

§ 1637a. Disclosure requirements for open end consumer credit plans secured by consumer's principal dwelling

(a) Application disclosures

In the case of any open end consumer credit plan which provides for any extension of credit which is secured by the consumer's principal dwelling, the creditor shall make the following disclosures in accordance with subsection (b):

(1) Fixed annual percentage rate

Each annual percentage rate imposed in connection with extensions of credit under the plan and a statement that such rate does not include costs other than interest.

(2) Variable percentage rate

In the case of a plan which provides for variable rates of interest on credit extended under the plan—

(A) a description of the manner in which such rate will be computed and a statement that such rate does not include costs other than interest;

(B) a description of the manner in which any changes in the annual percentage rate will be made, including—

- (i) any negative amortization and interest rate carryover;
- (ii) the timing of any such changes;
- (iii) any index or margin to which such changes in the rate are related; and
- (iv) a source of information about any such index;

(C) if an initial annual percentage rate is offered which is not based on an index—

- (i) a statement of such rate and the period of time such initial rate will be in effect; and
- (ii) a statement that such rate does not include costs other than interest;

(D) a statement that the consumer should ask about the current index value and interest rate;

(E) a statement of the maximum amount by which the annual percentage rate may change in any 1-year period or a statement that no such limit exists;

(F) a statement of the maximum annual percentage rate that may be imposed at any time under the plan;

(G) subject to subsection (b)(3), a table, based on a \$10,000 extension of credit, showing how the annual percentage rate and the minimum periodic payment amount under each repayment option of the plan would have been affected during the preceding 15-year period by changes in any index used to compute such rate;

(H) a statement of—

- (i) the maximum annual percentage rate which may be imposed under each repayment option of the plan;
- (ii) the minimum amount of any periodic payment which may be required, based on a \$10,000 outstanding balance, under each such option when such maximum annual percentage rate is in effect; and
- (iii) the earliest date by which such maximum annual interest rate may be imposed; and

(I) a statement that interest rate information will be provided on or with each periodic statement.

(3) Other fees imposed by the creditor

An itemization of any fees imposed by the creditor in connection with the availability or use of credit under such plan, including annual fees, application fees, transaction fees, and closing costs (including costs commonly described as "points"), and the time when such fees are payable.

(4) Estimates of fees which may be imposed by third parties

(A) Aggregate amount

An estimate, based on the creditor's experience with such plans and stated as a single amount or as a reasonable range, of the aggregate amount of additional fees that may be imposed by third parties (such as governmental authorities, appraisers, and attorneys) in connection with opening an account under the plan.

(B) Statement of availability

A statement that the consumer may ask the creditor for a good faith estimate by the creditor of the fees that may be imposed by third parties.

(5) Statement of risk of loss of dwelling

A statement that—

- (A) any extension of credit under the plan is secured by the consumer's dwelling; and
- (B) in the event of any default, the consumer risks the loss of the dwelling.

(6) Conditions to which disclosed terms are subject

(A) Period during which such terms are available

A clear and conspicuous statement—

- (i) of the time by which an application must be submitted to obtain the terms disclosed; or
- (ii) if applicable, that the terms are subject to change.

(B) Right of refusal if certain terms change

A statement that—

- (i) the consumer may elect not to enter into an agreement to open an account under the plan if any term changes (other than a change contemplated by a variable feature of the plan) before any such agreement is final; and
- (ii) if the consumer makes an election described in clause (i), the consumer is entitled to a refund of all fees paid in connection with the application.

(C) Retention of information

A statement that the consumer should make or otherwise retain a copy of information disclosed under this subparagraph.

(7) Rights of creditor with respect to extensions of credit

A statement that—

- (A) under certain conditions, the creditor may terminate any account under the plan and require immediate repayment of any

outstanding balance, prohibit any additional extension of credit to the account, or reduce the credit limit applicable to the account; and

(B) the consumer may receive, upon request, more specific information about the conditions under which the creditor may take any action described in subparagraph (A).

(8) Repayment options and minimum periodic payments

The repayment options under the plan, including—

(A) if applicable, any differences in repayment options with regard to—

(i) any period during which additional extensions of credit may be obtained; and

(ii) any period during which repayment is required to be made and no additional extensions of credit may be obtained;

(B) the length of any repayment period, including any differences in the length of any repayment period with regard to the periods described in clauses (i) and (ii) of subparagraph (A); and

(C) an explanation of how the amount of any minimum monthly or periodic payment will be determined under each such option, including any differences in the determination of any such amount with regard to the periods described in clauses (i) and (ii) of subparagraph (A).

(9) Example of minimum payments and maximum repayment period

An example, based on a \$10,000 outstanding balance and the interest rate (other than a rate not based on the index under the plan) which is, or was recently, in effect under such plan, showing the minimum monthly or periodic payment, and the time it would take to repay the entire \$10,000 if the consumer paid only the minimum periodic payments and obtained no additional extensions of credit.

(10) Statement concerning balloon payments

If, under any repayment option of the plan, the payment of not more than the minimum periodic payments required under such option over the length of the repayment period—

(A) would not repay any of the principal balance; or

(B) would repay less than the outstanding balance by the end of such period,

as the case may be, a statement of such fact, including an explicit statement that at the end of such repayment period a balloon payment (as defined in section 1665b(f) of this title) would result which would be required to be paid in full at that time.

(11) Negative amortization

If applicable, a statement that—

(A) any limitation in the plan on the amount of any increase in the minimum payments may result in negative amortization;

(B) negative amortization increases the outstanding principal balance of the account; and

(C) negative amortization reduces the consumer's equity in the consumer's dwelling.

(12) Limitations and minimum amount requirements on extensions of credit

(A) Number and dollar amount limitations

Any limitation contained in the plan on the number of extensions of credit and the amount of credit which may be obtained during any month or other defined time period.

(B) Minimum balance and other transaction amount requirements

Any requirement which establishes a minimum amount for—

(i) the initial extension of credit to an account under the plan;

(ii) any subsequent extension of credit to an account under the plan; or

(iii) any outstanding balance of an account under the plan.

(13) Statement regarding tax deductibility

A statement that—

(A) the consumer should consult a tax advisor regarding the deductibility of interest and charges under the plan; and

(B) in any case in which the extension of credit exceeds the fair market value (as defined under title 26) of the dwelling, 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.

(14) Disclosure requirements established by Bureau

Any other term which the Bureau requires, in regulations, to be disclosed.

(b) Time and form of disclosures

(1) Time of disclosure

(A) In general

The disclosures required under subsection (a) with respect to any open end consumer credit plan which provides for any extension of credit which is secured by the consumer's principal dwelling and the pamphlet required under subsection (e) shall be provided to any consumer at the time the creditor distributes an application to establish an account under such plan to such consumer.

(B) Telephone, publications, and third party applications

In the case of telephone applications, applications contained in magazines or other publications, or applications provided by a third party, the disclosures required under subsection (a) and the pamphlet required under subsection (e) shall be provided by the creditor before the end of the 3-day period beginning on the date the creditor receives a completed application from a consumer.

(2) Form

(A) In general

Except as provided in paragraph (1)(B), the disclosures required under subsection (a) shall be provided on or with any application to establish an account under an open end

consumer credit plan which provides for any extension of credit which is secured by the consumer's principal dwelling.

(B) Segregation of required disclosures from other information

The disclosures required under subsection (a) shall be conspicuously segregated from all other terms, data, or additional information provided in connection with the application, either by grouping the disclosures separately on the application form or by providing the disclosures on a separate form, in accordance with regulations of the Bureau.

(C) Precedence of certain information

The disclosures required by paragraphs (5), (6), and (7) of subsection (a) shall precede all of the other required disclosures.

(D) Special provision relating to variable interest rate information

Whether or not the disclosures required under subsection (a) are provided on the application form, the variable rate information described in subsection (a)(2) may be provided separately from the other information required to be disclosed.

(3) Requirement for historical table

In preparing the table required under subsection (a)(2)(G), the creditor shall consistently select one rate of interest for each year and the manner of selecting the rate from year to year shall be consistent with the plan.

(c) Third party applications

In the case of an application to open an account under any open end consumer credit plan described in subsection (a) which is provided to a consumer by any person other than the creditor—

(1) such person shall provide such consumer with—

(A) the disclosures required under subsection (a) with respect to such plan, in accordance with subsection (b); and

(B) the pamphlet required under subsection (e); or

(2) if such person cannot provide specific terms about the plan because specific information about the plan terms is not available, no nonrefundable fee may be imposed in connection with such application before the end of the 3-day period beginning on the date the consumer receives the disclosures required under subsection (a) with respect to the application.

(d) "Principal dwelling" defined

For purposes of this section and sections 1647 and 1665b of this title, the term "principal dwelling" includes any second or vacation home of the consumer.

(e) Pamphlet

In addition to the disclosures required under subsection (a) with respect to an application to open an account under any open end consumer credit plan described in such subsection, the creditor or other person providing such disclosures to the consumer shall provide—

(1) a pamphlet published by the Bureau pursuant to section 4 of the Home Equity¹ Consumer Protection Act of 1988; or

(2) any pamphlet which provides substantially similar information to the information described in such section, as determined by the Bureau.

(Pub. L. 90-321, title I, §127A, as added Pub. L. 100-709, §2(a), Nov. 23, 1988, 102 Stat. 4725; amended Pub. L. 109-8, title XIII, §1302(a)(1), Apr. 20, 2005, 119 Stat. 208; Pub. L. 111-203, title X, §1100A(2), July 21, 2010, 124 Stat. 2107.)

REFERENCES IN TEXT

Section 4 of the Home Equity Loan Consumer Protection Act of 1988, referred to in subsec. (e)(1), is section 4 of Pub. L. 100-709, which is set out as a note below.

AMENDMENTS

2010—Subsecs. (a)(14), (b)(2)(B), (e). Pub. L. 111-203 substituted "Bureau" for "Board" wherever appearing.

2005—Subsec. (a)(13). Pub. L. 109-8 substituted "tax deductibility" for "consultation of tax advisor" in heading, designated existing provisions as introductory provisions and subpar. (A), inserted dash, substituted ":", and" for period at end of subpar. (A), and added subpar. (B).

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111-203 effective on the designated transfer date, see section 1100H of Pub. L. 111-203, set out as a note under section 552a of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109-8 effective 180 days after Apr. 20, 2005, and not applicable with respect to cases commenced under Title 11, Bankruptcy, before such effective date, except as otherwise provided, see section 1501 of Pub. L. 109-8, set out as a note under section 101 of Title 11.

EFFECTIVE DATE

For effective date of section, see Regulations; Effective Date note below.

REGULATIONS

Pub. L. 109-8, title XIII, §1302(c), Apr. 20, 2005, 119 Stat. 209, provided that:

"(1) IN GENERAL.—The Board [of Governors of the Federal Reserve System] shall promulgate regulations implementing the amendments made by this section [amending this section and sections 1638, 1664, and 1665b of this title].

"(2) EFFECTIVE DATE.—Regulations issued under paragraph (1) shall not take effect until the later of—

"(A) 12 months after the date of enactment of this Act [Apr. 20, 2005]; or

"(B) 12 months after the date of publication of such final regulations by the Board."

REGULATIONS; EFFECTIVE DATE

Pub. L. 100-709, §7, Nov. 23, 1988, 102 Stat. 4734, provided that:

"(a) REGULATIONS.—Before the end of the 60-day period beginning on the date of the enactment of this Act [Nov. 23, 1988], the Board of Governors of the Federal Reserve System shall prescribe such regulations as may be necessary to carry out the proposes [sic] of the amendments made by this Act [enacting this section and sections 1647 and 1665b of this title, amending sections 1632 and 1637 of this title, and enacting provisions set out as notes under this section and section 1601 of this title].

¹ So in original. Probably should be followed by "Loan".

“(b) EFFECTIVE DATE.—The amendments made by this Act, and the regulations prescribed pursuant to subsection (a) with respect to such amendments, shall apply to—

“(1) any agreement to open an account under an open end consumer credit plan under which extensions of credit are secured by a consumer’s principal dwelling which is entered into after the end of the 5-month period beginning on the date on which the regulations prescribed under subsection (a) become final; and

“(2) any application to open such an account which is distributed by, or received by a creditor, after the end of such 5-month period.

“(c) VOLUNTARY COMPLIANCE.—Notwithstanding subsection (b), any creditor may comply with the amendments made by this Act, in accordance with the regulations prescribed by the Board, before the effective date established under such subsection.”

CONSUMER EDUCATION

Pub. L. 100-709, § 4, Nov. 23, 1988, 102 Stat. 4733, provided that: “The Board of Governors of the Federal Reserve System shall develop and prepare a pamphlet for distribution to consumers which contains—

“(1) a general description of open end consumer credit plans secured by the consumer’s principal dwelling and the terms and conditions under which such loans are generally extended; and

“(2) a discussion of the potential advantages and disadvantages of such plans, including how to compare among home equity plans and between home equity and closed end credit plans.”

§ 1638. Transactions other than under an open end credit plan

(a) Required disclosures by creditor

For each consumer credit transaction other than under an open end credit plan, the creditor shall disclose each of the following items, to the extent applicable:

(1) The identity of the creditor required to make disclosure.

(2)(A) The “amount financed”, using that term, which shall be the amount of credit of which the consumer has actual use. This amount shall be computed as follows, but the computations need not be disclosed and shall not be disclosed with the disclosures conspicuously segregated in accordance with subsection (b)(1):

(i) take the principal amount of the loan or the cash price less downpayment and trade-in;

(ii) add any charges which are not part of the finance charge or of the principal amount of the loan and which are financed by the consumer, including the cost of any items excluded from the finance charge pursuant to section 1605 of this title; and

(iii) subtract any charges which are part of the finance charge but which will be paid by the consumer before or at the time of the consummation of the transaction, or have been withheld from the proceeds of the credit.

(B) In conjunction with the disclosure of the amount financed, a creditor shall provide a statement of the consumer’s right to obtain, upon a written request, a written itemization of the amount financed. The statement shall include spaces for a “yes” and “no” indication to be initialed by the consumer to indicate

whether the consumer wants a written itemization of the amount financed. Upon receiving an affirmative indication, the creditor shall provide, at the time other disclosures are required to be furnished, a written itemization of the amount financed. For the purposes of this subparagraph, “itemization of the amount financed” means a disclosure of the following items, to the extent applicable:

(i) the amount that is or will be paid directly to the consumer;

(ii) the amount that is or will be credited to the consumer’s account to discharge obligations owed to the creditor;

(iii) each amount that is or will be paid to third persons by the creditor on the consumer’s behalf, together with an identification of or reference to the third person; and

(iv) the total amount of any charges described in the preceding subparagraph (A)(iii).

(3) The “finance charge”, not itemized, using that term.

(4) The finance charge expressed as an “annual percentage rate”, using that term. This shall not be required if the amount financed does not exceed \$75 and the finance charge does not exceed \$5, or if the amount financed exceeds \$75 and the finance charge does not exceed \$7.50.

(5) The sum of the amount financed and the finance charge, which shall be termed the “total of payments”.

(6) The number, amount, and due dates or period of payments scheduled to repay the total of payments.

(7) In a sale of property or services in which the seller is the creditor required to disclose pursuant to section 1631(b) of this title, the “total sale price”, using that term, which shall be the total of the cash price of the property or services, additional charges, and the finance charge.

(8) Descriptive explanations of the terms “amount financed”, “finance charge”, “annual percentage rate”, “total of payments”, and “total sale price” as specified by the Bureau. The descriptive explanation of “total sale price” shall include reference to the amount of the downpayment.

(9) Where the credit is secured, a statement that a security interest has been taken in (A) the property which is purchased as part of the credit transaction, or (B) property not purchased as part of the credit transaction identified by item or type.

(10) Any dollar charge or percentage amount which may be imposed by a creditor solely on account of a late payment, other than a deferral or extension charge.

(11) A statement indicating whether or not the consumer is entitled to a rebate of any finance charge upon refinancing or prepayment in full pursuant to acceleration or otherwise, if the obligation involves a precomputed finance charge. A statement indicating whether or not a penalty will be imposed in those same circumstances if the obligation involves a finance charge computed from time to time by application of a rate to the unpaid principal balance.