

**TITLE 160. DEPARTMENT OF CONSUMER CREDIT
CHAPTER 45. TRUTH IN LENDING RULES
SUBCHAPTER 3. OPEN-END CREDIT**

160:45-3-1. General disclosure requirements

(a) Form of disclosures.

(1) The creditor shall make the disclosures required by this subchapter clearly and conspicuously in writing, ~~7/~~ in a form that the consumer may keep. ~~8/~~ The disclosures required by this subchapter 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 160:45-3-2, 160:45-3-3, and 160:45-3-14 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.

(2) 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/~~

(3) Certain disclosures required under 160:45-3-2 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 160:45-3-2.

(4) For rules governing the form of disclosures for home-equity plans, see 160:45-3-3(1).

~~(5) **Electronic communication.** For rules governing the electronic delivery of disclosures, including the definition of electronic communication, see 160:45-11-1.~~

(b) Time of disclosures.

(1) **Initial disclosures.** The creditor shall furnish the initial disclosure statement required by 160:45-3-4 before the first transaction is made under the plan.

(2) Periodic statements.

(A) The creditor shall mail or deliver a periodic statement as required by 160:45-3-5 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 federal law.

(B) The creditor shall mail or deliver the periodic statement at least 14 days prior to any date or the end of any time period required to be disclosed under 160:45-3-5(10) in order for the consumer to avoid an additional finance or other charge. ~~10/~~ A creditor that fails to meet this requirement shall not collect any finance or other charge imposed as a result of such failure.

(3) **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 160:45-3-2.

(4) **Home-equity plans.** Disclosures for home equity plans shall be made in accordance with the timing requirements of 160:45-3-3(2).

(c) 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.

(d) **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 this chapter 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 160:45-3-13 is applicable, however, the disclosures required by 160:45-3-4 and 160:45-3-13(b) shall be made to each consumer having the right to rescind.

(e) **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 this chapter, although new disclosures may be required under 160:45-3-7(c).

7/ The disclosure required by 160:45-3-7(d) when a finance charge is imposed at the time of a transaction need not be written.

8/ The disclosures required under 160:45-3-2 for credit and charge card applications and solicitations, the home-equity disclosures required under 160:45-3-3(4), the alternative summary billing-rights statement provided in accordance with federal regulations, 12 CFR §226.9(a)(2), the credit and charge card renewal disclosures required under 160:45-3-7(e), and the disclosures made in accordance with federal regulations, 12 CFR §226.10(b), 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 160:45-3-2 generally for credit and charge card applications and solicitations, under 160:45-3-5(4) on periodic statements, under 160:45-3-7(e) in credit and charge card renewal disclosures, and under 160:45-3-14 in advertisements. (But see special rule for annual percentage rate for purchases, 160:45-3-2(b)(1).)

10/ This timing requirement does not apply if the creditor is unable to meet the requirement because of an act of God, war, civil disorder, natural disaster, or strike.

160:45-3-2. Credit and charge card applications and solicitations

(a) **General rules.** The card issuer shall provide the disclosures required under this section on or with a solicitation or an application to open a credit or charge card account.

(1) **Definition of solicitation.** For purposes of this section, the 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.

(2) **Form of disclosures.**

(A) The disclosures in paragraphs (b)(1) through (7) of this section 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.

(B) The disclosures in paragraphs (b)(8) through (11) of this section shall be provided either in the table containing the disclosures in paragraphs (b)(1) through (7), or clearly and conspicuously elsewhere on or with the application or solicitation.

(C) The disclosure required under paragraph (b)(5) of this section shall contain the term "grace period."

(D) The terminology in the disclosures under paragraph (b) of this section shall be consistent with that to be used in the disclosures under 160:45-3-4 and 160:45-3-5.

(E) 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.

(3) **Exceptions.** This section does not apply to home-equity plans accessible by a credit or charge card that are of the type subject to the requirements of 160:45-3-3; 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.

(4) **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.

(5) **Certain fees that vary by state.** If the amount of any fee referred to in paragraphs (b)(8) through (11) of this section 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.

(b) **Required disclosures.** The card issuer shall disclose the items in this paragraph on or with an application or a solicitation in accordance with the requirements of paragraphs (c), (d), or (e) of this section. A credit card issuer shall disclose all applicable items in this paragraph except for paragraph (b)(7) of this section. A charge card issuer shall disclose the applicable items in paragraphs (b)(2), (4), and (7) through (11) of this section.

(1) **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 160:45-3-12(b)). 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 this paragraph 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.

(A) 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.

(B) When variable-rate disclosures are provided under paragraph (c) of this section, 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 paragraph (e) of this section, an annual percentage rate disclosure is accurate if the rate was in effect within 30 days before printing the disclosures. Disclosures provided by electronic communication are subject to paragraph (b)(1)(C) of this section.

(C) 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.

(2) **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.

- (3) **Minimum finance charge.** Any minimum or fixed finance charge that could be imposed during a billing cycle.
- (4) **Transaction charges.** Any transaction charge imposed for the use of the card for purchases.
- (5) **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.
- (6) **Balance-computation method.** The name of the balance-computation method listed in paragraph (g) of this section 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.
- (7) **Statement on charge card payments.** A statement that charges incurred by use of the charge card are due when the periodic statement is received.
- (8) **Cash-advance fee.** Any fee imposed for an extension of credit in the form of cash.
- (9) **Late-payment fee.** Any fee imposed for a late payment.
- (10) **Over-the-limit fee.** Any fee imposed for exceeding a credit limit.
- (11) **Balance-transfer fee.** Any fee imposed to transfer an outstanding balance.
- (c) **Direct-mail applications and solicitations.** The card issuer shall disclose the applicable items in paragraph (b) of this section on or with an application or solicitation that is mailed to consumers or provided by electronic communication.
- (d) **Telephone applications and solicitations.**
- (1) **Oral disclosure.** The card issuer shall orally disclose the information in paragraphs (b)(1) through (7) of this section, to the extent applicable, in a telephone application or solicitation initiated by the card issuer.
- (2) **Alternative disclosure.** The oral disclosure under paragraph (d)(1) of this section need not be given if the card issuer either does not impose a fee described in paragraph (b)(2) of this section or 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:
- (A) The applicable information in paragraph (b) of this section; and
- (B) The fact that the consumer need not accept the card or pay any fee disclosed unless the consumer uses the card.
- (e) **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 paragraphs (e)(1), (2) or (3) of this section.
- (1) **Disclosure of required credit information.** The card issuer may disclose in a prominent location on the application or solicitation the following:
- (A) The applicable information in paragraph (b) of this section;
- (B) 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

(C) 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.

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

(A) The disclosures required under 160:45-3-4(1) through (3); and

(B) 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.

(3) **No disclosure of credit information.** If none of the items in paragraph (b) of this section 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:

(A) There are costs associated with the use of the card; and

(B) 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.

(4) **Prompt response to requests for information.** Upon receiving a request for any of the information referred to in this paragraph, the card issuer shall promptly and fully disclose the information requested.

(f) **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 paragraphs (c), (d) or (e) of this section for the open-end credit plan if the card issuer states on or with an application or a solicitation the following:

(1) The card issuer will make an independent decision whether to issue the card;

(2) The charge card may arrive before the decision is made about extending credit under the open-end credit plan; and

(3) Approval for the charge card does not constitute approval for the open-end credit plan.

(g) **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.

(1) **Average daily balance method.**

(A) **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.

(B) **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.

(2) **Two-cycle average daily balance method.**

(A) **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.

(B) **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.

(3) **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.

(4) **Previous balance.** This balance is the outstanding balance at the beginning of the billing cycle.

160:45-3-3. 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 160:45-3-12(b).

(1) Form of disclosures.

(A) **General.** The disclosures required by paragraph (4) of this section shall be made clearly and conspicuously and shall be grouped together and segregated from all unrelated information. The disclosures may be provided on the application form or on a separate form. The disclosure described in paragraph (4)(D)(iii), the itemization of third-party fees described in paragraph (4)(H), and the variable-rate information described in paragraph (4)(L) of this section may be provided separately from the other required disclosures.

(B) **Precedence of certain disclosures.** The disclosures described in paragraphs (4)(A) through (D)(ii) of this section 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 paragraphs (4) and (5) of this section shall be provided at the time an application is provided to the consumer. **10a/**

(3) Duties of third parties.

~~(A) **General.** Persons other than the creditor who provide applications to consumers for home-equity plans must provide the brochure required under paragraph (5) of this section at the time an application is provided. If such persons have the disclosures required under paragraph (4) of this section for a creditor's home-equity plan, they also shall provide the disclosures at such time. **10a/**~~

~~(B) **Electronic communication.** Persons other than the creditor that are required to comply with paragraphs (4) and (5) of this section may use electronic communication in accordance with the requirements 160:45-11-1, as applicable.~~

(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.

(i) 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.

(ii) 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.

(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 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.

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

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

(E) 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 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/**

(iii) 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:

(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) The index used in making rate adjustments and a source of information about 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 the addition of a margin.

(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 rules related 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 carryover.

(ix) 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.

(x) 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.

(xi) 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 carryover, rate discounts, and rate and payment limitations, that would have been affected by the index movement during the period.

(xii) 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:
 - (i) Such change is based on an index that is not under the creditor's control; and
 - (ii) 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 paragraph (6)(D) of this section) unless:
 - (i) There is fraud or material misrepresentation by the consumer in connection with the plan;
 - (ii) The consumer fails to meet the repayment terms of the agreement for any outstanding balance;
 - (iii) 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
 - (iv) Federal 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 the initial agreement.
 - (C) Change any term, except that a creditor may:
 - (i) 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 specific event takes place (for example, that the annual percentage rate will increase a specified amount if the consumer leaves the creditor's employment).
 - (ii) Change the index and margin used under the plan if the original index is no 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.
 - (iii) Make a specified change if the consumer specifically agrees to it in writing at that time.
 - (iv) Make a change that will unequivocally benefit the consumer throughout the remainder of the plan.
 - (v) Make an insignificant change to terms.
 - (vi) Prohibit additional extensions of credit or reduce the credit limit applicable to an agreement during any period in which-:
 - (I) The value of the dwelling that secures the plan declines significantly below the dwelling's appraised value for purposes of the plan;
 - (II) 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;
 - (III) The consumer is in default of any material obligation under the agreement;
 - (IV) The creditor is precluded by government action from imposing the annual percentage rate provided for in the agreement;

(V) 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 percent of the credit line; or

(VI) 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 160:45-9-3, terminate a plan and demand repayment of the entire outstanding balance in advance of the original term except:

(i) In the case of default;

(ii) If the consumer transfers title to the property securing the note;

(iii) If the consumer ceases using the property securing the note as the primary dwelling; or

(iv) 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 paragraph (4) of this section 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 this section. **10d/**

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.

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 paragraph (4)(L)(xi) of this section or a rate that has been in effect under the plan since the date of the most recent rate in the table.

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.

160:45-3-13. Right of rescission

(a) Consumer's right to rescind.

(1) General provisions.

(A) Except as provided in paragraph (a)(1)(B) of this section, 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.

(B) As provided in §5-204(5) of the Code, the 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.

(2) 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.

(3) The consumer may exercise the right to rescind until midnight of the third business day following the occurrence described in paragraph (a)(1) of this section that gave rise to the right of rescission, delivery of the notice required by paragraph (b) of this section, 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 three 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 §5-204(1) of the Code.

(4) 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.

(b) 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 ~~by~~in electronic ~~communication form~~ as provided in 160:45-11-1(b) 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:

(1) The retention or acquisition of a security interest in the consumer's principal dwelling.

(2) The consumer's right to rescind, as described in paragraph (a)(1) of this section.

(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 paragraph (d) of this section.

(5) The date the rescission period expires.

(c) Delay of creditor's performance. Unless a consumer waives the right to rescind under paragraph (e) of this section, 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 this section 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.

(d) Effects of rescission.

(1) 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.

(2) 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.

(3) If the creditor has delivered any money or property, the consumer may retain possession until the creditor has met its obligation under paragraph (d)(2) of this section. When the

creditor has complied with that paragraph, 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.

(4) The procedures outlined in paragraphs (d)(2) and (3) of this section may be modified by court order.

(e) **Consumer's waiver of right to rescind.** 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 signatures of the consumers entitled to rescind. Printed forms for this purpose are prohibited.

(f) **Exempt transactions.** The right to rescind does not apply to the following:

(1) A residential mortgage transaction.

(2) A credit plan in which a state agency is a creditor.

36/ The term "material disclosures" means the information that must be provided to satisfy the requirements in 160:45-3-4 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, 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 160:45-3-3(4)(E)(i) and (ii) that is required under 160:45-3-4(5)(B).

160:45-3-14. Advertising

(a) **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.

(b) **Advertisement of terms that require additional disclosures.** If any of the terms required to be disclosed under 160:45-3-4 is set forth in an advertisement, the advertisement shall also clearly and conspicuously set forth the following **36d/**

(1) Any minimum, fixed, transaction, activity or similar charge that could be imposed.

(2) Any periodic rate that may be applied expressed as an annual percentage rate as determined under 160:45-3-12(b). If the plan provides for a variable periodic rate, that fact shall be disclosed.

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

(c) **Catalogs or other multiple-page advertisements; electronic advertisements**

(1) If a catalog or other multiple-page advertisement, or an electronic advertisement using electronic communication (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 paragraph (b) of this section, it shall be considered a single advertisement if:

(A) The table or schedule is clearly and conspicuously set forth; and

(B) Any statement of terms set forth in 160:45-3-4 appearing anywhere else in the catalog or advertisement clearly refers to the page or location where the table or schedule begins.

(2) A catalog or other multiple-page advertisement or an electronic advertisement ~~using electronic communication~~ (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.

(d) **Additional requirements for home-equity plans.**

(1) **Advertisement of terms that require additional disclosures.** If any of the terms required to be disclosed under 160:45-3-4(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 160:45-3-3, the advertisement also shall clearly and conspicuously set forth the following:

(A) 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.

(B) Any periodic rate used to compute the finance charge, expressed as an annual percentage rate as determined under 160:45-3-12(b).

(C) The maximum annual percentage rate that may be imposed in a variable-rate plan.

(2) **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 the period of time such rate will be in effect, and, with equal prominence to the initial rate, a reasonably current annual percentage rate that would have been in effect using the index and margin.

(3) **Balloon payment.** If an advertisement contains a statement about any minimum periodic payment, the advertisement also shall state, if applicable, that a balloon payment may result.

36e/
(4) **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.

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

36d/ The disclosures given in accordance with 160:45-3-2 do not constitute advertising terms for purposes of the requirements of this section.

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 must repay the entire outstanding balance at such time.

SUBCHAPTER 5. CLOSED-END CREDIT

160:45-5-1. General disclosure requirements

(a) **Form of disclosures.**

(1) The creditor shall make the disclosures required by this subchapter clearly and conspicuously in writing, in a form that the consumer may keep. The disclosures required by this subchapter 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 160:45-5-1(g), 160:45-5-3(b), and 160:45-5-8 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 related ~~37/~~ to the disclosures required under 160:45-5-2. ~~38/~~ The itemization of the amount financed under 160:45-5-2(3)(A) must be separate from the other disclosures under 160:45-5-2.

(2) The terms "finance charge" and "annual percentage rate," when required to be disclosed under 160:45-5-2(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 160:45-5-2(1).

~~(3) **Electronic communication.** For rules governing the electronic delivery of disclosures, including a definition of electronic communication, see 160:45-11-1.~~

(b) **Time of disclosures.** The creditor shall make disclosures before consummation of the transaction. In certain residential mortgage transactions, special timing requirements are set forth in 160:45-5-3(a). In certain variable-rate transactions, special timing requirements for variable-rate disclosures are set forth in 160:45-5-3(b) and 160:45-5-4(c). In certain transactions involving mail or telephone orders or a series of sales, the timing of the disclosures may be delayed in accordance with paragraphs (g) and (h) of this section.

(c) **Basis of disclosures and use of estimates.**

(1) The disclosures shall reflect the terms of the legal obligation between the parties.

(2) **Estimates and per-diem interest.**

(A) 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.

(B) 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 for consummation of the transaction.

(3) The creditor may disregard the effects of the following in making calculations and disclosures.

(A) That payments must be collected in whole cents.

(B) That dates of scheduled payments and advances may be changed because the scheduled date is not a business day.

(C) That months have different numbers of days.

(D) The occurrence of leap year.

(4) 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:

(A) For transactions in which the term is less than 1 year, a first period not more than 6 days shorter or 13 days longer than a regular period;

(B) For transactions in which the term is at least 1 year and less than 10 years, a first period not more than 11 days shorter or 21 days longer than a regular period; and

(C) For transactions in which the term is at least 10 years, a first period shorter than or not more than 32 days longer than a regular period.

(5) If an obligation is payable on demand, the creditor shall make the disclosures based on an assumed maturity of 1 year. If an alternate maturity date is stated in the legal obligation between the parties, the disclosures shall be based on that date.

(6) Multiple advances.

(A) A series of advances under an agreement to extend credit up to a certain amount may be considered as one transaction.

(B) 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.

(d) 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 this chapter 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 160:45-5-7, however, the disclosures shall be made to each consumer who has the right to rescind.

(e) 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 this chapter although new disclosures may be required under paragraph (f) of this section, 160:45-5-3, or 160:45-5-4.

(f) Early disclosures. If disclosures required by this subchapter are given before the date of consummation of a transaction and a subsequent event makes them inaccurate, the creditor shall disclose before consummation: **39/**

(1) any changed term unless the term was based on an estimate in accordance with paragraph (c)(2) of this section and was labeled an estimate;

(2) 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 percentage point in a regular transaction, or more than 1/4 of 1 percentage point in an irregular transaction, as defined in 160:45-5-6(a).

(g) Mail or telephone orders - delay in disclosures. If a creditor receives a purchase order or a request for an extension of credit by mail, telephone, or facsimile machine 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:

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

(2) The total sale price.

(3) The finance charge.

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

(A) The circumstances under which the rate may increase.

(B) Any limitations on the increase.

(C) The effect of an increase.

(5) The terms of repayment.

(h) 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:

(1) 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.

(2) 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 this provision, 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.

(i) **Interim student credit extensions.** For each transaction involving an interim credit extension under a student credit program, the creditor need not make the following disclosures: the finance charge under 160:45-5-2(4), the payment schedule under 160:45-5-2(7), the total of payments under 160:45-5-2(8), or the total sale price under 160:45-5-2(10).

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 with or separately from other required disclosures: the creditor's identity under 160:45-5-2(1), the variable-rate example under 160:45-5-2(6)(A)(iv), insurance or debt cancellation under 160:45-5-2(14), and certain security interest-charges under 160:45-5-2(15).

39/ For certain residential mortgage transactions, 160:45-5-3(a)(2) permits redisclosure no later than consummation or settlement, whichever is later.

160:45-5-3. Certain residential mortgage and variable-rate transactions

(a) Disclosure.

(1) **Time of disclosure.** In a residential mortgage transaction subject to the Real Estate Settlement Procedures Act (12 USC 2601 et seq.) the creditor shall make good faith estimates of the disclosures required by 160:45-5-2 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.

(2) **Redisclosure required.** 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 percentage point in a regular transaction or more than 1/4 of 1 percentage point in an irregular transaction, as defined in 160:45-5-6, the creditor shall disclose all the changed terms no later than consummation or settlement.

(b) **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 nonrefundable fee, whichever is earlier: **45b/**

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

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

(A) The fact that the interest rate, payment, or term of the loan can change.

(B) The index or formula used in making adjustments, and a source of information about the index or formula.

- (C) 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.
- (D) A statement that the consumer should ask about the current margin value and current interest rate.
- (E) 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.
- (F) The frequency of interest-rate and payment changes.
- (G) 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 the interest-rate carryover.
- (H) At the option of the creditor, either of the following:
 - (i) A 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 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 during the period.
 - (ii) 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.
- (I) An explanation of how the consumer may calculate the payments for the loan amount to be borrowed based on either -
 - (i) the most recent payment shown in the historical example in paragraph (b)(2)(H)(i) of this section; or
 - (ii) the initial interest rate used to calculate the maximum interest rate and payment in paragraph (b)(2)(H)(ii) of this section.
- (J) The fact that the loan program contains a demand feature.
- (K) The type of information that will be provided in notices of adjustments and the timing of such notices.
- (L) A statement that disclosure forms are available for the creditor's other variable-rate loan programs.

(c) Electronic disclosures. For an application that is accessed by the consumer in electronic form, the disclosures required by paragraph (b) of this section may be provided to the consumer in electronic form on or with the application.

45a/ Information provided in accordance with variable-rate regulations of federal agencies may be substituted for the disclosures required by paragraph (b) of this section.

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.

160:45-5-7. Right of rescission

(a) Consumer's right to rescind.

(1) 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 paragraph (f) of this section. ~~47/~~

(2) 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.

(3) The consumer may exercise the right to rescind until midnight of the third business day following consummation, delivery of the notice required by paragraph (b) of this section, or delivery of all material disclosures, ~~48/~~ whichever occurs last. If the required notice or material disclosures are not delivered, the right to rescind shall expire 3 years after consummation, 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 §5-204(1) of the Code.

(4) 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.

(b) Notice of right to rescind.

(1) 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 ~~by~~in electronic ~~communication~~form ~~as provided in 160:45-11-1(b)~~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:

(A) The retention or acquisition of a security interest in the consumer's principal dwelling.

(B) The consumer's right to rescind the transaction.

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

(D) The effects of rescission, as described in paragraph (d) of this section.

(E) The date the rescission period expires.

(2) **Proper form of notice.** To satisfy the disclosure requirements of paragraph (b)(1) of this section, the creditor shall provide the appropriate model form in Appendix H of this chapter or a substantially similar notice.

(c) **Delay of creditor's performance.** Unless a consumer waives the right of rescission under paragraph (e) of this section, 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.

(d) Effects of rescission.

(1) 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.

(2) 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.

(3) If the creditor has delivered any money or property, the consumer may retain possession until the creditor has met its obligation under paragraph (d)(2) of this section. When the creditor has complied with that paragraph, 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.

(4) The procedures outlined in paragraphs (d)(2) and (3) of this section may be modified by court order.

(e) **Consumer's waiver of right to rescind.** 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.

(f) **Exempt transactions.** The right to rescind does not apply to the following:

(1) A residential mortgage transaction.

(2) A refinancing or consolidation by the same creditor of an extension of credit already secured by the consumer's principal dwelling. The right of rescission shall apply, however, to the extent the new amount financed exceeds the unpaid principal balance, any earned unpaid finance charge on the existing debt, and amounts attributed solely to the costs of the refinancing or consolidation.

(3) A transaction in which a state agency is a creditor.

(4) 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 160:45-5-1(c)(6), if the notice required by paragraph (b) of this section and all material disclosures have been given to the consumer.

(5) A renewal of optional insurance premiums that is not considered a refinancing under 160:45-5-4(a)(5).

(g) **Tolerances for accuracy.**

(1) **One-half of 1 percent tolerance.** Except as provided in paragraphs (g)(2) and (h)(2) of this section, 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:

(A) is understated by no more than 1/2 of 1 percent of the face amount of the note or \$100, whichever is greater; or

(B) is greater than the amount required to be disclosed.

(2) **One percent tolerance.** In a refinancing of a residential mortgage transaction with a new creditor (other than a transaction covered by 160:45-9-2), if there is no new advance 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 this section if the disclosed finance charge:

- (A) is understated by no more than 1 percent of the face amount of the note or \$100, whichever is greater; or
- (B) is greater than the amount required to be disclosed.

(h) **Special rules for foreclosures.**

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

- (A) A mortgage broker fee that should have been included in the finance charge was not included; or
- (B) The creditor did not provide the properly completed appropriate model form in Appendix H of this chapter, or a substantially similar notice of rescission.

(2) **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 this section if the disclosed finance charge:

- (A) is understated by no more than \$35; or
- (B) is greater than the amount required to be disclosed.

47/ For purposes of this section, 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 paragraph (b) of this section but need not deliver new material disclosures. Delivery of the required notice shall begin the rescission period.

48/ The term "material disclosures" means the required disclosures of the annual percentage rate, the finance charge, the amount financed, the total payments, the payment schedule, and the disclosures and limitations referred to in 160:45-9-2(c) and (d).

160:45-5-8. Advertising

(a) **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.

(b) **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. 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.

(c) **Advertisement of terms that require additional disclosures.**

(1) If any of the following terms is set forth in an advertisement, the advertisement shall meet the requirements of paragraph (c)(2) of this section:

- (A) The amount or percentage of any downpayment.
- (B) The number of payments or period of repayment.
- (C) The amount of any payment.
- (D) The amount of any finance charge.

(2) An advertisement stating any of the terms in paragraph (c)(1) of this section shall state the following terms, **49/** as applicable:

- (A) The amount or percentage of the downpayment.
 - (B) The terms of repayment.
 - (C) The "annual percentage rate," using that term, and, if the rate may be increased after consummation, that fact.
- (d) **Catalogs or other multiple-page advertisements; electronic advertisements.**
- (1) If a catalog or other multiple-page advertisement, or an electronic advertisement using electronic communication (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 paragraph (c)(2) of this section, it shall be considered a single advertisement if:
- (A) The table or schedule is clearly and conspicuously set forth; and
 - (B) Any statement of terms of the credit terms in paragraph (c)(1) of this section appearing anywhere else in the catalog or advertisement clearly refers to the page or location where the table or schedule begins.
- (2) A catalog or other multiple-page advertisement or an electronic advertisement using electronic communication (such as an advertisement appearing on an Internet Web site) complies with paragraph (c)(2) of this section 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.
- 49/** An example of one or more typical extensions of credit with a statement of all the terms applicable to each may be used.

SUBCHAPTER 9. SPECIAL RULES FOR CERTAIN HOME MORTGAGE TRANSACTIONS

160:45-9-1. General rules

- (a) **Relation to other subchapters in this chapter.** The requirements and limitations of this subchapter are in addition to and not in lieu of those contained in other subchapters of this chapter.
- (b) **Form of disclosures.**
- (1) ~~General.~~ The creditor shall make the disclosures required by this subchapter clearly and conspicuously in writing, in a form that the consumer may keep. The disclosures required by this subchapter 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.).
 - (2) ~~Electronic communication.~~ For rules governing the electronic delivery of disclosures, including a definition of electronic communication, see 160:45-11-1.
- (c) **Timing of disclosure.**
- (1) **Disclosures for certain closed-end home mortgages.** The creditor shall furnish the disclosures required by 160:45-9-2 at least three business days prior to consummation of a mortgage transaction covered by 160:45-9-2.
 - (A) **Change in terms.** After complying with paragraph (c)(1) of this section 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 this subchapter.

(B) **Telephone disclosures.** A creditor may provide new disclosures by telephone if the consumer initiates the change and if, at consummation:

(i) The creditor provides new written disclosures; and

(ii) The consumer and creditor sign a statement that the new disclosures were provided by telephone at least three days prior to consummation.

(C) **Consumer's waiver of waiting period before consummation.** The consumer may, after receiving the disclosures required by paragraph (c)(1) of this section, 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.

(2) **Disclosures for reverse mortgages.** The creditor shall furnish the disclosures required by 160:45-9-3 at least three business days prior to:

(A) Consummation of a closed-end credit transaction; or

(B) The first transaction under an open-end credit plan.

(d) **Basis of disclosures and use of estimates.**

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

(2) **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.

(3) **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.

(e) **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 this chapter 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 160:45-3-13 or 160:45-5-7, however, the disclosures shall be made to each consumer who has the right to rescind.

(f) **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 this chapter, although new disclosures may be required for mortgages covered by 160:45-9-2 under paragraph (c) of this section, 160:45-3-7(c), 160:45-5-3, or 160:45-5-4.

(g) **Accuracy of annual percentage rate.** For purposes of 160:45-9-2, the annual percentage rate shall be considered accurate and may be used in determining whether a transaction is covered by 160:45-9-2, if it is accurate according to the requirements and within the tolerances under 160:45-5-6. The finance-charge tolerances for rescission under 160:45-5-7(g) or (h) shall not apply for this purpose.

160:45-9-2. Requirements for certain closed-end home mortgages

(a) Coverage.

(1) Except as provided in paragraph (a)(2) of this section, the requirements of this section apply to a consumer credit transaction that is secured by the consumer's principal dwelling, and in which either:

(A) The annual percentage rate at consummation will exceed by more than 8 percentage points for first-lien loans, or by more than 10 percentage points for subordinate-lien loans, the yield on Treasury securities having comparable periods of maturity to the loan maturity as of the fifteenth day of the month immediately preceding the month in which the application for the extension of credit is received by the creditor; or

(B) The total points and fees payable by the consumer at or before loan closing will exceed the greater of 8 percent of the total loan amount **50**%, 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 1.

(i) The dollar amount for 1996 is \$412.

(ii) The dollar amount for 1997 is \$424.

(iii) The dollar amount for 1998 is \$435.

(iv) The dollar amount for 1999 is \$441.

(v) The dollar amount for 2000 is \$451.

(vi) The dollar amount for 2001 is \$465.

(vii) The dollar amount for 2002 is \$480.

(viii) The dollar amount for 2003 is \$488.

(ix) The dollar amount for 2004 is \$499.

(x) The dollar amount for 2005 is \$510.

(xi) The dollar amount for 2006 is \$528.

(xii) The dollar amount for 2007 is \$547.

(xiii) The dollar amount for 2008 is \$561.

(2) This section does not apply to the following:

(A) A residential mortgage transaction.

(B) A reverse-mortgage transaction subject to 160:45-9-3.

(C) An open-end credit plan subject to subchapter 3 of this chapter.

(b) **Definitions.** For purposes of this subchapter, the following definitions apply:

(1) For purposes of paragraph (a)(1)(B) of this section, **points and fees** means:

(A) All items required to be disclosed under 160:45-1-4(a) and (b), except interest or the time-price differential;

(B) All compensation paid to mortgage brokers;

(C) All items listed in 160:45-1-4(c)(7) (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; and

(D) Premiums or other charges for credit life, accident, health, or loss-of-income insurance, or debt-cancellation coverage (whether or not the debt-cancellation coverage is insurance under applicable law) that provides for cancellation of all or part of the consumer's liability in the event of the loss of life, health, or income or in the case of accident, written in connection with the credit transaction.

(2) **Affiliate** means any company that controls, is controlled by, or is under common control with another company, as set forth in the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.).

(c) **Disclosures.** In addition to other disclosures required by this chapter, in a mortgage subject to this section, the creditor shall disclose the following in conspicuous type size:

(1) **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."

(2) **Annual percentage rate.** The annual percentage rate.

(3) **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 this paragraph shall be treated as accurate if it is based on an amount borrowed that is deemed accurate and is disclosed under paragraph (c)(5) of this section.

(4) **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 160:45-7-4.

(5) **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.

(d) **Limitations.** A mortgage transaction subject to this section shall not include the following terms:

(1) **Balloon payment.**

(A) For a loan with a term of less than five years, a payment schedule with regular periodic payments that when aggregated do not fully amortize the outstanding principal balance.

(B) **Exception.** The limitations in paragraph (d)(1)(A) of this section do not apply to loans with maturities of less than one year, if the purpose of the loan is a "bridge" loan connected with the acquisition or construction of a dwelling intended to become the consumer's principal dwelling.

(2) **Negative amortization.** A payment schedule with regular periodic payments that cause the principal balance to increase.

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

(4) **Increased interest rate.** An increase in the interest rate after default.

(5) **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 U.S.C. 1615(d)), for rebates of interest arising from a loan acceleration due to default.

(6) **Prepayment penalties.** Except as allowed under paragraph (d)(7) of this section, 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.

(7) **Prepayment-penalty exception.** A mortgage transaction subject to this section may provide for a prepayment penalty otherwise permitted by law (including a refund calculated according to the rule of 78s) if:

- (A) The penalty can be exercised only for the first five years following consummation;
- (B) The source of the prepayment funds is not a refinancing by the creditor or an affiliate of the creditor; and
- (C) At consummation, the consumer's total monthly debts (including amounts owed under the mortgage) do not exceed 50 percent of the consumer's monthly gross income, as verified by the consumer's signed financial statement, a credit report, and payment records for employment income.

(8) **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:

- (A) There is fraud or material misrepresentation by the consumer in connection with the loan;
- (B) The consumer fails to meet the repayment terms of the agreement for any outstanding balance; or
- (C) There is any action or inaction by the consumer that adversely affects the creditor's security for the loan, or any right of the creditor in such security.

50/ Total loan amount. For purposes of the "points and fees" test, the total loan amount is calculated by taking the amount financed, as determined according to 160:45-5-2(2), and deducting any cost listed in 160:45-9-2(b)(1)(C) and 160:45-9-2(b)(1)(D) that is both included as points and fees under 160:45-9-2(b)(1) and financed by the creditor.

SUBCHAPTER 11. ELECTRONIC COMMUNICATION [REVOKED]

160:45-11-1. Requirements for electronic communication [REVOKED]

~~(a) **Definition.**—"Electronic communication" means a message transmitted electronically between a creditor and a consumer in a format that allows visual text to be displayed on equipment, for example, a personal computer monitor.~~

~~(b) **General rule.**—In accordance with the Electronic Signatures in Global and National Commerce Act (the E Sign Act) (15 U.S.C. 7001 et seq.) and the rules of this chapter, a creditor may provide by electronic communication any disclosure required by this chapter to be in writing.~~

~~(c) **When consent is required.**—Under the E Sign Act, a creditor is required to obtain a consumer's affirmative consent when providing disclosures related to a transaction. For purposes of this requirement, the disclosures required under 160:45-3-2, 160:45-3-3(4) and (5), 160:45-3-14, 160:45-5-1(g)(1) through (5), 160:45-5-3(b) and 160:45-5-8 are deemed not to be related to a transaction.~~

~~(d) **Address or location to receive electronic communication.**—A creditor that uses electronic communication to provide disclosures required by this chapter shall:~~

- ~~(1) Send the disclosure to the consumer's electronic address; or~~
- ~~(2) Make the disclosure available at another location such as an Internet web site; and~~
 - ~~(A) Alert the consumer of the disclosure's availability by sending a notice to the consumer's electronic address (or to a postal address, at the creditor's option). The notice~~

~~shall identify the account involved and the address of the Internet web site or other location where the disclosure is available; and~~

~~(B) Make the disclosure available for at least 90 days from the date the disclosure first becomes available or from the date of the notice alerting the consumer of the disclosure, whichever comes later.~~

~~(3) **Exceptions.**—A creditor need not comply with paragraphs (d)(2)(A) and (B) of this section for the disclosures required under 160:45-3-2, 160:45-3-3(4) and (5), 160:45-3-14, 160:45-5-1(g)(1) through (5), 160:45-5-3(b) and 160:45-5-8.~~

~~(e) **Redelivery.**—When a disclosure provided by electronic communication is returned to a creditor undelivered, the creditor shall take reasonable steps to attempt redelivery using information in its files.~~

~~(f) **Electronic signatures.**—An electronic signature as defined under the E-Sign Act satisfies any requirement under this chapter for a consumer's signature or initials.~~