(d) A statement of any transaction requirements as described in 209 CMR 32.05B(4)(j).

(e) A statement regarding the tax implications as described in 209 CMR 32.05B(4)(k).

(f) A statement that the annual percentage rate imposed under the plan does not include costs other than interest as described in 209 CMR 32.05B(4)(f) and 209 CMR 32.05B(4)(l)2.

(g) The variable-rate disclosures described in 209 CMR 32.05B(4)(l)8., 10., 11. and 12. as well as the disclosure described in 209 CMR 32.05B(4)(e)3., unless the disclosures provided with the application were in a form the consumer could keep and included a representative payment example for the category of payment option chosen by the consumer.

¹¹

A creditor is not required to adjust the range of balances disclosure to reflect the balance below which only a minimum charge applies.

¹²

If a creditor is offering a variable rate plan, the creditor shall also disclose: (1) the circumstances under which the rate(s) may increase; (2) any limitations on the increase; and (3) the effect(s) of an increase.

¹³

If no finance charge is imposed when the outstanding balance is less than a certain amount, no disclosure is required of that fact or of the balance below which no finance charge will be imposed.

32.06A: Computation of Finance Charge

- (1) Definition of "Credit Card Sale." For purposes of 209 CMR 32.06A, a "credit card sale" means a retail sale of goods or services made in reliance on a credit card, but it does not include:
- (a) A sale paid for with a check, draft or similar written instrument that is accepted in reliance on a check guarantee card.
 - (b) A sale made in reliance on an access device, as defined in M.G.L. c. 167B, if the sale results in an extension of credit under an overdraft credit plan or under a plan to maintain a specified minimum balance in a deposit account.
- (2) Exclusion of New Credit Card Sales.
- (a) The balance on which the finance charge is computed under an open-end credit plan established pursuant to M.G.L. c. 255D shall not include any new balance resulting from a credit card sale first posted to the account during the billing cycle for which the finance charge is computed.
 - (b) The balance on which the finance charge is computed under any other open-end credit plan shall not include any balance resulting from a credit card sale first posted to the account during the cycle for which the finance charge is computed if:
 - 1. There was no balance outstanding under the open-end credit plan at the beginning of the cycle;
 - 2. Any balance outstanding under the open-end credit plan at the beginning of the cycle was solely attributable to a finance charge assessed with respect to the preceding cycle; or
 - 3. The sum of all payments received by the creditor during the cycle and all credits to the open-end plan applicable to any balance outstanding at the beginning of the cycle is equal to or exceeds the balance outstanding under the plan at the beginning of the cycle.
- (3) Finance Charge Computation Methods. Subject to 209 CMR 32.06A(2), the finance charge under an open-end credit plan may be computed on any of the following:
- (a) The previous balance of the account, after deducting all payments on the account received by the creditor during the cycle and all credits to the account that apply to a sale reflected in the previous balance.
 - (b) The average daily balance determined by adding the daily account balances for each day in the billing cycle and dividing the total by the number of days in the billing cycle.
 - (c) The daily account balances.

32.07: Periodic Statement

The creditor shall furnish the consumer with a periodic statement that discloses the following items, to the extent applicable:

- (1) Previous Balance. The account balance outstanding at the beginning of the billing cycle.
- (2) Identification of Transactions. An identification of each credit transaction in accordance with 209 CMR 32.08.
- (3) Credits. Any credit to the account during the billing cycle, including the amount and the date of crediting. The date need not be provided if a delay in crediting does not result in any finance or other charge.

32.07: continued

(4) Periodic Rates. Each periodic rate that may be used to compute the finance charge, the range of balances to which it is applicable,¹⁴ and the corresponding annual percentage rate.¹⁵ If different periodic rates apply to different types of transactions, the types of transactions to which the periodic rates apply shall also be disclosed.

(5) Balance on Which Finance Charge Computed. The amount of the balance to which a periodic rate was applied and an explanation of how that balance was determined. When a balance is determined without first deducting all credits and payments made during the billing cycle, that fact and the amount of the credits and payments shall be disclosed.

(6) Amount of Finance Charge. The amount of any finance charge debited or added to the account during the billing cycle, using the term "finance charge." The components of the finance charge shall be individually itemized and identified to show the amount(s) due to the application of any periodic rates and the amount(s) of any other type of finance charge. If there is more than one periodic rate, the amount of the finance charge attributable to each rate need not be separately itemized and identified.

(7) Annual Percentage Rate. When a finance charge is imposed during the billing cycle, the annual percentage rate(s) determined under 209 CMR 32.14, using the term "annual percentage rate."

(8) Other Charges. The amounts, itemized and identified by type, of any charges other than finance charges debited to the account during the billing cycle.

(9) Closing Date of Billing Cycle; New Balance. The closing date of the billing cycle and the account balance outstanding on that date.

(10) Free-ride Period. The date by which or the time period within which the new balance or any portion of the new balance must be paid to avoid additional finance charges. If such a time period is provided, a creditor may, at its option and without disclosure, impose no finance charge when payment is received after the time period's expiration.

(11) Address for Notice of Billing Errors. The address to be used for notice of billing errors. Alternatively, the address may be provided on the billing rights statement permitted by 209 CMR 32.09(1)(b).

32.08: Identification of Transactions

The creditor shall identify credit transactions on or with the first periodic statement that reflects the transaction by furnishing the following information, as applicable.¹⁶

¹⁴ See footnotes 11 and 13.

¹⁵ If a variable rate plan is involved, the creditor shall disclose the fact that the periodic rate(s) may vary.

¹⁶ Failure to disclose the information required by 209 CMR 32.08 shall not be deemed a failure to comply with 209 CMR 32.00 if: (1) the creditor maintains procedures reasonably adapted to obtain and provide the information; and (2) the creditor treats an inquiry for clarification or documentation as a notice of a billing error, including correcting the account in accordance with 209 CMR 32.13(5). This applies to transactions that take place outside a state, as defined in 209 CMR 32.02(1), whether or not the creditor maintains procedures reasonably adapted to obtain the required information.

32.08: continued

(1) Sale Credit. For each credit transaction involving the sale of property or services, the following rules shall apply:

(a) Copy of Credit Document Provided. When an actual copy of the receipt or other credit document is provided with the first periodic statement reflecting the transaction, the transaction is sufficiently identified if the amount of the transaction and either the date of the transaction or the date of debiting the transaction to the consumer's account are disclosed on the copy or on the periodic statement.

(b) Copy of credit document not provided - creditor and seller same or related person(s). When the creditor and the seller are the same person or related persons, and an actual copy of the receipt or other credit document is not provided with the periodic statement, the creditor shall disclose the amount and date of the transaction, and a brief identification¹⁷ of the property or services purchased.¹⁸

(c) Copy of credit document not provided - creditor and seller not same or related person(s). When the creditor and seller are not the same person or related persons, and an actual copy of the receipt or other credit document is not provided with the periodic statement, the creditor shall disclose the amount and date of the transaction;¹⁹ the seller's name; and the city, and state or foreign country where the transaction took place.

(2) Nonsale Credit. A nonsale credit transaction is sufficiently identified if the first periodic statement reflecting the transaction discloses a brief identification of the transaction;²⁰ the amount of the transaction; and at least one of the following dates: the date of the transaction, the date of debiting the transaction to the consumer's account, or, if the consumer signed the credit document, the date appearing on the document. If an actual copy of the receipt or other credit document is provided and that copy shows the amount and at least one of the specified dates, the brief identification may be omitted.

32.09: Subsequent Disclosure Requirements

(1) Furnishing Statement of Billing Rights.

(a) Annual Statement. The creditor shall mail or deliver the billing rights statement required by 209 CMR 32.06(4) at least once per calendar year, at intervals of not less than six months nor more than 18 months, either to all consumers or to each consumer entitled to receive a periodic statement under 209 CMR 32.05(2)(b) for any one billing cycle.

(b) Alternative Summary Statement. As an alternative to 209 CMR 32.09(1)(a), the creditor may mail or deliver, on or with each periodic statement, a statement substantially similar to that in appendix G.

¹⁷ As an alternative to the brief identification, the creditor may disclose a number or symbol that also appears on the receipt or other credit document given to the consumer, if the number or symbol reasonably identifies that transaction with that creditor, and if the creditor treats an inquiry for clarification or documentation as a notice of a billing error, including correcting the account in accordance with 209 CMR 32.13(5).

¹⁸ An identification of property or services may be replaced by the seller's name and location of the transaction when: (1) the creditor and the seller are the same person; (2) the creditor's open-end plan has fewer than 15,000 accounts; (3) the creditor provides the consumer with point-of-sale documentation for that transaction; and (4) the creditor treats an inquiry for clarification or documentation as a notice of a billing error, including correcting the account in accordance with 209 CMR 32.13(5).

¹⁹ The creditor may omit the address or provide any suitable designation that helps the consumer to identify the transaction when the transaction (1) took place at a location that is not fixed; (2) took place in the consumer's home; or (3) was a mail or telephone order.

²⁰ See footnote 17.

(2) Disclosures for Supplemental Credit Devices and Additional Features.

(a) If a creditor, within 30 days after mailing or delivering the initial disclosures under 209 CMR 32.06(1), adds a credit feature to the consumer's account or mails or delivers to the consumer a credit device for which the finance charge terms are the same as those previously disclosed, no additional disclosures are necessary. After 30 days, if the creditor adds a credit feature or furnishes a credit device (other than as a renewal, resupply, or the original issuance of a credit card) on the same finance charge terms, the creditor shall disclose, before the consumer uses the feature or device for the first time, that it is for use in obtaining credit under the terms previously disclosed.

(b) Whenever a credit feature is added or a credit device is mailed or delivered, and the finance charge terms for the feature or device differ from disclosures previously given, the disclosures required by 209 CMR 32.06(1) that are applicable to the added feature or device shall be given before the consumer uses the feature or device for the first time.

(3) Change in Terms.

(a) Rules affecting home-equity plans and open-end plans that are not credit card accounts.

1. Written notice required. For home-equity plans subject to the requirements of 209 CMR 32.05B and other open-end plans that are not credit card accounts, whenever any term required to be disclosed under 209 CMR 32.06 is changed or the required minimum periodic payment is increased, the creditor shall mail or deliver written notice of the change to each consumer who may be affected. The notice shall be mailed or delivered at least 15 days prior to the effective date of the change. The 15-day timing requirement does not apply if the change has been agreed to by the consumer, or if a periodic rate or other finance charge is increased because of the consumer's delinquency or default; the notice shall be given, however, before the effective date of the change.

2. Notice not required. For home-equity plans subject to the requirements of 209 CMR 32.05B and other open-end plans that are not credit card accounts no notice under 209 CMR 32.09(3) is required when the change involves late-payment charges, charges for documentary evidence, or over-the-limit charges; a reduction of any component of a finance or other charge; suspension of future credit privileges or termination of an account or plan; or when the change results from an agreement involving a court proceeding, or from the consumer's default or delinquency (other than an increase in the periodic rate or other finance charge).

3. Notice for home equity plans. If a creditor prohibits additional extensions of credit or reduces the credit limit applicable to a home equity plan pursuant to 209 CMR 32.05B(6)(c)1. or 209 CMR 32.05B(6)(c)6., the creditor shall mail or deliver written notice of the action to each consumer who will be affected. The notice must be provided not later than three business days after the action is taken and shall contain specific reasons for the action. If the creditor requires the consumer to request reinstatement of credit privileges, the notice also shall state that fact.

(b) Rules affecting credit card accounts that are not home-secured

1. Changes where written advance notice is required. For credit card accounts under an open-end (not home-secured) consumer credit plan, except as provided in 209 CMR 32.09(3)(b)5., whenever a significant change to an account term as described in 209 CMR 32.09(3)(b)2. is made or the required minimum periodic payment is increased, a creditor must provide a written notice of the change at least 45 days prior to the effective date of the change to each consumer who may be affected. The 45-day timing requirement does not apply if the consumer has agreed to a particular change; the notice shall be given, however, before the effective date of the change.

2. Significant changes in account terms. The notice requirements of 209 CMR 32.09(3)(b)1 apply to changes in the following terms:
 - a. Annual percentage rates. Each periodic rate that may be used to compute the finance charge on an outstanding balance for purchases, a cash advance, or a balance transfer. For purposes of this paragraph, such rates include any discounted initial rate, premium initial rate, or penalty rate that may be applied to the account.
 - b. Fees for issuance or availability. Any annual or other periodic fee that may be imposed for the issuance or availability of a credit card account under an open-end (not home-secured) consumer credit plan, including any fee based on account activity or inactivity.
 - c. Fixed finance charge; minimum interest charge. Any fixed finance charge and any minimum interest charge if it exceeds \$1.00 that could be imposed during a billing cycle. The creditor may, at its option, provide notice in accordance with 209 CMR 32.09(3)(b)1. for changes in minimum interest charges below this threshold.
 - d. Transaction charges. Any transaction charge imposed by the creditor for use of the credit card account under an open-end (not home-secured) consumer credit plan for purchases.
 - e. Grace period. The date by which or the period within which any credit extended may be repaid without incurring a finance charge due to a periodic interest rate and any conditions on the availability of the grace period.
 - f. Balance computation method. The balance computation method that is used to determine the balance on which the finance charge is computed for each feature.
 - g. Cash advance fee. Any fee imposed for an extension of credit in the form of cash or its equivalent.
 - h. Late payment fee. Any fee imposed for a late payment.
 - i. Over-the-limit fee. Any fee imposed for exceeding a credit limit.
 - j. Balance transfer fee. Any fee imposed to transfer an outstanding balance.
 - k. Returned-payment fee. Any fee imposed by the creditor for a returned payment.
 - l. Required insurance, debt cancellation, or debt suspension coverage. A fee for insurance described in 209 CMR 32.04(2)(g), debt cancellation coverage described in 209 CMR 32.04(2)(j), or debt suspension coverage written in connection with a credit transaction, if the insurance, debt cancellation coverage, or debt suspension coverage is required as part of the plan.
3. Charges not covered by 209 CMR 32.09(3)(b)1.. Except as provided in 209 CMR 32.09(3)(b)5., if a creditor increases any component of a charge on a credit card account under an open-end (not home-secured) consumer credit plan, or introduces a new charge, that is not subject to the disclosure requirements under 209 CMR 32.09(3)(b)1., a creditor may either, at its option:
 - a. Comply with the requirements of 209 CMR 32.09(3)(b)1.; or
 - b. Provide notice of the amount of the charge before the consumer agrees to or becomes obligated to pay the charge, at a time and in a manner that a consumer would be likely to notice the disclosure of the charge. The notice may be provided orally or in writing.
4. Disclosure requirements—changes to terms described in 209 CMR 32.09(3)(b)1.. If a creditor changes a term described in 209 CMR 32.09(3)(b)2. or increases the required minimum periodic payment, the creditor must provide the following information on the notice provided pursuant to 209 CMR 32.09(3)(b)1.:

- a. A description of the changes made to terms described in 209 CMR 32.09(3)(b)2. or of any increase in the required minimum periodic payment;
 - b. A statement that changes are being made to the account;
 - c. The date the changes will become effective; and
 - d. Except in the case of an increase in the required minimum periodic payment:
 - (1) A statement that the consumer has the right to reject the change or changes prior to the effective date of the changes, unless the consumer fails to make a required minimum periodic payment within 60 days after the due date for that payment;
 - (2) Instructions for rejecting the change or changes, and a toll-free telephone number that the consumer may use to notify the creditor of the rejection; and
 - (3) If applicable, a statement that if the consumer rejects the change or changes, the consumer's ability to use the account for further advances will be terminated or suspended.
5. Notice not required. For credit card accounts under an open-end (not home-secured) consumer credit plan, a creditor is not required to provide notice under this section:
- a. When the change involves charges for documentary evidence; a reduction of any component of a finance or other charge; suspension of future credit privileges (except as provided in 209 CMR 32.09(3)(b)6.) or termination of an account or plan; or when the change results from an agreement involving a court proceeding;
 - b. When the change is an increase in an annual percentage rate upon the expiration of a specified period of time, provided that:
 - (1) Prior to commencement of that period, the creditor disclosed in writing to the consumer, in a clear and conspicuous manner, the length of the period and the annual percentage rate that would apply after expiration of the period; and
 - (2) The annual percentage rate that applies after that period does not exceed the rate disclosed pursuant to 209 CMR 32.09(3)(b)5.b.(1).
 - c. When the change is an increase in a variable annual percentage rate in accordance with a credit card agreement that provides for changes in the rate according to operation of an index that is not under the control of the creditor and is available to the general public; or
 - d. When the change is an increase in an annual percentage rate due to the completion of a workout or temporary hardship arrangement by the consumer, provided that:
 - (1) The annual percentage rate applicable to a category of transactions following any such increase does not exceed the rate that applied to that category of transactions prior to commencement of the arrangement or, if the rate that applied to a category of transactions prior to the commencement of the workout or temporary hardship arrangement was a variable rate, the rate following any such increase is a variable rate determined by the same formula (index and margin) that applied to the category of transactions prior to commencement of the workout or temporary hardship arrangement; and
 - (2) The creditor has provided the consumer, prior to the commencement of such arrangement, with a clear and conspicuous written disclosure of the terms of the arrangement (including any increases due to such completion).

6. Reduction of the credit limit. For credit card accounts under an open-end (not home-secured) consumer credit plan, if a creditor decreases the credit limit on an account, advance notice of the decrease must be provided before an over-the-limit fee or a penalty rate can be imposed solely as a result of the consumer exceeding the newly decreased credit limit. Notice shall be provided in writing or orally at least 45 days prior to imposing the over-the-limit fee or penalty rate and shall state that the credit limit on the account has been or will be decreased.
- (4) Finance Charge Imposed at Time of Transaction.
- (a) Any person, other than the card issuer, who imposes a finance charge at the time of honoring a consumer's credit card, shall disclose the amount of that finance charge prior to its imposition.
- (b) The card issuer, if other than the person honoring the consumer's credit card, shall have no responsibility for the disclosure required by 209 CMR 32.09(4)(a), and shall not consider any such charge for purposes of 209 CMR 32.05A, 32.06 and 32.07.
- (5) Disclosures Upon Renewal of Credit or Charge Card.
- (a) Notice prior to renewal. Except as provided in 209 CMR 32.09(5)(b), a card issuer that imposes any annual or other periodic fee to renew a credit or charge card account of the type subject to 209 CMR 32.05A, including any fee based on account activity or inactivity, shall mail or deliver written notice of the renewal to the cardholder. The notice shall be provided at least 30 days or one billing cycle, whichever is less, before the mailing or the delivery of the periodic statement on which the renewal fee is initially charged to the account. The notice shall contain the following information:
1. The disclosures contained in 209 CMR 32.05A(2)(a) through (g) that would apply if the account were renewed;^{20a} and
 2. How and when the cardholder may terminate credit availability under the account to avoid paying the renewal fee.
- (b) Delayed notice. The disclosures required by 209 CMR 32.09(5)(a) may be provided later than the time in 209 CMR 32.09(5)(a), but no later than the mailing or the delivery of the periodic statement on which the renewal fee is initially charged to the account, if the card issuer also discloses at that time that:
1. The cardholder has 30 days from the time the periodic statement is mailed or delivered to avoid paying the fee or to have the fee recredited if the cardholder terminates credit availability under the account; and
 2. The cardholder may use the card during the interim period without having to pay the fee.
- (c) Notification on periodic statements. The disclosures required by 209 CMR 32.09(5)(c) may be made on or with a periodic statement. If any of the disclosures are provided on the back of a periodic statement, the card issuer shall include a reference to those disclosures on the front of the statement.

^{20a} These disclosures need not be provided in tabular format or in a prominent location.

(6) Change in Credit Card Account Insurance Provider.

(a) Notice prior to change. If a credit card issuer plans to change the provider of insurance for repayment of all or part of the outstanding balance of an open-end credit card account of the type subject to 209 CMR 32.05A, the card issuer shall mail or deliver the cardholder written notice of the change not less than 30 days before the change in providers occurs. The notice shall also include the following items, to the extent applicable:

1. Any increase in the rate that will result from the change;
2. Any substantial decrease in coverage that will result from the change; and
3. A statement that the cardholder may discontinue the insurance.

(b) Notice when change in provider occurs. If a change described in 209 CMR 32.09(6)(a) occurs, the card issuer shall provide the cardholder with a written notice no later than 30 days after the change, including the following items, to the extent applicable:

1. The name and address of the new insurance provider;
2. A copy of the new policy or group certificate containing the basic terms of the insurance, including the rate to be charged; and
3. A statement that the cardholder may discontinue the insurance.

(c) Substantial decrease in coverage. For purposes of 209 CMR 32.09(6)(c), a substantial decrease in coverage is a decrease in a significant term of coverage that might reasonably be expected to affect the cardholder's decision to continue the insurance. Significant terms of coverage include, for example, the following:

1. Type of coverage provided;
2. Age at which coverage terminates or becomes more restrictive;
3. Maximum insurable loan balance, maximum periodic benefit payment, maximum number of payments, or other term affecting the dollar amount of coverage or benefits provided;
4. Eligibility requirements and number and identity of persons covered;
5. Definition of a key term of coverage such as disability;
6. Exclusions from or limitations on coverage; and
7. Waiting periods and whether coverage is retroactive.

(d) Combined notification. The notices required by 209 CMR 32.09(6)(a) and (b) may be combined provided the timing requirement of 209 CMR 32.09(6)(a) is met. The notices may be provided on or with a periodic statement.

32.10: Prompt Crediting of Payments

(1) General Rule. A creditor shall credit a payment to the consumer's account as of the date of receipt, except when a delay in crediting does not result in a finance or other charge or except as provided in 209 CMR 32.10(2).

(2) Specific Requirements for Payments. If a creditor specifies, on or with the periodic statement, requirements for the consumer to follow in making payments, but accepts a payment that does not conform to the requirements, the creditor shall credit the payment within 5 days of receipt.

32.10: continued

(3) Adjustment of Account. If a creditor fails to credit a payment, as required by 209 CMR 32.10(1) or (2), in time to avoid the imposition of finance or other charges, the creditor shall adjust the consumer's account so that the charges imposed are credited to the consumer's account during the next billing cycle.

32.11: Treatment of Credit Balances

When a credit balance equal to or in excess of one dollar is created on a credit account (through transmittal of funds to a creditor in excess of the total balance due on an account, through rebates of unearned finance charges or insurance premiums, or through amounts otherwise owed to or held for the benefit of a consumer), the creditor shall --

- (1) Credit the amount of the credit balance to the consumer's account;
- (2) Refund any part of the remaining credit balance within seven business days from receipt of a written request from the consumer; and
- (3) Make a good faith effort to refund to the consumer by cash, check, or money order, or credit to a deposit account of the consumer, any part of the credit balance remaining in the account for more than six months, within 30 days after the expiration of the six-month period, if no charge has been made against such credit balance and a refund has not been requested and the amount of such credit balance is then \$1 or more. No further action is required if the consumer's current location is not known to the creditor and cannot be traced through the consumer's last known address or telephone number.
- (4) Disclose in the periodic statement for the billing cycle at the end of which a credit balance first occurs and is due and owing to the consumer, the amount of such credit balance, and, unless the credit balance is previously reduced to less than \$1 by refunds or other charges to the account, disclose, in at least two additional periodic statements for billing cycles within the six-month period following the closing of the billing cycle in which the credit balance first occurs and is due and owing to the consumer, any credit balance of \$1 or more at the end of such cycles.
- (5) Disclose clearly and conspicuously in the periodic statement or in a statement accompanying the periodic statement for either the billing cycle in which the credit balance first occurs and is due and owing the consumer or the next succeeding billing cycle the following information to the extent applicable:
 - (a) The amount of the credit at the end of the applicable billing cycle;
 - (b) That such credit balance represents money owed to the consumer;
 - (c) That the consumer has the right to make charges against such credit balance or to obtain a cash refund of such balance upon request; and
 - (d) That the creditor will refund, within 30 days after the expiration of the aforesaid six-month period, the amount then remaining in such credit balance, if no charge has been made against such credit balance, and a refund has not been requested and the amount of such credit balance is then \$1 or more. If the creditor discloses the credit balance more than once, the additional disclosures shall also be made in at least one other periodic statement or in a statement accompanying another periodic statement for a billing cycle within the aforesaid six-month period.

32.12: Special Credit Card Provisions

(1) Issuance of Credit Cards. Regardless of the purpose for which a credit card is to be used, including business, commercial, or agricultural use, no credit card shall be issued to any person except:

(a) In response to an oral or written request or application for the card; or²¹

(b) As a renewal of, or substitute for, an accepted credit card.

(2) Liability of Cardholder for Unauthorized Use.

(a) Limitation on amount. The liability of a cardholder for unauthorized use²² of a credit card shall not exceed the lesser of \$50 or the amount of money, property, labor, or services obtained by the unauthorized use before notification to the card issuer under 209 CMR 32.12(2)(c).

(b) Conditions of liability. A cardholder shall be liable for unauthorized use of a credit card only if:

1. The credit card is an accepted credit card;

2. The card issuer has provided adequate notice²³ of the cardholder's maximum potential liability and of means by which the card issuer may be notified of loss or theft of the card. The notice shall state that the cardholder's liability shall not exceed \$50 (or any lesser amount) and that the cardholder may give oral or written notification, and shall describe a means of notification (for example, a telephone number, an address, or both); and

3. The card issuer has provided a means to identify the cardholder on the account or the authorized user of the card.

(c) Notification to Card Issuer. Notification to a card issuer is given when steps have been taken as may be reasonably required in the ordinary course of business to provide the card issuer with the pertinent information about the loss, theft, or possible unauthorized use of a credit card, regardless of whether any particular officer, employee, or agent of the card issuer does, in fact, receive the information. Notification may be given, at the option of the person giving it, in person, by telephone, or in writing. Notification in writing is considered given at the time of receipt or, whether or not received, at the expiration of the time ordinarily required for transmission, whichever is earlier.

(d) Effect of Other Applicable Law or Agreement. If other applicable Massachusetts law or an agreement between a cardholder and the card issuer imposes lesser liability than that provided in 209 CMR 32.12(2)(a), the lesser liability shall govern.

(e) Business Use of Credit Cards. If ten or more credit cards are issued by one card issuer for use by the employees of an organization, this section does not prohibit the card issuer and the organization from agreeing to liability for unauthorized use without regard to this section. However, liability for unauthorized use may be imposed on an employee of the organization, by either the card issuer or the organization, only in accordance with 209 CMR 32.12.

²¹

For purposes of 209 CMR 32.12, "accepted credit card" means any credit card that a cardholder has requested or applied for and received, or has signed, used, or authorized another person to use to obtain credit. Any credit card issued as a renewal or substitute in accordance with this paragraph becomes an accepted credit card when received by the cardholder.

²²

"Unauthorized use" means the use of a credit card by a person, other than the cardholder, who does not have actual, implied, or apparent authority for such use, and from which the cardholder receives no benefit.

²³

"Adequate notice" means a printed notice to a cardholder that sets forth clearly the pertinent facts so that the cardholder may reasonably be expected to have noticed it and understood its meaning. The notice may be given by any means reasonably assuring receipt by the cardholder.

(3) Right of Cardholder to Assert Claims or Defenses Against Card Issuer.

24

(a) General rule. When a person who honors a credit card fails to resolve satisfactorily a dispute as to property or services purchased with the credit card in a consumer credit transaction, the cardholder may assert against the card issuer all claims (other than tort claims) and defenses arising out of the transaction and relating to the failure to resolve the dispute. The cardholder may withhold payment up to the amount of credit outstanding for the property or services that gave rise to the dispute and any finance or other charges imposed on that amount.²⁵

(b) Adverse Credit Reports Prohibited. If, in accordance with 209 CMR 32.12(3)(a), the cardholder withholds payment of the amount of credit outstanding for the disputed transaction, the card issuer shall not report that amount as delinquent until the dispute is settled or judgment is rendered.

(c) Limitations. The rights stated in 209 CMR 32.12(3)(a) and (b) apply only if:

1. The cardholder has made a good faith attempt to resolve the dispute with the person honoring the credit card; and
2. The amount of credit extended to obtain the property or services that result in the assertion of the claim or defense by the cardholder exceeds \$50, and the disputed transaction occurred in the same state as the cardholder's current designated address or, if not within the same state, within 100 miles from that address.²⁶

(4) Offsets by Card Issuer Prohibited.

(a) A card issuer may not take any action, either before or after termination of credit card privileges, to offset a cardholder's indebtedness arising from a consumer credit transaction under the relevant credit card plan against funds of the cardholder held on deposit with the card issuer.

(b) 209 CMR 32.12(4)(b) does not alter or affect the right of a card issuer acting under Massachusetts or federal law to do any of the following with regard to funds of a cardholder held on deposit with the card issuer if the same procedure is constitutionally available to creditors generally: obtain or enforce a consensual security interest in the funds; attach or otherwise levy upon the funds; or obtain or enforce a court order relating to the funds.

²⁴ 209 CMR 32.12(3) does not apply to the use of a check guarantee card or a debit card in connection with an overdraft credit plan, or to a check guarantee card used in connection with cash advance checks.

²⁵ The amount of the claim or defense that the cardholder may assert shall not exceed the amount of credit outstanding for the disputed transaction at the time the cardholder first notifies the card issuer or the person honoring the credit card of the existence of the claim or defense. To determine the amount of credit outstanding for purposes of this section, payments and other credits shall be applied to: (1) late charges in the order of entry to the account; then to (2) finance charges in the order of entry to the account; and then to (3) any other debits in the order of entry to the account. If more than one item is included in a single extension of credit, credits are to be distributed pro rata according to prices and applicable taxes.

²⁶ The limitations stated in 209 CMR 32.12(3)(c)2. shall not apply when the person honoring the credit card: (1) is the same person as the card issuer; (2) is controlled by the card issuer directly or indirectly; (3) is under the direct or indirect control of a third person that also directly or indirectly controls the card issuer; (4) controls the card issuer directly or indirectly; (5) is a franchised dealer in the card issuer's products or services; or (6) has obtained the order for the disputed transaction through a mail solicitation made or participated in by the card issuer. The limitations stated in 209 CMR 32.12(3)(c) shall also not apply if the provisions of M.G.L. ch. 255, §12F apply to the transaction.

(c) 209 CMR 32.12(4)(c) does not prohibit a plan, if authorized in a separately signed agreement by the cardholder under which the card issuer may periodically deduct all or part of the cardholder's credit card debt from a deposit account held with the card issuer (subject to the limitations in 209 CMR 32.13(4)(a)); provided, however, that such action shall not be taken with respect to a disputed item if the cardholder so requests. This agreement shall contain the following statement appearing conspicuously on the face thereof:

YOU DO NOT HAVE TO SIGN THIS AGREEMENT
IN ORDER TO OBTAIN A CREDIT CARD.

(5) Prompt Notification of Returns and Crediting of Refunds.

(a) When a creditor other than the card issuer accepts the return of property or forgives a debt for services that is to be reflected as a credit to the consumer's credit card account, that creditor shall, within seven business days from accepting the return or forgiving the debt, transmit a credit statement to the card issuer through the card issuer's normal channels for credit statements.

(b) The card issuer shall, within three business days from receipt of a credit statement, credit the consumer's account with the amount of the refund.

(c) If a creditor other than a card issuer routinely gives cash refunds to consumers paying in cash, the creditor shall also give credit or cash refunds to consumers using credit cards, unless it discloses at the time the transaction is consummated that credit or cash refunds for returns are not given. 209 CMR 32.12 does not require refunds for returns nor does it prohibit refunds in kind.

(6) Discounts; Tie-in Arrangements. No card issuer may, by contract or otherwise:

(a) Prohibit any person who honors a credit card from offering a discount to a consumer to induce the consumer to pay by cash, check, or similar means rather than by use of a credit card or its underlying account for the purchase of property or services; or

(b) Require any person who honors the card issuer's credit card to open or maintain any account or obtain any other service not essential to the operation of the credit card plan from the card issuer or any other person, as a condition of participation in a credit card plan. If maintenance of an account for clearing purposes is determined to be essential to the operation of the credit card plan, it may be required only if no service charges or minimum balance requirements are imposed.

(7) Relation to Electronic Branches and Electronic Fund Transfers Act and 209 CMR 31.00.

(a) For guidance on whether this regulation or 209 CMR 31.00 applies in instances involving both credit and electronic fund transfer aspects, refer to 209 CMR 31.06 regarding issuance.

(b) A consumer's liability for an unauthorized electronic fund transfer shall be determined solely in accordance with M.G.L. c. 167B if the electronic fund transfer:

1. Was initiated by use of an access device that is also a credit card, or

2. Involves an extension of credit under an agreement between a consumer and a financial institution to extend the credit when the consumer's account is overdrawn or to maintain a specified minimum balance in the consumer's account.

(c) A consumer's liability for unauthorized use of a credit card that is also an access device but that does not involve an electronic fund transfer shall be determined solely in accordance with the Act and this regulation.

(d) On matters other than issuance and liability, this section applies to the credit aspects of combined credit/electronic fund transfer transactions, as applicable.

²⁷
32.13: Billing Error Resolution.

- (1) Definition of Billing Error. For purposes of 209 CMR 32.00, the term "billing error" means:
- (a) A reflection on or with a periodic statement of an extension of credit that is not made to the consumer or to a person who has actual, implied, or apparent authority to use the consumer's credit card or open-end credit plan.
 - (b) A reflection on or with a periodic statement of an extension of credit that is not identified in accordance with the requirements of 209 CMR 32.07(2) and 32.08.
 - (c) A reflection on or with a periodic statement of an extension of credit for property or services not accepted by the consumer or the consumer's designee, or not delivered to the consumer or the consumer's designee as agreed.
 - (d) A reflection on a periodic statement of the creditor's failure to credit properly a payment or other credit issued to the consumer's account.
 - (e) A reflection on a periodic statement of a computational or similar error of an accounting nature that is made by the creditor.
 - (f) A reflection on a periodic statement of an extension of credit for which the consumer requests additional clarification, including documentary evidence.
 - (g) The creditor's failure to mail or deliver a periodic statement to the consumer's last known address if that address was received by the creditor, in writing, at least 20 days before the end of the billing cycle for which the statement was required.

- (2) Billing Error Notice. ²⁸ A billing error notice is a written notice ²⁹ from a consumer that:
- (a) Is received by a creditor at the address disclosed under 209 CMR 32.07(11) no later than 60 days after the creditor transmitted the first periodic statement that reflects the alleged billing error;
 - (b) Enables the creditor to identify the consumer's name and account number; and
 - (c) To the extent possible, indicates the consumer's belief and the reasons for the belief that a billing error exists, and the type, date, and amount of the error.

- (3) Time for Resolution; General Procedures.
- (a) The creditor shall mail or deliver written acknowledgment to the consumer within 30 days of receiving a billing error notice, unless the creditor has complied with the appropriate resolution procedures of 209 CMR 32.13(5) and (6), as applicable, within the 30-day period; and
 - (b) The creditor shall comply with the appropriate resolution procedures of 209 CMR 32.13(5) and (6), as applicable, within two complete billing cycles (but in no event later than 90 days) after receiving a billing error notice.

²⁷
A creditor shall not accelerate any part of the consumer's indebtedness or restrict or close a consumer's account solely because the consumer has exercised in good faith rights provided by 209 CMR 32.13. A creditor may be subject to the forfeiture penalty under 209 CMR 32.13(10) for failure to comply with the requirements of 209 CMR 32.13.

²⁸
The creditor need not comply with the requirements of 209 CMR 32.13(3) through (7) if the consumer concludes that no billing error occurred and voluntarily withdraws the billing error notice.

²⁹
The creditor may require that the written notice not be made on the payment medium or other material accompanying the periodic statement if the creditor so stipulates in the billing rights statement required by 209 CMR 32.06(4) and 32.09(1).

(4) Rules Pending Resolution. Until a billing error is resolved under 209 CMR 32.13(5) or (6), the following rules apply:

(a) Consumer's Right to Withhold Disputed Amount; Collection Action prohibited. The consumer need not pay (and the creditor may not try to collect) any portion of any required payment that the consumer believes is related to the disputed amount (including related finance or other charges).³⁰ If the cardholder maintains a deposit account with the card issuer and has agreed to pay the credit card indebtedness by periodic deductions from the cardholder's deposit account, the card issuer shall not deduct any part of the disputed amount or related finance or other charges if a billing error notice is received any time up to three business days before the scheduled payment date.

(b) Adverse Credit Reports Prohibited. The creditor or its agent shall not (directly or indirectly) make or threaten to make an adverse report to any person about the consumer's credit standing, or report that an amount or account is delinquent, because the consumer failed to pay the disputed amount or related finance or other charges.

(5) Procedures if Billing Error Occurred as Asserted. If a creditor determines that a billing error occurred as asserted, it shall within the time limits in 209 CMR 32.13(3)(b):

- (a) Correct the billing error and credit the consumer's account with any disputed amount and related finance or other charges, as applicable; and
- (b) Mail or deliver a correction notice to the consumer.

(6) Procedures if Different Billing Error or no Billing Error Occurred. If, after conducting a reasonable investigation,³¹ a creditor determines that no billing error occurred or that a different billing error occurred from that asserted, the creditor shall within the time limits in 209 CMR 32.13(3)(b):

- (a) Mail or deliver to the consumer an explanation that sets forth the reasons for the creditor's belief that the billing error alleged by the consumer is incorrect in whole or in part;
- (b) Furnish copies of documentary evidence of the consumer's indebtedness, if the consumer so requests; and
- (c) If a different billing error occurred, correct the billing error and credit the consumer's account with any disputed amount and related finance or other charges, as applicable.

³⁰

A creditor is not prohibited from taking action to collect any undisputed portion of the item or bill; from deducting any disputed amount and related finance or other charges from the consumer's credit limit on the account; or from reflecting a disputed amount and related finance or other charges on a periodic statement, provided that the creditor indicates on or with the periodic statement that payment of any disputed amount and related finance or other charges is not required pending the creditor's compliance with 209 CMR 32.13.

³¹

If a consumer submits a billing error notice alleging either the non-delivery of property or services under 209 CMR 32.13(1)(c) or that information appearing on a periodic statement is incorrect because a person honoring the consumer's credit card has made an incorrect report to the card issuer, the creditor shall not deny the assertion unless it conducts a reasonable investigation and determines that the property or services were actually delivered, mailed, or sent as agreed or that the information was correct.

(7) Creditor's Rights and Duties After Resolution. If a creditor, after complying with all of the requirements of 209 CMR 32.13, determines that a consumer owes all or part of the disputed amount and related finance or other charges, the creditor:

- (a) Shall promptly notify the consumer in writing of the time when payment is due and the portion of the disputed amount and related finance or other charges that the consumer still owes;
- (b) Shall allow any time period disclosed under 209 CMR 32.06(1)(a) and 32.07(10), during which the consumer can pay the amount due under 209 CMR 32.13(7)(a) without incurring additional finance or other charges;
- (c) May report an account or amount as delinquent because the amount due under 209 CMR 32.13(7)(a) remains unpaid after the creditor has allowed any time period disclosed under 209 CMR 32.06(1)(a) and 32.07(10) or ten days (whichever is longer) during which the consumer can pay the amount; but
- (d) May not report that an amount or account is delinquent because the amount due under 209 CMR 32.13(7)(a) remains unpaid, if the creditor receives (within the time allowed for payment in 209 CMR 32.13(7)(c)) further written notice from the consumer that any portion of the billing error is still in dispute, unless the creditor also:
 1. Promptly reports that the amount or account is in dispute;
 2. Mails or delivers to the consumer (at the same time the report is made) a written notice of the name and address of each person to whom the creditor makes a report; and
 3. Promptly reports any subsequent resolution of the reported delinquency to all persons to whom the creditor has made a report.

(8) Reassertion of Billing Error. A creditor that has fully complied with the requirements of 209 CMR 32.13 has no further responsibilities under 209 CMR 32.13 (other than as provided in 209 CMR 32.13(7)(d)) if a consumer reasserts substantially the same billing error.

(9) Relation to Electronic Branches and Electronic Fund Transfers Act and 209 CMR 31.00. If an extension of credit is incident to an electronic fund transfer, under an agreement between a consumer and a financial institution to extend credit when the consumer's account is overdrawn or to maintain a specified minimum balance in the consumer's account the creditor shall comply with the requirements of M.G.L. c. 167B and 209 CMR 31.17 governing error resolution rather than those of 209 CMR 32.13(1), (2), (3), (5), (6), and (8).

(10) Forfeiture Penalty.

- (a) Any creditor who fails to comply with the requirements of 209 CMR 32.13 forfeits any right to collect from the consumer the amount indicated by the consumer to be a billing error, whether or not such amount is in fact in error, and any finance charges, late payment charges, or other charges imposed thereon, provided that the amount so forfeited under this section shall not exceed \$50 for each item or transaction on a periodic statement indicated by the consumer to be a billing error. In no case shall a creditor forfeit any amount for an error in a total figure or subtotal figure reflected on a statement which is caused solely by an error in another item which is the subject of a dispute, nor shall a creditor suffer any forfeit more than once for any item or transaction which may appear on a periodic statement.
- (b) Nothing in this 209 CMR 32.09 shall be construed to limit a consumer's right to recover under M.G.L. c. 140D, § 32.

32.14: Determination of Annual Percentage Rate

(1) General Rule. The annual percentage rate is a measure of the cost of credit, expressed as a yearly rate. An annual percentage rate shall be considered accurate if it is not more than 1/8 of one percentage point above or below the annual percentage rate determined in accordance with 209 CMR 32.14.^{31a}

(2) Annual Percentage Rate for Sections 209 CMR 32.05A and 209 CMR 32.05B Disclosures, for Initial Disclosures and for Advertising Purposes. Where one or more periodic rates may be used to compute the finance charge, the annual percentage rate(s) to be disclosed for purposes of 209 CMR 32.05A, 32.05B, 32.06 and 32.16 shall be computed by multiplying each periodic rate by the number of periods in a year.

(3) Annual Percentage Rate for Periodic Statements. The annual percentage rate(s) to be disclosed for purposes of 209 CMR 32.07(4) shall be computed by multiplying each periodic rate by the number of periods in a year and, for purposes of 209 CMR 32.07(7), shall be determined as follows:

(a) If the finance charge is determined solely by applying one or more periodic rates, at the creditor's option, either:

1. By multiplying each periodic rate by the number of periods in a year; or
2. By dividing the total finance charge for the billing cycle by the sum of the balances to which the periodic rates were applied and multiplying the quotient (expressed as a percentage) by the number of billing cycles in a year.

(b) If the finance charge imposed during the billing cycle is or includes a minimum, fixed, or other charge not due to the application of a periodic rate, other than a charge with respect to any specific transaction during the billing cycle, by dividing the total finance charge for the billing cycle by the amount of the balance(s) to which it is applicable³² and multiplying the quotient (expressed as a percentage) by the number of billing cycles in a year.³³

(c) If the finance charge imposed during the billing cycle is or includes a charge relating to a specific transaction during the billing cycle (even if the total finance charge also includes any other minimum, fixed, or other charge not due to the application of a periodic rate), by dividing the total finance charge imposed during the billing cycle by the total of all balances and other amounts on which a finance charge was imposed during the billing cycle without duplication, and multiplying the quotient (expressed as a percentage) by the number of billing cycles in a year,³⁴ except that the annual percentage rate shall not be less than the largest rate determined by multiplying each periodic rate imposed during the billing cycle by the number of periods in a year.³⁵

^{31a} An error in disclosure of the annual percentage rate or finance charge shall not, in itself, be considered a violation of this regulation if: (1) the error resulted from a corresponding error in a calculation tool used in good faith by the creditor; and (2) upon discovery of the error, the creditor promptly discontinues use of that calculation tool for disclosure purposes, and notifies the Commissioner in writing of the error in the calculation tool.

³² If there is no balance to which the finance charge is applicable, an annual percentage rate cannot be determined under 209 CMR 32.14.

³³ Where the finance charge imposed during the billing cycle is or includes a loan fee, points, or similar charge that relates to the opening of the account, the amount of such charge shall not be included in the calculation of the annual percentage rate.

³⁴ See Appendix F regarding determination of the denominator of the fraction under this paragraph.

³⁵ See footnote 33.

32.14: continued

(d) If the finance charge imposed during the billing cycle is or includes a minimum, fixed, or other charge not due to the application of a periodic rate and the total finance charge imposed during the billing cycle does not exceed 50¢ for a monthly or longer billing cycle, or the pro rata part of 50¢ for a billing cycle shorter than monthly, at the creditor's option, by multiplying each applicable periodic rate by the number of periods in a year, notwithstanding the provisions of 209 CMR 32.14(3)(b) and (c).

(4) Calculations Where Daily Periodic Rate Applied. If the provisions of 209 CMR 32.14(3)(a)2. or (b) apply and all or a portion of the finance charge is determined by the application of one or more daily periodic rates, the annual percentage rate may be determined either:

(a) By dividing the total finance charge by the average of the daily balances and multiplying the quotient by the number of billing cycles in a year; or

(b) By dividing the total finance charge by the sum of the daily balances and multiplying the quotient by 365.

32.15: Right of Rescission

(1) Consumer's Right to Rescind.

(a) 1. Except as provided in 209 CMR 32.15(1)(a)2., in a credit plan in which a security interest is or will be retained or acquired in a consumer's principal dwelling, each consumer whose ownership interest is or will be subject to the security interest shall have the right to rescind: each credit extension made under the plan; the plan when the plan is opened; a security interest when added or increased to secure an existing plan; and the increase when a credit limit on the plan is increased.

2. As provided in M.G.L. c. 140D, § 10(e), consumer does not have the right to rescind each credit extension made under the plan if such extension is made in accordance with a previously established credit limit for the plan.

(b) To exercise the right to rescind, the consumer shall notify the creditor of the rescission by mail, telegram, or other means of written communication. Notice is considered given when mailed, or when filed for telegraphic transmission, or, if sent by other means, when delivered to the creditor's designated place of business.

(c) The consumer may exercise the right to rescind until midnight of the third business day following the occurrence described in 209 CMR 32.15(1)(a) that gave rise to the right of rescission, delivery of the notice required by 209 CMR 32.15(2), or delivery of all material disclosures,³⁶ whichever occurs last. If the required notice and material disclosures are not delivered, the right to rescind shall expire four years after the occurrence giving rise to the right of rescission, or upon transfer of all of the consumer's interest in the property, or upon sale of the property, whichever occurs first. In the case of certain administrative proceedings, the rescission period shall be extended in accordance with M.G.L. c. 140D, § 10(f).

(d) When more than one consumer has the right to rescind, the exercise of the right by one consumer shall be effective as to all consumers.

³⁶

The term "material disclosures" means the information that must be provided to satisfy the requirements in 209 CMR 32.06 with regard to the method of determining the finance charge and the balance upon which a finance charge will be imposed, the annual percentage rate, and the amount or method of determining the amount of any membership or participation fee that may be imposed as part of the plan, and the payment information described in 209 CMR 32.05B(4)(e)1. and 2. that is required under 209 CMR 32.06(5)(b).

32.15: continued

(2) Notice of Right to Rescind. In any transaction or occurrence subject to rescission, a creditor shall deliver two copies of the notice of the right to rescind to each consumer entitled to rescind (one copy to each if the notice is delivered in electronic form in accordance with the consumer consent and other applicable provisions of the E-Sign Act). The notice shall identify the transaction or occurrence and clearly and conspicuously disclose the following:

- (a) The retention or acquisition of a security interest in the consumer's principal dwelling.
- (b) The consumer's right to rescind, as described in 209 CMR 32.15(1)(a).
- (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) The effects of rescission, as described in 209 CMR 32.15(4).
- (e) The date the rescission period expires.

(3) Delay of Creditor's Performance. Unless a consumer waives the right to rescind under 209 CMR 32.15(5), no money shall be disbursed other than in escrow, no services shall be performed, and no materials delivered until after the rescission period has expired and the creditor is reasonably satisfied that the consumer has not rescinded. A creditor does not violate 209 CMR 32.15 if a third party with no knowledge of the event activating the rescission right does not delay in providing materials or services, as long as the debt incurred for those materials or services is not secured by the property subject to rescission.

(4) Effects of Rescission.

- (a) When a consumer rescinds a transaction, the security interest giving rise to the right of rescission becomes void, and the consumer shall not be liable for any amount, including any finance charge.
- (b) Within 20 calendar days after receipt of a notice of rescission, the creditor shall return any money or property that has been given to anyone in connection with the transaction and shall take any action necessary to reflect the termination of the security interest.
- (c) If the creditor has delivered any money or property, the consumer may retain possession until the creditor has met its obligation under 209 CMR 32.15(4)(b). When the creditor has complied with 209 CMR 32.15(4)(b), the consumer shall tender the money or property to the creditor or, where the latter would be impracticable or inequitable, tender its reasonable value. At the consumer's option, tender of property may be made at the location of the property or at the consumer's residence. Tender of money must be made at the creditor's designated place of business. If the creditor does not take possession of the money or property within 20 calendar days after the consumer's tender, the consumer may keep it without further obligation.
- (d) The procedures outlined in 209 CMR 32.15(4)(b) and (c) may be modified by court order.

(5) Consumer's Waiver of Right to Rescind.

- (a) The consumer may modify or waive the right to rescind if the consumer determines that the extension of credit is needed to meet a bona fide personal financial emergency. To modify or waive the right, the consumer shall give the creditor a dated written statement that describes the emergency, that specifically modifies or waives the right to rescind, and that bears the signatures of the consumers entitled to rescind. Printed forms for this purpose are prohibited, except as provided in 209 CMR 32.15(5)(b).

32.15: continued

(b) The need of the consumer to obtain funds immediately shall be regarded as a bona fide personal financial emergency provided that the dwelling securing the extension of credit is located in an area declared during June through September 1993, pursuant to 42 U.S.C. 5170, to be a major disaster area because of severe storms and flooding in the Midwest.^{36a} In this instance, creditors may use printed forms for the consumer to waive the right to rescind. This exemption to 209 CMR 32.15(5)(a) shall expire one year from the date an area was declared a major disaster. (c) The consumer's need to obtain funds immediately shall be regarded as a bona fide personal financial emergency provided that the dwelling securing the extension of credit is located in an area declared during June through September 1994 to be a major disaster area, pursuant to 42 U.S.C. 5170, because of severe storms and flooding in the South.^{36b} In this instance, creditors may use printed forms for the consumer to waive the right to rescind. This exemption to 209 CMR 32.15(5)(a) shall expire one year from the date an area was declared a major disaster.

(d) The consumer's need to obtain funds immediately shall be regarded as a bona fide personal financial emergency provided that the dwelling securing the extension of credit is located in an area declared during October 1994 to be a major disaster area, pursuant to 42 U.S.C. 5170, because of severe storms and flooding in Texas.^{36c} In this instance, creditors may use printed forms for the consumer to waive the right to rescind. This exemption to 209 CMR 32.15(5)(a) shall expire one year from the date an area was declared a major disaster.

(6) Exempt Transactions. The right to rescind does not apply to the following:

- (a) A residential mortgage transaction.
- (b) A credit plan in which an agency of the Commonwealth or any subdivision is a creditor.

32.16: Advertising

(1) Actually Available Terms. If an advertisement for credit states specific credit terms, it shall state only those terms that actually are or will be arranged or offered by the creditor.

(2) Advertisement of Terms that Require Additional Disclosures. If any of the terms required to be disclosed under 209 CMR 32.06 is set forth in an advertisement, the advertisement shall also clearly and conspicuously set forth the following:^{36d}

- (a) Any minimum, fixed, transaction, activity or similar charge that could be imposed.
- (b) Any periodic rate that may be applied expressed as an annual percentage rate as determined under 209 CMR 32.14(2). If the plan provides for a variable periodic rate, that fact shall be disclosed.
- (c) Any membership or participation fee that could be imposed.

^{36a} A list of the affected areas will be maintained by the Board.

^{36b} A list of the affected areas will be maintained and published by the Board. Such areas now include parts of Alabama, Florida, and Georgia.

^{36c} A list of the affected areas will be maintained and published by the Board. Such areas now include the following counties in Texas: Angelina, Austin, Bastrop, Brazos, Brazoria, Burleson, Chambers, Fayette, Fort Bend, Galveston, Grimes, Hardin, Harris, Houston, Jackson, Jasper, Jefferson, Lee, Liberty, Madison, Matagorda, Montgomery, Nacagdoches, Orange, Polk, San Augustine, San Jacinto, Shelby, Trinity, Victoria, Washington, Waller, Walker, and Wharton.

^{36d} [Reserved]

(3) Catalogs and Multiple-page Advertisements; Electronic Advertisements.

(a) If a catalog or other multiple-page advertisement, or an electronic advertisement (such as an advertisement appearing on an Internet Web site), gives information in a table or schedule in sufficient detail to permit determination of the disclosures required by 209 CMR 32.16(2), it shall be considered a single advertisement if:

1. The table or schedule is clearly and conspicuously set forth; and
2. Any statement of terms set forth in 209 CMR 32.06 appearing anywhere else in the catalog or advertisement clearly refers to the page or location where the table or schedule begins.

(b) A catalog or multiple-page advertisement or an electronic advertisement (such as an advertisement appearing on an Internet Web site) complies with this paragraph if the table or schedule of terms includes all appropriate disclosures for a representative scale of amounts up to the level of the more commonly sold higher-priced property or services offered.

(4) Additional Requirements for Home Equity Plans.

(a) Advertisement of terms that require additional disclosures. If any of the terms required to be disclosed under 209 CMR 32.06(1) or (2) or the payment terms of the plan are set forth, affirmatively or negatively, in an advertisement for a home equity plan subject to the requirements of 209 CMR 32.05B, the advertisement also shall clearly and conspicuously set forth the following:

1. Any loan fee that is a percentage of the credit limit under the plan and an estimate of any other fees imposed for opening the plan, stated as a single dollar amount or a reasonable range.
2. Any periodic rate used to compute the finance charge, expressed as an annual percentage rate as determined under 209 CMR 32.14(2).
3. The maximum annual percentage rate that may be imposed in a variable rate plan.

(b) Discounted and premium rates. If an advertisement states an initial annual percentage rate that is not based on the index and margin used to make later rate adjustments in a variable-rate plan, the advertisement also shall state with equal prominence and in close proximity to the initial rate:

1. The period of time such initial rate will be in effect, and
2. A reasonably current annual percentage rate that would have been in effect using the index and margin.

(c) Balloon payment. If an advertisement contains a statement about any minimum periodic payment and a balloon payment may result if only the minimum periodic payments are made, even if such payment is uncertain or unlikely, the advertisement also shall state with equal prominence and in close proximity to the minimum periodic payment statement that a balloon payment may result, if applicable.^{36e} 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 is required to repay the entire outstanding balance at such time. If a balloon payment will occur when the consumer makes only the minimum payments required under the plan, an advertisement for such a program which contains any statement of any minimum periodic payment shall also state with equal prominence and in close proximity to the minimum periodic payment statement:

1. That a balloon payment will result; and
2. 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 that the consumer is permitted to make such payments.

(d) Tax implications. An advertisement that states that any interest expense incurred under the home equity plan is or may be tax deductible may not be misleading in this regard. If an advertisement distributed in paper form or through the Internet (rather than by radio or television) is for a home-equity plan secured by the consumer's principal dwelling, and the advertisement states that the advertised extension of credit may exceed the fair market value of the dwelling, the advertisement shall clearly and conspicuously state that:

1. The interest on the portion of the credit extension that is greater than the fair market value of the dwelling is not tax deductible for Federal income tax purposes; and
2. The consumer should consult a tax adviser for further information regarding the deductibility of interest and charges.

(e) Misleading terms. An advertisement may not refer to a home equity plan as "free money" or contain a similarly misleading term.

(f) Promotional rates and payments

1. Definitions. The following definitions apply for purposes of 209 CMR 32.16(4)(f):

a. Promotional rate. The term "promotional rate" means, in a variable-rate plan, any annual percentage rate that is not based on the index and margin that will be used to make rate adjustments under the plan, if that rate is less than a reasonably current annual percentage rate that would be in effect under the index and margin that will be used to make rate adjustments under the plan.

b. Promotional payment. The term "promotional payment" means:

(1) For a variable-rate plan, any minimum payment applicable for a promotional period that:

(i) Is not derived by applying the index and margin to the outstanding balance when such index and margin will be used to determine other minimum payments under the plan; and

(ii) Is less than other minimum payments under the plan derived by applying a reasonably current index and margin that will be used to determine the amount of such payments, given an assumed balance.

(2) For a plan other than a variable-rate plan, any minimum payment applicable for a promotional period if that payment is less than other payments required under the plan given an assumed balance.

c. Promotional period. A "promotional period" means a period of time, less than the full term of the loan, that the promotional rate or promotional payment may be applicable.

2. Stating the promotional period and post-promotional rate or payments. If any annual percentage rate that may be applied to a plan is a promotional rate, or if any payment applicable to a plan is a promotional payment, the following must be disclosed in any advertisement, other than television or radio advertisements, in a clear and conspicuous manner with equal prominence and in close proximity to each listing of the promotional rate or payment:

a. The period of time during which the promotional rate or promotional payment will apply;

b. In the case of a promotional rate, any annual percentage rate that will apply under the plan. If such rate is variable, the annual percentage rate must be disclosed in accordance with the accuracy standards in 209 CMR 32.05B, or 32.16(2)(a)2. as applicable; and

32.16: continued

c. In the case of a promotional payment, the amounts and time periods of any payments that will apply under the plan. In variable-rate transactions, payments that will be determined based on application of an index and margin shall be disclosed based on a reasonably current index and margin.

3. Envelope excluded. The requirements in 209 CMR 32.16(4)(f)2. do not apply to an envelope in which an application or solicitation is mailed, or to a banner advertisement or pop-up advertisement linked to an application or solicitation provided electronically.

(5) Alternative Disclosures—Television or Radio Advertisements. An advertisement for a home-equity plan subject to the requirements of 209 CMR 32.05B made through television or radio stating any of the terms requiring additional disclosures under 209 CMR 32.16(2) or (4)(a) may alternatively comply with 209 CMR 32.16(2) or (4)(a) by stating the information required by 209 CMR 32.16(2)(b) or (4)(a)2., as applicable, and listing a toll-free telephone number, or any telephone number that allows a consumer to reverse the phone charges when calling for information, along with a reference that such number may be used by consumers to obtain additional cost information.

32.17: General Disclosure Requirements - CLOSED-END CREDIT

(1) Form of Disclosures.

(a) The creditor shall make the disclosures required by 209 CMR 32.17 through 32.23 clearly and conspicuously in writing, in a form that the consumer may keep. The disclosures required by 209 CMR 32.27 through 32.23 may be provided to the consumer in electronic form, subject to compliance with the consumer consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. 7001 *et seq.*). The disclosures required by 209 CMR 32.17(7), 32.19(2) and 32.24 may be provided to the consumer in electronic form without regard to the consumer consent or other provisions of the E-Sign Act in the circumstances set forth in those sections. The disclosures shall be grouped together, shall be segregated from everything else, and shall not contain any information not directly related³⁷ to the disclosures required under 209 CMR 32.18 or 32.47.³⁸ The itemization of the amount financed under 209 CMR 32.18(3)(a) must be separate from the other disclosures under 209 CMR 32.18, except for private education loan disclosures made in compliance with 209 CMR 32.47.

(b) Except for private education loan disclosures made in compliance with CMR 32.47 the terms "finance charge" and "annual percentage rate," when required to be disclosed under 209 CMR 32.18(4) and (5) together with a corresponding amount or percentage rate, shall be more conspicuous than any other disclosure, except the creditor's identity under 209 CMR 32.18(1). For private education loan disclosures made in compliance with CMR 32.47, the term "annual percentage rate," and the corresponding percentage rate must be less conspicuous than the term "finance charge" and corresponding amount under CMR 32.18(4), the interest rate under CMR 32.47(2)(a)1. and (3)(a), and the notice of the right to cancel under CMR 32.47(3)(d.)

³⁷ The disclosures may include an acknowledgment of receipt, the date of the transaction, and the consumer's name, address and account number.

³⁸ The following disclosures may be made together or separately from other required disclosures: the creditor's identity under 209 CMR 32.18(1), the variable rate example under 209 CMR 32.18(6)(a)4., insurance under 209 CMR 32.18(14), and certain security interest charges under 209 CMR 32.18(15).

(2) Time of Disclosures. The creditor shall make disclosures before consummation of the transaction. In certain mortgage transactions, special timing requirements are set forth in 209 CMR 32.19(1). In certain variable-rate transactions, special timing requirements for variable-rate disclosures are set forth in 209 CMR 32.19(2) and 209 CMR 32.20(3). For private education loan disclosures made in compliance with 209 CMR 32.47, special timing requirements are set forth in 209 CMR 32.46(4). In certain transactions involving mail or telephone orders or a series of sales, the timing of disclosures may be delayed in accordance with 209 CMR 32.17(7) and (8).

(3) Basis of Disclosures and Use of Estimates.

- (a) The disclosures shall reflect the terms of the legal obligation between the parties.
- (b) 1. If any information necessary for an accurate disclosure is unknown to the creditor, the creditor shall make the disclosure based on the best information reasonably available at the time the disclosure is provided to the consumer and shall state clearly that the disclosure is an estimate.
2. For a transaction in which a portion of the interest is determined on a per diem basis and collected at consummation, any disclosure affected by the per diem interest shall be considered accurate if the disclosure is based on information known to the creditor at the time that the disclosure documents are prepared for consummation of the transaction
- (c) The creditor may disregard the effects of the following in making calculations and disclosures:
 - 1. That payments must be collected in whole cents.
 - 2. That dates of scheduled payments and advances may be changed because the scheduled date is not a business day.
 - 3. That months have different numbers of days.
 - 4. The occurrence of leap year.
- (d) In making calculations and disclosures, the creditor may disregard any irregularity in the first period that falls within the limits described below and any payment schedule irregularity that results from the irregular first period--
 - 1. For transactions in which the term is less than one year, a first period not more than six days shorter or 13 days longer than a regular period;
 - 2. For transactions in which the term is at least one year and less than ten years, a first period not more than 11 days shorter or 21 days longer than a regular period; and
 - 3. For transactions in which the term is at least ten years, a first period shorter than or not more than 32 days longer than a regular period.
- (e) If an obligation is payable on demand, the creditor shall make the disclosures based on an assumed maturity of one year. If an alternate maturity date is stated in the legal obligation between the parties, the disclosures shall be based on that date.
- (f) 1. A series of advances under an agreement to extend credit up to a certain amount may be considered as one transaction.
2. When a multiple-advance loan to finance the construction of a dwelling may be permanently financed by the same creditor, the construction phase and the permanent phase may be treated as either one transaction or more than one transaction.

(4) Multiple Creditors; Multiple Consumers. If a transaction involves more than one creditor, only one set of disclosures shall be given and the creditors shall agree among themselves which creditor must comply with the requirements that 209 CMR 32.00 imposes on any or all of them. If there is more than one consumer, the disclosures may be made to any consumer who is primarily liable on the obligation. If the transaction is rescindable under 209 CMR 32.23, however, the disclosures shall be made to each consumer who has the right to rescind.

(5) Effect of Subsequent Events. If a disclosure becomes inaccurate because of an event that occurs after the creditor delivers the required disclosures, the inaccuracy is not a violation of 209 CMR 32.00, although new disclosures may be required under 209 CMR 32.17(6), 32.19, or 32.20 or 32.46(3)(d).

(6) Early Disclosures. Except for private education loan disclosures made in compliance with 209 CMR 32.47 if the disclosures required by 209 CMR 32.17 are given before the date of consummation of a transaction and a subsequent event makes them inaccurate, the creditor shall disclose before consummation (subject to the provisions of 209 CMR 32.19(1)(b) and 32.19(1)(e)³⁹):

(a) any changed term unless the term was based on an estimate in accordance with 209 CMR 32.17(3)(b) and was labeled an estimate;

(b) all changed terms, if the annual percentage rate at the time of consummation varies from the annual percentage rate disclosed earlier by more than 1/8 of 1% point in a regular transaction, or more than 1/4 of 1% point in an irregular transaction, as defined in 209 CMR 32.22(1).

(7) Mail or Telephone Orders--Delay in Disclosures. Except for private education loan disclosures made in compliance with 209 CMR 32.47 if a creditor receives a purchase order or a request for an extension of credit by mail, telephone, or any other written or electronic communication without face-to-face or direct telephone solicitation, the creditor may delay the disclosures until the due date of the first payment, if the following information for representative amounts or ranges of credit is made available in written form or in electronic form to the consumer or to the public before the actual purchase order or request:

(a) The cash price or the principal loan amount.

(b) The total sale price.

(c) The finance charge.

(d) The annual percentage rate, and if the rate may increase after consummation, the following disclosures:

1. The circumstances under which the rate may increase.

2. Any limitations on the increase.

3. The effect of an increase.

(e) The terms of repayment.

(8) Series of Sales--Delay in Disclosures. If a credit sale is one of a series made under an agreement providing that subsequent sales may be added to an outstanding balance, the creditor may delay the required disclosures until the due date of the first payment for the current sale, if the following two conditions are met:

(a) The consumer has approved in writing the annual percentage rate or rates, the range of balances to which they apply, and the method of treating any unearned finance charge on an existing balance.

(b) The creditor retains no security interest in any property after the creditor has received payments equal to the cash price and any finance charge attributable to the sale of that property. For purposes of 209 CMR 32.17(8), in the case of items purchased on different dates, the first purchased is deemed the first item paid for; in the case of items purchased on the same date, the lowest priced is deemed the first item paid for.

32.17: continued

(9) Interim Student Credit Extensions. For each transaction involving an interim credit extension under a student credit program for which an application is received prior to the mandatory compliance date of 209 CMR 32.46, 32.47, and 32.48), the creditor need not make the following disclosures: the finance charge under 209 CMR 32.18(4), the payment schedule under 209 CMR 32.18(7), the total of payments under 209 CMR 32.18(8), or the total sale price under 209 CMR 32.18(10), at the time the credit is actually extended. The creditor must make complete disclosures at the time the creditor and consumer agree upon the repayment schedule for the total obligation. At that time, a new set of disclosures must be made of all applicable items under 209 CMR 32.18.)

32.18: Content of Disclosures

For each transaction, the creditor shall disclose the following information as applicable.

- (1) Creditor. The identity of the creditor making the disclosures.
- (2) Amount Financed. The "amount financed," using that term, and a brief description such as "the amount of credit provided to you or on your behalf." The amount financed is calculated by--
 - (a) Determining the principal loan amount or the cash price (subtracting any downpayment);
 - (b) Adding any other amounts that are financed by the creditor and are not part of the finance charge; and
 - (c) Subtracting any prepaid finance charge.
- (3) Itemization of Amount Financed.
 - (a) A separate written itemization of the amount financed, including:⁴⁰
 1. The amount of any proceeds distributed directly to the consumer.
 2. The amount credited to the consumer's account with the creditor.
 3. Any amounts paid to other persons⁴¹ by the creditor on the consumer's behalf. The creditor shall identify those persons.
 4. The prepaid finance charge.
 - (b) The creditor need not comply with 209 CMR 32.18(3)(a) if the creditor provides a statement that the consumer has the right to receive a written itemization of the amount financed, together with a space for the consumer to indicate whether it is desired, and the consumer does not request it.
- (4) Finance Charge. The "finance charge" using that term, and a brief description such as "the dollar amount the credit will cost you."

⁴⁰ Good faith estimates of settlement costs provided for transactions subject to the Real Estate Settlement Procedures Act (12 USC 2601 *et seq.*) may be substituted for the disclosures required by 209 CMR 32.18(3).

⁴¹ The following payees may be described using generic or other general terms and need not be further identified: public officials or government agencies, credit reporting agencies, appraisers, and insurance companies.

32.18: continued

(a) Mortgage loans. In a transaction secured by real property or a dwelling, the disclosed finance charge and other disclosures affected by the disclosed finance charge (including the amount financed and the annual percentage rate) shall be treated as accurate if the amount disclosed as the finance charge:

1. is understated by no more than \$100; or
2. is greater than the amount required to be disclosed.

(b) Other credit. In any other transaction, the amount disclosed as the finance charge shall be treated as accurate if, in a transaction involving an amount financed of \$1,000 or less, it is not more than \$5 above or below the amount required to be disclosed; or in a transaction involving an amount financed of more than \$1,000, it is not more than \$10 above or below the amount required to be disclosed.

(5) Annual Percentage Rate. The "annual percentage rate,"⁴² using that term, and a brief description such as "the cost of your credit as a yearly rate."

(6) Variable-rate.

(a) If the annual percentage rate may increase after consummation in a transaction not secured by the consumer's principal dwelling or in a transaction secured by the consumer's principal dwelling with a term of one year or less,⁴³ the following disclosures:

1. The circumstances under which the rate may increase.
2. Any limitations on the increase.
3. The effect of an increase.
4. An example of the payment terms that would result from an increase.

(b) If the annual percentage rate may increase after consummation in a transaction secured by the consumer's principal dwelling with a term greater than one year, the following disclosures:

1. The fact that the transaction contains a variable-rate feature.
2. A statement that variable-rate disclosures have been provided earlier.

(7) Payment Schedule. The number, amounts, and timing of payments scheduled to repay the obligation.

(a) In a demand obligation with no alternate maturity date, the creditor may comply with 209 CMR 32.18(7)(a) by disclosing the due dates or payment periods of any scheduled interest payments for the first year.

(b) In a transaction in which a series of payments varies because a finance charge is applied to the unpaid principal balance, the creditor may comply with 209 CMR 32.18(7)(b) by disclosing the following information:

1. The dollar amounts of the largest and smallest payments in the series.
2. A reference to the variations in the other payments in the series.

⁴² For any transaction involving a finance charge, of \$5 or less on an amount financed of \$75 or less, or a finance charge of \$7.50 or less on an amount financed of more than \$75, the creditor need not disclose the annual percentage rate.

⁴³ Information provided in accordance with 209 CMR 32.18(6)(b) and 209 CMR 32.19(2) may be substituted for the disclosures required by 209 CMR 32.18(6)(a).

32.18: continued

(8) Total of Payments. The "total of payments," using that term, and a descriptive explanation such as "the amount you will have paid when you have made all scheduled payments."⁴⁴

(9) Demand Feature. If the obligation has a demand feature, that fact shall be disclosed. When the disclosures are based on an assumed maturity of one year as provided in 209 CMR 32.17(3)(e), that fact shall also be disclosed.

(10) Total Sale Price. In a credit sale, the "total sale price," using that term, and a descriptive explanation (including the amount of any downpayment) such as "the total price of your purchase on credit, including your downpayment of \$_." The total sale price is the sum of the cash price, the items described in 209 CMR 32.18(2)(b), and the finance charge disclosed under 209 CMR 32.18(4).

(11) Prepayment.

(a) When an obligation includes a finance charge computed from time to time by application of a rate to the unpaid principal balance, a statement indicating whether or not a penalty may be imposed if the obligation is prepaid in full.

(b) When an obligation includes a finance charge other than the finance charge described in 209 CMR 32.18(11)(a), a statement indicating whether or not the consumer is entitled to a rebate of any finance charge if the obligation is prepaid in full.

(12) Late Payment. Any dollar or percentage charge that may be imposed before maturity due to a late payment, other than a deferral or extension charge.

(13) Security Interest. The fact that the creditor has or will acquire a security interest in the property purchased as part of the transaction, or in other property identified by item or type.

(14) Insurance and Debt Cancellation. The items required by 209 CMR 32.04(4) in order to exclude certain insurance premiums and debt cancellation fees from the finance charge.

(15) Certain Security Interest Charges. The disclosures required by 209 CMR 32.04(5) in order to exclude from the finance charge certain fees prescribed by law or certain premiums for insurance in lieu of perfecting a security interest.

(16) Contract Reference. A statement that the consumer should refer to the appropriate contract document for information about nonpayment, default, the right to accelerate the maturity of the obligation, and prepayment rebates and penalties. At the creditor's option, the statement may also include a reference to the contract for further information about security interests and, in a residential mortgage transaction, about the creditor's policy regarding assumption of the obligation.

(17) Assumption Policy. In a residential mortgage transaction, a statement whether or not a subsequent purchaser of the dwelling from the consumer may be permitted to assume the remaining obligation on its original terms.

⁴⁴

In any transaction involving a single payment, the creditor need not disclose the total of payments.

32.18: continued

(18) Required Deposit. If the creditor requires the consumer to maintain a deposit as a condition of the specific transaction, a statement that the annual percentage rate does not reflect the effect of the required deposit.⁴⁵

32.19: Certain Mortgage and Variable-Rate Transactions.

(1) Mortgage Transactions Subject to RESPA

(a) 1. Time of disclosures. In a mortgage transaction subject to the Real Estate Settlement Procedures Act (12 U.S.C. 2601 *et seq.*) that is secured by the consumer's dwelling, other than a home equity line of credit subject to 209 CMR 32.05B or mortgage transaction subject to 209 CMR 32.19(1)(e), , the creditor shall make good faith estimates of the disclosures required by 209 CMR 32.18 and shall deliver or place them in the mail not later than the third business day after the creditor receives the consumer's written application, whichever is earlier.

2. Imposition of fees. Except as provided in 209 CMR 32.19(1)(a)3., neither a creditor nor any other person may impose a fee on a consumer in connection with the consumer's application for a mortgage transaction subject to 209 CMR 32.19(1)(a)1. before the consumer has received the disclosures required by 209 CMR 32.19(1)(a)1.. If the disclosures are mailed to the consumer, the consumer is considered to have received them three business days after they are mailed.

3. Exception to fee restriction. A creditor or other person may impose a fee for obtaining the consumer's credit history before the consumer has received the disclosures required by 209 CMR 32.19(1)(a)1., provided the fee is *bona fide* and reasonable in amount.

(b) Waiting periods for early disclosures and corrected disclosures.

1. The creditor shall deliver or place in the mail the good faith estimates required by 209 CMR 32.19(1)(a)1. not later than the seventh business day before consummation of the transaction.

2. If the annual percentage rate disclosed under 209 CMR 32.19(1)(a)1. becomes inaccurate, as defined in 209 CMR 32.22, the creditor shall provide corrected disclosures with all changed terms. The consumer must receive the corrected disclosures no later than three business days before consummation. If the corrected disclosures are mailed to the consumer or delivered to the consumer by means other than delivery in person, the consumer is deemed to have received the corrected disclosures three business days after they are mailed or delivered.

(c) Consumer's waiver of waiting period before consummation. If the consumer determines that the extension of credit is needed to meet a *bona fide* personal financial emergency, the consumer may modify or waive the seven-business-day waiting period or the three-business-day waiting period required by 209 CMR 32.19(1)(b), after receiving the disclosures required by 209 CMR 32.18. To modify or waive a waiting period, the consumer shall give the creditor a dated written statement that describes the emergency, specifically modifies or waives the waiting period, and bears the signature of all the consumers who are primarily liable on the legal obligation. Printed forms for this purpose are prohibited.

⁴⁵

A required deposit need not include, for example: (1) an escrow account for items such as taxes, insurance or repairs; (2) a deposit that earns not less than 5% per year; or (3) payments under a Morris Plan.

32.19: continued

(d) Notice. Disclosures made pursuant to 209 CMR 32.19(1)(a) or (1)(b) shall contain the following statement: “You are not required to complete this agreement merely because you have received these disclosures or signed a loan application.” The disclosure required by this paragraph shall be grouped together with the disclosures required by 209 CMR 32.19(1)(a) or (1)(b).

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

1. The requirements of 209 CMR 32.19(1)(a) through (1)(d) do not apply;
2. The creditor shall make good faith estimates of the disclosures required by 209 CMR 32.18 before consummation, or shall deliver or place them in the mail not later than three business days after the creditor receives the consumer's written application, whichever is earlier; and
3. If the annual percentage rate at the time of consummation varies from the annual percentage rate disclosed under 209 CMR 32.19(1)(e)2. by more than 1/8 of 1 percentage point in a regular transaction or more than 1/4 of 1 percentage point in an irregular transaction, as defined in 209 CMR 32.22, the creditor shall disclose all the changed terms no later than consummation or settlement.

(2) Certain Variable-Rate Transactions.^{45a} If the annual percentage rate may increase after consummation in a transaction secured by the consumer's principal dwelling with a term greater than one year, the following disclosures must be provided at the time an application form is provided or before the consumer pays a non-refundable fee, whichever is earlier:^{45b}

(a) The booklet titled Consumer Handbook on Adjustable Rate Mortgages published by the Board and the Federal Home Loan Bank Board, or a suitable substitute.

(b) A loan program disclosure for each variable-rate program in which the consumer expresses an interest. The following disclosures, as applicable, shall be provided:

1. The fact that the interest rate, payment, or term of the loan can change.
2. The index or formula used in making adjustments, and a source of information about the index or formula.
3. An explanation of how the interest rate and payment will be determined, including an explanation of how the index is adjusted, such as by the addition of a margin.
4. A statement that the consumer should ask about the current margin value and current interest rate.
5. The fact that the interest rate will be discounted, and a statement that the consumer should ask about the amount of the interest rate discount.
6. The frequency of interest rate and payment changes.
7. Any rules relating to changes in the index, interest rate, payment amount, and outstanding loan balance including, for example, an explanation of interest rate or payment limitations, negative amortization, and interest rate carry-over.

^{45a} Information provided in accordance with variable-rate regulations of other federal agencies may be substituted for the disclosures required by 209 CMR 32.19(2).

^{45b} Disclosures may be delivered or placed in the mail not later than three business days following receipt of a consumer's application when the application reaches the creditor by telephone, or through an intermediary agent or broker.

32.19: continued

8. At the option of the creditor, either of the following:
 - a. An historical example, based on a \$10,000 loan amount, illustrating how payments and the loan balance would have been affected by interest-rate changes implemented according to the terms of the loan-program disclosure. The example shall reflect the most recent 15 years of index values. The example shall reflect all significant loan-program terms, such as negative amortization, interest rate carryover, interest-rate discounts, and interest-rate and payment limitations, that would have been affected by the index movement over the period.
 - b. The maximum interest rate and payment for a \$10,000 loan originated at the initial interest rate (index value plus margin, adjusted by the amount of any discount or premium) in effect as of an identified month and year for the loan program disclosure assuming the maximum periodic increases in rates and payments under the program; and the initial interest rate and payment for that loan and a statement that the periodic payment may increase or decrease substantially depending on changes in the rate.
9. An explanation of how the consumer may calculate the payments for the loan amount to be borrowed based on either:
 - a. the most recent payment shown in the historical example in 209 CMR 32.19(2)(b)8.a.; or
 - b. the initial interest rate used to calculate the maximum interest rate and payment in 209 CMR 32.19(2)(b)8.b.
10. The fact that the loan program has a demand feature.
11. The type of information that will be provided in notices of adjustments and the timing of such notices.
12. A statement that disclosure forms are available for the creditor's other variable-rate loan programs.

(3) Electronic disclosures. For an application that is accessed by the consumer in electronic form, the disclosures required by 209 CMR 32.19(2) may be provided to the consumer in electronic form on or with the application.

32.20: Subsequent Disclosure Requirements

(1) Refinancings. A refinancing occurs when an existing obligation that was subject to 209 CMR 32.00 is satisfied and replaced by a new obligation undertaken by the same consumer. A refinancing is a new transaction requiring new disclosures to the consumer. The new finance charge shall include any unearned portion of the old finance charge that is not credited to the existing obligation. The following shall not be treated as a refinancing:

- (a) A renewal of a single payment obligation with no change in the original terms.
- (b) A reduction in the annual percentage rate with a corresponding change in the payment schedule.
- (c) An agreement involving a court proceeding.
- (d) A change in the payment schedule or a change in collateral requirements as a result of the consumer's default or delinquency, unless the rate is increased, or the new amount financed exceeds the unpaid balance plus earned finance charge and premiums for continuation of insurance of the types described in 209 CMR 32.04(4).
- (e) The renewal of optional insurance purchased by the consumer and added to an existing transaction, if disclosures relating to the initial purchase were provided as required by 209 CMR 32.00

32.20: continued

(2) Assumptions. An assumption occurs when a creditor expressly agrees in writing with a subsequent consumer to accept that consumer as a primary obligor on an existing residential mortgage transaction. Before the assumption occurs, the creditor shall make new disclosures to the subsequent consumer, based on the remaining obligation. If the finance charge originally imposed on the existing obligation was an add-on or discount finance charge, the creditor need only disclose:

- (a) The unpaid balance of the obligation assumed.
- (b) The total charges imposed by the creditor in connection with the assumption.
- (c) The information required to be disclosed under 209 CMR 32.18(11), (12), (13), and (14).
- (d) The annual percentage rate originally imposed on the obligation.
- (e) The payment schedule under 209 CMR 32.18(7) and the total of payments under 209 CMR 32.18(8), based on the remaining obligation.

(3) Variable-rate adjustments.^{45c} An adjustment to the interest rate with or without a corresponding adjustment to the payment in a variable-rate transaction subject to 209 CMR 32.19(2) is an event requiring new disclosures to the consumer. 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 payment at a new level is due, the following disclosures, as applicable, must be delivered or placed in the mail:

- (a) The current and prior interest rates.
- (b) The index values upon which the current and prior interest rates are based.
- (c) The extent to which the creditor has foregone any increase in the interest rate.
- (d) The contractual effects of the adjustment, including the payment due after the adjustment is made, and a statement of the loan balance.
- (e) The payment, if different from that referred to in 209 CMR 32.20(3)(d), that would be required to fully amortize the loan at the new interest rate over the remainder of the loan term.

32.21: Treatment of Credit Balances

When a credit balance of \$1 or more is created in connection with a transaction (through transmittal of funds to a creditor in excess of the total balance due on an account, through rebates of unearned finance charges or insurance premiums, or through amounts otherwise owed to or held for the benefit of a consumer), the creditor shall--

- (1) Credit the amount of the credit balance to the consumer's account;
- (2) Refund any part of the remaining credit balance, upon the written request of the consumer; and
- (3) Make a good faith effort to refund to the consumer by cash, check, or money order, or credit to a deposit account of the consumer, any part of the credit balance remaining in the account for more than six months (within 30 days after the end of the six-month period), except that no further action is required if the consumer's current location is not known to the creditor and cannot be traced through the consumer's last known address or telephone number. Any creditor who does not make the good faith effort as required by the regulation to refund the credit balance shall pay to the consumer interest on the balance at an annual percentage rate of 18%.

^{45c}

Information provided in accordance with variable-rate subsequent disclosure regulations of other federal agencies may be substituted for the disclosure required by 209 CMR 32.20(3).

32.22: Determination of Annual Percentage Rate

(1) Accuracy of Annual Percentage Rate.

(a) The annual percentage rate is a measure of the cost of credit, expressed as a yearly rate, that relates the amount and timing of value received by the consumer to the amount and timing of payments made. The annual percentage rate shall be determined in accordance with either the actuarial method or the United States Rule method. Explanations, equations and instructions for determining the annual percentage rate in accordance with the actuarial method are set forth in appendix J to Regulation Z,^{45d}

(b) As a general rule, the annual percentage rate shall be considered accurate if it is not more than 1/8 of one percentage point above or below the annual percentage rate determined in accordance with 209 CMR 32.22(1)(a).

(c) In an irregular transaction, the annual percentage rate shall be considered accurate if it is not more than 1/4 of one percentage point above or below the annual percentage rate determined in accordance with 209 CMR 32.22(1)(a).⁴⁶

(d) Mortgage loans. If the annual percentage rate disclosed in a transaction secured by real property or a dwelling varies from the actual rate determined in accordance with 209 CMR 32.22(1)(a), in addition to the tolerances applicable under 209 CMR 32.22(1)(b) and (c), the disclosed annual percentage rate shall also be considered accurate if:

1. The rate results from the disclosed finance charge; and
2. a. The disclosed finance charge would be considered accurate under 209 CMR 32.18(4)(a) or
b. For purposes of rescission, if the disclosed finance charge would be considered accurate under 209 CMR 32.23(7) or (8), whichever applies.

(e) Additional tolerance for mortgage loans. In a transaction secured by real property or a dwelling, in addition to the tolerances applicable under 209 CMR 32.22(1)(b) and (c), if the disclosed finance charge is calculated incorrectly but considered accurate under 209 CMR 32.18(4)(a) or 209 CMR 32.23(7) or (8), the disclosed annual percentage rate shall be considered accurate:

1. If the disclosed finance charge is understated, and the disclosed annual percentage rate is also understated but it is closer to the actual annual percentage rate than the rate that would be considered accurate under 209 CMR 32.22(1)(d):
2. If the disclosed finance charge is overstated, and the disclosed annual percentage rate is also overstated but it is closer to the actual annual percentage rate than the rate that would be considered accurate under 209 CMR 32.22(1)(d).

^{45d} An error in disclosure of the annual percentage rate or finance charge shall not, in itself, be considered a violation of 209 CMR 32.00 if (1) the error resulted from a corresponding error in a calculation tool used in good faith by the creditor; and (2) upon discovery of the error, the creditor promptly discontinues use of that calculation tool for disclosure purposes and notifies the Commissioner, in writing, of the error in the calculation tool.

⁴⁶ For purposes of 209 CMR 32.22(1)(c), an irregular transaction is one that includes one or more of the following features: multiple advances, irregular payment periods, or irregular payment amounts (other than an irregular first period or an irregular first or final payment).

32.22: continued

(2) Computation Tools.

(a) The Regulation Z Annual Percentage Rate Tables produced by the Board may be used to determine the annual percentage rate, and any rate determined from those tables in accordance with the accompanying instructions complies with the requirements of 209 CMR 32.22. Volume I of the tables applies to single-advance transactions involving up to 480 monthly payments or 104 weekly payments. It may be used for regular transactions and for transactions with any of the following irregularities; an irregular first period, an irregular first payment, and an irregular final payment. Volume II of the tables applies to transactions involving multiple advances and any type of payment or period irregularity.

(b) Creditors may use any other computation tool in determining the annual percentage rate if the rate so determined equals the rate determined in accordance with appendix J, within the degree of accuracy set forth in 209 CMR 32.22(1).

(3) Single Add-on Rate Transactions. If a single add-on rate is applied to all transactions with maturities up to 60 months and if all payments are equal in amount and period, a single annual percentage rate may be disclosed for all those transactions, so long as it is the highest annual percentage rate for any such transaction.

(4) Certain Transactions Involving Ranges of Balances. For purposes of disclosing the annual percentage rate referred to in 209 CMR 32.17(7)(d) (Mail or Telephone Orders--Delay in Disclosures) and 32.17(8) (Series of Sales--Delay in Disclosures), if the same finance charge is imposed on all balances within a specified range of balances, the annual percentage rate computed for the median balance may be disclosed for all the balances. However, if the annual percentage rate computed for the median balance understates the annual percentage rate computed for the lowest balance by more than 8% of the latter rate, the annual percentage rate shall be computed on whatever lower balance will produce an annual percentage rate that does not result in an understatement of more than 8% of the rate determined on the lowest balance.

32.23: Right of Rescission

(1) Consumer's Right to Rescind.

(a) In a credit transaction in which a security interest is or will be retained or acquired in a consumer's principal dwelling, each consumer whose ownership interest is or will be subject to the security interest shall have the right to rescind the transaction, except for transactions described in 209 CMR 32.23(6).⁴⁷

(b) To exercise the right to rescind, the consumer shall notify the creditor of the rescission by mail, telegram or other means of written communication. Notice is considered given when mailed, when filed for telegraphic transmission or, if sent by other means, when delivered to the creditor's designated place of business.

⁴⁷ For purposes of 209 CMR 32.23, the addition to an existing obligation of a security interest in a consumer's principal dwelling is a transaction. The right of rescission applies only to the addition of the security interest and not the existing obligation. The creditor shall deliver the notice required by 209 CMR 32.23(2) but need not deliver new material disclosures. Delivery of the required notice shall begin the rescission period.

(c) The consumer may exercise the right to rescind until midnight of the third business day following consummation, delivery of the notice required by 209 CMR 32.23(2), or delivery of all material disclosures⁴⁸, whichever occurs last. If the required notice or material disclosures are not delivered, the right to rescind shall expire four years after consummation, upon transfer of all the consumer's interest in the property, or upon sale of the property, whichever occurs first. In the case of certain administrative proceedings, the rescission period shall be extended in accordance with M.G.L. c. 140D, § 10(f).

(d) When more than one consumer in a transaction has the right to rescind, the exercise of the right by one consumer shall be effective as to all consumers.

(2) (a) Notice of Right to Rescind. In a transaction subject to rescission, a creditor shall deliver two copies of the notice of the right to rescind to each consumer entitled to rescind (one copy to each if the notice is delivered in electronic form in accordance with the consumer consent and other applicable provisions of the E-Sign Act). The notice shall be on a separate document that identifies the transaction and shall clearly and conspicuously disclose the following:

1. The retention or acquisition of a security interest in the consumer's principal dwelling.
2. The consumer's right to rescind the transaction.
3. How to exercise the right to rescind, with a form for that purpose, designating the address of the creditor's place of business.
4. The effects of rescission, as described in 209 CMR 32.23(4).
5. The date the rescission period expires.

(b) Proper form of notice. To satisfy the disclosure requirements of 209 CMR 32.23(2)(a), the creditor shall provide a notice that conforms with the model forms in Appendix H of Regulation Z, as appropriate, or a substantially similar notice.

(3) Delay of Creditor's Performance. Unless a consumer waives the right of rescission under 209 CMR 32.23(5), no money shall be disbursed other than in escrow, no services shall be performed and no materials delivered until the rescission period has expired and the creditor is reasonably satisfied that the consumer has not rescinded.

(4) Effects of Rescission.

(a) When a consumer rescinds a transaction, the security interest giving rise to the right of rescission becomes void and the consumer shall not be liable for any amount, including any finance charge.

(b) Within 20 calendar days after receipt of a notice of rescission, the creditor shall return any money or property that has been given to anyone in connection with the transaction and shall take any action necessary to reflect the termination of the security interest.

⁴⁸

The term "material disclosures" means the required disclosures of the annual percentage rate, the finance charge, the amount financed, the total of payments, and the payment schedule, and the disclosures and limitations referred to in 209 CMR 32.32(3) and (4) and 32.35(2)(b).

(c) If the creditor has delivered any money or property, the consumer may retain possession until the creditor has met its obligation under 209 CMR 32.23(4)(b). When the creditor has complied with 209 CMR 32.23(4)(b), the consumer shall tender the money or property to the creditor or, where the latter would be impracticable or inequitable, tender its reasonable value. At the consumer's option, tender of property may be made at the location of the property or at the consumer's residence. Tender of money must be made at the creditor's designated place of business. If the creditor does not take possession of the money or property within 20 calendar days after the consumer's tender, the consumer may keep it without further obligation.

(d) The procedures outlined in 209 CMR 32.23(4)(b) and (c) may be modified by court order.

(5) Consumer's Waiver of Right to Rescind.

(a) The consumer may modify or waive the right to rescind if the consumer determines that the extension of credit is needed to meet a bona fide personal financial emergency. To modify or waive the right, the consumer shall give the creditor a dated written statement that describes the emergency, specifically modifies or waives the right to rescind, and bears the signature of all of the consumers entitled to rescind. Printed forms for this purpose are prohibited, except as provided in 209 CMR 32.23(5)(b).

(b) The need of the consumer to obtain funds immediately shall be regarded as a bona fide personal financial emergency provided that the dwelling securing the extension of credit is located in an area declared during June through September 1993, pursuant to 42 U.S.C. 5170, to be a major disaster area because of severe storms and flooding in the Midwest.^{48a} In this instance, creditors may use printed forms for the consumer to waive the right to rescind. This exemption to 209 CMR 32.23(5)(a) shall expire one year from the date an area was declared a major disaster.

(c) The consumer's need to obtain funds immediately shall be regarded as a bona fide personal financial emergency provided that the dwelling securing the extension of credit is located in an area declared during June through September 1994 to be a major disaster area, pursuant to 42 U.S.C. 5170, because of severe storms and flooding in the South.^{48b} In this instance, creditors may use printed forms for the consumer to waive the right to rescind. This exemption to 209 CMR 32.23(5)(a) shall expire one year from the date an area was declared a major disaster.

(d) The consumer's need to obtain funds immediately shall be regarded as a bona fide personal financial emergency provided that the dwelling securing the extension of credit is located in an area declared during October 1994 to be a major disaster area, pursuant to 42 U.S.C. 5170, because of severe storms and flooding in Texas.^{48c} In this instance, creditors may use printed forms for the consumer to waive the right to rescind. This exemption to 209 CMR 32.23(5)(a) shall expire one year from the date an area was declared a major disaster.

^{48a} A list of the affected areas will be maintained by the Board.

^{48b} A list of the affected areas will be maintained and published by the Board. Such areas now include parts of Alabama, Florida, and Georgia.

^{48c} A list of the affected areas will be maintained and published by the Board. Such areas now include the following counties in Texas: Angelina, Austin, Bastrop, Brazos, Brazoria, Burleson, Chambers, Fayette, Fort Bend, Galveston, Grimes, Hardin, Harris, Houston, Jackson, Jasper, Jefferson, Lee, Liberty, Madison, Matagorda, Montgomery, Nacagdoches, Orange, Polk, San Augustine, San Jacinto, Shelby, Trinity, Victoria, Washington, Waller, Walker, and Wharton.

(6) Exempt Transactions. The right to rescind does not apply to the following:

- (a) A residential mortgage transaction.
- (b) A refinancing or consolidation by the same creditor of an extension of credit already secured by the consumer's principal dwelling. If the new amount financed exceeds the unpaid principal balance plus any earned unpaid finance charge on the existing debt, this exemption applies only to the existing debt and its security interest.
- (c) A transaction in which a state agency is a creditor.
- (d) An advance, other than an initial advance, in a series of advances or in a series of single-payment obligations that is treated as a single transaction under 209 CMR 32.17(3)(f), if the notice required by 209 CMR 32.23(2) and all material disclosures have been given to the consumer.
- (e) A renewal of optional insurance premiums that is not considered a refinancing under 209 CMR 32.20(1)(e).

(7) Tolerances for accuracy.

(a) One-half of 1 Percent Tolerance. Except as provided in 209 CMR 32.23(7)(b) and (8)(b), the finance charge and other disclosures affected by the finance charge (such as the amount financed and the annual percentage rate) shall be considered accurate for purposes of this section if the disclosed finance charge:

1. is understated by no more than 1/2 of one percent of the face amount of the note or \$100, whichever is greater; or
2. is greater than the amount required to be disclosed.

(b) One Percent Tolerance. In a refinancing of a residential mortgage transaction with a new creditor (other than a transaction covered by 209 CMR 32.32) if there is no new money advanced and no consolidation of existing loans, the finance charge and other disclosures affected by the finance charge (such as the amount financed and the annual percentage rate) shall be considered accurate for purposes of 209 CMR 32.23(7) if the disclosed finance charge:

1. is understated by no more than one percent of the face amount of the note or \$100, whichever is greater; or
2. is greater than the amount required to be disclosed.

(8) Special rules for foreclosures.

(a) Right to rescind. After the initiation of a foreclosure on the consumer's principal dwelling which secures the credit obligation, the consumer shall have the right to rescind the transaction if:

1. A mortgage broker fee that should have been included in the finance charge was not included; or
2. The creditor did not provide the properly completed appropriate model form in Appendix H of Regulation Z or a substantially similar notice of rescission.

(b) Tolerance for disclosures. After the initiation of foreclosure on the consumer's principal dwelling that secures the credit obligation, the finance charge and other disclosures affected by the finance charge (such as the amount financed and the annual percentage rate) shall be considered accurate for purposes of 209 CMR 32.23 if the disclosed finance charge is:

1. Is understated by no more than \$35, or
2. Is greater than the amount required to be disclosed.

32.24: Advertising

(1) Actually Available Terms. If an advertisement for credit states specific credit terms, it shall state only those terms that actually are or will be arranged or offered by the creditor.

(2) Clear and conspicuous standard. Disclosures required by this section shall be made clearly and conspicuously.

(3) Advertisement of Rate of Finance Charge. If an advertisement states a rate of finance charge, it shall state the rate as an "annual percentage rate," using that term. If the annual percentage rate may be increased after consummation, the advertisement shall state that fact. If an advertisement is for credit not secured by a dwelling, the advertisement shall not state any other rate, except that a simple annual rate or periodic rate that is applied to an unpaid balance may be stated in conjunction with, but not more conspicuously than, the annual percentage rate. If an advertisement is for credit secured by a dwelling, the advertisement shall not state any other rate, except that a simple annual rate that is applied to an unpaid balance may be stated in conjunction with, but not more conspicuously than, the annual percentage rate.

(4) Advertisement of Terms that Require Additional Disclosures.

(a) Triggering terms. If any of the following terms is set forth in an advertisement, the advertisement shall meet the requirements of 209 CMR 32.24(4)(b):

1. The amount or percentage of any downpayment.
2. The number of payments or period of repayment.
3. The amount of any payment.
4. The amount of any finance charge.

(b) Additional terms. An advertisement stating any of the terms in 209 CMR 32.24(4)(a) shall state the following terms,⁴⁹ as applicable (an example of one or more typical extensions of credit with a statement of all the terms applicable to each may be used):

1. The amount or percentage of the downpayment.
2. The terms of repayment, which reflect the repayment obligations over the full term of the loan, including any balloon payment.
3. The "annual percentage rate," using that term, and, if the rate may be increased after consummation, that fact.

(5) Catalogs or Other Multiple-Page Advertisements; Electronic Advertisements.

(a) If a catalog or other multiple-page advertisement, or an electronic advertisement (such as an advertisement appearing on an Internet Web site) gives information in a table or schedule in sufficient detail to permit determination of the disclosures required by 209 CMR 32.24(4)(b), it shall be considered a single advertisement if--

1. The table or schedules is clearly set forth; and
2. Any statement of the credit terms in 209 CMR 32.24(4)(a) appearing anywhere else in the catalog or advertisement clearly refers to the page or location where the table or schedule begins.

⁴⁹ [Reserved]

(b) A catalog or multiple-page advertisement or an electronic advertisement (such as an advertisement appearing on an Internet Web site) complies with 209 CMR 32.24(4)(b) if the table or schedule of terms includes all appropriate disclosures for a representative scale of amounts up to the level of the more commonly sold higher-priced property or services offered.

(6) Disclosure of Rates and Payments in Advertisements for Credit Secured by a Dwelling.

(a) Scope. The requirements of this paragraph apply to any advertisement for credit secured by a dwelling, other than television or radio advertisements, including promotional materials accompanying applications.

(b) Disclosure of rates

1. In general. If an advertisement for credit secured by a dwelling states a simple annual rate of interest and more than one simple annual rate of interest will apply over the term of the advertised loan, the advertisement shall disclose in a clear and conspicuous manner:

- a. Each simple annual rate of interest that will apply. In variable-rate transactions, a rate determined by adding an index and margin shall be disclosed based on a reasonably current index and margin;
- b. The period of time during which each simple annual rate of interest will apply; and
- c. The annual percentage rate for the loan. If such rate is variable, the annual percentage rate shall comply with the accuracy standards in 209 CMR 32.17(3) and 32.22.

2. Clear and conspicuous requirement. For purposes of 209 CMR 32.24(6)(b)1., clearly and conspicuously disclosed means that the required information in 209 CMR 32.24(6)(b)1.a. through c. shall be disclosed with equal prominence and in close proximity to any advertised rate that triggered the required disclosures. The required information in 209 CMR 32.24(6)(b)1.c. may be disclosed with greater prominence than the other information.

(c) Disclosure of payments

1. In general. In addition to the requirements of 209 CMR 32.24(3), if an advertisement for credit secured by a dwelling states the amount of any payment, the advertisement shall disclose in a clear and conspicuous manner:

- a. The amount of each payment that will apply over the term of the loan, including any balloon payment. In variable-rate transactions, payments that will be determined based on the application of the sum of an index and margin shall be disclosed based on a reasonably current index and margin;
- b. The period of time during which each payment will apply; and
- c. In an advertisement for credit secured by a first lien on a dwelling, the fact that the payments do not include amounts for taxes and insurance premiums, if applicable, and that the actual payment obligation will be greater.

2. Clear and conspicuous requirement. For purposes of 209 CMR 32.24(6)(c)1., a clear and conspicuous disclosure means that the required information in 209 CMR 32.24(6)(c)1.a. and b. shall be disclosed with equal prominence and in close proximity to any advertised payment that triggered the required disclosures, and that the required information in 209 CMR 32.24(6)(c)1.c. shall be disclosed with prominence and in close proximity to the advertised payments.

(d) Envelope excluded. The requirements in 209 CMR 32.24(6)(b) and (6)(c) do not apply to an envelope in which an application or solicitation is mailed, or to a banner advertisement or pop-up advertisement linked to an application or solicitation provided electronically.

(7) Alternative disclosures—television or radio advertisements. An advertisement made through television or radio stating any of the terms requiring additional disclosures under 209 CMR 32.24(4)(b) may comply with 209 CMR 32.24(4)(b) either by:

- (a) Stating clearly and conspicuously each of the additional disclosures required under 209 CMR 32.24(4)(b); or
- (b) Stating clearly and conspicuously the information required by 209 CMR 32.24(4)(b)3. and listing a toll-free telephone number, or any telephone number that allows a consumer to reverse the phone charges when calling for information, along with a reference that such number may be used by consumers to obtain additional cost information.

(8) Tax implications. If an advertisement distributed in paper form or through the Internet (rather than by radio or television) is for a loan secured by the consumer's principal dwelling, and the advertisement states that the advertised extension of credit may exceed the fair market value of the dwelling, the advertisement shall clearly and conspicuously state that:

- (a) The interest on the portion of the credit extension that is greater than the fair market value of the dwelling is not tax deductible for Federal income tax purposes; and
- (b) The consumer should consult a tax adviser for further information regarding the deductibility of interest and charges.

(9) Prohibited acts or practices in advertisements for credit secured by a dwelling. The following acts or practices are prohibited in advertisements for credit secured by a dwelling:

(a) Misleading advertising of “fixed” rates and payments. Using the word “fixed” to refer to rates, payments, or the credit transaction in an advertisement for variable-rate transactions or other transactions where the payment will increase, unless:

1. In the case of an advertisement solely for one or more variable-rate transactions,
 - a. The phrase “Adjustable-Rate Mortgage,” “Variable-Rate Mortgage,” or “ARM” appears in the advertisement before the first use of the word “fixed” and is at least as conspicuous as any use of the word “fixed” in the advertisement; and
 - b. Each use of the word “fixed” to refer to a rate or payment is accompanied by an equally prominent and closely proximate statement of the time period for which the rate or payment is fixed, and the fact that the rate may vary or the payment may increase after that period;
2. In the case of an advertisement solely for non-variable-rate transactions where the payment will increase (*e.g.* , a stepped-rate mortgage transaction with an initial lower payment), each use of the word “fixed” to refer to the payment is accompanied by an equally prominent and closely proximate statement of the time period for which the payment is fixed, and the fact that the payment will increase after that period; or
3. In the case of an advertisement for both variable-rate transactions and non-variable-rate transactions,
 - a. The phrase “Adjustable-Rate Mortgage,” “Variable-Rate Mortgage,” or “ARM” appears in the advertisement with equal prominence as any use of the term “fixed,” “Fixed-Rate Mortgage,” or similar terms; and
 - b. Each use of the word “fixed” to refer to a rate, payment, or the credit transaction either refers solely to the transactions for which rates are fixed and complies with 209 CMR 32.24(9)(a)2., if applicable, or, if it refers to the variable-rate transactions, is accompanied by an equally prominent and closely proximate statement of the time period for which the rate or payment is fixed, and the fact that the rate may vary or the payment may increase after that period.

32.24: continued

(b) Misleading comparisons in advertisements. Making any comparison in an advertisement between actual or hypothetical credit payments or rates and any payment or simple annual rate that will be available under the advertised product for a period less than the full term of the loan, unless:

1. In general. The advertisement includes a clear and conspicuous comparison to the information required to be disclosed under sections CMR 32.24(6)(b) and (c); and
2. Application to variable-rate transactions. If the advertisement is for a variable-rate transaction, and the advertised payment or simple annual rate is based on the index and margin that will be used to make subsequent rate or payment adjustments over the term of the loan, the advertisement includes an equally prominent statement in close proximity to the payment or rate that the payment or rate is subject to adjustment and the time period when the first adjustment will occur.

(c) Misrepresentations about government endorsement. Making any statement in an advertisement that the product offered is a “government loan program”, “government-supported loan”, or is otherwise endorsed or sponsored by any federal, state, or local government entity, unless the advertisement is for an FHA loan, VA loan, or similar loan program that is, in fact, endorsed or sponsored by a federal, state, or local government entity.

(d) Misleading use of the current lender's name. Using the name of the consumer's current lender in an advertisement that is not sent by or on behalf of the consumer's current lender, unless the advertisement:

1. Discloses with equal prominence the name of the person or creditor making the advertisement; and
2. Includes a clear and conspicuous statement that the person making the advertisement is not associated with, or acting on behalf of, the consumer's current lender.

(e) Misleading claims of debt elimination. Making any misleading claim in an advertisement that the mortgage product offered will eliminate debt or result in a waiver or forgiveness of a consumer's existing loan terms with, or obligations to, another creditor.

(f) Misleading use of the term “counselor”. Using the term “counselor” in an advertisement to refer to a for-profit mortgage broker or mortgage creditor, its employees, or persons working for the broker or creditor that are involved in offering, originating or selling mortgages.

(g) Misleading foreign-language advertisements. Providing information about some trigger terms or required disclosures, such as an initial rate or payment, only in a foreign language in an advertisement, but providing information about other trigger terms or required disclosures, such as information about the fully-indexed rate or fully amortizing payment, only in English in the same advertisement.

32.25: Record Retention

(1) General Rule. A creditor shall retain evidence of compliance with 209 CMR 32.00 (other than advertising requirements under 209 CMR 32.16 and 32.24) for two years after the date disclosures are required to be made or action is required to be taken. The Commissioner may require creditors to retain records for a longer period if necessary to carry out its enforcement responsibilities.

(2) Inspection of Records. A creditor shall permit the Commissioner or the Commissioner's duly authorized representative to inspect its relevant records for compliance.

32.26: Use of Annual Percentage Rate in Oral Disclosures

(1) Open-end Credit. In an oral response to a consumer's inquiry about the cost of open-end credit, only the annual percentage rate or rates shall be stated, except that the periodic rate or rates also may be stated. If the annual percentage rate cannot be determined in advance because there are finance charges other than a periodic rate, the corresponding annual percentage rate shall be stated, and other cost information may be given.

(2) Closed-end Credit. In an oral response to a consumer's inquiry about the cost of closed-end credit, only the annual percentage rate shall be stated, except that a simple annual rate or periodic rate also may be stated if it is applied to an unpaid balance. If the annual percentage rate cannot be determined in advance, the annual percentage rate for a sample transaction shall be stated, and other cost information for the consumer's specific transaction may be given.

32.27: Staff Interpretations

The office of the Commissioner will endeavor to maintain a current compilation of 209 CMR 32.00 and of official Board or staff interpretations. Compliance with any provisions of the Federal Truth in Lending Act, the Board's Regulation Z, and the Official Staff Commentary, which does not conflict with M.G.L. c. 140D, 209 CMR 32.00 or an advisory ruling of the Commissioner, shall be deemed to be in compliance with M.G.L. c. 140D.

32.28: Appendices

Appendices of Regulation Z, are incorporated herein by reference as follows:

- (1) Appendix D
- (2) Appendix E
- (3) Appendix F
- (4) Appendix G
- (5) Appendix H
- (6) Appendix J
- (7) Appendix K
- (8) Appendix L
- (9) Appendix M

Sectional references are changed to coincide with sectional references of 209 CMR 32.00.

32.29: Compliance

Any person who complies with the provisions of M.G.L. c. 140C and Regulations promulgated thereunder in effect prior to the effective date of M.G.L. c. 140D and 209 CMR 32.00 shall be deemed to be in compliance with M.G.L. c. 140D and Regulations promulgated thereunder until October 1, 1982.

32.30: Limitations on Rates

A Creditor shall include in any consumer credit contract secured by a dwelling and subject to M.G.L. c. 140D and 209 CMR 32.00, the maximum interest rate that may be imposed during the term of the obligation⁵⁰ when:

- (1) in the case of closed-end credit, the annual percentage rate may increase after consummation, or
- (2) in the case of open-end credit, the annual percentage rate may increase during the plan.

32.31: Special Rules for Certain Home Mortgage Transactions

(1) Relation to other sections of 209 CMR 32.00. The requirements and limitations of 209 CMR 32.31 are in addition to and not in lieu of those contained in other sections of 209 CMR 32.00.

(2) Form of disclosures. The creditor shall make the disclosures required by 209 CMR 32.31 clearly and conspicuously in writing, in a form that the consumer may keep. The disclosures required by 209 CMR 32.31 may be provided to the consumer in electronic form, subject to compliance with the consumer consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. §7001 *et seq.*).

(3) Timing of disclosure.

(a) Disclosures for certain closed-end home mortgages. The creditor shall furnish the disclosures required by 209 CMR 32.32 at least three business days prior to consummation of a mortgage transaction covered by 209 CMR 32.32.

1. Change in terms. After complying with 209 CMR 32.31(3)(a) and prior to consummation, if the creditor changes any term that makes the disclosures inaccurate, new disclosures shall be provided in accordance with the requirements of 209 CMR 32.31(3)(a).
2. Telephone disclosures. A creditor may provide new disclosures by telephone if the consumer initiates the change and if, at consummation:
 - a. The creditor provides new written disclosures; and
 - b. The consumer and creditor sign a statement that the new disclosures were provided by telephone at least three days prior to consummation.

⁵⁰

Compliance with 209 CMR 32.30 will constitute compliance with the disclosure requirements on limitations on increases of footnote 12 to 209 CMR 32.06(1)(b) and 209 CMR 32.18(6)(b) until October 1, 1988.

3. Consumer's waiver of waiting period before consummation. The consumer may, after receiving the disclosures required by 209 CMR 32.31(3)(a), modify or waive the three-day waiting period between delivery of those disclosures and consummation if the consumer determines that the extension of credit is needed to meet a bona fide personal financial emergency. To modify or waive the right, the consumer shall give the creditor a dated written statement that describes the emergency, specifically modifies or waives the waiting period, and bears the signature of all the consumers entitled to the waiting period. Printed forms for this purpose are prohibited, except when creditors are permitted to use printed forms pursuant to 209 CMR 32.23(5)(b).
- (b) Disclosures for reverse mortgages. The creditor shall furnish the disclosures required by 209 CMR 32.33 at least three business days prior to:
 1. Consummation of closed-end credit transaction; or
 2. The first transaction under an open-end credit plan.
- (4) Basis of disclosures and use of estimates.
 - (a) Legal Obligation. Disclosures shall reflect the terms of the legal obligation between the parties.
 - (b) Estimates. If any information necessary for accurate disclosure is unknown to the creditor, the creditor shall make the disclosure based on the best information reasonably available at the time the disclosure is provided and shall state clearly that the disclosure is an estimate.
 - (c) Per-Diem interest. For a transaction in which a portion of the interest is determined on a per diem basis and collected at consummation, any disclosure affected by the per diem interest shall be considered accurate if the disclosure is based on the information known to the creditor at the time that the disclosure documents are prepared.
- (5) Multiple Creditors; Multiple Consumers. If a transaction involves more than one creditor, only one set of disclosures shall be given and the creditors shall agree among themselves which creditor must comply with the requirements that 209 CMR 32.31 imposes on any or all of them. If there is more than one consumer, the disclosures may be made to any consumer who is primarily liable on the obligation. If the transaction is rescindable under 209 CMR 32.15 or 209 CMR 32.23, however, the disclosures shall be made to each consumer who has the right to rescind.
- (6) Effect of Subsequent Events. If a disclosure becomes inaccurate because of an event that occurs after the creditor delivers the required disclosures, the inaccuracy is not a violation of 209 CMR 32.00, although new disclosures may be required for mortgages covered by 209 CMR 32.32 under 209 CMR 32.31(3), 209 CMR 32.09(3), 209 CMR 32.19, or 209 CMR 32.20.
- (7) Accuracy of Annual Percentage Rate. For purposes of 209 CMR 32.32, the annual percentage rate shall be considered accurate, and may be used in determining whether a transaction is covered by 209 CMR 32.32, if it is accurate according to the requirements and within the tolerances set forth in 209 CMR 32.22. The finance charge tolerances for rescission under 209 CMR 32.23(7) or (8) shall not apply for this purpose.

32.32: Requirements for Certain Home Mortgages

(1) Coverage.

(a) Except as provided in 209 CMR 32.32(1)(b), the requirements of 209 CMR 32.32 apply to a consumer credit transaction that is secured by the consumer's principal dwelling, and in which either:

1. a. The annual percentage rate at consummation will exceed by more than eight percentage points for first-lien loans, or by more than nine percentage points for subordinate-lien loans, the yield on Treasury securities having comparable periods of maturity to the loan maturity as of the 15th day of the month immediately preceding the month in which the application for the extension of credit is received by the creditor;
- b. When calculating the annual percentage rate for adjustable rate loans, the creditor shall use the interest rate that would be effective once the introductory rate has expired; or
2. Excluding either a conventional prepayment penalty or up to 2 bona fide discount points, the total points and fees payable by the consumer at or before loan closing will exceed the greater of 5% of the total loan amount, or \$400; the \$400 figure shall be adjusted annually on January 1 by the annual percentage change in the Consumer Price Index that was reported on the preceding June 1st

(b) 209 CMR 32.32 does not apply to the following:

1. a reverse-mortgage transaction subject to 209 CMR 32.33.
2. an unsecured open-end credit plan subject to 209 CMR 32.00.

(2) Definitions. For purposes of 209 CMR 32.32, the following definitions apply:

(a) For purposes of 209 CMR 32.32(1)(a)2., Points and Fees means:

1. For closed-end loans:

- a. all items required to be disclosed under 209 CMR 32.04(1) and 32.04(2), except interest or the time-price differential;
- b. charges for all items listed in 209 CMR 32.04(3)(g) (other than amounts held for future payment of taxes) unless the charge is reasonable, the creditor receives no direct or indirect compensation in connection with the charge, and the charge is not paid to an affiliate of the creditor;
- c. the maximum prepayment fees and penalties that may be charged or collected under the terms of the loan documents;
- d. all prepayment fees or penalties that are incurred by the borrower if the loan refinances a previous loan made or currently held by the same creditor;
- e. all compensation paid directly or indirectly to a mortgage broker, not otherwise included in 209 CMR 32.32(2)(a): Points and Fees 1.a. and b.; and
- f. the cost of all premiums financed by the creditor, directly or indirectly for any credit life, credit disability, credit unemployment or credit property insurance, or any other life or health insurance, or any payments financed by the creditor directly or indirectly for any debt cancellation or suspension agreement or contract, except that insurance premiums or debt cancellation or suspension fees calculated and paid on a monthly basis shall not be considered financed by the creditor.

¹As of January 1, 2009, the adjusted figure was \$583; as of January 1, 2010, the adjusted figure will be \$579.

g. Points and fees shall not include the following:

- i. taxes, filing fees, recording and other charges and fees paid to or to be paid to a public official for determining the existence of or for perfecting, releasing or satisfying a security interest; and,
- ii. fees paid to a person other than a lender or to the mortgage broker for the following: fees for flood certification; fees for pest infestation; fees for flood determination; appraisal fees; fees for inspections performed before closing; credit reports; surveys; notary fees; escrow charges so long as not otherwise included under 209 CMR 32.32(2)(a): Points and Fees 1.a.; title insurance premiums; and fire insurance and flood insurance premiums, including homeowner insurance premiums, if the conditions in 209 CMR 32.04(4)(b), as amended from time to time, are met.

2. For open-end loans, the points and fees shall be calculated by adding the total points and fees included within 209 CMR 32.32(2)(a): Points and Fees 1., plus the minimum additional fees the borrower would be required to pay to draw down an amount equal to the total credit line.

(b) Affiliate means any company that controls, is controlled by, or is under common control with another company. Control shall mean ownership of 10% or more of any class of outstanding capital stock of the company or the power to direct or cause the direction of the management and policies of the company.

(c) Benchmark Rate, means the interest rate which the borrower can reduce by paying *bona fide* discount points; this rate shall not exceed the weekly average yield of United States Treasury securities having a maturity of 5 years, on the fifteenth day of the month immediately preceding the month in which the loan was made, plus 4 percentage points.

(d) Bona Fide Loan Discount Points means loan discount points which are:

1. knowingly paid by the borrower;
2. paid for the express purpose of lowering the benchmark rate; and
3. in fact reducing the interest rate or time-price differential applicable to the loan from an interest rate which does not exceed the benchmark rate.

(e) Broker, means any person who for compensation directly or indirectly solicits, processes, places or negotiates home mortgage loans for others or who closes home mortgage loans which may be in the person's own name with the funds provided by others and which loans are thereafter assigned to the person providing the funding of the loans; provided, that broker shall not include a person who is an attorney providing legal services in association with the closing of a home mortgage loan who is not also funding the home loan and is not an affiliate of the lender.

(f) Conventional Mortgage Rate means the most recently published annual yield on conventional mortgages published by the Board of Governors of the Federal Reserve System, as published in statistical release H.15 or any publication that may supersede it, as of the applicable time set forth in 209 CMR 32.32(1)(a)1.

(g) For purposes of 209 CMR 32.32(1)(a)2, Conventional Prepayment Penalty, means any prepayment penalty or fee that may be collected or charged in a home loan, and that is authorized by law provided the home loan:

1. does not have an annual percentage rate that exceeds the conventional mortgage rate by more than 2 percentage points, and
2. does not permit any prepayment fees or penalties that exceed 2 per cent of the amount prepaid.

32.32: continued

(h) Creditor means any person who meets the definition under 209 CMR 32.02(1): Creditor, as well as any entity that originated 5 or more home mortgage loans within the past 12 month period or acted as an intermediary between originators and borrowers on 5 or more home mortgage loans within the past 12 month period, provided that creditor shall not include a person who is an attorney providing legal services in association with the closing of a home loan who is not also funding the home loan and is not an affiliate of the creditor. For purposes of 209 CMR 32.32, creditor shall include broker.

(i) High Cost Home Loan means any transaction covered under 209 CMR 32.32(1).

(j) Obligor, means a borrower, co-borrower, cosigner, or guarantor obligated to repay a home mortgage loan.

(k) Scheduled Monthly Payments means minimum sums required to be paid with respect to all of the borrower's debts that are reported on any loan application completed by the borrower and a nationally recognized consumer credit bureau report and the monthly mortgage payment due under the high cost home loan (ignoring any reduction arising from a lower introductory rate) plus 1/12 of the annualized cost of real estate tax and insurance premium payments during the immediately preceding twelve months. Scheduled monthly payments shall not include any debts that are consolidated with or paid off by the high cost home loan.

(l) Total loan amount, means the total amount the consumer will borrow, as reflected by the face amount of the note.

(3) Disclosures. In addition to other disclosures required by 209 CMR 32.00, in a mortgage subject to 209 CMR 32.32 the creditor, other than a broker, shall disclose the following in conspicuous type size:

(a) Notices. The following 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."

(b) Annual Percentage Rate. The annual percentage rate calculated in accordance with 209 CMR 32.14 or 209 CMR 32.22, as applicable.

(c) Regular Payment; Balloon Payment. The amount of the regular monthly (or other periodic) payment and the amount of any balloon payment. The regular payment disclosed under 209 CMR 32.32(3)(c) shall be treated as accurate if it is based on an amount borrowed that is deemed accurate and is disclosed under 209 CMR 32.32(3)(e).

(d) Variable Rate. For variable-rate transactions, a statement that the interest rate and monthly payment may increase, and the amount of the single maximum monthly payment, based on the maximum interest rate required to be disclosed under 209 CMR 32.30.

(e) Amount Borrowed. For a mortgage refinancing, the total amount the consumer will borrow, 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 disclosure of the amount borrowed. The disclosure of the amount borrowed shall be treated as accurate if it is not more than \$100 above or below the amount required to be disclosed.

(f) Application.

1. The following statement must appear in at least 12 point type directly above the borrower's signature line on the application: "The loan which will be offered to you is not necessarily the least expensive loan available to you and you are advised to shop around to determine competitive interest rates, points, and other fees and charges." In the event that the creditor does not know whether the borrower's application is a high cost home loan application, such disclosure must be made as soon as the creditor determines that it is a high cost home loan application, but in any event, no later than 24 hours after such determination is made.

2. At or prior to taking an application, a creditor must also deliver, place in the mail, fax or electronically transmit to the borrower a statement in substantially the following form: "Although your aggregate monthly debt payment may decrease, the high cost home loan may increase both

a. your aggregate number of monthly debt payments and

b. the aggregate amount paid by you over the term of the high cost home loan if such are likely the case.

The disclosure in 209 CMR 32.32(3)(f) may be combined with disclosures required under M.G.L. c. 184, § 17D. In the event that the creditor does not know whether the borrower's application is a high cost home loan application, such disclosure must be made as soon as the creditor determines that it is a high cost home loan application, but in any event, no later than 24 hours after such determination is made.

(4) Limitations. A mortgage transaction subject to 209 CMR 32.32 shall not include the following terms:

(a) 1. Balloon Payment. A scheduled payment that is more than twice as large as the average of earlier scheduled payments.

2. Exception. The limitations in 209 CMR 32.32(4)(a)1. do not apply when the payment schedule is adjusted to the seasonal or irregular income of the borrower.

(b) Negative Amortization. A payment schedule with regular periodic payments that cause the principal balance to increase.

(c) Advance Payments. A payment schedule that consolidates more than two periodic payments and pays them in advance from the proceeds.

(d) Increased Interest Rate. An increase in the interest rate after default. This shall not apply to interest rate changes in a variable rate loan otherwise consistent with the home loan documents provided that the change in the interest rate is not triggered by the event of default or the acceleration of indebtedness.

(e) Rebates. A refund calculated by a method less favorable than the actuarial method (as defined by section 933(d) of the Housing and Community Development Act of 1992, 15 USC 1615(d)), for rebates of interest arising from a loan acceleration due to default.

(f) Prepayment Penalties. A penalty for paying all or part of the principal before the date on which the principal is due. A prepayment penalty includes computing a refund of unearned interest by a method that is less favorable to the consumer than the actuarial method, as defined by section 933(d) of the Housing and Community Development Act of 1992, 15 U.S.C. 1615(d).)

32.32: continued

(g) Due-on-demand Clause. A demand feature that permits the creditor to terminate the loan in advance of the original maturity date and to demand repayment of the entire outstanding balance, except in the following circumstances:

1. There is fraud or material misrepresentation by the consumer in connection with the loan that is not induced by the creditor, its employees, or agents;
2. The consumer fails to meet the repayment terms of the agreement for any outstanding balance and after the consumer has been contacted in writing and afforded a reasonable opportunity to meet the outstanding balance as outlined within the repayment terms of the agreement; or
3. There is any *bona fide* action or inaction by the consumer that adversely and materially affects the creditor's security for the loan, or any right of the creditor in such security as provided in the loan agreement.

32.33: Requirements for Reverse Mortgages

(1) Definitions. For purposes of 209 CMR 32.33, reverse mortgage transaction means a nonrecourse consumer credit obligation in which:

- (a) A mortgage, deed of trust, or equivalent consensual security interest securing one or more advances is created in the consumer's principal dwelling; and
- (b) Any principal, interest, or shared appreciation or equity is due and payable (other than in the case of default) only after:
 1. The consumer dies;
 2. The dwelling is transferred; or
 3. The consumer ceases to occupy the dwelling as a principal dwelling.

(2) Content of Disclosures. In addition to other disclosures required by 209 CMR 32.31, in a reverse mortgage transaction the creditor shall provide the following disclosures in a form substantially similar to the model form found in paragraph (d) of Appendix K of Regulation Z:

- (a) Notice. A statement that the consumer is not obligated to complete the reverse mortgage transaction merely because the consumer has received the disclosures required by 209 CMR 32.33 or has signed an application for a reverse mortgage loan.
- (b) Total-annual-loan-cost-rates. A good-faith projection of the total cost of the credit, determined in accordance with 209 CMR 32.33(3) and expressed as a table of "total-annual-loan-cost rates", using that term, in accordance with Appendix K of Regulation Z.
- (c) Itemization of Pertinent Information. An itemization of loan terms, charges, the age of the youngest borrower and the appraised property value.
- (d) Explanation of Table. An explanation of the table of total annual loan cost rates as provided in the model form found in paragraph (d) of Appendix K of this part.

(3) Projected Total Cost of Credit. The projected total cost of credit shall reflect the following factors, as applicable:

- (a) Costs to Consumer. All costs and charges to the consumer, including the costs of any annuity the consumer purchases as part of the reverse mortgage transaction.
- (b) Payments to Consumer. All advances to and for the benefit of the consumer, including annuity payments that the consumer will receive from an annuity that the consumer purchases as part of the reverse mortgage transaction.
- (c) Additional Creditor Compensation. Any shared appreciation or equity in the dwelling that the creditor is entitled by contract to receive.

32.33: continued

- (d) Limitations on Consumer Liability. Any limitation on the consumer's liability (such as nonrecourse limits and equity conservation agreements).
- (e) Assumed Annual Appreciation Rates. Each of the following assumed annual appreciation rates for the dwelling:
 - a. 0%.
 - b. 4%.
 - c. 8%.
- (f) Assumed Loan Period. Each of the following assumed loan periods, as provided in Appendix L of Regulation Z.
 - 1. Two years
 - 2. 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).
 - 3. The actuarial life expectancy specified by 209 CMR 32.33(3)(f)2., multiplied by a factor of 1.4 and rounded to the nearest full year.
 - 4. At the creditor's option, the actuarial life expectancy specified by 209 CMR 32.33(3)(f)2., multiplied by a factor of .5 and rounded to the nearest full year.

32.34: Prohibited Acts and Practices in Connection with Credit Secured by a Consumer's Dwelling

- (1) Prohibited Acts and Practices for Loans Subject to 209 CMR 32.32. A creditor extending mortgage credit subject to 209 CMR 32.32 shall not:
 - (a) Home-improvement Contracts. Pay a contractor under a home-improvement contract from the proceeds of a mortgage covered by 209 CMR 32.32, other than:
 - 1. by an instrument payable to the consumer or jointly to the consumer and the contractor; or
 - 2. 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.
 - (b) Notice to Assignee.
 - 1. Sell or otherwise assign a mortgage subject to 209 CMR 32.32 without furnishing the following statement to the purchaser or assignee: "Notice: This is a mortgage subject to special rules under the Massachusetts 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."
 - 2. A person who purchases or is otherwise assigned to a high cost home loan shall not be subject to all affirmative claims and any defenses with respect to the loan that the borrower could assert against the original lender or broker of the loan, provided that the purchaser or assignee demonstrates by a preponderance of the evidence that it:
 - a. has in place at the time of the purchase or assignment of the subject loans, policies that expressly prohibit its purchase or acceptance of assignment of any high cost home loans;
 - b. requires by contract that a seller or assignor of home loans to the purchaser or assignee represents and warrants to the purchaser or assignee that either (i) the seller or assignor will not sell or assign any high cost home loans to the purchaser or assignee or (ii) that the seller or assignor is a beneficiary of a representation and warranty from a previous seller or assignor to that effect; and

c. exercises reasonable due diligence at the time of purchase or assignment of home loans or within a reasonable period of time after the purchase or assignment of the home loans, intended by the purchaser or assignee to prevent the purchaser or assignee from purchasing or taking assignment of any high cost home loans; provided, however, that reasonable due diligence shall provide for sampling and shall not require loan by loan review. If a sampling of the loans purchased or assigned discloses high cost home loans, the purchaser or assignee must conduct a subsequent compliance review to determine whether there are other high cost home loans in the group of home loans purchased or assigned. If high cost home loans are detected within the sample, the purchaser or assignee must take corrective action with all loans identified.

(c) *Refinancings within one-year period.* Within one year of having extended credit subject to 32.32, refinance any loan subject to 32.32 to the same borrower into another loan subject to 32.32, unless the refinancing is in the borrower's interest. An assignee holding or servicing an extension of mortgage credit subject to 32.32, shall not, for the remainder of the one-year period following the date of origination of the credit, refinance any loan subject to 32.32 to the same borrower into another loan subject to 32.32, 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.

(d) Repayment Ability. Make a high cost home loan unless the creditor reasonably believes at the time the loan is consummated that the obligor or the obligors (when considered collectively in the case of multiple obligors) will be able to make the scheduled payments to repay the obligation based upon a consideration of their current and expected income, current obligations, employment status, and other financial resources (other than the borrower's equity in the dwelling which secures repayment of the loan). An obligor shall be presumed to be able to make the scheduled payments to repay the obligation, if, at the time the loan is consummated, or at the time of the first rate adjustment in the case of a lower introductory interest rate, the obligor's scheduled monthly payments, including principal, interest, taxes, insurance, and assessments, combined with the scheduled payments for all other debt, do not exceed 50% of the obligor's documented and verified monthly gross income, if the borrower has sufficient residual income as defined in the guidelines established in 38 CFR 36.4337(e) and VA form 26-6393 to pay essential monthly expenses after paying the scheduled monthly payments and any additional debt.

(e) Counseling Disclosure and List of Counselors. Make a high-cost home mortgage without first receiving certification from a counselor with a third-party nonprofit organization approved by the United States Department of Housing and Urban Development, a housing financing agency of the Commonwealth, the Division of Banks, or the regulatory agency which has jurisdiction over the lender, that the borrower has received counseling on the advisability of the loan transaction. Counseling shall be allowed in whole or in part by telephonic means. At or before closing a high cost home loan, the creditor shall obtain evidence that the borrower has completed an approved counseling program.

(2) Unfair High Cost Home Loan Practices. It is an unfair act or practice for a creditor to engage in any of the following for any transaction subject to 209 CMR 32.32:

(a) Financing of Points, Fees or Charges. Requiring a borrower to directly or indirectly finance any portion of the points and/or fees nor, in any case, directly or indirectly finance points and fees payable to the creditor or charges payable to third parties (other than appraisal fees, credit report fees, mortgage recording tax, fire and miscellaneous property insurance, voluntary credit, disability, unemployment and/or life insurance, title report and title insurance charges), in an amount that exceeds 5% of the total loan amount or \$800, whichever is greater;

(b) Packing high cost home loans; that is, the practice of selling credit life, accident and health, disability or unemployment insurance products or unrelated goods or services in conjunction with a high cost home loan without the informed consent of the borrower under circumstances where:

1. the creditor solicits the sale of such insurance, goods or services;
2. the creditor receives direct or indirect compensation for the sale of such insurance, goods or services; and
3. the charges for such insurance, goods or services are prepaid with the proceeds of the loan and financed as part of the principal amount of the loan.

Provided, however, it shall not constitute the practice of "packing" if the creditor, at least three business days before the loan is closed, makes a separate oral and a separate clear and conspicuous written disclosure in at least 12 point type to the borrower containing the following information; the cost of the credit insurance or other goods and services; the fact that the insurance, goods, or services will be prepaid and financed at the interest rate provided for in the loan; and that the purchase of such insurance, goods or services is not required to obtain the mortgage loan; provided further, that insurance premiums shall not be considered financed as part of the loan transaction if insurance premiums are calculated, earned and paid on a monthly or other regular, periodic basis.

In addition, the written disclosure shall contain a signed and dated acknowledgment by the obligor(s) that the oral disclosure was made and a signed and dated acknowledgment by the creditor that the oral disclosure was made. In addition to the disclosures required under 209 CMR 32.34(2)(b), a creditor shall comply with the requirements of 209 CMR 52.02(1) and (3) as well as 209 CMR 52.03 for credit life insurance or credit accident and health insurance.

(c) Recommending or Encouraging Default or further default by a borrower on an existing loan or other debt, prior to the closing of a high cost home loan that refinances all or any portion of such existing loan or debt.

(d) Advertising. Advertising that refinancing pre-existing debt with a high cost home loan will reduce a borrower's aggregate monthly debt payment without also disclosing, if such are likely the case, that the high cost home loan will increase both

1. a borrower's aggregate number of monthly debt payments and
2. the aggregate amount paid by a borrower over the term of the high cost mortgage loan.

(e) Unconscionable Rates and Terms.

1. Making a high cost home loan with rates or fees that violate 940 CMR 8.06, if applicable, or otherwise charge interest rates or fees in a high cost loan transaction that significantly deviate from industry standards or that are otherwise unconscionable.

2. It shall be the creditor's burden to demonstrate that interest rates or fees charged are based upon generally accepted credit worthiness, sound underwriting and other risk related standards or otherwise conform to 209 CMR 32.34(2)(e)1.

32.34: continued

(f) Unreasonable Charges. Making high cost home loans in which the creditor charges and retains fees paid by the borrower

1. for services that are not actually performed, or
2. for which the fees bear no reasonable relationship to the value of the services actually performed, or
3. which are otherwise unconscionable.

(g) Oppressive Mandatory Arbitration Clause or Waiver of Participation in Class Action Suits. Requiring a borrower, without regard to whether a borrower is acting individually or on behalf of others similarly situated, to assert any claim or defense in a forum that is less convenient, more costly, or more dilatory for the resolution of a dispute than a judicial forum established in the Commonwealth where the borrower may otherwise properly bring a claim or defense or limits in any way any claim or defense the borrower may have.

(h) Failure to Report for Credit Histories. Failing to report both the favorable and unfavorable payment history of the borrower to a nationally recognized consumer credit bureau at least annually if the creditor regularly reports information to a credit bureau.

(i) Single-premium Credit Insurance. Notwithstanding the provisions of 209 CMR 32.34(2)(b), making a high cost home loan which contains single-premium credit insurance, including credit life, debt cancellation, and debt suspension.

(j) Modification or Deferral Fees. Making a high cost home loan with any fees to modify, renew, extend, or amend a high cost home loan or defer any payment due under a high cost home loan.

32.35 Prohibited Acts or Practices in Connection with Higher-Priced Mortgage Loans.

(1) Higher-priced mortgage loans

(a) For purposes 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.

(b) "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.

(c) Notwithstanding 209 CMR 32.35(1)(a), 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 209 CMR 32.33, or a home equity line of credit subject to 209 CMR 32.05B.

32.35: (continued)

(2) Rules for higher-priced mortgage loans. Higher-priced mortgage loans are subject to the following restrictions:

(a) Repayment ability. A creditor shall not extend credit based on the value of the consumer's collateral without regard to the consumer's repayment ability as of consummation as provided in 209 CMR 32.34(1)(c)

(b) Prepayment penalties. A loan may not include a penalty described by 209 CMR 32.32(4)(f) unless:

1. The penalty is otherwise permitted by law; and

2. Under the terms of the loan—

a. The penalty will not apply after the two-year period following consummation;

b. The penalty will not apply if the source of the prepayment funds is a refinancing by the creditor or an affiliate of the creditor; and

c. The amount of the periodic payment of principal or interest or both may not change during the four-year period following consummation.

(c) Escrows

1. Failure to escrow for property taxes and insurance. Except as provided in 209 CMR 32.35(2)(c)2., a creditor may not extend a loan secured by a first lien on a principal dwelling unless an escrow account is established before consummation for payment of property taxes and premiums for mortgage-related insurance required by the creditor, such as insurance against loss of or damage to property, or against liability arising out of the ownership or use of the property, or insurance protecting the creditor against the consumer's default or other credit loss.

2. Exemptions for loans secured by shares in a cooperative and for certain condominium units

a. Escrow accounts need not be established for loans secured by shares in a cooperative; and

b. Insurance premiums described in 209 CMR 32.35(2)(c)1. need not be included in escrow accounts for loans secured by condominium units, where the condominium association has an obligation to the condominium unit owners to maintain a master policy insuring condominium units.

3. Cancellation. A creditor or servicer may permit a consumer to cancel the escrow account required in 209 CMR 32.35(2)(c)1. only in response to a consumer's dated written request to cancel the escrow account that is received no earlier than 365 days after consummation.

4. Definition of escrow account. For purposes of this section, "escrow account" shall have the same meaning as in 24 CFR 3500.17(b) as amended.

(d) Evasion; open-end credit. In connection with credit secured by a consumer's principal dwelling that does not meet the definition of open-end credit in 32.02, a creditor shall not structure a home-secured loan as an open-end plan to evade the requirements of this section.

32.36: Prohibited Acts or Practices in Connection with Credit Secured by a Consumer's Principal Dwelling.

(1) Mortgage broker defined. For purposes of this section, the term “mortgage broker” means a person, other than an employee of a creditor, who for compensation or other monetary gain, or in expectation of compensation or other monetary gain, arranges, negotiates, or otherwise obtains an extension of consumer credit for another person. The term includes a person meeting this definition, even if the consumer credit obligation is initially payable to such person, unless the person provides the funds for the transaction at consummation out of the person's own resources, out of deposits held by the person, or by drawing on a bona fide warehouse line of credit.

(2) Misrepresentation of value of consumer's dwelling

(a) Coercion of appraiser. In connection with a consumer credit transaction secured by a consumer's principal dwelling, no creditor or mortgage broker, and no affiliate of a creditor or mortgage broker shall directly or indirectly coerce, influence, or otherwise encourage an appraiser to misstate or misrepresent the value of such dwelling.

1. Examples of actions that violate this 209 CMR 32.36(2)(a) include:

- a. Implying to an appraiser that current or future retention of the appraiser depends on the amount at which the appraiser values a consumer's principal dwelling;
- b. Excluding an appraiser from consideration for future engagement because the appraiser reports a value of a consumer's principal dwelling that does not meet or exceed a minimum threshold;
- c. Telling an appraiser a minimum reported value of a consumer's principal dwelling that is needed to approve the loan;
- d. Failing to compensate an appraiser because the appraiser does not value a consumer's principal dwelling at or above a certain amount; and
- e. Conditioning an appraiser's compensation on loan consummation.

2. Examples of actions that do not violate this 209 CMR 32.36(2)(a) include:

- a. Asking an appraiser to consider additional information about a consumer's principal dwelling or about comparable properties;
- b. Requesting that an appraiser provide additional information about the basis for a valuation;
- c. Requesting that an appraiser correct factual errors in a valuation;
- d. Obtaining multiple appraisals of a consumer's principal dwelling, so long as the creditor adheres to a policy of selecting the most reliable appraisal, rather than the appraisal that states the highest value;
- e. Withholding compensation from an appraiser for breach of contract or substandard performance of services as provided by contract; and
- f. Taking action permitted or required by applicable federal or state statute, regulation, or agency guidance.

(b) When extension of credit prohibited. In connection with a consumer credit transaction secured by a consumer's principal dwelling, a creditor who knows, at or before loan consummation, of a violation of 209 CMR 32.36(2)(a) in connection with an appraisal shall not extend credit based on such appraisal unless the creditor documents that it has acted with reasonable diligence to determine that the appraisal does not materially misstate or misrepresent the value of such dwelling.

(c) Appraiser defined. As used in this 209 CMR 32.36(2), an appraiser is a person who engages in the business of providing assessments of the value of dwellings. The term “appraiser” includes persons that employ, refer, or manage appraisers and affiliates of such persons.

32.36: (continued)

(3) Servicing practices.

(a) In connection with a consumer credit transaction secured by a consumer's principal dwelling, no servicer shall—

1. Fail to credit a payment to the consumer's loan account as of the date of receipt, except when a delay in crediting does not result in any charge to the consumer or in the reporting of negative information to a consumer reporting agency, or except as provided in 209 CMR 32.36(3)(b);

2. Impose on the consumer any late fee or delinquency charge in connection with a payment, when the only delinquency is attributable to late fees or delinquency charges assessed on an earlier payment, and the payment is otherwise a full payment for the applicable period and is paid on its due date or within any applicable grace period; or

3. Fail to provide, within a reasonable time after receiving a request from the consumer or any person acting on behalf of the consumer, an accurate statement of the total outstanding balance that would be required to satisfy the consumer's obligation in full as of a specified date.

(b) If a servicer specifies in writing requirements for the consumer to follow in making payments, but accepts a payment that does not conform to the requirements, the servicer shall credit the payment as of 5 days after receipt.

(c) For purposes of this 209 CMR 32.36(3), the terms “servicer” and “servicing” have the same meanings as provided in 24 CFR 3500.2(b), as amended.

(4) This section does not apply to a home equity line of credit subject to 209 CMR 32.05B.

209 CMR 32.37 through 32.45 are reserved.

32.46: Special disclosure requirements for private education loans.

(1) Coverage. The requirements of 209 CMR 32.46 through 32.48 apply to private education loans as defined in 209 CMR 32.46(2)(e). A creditor may, at its option, comply with the requirements of 209 CMR 32.46 through 32.48 for an extension of credit subject to 209 CMR 32.17 and 32.18 that is extended to a consumer for expenses incurred after graduation from a law, medical, dental, veterinary, or other graduate school and related to relocation, study for a bar or other examination, participation in an internship or residency program, or similar purposes.

(a) Relation to other subparts in this part. Except as otherwise specifically provided, the requirements and limitations of 209 CMR 32.46 through 32.48 are in addition to and not in lieu of those contained in other subparts of this Part.

(2) Definitions. For purposes of 209 CMR 32.46 through 32.48, the following definitions apply:

(a) Covered educational institution means:

1. An educational institution that meets the definition of an institution of higher education, as defined in 209 CMR 32.46(2)(b), without regard to the institution's accreditation status; and

2. Includes an agent, officer, or employee of the institution of higher education. An agent means an institution-affiliated organization as defined by section 151 of the Higher Education Act of 1965 (20 U.S.C. 1019) or an officer or employee of an institution-affiliated organization.

(b) Institution of higher education has the same meaning as in sections 101 and 102 of the Higher Education Act of 1965 (20 U.S.C. 1001–1002) and the implementing regulations published by the U.S. Department of Education.

(c) Postsecondary educational expenses means any of the expenses that are listed as part of the cost of attendance, as defined under section 472 of the Higher Education Act of 1965 (20 U.S.C. 10871l), of a student at a covered educational institution. These expenses include tuition and fees, books, supplies, miscellaneous personal expenses, room and board, and an allowance for any loan fee, origination fee, or insurance premium charged to a student or parent for a loan incurred to cover the cost of the student's attendance.

(d) Preferred lender arrangement has the same meaning as in section 151 of the Higher Education Act of 1965 (20 U.S.C. 1019).

(e) Private education loan means an extension of credit that:

1. Is not made, insured, or guaranteed under title IV of the Higher Education Act of 1965 (20 U.S.C. 1070et seq.);
2. Is extended to a consumer expressly, in whole or in part, for postsecondary educational expenses, regardless of whether the loan is provided by the educational institution that the student attends;
3. Does not include open-end credit any loan that is secured by real property or a dwelling; and
4. Does not include an extension of credit in which the covered educational institution is the creditor if:
 - a. The term of the extension of credit is 90 days or less; or
 - b. an interest rate will not be applied to the credit balance and the term of the extension of credit is one year or less, even if the credit is payable in more than four installments.

(3) Form of disclosures

(a) Clear and conspicuous. The disclosures required by 209 CMR 32.46 shall be made clearly and conspicuously.

(b) Transaction disclosures.

1. The disclosures required under 209 CMR 32.47(2) and (3) shall be made in writing, in a form that the consumer may keep. The disclosures shall be grouped together, shall be segregated from everything else, and shall not contain any information not directly related to the disclosures required under 209 CMR 32.47(2) and (3), which include the disclosures required under 209 CMR 32.18.
2. The disclosures may include an acknowledgement of receipt, the date of the transaction, and the consumer's name, address, and account number. The following disclosures may be made together with or separately from other required disclosures: the creditor's identity under 209 CMR 32.18(1), insurance or debt cancellation under 209 CMR 32.18(14), and certain security interest charges under 209 CMR 32.18(15).
3. The term "finance charge" and corresponding amount, when required to be disclosed under 209 CMR 32.18(4), and the interest rate required to be disclosed under 209 CMR 32.47(2)(a)1. and (3)(a), shall be more conspicuous than any other disclosure, except the creditor's identity under 209 CMR 32.18(1).

(c) Electronic disclosures. The disclosures required under 209 CMR 32.47(2) and (3) may be provided to the consumer in electronic form, subject to compliance with the consumer consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. 7001et seq.). The disclosures required by 209 CMR 32.47(1) may be provided to the consumer in electronic form on or with an application or solicitation that is accessed by the consumer in electronic form without regard to the consumer consent or other provisions of the E-Sign Act. The form required to be received under 209 CMR 32.48(5) may be accepted by the creditor in electronic form as provided for in that section.

(4) Timing of disclosures

(a) Application or solicitation disclosures.

1. The disclosures required by 209 CMR 32.47(1) shall be provided on or with any application or solicitation. For purposes of 209 CMR 32.46, the term solicitation means an offer of credit that does not require the consumer to complete an application. A “firm offer of credit” as defined in section 603(l) of the Fair Credit Reporting Act (15 U.S.C. 1681a(1)) is a solicitation for purposes of this section.

2. The creditor may, at its option, disclose orally the information in 209 CMR 32.47(1) in a telephone application or solicitation. Alternatively, if the creditor does not disclose orally the information in 209 CMR 32.47(1), the creditor must provide the disclosures or place them in the mail no later than three business days after the consumer has applied for the credit, except that, if the creditor either denies the consumer's application or provides or places in the mail the disclosures in 209 CMR 32.47(2) no later than three business days after the consumer requests the credit, the creditor need not also provide the 209 CMR 32.47(1) disclosures.

3. Notwithstanding 209 CMR 32.46(4)(a)1., for a loan that the consumer may use for multiple purposes including, but not limited to, postsecondary educational expenses, the creditor need not provide the disclosures required by 209 CMR 32.47(1).

(b) Approval disclosures. The creditor shall provide the disclosures required by 209 CMR 32.47(2) before consummation on or with any notice of approval provided to the consumer. If the creditor mails notice of approval, the disclosures must be mailed with the notice. If the creditor communicates notice of approval by telephone, the creditor must mail the disclosures within three business days of providing the notice of approval. If the creditor communicates notice of approval electronically, the creditor may provide the disclosures in electronic form in accordance with 209 CMR 32.46(4)(c); otherwise the creditor must mail the disclosures within three business days of communicating the notice of approval. If the creditor communicates approval in person, the creditor must provide the disclosures to the consumer at that time.

(c) Final disclosures. The disclosures required by 209 CMR 32.47(3) shall be provided after the consumer accepts the loan in accordance with 209 CMR 32.48(3)(a).

(d) Receipt of mailed disclosures. If the disclosures under 209 CMR 32.46(4)(a), (4)(b) or (4)(c), are mailed to the consumer, the consumer is considered to have received them three business days after they are mailed.

(5) Basis of disclosures and use of estimates

(a) Legal obligation. Disclosures shall reflect the terms of the legal obligation between the parties.

(b) Estimates. If any information necessary for an accurate disclosure is unknown to the creditor, the creditor shall make the disclosure based on the best information reasonably available at the time the disclosure is provided, and shall state clearly that the disclosure is an estimate.

(6) Multiple creditors; multiple consumers. If a transaction involves more than one creditor, only one set of disclosures shall be given and the creditors shall agree among themselves which creditor will comply with the requirements that this part imposes on any or all of them. If there is more than one consumer, the disclosures may be made to any consumer who is primarily liable on the obligation.

32.46: (continued)

(7) Effect of subsequent events

(a) Approval disclosures. If a disclosure under 209 CMR 32.47(2) becomes inaccurate because of an event that occurs after the creditor delivers the required disclosures, the inaccuracy is not a violation of 209 CMR 32.00, although new disclosures may be required under 209 CMR 32.48(3).

(b) Final disclosures. If a disclosure under 209 CMR 32.47(3) becomes inaccurate because of an event that occurs after the creditor delivers the required disclosures, the inaccuracy is not a violation of 209 CMR 32.00.

32.47: Content of disclosures.

(1) Application or solicitation disclosures. A creditor shall provide the disclosures required under 209 CMR 32.47(1) on or with a solicitation or an application for a private education loan.

(a) Interest Rates.

1. The interest rate or range of interest rates applicable to the loan and actually offered by the creditor at the time of application or solicitation. If the rate will depend, in part, on a later determination of the consumer's creditworthiness or other factors, a statement that the rate for which the consumer may qualify will depend on the consumer's creditworthiness and other factors, if applicable.

2. Whether the interest rates applicable to the loan are fixed or variable.

3. If the interest rate may increase after consummation of the transaction, any limitations on the interest rate adjustments, or lack thereof; a statement that the consumer's actual rate could be higher or lower than the rates disclosed under 209 CMR 32.47(1)(a)1., if applicable; and, if the limitation is determined by applicable law, that fact.

4. Whether the applicable interest rates typically will be higher if the loan is not co-signed or guaranteed.

(b) Fees and default or late payment costs.

1. An itemization of the fees or range of fees required to obtain the private education loan.

2. Any fees, changes to the interest rate, and adjustments to principal based on the consumer's defaults or late payments.

(c) Repayment terms.

1. The term of the loan, which is the period during which regularly scheduled payments of principal and interest will be due.

2. A description of any payment deferral options, or, if the consumer does not have the option to defer payments, that fact.

3. For each payment deferral option applicable while the student is enrolled at a covered educational institution:

a. Whether interest will accrue during the deferral period; and

b. If interest accrues, whether payment of interest may be deferred and added to the principal balance.

4. A statement that if the consumer files for bankruptcy, the consumer may still be required to pay back the loan.

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(d) Cost estimates. An example of the total cost of the loan calculated as the total of payments over the term of the loan:

1. Using the highest rate of interest disclosed under 209 CMR 32.47(1)(a) and including all finance charges applicable to loans at that rate;
2. Using an amount financed of \$10,000, or \$5000 if the creditor only offers loans of this type for less than \$10,000; and
3. Calculated for each payment option.

(e) Eligibility. Any age or school enrollment eligibility requirements relating to the consumer or co-signer.

(f) Alternatives to private education loans.

1. A statement that the consumer may qualify for Federal student financial assistance through a program under title IV of the Higher Education Act of 1965 (20 U.S.C. 1070et seq.).
2. The interest rates available under each program under title IV of the Higher Education Act of 1965 (20 U.S.C. 1070et seq.) and whether the rates are fixed or variable.
3. A statement that the consumer may obtain additional information concerning Federal student financial assistance from the institution of higher education that the student attends, or at the Web site of the U.S. Department of Education, including an appropriate Web site address.
4. A statement that a covered educational institution may have school-specific education loan benefits and terms not detailed on the disclosure form.

(g) Rights of the consumer. A statement that if the loan is approved, the terms of the loan will be available and will not change for 30 days except as a result of adjustments to the interest rate and other changes permitted by law.

(h) Self-certification information. A statement that, before the loan may be consummated, the consumer must complete the self-certification form and that the form may be obtained from the institution of higher education that the student attends.

(2) Approval disclosures. On or with any notice of approval provided to the consumer, the creditor shall disclose the information required under 209 CMR 32.18 and the following information:

(a) Interest rate.

1. The interest rate applicable to the loan.
2. Whether the interest rate is fixed or variable.
3. If the interest rate may increase after consummation of the transaction, any limitations on the rate adjustments, or lack thereof.

(b) Fees and default or late payment costs.

1. An itemization of the fees or range of fees required to obtain the private education loan.
2. Any fees, changes to the interest rate, and adjustments to principal based on the consumer's defaults or late payments.

(c) Repayment terms.

1. The principal amount of the loan for which the consumer has been approved.
2. The term of the loan, which is the period during which regularly scheduled payments of principal and interest will be due.
3. A description of the payment deferral option chosen by the consumer, if applicable, and any other payment deferral options that the consumer may elect at a later time.
4. Any payments required while the student is enrolled at a covered educational institution, based on the deferral option chosen by the consumer.

5. The amount of any unpaid interest that will accrue while the student is enrolled at a covered educational institution, based on the deferral option chosen by the consumer.
 6. A statement that if the consumer files for bankruptcy, the consumer may still be required to pay back the loan.
 7. An estimate of the total amount of payments calculated based on:
 - a. The interest rate applicable to the loan. Compliance with 209 CMR 32.18(8) constitutes compliance with this requirement.
 - b. The maximum possible rate of interest for the loan or, if a maximum rate cannot be determined, a rate of 25%.
 - c. If a maximum rate cannot be determined, the estimate of the total amount for repayment must include a statement that there is no maximum rate and that the total amount for repayment disclosed under 209 CMR 32.47(2)(c)7.b. is an estimate and will be higher if the applicable interest rate increases.
 8. The maximum monthly payment based on the maximum rate of interest for the loan or, if a maximum rate cannot be determined, a rate of 25%. If a maximum cannot be determined, a statement that there is no maximum rate and that the monthly payment amount disclosed is an estimate and will be higher if the applicable interest rate increases.
- (d) Alternatives to private education loans.
1. A statement that the consumer may qualify for Federal student financial assistance through a program under title IV of the Higher Education Act of 1965 (20 U.S.C. 1070et seq.).
 2. The interest rates available under each program under title IV of the Higher Education Act of 1965 (20 U.S.C. 1070et seq.), and whether the rates are fixed or variable.
 3. A statement that the consumer may obtain additional information concerning Federal student financial assistance from the institution of higher education that the student attends, or at the Web site of the U.S. Department of Education, including an appropriate Web site address.
- (e) Rights of the consumer.
1. A statement that the consumer may accept the terms of the loan until the acceptance period under 209 CMR 32.48(3)(a) has expired. The statement must include the specific date on which the acceptance period expires, based on the date upon which the consumer receives the disclosures required under this subsection for the loan. The disclosure must also specify the method or methods by which the consumer may communicate acceptance.
 2. A statement that, except for changes to the interest rate and other changes permitted by law, the rates and terms of the loan may not be changed by the creditor during the period described in 209 CMR 32.47(2)(e)1..
- (3) Final disclosures. After the consumer has accepted the loan in accordance with 209 CMR 32.48(3)(a), the creditor shall disclose to the consumer the information required by 209 CMR 32.18 and the following information:
- (a) Interest rate. Information required to be disclosed under 209 CMR 32.47(2)(a).
 - (b) Fees and default or late payment costs. Information required to be disclosed under 209 CMR 32.47(2)(b).
 - (c) Repayment terms. Information required to be disclosed under 209 CMR 32.47(2)(c).
 - (d) Cancellation right. A statement that:
 1. the consumer has the right to cancel the loan, without penalty, at any time before the cancellation period under 209 CMR 32.48(4) expires, and

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2. loan proceeds will not be disbursed until after the cancellation period under 209 CMR 32.48(4) expires. The statement must include the specific date on which the cancellation period expires and state that the consumer may cancel by that date. The statement must also specify the method or methods by which the consumer may cancel. If the creditor permits cancellation by mail, the statement must specify that the consumer's mailed request will be deemed timely if placed in the mail not later than the cancellation date specified on the disclosure. The disclosures required by this 209 CMR 32.47(3)(d) must be made more conspicuous than any other disclosure required under this section, except for the finance charge, the interest rate, and the creditor's identity, which must be disclosed in accordance with the requirements of 209 CMR 32.46(3)(b)3.

32.48: Limitations on private education loans.

(1) Co-branding prohibited.

(a) Except as provided in 209 CMR 32.48(2), a creditor, other than the covered educational institution itself, shall not use the name, emblem, mascot, or logo of a covered educational institution, or other words, pictures, or symbols identified with a covered educational institution, in the marketing of private education loans in a way that implies that the covered education institution endorses the creditor's loans.

(b) A creditor's marketing of private education loans does not imply that the covered education institution endorses the creditor's loans if the marketing includes a clear and conspicuous disclosure that is equally prominent and closely proximate to the reference to the covered educational institution that the covered educational institution does not endorse the creditor's loans and that the creditor is not affiliated with the covered educational institution.

(2) Endorsed lender arrangements. If a creditor and a covered educational institution have entered into an arrangement where the covered educational institution agrees to endorse the creditor's private education loans, and such arrangement is not prohibited by other applicable law or regulation, 209 CMR 32.48(1)(a) does not apply if the private education loan marketing includes a clear and conspicuous disclosure that is equally prominent and closely proximate to the reference to the covered educational institution that the creditor's loans are not offered or made by the covered educational institution, but are made by the creditor.

(3) Consumer's right to accept.

(a) The consumer has the right to accept the terms of a private education loan at any time within 30 calendar days following the date on which the consumer receives the disclosures required under 209 CMR 32.47(2).

(b) Except for changes permitted under 209 CMR 32.48(3)(c) and (3)(d), the rate and terms of the private education loan that are required to be disclosed under 209 CMR 32.47(2) and (3) may not be changed by the creditor prior to the earlier of:

1. The date of disbursement of the loan; or
2. The expiration of the 30 calendar day period described in 209 CMR 32.48(3)(a) if the consumer has not accepted the loan within that time.

(c) Exceptions not requiring re-disclosure.

1. Notwithstanding 209 CMR 32.48(3)(b), nothing in this section prevents the creditor from:

- a. Withdrawing an offer before consummation of the transaction if the extension of credit would be prohibited by law or if the creditor has reason to believe that the consumer has committed fraud in connection with the loan application;

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- b. Changing the interest rate based on adjustments to the index used for a loan;
- c. Changing the interest rate and terms if the change will unequivocally benefit the consumer; or
- d. Reducing the loan amount based upon a certification or other information received from the covered educational institution, or from the consumer, indicating that the student's cost of attendance has decreased or the consumer's other financial aid has increased. A creditor may make corresponding changes to the rate and other terms only to the extent that the consumer would have received the terms if the consumer had applied for the reduced loan amount.

2. If the creditor changes the rate or terms of the loan under 209 CMR 32.48(3)(c), the creditor need not provide the disclosures required under 209 CMR 32.47(2) for the new loan terms, nor need the creditor provide an additional 30-day period to the consumer to accept the new terms of the loan under 209 CMR 32.48(3)(a).

(d) Exceptions requiring re-disclosure.

1. Notwithstanding 209 CMR 32.48(3)(b) or (3)(c), nothing in this section prevents the creditor, at its option, from changing the rate or terms of the loan to accommodate a specific request by the consumer. For example, if the consumer requests a different repayment option, the creditor may, but need not, offer to provide the requested repayment option and make any other changes to the rate and terms.

2. If the creditor changes the rate or terms of the loan under this 209 CMR 32.48(3)(d), the creditor shall provide the disclosures required under 209 CMR 32.47(2) and shall provide the consumer the 30-day period to accept the loan under 209 CMR 32.48(3)(a). The creditor shall not make further changes to the rates and terms of the loan, except as specified in 209 CMR 32.48 (3)(c) and (d). Except as permitted under 209 CMR 32.48(3)(c), unless the consumer accepts the loan offered by the creditor in response to the consumer's request, the creditor may not withdraw or change the rates or terms of the loan for which the consumer was approved prior to the consumer's request for a change in loan terms.

(4) Consumer's right to cancel. The consumer may cancel a private education loan, without penalty, until midnight of the third business day following the date on which the consumer receives the disclosures required by 209 CMR 32.47(3). No funds may be disbursed for a private education loan until the three-business day period has expired.

(5) Self-certification form. For a private education loan intended to be used for the postsecondary educational expenses of a student while the student is attending an institution of higher education, the creditor shall obtain from the consumer or the institution of higher education the form developed by the Secretary of Education under section 155 of the Higher Education Act of 1965, signed by the consumer, in written or electronic form, before consummating the private education loan.

(6) Provision of information by preferred lenders. A creditor that has a preferred lender arrangement with a covered educational institution shall provide to the covered educational institution the information required under 209 CMR 32.47(1)(a) through (e), for each type of private education loan that the lender plans to offer to consumers for students attending the covered educational institution for the period beginning July 1 of the current year and ending June 30 of the following year. The creditor shall provide the information annually by the later of the 1st day of April, or within 30 days after entering into, or learning the creditor is a party to, a preferred lender arrangement.

REGULATORY AUTHORITY

209 CMR 32.00: M.G.L. c. 140D, §§ 3 and 29.