Truth in Lending Act[1]

The Truth in Lending Act (TILA), 15 U.S.C. 1601 *et seq*., was enacted on May 29, 1968, as title I of the Consumer Credit Protection Act (Pub. L. 90-321). The TILA, implemented by Regulation Z (12 CFR 1026), became effective July 1, 1969.

The TILA was first amended in 1970 to prohibit unsolicited credit cards. Additional major amendments to the TILA and Regulation Z were made by the Fair Credit Billing Act of 1974, the Consumer Leasing Act of 1976, the Truth in Lending Simplification and Reform Act of 1980, the Fair Credit and Charge Card Disclosure Act of 1988, the Home Equity Loan Consumer Protection Act of 1988.

Regulation Z also was amended to implement section 1204 of the Competitive Equality Banking Act of 1987, and in 1988, to include adjustable rate mortgage loan disclosure requirements. All consumer leasing provisions were deleted from Regulation Z in 1981 and transferred to Regulation M (12 CFR 1013).

The Home Ownership and Equity Protection Act of 1994 (HOEPA) amended the TILA. The law imposed new disclosure requirements and substantive limitations on certain closed-end mortgage loans bearing rates or fees above a certain percentage or amount. The law also included new disclosure requirements to assist consumers in comparing the costs and other material considerations involved in a reverse mortgage transaction and authorized the Federal Reserve Board to prohibit specific acts and practices in connection with mortgage transactions.

The TILA amendments of 1995 dealt primarily with tolerances for real estate secured credit. Regulation Z was amended on September 14, 1996 to incorporate changes to the TILA. Specifically, the revisions limit lenders' liability for disclosure errors in real estate secured loans consummated after September 30, 1995. The Economic Growth and Regulatory Paperwork Reduction Act of 1996 further amended the TILA. The amendments were made to simplify and improve disclosures related to credit transactions.

The Electronic Signatures in Global and National Commerce Act (the E-Sign Act), 15 U.S.C. 7001 *et seq*., was enacted in 2000 and did not require implementing regulations. On November 9, 2007, amendments to Regulation Z and the official commentary were issued to simplify the regulation and provide guidance on the electronic delivery of disclosures consistent with the E-Sign Act.

In July 2008, Regulation Z was amended to protect consumers in the mortgage market from unfair, abusive, or deceptive lending and servicing practices. Specifically, the change applied protections to a newly defined category of "higher-priced mortgage loans" that includes virtually all closed-end subprime loans secured by a consumer's principal dwelling. The revisions also applied new protections to mortgage loans secured by a dwelling, regardless of loan price, and required the delivery of early disclosures for more types of transactions. The revisions also

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[1] These reflect FFIEC-approved procedures.

banned several advertising practices deemed deceptive or misleading. The Mortgage Disclosure Improvement Act of 2008 (MDIA) broadened and added to the requirements of the Board's July 2008 final rule by requiring early truth-in-lending disclosures for more types of transactions and by adding a waiting period between the time when disclosures are given and consummation of the transaction. In 2009, Regulation Z was amended to address those provisions. The MDIA also requires disclosure of payment examples if the loan's interest rate or payments can change, as well as disclosure of a statement that there is no guarantee the consumer will be able to refinance in the future. In 2010, Regulation Z was amended to address these provisions, which became effective on January 30, 2011.

In December 2008, the Board adopted two final rules pertaining to open-end (not home-secured) credit. The first rule involved Regulation Z revisions and made comprehensive changes applicable to several disclosures required for: applications and solicitations, new accounts, periodic statements, change in terms notifications, and advertisements. The second was a rule published under the Federal Trade Commission (FTC) Act and was issued jointly with the Office of Thrift Supervision and the National Credit Union Administration. It sought to protect consumers from unfair acts or practices with respect to consumer credit card accounts. Before these rules became effective, however, the Credit Card Accountability Responsibility and Disclosure Act of 2009 (Credit CARD Act) amended the TILA and established a number of new requirements for open-end consumer credit plans. Several provisions of the Credit CARD Act are similar to provisions in the Board's December 2008 TILA revisions and the joint FTC Act rule, but other portions of the Credit CARD Act address practices or mandate disclosures that were not addressed in these rules. In light of the Credit CARD Act, the Board, NCUA, and OTS withdrew the substantive requirements of the joint FTC Act rule. On July 1, 2010, compliance with the provisions of the Board's rule that were not impacted by the Credit CARD Act became effective.

The Credit CARD Act provisions became effective in three stages. The provisions effective first (August 20, 2009) required creditors to increase the amount of notice consumers receive before the rate on a credit card account is increased or a significant change is made to the account's terms. These amendments also allowed consumers to reject such increases and changes by informing the creditor before the increase or change goes into effect. The provisions effective next (February 22, 2010) involved rules regarding interest rate increases, over-the-limit transactions, and student cards. Finally, the provisions effective last (August 22, 2010) addressed the reasonableness and proportionality of penalty fees and charges and re-evaluation of rate increases.

In 2009, Regulation Z was amended following the passage of the Higher Education Opportunity Act (HEOA) by adding disclosure and timing requirements that apply to lenders making private education loans.

In 2009, the Helping Families Save Their Homes Act amended the TILA to establish a new requirement for notifying consumers of the sale or transfer of their mortgage loans. The purchaser or assignee that acquires the loan must provide the required disclosures no later than 30 days after the date on which it acquired the loan.

In 2010, the Board further amended Regulation Z to prohibit payment to a loan originator that is based on the terms or conditions of the loan, other than the amount of credit extended. The

amendment applies to mortgage brokers and the companies that employ them, as well as to mortgage loan officers employed by depository institutions and other lenders. In addition, the amendment prohibits a loan originator from directing or "steering" a consumer to a loan that is not in the consumer's interest to increase the loan originator's compensation.

The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act) amended the TILA to include several provisions that protect the integrity of the appraisal process when a consumer's home is securing the loan. The rule also requires that appraisers receive customary and reasonable payments for their services. The appraiser and loan originator compensation requirements had a mandatory compliance date of April 6, 2011.

The Dodd-Frank Act granted rulemaking authority under the TILA to the Consumer Financial Protection Bureau (CFPB). Title XIV of the Dodd-Frank Act included a number of amendments to TILA, and in 2013, the CFPB issued rules to implement them. Prohibitions on mandatory arbitration and waivers of consumer rights, as well as requirements that lengthen the time creditors must maintain an escrow account for higher-priced mortgage loans, were effective June 1, 2013. The remaining amendments to Regulation Z are effective in January 2014[2]. These amendments include ability-to-repay requirements for mortgage loans, appraisal requirements for higher-priced mortgage loans, a revised and expanded test for high-cost mortgages, as well as additional restrictions on those loans, expanded requirements for servicers of mortgage loans, and refined loan originator compensation rules and loan origination qualification standards. The amendments also established new record retention requirements for certain provisions of the TILA.

In 2013, the CFPB issued a final rule revising the general limitation on the total amount of account fees that a credit card issuer may require a consumer to pay. Effective March 28, 2013, the limit is 25 percent of the credit limit in effect when the account is opened. The limitation applies only during the first year after account opening.

In 2013, the CFPB also issued a final rule to remove the requirement that card issuers consider the consumer's independent ability to pay for applicants who are 21 or older and to permit issuers to consider income and assets to which such consumers have a reasonable expectation of access. This change was effective May 3, 2013, with a mandatory compliance date of November 4, 2013.

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[2] These FFIEC examination procedures cover amendments to Regulation Z that were issued in final form as of June 12, 2013.

Format of Regulation Z

The rules creditors must follow differ depending on whether the creditor is offering open-end credit, such as credit cards or home-equity lines, or closed-end credit, such as car loans or mortgages.

Subpart A (sections 1026.1 through 1026.4) of the regulation provides general information that applies to open-end and closed-end credit transactions. It sets forth definitions and stipulates which transactions are covered and which are exempt from the regulation. It also contains the rules for determining which fees are finance charges.

Subpart B (sections 1026.5 through 1026.16) relates to open-end credit. It contains rules on account-opening disclosures and periodic statements. It also describes special rules that apply to credit card transactions, treatment of payments and credit balances, procedures for resolving credit billing errors, annual percentage rate calculations, rescission requirements, and advertising.

Subpart C (sections 1026.17 through 1026.24) relates to closed-end credit. It contains rules on disclosures, treatment of credit balances, annual percentage rate calculations, rescission requirements, and advertising.

Subpart D (sections 1026.25 through 1026.30) contain rules on oral disclosures, disclosures in languages other than English, record retention, effect on state laws, state exemptions, and rate limitations.

Subpart E (sections 1026.31 through 1026.45) contains special rules and exemptions for certain mortgage transactions. It contains rules on certain disclosures and provides limitations for loans that have rates or fees above specified amounts, and restricts certain terms for high-cost mortgages, higher-priced mortgage loans, and home equity plans. It contains requirements for reverse mortgage transactions. It provides for additional prohibitions for specific acts and practices in connection with an extension of credit secured by a dwelling. It contains rules on valuation independence, loan originator compensation in loans secured by a dwelling, loan originator qualification standards, and homeownership counseling requirements for certain types of loans secured by a dwelling. It also contains certain servicing requirements, such as the requirement to provide periodic billing statements. It establishes minimum standards for transactions secured by a dwelling, including repayment ability and qualified mortgage standards.

Subpart F (sections 1026.46 through 1026.48) relates to private education loans. It contains rules on disclosures, limitations on changes in terms after approval, the right to cancel the loan, and limitations on co-branding in the marketing of private education loans.

Subpart G (sections 1026.51 through 1026.60) relates to credit card accounts under an open-end (not home-secured) consumer credit plan (except for section 1026.57(c), which applies to all open-end credit plans). This subpart contains rules regarding credit and charge card application and solicitation disclosures. It also contains rules on evaluation of a consumer’s ability to make the required payments under the terms of an account, limits the fees that a consumer can be required to pay, and contains rules on allocation of payments in excess of the minimum payment. It also sets

forth certain limitations on the imposition of finance charges as the result of a loss of a grace period, and on increases in annual percentage rates, fees, and charges for credit card accounts, including the reevaluation of rate increases. This subpart prohibits the assessment of fees or charges for over-the-limit transactions unless the consumer affirmatively consents to the creditor's payment of over-the-limit transactions. This subpart also sets forth rules for reporting and marketing of college student open-end credit. Finally, it sets forth requirements for the Internet posting of credit card accounts under an open-end (not home-secured) consumer credit plan.

Several appendices contain information such as the procedures for determinations about state laws, state exemptions and issuance of official interpretations, special rules for certain kinds of credit plans, model disclosure forms, standards for determining ability to pay, and the rules for computing annual percentage rates in closed-end credit transactions and total-annual-loan-cost rates for reverse mortgage transactions.

Official interpretations of the regulation are published in a commentary. Good faith compliance with the commentary protects creditors from civil liability under the TILA. In addition, the commentary includes more detailed information on disclosures or other actions required of creditors. It is virtually impossible to comply with Regulation Z without reference to and reliance on the commentary.

NOTE: The following narrative does not discuss all the sections of Regulation Z, but rather highlights only certain sections of the regulation and the TILA.

Subpart A – General

Purpose of the TILA and Regulation Z

The TILA is intended to ensure that credit terms are disclosed in a meaningful way so consumers can compare credit terms more readily and knowledgeably. Before its enactment, consumers were faced with a bewildering array of credit terms and rates. It was difficult to compare loans because they were seldom presented in the same format. Now, all creditors must use the same credit terminology and expressions of rates. In addition to providing a uniform system for disclosures, the act:

- Protects consumers against inaccurate and unfair credit billing and credit card practices;
- Provides consumers with rescission rights;
- Provides for rate caps on certain dwelling-secured loans;
- Imposes limitations on home equity lines of credit and certain closed-end home mortgages;
- Provides minimum standards for most dwelling-secured loans; and
- Delineates and prohibits unfair or deceptive mortgage lending practices.

The TILA and Regulation Z do not, however, tell financial institutions how much interest they may charge or whether they must grant a consumer a loan.

Summary of Coverage Considerations – Sections 1026.1 and 1026.2

Lenders must carefully consider several factors when deciding whether a loan requires Truth in Lending disclosures or is subject to other Regulation Z requirements. The coverage considerations under Regulation Z are addressed in more detail in the commentary to Regulation Z. For example, broad coverage considerations are included under section 1026.1(c) of the regulation and relevant definitions appear in section 1026.2.

Exempt Transactions – Section 1026.3

The following transactions are exempt from Regulation Z:

- Credit extended primarily for a business, commercial, or agricultural purpose;
- Credit extended to other than a natural person (including credit to government agencies or instrumentalities);

- Credit in excess of an annually adjusted threshold not secured by real property or by personal property used or expected to be used as the principal dwelling of the consumer;[3]
- Public utility credit;
- Credit extended by a broker-dealer registered with the Securities and Exchange Commission (SEC) or the Commodity Futures Trading Commission (CFTC), involving securities or commodities accounts;
- Home fuel budget plans not subject to a finance charge; and
- Certain student loan programs.

However, when a credit card is involved, generally exempt credit (e.g., business purpose credit) is subject to the requirements that govern the issuance of credit cards and liability for their unauthorized use. Credit cards must not be issued on an unsolicited basis and, if a credit card is lost or stolen, the cardholder must not be held liable for more than $50 for the unauthorized use of the card. (Comment 3-1)

When determining whether credit is for consumer purposes, the creditor must evaluate all of the following:

- Any statement obtained from the consumer describing the purpose of the proceeds.
    - For example, a statement that the proceeds will be used for a vacation trip would indicate a consumer purpose.
    - If the loan has a mixed-purpose (e.g., proceeds will be used to buy a car that will be used for personal and business purposes), the lender must look to the primary purpose of the loan to decide whether disclosures are necessary. A statement of purpose from the consumer will help the lender make that decision.
    - A checked box indicating that the loan is for a business purpose, absent any documentation showing the intended use of the proceeds could be insufficient evidence that the loan did not have a consumer purpose.
- The consumer's primary occupation and how it relates to the use of the proceeds. The higher the correlation between the consumer's occupation and the property purchased from the loan proceeds, the greater the likelihood that the loan has a business purpose. For example, proceeds used to purchase dental supplies for a dentist would indicate a business purpose.
- Personal management of the assets purchased from proceeds. The lower the degree of the borrower's personal involvement in the management of the investment or enterprise purchased

[3] The Dodd-Frank Act requires that this threshold be adjusted annually by any annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W). Accordingly, based on the annual percentage increase in the CPI-W as of June 1, 2012, the exemption threshold increased from $51,800 to $53,000, effective January 1, 2013.

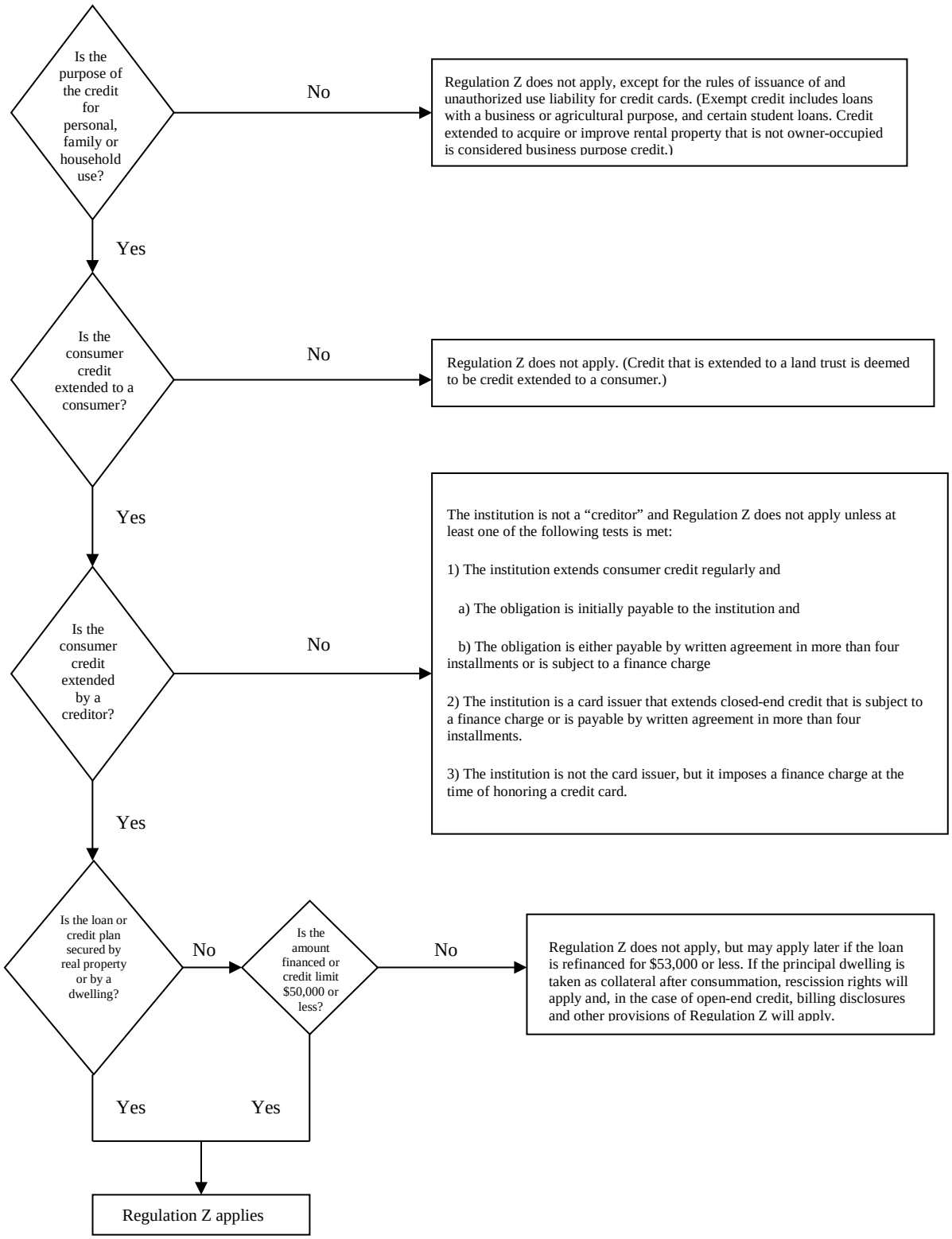
by the loan proceeds, the less likely the loan will have a business purpose. For example, money borrowed to purchase stock in an automobile company by an individual who does not work for that company would indicate a personal investment and a consumer purpose.

- The size of the transaction. The larger the size of the transaction, the more likely the loan will have a business purpose. For example, if the loan is for a $5,000,000 real estate transaction, that might indicate a business purpose.

- The amount of income derived from the property acquired by the loan proceeds relative to the borrower's total income. The lesser the income derived from the acquired property, the more likely the loan will have a consumer purpose. For example, if the borrower has an annual salary of $100,000 and receives about $500 in annual dividends from the acquired property, that would indicate a consumer purpose.

All five factors must be evaluated before the lender can conclude that disclosures are not necessary. Normally, no one factor, by itself, is sufficient reason to determine the applicability of Regulation Z. In any event, the financial institution may routinely furnish disclosures to the consumer. Disclosure under such circumstances does not control whether the transaction is covered, but can assure protection to the financial institution and compliance with the law.

Coverage Considerations under Regulation Z



Determination of Finance Charge and Annual Percentage Rate ("APR")

Finance Charge (Open-End and Closed-End Credit) – Section 1026.4

The finance charge is a measure of the cost of consumer credit represented in dollars and cents. Along with APR disclosures, the disclosure of the finance charge is central to the uniform credit cost disclosure envisioned by the TILA.

The finance charge does not include any charge of a type payable in a comparable cash transaction. Examples of charges payable in a comparable cash transaction may include taxes, title, license fees, or registration fees paid in connection with an automobile purchase.

Finance charges include any charges or fees payable directly or indirectly by the consumer and imposed directly or indirectly by the financial institution either as an incident to or as a condition of an extension of consumer credit. The finance charge on a loan always includes any interest charges and often, other charges. Regulation Z includes examples, applicable both to open-end and closed-end credit transactions, of what must, must not, or need not be included in the disclosed finance charge (§1026.4(b)).

Accuracy Tolerances (Closed-End Credit) – Sections 1026.18(d) and 1026.23(g)

Regulation Z provides finance charge tolerances for legal accuracy that should not be confused with those provided in the TILA for reimbursement under regulatory agency orders. As with disclosed APRs, if a disclosed finance charge were legally accurate, it would not be subject to reimbursement.

Under the TILA and Regulation Z, finance charge disclosures for open-end credit must be accurate since there is no tolerance for finance charge errors. However, both the TILA and Regulation Z permit various finance charge accuracy tolerances for closed-end credit.

Tolerances for the finance charge in a closed-end transaction, other than a mortgage loan, are generally $5 if the amount financed is less than or equal to $1,000 and $10 if the amount financed exceeds $1,000. Tolerances for certain transactions consummated on or after September 30, 1995 are noted below.

- Credit secured by real property or a dwelling (closed-end credit only):
    - The disclosed finance charge is considered accurate if it is not understated by more than $100.
    - Overstatements are not violations.

- Rescission rights after the three-business-day rescission period (closed-end credit only):
  - The disclosed finance charge is considered accurate if it does not vary from the actual finance charge by more than one-half of 1 percent of the credit extended or $100, whichever is greater.
  - The disclosed finance charge is considered accurate if it does not vary from the actual finance charge by more than 1 percent of the credit extended for the initial and subsequent refinancings of residential mortgage transactions when the new loan is made at a different financial institution. (This excludes high-cost mortgage loans subject to section 1026.32, transactions in which there are new advances, and new consolidations.)
- Rescission rights in foreclosure:
  - The disclosed finance charge is considered accurate if it does not vary from the actual finance charge by more than $35.
  - Overstatements are not considered violations.
  - The consumer can rescind if a mortgage broker fee that should have been included in the finance charge was not included.

  NOTE: Normally, the finance charge tolerance for a rescindable transaction is either 0.5 percent of the credit transaction or, for certain refinancings, 1 percent of the credit transaction. However, in the event of a foreclosure, the consumer may exercise the right of rescission if the disclosed finance charge is understated by more than $35.

See the "*Finance Charge Tolerances*" charts within these examination procedures for help in determining appropriate finance charge tolerances.

Calculating the Finance Charge (Closed-End Credit)

One of the more complex tasks under Regulation Z is determining whether a charge associated with an extension of credit must be included in, or excluded from, the disclosed finance charge. The finance charge initially includes any charge that is, or will be, connected with a specific loan. Charges imposed by third parties are finance charges if the financial institution requires use of the third party. Charges imposed by settlement or closing agents are finance charges if the bank requires the specific service that gave rise to the charge and the charge is not otherwise excluded. The "Finance Charge Tolerances" charts within this document briefly summarize the rules that must be considered.

Prepaid Finance Charges – Section 1026.18(b)(3)

A prepaid finance charge is any finance charge paid separately to the financial institution or to a third party, in cash or by check before or at closing, settlement, or consummation of a transaction, or withheld from the proceeds of the credit at any time.

Prepaid finance charges effectively reduce the amount of funds available for the consumer's use; usually before or at the time the transaction is consummated.

Examples of finance charges frequently prepaid by consumers are borrower's points, loan origination fees, real estate construction inspection fees, odd days' interest (interest attributable to part of the first payment period when that period is longer than a regular payment period), mortgage guarantee insurance fees paid to the Federal Housing Administration, private mortgage insurance (PMI) paid to such companies as the Mortgage Guaranty Insurance Company (MGIC), and, in non-real-estate transactions, credit report fees.

Precomputed Finance Charges

A precomputed finance charge includes, for example, interest added to the note amount that is computed by the add-on, discount, or simple interest methods. If reflected in the face amount of the debt instrument as part of the consumer's obligation, finance charges that are not viewed as prepaid finance charges are treated as precomputed finance charges that are earned over the life of the loan.

Finance Charge Chart

FINANCE CHARGE = DOLLAR COST OF CONSUMER CREDIT: It includes any charge payable directly or indirectly by the consumer and imposed directly or indirectly by the creditor as a condition of or incident to the extension of credit.

CHARGES ALWAYS INCLUDED

- Interest
- Transaction fees
- Loan origination fees Consumer points
- Credit guarantee insurance premiums
- Charges imposed on the creditor for purchasing the loan, which are passed on to the consumer
- Discounts for inducing payment by means other than credit
- Mortgage broker fees
- Other examples: Fee for preparing TILA disclosures; real estate construction loan inspection fees; fees for post-consummation tax or flood service policy; required credit life insurance charges

CHARGES INCLUDED UNLESS CONDITIONS ARE MET

CONDITIONS (Any loan)

Premiums for credit life, A&H, or loss of income insurance	Insurance not required, disclosures are made, and consumer authorizes
Debt cancellation fees	Coverage not required, disclosures are made, and consumer authorizes
Premiums for property or liability insurance	Consumer selects insurance company and disclosures are made
Premiums for vendor's single interest (VSI) insurance	Insurer waives right of subrogation, consumer selects insurance company, and disclosures are made
Security interest charges (filing fees), insurance in lieu of filing fees and certain notary fees	The fee is for lien purposes, prescribed by law, payable to a third public official and is itemized and disclosed
Charges imposed by third parties	Use of the third party is not required to obtain loan and creditor does not retain the charge
Charges imposed by third-party closing agents	Creditor does not require and does not retain the fee for the particular service
Appraisal and credit report fees	Application fees, if charged to all applicants, are not finance charges. Application fees may include appraisal or credit report fees.

CHARGES NOT INCLUDED IF BONA FIDE AND REASONABLE IN AMOUNT (Residential mortgage transactions and loans secured by real estate)

- Fees for title insurance, title examination, property survey, etc.
- Fees for preparing loan documents, mortgages, and other settlement documents
- Amounts required to be paid into escrow, if not otherwise included in the finance charge
- Notary fees
- Pre-consummation flood and pest inspection fees
- Appraisal and credit report fees

CHARGES NEVER INCLUDED

- Charges payable in a comparable cash transaction.
- Fees for unanticipated late payments
- Overdraft fees not agreed to in writing
- Seller's points
- Participation or membership fees
- Discount offered by the seller to induce payment by cash or other means not involving the use of a credit card
- Interest forfeited as a result of interest reduction required by law
- Charges absorbed by the creditor as a cost of doing business

Instructions for the Finance Charge Chart

The finance charge initially includes any charge that is, or will be, connected with a specific loan. Charges imposed by third parties are finance charges if the creditor requires use of the third party. Charges imposed on the consumer by a settlement agent are finance charges only if the creditor requires the particular services for which the settlement agent is charging the borrower and the charge is not otherwise excluded from the finance charge.

Immediately below the finance charge definition, the chart presents five captions applicable to determining whether a loan related charge is a finance charge.

The first caption is charges always included. This category focuses on specific charges given in the regulation or commentary as examples of finance charges.

The second caption, charges included unless conditions are met, focuses on charges that must be included in the finance charge unless the creditor meets specific disclosure or other conditions to exclude the charges from the finance charge.

The third caption, conditions, focuses on the conditions that need to be met if the charges identified to the left of the conditions are permitted to be excluded from the finance charge. Although most charges under the second caption may be included in the finance charge at the creditor's option, third-party charges and application fees (listed last under the third caption) must be excluded from the finance charge if the relevant conditions are met. However, inclusion of appraisal and credit report charges as part of the application fee is optional.

The fourth caption, charges not included, identifies fees or charges that are not included in the finance charge under conditions identified by the caption. If the credit transaction is secured by real property or the loan is a residential mortgage transaction, the charges identified in the column, if they are bona fide and reasonable in amount, must be excluded from the finance charge. For example, if a consumer loan is secured by a vacant lot or commercial real estate, any appraisal fees connected with the loan must not be included in the finance charge.

The fifth caption, charges never included, lists specific charges provided by the regulation as examples of those that automatically are not finance charges (e.g., fees for unanticipated late payments).

Annual Percentage Rate Definition – Section 1026.22 (Closed-End Credit)

Credit costs may vary depending on the interest rate, the amount of the loan and other charges, the timing and amounts of advances, and the repayment schedule. The APR, which must be disclosed in nearly all consumer credit transactions, is designed to take into account all relevant factors and to provide a uniform measure for comparing the cost of various credit transactions.

The APR is a measure of the cost of credit, expressed as a nominal yearly rate. It relates the amount and timing of value received by the consumer to the amount and timing of payments made. The disclosure of the APR is central to the uniform credit cost disclosure envisioned by the TILA.

The value of a closed-end credit APR must be disclosed as a single rate only, whether the loan has a single interest rate, a variable interest rate, a discounted variable interest rate, or graduated payments based on separate interest rates (step rates), and it must appear with the segregated disclosures. Segregated disclosures are grouped together and do not contain any information not directly related to the disclosures required under section 1026.18.

Since an APR measures the total cost of credit, including costs such as transaction charges or premiums for credit guarantee insurance, it is not an "interest" rate, as that term is generally used. APR calculations do not rely on definitions of interest in state law and often include charges, such as a commitment fee paid by the consumer, that are not viewed by some state usury statutes as interest. Conversely, an APR might not include a charge, such as a credit report fee in a real property transaction, which some state laws might view as interest for usury purposes. Furthermore, measuring the timing of value received and of payments made, which is essential if APR calculations are to be accurate, must be consistent with parameters under Regulation Z.

The APR is often considered to be the finance charge expressed as a percentage. However, two loans could require the same finance charge and still have different APRs because of differing values of the amount financed or of payment schedules. For example, the APR is 12 percent on a loan with an amount financed of $5,000 and 36 equal monthly payments of $166.07 each. It is 13.26 percent on a loan with an amount financed of $4,500 and 35 equal monthly payments of $152.18 each and final payment of $152.22. In both cases the finance charge is $978.52. The APRs on these example loans are not the same because an APR does not only reflect the finance charge. It relates the amount and timing of value received by the consumer to the amount and timing of payments made.

The APR is a function of:

- The amount financed, which is not necessarily equivalent to the loan amount. For example, if the consumer must pay at closing a separate 1 percent loan origination fee (prepaid finance charge) on a $100,000 residential mortgage loan, the loan amount is $100,000, but the amount financed would be $100,000 less the $1,000 loan fee, or $99,000.

- The finance charge, which is not necessarily equivalent to the total interest amount (interest is not defined by Regulation Z, but rather is defined by state or other federal law). For example:
    - If the consumer must pay a $25 credit report fee for an auto loan, the fee must be included in the finance charge. The finance charge in that case is the sum of the interest on the loan (i.e., interest generated by the application of a percentage rate against the loan amount) plus the $25 credit report fee.
    - If the consumer must pay a $25 credit report fee for a home improvement loan secured by real property, the credit report fee must be excluded from the finance charge. The finance charge in that case would be only the interest on the loan.
- The payment schedule, which does not necessarily include only principal and interest (P + I) payments. For example:
    - If the consumer borrows $2,500 for a vacation trip at 14 percent simple interest per annum and repays that amount with 25 equal monthly payments beginning one month from consummation of the transaction, the monthly P + I payment will be $115.87, if all months are considered equal, and the amount financed would be $2,500. If the consumer's payments are increased by $2.00 a month to pay a non-financed $50 loan fee during the life of the loan, the amount financed would remain at $2,500 but the payment schedule would be increased to $117.87 a month, the finance charge would increase by $50, and there would be a corresponding increase in the APR. This would be the case whether or not state law defines the $50 loan fee as interest.
    - If the loan above has 55 days to the first payment and the consumer prepays interest at consummation ($24.31 to cover the first 25 days), the amount financed would be $2,500 - $24.31, or $2,475.69. Although the amount financed has been reduced to reflect the consumer's reduced use of available funds at consummation, the time interval during which the consumer has use of the $2,475.69, 55 days to the first payment, has not changed. Since the first payment period exceeds the limitations of the regulation's minor irregularities provisions (see §1026.17(c)(4)), it may not be treated as regular. In calculating the APR, the first payment period must not be reduced by 25 days (i.e., the first payment period may not be treated as one month).

Financial institutions may, if permitted by state or other law, precompute interest by applying a rate against a loan balance using a simple interest, add-on, discount or some other method, and may earn interest using a simple interest accrual system, the Rule of 78's (if permitted by law) or some other method. Unless the financial institution's internal interest earnings and accrual methods involve a simple interest rate based on a 360-day year that is applied over actual days (even that is important only for determining the accuracy of the payment schedule), it is not relevant in calculating an APR, since an APR is not an interest rate (as that term is commonly used under state or other law). Since the APR normally need not rely on the internal accrual systems of a bank, it always may be computed after the loan terms have been agreed upon (as long as it is disclosed before actual consummation of the transaction).

Special Requirements for Calculating the Finance Charge and APR

Proper calculation of the finance charge and APR are of primary importance. The regulation requires that the terms “finance charge” and “annual percentage rate” be disclosed more conspicuously than any other required disclosure, subject to limited exceptions. The finance charge and APR, more than any other disclosures, enable consumers to understand the cost of the credit and to comparison shop for credit. A creditor’s failure to disclose those values accurately can result in significant monetary damages to the creditor, either from a class action lawsuit or from a regulatory agency’s order to reimburse consumers for violations of law.

If an APR or finance charge is disclosed incorrectly, the error is not, in itself, a violation of the regulation if:

- The error resulted from a corresponding error in a calculation tool used in good faith by the financial institution.
- Upon discovery of the error, the financial institution promptly discontinues use of that calculation tool for disclosure purposes.
- The financial institution notifies the CFPB in writing of the error in the calculation tool.

When a financial institution claims a calculation tool was used in good faith, the financial institution assumes a reasonable degree of responsibility for ensuring that the tool in question provides the accuracy required by the regulation. For example, the financial institution might verify the results obtained using the tool by comparing those results to the figures obtained by using another calculation tool. The financial institution might also verify that the tool, if it is designed to operate under the actuarial method, produces figures similar to those provided by the examples in appendix J to the regulation. The calculation tool should be checked for accuracy before it is first used and periodically thereafter.

Subpart B – Open-End Credit

Time of Disclosures (Periodic Statements) – Section 1026.5(b)

For credit card accounts under an open-end (not home-secured) consumer credit plan, creditors must adopt reasonable procedures designed to ensure that periodic statements are mailed or delivered at least 21 days prior to the payment due date disclosed on the periodic statement and that payments are not treated as late for any purpose if they are received within 21 days after mailing or delivery of the statement. In addition, for all open-end consumer credit accounts with grace periods, creditors must adopt reasonable procedures designed to ensure that periodic statements are mailed or delivered at least 21 days prior to the date on which a grace period (if any) expires and that finance charges are not imposed as a result of the loss of a grace period if a payment is received within 21 days after mailing or delivery of a statement. For purposes of this requirement, a "grace period" is defined as a period within which any credit extended may be repaid without incurring a finance charge due to a periodic interest rate. For non-credit card open-end consumer plans without a grace period, creditors must adopt reasonable policies and procedures designed to ensure that periodic statements are mailed or delivered at least 14 days prior to the date on which the required minimum periodic payment is due. Moreover, the creditor must adopt reasonable policies and procedures to ensure that it does not treat as late a required minimum periodic payment received by the creditor within 14 days after it has mailed or delivered the periodic statement.

Subsequent Disclosures (Open-End Credit) – Section 1026.9

For open-end, not home-secured credit, the following applies:

Creditors are required to provide consumers with 45 days' advance written notice of rate increases and other significant changes to the terms of their credit card account agreements. The list of "significant changes" includes most fees and other terms that a consumer should be aware of before use of the account. Examples of such fees and terms include:

- Penalty fees;
- Transaction fees;
- Fees imposed for the issuance or availability of the open-end plan;
- Grace period; and
- Balance computation method.

Changes that do not require advance notice include:

- Reductions of finance charges;
- Termination of account privileges resulting from an agreement involving a court proceeding;
- The change is an increase in an APR upon expiration of a specified period of time previously disclosed in writing;
- The change applies to increases in variable APRs that change according to an index not under the card issuer's control; and
- Rate increases due to the completion of, or failure of a consumer to comply with, the terms of a workout or temporary hardship arrangement, if those terms are disclosed prior to commencement of the arrangement.

A creditor may suspend account privileges, terminate an account, or lower the credit limit without notice. However, a creditor that lowers the credit limit may not impose an over limit fee or penalty rate as a result of exceeding the new credit limit without a 45-day advance notice that the credit limit has been reduced.

For significant changes in terms (with the exception of rate changes, increases in the minimum payment, certain changes in the balance computation method, and when the change results from the consumer's failure to make a required minimum periodic payment within 60 days after the due date), a creditor must also provide consumers the right to reject the change. If the consumer does reject the change prior to the effective date, the creditor may not apply the change to the account (§1026.9(h)(2)(i)).

In addition, when a consumer rejects a change or increase, the creditor must not:

- Impose a fee or charge or treat the account as in default solely as a result of the rejection; or
- Require repayment of the balance on the account using a method that is less beneficial to the consumer than one of the following methods: (1) the method of repayment prior to the rejection; (2) an amortization period of not less than five years from the date of rejection; or (3) a minimum periodic payment that includes a percentage of the balance that is not more than twice the percentage included prior to the date of rejection.

Finance Charge (Open-End Credit) – Sections 1026.6(a)(1) & 1026.6(b)(3)

Each finance charge imposed must be individually itemized. The aggregate total amount of the finance charge need not be disclosed.

Determining the Balance and Computing the Finance Charge

The examiner must know how to compute the balance to which the periodic rate is applied. Common methods used are the previous balance method, the daily balance method, and the average daily balance method, which are described as follows:

- **Previous balance method.** The balance on which the periodic finance charge is computed is based on the balance outstanding at the start of the billing cycle. The periodic rate is multiplied by this balance to compute the finance charge.

- **Daily balance method.** A daily periodic rate is applied to either the balance on each day in the cycle or the sum of the balances on each of the days in the cycle. If a daily periodic rate is multiplied by the balance on each day in the billing cycle, the finance charge is the sum of the products. If the daily periodic rate is multiplied by the sum of all the daily balances, the result is the finance charge.

- **Average daily balance method.** The average daily balance is the sum of the daily balances (either including or excluding current transactions) divided by the number of days in the billing cycle. A periodic rate is then multiplied by the average daily balance to determine the finance charge. If the periodic rate is a daily one, the product of the rate multiplied by the average balance is multiplied by the number of days in the cycle.

In addition to those common methods, financial institutions have other ways of calculating the balance to which the periodic rate is applied. By reading the financial institution's explanation, the examiner should be able to calculate the balance to which the periodic rate was applied. In some cases, the examiner may need to obtain additional information from the financial institution to verify the explanation disclosed. Any inability to understand the disclosed explanation should be discussed with management, who should be reminded of Regulation Z's requirement that disclosures be clear and conspicuous.

When a balance is determined without first deducting all credits and payments made during the billing cycle, that fact and the amount of the credits and payments must be disclosed.

If the financial institution uses the daily balance method and applies a single daily periodic rate, disclosure of the balance to which the rate was applied may be stated as any of the following:

- A balance for each day in the billing cycle. The daily periodic rate is multiplied by the balance on each day and the sum of the products is the finance charge.

- A balance for each day in the billing cycle on which the balance in the account changes. The finance charge is figured by the same method as discussed previously, but the statement shows the balance only for those days on which the balance changed.

- The sum of the daily balances during the billing cycle. The balance on which the finance charge is computed is the sum of all the daily balances in the billing cycle. The daily periodic rate is multiplied by that balance to determine the finance charge.

- The average daily balance during the billing cycle. If this is stated, the financial institution may, at its option, explain that the average daily balance is or can be multiplied by the number of days in the billing cycle and the periodic rate applied to the product to determine the amount of interest.

If the financial institution uses the daily balance method, but applies two or more daily periodic rates, the sum of the daily balances may not be used. Acceptable ways of disclosing the balances include:

- A balance for each day in the billing cycle;

- A balance for each day in the billing cycle on which the balance in the account changes; or

- Two or more average daily balances. If the average daily balances are stated, the financial institution may, at its option, explain that interest is or may be determined by 1) multiplying each of the average daily balances by the number of days in the billing cycle (or if the daily rate varied during the cycle), 2) by multiplying each of the results by the applicable daily periodic rate, and 3) adding these products together.

In explaining the method used to find the balance on which the finance charge is computed, the financial institution need not reveal how it allocates payments or credits. That information may be disclosed as additional information, but all required information must be clear and conspicuous.

NOTE: Section 1026.54 prohibits a credit card issuer from calculating finance charges based on balances for days in previous billing cycles as a result of the loss of a grace period (a practice sometimes referred to as “double-cycle billing”).

Finance Charge Resulting from Two or More Periodic Rates

Some financial institutions use more than one periodic rate in computing the finance charge. For example, one rate may apply to balances up to a certain amount and another rate to balances more than that amount. If two or more periodic rates apply, the financial institution must disclose all rates and conditions. The range of balances to which each rate applies also must be disclosed. It is not necessary, however, to break the finance charge into separate components based on the different rates.

Annual Percentage Rate (Open-End Credit)

The disclosed APR on an open-end credit account is accurate if it is within one-eighth of one percentage point of the APR calculated under Regulation Z.

Determination of APR – Section 1026.14

The basic method for determining the APR in open-end credit transactions involves multiplying each periodic rate by the number of periods in a year. This method is used in all types of open-end disclosures, including:

- The corresponding APR in the initial disclosures;
- The corresponding APR on periodic statements;
- The APR in early disclosures for credit card accounts;
- The APR in early disclosures for home-equity plans;
- The APR in advertising; and
- The APR in oral disclosures.

The corresponding APR is prospective and it does not involve any particular finance charge or periodic balance.

A second method of calculating the APR is the quotient method. At a creditor's option, the quotient method may be disclosed on periodic statements for home-equity plans subject to section 1026.40 ("HELOCs").[4] The quotient method reflects the annualized equivalent of the rate that was actually applied during a cycle. This rate, also known as the effective APR, will differ from the corresponding APR if the creditor applies minimum, fixed, or transaction charges to the account during the cycle. (§1026.14(c))

Brief Outline for Open-End Credit APR Calculations on Periodic Statements

NOTE: Assume monthly billing cycles for each of the calculations below.

I. Basic method for determining the APR in an open-end credit transaction. This is the corresponding APR. (§1026.14(b))

   A. Monthly rate x 12 = APR

II. Optional effective APR that may be disclosed on home-equity line of credit (HELOC) periodic statements

[4] If a creditor does not disclose the effective (or quotient method) APR on a HELOC periodic statement, it must instead disclose the charges (fees and interest) imposed as provided in section 1026.7(a).

A. APR when only periodic rates are imposed (§1026.14(c)(1))

   1. Monthly rate x 12 = APR

      Or

   2. (Total finance charge / sum of the balances) x 12 = APR

B. APR when minimum or fixed charge, but not transaction charge imposed. (§1026.14(c)(2))

   1. (Total finance charge / amount of applicable balance[5]) x 12 = APR[6]

C. APR when the finance charge includes a charge related to a specific transaction (such as a cash advance fee), even if the total finance charge also includes any other minimum, fixed, or other charge not calculated using a periodic rate. (§1026.14(c)(3))

   1. (Total finance charge / (all balances + other amounts on which a finance charge was imposed during the billing cycle without duplication[7]) x 12 = APR[8]

D. APR when the finance charge imposed during the billing cycle includes a minimum or fixed charge that does not exceed $.50 for a monthly or longer billing cycles (or pro rata part of $.50 for a billing cycle shorter than monthly). (§1026.14(c)(4))

   1. Monthly rate x 12 = APR

E. APR calculation when daily periodic rates are applicable if only the periodic rate is imposed or when a minimum or fixed charge (but not a transactional charge is imposed. (§1026.14(d))

   1. (Total finance charge / average daily balance) x 12 = APR

      Or

   2. (Total finance charge / sum of daily balances) x 365 = APR

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[5] For the following formulas, the APR cannot be determined if the applicable balance is zero. (§1026.14(c)(2))

[6] Loan fees, points, or similar finance charges that relate to the opening of the account must not be included in the calculation of the APR.

[7] The sum of the balances may include the average daily balance, adjusted balance, or previous balance method. When a portion of the finance charge is determined by application of one or more daily periodic rates, the sum of the balances also means the average of daily balances. See Appendix F to Regulation Z.

[8] Cannot be less than the highest periodic rate applied, expressed as an APR. Loan fees, points, or similar finance charges that relate to the opening of the account must not be included in the calculation of the APR.

Change in Terms Notices for Home Equity Plans Subject to Section 1026.40 – Section 1026.9(c)

Servicers are required to provide consumers with 15 days' advance written notice of a change to any term required to be disclosed under section 1026.6(a) or where the required minimum periodic payment is increased. Notice is not required when the change involves a reduction of any component of a finance charge or other charge or when the change results from an agreement involving a court proceeding. If the creditor prohibits additional extensions of credit or reduces the credit limit in certain circumstances (if permitted by contract), a written notice must be provided no later than three business days after the action is taken and must include the specific reasons for the action. If the creditor requires the consumer to request reinstatement of credit privileges, the notice also must state that fact.

Timely Settlement of Estates – Section 1026.11(c)

Issuers are required to establish procedures to ensure that any administrator of an estate can resolve the outstanding credit card balance of a deceased account holder in a timely manner. If an administrator requests the amount of the balance:

- The issuer is prohibited from imposing additional fees on the account;
- The issuer is required to disclose the amount of the balance to the administrator in a timely manner (safe harbor of 30 days); and
- If the balance is paid in full within 30 days after disclosure of the balance, the issuer must waive or rebate any trailing or residual interest charges that accrued on the balance following the disclosure.

Minimum Payments – Section 1026.7(b)(12)

For credit card accounts under an open-end credit plan, card issuers generally must disclose on periodic statements an estimate of the amount of time and the total cost (principal and interest) involved in paying the balance in full by making only the minimum payments, and an estimate of the monthly payment amount required to pay off the balance in 36 months and the total cost (principal and interest) of repaying the balance in 36 months. Card issuers also must disclose a minimum payment warning, and an estimate of the total interest that a consumer would save if that consumer repaid the balance in 36 months, instead of making minimum payments.

Subpart C – Closed-End Credit

Timing of Disclosures – Sections 1026.17(b) and 1026.19

Creditors are generally required to make disclosures required by the TILA before the consummation of the transaction. Residential mortgage transactions have special timing requirements that include providing disclosures to consumers no later than the third business day after receipt of the consumer's application. Creditors are also required to provide consumers with updated disclosures three days prior to consummation of the mortgage transaction if certain terms of the mortgage change. Finally, certain variable rate transactions secured by a dwelling have additional disclosure obligations with specific timing requirements both prior to and after consummation (see §§1026.20(c) and (d) below).

Finance Charge (Closed-End Credit) – Section 1026.17(a)

The aggregate total amount of the finance charge must be disclosed. Each finance charge imposed need not be individually itemized and must not be itemized with the segregated disclosures.

Annual Percentage Rate (Closed-End Credit) – Section 1026.22

Accuracy Tolerances

The disclosed APR on a closed-end transaction is accurate for:

- Regular transactions (which include any single advance transaction with equal payments and equal payment periods, or an irregular first payment period and/or a first or last irregular payment), if it is within one-eighth of 1 percentage point of the APR calculated under Regulation Z (§1026.22(a)(2)).

- Irregular transactions (which include multiple advance transactions and other transactions not considered regular), if it is within one-quarter of 1 percentage point of the APR calculated under Regulation Z (§1026.22(a)(3)).

- Mortgage transactions, if it is within one-eighth of 1 percentage point for regular transactions or one-quarter of 1 percentage point for irregular transactions **or if**:

  i. The rate results from the disclosed finance charge, and the disclosed finance is considered accurate under sections 1026.18(d)(1) or 1026.23(g) or (h) (§1026.22(a)(4)); or

  ii. The disclosed finance charge is calculated incorrectly but is considered accurate under sections 1026.18(d)(1) or 1026.23(g) or (h) and either:

    (A) the finance charge is understated and the disclosed APR is also understated but is closer to the actual APR than the APR that would be considered accurate under section 1026.22(a)(4); or

(B) the disclosed finance charge is overstated and the disclosed APR is also overstated but is closer to the actual APR than the APR that would be considered accurate under section 1026.22(a)(4).

For example, in an irregular transaction subject to a tolerance of ¼th of 1 percentage point, if the actual APR is 9.00% and a $75 omission from the finance charge corresponds to a rate of 8.50% that is considered accurate under section 1026.22(a)(4), a disclosed APR of 8.65% is considered accurate under section 1026.22(a)(5). However, a disclosed APR below 8.50% or above 9.25% would not be considered accurate.

Construction Loans – Section 1026.17(c)(6) & Appendix D

Construction and certain other multiple advance loans pose special problems in computing the finance charge and APR. In many instances, the amount and dates of advances are not predictable with certainty since they depend on the progress of the work. Regulation Z provides that the APR and finance charge for such loans may be estimated for disclosure.

At its option, the financial institution may rely on the representations of other parties to acquire necessary information (for example, it might look to the consumer for the dates of advances). In addition, if either the amounts or dates of advances are unknown (even if some of them are known), the financial institution may, at its option, use appendix D to the regulation to make calculations and disclosures. The finance charge and payment schedule obtained through appendix D may be used with volume one of the CFPB's APR tables or with any other appropriate computation tool to determine the APR. If the financial institution elects not to use appendix D, or if appendix D cannot be applied to a loan (e.g., appendix D does not apply to a combined construction-permanent loan if the payments for the permanent loan begin during the construction period), the financial institution must make its estimates under section 1026.17(c)(2) and calculate the APR using multiple advance formulas.

On loans involving a series of advances under an agreement to extend credit up to a certain amount, a financial institution may treat all of the advances as a single transaction or disclose each advance as a separate transaction. If advances are disclosed separately, disclosures must be provided before each advance occurs, with the disclosures for the first advance provided before consummation.

In a transaction that finances the construction of a dwelling that may or will be permanently financed by the same financial institution, the construction-permanent financing phases may be disclosed in one of three ways listed below.

- As a single transaction, with one disclosure combining both phases.
- As two separate transactions, with one disclosure for each phase.
- As more than two transactions, with one disclosure for each advance and one for the permanent financing phase.

If two or more disclosures are furnished, buyer's points or similar amounts imposed on the consumer may be allocated among the transactions in any manner the financial institution chooses, as long as the charges are not applied more than once. In addition, if the financial institution chooses to give two sets of disclosures and the consumer is obligated for both construction and permanent phases at the outset, both sets of disclosures must be given to the consumer initially, before consummation of each transaction occurs.

If the creditor requires interest reserves for construction loans, special appendix D rules apply that can make the disclosure calculations quite complicated. The amount of interest reserves included in the commitment amount must not be treated as a prepaid finance charge.

If the lender uses appendix D for construction-only loans with required interest reserves, the lender must estimate construction interest using the interest reserve formula in appendix D. The lender's own interest reserve values must be completely disregarded for disclosure purposes.

If the lender uses appendix D for combination construction-permanent loans, the calculations can be much more complex. Appendix D is used to estimate the construction interest, which is then measured against the lender's contractual interest reserves.

If the interest reserve portion of the lender's contractual commitment amount exceeds the amount of construction interest estimated under appendix D, the excess value is considered part of the amount financed if the lender has contracted to disburse those amounts whether they ultimately are needed to pay for accrued construction interest. If the lender will not disburse the excess amount if it is not needed to pay for accrued construction interest, the excess amount must be ignored for disclosure purposes.

Calculating the Annual Percentage Rate – Section 1026.22

The APR must be determined under one of the following:

- The actuarial method, which is defined by Regulation Z and explained in appendix J to the regulation.
- The U.S. Rule, which is permitted by Regulation Z and briefly explained in appendix J to the regulation. The U.S. Rule is an accrual method that seems to have first surfaced officially in an early nineteenth century United States Supreme Court case, *Story v. Livingston*, 38 U.S. 359 (1839).

Whichever method is used by the financial institution, the rate calculated will be accurate if it is able to "amortize" the amount financed while it generates the finance charge under the accrual method selected. Financial institutions also may rely on minor irregularities and accuracy tolerances in the regulation, both of which effectively permit somewhat imprecise, but still legal, APRs to be disclosed.

360-Day and 365-Day Years – Section 1026.17(c)(3)

Confusion often arises over whether to use the 360-day or 365-day year in computing interest, particularly when the finance charge is computed by applying a daily rate to an unpaid balance. Many single payment loans or loans payable on demand are in this category. There are also loans in this category that call for periodic installment payments. Regulation Z does not require the use of one method of interest computation in preference to another (although state law may). It does, however, permit financial institutions to disregard the fact that months have different numbers of days when calculating and making disclosures. This means financial institutions may base their disclosures on calculation tools that assume all months have an equal number of days, even if their practice is to take account of the variations in months to collect interest.

For example, a financial institution may calculate disclosures using a financial calculator based on a 360-day year with 30-day months, when, in fact, it collects interest by applying a factor of 1/365 of the annual interest rate to actual days.

Disclosure violations may occur, however, when a financial institution applies a daily interest factor based on a 360-day year to the actual number of days between payments. In those situations, the financial institution must disclose the higher values of the finance charge, the APR, and the payment schedule resulting from this practice.

For example, a 12 percent simple interest rate divided by 360 days results in a daily rate of .033333 percent. If no charges are imposed except interest, and the amount financed is the same as the loan amount, applying the daily rate on a daily basis for a 365-day year on a $10,000 one year, single payment, unsecured loan results in an APR of 12.17 percent (.033333% x 365 = 12.17%), and a finance charge of $1,216.67. There would be a violation if the APR were disclosed as 12 percent or if the finance charge were disclosed as $1,200 (12% x $10,000).

However, if there are no other charges except interest, the application of a 360-day year daily rate over 365 days on a regular loan would not result in an APR in excess of the one eighth of one percentage point APR tolerance unless the nominal interest rate is greater than 9 percent. For irregular loans, with one-quarter of 1 percentage point APR tolerance, the nominal interest rate would have to be greater than 18 percent to exceed the tolerance.

Variable Rate Information – Section 1026.18(f) and Commentary to Section 1026.17(c)

If the terms of the legal obligation allow the financial institution, after consummation of the transaction, to increase the APR, the financial institution must furnish the consumer with certain information on variable rates. Graduated payment mortgages and step-rate transactions without a variable rate feature are not considered variable rate transactions. In addition, variable rate disclosures are not applicable to rate increases resulting from delinquency, default, assumption, acceleration, or transfer of the collateral.

Some of the more important transaction-specific variable rate disclosure requirements follow.

- Disclosures for variable rate loans must be given for the full term of the transaction and must be based on the terms in effect at the time of consummation.
- If the variable rate transaction includes either a seller buy-down that is reflected in a contract or a consumer buy-down, the disclosed APR should be a composite rate based on the lower rate for the buy-down period and the rate that is the basis for the variable rate feature for the remainder of the term.
- If the initial rate is not determined by the index or formula used to make later interest rate adjustments, as in a discounted variable rate transaction, the disclosed APR must reflect a composite rate based on the initial rate for as long as it is applied and, for the remainder of the term, the rate that would have been applied using the index or formula at the time of consummation (i.e., the fully indexed rate).
    - If a loan contains a rate or payment cap that would prevent the initial rate or payment, at the time of the adjustment, from changing to the fully indexed rate, the effect of that rate or payment cap needs to be reflected in the disclosures.
    - The index at consummation need not be used if the contract provides a delay in the implementation of changes in an index value (e.g., the contract indicates that future rate changes are based on the index value in effect for some specified period, like 45 days before the change date). Instead, the financial institution may use any rate from the date of consummation back to the beginning of the specified period (e.g., during the previous 45-day period).
- If the initial interest rate is set according to the index or formula used for later adjustments, but is set at a value as of a date before consummation, disclosures should be based on the initial interest rate, even though the index may have changed by the consummation date.

For variable-rate loans that are <u>not</u> secured by the consumer's principal dwelling or that are secured by the consumer's principal dwelling but have a term of one year or less, creditors must disclose the circumstances under which the rate may increase, any limitations on the increase, the effect of an increase, and an example of the payment terms that would result from an increase. (§1026.18(f)(1))

For variable-rate consumer loans secured by the consumer's principal dwelling and having a maturity of more than one year, creditors must state that the loan has a variable-rate feature and that the disclosures were previously given. (§1026.18(f)(2)) Extensive disclosures about the loan program are provided when consumers apply for such a loan (§1026.19(b)), and throughout the loan term when the rate or payment amount is changed (§1026.20(c)).

Payment Schedule – Section 1026.18(g)

The disclosed payment schedule must reflect all components of the finance charge. It includes all payments scheduled to repay loan principal, interest on the loan, and any other finance charge payable by the consumer after consummation of the transaction.

However, any finance charge paid separately before or at consummation (e.g., odd days' interest) is not part of the payment schedule. It is a prepaid finance charge that must be reflected as a reduction in the value of the amount financed.

At the creditor's option, the payment schedule may include amounts beyond the amount financed and finance charge (e.g., certain insurance premiums or real estate escrow amounts such as taxes added to payments). However, when calculating the APR, the creditor must disregard such amounts.

If the obligation is a renewable balloon payment instrument that unconditionally obligates the financial institution to renew the short-term loan at the consumer's option or to renew the loan subject to conditions within the consumer's control, the payment schedule must be disclosed using the longer term of the renewal period or periods. The long-term loan must be disclosed with a variable rate feature.

If there are no renewal conditions or if the financial institution guarantees to renew the obligation in a refinancing, the payment schedule must be disclosed using the shorter balloon payment term. The short-term loan must be disclosed as a fixed rate loan, unless it contains a variable rate feature during the initial loan term.

Amount Financed – Section 1026.18(b)

Definition – The amount financed is the net amount of credit extended for the consumer's use. It should not be assumed that the amount financed under the regulation is equivalent to the note amount, proceeds, or principal amount of the loan. The amount financed normally equals the total of payments less the finance charge.

To calculate the amount financed, all amounts and charges connected with the transaction, either paid separately or included in the note amount, must first be identified. Any prepaid, precomputed, or other finance charge must then be determined.

The amount financed must not include any finance charges. If finance charges have been included in the obligation (either prepaid or precomputed), they must be subtracted from the face amount of the obligation when determining the amount financed. The resulting value must be reduced further by an amount equal to any prepaid finance charge paid separately. The final resulting value is the amount financed.

When calculating the amount financed, finance charges (whether in the note amount or paid separately) should not be subtracted more than once from the total amount of an obligation. Charges not in the note amount and not included in the finance charge (e.g., an appraisal fee paid separately in cash on a real estate loan) are not required to be disclosed under Regulation Z and must not be included in the amount financed.

In a multiple advance construction loan, proceeds placed in a temporary escrow account and awaiting disbursement in draws to the developer are not considered part of the amount financed until actually disbursed. Thus, if the entire commitment amount is disbursed into the lender's escrow account, the lender must not base disclosures on the assumption that all funds were disbursed immediately, even if the lender pays interest on the escrowed funds.

Required Deposit – Section 1026.18(r)

A required deposit, with certain exceptions, is one that the financial institution requires the consumer to maintain as a condition of the specific credit transaction. It can include a compensating balance or a deposit balance that secures the loan. The effect of a required deposit is not reflected in the APR. Also, a required deposit is not a finance charge since it is eventually released to the consumer. A deposit that earns at least 5 percent per year need not be considered a required deposit.

Calculating the Amount Financed

A consumer signs a note secured by real property in the amount of $5,435. The note amount includes $5,000 in proceeds disbursed to the consumer, $400 in precomputed interest, $25 paid to a credit reporting agency for a credit report, and a $10 service charge. Additionally, the consumer pays a $50 loan fee separately in cash at consummation. The consumer has no other debt with the financial institution. The amount financed is $4,975.

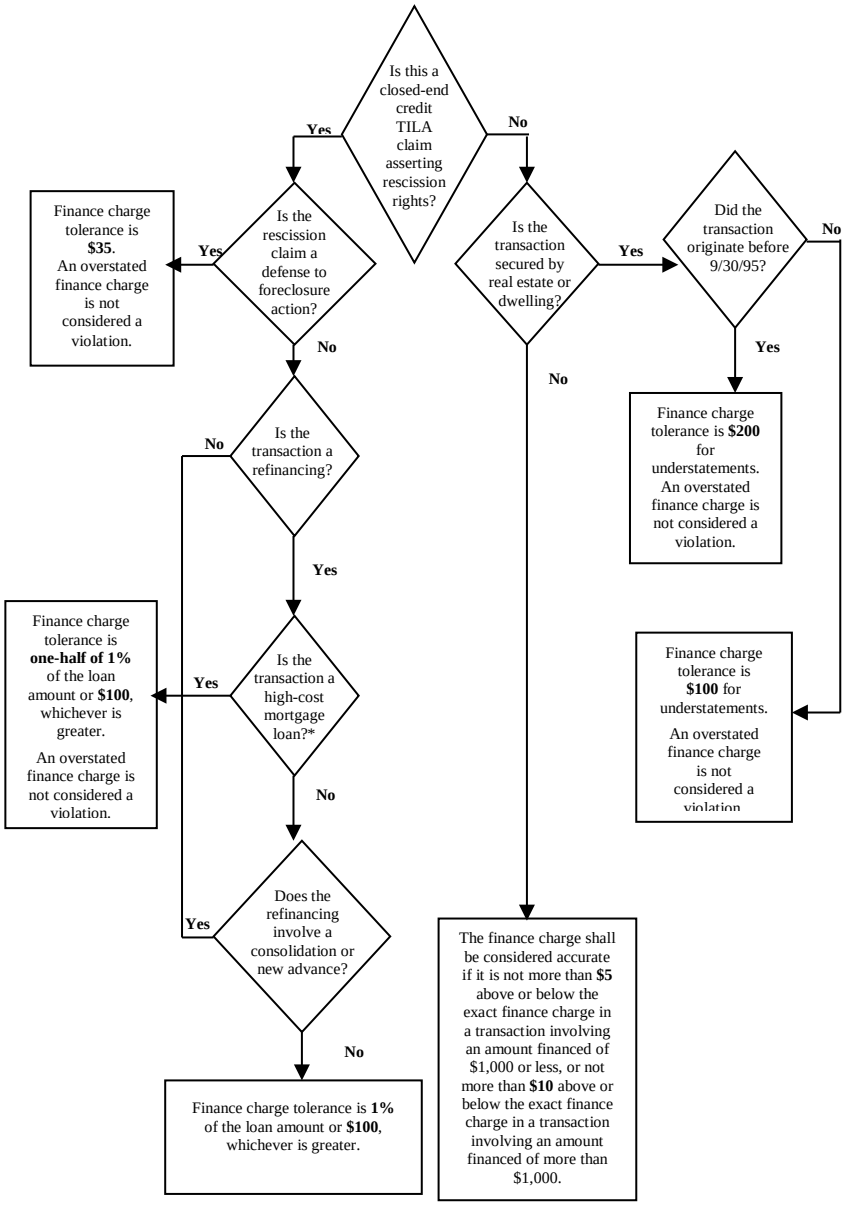
The amount financed may be calculated by first subtracting all finance charges included in the note amount ($5,435 - $400 - $10 = $5,025). The $25 credit report fee is not a finance charge because the loan is secured by real property. The $5,025 is further reduced by the amount of prepaid finance charges paid separately, for an amount financed of $5,025 - $50 = $4,975. The answer is the same whether finance charges included in the obligation are considered prepaid or precomputed finance charges.

The financial institution may treat the $10 service charge as an addition to the loan amount and not as a prepaid finance charge. If it does, the loan principal would be $5,000. The $5,000 loan principal does not include either the $400 or the $10 precomputed finance charge in the note. The loan principal is increased by other amounts that are financed which are not part of the finance charge (the $25 credit report fee) and reduced by any prepaid finance charges (the $50 loan fee, not the $10 service charge) to arrive at the amount financed of $5,000 + $25 - $50 = $4,975.

Other Calculations

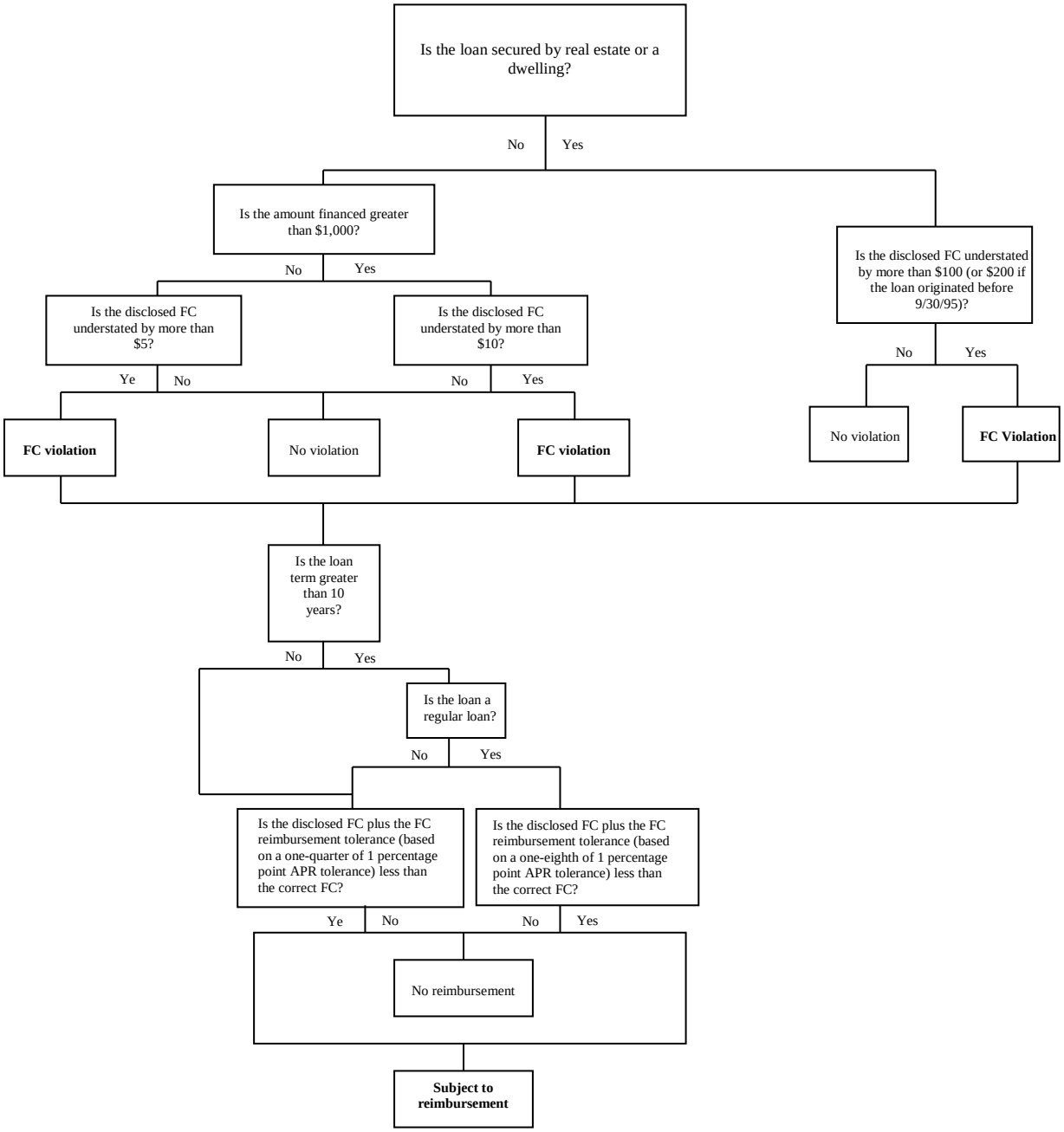
The financial institution may treat the $10 service charge as a prepaid finance charge. If it does, the loan principal would be $5,010. The $5,010 loan principal does not include the $400 precomputed finance charge. The loan principal is increased by other amounts that are financed which are not part of the finance charge (the $25 credit report fee) and reduced by any prepaid finance charges (the $50 loan fee and the $10 service charge withheld from loan proceeds) to arrive at the same amount financed of $5,010 + $25 - $50- $10 = $4,975.

Closed-End Credit: Finance Charge Accuracy Tolerances

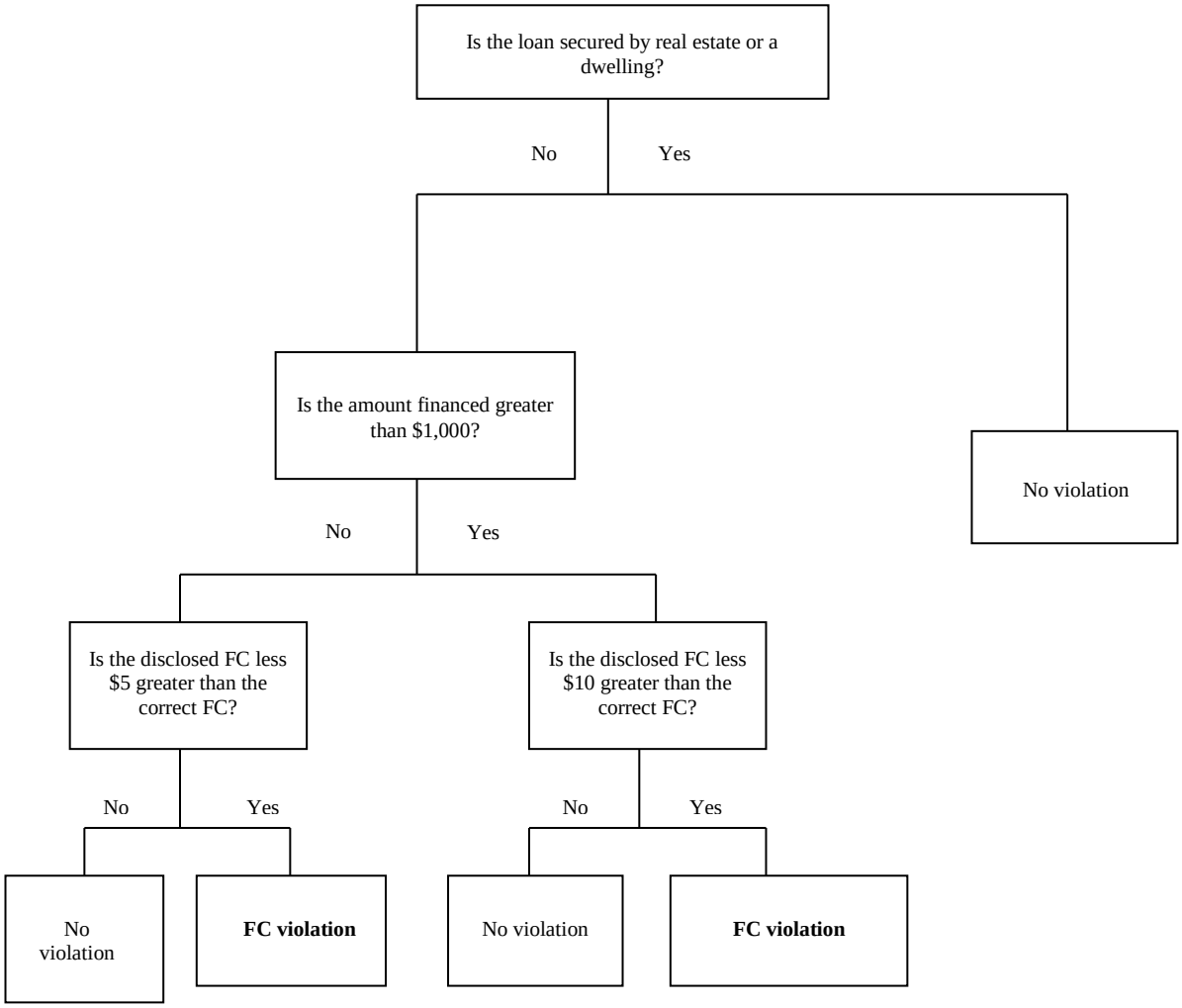


* See 15 U.S.C. 1602(bb)

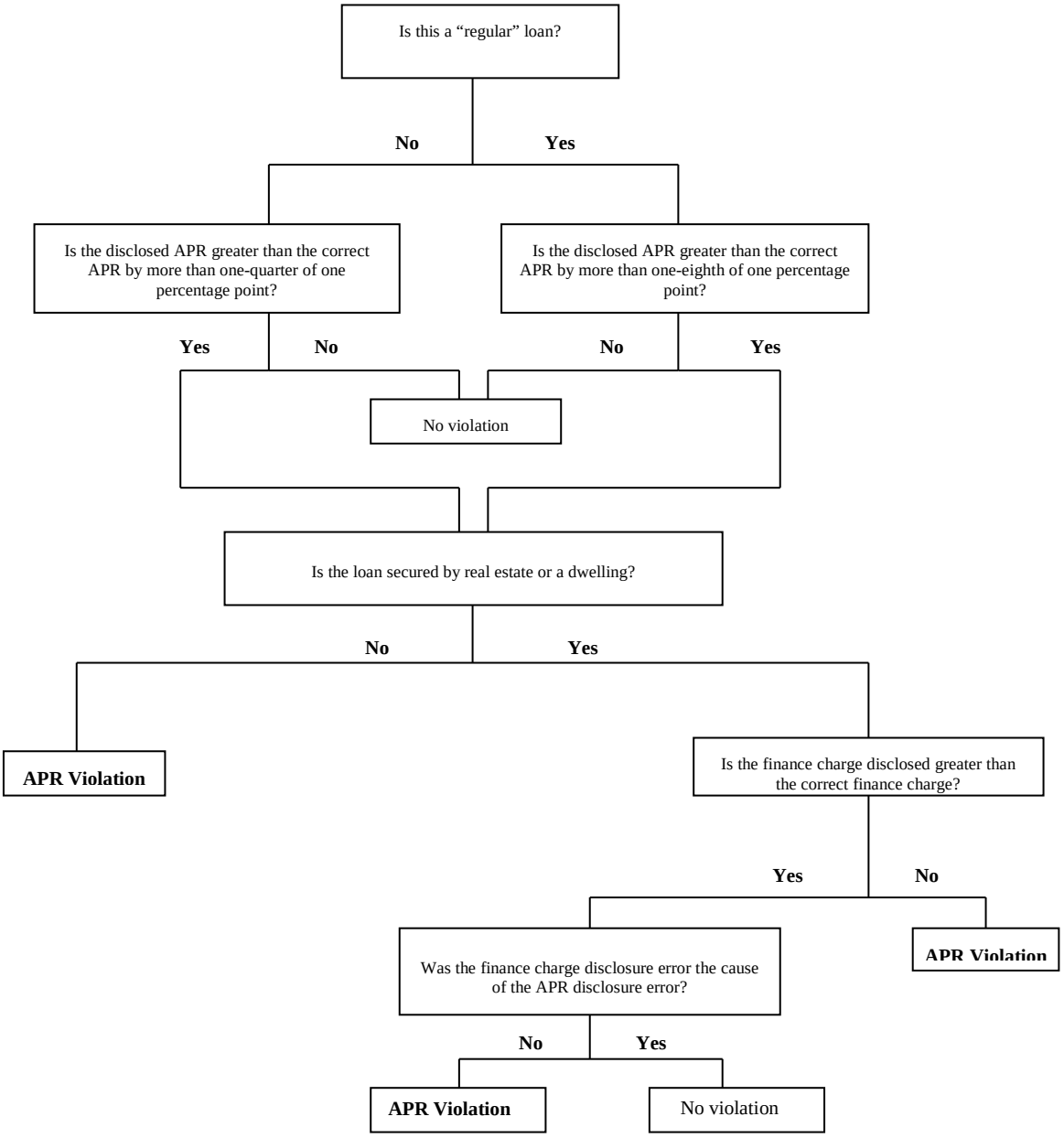
Closed-End Credit: Accuracy and Reimbursement Tolerances for UNDERSTATED FINANCE CHARGES



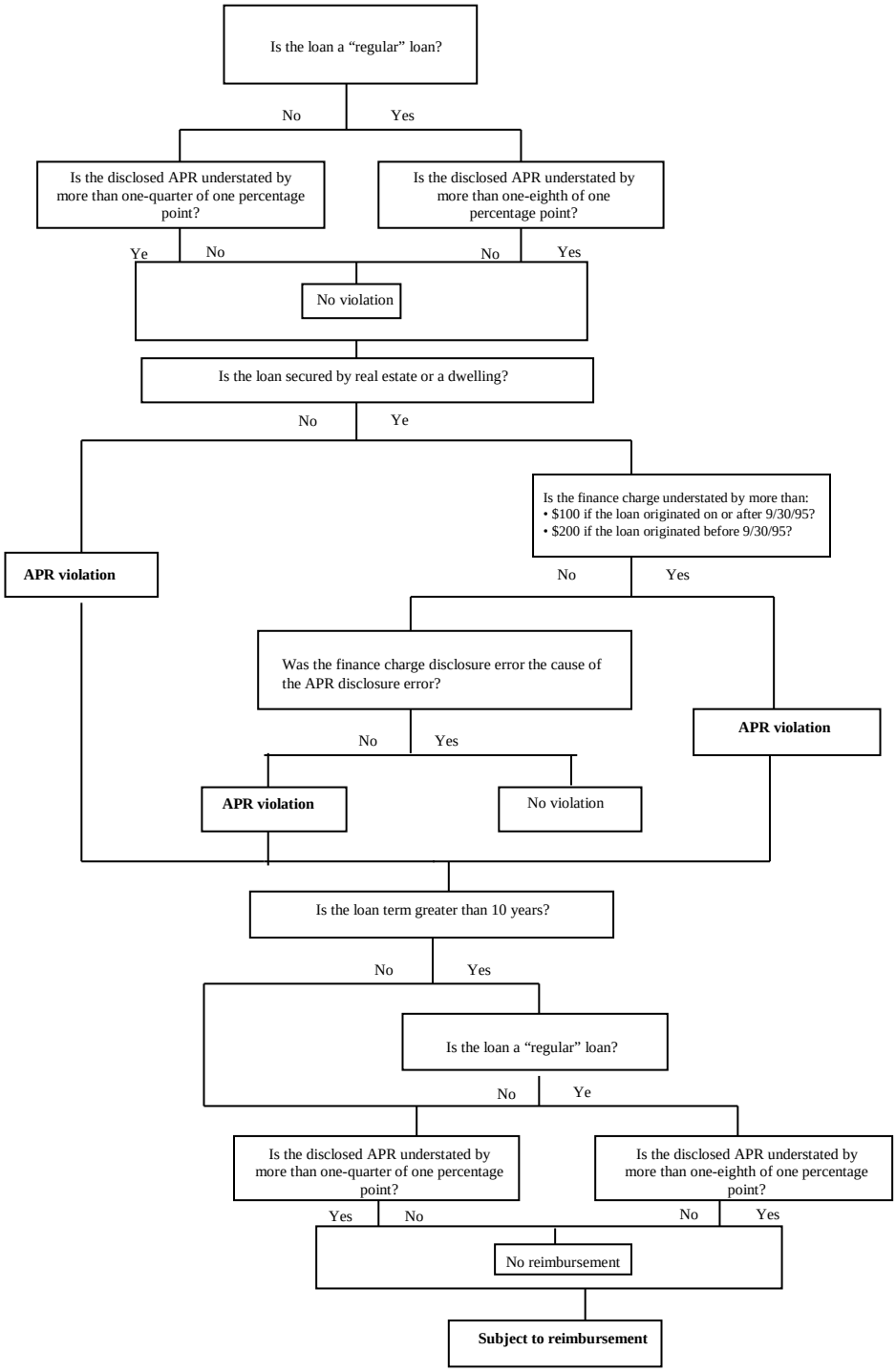
Closed-End Credit: Accuracy Tolerances for OVERSTATED FINANCE CHARGES



Closed-End Credit: Accuracy Tolerances for OVERSTATED APRs



Closed-End Credit: Accuracy and Reimbursement Tolerances for UNDERSTATED APRs



Refinancings – Section 1026.20

When an obligation is satisfied and replaced by a new obligation to the original financial institution (or a holder or servicer of the original obligation) and is undertaken by the same consumer, it must be treated as a refinancing for which a complete set of new disclosures must be furnished. A refinancing may involve the consolidation of several existing obligations, disbursement of new money to the consumer, or the rescheduling of payments under an existing obligation. In any form, the new obligation must completely replace the earlier one to be considered a refinancing under the regulation. The finance charge on the new disclosure must include any unearned portion of the old finance charge that is not credited to the existing obligation. (§1026.20(a))

The following transactions are not considered refinancings even if the existing obligation is satisfied and replaced by a new obligation undertaken by the same consumer:

- A renewal of an obligation with a single payment of principal and interest or with periodic interest payments and a final payment of principal with no change in the original terms.
- An APR reduction with a corresponding change in the payment schedule.
- An agreement involving a court proceeding.
- Changes in credit terms arising from the consumer's default or delinquency.
- The renewal of optional insurance purchased by the consumer and added to an existing transaction, if required disclosures were provided for the initial purchase of the insurance.

However, even if it is not accomplished by the cancellation of the old obligation and substitution of a new one, a new transaction subject to new disclosures results if the financial institution:

- Increases the rate based on a variable rate feature that was not previously disclosed; or
- Adds a variable rate feature to the obligation.

If, at the time a loan is renewed, the rate is increased, the increase is not considered a variable rate feature. It is the cost of renewal, similar to a flat fee, as long as the new rate remains fixed during the remaining life of the loan. If the original debt is not canceled in connection with such a renewal, the regulation does not require new disclosures. Also, changing the index of a variable rate transaction to a comparable index is not considered adding a variable rate feature to the obligation.

Refinancing of Non-Standard Mortgages – Section 1026.43(d)

Section 1026.43(d) provides special rules for refinancing a "non-standard mortgage" into a "standard mortgage."

A "non-standard mortgage" is a covered transaction[9] as defined under section 1026.43(a) that is:

- An adjustable rate mortgage with an introductory fixed interest rate for a period of one year or longer;
- An interest-only loan; or
- A negative amortization loan.

A "standard mortgage" is a covered transaction as defined under section 1026.43(a) with:

- Periodic payments that do not cause the principal balance to increase, do not allow the consumer to defer repayment of the principal, or do not result in balloon payments;
- Total points and fees that are not more than those allowed in section 1026.43(e)(3);
- A term that does not exceed 40 years;
- An interest rate that is fixed for the first five years of the loan; and
- Proceeds that are used solely to pay off the outstanding principal on the non-standard mortgage and closing or settlement costs (that are required to be disclosed under RESPA).

Current holders of non-standard mortgages or their servicers (collectively referred to here as "holders") can refinance non-standard mortgages into standard mortgages without considering a consumer's ability to repay under section 1026.43(c), if certain conditions are met.

[9] A covered transaction is a consumer credit transaction that is secured by a dwelling, including any real property attached to the dwelling. A covered transaction is not a home equity line of credit under section 1026.40; a mortgage secured by a consumer's interest in a timeshare plan; a reverse mortgage under section 1026.33; a temporary or "bridge" loan with a term of 12 months or less; a construction phase of 12 months or less of a construction-to-permanent loan; or an extension of credit made: pursuant to a program administered by a housing finance agency; by certain community development or non-profit lenders, as specified in section 1026.43(a)(3)(v); or in connection with certain federal emergency economic stabilization programs.

To qualify for the exemption from the ability-to-repay requirements, the standard mortgage must have:

- A monthly payment that is "materially lower"[10] than the non-standard mortgage,
- The creditor must receive a written application from the consumer for the standard mortgage no later than two months after the non-standard mortgage is recast, and
- On the non-standard mortgage, consumers must have made no more than one payment more than 30 days late during the preceding 12 months and must have made no late payments more than 30 days late in the preceding six months of the holder receiving the application for a standard mortgage.

For non-standard loans consummated on or after January 10, 2014, that are refinanced into standard mortgages, the exemption from the ability-to-repay requirements for the refinancing is available only if the non-standard mortgage met the repayment ability requirements under section 1026.43(c) or the qualified mortgage requirements under section 1026.43(e) as applicable.

If these conditions are satisfied and if the holder has considered whether the standard mortgage is likely to prevent the consumer from defaulting on the non-standard mortgage once the loan terms are recast, the holder is not required to meet the ability-to-repay requirements in section 1026.43(c). Finally, holders refinancing a non-standard mortgage to a standard mortgage may offer consumers rate discounts and terms that are the same as (or better than) rate discounts and terms that the holder offers to new consumers, consistent with the holder's documented underwriting practices and to the extent not prohibited by applicable laws. For example, a holder would comply with this requirement if it has documented underwriting practices that provide for offering rate discounts to consumers with credit scores above a certain threshold, even though the consumer would not normally qualify for that discounted rate.

[10] When comparing the payments, the holder must calculate the payment for the standard mortgage based on substantially equal, monthly, fully amortizing payments based on the maximum interest rate that may apply in the first five years. The holder must calculate the non-standard mortgage payment based on substantially equal, monthly, fully amortizing payments of principal and interest using:

- The fully indexed rate as of a reasonable period of time before or after the date on which the creditor receives the consumer's application for the standard mortgage;
- The term of the loan remaining as of the date on which the recast occurs, assuming all scheduled payments have been made up to the recast date and the payment due on the recast date is made and credited as of that date; and
- The remaining loan amount, which is calculated differently depending on whether the loan is an adjustable rate mortgage, interest-only loan, or negative amortization loan.

Disclosure of Initial Rate Change for Adjustable Rate Mortgages – Section 1026.20(d)

Creditors, assignees, or servicers[11] (referred to collectively as creditors) of adjustable rate mortgages, or ARMs, secured by the consumer's principal dwelling and with terms of more than one year are generally required to provide consumers with certain information pertaining to the ARM's initial rate change.[12] This information must be provided in a disclosure that is separate from all other documents, and the disclosure must be provided between 210 and 240 days before the first payment at the adjusted rate is due. If the first payment at a new rate is due within the first 210 days after consummation, the creditor must provide the rate change disclosure at consummation.

Disclosures required under this section must provide consumers with information related to the timing and nature of the rate change. If the new rate pursuant to the change disclosed is not known and the creditor provides an estimate, the rate must be identified as an estimate. If the creditor is using an estimate, it must be based on the index within 15 business days prior to the date of the disclosure. The calculation is made using the index reported in the source of information that the creditor uses in the explanation of how the interest rate is determined.

Disclosures required under section 1026.20(d) must also include, among others:

- The date of the disclosure.
- A statement explaining that the time period that the current rate has been in effect is ending, that the current rate is expiring, and that a change in the rate may result in a change in the required payment; providing the effective date of the change and a schedule of any future changes; and describing any other changes to the loan terms, features, or options taking effect on the same date (including expiration of interest-only or payment-option features).
- A table containing the current and new interest rates, the current and new payments, including the date the new payment is due, and for interest-only or negative amortization loans, the amount of the current and new payment allocated to principal, interest, and escrow (if applicable).

  NOTE: The new payment allocation disclosed is the expected payment allocation for the first payment for which the new interest rate will apply.

[11] Creditors, assignees, and servicers are all subject to the requirements of this section 1026.20(d). Creditors, assignees, and servicers may decide among themselves which of them will provide the required disclosures. However, establishing a business relationship where one party agrees to provide disclosures on behalf of the other parties does not absolve all other parties from their legal obligations.

[12] Exemptions to disclosure requirements are covered in the section titled, "Exemptions to the Adjustable Rate Mortgage Disclosure Requirements – Sections 1026.20(c)(1)(ii) and (d)(1)(ii)" below.

- An explanation of how the interest rate is determined, including (among other things) an explanation of the index or formula used to determine the new rate and the margin.
- Any limitations on the interest rate or payment increase for each scheduled increase and over the life of the loan. Creditors must also include a statement regarding the extent to which such limitations result in foregone interest rate increases and the earliest date such foregone interest rate increases may apply to future interest rate adjustments.
- An explanation of how the new payment is determined, including an explanation of the index or formula used to determine the new rate, including the margin, the expected loan balance on the date of the rate adjustment, and the remaining loan term or any changes to the term caused by the rate change.
    - If the creditor is using an estimated rate or payment, a statement that the actual new interest rate and new payment will be provided to the consumer between two and four months prior to the first payment at the new rate.
- For negative amortization loans, creditors must provide a statement indicating that the new payment will not be allocated to pay loan principal and will not reduce the balance of the loan; instead, the payment will only apply to part of the interest, thereby increasing the amount of principal.
- A statement indicating the circumstances under which any prepayment penalty may be imposed, the time period during which it may be imposed, and a statement that the consumer may contact the servicer for additional information, including the maximum amount of the penalty that may be charged to the consumer.
- The telephone number of the creditor, assignee, or servicer for use if the consumer anticipates that he or she may not be able to make the new payments.
- A statement providing specified alternatives (which include refinancing, selling the property, loan modification, and forbearance) available if the consumer anticipates not being able to make the new payment.

A website address for either the CFPB's or the Department of Housing and Urban Development's (HUD) list of homeownership counselors and counseling organizations, the HUD toll-free telephone number to access the HUD list of homeownership counselors and counseling organizations, and the CFPB's website address for state housing finance authorities contact information.

For more information pertaining to the required format of the disclosures required under section 1026.20(d), please see section 1026.20(d)(3) and the model and sample forms H-4(D)(3) and (4) in Appendix H.

Disclosure of Rate Adjustments Resulting in Payment Changes – Section 1026.20(c)

Creditors, assignees, or servicers[13] (referred to collectively as creditors) of ARMs secured by a consumer's principal dwelling with a term greater than one year are generally required to provide consumers with disclosures prior to the adjustment of the interest rate on the mortgage,[14] if the interest rate change will result in a payment change as follows:

- For ARMs where the payment changes along with a rate change, disclosures must be provided to consumers between 60 and 120 days before the first payment at the new amount is due.
- For ARMs where the payment changes in connection with a uniformly scheduled interest rate adjustment occurring every 60 days (or more frequently), the disclosures must be provided between 25 and 120 days before the first payment at the new amount is due.
- For ARMs originated prior to January 10, 2015, in which the contract requires the adjusted interest and payment to be calculated based on an index that is available on a date less than 45 days prior to the adjustment date, disclosures must be provided between 25 and 120 days before the first payment at the new amount is required.
- For ARMs where the first adjustment occurs within 60 days of consummation and the new interest rate disclosed at the time was an estimate, the disclosures must be provided as soon as practicable, but no less than 25 days before the first payment at the new amount is due.

Disclosures required under section 1026.20(c) must contain specific information, which includes, among others:

- A statement explaining that the time period during which the consumer's current rate has been in effect is ending and that the rate and payment will change; when the interest rate will change; dates when additional interest rate adjustments are scheduled to occur; and any other change in loan terms or features that take effect on the same date that the interest rate and payment change, such as an expiration of interest-only treatment or payment-option feature.
- A table explaining the current and new interest rates; the current and new payments, including the date the new payment is due; and for interest-only or negative amortizing loans, the amount of the current and new payment allocated to principal, interest, and amounts for escrow (if applicable).

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[13] Creditors, assignees, and servicers are all subject to the requirements of section 1026.20(c). Creditors, assignees, and servicers may decide among themselves which of them will provide the required disclosures. However, establishing a business relationship where one party agrees to provide disclosures on behalf of the other parties does not absolve all other parties from their legal obligations.

[14] Exemptions to disclosure requirements are covered in the section titled, "Exemptions to the Adjustable Rate Mortgage Disclosure Requirements – Sections 1026.20(c)(1)(ii) and (d)(1)(ii)" below.

- An explanation of how the new interest rate is determined, including (among other things) the index or formula used to determine the new rate and the margin, and any application of previously foregone interest rate increases from past adjustments;
- Any limitations on the interest rate and payment increase for each scheduled increase for the duration of the loan. Creditors must also include a statement regarding the extent to which such limitations result in foregone interest rate increases and the earliest date such foregone interest rate increases may apply to future interest rate adjustments.
- An explanation of how the new payment is determined, including an explanation of the index or formula used to determine the new rate, including the margin, the expected loan balance on the date of the rate adjustment, and the remaining loan term or any changes to the term caused by the rate change;
- For negative amortization loans, creditors must provide a statement indicating that the new payment will not reduce the balance of the loan, rather, the payment will only apply to part of the interest, thereby increasing the amount of principal; and
- A statement indicating the circumstances under which any prepayment penalty may be imposed, the time period during which it may be imposed, and a statement that the consumer may contact the servicer for additional information, including the maximum amount of the penalty that may be charged to the consumer.

For more information pertaining to the required format of the disclosures required under section 1026.20(c), please see section 1026.20(c)(3) and the model and sample forms H-4(D)(1) and (2) in Appendix H.

Exemptions to the Adjustable Rate Mortgage Disclosure Requirements – Sections 1026.20(c)(1)(ii) and (d)(1)(ii)

Disclosures under sections 1026.20(c) and (d) are not required for ARMs with a term of one year or less. Likewise, disclosures under section 1026.20(c) are not required if the first interest rate and payment adjustment occurs within the first 210 days and the new rate disclosed at consummation pursuant to section 1026.20(d) was not an estimate.

Advertising – Sections 1026.16 & 1026.24

The regulation requires that loan product advertisements provide accurate and balanced information, in a clear and conspicuous manner, about rates, monthly payments, and other loan features. The advertising rules ban several deceptive or misleading advertising practices, including representations that a rate or payment is “fixed” when in fact it can change.

Advertising Rules for Open-End Plans – Section 1026.16

If an advertisement for credit states specific credit terms, it must state only those terms that actually are or will be arranged or offered by the creditor. If any finance charges or other charges are set forth in an advertisement, the advertisement must also clearly and conspicuously state the following:

- Any minimum, fixed, transaction, activity or similar charge that is a finance charge under section 1026.4 that could be imposed;
- Any periodic rate that may be applied expressed as an APR as determined under section 1026.14(b). If the plan provides for a variable periodic rate, that fact must be disclosed; and
- Any membership or participation fee that could be imposed.

If any finance charges or other charge or payment terms are set forth, affirmatively or negatively, in an advertisement for a home-equity plan subject to the requirements of section 1026.40, the advertisement also must clearly and conspicuously set forth the following:

- 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;
- Any periodic rate used to compute the finance charge, expressed as an APR as determined under section 1026.14(b); and
- The maximum APR that may be imposed in a variable-rate plan.

Regulation Z's open-end home-equity plan advertising rules include a clear and conspicuous standard for home-equity plan advertisements, consistent with the approach taken in the advertising rules for consumer leases under Regulation M. Commentary provisions clarify how the clear and conspicuous standard applies to advertisements of home-equity plans with promotional rates or payments, and to Internet, television, and oral advertisements of home-equity plans. The regulation allows alternative disclosures for television and radio advertisements for home-equity plans. The regulation also requires that advertisements adequately disclose not only promotional plan terms, but also the rates or payments that will apply over the term of the plan.

Regulation Z also contains provisions implementing the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, which requires disclosure of the tax implications of certain home-equity plans.

Closed-End Advertising – Section 1026.24

If an advertisement for credit states specific credit terms, it must state only those terms that actually are or will be arranged or offered by the creditor.

Disclosures required by this section must be made "clearly and conspicuously." To meet this standard in general, credit terms need not be printed in a certain type size nor appear in any particular place in the advertisement. For advertisements for credit secured by a dwelling, a clear and conspicuous disclosure means that the required information is disclosed with equal prominence and in close proximity to the advertised rates or payments triggering the required disclosures.

If an advertisement states a rate of finance charge, it must state the rate as an "annual percentage rate," using that term. If the APR may be increased after consummation, the advertisement must state that fact.

If an advertisement is for credit *not* secured by a dwelling, the advertisement must 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 APR.

If an advertisement is for credit secured by a dwelling, the advertisement must not state any other rate, except that a simple annual rate that is applied to an unpaid balance may be stated in conjunction with, but not more conspicuously than, the APR. That is, an advertisement for credit secured by a dwelling may not state a periodic rate, other than a simple annual rate, that is applied to an unpaid balance.

"Triggering terms" – The following are triggering terms that require additional disclosures:

- The amount or percentage of any down payment;
- The number of payments or period of repayment;
- The amount of any payment; and
- The amount of any finance charge.

An advertisement stating a triggering term must also state the following terms as applicable:

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

For any advertisement secured by a dwelling, other than television or radio advertisements, that states a simple annual rate of interest and more than one simple annual rate of interest will apply over the term of the advertised loan, the advertisement must state in a clear and conspicuous manner:

- Each simple rate of interest that will apply. In variable-rate transactions, a rate determined by adding an index and margin must be disclosed based on a reasonably current index and margin.
- The period of time during which each simple annual rate of interest will apply.
- The APR for the loan.

The regulation prohibits the following seven deceptive or misleading acts or practices in advertisements for closed-end mortgage loans:

- Stating that rates or payments for loans are “fixed” when those rates or payments can vary without adequately disclosing that the interest rate or payment amounts are “fixed” only for a limited period of time, rather than for the full term of the loan;
- Making comparisons between actual or hypothetical credit payments or rates and any payment or rate available under the advertised product that are not available for the full term of the loan, with certain exceptions for advertisements for variable rate products;
- Characterizing the products offered as “government loan programs,” “government-supported loans,” or otherwise endorsed or sponsored by a federal or state government entity even though the advertised products are not government-supported or -sponsored loans;
- Displaying the name of the consumer’s current mortgage lender, unless the advertisement also prominently discloses that the advertisement is from a mortgage lender not affiliated with the consumer’s current lender;
- Making claims of debt elimination if the product advertised would merely replace one debt obligation with another;
- Creating a false impression that the mortgage broker or lender is a “counselor” for the consumer; and
- In foreign-language advertisements, providing certain information, such as a low introductory “teaser” rate, in a foreign language, while providing required disclosures only in English.

Subpart D – Miscellaneous

Civil Liability – TILA Sections 129B, 129C, 130 and 131

If a creditor fails to comply with any requirements of the TILA, other than with the advertising provisions of chapter 3, it may be held liable to the consumer for:

- Actual damage, and
- Cost of any successful legal action together with reasonable attorney's fees.

The creditor also may be held liable for any of the following:

- In an individual action, twice the amount of the finance charge involved.
- In an individual action relating to an open-end credit transaction that is not secured by real property or a dwelling, twice the amount of the finance charge involved, with a minimum of $500 and a maximum of $5,000 or such higher amount as may be appropriate in the case of an established pattern or practice of such failure.
- In an individual action relating to a closed-end credit transaction secured by real property or a dwelling, not less than $400 and not more than $4,000.
- In a class action, such amount as the court may allow (with no minimum recovery for each class member). However, the total amount of recovery in any class actions arising out of the same failure to comply by the same creditor cannot be more than $1 million or 1 percent of the creditor's net worth, whichever is less.

A creditor that fails to comply with section 129 of TILA, 15 U.S.C. section 1639, (requirements for certain mortgages) may be held liable to the consumer for all finance charges and fees paid by the consumer unless the creditor demonstrates that the failure was not material. A mortgage originator that is not a creditor and that fails to comply with section 129B (requirements for mortgage loan originators) also may be liable to consumers for the greater of actual damages or an amount equal to three times the total amount of direct and indirect compensation or gain to the mortgage originator in connection with the loan, plus costs, including reasonable attorney's fees. In addition, TILA section 130(a) provides that a creditor may be liable for failure to comply with the ability-to-repay requirements of TILA section 129C(a) unless the creditor demonstrates that the failure to comply was not material.

Generally, civil actions that may be brought against a creditor may be maintained against any assignee of the creditor only if the violation is apparent on the face of the disclosure statement or other documents assigned, except where the assignment was involuntary. For high-cost mortgage loans (under section 1026.32(a)), any subsequent purchaser or assignee is subject to all claims and defenses that the consumer could assert against the creditor, unless the assignee demonstrates that it could not reasonably have determined that the loan was a high-cost mortgage loan subject to section 1026.32.

In specified circumstances, the creditor or assignee has no liability if it corrects identified errors within 60 days of discovering the errors and prior to the institution of a civil action or the receipt of written notice of the error from the obligor. Additionally, a creditor and assignee will not be liable for bona fide errors that occurred despite the maintenance of procedures reasonably adapted to avoid any such error.

Moreover, the TILA also provides consumers with the right to assert a violation of the TILA's anti-steering provisions or the ability-to-repay standards for residential mortgage loan requirements "as a matter of defense by recoupment or setoff" against a foreclosure action. In general, the amount of recoupment or setoff shall be equal to the amount that the consumer would be entitled to generally under 15 U.S.C. 1640(a) for a valid claim, plus the cost to the consumer of the action (including reasonable attorney's fees).

Refer to Sections 129B, 129C, 130 and 131 of TILA for more information.

Criminal Liability – TILA Section 112

Anyone who willingly and knowingly fails to comply with any requirement of the TILA will be fined not more than $5,000 or imprisoned not more than one year, or both.

Administrative Actions – TILA Section 108

The TILA authorizes federal regulatory agencies to require financial institutions to make monetary and other adjustments to the consumers' accounts when the true finance charge or APR exceeds the disclosed finance charge or APR by more than a specified accuracy tolerance. That authorization extends to unintentional errors, including isolated violations (e.g., an error that occurred only once or errors, often without a common cause, that occurred infrequently and randomly).

Under certain circumstances, the TILA requires federal regulatory agencies to order financial institutions to reimburse consumers when understatement of the APR or finance charge involves:

- Patterns or practices of violations (e.g., errors that occurred, often with a common cause, consistently or frequently, reflecting a pattern with a specific type or types of consumer credit).
- Gross negligence.
- Willful noncompliance intended to mislead the person to whom the credit was extended.

Any proceeding that may be brought by a regulatory agency against a creditor may be maintained against any assignee of the creditor if the violation is apparent on the face of the disclosure statement or other documents assigned, except where the assignment was involuntary under section 131 (15 U.S.C. 1641).

Relationship to State Law – TILA Section 111

State laws providing rights, responsibilities, or procedures for consumers or financial institutions for consumer credit contracts may be:

- Preempted by federal law;
- Not preempted by federal law; or
- Substituted in lieu of the TILA and Regulation Z requirements.

State law provisions are preempted to the extent that they contradict the requirements in the following chapters of the TILA and the implementing sections of Regulation Z:

- Chapter 1, "General Provisions," which contains definitions and acceptable methods for determining finance charges and annual percentage rates.
- Chapter 2, "Credit Transactions," which contains disclosure requirements, rescission rights, and certain credit card provisions.
- Chapter 3, "Credit Advertising," which contains consumer credit advertising rules and APR oral disclosure requirements.

For example, a state law would be preempted if it required a bank to use the terms "nominal annual interest rate" in lieu of "annual percentage rate."

Conversely, state law provisions are generally not preempted under federal law if they call for, without contradicting chapters 1, 2, or 3 of the TILA or the implementing sections of Regulation Z, either of the following:

- Disclosure of information not otherwise required. A state law that requires disclosure of the minimum periodic payment for open-end credit, for example, would not be preempted because it does not contradict federal law.
- Disclosures more detailed than those required. A state law that requires itemization of the amount financed, for example, would not be preempted, unless it contradicts federal law by requiring the itemization to appear with the disclosure of the amount financed in the segregated closed-end credit disclosures.

The relationship between state law and chapter 4 of the TILA ("Credit Billing") involves two parts. The first part is concerned with sections 161 (correction of billing errors) and 162 (regulation of credit reports) of the act; the second part addresses the remaining sections of chapter 4.

State law provisions are preempted if they differ from the rights, responsibilities, or procedures contained in sections 161 or 162. An exception is made, however, for state law that allows a consumer to inquire about an account and requires the bank to respond to such inquiry beyond

the time limits provided by federal law. Such a state law would not be preempted for the extra time period.

State law provisions are preempted if they result in violations of sections 163 through 171 of chapter 4. For example, a state law that allows the card issuer to offset the consumer's credit-card indebtedness against funds held by the card issuer would be preempted, since it would violate 12 CFR 1026.12(d). Conversely, a state law that requires periodic statements to be sent more than 14 days before the end of a free-ride period would not be preempted, since no violation of federal law is involved.

A bank, state, or other interested party may ask the CFPB to determine whether state law contradicts chapters 1 through 3 of the TILA or Regulation Z. They also may ask if the state law is different from, or would result in violations of, chapter 4 of the TILA and the implementing provisions of Regulation Z. If the CFPB determines that a disclosure required by state law (other than a requirement relating to the finance charge, APR, or the disclosures required under section 1026.32) is substantially the same in meaning as a disclosure required under the act or Regulation Z, generally creditors in that state may make the state disclosure in lieu of the federal disclosure.

Subpart E – Special Rules for Certain Home Mortgage Transactions

General Rules – Section 1026.31

The requirements and limitations of this subpart are in addition to, and not in lieu of, those contained in other subparts of Regulation Z. The disclosures for high-cost, reverse mortgage, and higher-priced mortgage transactions must be made clearly and conspicuously in writing, in a form that the consumer may keep and in compliance with specific timing requirements.

Requirements for High-Cost Mortgages – Section 1026.32

The requirements of this section generally apply to a high-cost mortgage, which is a consumer credit transaction secured by the consumer's principal dwelling (subject to the exemptions discussed below) that meets any one of the following three coverage tests.

- The APR will exceed the *average prime offer rate* (APOR), as defined in section 1026.35(a)(2), applicable for a comparable transaction as of the date the interest rate is set by:
    - More than 6.5 percentage points for first-lien transactions (other than as described below);
    - More than 8.5 percentage points for first-lien transactions where the dwelling is personal property and the loan amount is less than $50,000; or
    - More than 8.5 percentage points for subordinate-lien transactions.

- The total points and fees (see definition below) for the transaction will exceed:
  - For transactions with a loan amount of $20,000 or more, five percent of the total loan amount; or
  - For transactions with a loan amount of less than $20,000, the lesser of eight percent of the total transaction amount or $1,000 for the calendar year 2014.

The $20,000 and $1,000 dollar amounts will be adjusted annually based on changes in the Consumer Price Index and will be reflected in official interpretations of section 1026.32(a)(1)(ii). The official interpretation of section 1026.32(a)(1)(ii) also contains a historical list of dollar amount adjustments for transactions originated prior to January 10, 2014.

NOTE: The "total loan amount" (using the face amount of the note) for closed-end credit is calculated by taking the amount financed (see §1026.18(b)) and deducting any cost listed in sections 1026.32(b)(1)(iii), (iv), or (vi) that is both included in points and fees and financed by the creditor. The "total loan amount" for open-end credit is the credit plan limit when the account is opened.

- The terms of the loan contract or open-end credit agreement permit the creditor to charge a prepayment penalty (see definition below) more than 36 months after consummation or account opening, or prepayment penalties that exceed more than two percent of the amount prepaid (§1026.32(a)(1)(iii)).

  NOTE: Section 1026.32(d)(6) prohibits prepayment penalties for high-cost mortgages. However, if a mortgage loan has a prepayment penalty that may be imposed more than 36 months after consummation or account opening or that is greater than two percent of the amount prepaid, the loan is a high-cost mortgage regardless of interest rate or fees. Therefore, the prepayment penalty coverage test above effectively bans transactions of the types subject to HOEPA coverage that permit creditors to charge prepayment penalties that exceed the prescribed limits.

Exemptions from HOEPA Coverage – Section 1026.32(a)(2)

- Reverse mortgage transactions subject to section 1026.33;
- A transaction that finances the initial construction of a dwelling;
- A transaction originated by a Housing Finance Agency, where the Housing Finance Agency is the creditor for the transaction; or
- A transaction originated pursuant to the United States Department of Agriculture's Rural Development Section 502 Direct Loan Program.

Determination of APR for High-Cost Mortgages – Section 1026.32(a)(3)

The APR used to determine whether a mortgage is a high-cost mortgage is calculated differently than the APR that is used on TILA disclosures. Specifically, the APR for HOEPA coverage is based on the following:

- If the APR will not vary during the length of the loan or credit plan (i.e., for fixed-rate transactions), the interest rate in effect as of the date the interest rate for the transaction is set (§1026.32(a)(3)(i));
- If the interest rate may vary during the term of the loan or credit plan in accordance with an index, the interest rate that results from adding the maximum margin permitted at any time during the term of the loan or credit plan to the index rate in effect as of the date the interest rate for the transaction is set, or to the introductory interest rate, whichever is greater (§1026.32(a)(3)(ii)); or
- If the interest rate may or will vary during the term of the loan or credit plan other than as described above (i.e., as in a step-rate transaction), the maximum interest rate that may be imposed during the life of the loan or credit plan. (§1026.32(a)(3)(iii))

Points and Fees for High-Cost Mortgages – Section 1026.32(b)

NOTE: Points and fees calculations for high-cost mortgages depend upon whether the transaction is closed end or open end.

For a **closed-end transaction**, calculate the points and fees by including the following charges (§1026.32(b)(1)):

- All items included in the finance charge under sections 1026.4(a) and (b), except that the following items are excluded:
  - Interest or the time-price differential;
  - Any premiums or other charges imposed in connection with a federal or state agency program for any guaranty or insurance that protects the creditor against the consumer's default or other credit loss (i.e., up-front and annual FHA premiums, VA funding fees, and USDA guarantee fees);
  - Premiums or other charges for any guaranty or insurance that protects creditors against the consumer's default or other credit loss and IS NOT in connection with a federal or state agency program (i.e., private mortgage insurance (PMI) premiums) as follows:
    - The entire amount of any premiums or other charges payable after consummation (i.e., monthly or annual PMI premiums); or
    - If the premium or other charge is payable at or before consummation, the portion of any such premium or other charge that is not in excess of the permissible up-front mortgage insurance premium for FHA loans, but only if the premium or charge is

refundable on a pro rata basis and the refund is automatically issued upon the notification of the satisfaction of the underlying mortgage loan. The permissible up-front mortgage insurance premiums for FHA loans are published in HUD Mortgagee Letters, available online at: http://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/hudclips/letters/mortgagee.

- Bona fide third-party charges not retained by the creditor, loan originator, or an affiliate of either, unless the charge is required to be included under section 1026.32(b)(1)(i)(C), (iii), or (v);
- Up to two bona fide discount points payable by the consumer in connection with the transaction, provided that the interest rate without any discount does not exceed:
  - The APOR for a comparable transaction by more than one percentage point; or
  - If the transaction is secured by personal property, the average rate for a loan insured under Title I of the National Housing Act by more than one percentage point, or
- If no discount points have been excluded above, then up to one bona fide discount point payable by the consumer in connection with the transaction, provided that the interest rate without any discount does not exceed:
  - The APOR for a comparable transaction by more than two percentage points; or
  - If the transaction is secured by personal property, the average rate for a loan insured under Title I of the National Housing Act by more than two percentage points.

  NOTE: In the case of a closed-end plan, a bona fide discount point means an amount equal to one percent of the loan amount paid by the consumer that reduces the interest rate or time-price differential applicable to the transaction based on a calculation that is consistent with established industry practices for determining the amount of reduction in the interest rate or time-price differential appropriate for the amount of discount points paid by the consumer. (§1026.32(b)(3))

- All compensation paid directly or indirectly by a consumer or creditor to a loan originator (as defined in section 1026.36(a)(1) that can be attributed to the transaction at the time the interest rate is set unless:
  - That compensation is paid by a consumer to a mortgage broker, as defined in section 1026.36(a)(2), and already has been included in points and fees under section 1026.32(b)(1)(i);
  - That compensation is paid by a mortgage broker, as defined in section 1026.36(a)(2), to a loan originator that is an employee of the mortgage broker; or
  - That compensation is paid by a creditor to a loan originator that is an employee of the creditor.

- All items listed in section 1026.4(c)(7), other than amounts held for future taxes, unless ALL of the following conditions are met:
  - 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.
- Premiums or other charges paid at or before consummation, whether paid in cash or financed, for any credit life, credit disability, credit unemployment, or credit property insurance, or for any other life, accident, health, or loss-of-income insurance for which the creditor is a beneficiary, or any payments directly or indirectly for any debt cancellation or suspension agreement or contract.
- The maximum prepayment penalty that may be charged or collected under the terms of the mortgage or credit plan; and
- The total prepayment penalty incurred by the consumer if the consumer refinances an existing closed-end mortgage with a new mortgage transaction extended by the current holder of the existing loan, a servicer acting on behalf of the current holder, or an affiliate of either.

For an **open-end credit plan,** points and fees mean the following charges that are known at or before account opening: (§1026.32(b)(2))

- All items included in the finance charge under sections 1026.4(a) and (b), except that the following items are excluded:
  - Interest or the time-price differential;
  - Any premiums or other charges imposed in connection with a federal or state agency program for any guaranty or insurance that protects the creditor against the consumer's default or other credit loss (i.e., up-front and annual FHA premiums, VA funding fees, and USDA guarantee fees);
  - Premiums or other charges for any for guaranty or insurance that protects creditors against the consumer's default or other credit loss and IS NOT in connection with a federal or state agency program (i.e., private mortgage insurance (PMI) premiums) as follows:
    - If the premium or other charge is payable after account opening, the entire amount of such premium or other charge, or
    - If the premium or other charge is payable at or before account opening, the portion of any such premium or other charge that is not in excess of the permissible up-front mortgage insurance premium for FHA loans, but only if the premium or charge is refundable on a pro rata basis and the refund is automatically issued upon the

notification of the satisfaction of the underlying mortgage loan. The permissible up-front mortgage insurance premiums for FHA loans are published in HUD Mortgagee Letters, available online at: http://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/hudclips/letters/mortgagee

- Bona fide third-party charges not retained by the creditor, loan originator, or an affiliate of either, unless the charge is required to be included under section 1026.32(b)(2)(i)(C), (iii), or (iv);
- Up to two bona fide discount points payable by the consumer in connection with the transaction, provided that the interest rate without any discount does not exceed:
  - The APOR by more than one percentage point; or
  - If the transaction is secured by personal property, the average rate for a loan insured under Title I of the National Housing Act by more than one percentage point, or
- If no discount points have been excluded above, then up to one bona fide discount point payable by the consumer in connection with the transaction, provided that the interest rate without any discount does not exceed:
  - The APOR by more than two percentage points; or
  - If the transaction is secured by personal property, the average rate for a loan insured under Title I of the National Housing Act by more than two percentage points.

  NOTE: A bona fide discount point means an amount equal to one percent of the credit limit when the account is opened, paid by the consumer, that reduces the interest rate or time-price differential applicable to the transaction based on a calculation that is consistent with established industry practices for determining the amount of reduction in the interest rate or time-price differential appropriate for the amount of discount points paid by the consumer. (§1026.32(b)(3)(ii))

- All compensation paid directly or indirectly by a consumer or creditor to a loan originator (as defined in section 1026.36(a)(1) that can be attributed to the transaction at the time the interest rate is set unless:
  - That compensation is paid by a consumer to a mortgage broker, as defined in section 1026.36(a)(2) and already has been included in points and fees under section 1026.33(b)(2)(i);
  - That compensation is paid by a mortgage broker as defined in section 1026.36(a)(2) to a loan originator that is an employee of the mortgage broker; or
  - That compensation is paid by a creditor to a loan originator that is an employee of the creditor.

- All items listed in section 1026.4(c)(7), other than amounts held for future taxes, unless ALL of the following conditions are met:
    - 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.
- Premiums or other charges paid at or before account opening for any credit life, credit disability, credit unemployment, or credit property insurance, or for any other life, accident, health, or loss-of-income insurance for which the creditor is a beneficiary, or any payments directly or indirectly for any debt cancellation or suspension agreement or contract.
- The maximum prepayment penalty that may be charged or collected under the terms of the credit plan; and
- The total prepayment penalty incurred by the consumer if the consumer refinances an existing closed-end credit transaction or terminates an existing open-end credit plan in connection with obtaining a new closed- or open-end credit transaction with the current holder of the existing loan or plan, a servicer acting on behalf of the current holder, or an affiliate of either.

In addition to the charges listed above, points and fees for open-end credit plans also include the following items:

- Fees charged for participation in the credit plan, payable at or before account opening, as described in section 1026.4(c)(4), and
- Any transaction fee that will be charged to draw funds on the credit line, as described in section 1026.32(b)(2)(viii).

Prepayment Penalty Definition – Section 1026.32(b)(6)

For closed-end credit transactions, a prepayment penalty is a charge imposed for paying all or part of the transaction's principal before the date on which the principal is due with limited exceptions.

For open-end credit plans, a prepayment penalty is a charge imposed by the creditor if the consumer terminates the credit plan prior to the end of its term.

NOTE: Waived, bona fide third-party charges that are later imposed if the transaction is prepaid sooner than 36 months after consummation or account opening are not considered prepayment penalties. For closed-end transactions insured by the Federal Housing Administration and consummated before January 21, 2015, interest charged consistent with the monthly interest accrual amortization method is not a prepayment penalty, so long as the interest is charged consistent with the monthly interest accrual amortization method used for those loans. See Commentary 32(b)(6)-1(iv).

High-Cost Mortgage Disclosures – Section 1026.32(c)

In addition to the other disclosure requirements of Regulation Z, high-cost mortgages require certain additional information to be disclosed in conspicuous type size to consumers before consummation of the transaction or account opening. These disclosures include:

- Notice to the consumer using the required language in section 1026.32(c)(1);
- The annual percentage rate (§1026.32(c)(2));
- Specified information concerning the regular or minimum periodic payment and the amount of any balloon payment, if permitted under the high-cost mortgage limitations in section 1026.32(d); (§1026.32(c)(3))
- For variable-rate transactions, a statement that the interest and monthly payment may increase, and the amount of the single maximum monthly payment based on the maximum interest rate required to be included in the contract; (§1026.32(c)(4)) and
- The total amount borrowed for closed-end credit transactions or the credit limit for the plan when the account is opened for an open-end credit plan. (§1026.32(c)(5))

  NOTE: For closed-end credit transactions, if the amount borrowed includes charges to be financed under section 1026.34(a)(10), this fact must be stated, grouped together with the disclosure of amount borrowed. The disclosure of the amount borrowed will be treated as accurate if it is not more than $100 above or below the amount required to be disclosed.

High-Cost Mortgage Limitations – Section 1026.32(d)

Certain loan terms, including negative amortization, interest rate increases after default, and prepayment penalties are prohibited for high-cost mortgages. Others, including balloon payments and due-on-demand clauses, are restricted.

- Balloon payments, defined as payments that are more than two times a regular periodic payment, are generally prohibited for high-cost mortgages. (§1026.32(d)(1)(i)) However, balloon payments are allowed in certain limited circumstances.
  - For closed-end transactions, balloon payments are permitted when (a) the loan has a payment schedule that is adjusted to seasonal or irregular income of the consumer; (b) the loan is a “bridge” loan made in connection with the purchase of a new dwelling and matures in 12 months or less; or (c) the creditor meets criteria for serving a predominantly rural or underserved area, and the loan meets specific criteria set forth in sections 1026.43(f)(1)(i) through (vi) and 1026.43(f)(2). (§1026.32(d)(1)(ii))
  - For an open-end credit plan where the terms of the plan provide for a draw period where no payment is required, followed by a repayment period where no further draws may be taken, the initial payment required after conversion to the repayment phase of the credit plan is not considered a “balloon” payment. However, if the terms of an open-end credit

plan do not provide for a separate draw period and repayment period, the balloon payment limitation applies. (§1026.32(d)(1)(iii))

- Acceleration clauses or demand features are limited and may only permit creditors to accelerate and demand repayment of the entire outstanding balance of a high-cost mortgage if:
  - There is fraud or material misrepresentation by the consumer in connection with the loan (§1026.32(d)(8)(i));
  - The consumer fails to meet the repayment terms of the agreement for any outstanding balance that results in a default on the loan (§1026.32(d)(8)(ii)); or
  - There is any action (or inaction) by the consumer that adversely affects the rights of the creditor's security interest for the loan, such as the consumer failing to pay required taxes on the property. (§1026.32(d)(8)(iii) and comments 32(d)(8)(iii)-1 and -2)

Prohibited Acts or Practices in Connection with High-Cost Mortgages – Section 1026.34

In addition to the requirements in section 1026.32, Regulation Z imposes additional requirements for high-cost mortgages, several of which are discussed below.

Refinancing Within One-Year – Section 1026.34(a)(3)

A creditor or assignee cannot refinance a consumer's high-cost mortgage into a second high-cost mortgage within the first year of the origination of the first loan, unless the second high-cost mortgage is in the consumer's interest.

Repayment Ability for High-Cost Mortgages – Section 1026.34(a)(4)

Among other requirements, a creditor extending high-cost mortgage credit subject to section 1026.32 must not make such loans without regard to the consumer's repayment ability as of consummation or account opening as applicable. (§1026.34(a)(4))

For closed-end credit transactions that are high-cost mortgages, section 1026.34(a)(4) requires a creditor to comply with the repayment ability requirements set forth in section 1026.43.

For open-end credit plans that are high-cost mortgages, a creditor may not open a credit plan for a consumer where credit is or will be extended without regard to the consumer's repayment ability as of account opening, including the consumer's current and reasonably expected income, employment, assets other than the collateral, and current obligations, including any mortgage-related obligations.

- For the purposes of these open-end requirements, mortgage-related obligations include, among other things, property taxes, premiums and fees for mortgage-related insurance that are required by the creditor, fees and special assessments such as those imposed by a

condominium association, and similar expenses required by another credit obligation undertaken prior to or at account opening and secured by the same dwelling that secures the high-cost mortgage transaction. (§1026.34(a)(4)(i))

- A creditor must also verify both current obligations and the amounts of income or assets that it relies on to determine repayment ability using W-2s, tax returns, payroll receipts, financial institution records, or other third-party documents that provide reasonably reliable evidence of the consumer's income or assets (§1026.34(a)(4)(ii)).

For open-end high-cost mortgages, a presumption of compliance is available but only if the creditor:

- Verifies the consumer's repayment ability as required under section 1026.34(a)(4)(ii));
- Determines the consumer's repayment ability taking into account current obligations and mortgage-related obligations, using the largest required minimum periodic payment based on the assumptions that:
    - The consumer borrows the full credit line at account opening with no additional extensions of credit;
    - The consumer makes only required minimum periodic payments during the draw period and any repayment period; and
    - If the APR can increase, the maximum APR that is included in the contract applies to the plan at account opening and will apply during the draw and any repayment period. (§1026.34(a)(4)(iii)(B))
- Assesses the consumer's repayment ability, taking into account either the ratio of total debts to income or the income the consumer will have after paying current obligations. (§1026.34(a)(4)(iii)(C))

NOTE: No presumption of compliance will be available for an open-end high-cost mortgage transaction in which the regular periodic payments, when aggregated, do not fully amortize the outstanding principal balance except for transactions with balloon payments permitted under section 1026.32(d)(1)(ii).

High-Cost Mortgage Pre-Loan Counseling – Section 1026.34(a)(5)

Creditors that originate high-cost mortgages must receive written certification that the consumer has obtained counseling on the advisability of the mortgage from a counselor approved by HUD, or if permitted by HUD, a state housing finance authority (specific content for the certifications can be found in section 1026.34(a)(5)(iv)). Counseling must occur after the consumer receives a good faith estimate or initial TILA disclosure. Additionally, counseling cannot be provided by a counselor who is employed by, or affiliated with, the creditor. A creditor may pay the fees for counseling but is prohibited from conditioning the payment of fees upon the consummation of

the mortgage transaction or, if the consumer withdraws his or her application, upon receipt of the certification. However, a creditor may confirm that a counselor provided counseling to the consumer prior to paying these fees. Finally, a creditor is prohibited from steering a consumer to a particular counselor.

Recommended Default – Section 1026.34(a)(6)

Creditors (and mortgage brokers) are prohibited from recommending or encouraging a consumer to default on an existing loan or other debt prior to, and in connection with, the consummation or account opening of a high-cost mortgage that refinances all or any portion of the existing loan or debt.

Loan Modification and Deferral Fees – Section 1026.34(a)(7)

Creditors, successors-in-interest, assignees, or any agents of these parties may not charge a consumer any fee to modify, renew, extend, or amend a high-cost mortgage, or to defer any payment due under the terms of the mortgage.

Late Fees – Section 1026.34(a)(8)

Late payment charges for a high-cost mortgage must be permitted by the terms of the loan contract or open-end agreement and may not exceed **four** percent of the amount of the payment that is past due. Late payment charges are permitted only if payment is not received by the end of the 15-day period beginning on the day the payment is due or, where interest on each installment is paid in advance, by the end of the 30-day period beginning on the day the payment is due.

Creditors are also prohibited from "pyramiding" late fees—that is, charging late payments if any delinquency is attributable only to a late payment charge that was imposed due to a previous late payment, and the payment otherwise is considered a full payment for the applicable period (and any allowable grace period). If a consumer fails to make a timely payment by the due date, then subsequently resumes making payments but has not paid all past due payments, the creditor can continue to impose late payment charges for the payments outstanding until the default is cured.

Fees for Payoff Statements – Section 1026.34(a)(9)

A creditor or servicer may not charge a fee for providing consumers (or authorized representatives) with a payoff statement on a high-cost mortgage. Payoff statements must be provided to consumers within **five** business days after receiving the request for a statement. A creditor or servicer may charge a processing fee to cover the cost of providing the payoff statement by fax or courier only, provided that such fee may not exceed an amount that is comparable to fees imposed for similar services provided in connection with a non-high-cost mortgage and that a payoff statement be made available to the consumer by an alternative method without charge. If a creditor charges a fee for providing a payoff statement by fax or courier, the creditor must disclose the fee prior to charging the consumer and must disclose to the consumer that other methods for providing the payoff statement are available at no cost. Finally,

a creditor is permitted to charge a consumer a reasonable fee for additional payoff statements during a calendar year in which four payoff statements have already been provided without charge other than permitted processing fees.

Reverse Mortgages – Section 1026.33

A reverse mortgage is a non-recourse transaction secured by the consumer's principal dwelling which ties repayment (other than upon default) to the homeowner's death or permanent move from, or transfer of the title of, the home. Special disclosure requirements apply to reverse mortgages.

Higher-Priced Mortgage Loans – Section 1026.35(a)

A mortgage loan subject to section 1026.35 (*higher-priced mortgage loan*) is a closed-end consumer credit transaction secured by the consumer's principal dwelling with an APR that exceeds the *average prime offer rate* for a comparable transaction as of the date the interest rate is set by:

- 1.5 or more percentage points for loans secured by a first lien on a dwelling where the amount of the principal obligation at the time of consummation does not exceed the maximum principal obligation eligible for purchase by Freddie Mac;
- 2.5 or more percentage points for loans secured by a first lien on a dwelling, where the amount of the principal obligation at the time of consummation exceeds the maximum principal obligation eligible for purchase by Freddie Mac; or
- 3.5 or more percentage points for loans secured by a subordinate lien on a dwelling.

Average prime offer rate means an APR that is derived from average interest rates, points, and other loan pricing terms currently offered to consumers by a representative sample of creditors for mortgage transactions that have low-risk pricing characteristics. The CFPB publishes average prime offer rates for a broad range of types of transactions in a table updated at least weekly, as well as the methodology it uses to derive these rates. These rates are available on the website of the Federal Financial Institutions Examination Council (FFIEC).
http://www.ffiec.gov/ratespread/newcalchelp.aspx

Additionally, creditors extending mortgage loans subject to 1026.43(c) must verify a consumer's ability to repay as required by section 1026.43(c).

Finally, the regulation prohibits creditors from structuring a home-secured loan that does not meet the definition of open-end credit as an open-end plan to evade these requirements.

Higher-Priced Mortgage Loans Escrow Requirement – Section 1026.35(b)

In general, a creditor may not extend a higher-priced mortgage loan (including high-cost mortgages that also meet the definition of a higher-priced mortgage loan), secured by a first lien on a principal dwelling unless an escrow account is established before consummation for payment of property taxes and premiums for mortgage-related insurance required by the creditor.

An escrow account for a higher-priced mortgage loan need not be established for:

- a transaction secured by shares in a cooperative,
- a transaction to finance the initial construction of a dwelling,
- a temporary or "bridge" loan with a term of 12 months or less, or
- a reverse mortgage subject to section 1026.33.

There is also a limited exemption that allows creditors to establish escrow accounts for property taxes only (rather than for both property taxes and insurance) for loans secured by dwellings in a "common interest community" under section 1026.35(b)(2)(ii), where dwelling ownership requires participation in a governing association that is obligated to maintain a master insurance policy insuring all dwellings. (§1026.35(b)(2)(ii))

An exemption to the higher-priced mortgage loan escrow requirement is available for first-lien higher-priced mortgage loans made by certain creditors that operate predominantly in "rural" or "underserved" areas. To make use of this exemption, a creditor must:

1) Make over half its covered transactions in counties that meet the definition of "rural" or "underserved" as laid out in the regulation,[15]
2) Together with any affiliates must not have made more than 500 covered transactions in the preceding calendar year,
3) Must have had less than $2 billion in total assets as of the end of the preceding calendar year,[16] and
4) Together with any affiliates must not maintain escrow accounts for any extensions of consumer credit secured by real property or a dwelling that it or its affiliate currently services. However, such creditors (and their affiliates) are permitted to offer an escrow

[15] The regulation generally defines these two terms by reference to "urban influence codes" (for "rural") and HMDA data (for "underserved"). To ease compliance, however, the CFPB will post on its public website a list of "rural" and "underserved" counties that creditors may rely on as a safe harbor. See comment 35(b)(2)(iv)-1.

[16] The asset threshold will be adjusted automatically each year, based on the year-to-year change in the average of the Consumer Price Index for Urban Wage Earners and Clerical Workers.

account to accommodate distressed borrowers and may continue to maintain escrow accounts established to comply with the rule for applications received before June 1, 2013 without losing the exemption.

For first-lien higher-priced mortgage loans originated by a creditor that would not be required to establish an escrow account based on the above exemption, if that creditor has obtained a commitment for a higher-priced mortgage loan to be acquired by another company that is not eligible for the exemption, an escrow account must be established. Since an escrow account will be established for this loan, however, note that if the creditor that has obtained a commitment for the higher-priced mortgage loan to be acquired by a non-exempt company would like to remain eligible for the exemption above, neither the creditor nor its affiliates can service the loan on or beyond the second periodic payment under the terms of the loan.

A creditor or servicer may cancel an escrow account only upon the earlier of termination of the underlying loan, or a cancellation request from the consumer five years or later after consummation. However, a creditor or servicer is not permitted to cancel an escrow account, even upon request from the consumer unless the unpaid principal balance of the higher-priced mortgage loan is less than 80 percent of the original value of the property securing the loan and the consumer is not currently delinquent or in default on the loan. (§1026.35(b)(3))

Higher-Priced Mortgage Loans Appraisal Requirement – Section 1026.35(c)[17]

General Requirements, Exception, and Safe Harbor

A creditor may not extend a higher-priced mortgage loan without first obtaining a written appraisal of the property to be mortgaged. The appraisal must be performed by a state-certified or licensed appraiser (defined in part as an appraiser who conducts the appraisal in conformity with the Uniform Standards of Professional Appraisal Practice (USPAP) and the requirements applicable to appraisers in title IX of FIRREA and its implementing regulations). The appraisal must include a physical visit of the interior of the dwelling. The appraisal requirements do **not** apply to:

- Qualified mortgages under section 1026.43;
- A transaction secured by a new manufactured home;
- A transaction secured by a mobile home, boat, or trailer;
- A transaction to finance the initial construction of a dwelling;

[17] The higher-priced mortgage loans appraisal requirement was adopted pursuant to an interagency rulemaking conducted by the Board, the CFPB, the FDIC, FHFA, NCUA, and OCC. The Board codified the rule at 12 CFR 226.43, and the OCC codified the rule at 12 CFR Part 34 and 12 CFR Part 164. There is no substantive difference among these three sets of rules.

- A loan with maturity of 12 months or less, if the purpose of the loan is a “bridge” loan connected with the acquisition of a dwelling intended to become the consumer’s principal dwelling; or

- A reverse mortgage transaction subject to 12 CFR 1026.33(a). (§1026.35(c)(2)).

A creditor may obtain a safe harbor for compliance with section 1026.35(c)(3)(i) by ordering that the appraisal be completed in conformity with USPAP and the requirements applicable to appraisers in title IX of FIRREA and its implementing regulations, verifying that the appraiser is certified or licensed through the National Registry; and confirming that the written appraisal contains the elements listed in Appendix N of Regulation Z. In addition, the creditor must have no actual knowledge that the facts or certifications contained in the appraisal are inaccurate (§1026.35(c)(3)(ii)).

Second Appraisals

The appraisal provisions in section 1026.35(c) also require creditors to obtain a second written appraisal before extending a higher-priced mortgage loan in two instances:

- First, when the dwelling that is securing the higher-priced mortgage loan was acquired by the seller 90 or fewer days prior to the consumer’s agreement to purchase the property and the price of the property has increased by more than 10 percent.

- Second, when the dwelling was acquired by the seller between 91 and 180 prior to the consumer’s agreement to purchase the property, and the price of the property has increased by more than 20 percent.

A creditor must obtain a second interior appraisal unless the creditor can demonstrate, by exercising reasonable diligence, that the two instances necessitating a second appraisal do not apply. A creditor can meet the reasonable diligence requirement if it bases its determination on information contained in certain written source documents (such as a copy of the seller’s recorded deed or a copy of a property tax bill). See Appendix O. If, after exercising reasonable diligence, the creditor is unable to determine whether the two instances necessitating a second appraisal apply, the creditor must obtain a second appraisal.

If the creditor is required to obtain a second written appraisal, the two required appraisals must be conducted by different appraisers. Each appraisal obtained must include a physical visit of the interior of the dwelling. In instances where two appraisals are required, creditors are allowed to charge for only one of the two appraisals.

The second written appraisal must contain an analysis of the difference between the price at which the seller obtained the property and the price the consumer agreed to pay to acquire the property, an analysis of changes in market conditions between when the seller acquired the property and when the consumer agreed to purchase the property, and a review of improvements made to the property between the two dates.

The higher-priced mortgage loan second appraisal requirements do not apply to the extension of credit financing acquisition of a property:

- From a local, state, or federal government agency;
- From a person who acquired title to the property through foreclosure, deed-in-lieu of foreclosure, or other similar judicial or non-judicial procedures as a result of the person's exercise of rights as the holder of a defaulted mortgage;
- From a non-profit entity as part of a local, state, or federal government program permitted to acquire single-family properties for resale from a person who acquired title through foreclosure, deed-in-lieu of foreclosure, or other similar judicial or non-judicial procedures;
- From a person who acquired title to the property by inheritance or by court order as a result of a dissolution of marriage, civil union, or domestic partnership, or of partition of joint or marital assets;
- From an employer or relocation agency in connection with the relocation of an employee;
- From a servicemember who received a deployment or permanent change of station order after the servicemember purchased the property;
- Located in a federal disaster area if and for as long as the requirements of title XI of FIRREA have been waived by the federal financial institutions regulatory agencies; or
- Located in a rural county as defined by the Bureau in section 1026.35(b)(2)(iv)(A).

Application Disclosures and Copy of Appraisal

Finally, creditors must provide consumers who apply for a loan covered by the appraisal requirements in section 1026.35(c) with a disclosure providing information relating to appraisals. A creditor must provide consumers with disclosures no later than the third business day after the creditor receives an application for a higher-priced mortgage loan, or no later than the third business day after the loan requested becomes a higher-priced mortgage loan. Additionally, a creditor must provide, at no cost to the consumer, a copy of each written appraisal performed in connection with a loan covered by the appraisal requirements in section 1026.35(c) no later than three business days prior to consummation or, if the loan will not be consummated, no later than 30 days after the creditor determines that the loan will not be consummated.

Prohibited Acts or Practices in Connection with Credit Secured by a Consumer's Dwelling – Section 1026.36

Loan Originator – Section 1026.36(a)

The term "loan originator" means a person who, in expectation of direct or indirect compensation or other monetary gain or for direct or indirect compensation or other monetary gain, performs any of the following activities:

- Takes an application, offers, arranges, assists a consumer in obtaining or applying to obtain, negotiates, or otherwise obtains or makes an extension of consumer credit for another person; or
- Through advertising or other means of communication represents to the public that such person can or will perform any of these activities.

The term "loan originator" includes an employee, agent, or contractor of the creditor or loan originator organization if the employee, agent, or contractor meets this definition. The term "loan originator" also includes a creditor that engages in loan origination activities if the creditor does not finance the transaction at consummation out of the creditor's own resources, including by drawing on a *bona fide* warehouse line of credit or out of deposits held by the creditor.

The term "loan originator" does not include:

- A person who performs purely administrative or clerical tasks on behalf of a person who takes applications or offers or negotiates credit terms;
- An employee of a manufactured home retailer who does not take a consumer credit application, offer or negotiate credit terms, or advise consumers on available credit terms;
- A person that performs only real estate brokerage activity and is licensed or registered in accordance with applicable state law, unless that person is compensated by a creditor or loan originator for a consumer credit transaction subject to section 1026.36;
- A seller financer that meets the criteria established in sections 1026.36(a)(4) or (a)(5); or
- A servicer, or a servicer's employees, agents, and contractors who offer or negotiate the terms of a mortgage for the purpose of renegotiating, modifying, replacing, or subordinating principal of an existing mortgage where consumers are behind in their payments, in default, or have a reasonable likelihood of becoming delinquent or defaulting. This exception does not, however, apply to such persons if they refinance a mortgage or assign a mortgage to a different consumer.

An "individual loan originator" is a natural person who meets the definition of "loan originator." Finally, a "loan originator organization" is any loan originator that is not an individual loan originator. A loan originator organization would include banks, thrifts, finance companies, credit unions and mortgage brokers.

Prohibited Loan Originator Compensation: Payments Based on a Term of a Transaction – Section 1026.36(d)(1)

With limited exceptions, loan originators cannot receive (and no person can pay directly or indirectly), compensation in connection with closed-end consumer credit transactions secured by a dwelling based on a term of a transaction, the terms of multiple transactions, or the terms of multiple transactions by multiple individual loan originators. The loan originator compensation provisions do not apply to open-end home-equity lines of credit secured by a consumer's interest in a timeshare plan described in 11 U.S.C. 101(53D).

A "term of a transaction" is any right or obligation of the parities to a credit transaction. The amount of credit extended is not a term of a transaction, provided that such compensation is based on a fixed percentage of the amount of credit extended (but may be subject to a minimum or maximum dollar amount).

NOTE: A review of whether compensation, which includes salaries, commissions, and any financial or similar incentive, is based on the terms of a transaction requires an objective analysis. If compensation would have been different if a transaction term had been different, then the compensation is prohibited. The regulation does not prevent compensating loan originators differently on different transactions, provided the difference is not based on a term of a transaction or on a proxy for a term of a transaction (a factor that consistently varies with a term or terms of the transaction over a significant number of transactions and which the loan originator has the ability to manipulate).

An individual loan originator may receive (and a person may pay):

- Compensation in the form of a contribution to a defined contribution plan that is a designated tax-advantage plan unless the contribution is tied to the terms of the individual's transaction(s); (§1026.36.(d)(1)(iii))
- Compensation in the form of a benefit under a defined benefit plan that is a designated tax-advantaged plan (§1026.36(d)(1)(iii))
- Compensation under a non-deferred profits-based compensation plan provided that:
  - The compensation paid to an individual loan originator is not directly or indirectly based on the terms of the individual's transaction(s); and
  - Either:
    - The compensation paid to the individual loan originator does not exceed 10 percent (in aggregate) of the individual loan originator's total compensation corresponding to the time period for which the compensation under the non-deferred profits-based compensation plan is paid; or

- The individual loan originator was the loan originator of 10 or fewer transactions during the 12 months preceding the date the compensation was determined. (§1026.36(d)(1)(iv))

For more information pertaining to permissible compensation, see the Commentary at section 1026.36(d).[18]

Prohibited Loan Originator Compensation: Dual Compensation – Section 1026.36(d)(2)

Loan originators that receive compensation directly from consumers in consumer credit transactions secured by a dwelling, (except for open-end home-equity lines of credit or to loans secured by a consumer's interest in a timeshare plan) may not receive additional compensation directly or indirectly from any other person in connection with that transaction. (§1026.36(d)(1)(i)(A)(*1*)) This prohibition includes compensation received from a third-party to the transaction to pay for some or all of the consumer's costs. (§1026.36(d)(1)(i)(B)) Further, a person is prohibited from compensating a loan originator when that person "knows or has reason to know" that the consumer has paid compensation to the loan originator. (§1026.36(d)(2)(i)(A)(*2*))

However, even if a loan originator organization receives compensation directly from a consumer, the organization can compensate the individual loan originator, subject to section 1026.36(d)(1). (§1026.36(d)(2)(i)(C))

Prohibition on Steering – Section 1026.36(e)

Loan originators are prohibited from directing or "steering" consumers to loans based on the fact that the originator will receive greater compensation for the loan from the creditor than in other transactions the originator offered or could have offered to the consumer, unless the consummated transaction is in the consumer's interest. A loan originator complies with the prohibition on steering (but not the loan originator compensation provisions) by obtaining loan options from a significant number of the creditors with which the loan originator regularly does business and, for each loan type in which the consumer has expressed interest, presenting the consumer with loan options for which the loan originator believes in good faith the consumer likely qualifies, provided that the presented loan options include all of the following:

- The loan with the lowest interest rate;
- The loan with the lowest interest rate without certain enumerated risky features (such as prepayment penalties, negative amortization, or a balloon payment in the first seven years); and

[18] In addition to the requirements listed here, section 1026.25(c) imposes specific record retention requirements for creditors and loan originator organizations that compensate loan originators.

- The loan with the lowest total dollar amount of discount points, origination points or origination fees (or, if two or more loans have the same total dollar amount of discount points, origination points or origination fees, the loan with the lowest interest rate that has the lowest total dollar amount of discount points, origination points or origination fees).

The anti-steering provisions do not apply to open-end home-equity lines of credit or to loans secured by a consumer's interest in a timeshare plan.

Loan Originator Qualification Requirements – Section 1026.36(f)

Individual loan originators and loan originator organizations must, when required under state or federal law, be registered and licensed under those laws, including the Safe and Fair Enforcement for Mortgage Licensing Action of 2008 (SAFE Act).[19] Loan originator organizations other than government agencies or state housing finance agencies must:

- Comply with all applicable state law requirements for legal existence and foreign qualification; (§1026.36(f)(1))

- Ensure that each individual loan originator who works for the loan originator organization (e.g., an employee, under a brokerage agreement) is licensed or registered to the extent the individual is required to be licensed or registered under the SAFE Act prior to acting as a loan originator in a consumer credit transaction secured by a dwelling. (§1026.36(f)(2))

The requirements are different for loan originator organizations whose employees are not required to be licensed and are not licensed pursuant to 12 CFR section 1008.103 or state SAFE Act implementing laws (including employees of depository institutions and bona fide non-profits). For their employees hired on or after January 10, 2014 (or hired before this date but not subject to any statutory or regulatory background standards at the time, or for any individual loan originators regardless of when hired that the organization believes, based on reliable information do not meet the qualification standards), loan originator employers must obtain before the individual acts as a loan originator in a consumer credit transaction secured by a dwelling:

- A criminal background check through the Nationwide Mortgage Licensing System and Registry (NMLSR) or, in the case of an individual loan originator who is not a registered loan originator under NMLSR, a criminal background check from a law enforcement agency or commercial service; (§1026.36(f)(3)(i)(A))

- A credit report from a consumer reporting agency (as defined in section 603(p) of the Fair Credit Reporting Act) secured, where applicable, in compliance with section 604(b) of FCRA; (§1026.36(f)(3)(i)(B)) and

[19] Section 1026.36(f) applies to closed-end consumer credit transactions secured by a dwelling except a loan that is secured by a consumer's interest in a timeshare plan described in 11 U.S.C. 101(53D). For purposes of 1026.36(f), a loan originator includes all creditors that engage in loan origination activities, not just those who table fund.

- Information from the NMLSR about any administrative, civil, or criminal findings by any government jurisdiction or, in the case of an individual loan originator who is not a registered loan originator under the NMLSR, such information from the individual loan originator. (§1026.36(f)(3)(i)(C))

Based on the information obtained above and any other information reasonably available, the loan originator employer must determine for such an employee prior to allowing the individual to act as a loan originator in a consumer credit transaction secured by a dwelling:

- That the individual has not been convicted of, or pleaded guilty or *nolo contendere* to, a felony in a domestic or military court during the preceding seven-year period or, in the case of a felony involving an act of fraud, dishonesty, a breach of trust, or money laundering, at any time; and (§1026.36(f)(3)(ii)(A)(*1*))

  NOTE: Whether the conviction of a crime is considered a felony is determined by whether the conviction was classified as a felony under the law of the jurisdiction under which the individual is convicted. Additionally, a loan originator organization may employ an individual with a felony conviction (or a plea of *nolo contendere*) as a loan originator if that individual has received consent from the FDIC, (or the FRB, as applicable) the NCUA, or the Farm Credit Administration under their own applicable statutory authority. (§1026.36(f)(3)(iii))

- Has demonstrated financial responsibility, character, and general fitness such as to warrant a determination that the individual loan originator will operate honestly, fairly, and efficiently.

The loan originator organization must also provide periodic training to each such employee that covers federal and state legal requirements that apply to the individual loan originator's loan origination activities.

Name and NMLSR ID on Loan Documentation – Section 1026.36(g)

Section 1026.36(g) applies to closed-end consumer credit transactions secured by a dwelling except a loan that is secured by a consumer's interest in a timeshare plan described in 11 U.S.C. 101(53D). For purposes of 1026.36(g), a loan originator includes all creditors that engage in loan origination activities, not just those who table fund.

For consumer credit transactions secured by a dwelling, loan originator organizations must include certain identifying information on loan documentation provided to consumers. The loan documents must include the loan originator organization's name, NMLSR ID (if applicable), and the name of the individual loan originator that is primarily responsible for the origination as it appears in the NMLSR, as well as the individual's NMLSR ID. This information is required on credit applications, the note or loan contract and the documents securing an interest in the property.

Policies and Procedures to Ensure and Monitor Compliance – Section 1026.36(j)

Depository institutions (including credit unions) must establish and maintain written policies and procedures reasonably designed to ensure and monitor compliance of the depository institution, its employees, and its subsidiaries and their employees with the requirements of section 1026.36(d) (prohibited payments to loan originators), section 1026.36(e) (prohibition on steering), section 1026.36(f) (loan originator qualifications), and section 1026.36(g) (name and NMLSR ID on loan documents). The written policies and procedures must be appropriate to the nature, size, complexity, and scope of the mortgage lending activities of the depository and its subsidiaries. (§1026.36(j))

Prohibition on Mandatory Arbitration or Waivers of Certain Consumer Rights – Section 1026.36(h)

A contract or other agreement for a consumer credit transaction secured by a dwelling (including a home equity line of credit secured by the consumer's principal dwelling) may not include terms that require mandatory arbitration or any other non-judicial procedure to resolve any controversy arising out of the transaction. Also, a contract or other agreement relating to such a consumer credit transaction may not be applied or interpreted to bar a consumer from bringing a claim in court under any provision of law for damages or other relief in connection with an alleged violation of any federal law. However, a creditor and a consumer could agree, after a dispute or claim under the transaction arises, to settle or use arbitration or other non-judicial procedure to resolve that dispute or claim.

Prohibition on Financing Single-Premium Credit Insurance – Section 1026.36(i)

Creditors are prohibited from financing, either directly or indirectly, premiums or fees for credit insurance in connection with a consumer credit transaction secured by a dwelling (including a home equity line of credit secured by the consumer's principal dwelling). This prohibition includes financing fees for credit life, credit disability, credit unemployment, credit property insurance, or any other accident, loss-of-income, life, or health insurance or payment for debt cancellation or suspension. This prohibition does not apply to credit unemployment insurance where the premiums are reasonable, the creditor receives no direct or indirect compensation in connection with the premiums, and the premiums are paid under a separate insurance contract and not to an affiliate of the creditor. This prohibition also does not apply to credit insurance where premiums or fees are calculated and paid in full on a monthly basis.

Negative Amortization Counseling – Section 1026.36(k)

A creditor may not extend a negative amortizing mortgage loan to a first-time borrower in connection with a closed-end transaction secured by a dwelling, other than a reverse mortgage or a transaction secured by a timeshare, unless the creditor receives documentation that the consumer has obtained homeownership counseling from a HUD certified or approved counselor.

Additionally, a creditor extending a negative amortizing mortgage loan to a first-time borrower may not steer, direct, or require the consumer to use a particular counselor.

Loan Servicing Practices

Servicers of mortgage loans are prohibited from engaging in certain practices, such as pyramiding late fees. In addition, servicers are required to credit consumers' loan payments as of the date of receipt and provide a payoff statement within a reasonable time, not to exceed seven business days of a written request.

Payment Processing – Section 1026.36(c)(1)

For a consumer credit transaction secured by a consumer's principal dwelling, a loan servicer:

- Cannot fail to credit a periodic payment to the consumer's loan account as of the date of receipt, except in instances where the delay will not result in a charge to the consumer or in the reporting of negative information to a consumer reporting agency.

  NOTE: For the purposes of section 1026.36(c) a periodic payment is "an amount sufficient to cover principal, interest, and escrow for any given billing cycle." If the consumer owes late fees, other fees, or non-escrow payments but makes a full periodic payment, the servicer must credit the periodic payment as of the date of receipt.

- Cannot retain a partial payment (any amount less than a periodic payment) in a suspense or unapplied payment account without disclosing to the consumer in the periodic statement (if required) the total amount(s) held in the suspense account and applying the payment to the balance upon accumulation of sufficient funds to equal a periodic payment.

If a servicer has provided written requirements for accepting payments in writing but then accepts payments that do not conform to the written requirements, the servicer must credit the payment as of five days after receipt.

Pyramiding of Late Fees – Section 1026.36(c)(2)

A servicer may not impose on the consumer any late fee or delinquency charge in connection with a timely payment made in full, when the only delinquency is attributable to late fees or delinquency charges assessed on an earlier payment.

Providing Payoff Statements – Section 1026.36(c)(3)

A creditor, assignee, or servicer may not fail to provide, within a reasonable time, but no more than seven business days, after receiving a written request from the consumer or person acting on behalf of the consumer, an accurate statement of the total outstanding balance that would be required to satisfy the consumer's obligations in full as of a specific date.

NOTE: For purposes of section 1026.36(c)(3), when a creditor, assignee, or servicer is not able to provide the statement within seven business days because a loan is in bankruptcy or foreclosure,

because the loan is a reverse mortgage or shared appreciation mortgage, or because of natural disasters or similar circumstances, the payoff statement must be provided within a reasonable time.

Notification of Sale or Transfer of Mortgage Loans – Section 1026.39

Notice of new owner – No later than 30 calendar days after the date on which a mortgage loan is acquired by or otherwise sold, assigned, or otherwise transferred[20] to a third party, the "covered person"[21] shall notify the consumer clearly and conspicuously in writing, in a form that the consumer may keep, of such transfer and include:

- Identification of the loan that was sold, assigned, or otherwise transferred;
- Name, address, and telephone number of the covered person;
- Date of transfer;
- Name, address, and telephone number of an agent or party having authority, on behalf of the covered person, to receive notice of the right to rescind and resolve issues concerning the consumer's payments on the mortgage loan;
- Location where transfer of ownership of the debt to the covered person is or may be recorded in public records or, alternatively, that the transfer of ownership has not been recorded in public records at the time the disclosure is provided; and
- At the option of the covered person, any other information regarding the transaction.

This notice of sale or transfer must be provided for any consumer credit transaction that is secured by the principal dwelling of a consumer. Thus, it applies to both closed-end mortgage loans and open-end home equity lines of credit. This notification is required of the covered person even if the loan servicer remains the same.

Regulation Z also establishes special rules regarding the delivery of the notice when there is more than one covered person. In a joint acquisition of a loan, the covered persons must provide a single disclosure that lists the contact information for all covered persons. However, if one of the covered persons is authorized to receive a notice of rescission and to resolve issues concerning the consumer's payments, the disclosure may state contact information only for that covered person. In addition, if the multiple covered persons each acquire a partial interest in the loan pursuant to separate and unrelated agreements, they may provide either a single notice or

[20] The date of transfer to the covered person may, at the covered person's option, be either the date of acquisition recognized in the books and records of the acquiring party or the date of transfer recognized in the books and records of the transferring party.

[21] A "covered person" means any person, as defined in 12 CFR 1026.2(a)(22), that becomes the owner of an existing mortgage loan by acquiring legal title to the debt obligation, whether through a purchase, assignment, or other transfer, and who acquires more than one mortgage loan in any 12-month period. For purposes of this section, a servicer of a mortgage loan shall not be treated as the owner of the obligation if the servicer holds title to the loan or it is assigned to the servicer solely for the administrative convenience of the servicer in servicing the obligation. See 12 CFR 1026.39(a)(1).

separate notices. Finally, if a covered person acquires a loan and subsequently transfers it to another covered person, a single notice may be provided on behalf of both of them, as long as the notice satisfies the timing and content requirements with respect to each of them.

In addition, there are three exceptions to the notice requirement to provide the notice of sale or transfer:

- The covered person sells, assigns, or otherwise transfers legal title to the mortgage loan on or before the 30th calendar day following the date of transfer on which it acquired the mortgage loan;
- The mortgage loan is transferred to the covered person in connection with a repurchase agreement that obligates the transferring party to repurchase the mortgage loan (unless the transferring party does not repurchase the mortgage loan); or
- The covered person acquires only a partial interest in the mortgage loan and the agent or party authorized to receive the consumer's rescission notice and resolve issues concerning the consumer's payments on the mortgage loan does not change as a result of that transfer.

Periodic Statements for Closed-End Mortgages – Section 1026.41

Creditors, assignees, or servicers[22] of closed-end mortgages are generally required to provide consumers with periodic statements for each billing cycle unless the loan is a fixed rate loan and the servicer provides the consumer with a coupon book meeting certain conditions. Periodic statements must be provided by the servicer within a reasonably prompt time after the payment is due, or at the end of any courtesy period provided by the servicer for the previous billing cycle. Delivering, emailing or placing the periodic statements in the mail within four days of the close of the courtesy period of the previous billing cycle is generally acceptable. However, periodic statements are not required for:

- Reverse mortgage transactions covered under section 1026.33;
- Mortgage loans secured by a consumer's interest in a timeshare plan;
- Fixed-rate loans where the servicer currently provides consumers with coupon books that contain certain specified account information, contact information for the servicer, delinquency information (if applicable), and information that consumers can use to obtain more information about their account; and

[22] Creditors, assignees, and servicers are all subject to the requirements of section 1026.41, as applicable. Creditors, assignees, or servicers may decide among themselves which of them will provide the required disclosures. However, establishing a business relationship where one party agrees to provide disclosures on behalf of the other parties does not absolve all other parties from their legal obligations. However, a creditor or assignee that currently does not own the mortgage loan or mortgage servicing rights is not subject to the periodic statement requirement.

- Creditors, assignees, or servicers that meet the “small servicer” exemption.

  NOTE: Sections 1026.41(e)(4)(ii) and (iii) define a “small servicer” and provide clarification how a small servicer will be determined. A small servicer is a servicer that either services, together with any affiliates, 5,000 or fewer mortgage loans, for all of which it or an affiliate is the creditor or assignee, or a servicer that meets the definition of a Housing Finance Agency under 24 CFR 266.5. To determine whether a servicer services 5,000 loans or fewer, a servicer should be evaluated based on the number of mortgage loans serviced by the servicer and any affiliate as of January 1 for the remainder of the calendar year. If a servicer crosses the 5,000 loan threshold, it will have the later of six months after crossing the threshold or until the next January 1 to come into compliance with the requirements of section 1026.41.

Servicers must provide consumers with the following information in the specified format on the periodic statements:

The Amount Due

- The payment due date, the amount of any late payment fee, the date that late payment fees will be assessed to the consumer’s account if timely payment is not made, and the amount due, which must be shown more prominently than other disclosures on the page;

  NOTE: If the transaction has multiple payment options, the amount due under each of the payment options must be provided.

- An explanation of the amount due, including the monthly payment amount with a breakdown of how much will be applied to principal, interest, and escrow, the total sum of any fees/charges imposed since the last statement, and any payment amount past due. Mortgage loans with multiple payment options must also have a breakdown of each payment option, along with information regarding how each payment option will impact the principal;

Past Payment Breakdown

- The total of all payments received since the last statement and the total of all payments received since the start of the calendar year, including, for each payment, a breakdown of how the payment(s) was applied to principal, interest, escrow, and/or fees and charges, and any amount held in a suspense or unapplied funds account (if applicable);

Transaction Activity

- A list of transaction activity (including dates, a brief description, and amount) for the current billing cycle, including any credits or debits that affect the current amount due, with the date, amount, and brief description of each transaction;

Partial Payment Information

- If a statement reflects a past partial payment held in suspense or unapplied funds account, information explaining what the consumer must do to have the payment applied to the

mortgage. Information must be on the front page or a separate page of the statement or separate letter;

Contact Information

- Contact information for the servicer, including a toll-free telephone number and email address (if applicable) that the consumer may use to obtain information regarding the account. Contact information must be on the front page of the statement; and

Account Information

- Account information, including the outstanding principal balance, the current interest rate, the date after which the interest rate may change if the loan is an ARM, and any prepayment penalty, as well as the web address for CFPB's or HUD's list of homeownership counselors or counseling organizations and the HUD toll-free telephone number to contact the counselors or counseling organizations.

Servicers must provide consumers that are more than 45 days delinquent on past payments additional information regarding their accounts on their periodic statements. These items must be grouped together in close proximity to each other and must include:

- The date on which the consumer became delinquent;
- A notification of the possible risks of being delinquent, such as foreclosure and related expenses;
- An account history for either the previous six months or the period since the last time the account was current (whichever is shorter), which details the amount past due from each billing cycle and the date on which payments were credited to the account as fully paid;
- A notice stating any loss mitigation program that the consumer has agreed to (if applicable);
- A notice stating whether the servicer has initiated a foreclosure process;
- Total payments necessary to bring the account current; and
- A reference to homeownership counseling information (see **Account Information** above*)*.

The regulation does not prohibit adding to the required disclosures, as long as the additional information does not overwhelm or obscure the required disclosures. For example, while certain information about the escrow account (such as the account balance) is not required on the periodic statement, this information may be included.

The periodic statement may be provided electronically if the consumer agrees. The consumer must give affirmative consent to receive statements electronically.

For sample periodic statements, see Appendix H-30.

Valuation Independence – Section 1026.42

Regulation Z seeks to ensure that real estate appraisers, and others preparing valuations, are free to use their independent professional judgment in assigning home values without influence or pressure from those with interests in the transactions. Regulation Z also seeks to ensure that appraisers receive customary and reasonable payments for their services. Regulation Z's valuation rules apply to creditors and settlement services providers for consumer credit transactions secured by the consumer's principal dwelling ("covered transaction") and includes several provisions that protect the integrity of the appraisal process when a consumer's principal dwelling is securing the loan. In general, the rule prohibits "covered persons" from engaging in coercion, bribery, and other similar actions designed to cause anyone who prepares a valuation to base the value of the property on factors other than the person's independent judgment.[23] More specifically, Regulation Z:

- Prohibits coercion and other similar actions designed to cause appraisers to base the appraised value of properties on factors other than their independent judgment;
- Prohibits appraisers and appraisal management companies hired by lenders from having financial or other interests in the properties or the credit transactions;
- Prohibits creditors from extending credit based on appraisals if they know beforehand of violations involving appraiser coercion or conflicts of interest, unless the creditors determine that the values of the properties are not materially misstated;
- Prohibits a person that prepares a valuation from materially misrepresenting the value of the consumer's principal dwelling, and prohibits a covered person other than the person that prepares valuations from materially altering a valuation. A misrepresentation or alteration is material if it is likely to significantly affect the value assigned to the consumer's principal dwelling;
- Prohibits any covered person from falsifying a valuation or inducing a misrepresentation, falsification, or alteration of value;
- Requires that creditors or settlement service providers that have information about appraiser misconduct file reports with the appropriate state licensing authorities if the misconduct is material (i.e., likely to significantly affect the value assigned to the consumer's principal dwelling; and
- Requires the payment of reasonable and customary compensation to appraisers who are not employees of the creditors or of the appraisal management companies hired by the creditors.

[23] This section applies to any consumer credit transaction secured by a dwelling. A "covered person" means a creditor with respect to a covered transaction. A "covered transaction" means an extension of consumer credit that is or will be secured by a dwelling, as defined in 12 CFR 1026.2(a)(19).

Minimum Standards for Transactions Secured by a Dwelling (Ability to Repay and Qualified Mortgages) – Section 1026.43

Minimum standards for transactions secured by a dwelling – Sections 1026.43(a), (g), (h)

Creditors originating certain mortgage loans are required to make a reasonable and good faith determination at or before consummation that a consumer will have the ability to repay the loan. The ability-to-repay requirement applies to most closed-end mortgage loans; however, there are some exclusions, including:

- Home equity lines of credit;[24]
- Mortgages secured by an interest in a timeshare;
- Reverse mortgages;
- A temporary bridge loan with a term of 12 months or less, such as a loan to finance the purchase of a new dwelling where the consumer plans to sell a current dwelling within 12 months or a loan to finance the initial construction of a dwelling;
- A construction phase of 12 months or less of a construction-to-permanent loan; and
- An extension of credit made pursuant to a program authorized by sections 101 and 109 of the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5211; 5219).

NOTE: There are additional exclusions under 1026.43(a) that generally include extensions of credit by various state or federal government agencies or programs or by creditors with specific designations under such programs or extensions of credit that meet certain criteria and are extended by certain creditors that the IRS has determined are 501(c)(3) non-profits. For a full list, please see sections 1026.43(a)(3)(iv)–(vi).

Generally, loans covered under this section (which, for purposes of the prepayment penalty provisions in section 1026.43(g), includes reverse mortgages and temporary loans otherwise excluded[25] from the ability-to-repay provisions) may not have prepayment penalties; however, there are exceptions for certain fixed-rate and step-rate qualified mortgages that are not higher-priced mortgage loans (as defined in section 1026.35(a)), and only if otherwise permitted by law. For such mortgages, the prepayment penalties must be limited to the first three years of the loan

[24] For open-end credit transactions that are high-cost mortgages as defined in 12 CFR 1026.32, creditors are required to determine a borrower's ability to repay under section 1026.34.

[25] These include a temporary or "bridge" loan with a term of 12 months or less; a construction phase of 12 months or less of a construction-to-permanent loan; or an extension of credit made pursuant to a program administered by a housing finance agency; by certain community development or non-profit lenders, as specified in section 1026.43(a)(3)(v); or in connection with certain federal emergency economic stabilization programs. 12 CFR §1026.43(a)(3)

and may not exceed two percent for the first two years and one percent for the third year. The creditor must offer the consumer an alternative loan without such penalties that the creditor has a good faith belief that the consumer likely qualifies for, with the same term, a fixed rate or step rate, substantially equal payments, and limited points and fees (see §1026.43(g)).

Ability to Repay – Section 1026.43(c)

Except as provided under section 1026.43(d) (refinancing of non-standard mortgages), (e) (qualified mortgages), and (f)(balloon payment qualified mortgages by certain creditors), creditors must consider the following eight underwriting factors when making a determination of the consumer's ability to repay:

- The consumer's current or reasonably expected income or assets (excluding the value of the dwelling and any attached real property);
- The consumer's current employment status if the creditor relies on the consumer's income in determining repayment ability;
- The consumer's monthly payment for the mortgage loan;
- The consumer's monthly payment on any simultaneous loan (i.e., a covered transaction or HELOC that is being consummated generally at the same or similar time) secured by the same dwelling that the creditor knows or has reason to know will be made, calculated in accordance with section 1026.43(c)(6);
- The consumer's monthly payment for mortgage-related obligations, including property taxes;
- The consumer's current debt obligations, alimony, and child support;
- The consumer's monthly debt-to-income ratio or residual income, calculated in accordance with section 1026.43(c)(7) ; and
- The consumer's credit history.

Creditors are required to verify this information using reasonably reliable third-party records, with specific rules for verification of income or assets and employment status. In the case of the consumer's income or assets, the creditor must use third-party records that provide reasonably reliable evidence of such income or assets. Creditors may verify the information considered using the consumer's income tax return transcripts issued by the IRS, copies of tax returns filed by the consumer, W-2s or similar documentation, payroll statements, financial institution records, receipts from check-cashing or fund transfer services, and records from the consumer's employer or other specified records. (§1026.43(c)(4))

Regulation Z also provides rules for how creditors must apply certain underwriting factors when determining whether a consumer has the ability to repay the mortgage. For example, creditors must calculate the monthly payment for the covered transaction using the greater of the fully indexed rate or any introductory interest rate, and the monthly, fully amortizing payments that

are substantially equal during the loan term. However, special rules apply to mortgages with a balloon payment, interest-only loans, and negative amortization loans due to the unique characteristics of the mortgage. (§1026.43(c)(5))

Finally, creditors may not evade the ability-to-repay requirements by structuring a closed-end loan secured by a dwelling as open-end credit that does not meet the definition of open-end credit plan.

Qualified Mortgages: Rebuttable Presumption and Safe Harbor – Section 1026.43(e)

The rule provides a presumption of compliance with the ability-to-repay requirements for creditors that originate certain types of loans called "qualified mortgages." There are several categories of qualified mortgages, which are discussed below. Qualified mortgages afford creditors and assignees greater protection against liability under the ability-to-repay provisions. Qualified mortgages that are not higher-priced covered transactions receive a safe harbor under the ability-to-repay provisions, which means the presumption of compliance cannot be rebutted. A qualified mortgage is higher priced if the loan's APR exceeds the APOR by 1.5 percentage points or more for first-lien loans that either fall within the general qualified mortgage definition or the temporary qualified mortgage definition for loans that are eligible to be purchased, guaranteed or insured by GSEs or federal agencies, and 3.5 percentage points for first-lien loans that fall within the small creditor balloon payment, temporary small creditor balloon payment, or small creditor portfolio qualified mortgage definitions, or for second-lien loans.

Generally, the safe harbor provides a conclusive presumption that the creditor made a good faith and reasonable determination of the consumer's ability to repay. Qualified mortgages that are higher priced receive a rebuttable presumption of compliance rather than a safe harbor with the ability-to-repay provisions. This means that the loan is presumed to comply with the ability-to-repay provisions, but, for example, the consumer would have the opportunity to rebut that presumption in future ability-to-repay litigation.

For a qualified mortgage that is a higher-priced covered transaction, the presumption of compliance is rebuttable by showing that at consummation, the consumer's income, debt obligations, alimony, child support, and monthly payments on the loan and mortgage-related obligations and simultaneous loans of which the creditor was aware at consummation would leave the consumer with insufficient residual income or assets (other than the value of the dwelling and real property) to meet living expenses (including recurring and material non-debt obligations that the creditor was aware of at consummation).

General Requirements for Qualified Mortgages – Section 1026.43(e)(2)

Loans that are qualified mortgages under the general definition may not have negative amortization, interest-only payments, balloon payments, or terms exceeding 30 years. A qualified mortgage for loans greater than or equal to $100,000 may not have points and fees paid by the consumer that exceed three percent of the total loan amount (although certain "bona fide discount points" are excluded for certain loans with pricing within prescribed ranges of APOR—

the average prime offer rate). The rule provides guidance on calculating points and fees and thresholds for smaller loans.[26]

The rule also provides underwriting criteria for qualified mortgages. Generally, the rule requires that monthly payments be calculated based on the highest payment that will apply in the first five years of the loan after the date on which the first periodic payment is due and that the consumer have a total (or "back-end") debt-to-income ratio that is less than or equal to 43 percent. Appendix Q, drawing upon Federal Housing Administration guidelines, details the calculation of debt-to-income for these purposes. The rule also requires that the creditor consider and verify the consumer's current or reasonably expected income or assets and current debt obligations, alimony and child support, also in accordance with Appendix Q.

Temporary Category of Qualified Mortgages – Section 1026.43(e)(4)

Regulation Z provides a temporary category of qualified mortgages that satisfy the underwriting requirements of, and are therefore eligible to be purchased, guaranteed or insured by, either (1) the Government Sponsored Enterprises (Fannie Mae and Freddie Mac) while they operate under federal conservatorship or receivership; or (2) the U.S. Department of Housing and Urban Development, the U.S. Department of Veterans Affairs, the U.S. Department of Agriculture, or the Rural Housing Service. This temporary provision will phase out over time as the various federal agencies issue their own qualified mortgage rules or if GSE conservatorship ends, and in any event after seven years (January 10, 2021). These mortgages must satisfy certain requirements applicable to qualified mortgages, including prohibitions on negative-amortization, interest-only, and balloon payment features; maximum loan terms of 30 years; and points-and-fees restrictions. However, the flat 43 percent debt-to-income threshold for qualified mortgages does not apply.

Qualified Mortgage – Small Creditor Portfolio Loans – Section 1026.43(e)(5)

Mortgages that are originated and held in portfolio by certain small creditors are also qualified mortgages if they meet certain requirements.

These mortgages must generally satisfy the requirements applicable to qualified mortgages, including prohibitions on negative-amortization, balloon-payment, and interest-only features; maximum loan terms of 30 years; and points-and-fees restrictions. However, while the creditor must consider and verify the consumer's current or reasonably expected income or assets and current debt obligations, alimony, and child support, it may do so without regard to the standards in Appendix Q. In addition, debt-to-income ratios must be considered and verified, but the 43 percent threshold for qualified mortgages under the general definition does not apply.

A small creditor that satisfies the exemption criteria in section 1026.35(b)(2)(iii)(B) and (C) is eligible to make small creditor portfolio qualified mortgages. (In contrast to section 1026.43(f),

[26] The definition and calculation rules for points and fees are the same as those used to determine whether a closed-end mortgage is a HOEPA loan, discussed above at section 1026.32(b)(2)

below, eligibility for this qualified mortgage category is not conditioned on the small creditor operating predominantly in a rural or underserved area). For a period of three years after consummation, the creditor may not transfer the loan, or the loan will lose its status as a qualified mortgage. The qualified mortgage status continues under section 1026.43(e)(5)(ii), however, if the creditor transfers the loan to another creditor that meets the requirements to be a small lender, or when the loan is transferred due to a capital restoration plan, bankruptcy, or state or federal governmental agency order, or if the mortgage is transferred pursuant to a merger or acquisition of the creditor. A qualified mortgage can be transferred after three years without losing its status.

Small Creditor Rural or Underserved Balloon-Payment Qualified Mortgages and Temporary Balloon-Payment Qualified Mortgages – Sections 1026.43(f) and 1026.43(e)(6)

Balloon-payment mortgages are qualified mortgages if they are originated and held in portfolio by small creditors operating predominantly in rural or underserved areas and meet certain other requirements. These mortgages must satisfy certain requirements applicable to qualified mortgages, including prohibitions on negative-amortization and interest-only features; maximum loan terms of 30 years; and points-and-fees restrictions. These loans must have a term of at least five years, a fixed interest rate, and meet certain basic underwriting standards; debt-to-income ratios must be considered and verified, but the 43 percent threshold for qualified mortgages under the general definition does not apply. The rule also requires that the creditor consider and verify the consumer's current or reasonably expected income or assets and current debt obligations, alimony, and child support, but without regard to the standards in Appendix Q. This category of qualified mortgage is not available for a loan that, at origination, is subject to a forward commitment to be acquired by a person that does not itself qualify for the category (under the requirements outlined in the next paragraph).

A small creditor that satisfies the exemption criteria in section 1026.35(b)(2)(iii)(A), (B), and (C) (higher-priced mortgage escrow requirements) is eligible to make rural or underserved balloon-payment qualified mortgages. For a period of three years after consummation, the creditor may not transfer the loan, or it will lose its status as a qualified mortgage. The qualified mortgage status continues under section 1026.43(f)(2), however, if the creditor transfers the loan to another creditor that meets the requirements to be a small rural lender, or when the loan is transferred due to a capital restoration plan, bankruptcy, or state or federal governmental agency order, or if the mortgage is transferred pursuant to a merger or acquisition of the creditor. A qualified mortgage can be transferred after three years without losing its status.

There is also a temporary qualified mortgage definition for balloon-payment mortgages that would otherwise meet the requirements of section 1026.43(f), but that are originated by small creditors that do not operate predominantly in rural or underserved areas. This category is applicable to covered transactions consummated on or before January 10, 2016.

Subpart F – Special Rules for Private Education Loans

Special Disclosure Requirements for Private Education Loans – Section 1026.46

The disclosures required under Subpart F apply only to private education loans. Except where specifically provided otherwise, the requirements and limitations of Subpart F are in addition to the requirements of the other subparts of Regulation Z.

A private education loan means an extension of credit that:

- Is not made, insured, or guaranteed under title IV of the Higher Education Act of 1965;
- Is extended to a consumer expressly, in whole or part, for postsecondary educational expenses, regardless of whether the loan is provided by the educational institution that the student attends; and
- Does not include open-end credit or any loan that is secured by real property or a dwelling.

A private education loan does not include an extension of credit in which the covered educational institution is the creditor if:

- The term of the extension of credit is 90 days or less, or
- An interest rate will not be applied to the credit balance and the term of the extension of credit is one year or less, even if the credit is payable in more than four installments.

Content of Disclosures – Section 1026.47

Disclosure Requirements

This section establishes the content that a creditor must include in its disclosures to a consumer at three different stages in the private education loan origination process:

1) Application or Solicitation Disclosures – With any application or solicitation;
2) Approval Disclosures – With any notice of approval of the private education loan; and
3) Final Disclosures – After the consumer accepts the loan. In addition, section 1026.48(d) requires that the disclosures must be provided at least three business days prior to disbursement of the loan funds.

Rights of the Consumer

The creditor must disclose that, if approved for the loan, the consumer has the right to accept the loan on the terms approved for up to 30 calendar days. The disclosure must inform the consumer that the rate and terms of the loan will not change during this period, except for changes to the rate based on adjustments to the index used for the loan and other changes permitted by law. The creditor must disclose that the consumer also has the right to cancel the loan, without penalty, until midnight of the third business day following the date on which the consumer receives the final disclosures.

Limitations on Private Educational Loans – Section 1026.48

This section contains rules and limitations on private education loans, including:

1) A prohibition on co-branding in the marketing of private education loans;

2) Rules governing the 30-day acceptance period and three business-day cancellation period and prohibition on disbursement of loan proceeds until the cancellation period has expired;

3) The requirement that the creditor obtain a self-certification form from the consumer before consummation; and

4) The requirement that creditors in preferred lender arrangements provide certain information to covered educational institutions.

Co-Branding Prohibited

Regulation Z prohibits creditors from using the name, emblem, mascot, or logo of a covered institution (or other words, pictures, or symbols readily identified with a covered institution) in the marketing of private education loans in a way that implies endorsement by the educational institution. Marketing that refers to an educational institution does not imply endorsement if the marketing includes a clear and conspicuous disclosure that is equally prominent and closely proximate to the reference to the institution that the educational institution does not endorse the creditor's loans, and that the creditor is not affiliated with the educational institution. There is also an exception in cases where the educational institution actually does endorse the creditor's loans, but the marketing must make a clear and conspicuous disclosure that is equally prominent and closely proximate to the reference to the institution that the creditor, and not the educational institution, is making the loan.

Subpart G – Special Rules Applicable to Credit Card Accounts and Open-End Credit Offered to College Students

Evaluation of the Consumer's Ability to Pay – Section 1026.51

Regulation Z requires credit card issuers to consider a consumer's ability to pay before opening a new credit card account or increasing the credit limit for an existing credit card account. Additionally, the rule provides specific requirements that must be met before opening a new credit card account or increasing the credit limit on an existing account when the consumer is under the age of 21.

When evaluating a consumer's ability to pay, credit card issuers must perform a review of a consumer's income or assets and current obligations. Issuers are permitted, however, to rely on information provided by the consumer. The rule does not require issuers to verify a consumer's statements; a creditor may base its determination of ability to repay on facts and circumstances known to the card issuer (Commentary at 1026.51(a)(1)(i)-2). A card issuer may also consider information obtained through any empirically derived, demonstrably and statistically sound model that reasonably estimates a consumer's income or assets.

Issuers may consider any income and assets to which the consumer has a reasonable expectation of access or may limit their consideration to the consumer's independent income and assets. The rule also requires that issuers consider at least one of the following:

- The ratio of debt obligations to income;
- The ratio of debt obligations to assets; or
- The income the consumer will have after paying debt obligations (i.e., residual income).

The rule also provides that it would be unreasonable for an issuer not to review any information about a consumer's income, assets, or current obligations, or to issue a credit card to a consumer who does not have any income or assets.

Because credit card accounts typically require consumers to make a minimum monthly payment that is a percentage of the total balance (plus, in some cases, accrued interest and fees), creditors are required to consider the consumer's ability to make the required minimum payments. Card issuers must also establish and maintain reasonable written policies and procedures to consider a consumer's income or assets and current obligations. Because the minimum payment is unknown at account opening, the rule requires that creditors use a reasonable method to estimate a consumer's minimum payment. The regulation provides a safe harbor for issuers to estimate the required minimum periodic payment if the card issuer:

1) Assumes utilization, from the first day of the billing cycle, of the full credit line that the issuer is considering offering to the consumer; and

2) Uses a minimum payment formula employed by the issuer for the product the issuer is considering offering to the consumer or, in the case of an existing account, the minimum payment formula that currently applies to that account, provided that:

   (a) If the minimum payment formula includes interest charges, the card issuer estimates those charges using an interest rate that the issuer is considering offering to the consumer for purchases or, in the case of an existing account, the interest rate that currently applies to purchases; and

   (b) If the applicable minimum payment formula includes mandatory fees, the card issuer must assume that such fees have been charged to the account.

Specific Requirements for Underage Consumers – Section 1026.51(b)(1)

Regulation Z prohibits the issuance of a credit card to a consumer who has not attained the age of 21 unless the consumer has submitted a written application and the creditor has:

- Information indicating that the underage consumer has an independent ability to make the required minimum payments on the account; or

- The signature of a cosigner, guarantor, or joint applicant who has attained the age of 21, who has the ability to repay debts (based on section 1026.51) incurred by the underage consumer in connection with the account, and who assumes joint liability for all debts or secondary liability for any debts incurred before the underage consumer attains 21 years of age.

For credit line increases:

- If an account was opened based on the underage consumer's independent ability to repay, in order to increase the consumer's credit line before he or she turns 21, the issuer either must determine that the consumer has an independent ability to make the required minimum payments at the time of the contemplated increase, or must obtain an agreement from a cosigner, guarantor, or joint applicant who is 21 or older and who has the ability to repay debts to assume liability for any debt incurred on the account.

- If the account was opened based on the ability of a cosigner over the age of 21 to pay, the issuer must obtain written consent from that cosigner before increasing the credit limit.

Limitations of Fees – Section 1026.52

Limitations on Fees During First Year After Account Opening – Section 1026.52(a)

During the first year after account opening, issuers are prohibited from requiring consumers to pay fees (other than fees for late payments, returned payments, and exceeding the credit limit) that in the aggregate exceed 25 percent of the initial credit limit in effect when the account is opened. An account is considered open no earlier than the date on which the account may first be used by the consumer to engage in transactions.

NOTE: The 25 percent limitation on fees does not apply to fees assessed prior to opening the account.

Limitations on Penalty Fees – Section 1026.52(b)

TILA requires that penalty fees imposed by card issuers be reasonable and proportional to the violation of the account terms. Among other things, the regulation prohibits credit card issuers from charging a penalty fee of more than $25 for paying late or otherwise violating the account's terms for the first violation (or $35 for an additional violation of the same type during the same billing cycle or one of the next six billing cycles) unless the issuer determines that a higher fee represents a reasonable proportion of the costs it incurs as a result of that type of violation and reevaluates that determination at least once every 12 months.

Credit card issuers are banned from charging penalty fees that exceed the dollar amount associated with the consumer's violation of the terms or other requirements of the credit card account. For example, card issuers are no longer permitted to charge a $39 fee when a consumer is late making a $20 minimum payment. Instead, in this example, the fee cannot exceed $20. The regulation also bans imposition of penalty fees when there is no dollar amount associated with the violation, such as "inactivity" fees based on the consumer's failure to use the account to make new purchases. It also prohibits issuers from charging multiple penalty fees based on a single late payment or other violation of the account terms.

Payment Allocation – Section 1026.53

When different rates apply to different balances on a credit card account, issuers are generally required to allocate payments in excess of the minimum payment first to the balance with the highest APR and any remaining portion to the other balances in descending order based on the applicable APR.

For deferred interest programs, however, issuers must allocate excess payments first to the deferred interest balance during the last two billing cycles of the deferred interest period. In addition, during a deferred interest period, issuers are permitted (but not required) to allocate excess payments in the manner requested by the consumer.

For accounts with secured balances, issuers are permitted (but not required) to allocate excess payments to the secured balance if requested by the consumer.

Double-Cycle Billing and Partial Grace Period – Section 1026.54

Issuers are generally prohibited from imposing finance charges on balances for days in previous billing cycles as a result of the loss of a grace period. In addition, when a consumer pays some, but not all, of a balance prior to the expiration of a grace period, an issuer is prohibited from imposing finance charges on the portion of the balance that has been repaid.

Restrictions on Applying Increased Rates to Existing Balances and Increasing Certain Fees and Charges – Section 1026.55

Unless an exception applies, a card issuer must not increase an annual percentage rate or a fee or charge required to be disclosed under sections 1026.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii) on a credit card account. There are some general exceptions to the prohibition against applying increased rates to existing balances and increasing certain fees or charges:

- A temporary or promotional rate or temporary fee or charge that lasts at least six months, and that is required to be disclosed under sections 1026.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii), provided that the card issuer complied with applicable disclosure requirements. Fees and charges required to be disclosed under sections 1026.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii) are periodic fees for issuance or availability of an open-end plan (such as an annual fee); a fixed finance charge (and any minimum interest charge) that exceeds $1; or a charge for required insurance, debt cancellation, or debt suspension;

- The rate is increased due to the operation of an index available to the general public and not under the card issuer's control (i.e., the rate is a variable rate);

- The minimum payment has not been received within 60 days after the due date, provided that the card issuer complied with applicable disclosure requirements and adheres to certain requirements when a series of on time payments are received;

- The consumer successfully completes or fails to comply with the terms of a workout arrangement, provided that card issuer complied with applicable disclosure requirements and adheres to certain requirements upon the completion or failure of the arrangement; and

- The APR on an existing balance or a fee or charge required to be disclosed under sections 1026.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii) has been reduced pursuant to the Servicemembers Civil Relief Act (SCRA) or a similar federal or state statute or regulation. The creditor is permitted to increase the rate, fee, or charge once the SCRA ceases to apply, but only to the rate, fee, or charge that applied prior to the reduction.

Regulation Z's limitations on the application of increased rates and certain fees and charges to existing balances continue to apply when the account is closed, acquired by another institution through a merger or the sale of a credit card portfolio, or when the balance is transferred to another credit account issued by the same creditor (or its affiliate or subsidiary).

Issuers are generally prevented from increasing the APR applicable to new transactions or a fee or charge subject to sections 1026.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii) during the first year after an account is opened. After the first year, issuers are permitted to increase the APRs that apply to new transactions or a fee or charge subject to sections 1026.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii) so long as the creditor complies with the regulation's 45-day advance notice requirement (§1026.9).

Regulation Z's limitations on the application of increased rates to existing balances and limitations on the increase of certain fees or charges apply upon cessation of a waiver or rebate of interest, fees, or charges if the issuer promotes the waiver or rebate.

Fees for Transactions that Exceed the Credit Limit – Section 1026.56

Consumer consent requirement – Regulation Z requires an issuer to obtain a consumer's express consent (or opt in) before the issuer may impose any fees on a consumer's credit card account for making an extension of credit that exceeds the account's credit limit. Prior to providing such consent, the consumer must be notified by the issuer of any fees that may be assessed for an over-the-limit transaction. If the consumer consents, the issuer is also required to provide written confirmation (or electronic confirmation if the consumer agrees) of the consumer's consent and a notice of the consumer's right to revoke that consent on the front page of any periodic statement that reflects the imposition of an over-the-limit fee.

Prior to obtaining a consumer's consent to the payment of over-the-limit transactions, the issuer must provide the consumer with a notice disclosing, among other things, the dollar amount of any charges that will be assessed for an over-the-limit transaction, as well as any increased rate that may apply if the consumer exceeds the credit limit. Issuers are prevented from assessing any over-the-limit fee or charge on an account unless the consumer consents to the payment of transactions that exceed the credit limit.

Prohibited practices – Even if the consumer has affirmatively consented to the issuer's payment of over-the-limit transactions, Regulation Z prohibits certain issuer practices in connection with the assessment of over-the-limit fees or charges. An issuer can only charge one over-the-limit fee or charge per billing cycle. In addition, an issuer cannot impose an over-the-limit fee on the account for the same transaction in more than three billing cycles. Furthermore, fees may not be imposed for the same transaction in the second or third billing cycle unless the consumer has failed to reduce the account balance below the credit limit by the payment due date in that cycle.

Regulation Z also prohibits unfair or deceptive acts or practices in connection with the manipulation of credit limits in order to increase over-the-limit fees or other penalty charges. Specifically, issuers are prohibited from engaging in three practices:

- Assessing an over-the-limit fee because the creditor failed to promptly replenish the consumer's available credit;
- Conditioning the amount of available credit on the consumer's consent to the payment of over-the-limit transactions (e.g., opting in to an over-the-limit service to obtain a higher credit limit); and
- Imposing any over-the-limit fee if the credit limit is exceeded solely because of the issuer's assessment of accrued interest charges or fees on the consumer's account.

Special Rules for Marketing to Students – Section 1026.57

Regulation Z establishes several requirements related to the marketing of credit cards and other open-end consumer credit plans to students at an institution of higher education. The regulation limits a creditor's ability to offer a college student any tangible item to induce the student to apply for or participate in an open-end consumer credit plan offered by the creditor. Specifically, Regulation Z prohibits a card issuer from offering tangible items as an inducement:

- On the campus of an institution of higher education;
- Near the campus of an institution of higher education; or
- At an event sponsored by or related to an institution of higher education

A tangible item means physical items, such as gift cards, t-shirts, or magazine subscriptions, but does not include non-physical items such as discounts, reward points, or promotional credit terms. With respect to offers "near" the campus, the commentary to the regulation states that a location that is within 1,000 feet of the border of the campus is considered near the campus.

Regulation Z also requires card issuers to submit an annual report to the CFPB containing the terms and conditions of business, marketing, or promotional agreements with an institution of higher education or an alumni organization or foundation affiliated with an institution of higher education.

Online Disclosure of Credit Card Agreements – Section 1026.58

The regulation requires that issuers post credit card agreements on their websites and to submit those agreements to the CFPB for posting on a website maintained by the CFPB. There are three exceptions for when issuers are not required to provide statements to the CFPB:

- The issuer has fewer than 10,000 open credit card accounts; or
- The agreement currently is not offered to the public and the agreement is used only for one or more private label credit card plans with credit cards usable only at a single merchant or group of affiliated merchants and that involves fewer than 10,000 open accounts; or
- The agreement currently is not offered to the public and the agreement is for one or more plans offered to test a new product offered only to a limited group of consumers for a limited time that involves fewer than 10,000 open accounts.

Reevaluation of Rate Increases – Section 1026.59

For any rate increase imposed on or after January 1, 2009, that requires 45 days advance notice, the regulation requires card issuers to review the account no less frequently than once each six months and, if appropriate based on that review, reduce the annual percentage rate. The requirement to reevaluate rate increases applies both to increases in annual percentage rates based on consumer-specific factors, such as changes in the consumer's creditworthiness, and to increases in annual percentage rates imposed based on factors that are not specific to the consumer, such as changes in market conditions or the issuer's cost of funds. If based on its review a card issuer is required to reduce the rate applicable to an account, the final regulation requires that the rate be reduced within 45 days after completion of the evaluation.

This review must consider either the same factors on which the increase was originally based or the factors the card issuer currently considers in determining the annual percentage rate applicable to similar new credit card accounts.

Specific Defenses – TILA Section 108

Defense Against Civil, Criminal, and Administrative Actions

A financial institution in violation of TILA may avoid liability by:

- Discovering the error before an action is brought against the financial institution, or before the consumer notifies the financial institution, in writing, of the error.
- Notifying the consumer of the error within 60 days of discovery.
- Making the necessary adjustments to the consumer's account, also within 60 days of discovery. (The consumer will pay no more than the lesser of the finance charge actually disclosed or the dollar equivalent of the APR actually disclosed.)

The above three actions also may allow the financial institution to avoid a regulatory order to reimburse the customer.

An error is “discovered” if it is:

- Discussed in a final, written report of examination.
- Identified through the financial institution’s own procedures.
- An inaccurately disclosed APR or finance charge included in a regulatory agency notification to the financial institution.

When a disclosure error occurs, the financial institution is not required to re-disclose after a loan has been consummated or an account has been opened. If the financial institution corrects a disclosure error by merely re-disclosing required information accurately, without adjusting the consumer’s account, the financial institution may still be subject to civil liability and an order to reimburse from its regulator.

The circumstances under which a financial institution may avoid liability under the TILA do not apply to violations of the Fair Credit Billing Act (chapter 4 of the TILA).

Additional Defenses Against Civil Actions

The financial institution may avoid liability in a civil action if it shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error that occurred despite the maintenance of procedures to avoid the error.

A bona fide error may include a clerical, calculation, computer malfunction, programming, or printing error. It does not include an error of legal judgment.

Showing that a violation occurred unintentionally could be difficult if the financial institution is unable to produce evidence that explicitly indicates it has an internal controls program designed to ensure compliance. The financial institution’s demonstrated commitment to compliance and its adoption of policies and procedures to detect errors before disclosures are furnished to consumers could strengthen its defense.

Statute of Limitations – TILA Sections 108, 129, 129B, 129C and 130

Civil actions may be brought within one year after the violation occurred. For private education loans, civil actions may be brought within one year from the date on which the first regular payment of principal and interest is due. After that time, and if allowed by state law, the consumer may still assert the violation as a defense if a financial institution were to bring an action to collect the consumer’s debt.

The statute of limitations for a violation of TILA section 129 (requirements for certain mortgages), 129B (residential mortgage loan origination), or 129C (minimum standards for

mortgages) is three years from the date of the occurrence of the violation (as compared to one year for most other TILA violations). TILA section 130(e).

Moreover, TILA provides that when a creditor, assignee, other holder or anyone acting on such a person's on behalf initiates a foreclosure action on, or any other action to collect the debt in connection with a residential mortgage loan, a consumer may assert a violation of TILA section 129C(a) "as a matter of defense by recoupment or set off." TILA section 130(k). There is no time limit on the use of this defense and the amount of recoupment or setoff is limited, with respect to the special statutory damages, to no more than three years of finance charges and fees.

Criminal actions are not subject to the TILA one-year statute of limitations.

Regulatory administrative enforcement actions also are not subject to the one-year statute of limitations. Actions brought under section 129, 129B, or 129C and actions brought by a state attorney general to enforce a violation of section 129, 129B, 129C, 129D, 129E, 129F, 129G, or 129H, may be brought not later than 3 years after the date on which the violation occurs. ‚Actions involving private education loans under 15 U.S.C. 1650(a) may be brought not later than one year from the due date of first regular payment of principal. TILA section 130(e).

However, enforcement actions under the policy guide involving erroneously disclosed APRs and finance charges are subject to time limitations by the TILA. Those limitations range from the date of the last regulatory examination of the financial institution, to as far back as 1969, depending on when loans were made, when violations were identified, whether the violations were repeat violations, and other factors.

There is no time limitation on willful violations intended to mislead the consumer. A summary of the various time limitations follows.

- For open-end credit, reimbursement applies to violations not older than two years.
- For closed-end credit, reimbursement is generally directed for loans with violations occurring since the immediately preceding examination.

Rescission Rights (Open-End and Closed-End Credit) – Sections 1026.15 & 1026.23

TILA provides that for certain transactions secured by the consumer's principal dwelling, a consumer has three business days after becoming obligated on the debt to rescind the transaction. The right of rescission allows consumer(s) time to reexamine their credit agreements and cost disclosures and to reconsider whether they want to place their homes at risk by offering it as security for the credit. A higher-priced mortgage loan (whether or not it is a HOEPA loan) having a prepayment penalty that does not conform to the prepayment penalty limitations (§§1026.32(c) and (d) and §1026.35(e)(2), (subject to certain exclusions)) is also subject to a three-year right of rescission. Transactions exempt from the right of rescission include residential mortgage transactions (§1026.2(a)(24)) and refinancings or consolidations with the original creditor where no "new money" is advanced.

If a transaction is rescindable, consumers must be given a notice explaining that the creditor has a security interest in the consumer's home, that the consumer may rescind, how the consumer may rescind, the effects of rescission, and the date the rescission period expires.

To rescind a transaction, a consumer must notify the creditor in writing by midnight of the third business day after the latest of three events:

- Consummation of the transaction,
- Delivery of material TILA disclosures, or
- Receipt[27] of the required notice of the right to rescind.

For purposes of rescission, business day means every calendar day except Sundays and the legal public holidays (§1026.2(a)(6)). The term "material disclosures" is defined in section 1026.23(a)(3) to mean the required disclosures of the APR, the finance charge, the amount financed, the total of payments, the payment schedule, and the disclosures and limitations referred to in section 1026.32(c) and (d) and 1026.35(e)(2).

The creditor may not disburse any monies (except into an escrow account) and may not provide services or materials until the three-day rescission period has elapsed and the creditor is reasonably satisfied that the consumer has not rescinded. If the consumer rescinds the transaction, the creditor must refund all amounts paid by the consumer (even amounts disbursed to third parties) and terminate its security interest in the consumer's home.

A consumer may waive the three-day rescission period and receive immediate access to loan proceeds if the consumer has a "bona fide personal financial emergency." The consumer must give the creditor a signed and dated waiver statement that describes the emergency, specifically waives the right, and bears the signatures of all consumers entitled to rescind the transaction. The consumer provides the explanation for the bona fide personal financial emergency, but the creditor decides the sufficiency of the emergency.

If the required rescission notice or material TILA disclosures are not delivered or if they are inaccurate, the consumer's right to rescind may be extended from three days after becoming obligated on a loan to up to three years.

[27] 12 CFR 1026.15(b) and 1026.23(b)(1) were amended to include the electronic delivery of the notice of the right to rescind. If a paper notice of the right to rescind is used, a creditor must deliver two copies of the notice to each consumer entitled to rescind. However, under the final rule on electronic delivery of disclosures if the notice is in electronic form, in accordance with the consumer consent and other applicable provisions of the E-Sign Act, only one copy to each customer is required.

REFERENCES

Laws

15 U.S.C. 1601 *et seq*. Truth in Lending Act (TILA)

15 U.S.C. 1666 *et seq*. Fair Credit Billing Act

15 U.S.C. 7001 *et seq*. Electronic Signatures in Global and National Commerce Act

Regulations

Consumer Financial Protection Bureau Regulation (12 CFR)

Part 1026 Truth in Lending (Regulation Z)

Truth in Lending[28]

Exam Date:	[Click&type]
Prepared By:	[Click&type]
Reviewer:	[Click&type]
Docket #:	[Click&type]
Entity Name:	[Click&type]

Examination Objectives

1. To appraise the quality of the financial institution's compliance management system for the Truth in Lending Act and Regulation Z.
2. To determine the reliance that can be placed on the financial institution's compliance management system, including internal controls and procedures performed by the person(s) responsible for monitoring the financial institution's compliance review function for the Truth in Lending Act and Regulation Z.
3. To determine the financial institution's compliance with the Truth in Lending Act and Regulation Z.
4. To initiate corrective action when policies or internal controls are deficient, or when violations of law or regulation are identified.
5. To determine whether the institution will be required to make adjustments to consumer accounts under the restitution provisions of the Truth in Lending Act.

[28] These reflect FFIEC-approved procedures.

General Procedures

1. Obtain information pertinent to the area of examination from the financial institution‘s compliance management system program (historical examination findings, complaint information, and significant findings from compliance review and audit).

2. Through discussions with management and review of the following documents, determine whether the financial institution‘s internal controls are adequate to ensure compliance in the area under review. Identify procedures used daily to detect errors/violations promptly. Also, review the procedures used to ensure compliance when changes occur (e.g., changes in interest rates, service charges, computation methods, and software programs).

   - Organizational charts.
   - Process flowcharts.
   - Policies and procedures.
   - Loan documentation and disclosures.
   - Checklists/worksheets and review documents.
   - Computer programs.

3. Review compliance review and audit workpapers and determine whether:

   a. The procedures used address all regulatory provisions (see Transactional Testing section).

   b. Steps are taken to follow up on previously identified deficiencies.

   c. The procedures used include samples that cover all product types and decision centers.

   d. The work performed is accurate (through a review of some transactions).

   e. Significant deficiencies, and the root cause of the deficiencies, are included in reports to management/board.

   f. Corrective actions are timely and appropriate.

   g. The area is reviewed at an appropriate interval.

4. Review the financial institution‘s record retention practices to determine whether evidence of compliance is retained for at least:

   a. Two years after the disclosures were required to be made or other action was required to be taken, other than for the advertising requirements and certain requirements for mortgages described below. (§1026.25(a))

b. Three years after the date of receipt of payment to show compliance with loan originator compensation requirements. (§1026.25(c)(2))

c. Three years after consummation to show compliance with ability-to-repay minimum standards (§1026.43(c)-(f)) and prepayment penalty restrictions (§1026.43(g)) for loans secured by a dwelling. (§1026.25(c)(3))

Disclosure Forms

5. Determine if the financial institution has changed any TILA disclosure forms or if there are forms that have not been previously reviewed for accuracy. If so:

   Verify the accuracy of each disclosure by reviewing the following:

   - Credit card application/solicitation disclosures (§1026.60(b)-(e)).
   - HELOC disclosures (§1026.40(d) and (e)).
   - Initial disclosures (§1026.6) and, if applicable, additional HELOC disclosures (§1026.40).
   - Periodic statement disclosures (§1026.7)
   - Statement of billing rights and change in terms notice (§1026.9(a),(b),(c) or (g)).
   - Note and/or contract forms (including those furnished to dealers).
   - Notice of Right to Rescind/Cancel (§§1026.15(b), 1026.23(b)(1)) and 1026.47(c)(4).
   - Standard closed-end credit disclosures (§§1026.17(a) and 1026.18).
   - ARM disclosures (§1026.19(b)).
   - High-cost mortgage disclosures (§1026.32(c)).
   - Reverse mortgage disclosures (§1026.33(b)).
   - Private education loan disclosures (§1026.47).

Closed-End Credit Disclosure Forms Review Procedures

a. Determine that the disclosures are clear, conspicuous, and grouped together or segregated as required, in a form the consumer may keep. The terms "Finance Charge" and "Annual Percentage Rate" and corresponding rates or amounts should be more conspicuous than other terms, except for the creditor's identity. For private student loans the term "Annual Percentage Rate" and corresponding rate must be less conspicuous than the term "finance charge" and the corresponding amount, as well as less conspicuous than the interest rate, the notice of the right to cancel and creditor's identity. (§§1026.17(a), 1026.47(b), and (c))

b. Determine the disclosures include the following as applicable. (§1026.18)

    1. Identity of the creditor
    2. Brief description of the finance charge
    3. Brief description of the APR
    4. Variable rate information (§1026.18(f)(1) or (2))
    5. Payment schedule
    6. Brief description of the total of payments
    7. Demand feature
    8. Description of total sales price in a credit sale
    9. Prepayment penalties or rebates
    10. Late payment amount or percentage
    11. Description for security interest
    12. Insurance conditions for finance charge exclusions (§1026.4(d))
    13. Statement referring to the contract
    14. Statement regarding assumption of the note
    15. Statement regarding required deposits.

c. Determine that the creditor discloses the number, amounts, and timing of payments scheduled to repay the obligation (other than for a transaction that is subject to section 1026.18(s)[29]. (§1026.18(g))

[29] For example, home construction loans that are secured by real property or a dwelling are subject to §1026.18(s) and not §1026.18 (g). See comment App. D-6 of Regulation Z.

d. For a closed-end transaction secured by real property or a dwelling (other than a transaction secured by a consumer's interest in a timeshare plan described in 11 U.S.C. 101(53D)), determine that the creditor discloses the following information about the interest rate and payments, as applicable (§1026.18(s)):

Interest Rates

1. *For a fixed-rate mortgage*, the interest rate at consummation. (§1026.18(s)(2)(i)(A))

2. *For an adjustable-rate or step-rate mortgage* (§1026.18(s)(2)(i)(B)):

   i. The interest rate at consummation and the period of time until the first interest rate adjustment may occur, labeled as the "introductory rate and monthly payment;"

      NOTE: As set forth in comment 18(s)-1, if periodic payments are not due monthly, the creditor should use the appropriate term, such as "quarterly" or "annually."

   ii. The maximum interest rate that may apply during the first five years after the date on which the first regular periodic payment will be due and the earliest date on which that rate may apply, labeled as "maximum during first five years;" and

   iii. The maximum interest rate that may apply during the life of the loan and the earliest date on which that rate may apply, labeled as "maximum ever."

3. *For a loan that provides for payment increases occurring without regard to an interest rate adjustment* [30] (as described in section 1026.18(s)(3)(i)(B)), the interest rate in effect at the time the first such payment increase is scheduled to occur and the date on which the increase will occur, labeled as "first adjustment" if the loan is an adjustable-rate mortgage or, otherwise, labeled as "first increase."[31] (§1026.18(s)(2)(i)(C))

4. *For a negative amortization loan*[32] (§1026.18(s)(2)(ii)):

   i. The interest rate at consummation and, if it will adjust after consummation, the length of time until it will adjust, and the label "introductory" or "intro";

   ii. The maximum interest rate that could apply when the consumer must begin making fully amortizing payments under the terms of the legal obligation;

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[30] Note: this category includes interest-only loans, as set forth in comment §1026.18(s)(2)(i)(C)-1.

[31] Because model forms and clauses published by the CFPB are safe harbors, this rate may also be labeled "Maximum Ever," pursuant to §1026.18(s)(2)(i)((B)(3).

[32] The term "negative amortization loan" means a loan, other than a reverse mortgage subject to section 1026.33 that provides for a minimum periodic payment that covers only a portion of the accrued interest, resulting in negative amortization. (§1026.18(s)(7)(v))

iii. If the minimum required payment will increase before the consumer must begin making fully amortizing payments, the maximum interest rate that could apply at the time of the first payment increase and the date the increase is scheduled to occur; and

iv. If a second increase in the minimum required payment may occur before the consumer must begin making fully amortizing payments, the maximum interest rate that could apply at the time of the second payment increase and the date the increase is scheduled to occur.

5. *For an amortizing adjustable-rate mortgage*, if the interest rate at consummation is less than the fully indexed rate, the following (placed in a box directly beneath the table required by paragraph 18 (s)(1) of the regulation, in a format substantially similar to Model Clause H–4(I) in the regulation's appendix H):

   i. The interest rate that applies at consummation and the period of time for which it applies;

   ii. A statement that, even if market rates do not change, the interest rate will increase at the first adjustment and a designation of the place in sequence of the month or year, as applicable, of such rate adjustment (e.g., "in the third year"); and

   iii. The fully-indexed rate.

<u>Payments for Amortizing Loans</u>

1. *Principal and interest payments.* If all periodic payments will be applied to accrued interest and principal, for each interest rate disclosed under section 1026.18(s)(2)(i) (§1026.18(s)(3)(i)):

   i. The corresponding periodic principal and interest payment, labeled as "principal and interest;"

   ii. If the periodic payment may increase without regard to an interest rate adjustment, the payment that corresponds to the first such increase and the earliest date on which the increase could occur;

   iii. If an escrow account is established, an estimate of the amount of taxes and insurance, including any mortgage insurance payable with each periodic payment; and

   iv. The sum of the amounts disclosed under sections 1026.18(s)(3)(i)(A) and (C) or (s)(3)(i)(B) and (C), as applicable, labeled as "total estimated monthly payment."

2. *Interest-only payments.* If the loan is an interest-only loan, for each interest rate disclosed under section 1026.18(s)(2)(i), the corresponding periodic payment and (§1026.18(s)(3)(ii)):

i. If the payment will be applied to only accrued interest, the amount applied to interest, labeled as “interest payment,” and a statement that none of the payment is being applied to principal;

ii. If the payment will be applied to accrued interest and principal, an itemization of the amount of the first such payment applied to accrued interest and to principal, labeled as “interest payment” and “principal payment,” respectively;

iii. The escrow information described in section 1026.18(s)(3)(i)(C); and

iv. The sum of all amounts required to be disclosed under sections 1026.18(s)(3)(ii)(A) and (C) or (s)(3)(ii)(B) and (C), as applicable, labeled as “total estimated monthly payment.”

3. *Payments for negative amortization loans.* If the loan is a negative amortization loan (§1026.18(s)(4)):

   i. The minimum periodic payment required until the first payment increase or interest rate increase, corresponding to the interest rate disclosed under section 1026.18(s)(2)(ii)(A);

   ii. The minimum periodic payment that would be due at the first payment increase and the second, if any, corresponding to the interest rates described in section 1026.18(s)(2)(ii)(C) and (D);

   iii. A statement that the minimum payment pays only some interest, does not repay any principal, and will cause the loan amount to increase;

   iv. The fully amortizing periodic payment amount at the earliest time when such a payment must be made, corresponding to the interest rate disclosed under section 1026.18 (s)(2)(ii)(B); and

   v. If applicable, in addition to the payments in sections 1026.18(s)(4)(i) and (ii), for each interest rate disclosed under section 1026.18(s)(2)(ii), the amount of the fully amortizing periodic payment, labeled as the “full payment option,” and a statement that these payments pay all principal and all accrued interest.

   NOTE: The information in sections 1026.18(s)(2)–(4) must be disclosed in the form of a table with no more than five columns, and with headings and format substantially similar to Model Clause H–4(E), H–4(F), H–4(G), or H–4(H) in appendix H of the regulation. The table should contain only the information required in sections 1026.18 (s)(2)–(4), be placed in a prominent location, and be in a minimum 10-point font. (§1026.18(s)(1))

4. *Balloon payments.* For loans with balloon payments (defined as a payment that is more than two times a regular periodic payment) (§1026.18(s)(5)):

i. Except as provided below, the balloon payment is disclosed separately from other periodic payments disclosed in the table (i.e., is outside the table and in a manner substantially similar to Model Clause H–4(J) in appendix H to the regulation);

ii. If the balloon payment is scheduled to occur at the same time as another payment required to be disclosed in the table, the balloon payment must be disclosed in the table.

e. For a closed-end transaction secured by real property or a dwelling (other than a transaction secured by a consumer's interest in a timeshare plan described in 11 U.S.C. 101(53D)), that is a negative amortization loan, determine that the following information is disclosed (in close proximity to the table required in section 1026.18(s)(1), with headings, content, and format substantially similar to Model Clause H–4(G) in appendix H to this part) (§1026.18(s)(6)):

   i. The maximum interest rate, the shortest period of time in which such interest rate could be reached, the amount of estimated taxes and insurance included in each payment disclosed, and a statement that the loan offers payment options, two of which are shown; and

   ii. The dollar amount of the increase in the loan's principal balance if the consumer makes only the minimum required payments for the maximum possible time and the earliest date on which the consumer must begin making fully amortizing payments, assuming that the maximum interest rate is reached at the earliest possible time.

f. For a closed-end transaction secured by real property or a dwelling, (other than a transaction secured by a consumer's interest in a timeshare plan described in 11 U.S.C. 101(53D)), determine that the creditor disclosed a statement that there is no guarantee the consumer can refinance the transaction to lower the interest rate or periodic payments. (§1026.18(t)(1))

   NOTE: The statement required by section 1026.18(t)(1) should be in a form substantially similar to Model Clause H–4(K) in appendix H to the regulation. (§1026.18(t)(2))

g. Determine all variable rate loans with a maturity greater than one year secured by a principal dwelling are given the following disclosures at the time of application. (§1026.19)

   1. Consumer Handbook on Adjustable Rate Mortgages or substitute

   2. Statement that interest rate payments and or terms can change

   3. The index/formula and a source of information

   4. Explanation of the interest rate/payment determination and margin

   5. Statement that the consumer should ask for the current interest rate and margin

   6. Statement that the interest rate is discounted, if applicable

7. Frequency of interest rate and payment changes

8. Rules relating to all changes

9. Either a historical example based on 15 years, or the initial rate and payment with a statement that the periodic payment may substantially increase or decrease together with a maximum interest rate and payment

10. Explanation of how to compute the loan payment, giving an example

11. Demand feature, if applicable

12. Statement of content and timing of adjustment notices

13. Statement that other variable rate loan program disclosures are available, if applicable

h. Determine that for any closed-end adjustable-rate mortgage with a maturity date greater than one year, secured by a principal dwelling, the creditor, assignee, or servicer provides the following initial rate adjustment disclosures (for disclosure timing requirements, see **Timing Requirements** below): (§1026.20(d)(2))

1. The date of the disclosure;

2. An explanation that under the terms of the consumer's adjustable rate mortgage, the time frame that the current rate has been in effect, when the current rate is scheduled to expire, the effective date of the new rate, when additional future interest rate adjustments are scheduled to occur and any other changes to loan terms, features, and options taking effect on the same date, and how the rate change may affect the payment and other loan terms;

3. A table explaining the current interest rate and payment, the new interest rate and payment, and the date the first new payment is due;

   NOTE: For interest-only and negative amortization adjustable-rate mortgages, the table must include how the current and new rates and payment will be allocated to interest, principal, and escrow (if applicable). See section 1026.20(d)(2)(iii)(C) for more on payment allocation disclosure requirements.

4. An explanation of how the interest rate is determined, including the specific index or formula used and a source of information about that index or formula, and the type and amount of any adjustment, including a margin and an explanation that a margin is the addition of a certain number of percentage points to the index;

5. Any limits on the interest rate or payment increases at each interest rate adjustment and over the life of the loan (as applicable), including the extent to which such limits result in the creditor, assignee, or servicer foregoing any increase in the interest rate and the earliest date that such foregone interest rate increases may apply to future interest rate adjustments, subject to those limits;

6. An explanation of how the new payment was determined, including the index or formula used to determine the new interest rate;

7. Any adjustments to the index or formula used to determine the new payment, such as the addition of a margin;

8. The expected loan balance on the date of the interest rate adjustment;

9. The remaining loan term expected on the date of the interest rate adjustment and any changes to the term that may have occurred due to the interest rate change;

10. If an estimated rate payment is provided, a statement that another disclosure with the actual interest rate will be provided to the consumer between two and four months prior to the first payment at the adjusted level is due, and that the creditor is using an estimated rate;

11. If applicable, a statement that the new payment will not be allocated to pay loan principal and will not reduce the loan balance. If the new payment will result in negative amortization, a statement that the new payment will not be allocated to pay loan principal and that only part of the interest will be paid, which will add to the loan balance. If the new payment will result in negative amortization as a result of the interest rate adjustment, the statement must set forth the payment required to fully amortize the remaining balance at the new interest rate over the remainder of the loan term;

12. A statement indicating the circumstances under which any prepayment penalty may be imposed, the time period during which it may be imposed, and a statement that the consumer may contact the servicer for additional information, including the maximum amount of the penalty that may be charged to the consumer;

13. A telephone number of the creditor, assignee, or servicer to call if the consumer anticipates not being able to make the new payment;

14. A statement listing alternatives that consumers may pursue if they anticipate not being able to make the new payment;

15. A web address to access either the CFPB or the Department of Housing and Urban Development's (HUD) approved list of homeownership counselors and counseling organizations, the HUD toll-free number to access the HUD list of homeownership counselors and counseling organizations, and the Bureau website to access state housing finance authorities' contact information.

i. Determine that for any closed-end adjustable-rate mortgage with a maturity date greater than one year, secured by a principal dwelling, the creditor, assignee, or servicer provides the following rate adjustment disclosures for rate adjustments with a corresponding payment change (for disclosure timing requirements see **Timing Requirements** below): (§1026.20(c))

1. An explanation that under the terms of the consumer's adjustable rate mortgage, the time frame that the current rate has been in effect is ending and the interest rate and payment will change, the effective date of the new rate, when additional future interest rate adjustments are scheduled to occur and any other changes to loan terms, features, and options taking effect on the same date, such as the expiration of interest-only or payment-option features; a table explaining the current interest rate and payment, the new interest rate and payment, and the date the first new payment is due;

   NOTE: For interest-only and negatively amortizing payments, the table must include how the current and new rates and payment will be allocated to interest, principal, and escrow (if applicable). See section 1026.20(d)(2)(iii)(C) for more on payment allocation disclosure requirements.
2. An explanation of how the interest rate is determined, including the specific index or formula used and a source of information about that index or formula, and the type and amount of any adjustment, including a margin and an explanation that a margin is the addition of a certain number of percentage points to the index, and any application of previously foregone interest rate increases from past rate adjustments;

3. Any limits on the interest rate or payment increases at each interest rate adjustment and over the life of the loan (as applicable), including the extent to which such limits result in the creditor, assignee, or servicer foregoing any increase in the interest rate and the earliest date that such foregone interest rate increases may apply to future interest rate adjustments, subject to those limits;

4. An explanation of how the new payment is determined, including the index or formula used to determine the new interest rate;

5. Any adjustments to the index or formula used to determine the new payment, such as the addition of a margin or the application of any previously foregone interest rate increases from past interest rate adjustments;

6. The expected loan balance on the date of the interest rate adjustment;

7. The remaining loan term expected on the date of the interest rate adjustment and any changes to the term that may have occurred due to the interest rate change;

8. If applicable, a statement that the new payment will not be allocated to pay loan principal and will not reduce the loan balance. If the new payment will result in negative amortization, a statement that the new payment will not be allocated to pay loan principal and that only part of the interest will be paid, which will add to the loan balance. If the new payment will result in negative amortization as a result of the interest rate adjustment, the statement must set forth the payment required to fully amortize the remaining balance at the new interest rate over the remainder of the loan term;

9. A statement indicating the circumstances under which any prepayment penalty may be imposed, the time period during which it may be imposed, and a statement that the

consumer may contact the servicer for additional information, including the maximum amount of the penalty that may be charged to the consumer;

NOTE: Model and sample disclosures H-4(D)(1) through (4) containing all necessary information can be found in appendix H. The disclosures required under section 1026.20(c) and (d) generally should be in the form of a table and in the same order as, and with headings and format substantially similar to, the model disclosures (§§1026.20(c)(3) and (d)(3)).

NOTE: When examining a creditor, an assignee, or a servicer that continues to own the loan, if the entity states that another entity has the obligation to provide the disclosures, examiners should determine whether the entity takes steps to ensure that the other party (the creditor, assignee, or servicer, as applicable) is complying with the obligation to provide the disclosures.

j. Determine that the disclosures required for high-cost mortgage transactions (§1026.32) clearly and conspicuously include the items below. (§1026.32(c), see Form H-16 in appendix H)

   1. The required 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. The APR.

   3. Amount of the regular monthly (or other periodic) payment and the amount of any balloon payment. The regular payment should include amounts for voluntary items, such as credit life insurance or debt-cancellation coverage, only if the consumer has previously agreed to the amount (See the commentary to section 1026.32(c)(3)).

   4. Statement that the interest rate may increase and monthly payment may increase, and the amount of the single maximum monthly payment, based on the maximum interest rate allowed under the contract, if applicable.

   5. The amount borrowed. For a closed-end mortgage, the amount borrowed is the total amount borrowed, 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 (grouped together with the amount borrowed), that fact shall be stated. For an open-end credit plan, the amount borrowed is the credit limit for the plan when the account is opened.

k. For any closed-end mortgage loan (credit transaction that is secured by the principal dwelling of a consumer) that was sold, assigned, or otherwise transferred to the covered person, determine that the covered person notifies the borrower clearly and conspicuously in writing, in a form that the consumer may keep of such transfer, including (§1026.39):

1. An identification of the loan that was sold, assigned, or otherwise transferred;
2. The name, address, and telephone number of the covered person who owns the mortgage loan;
3. The date of transfer (either the date of acquisition recognized in the books and records of the covered person or that of the transferring party) identified by the covered person;
4. The name, address, and telephone number of an agent or party having authority, on behalf of the covered person, to receive notice of the right to rescind and resolve issues concerning the consumer's payments on the mortgage loan;
5. Where transfer of ownership of the debt to the covered person is or may be recorded in public records or, alternatively, that the transfer of ownership has not been recorded in public records at the time the disclosure is provided; and,
6. At the option of the covered person, any other relevant information regarding the transaction.
7. If there are multiple covered persons, contact information for each of them, unless one of them has been authorized to receive the consumer's notice of the right to rescind and resolve issues concerning the consumer's payments on the loan.

   NOTE: This notice of sale or transfer must be provided for any consumer credit transaction that is secured by the principal dwelling of a consumer. This notification is required of the covered person even if the loan servicer remains the same. In addition, if more than one consumer is liable on the obligation, the covered person may mail or deliver the disclosure notice to any consumer who is primarily liable. And, if an acquisition involves multiple covered persons who each acquire a partial interest in the loan pursuant to separate and unrelated agreements, each covered person has a duty to ensure that disclosures related to its acquisition are accurate and provided in a timely manner unless an exception in section 1026.39(c) applies. The parties may, but are not required to, provide a single notice that satisfies the timing and content requirements applicable to each covered person. (Commentary 1026.39(b)(5)–2)

l. For private education loans subject to Subpart F, ensure that the required disclosures are accurate (§1026.47) and contain the following information:

1. Application or solicitation disclosures disclose the following:

    a. Interest rate, including:

        i. Rate or range, and if the rate depends in part on a determination of the borrower's creditworthiness or other factors, a statement to that effect;

        ii. Whether rate is fixed or variable;

        iii. If rate may increase after consummation, any limitations, or lack thereof, and if the limitation is imposed by law, that fact. Also, the creditor must state that the consumer's actual rate may be higher or lower that that disclosed, if applicable; and

        iv. Whether the rate will typically be higher if the loan is not co-signed or guaranteed.

    b. Fees and default or late payment costs.

    c. Repayment terms, including:

        i. Term of the loan, which is the period during which regularly scheduled payments of principal and interest will be due.

        ii. Deferral options, or if consumer does not have the option to defer, that fact.

        iii. For each available deferral option applicable, information as to:

            1. Whether interest will accrue during deferral period; and

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

        iv. A statement that, if the consumer files bankruptcy, the consumer may still be required to repay the loan.

    d. Cost estimates, based on an example of the total cost of the loan, calculated using:

        i. The highest interest rate and including all applicable finance charges,

        ii. An amount financed of $10,000, or $5,000, if the creditor offers loans less than $10,000; and

        iii. Calculated for each payment option.

    e. Eligibility (e.g., any age or school enrollment eligibility requirements).

f. Alternatives to private education loans, including:

   i. A statement that the consumer may qualify for federal student loans,

   ii. The interest rates available for each program available under title IV of the Higher Education Act of 1965, and whether the rate is variable or fixed;

   iii. A statement that the consumer may obtain additional information regarding student federal financial assistance from his school or U.S. Department of Education, including an appropriate website; and

   iv. A statement that a covered educational institution may have school specific educational loan benefits and terms not detailed in the loan disclosure forms.

g. A statement that if the loan is approved, that the loan will be available for 30 days and the terms will not change, except for changes to the interest rate in the case of a variable rate and other changes permitted by law.

h. A statement that before consummation, the borrower must complete a self-certification form obtained from the student's institution of higher education.

2. For approval disclosures, the following information is required under section 1026.47(b):

   a. Interest rate, information, including:

      i. Interest rate applicable to the loan

      ii. Whether the interest rate is variable or fixed; and

      iii. If the interest rate may increase after consummation, any limitations on the rate adjustments, or lack thereof.

   b. Fees and default or late payment costs, including:

      i. An itemization of the fees or range of fees required to obtain the loan; and

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

   c. Repayment terms, including:

      i. Principal amount;

      ii. Term of the loan;

      iii. A description of the payment deferral option chosen by the consumer, if applicable, and any other payment deferral options that the consumer may elect at a later time;

iv. Any payments required while the student is enrolled at the educational institution, based on the deferral option chosen by the consumer;

v. Amount of any unpaid interest that will accrue while the student is enrolled in school, based upon the deferral option chosen by the consumer;

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

vii. An estimate of the total amount of payments calculated based upon:

1. The interest rate applicable to the loan (compliance with section 1026.18(h) constitutes compliance with this requirement);

2. The maximum possible rate of interest for the loan, or, if a maximum rate cannot be determined, a rate of 25%.

3. If a maximum rate cannot be determined, the estimate of the total amount for repayment must include a statement that there is no maximum rate and that the total amount for repayment disclosed is an estimate.

viii. The maximum monthly payment based on the maximum rate of interest for the loan, or, if a maximum rate of interest cannot be determined, a rated of 25%. If a maximum cannot be determined, a statement that there is no maximum rate and that the monthly payment amount disclosed is an estimate and will be higher if the applicable interest rate increases.

d. Alternatives to private education loans, including:

i. A statement that the consumer may qualify for federal student loans,

ii. The interest rates available for each program available under title IV of the Higher Education Act of 1965, and whether the rate is variable or fixed; and

iii. A statement that the consumer may obtain additional information regarding student federal financial assistance from his school or U.S. Department of Education, including an appropriate website.

e. A statement that the consumer may accept the terms of the loan until the acceptance period under section 1026.48(c)(1) has expired. The statement must include:

i. The specific date on which the acceptance period expires, based on the date upon which the consumer receives the disclosures required under this subsection for the loan;

ii. The method or methods by which the consumer may communicate the acceptance (written, oral, or by electronic means; and

iii. A statement that except for changes to the interest rate and other changes permitted by law, the rates and the terms of the loan may not be changed by the creditor during the 30-day acceptance period.

3. After the consumer has accepted the loan in accordance with section 1026.48(c)(1), final disclosures must disclose the information required under section 1026.47(c) and the following:

   a. Interest rate, including:

      i. Interest rate applicable to the loan

      ii. Whether the interest rate is variable or fixed; and

      iii. If the interest rate may increase after consummation, any limitations on the rate adjustments, or lack thereof.

   b. Fees and default or late payment costs, including:

      i. An itemization of the fees or range of fees required to obtain the loan; and

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

   c. Repayment terms, including:

      i. Principal amount;

      ii. Term of the loan;

      iii. A description of the payment deferral option chosen by the consumer, if applicable, and any other payment deferral options that the consumer may elect at a later time;

      iv. Any payments required while the student is enrolled at the educational institution, based on the deferral option chosen by the consumer;

      v. Amount of any unpaid interest that will accrue while the student is enrolled in school, based upon the deferral option chosen by the consumer;

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

      vii. An estimate of the total amount of payments calculated based upon:

         1. The interest rate applicable to the loan (compliance with section 1026.18(h) constitutes compliance with this requirement);

2. The maximum possible rate of interest for the loan, or, if a maximum rate cannot be determined, a rate of 25 percent;

3. If a maximum rate cannot be determined, the estimate of the total amount for repayment must include a statement that there is no maximum rate and that the total amount for repayment disclosed is an estimate.

viii. The maximum monthly payment based on the maximum rate of interest for the loan, or, if a maximum rate of interest cannot be determined, a rated of 25 percent. If a maximum cannot be determined, a statement that there is no maximum rate and that the monthly payment amount disclosed is an estimate and will be higher if the applicable interest rate increases.

d. In a text more conspicuous than any other required disclosure, except for the finance charge, the interest rate, and the creditor's identify the following disclosures:

i. A statement that the consumer has the right to cancel the loan, without penalty, at any time before the midnight of the third business day following the date on which the consumer receives the final loan disclosures. The statement must include the specific date on which the cancellation period expires and that the consumer may cancel by that date. (§1026.47(c)(4)(i))

ii. A statement that the loan proceeds will not be disbursed until the cancellation period expires. (§1026.47(c)(4)(ii))

iii. The method or methods by which the consumer may cancel; (§1026.47(c)(4)(ii)) and

iv. If the creditor permits cancellation by mail, the statement specifying that the consumer's mailed request will be deemed timely if placed in the mail not later than the cancellation date specified on the disclosures. (§1026.47(c)(4)(ii))

Open-End Credit Forms Review Procedures

a. Determine that the creditor made the disclosures clearly and conspicuously. (§1026.5(a))

b. Determine that the creditor made the applicable disclosures in writing, in a form that the consumer may keep, except (§1026.5(a)(1)(ii)):

1. The following disclosures need not be written: Disclosures under section 1026.6(b)(3) of charges that are imposed as part of an open-end (not home-secured) plan that are not required to be disclosed under section 1026.6(b)(2) and related disclosures of charges under section 1026.9(c)(2)(iii)(B); disclosures under section 1026.9(c)(2)(vi); disclosures under section 1026.9(d) when a finance charge is imposed at the time of the transaction; and disclosures under section 1026.56(b)(1)(i).

2. The following disclosures need not be in a retainable form: Disclosures that need not be written under paragraph 1026.5(a)(1)(ii)(A) of this section; the alternative summary billing-rights statement under section 1026.9(a)(2); the credit and charge card renewal disclosures required under section 1026.9(e); the payment requirements under section 1026.10(b), except as provided in section 1026.7(b)(13); ; home-equity disclosures under section 1026.40(d); and disclosures for credit and charge card applications and solicitations under section 1026.60.

3. The disclosures required by this subpart 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 sections 1026.60, 1026.40, and 1026.16 may be provided to the consumer in electronic form without regard to the consumer consent or other provisions of the E-Sign Act in the circumstances set forth in those sections.

c. Determine that the terminology used in providing the disclosures required by section 1026.5 is consistent. (§1026.5(a)(2)(i))

d. Determine that, for home-equity plans subject to section 1026.40, the terms *finance charge* and *annual percentage rate (APR),* when required to be disclosed with a corresponding amount or percentage rate, shall be more conspicuous than any other required disclosure. The terms need not be more conspicuous when used for periodic statement disclosures under section 1026.7(a)(4) and for advertisements under section 1026.16. (§1026.5(a)(2)(ii))

e. Determine that, if disclosures are required to be presented in a tabular format pursuant to section 1026.5(a)(3), that the term *penalty APR* shall be used, as applicable. (§1026.5(a)(2)(iii))

   NOTE: The term *penalty APR* need not be used in reference to the annual percentage rate that applies with the loss of a promotional rate, assuming the annual percentage rate that applies is not greater than the annual percentage rate that would have applied at the end of the promotional period; or if the annual percentage rate that applies with the loss of a promotional rate is a variable rate, the annual percentage rate is calculated using the same index and margin as would have been used to calculate the annual percentage rate that would have applied at the end of the promotional period. If credit insurance or debt cancellation or debt suspension coverage is required as part of the plan, the term *required* shall be used and the program shall be identified by its name. If an annual percentage rate is required to be presented in a tabular format pursuant to paragraph (a)(3)(i) or (a)(3)(iii) of this section, the term *fixed*, or a similar term, may not be used to describe such rate unless the creditor also specifies a time period that the rate will be fixed and the rate will not increase during that period, or if no such time period is provided, the rate will not increase while the plan is open.

Credit and Charge Card Application and Solicitation Disclosures – Section 1026.60

a. Determine that the credit card solicitation or application disclosures were made clearly and conspicuously on or with a solicitation or an application. (§1026.60)

b. For the disclosures in sections 1026.60(b)(1) through (5) (except for (b)(1)(iv)(B) and (b)(7) through (15), determine that the creditor made the disclosures required for sections 1026.60(c), (d)(2), (e)(1) and (f) in the form of a table with headings, content, and format substantially similar to the applicable tables found in G-10 in appendix G. (§1026.60(a)(2)(i))

c. Determine that the table required by section 1026.60(a)(2)(i) contains only the information required or permitted by that section. If the creditor provides other information, determine that such information appears outside the table. (§1026.60(a)(2)(ii))

d. Determine that the disclosures required by section 1026.60(b)(1)(iv)(B), (b)(1)(iv)(C), and (b)(6) are placed directly beneath the table required by section 1026.60(a)(2)(i). (§1026.60(a)(2)(iii))

e. When a tabular format is required, determine that the following disclosures are disclosed in bold text (§1026.60(a)(2)(iv)):

   i. Annual percentage rate required to be disclosed pursuant to paragraph (b)(1) of this section,

   ii. Introductory rate required to be disclosed pursuant to paragraph (b)(1)(ii) of this section,

   iii. Rate that will apply after a premium initial rate expires required to be disclosed under paragraph (b)(1)(iii) of this section, and

   iv. Fee or percentage amounts or maximum limits on fee amounts required to be disclosed pursuant to paragraphs (b)(2), (b)(4), (b)(8) through (b)(13).

   NOTE: Bold text shall not be used for the amount of any periodic fee disclosed pursuant to paragraph (b)(2) of this section that is not an annualized amount, and other APRs or fee amounts disclosed in the table. (§1026.60(a)(2)(iv))

f. Determine that the card issuer discloses, on or with an solicitation or application: (§1026.60(b))

   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. When more than one rate applies for a

category of transactions, determine that the range of balances to which each rate is applicable is also disclosed. (§1026.60(b)(1))

NOTE: The APR for purchases disclosed pursuant to section 1026.60(b)(1) shall be in at least 16-point type, except for the following: Oral disclosures of the annual percentage rate for purchases; or a penalty rate that may apply upon the occurrence of one or more specific events.

i. *Variable rate information*. If a rate is a variable rate, determine that the card issuer discloses the fact that the rate may vary and how the rate is determined. Determine that the card issuer identifies the type of index or formula that is used in setting the rate. Determine that the value of the index and the amount of the margin that are used to calculate the variable rate are not disclosed in the table. Determine further that any applicable limitations on rate increases are not included in the table. (§1026.60(b)(1)(i))

ii. *Discounted initial rate.* If the initial rate is an introductory rate, determine that the card issuer discloses in the table the introductory rate, the time period during which the introductory rate will remain in effect, and the term "introductory" or "intro" in immediate proximity to the introductory rate. Determine further that the card issuer discloses, as applicable, either the variable or fixed rate that would otherwise apply to the account. (§1026.60(b)(1)(ii))

iii. *Premium initial rate.* If the initial rate is temporary and is higher than the rate that will apply after the temporary rate expires, determine that the card issuer discloses the premium initial rate and the time period during which the premium initial rate will remain in effect. Determine that the premium initial rate for purchases is in at least 16-point type. Determine that the issuer discloses in the table the rate that will apply after the premium initial rate expires, in at least 16-point type. (§1026.60(b)(1)(iii))

iv. *Penalty rates.* Except as for provided introductory rate or employee preferential rate requirements (discussed below), if a rate may increase as a penalty for one or more events specified in the account agreement, such as a late payment or an extension of credit that exceeds the credit limit, determine that the card issuer discloses the increased rate that may apply, a brief description of the event or events that may result in the increased rate, and a brief description of how long the increased rate will remain in effect. (§1026.60(b)(1)(iv)(A))

v. *Introductory rate.* If the issuer discloses an introductory rate in the table or in any written or electronic promotional materials accompanying applications or solicitations (and subject to paragraph (c) or (e) of section 1026.60), determine that the issuer briefly discloses, directly beneath the table, the circumstances, if any, under which the introductory rate may be revoked, and the type of rate that will apply after the introductory rate is revoked. (§1026.60(b)(1)(iv)(B))

vi. *Employee preferential rates.* If the issuer discloses in the table a preferential APR for which only employees of the card issuer, employees of a third party, or other individuals with similar affiliations with the card issuer or third party are eligible, determine that the issuer briefly discloses directly beneath the table the circumstances under which such preferential rate may be revoked and the rate that will apply after such preferential rate is revoked. (§1026.60(b)(1)(iv)(C))

vii. *Rates that depend on consumer's creditworthiness.* If a rate cannot be determined at the time disclosures are given because the rate depends, at least in part, on a later determination of the consumer's creditworthiness, determine that the card issuer discloses the specific rates or the range of rates that could apply and a statement that the rate for which the consumer may qualify at account opening will depend on the consumer's creditworthiness, and other factors if applicable. (§1026.60(b)(1)(v))

NOTE: If the rate that depends, at least in part, on a later determination of the consumer's creditworthiness is a penalty rate, as described in (b)(1)(iv), the card issuer at its option may disclose the highest rate that could apply, instead of disclosing the specific rates or the range of rates that could apply. (§1026.60(b)(1)(v))

viii. *APRs that vary by state.* Determine that the card issuer does not list annual percentage rates for multiple states in the table. Note, however, that issuers imposing annual percentage rates that vary by state may, at the issuer's option, disclose in the table: the specific annual percentage rate applicable to the consumer's account; or the range of the annual percentage rates, if the disclosure includes a statement that the annual percentage rate varies by state and refers the consumer to a disclosure provided with the table where the annual percentage rate applicable to the consumer's account is disclosed. (§1026.60(b)(1)(vi))

2. *Fees for issuance or availability.* Determine that the card issuer discloses 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. (§1026.60(b)(2))

3. *Fixed finance charge; minimum interest charge*. Determine that the creditor discloses any fixed finance charge that could be imposed during a billing cycle, as well as a brief description of that charge. Determine that the creditor discloses any minimum interest charge if it exceeds $1.00 that could be imposed during a billing cycle, and a brief description of the charge. (§1026.60(b)(3))

4. Transaction charge. Determine that the creditor discloses any transaction charge imposed for the use of the card for purchases. (§1026.60(b)(4))

5. *Grace period.* Determine that the issuer discloses the date by which or the period within which any credit extended for purchases may be repaid without incurring a finance charge due to a periodic interest rate and any conditions on the availability of

the grace period. If no grace period is provided, determine that this fact is disclosed. In disclosing in the tabular format a grace period that applies to all types of purchases, determine that the issuer uses the phrase "How to Avoid Paying Interest on Purchases" as the heading for the row describing the grace period. If a grace period is not offered on all types of purchases, in disclosing this fact in the tabular format, determine that the issuer uses the phrase "Paying Interest" as the heading for the row describing this fact.

NOTE: 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. (§1026.60(b)(5))

6. *Balance computation method*. Determine that the creditor disclosed the name of the balance computation method that is used to determine the balance on which the finance charge is computed, or an explanation of the method used if it is not listed. In determining which balance computation method to disclose, the creditor should have assumed that the credit extended will not be repaid within any grace period. (§1026.60(b)(6))

   NOTE: Disclosures required by section 1026.60(b)(6) must be placed directly beneath the table.

7. Statement on charge card payments. Determine that the creditor discloses a statement that charges incurred by use of the charge card are due when the periodic statement is received. (§1026.60(b)(7))

8. *Cash advance fee.* Determine that the creditor disclosed any fee imposed for an extension of credit in the form of cash or its equivalent. (§1026.60(b)(8))

9. *Late payment fee*. Determine that the creditor disclosed any fee imposed for a late payment. (§1026.60(b)(9))

10. *Over-the-limit fee.* Determine that the creditor disclosed any fee imposed for exceeding the credit limit. (§1026.60(b)(10))

11. *Balance transfer fee*. Determine that the creditor disclosed any fee imposed to transfer a balance. (§1026.60(b)(11))

12. *Returned payment fee*. Determine that the creditor disclosed any fee imposed for a returned payment. (§1026.60(b)(12))

13. *Required insurance, debt cancellation, or debt suspension coverage*. Determine that the fee imposed required insurance, debt cancellation or suspension coverage is disclosed if the insurance, debt cancellation or coverage is required as part of the plan. (§1026.60(b)(13))

14. *Available credit.* Determine whether total of required fees for the issuance or availability of credit and/or security deposit debited to the account at account opening

equal or exceed 15 percent of minimum credit limit for the account. If so, determine that the creditor disclosed, as applicable, the available credit remaining after the fees and/or security deposit are debited to the account. (§1026.60(b)(14))

15. *Website reference.* For issuers of credit cards that are not charge cards, determine that the creditor disclosed a reference to the website established by the Consumer Financial Protection Bureau (CFPB) and a statement that the consumers may obtain on the website information about shopping for and using credit cards. (§1026.60(b)(15))

Requirements for Home Equity Plans – Section 1026.40

a. Determine that the following home equity disclosures were made clearly and conspicuously, at the time of application. (§1026.40)

    1. Home equity brochure
    2. Statement that the consumer should retain a copy of the disclosure
    3. Statement of the time the specific terms are available
    4. Statement that terms are subject to change before the plan opens
    5. Statement that the consumer may receive a full refund of all fees
    6. Statement that the consumer's dwelling secures the credit
    7. Statement that the consumer could lose the dwelling
    8. Creditors right to change, freeze, or terminate the account
    9. Statement that information about conditions for adverse action are available upon request
    10. Payment terms including the length of the draw and repayment periods, how the minimum payment is determined, the timing of payments, and an example based on $10,000 and a recent APR
    11. A recent APR imposed under the plan and a statement that the rate does not include costs other than interest (fixed rate plans only)
    12. Itemization of all fees paid to creditor
    13. Estimate of any fees payable to third parties to open the account and a statement that the consumer may receive a good faith itemization of third-party fees
    14. Statement regarding negative amortization, as applicable
    15. Transaction requirements

16. Statement that the consumer should consult a tax advisor regarding the deductibility of interest and charges under the plan

17. For variable rate home equity plans, disclose the following:

    i. That the APR, payment, or term may change

    ii. The APR excludes costs other than interest

    iii. Identify the index and its source

    iv. How the APR will be determined

    v. Statement that the consumer should request information on the current index value, margin, discount, premium, or APR

    vi. Statement that the initial rate is discounted and the duration of the discount, if applicable

    vii. Frequency of APR changes

    viii. Rules relating to changes in the index, APR, and payment amount

    ix. Lifetime rate cap and any annual caps, or a statement that there is no annual limitation

    x. The minimum payment requirement, using the maximum APR, and when the maximum APR may be imposed

    xi. A historical example, based on a $10,000 balance, reflecting all significant plan terms

    xii. Statement that rate information will be provided on or with each periodic statement.

b. For home-equity plans subject to section 1026.40, determine that the terms *finance charge* and *annual percentage rate,* when required to be disclosed with a corresponding amount or percentage rate, are more conspicuous than any other required disclosure.

   NOTE: The terms need not be more conspicuous when used for periodic statement disclosures under section 1026.7(a)(4) and for advertisements under section 1026.16. (§1026.5(a)(2)(ii))

Account Opening Initial Disclosures – Section 1026.6

a. The following requirements apply only to home-equity plans subject to the requirements of section 1026.40. Determine that the creditor discloses, as applicable (§1026.6(a)):

1. *Finance charge.* The circumstances under which a finance charge will be imposed and an explanation of how it will be determined, including: a statement of when finance charges begin to accrue, and an explanation of whether or not any time period exists within which any credit extended may be repaid without incurring a finance charge; a disclosure of each periodic rate that may be used to compute the finance charge, the range of balances to which it is applicable, and the corresponding annual percentage rate; an explanation of the method used to determine the balance on which the finance charge may be computed; and, an explanation of how the amount of any finance charge will be determined, including a description of how any finance charge other than the periodic rate will be determined. (§1026.6(a)(1))

   If a creditor offers a variable-rate plan, determine that the creditor discloses: the circumstances under which the rate(s) may increase; any limitations on the increase; and the effect(s) of an increase. When different periodic rates apply to different types of transactions, determine that the types of transactions to which the periodic rates shall apply shall also be disclosed. (§1026.6(a)(1))

2. *Other charges.* The amount of any charge other than a finance charge that may be imposed as part of the plan, or an explanation of how the charge will be determined. (§1026.6(a)(2))

3. *Home-equity plan information.* The following disclosures, as applicable (§1026.6(a)(3)):

   i. A statement of the conditions under which the creditor may take certain action, as described in section 1026.40(d)(4)(i), such as terminating the plan or changing the terms.

   ii. The payment information described in section 1026.40(d)(5)(i) and (ii) for both the draw period and any repayment period.

   iii. A statement that negative amortization may occur as described in section 1026.40(d)(9).

   iv. A statement of any transaction requirements as described in section 1026.40(d)(10).

   v. A statement regarding the tax implications as described in section 1026.40(d)(11).

   vi. A statement that the annual percentage rate imposed under the plan does not include costs other than interest as described in section 1026.40(d)(6) and (d)(12)(ii).

   vii. The variable-rate disclosures described in section 1026.40(d)(12)(viii), (d)(12)(x), (d)(12)(xi), and (d)(12)(xii), as well as the disclosure described in section 1026.40(d)(5)(iii), unless the disclosures provided with the application were in a

form the consumer could keep and included a representative payment example for the category of payment option chosen by the consumer.

4. *Security interests.* The fact that the creditor has or will acquire a security interest in the property purchased under the plan, or in other property identified by item or type. (§1026.6(a)(4))

5. *Statement of billing rights.* A statement that outlines the consumer's rights and the creditor's responsibilities under sections 1026.12(c) and 1026.13 and that is substantially similar to the statement found in Model Form G–3 or, at the creditor's option, G–3(A), in appendix G to this part. (§1026.6(a)(5))

b. For open-end (not home-secured) plans determine that the creditor provided the account-opening disclosures specified in section 1026.6(b)(2)(i) through (b)(2)(v) (except for section 1026.6 (b)(2)(i)(D)(2) and section 1026.6 (b)(2)(vii) through (b)(2)(xiv) in the form of a table with the headings, content, and format substantially similar to any of the applicable tables in G–17 in appendix G. (§1026.6(b)(1))

c. For open-end (not home-secured) plans, determine that the following disclosures are disclosed in bold text (§1026.6(b)(1)(i)):

   1. Any APR required to be disclosed pursuant to section 1026.6(b)(2)(i);

   2. Any introductory rate permitted to be disclosed pursuant to paragraph (b)(2)(i)(B) or required to be disclosed under paragraph (b)(2)(i)(F) of this section;

   3. Any rate that will apply after a premium initial rate expires permitted to be disclosed pursuant to paragraph (b)(2)(i)(C) or required to be disclosed pursuant to paragraph (b)(2)(i)(F); and

   4. Any fee or percentage amounts or maximum limits on fee amounts disclosed pursuant to paragraphs (b)(2)(ii), (b)(2)(iv), (b)(2)(vii) through (b)(2)(xii).

d. Determine that bold text is not used for: The amount of any periodic fee disclosed pursuant to paragraph (b)(2) of this section that is not an annualized amount; and other annual percentage rates or fee amounts disclosed in the table. (§1026.6(b)(1)(i))

e. Determine that only the information required or permitted by section 1026.6 (b)(2)(i) through (b)(2)(v) (except for (b)(2)(i)(D)(2)) and (b)(2)(vii) through (b)(2)(xiv) are provided in the table. Disclosures required by paragraphs (b)(2)(i)(D)(2), (b)(2)(i)(D)(3), (b)(2)(vi) and (b)(2)(xv) of this section shall be placed directly below the table required by section 1026.6(b)(1). (§1026.6(b)(1)(ii))

   NOTE: Disclosures required by section 1026.6(b)(3) through (b)(5) that are not otherwise required to be in the table and other information may be presented with the account agreement or account-opening disclosure statement, provided such information appears outside the required table.

f. For creditors that impose fees referred to in section 1026.6(b)(2)(vii) through (b)(2)(xi) that vary by state and that provide the disclosures required by section 1026.6(b) in person at the time the open-end (not home-secured) plan is established in connection with financing the purchase of goods or services determine that the creditor discloses in the account-opening table either:

   1. The specific fee applicable to the consumer's account, or

   2. The range of fees, a statement that the amount of the fee varies by state, and a reference to the account agreement or other disclosure provided with the account-opening table where the amount of the fee applicable to the consumer's account is disclosed. (§1026.6(b)(1)(iii))

      NOTE: A creditor is not permitted to list fees for multiple states in the account-opening summary table (§1026.6(b)(1)(iii)).

   3. 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. (§1026.6(b)(1)(iv))

g. The following requirements apply to open-end (not home-secured). Determine that the creditor discloses in the appropriate format, as applicable:

   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 APR. When more than one rate applies for a category of transactions, determine that the creditor discloses the range of balances to which each rate is applicable. Ensure that the APR for purchases disclosed pursuant to this paragraph is in at least 16-point type, except for a penalty rate that may apply upon the occurrence of one or more specific events. (§1026.6(b)(2)(i))

   2. *Variable rate information*. If the rate is a variable rate, determine that the creditor also disclosed the fact that the rate may vary and how the rate is determined (i.e., identify the type of index or formula used in setting the rate). (§1026.6(b)(2)(i)(A))

   3. *Discounted initial rate*. If the initial rate is an introductory rate, determine that the creditor disclosed that the rate would otherwise apply to the account. Where the rate is not tied to an index or formula, determine that the creditor disclosed the rate that will apply after the introductory rate expires. For a variable rate account, determine that the creditor disclosed a rate based on the applicable index or formula in accordance with the accuracy requirements. (§1026.6(b)(2)(i)(B))

   4. *Premium initial rate.* If the initial rate is temporary and is higher than the rate that will apply after the temporary rate expires, determine that the creditor disclosed the premium initial rate. Determine that the premium rate for purchases is in at least 16-point type. (§1026.6(b)(2)(i)(C))

5. *Penalty rates.* Except for introductory rates and employee preferential rates (discussed below), if the rate is a penalty rate, determine that the creditor disclosed as part of the APR disclosure the increased rate that may apply, a brief description of the event or events that may result in the increased rate, and a brief description of how long the increased rate will remain in effect. (§1026.6(b)(2)(i)(D)(1))

6. *Introductory rates.* If the creditor discloses in the table an introductory rate, as that term is defined in section 1026.16(g)(2)(ii), determine that the creditor briefly disclosed directly beneath the table the circumstances under which the introductory rate may be revoked, and the rate that will apply after the introductory rate is revoked. (§1026.6(b)(2)(i)(D)(2))

7. *Employee preferential rates.* If the creditor discloses in the table a preferential APR for which only employees of the creditor, employees of a third party, or other individuals with similar affiliations with the creditor or third party are eligible, determine that the creditor briefly disclosed directly beneath the table the circumstances under which the preferential rate may be revoked, and the rate that will apply after the preferential rate is revoked. (§1026.6(b)(2)(i)(D)(3))

8. *Point of sale where APRs vary by state or based on creditworthiness*. If the creditor imposes an APR that varies by state or based on the consumer's creditworthiness and provides required disclosures in person at the time the open-end (not home-secured) plan is established in connection with financing the purchase of goods or services, determine that the creditor discloses either (§1026.6(b)(2)(i)(E)):

    i. The specific APR applicable to the consumer's account, or

    ii. The range of the APRs, if the disclosure includes a statement that the APR varies by state or will be determined based on the consumer's creditworthiness and refers the consumer to the account agreement or other disclosure provided with the account-opening table where the AP applicable to the consumer's account is disclosed. Determine that the creditor does not list APRs for multiple states in the account opening table.

9. *Credit card accounts under an open-end (not home-secured) consumer credit plan*. Determine that the issuer discloses in the table (§1026.6(b)(2)(i)(F)):

    i. Any introductory rate, and

    ii. Any rate that would apply upon expiration of a premium initial rate.

10. *Fees for issuance or availability*. Determine that the credit disclosed any annual or periodic fee that may be imposed for the issuance or availability of an open-end plan (including any fee based on account activity or inactivity); how frequently the fee will be imposed; and the annualized amount of the fee. (§1026.6(b)(2)(ii))

11. *Fixed finance charge and minimum interest charge.* Determine that the creditor disclosed any fixed finance charge and any minimum interest charge if it exceeds $1.00 that could be imposed during a billing cycle, and a brief description of the charge. (§1026.6(b)(2)(iii))

12. Determine that the creditor disclosed any non-periodic fee that relates to opening the plan. A creditor must disclose that the fee is a one-time fee. (§1026.6(b)(2)(ii)(B))

13. *Transaction charges.* Determine that the creditor discloses any transaction charge imposed by the creditor for use of the open-end plan for purchases. (§1026.6(b)(2)(iv))

14. *Grace period*. The date by which or the period within which any credit extended may be repaid without incurring a finance charge due to a periodic interest rate and any conditions on the availability of the grace period. If no grace period is provided, that fact must be disclosed. If the length of the grace period varies, the creditor may disclose the range of days, the minimum number of days, or the average number of the days in the grace period, if the disclosure is identified as a range, minimum, or average. In disclosing in the tabular format a grace period that applies to all features on the account, the phrase "How to Avoid Paying Interest" shall be used as the heading for the row describing the grace period. If a grace period is not offered on all features of the account, in disclosing this fact in the tabular format, the phrase "Paying Interest" shall be used as the heading for the row describing this fact. (§1026.6(b)(2)(v))

15. *Balance computation method*. Determine that the creditor disclosed in the account opening disclosures the name of the balance computation method that is used to determine the balance on which the finance charge is computed for each feature, or an explanation of the method used if it is not listed, along with a statement that an explanation of the methods required by section 1026.6(b)(4)(i)(D). In determining which balance computation method to disclose, the creditor should have assumed that the credit extended will not be repaid within any grace period. (§1026.6(b)(2)(vi))

16. *Cash advance fee.* Determine that the creditor disclosed any fee imposed for an extension of credit in the form of cash or its equivalent. (§1026.6(b)(2)(vii))

17. *Late payment fee*. Determine that the creditor disclosed any fee imposed for a late payment. (§1026.6(b)(2)(viii))

18. *Over-the-limit fee.* Determine that the creditor disclosed any fee imposed for exceeding the credit limit. (§1026.6(b)(2)(ix))

19. *Balance transfer fee*. Determine that the creditor disclosed any fee imposed to transfer a balance. (§1026.6(b)(2)(x))

20. *Returned payment fee*. Determine that the creditor disclosed any fee imposed for a returned payment. (§1026.6(b)(2)(xi))

21. *Required insurance, debt cancellation, or debt suspension coverage*. Determine that the fee imposed for required insurance, debt cancellation or suspension coverage is disclosed if the insurance, debt cancellation or coverage is required as part of the plan. Creditors must also cross reference additional information about the insurance or coverage as applicable. (§1026.6(b)(2)(xii))

22. *Available credit.* Determine whether total of required fees for the issuance or availability of credit and/or security deposit debited to the account at account opening equal or exceed 15 percent of the credit limit for the account. If so, determine that the creditor disclosed, as applicable, the available credit remaining after the fees and/or security deposit are debited to the account. (§1026.6(b)(2)(xiii))

23. *Website reference.* For issuers of credit cards that are not charge cards, determine that the creditor disclosed a reference to the website established by the CFPB and a statement that the consumers may obtain on the website information about shopping for and using credit cards. (§1026.6(b)(2)(xiv))

24. *Billing error rights reference.* Determine that the creditor disclosed a statement that information about consumers' right to dispute transactions is included in the account-opening disclosures. (§1026.6(b)(2)(xv))

25. *Charges and finance charges.* For charges imposed as part of open-end (not home-secured) plan, the circumstances under which the charge may be imposed, including the amount of the charge or explanation of how the charge is determined. For finance charges, a statement of when finance charges begin to accrue, including an explanation of whether or not any time period exists within which any credit extended may be repaid without incurring a finance charge. If such a time period is provided, a creditor may, at its option and without disclosure, impose no finance charge when payment is received after the time period's expiration. (§1026.6(b)(3)(i))

26. *Disclosure of rates for open*-end (not home-secured) plans. Determine that the creditor disclosed, as applicable, for each periodic rate that may be used to calculate interest (§1026.6(b)(4)(i)):

    i. The rate (expressed as a periodic rate and a corresponding APR),

    ii. The range of balances to which the rate is applicable,

    iii. The type of transaction to which the periodic rate applies,

    iv. An explanation of the method used to determine the balance to which the rate is applied.

27. *Variable-rate Accounts.* For interest rate changes that are tied to increases in an index or formula (variable-rate accounts) determine that the following are specifically set forth in the account agreement (§1026.6(b)(4)(ii)):

    i. The fact that the annual percentage rate may increase.

ii. How the rate is determined, including the margin.

iii. The circumstances under which the rate may increase.

iv. The frequency with which the rate may increase.

v. Any limitation on the amount the rate may change.

vi. The effect(s) of an increase.

vii. Except as specified in paragraph (b)(4)(ii)(H) of this section, a rate is accurate if it is a rate as of a specified date and this rate was in effect within the last 30 days before the disclosures are provided.

27. Rate changes not due to index or formula. For interest rate changes that are specifically set forth in the account agreement and not tied to increases in an index or formula, determine that the creditor discloses (§1026.6(b)(4)(iii)):

    i. The initial rate (expressed as a periodic rate and a corresponding APR)

    ii. How long the initial rate will remain in effect and the specific events that cause the initial rate to change.

    iii. The rate (expressed as a periodic rate and a corresponding APR) that will apply when the initial rate is no longer in effect and any limitation on the time period the new rate will remain in effect.

    iv. The balances to which the new rate will apply.

    v. The balances to which the current rate at the time of the change will apply.

28. *Voluntary credit insurance, debt cancellation, or debt suspension*. Determine that the creditor disclosed the applicable disclosures if the creditor offers optional credit insurance, or debt cancellation or debt suspension coverage. (§1026.6(b)(5)(i))

29. *Security interests.* Determine that the creditor disclosed the fact that the creditor has or will acquire a security interest in the property purchased under the plan, or in other property identified by item or type. (§1026.6(b)(5)(ii))

30. *Statement of billing rights.* Determine that the creditor disclosed a statement that outlines the consumer's rights and the creditor's responsibilities. (§1026.6(b)(5)(iii))

Periodic Statement Disclosures – Section 1026.7

a. *Rules affecting home-equity plans.* For home-equity plans subject to the requirements of section 1026.40, determine that the creditor disclosed on the periodic statement items 1 through 10 below (§1026.7(a)):

NOTE: The requirements of section 1026.7(a) apply only to home-equity plans subject to the requirements of section 1026.40. Alternatively, a creditor subject to the rules affecting home-equity plans may, at its option, comply with any of the requirements of section 1026.7(b); however, any creditor that chooses not to provide a disclosure under section 1026.7(a)(7) must comply with section 1026.7(b)(6).

1. *Previous balance.* The account balance outstanding at the beginning of the billing cycle. (§1026.7(a)(1))

2. *Identification of transactions.* An identification of each credit transaction in accordance with section 1026.8. (§1026.7(a)(2))

3. *Credits.* Any credit to the account during the billing cycle, including the amount and the date of crediting. The date need not be provided if a delay in accounting does not result in any finance or other charge. (§1026.7(a)(3))

4. *Periodic rates.* Each periodic rate that may be used to compute the finance charge, the range of balances to which it is applicable, and the corresponding annual percentage rate. If different periodic rates apply to different types of transactions, the types of transactions to which the periodic rates apply shall also be disclosed. For variable-rate plans, the fact that the periodic rate(s) may vary. (§1026.7(a)(4))

   NOTE: If no finance charge is imposed when the outstanding balance is less than a certain amount, the creditor is not required to disclose that fact, or the balance below which no finance charge will be imposed

   NOTE: Further, an annual percentage rate that differs from the rate that would otherwise apply and is offered only for a promotional period need not be disclosed except in periods in which the offered rate is actually applied.

5. *Balance on which finance charge computed.* The amount of the balance to which a periodic rate was applied and an explanation of how that balance was determined. When a balance is determined without first deducting all credits and payments made during the billing cycle, the fact and the amount of the credits and payments shall be disclosed. (§1026.7(a)(5))

6. *Amount of finance charge and other charges.* (§1026.7(a)(6))

   i. *Finance charges.* The amount of any finance charge debited or added to the account during the billing cycle, using the term *finance charge.* Determine that the components of the finance charge are individually itemized and identified to show the amount(s) due to the application of any periodic rates and the amounts(s) of any other type of finance charge.

      NOTE: If there is more than one periodic rate, the amount of the finance charge attributable to each rate need not be separately itemized and identified. (§1026.7(a)(6)(i))

ii. *Other charges.* The amounts, itemized and identified by type, of any charges other than finance charges debited to the account during the billing cycle. (§1026.7(a)(6)(ii))

NOTE: Creditors may comply with paragraphs (a)(6) of section 1026.7, or with paragraph (b)(6) of section 1026.7, at their option.

7. *Annual percentage rate.* At a creditor's option, when a finance charge is imposed during the billing cycle, the annual percentage rate(s) determined under section 1026.14(c) using the term *annual percentage rate.* (§1026.7(a)(7))

8. *Grace period.* The date by which or the time period within which the new balance or any portion of the new balance must be paid to avoid additional finance charges. (§1026.7(a)(8))

9. *Address for notice of billing errors.* The address to be used for notice of billing errors. Alternatively, the address may be provided on the billing rights statement permitted by section 1026.9(a)(2). (§1026.7(a)(9))

10. *Closing date of billing cycle; new balance.* The closing date of the billing cycle and the account balance outstanding on that date. (§1026.7(a)(10))

b. *Rules affecting open-end (not home-secured) plans.* The requirements of paragraph (b) of this section (1 through 14 below) apply only to plans other than home-equity plans subject to the requirements of section 1026.40. For applicable plans, determine that the creditor discloses on the periodic statement (§1026.7(b)):

1. *Previous balance.* The account balance outstanding at the beginning of the billing cycle. (§1026.7(b)(1))

2. *Identification of transactions.* An identification of each credit transaction in accordance with section 1026.8. (§1026.7(b)(2))

3. *Credits.* Any credit to the account during the billing cycle, including the amount and the date of crediting. The date need not be provided if a delay in crediting does not result in any finance or other charge. (§1026.7(b)(3))

4. *Periodic rates.* Each periodic rate that may be used to compute the interest charge expressed as an annual percentage rate and using the term *Annual Percentage Rate,* along with the range of balances to which it is applicable. (§1026.7(b)(4))

NOTE: If no interest charge is imposed when the outstanding balance is less than a certain amount, the creditor is not required to disclose that fact, or the balance below which no interest charge will be imposed. The types of transactions to which the periodic rates apply shall also be disclosed. For variable-rate plans, the fact that the APR may vary; and

A promotional rate, as that term is defined in section 1026.16(g)(2)(i), is required to be disclosed only in periods in which the offered rate is actually applied.

5. *Balance on which finance charge computed.* The amount of the balance to which a periodic rate was applied and an explanation of how that balance was determined, using the term *Balance Subject to Interest Rate.* (§1026.7(b)(5))

6. *Charges imposed.* The amounts of any charges imposed as part of a plan as stated in section 1026.6(b)(3), grouped together, in proximity to transactions identified under paragraph (b)(2) of this section, substantially similar to Sample G–18(A) in appendix G to this part. (§1026.7(b)(6))

    i. *Interest.* Finance charges attributable to periodic interest rates, using the term *Interest Charge,* must be grouped together under the heading *Interest Charged,* itemized and totaled by type of transaction, and a total of finance charges attributable to periodic interest rates, using the term *Total Interest,* must be disclosed for the statement period and calendar year to date, using a format substantially similar to Sample G–18(A).

    ii. *Fees.* Charges imposed as part of the plan other than charges attributable to periodic interest rates must be grouped together under the heading *Fees,* identified consistent with the feature or type, and itemized, and a total of charges, using the term *Fees,* must be disclosed for the statement period and calendar year to date, using a format substantially similar to Sample G–18(A).

7. *Change-in-terms and increased penalty rate summary for open-end (not home-secured) plans.* Creditors that provide a change-in-terms notice required by section 1026.9(c), or a rate increase notice required by section 1026.9(g), on or with the periodic statement, must disclose the information in sections 1026.9(c)(2)(iv)(A) and (c)(2)(iv)(B) (if applicable) or section 1026.9(g)(3)(i) on the periodic statement in accordance with the format requirements in section 1026.9(c)(2)(iv)(D), and section 1026.9(g)(3)(ii). See Forms G–18(F) and G–18(G). (§1026.7(b)(7))

8. *Grace period.* The date by which or the time period within which the new balance or any portion of the new balance must be paid to avoid additional finance charges. If such a time period is provided, a creditor may, at its option and without disclosure, impose no finance charge if payment is received after the time period's expiration. (§1026.7(b)(8))

9. *Address for notice of billing errors.* The address to be used for notice of billing errors. Alternatively, the address may be provided on the billing rights statement permitted by section 1026.9(a)(2). (§1026.7(b)(9))

10. *Closing date of billing cycle; new balance.* The closing date of the billing cycle and the account balance outstanding on that date disclosed in accordance with section 1026.7(b)(13). (§1026.7(b)(10))

11. *Due date; late payment costs.* With the exception of periodic statements provided solely for charge cards and periodic statements provided for a charged-off account where payment of the entire account balance is due immediately, determine that the

creditor disclosed (in accordance with section 1026.7(b)(13)) for a credit card account under an open-end (not home-secured) consumer credit plan:

i. The due date for a payment (the due date must be the same day of the month for each billing cycle). (§1026.7(b)(11)(i)(A))

ii. The amount of any late payment fee and any increased periodic rate(s) (expressed as an annual percentage rate(s)) that may be imposed on the account as a result of a late payment. If a range of late payment fees may be assessed, verify that the card issuer either states a range of fees or the highest fee and an indication that the fee imposed could be lower. (§1026.7(b)(11)(i)(B))

NOTE: If the rate may be increased for more than one feature or balance, the card issuer may state the range of rates or the highest rate that could apply and at the issuer's option an indication that the rate imposed could be lower.
NOTE: Further, with the exception of the negative or no amortization disclosures required by section 1026.7(b)(12)(ii), the repayment disclosures in section 1026.7(b)(12) (as listed in step 12 below) are not required for:

i. Charge card accounts that require payment of outstanding balances in full at the end of each billing cycle;

ii. A billing cycle immediately following two consecutive billing cycles in which the consumer paid the entire balance in full, had a zero outstanding balance or had a credit balance; and

iii. A billing cycle where paying the minimum payment due for that billing cycle will pay the entire outstanding balance on the account for that billing cycle.

12. Given those exceptions above, determine that the card issuer disclosed on the periodic statement section 1026.7(b)(12):

i. The following statement with a bold heading: "**Minimum Payment Warning**: If you make only the minimum payment each period, you will pay more in interest and it will take you longer to pay off your balance" (§1026.7(b)(12)(i)(A));

ii. The minimum payment repayment estimate, as described in appendix M1 to this part. NOTE: If the minimum payment repayment estimate is less than two years, determine that the card issuer disclosed the estimate in months. Otherwise, the estimate must be disclosed in years and rounded to the nearest whole year (§1026.7(b)(12)(i)(B));

iii. The minimum payment total cost estimate, as described in appendix M1 to this part, rounded to the nearest whole dollar or to the nearest cent, at the card issuer's option (§1026.7(b)(12)(i)(C));

iv. A statement that the minimum payment repayment estimate and the minimum payment total cost estimate are based on the current outstanding balance shown

on the periodic statement. A statement that the minimum payment repayment estimate and the minimum payment total cost estimate are based on the assumption that only minimum payments are made and no other amounts are added to the balance (§1026.7(b)(12)(i)(D));

v. A toll-free telephone number where the consumer may obtain from the card issuer information about credit counseling services (§1026.7(b)(12)(i)(E)); and

vi. The disclosures required for section 1026.7(b)(12)(i)(F)(1):

a. The estimated monthly payment for repayment in 36 months, as described in appendix M1 to this part. The estimated monthly payment for repayment in 36 months must be rounded to the nearest whole dollar or to the nearest cent, at the card issuer's option (§1026.7(b)(12)(i)(F)(1)(i));

b. A statement that the card issuer estimates that the consumer will repay the outstanding balance shown on the periodic statement in three years if the consumer pays the estimated monthly payment for three years (§1026.7(b)(12)(i)(F)(1)(ii));

c. The total cost estimate for repayment in 36 months, as described in appendix M1 to this part. The total cost estimate for repayment in 36 months must be rounded to the nearest whole dollar or to the nearest cent, at the card issuer's option (§1026.7(b)(12)(i)(F)(1)(iii)); and

d. The savings estimate for repayment in 36 months, as described in appendix M1 to this part. The savings estimate for repayment in 36 months must be rounded to the nearest whole dollar or to the nearest cent, at the card issuer's option (§1026.7(b)(12)(i)(F)(1)(iv)).

NOTE: The disclosures (a through d above) required for section 1026.7(b)(12)(i)(F)(1) do not apply to a periodic statement in any of the following circumstances:

a. The minimum payment repayment estimate that is disclosed on the periodic statement pursuant to paragraph (b)(12)(i)(B) of this section after rounding is three years or less;

b. The estimated monthly payment for repayment in 36 months, as described in appendix M1 to this part, rounded to the nearest whole dollar or nearest cent that is calculated for a particular billing cycle is less than the minimum payment required for the plan for that billing cycle; and

c. A billing cycle where an account has both a balance in a revolving feature where the required minimum payments for this feature will not amortize that balance in a fixed amount of time specified in the account agreement and a balance in a fixed repayment feature where the required minimum payment

for this fixed repayment feature will amortize that balance in a fixed amount of time specified in the account agreement which is less than 36 months.

vii. If negative or no amortization occurs when calculating the minimum payment estimate as described in appendix M1, determine that the card issuer provides the following disclosures on each periodic statement instead of the disclosures set forth in section 1026.7(b)(12)(i) (§1026.7(b)(12)(ii)):

a. "**Minimum Payment Warning:** Even if you make no more charges using this card, if you make only the minimum payment each month we estimate **you will never pay off the balance shown on this statement** because your payment will be less than the interest charged each month" (§1026.7(b)(12)(ii)(A));

b. "If you make more than the minimum payment each period, you will pay less in interest and pay off your balance sooner" (§1026.7(b)(12)(ii)(B));

c. The estimated monthly payment for repayment in 36 months rounded to the nearest whole dollar or to the nearest cent, at the creditor's option (§1026.7(b)(12)(ii)(C));

d. A statement that the card issuer estimates that the consumer will repay the outstanding balance shown on the periodic statement in three years if the consumer pays the estimated monthly payment each month for three years (§1026.7(b)(12)(ii)(D)); and

e. A toll-free telephone number where the consumer may obtain from the card issuer information about credit counseling services consistent with section 1026.7(b)(12)(iv). (§1026.7(b)(12)(ii)(E))

viii. Verify that the items required to be disclosed, as addressed in the procedures in step 12 above (required by section 1026.7(b)(12)) are disclosed in accordance with the format requirements of section 1026.7(b)(13) and are substantially similar to the samples provided in appendix G of Regulation Z.

ix. Determine that a card issuer provides (to the extent available from the United States Trustee or a bankruptcy administrator) through the disclosed toll-free telephone number the name, street address, telephone number, and website address for at least three organizations that have been approved by the United States Trustee or a bankruptcy administrator to provide credit counseling services in either the state in which the billing address for the account is located or the state specified by the consumer. (§1026.7(b)(12)(iv)(A))

x. Determine that the card issuer at least annually updates the credit counseling information it discloses for consistency with the information available from the United States Trustee or a bankruptcy administrator. (§1026.7(b)(12)(iv)(B))

13. Determine that the card issuer provided periodic statement disclosures according to the following format requirements (§1026.7(b)(13)):

    i. The due date is disclosed on the front of the first page of the periodic statement and that the amount of the late payment fee and the APR(s) are stated in close proximity thereto.

    ii. The ending balance and the repayment disclosures (required by paragraph (b)(12) of section 1026.7 are disclosed closely proximate to the minimum payment due.

    iii. The due date, late payment fee and APR, ending balance, minimum payment due, and repayment disclosures are grouped together.

    NOTE: Sample G-18(D) in appendix G of Regulation Z sets forth an example of how these terms may be grouped.

14. For accounts with an outstanding balance subject to a deferred interest or similar program, determine that the creditor disclosed the date by which that outstanding balance must be paid in full in order to avoid the obligation to pay finance charges on such balance on the front of any page of each periodic statement issued during the deferred interest period beginning with the first periodic statement issued during the deferred interest period that reflects the deferred interest or similar transaction. The disclosure provided pursuant to this paragraph must be substantially similar to Sample G–18(H) in appendix G to this part. (§1026.7(b)(14))

Subsequent Disclosure Requirements – Section 1026.9

a. Determine whether the creditor mailed or delivered the billing rights statement at least once per calendar year, at intervals of not less than 6 months or more than 18 months, customers and whether the institution used the short form notice with each periodic statement. (§1026.9(a)(1))

   NOTE: As an alternative to the annual billing rights statement (§1026.9(a)(1)), the creditor may mail or deliver, on or with each periodic statement, a statement substantially similar to Model Form G–4 or Model Form G–4(A) in appendix G to this part, as applicable. Creditors offering home-equity plans subject to the requirements of section 1026.40 may use either Model Form, at their option. (§1026.9(a)(2))

b. If, 30 days after mailing or delivering the account-opening disclosures under sections 1026.6(a)(1) or (b)(3)(ii)(A), the creditor adds a credit feature or furnishes a credit access device (other than as a renewal, resupply, or the original issuance of a credit card, or except with regard to checks that access a credit card account) on the same finance charge terms, determine that the creditor discloses, before the consumer uses the feature or device for the first time, that it is for use in obtaining credit under the terms previously disclosed. (§1026.9(b)(1))

c. Determine that, except with regard to checks that access a credit card account, whenever a credit feature is added or a credit access device is mailed or delivered to the consumer,

and the finance charge terms for the feature or device differ from disclosures previously given, the disclosures required by sections 1026.6(a)(1) or (b)(3)(ii)(A) that are applicable to the added feature or device are given before the consumer uses the feature or device for the first time. (§1026.9(b)(2))

d. *Checks that access a credit card account.* For open-end plans not subject to the requirements of section 1026.40, if checks that can be used to access a credit card account are provided more than 30 days after account-opening disclosures under section 1026.6(b) are mailed or delivered, or are provided within 30 days of the account-opening disclosures and the finance charge terms for the checks differ from the finance charge terms previously disclosed, determine that the creditor discloses on the front of the page containing the checks the following terms in the form of a table with the headings, content, and form substantially similar to Sample G–19 in appendix G to this part (§1026.9(b)(3)):

1. If a promotional rate applies to the checks, determine that the creditor discloses:

   i. The promotional rate and the time period during which the promotional rate will remain in effect (§1026.9(b)(3)(i)(A)(1));

   ii. The type of rate that will apply (such as whether the purchase or cash advance rate applies) after the promotional rate expires, and the annual percentage rate that will apply after the promotional rate expires. For a variable-rate account, a creditor must disclose an annual percentage rate based on the applicable index or formula in accordance with the accuracy requirements set forth in paragraph (b)(3)(ii) of this section (§1026.9(b)(3)(i)(A)(2)); and

   iii. The date, if any, by which the consumer must use the checks in order to qualify for the promotional rate. If the creditor will honor checks used after such date but will apply an annual percentage rate other than the promotional rate, the creditor must disclose this fact and the type of annual percentage rate that will apply if the consumer uses the checks after such date (§1026.9(b)(3)(i)(A)(3)).

2. If any APR required to be disclosed pursuant to section 1026.9(b)(3)(i) is a variable rate, determine that the creditor also disclosed the fact that the rate may vary and how the rate is determined. Determine that the creditor identified the type of index or formula used in setting the rate. Determine that the creditor does not disclose the value of the index and the amount of the margin that are used to calculate the variable rate in the table and that any applicable limitations on rate increases are not included in the table (§1026.9(b)(3)(iii)).

3. If no promotional rate applies to the checks, determine that the creditor discloses:

   i. The type of rate that will apply to the checks and the applicable annual percentage rate. For a variable-rate account, a creditor must disclose an annual percentage rate based on the applicable index or formula in accordance with the accuracy requirements set forth in section 1026.9(b)(3)(ii). (§1026.9(b)(3)(i)(B)(1))

4. Determine that the creditor discloses:

   i. Any transaction fees applicable to the checks disclosed under section 1026.6(b)(2)(iv). (§1026.9(b)(3)(i)(C))

   ii. Whether or not a grace period is given within which any credit extended by use of the checks may be repaid without incurring a finance charge due to a periodic interest rate. When disclosing whether there is a grace period, the phrase "How to Avoid Paying Interest on Check Transactions" shall be used as the row heading when a grace period applies to credit extended by the use of the checks. When disclosing the fact that no grace period exists for credit extended by use of the checks, the phrase "Paying Interest" shall be used as the row heading. (§1026.9(b)(3)(i)(D))

   NOTE: The disclosures in section 1026.9(b)(3)(i) must be accurate as of the time the disclosures are mailed or delivered. A variable APR is accurate if it was in effect within 60 days of when the disclosures are mailed or delivered. (§1026.9(b)(3)(ii))

e. Determine, for home-equity plans subject to the requirements of section 1026.40:

   1. Whenever any term required to be disclosed under section 1026.6(a) is changed or the required minimum periodic payment is increased, the creditor mailed or delivered written notice of the change at least 15 days prior to the effective date of the change. If the consumer agreed to the change, determine that notice was provided before the change went into effect. (§1026.9(c)(1)(i))

   2. If the creditor prohibits additional extensions of credit or reduces the credit limit that the creditor mailed or delivered notice of the action not later than three business days after such action is taken. The notice must contain the specific reasons for the action. (§1026.9(c)(1)(iii))

   NOTE: Notice is not required when the change involves a reduction of any component of a finance charge or other charge or when the change results from an agreement involving a court proceeding. (§1026.9(c)(1)(ii))

f. For plans other than home-equity plans subject to the requirements of section 1026.40, except as provided in sections 1026.9(c)(2)(i)(B), (c)(2)(iii) and (c)(2)(v), when a significant change in account terms as described in section 1026.9(c)(2)(ii) is made, determine that the creditor provides a written notice of the change at least 45 days prior to the effective date of the change to each consumer who may be affected. (§1026.9(c)(2)(i)(A))

g. The 45-day timing requirement, however, does not apply if the consumer has agreed to a particular change as described in section 1026.9(c)(2)(i)(B). For these instances, however, determine that the creditor provided a notice in accordance with the timing requirements of section 1026.9(c)(2)(i)(B). (§1026.9(c)(2)(i)(A))

h. For open-end (not home-secured) plans, determine that increases in the rate applicable to a consumer's account due to delinquency, default or as a penalty described in section 1026.9(g) that are not due to a change in the contractual terms of the consumer's account are disclosed pursuant to section 1026.9(g) instead of section 1026.9(c)(2). (§1026.9(c)(2)(i)(A))

i. When a notice of change in terms is required, determine that it is mailed or delivered no later than the effective date of the change, if the consumer agrees to the particular change. section 1026.9(c)(2)(i)(B) applies only when a consumer substitutes collateral or when the creditor can advance additional credit only if a change relatively unique to that consumer is made, such as the consumer's providing additional security or paying an increased minimum payment amount. (§1026.9(c)(2)(i)(B))

   NOTE: The 45-day timing requirements discussed in step f above does not apply in certain narrow circumstances, as described in section 1026.9(c)(2)(i)(B). The following are not considered agreements between the consumer and the creditor for purposes of section 1026.9(c)(2)(i)(B):

   1. The consumer's general acceptance of the creditor's contract reservation of the right to change terms;

   2. The consumer's use of the account (which might imply acceptance of its terms under state law);

   3. The consumer's acceptance of a unilateral term change that is not particular to that consumer, but rather is of general applicability to consumers with that type of account; and,

   4. The consumer's request to reopen a closed account or to upgrade an existing account to another account offered by the creditor with different credit or other features. (§1026.9(c)(2)(i)(B))

j. The 45-day advance notice requirement applies to changes to the following terms (§1026.9(c)(2)(ii)):

   1. APR increase, including each periodic rate that may be used to compute the finance charge on outstanding balances for purchases, a cash advance, or a balance transfer (such rates may include any discounted initial rate, premium initial rate, or penalty rate that may be applied to the account);

      i. Variable-rate information;

      ii. Discounted or premium initial rates;

      iii. Penalty rates;

   2. Fees for issuance or availability, including any fee based upon account activity or inactivity;

3. Fixed finance charge or minimum interest charge, if it exceeds $1.00;

4. Transaction charge for purchases;

5. Grace period;

6. Balance computation method;

7. Cash advance fee;

8. Late payment fee;

9. Over-the-limit fee;

10. Balance transfer fee;

11. Returned payment fee;

12. Required insurance, debt cancellation, or debt suspension coverage; and

13. Increase in required minimum periodic payment, or the acquisition of a security interest.

k. Except as provided in section 1026.9(c)(2)(vi), if a creditor increases any component of a charge, or introduces a new charge, required to be disclosed under section 1026.6(b)(3) that is not a significant change in account terms as described in paragraph (c)(2)(ii) of this section, determine that the creditor either (§1026.9(c)(2)(iii)):

1. Complies with the requirements of section 1026.9(c)(2)(i), or

2. Provides notice of the amount of the charge before the consumer agrees to or becomes obligated to pay the charge, at a time and in a manner that a consumer would be likely to notice the disclosure of the charge, either in writing or orally.

l. Ensure that the written change-in-terms notice contains the following disclosures (§1026.9(c)(2)(iv)(A)):

1. A summary of the changes made to terms required by sections 1026.6(b)(1) and (b)(2) or section 1026.6(b)(4), a description of any increase in the required minimum payment, and a description of any security interests being acquired by the creditor.

2. A statement that changes are being made to the account.

3. For accounts other than credit card accounts under an open-end (not home-secured) consumer credit plan subject to section 1026.9(c)(2)(iv)(B), a statement indicating that the consumer has the right to opt out of the changes, if applicable, and a reference to the opt-out right provided in the notice, if applicable.

4. The date the changes will become effective.

5. If applicable, a statement that the consumer may find additional information about the summarized changes, and other changes, in the notice.

6. In the case of a rate change, other than a penalty rate, a statement that if a penalty rate currently applies to the consumer's account, the new rate described in the notice will not apply to the consumer's account until the consumer's account balances are no longer subject to the penalty rate.

7. If the change in terms being disclosed is an increase in the APR, the balances to which the increased rate will apply. If applicable, creditors should disclose a statement identifying the balances to which the current rate will apply as of the effective date of the change.

8. If the change in terms being disclosed is an increase in an annual percentage rate for a credit card account under an open-end (not home-secured) consumer credit plan, a statement of no more than four principal reasons for the rate increase, listed in their order of importance.

   NOTE: The disclosed reasons must accurately describe the principal factors actually considered by the card issuer in increasing the rate. (Comment §1026.9(c)(2)(iv)-11)

m. In addition to the disclosures in section 1026.9(c)(2)(iv)(A), if a card issuer makes a significant change in account terms on a credit card account under an open-end (not home-secured) consumer credit plan, determine that the creditor provides the following information on the notice provided pursuant to section 1026.9(c)(2)(i) (§1026.9(c)(2)(iv)(B)):

   NOTE: This information is not required to be provided in the case of an increase in the required minimum periodic payment, an increase in a fee as a result of a reevaluation of a determination made under section 1026.52(b)(1)(i) or an adjustment to the safe harbors in section 1026.52(b)(1)(ii) to reflect changes in the Consumer Price Index, a change in an annual percentage rate applicable to a consumer's account, an increase in a fee previously reduced consistent with 50 U.S.C. app. 527 (Servicemembers Civil Relief Act) or similar federal or state statute or regulation if the amount of the increased fee does not exceed the amount of that fee prior to the reduction, or when the change results from the creditor not receiving the consumer's required minimum periodic payment within 60 days after the due date for that payment.

   1. A statement that the consumer has the right to reject the change or changes prior to the effective date of the changes, unless the consumer fails to make a required minimum periodic payment within 60 days after the due date for that payment;

   2. Instructions for rejecting the change or changes, and a toll-free telephone number that the consumer may use to notify the creditor of the rejection; and

3. If applicable, a statement that if the consumer rejects the change or changes, the consumer's ability to use the account for further advances will be terminated or suspended.

n. *Changes resulting from failure to make minimum periodic payment within 60 days from due date for credit card accounts under an open-end (not home-secured) consumer credit plan.* For a credit card account under an open-end (not home-secured) consumer credit plan (§1026.9(c)(2)(iv)(C)):

1. If the significant change required to be disclosed pursuant to section 1026.9(c)(2)(i) of this section is an increase in an annual percentage rate or a fee or charge required to be disclosed under sections 1026.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii) based on the consumer's failure to make a minimum periodic payment within 60 days from the due date for that payment, determine that the notice provided pursuant to paragraph (c)(2)(i) of this section states that the increase will cease to apply to transactions that occurred prior to or within 14 days of provision of the notice, if the creditor receives six consecutive required minimum periodic payments on or before the payment due date, beginning with the first payment due following the effective date of the increase.

2. If the significant change required to be disclosed pursuant to section 1026.9(c)(2)(i) is an increase in a fee or charge required to be disclosed under sections 1026.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii) based on the consumer's failure to make a minimum periodic payment within 60 days from the due date for that payment, determine that the notice provided pursuant to section 1026.9(c)(2)(i) also states the reason for the increase.

o. Determine that the summary of changes described in section 1026.9(c)(2)(iv)(A)(1) is in a tabular format (except for a summary of any increase in the required minimum periodic payment, a summary of a term required to be disclosed under section 1026.6(b)(4) that is not required to be disclosed under section 1026.6(b)(1) and (b)(2), or a description of any security interest being acquired by the creditor), with headings and format substantially similar to any of the account-opening tables found in G–17 in appendix G. Determine that the table discloses the changed term and information relevant to the change, if that relevant information is required by section 1026.6(b)(1) and (b)(2). Determine that the new terms are described in the same level of detail as required when disclosing the terms under section 1026.6(b)(2). (§1026.9(c)(2)(iv)(D)(1))

p. If a notice required by section 1026.9(c)(2)(i) (change in terms) is included on or with a periodic statement, determine that the information described in section 1026.6(c)(2)(iv)(A)(1) is disclosed on the front of any page of the statement. Determine that the summary of changes described in section 1026.9(c)(2)(iv)(A)(1) immediately follows the information described in section 1026.9(c)(2)(iv)(A)(2) through section 1026.9(c)(2)(iv)(A)(7) and, if applicable, sections 1026.9(c)(2)(iv)(A)(8), 1026.9(c)(2)(iv)(B), and 1026.9(c)(2)(iv)(C), and is substantially similar to the format shown in Sample G-20 or G-21 in appendix G to this part. (§1026.9(c)(2)(iv)(D)(2))

q. If a notice required by section 1026.9(c)(2)(i) is not included on or with a periodic statement, determine that the information described in section 1026.9(c)(2)(iv)(A)(1) is disclosed on the front of the first page of the notice or segregated on a separate page from other information given with the notice. (§1026.9(c)(2)(iv)(D)(3))

   NOTE: The summary of changes required to be in a table pursuant to paragraph (c)(2)(iv)(A)(1) of this section may be on more than one page, and may use both the front and reverse sides, so long as the table begins on the front of the first page of the notice and there is a reference on the first page indicating that the table continues on the following page.

r. Determine that the summary of changes described in section 1026.9(c)(2)(iv)(A)(1) immediately follows the information described in section 1026.9(c)(2)(iv)(A)(2) through section 1026.9(c)(2)(iv)(A)(7) and, if applicable, sections 1026.9(c)(2)(iv)(A)(8), (c)(2)(iv)(B), and (c)(2)(iv)(C), of this section, and is substantially similar to the format shown in Sample G-20 or G-21 in appendix G to this part. (§1026.9(c)(2)(iv)(D)(3))

s. For open-end plans (other than home equity plans subject to the requirements of section 1026.40), note that a creditor is not required to provide notice under this section if (§1026.9(c)(2)(v)):

   1. The change involves:

      i. Charges for documentary evidence;

      ii. A reduction of any component of a finance or other charge;

      iii. A suspension of future credit privileges (except as provided in section 1026.9(c)(2)(vi) of this section) or termination of an account or plan;

      iv. When the change results from an agreement involving a court proceeding;

      v. When the change is an extension of the grace period; or

      vi. The change is applicable only to checks that access a credit card account and the changed terms are disclosed on or with the checks in accordance with section 1026.9(b)(3) (§1026.9(c)(2)(v)(A));

   2. The change is an increase in an APR upon the expiration of a specified period of time, provided that (§1026.9(c)(2)(v)(B)):

      i. Prior to commencement of that period, the creditor disclosed in writing to the consumer, in a clear and conspicuous manner, the length of the period and the APR or fee that would apply after expiration of the period;

      ii. The disclosure of the length of the period and the APR or fee that would apply after expiration of the period are set forth in close proximity and in equal prominence to the first listing of the disclosure of the rate or fee that applies during the specified period of time; and

iii. The APR or fee that applies after that period does not exceed the rate disclosed pursuant to section 1026.9(c)(2)(v)(B)(1) or, if the rate disclosed pursuant to section 1026.9(c)(2)(v)(B)(1) was a variable rate, the rate following any such increase is a variable rate determined by the same formula (index and margin) that was used to calculate the variable rate disclosed pursuant to section 1026.9(c)(2)(v)(B)(1);

3. The change is an increase in a variable APR in accordance with a credit card or other account agreement that provides for changes in the rate according to operation of an index that is not under the control of the creditor and is available to the general public (§1026.9(c)(2)(v)(C)); or

4. The change is an increase in an APR, a fee or charge required to be disclosed under sections 1026.6(b)(2)(ii), (b)(2)(iii), (b)(2)(viii), (b)(2)(ix) or (b)(2)(xii), or the required minimum periodic payment due to the completion of a workout or temporary hardship arrangement by the consumer or the consumer's failure to comply with the terms of such an arrangement, provided that (§1026.9(c)(2)(v)(D)):

   i. The APR or fee or charge applicable to a category of transactions or the required minimum periodic payment following any such increase does not exceed the rate or fee or charge or required minimum periodic payment that applied to that category of transactions prior to commencement of the arrangement or, if the rate that applied to a category of transactions prior to the commencement of the workout or temporary hardship arrangement was a variable rate, the rate following any such increase is a variable rate determined by the same formula (index and margin) that applied to the category of transactions prior to commencement of the workout or temporary hardship arrangement; and

   ii. The creditor has provided the consumer, prior to the commencement of such arrangement, with a clear and conspicuous disclosure of the terms of the arrangement (including any increases due to such completion or failure). This disclosure must generally be provided in writing. However, a creditor may provide the disclosure of the terms of the arrangement orally by telephone, provided that the creditor mails or delivers a written disclosure of the terms of the arrangement to the consumer as soon as reasonably practicable after the oral disclosure is provided.

t. For open-end plans that are not subject to the requirements of section 1026.40, if a creditor decreases the credit limit on the account, determine that advance notice of the decrease is provided before an over-the-limit fee or a penalty rate can be imposed solely as a result of the consumer exceeding the newly decreased credit limit. Determine that notice is provided in writing or orally at least 45 days prior to imposing the over-the-limit fee or penalty rate and that it states that the credit limit on the account has been or will be decreased. (§1026.9(c)(2)(vi))

u. Determine that the disclosures contained in section 1026.60(b)(1) through (b)(7) are provided if the account is renewed and (1) the card issuer imposes an annual or other periodic fee for the renewal or (2) the card issuer has changed or amended any term of the account required to be disclosed under section 1026.6(b)(1) and (b)(2) that has not previously been disclosed to the consumer. Additionally, the disclosure provided upon renewal must disclose how and when the cardholder may terminate the credit to avoid paying the renewal fee, if any. (§1026.9(e))

v. For plans other than home-equity plans subject to the requirements of section 1026.40 (except as provided in section 1026.9(g)(4)), determine that the creditor provides a written notice to each consumer who may be affected when (§1026.9(g)(1)):

    1. A rate is increased due to the consumer's delinquency or default; or

    2. A rate is increased as a penalty for one or more events specified in the account agreement, such as making a late payment or obtaining an extension of credit that exceeds the credit limit.

w. Whenever any notice is required to be given pursuant to paragraph (g)(1) of this section, determine that the creditor provided written notice of the increase in rates at least 45 days prior to the effective date of the increase. The notice must be provided after the occurrence of the events described in section 1026.9(g)(1)(i) and (g)(1)(ii) that trigger the imposition of the rate increase. (§1026.9(g)(2))

x. If a creditor is increasing the rate due to delinquency or default or as a penalty, determine that the creditor provided the following information on the notice sent pursuant to section 1026.9(g)(1) (§1026.9(g)(3)(i)(A)):

    1. A statement that the delinquency or default rate or penalty rate, as applicable, has been triggered;

    2. The date on which the delinquency or default rate or penalty rate will apply;

    3. The circumstances under which the delinquency or default rate or penalty rate, as applicable, will cease to apply to the consumer's account, or that the delinquency or default rate or penalty rate will remain in effect for a potentially indefinite time period;

    4. A statement indicating to which balances the delinquency or default rate or penalty rate will be applied;

    5. If applicable, a description of any balances to which the current rate will continue to apply as of the effective date of the rate increase, unless a consumer fails to make a minimum periodic payment within 60 days from the due date for that payment; and

    6. For a credit card account under an open-end (not home-secured) consumer credit plan, a statement of no more than four principal reasons for the rate increase, listed in their order of importance.

NOTE: The disclosed reasons must accurately describe the principal factors actually considered by the card issuer in increasing the rate. (Commentary §1026.9(g) - 7)

y. For a credit card account under an open-end (not home-secured) consumer credit plan, if the rate increase required to be disclosed pursuant to paragraph (g)(1) of this section is an increase pursuant to section 1026.55(b)(4) based on the consumer's failure to make a minimum periodic payment within 60 days from the due date for that payment, determine that the notice provided pursuant to paragraph (g)(1) of this section also states that the increase will cease to apply to transactions that occurred prior to or within 14 days of provision of the notice, if the creditor receives six consecutive required minimum periodic payments on or before the payment due date, beginning with the first payment due following the effective date of the increase. (§1026.9(g)(3)(i)(B))

z. If a notice required by section 1026.9(g)(1) (*Increase in rates due to delinquency or default or as a penalty)* is included on or with a periodic statement, determine that the disclosure described in paragraph (g)(3)(i) is in the form of a table and provided on the front of any page of the periodic statement, above the notice described in paragraph (c)(2)(iv) of this section if that notice is provided on the same statement. (§1026.9(g)(3)(ii)(A))

aa. If a notice required by section 1026.9(g)(1) (increase in rates) is not included on or with a periodic statement, determine that the information described in section 1026.9(g)(3)(i) is disclosed on the front of the first page of the notice. Ensure that only information related to the increase in the rate to a penalty rate is included with the notice.

NOTE: This notice may be combined with a notice described in sections 1026.9(c)(2)(iv) or (g)(4) (A statement indicating to which balances the delinquency or default rate or penalty rate will be applied) of this section. (§1026.9(g)(3)(ii)(B))

bb. *Exception for Decreases in the Credit Limit* – If a creditor does not provide the 45-day notice under section 1026.9(g)(1) prior to increasing the rate for obtaining an extension of credit that exceeds the credit limit, determine that the creditor provides at least 45 days in advance of imposing the penalty rate a notice, in writing, that includes (§1026.9(g)(4)):

1. A statement that the credit limit on the account has or will be decreased.

2. The date on which the penalty rate will apply, if the outstanding balance exceeds the credit limit as of that date;

3. A statement that the penalty rate will not be imposed on that date, if the outstanding balance does not exceed the credit limit as of that date;

4. The circumstances under which the penalty rate, if applied, will cease to apply to the account, or that the penalty rate, if applied, will remain in effect for a potentially indefinite period of time;

5. A statement indicating to which balances the penalty rate may be applied; and

6. If applicable, a description of any balances to which the current rate will continue to apply as of the effective date of the rate increase, unless the consumer fails to make a minimum periodic payment within 60 days from the due date for that payment.

   In addition to this notice, determine that the creditor does not increase the applicable rate to the penalty rate if the outstanding balance does not exceed the credit limit on the date set forth in the notice. (§1026.9(g)(4)(ii))

cc. If a notice provided pursuant to section 1026.9(g)(4)(i) is included on or with a periodic statement, determine that the information described in section 1026.9(g)(4)(i) is in the form of a table and provided on the front of any page of the periodic statement (§1026.9(g)(4)(iii)(A)); or,

dd. If a notice required by section 1026.9(g)(4)(i) is not included on or with a periodic statement, determine that the information described in section 1026.9(g)(4)(i) is disclosed on the front of the first page of the notice. Determine that only information related to the reduction in credit limit is included with the notice, except that this notice may be combined with a notice described in sections 1026.9(c)(2)(iv) or (g)(1). (§1026.9(g)(4)(iii)(B))

ee. When the consumer is given the right to reject a significant change to an account term prior to the effective date of the change, determine whether the consumer was given the option to reject the change by notifying the creditor of the rejection before the effective date of the change. (§1026.9(h)(1))

ff. If the creditor was notified of the rejection of a significant change to an account term, determine that the creditor did not:

   1. Apply the charge to the account;

   2. Impose a fee or charge or treat the account as in default solely as a result of the rejection; or

   3. Require repayment of the balance on the account using a method that is LESS beneficial to the consumer than one of the following methods:

      a. The method of repayment for the account on the date on which the creditor was notified of the rejection;

      b. An amortization period of not less than five years, beginning no earlier than the date on which the creditor was notified of the rejection; or

      c. A required minimum periodic payment that includes a percentage of the balance that is equal to no more than twice the percentage required on the date on which the creditor was notified of the rejection. (§1026.9(h)(2))

   NOTE: These requirements do not apply if the creditor has not received the consumer's required minimum periodic payment within 60 days after the due date for

that payment and the creditor has provided timely change in terms disclosures. (§1026.9(h)(3))

gg. Determine that a statement of the maximum interest rate that may be imposed during the term of the obligation is made for any dwelling-secured loan in which the APR may increase during the plan. (§1026.30(b))

hh. For any open-end mortgage loan (credit transaction that is secured by the principal dwelling of a consumer) that was sold, assigned, or otherwise transferred to the covered person, determine that the covered person notifies the borrower in writing of such transfer, including (§1026.39):

1. An identification of the loan that was sold, assigned, or otherwise transferred;
2. The name, address, and telephone number of the covered person who owns the mortgage loan;
3. The date of transfer (either the date of acquisition recognized in the books and records of the covered person or that of the transferring party) identified by the covered person;
4. The name, address, and telephone number of an agent or party having authority, on behalf of the covered person, to receive notice of the right to rescind and resolve issues concerning the consumer's payments on the mortgage loan;
5. Where transfer of ownership of the debt to the covered person is or may be recorded in public records or, alternatively, that the transfer of ownership has not been recorded in public records at the time the disclosure is provided; and
6. At the option of the covered person, any other relevant information regarding the transaction.
7. If there are multiple covered persons, contact information for each of them, unless one of them has been authorized to receive the consumer's notice of the right to rescind and resolve issues concerning the consumer's payments on the loan. (§§1026.39(d)-(e))

   NOTE: This notice of sale or transfer must be provided for any consumer credit transaction that is secured by the principal dwelling of a consumer. This notification is required by the covered person even if the loan servicer remains the same. In addition, if more than one consumer is liable on the obligation, the covered person may mail or deliver the disclosure notice to any consumer who is primarily liable. And, if an acquisition involves multiple covered persons who each acquire a partial interest in the loan pursuant to separate and unrelated agreements, each covered person has a duty to ensure that disclosures related to its acquisition are accurate and provided in a timely manner unless an exception in 1026.39(c) applies. The parties may, but are not required to, provide a single notice that satisfies the timing and

content requirements applicable to each covered person. (Commentary §1026.39(b)(5) – 2)

Disclosure Requirements for Over-the-Limit Transactions – Section 1026.56

a. Determine that the oral, written or electronic "opt-in" notice includes all of the following applicable items (and not any information not specified in or otherwise permitted) (§1026.56(e)(1)):

   1. *Fees* – The dollar amount of any fees or charges assessed by the card issuer on a consumer's account for an over-the-limit transaction;

   2. *APR(s)* – Any increased periodic rate(s) (expressed as an APR(s)) that may be imposed on the account as a result of an over-the-limit transaction; and

   3. *Disclosure of opt-in right* – An explanation of the consumer's right to affirmatively consent to the card issuer's payment of over-the-limit transactions, including the method(s) by which the consumer may consent.

b. Determine that the written notice informing the consumer of the right to revoke consent following the assessment of an over-the-limit fee or charge describes that right, including the method(s) by which the consumer may revoke consent. (§1026.56(e)(2))

Reverse Mortgage Forms Review Procedures (Both Open- and Closed-End)

a. Determine that the disclosures required for reverse mortgage transactions are substantially similar to the model form in appendix K and include the items below (§1026.33):

   1. A statement that the consumer is not obligated to complete the reverse mortgage transaction merely because he or she has received the disclosures or signed an application.

   2. A good faith projection of the total cost of the credit expressed as a table of "total annual loan cost rates" including payments to the consumer, additional creditor compensation, limitations on consumer liability, assumed annual appreciation, and the assumed loan period.

   3. An itemization of loan terms, charges, the age of the youngest borrower, and the appraised property value.

   4. An explanation of the table of total annual loan costs rates.

NOTE: Forms that include or involve current transactions, such as change in terms notices, periodic billing statements, rescission notices, and billing error communications, are verified for accuracy when the file review worksheets are completed.

Timing Requirements

6. Review financial institution policies, procedures, and systems to determine, either separately or when completing the actual file review, whether the applicable disclosures listed below are furnished when required by Regulation Z. Take into account products that have different features, such as closed-end loans or credit card accounts that are fixed or variable rate.

   a. *Credit card application and solicitation disclosures* – On or with the application (§1026.60(b))

   b. *HELOC disclosures* – At the time the application is provided or within three business days under certain circumstances. (§1026.40(b))

   c. *Open-end credit initial disclosures* – Before the first transaction is made under the plan. (§1026.5(b)(1))

   d. *Card Holder Agreement* – Verify that the card issuer sends to the cardholder or otherwise make available to the cardholder a copy of the cardholder's agreement in electronic or paper form no later than 30 days after the issuer receives the cardholder's request (§1026.58(e)(1)(ii)). Determine that the issuer has adequate procedures for ensuring that this requirement is met.

   e. *Periodic statement disclosures for open-end credit under section 1026.7* – Required if at the end of a billing cycle, the account has a debit or credit balance of $1 or more or if a finance charge has been imposed (§1026.5(b)(2)(i)). Also, the creditor must adopt reasonable procedures designed to ensure that periodic statements for credit card accounts are mailed or delivered at least 21 days prior to the payment due date and the date on which any grace period expires (for non-credit card open-end credit, there is a 21-day rule if there is a grace period and a 14-day rule if there is no grace period). (§1026.5(b)(2)(ii)(B)(2))

   f. *Statement of billing rights* – At least once per year. (§1026.9(a))

   g. *Supplemental credit devices* – Before the first transaction under the plan. (§1026.9(b))

   h. *Open-end credit change in significant terms as a result of a change in contractual terms* – 45 days prior to the effective change date. (§1026.9(c)(2))

   i. *Open-end change in terms or rates due to delinquency or default or as a penalty* – 45 days prior to the effective change date. (§1026.9(g))

   j. *Finance charge imposed at time of transaction* – Prior to imposing any fee. (§1026.9(d))

k. *Disclosures upon renewal of credit or charge card* – 30 days or one billing cycle, whichever is less before the delivery of the periodic statement on which the renewal fee is charged, or at least 30 days prior to the scheduled renewal date if the creditor has changed or amended any term required to be disclosed under section 1026.6(b)(1) and (b)(2) that has not previously been disclosed to the consumer. (§1026.9(e))

l. *Change in credit account insurance provider* – Certain information 30 days before the change in provider occurs and certain information 30 days after the change in provider occurs. The institution may provide a combined disclosure 30 days before the change in provider occurs. (§1026.9(f))

m. *Closed-end credit disclosures* – Before consummation. (§1026.17(b))

n. For disclosures for dwelling-secured transactions subject to RESPA (other than open-end), multiple timing requirements apply. Determine whether the creditor provides early disclosures within three business days after receiving the consumer's written application. The creditor is required to deliver or mail the early disclosures no later than three business days after receiving the consumer's application and at least seven business days before consummation (§§1026.19(a)(1)(i) and 1026.19(a)(2)(i)). If the APR stated in the early disclosures is not considered accurate under section 1026.22 when compared to the APR at consummation, determine whether the creditor provided corrected disclosures of all changed terms, including the APR, that the consumer received no later than the third business day before consummation. (§1026.19(a)(2)(ii))

o. *Disclosures for high-cost mortgages* – Three business days prior to consummation or account opening. If such disclosures became inaccurate due to a change by the creditor, ensure that the creditor provided new, accurate disclosures no later than three business days prior to consummation or account opening. (§1026.31(c)(1))

p. *Disclosures for reverse mortgages* – Three days prior to consummation of a closed-end credit transaction or prior to the first transaction under an open-end credit plan. (§1026.31(c)(2))

q. Disclosures for initial rate change to an adjustable-rate mortgage securing a principal dwelling with terms of more than one year:

    1. For adjustable-rate mortgages, creditors, assignees, or servicers are generally required to provide information regarding the first interest rate change to consumers between 210 and 240 days prior to the date the first payment at the new rate is due;

       NOTE: If the first payment change occurs within the first 210 days, creditors, assignees, or servicers are required to provide the disclosure at consummation.
    2. For adjustable-rate mortgages, verify that the creditor, assignee, or servicer provided consumers with disclosures of the new rate and payment within the first 210 days after consummation.

NOTE: When examining a creditor that continues to own the loan, an assignee, or a servicer, if the entity states that another entity has the obligation to provide the disclosures, examiners should determine whether the entity takes steps to ensure that the other party (the creditor, assignee, or servicer, as applicable) is complying with the obligation to provide the disclosures.

r. Additional disclosures for adjustable-rate mortgages securing a principal dwelling with a term of more than one year, where a rate change affects the amount of payment:

   1. For adjustable-rate mortgages where the payment changes with a rate change, disclosures must be provided to consumers between 60 and 120 days before the first payment at the new rate is due;

   2. For adjustable-rate mortgages where the payment change is caused by a rate change that is uniformly scheduled every 60 days (or more frequently), disclosures must be provided to consumers between 25 and 120 days before the first payment at the new rate;

   3. For adjustable-rate mortgages originated prior to January 10, 2015, where the interest rate and payment are calculated based on an index that is available less than 45 days prior to the change, disclosures must be provided between 25 and 120 days before the first payment at the new rate is due; and

   4. For adjustable-rate mortgages where the payment adjustment occurs within 60 days of consummation and the new interest rate after adjustment provided at consummation was an estimate, disclosure are required as soon as practicable, but no later than 25 days prior to the first payment at the new rate is due. (§1026.20(c))

s. *Notice of new creditor* (§1026.39) – On or before the 30th calendar day following the acquisition.

t. For private education loans subject to Subpart F (§1026.46), determine that:

   1. Application or solicitation disclosures were provided on or with any application or solicitation (§1026.46(d)(1)(i));

   2. Approval disclosures were provided before consummation on or with any notice of approval provided to the consumer (§1026.46(d)(2)); and

   3. Final disclosures were provided after the consumer accepts the loan and at least three business days prior to disbursing the private education loan funds. (§1026.46(d)(3))

u. Determine that the issuer provides a written over-the-limit notice prior to the assessment of any over-the-limit fee or charge on a consumer's account. (§1026.56(d)(1)(i))

v. Determine that, if a consumer consents to the card issuer's payment of any over-the-limit transaction by oral or electronic means, the card issuer provides the required written notice immediately prior to obtaining that consent. (§1026.56(d)(1)(ii))

w. Determine that the notice confirming the consumer's consent is provided no later than the first periodic statement sent after the consumer has consented to the card issuer's payment of over-the-limit transactions. The creditor must not assess an over-the-limit fee on the consumer's account without first providing written confirmation. (§1026.56(d)(2))

x. Determine that the notice providing the consumer notice in writing of the right to revoke consent following the assessment of an over-the-limit fee or charge is provided on the front of any page of each periodic statement that reflects the assessment of an over-the-limit fee or charge on a consumer's account. (§1026.56(d)(3))

y. For home-equity plans subject to the requirements of section 1026.40, whenever any term required to be disclosed under section 1026.6(a) is changed or the required minimum periodic payment is increased, determine that the creditor mails or delivers written notice of the change to each consumer who may be affected. Determine that the notice is mailed or delivered at least 15 days prior to the effective date of the change. If the change has been agreed to by the consumer, determine that the notice is given before the effective date of the change. (§1026.9(c)(1)(i))

z. *Notice to restrict credit.* For home-equity plans subject to the requirements of section 1026.40, if the creditor prohibits additional extensions of credit or reduces the credit limit pursuant to section 1026.40(f)(3)(i) or (f)(3)(vi), determine that the creditor mails or delivers written notice of the action to each consumer who will be affected not later than three business days after the action is taken and contains specific reasons for the action. If the creditor requires the consumer to request reinstatement of credit privileges, determine that the notice states that fact. (§1026.9(c)(1)(iii))

Electronic Disclosures

7. Assess compliance for an institution's electronic disclosure requirements.

E-Sign Act

a. Disclosures 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 E-Sign Act does not mandate that institutions or consumers use or accept electronic records or signatures. It permits institutions to satisfy any statutory or regulatory requirements by providing the information electronically after obtaining the consumer's affirmative consent. Before consent can be given, consumers must be provided with the following information:

    1. Any right or option to have the information provided in paper or non-electronic form;

    2. The right to withdraw the consent to receive information electronically and the consequences, including fees, of doing so;

3. The scope of the consent (for example, whether the consent applies only to a particular transaction or to identified categories of records that may be provided during the course of the parties' relationship);

4. The procedures to withdraw consent and to update information needed to contact the consumer electronically; and

5. The methods by which a consumer may obtain, upon request, a paper copy of an electronic record after consent has been given to receive the information electronically and whether any fee will be charged.

b. The consumer must consent electronically or confirm consent electronically in a manner that "reasonably demonstrates that the consumer can access information in the electronic form that will be used to provide the information that is the subject of the consent." After the consent, if an institution changes the hardware or software requirements such that a consumer may be prevented from accessing and retaining information electronically, the institution must notify the consumer of the new requirements and must allow the consumer to withdraw consent without charge.

c. If the financial institution makes its disclosures available to consumers in electronic form, determine that the forms comply with the appropriate sections – §1026.5(a)(1); §1026.15(b); §1026.16(c); §1026.17(a)(1); §1026.17(g); §1026.19(c); §1026.23(b)(1); §1026.24(d); §1026.31(b); §1026.40(a)(3); and §1026.60(a)(2)(v).

d. Card issuers may provide credit card agreements in electronic form under section 1026.58(d) and (e) without regard to the consumer notice and consent requirements of section 101(c) of the E-Sign Act. (§1026.58(f))

Annual Report to the CFPB – Section 1026.57

a. If the card issuer was a party to one or more college credit card agreements in effect at any time during a calendar year, verify that the card issuer submits to the CFPB an annual report regarding those agreements in the form and manner prescribed by the CFPB. (§1026.57(d)(1))

   NOTE: A college credit card agreement is any business, marketing, or promotional agreement between a card issuer and an institution of higher education (or an affiliated alumni organization or foundation) in connection with which credit cards are issued to college students at that institution of higher education. (§1026.57(a)(5))

b. The annual report to the CFPB must include the following (§1026.57(d)(2)):

   1. Identifying information about the card issuer and the agreements submitted, including the issuer's name, address, and identifying number (such as an RSSD ID number or tax identification number);

2. A copy of any college credit card agreement to which the card issuer was a party that was in effect at any time during the period covered by the report;

3. A copy of any memorandum of understanding in effect at any time during the period covered by the report between the card issuer and an institution of higher education or affiliated organization that directly or indirectly relates to the college credit card agreement or that controls or directs any obligations or distribution of benefits between any such entities;

4. The total dollar amount of any payments pursuant to a college credit card agreement from the card issuer to an institution of higher education or affiliated organization during the period covered by the report, and the method or formula used to determine such amounts;

5. The total number of credit card accounts opened pursuant to any college credit card agreement during the period covered by the report; and

6. The total number of credit card accounts opened pursuant to any such agreement that were open at the end of the period covered by the report.

c. If the card issuer is subject to reporting, determine if the card issuer submits its annual report for each calendar year to the CFPB by the first business day on or after March 31 of the following calendar year. (§1026.57(d)(3))

The Submission of Agreements to the CFPB – Section 1026.58(c)

a. For card issuers that issue credit cards under a credit card account under an open-end (not home-secured) consumer credit plan, determine that the card issuer makes quarterly submissions to the CFPB in the form and manner specified by the CFPB that contain:

1. Identifying information about the card issuer and the agreements submitted, including the issuer's name, address, and identifying number (such as an RSSD ID number or tax identification number) (§1026.58(c)(1)(i));

2. The credit card agreements that the card issuer offered to the public as of the last business day of the preceding calendar quarter that the card issuer has not previously submitted to the CFPB (§1026.58(c)(1)(ii));

3. Any credit card agreement previously submitted to the CFPB that was amended during the preceding calendar quarter and that the card issuer offered to the public as of the last business day of the preceding calendar quarter as described in section 1026.58(c)(3) (§1026.58(c)(1)(iii)); and

4. Notification regarding any credit card agreement previously submitted to the CFPB that the issuer is withdrawing, as described in section 1026.58(c)(4), (c)(5), (c)(6), and (c)(7) (§1026.58(c)(1)(iv)).

b. Verify that quarterly submissions were sent to the CFPB no later than the first business day on or after January 31, April 30, July 31, and October 31, of each year. (§1026.58(c)(1))

c. If a credit card agreement that previously has been submitted to the CFPB is amended, verify that the card issuer submits the entire amended agreement to the CFPB, in the form and manner specified by the CFPB, by the first quarterly submission deadline after the last day of the calendar quarter in which the change became effective. (§1026.58(c)(3))

   NOTE: If a credit card agreement has been submitted to the CFPB, the agreement has not been amended and the card issuer continues to offer the agreement to the public, no additional submission regarding that agreement is required.

d. If a card issuer no longer offers to the public a credit card agreement that previously has been submitted to the CFPB, ensure that the card issuer notifies the CFPB by the first quarterly submission deadline after the last day of the calendar quarter in which the issuer ceased to offer the agreement. (§1026.58(c)(4))

   NOTE: A card issuer is not required to submit any credit card agreements to the CFPB if the card issuer had fewer than 10,000 open credit card accounts as of the last business day of the calendar quarter. (§1026.58(c)(5)(i))

e. If an issuer that previously qualified for the *de minimis* exception ceases to qualify, determine that the card issuer begins making quarterly submissions to the CFPB no later than the first quarterly submission deadline after the date as of which the issuer ceased to qualify. (§1026.58(c)(5)(ii))

f. If a card issuer that did not previously qualify for the *de minimis* exception qualifies for the *de minimis* exception, determine that the card issuer continues to make quarterly submissions to the CFPB until the issuer notifies the CFPB that the card issuer is withdrawing all agreements it previously submitted to the CFPB. (§1026.58(c)(5)(iii))

g. A card issuer is not required to submit to the CFPB a credit card agreement if, as of the last business day of the calendar quarter, the agreement is offered for accounts under one or more private label credit card plans each of which has fewer than 10,000 open accounts and is not offered to the public other than for accounts under such a plan. (§1026.58(c)(6)(i))

   NOTE: A private label credit card is one that is usable only at a single merchant or affiliated group of merchants. A private label credit card plan is all private label credit card accounts issued by a particular issuer with credit cards usable at the same single merchant or affiliated group of merchants. (§1026.58(b)(8))

h. If an agreement that previously qualified for the private label credit card exception ceases to qualify, determine that the card issuer submits the agreement to the CFPB no later than the first quarterly submission deadline after the date as of which the agreement ceased to qualify. (§1026.58(c)(6)(ii))

i. If an agreement that did not previously qualify for the private label credit card exception qualifies for the exception, determine that the card issuer continues to make quarterly submissions to the CFPB with respect to that agreement until the issuer notifies the CFPB that the agreement is being withdrawn. (§1026.58(c)(6)(iii))

   NOTE: A card issuer is not required to submit to the CFPB a credit card agreement if, as of the last business day of the calendar quarter, the agreement is offered as part of a product test offered to only a limited group of consumers for a limited period of time, is used for fewer than 10,000 open accounts, and is not offered to the public other than in connection with such a product test. (§1026.58(c)(7)(i))

j. If an agreement that previously qualified for the product testing exception ceases to qualify, determine that the card issuer submits the agreement to the CFPB no later than the first quarterly submission deadline after the date as of which the agreement ceased to qualify. (§1026.58(c)(7)(ii))

k. If an agreement that did not previously qualify for the product testing exception qualifies for the exception, determine that the card issuer continues to make quarterly submissions to the CFPB with respect to that agreement until the issuer notifies the CFPB that the agreement is being withdrawn. (§1026.58(c)(7)(iii))

l. Verify that each agreement contains the provisions of the agreement and the pricing information in effect as of the last business day of the preceding calendar quarter. (§1026.58(c)(8)(i)(A))

m. Verify that agreements do not include any personally identifiable information relating to any cardholder, such as name, address, telephone number, or account number. (§1026.58(c)(8)(i)(B))

n. Verify that agreements are presented in a clear and legible font. (§1026.58(c)(8)(i)(D))

o. Verify that pricing information is set forth in a single addendum to the agreement that contains only the pricing information. (§1026.58(c)(8)(ii)(A))

   NOTE: With respect to information other than the pricing information that may vary between cardholders depending on creditworthiness, state of residence, or other factors, issuers may, but are not required to, include that information in a single addendum (the optional variable terms addendum) to the agreement separate from the pricing addendum (§1026.58(c)(8)(iii)).

p. If pricing information varies from one cardholder to another depending on the cardholder's creditworthiness or state of residence or other factors, verify that the pricing information is disclosed either by setting forth all the possible variations (such as purchase APRs of 13 percent, 15 percent, 17 percent, and 19 percent) or by providing a range of possible variations (such as purchase APRs ranging from 13 percent to 19 percent). (§1026.58(c)(8)(ii)(B))

q. If a rate included in the pricing information is a variable rate, verify that the issuer identifies the index or formula used in setting the rate and the margin. (§1026.58(c)(8)(ii)(C))

r. If rates vary from one cardholder to another, verify that the issuer discloses such rates by providing the index and the possible margins (such as the prime rate plus 5 percent, 8 percent, 10 percent, or 12 percent) or range of margins (such as the prime rate plus from 5 to 12 percent). (§1026.58(c)(8)(ii)(C))

   NOTE: The value of the rate and the value of the index are not required to be disclosed.

s. Determine that issuers do not provide provisions of the agreement or pricing information in the form of change-in-terms notices or riders (other than the pricing information addendum and the optional variable terms addendum). (§1026.58(c)(8)(iv))

t. Determine that changes in provisions or pricing information are integrated into the text of the agreement, the pricing information addendum or the optional variable terms addendum, as appropriate. (§1026.58(c)(8)(iv))

The Posting of Agreements Offered to the Public – Section 1026.58(d)

a. Determine that the card issuer posts and maintains on its publicly available website the credit card agreements that the issuer is required to submit to the CFPB under section 1026.58(c). (§1026.58(d)(1))

b. With respect to an agreement offered solely for accounts under one or more private label credit card plans (and the issuer does not post and maintain the agreements on its publicly available website), determine that the issuer posts and maintains the agreement on the publicly available website of at least one of the merchants where cards issued under each private label credit card plan with 10,000 or more open accounts may be used. (§1026.58(d)(1))

c. Verify that agreements posted pursuant to section 1026.58(d) conform to the form and content requirements for agreements submitted to the CFPB specified in section 1026.58(c)(8). (§1026.58(d)(2))

d. Determine that agreements are posted in an electronic format that is readily usable by the general public. (§1026.58(d)(3))

e. Verify that agreements are placed in a location on its website that is prominent and readily accessible by the public and accessible without submission of personally identifiable information. (§1026.58(d)(3))

f. Determine that the card issuer updates the agreements posted on its website at least as frequently as the quarterly schedule required for submission of agreements to the CFPB under section 1026.58(c). (§1026.58(d)(4))

NOTE: If the issuer chooses to update the agreements on its website more frequently, the agreements posted on the issuer's website may contain the provisions of the agreement and the pricing information in effect as of a date other than the last business day of the preceding calendar quarter.

The Posting of Agreements for "Open" Accounts – Section 1026.58(e)

a. With respect to any open (i.e., the cardholder can obtain extensions or there is an outstanding balance on the account that has not been charged off) credit card account, determine that the card issuer either:

   1. Posts and maintains the cardholder's agreement on its website; or

   2. Promptly provides a copy of the cardholder's agreement to the cardholder upon the cardholder's request.

b. If the card issuer makes an agreement available upon request, ensure that the issuer provides the cardholder with the ability to request a copy of the agreement both by:

   1. Using the issuer's website, such as by clicking on a clearly identified box to make the request (§1026.58(e)(1)(ii)), and

   2. Calling a readily available telephone line the number for which is displayed on the issuer's website and clearly identified as to purpose. (§1026.58(e)(1)(ii) and (e)(2))

c. If an issuer does not maintain a website from which cardholders can access specific information about their individual accounts determine that the issuer makes agreements available upon request by providing the cardholder with the ability to request a copy of the agreement by calling a readily available telephone line the number for which is (§1026.58(e)(2)):

   1. Displayed on the issuer's website and clearly identified as to purpose; or

   2. Included on each periodic statement sent to the cardholder and clearly identified as to purpose.

d. Verify that the card issuer sends to the cardholder or otherwise make available to the cardholder a copy of the cardholder's agreement in electronic or paper form no later than 30 days after the issuer receives the cardholder's request. (§1026.58(e)(1)(ii))

e. Determine that agreements posted on the card issuer's website or made available upon the cardholder's request conform to the form and content requirements for agreements submitted to the CFPB specified in section 1026.58(c)(8). (§1026.58(e)(3)(i))

f. If the card issuer posts an agreement on its website or otherwise provides an agreement to a cardholder electronically, verify that the agreement is posted or provided in an

electronic format that is readily usable by the general public and is placed in a location that is prominent and readily accessible to the cardholder. (§1026.58(e)(3)(ii))

g. If agreements posted or otherwise provided contain personally identifiable information relating to the cardholder, such as name, address, telephone number, or account number, ensure that the issuer takes appropriate measures to make the agreement accessible only to the cardholder or other authorized persons. (§1026.58(e)(3)(iii))

h. Determine that agreements posted or otherwise provided set forth the specific provisions and pricing information applicable to the particular cardholder. (§1026.58(e)(3)(iv))

i. Determine that provisions and pricing information are complete and accurate as of a date no more than 60 days prior to (§1026.58(e)(3)(iv)):

   1. The date on which the agreement is posted on the card issuer's website under section 1026.58(e)(1)(i);

   2. The date the cardholder's request is received under section 1026.58(e)(1)(ii) or (e)(2).

   NOTE: Card issuers may provide credit card agreements in electronic form under section 1026.58(d) and (e) without regard to the consumer notice and consent requirements of section 101(c) of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. 7001 et seq.). (§1026.58(f))

Advertising (Open- and Closed-End)

8. For open- and closed-end loans, sample advertising copy, including any electronic advertising, since the previous examination and verify that the terms of credit are accurate, clear, balanced, and conspicuous. If triggering terms are used, determine that the required disclosures are made (§§1026.16 and 1026.24).

   a. For advertisements for closed-end credit:

      1. If a rate of finance charge was stated, determine that it was stated as an APR.

      2. If an APR will increase after consummation, verify that a statement to that fact is made.

      3. Determine whether there are deceptive or misleading statements or practices.

   b. Determine that the creditor does not offer college students any tangible item to induce such students to apply for or open an open-end consumer credit plan offered by such creditor, if such offer is made:

      1. On the campus of an institution of higher education;

      2. Near the campus of an institution of higher education; or

3. At an event sponsored by or related to an institution of higher education. (§1026.57(c))

c. If an open-end credit advertisement refers to an APR as “fixed” (or similar term), determine 1) that the advertisement also specifies a time period that the rate will be fixed and 2) that the rate will not increase during that period. (§1026.16(f))

d. If an open-end credit advertisement used the word “fixed” or a similar word and no time period is specified in which the rate will be fixed, determine that the rate will not increase while the plan is open. (§1026.16(f))

e. For any advertisement of an open-end (not home-secured) plan, if an APR or fee that may be applied to the account is an introductory rate or introductory fee, determine that the term *introductory* or *intro* is in immediate proximity to each listing of the introductory rate or introductory fee in a written or electronic advertisement. (§1026.16(g)(3))

f. For any advertisement of an open-end (not home-secured) plan, if any APR or fee that may be applied to the account is a promotional rate under section 1026.16(g)(2)(i) or any fee that may be applied to the account is a promotional fee under section 1026.16(g)(2)(iv), determine that the following information is stated in a clear and conspicuous manner in the advertisement (§1026.16(g)(4)):

   1. When the promotional rate or promotional fee will end and

   2. The annual percentage rate that will apply after the end of the promotional period.

   NOTE: If such rate is variable, determine that the annual percentage rate complies with the accuracy standards in sections 1026.60(c)(2), 1026.60(d)(3), 1026.60(e)(4), or 1026.16(b)(1)(ii), as applicable. If such rate cannot be determined at the time disclosures are given because the rate depends at least in part on a later determination of the consumer’s creditworthiness, determine that the advertisement discloses the specific rates or the range of rates that might apply. (§1026.16(g)(4)(ii)). Further, if the promotional rate or fee is stated in a written or electronic advertisement, determine that the information in sections 1026.16 (g)(4)(i), and, as applicable, (g)(4)(ii), or (g)(4)(iii) are also stated in a prominent location closely proximate to the first listing of the promotional rate or promotional fee.

g. If a deferred interest offer is advertised for an open-end account not subject to section 1026.40, determine that the deferred interest period is stated in a clear and conspicuous manner in the advertisement. If the phrase “no interest” or similar term regarding the possible avoidance of interest obligations under the deferred interest program is stated, determine that the term “if paid in full” is also stated in a clear and conspicuous manner preceding the disclosure of the deferred interest period in the advertisement. If the deferred interest offer is included in a written or electronic advertisement, determine that the deferred interest period and, if applicable, the term “if paid in full” are stated in immediate proximity to each statement of “no interest,” “no payments,” “deferred

interest," "same as cash," or similar term regarding interest or payments during the deferred interest period. (§1026.16(h)(3))

h. If any deferred interest offer is advertised for an open-end account not subject to section 1026.40, determine that the (h)(4)(i) and (h)(4)(ii) language (of section 1026.16(h)(4)) is stated in the advertisement and is similar to Sample G–24 in appendix G. If the deferred interest offer is included in a written or electronic advertisement, determine that this information is stated in a prominent location closely proximate to the first statement of "no interest," "no payments," "deferred interest," "same as cash," or similar term regarding interest or payments during the deferred interest period. (§1026.16(h)(4))

   NOTE: The requirements in section 1026.16(h)(4) apply to any advertisement of an open-end credit plan not subject to section 1026.40 (requirements for home equity plans) section 1026.16(h)(1). However, the requirements do not apply to an envelope or other enclosure in which an application or solicitation is mailed, or to a banner advertisement or pop-up advertisement linked to an application or solicitation provided electronically. (§1026.16(h)(5))

Transactional Testing

NOTE: When verifying APR accuracies, use the OCC's APR calculation model or other calculation tool acceptable to your regulatory agency.

Review the financial institution's closed-end and open-end transactions to ensure accuracy and completeness.

Closed-End Credit Transactional Testing Procedures

a. For each type of closed-end loan being tested, determine the accuracy of the disclosures by comparing the disclosures to the contract and other financial institution documents. (§1026.17)

b. Determine whether the required disclosures were made before consummation of the transaction and ensure the presence and accuracy of the items below, as applicable. (§1026.18)

   1. Creditor and loan originator name with Nationwide Mortgage Licensing System and Registry (NMLSR) IDs on required documents as required under section 1026.36

   2. Amount financed

   3. Itemization of the amount financed (RESPA GFE may substitute)

   4. Finance charge

   5. APR

6. Variable rate information as follows for loans not secured by a principal dwelling or secured by a principal dwelling with terms of one year or less:
    a. Circumstances which permit rate increase
    b. Limitations on the increase (periodic or lifetime)
    c. Effect of the increase
    d. Hypothetical example of new payment terms that would result from an increase
7. Payment schedule including the number, amount, and timing of payments.
8. Total of payments
9. Demand feature
10. Total sale price (credit sale)
11. Prepayment
12. Late payment
13. Security interest
14. Insurance and debt cancellation
15. Certain security interest charges
16. Contract reference
17. Assumption policy
18. Required deposit
19. Interest rate and payment summary for mortgage transactions
20. No-guarantee-to-refinance statement

c. For adjustable-rate mortgages, verify that the creditor, assignee, or servicer provides disclosures in connection with the initial interest rate adjustment pursuant to the contract and for rate changes that result in corresponding changes in payment.

d. For adjustable-rate mortgages, verify that the creditor, assignee, or servicer includes the appropriate content (as identified in the Closed-End Credit Disclosure Forms Review Procedures section above).

e. For adjustable-rate mortgages, verify that the creditor, assignee, or servicer provides the disclosures consistent with timing requirements (see **Timing Requirements** section of the procedures above).

NOTE: The accuracy of the adjusted interest rates and indexes should be verified by comparing them with the contract and early disclosures. Refer to the Additional Variable Rate Testing section of these examination procedures.

c. Determine, for each type of closed-end rescindable loan being tested, the appropriate number of copies of the rescission notice are provided to each person whose ownership interest is or will be subject to the security interest. The creditor must deliver two copies of the notice of right to rescind to each consumer entitled to rescind. The rescission notice must disclose the items below. (§1026.23(b)(1))

    1. Security interest taken in the consumer's principal dwelling
    2. Consumer's right to rescind the transaction
    3. How to exercise the right to rescind, with a form for that purpose, designating the address of the creditor's place of business
    4. Effects of rescission
    5. Date the rescission period expires.

g. Ensure funding was delayed until the rescission period expired. (§1026.23(c))

h. Determine if the consumer has waived the three-day right to rescind since the previous examination. If applicable, test rescission waivers. (§1026.23(e))

i. Determine whether the maximum interest rate in the contract is disclosed for any consumer credit contract secured by a dwelling if the APR may increase after consummation. (§1026.30(a))

j. For private student loans with a right to cancel, review cancellation requests to determine if they were properly handled. (§1026.47(c))

Minimum standards for transactions secured by a dwelling – Section 1026.43

a. Determine whether the financial institution is a creditor that originates covered transactions. Covered transactions are transactions secured by a dwelling, including any real property attached to a dwelling. They do not do not include: home equity lines of credit; timeshare loans (except for the prepayment penalty provisions in section 1026.43(g)); reverse mortgages; temporary, "bridge," or construction loans of 12 months or less; renewable or non-renewable construction loans of 12 months or less that are a part of a construction-to-permanent transaction; or an extension of credit under a program administered by a Housing Finance Agency (defined in 24 CFR 266.5); by community development or non-profit lenders specified in section 1026.43(a)(3)(v); or in connection with certain federal emergency economic stabilization programs). (§1026.43(a))

b. Determine if a loan is a streamline refinance under section 1026.20(a) and Commentary 1026.20(a) and whether it qualifies under section 1026.43(d), below.

Refinancing Non-Standard Mortgages – Section 1026.43(d)

a. Determine whether a creditor that has refinanced a non-standard mortgage defined in 1026.43(d)(i) (an ARM with an introductory rate fixed for a year or more, an interest-only loan, or a negative amortization loan) into a standard mortgage as defined in 1026.43(d)(ii) has considered whether the standard mortgage likely will prevent a default by the consumer once the loan is recast. In addition, determine that the following conditions are met (§1026.43(d)(3)):

    1. At the time of the refinance, the creditor for the standard mortgage is the current holder of the existing non-standard mortgage or the servicer acting on behalf of the current holder (§1026.43(d)(2)(i));

    2. The monthly payment for the standard mortgage is materially lower (a payment reduction of 10 percent or more is sufficient) than the monthly payment for the non-standard mortgage using the payment calculation rules in section 1026.43(d)(5) (§1026.43(d)(2)(ii));

    3. The creditor received the consumer's written application for the standard mortgage no later than two months after the non-standard mortgage had recast (§1026.43(d)(2)(iii));

    4. The consumer had made no more than one payment more than 30 days late on the non-standard mortgage during the 12 months immediately before the creditor receives the consumer's written application for the standard mortgage (§1026.43(d)(2)(iv));

    5. The consumer had made no payments more than 30 days late during the six months immediately before the creditor received the consumer's written application for the standard mortgage (§1026.43(d)(2)(v)); and

    6. If the non-standard mortgage was consummated on or after January 10, 2014, the non-standard mortgage was made in accordance with the ability to repay or the qualified mortgage requirements (§1026.43(c) or (e)). (§1026.43(d)(vi))

Ability to Repay – Section 1026.43(c)

NOTE: For all covered transactions, except streamline refinances, creditors must make a good faith determination that the consumer will have a reasonable ability to repay the loan, and must verify the information upon which it relied. A creditor can meet this obligation by complying with the ability-to-repay requirement in section 1026.43(c) or by making qualified mortgages under section 1026.43(e) and (f) (which limit certain risky loan features and practices), which are presumed to satisfy the ability-to-repay requirements.

a. Determine whether the creditor makes a reasonable and good faith determination at or before consummation that the consumer will have a reasonable ability to repay the loan according to its terms, based (except as otherwise provided for loans under section 1026.43 (d), (e), and (f) for refinancing non-standard to standard mortgages, qualified mortgages, and certain balloon qualified mortgages respectively), at a minimum, on the criteria set forth below. (§1026.43(c)(1))

b. Determine whether the creditor considered the following, at a minimum, in determining the consumer's ability to repay: (§1026.43(c)(2))

    1. The consumer's current or reasonably expected income or assets (other than the value of the dwelling, including any real property attached to the dwelling, that secures the loan); (§1026.43(c)(2)(i))

    2. If the creditor relies on employment income, the consumer's current employment status; (§1026.43(c)(2)(ii))

    3. The consumer's monthly payment on the covered transaction, calculated in accordance with section 1026.43(c)(5); (§1026.43(c)(2)(iii)) (see g. below)

    4. The consumer's monthly payment on any simultaneous loan that the creditor knows or has reason to know will be made, calculated in accordance with section 1026.43(c)(6); (§1026.43(c)(2)(iv))

    5. The consumer's monthly payment for mortgage-related obligations; (§1026.43(c)(2)(v))

    6. The consumer's current debt obligations, alimony, and child support; (§1026.43(c)(2)(vi))

    7. The consumer's monthly debt-to-income ratio or residual income in accordance with section 1026.43(c)(7) and section 1026.43(c)(2)(vii) and (viii)); and

    8. The consumer's credit history (§1026.43(c)(2)(viii)).

c. Determine whether the creditor verified the information it relied upon when considering the eight factors listed above using reasonably reliable third-party records, except that special rules apply for verification of income or assets, employment, and current debt obligations that are not shown on the consumer's credit report.

Income and Assets, Employment and Debt Obligations

d. For purposes of c. above, determine that the creditor verified the information that it relied on using reliable third-party records except that:

    1. A creditor may verify a consumer's employment status orally if the creditor prepares a written record of the information obtained orally; and (§1026.43(c)(3)(ii))

2. A creditor that relies on a credit report to verify a consumer's current obligations need not independently verify obligations that the consumer lists on the application that are not in the consumer's credit report. (§1026.43(c)(3)(iii))

e. For the purposes of c. above, determine whether the creditor verified the income or assets it relied upon, by using third-party records that provide reasonably reliable evidence, (§1026.43(c)(4)) such as:

1. A tax-return transcript issued by the Internal Revenue Service (IRS); (§1026.43(c)(4))

2. Copies of tax returns the consumer filed with the IRS or a state taxing authority; (§1026.43(c)(4)(i))

3. IRS Form W-2s or similar IRS forms used for reporting wages or tax withholding; (§1026.43(c)(4)(ii))

4. Payroll statements, including military Leave and Earnings Statements; (§1026.43(c)(4)(iii))

5. Financial institution records; (§1026.43(c)(4)(iv))

6. Records from the consumer's employer or a third party that obtained information from the employer; (§1026.43(c)(4)(v))

7. Records from a federal, state, or local government agency stating the consumer's income from benefits or entitlements; (§1026.43(c)(4)(vi))

8. Receipts from the consumer's use of check cashing services; and (§1026.43(c)(4)(vii))

9. Receipts from the consumer's use of a funds transfer service. (§1026.43(c)(4)(viii))

f. For employment status, if the creditor orally verified employment status, determine whether the creditor prepared a written record of the information obtained orally. (§1026.43(c)(3)(ii))

Monthly payment calculation

g. For purposes of b. 3 above, determine whether the creditor calculated the monthly payment (except for balloon payment, interest-only and negative amortization loans) by using:

1. The fully indexed rate or any introductory interest rate, whichever is greater; and monthly, fully amortizing payments that are substantially equal. (§1026.43(c)(5))

2. For a loan with a balloon payment:

   i. The maximum payment scheduled during the first five years after the date on which the first regular periodic payment will be due for a loan that is not a higher-

priced covered transaction as defined under section 1026.43(b)(4); (§1026.43(c)(5)(ii)(A)(1)) or

ii. The maximum payment in the payment schedule, including any balloon payment, for a higher-priced covered transaction. (§1026.43(c)(5)(ii)(A)(2))

3. For an interest-only loan:

   i. The fully indexed rate or any introductory interest rate, whichever is greater; and

   ii. Substantially equal, monthly payments of principal and interest that will repay the loan amount over the term of the loan remaining as of the date the loan is recast. (§1026.43(c)(5)(ii)(B))

4. For a negative amortization loan:

   i. The fully indexed rate or any introductory interest rate, whichever is greater; and

   ii. Substantially equal, monthly payments of principal and interest that will repay the maximum loan amount as defined in section 1026.43(b)(7) over the term of the loan remaining as of the date the loan is recast. (§1026.43(c)(5)(ii)(C))

Monthly payment calculation for simultaneous loans

h. For the purposes of b. 4 above, determine whether the creditor calculated the monthly payment on any simultaneous loan that was used to determine the consumer's repayment ability, including any mortgage-related obligations, as follows:

   1. For a simultaneous loan that is a covered transaction, using the payment calculation rules for covered transactions, described above (§1026.43(c)(6)(i)); or

   2. For a home equity line of credit, by using the periodic payment required under the terms of the plan and the amount of credit drawn at or before consummation of the covered transaction. (§1026.43(c)(6)(ii)).

Monthly debt-to-income ratio or residual income

i. When a creditor considers the consumer's monthly debt-to-income ratio, determine whether the creditor considered the ratio of the consumer's total monthly debt obligations to the consumer's total monthly income. (§1026.43(c)(7)(ii)(A))

   1. Total monthly debt obligations means the total of: the monthly payment on the covered transaction (as required by §1026.43(c)(2)(iii) and (c)(5)), simultaneous loans (as required by §1026.43(c)(2)(iv) and (c)(6)), mortgage-related obligations (as required by §1026.43(c)(2)(v)), and current debt obligations, alimony, and child support (as required by §1026.43(c)(2)(vi)).

2. Total monthly income means the total of the consumer's current or reasonably expected income, including any income from assets (as required by §1026.43(c)(2)(i) and (4)).

j. If a creditor considers the consumer's monthly residual income, determine whether the creditor considered the consumer's remaining income after subtracting the consumer's total monthly debt obligations from the consumer's total monthly income. (§1026.43(c)(7)(ii)(B)) Total monthly debt obligations and total monthly income are defined in section 1026.43(c)(7)(i)(A) and (B).

Qualified Mortgages – Section 1026.43(e)

a. Determine whether the creditor has complied with the ability-to-repay requirements of section 1026.43(c) by making a loan that is a qualified mortgage, including a higher-priced qualified mortgage, under the general qualified mortgage definition. (§1026.43(e)) Except as provided in section 1026.43(e)(4), (5), (6), or (f) (all discussed below), a qualified mortgage is a covered transaction:

1. That provides for regular, substantially equal, periodic payments, except for the effect any interest rate change after consummation has on adjustable-rate mortgages or step-rate mortgages (§1026.43(e)(2)(i)) that do not:

   i. Result in an increase of the principal balance (§1026.43(e)(2)(i)(A)), or

   ii. Allow balloon payments or deferment of principal payments (except for balloon-payment qualified mortgages described in section 1026.43(f) and (e)(6); (§§1026.43(e)(2)(i)(B) and (C)).

2. For which the loan term does not exceed 30 years; (§1026.43(e)(2)(ii))

3. For which the total points and fees (as defined in §1026.32(b)(1)(i)) do not exceed: (§1026.43(e)(2)(iii) and (3))

   i. $100,000 or over: 3 percent of the total loan amount (see §1026.32(b)(4)(i));

   ii. $60,000 or over but less than $100,000: $3,000;

   iii. $20,000 or over but less than $60,000: 5 percent of the total loan amount;

   iv. $12,500 or over but less than $20,000: $1,000;

   v. Less than $12,500: 8 percent of the total loan amount.

   NOTE: These numbers will be annually adjusted for inflation on January 1.

4. For which the creditor underwrites the loan, taking into account the monthly payment for mortgage-related obligations, using: (§1026.43(e)(2)(iv))

   i. The maximum interest rate that may apply during the first 5 years after the date

on which the first regular periodic payment will be due; and

ii. Periodic payments of principal and interest that will repay either:

A. The outstanding principal balance over the remaining term of the loan. This should be calculated as of the date the interest rate adjusts to the maximum interest rate that may apply during the first 5 years after the date on which the first regular periodic payment will be due, assuming the consumer will have made all required payments as due prior to that date; or

B. The loan amount over the loan term;

5. For which the creditor considers and verifies at or before consummation the following: (§1026.43(e)(2)(v))

i. The consumer's current or reasonably expected income or assets other than the value of the dwelling (including any real property attached to the dwelling) that secures the loan, in accordance with appendix Q and sections 1026.43(c)(2)(i) and (c)(4); and

ii. The consumer's current debt obligations, alimony, and child support in accordance with appendix Q and sections 1026.43(c)(2)(vi) and (c)(3); and

6. For which the ratio of the consumer's total monthly debt to total monthly income at the time of consummation does not exceed 43 percent. For purposes of section 1026.43(e)(2)(vi), the ratio of the consumer's total monthly debt to total monthly income is determined: (§1026.43(e)(2)(vi))

i. In accordance with the standards in appendix Q; (§1026.43(e)(2)(vi)(A)), except

ii. The creditor calculates the consumer's monthly payment on: (§1026.43(e)(2)(vi)(B))

A. The covered transaction, including the monthly payment for mortgage-related obligations, in accordance with section 1026.43(e)(2)(iv) (see also a.4 above) and

B. Any simultaneous loan that the creditor knows or has reason to know will be made, in accordance with sections 1026.43 (c)(2)(iv) and (c)(6) (see also h. in "Ability to Repay" above).

Temporary Category of Qualified Mortgages – Section 1026.43(e)(4)

a. Determine whether the creditor has complied with the ability-to-repay requirements of section 1026.43(c) by making loans that

1. Meet the requirements of section 1026.43(e)(2)(i) through (iii) (i.e., have substantially

equal, periodic payments; restrictions on loan features; a maximum 30-year term; and limited points and fees); and are

2. Eligible to be purchased, guaranteed, or insured by the listed federal government sponsored entities or agencies,[33]

Small Creditor Portfolio Loan Qualified Mortgages – Section 1026.43(e)(5)

a. Determine whether a creditor has complied with the ability-to-repay requirements of section 1026.43(c) by making a qualified mortgage as follows:

1. The creditor satisfies the creditor requirements of section 1026.35(b)(2)(iii)(B), and (C), which require that: (§1026.43(e)(5)(D))

   A. During the preceding calendar year, the creditor, together with its affiliates, originated 500 or fewer first-lien covered transactions; and

   B. As of the end of the preceding calendar year, the creditor had total assets of less than $2 billion (this threshold will adjust annually).

   NOTE: This category of qualified mortgages does not require a small creditor to operate predominantly in a rural or underserved area.

2. The creditor makes a loan that meets the requirements for a qualified mortgage in section 1026.43(e)(2), other than section 1026.43(e)(2)(vi), and without regard to the standards in appendix Q: (§1026.43(e)(5)(A)), and

   NOTE: This means, among other things, that the loan does not have negative amortization, interest-only, or balloon payment features (1026.43(e)(2)(i)); has a loan term of 30 years or less (((1026.43(e)(2)(ii)); points and fees are under certain thresholds (1026.43(e)(2)(iii); and the creditor underwrites the loan, taking into account the monthly payment for mortgage related obligations (1026.43(e)(2)(iv)). Further, the creditor considers and verifies at or before consummation: the consumer's current or reasonably expected income or assets other than the value of the dwelling (including any real property attached to the dwelling) that secures the loan, in accordance with the general repayment ability standards; and the consumer's current debt obligations, alimony, and child support in accordance with the general

[33] Federal National Mortgage Association (Fannie Mae) or the Federal Home Loan Mortgage Corporation (Freddie Mac), operating under the conservatorship or receivership of the Federal Housing Finance Agency pursuant to section 1367(a) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4617(a)); or any limited-life regulatory entity succeeding the charter of either the Fannie Mae or Freddie Mac pursuant to §1367(i) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4617(i)); the U.S. Department of Housing and Urban Development under the National Housing Act; U.S. Department of Veterans Affairs; the U.S. Department of Agriculture pursuant to 42 U.S.C. 1472(h); or the Rural Housing Service. This provision expires on the effective date of a rule issued by each respective agency pursuant to its authority under TILA §129C(b)(3)(ii) to define a qualified mortgage. These special rules in §1026.43(e)(4) are available only for covered transactions consummated on or before January 10, 2021.

repayment ability standards (§1026.43(e)(5)(B))

3. Considers at or before consummation, the consumer's monthly debt-to-income ratio or residual income and verifies the debt obligations and income used to determine that ratio in accordance with the repayment ability requirements of section 1026.43(c)(7), except that the calculation of the payment for determining the consumer's total monthly debt obligations in section 1026.43(c)(7)(i)(A) is determined in accordance with section 1026.43(e)(2)(iv) (based on the maximum interest rate in the first five years after the date the first periodic payment is due) instead of section 1026.43(c)(5) (fully indexed rate); (§1026.43(e)(5)(B))

4. The loan was not subject to a forward commitment at consummation, except to a person that satisfies the requirements of sections 1026.35(b)(2)(iii) (B) and (C) (i.e., small creditors) (§1026.43(e)(5)(C)).

b. Determine whether the small creditor portfolio mortgage does not have a qualified mortgage status because it was subject to a forward commitment at consummation, or the creditor has transferred it in any circumstances other than where the transfer was:

1. Three years or more after consummation;

2. To a creditor that satisfies the requirements of section 1026.43(e)(5)(i)(D) of this section (i.e., small creditors under section 1026.35(b)(2)(iii)(B) and (C));

3. Made pursuant to a capital restoration plan or other action under 12 U.S.C. 1831o, or to actions or instructions of a conservator, receiver, or bankruptcy trustee, or to orders by or agreements with a state or federal governmental agency with jurisdiction to examine the creditor; or

4. Made pursuant to a merger of the creditor and another person or the acquisition of the creditor by another person, or the creditor's acquisition of another person. (§§1026.43(f)(2)(ie)(5)(ii).

NOTE: If a small creditor portfolio qualified mortgage has lost its qualified mortgage status, the creditor must have complied with the general ability-to-repay requirements under section 1026.43(c)).

Balloon-Payment Qualified Mortgages Made By Certain Small Creditors – Section 1026.43(f)

a. Determine whether a creditor has complied with the ability-to-repay requirements of section 1026.43(c) by making a qualified mortgage that provides for a balloon payment as follows:

1. The creditor satisfies the creditor requirements of section 1026.35(b)(2)(iii)(A),(B), and (C), which require that: (§1026.43(f)(1)(vi))

A. During the preceding calendar year, the creditor extended more than 50 percent of its first-lien covered transactions on properties that are located in “rural” or “underserved” counties;

B. During the preceding calendar year, the creditor, together with its affiliates, originated 500 or fewer first-lien covered transactions; and

C. As of the end of the preceding calendar year, the creditor had total assets of less than $2 billion (this threshold will adjust annually).

2. Makes a loan that meets the requirements for a qualified mortgage in section 1026.43(e)(2)(i)(A) (substantially equal payments or ARMs or step-rate mortgages that do not increase the principal balance), (e)(2)(ii) (loan term 30 years or less), (e)(2)(iii) (points and fees under certain thresholds), and (e)(2)(v) (income, assets, and obligations are considered and verified), but without regard to the standards in appendix Q: (§1026.43(f)(1)(iv)(A));

3. Determines that the consumer can make all of the scheduled payments under the loan and the monthly payments for all mortgage-related obligations (excluding the balloon payment) from the consumer’s current or reasonably expected income or assets (other than the dwelling that secures the loan); (§1026.43(f)(1)(ii))

4. Considers at or before consummation, the consumer’s monthly debt-to-income ratio or residual income and verifies the debt obligations and income used to determine that ratio in accordance with the repayment ability requirements of section 1026.43(c)(7), except that the calculation of the payment for determining the consumer’s total monthly debt obligations in section 1026.43(c)(7)(i)(A) is based on the scheduled payments for the balloon-payment qualified mortgage in accordance with section 1026.43(f)(1)(iv)(A), together with the consumer’s monthly payments for all mortgage-related obligations other than the balloon payment; (§1026.43(f)(1)(iii))

5. The legal obligation provides for:

   i. Scheduled payments that are substantially equal, calculated using an amortization period that does not exceed 30 years, with

   ii. An interest rate that does not increase over the term of the loan, and

   iii. A loan term of five years or longer; (§1026.43(f)(1)(iv)(A)-(C))

6. The loan was not subject to a forward commitment at consummation, except to a person that satisfies the requirements of sections 1026.35(b)(2)(iii)(A), (B), and (C) (i.e., small creditors serving rural or underserved counties).

b. Determine whether the balloon-payment qualified mortgage does not have qualified mortgage status because it was subject to a forward commitment at consummation, or the creditor has transferred it in any circumstances other than where the transfer was:

1. Three years or more after consummation;

2. To a creditor that satisfies the requirements of section 1026.43(f)(1)(vi) of this section (i.e., meets the definition of 1026.35(b)(2)(iii)(A)-(C), establishing criteria for small creditors serving rural or underserved counties);

3. Made pursuant to a capital restoration plan or other action under 12 U.S.C. 1831o, or to actions or instructions of a conservator, receiver or bankruptcy trustee, or to orders by or agreements with a state or federal governmental agency with jurisdiction to examine the creditor; or

4. Due to a merger of the creditor with another person or the acquisition of the creditor by another person or another person by the creditor. (§§1026.43(f)(2)(i) and (iv))

NOTE: If a balloon-payment qualified mortgage has lost its qualified mortgage status, the creditor must have complied with the general ability-to-repay requirements under section 1026.43(c).

Temporary Balloon-Payment Qualified Mortgages Made By Small Creditors – Section 1026.43(e)(6)

a. Determine whether a creditor has complied with the ability-to-repay requirements of section 1026.43(c) by making a qualified mortgage that meets the requirements of the small creditor balloon-payment qualified mortgage definition in section 1026.43(f) (above), except that the creditor requirement in section 1026.35(b)(2)(iii)(A) (operate predominantly in a rural or underserved area) does not apply.

NOTE: This temporary qualified mortgage category applies only to loans that are consummated on or before January 10, 2016.

Prepayment Penalties – Section 1026.43(g)

a. Determine whether mortgage is a covered transaction (which excludes HELOCs and timeshares but, for purposes of the prepayment penalty provisions, includes reverse mortgages, temporary loans, and loans made by certain community development, non-profit, and other lenders otherwise excluded from ability-to-repay provisions under section 1026.43(a)). If yes, then the loan may not have a prepayment penalty unless:

1. It is a qualified mortgage under sections 1026.43(e)(2), (e)(4), (e)(5), (e)(6), or (f);

2. The prepayment penalty is otherwise allowed by law;

3. The mortgage has an APR that cannot increase after consummation; and

4. The loan is not a higher-priced mortgage loan, as defined in section 1026.35(a). (§1026.43(g)(1)).

NOTE: Covered transactions are generally prohibited from having prepayment penalties

unless certain conditions are met.

b. Determine if the prepayment penalty improperly exceeds the following percentages of the outstanding balance prepaid:

    1. 2 percent during the first two years following consummation;

    2. 1 percent during the third year following consummation; and

    3. 0 percent thereafter. (§1026.43(g)(2))

c. Determine whether a creditor offering a consumer a mortgage with a prepayment penalty has also offered the consumer an alternative without a prepayment penalty and the alternative: (§1026.43(g)(3))

    1. Has an APR that cannot increase after consummation and has the same type of interest rate (fixed or step rate) as the loan with a prepayment penalty;

    2. Has the same loan term as the loan with a prepayment penalty;

    3. Satisfies the periodic payment conditions under section 1026.43(e)(2)(i);

    4. Satisfies the points and fees conditions under section 1026.43(e)(2)(iii), based on the information known to the creditor at the time of the offer; and

    5. Is a loan for which the creditor has a good faith belief that the consumer likely qualifies, based on the information known to the creditor at the time the creditor offers the loan without a prepayment penalty. (§1026.43(g)(3))

d. Determine whether a creditor offering a loan with a prepayment penalty through a mortgage broker:

    1. Presents the mortgage broker an alternative covered transaction without a prepayment penalty that satisfies the requirements of section 1026.43(g)(3) (see c. above); and

    2. Establishes by agreement that the mortgage broker must present to the consumer an alternative covered transaction without a prepayment penalty offered by the creditor that satisfies the requirements of section 1026.43(g) (see c. above); or another creditor, if the other creditor offers a lower interest rate or a lower total dollar amount of discount points and origination points or fees. (§1026.43(g)(4))

e. Determine whether a creditor that is a loan originator, as defined in section 1026.36(a)(1), who presents a covered transaction with a prepayment penalty offered by another person to whom the loan would be assigned after consummation also presents the consumer an alternative covered transaction without a prepayment penalty that satisfies the requirements of section 1026.43(g), offered by the assignee; or another person offering a lower interest rate or a lower total dollar amount of origination discount points and points or fees. (§1026.43(g)(5))

Evasion of Minimum Standards for Loans Secured By a Dwelling – Section 1026.43(h)

a. Determine whether the creditor has structured credit secured by a dwelling that does not meet the definition of open-end credit in section 1026.2(a)(20) as an open-end plan to evade the requirements for minimum standards for loans secured by a dwelling.

High-Cost Mortgages, Reverse Mortgages, and Higher-Priced Mortgages Loans – Sections 1026.32, 1026.33, and 1026.35

a. Determine whether the financial institution originates consumer credit transactions subject to Subpart E of Regulation Z; specifically, high-cost mortgages (§1026.32), reverse mortgages (§1026.33), and "higher-priced mortgage loans" (§1026.35).

b. In addition to reviewing high-cost mortgages, reverse mortgages, and higher-priced mortgage loans for compliance with requirements in other subparts of Regulation Z (for example, disclosure timing requirements under section 1026.19(a)), review such mortgages to ensure the following:

    1. Required disclosures are provided to consumers in addition to, not in lieu of, the disclosures contained in other subparts of Regulation Z. (§1026.31(a))

    2. Disclosures are clear and conspicuous, in writing, and in a form that the consumer may keep. (§1026.31(b))

    3. Disclosures are furnished at least three business days prior to consummation or account opening of a high-cost mortgage or a closed-end reverse mortgage transaction (or at least three business days prior to the first transaction under an open-end reverse mortgage). (§1026.31(c))

    4. Disclosures reflect the terms of the legal obligation between the parties. (§1026.31(d))

    5. If the transaction involves more than one creditor, that only one creditor provided the disclosures. Where the obligation involves multiple consumers, ensure that the disclosures were provided to any consumer who is primarily liable on the obligation. Further, for rescindable transactions, verify that the disclosures were provided to each consumer who has the right to rescind. (§1026.31(e))

    6. The APR is accurately calculated and disclosed in accordance with the requirements and within the tolerances allowed in section 1026.22 for closed-end credit transactions. (§1026.31(g))

c. For high-cost mortgages (§1026.32), ensure that, in addition to other required disclosures, the creditor discloses the following at least three business days prior to consummation or account opening (See model disclosure at App. H-16):

1. Notice containing the prescribed language. (§1026.32(c)(1))

2. The APR. (§1026.32(c)(2))

3. Regular payment and balloon payment. (§1026.32(c)(3)).

4. For a closed-end credit transaction, the amount of regular loan payment and the amount of any balloon payment. The disclosed regular payment should be treated as accurate if it is based on an amount borrowed that is deemed accurate under section 1026.32(c)(5). (§1026.32(c)(3))

5. For an open-end credit plan:

   A. An example showing the first minimum periodic payment for the draw period, the first minimum periodic payment for any repayment period, and the balance outstanding at the beginning of any repayment period. (§1026.32(c)(3)(ii)(A))

      NOTE: The example must be based on the assumption that the consumer borrows the full credit line at account opening and does not obtain any additional extensions of credit, that the consumer makes only the minimum periodic payments during the draw period and any repayment period, and that the APR used to calculate the example payments remains the same during the draw period and any repayment period. Creditors must provide the minimum period payment example based on the APR, except that if an introductory APR applies, the creditor must use the rate that will apply to the plan after the introductory rate expires. (§§1026.32(c)(3)(ii)(A)-(C))

   B. If the credit contract provides for a balloon payment, a disclosure of that fact and an example showing the amount of the balloon payment based on the assumptions described in the note above. (§1026.32(c)(3)(ii)(B))

   C. A statement that the example payments show the first minimum periodic payments at the current annual percentage rate if the consumer borrows the maximum credit available when the account is opened and does not obtain any additional extensions of credit, or substantially similar statement. (§1026.32(c)(3)(ii)(C))

   D. A statement that the example payments are not the consumer's actual payments and that the actual minimum periodic payments will depend on the amount the consumer borrows, the interest rate applicable to that period, and whether the consumer pays more than the required minimum periodic payment, or a substantially similar statement. (§1026.32(c)(3)(ii)(D))

6. For variable rate transactions, a statement that the interest rate and monthly payment may increase, and the amount of the single maximum monthly payment allowed under the contract based on the maximum rate required to be disclosed under section 1026.30. (§1026.32(c)(4))

7. For a closed-end credit transaction, the total amount the consumer will borrow (the face amount of the note) and if this amount includes financed charges that are not prohibited under section 1026.34(a)(10), that fact. This disclosure should be treated as accurate if within $100 of the actual amount borrowed. For an open-end credit plan, the credit limit for the plan when the account is opened. (§1026.32(c)(5))

d. For high-cost mortgages (§1026.32), ensure that the creditor follows these additional rules concerning the disclosures required by section 1026.32(c):

   a. Determine if a new disclosure is required if, subsequent to providing the additional disclosure but prior to consummation or account opening, the creditor changes any terms that make the disclosures inaccurate. For example, if a consumer finances the payment of premiums or other charges as permitted under section 1026.34(a)(10) and, as a result, the monthly payment differs from the payment previously disclosed, re-disclosure is required and a new three-day waiting period applies. (§1026.31(c)(1)(i))

   b. Determine if a creditor provides new disclosures by telephone when the consumer initiates a change in terms, then prior to or at consummation or account opening the creditor must provide new written disclosures and both parties must sign a statement that these new disclosures were provided by telephone at least three days prior to consummation or account opening. (§1026.31(c)(1)(ii))

   c. If a consumer waives the right to a three-day waiting period to meet a bona fide personal financial emergency, the consumer's waiver must be a dated written statement (not a pre-printed form) describing the emergency and bearing the signature of all the consumers entitled to the waiting period (a consumer can waive *only after* receiving the required disclosures and prior to consummation or account opening). (§1026.31(c)(1)(iii))

   e. For high-cost mortgages (§1026.32) determine that the creditor has not included any of the following loan terms:

      1. A payment schedule that provides for a balloon payment (with exceptions). (§1026.32(d)(1)(i)-(iii))

      2. Negative amortization. (§1026.32(d)(2))

      3. Advance payments from the proceeds of more than 2 periodic payments. (§1026.32(d)(3))

      4. Increased interest rate after default. (§1026.32(d)(4))

5. A rebate of interest, arising from a loan acceleration due to default, calculated by a method less favorable than the actuarial method. (§1026.32(d)(5))

6. Prepayment penalty as defined in section 1026.32(b)(6).

7. A due-on-demand clause that permits the creditor to terminate the loan in advance of maturity and accelerate the balance, except in cases of fraud or material misrepresentation by the consumer, failure by the consumer to meet the repayment terms of the agreement for any outstanding balance, or action or inaction by the consumer that adversely affects the creditor's security interest in the loan. (§1026.32(d)(8))

f. For high-cost mortgages under section 1026.32, determine that the creditor is not engaged in the following acts and practices:

1. Home improvement contracts – Paying a contractor under a home improvement contract from the proceeds of a mortgage unless certain conditions are met. (§1026.34(a)(1))

2. Notice to assignee – Selling or otherwise assigning a high-cost mortgage without furnishing the required statement to the purchaser or assignee. (§1026.34(a)(2))

3. Refinancing within one year of extending credit – Within one year of making a high-cost mortgage, a creditor may not refinance any high-cost mortgage to the same consumer into another high-cost mortgage that is not in the consumer's interest. This also applies to assignees that hold or service the high-cost mortgage. Commentary to 1026.34(a)(3) has examples applying the refinancing prohibition and addressing "consumer's interest." (§1026.34(a)(3))

4. Extending high-cost mortgage credit without regard to the consumer's repayment ability. (Temporary or bridge loans with a term of 12 months or less are exempt from this requirement.) (§1026.34(a)(4)):

i. For closed-end credit transactions that are high-cost mortgages, ensure the creditor is complying with the repayment ability requirements set forth in section 1026.43

ii. For open-end credit plans that are high-cost mortgages, ensure the creditor is not extending credit without regard to the consumer's repayment ability as of account opening, including the consumer's current and reasonably expected income, current obligations, assets other than collateral, and employment. A creditor must determine repayment ability for open-end high-cost mortgages by:

A. Verifying amounts of income or assets that it relies on to determine repayment ability, including expected income or assets, by the consumer's Internal Revenue Service Form W-2, tax returns, payroll receipts, financial institution

records, or other third-party documents that provide reasonably reliable evidence of the consumer's income or assets.

B. Verifying the consumer's current obligations, including any mortgage-related obligations that are required by another credit obligation undertaken prior to or at account opening and secured by the same dwelling that secures the high-cost mortgage.

iii. Alternatively determines whether the creditor complies with the repayment ability requirement by:

A. Verifying repayment ability as described above;

B. Determining the consumer's repayment ability by using the largest required minimum periodic payment based on the assumptions that:

i. The consumer borrows the full credit line at account opening with no additional extensions of credit;

ii. The consumer makes only required minimum periodic payments during the draw period and any repayment period

iii. If the annual percentage rate can increase during the plan, the maximum percentage rate that is included in the contract ; and

C. Assessing the consumer's repayment ability, taking into account at least one of the following: the ratio of total debt obligations to income (including any mortgage-related obligations that are required by another credit obligation undertaken prior to or at account opening, and are secured by the same dwelling that secures the high-cost mortgage transaction, or the income the consumer will have after paying debt obligations. (§1026.34(a)(4)).

5. *Pre-loan counseling* – Determine whether the creditor extending a high-cost mortgage received written certification confirming that the consumer received approved home ownership counseling after receiving the initial GFE or, for open-end credit plans, the initial TILA disclosure. (§1026.34(a)(5)). Requirements include:

i. Verify that home ownership counseling was not provided by an employee or affiliate of the creditor

ii. If the creditor paid fees associated with homeownership counseling, confirm that the payment was not contingent upon the consumer obtaining the high-cost mortgage or receipt of a counseling certification

iii. Verify that the counseling certificate contains the name of the consumer, date of counseling, name and address of the counselor, and statements required by section 1026.34(a)(5)(iv).

g. *Late Fees* – For high-cost mortgages, confirm that late payment charges are disclosed in the terms of the loan contract or open-end credit agreement and that such fees do not exceed four percent of the amount past due. No such charge may be imposed more than once for a single late payment. (§1026.34(a)(8))

Higher-priced mortgage loans: Appraisals[34]

h. For higher-priced mortgage loans secured by principal dwelling that are not exempt under section 1026.35(c)(2), determine whether the creditor obtained a written appraisal from a state-licensed or certified appraiser that included a physical visit to the interior of the dwelling. (§1026.35(c)(3))

   NOTE: Section 1026.35(c)(2) exempts several types of loans from the appraisal requirements, including qualified mortgages under section 1026.43.

i. Determine whether the creditor is deemed to comply with the requirement by:

   1. Ordering that the appraiser perform the appraisal in conformity with the Uniform Standards of Professional Appraisal Practice and title XI of FIRREA and any implementing regulations. (§1026.35(c)(3)(ii)(A))

   2. Verifying through the National Registry that the appraiser who signed the appraiser's certification was a certified or licensed appraiser in the state in which the appraised property is located as of the date the appraiser signed the appraiser's certification. (§1026.35(c) (3)(ii)(B))

   3. Confirming that the appraisal includes elements set forth in appendix N. (§1026.35(c)(ii)(3)(C))

   4. Having no actual knowledge contrary to the facts or certifications contained in the written appraisal.

j. Assess whether the creditor exercised reasonable diligence in determining if a second interior appraisal was necessary (see m. below for testing to verify second appraisal was obtained when required). A creditor can exercise reasonable diligence by basing its determination on written source documents such as:

   1. A copy of the recorded deed from the seller.

   2. A copy of a property tax bill.

   3. A copy of any owner's title insurance policy obtained by the seller.

   4. A copy of the RESPA settlement statement from the seller's acquisition.

[34] The higher-priced mortgage loans appraisal requirement was adopted pursuant to an interagency rulemaking conducted by the Board, the CFPB, the FDIC, FHFA, NCUA and OCC. The Board codified the rule at 12 CFR 226.43, and the OCC codified the rule at 12 CFR Part 34 and 12 CFR Part 164. There is no substantive difference among these three sets of rules.

5. A property sales history report or title report from a third-party reporting service.

6. Sales price data recorded in multiple listing services.

7. Tax assessment records or transfer tax records obtained from local governments.

8. A written appraisal performed in compliance with section 1026.35(c)(3)(i) for the same transaction.

9. A copy of a title commitment report detailing the seller's ownership of the property.

10. A property abstract.

k. For higher-priced mortgage loans that are not exempt under section 1026.35(c)(2) or section 1026.35(c)(4)(vii), determine whether a second written interior appraisal from a state certified or licensed appraiser was both required and performed because the seller acquired the property 180 days or less before the consumer's purchase agreement, and the sales price increased:

   1. Greater than 10 percent over the previous purchase price, if acquired 90 or fewer days prior to the consumer's purchase agreement; or (§1026.35(c)(4)(i)(A)) or

   2. Greater than 20 percent over the previous purchase price, if acquired 91 to 180 days prior to the consumer's purchase agreement. (§1026.35(C)(4)(i)(B))

   NOTE: Section 1026.35(c)(4)(vii) provides for eight exemptions from the second appraisal requirement, such as for extensions of credit to finance the acquisition of property from a local, state, or federal government agency.

l. For higher-priced mortgage loans (that are not exempt under section 1026.35(c)(2) or section 1026.35(c)(4)(vii)) where the creditor is required to obtain a second interior appraisal:

   1. Confirm that the creditor obtained an appraisal from a different state certified or licensed appraiser than the one who conducted the first appraisal. (§1026.35(c)(4)(ii))

   2. Confirm that the creditor charged the consumer for only one of the appraisals. (§1026.35(c)(4)(v))

      NOTE: Reviewing the HUD-1 may assist in identifying whether a second appraisal fee was charged to the consumer.

   3. For higher-priced mortgage loans that are not exempt under section 1026.35(c)(2), determine that the creditor provided a written disclosure in a timely manner informing consumers that an appraisal may be necessary and that there is a cost associated with the appraisal, as specified in section 1026.35(c)(5)).

      i. Disclosures must be provided to consumers within three business days after receipt of an application for a higher-priced mortgage loan. A creditor can meet

this requirement by placing the disclosure in the mail within three business days after receipt of the application for a higher-priced mortgage loan. (§1026.35(c)(5)(ii))

ii. If the loan becomes a higher-priced mortgage loan during the application process, but after initial receipt of the application, a creditor has three business days from the time the loan became a higher priced mortgage loan to provide the necessary disclosure. (§1026.35(c)(5)(ii))

4. Confirm that the creditor provided consumers with a free copy of any written appraisal performed in connection with a higher-priced mortgage loan that is not exempt under section 1026.35(c)(2). (§1026.35(c)(6))

   i. Determine whether the creditor is providing consumers with a copy of their appraisal(s) no later than three business days prior to consummation of the loan; (§1026.35(c)(6)(ii)(A)) or

   ii. If the loan is not consummated, determine whether the creditor is providing consumers with a copy of the appraisal(s) within 30 days after determining that the loan will not be consummated. (§1026.35(c)(6)(ii)(B))

Higher-priced mortgage loans: Escrow Accounts

m. For most higher-priced mortgage loans secured by a first lien on a principal dwelling escrow accounts must be established before consummation for property taxes and premiums for mortgage-related insurance required by the creditor. (§1026.35(b)(1))

n. For higher-priced mortgage loans where the creditor did not establish an escrow account, determine whether the transaction or the creditor would fall into an exemption. (§1026.35(b)(2))

   1. Is the transaction secured by shares in a cooperative (§1026.35(b)(2)(i)(A));

   2. Is the transaction to finance the initial construction of the dwelling (§1026.35(b)(2)(i)(B));

   3. Is the transaction a temporary or “bridge” loan with a term less than 12 months (§1026.35(b)(2)(i)(C));

   4. Is the transaction a reverse mortgage under section 1026.33 (§1026.35(b)(2)(i)(D));

   NOTE: There is a limited exemption for transactions secured by a dwelling in a condominium, planned unit development, or other “common interest community” where a dwelling ownership requires participation in a governing association that is obligated to maintain a master insurance policy insuring all dwellings (§1026.35(b)(2)(ii)). In these common interest communities, creditors must maintain an escrow account for the payment of taxes only.

5. Does the creditor, or loan originator, qualify for an exemption under sections 1026.35(b)(2)(iii)(A)-(D).

    i. During the preceding calendar year, the creditor extended more than 50 percent of its total covered transactions, as defined by section 1026.43(b)(1), secured by a first lien, on properties that are located in counties that are either "rural" or "underserved" (this asset threshold will adjust automatically each year, based on the year-to-year change in the average of the Consumer Price Index for Urban Wage Earners and Clerical Workers, not seasonally adjusted, for each 12-month period ending in November, with rounding to the nearest million dollars (see comment 35(b)(2)(iii)-1.iii for the current threshold)); and

    ii. Neither the creditor nor its affiliate maintains an escrow account of the type described in section 1026.35(b)(1) for any extension of consumer credit secured by real property or a dwelling that the creditor or its affiliate currently services, other than:

        1. Escrow accounts established for first-lien higher-priced mortgage loans on or after April 1, 2010, and before June 1, 2013; or

        2. Escrow accounts established after consummation as an accommodation to distressed consumers to assist such consumers in avoiding default or foreclosure.

o. Evasion of requirements: Ensure that the creditor does not structure a higher-priced mortgage loan as an open-end plan ("spurious open-end credit") to evade the requirements of Regulation Z. (§1026.35(d))

Prohibited Payments to Loan Originators

a. Determine that, in connection with a closed-end consumer credit transaction secured by a dwelling,[35] no loan originator receives and no person pays to a loan originator, directly or indirectly, compensation[36] that is based on:

    NOTE: The term "loan originator" means, a person who, in expectation of direct or indirect compensation or other monetary gain or for direct or indirect compensation or other monetary gain: takes an application, offers, arranges, assists a consumer in obtaining or applying to obtain, negotiates, or otherwise obtains or makes an extension of consumer credit for another person; or through advertising or other means of communication represents to the public that such person can or will perform any of these activities. The term "loan originator" includes an employee, agent, or contractor of the

[35] Sections 1026.36(d) and (e) do not apply to a home-equity line of credit subject to section 1026.40 or to a loan that is secured by a consumer's interest in a timeshare plan described in 11 U.S.C. 101(53D). (§1026.36(b))

[36] Compensation includes salaries, commissions, and any financial or similar incentive, such as an annual or periodic bonus or awards of merchandise, services, trips, or similar prizes. See 12 CFR §1026.36(a)(3) and comment 1026.36(a)-5.

creditor or loan originator organization if the employee, agent, or contractor meets this definition. The term "loan originator" also includes a creditor that engages in loan origination activities if the creditor does not finance the transaction at consummation out of the creditor's own resources, including by drawing on a *bona fide* warehouse line of credit or out of deposits held by the creditor.

1. A term of a transaction, the terms of multiple transactions by an individual loan originator, or the terms of multiple transactions by multiple individual loan originators, or

NOTE: For purposes of section 1026.36(d)(1) only, a "term of a transaction" is any right or obligation of the parties to a credit transaction. The amount of credit extended is not a term of a transaction or a proxy for a term of a transaction, provided that compensation received by or paid to a loan originator, directly or indirectly, is based on a fixed percentage of the amount of credit extended; however, such compensation may be subject to a minimum or maximum dollar amount. (§1026.36(d)(1)(ii))

2. A proxy[37] for a term of a transaction. (§1026.36(d)(1)(i))

b. Determine that a loan originator that receives a contribution to a defined contribution, tax-advantaged plan that meets the applicable requirements of the Internal Revenue Code does not receive a contribution that is directly or indirectly based on the terms of the individual loan originator's transactions. (§1026.36(d)(1)(iii))

c. Determine whether an individual loan originator receives compensation pursuant to a non-deferred, profits-based compensation plan only if:

1. The compensation paid to an individual loan originator is not directly or indirectly based on the terms of that individual loan originator's transactions that are subject to section 1026.36(d); and

2. At least one of the following conditions is satisfied:

i. The compensation paid to an individual loan originator does not, in the aggregate, exceed 10 percent of the individual loan originator's total compensation corresponding to the time period for which the compensation under the non-deferred profits-based compensation plan is paid; or

ii. The individual loan originator was a loan originator for ten or fewer transactions consummated during the 12-month period preceding the date of the compensation determination.

[37] A factor that is not itself a term of a transaction is a proxy for a term of the transaction if the factor consistently varies with that term over a significant number of transactions, and the loan originator has the ability, directly or indirectly, to add, drop, or change the factor in originating the transaction. (§1026.36(d)(1)(i))

Prohibition on Dual Compensation

a. If any loan originator receives compensation directly from a consumer in a closed-end consumer credit transaction secured by a dwelling, determine that (§1026.36(d)(2)):

   1. No loan originator receives compensation, directly or indirectly, from any person other than the consumer in connection with the transaction (§1026.36(d)(2)(i)(A)(*1*)) except that a loan originator organization may receive compensation from a consumer and pay compensation to its individual loan originator ; and

   2. No person who knows or has reason to know of the consumer-paid compensation to the loan originator (other than the consumer) pays any compensation to a loan originator, directly or indirectly, in connection with the transaction. (§1026.36(d)(2)(i)(A)(*2*))

      NOTE: Loan originator organizations are permitted to compensate their employees if the organization receives compensation directly from a consumer, subject to the prohibition on payments to loan originators in section 1026.36(d)(1).

Prohibition on Steering

a. Determine that, in connection with a consumer credit transaction secured by a dwelling, a loan originator does not direct or "steer" a consumer to consummate a transaction based on the fact that the originator will receive greater compensation from the creditor in that transaction than in other transactions the originator offered or could have offered to the consumer, unless the consummated transaction is in the consumer's interest. (§1026.36(e)(1))

   NOTE: The rule provides a safe harbor to facilitate compliance with the prohibition on steering in section 1026.36(e)(1). The loan originator is deemed to comply with the anti-steering prohibition if the consumer is presented with loan options that meet all of the following conditions for each type of transaction in which the consumer expressed an interest:[38]

   1. The loan originator obtains loan options from a significant number of the creditors with which the originator regularly does business and, for each type of transaction in which the consumer expressed an interest, presents the consumer with loan options that include (§1026.36(e)(3)(i)):

      i. The loan with the lowest interest rate; (§1026.36(e)(3)(i)(A))

      ii. The loan with the lowest interest rate without negative amortization, a prepayment penalty, interest-only payments, a balloon payment in the first seven years of the life of the loan, a demand feature, shared equity, or shared appreciation; or, in the

[38] The term ''type of transaction'' refers to whether: (i) A loan has an APR that cannot increase after consummation; (ii) A loan has an APR that may increase after consummation; or (iii) A loan is a reverse mortgage. (§1026.36(e)(2))

case of a reverse mortgage, a loan without a prepayment penalty, or shared equity or shared appreciation; and (§1026.36(e)(3)(i)(B))

iii. The loan with the lowest total dollar amount of discount points, origination points or origination fees (or, if two or more loans have the same total dollar amount of discount points, origination points or origination fees, the loan with the lowest interest rate that has the lowest total dollar amount of discount points, origination points or origination fees). (§1026.36(e)(3)(i)(C))

2. The loan originator has a good faith belief that the options (presented to the consumer that are set forth, above) are loans for which the consumer likely qualifies. (§1026.36(e)(3)(ii))

3. For each type of transaction, if the originator presents to the consumer more than three loans, the originator highlights the loans that satisfy options 1.i, 1.ii, and 1.iii above. (§1026.36(e)(3)(iii))

   NOTE: If the requirements set forth in section 1026.36(e) are met, the loan originator can, without steering, present fewer than three loans. (§1026.36(e)(4))

Loan Originator[39] Qualifications and Documentation

a. Determine whether the loan originator organization complies with all applicable state law requirements for legal existence and foreign qualification. (§1026.36(f)(1))

b. Determine whether the loan originator organization ensures that individual loan originators who work for it (e.g., employees, under a brokerage agreement) are licensed or registered as required by the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (SAFE Act), its implementing regulations (12 CFR §§1007 and 1008), and any state SAFE Act law. (§1026.36(f)(2))

c. For individual loan originators who are its employees and who are not required to be licensed and are not licensed as a loan originator under section 1008.103 or state SAFE Act implementing law, determine whether the loan originator organization, prior to allowing the individual to act as a loan originator:

   1. Obtained a copy of the individual's background check through the Nationwide Mortgage Licensing System and Registry (NMLSR) or a criminal background check from a law enforcement agency or commercial service; (§1026.36(f)(3)(i)(A))

   2. Obtained a credit report from a consumer reporting agency in compliance with FCRA section 604(b); (§1026.36(f)(3)(i)(B))

[39] For the purposes of §§1026.36(f) and (g), all creditors are loan originators.

3. Obtained information from the NMLSR, or from the individual as applicable, about administrative, civil, or criminal findings against the individual; (§1026.36(f)(3)(i)(C))

4. Determined on the basis of obtained information or any other information reasonably available that the individual has not been convicted of, plead guilty or *nolo contendere* to a felony in a domestic or military court during the preceding seven year period; (§1026.36(f)(3)(ii)(A)(*1*))

5. Determined on the basis of obtained information or any other information reasonably available that the individual has not been convicted of, plead guilty or *nolo contendere* to a felony involving an act of fraud, dishonesty, breach of trust, or money laundering, at any time; (§1026.36(f)(3)(ii)(A)(*1*))

6. Confirmed that if the individual has a felony conviction and is employed as an individual loan originator, that the FDIC (or FRB, as applicable), NCUA, or Farm Credit Administration has provided consent to employ the individual under their own statutory authorities; (§1026.36(f)(ii)(A)(*2*) (*iii*))

7. Confirmed that the individual demonstrated financial responsibility, character, and general fitness such as to warrant a determination that the individual loan originator will operate honestly, fairly, and efficiently; (§1026(f)(3)(ii)(B))

8. Provides periodic training covering federal and state law requirements that apply to the individual loan originator's loan origination activities. (§1026.36(f)(3)(iii))

   NOTE: Paragraph (c) only applies to an individual loan originator hired on after January 10, 2014 (or an individual loan originator the loan originator organization hired before this date but for whom there were no applicable statutory or regulatory background standards in effect at the time of hire or used to screen the individual) or an individual loan originator regardless of when hired who, based on reliable information known to the loan originator organization, likely does not meet the qualification standards.

d. Verify that the loan originator organization and individual loan originator include their names and NMLSR IDs on all required loan documentation, including: (§1026.36(g))

   1. The credit application;

   2. The note or loan contract; and

   3. The security instrument.

Policies and Procedures for Depository Institutions to Ensure and Monitor Compliance

a. Verify that loan originator organizations that are depositories (including credit unions) have established and maintain written policies and procedures reasonably designed (i.e.,

appropriate to the nature, size, complexity and scope of the mortgage lending activities of the depository and its subsidiaries) to ensure that the depository, its subsidiaries and their collective employees comply with the loan originator requirements of section 1026.36(d)–(g). (§1026.36(j))

Prohibition on Mandatory Arbitration Clauses and Waiver of Certain Consumer Rights

a. Verify that the contract or other agreement for a consumer credit transaction secured by a dwelling (including a home equity line of credit secured by the consumer's principal dwelling) does not include terms that require arbitration or any other non-judicial procedure to resolve any controversy or settle any claims arising out of the transaction. (§1026.36(h)(1))

b. Verify that the contract or other agreement relating to a consumer credit transaction secured by a dwelling (including a home equity line of credit secured by the consumer's principal dwelling) has not been applied or interpreted to bar a consumer from bringing a claim in court pursuant to any provision of law for damages or other relief in connection with any alleged violation of any federal law. (§1026.36(h)(2))

Prohibition on Financing Single-Premium Credit Insurance

a. Determine that the creditor does not finance, directly or indirectly, premiums or fees for credit insurance (including credit life, credit disability, credit unemployment, or credit property insurance, or any other accident, loss-of-income, life, or health insurance or payment for debt cancellation/suspension) on the transaction secured by a dwelling. (§1026.36(i))

NOTE: Credit unemployment insurance is not subject to this prohibition where the premiums are reasonable, the creditor receives no direct or indirect compensation in connection with the premiums, and the premiums are paid under a separate insurance contract and are not paid to an affiliate of the creditor. Additionally, this prohibition does not extend to credit insurance that is paid in full monthly.

Negative Amortization Counseling

a. Verify that the creditor received documentation that first-time borrowers received pre-loan counseling from a HUD certified or approved counselor on each negative amortizing mortgage loan to prior to originating the loan. (§1026.36(k))

   NOTE: This restriction does not apply to reverse mortgages covered under section 1026.33 or transactions secured by a timeshare plan. For more information, please see the commentary to section 1026.36(k).

Servicing Requirements for Certain Home Mortgages Subject to Subpart E

a. Determine whether the creditor, assignee, or servicer provides consumers with reasonably prompt periodic statements for closed-end loans secured by a dwelling. (§1026.41)

   NOTE: This requirement does not apply to reverse mortgages under section 1026.33, timeshare plans, fixed-rate loans where the servicer currently provides consumers with coupon books that contain account payment, fees, and contact information specified under section 1026.41(e)(3), or small servicers under section 1026.41(e)(4). A small servicer is defined as either a servicer that, together with any affiliates, services 5,000 or fewer loans, for all of which the servicer or any affiliate is the creditor or assignee or a servicer that is a housing finance agency under 24 CFR 226.5. Small servicer status is based on the loans serviced by the servicer and any affiliates as of January 1 for the remainder of the year. Servicers that cease to qualify as a small servicer will have the later of six months after the date they ceased to qualify, or until the next January 1 to come into compliance.
   NOTE ALSO: When examining a creditor or assignee that continues to own the loan, or a servicer, if the entity states that another entity has the obligation to provide the disclosures, examiners should determine whether the examined entity takes steps to ensure that the other party (a creditor, assignee, or servicer) is complying with the obligation to provide the disclosures.

b. Verify that the periodic statements contain:

   1. The payment due date; the amount of any late payment fee, and the date on which that fee will be imposed; and the amount due (the latter shown more prominently than other disclosures on the page and, if the transaction has multiple payment options, the amount due under each of the payment options), grouped together in close proximity to each other and located at the top of the first page; (§1026.41(d)(1))

   2. The monthly payment amount, including a breakdown of how it will be applied to principal, interest, and escrow, and if a mortgage loan has multiple payment options along with information regarding how each payment will affect the principal, a breakdown of each of the payment options; the total sum of any fees or charges imposed since the last statement; and any payment amount past due, grouped together in close proximity to each other and located at the top of the first page. (§1026.41(d)(2))

   3. The total of all payments received since the last statement, including a breakdown showing how the payment was applied to principal, interests, escrow, fees. and charges, and any amount sent to a suspense or unapplied funds account grouped together in close proximity to each other and located at the top of the first page; (§1026.41(d)(3)(i))

   4. The total of all payments received for the calendar year, including a breakdown of how those payments were applied to principal, interest, escrow, fees. and charges and

any amount currently held in a suspense or unapplied funds account, grouped together in close proximity to each other and located at the top of the first page; (§1026.41(d)(3)(ii))

5. A list of transaction activity that occurred since the last statement, including the date, amount, and brief description of the transaction. Transaction activity includes any activity that caused a credit or debit to the amount currently due; (§1026.41(d)(4))

6. For statements where a partial payment was received and the creditor or servicer held the partial payment in a suspense or unapplied funds account, information explaining what must be done for the funds to be applied to the balance, located on the front page or a separate page of the statement or in a separate letter; (§1026.41(d)(5))

7. A toll-free number, and if applicable, an email address, that consumers may use to obtain account information located on the front page; (§1026.41(d)(6))

8. The amount of the outstanding principal balance; (§1026.41(d)(7)(i))

9. The current interest rate for the mortgage; (§1026.41(d)(7)(ii))

10. The date that the interest may change (if applicable); (§1026.41(d)(7)(iii))

11. Information regarding whether the loan contains a prepayment penalty; (§1026.41(d)(7)(iv))

12. The web address to the CFPB or HUD's list of homeownership counselors or counseling organizations and HUD's toll-free telephone number to obtain contact information for counselors or counseling organizations; (§1026.41(d)(7)(v))

13. For consumers more than 45 days delinquent, creditors, assignees, or servicers also must provide on the first page or on a separate page of the statement or in a separate letter:

    i. The date that the consumer's account became delinquent; (§1026.41(d)(8)(i))

    ii. A notification of the possible risks, such as foreclosure, and expenses that may occur if the consumer does not become current; (§1026.41(d)(8)(ii))

    iii. An account history showing the shorter of the previous six months or from the time the account was last current, the amount of payment that is past due from each billing cycle; (§1026.41(d)(8)(iii))

    NOTE: If any payment was accepted as a full payment, the creditor or servicer must show that the payment was credited to the consumer's account and the date that the payment was credited.

    iv. A notice indicating any loss mitigation program that the consumer has agreed to; (§1026.41(d)(8)(iv))

v. A notice of whether the servicer has initiated foreclosure proceedings; (§1026.41(d)(8)(v))

vi. The total payment amount needed to bring the account current; and (§1026.41(d)(8)(vi))

vii. A reference to homeownership counseling information required under section 1026.41(d)(7)(v). (§1026.41(d)(8)(vii))

c. For high-cost mortgages, ensure the creditor or servicer does not charge any fee to modify, renew, extend, or amend a high-cost mortgage, or to defer any payment due under the terms of the mortgage. (§1026.34(a)(7))

d. For high-cost mortgages, determine whether the creditor or servicer charged a late payment greater than four percent of the payment past due. (§1026.34(a)(8)(i))

e. For high-cost mortgages, determine that the creditor or servicer did not impose any late fee or delinquency charge in connection with a payment, when the only delinquency was attributable to late fees or delinquency charges assessed on an earlier payment, and the payment is otherwise a full payment for the applicable period and is paid on its due date or within any applicable grace period (§§1026.34(a)(8)(iii)).

f. For high-cost mortgages, determine whether the creditor or servicer assessed any fees for providing consumers with a payoff statement related to the high-cost mortgage. (§1026.34(a)(9))

   NOTE: Creditors or servicers are permitted to assess a processing fee if the payoff statement is provided by courier or by fax, the fee is comparable to fees for similar services provided for non-high-cost mortgages, and the creditor or servicer discloses that payoff statements are available by an alternative method free of charge. Additionally, within a calendar year, if the creditor or servicer has already provided four payoff statements in compliance with section 1026.34(a)(9), it may assess fees for additional statements.

g. For high-cost mortgages, determine that the creditor or servicer is providing payoff statements within five business days after receiving a request from the consumer (or consumer's authorized representative). (§1026.34(a)(9)(v))

h. For higher-priced mortgage loans that are subject to the escrow account requirements, ensure the creditor or servicer maintains the consumer's escrow account for a minimum of five years after consummation of the loan, unless: (1026.35(b)(3))

   1. The creditor or servicer terminated the escrow account upon termination of the underlying debt obligation (§1026.35(b)(3)(i)(A)); or

   2. The creditor or servicer terminated the escrow account upon request from the consumer, no earlier than five years after consummation of the loan. (§1026.35(b)(3)(i)(B))

NOTE: Upon request from the consumer, the creditor or servicer must verify that the unpaid principal balance of the higher-priced mortgage loan is less than 80 percent of the original value of the property securing the loan and that the consumer is not delinquent or in default on the loan, prior to cancelling the escrow account. (§1026.35(b)(3)(ii))

i. For consumer credit transactions secured by a consumer's principal dwelling, determine that the creditor or servicer credited consumer's periodic payments as of the date the payment was received or ensured that any delay in crediting did not result in any charge to the consumer or in the reporting of any negative information to a consumer reporting agency. (§§1026.34(a)(8)-(9) and 1026.36(c)(1)(i))

j. For consumer credit transactions secured by a consumer's principal dwelling, determine whether the creditor or servicer uses a suspense or unapplied payment account for partial payments.

   1. For creditors or servicers that use suspense or unapplied payment accounts for consumers' partial payments, verify that the creditor or servicer discloses to consumers that amount held in the suspense account on the periodic statement required by section 1026.41(d)(3) if one is required; and

   2. Verify that creditors or servicers credit a periodic payment to the consumer's account once the amount in the suspense account equals a periodic payment. (§1026.36(c)(1)(ii)(B))

k. For consumer credit transactions secured by a consumer's principal dwelling, and for creditors or servicers that accept non-conforming payments from consumers, verify that the creditor or servicer credited the non-conforming payment to the consumer's account as of five days after receipt of the payment. (§1026.36(c)(1)(iii))

l. Determine whether there were any of the following prohibited acts or practices in connection with credit secured by a consumer's principal dwelling (§1026.36(c)):

   1. Imposing on the consumer any late fee or delinquency charge in connection with a payment, when the only delinquency was attributable to late fees or delinquency charges assessed on an earlier payment, and the payment is otherwise a full payment for the applicable period and is received on its due date or within any applicable grace period (§1026.36(c)(1)(ii)); or,

   2. A creditor, assignee, or servicer failing to provide, within a reasonable time, but no later than seven business days after receiving a written request from the consumer or person acting on behalf of the consumer, an accurate statement of the total outstanding balance that would be required to satisfy the consumer's obligations in full as of a specific date except when a delay is because a loan is in bankruptcy or foreclosure, the loan is a reverse or shared appreciation mortgage, or because of a natural disaster, in which case the payoff statement must be provided within a reasonable period of time. (§1026.36(c)(3))

Valuation Independence

a. Determine that the covered person did not attempt to directly or indirectly cause the value assigned to the consumer's principal dwelling to be based on any factor other than the independent judgment of a person that prepares valuations. Examples of such attempts include (§1026.42(c)):

   1. Seeking to influence a person that prepares a valuation to report a minimum or maximum value for the consumer's principal dwelling;

   2. Withholding or threatening to withhold timely payment to a person that prepares a valuation or performs valuation management functions because the person does not value the consumer's principal dwelling at or above a certain amount;

   3. Implying to a person that prepares valuations that current or future retention of the person depends on the amount at which the person estimates the value of the consumer's principal dwelling;

   4. Excluding a person that prepares a valuation from consideration for future engagement because the person reports a value for the consumer's principal dwelling that does not meet or exceed a predetermined threshold; and

   5. Conditioning the compensation paid to a person that prepares a valuation on consummation of the covered transaction.

b. Determine that the valuation does not materially misrepresent the value of the consumer's principal dwelling. (§1026.42(c)(2)(i))

   NOTE: A misrepresentation is material if it is likely to significantly affect the value assigned to the consumer's principal dwelling. A bona fide error shall not be a misrepresentation.

c. Determine that a valuation was not falsified or materially altered. (§1026.42(c)(2)(ii))

   NOTE: An alteration is material if it is likely to significantly affect the value assigned to the consumer's principal dwelling.

d. Determine that the covered person does not induce a person to materially misrepresent or falsify the value of a consumer's principal dwelling (in violation of section 1026.42(c)(2)(i) or (ii)). (§1026.42(c)(2)(iii))

e. Prohibition on conflicts of interest. To the extent applicable, determine that the person who prepared the valuations or performed the valuation management functions for a covered transaction did not have a direct or indirect interest, financial or otherwise, in the property or transaction for which the valuation is or will be performed. (§1026.42(d)(1)(i))

NOTE: No person violates this section solely because that the person is an employee or affiliate of the creditor, or provides a settlement service in addition to preparing valuations or performing valuation management functions, or based solely on the fact that the person's affiliate performs another settlement service, as long as the conditions discussed below ((f), (g), and (h)) are met If they are not met, whether the conflicts of interest provisions are violated by the above persons or entities depends on all of the facts and circumstances. In other words, the conditions in (f), (g), and (h) are a safe harbor, but not required.

f. For any consumer credit transaction secured by the consumer's principal dwelling in which the creditor had assets of more than $250 million as of December 31st for both of the past two calendar years, determine that a person subject to section 1026.42(d)(1)(i) who is employed by or affiliated with the creditor does not have a conflict of interest in violation of section 1026.42(d)(1)(i) based solely on the person's employment or affiliate relationship with the creditor if (§1026.42(d)(2)):

    1. The compensation of the person preparing a valuation or performing valuation management functions is not based on the value arrived at in any valuation;

    2. The person preparing a valuation or performing valuation management functions reports to a person who is not part of the creditor's loan production function, as defined in section 1026.42(d)(5)(i), and whose compensation is not based on the closing of the transaction to which the valuation relates; and

    3. No employee, officer or director in the creditor's loan production function, as defined in section 1026.42(d)(5)(i), is directly or indirectly involved in selecting, retaining, recommending or influencing the selection of the person to prepare a valuation or perform valuation management functions, or to be included in or excluded from a list of approved persons who prepare valuations or perform valuation management functions.

g. For any covered transaction in which the creditor had assets of $250 million or less as of December 31st for either of the past two calendar years, determine that a person subject to section 1026.42(d)(1)(i) who is employed by or affiliated with the creditor does not have a conflict of interest in violation of section 1026.42(d)(1)(i) based solely on the person's employment or affiliate relationship with the creditor if (§1026.42(d)(3)):

    1. The compensation of the person preparing a valuation or performing valuation management functions is not based the value arrived at in any valuation; and

    2. The creditor requires that any employee, officer or director of the creditor who orders, performs, or reviews a valuation for a covered transaction abstain from participating in any decision to approve, not approve, or set the terms of that transaction.

h. For any covered transaction, determine that a person who prepares a valuation or performs valuation management functions in addition to performing another settlement service for the transaction, or whose affiliate performs another settlement service for the

transaction, does not have a conflict of interest in violation of section 1026.42(d)(1)(i) as a result of the person or the person's affiliate performing another settlement service for the transaction if (§1026.42(d)(4)):

1. The creditor had assets of more than $250 million as of December 31st for both of the past two calendar years and the conditions in paragraph (d)(2)(i)-(iii) are met; or

2. The creditor had assets of $250 million or less as of December 31st for either of the past two calendar years and the conditions in paragraph (d)(3)(i)-(ii) are met.

i. If the creditor did know at or before consummation of a violation of sections 1026.42(c) or (d) in connection with a valuation, determine that the creditor did not extend credit based on the valuation, unless the creditor documented that it acted with reasonable diligence to determine that the valuation did not materially misstate or misrepresent the value of the consumer's principal dwelling. (§1026.42(e))

   NOTE: For purposes of section 1026.42(e), a valuation materially misstates or misrepresents the value of the consumer's principal dwelling if the valuation contains a misstatement or misrepresentation that affects the credit decision or the terms on which credit is extended.

j. Customary and reasonable compensation. For any covered transaction, determine that the creditor and its agents compensated a fee appraiser for performing appraisal services at a rate that is customary and reasonable for comparable appraisal services performed in the geographic market of the property being appraised. (§1026.42(f)(1))

   NOTE: For purposes of section 1026.42(f), "agents" of the creditor do not include any fee appraiser as defined in section 1026.42(f)(4)(i). An "agent" could be an appraisal management company to which the creditor has outsourced the valuation function.

k. If the creditor reasonably believes an appraiser has not complied with the Uniform Standards of Professional Appraisal Practice or ethical or professional requirements for appraisers under applicable state or federal statutes or regulations, determine that the creditor referred the matter within a reasonable period of time to the appropriate state agency if the failure to comply is material. (§1026.42(g)(1))

   NOTE: For purposes of section 1026.42(g), a failure to comply is material if it is likely to significantly affect the value assigned to the consumer's principal dwelling.

Open-End Credit Transactional Testing Procedures

a. For each open-end credit product tested, determine the accuracy of the disclosures by comparing the disclosure with the contract and other financial institution documents. (§1026.5(c))

b. Review the financial institution's policies, procedures, and practices to determine whether it provides appropriate disclosures for creditor-initiated direct mail applications and solicitations to open charge card accounts, telephone applications and solicitations to open charge card accounts, and applications and solicitations made available to the general public to open charge card accounts. (§1026.60(b), (c), and (d))

c. Determine for all home equity plans with a variable rate that the APR is based on an independent index. Further, ensure home equity plans are terminated or terms changed only if certain conditions exist. (§1026.40(f))

d. Determine that, if any consumer rejected a home equity plan because a disclosed term changed before the plan was opened, all fees were refunded. Verify that non-refundable fees were not imposed until three business days after the consumer received the required disclosures and brochure. (§1026.40(g) and (h))

e. Review consecutive periodic billing statements for each major type of open-end credit activity offered (overdraft and home-equity lines of credit, credit card programs, etc.). Determine whether disclosures were calculated accurately and are consistent with the initial disclosure statement furnished in connection with the accounts (or any subsequent change in terms notice) and the underlying contractual terms governing the plan(s).

f. Determine whether the consumer was given notice of the right to reject the significant change, with the exception of:

    1. An increase in the required minimum periodic payment (§1026.9(c)(2)(iv)(B)),

    2. A change in the APR (§1026.9(c)(2)(iv)(B)),

    3. A change in the balance computation method necessary to comply with section 1026.54, which sets forth certain limitations on the imposition of finance charges as a result of a loss of a grace period, or

    4. Increase in fee pursuant to evaluation under section 1026.52 or adjustment to safe harbors

    5. Increase in fees previously reduced under SCRA

    6. When the change results from the creditor not receiving the required minimum periodic payment within 60 days after the due date for that payment. (§1026.9(c)(2)(iv)(B))

g. Determine that the creditor did not increase the rate applicable to the consumer's account to the penalty rate if the outstanding balance did not exceed the credit limit on the date set forth in the notice. (§1026.9(g)(4))

h. Determine, for each type of open-end rescindable loan being tested, the appropriate number of copies of the rescission notice are provided to each person whose ownership

interest is or will be subject to the security interest and perform the procedures 12, 13, and 14 under Closed-End Credit section. (§1026.15(b), (c) and (e))

i. Additional variable rate testing: Verify that when accounts were opened or loans were consummated that loan contract terms were recorded correctly in the financial institution's calculation systems (e.g., its computer). Determine the accuracy of the following recorded information:

   1. Index value,
   2. Margin and method of calculating rate changes,
   3. Rounding method, and
   4. Adjustment caps (periodic and lifetime).

j. Using a sample of periodic disclosures for open-end variable rate accounts (e.g., home equity accounts) and closed-end rate change notices for adjustable rate mortgage loans:

   1. Compare the rate-change date and rate on the credit obligation to the actual rate-change date and rate imposed.
   2. Determine that the index disclosed and imposed is based on the terms of the contract (example: the weekly average of one-year Treasury constant maturities, taken as of 45 days before the change date). (§§1026.7(a) and 1026.20(c)(2))
   3. Determine that the new interest rate is correctly disclosed by adding the correct index value with the margin stated in the note, plus or minus any contractual fractional adjustment. (§§1026.7(g) and 1026.20 (c)(1))
   4. Determine that the new payment disclosed (§1026.20(c)(4)) was based on an interest rate and loan balance in effect at least 25 days before the payment change date (consistent with the contract). (§1026.20(c))

Crediting a Consumer's Account – Section 1026.10

a. Ensure that the creditor credits payment to a consumer's account as of the date of receipt, except when a delay in crediting does not result in a finance charge or other charge. (§1026.10(a))

b. If a creditor specifies requirements for payments, determine that they are reasonable and enable most consumers to make conforming payments. (§1026.10(b))

c. Except as provided by section 1026.10(b)(4)(ii), if a creditor specifies, on or with the periodic statement, requirements for the consumer to follow in making payments as permitted under section 1026.10, but accepts a payment that does not conform to the requirements, determine that the payment is credited within five days of receipt. (§1026.10(b)(4)(i))

d. If the creditor promotes a method for making payments, determine that the creditor considers such payments conforming payments in accordance with section 1026.10(b) and that they are credited to the consumer's account as of the date of receipt, except when a delay in crediting does not result in a finance charge or other charge. (§1026.10(b)(4)(ii))

e. If the creditor sets a cut-off time for payments to be received by mail, by electronic means, by telephone, or in person, verify that the cut-off time is 5 p.m. or later on the payment due date at the location specified by the creditor for the receipt of such payments. (§1026.10(b)(2)(ii))

f. For in-person payments on a credit card account under an open-end (not home-secured) consumer credit plan at a financial institution branch or office that accepts such payments, a card issuer shall not impose a cut-off time earlier than the close of business for any such payments made in person at any branch or office of the card issuer at which such payments are accepted. However, a card issuer may impose a cut-off time earlier than 5 p.m. for such payments, if the close of business of the branch or office is earlier than 5 p.m. (§1026.10(b)(3)(i))

g. If a creditor fails to credit a payment as required and imposes a finance or other charge, ensure that the creditor credits the charge(s) to the consumer's account during the next billing cycle. (§1026.10(c))

h. If (due to a weekend or holiday, for example) a creditor does not receive or accept payments by mail on the due date for payments, determine that the creditor treats as timely a payment received on the next business day. (§1026.10(d)(1))

   NOTE: If a creditor accepts or receives payments made on the due date by a method other than mail, such as electronic or telephone payments, the creditor is not required to treat a payment made by that method on the next business day as timely.

i. For credit card accounts under an open-end (not home-secured) consumer credit plan, determine that the creditor does not impose a separate fee to allow consumers to make a payment by any method, such as mail, electronic, or telephone payments, unless such payment method involves an expedited service by a customer service representative of the creditor. (§1026.10(e))

   NOTE: For purposes of section 1026.10(e), the term "creditor" includes a third party that collects, receives, or processes payments on behalf of a creditor.

j. If a card issuer makes a material change in the address for receiving payments or procedures for handling payments, and such change causes a material delay in the crediting of a payment to a consumer's account during the 60-day period following the date on which such change took effect, ensure that the card issuer does not impose any late fee or finance charge for a late payment on the credit card account during the 60-day period following the date on which the change took effect. (§1026.10(f))

Treatment of Credit Balances, Account Termination – Section 1026.11

a. Determine institution's treatment of credit balances. Specifically, if the account's credit balance is in excess of $1, the institution must take the actions listed below. (§1026.11)

   1. Credit the amount to the consumer's account; and

   2. Either:

      i. Refund any part of the remaining credit balance within seven business days from receiving a written request from the consumer; or

      ii. If no written request is received and the credit remains for more than six months, make a good faith effort to refund the amount of the credit to the consumer by cash, check, money order, or credit to a deposit account of the consumer. No further action is required if the consumer's current location is not known to the creditor and cannot be traced through the consumer's last known address or telephone number.

b. Determine that institution has not terminated an account prior to its expiration date solely because the consumer did not incur a finance charge. However, a creditor is not prohibited from closing an account that, for three consecutive months, no credit has been extended (such as by purchase, cash advance, or balance transfer) and the account has had no outstanding balance. (§1026.11(b))

c. Determine that, for credit card accounts under an open-end (not home-secured) consumer credit plan, the card issuer has adopted reasonable written policies and procedures designed to ensure that an administrator of an estate of a deceased account holder can determine the amount of and pay any balance on the account in a timely manner. (§1026.11(c)(1)(i))

d. NOTE: This does not apply to the account of a deceased consumer if a joint account holder remains on the account.

e. Ensure that, upon request by the administrator of an estate, the card issuer provides the administrator with the amount of the balance on a deceased consumer's account in a timely manner. (§1026.11(c)(2)(i))

f. NOTE: Providing the amount of the balance on the account within 30 days of receiving the request is deemed to be timely.

g. Verify that, after receiving a request from the administrator of an estate for the amount of the balance on a deceased consumer's account, the card issuer does not impose any fees on the account (such as a late fee, annual fee, or over the-limit fee) or increase any annual percentage rate, except as provided by section 1026.55(b)(2) (i.e., due to the operation of an index). (§1026.11(c)(3)(i))

h. Determine that, if payment in full of the disclosed balance, pursuant to section 1026.11(c)(2), is received within 30 days after disclosure, the card issuer waives or rebates any additional finance charge due to a periodic interest rate. (§1026.11(c)(3)(ii))

Special Credit Card Provisions and Billing Error Resolution – Sections 1026.12 and 13

a. Review a sample of billing error resolution files and a sample of consumers who have asserted a claim or defense against the financial institution for a credit card dispute regarding property or services. Verify the following (§§1026.12 and 1026.13):

   1. Credit cards are issued only upon request;

   2. Liability for unauthorized credit card use is limited to $50;

   3. Disputed amounts are not reported delinquent unless remaining unpaid after the dispute has been settled;

   4. Offsetting credit card indebtedness is prohibited; and

   5. Errors are resolved within two complete billing cycles.

Ability to Make the Required Minimum Payments – Section 1026.51

a. Determine that the card issuer does not open a credit card account for a consumer under an open-end (not home-secured) consumer credit plan, or increase any credit limit applicable to such account, unless the card issuer considers the ability of the consumer to make the required minimum periodic payments under the terms of the account based on the consumer's income or assets and current obligations. (§1026.51(a)(1)(i))

b. Verify that the card issuer establishes and maintains reasonable written policies and procedures to consider a consumer's income or assets and current obligations. Reasonable policies and procedures to consider a consumer's ability to make the required payments include a consideration of at least one of the following: (§1026.51(a)(1)(ii))

   1. The ratio of debt obligations to income;

   2. The ratio of debt obligations to assets; or

   3. The income the consumer will have after paying debt obligations.

      NOTE: Reasonable written policies and procedures may include treating any income and assets to which the consumer has a reasonable expectation of access as the consumer's income or assets, or may be limited to consideration to the consumer's independent income and assets.

c. Confirm that the card issuer does not issue a credit card to a consumer who does not have any income or assets, and that the credit does not issue a credit card without reviewing any information about a consumer's income, assets, or current obligations. (§1026.51(a)(1)(ii))

   NOTE: A card issuer may consider the consumer's income or assets based on information provided by the consumer, in connection with the credit card account or any other financial relationship the card issuer or its affiliates has with the consumer, subject to any applicable information-sharing rules, and information obtained through third parties, subject to any applicable information-sharing rules. A card issuer may also consider information obtained through any empirically derived, demonstrably and statistically sound model that reasonably estimates a consumer's income or assets. (Comment 1026.51(a)-5)

d. Determine that the card issuer uses a reasonable method for estimating the minimum periodic payments the consumer would be required to pay under the terms of the account. (§1026.51(a)(2)(i))

e. A card issuer's estimate of the minimum periodic payment is compliant (i.e., receives the benefit of a safe harbor) if it uses the following method (§1026.51(a)(2)(ii)):

   1. The card issuer assumes utilization, from the first day of the billing cycle, of the full credit line that the issuer is considering offering to the consumer; and

   2. The card issuer uses a minimum payment formula employed by the issuer for the product the issuer is considering offering to the consumer or, in the case of an existing account, the minimum payment formula that currently applies to that account, provided that:

      i. If the applicable minimum payment formula includes interest charges, the card issuer estimates those charges using an interest rate that the issuer is considering offering to the consumer for purchases or, in the case of an existing account, the interest rate that currently applies to purchases; and

      ii. If the applicable minimum payment formula includes mandatory fees, the card issuer must assume that such fees have been charged to the account.

f. Rules affecting young consumers: If the card issuer opens a credit card account under an open-end (not home-secured) consumer credit plan for a consumer less than 21 years old, verify that the issuer requires that such consumers:

   1. Submit a written application; and

   2. Either possess an independent ability to make the required minimum periodic payments on the proposed extension of credit in connection with the account under section 1026.51(b)(1)(i)) or provide a signed agreement of a cosigner, guarantor, or joint applicant who is at least 21 years old who has the ability to make the required

minimum periodic payments on such debts, and be either jointly liable with the consumer for any debt on the account, or secondarily liable for any debt on the account incurred by the consumer before the consumer has attained the age of 21 pursuant to section 1026.51(b)(1)(ii)(A) and (B).

g. If a credit card account was opened for such consumer without a cosigner, guarantor, or joint applicant pursuant to section 1026.51(b)(1), determine that the issuer does not increase the credit limit on the account before the consumer turns 21 unless:

   a. At the time of the contemplated increase, the consumer has an independent ability to make the required minimum periodic payments; or

   b. A cosigner, guarantor, or joint accountholder who is at least 21 years old and has the ability to make the required minimum periodic payments agrees in writing to assume liability for any debt incurred on the account. (§1026.51(b)(2)(i))

h. If a credit card account was opened for such a consumer with a cosigner, guarantor, or joint applicant pursuant to section 1026.51(b)(1)(ii), determine that the issuer does not increase the credit limit on such account before the consumer attains the age of 21 unless the cosigner, guarantor, or joint accountholder who assumed liability at account opening agrees in writing to assume liability on the increase. (§1026.51**(**b)(2))

Limitations on Fees – Section 1026.52

a. During the first year after the opening of a credit card account under an open-end (not home-secured) consumer credit plan, determine whether the card issuer required the consumer to pay covered fees in excess of the 25 percent of the credit limit in effect when the account is opened. (§1026.52(a)(1))

   NOTE: The 25 percent limitation on fees does not apply to fees assessed prior to opening the account.

   NOTE ALSO: An account is considered opened no earlier than the date on which the account may first be used by the consumer to engage in transactions.

   Covered fees include fees (Comment 1026.52(a)(2)-1):

   1. For the issuance or availability of credit, including any fees based on account activity or inactivity;

   2. For insurance, debt cancellation or debt suspension coverage, if the insurance or debt cancellation or suspension coverage is required by the terms of the account;

   3. The consumer is required to pay to engage in transactions using the account, such as:

      i. Cash advance fees;

      ii. Balance transfer fees;

iii. Foreign transaction fees; and

iv. Fees for using the account for purchases.

4. Fees the consumer is required to pay for violating the terms of the account, except to the extent they are specifically excluded (see below);

5. Fixed finance charges; and

6. Minimum charges imposed if a charge would otherwise have been determined by applying a periodic interest rate to a balance except for the fact that such charge is smaller than the minimum.

NOTE: Section 1026.52(a) does not authorize the imposition or payment of fees or charges otherwise prohibited by law. (§1026.52(a)(3)

b. Fees not covered by this limitation include: (§1026.52(a)(2)(i)

1. Late payment fees, over-the-limit fees, and returned-payment fees; or

2. Fees that the consumer is not required to pay with respect to the account, such as:

i. An expedited payment fee;

ii. Fees for optional services like travel insurance;

iii. Fees for reissuing a lost or stolen card; or

iv. Statement reproduction fees.

c. Review penetration rates of various optional services to determine if they are truly optional and therefore not covered by the 25 percent limitation.

d. Ensure that the card issuer does not impose a fee for violating the terms or other requirements of a credit card account under an open-end (not home-secured) consumer credit plan unless the dollar amount of the fee is consistent with sections 1026.52(b)(1) and (b)(2). (§1026.52(b))

e. Determine that a card issuer imposes a fee for violating the terms or other requirements of a credit card account under an open-end (not home-secured) consumer credit plan only if the dollar amount of the fee is consistent with either section 1026.52(b)(1)(i) or section 1026.52(b)(1)(ii). (§1026.52(b)(1))

f. *Cost determination*. A card issuer may impose a fee for a particular violation (e.g., late payment) if the card issuer has determined that the fee represents a reasonable proportion of the total costs incurred by the issuer as a result of that type of violation. If a card issuer is relying on a cost determination instead of the safe harbors (see below), review (§1026.52(b)(1)(i)):

1. The number of violations of a particular type experienced by the card issuer during a prior period of reasonable length (e.g., a 12-month period).

2. The costs incurred by the card issuer during that period *as a result of* those violations. Losses and associated costs (including the cost of holding reserves against potential losses and the cost of funding delinquent accounts) must be excluded from this analysis.

3. If used by the card issuer when making its determination:

   i. The number of fees imposed by the card issuer as a result of the type of violation during the period that the issuer reasonably estimates it will be unable to collect.

   ii. Reasonable estimates for an upcoming period of changes in the number of violations of the relevant type, the resulting costs, and the number of fees that the card issuer will be unable to collect.

4. If applicable, whether the items in paragraph 1-3 have been reevaluated by the card issuer at least once during the prior 12 months. If as a result of the reevaluation the card issuer determines that a lower fee represents a reasonable proportion of the total costs incurred by the card issuer as a result of that type of violation, determine that the card issuer begins imposing the lower fee within 45 days after completing the reevaluation.

   NOTE: If as a result of the reevaluation the card issuer determines that a higher fee represents a reasonable proportion of the total costs incurred by the card issuer as a result of that type of violation, the card issuer may begin imposing the higher fee after complying with the notice requirements in section 1026.9. (§1026.52(b)(1)(i))

g. *Safe harbors.* A card issuer may impose a fee for violating the terms or other requirements of the account if the dollar amount of the fee does not exceed, as applicable (§§1026.52(b)(1)(ii)(A)-(C)):

   1. $25.00,

   2. $35.00 if the card issuer previously imposed a fee pursuant to section 1026.52(b)(1)(ii)(A) for a violation of the same type that occurred during the same billing cycle or one of the next six billing cycles or

   3. Three percent of the delinquent balance on a charge card account that requires payment of outstanding balances in full at the end of each billing cycle if the card issuer has not received the required payment for two or more consecutive billing cycles.

   NOTE: The dollar amounts in paragraphs 1 and 2 above will be adjusted annually by the CFPB to the extent that changes in the Consumer Price Index warrant an increase or decrease of a whole dollar.

h. Determine that the card issuer does not impose a fee for violating the terms or other requirements of a credit card account under an open-end (not home-secured) consumer credit plan that exceeds the dollar amount associated with the violation. (§1026.52(b)(2)(i)(A))

i. Determine that a card issuer does not impose a fee for violating the terms or other requirements of a credit card account under an open end (not home-secured) consumer credit plan when there is no dollar amount associated with the violation. For purposes of section 1026.52(b)(2)(i), there is no dollar amount associated with the following violations (§1026.52(b)(2)(i)(B)):

   1. Transactions that the card issuer declines to authorize;

   2. Account inactivity; and

   3. The closure or termination of an account.

j. Determine that the card issuer does not impose more than one fee for violating the terms or other requirements of a credit card account under an open-end (not home-secured) consumer credit plan based on a single event or transaction. (§1026.52(b)(2)(ii))

Allocation of Payments – Section 1026.53

a. Determine whether, when a consumer makes a payment in excess of the required minimum periodic payment, the card issuer allocates the excess amount:

   1. First to the balance with the highest APR, and

   2. Any remaining portion to the other balances in descending order based on the applicable APR.

b. For balances on a credit card account subject to a deferred interest or similar program, determine whether the card issuer allocated any amount paid by the consumer in excess of the required minimum periodic payment:

   1. Consistent with the general requirement discussed in (a) above, except that, during the two billing cycles immediately preceding expiration of the deferred interest period, the excess amount must have been allocated first to the balance subject to the deferred interest or similar program and any remaining portion allocated to any other balances consistent with section 1026.53(a) (§1026.53(b)(1)(i)), or

   2. In the manner requested by the consumer (§1026.53(b)(1)(ii)).

c. When a balance on a credit card account is secured, the card issuer may at its option allocate any amount paid by the consumer in excess of the required minimum periodic payment to that balance if requested by the consumer. (§1026.53(b)(2))

Loss of a Grace Period – Section 1026.54

a. Determine whether the card issuer imposed finance charges as a result of the loss of a grace period on a credit card account under an open-end (not home-secured) consumer credit plan based on:

   1. Balances for days in billing cycles that precede the most recent billing cycle, a prohibited practice; or

   2. Any portion of a balance subject to a grace period that was repaid prior to the expiration of the grace period. (§1026.54).

b. With respect to the prohibition in a.2 above, issuers are not required to follow any specific methodology, but an issuer is in compliance if it applies the consumer's payment to the balance subject to the grace period and calculates interest charges on the amount of the balance that remains unpaid. (Comment 1026.54(a)(1)-5)

   Exceptions: This rule does not apply to adjustments to the finance charge as a result of:

   1. The resolution of a dispute under section 1026.12, unauthorized use, or section 1026.13, billing error; or

   2. The return of a payment.

Limitations on Increasing Annual Percentage Rates, Fees, and Charges – Section 1026.55

a. With respect to a credit card account under an open-end (not home-secured) consumer credit plan, determine that the card issuer did not increase an APR or fee or charge required to be disclosed under sections 1026.6(b)(2)(ii) (fee for issuance or availability (e.g., an annual fee)), (b)(2)(iii) (fixed finance charge or minimum interest charge), or (b)(2)(xii) (fee for required insurance, debt cancellation, or debt suspension coverage), unless as permitted by one of the six exceptions:

   1. Temporary rate, fee, or charge exception;

   2. Variable rate exception;

   3. Advance notice exception;

   4. Delinquency exception;

   5. Workout and temporary hardship arrangement; and

   6. Servicemembers Civil Relief Act exception (§1026.55(a)-(b)).

b. To assess whether the temporary rate, fee, or charge exception applies (§1026.55(b)(1)), determine whether:

1. The card issuer increased the APR, fee, or charge upon the expiration of a specified period of six months or longer and

2. Prior to the commencement of that period, the card issuer disclosed in writing to the consumer, in a clear and conspicuous manner, the length of the period and the APR, fee, or charge that would apply after expiration of the period.

c. If the temporary rate exception applies, determine that the card issuer:

1. Did not apply an APR, fee, or charge to transactions that occurred prior to the period that exceeds the APR, fee, or charge that applied to those transactions prior to the period;

2. Provided the required notice, but did not apply an APR, fee, or charge (to transactions that occurred within 14 days after provision of the notice) that exceeds the APR, fee, or charge that applied to that category of transactions prior to provision of the notice; and

3. Did not apply an annual percentage rate to transactions that occurred during the period that exceeds the increased APR, fee, or charge.

d. If the variable rate exception applies (§1026.55(b)(2)), determine that the card issuer did not increase an APR unless:

1. The increase in the APR is due to an increase in the index; and

2. The annual percentage rate varies according to an index that is not under the card issuer's control and is available to the general public.

   NOTE: For purposes of qualifying under this exception, an index is considered under the card issuer's control if the card issuer applies a minimum rate or floor below which the rate cannot decrease. However, because there is no disadvantage to consumers, issuers are not prevented from setting a maximum rate or ceiling. (Comment 1026.55(b)(2) – 2(ii))

e. If the advance notice exception applies (§1026.55(b)(3)), determine that the card issuer:

1. Did not apply that increased APR, fee, or charge to transactions that occurred prior to provision of the notice;

2. Did not apply the increased APR, fee, or charge to transactions that occurred prior to or within 14 days after provision of the notice; and

3. Did not increase the APR, fee, or charge during the first year after the account is opened.

f. If the delinquency exception applies (§1026.55(b)(4)), determine that the card issuer:

1. Disclosed in a clear and conspicuous manner in the required notice a statement of the reason for the increase, and

2. Will cease the increase if the card issuer receives six consecutive required minimum periodic payments on or before the payment due date, beginning with the first payment due following the effective date of the increase.

g. If the delinquency exception applies and the card issuer received six consecutive required minimum periodic payments on or before the payment due date beginning with the first payment due following the effective date of the increase, determine that the card issuer reduces any APR, fee, or charge (increased pursuant to the delinquency exception) to the original APR, fee, or charge that applied prior to the increase with respect to transactions that occurred prior to or within 14 days after provision of the required notice.

h. If the workout and temporary hardship arrangement exception applies (§1026.55(b)(5)), determine that:

1. Prior to commencement of the arrangement (except as provided in section 1026.9(c)(2)(v)(D)) the card issuer provided the consumer with a clear and conspicuous written disclosure of the terms of the arrangement (including any increases due to the completion or failure of the arrangement); and

2. Upon the completion or failure of the arrangement, the card issuer did not apply to any transactions that occurred prior to commencement of the arrangement an APR, fee, or charge that exceeds the APR, fee, or charge that applied to those transactions prior to commencement of the arrangement.

i. If the Servicemembers Civil Relief Act exception applies (§1026.55(b)(6)), determine that the card issuer increased the APR, fee, or charge only after 50 U.S.C. app. 527 or a similar federal or state statute or regulation no longer applied. Further, determine that the issuer did not apply to any transactions that occurred prior to the decrease an APR, fee, or charge that exceeded the APR, fee, or charge that applied to those transactions prior to the decrease.

j. For protected balances (§1026.55(c)), determine that the card issuer did not require repayment using a method that is less beneficial to the consumer than one of the following methods:

1. The method of repayment for the account before the effective date of the increase;

2. An amortization period of not less than five years, beginning no earlier than the effective date of the increase; or

3. A required minimum periodic payment that includes a percentage of the balance that is equal to no more than twice the percentage required before the effective date of the increase.

k. If a card issuer promotes the waiver or rebate of finance charges due to a periodic interest rate or fees or charges (§§1026.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii)) and applies the waiver or rebate to a credit card account under an open-end (not home-secured) consumer credit plan, any cessation of the waiver or rebate on that account constitutes an increase in an annual percentage rate, fee, or charge for purposes of section 1026.55.

Requirements for Over-the-Limit Transactions – Section 1026.56

a. Joint Relationships. Determine that, if two or more consumers are jointly liable on a credit card account under an open-end (not home-secured) consumer credit plan, the card issuer treats the affirmative consent of any of the joint consumers as affirmative consent for that account. Similarly, determine that the card issuer treats a revocation of consent by any of the joint consumers as revocation of consent for that account. (§1026.56(f))

b. Notwithstanding a consumer's affirmative consent to a card issuer's payment of over-the-limit transactions, determine that the card issuer does not (§1026.56(j)):

   1. Impose more than one over-the-limit fee or charge on a consumer's credit card account per billing cycle, and, in any event, only if the credit limit was exceeded during the billing cycle. In addition, the card issuer may not impose an over-the-limit fee or charge on the consumer's credit card account for more than three billing cycles for the same over-the-limit transaction where the consumer has not reduced the account balance below the credit limit by the payment due date for either of the last two billing cycles.

      NOTE: There is an exception to the latter prohibition if another over-the-limit transaction occurred in the last two billing cycles

   2. Impose an over-the-limit fee or charge solely because of the card issuer's failure to promptly replenish the consumer's available credit following the crediting of the consumer's payment following the crediting of the consumer's payment under section 1026.10.

   3. Condition the amount of a consumer's credit limit on the consumer affirmatively consenting to the card issuer's payment of over-the-limit transactions if the card issuer assesses a fee or charge for such service.

   4. Impose an over-the-limit fee or charge for a billing cycle if a consumer exceeds a credit limit solely because of fees or interest charged by the card issuer (defined as charges imposed as part of the plan under section 1026.6(b)(3)) to the consumer's account during that billing cycle.

Reevaluation of Rate Increases – Section 1026.59

a. If a card issuer increases an APR that applies to a credit card account under an open-end (not home-secured) consumer credit plan, based on the credit risk of the consumer,

market conditions, or other factors, or increased such a rate on or after January 1, 2009, and 45 days' advance notice of the rate increase is required pursuant to section 1026.9(c)(2) or (g), determine that the card issuer (§1026.59(a)(1)):

1. Evaluates the factors described in section 1026.59(d); and

2. Based on its review of such factors, reduces the APR applicable to the consumer's account, as appropriate.

b. If a card issuer is required to reduce the rate applicable to an account pursuant to section 1026.59(a)(1), determine that the card issuer reduces the rate not later than 45 days after completion of the evaluation described in section 1026.59(a)(1). (§1026.59(a)(2)(i))

NOTE: Any reduction in an APR required pursuant to section 1026.59(a)(1) of this section shall apply to (§1026.59(a)(2)(ii)):

1. Any outstanding balances to which the increased rate described in section 1026.59(a)(1) has been applied; and

2. New transactions that occur after the effective date of the rate reduction that would otherwise have been subject to the increased rate.

c. Determine that the card issuer has reasonable written policies and procedures in place to conduct the review described in section 1026.59(a). (§1026.59(b))

d. Determine that a card issuer that is subject to section 1026.59(a) conducts the review described in section 1026.59(a)(1) not less frequently than once every six months after the rate increase. (§1026.59(c))

e. Except as provided in section 1026.59(d)(2), determine that the card issuer reviews either (§1026.59(d)(1)):

1. The factors on which the increase in an APR was originally based; or

2. The factors that the card issuer currently considers when determining the APRs applicable to similar new credit card accounts under an open-end (not home-secured) consumer credit plan.

f. For rate increases imposed between January 1, 2009 and February 21, 2010, determine that an issuer considered the factors described in section 1026.59(d)(1)(ii) when conducting the first two reviews required under section 1026.59(a), unless the rate increase subject to section 1026.59(a) was based solely upon factors specific to the consumer, such as a decline in the consumer's credit risk, the consumer's delinquency or default, or a violation of the terms of the account. (§1026.59(d)(2))

g. If an issuer increases a rate applicable to a consumer's account pursuant to section 1026.55(b)(4) based on the card issuer not receiving the consumer's required minimum periodic payment within 60 days after the due date, note that the issuer is not required to

perform the review described in section 1026.59(a) prior to the sixth payment due date after the effective date of the increase. However, if the APR applicable to the consumer's account is not reduced pursuant to section 1026.55(b)(4)(ii), determine that the card issuer performs the review described in section 1026.59(a). Determine that the first such review occurs no later than six months after the sixth payment due following the effective date of the rate increase. (§1026.59(e))

h. The obligation to review factors described in sections 1026.59(a) and (d) ceases to apply (§1026.59(f)):

   1. If the issuer reduces the APR applicable to a credit card account under an open-end (not home-secured) consumer credit plan to the rate applicable immediately prior to the increase, or, if the rate applicable immediately prior to the increase was a variable rate, to a variable rate determined by the same formula (index and margin) that was used to calculate the rate applicable immediately prior to the increase; or

   2. If the issuer reduces the APR to a rate that is lower than the rate described in section 1026.59(f)(1) of this section.

i. Except as provided in section 1026.59(g)(2), section 1026.59 applies to credit card accounts that have been acquired by the card issuer from another card issuer. (§1026.59(g))

j. Determine that a card issuer that complies with this section by reviewing the factors described in section 1026.59(d)(1)(i) reviews the factors considered by the card issuer from which it acquired the accounts in connection with the rate increase. (§1026.59(g)(1))

k. If, not later than six months after the acquisition of such accounts, a card issuer reviews all of the credit card accounts it acquires in accordance with the factors that it currently considers in determining the rates applicable to its similar new credit card accounts (§1026.59(g)(2)):

   1. Except as provided in section 1026.59(g)(2)(iii), determine that the card issuer conducts reviews described in section 1026.59(a) for rate increases that are imposed as a result of its review under this paragraph.

   2. Except as provided in section 1026.59(g)(2)(iii), note that the card issuer is not required to conduct reviews in accordance with section 1026.59(a) for any rate increases made prior to the card issuer's acquisition of such accounts.

   3. Note that if as a result of the card issuer's review, an account is subject to, or continues to be subject to, an increased rate as a penalty, or due to the consumer's delinquency or default, the requirements of section 1026.59(a) apply.

      Servicemembers Civil Relief Act exception: Note that the requirements of Section 1026.59 do not apply to increases in an APR that was previously decreased pursuant

to the Servicemembers Civil Relief Act (50 U.S.C. app. 527), provided that such a rate increase is made in accordance with section 1026.55(b)(6). (§1026.59(h)(1))

Charged off accounts exception: Note that the requirements of section 1026.59 do not apply to accounts that the card issuer has charged off in accordance with loan-loss provisions. (§1026.59(h)(2))

NOTE: Appendix G to part 1026 is amended by revising Forms G-10(B), G-10(C), G-10(E), G-17(B), G-17(C), G-18(B), G-18(D), G-18(F), G-18(G), G-20, G-21, G-22, G- 25(A), and G-25(B).

Administrative Enforcement

10. If there is non-compliance involving understated finance charges or understated APRs subject to reimbursement under the FFIEC Policy Guide on Reimbursement (policy guide):

    a. Document the date on which the administrative enforcement of the TILA policy statement would apply for reimbursement purposes by determining the date of the preceding examination.

    b. If the non-compliance involves indirect (third-party paper) disclosure errors and affected consumers have not been reimbursed.

    c. Prepare comments, discussing the need for improved internal controls to be included in the report of examination.

    d. Notify your supervisory office for follow up with the regulator that has primary responsibility for the original creditor.

    e. If the non-compliance involves direct credit:

        1. Make an initial determination whether the violation is a pattern or practice.

        2. Calculate the reimbursement for the loans or accounts in an expanded sample of the identified population.

        3. Estimate the total impact on the population based on the expanded sample.

        4. Inform management that reimbursement may be necessary under the law and the policy guide, and discuss all substantive facts including the sample loans and calculations.

        5. Inform management of the financial institution's options under section 130 of the TILA for avoiding civil liability and of its option under the policy guide and section 108 (e)(6) of the TILA for avoiding a regulatory agency's order to reimburse affected borrowers.