Rog 2

(a) (1) (i) 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 § 226.14(b).

(ii) Form of disclosures—(1) General. The disclosures required by paragraph (d) of this section shall be made in a form that the consumer may keep. The disclosures required by paragraph (d)(1) of this section shall be furnished in writing or provided on the consumer's home or on a separate form. The disclosure described in paragraph (d)(4)(iii), the termination of third-party fees described in paragraph (g)(3), and the variable-rate information described in paragraph (d)(12) of this section may be provided separately from the other required disclosures.

(2) Presence of creditor. Disclosures required by the creditor disclosure in paragraph (d)(1) through (d)(6) of this section shall provide the creditor's name.

(3) Tone of disclosures. The disclosures and brochure required by paragraphs (d) and (e) of this section shall be presented in a clear and conspicuous manner and in readable type.

(4) Duties of third parties—Persons other than the creditor who provide applications to consumers for home equity plans subject to this section shall furnish required creditor paragraph (e) of this section at the time an application is provided. If such persons have the disclosures required under paragraph (d) of this section in a creditor's stock in trade, they also shall provide those disclosures to consumers.

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

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

(2) Conditions for disclosed terms. (i) A statement of the time by which the consumer must submit an application or request to open a home equity plan and the consumer information or documents that is subject to change prior to opening the plan.

(ii) A statement that, if a disclosed term changes (other than a change due to fluctuations in the index rate) or is withdrawn after the consumer receives the disclosures and before the account is opened, the creditor may charge the consumer a refund of all fees paid in connection with the application.

(3) 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.

(4) Possible actions by creditor (i) 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, may impose fees upon termination, prohibit additional extensions of credit or reduce the credit limit, and, specified in the initial agreement (consistent with paragraph (f)(2)(ii)).

(ii) A statement that the consumer may receive, upon request, information about the conditions under which such actions may be taken.

(iii) In lieu of the disclosure required under paragraph (d)(4)(ii) of this section, a statement of such conditions.

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

(i) The length of the draw period and any repayment period.

(ii) 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 not repay the principal by the end of the draw period, a statement of that fact, as well as a statement that a balloon payment may result. Illo

(iii) An example, based on a $10,000 outstanding balance and a recent annual percentage rate,(b) 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 additional extensions of credit.

(6) Annual percentage rate. For fixed-rate plans, a recent annual percentage rate(b) imposed under the plan and a statement that the rate does not include costs other than interest.

(7) Fees imposed by creditor. An explanation 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.

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

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

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

(i) The fact that the annual percentage rate, payment, or term may change due to the variable-rate feature.

(ii) A statement that the annual percentage rate does not include costs other than interest.

(iii) A statement that the annual percentage rate is based on a source of information stated in the index.

(iv) An explanation of how the annual percentage rate will be determined, including an explanation of how the index is adjusted, such as by adding a margin to the index value.

(v) A statement that the consumer should ask about the current index value, margin, discount or premium, and annual percentage rate.

(vi) 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.

(vii) The frequency of changes in the annual percentage rate.

(viii) Any rate restrictions (caps) on 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 their purpose.

(ix) A statement of any annual or more frequent periodic limitations on changes in the annual percentage rate (in addition to the lifetime rate limitation rule), as well as a statement of the maximum annual percentage rate that may be imposed under each payment option.

(x) The minimum periodic payment imposed 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.

(xi) A statement that the annual percentage rate does not include costs other than interest.

(xii) Upon request, a table showing the preceding information for the previous 15 years.

(xiii) An explanation of how the annual percentage rate will be determined, including an explanation of how the index is adjusted, such as by adding a margin to the index value.

(xiv) A statement that the consumer should ask about the current index value, margin, discount or premium, and annual percentage rate.

(xv) 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.

(xvi) The frequency of changes in the annual percentage rate.

(xvii) Any rate restrictions (caps) on 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 their purpose.

(xviii) A statement of any annual or more frequent periodic limitations on changes in the annual percentage rate (in addition to the lifetime rate limitation rule), as well as a statement of the maximum annual percentage rate that may be imposed under each payment option.

(xix) The minimum periodic payment imposed 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.

(xx) Illustrative payments. Illustrative payments for the preceding variable-rate information, including payments based on a recent annual percentage rate(b) for a $10,000 outstanding balance, and a statement of the earliest date or time the maximum rate may be imposed.

(xxi) Illustrative payments. Illustrative payments for the preceding variable-rate information, including payments based on the highest annual percentage rate in effect within the last 15 years for a $10,000 outstanding balance, and a statement of the earliest date or time the maximum rate may be imposed.

(xxii) Upon request, a table showing the preceding information for the previous 15 years.

(xxiii) Upon request, a table showing the preceding information for the previous 15 years, that would have been affected by the index movement during the period.

(11) A statement that rate information will be provided on or with each periodic statement.

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

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

(i) 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;

(ii) Unilaterally terminate an open-end plan prior to maturity of the entire outstanding balance in advance of the original term (except for reverse mortgage transactions that are subject to paragraph (f)(4) of this section) 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;

(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; or

(4) Federal law dealing with credit extended by a depository institution to its members or comparable law dealing with such credit prohibits such termination. Illo Illustrative payments, based on a recent annual percentage rate(b) for a $10,000 outstanding balance, and a statement of the earliest date or time the maximum rate may be imposed.

(iii) Prohibit additional extensions of credit or reduce the credit limit applicable to an agreement during any period in which:

(1) The value of the dwelling that secures the plan declines significantly below the dwelling's appraised value for purposes of the plan;

(2) 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;

(3) The consumer is in default of any material obligation in the agreement;

(4) The creditor is precluded by government action from imposing the annual percentage rate provided for in the agreement;

(5) The priority of the creditor's security interest in dwelling is adversely affected by government action to the extent that the value of the security interest is less than 120 percent of the credit line; or

(6) The creditor is notified by its regulatory agency that continued advances constitute an unsafe and unsound practice.

(iv) For reverse mortgage transactions that are subject to § 226.33, terminate a plan and demand repayment of the outstanding balance in advance of the original term except:

(1) In the 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.

(v) Refund of fees. A creditor shall refund all fees paid by the consumer to anyone in connection with an application if the terms disclosed under paragraph (d) of this section changes (other than a change due to fluctuations in the index rate) or is withdrawn (or any other plan) before the account is opened. As a result, the consumer elects not to open the plan.

(vi) 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 this section.150

[May 2, 54 FR 24988, June 9, 1989, as amended at 55 FR 34312, Sept. 17, 1990; 57 FR 44690, Sept. 29, 1992; 57 FR 48832, Oct. 28, 1992; Aug. 6, 1992; 60 FR 15474, Mar. 24, 1995; 66 FR 17038, Mar. 30, 2001; 72 FR 63474, Nov. 9, 2007]

§ 226.16 Advertising.

(a) Actually available terms. If an advertisement for credit states specific credit terms, it shall state the terms terms that will actually be offered or arranged or offered by the creditor.

(b) Advertisement of terms that require additional disclosures. (1) Any term required to be disclosed under § 226.5b(d)(12) or (d)(13) or a discussion of the right to assume a loan under the terms of a home mortgage shall be accompanied by the additional disclosures specified this section. Any term required to be disclosed under § 226.6(a)(1) or (a)(2) set forth affirmatively or negatively in an advertisement for a home equity plan subject to the requirements of § 226.5b shall be accompanied by the additional disclosures in this section. If any of the terms that trigger additional disclosures under this paragraph is set forth in an advertisement, the additional disclosures shall also clearly and conspicuously set forth the following:

(i) Any minimum, fixed, transaction, activity or similar charge that is a finance charge under § 226.4 that could be imposed.

(ii) Any periodic rate that may be applied expressed as an annual percentage rate determined under § 226.14(b). If the rate is provided for a variable-periodic rate, that fact shall be disclosed.

(iii) Any membership or participation fee that could be imposed.

(2) If an advertisement for credit to finance the purchase of goods or services specified in the advertisement, or to refinance such an existing obligation, the advertisement shall also state the total of payments and the time period to repay the obligation, assuming that the consumer pays only the required minimum periodic payments. If the terms of the credit offered are such that a balloon payment may be required, the advertisement shall also state that a balloon payment may be required. If applicable, the advertisement shall state that the consumer pays only the required minimum periodic payments during the period of time in which the consumer is permitted to repay the entire outstanding balance at such time. If a balloon payment will occur when the consumer pays the required minimum periodic payments for the full period of time in which such a program which provides for payment of any minimum periodic payment shall also state with equal prominence and in close proximity to the minimum periodic payment statement.

(3) That a balloon payment will result; and

(4) 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.

(5) Tax implications. An advertisement that states that any interest expense incurred under the home equity plan is tax deductible or that interest 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, the advertisement shall state that interest is deductible for purposes of the credit for the market value of the consumer's principal dwelling and shall clearly and conspicuously state that:

(i) 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

(ii) The consumer should consult a tax advisor for further information regarding the deductibility of interest and charges.

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

(7) Illustrative payments. (i) Definitions. The following definitions apply for purposes of paragraph (c)(6) of this section:

(A) Promotional rate. The term "promotional rate" means, in a variable-rate plan, any annual percentage rate that is 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 period. 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 adding the 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 equal balance.

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

(D) Fixed-rate promotional rate and post-promotional rate or payment. 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, then in addition to the promotional rate or payment, the rate that is not based on rate adjustments, in a clear and conspicuous manner with equal prominence and in close proximity to each listing of the promotional rate or payment, the:

(E) The period of time during which the promotional rate or promotional payment will apply;

(F) For a plan in which the annual percentage rate may vary, a statement that will apply after the promotional period, the annual percentage rate must be disclosed in accordance with the accuracy standards in § 226.5b(d)(12) and (13) as applicable; and

(G) In the case of a promotional payment, the amounts and time periods of any payments that will apply during the promotional period under a payment schedule that will be determined based on the application of an index and margin shall be disclosed based on a reasonably current index and margin.

(ii) Illustrative excludes. The requirements of this paragraph (c)(6)(i) shall not apply to an advertisement for an open-end plan subject to the requirements of § 226.5b(d) or an advertisement for a home equity plan subject to the requirements of § 226.5b(f) or (h) of this section that is stated in a clear and conspicuous manner in the advertisement, if the rate or fee is stated in a written form provided to consumers or available to consumers with equal prominence and in close proximity to the rate or fee that is required to be disclosed in a prominent location closely proximate to the first listing of the promotional rate or payment.

(iii) When the promotional rate or promotional fee will end.

(8) The annual percentage rate. If an advertisement states a rate of interest, it shall state the rate is variable, the annual percentage rate must comply with the accuracy standards in §§ 226.5a(c)(2), 226.5b(d)(12), and 226.5b(d)(13) as applicable. If the rate is not variable, the rate cannot be stated unless the disclosures are given because the rate depends at least in part on a later determination of the consumer's credit standing or other circumstances. If the advertisement states the specific rate or the range of rates that might apply, the advertisement shall also state:

(9) The fee that will apply after the end of the promotional period.

(i) Envelope excluded. The requirements in paragraph (b)(4) of this section do not apply to an envelope or other enclosure 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.

(ii) Deferred interest or similar offers (i) Scope. The requirements in paragraph (b)(5) of this section do not apply to an advertisement of an open-end credit plan not subject to § 226.5b, including promotional materials accompanying such solicitations subject to § 226.5a(c) or accompanying applications or solicitations subject to § 226.5a(b).

(2) Definitions. "Deferred interest" means finance charges, accrued on balances or transactions, that a consumer is not obligated to pay or that will be waived or refunded to a consumer if those balances or transactions are paid in full by a specified date. "Deferred interest offer" means a credit card account or open-end credit plan offer pursuant to which deferred interest could be waived by the consumer must pay the balance or transaction in full in order to avoid finance charges, or receive a waiver or refund of finance charges, the "deferred interest period." "Deferred interest" does not include any finance charges the consumer avoids paying in connection with any recurring grace period.

(3) Stating the deferred interest period. (i) A deferred interest offer or a statement that a deferred interest period must be stated in a clear and conspicuous manner in the advertisement. If the phrase "no interest" or a similar phrase is used to describe the deferred interest period, the phrase "deferred interest period is longer." The phrase "no interest" or a similar phrase may not be used to describe a manner preceding the disclosure of the deferred interest period in the advertisement. If the deferred interest offer is conveyed in a form other than a written advertisement, the deferred interest period, if applicable, the term "if paid in full" must also be stated in immediate proximity to each statement of the deferred interest period, with equal prominence, "same as cash." or a similar phrase. Illo Illustrative payments.

(4) Stating the terms of the deferred interest or similar offer. If any deferred interest offer is disclosed, the following information must be stated in a clear and conspicuous manner in the advertisement, in language similar to Sample G-24 in Appendix G to this part. If the deferred interest offer is included in a written or electronic advertisement, the information in paragraphs (b)(4) and (b)(4)(ii) of this section must also be stated in a prominent location closely proximate to the first listing of the deferred interest period, with equal prominence, "same as cash." or a similar phrase. Illo Illustrative payments.

(5) A statement that interest will be charged from the date the consumer becomes obligated for the balance or transaction subject to the deferred interest offer if the balance or transaction is not paid in full within the deferred interest period. Illo

(6) A statement, if applicable, that interest will be charged from the date the consumer incurs the balance or transaction if the consumer makes a late payment or if the account is in default during the deferred interest period.

(7) Envelope excluded. The requirements in paragraph (b)(4) of this section do not apply to an envelope or other enclosure 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.

[Source: 75 Fed. Reg. 7918, Feb. 22, 2010, amended at 76 Fed. Reg. 73002, effective October 1, 2011, mandatory compliance beginning October 1, 2013. Conditions may, at their option, comply with this rule prior to October 1, 2011]