

- (4) All loan origination charges included in the effective interest rate;
- (5) All other charges not included as loan origination charges in the effective interest rate calculation that borrowers are required to pay to obtain a loan;
- (6) That stock or participation certificates that borrowers are required to purchase are at risk and may only be retired at the discretion of the board of the institution; and
- (7) The various types of loan options available to borrowers, with an explanation of the terms and borrower rights that apply to each type of loan.

The information required above is intended to reflect the actual loan for which the disclosure is being provided. The qualified lender may, at its discretion, include additional disclosures or examples—including illustrations of the impact on the effective interest rate of any change in borrower stock ownership—so long as such disclosures are not misleading.

The FCC contended in its comment letter that existing § 614.4367(a)(3), which requires the computation of EIR to be made on a transaction-specific basis, goes beyond the requirement of section 4.13(a)(3) of the Act. The FCC believes that the statutory requirement could be satisfied by using a representative example based on a generic transaction and recommended that FCA allow disclosure through the use of a standard example.

As indicated in prior rulemakings, we disagree with this approach and believe that in order for borrower disclosure to be “meaningful,” as is required by statute, the disclosure should take into account the specific loan for which the disclosure is being provided. The EIR disclosed should be derived from the interest rate and related charges applicable to the loan being made to the borrower. However, for adjustable or revolving loans where the terms and conditions are not fixed or are subject to change, a disclosure of the EIR based on the terms and conditions known at the inception of the loan, coupled with representative examples showing the effect of changes in any of the cost elements of the loan, *e.g.*, borrower stock, loan origination charges, or interest rate, on the EIR would be appropriate under the circumstances.

(b) *Adjustable rate loans*—Information required by current § 614.4367(a)(2) is incorporated in proposed § 617.7130. Qualified lenders must disclose to borrowers at the inception of adjustable rate loans:

- (1) The circumstances under which the rate can be adjusted;
- (2) How much the rate can be adjusted at any one time and how much the rate

can be adjusted during the term of the loan;

- (3) How often the rate can be adjusted;
- (4) Any limitations on the amount or frequency of adjustments; and
- (5) The specific factors that the qualified lender may take into account in making adjustments to the interest rate on the loan.

Paragraph (b)(5) was added to replace the current definition of “standard adjustments factors” in § 614.4366(h), which includes those factors typically taken into consideration by a qualified lender in adjusting the interest rate on loans, such as a lender’s cost of funds, operating expenses, provision for loan losses, changes in retained earnings, etc.

Section 617.7135—What Subsequent Disclosures Must a Qualified Lender Make to a Borrower?

(a) *Notice of interest rate change*—Section 4.13(a)(4) of the Act requires qualified lenders to provide notice to borrowers of “any change in the interest rate applicable to the borrower’s loan” within a “reasonable time after” the effective date of increase or decrease. Current § 614.4367(b)(3) requires notice to be made within 10 days after the effective date of the rate change. For loans with interest rates directly tied to a widely publicized external index, the notice may be made within 30 days after the effective date of the rate change.

The FCC recommends that the period in which disclosure must be made should be the same for all loans, regardless of any tie to an external index, in order to “simplify the disclosure process for System institutions.” However, under the current regulation, a System lender may choose to make disclosure for all adjustable rate loans within 10 days of the effective date of a change. Therefore, no regulatory change is necessary to achieve this recommendation. Additionally, when we adopted the 10- and 30-day rule in 1996, we said that the “need to provide timely information to borrowers outweighed the regulatory burden that a 10-day post-notice may entail.” We continue to believe that a longer notice period is not appropriate for “administered rate loans” (adjustable rate loans not tied to a widely published external index), thus we retain the 10-day requirement in the proposed rule at § 617.7135(a)(3).

The FCC also recommends that “where an interest rate is based on a widely publicized external index plus a spread, disclosure of a change of rate should not be required merely when the index changes but should be required only when the change in rate is caused by a change in the spread.” In support,

FCC notes that: (1) Borrowers receive notice in their original contract of what the index is and when the rate can change; (2) borrowers can easily find changes in the index through readily available sources; (3) anticipated changes in an external index (as opposed to unanticipated changes in the spread) would not have much impact on a borrower’s decision to refinance with another lender; and (4) when an external index changes, there is no change to the borrower’s contract rate of interest (index plus spread).

However, we believe eliminating the notice of interest changes for index rate loans is not appropriate. The Act requires notice of “any change in the interest rate applicable to the borrower’s loan.” While the contract rate (index plus spread) may not have changed, it is clear that when the index changes, the rate of interest the borrower pays on the loan has changed. There is nothing in the legislative history of the Act to suggest that Congress intended to exempt index rate loans from the disclosure requirement. Furthermore, we believe it is important to remind borrowers that interest rate changes will affect their payment amounts.

We propose to extend the deadline to provide notice on loans directly tied to a widely publicized index from 30 to 45 days. This would allow lenders that provide monthly billing or account statements sufficient time to include the notice of change with the regular mailing. The notice could also be satisfied by providing the required disclosure to borrowers in any form of correspondence, such as a newsletter.

We considered revising the rule to allow qualified lenders to send notice with the borrower’s next regularly scheduled billing or account statement. However, for annual, semiannual, or quarterly payment loans, it could result in some borrowers not receiving notice of interest rate change for a considerable time period. We did not believe that would constitute “reasonable” notice for those borrowers and would result in significantly disparate treatment for borrowers depending on their payment schedule.

We consider the nationally published commercial bank Prime Rate and the London Interbank Offered Rate (LIBOR) to be the primary examples of widely publicized external indexes. Other rates may also qualify, but the qualified lender must ensure that the rate is published in a source readily available to its borrowers. The 45-day rule applies only for changes in the index itself; if the lender changes the spread, a 10-day post-notice is required.