

Truth in Lending Act¹

Introduction

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 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

¹ These reflect FFIEC-approved procedures.

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 loan originator compensation in loans secured by a dwelling, loan originator qualification standards, prohibitions on mandatory arbitration clauses and waivers of certain consumer rights for loans secured by a dwelling, a prohibition on financing credit insurance for loans secured by a dwelling, 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

V. Lending — TILA

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

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.

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; 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.

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 a third party 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 provides five captions applicable to determining whether a loan-related charge is a finance charge.

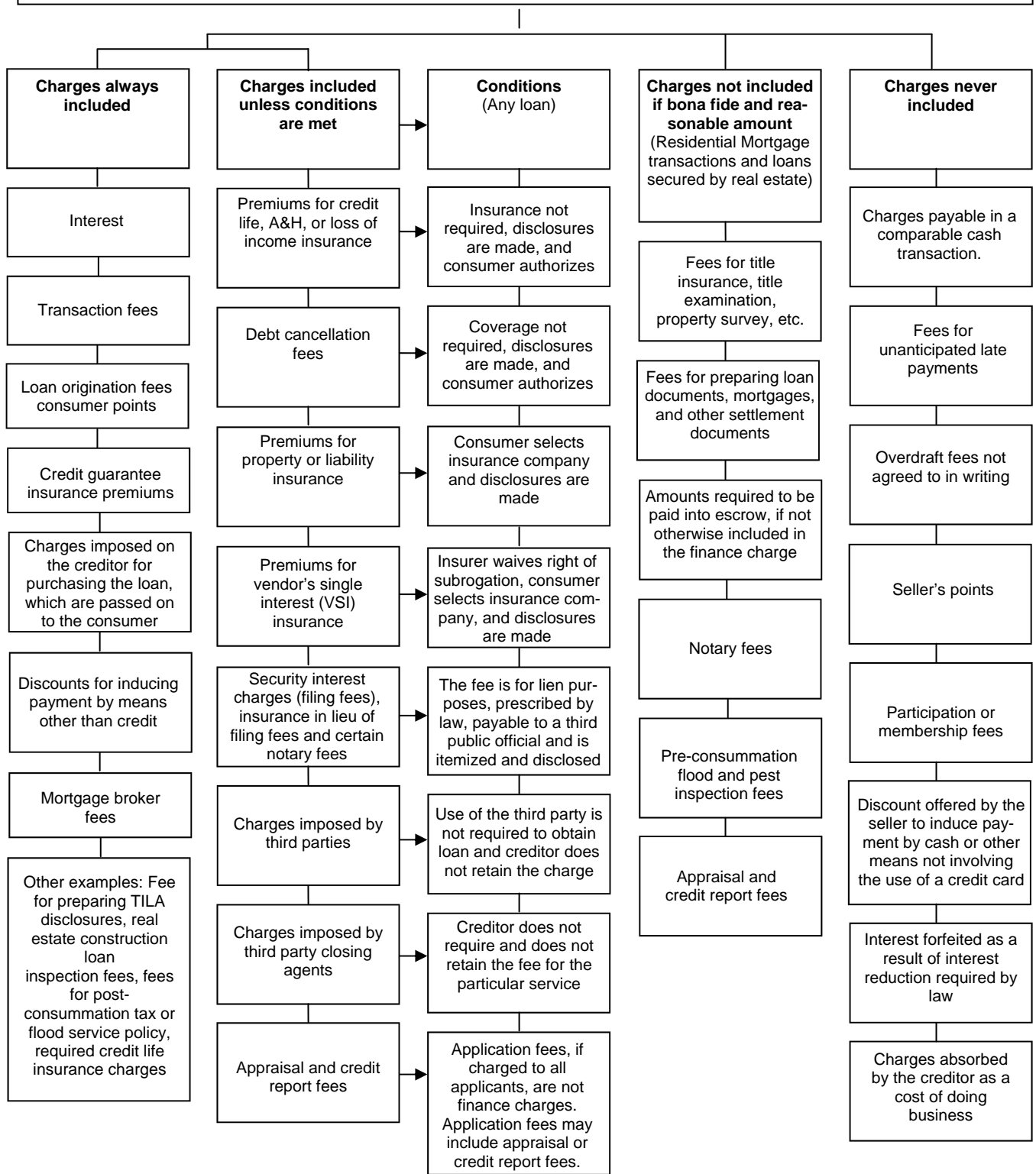
The first caption is charges always included. This category focuses on specific charges given in the regulation or commentary as examples of finance charges.

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

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.



**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

V. Lending — TILA

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

Transaction fees;

Fees imposed for the issuance or availability of the open-end plan;

Grace period; and

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

$$\text{Monthly rate} \times 12 = \text{APR}$$

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

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

1. $\text{Monthly rate} \times 12 = \text{APR}$

Or

2. $(\text{Total finance charge} / \text{sum of the balances}) \times 12 = \text{APR}$

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

$$(\text{Total finance charge} / \text{amount of applicable balance}^5) \times 12 = \text{APR}^6$$

- 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))

$$(\text{Total finance charge} / (\text{all balances} + \text{other amounts on which a finance charge was imposed during the billing cycle without duplication}^7)) \times 12 = \text{APR}^8$$

- 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))

$$\text{Monthly rate} \times 12 = \text{APR}$$

- 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. $(\text{Total finance charge} / \text{average daily balance}) \times 12 = \text{APR}$

Or

2. $(\text{Total finance charge} / \text{sum of daily balances}) \times 365 = \text{APR}$

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

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.

V. Lending — TILA

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

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

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.

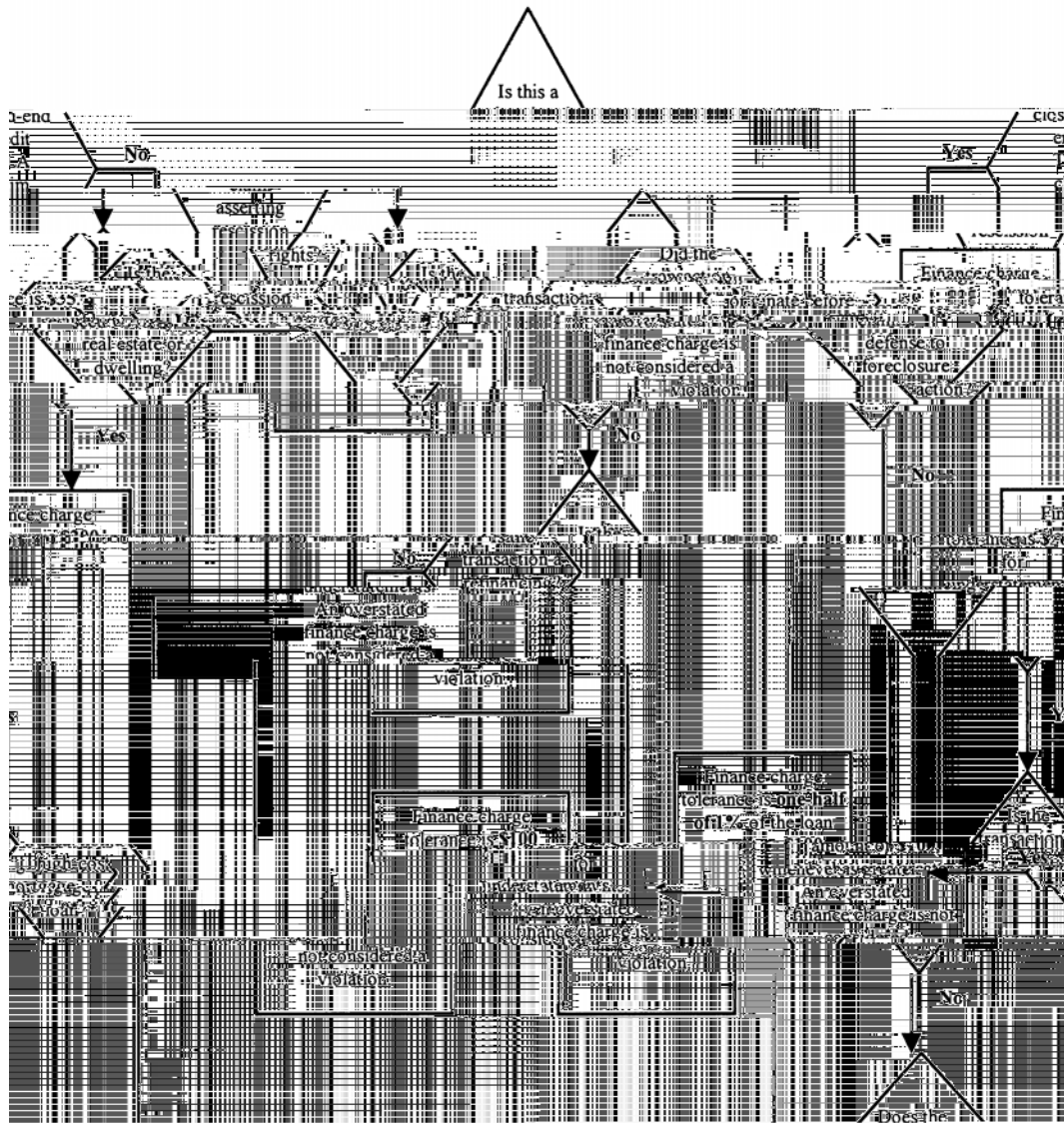
The amount financed may be calculated by first subtracting all finance charges included in the note amount ($\$5,435 - \$400 - \$10 = \$5,025$). The \$25 credit report fee is not a finance charge because the loan is secured by real property. The \$5,025 is further reduced by the amount of prepaid finance 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



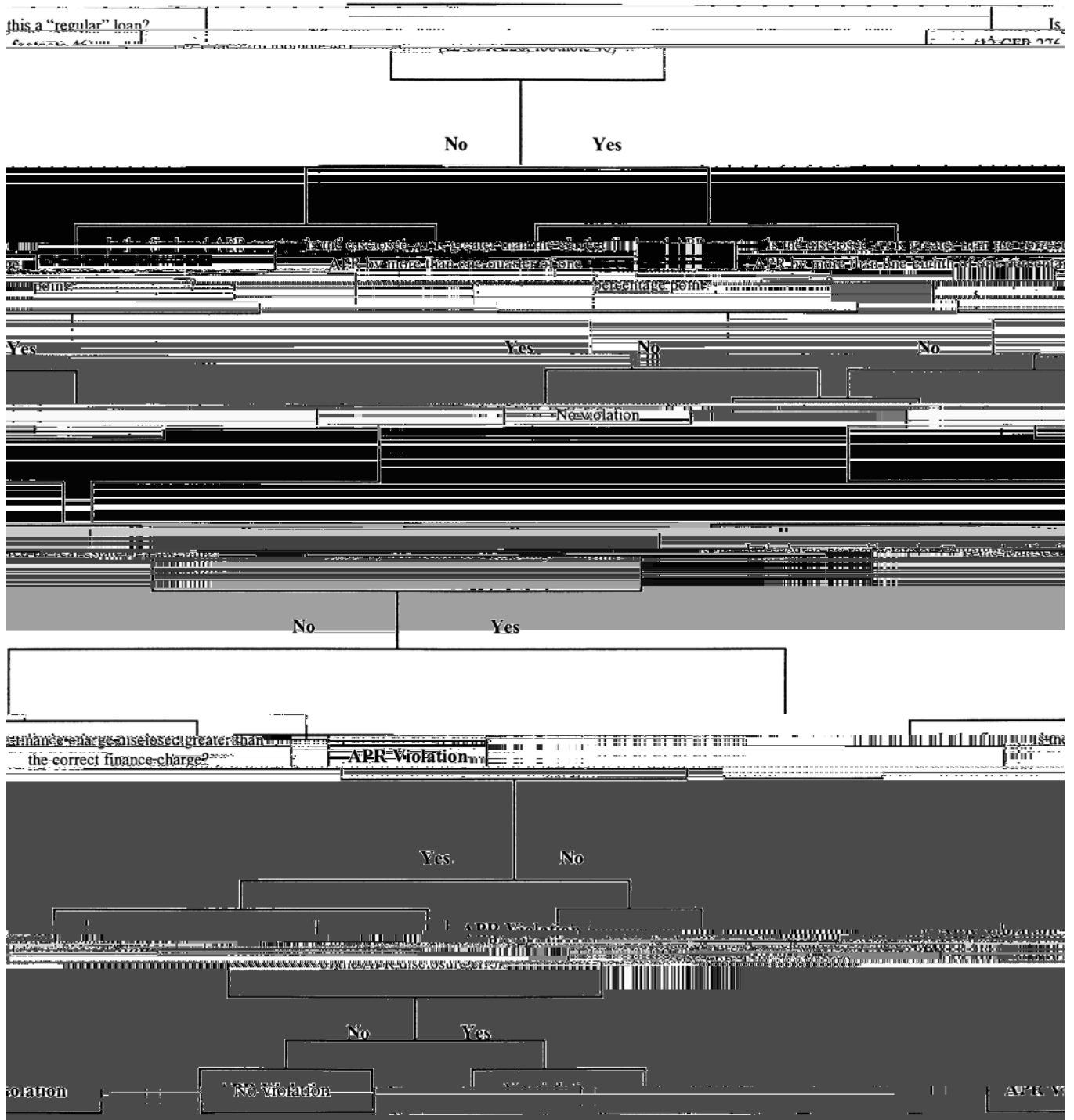
* See 15 U.S.C. § 160 (aa) and 12 C.F.R. § 1026.32

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 obligation, and the increase is not applied to the original obligation.

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

V. Lending — TILA

A monthly payment that is “materially lower”¹⁰ than the non-

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

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

V. Lending — TILA

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).

An explanation of how the new interest rate is determined,

allows alternative disclosures for television and radio advertisements for home-equity plans. The regulation also requires that advertisements adequately disclose not only

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.

V. Lending — TILA

and conspicuously in writing, in a form that the consumer may keep and in compliance with specific timing requirements.

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

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 Mortgage Letters, available online at: http://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/hudclips/letters/mortgage.

- 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;
- That compensation is paid by a creditor to a loan originator that is an employee of the creditor; or

V. Lending — TILA

- 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 mortgage loan, or terminates

an existit l3.2(ti)-6.9(t l3.9(ep)5.)-5.7(d(u)-11-5.7-(ot)-6i)-7(n)0d(t).1(or cd-7(n)07(; 9(c)1.5(-3(preJ.038 -r)2.9(ep)inu)-6(m9(a)10.866(fi)-.1 if)-5.9

V. Lending — TILA

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; (c) the creditor is a small creditor operating predominantly in rural or underserved areas that meets the criteria set forth in section 1026.43(f) for small creditor rural or underserved balloon-payment qualified mortgages; or, (d) until January 10, 2016, the creditor is a small creditor that meets the criteria set forth in 1026.43(e)(6) for temporary balloon-payment qualified mortgages. (§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 mor con.1(s)-3(u)-6./TT40[(Z im)6.2(poses addit(of))T9latio6 -89 TD.000)

V. Lending — TILA

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 financier 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 parties 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

commissions, fees, and any financial or incentive-based compensation, is prohibited under 1026.36(d)(1) is based on the following factors:

1. Whether the compensation is based on a term of a transaction, the terms of multiple transactions, or the terms of multiple transactions by multiple individual loan originators.

V. Lending — TILA

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

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 1, 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

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:

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.

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)(I))

*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.

V. Lending — TILA

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

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 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 Residential Mortgage Loans – Section 1026.41

Creditors, assignees, or servicers²² 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

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 is a small servicer, a servicer should be evaluated based on the mortgage loans serviced by the servicer and any affiliate as of January 1 for the remainder of the calendar year. A servicer that ceases to qualify as a small servicer has the later of six months from the time it ceases to qualify or until the next January 1 to come into compliance with the requirements of section 1026.41. The following mortgage loans are not considered

²² mCreditor(cred)1116(5.964(s)).8tr-7(u)o5.1(rtgage)- 3(m)1116i.4(s 1m)1116g.t o.7(g.)-2(0.8

V. Lending — TILA

in determining whether the servicer qualifies as a small servicer: mortgage loans voluntarily serviced by the servicer for a creditor or assignee that is not an affiliate of the servicer and for which the servicer does not receive any compensation or fees; reverse mortgage transactions, and mortgage loans secured by consumers' interests in timeshare plans.

A servicer is exempt from the periodic statement requirements for a mortgage loan while the consumer is a debtor in bankruptcy under Title 11 of the United States Code.

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

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.

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;²³

Mortgages secured by an interest in a timeshare plan;

Reverse mortgages;

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.²⁵

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.

²⁵ The definition and calculation rules for points and fees are the same as

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

Regulation Z provides a temporary category of qualified

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

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 (Comment 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 ifre perobligat5mer's1(me

V. Lending — TILA

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

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

V. Lending — TILA

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

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 §1026.43(g), (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

V. Lending — TILA

Receipt²⁶ 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 1026.43(g).

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

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

Corrective actions are timely and appropriate.

The area is reviewed at an appropriate interval.

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

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))

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

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

- V. 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)²⁷. (§1026.18(g))
- 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 dis-

²⁷ 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.

closes 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)):
 - a. 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;”
 - b. 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.”
 - c. 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
 - d. 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***²⁸ (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.”

increase and the earliest date on which the increase could occur;

c.

urance included in each payment disclosed, and a statement that the loan offers payment options, two of which are shown; and

2. 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.

6.

ture 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 in-

3.

- 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:
 - The interest rate applicable to the loan (compliance with section 1026.18(h) constitutes compliance with this requirement);
 - The maximum possible rate of interest for the loan, or, if a maximum rate cannot be determined, a rate of 25 percent;
 - 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 rate 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 mid-

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)):
 1. Annual percentage rate required to be disclosed pursuant to paragraph (b)(1) of this section,
 2. Introductory rate required to be disclosed pursuant to paragraph (b)(1)(ii) of this section,
 3. Rate that will apply after a premium initial rate expires required to be disclosed under paragraph (b)(1)(iii) of this section, and
 4. 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.

 - a. **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))
 - b. **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))
 - a. **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

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 com-

V. Lending — TILA

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:
 - a.

- b. The payment information described in section 1026.40(d)(5)(i) and (ii) for both the draw period and any repayment period.
 - c. A statement that negative amortization may occur as described in section 1026.40(d)(9).
 - d. A statement of any transaction requirements as described in section 1026.40(d)(10).
 - e. A statement regarding the tax implications as described in section 1026.40(d)(11).
 - f. 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).
 - g. 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 20 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. A0 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

V. Lending — TILA

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-

count 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)):
 - a. Any introductory rate, and
 - b. Any rate that would apply upon expiration of a premium initial rate.
10. ***Fees for issuance or availability.*** Determine that the creditor 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.***

or exceed 15 percent of the credit limit for

ing 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))

- a. **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).
 - b. **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 ac-

cordance 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:

- a. 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))
- b. 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):
- a. 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));
 - b. 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));
 - c. The minimum payment total cost estimate, as described in appendix M1 to this part,

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))

- j. 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)):
- a. 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.
 - b. 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.
 - c. 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:
 - a. The promotional rate and the time period during which the promotional rate will remain in effect (§1026.9(b)(3)(i)(A)(1));
 - b. 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
 - c. 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 deter-

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))

- c. 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)):
 - a. 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
 - b. The creditor has provided the c7(ent xii ed)-6a9e rate,

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

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 TD0 Rs

content requirements applicable to each covered person. (Commentary §1026.39(b)(5) – 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. (§1026.20(d))
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

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))

NOTE: The requirements of section 1026.20(c) do not apply to: ARMS with terms of one year or less; first interest rate adjustments to an ARM if the first adjusted payment is due within 210 days after consummation and the new interest rate disclosed at consummation was not an estimate; or the creditor, assignee or servicer when the servicer is subject to the Fair Debt Collections Practices Act (FDCPA) and the consumer has notified the servicer to cease communication under section 805(c) of the FDCPA.
(§1026.20(c)(1)(ii))

- 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.

V. Lending — TILA

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,

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

V. Lending — TILA

- 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,

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 to the cardholder or to the cardholder's representative. (§1026.58(e)(3)(iii))

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.
- F. 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)

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

- 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.
- 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

- 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
- 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:
 - a. The maximum payment scheduled during the first five years after the date on which

- b. \$60,000 or over but less than \$100,000:
\$3,000;
- c. \$20,000 or over but less than \$60,000: 5
percent of the total loan amount;
- d. \$12,500 or over but less than \$20,000:
\$1,000;
- e. 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))
 - a.

guaranteed, or insured by the listed federal government sponsored entities or agencies.³¹

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).

agency with jurisdiction to examine the creditor; or

- iv. 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)(iv).

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 any of the three preceding calendar years, 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

V. Lending — TILA

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)

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 a 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)

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

- 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):
- 1. 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))
 - 2. 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))
 - 3. 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

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)):
 - a. 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
 - b. 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:
 - i. 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.
 - ii. 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.
- c. Alternatively determines whether the creditor complies with the repayment ability requirement by:
 - i. Verifying repayment ability as described above;
 - ii. Determining the consumer’s repayment ability by 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

If the annual percentage rate can increase during the plan, the maximum percentage rate that is included in the contract ; and
 - iii. 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 required by section 1026.40, or if neither of those disclosures are provided, after receiving the disclosures required by section 1026.32(c). (§1026.34(a)(5)). Requirements include:

V. Lending — TILA

- a. Verify that home ownership counseling was not provided by an employee or affiliate of the creditor
 - b. 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
 - c. 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: Appraisals³²

- 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

fd a f o r P 9 2 0 0 with the requirement by B ((4) (TJ T I] 8 4 8 1 T D 0 T c 0 1 T w (H. T j d H 1 3 E T f. 7 5 3 2 0 T D () E / T T 8 r l e f f l e l 4 5 6 0 T D. 0 0 3 T i. 0 0 2 9 O r p T - 6.

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).
 - a. 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))
 - b. 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))
 - a. 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

- b. 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))

- M. If a financial institution is making HPML loans, notify RMS via a memorandum or other communication, so that RMS examiners can review the financial institution's HPML Appraisal Rule policy at RMS's next regularly scheduled safety-and-soundness examination.

Higher-priced mortgage loans: Escrow Accounts

- N. 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))
- O. 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 transaction 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

- a. During any of the three preceding calendar years, it made over half its covered transactions in counties that meet the definition of “rural” or “underserved” as laid out in section 1026.35(b)(2)(iv);
- b. Together with any affiliates, it did not make more than 500 covered transactions in the preceding calendar year;
- c. It had less than \$2 billion in total assets as of the end of the preceding calendar year; and
- d. 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:
 - i. Escrow accounts established for first-lien higher-priced mortgage loans on or after April 1, 2010, and before January 1, 2014; or
 - ii. Escrow accounts established after consummation as an accommodation to distressed consumers to assist such consumers in avoiding default or foreclosure.

loan originator, directly or indirectly, compensation³⁴ that is based on:

NOTE: The 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).

- P. 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,³³ no loan originator receives and no person pays to a

³³ 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))

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 proxy³⁵ 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:
 - a. 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
 - b. 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.

Prohibition on Dual Compensation

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

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

³⁵ 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))

- b. 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 case of a reverse mortgage, a loan without a prepayment penalty, or shared equity or shared appreciation; and (§1026.36(e)(3)(i)(B))
- c. 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

NOTE: Paragraph (c) only applies to an individual loan originator hired on after January 1, 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

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.

V. Lending — TILA

the US Code. 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.

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.

- d. A notice indicating any loss mitigation program that the consumer has agreed to; (§1026.41(d)(8)(iv))
 - e. A notice of whether the servicer has initiated foreclosure proceedings; (§1026.41(d)(8)(v))
 - f. The total payment amount needed to bring the account current; and (§1026.41(d)(8)(vi))
 - g. 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

V. Lending — TILA

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)):
 - o Imposing on the consumer any late fee or delinquency charge in connection with a

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.

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:
 - a. Refund any part of the remaining credit balance within seven business days from receiving a written request from the consumer; or
 - b. 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))

NOTE: This does not apply to the account of a deceased consumer if a joint account holder remains on the account.

- D. 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))

NOTE: Providing the amount of the balance on the account within 30 days of receiving the request is deemed to be timely.

- E. 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))
- F. 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

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:
 - a. 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
 - b. 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:

1. At the time of the contemplated increase, the consumer has an independent ability to make the required minimum periodic payments; or
 2. A cosigner, guarantor, or joint account holder 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 account holder 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:
 - a. Cash advance fees;
 - b. Balance transfer fees;
 - c. Foreign transaction fees; and

d. 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:
 - a. An expedited payment fee;
 - b. Fees for optional services like travel insurance;
 - c. Fees for reissuing a lost or stolen card; or
 - d. 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 creine tha28 Tw471.

V. Lending — TILA

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

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

V. Lending — TILA

V. Lending — TILA

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.

Joint Statement of Policy: Administrative Enforcement of the Truth in Lending Act—Restitution

12 U.S.C. § 1461 Dodd-Frank Wall Street Reform and Consumer Protection Act amendments to Truth in Lending Act

15 U.S.C. § 1601 et seq., Truth in Lending Act

References

12 C.F.R. § 1026: Truth in Lending—Regulation Z (CFPB's regulation and official staff interpretation (commentary))

HIGH-COST MORTGAGE (Section 1026.32) WORKSHEET		
Borrower's Name	Loan Number:	
COVERAGE		
	Yes	No
Is the transaction secured by the consumer's principal dwelling? [§1026.2(a)(19), §1026.32(a)(1)]		
If the answer is No, STOP HERE. The transaction is not a high-cost mortgage.		
Is the transaction:		
1. A reverse mortgage transaction [§1026.32(a)(2)(i)]		
2. A transaction to finance the initial construction of a dwelling [§1026.32(a)(2)(ii)]		
3. A transaction originated and financed by a Housing Finance Agency [§1026.32(a)(2)(iii)]		
4. A transaction originated under the USDA's rural development section 502 direct loan program [§1026.32(a)(2)(iv)]		
If the answer is Yes to Box 1, 2, 3 or 4, STOP HERE. If No, continue to Test 1, APR.		

TEST 1 – APR

A. Determine the APR for testing high-cost mortgage coverage:

1. For fixed-rate transactions, calculate the APR using the interest rate in effect on the date the interest rate for the transaction was set.
- 2.

TEST 2 – POINTS AND FEES³⁸**STEP 1: Identify all charges payable in connection with the transaction and known at or before consummation or account opening.****A. Items included in the finance charge (§1026.4(a) and (b)), except for the following:**

Interest, including per-diem interest, and time-price differential;

All federal or state government-sponsored MIPs, *e.g.*, up-front and annual FHA premiums, VA funding fees, and USDA guarantee fees;

All monthly or annual PMI premiums;

Up-front PMI premiums *if* the premiums are refundable on a prorated basis and the refund is automatically issued upon loan satisfaction. *However*, include any portion of the PMI premium that exceeds the up-front MIP for FHA loans;

Bona fide third-party charges not retained by the creditor, loan originator, or an affiliate of either, unless specifically required to be included under Boxes A-H,³⁹ and

Up to 1 or 2 bona fide discount points, if eligible.⁴⁰

or the
editor.

t

0.76 397.5 3814.1 .4799

TEST 2 – POINTS AND FEES (continued)	
STEP 2: Determine the Total Loan Amount (§1026.32(b)(4))	
<p>A. Closed-End Transaction</p> <p>1. Determine the Amount Financed (§1026.18(b))</p> <ul style="list-style-type: none"> ○ The full amount of principal repayable under the terms of the note or other loan contract ○ <u>Minus</u>: Prepaid finance charges (§1026.2(a)(23)) 	
<ul style="list-style-type: none"> ○ <u>Equals</u>: Amount Financed <p>2. Deduct from the Amount Financed costs that are included in points and fees under Step 1, Boxes C, D, or F</p> <p>3. Total Loan Amount (1 minus 2)</p>	
<p>B. Open-End Transaction</p> <p>1. Credit limit for the plan when the account is opened</p>	
STEP 3: Perform High-Cost Fee Calculation	

Determine which points and fees threshold applies according to the note amount (threshold cut-offs are adjusted annually for inflation) (§1026.32(a)(1)(ii)(A)-(B))

V. Lending — TILA

TEST 3 – Prepayment Penalty		
STEP 1: Determine whether the transaction has a prepayment penalty (§1026.32(b)(6)(i)-(ii))	Yes	No
If No, STOP HERE, the transaction is not a high-cost mortgage. If Yes, continue to Step 2.		
STEP 2: Determine the amount and duration of any prepayment penalty⁴¹		
A. Can prepayment penalties be imposed for longer than 36 months after consummation or account opening?		
B. Can prepayment penalties exceed two percent of the amount prepaid?		
If Yes, the transaction is a high-cost mortgage and is in violation of the prohibition against prepayment penalties for high-cost mortgages (§1026.32(d)(6)). If No, the transaction is not a high-cost mortgage.		

⁴¹ If the creditor used an accounting method whereby it kept unearned interest charged for any period between payoff and the end of the month, this would be a prepayment penalty under the rule. In this case, the maximum prepayment penalty would be the maximum amount of interest that could be charged for the “phantom” (post-payoff) accrual period. For this purpose, the examiner would need to assume that the consumer makes the final payoff on the day of the month that yields the longest period of post-payoff interest that could be charged under the terms of the credit contract and is charged interest for the entire month, and that amount would be the maximum unearned interest prepayment penalty.