

Appendix B
Regulation Z

Redline: 2012 8th ed. 2012 vs. amendments effective in 2013/2014

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[3c]SUBPART A--GENERAL

SECTION 1026.1 Authority, Purpose, Coverage, Organization, Enforcement, and Liability [§ 226.1]

(a) *Authority.* This part, known as Regulation Z, is issued by the Bureau of Consumer Financial Protection to implement the Federal Truth in Lending Act, which is contained in ~~Title~~[title](#) I of the Consumer Credit Protection Act, as amended (15 U.S.C. 1601 *et seq.*). This part also implements ~~Title~~[title](#) XII, section 1204 of the Competitive Equality Banking Act of 1987 (Pub. L. 100-86, 101 Stat. 552). ~~Information~~[Furthermore, this part implements certain provisions of the Real Estate Settlement Procedures Act of 1974, as amended \(12 U.S.C. 2601 *et seq.*\). The Bureau's \[information\]\(#\)](#)-collection requirements contained in this part have been approved by the Office of

Management and Budget under the provisions of 44 U.S.C. 3501 *et seq.* and have been assigned OMB No. 3170-~~0015~~-0015 ([Truth in Lending](#)).¹

(b) *Purpose.* The purpose of this part is to promote the informed use of consumer credit by requiring disclosures about its terms and cost. The regulation also includes substantive protections. It gives consumers the right to cancel certain credit transactions that involve a lien on a consumer's principal dwelling, regulates certain credit card practices, and provides a means for fair and timely resolution of credit billing disputes. The regulation does not generally govern charges for consumer credit, except that several provisions in Subpart G set forth special rules addressing certain charges applicable to credit card accounts under an open-end (not home-secured) consumer credit plan. The regulation requires a maximum interest rate to be stated in variable-rate contracts secured by the consumer's dwelling. It also imposes limitations on home-equity plans that are subject to the requirements of § 1026.40 and mortgages that are subject to the requirements of § 1026.32. The regulation prohibits certain acts or practices in connection with credit secured by a dwelling in § 1026.36, and credit secured by a consumer's principal dwelling in § 1026.35. The regulation also regulates certain practices of creditors who extend private education loans as defined in § 1026.46(b)(5).

(c) *Coverage.*

(1) In general, this part applies to each individual or business that offers or extends credit, other than a person excluded from coverage of this part by section 1029 of the Consumer Financial Protection Act of 2010, Title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203, 124 Stat. 1376, when four conditions are met:

- (i) The credit is offered or extended to consumers;
- (ii) The offering or extension of credit is done regularly;
- (iii) The credit is subject to a finance charge or is payable by a written agreement in more than four installments; and
- (iv) The credit is primarily for personal, family, or household purposes.

(2) If a credit card is involved, however, certain provisions apply even if the credit is not subject to a finance charge, or is not payable by a written agreement in more than four installments, or if the credit card is to be used for business purposes.

(3) In addition, certain requirements of § 1026.40 apply to persons who are not creditors but who provide applications for home-equity plans to consumers.

(4) Furthermore, certain requirements of § 1026.57 apply to institutions of higher education.

¹ [Paragraph \(a\) is effective December 23, 2012. 77 Fed. Reg. 70,105 \(Nov. 23, 2012\).](#)

(5) No person is required to provide the disclosures required by sections 128(a)(16) through (19), 128(b)(4), 129C(f)(1), 129C(g)(2) and (3), 129C(h), 129D(h), 129D(j)(1)(A), or 129D(j)(1)(B) of the Truth in Lending Act or section 4(c) of the Real Estate Settlement Procedures Act.²

(d) *Organization.* The regulation is divided into subparts and appendices as follows:

(1) Subpart A contains general information. It sets forth:

- (i) The authority, purpose, coverage, and organization of the regulation;
- (ii) The definitions of basic terms;
- (iii) The transactions that are exempt from coverage; and
- (iv) The method of determining the finance charge.

(2) Subpart B contains the rules for open-end credit. It requires that account-opening disclosures and periodic statements be provided, as well as additional disclosures for credit and charge card applications and solicitations and for home-equity plans subject to the requirements of § 1026.60 and § 1026.40, respectively. It also describes special rules that apply to credit card transactions, treatment of payments and credit balances, procedures for resolving credit billing errors, annual percentage rate calculations, rescission requirements, and advertising.

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

(4) Subpart D contains rules on oral disclosures, disclosures in languages other than English, record retention, effect on state laws, state exemptions, and rate limitations.

(5) Subpart E contains special rules for mortgage transactions. Section 1026.32 requires certain disclosures and provides limitations for closed-end ~~loans~~credit transactions and open-end credit plans that have rates or fees above specified amounts or certain prepayment penalties. Section 1026.33 requires special disclosures, including the total annual loan cost rate, for reverse mortgage transactions. Section 1026.34 prohibits specific acts and practices in connection with ~~closed-end mortgage transactions that are subject to § 1026.32~~high-cost mortgages, as defined in § 1026.32(a). Section 1026.35 prohibits specific acts and practices in connection with closed-end higher-priced mortgage loans, as defined in § 1026.35(a). Section 1026.36 prohibits specific acts and practices in connection with an extension of credit secured by a dwelling.³

(6) Subpart F 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.

² Paragraph (c)(5) is effective December 23, 2012. 77 Fed. Reg. 70,105 (Nov. 23, 2012).

³ Paragraph (d)(5) is effective Jan. 10, 2014. 78 Fed. Reg. 6856 (Jan. 31, 2013).

(7) Subpart G relates to credit card accounts under an open-end (not home-secured) consumer credit plan (except for § 1026.57(c), which applies to all open-end credit plans). Section 1026.51 contains rules on evaluation of a consumer's ability to make the required payments under the terms of an account. Section 1026.52 limits the fees that a consumer can be required to pay with respect to an open-end (not home-secured) consumer credit plan during the first year after account opening. Section 1026.53 contains rules on allocation of payments in excess of the minimum payment. Section 1026.54 sets forth certain limitations on the imposition of finance charges as the result of a loss of a grace period. Section 1026.55 contains limitations on increases in annual percentage rates, fees, and charges for credit card accounts. Section 1026.56 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. Section 1026.57 sets forth rules for reporting and marketing of college student open-end credit. Section 1026.58 sets forth requirements for the Internet posting of credit card accounts under an open-end (not home-secured) consumer credit plan.

(8) 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, and the rules for computing annual percentage rates in closed-end credit transactions and total-annual-loan-cost rates for reverse mortgage transactions.

(e) *Enforcement and liability.* Section 108 of the Act contains the administrative enforcement provisions. Sections 112, 113, 130, 131, and 134 contain provisions relating to liability for failure to comply with the requirements of the Act and the regulation. Section 1204 (c) of Title XII of the Competitive Equality Banking Act of 1987, Public Law 100-86, 101 Stat. 552, incorporates by reference administrative enforcement and civil liability provisions of sections 108 and 130 of the Act.

[Reg. Z, 36 Fed. Reg. 1,040 (Jan. 22, 1971), *as amended at* 40 Fed. Reg. 30,085 (July 17, 1975); 40 Fed. Reg. 43,201 (Sept. 19, 1975); 41 Fed. Reg. 45,538 (Oct. 15, 1976); 42 Fed. Reg. 3 (Jan. 3, 1977); 43 Fed. Reg. 18,540 (May 1, 1978); 49 Fed. Reg. 46,991 (Nov. 30, 1984); 52 Fed. Reg. 43,181 (Nov. 9, 1987); 52 Fed. Reg. 45,611 (Dec. 1, 1987); 54 Fed. Reg. 13,865 (Apr. 6, 1989); 54 Fed. Reg. 24,686 (June 9, 1989); 60 Fed. Reg. 15,471 (Mar. 24, 1995); 66 Fed. Reg. 65,617 (Dec. 20, 2001); 73 Fed. Reg. 44,599 (July 30, 2008); 74 Fed. Reg. 41,231 (Aug. 14, 2009); 75 Fed. Reg. 7792 (Feb. 22, 2010); 75 Fed. Reg. 58,533 (Sept. 24, 2010) (*EFFECTIVE DATE NOTE*: Effective Apr. 1, 2011); 76 Fed. Reg. 79,772 (Dec. 22, 2011); [77 Fed. Reg. 70,105 \(Nov. 23, 2012\)](#); [78 Fed. Reg. 6856 \(Jan. 31, 2013\)](#)]

SECTION 1026.2 Definitions and Rules of Construction [§ 226.2]

(a) *Definitions.* For purposes of this part, the following definitions apply:

(1) *Act* means the Truth in Lending Act (15 U.S.C. 1601 *et seq.*).

(2) *Advertisement* means a commercial message in any medium that promotes, directly or indirectly, a credit transaction.

(3) [Reserved]

(4) *Billing cycle* or *cycle* means the interval between the days or dates of regular periodic statements. These intervals shall be equal and no longer than a quarter of a year. An interval will be considered equal if the number of days in the cycle does not vary more than four days from the regular day or date of the periodic statement.

(5) *Bureau* means the Bureau of Consumer Financial Protection.

(6) *Business day* means a day on which the creditor's offices are open to the public for carrying on substantially all of its business functions. However, for purposes of rescission under §§ 1026.15 and 1026.23, and for purposes of §§ 1026.19(a)(1)(ii), 1026.19(a)(2), 1026.31, and 1026.46(d)(4), the term means all calendar days except Sundays and the legal public holidays specified in 5 U.S.C. 6103(a), such as New Year's Day, the Birthday of Martin Luther King, Jr., Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, and Christmas Day.

(7) *Card issuer* means a person that issues a credit card or that person's agent with respect to the card.

(8) *Cardholder* means a natural person to whom a credit card is issued for consumer credit purposes, or a natural person who has agreed with the card issuer to pay consumer credit obligations arising from the issuance of a credit card to another natural person. For purposes of § 1026.12(a) and (b), the term includes any person to whom a credit card is issued for any purpose, including business, commercial or agricultural use, or a person who has agreed with the card issuer to pay obligations arising from the issuance of such a credit card to another person.

(9) *Cash price* means the price at which a creditor, in the ordinary course of business, offers to sell for cash property or service that is the subject of the transaction. At the creditor's option, the term may include the price of accessories, services related to the sale, service contracts and taxes and fees for license, title, and registration. The term does not include any finance charge.

(10) *Closed-end credit* means consumer credit other than "open-end credit" as defined in this section.

(11) *Consumer* means a cardholder or natural person to whom consumer credit is offered or extended. However, for purposes of rescission under §§ 1026.15 and 1026.23, the term also includes a natural person in whose principal dwelling a security interest is or will be retained or acquired, if that person's ownership interest in the dwelling is or will be subject to the security interest.

(12) *Consumer credit* means credit offered or extended to a consumer primarily for personal, family, or household purposes.

(13) *Consummation* means the time that a consumer becomes contractually obligated on a credit transaction.

(14) *Credit* means the right to defer payment of debt or to incur debt and defer its payment.

(15)(i) *Credit card* means any card, plate, or other single credit device that may be used from time to time to obtain credit.

(ii) Credit card account under an open-end (not home-secured) consumer credit plan means any open-end credit account that is accessed by a credit card, except:

(A) A home-equity plan subject to the requirements of § 1026.40 that is accessed by a credit card; or

(B) An overdraft line of credit that is accessed by a debit card or an account number.

(iii) *Charge card* means a credit card on an account for which no periodic rate is used to compute a finance charge.

(16) *Credit sale* means a sale in which the seller is a creditor. The term includes a bailment or lease (unless terminable without penalty at any time by the consumer) under which the consumer:

(i) Agrees to pay as compensation for use a sum substantially equivalent to, or in excess of, the total value of the property and service involved; and

(ii) Will become (or has the option to become), for no additional consideration or for nominal consideration, the owner of the property upon compliance with the agreement.

(17) *Creditor* means:

(i) A person who regularly extends consumer credit that is subject to a finance charge or is payable by written agreement in more than four installments (not including a down payment), and to whom the obligation is initially payable, either on the face of the note or contract, or by agreement when there is no note or contract.

(ii) For purposes of §§ 1026.4(c)(8) (Discounts), 1026.9(d) (Finance charge imposed at time of transaction), and 1026.12(e) (Prompt notification of returns and crediting of refunds), a person that honors a credit card.

(iii) For purposes of subpart B, any card issuer that extends either open-end credit or credit that is not subject to a finance charge and is not payable by written agreement in more than four installments.

(iv) For purposes of subpart B (except for the credit and charge card disclosures contained in §§ 1026.60 and 1026.9(e) and (f), the finance charge disclosures contained in § 1026.6(a)(1) and (b)(3)(i) and § 1026.7(a)(4) through (7) and (b)(4) through (6) and the right of rescission set forth in § 1026.15) and subpart C, any card issuer that extends closed-end credit that is subject to a finance charge or is payable by written agreement in more than four installments.

(v) A person regularly extends consumer credit only if it extended credit (other than credit subject to the requirements of § 1026.32) more than 25 times (or more than 5 times for transactions secured by a dwelling) in the preceding calendar year. If a person did not meet these numerical standards in the preceding calendar year, the numerical standards shall be applied to the current calendar year. A person regularly extends consumer credit if, in any 12-month period, the person originates more than one credit extension that is subject to the requirements of § 1026.32 or one or more such credit extensions through a mortgage broker.

(18) *Downpayment* means an amount, including the value of property used as a trade-in, paid to a seller to reduce the cash price of goods or services purchased in a credit sale transaction. A deferred portion of a downpayment may be treated as part of the downpayment if it is payable not later than the due date of the second otherwise regularly scheduled payment and is not subject to a finance charge.

(19) *Dwelling* means a residential structure that contains one to four units, whether or not that structure is attached to real property. The term includes an individual condominium unit, cooperative unit, mobile home, and trailer, if it is used as a residence.

(20) *Open-end credit* means consumer credit extended by a creditor under a plan in which:

(i) The creditor reasonably contemplates repeated transactions;

(ii) The creditor may impose a finance charge from time to time on an outstanding unpaid balance; and

(iii) The amount of credit that may be extended to the consumer during the term of the plan (up to any limit set by the creditor) is generally made available to the extent that any outstanding balance is repaid.

(21) *Periodic rate* means a rate of finance charge that is or may be imposed by a creditor on a balance for a day, week, month, or other subdivision of a year.

(22) *Person* means a natural person or an organization, including a corporation, partnership, proprietorship, association, cooperative, estate, trust, or government unit.

(23) *Prepaid finance charge* means any finance charge paid separately in cash or by check before or at consummation of a transaction, or withheld from the proceeds of the credit at any time.

(24) *Residential mortgage transaction* means a transaction in which a mortgage, deed of trust, purchase money security interest arising under an installment sales contract, or equivalent consensual security interest is created or retained in the consumer's principal dwelling to finance the acquisition or initial construction of that dwelling.

(25) *Security interest* means an interest in property that secures performance of a consumer credit obligation and that is recognized by state or Federal law. It does not include incidental interests such as interests in proceeds, accessions, additions, fixtures, insurance proceeds (whether or not the creditor is a loss payee or beneficiary), premium rebates, or interests in after-acquired property. For purposes of disclosures under §§ 1026.6 and 1026.18, the term does not include an interest that arises solely by operation of law. However, for purposes of the right of rescission under §§ 1026.15 and 1026.23, the term does include interests that arise solely by operation of law.

(26) *State* means any state, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

(b) *Rules of construction.* For purposes of this part, the following rules of construction apply:

(1) Where appropriate, the singular form of a word includes the plural form and plural includes singular.

(2) Where the words *obligation* and *transaction* are used in the regulation, they refer to a consumer credit obligation or transaction, depending upon the context. Where the word *credit* is used in the regulation, it means *consumer credit* unless the context clearly indicates otherwise.

(3) Unless defined in this part, the words used have the meanings given to them by state law or contract.

(4) Where the word *amount* is used in this part to describe disclosure requirements, it refers to a numerical amount.

[Reg. Z, 34 Fed. Reg. 2,002 (Feb. 11, 1969); 38 Fed. Reg. 18,457 (July 11, 1973), *as amended at* 40 Fed. Reg. 43,201, 43,202 (Sept. 19, 1975); 40 Fed. Reg. 50,508 (Oct. 30, 1975); 41 Fed. Reg. 45,538 (Oct. 15, 1976); 42 Fed. Reg. 753 (Jan. 4, 1977); 42 Fed. Reg. 38,173 (July 27, 1977); 46 Fed. Reg. 20,892 (Apr. 7, 1981); 46 Fed. Reg. 29,246 (June 1, 1981); 47 Fed. Reg. 7,392 (Feb. 19, 1982); 48 Fed. Reg. 14,886 (Apr 6, 1983); 54 Fed. Reg. 13,865 (Apr. 6, 1989); 60 Fed. Reg. 15,471 (Mar. 24, 1995); 61 Fed. Reg. 49,245 (Sept. 19, 1996); 69 Fed. Reg. 16,769 (Mar. 31, 2004); 73 Fed. Reg. 44,599 (July 30, 2008); 74 Fed. Reg. 23,301 (May 19, 2009); 74 Fed. Reg.

41,232 (Aug. 14, 2009); 75 Fed. Reg. 7793 (Feb. 22, 2010); 76 Fed. Reg. 22,998 (Apr. 25, 2011); 76 Fed. Reg. 79,772 (Dec. 22, 2011)]

SECTION 1026.3 Exempt Transactions [§ 226.3]

This part does not apply to the following:

(a) *Business, commercial, agricultural, or organizational credit.*

(1) An extension of credit primarily for a business, commercial or agricultural purpose.

(2) An extension of credit to other than a natural person, including credit to government agencies or instrumentalities.

(b) *Credit over applicable threshold amount.*

(1) *Exemption.*

(i) *Requirements.* An extension of credit in which the amount of credit extended exceeds the applicable threshold amount or in which there is an express written commitment to extend credit in excess of the applicable threshold amount, unless the extension of credit is:

(A) Secured by any real property, or by personal property used or expected to be used as the principal dwelling of the consumer; or

(B) A private education loan as defined in § 1026.46(b)(5).

(ii) *Annual adjustments.* The threshold amount in paragraph (b)(1)(i) of this section is adjusted annually to reflect increases in the Consumer Price Index for Urban Wage Earners and Clerical Workers, as applicable. See the official staff commentary to this paragraph (b) for the threshold amount applicable to a specific extension of credit or express written commitment to extend credit.

(2) *Transition rule for open-end accounts exempt prior to July 21, 2011.* An open-end account that is exempt on July 20, 2011 based on an express written commitment to extend credit in excess of \$25,000 remains exempt until December 31, 2011 unless:

(i) The creditor takes a security interest in any real property, or in personal property used or expected to be used as the principal dwelling of the consumer; or

(ii) The creditor reduces the express written commitment to extend credit to \$25,000 or less.

(c) *Public utility credit.* An extension of credit that involves public utility services provided through pipe, wire, other connected facilities, or radio or similar transmission (including extensions of such facilities), if the charges for service, delayed payment, or any discounts for prompt payment are filed with or regulated by any government unit. The financing of durable goods or home improvements by a public utility is not exempt.

(d) *Securities or commodities accounts.* Transactions in securities or commodities accounts in which credit is extended by a broker-dealer registered with the Securities and Exchange Commission or the Commodity Futures Trading Commission.

(e) *Home fuel budget plans.* An installment agreement for the purchase of home fuels in which no finance charge is imposed.

(f) *Student loan programs.* Loans made, insured, or guaranteed pursuant to a program authorized by Title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.).

(g) *Employer-sponsored retirement plans.* An extension of credit to a participant in an employer-sponsored retirement plan qualified under section 401(a) of the Internal Revenue Code, a tax-sheltered annuity under section 403(b) of the Internal Revenue Code, or an eligible governmental deferred compensation plan under section 457(b) of the Internal Revenue Code (26 U.S.C. 401(a); 26 U.S.C. 403(b); 26 U.S.C. 457(b)), provided that the extension of credit is comprised of fully vested funds from such participant's account and is made in compliance with the Internal Revenue Code (26 U.S.C. 1 et seq.).

[Reg. Z, 34 Fed. Reg. 2,002 (Feb. 11, 1969); 34 Fed. Reg. 5,327 (Mar. 18, 1969) *as amended at* 40 Fed. Reg. 30,085 (July 17, 1975); 40 Fed. Reg. 43,202 (Sept. 19, 1975); 41 Fed. Reg. 45,5038 (Oct. 15, 1976); 45 Fed. Reg. 33,599 (May 20, 1980); 48 Fed. Reg. 14,886 (Apr. 6, 1983); 49 Fed. Reg. 46,991 (Nov. 30, 1984); 74 Fed. Reg. 41,232 (Aug. 14, 2009); 75 Fed. Reg. 7794 (Feb. 22, 2010); 76 Fed. Reg. 18,363 (Apr. 4, 2011); 76 Fed. Reg. 79,772 (Dec. 22, 2011)]

SECTION 1026.4 Finance Charge [§ 226.4]

(a) *Definition.* The finance charge is the cost of consumer credit as a dollar amount. It includes any charge payable directly or indirectly by the consumer and imposed directly or indirectly by the creditor as an incident to or a condition of the extension of credit. It does not include any charge of a type payable in a comparable cash transaction.

(1) *Charges by third parties.* The finance charge includes fees and amounts charged by someone other than the creditor, unless otherwise excluded under this section, if the creditor:

(i) Requires the use of a third party as a condition of or an incident to the extension of credit, even if the consumer can choose the third party; or

(ii) Retains a portion of the third-party charge, to the extent of the portion retained.

(2) *Special rule; closing agent charges.* Fees charged by a third party that conducts the loan closing (such as a settlement agent, attorney, or escrow or title company) are finance charges only if the creditor:

(i) Requires the particular services for which the consumer is charged;

(ii) Requires the imposition of the charge; or

(iii) Retains a portion of the third-party charge, to the extent of the portion retained.

(3) *Special rule; mortgage broker fees.* Fees charged by a mortgage broker (including fees paid by the consumer directly to the broker or to the creditor for delivery to the broker) are finance charges even if the creditor does not require the consumer to use a mortgage broker and even if the creditor does not retain any portion of the charge.

(b) *Examples of finance charges.* The finance charge includes the following types of charges, except for charges specifically excluded by paragraphs (c) through (e) of this section:

(1) Interest, time price differential, and any amount payable under an add-on or discount system of additional charges.

(2) Service, transaction, activity, and carrying charges, including any charge imposed on a checking or other transaction account to the extent that the charge exceeds the charge for a similar account without a credit feature.

(3) Points, loan fees, assumption fees, finder's fees, and similar charges.

(4) Appraisal, investigation, and credit report fees.

(5) Premiums or other charges for any guarantee or insurance protecting the creditor against the consumer's default or other credit loss.

(6) Charges imposed on a creditor by another person for purchasing or accepting a consumer's obligation, if the consumer is required to pay the charges in cash, as an addition to the obligation, or as a deduction from the proceeds of the obligation.

(7) Premiums or other charges for credit life, accident, health, or loss-of-income insurance, written in connection with a credit transaction.

(8) Premiums or other charges for insurance against loss of or damage to property, or against liability arising out of the ownership or use of property, written in connection with a credit transaction.

(9) Discounts for the purpose of inducing payment by a means other than the use of credit.

(10) Charges or premiums paid for debt cancellation or debt suspension coverage written in connection with a credit transaction, whether or not the coverage is insurance under applicable law.

(c) *Charges excluded from the finance charge.* The following charges are not finance charges:

(1) Application fees charged to all applicants for credit, whether or not credit is actually extended.

(2) Charges for actual unanticipated late payment, for exceeding a credit limit, or for delinquency, default, or a similar occurrence.

(3) Charges imposed by a financial institution for paying items that overdraw an account, unless the payment of such items and the imposition of the charge were previously agreed upon in writing.

(4) Fees charged for participation in a credit plan, whether assessed on an annual or other periodic basis.

(5) Seller's points.

(6) Interest forfeited as a result of an interest reduction required by law on a time deposit used as security for an extension of credit.

(7) *Real-estate related fees.* The following fees in a transaction secured by real property or in a residential mortgage transaction, if the fees are bona fide and reasonable in amount:

(i) Fees for title examination, abstract of title, title insurance, property survey, and similar purposes.

(ii) Fees for preparing loan-related documents, such as deeds, mortgages, and reconveyance or settlement documents.

(iii) Notary and credit-report fees.

(iv) Property appraisal fees or fees for inspections to assess the value or condition of the property if the service is performed prior to closing, including fees related to pest-infestation or flood-hazard determinations.

(v) Amounts required to be paid into escrow or trustee accounts if the amounts would not otherwise be included in the finance charge.

(8) Discounts offered to induce payment for a purchase by cash, check, or other means, as provided in section 167(b) of the Act.

(d) *Insurance and debt cancellation and debt suspension coverage.*

(1) *Voluntary credit insurance premiums.* Premiums for credit life, accident, health, or loss-of-income insurance may be excluded from the finance charge if the following conditions are met:

(i) The insurance coverage is not required by the creditor, and this fact is disclosed in writing.

(ii) The premium for the initial term of insurance coverage is disclosed in writing. If the term of insurance is less than the term of the transaction, the term of insurance also shall be disclosed. The premium may be disclosed on a unit-cost basis only in open-end credit transactions, closed-end credit transactions by mail or telephone under § 1026.17(g), and certain closed-end credit transactions involving an insurance plan that limits the total amount of indebtedness subject to coverage.

(iii) The consumer signs or initials an affirmative written request for the insurance after receiving the disclosures specified in this paragraph, except as provided in paragraph (d)(4) of this section. Any consumer in the transaction may sign or initial the request.

(2) *Property insurance premiums.* Premiums for insurance against loss of or damage to property, or against liability arising out of the ownership or use of property, including single interest insurance if the insurer waives all right of subrogation against the consumer, may be excluded from the finance charge if the following conditions are met:

(i) The insurance coverage may be obtained from a person of the consumer's choice, and this fact is disclosed. (A creditor may reserve the right to refuse to accept, for reasonable cause, an insurer offered by the consumer.)

(ii) If the coverage is obtained from or through the creditor, the premium for the initial term of insurance coverage shall be disclosed. If the term of insurance is less than the term of the transaction, the term of insurance shall also be disclosed. The premium may be disclosed on a unit-cost basis only in open-end credit transactions, closed-end credit transactions by mail or telephone under § 1026.17(g), and certain closed-end credit transactions involving an insurance plan that limits the total amount of indebtedness subject to coverage.

(3) *Voluntary debt cancellation or debt suspension fees.* Charges or premiums paid for debt cancellation coverage for amounts exceeding the value of the collateral securing the obligation or for debt cancellation or debt suspension coverage in the event of the loss of life, health, or income or in case of accident may be excluded from the finance charge, whether or not the coverage is insurance, if the following conditions are met:

(i) The debt cancellation or debt suspension agreement or coverage is not required by the creditor, and this fact is disclosed in writing;

(ii) The fee or premium for the initial term of coverage is disclosed in writing. If the term of coverage is less than the term of the credit transaction, the term of coverage also shall be disclosed. The fee or premium may be disclosed on a unit-cost basis only in open-end credit transactions, closed-end credit transactions by mail or telephone under § 1026.17(g), and certain closed-end credit transactions involving a debt cancellation agreement that limits the total amount of indebtedness subject to coverage;

(iii) The following are disclosed, as applicable, for debt suspension coverage: That the obligation to pay loan principal and interest is only suspended, and that interest will continue to accrue during the period of suspension.

(iv) The consumer signs or initials an affirmative written request for coverage after receiving the disclosures specified in this paragraph, except as provided in paragraph (d)(4) of this section. Any consumer in the transaction may sign or initial the request.

(4) *Telephone purchases.* If a consumer purchases credit insurance or debt cancellation or debt suspension coverage for an open-end (not home-secured) plan by telephone, the creditor must make the disclosures under paragraphs (d)(1)(i) and (ii) or (d)(3)(i) through (iii) of this section, as applicable, orally. In such a case, the creditor shall:

(i) Maintain evidence that the consumer, after being provided the disclosures orally, affirmatively elected to purchase the insurance or coverage; and

(ii) Mail the disclosures under paragraphs (d)(1)(i) and (ii) or (d)(3)(i) through (iii) of this section, as applicable, within three business days after the telephone purchase.

(e) *Certain security interest charges.* If itemized and disclosed, the following charges may be excluded from the finance charge:

(1) Taxes and fees prescribed by law that actually are or will be paid to public officials for determining the existence of or for perfecting, releasing, or satisfying a security interest.

(2) The premium for insurance in lieu of perfecting a security interest to the extent that the premium does not exceed the fees described in paragraph (e)(1) of this section that otherwise would be payable.

(3) *Taxes on security instruments.* Any tax levied on security instruments or on documents evidencing indebtedness if the payment of such taxes is a requirement for recording the instrument securing the evidence of indebtedness.

(f) *Prohibited offsets.* Interest, dividends, or other income received or to be received by the consumer on deposits or investments shall not be deducted in computing the finance charge.

[Reg. Z, 34 Fed. Reg. 2,002 (Feb. 11, 1969); 34 Fed. Reg. 5,327 (Mar. 18, 1969), *as amended at* 40 Fed. Reg. 43,202 (Sept. 19, 1975); 44 Fed. Reg. 12,970 (Mar. 9, 1979); 61 Fed. Reg. 49,245 (Sept. 19, 1996); 75 Fed. Reg. 7794 (Feb. 22, 2010); 76 Fed. Reg. 79,772 (Dec. 22, 2011)]

[3c]SUBPART B--OPEN-END CREDIT

SECTION 1026.5 General Disclosure Requirements [§ 226.5]

(a) *Form of disclosures.*

(1) *General.*

(i) The creditor shall make the disclosures required by this subpart clearly and conspicuously.

(ii) The creditor shall make the disclosures required by this subpart in writing, in a form that the consumer may keep, except that:

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

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

(iii) The disclosures required by this subpart may be provided to the consumer in electronic form, subject to compliance with the consumer consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. 7001 *et seq.*). The disclosures required by §§ 1026.60, 1026.40, and 1026.16 may be

provided to the consumer in electronic form without regard to the consumer consent or other provisions of the E-Sign Act in the circumstances set forth in those sections.

(2) *Terminology.*

(i) Terminology used in providing the disclosures required by this subpart shall be consistent.

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

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

(3) *Specific formats.*

(i) Certain disclosures for credit and charge card applications and solicitations must be provided in a tabular format in accordance with the requirements of § 1026.60(a)(2).

(ii) Certain disclosures for home-equity plans must precede other disclosures and must be given in accordance with the requirements of § 1026.40(a).

(iii) Certain account-opening disclosures must be provided in a tabular format in accordance with the requirements of § 1026.6(b)(1).

(iv) Certain disclosures provided on periodic statements must be grouped together in accordance with the requirements of § 1026.7(b)(6) and (b)(13).

(v) Certain disclosures provided on periodic statements must be given in accordance with the requirements of § 1026.7(b)(12).

(vi) Certain disclosures accompanying checks that access a credit card account must be provided in a tabular format in accordance with the requirements of § 1026.9(b)(3).

(vii) Certain disclosures provided in a change-in-terms notice must be provided in a tabular format in accordance with the requirements of § 1026.9(c)(2)(iv)(D).

(viii) Certain disclosures provided when a rate is increased due to delinquency, default or as a penalty must be provided in a tabular format in accordance with the requirements of § 1026.9(g)(3)(ii).

(b) *Time of disclosures.*

(1) *Account-opening disclosures.*

(i) *General rule.* The creditor shall furnish account-opening disclosures required by § 1026.6 before the first transaction is made under the plan.

(ii) *Charges imposed as part of an open-end (not home-secured) plan.* Charges that are imposed as part of an open-end (not home-secured) plan and are not required to be disclosed under § 1026.6(b)(2) may be disclosed after account opening but before the consumer agrees to pay or becomes obligated to pay for the charge, provided they are disclosed at a time and in a manner that a consumer would be likely to notice them. This provision does not apply to charges imposed as part of a home-equity plan subject to the requirements of § 1026.40.

(iii) *Telephone purchases.* Disclosures required by § 1026.6 may be provided as soon as reasonably practicable after the first transaction if:

(A) The first transaction occurs when a consumer contacts a merchant by telephone to purchase goods and at the same time the consumer accepts an offer to finance the purchase by establishing an open-end plan with the merchant or third-party creditor;

(B) The merchant or third-party creditor permits consumers to return any goods financed under the plan and provides consumers with a sufficient time to reject the plan and return the goods free of cost after the merchant or third-party creditor has provided the written disclosures required by § 1026.6; and

(C) The consumer's right to reject the plan and return the goods is disclosed to the consumer as a part of the offer to finance the purchase.

(iv) *Membership fees.*

(A) *General.* In general, a creditor may not collect any fee before account-opening disclosures are provided. A creditor may collect, or obtain the consumer's agreement to pay, membership fees, including application fees excludable from the finance

charge under § 1026.4(c)(1), before providing account-opening disclosures if, after receiving the disclosures, the consumer may reject the plan and have no obligation to pay these fees (including application fees) or any other fee or charge. A membership fee for purposes of this paragraph has the same meaning as a fee for the issuance or availability of credit described in § 1026.60(b)(2). If the consumer rejects the plan, the creditor must promptly refund the membership fee if it has been paid, or take other action necessary to ensure the consumer is not obligated to pay that fee or any other fee or charge.

(B) *Home-equity plans.* Creditors offering home-equity plans subject to the requirements of § 1026.40 are not subject to the requirements of paragraph (b)(1)(iv)(A) of this section.

(v) *Application fees.* A creditor may collect an application fee excludable from the finance charge under § 1026.4(c)(1) before providing account-opening disclosures. However, if a consumer rejects the plan after receiving account-opening disclosures, the consumer must have no obligation to pay such an application fee, or if the fee was paid, it must be refunded. See § 1026.5(b)(1)(iv)(A).

(2) *Periodic statements.*

(i) *Statement required.* The creditor shall mail or deliver a periodic statement as required by § 1026.7 for each billing cycle at the end of which an account has a debit or credit balance of more than \$1 or on which a finance charge has been imposed. A periodic statement need not be sent for an account if the creditor deems it uncollectible, if delinquency collection proceedings have been instituted, if the creditor has charged off the account in accordance with loan-loss provisions and will not charge any additional fees or interest on the account, or if furnishing the statement would violate Federal law.

(ii) *Timing requirements.*

(A) *Credit card accounts under an open-end (not home-secured) consumer credit plan.* For credit card accounts under an open-end (not home-secured) consumer credit plan, a card issuer must adopt reasonable procedures designed to ensure that:

(1) Periodic statements are mailed or delivered at least 21 days prior to the payment due date disclosed on the statement pursuant to § 1026.7(b)(11)(i)(A); and

(2) The card issuer does not treat as late for any purpose a required minimum periodic payment received by the card issuer within 21 days after mailing or delivery of the periodic statement disclosing the due date for that payment.

(B) *Open-end consumer credit plans.* For accounts under an open-end consumer credit plan, a creditor must adopt reasonable procedures designed to ensure that:

(1) If a grace period applies to the account:

(i) Periodic statements are mailed or delivered at least 21 days prior to the date on which the grace period expires; and

(ii) The creditor does not impose finance charges as a result of the loss of the grace period if a payment that satisfies the terms of the grace period is received by the creditor within 21 days after mailing or delivery of the periodic statement.

(2) Regardless of whether a grace period applies to the account:

(i) Periodic statements are mailed or delivered at least 14 days prior to the date on which the required minimum periodic payment must be received in order to avoid being treated as late for any purpose; and

(ii) The creditor does not treat as late for any purpose a required minimum periodic payment received by the creditor within 14 days after mailing or delivery of the periodic statement.

(3) For purposes of paragraph (b)(2)(ii)(B) of this section, “grace period” means a period within which any credit extended may be repaid without incurring a finance charge due to a periodic interest rate.

(3) *Credit and charge card application and solicitation disclosures.* The card issuer shall furnish the disclosures for credit and charge card applications and solicitations in accordance with the timing requirements of § 1026.60.

(4) *Home-equity plans.* Disclosures for home-equity plans shall be made in accordance with the timing requirements of § 1026.40(b).

(c) *Basis of disclosures and use of estimates.* Disclosures shall reflect the terms of the legal obligation between the parties. If any information necessary for accurate disclosure is unknown to the creditor, it shall make the disclosure based on the best information reasonably available and shall state clearly that the disclosure is an estimate.

(d) *Multiple creditors; multiple consumers.* If the credit plan involves more than one creditor, only one set of disclosures shall be given, and the creditors shall agree among themselves which creditor must comply with the requirements that this part imposes on any or all of them. If there is more than one consumer, the disclosures may be made to any consumer who is primarily liable on the account. If the right of rescission under § 1026.15 is applicable, however, the disclosures required by §§ 1026.6 and 1026.15(b) shall be made to each consumer having the right to rescind.

(e) *Effect of subsequent events.* If a disclosure becomes inaccurate because of an event that occurs after the creditor mails or delivers the disclosures, the resulting inaccuracy is not a violation of this part, although new disclosures may be required under § 1026.9(c).

[44 Fed. Reg. 77,144 (Dec. 31, 1979); 45 Fed. Reg. 4,345 (Jan. 22, 1980), *as amended at* 45 Fed. Reg. 50,325 (July 29, 1980); 54 Fed. Reg. 13,865 (Apr. 6, 1989); 54 Fed. Reg. 24,686 (June 9, 1989); 65 Fed. Reg. 58,908 (Oct. 3, 2000); 66 Fed. Reg. 17,338 (Mar. 30, 2001); 66 Fed. Reg. 41,440 (Aug. 8, 2001) (*COMPLIANCE DATE NOTE:* At 66 Fed. Reg. 41,440 (Aug. 8, 2001) the Oct. 1, 2001, mandatory compliance date for the interim final rules published at 66 Fed. Reg. 17,311 (Mar. 30, 2001) was lifted.); 72 Fed. Reg. 63,473 (Nov. 9, 2007); 74 Fed. Reg. 36,094 (July 22, 2009) (interim final rule); 75 Fed. Reg. 7796 (Feb. 22, 2010); 76 Fed. Reg. 22,998, 22,999 (Apr. 25, 2011); 76 Fed. Reg. 79,772 (Dec. 22, 2011)]

SECTION 1026.6 Account-Opening Disclosures [§ 226.6]

(a) *Rules affecting home-equity plans.* The requirements of this paragraph (a) apply only to home-equity plans subject to the requirements of § 1026.40. A creditor shall disclose the items in this section, to the extent applicable:

(1) *Finance charge.* The circumstances under which a finance charge will be imposed and an explanation of how it will be determined, as follows:

(i) A statement of when finance charges begin to accrue, including an explanation of whether or not any time period exists within which any credit extended may be repaid without incurring a finance charge. If such a time period is provided, a creditor may, at its option and without disclosure, impose no finance charge when payment is received after the time period's expiration.

(ii) A disclosure of each periodic rate that may be used to compute the finance charge, the range of balances to which it is applicable, and the corresponding annual percentage rate. If a creditor offers a variable-rate plan, the creditor shall also disclose: The circumstances under which the rate(s) may increase; any limitations on the increase; and the effect(s) of an increase. When different periodic rates apply to different types of transactions, the types of transactions to which the periodic rates shall apply shall also be disclosed. A creditor is not required to adjust the range of balances disclosure to reflect the balance below which only a minimum charge applies.

(iii) An explanation of the method used to determine the balance on which the finance charge may be computed.

(iv) An explanation of how the amount of any finance charge will be determined, including a description of how any finance charge other than the periodic rate will be determined.

(2) *Other charges.* The amount of any charge other than a finance charge that may be imposed as part of the plan, or an explanation of how the charge will be determined.

(3) *Home-equity plan information.* The following disclosures described in § 1026.40(d), as applicable:

(i) A statement of the conditions under which the creditor may take certain action, as described in § 1026.40(d)(4)(i), such as terminating the plan or changing the terms.

(ii) The payment information described in § 1026.40(d)(5)(i) and (ii) for both the draw period and any repayment period.

(iii) A statement that negative amortization may occur as described in § 1026.40(d)(9).

(iv) A statement of any transaction requirements as described in § 1026.40(d)(10).

(v) A statement regarding the tax implications as described in § 1026.40(d)(11).

(vi) A statement that the annual percentage rate imposed under the plan does not include costs other than interest as described in § 1026.40(d)(6) and (d)(12)(ii).

(vii) The variable-rate disclosures described in § 1026.40(d)(12)(viii), (d)(12)(x), (d)(12)(xi), and (d)(12)(xii), as well as the disclosure described in § 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.

(5) *Statement of billing rights.* A statement that outlines the consumer's rights and the creditor's responsibilities under §§ 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.

(b) *Rules affecting open-end (not home-secured) plans.* The requirements of paragraph (b) of this section apply to plans other than home-equity plans subject to the requirements of § 1026.40.

(1) *Form of disclosures; tabular format for open-end (not home-secured) plans.* Creditors must provide the account-opening disclosures specified in paragraph (b)(2)(i) through (b)(2)(v) (except for (b)(2)(i)(D)(2)) and (b)(2)(vii) through (b)(2)(xiv) of this section in the form of a table with the headings, content, and format substantially similar to any of the applicable tables in G-17 in Appendix G.

(i) *Highlighting.* In the table, any annual percentage rate required to be disclosed pursuant to paragraph (b)(2)(i) of this section; 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, 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 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) of this section must be disclosed in bold text. However, 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 annual percentage rates or fee amounts disclosed in the table.

(ii) *Location.* Only the information required or permitted by paragraphs (b)(2)(i) through (v) (except for (b)(2)(i)(D)(2)) and (b)(2)(vii) through (xiv) of this section shall be 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. Disclosures required by paragraphs (b)(3) through (5) of this section 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.

(iii) *Fees that vary by state.* Creditors that impose fees referred to in paragraphs (b)(2)(vii) through (b)(2)(xi) of this section that vary by state and that provide the disclosures required by paragraph (b) of this section in person at the time the open-end (not home-secured) plan is established in connection with financing the purchase of goods or services may, at the creditor's option, disclose in the account-opening table the specific fee applicable to the consumer's account, or the range of the fees, if the disclosure includes a statement that the amount of the fee varies by state and refers the consumer to the account agreement or other disclosure provided with the account-opening table where the amount of the fee applicable to the consumer's account is disclosed. A creditor may not list fees for multiple states in the account-opening summary table.

(iv) *Fees based on a percentage.* If the amount of any fee required to be disclosed under this section is determined on the basis of a percentage of another amount, the percentage used and the identification of the amount against which the percentage is applied may be disclosed instead of the amount of the fee.

(2) *Required disclosures for account-opening table for open-end (not home-secured) plans.* A creditor shall disclose the items in this section, to the extent applicable:

(i) *Annual percentage rate.* Each periodic rate that may be used to compute the finance charge on an outstanding balance for purchases, a cash advance, or a balance transfer, expressed as an annual percentage rate (as determined by § 1026.14(b)). When more than one rate applies for a category of transactions, the range of balances to which each rate is applicable shall also be disclosed. The annual percentage rate for purchases disclosed pursuant to this paragraph shall be in at least 16-point type, except for the following: A penalty rate that may apply upon the occurrence of one or more specific events.

(A) *Variable-rate information.* If a rate disclosed under paragraph (b)(2)(i) of this section is a variable rate, the creditor shall also disclose the fact that the rate may vary and how the rate is determined. In describing how the applicable rate will be determined, the creditor must identify the type of index or formula that is used in setting the rate. The value of the index and the amount of the margin that are used to calculate the variable rate shall not be disclosed in the table. A disclosure of any applicable limitations on rate increases or decreases shall not be included in the table.

(B) *Discounted initial rates.* If the initial rate is an introductory rate, as that term is defined in § 1026.16(g)(2)(ii), the creditor must disclose the rate that would otherwise apply to the account pursuant to paragraph (b)(2)(i) of this section. Where the rate is not tied to an index or formula, the creditor must disclose the rate that will apply after the introductory rate expires. In a variable-rate account, the creditor must disclose a rate based on the applicable index or formula in accordance with the accuracy requirements of paragraph (b)(4)(ii)(G) of this section. Except as provided in paragraph (b)(2)(i)(F) of this section, the creditor is not required to, but may disclose in the table the introductory rate along with the rate that would otherwise apply to the account if the creditor also discloses the time period during which the introductory rate will remain in effect, and uses the term “introductory” or “intro” in immediate proximity to the introductory rate.

(C) *Premium initial rate.* If the initial rate is temporary and is higher than the rate that will apply after the temporary rate expires, the creditor must disclose the premium initial rate pursuant to paragraph (b)(2)(i) of this section. Consistent with paragraph (b)(2)(i) of this section, the premium initial rate for purchases must be in at least 16-point type. Except as provided in paragraph (b)(2)(i)(F) of this section, the creditor is not required to, but may disclose in the table the rate that will apply after the premium initial rate expires if the creditor also discloses the time period during which the premium initial rate will remain in effect. If the creditor also discloses in the table the rate that will apply after the premium initial rate for purchases expires, that rate also must be in at least 16-point type.

(D) *Penalty rates.*

(1) *In general.* Except as provided in paragraph (b)(2)(i)(D)(2) and (b)(2)(i)(D)(3) of this section, if a rate may increase as a penalty for one or more events specified in the account agreement, such as a late payment or an extension of credit that exceeds the credit limit, the creditor must disclose pursuant to paragraph (b)(2)(i) of this section the increased rate that may apply, a brief description of the event or events that may result in the increased rate, and a brief description of how long the increased rate will remain in effect. If more than one penalty rate may apply, the creditor at its option may disclose the highest rate that could apply, instead of disclosing the specific rates or the range of rates that could apply.

(2) *Introductory rates.* If the creditor discloses in the table an introductory rate, as that term is defined in § 1026.16(g)(2)(ii), creditors must briefly disclose directly beneath the table the circumstances under which the introductory rate may be revoked, and the rate that will apply after the introductory rate is revoked.

(3) *Employee preferential rates.* If a creditor discloses in the table a preferential annual percentage rate for which only employees of the creditor, employees of a third party, or other individuals with similar affiliations with the creditor or third party, such as executive officers, directors, or principal shareholders are eligible, the creditor must briefly disclose directly beneath the table the circumstances under which such preferential rate may be revoked, and the rate that will apply after such preferential rate is revoked.

(E) *Point of sale where APRs vary by state or based on creditworthiness.* Creditors imposing annual percentage rates that vary by state or based on the consumer's creditworthiness and providing the disclosures required by paragraph (b) of this section in person at the time the open-end (not home-secured) plan is established in connection with financing the purchase of goods or services may, at the creditor's option, disclose pursuant to paragraph (b)(2)(i) of this section in the account-opening table:

(1) The specific annual percentage rate applicable to the consumer's account; or

(2) The range of the annual percentage rates, if the disclosure includes a statement that the annual percentage rate varies by state or will be determined based on the consumer's creditworthiness and refers the consumer to the account agreement or other disclosure provided with the account-opening table where the annual percentage rate applicable to the consumer's account is disclosed. A creditor may not list annual percentage rates for multiple states in the account-opening table.

(F) *Credit card accounts under an open-end (not home-secured) consumer credit plan.* Notwithstanding paragraphs (b)(2)(i)(B) and (b)(2)(i)(C) of this section, for credit card accounts under an open-end (not home-secured) plan, issuers must disclose in the table:

(1) Any introductory rate as that term is defined in § 1026.16(g)(2)(ii) that would apply to the account, consistent with the requirements of paragraph (b)(2)(i)(B) of this section, and

(2) Any rate that would apply upon the expiration of a premium initial rate, consistent with the requirements of paragraph (b)(2)(i)(C) of this section.

(ii) *Fees for issuance or availability.*

(A) Any annual or other 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 it will be imposed; and the annualized amount of the fee.

(B) Any non-periodic fee that relates to opening the plan. A creditor must disclose that the fee is a one-time fee.

(iii) *Fixed finance charge; minimum interest charge.* Any fixed finance charge and a brief description of the charge. Any minimum interest charge if it exceeds \$1.00 that could be imposed during a billing cycle, and a brief description of the charge. The \$1.00 threshold amount shall be adjusted periodically by the Bureau to reflect changes in the Consumer Price Index. The Bureau shall calculate each year a price level adjusted minimum interest charge using the Consumer Price Index in effect on the June 1 of that year. When the cumulative change in the adjusted minimum value derived from applying the annual Consumer Price level to the current minimum interest charge threshold has risen by a whole dollar, the minimum interest charge will be increased by \$1.00. The creditor may, at its option, disclose in the table minimum interest charges below this threshold.

(iv) *Transaction charges.* Any transaction charge imposed by the creditor for use of the open-end plan for purchases.

(v) *Grace period.* The date by which or the period within which any credit extended may be repaid without incurring a finance charge due to a periodic interest rate and any conditions on the availability of the grace period. If no grace period is provided, that fact must be disclosed. If the length of the grace period varies, the creditor may disclose the range of days, the minimum number of days, or the average number of the days in the grace period, if the disclosure is identified as a range, minimum, or average. In disclosing in the tabular format a grace period that applies to all features on the account, the phrase "How to Avoid Paying Interest" shall be used as the heading for the row describing the grace period. If a grace period is not offered on all features of the account, in disclosing this fact in the tabular format, the phrase "Paying Interest" shall be used as the heading for the row describing this fact.

(vi) *Balance computation method.* The name of the balance computation method listed in § 1026.60(g) that is used to determine the balance on which the finance charge is computed for each feature, or an explanation of the method used if it is not listed, along with a statement that an explanation of the method(s) required by paragraph (b)(4)(i)(D) of this section is provided with the account-opening disclosures. In determining which balance computation method to disclose, the creditor shall assume that credit extended will not be repaid within any grace period, if any.

(vii) *Cash advance fee.* Any fee imposed for an extension of credit in the form of cash or its equivalent.

(viii) *Late payment fee.* Any fee imposed for a late payment.

(ix) *Over-the-limit fee.* Any fee imposed for exceeding a credit limit.

(x) *Balance transfer fee.* Any fee imposed to transfer an outstanding balance.

(xi) *Returned-payment fee.* Any fee imposed by the creditor for a returned payment.

(xii) *Required insurance, debt cancellation or debt suspension coverage.*

(A) A fee for insurance described in § 1026.4(b)(7) or debt cancellation or suspension coverage described in § 1026.4(b)(10), if the insurance, or debt cancellation or suspension coverage is required as part of the plan; and

(B) A cross reference to any additional information provided about the insurance or coverage, as applicable.

(xiii) *Available credit.* If a creditor requires fees for the issuance or availability of credit described in paragraph (b)(2)(ii) of this section, or requires a security deposit for such credit, and the total amount of those required fees and/or security deposit that will be imposed and charged to the account when the account is opened is 15 percent or more of the minimum credit limit for the plan, a creditor must disclose the available credit remaining after these fees or security deposit are debited to the account. The determination whether the 15 percent threshold is met must be based on the minimum credit limit for the plan. However, the disclosure provided under this paragraph must be based on the actual initial credit limit provided on the account. In determining whether the 15 percent threshold test is met, the creditor must only consider fees for issuance or availability of credit, or a security deposit, that are required. If fees for issuance or availability are optional, these fees should not be considered in determining whether the disclosure must be given. Nonetheless, if the 15 percent threshold test is met, the creditor in providing the disclosure must disclose the amount of available credit calculated by excluding those optional fees, and the available credit including those optional fees. The creditor shall also disclose that the consumer has the right to reject the plan and not be obligated to pay those fees or any other fee or charges until the consumer has used the account or made a payment on the account after receiving a periodic statement. This paragraph does not apply with respect to fees or security deposits that are not debited to the account.

(xiv) *Web site reference.* For issuers of credit cards that are not charge cards, a reference to the Web site established by the Bureau and a statement that consumers may obtain on the Web site information about shopping for and using credit cards. Until January 1, 2013, issuers may substitute for this reference a reference to the Web site established by the Board of Governors of the Federal Reserve System.

(xv) *Billing error rights reference.* A statement that information about consumers' right to dispute transactions is included in the account-opening disclosures.

(3) *Disclosure of charges imposed as part of open-end (not home-secured) plans.* A creditor shall disclose, to the extent applicable:

(i) For charges imposed as part of an open-end (not home-secured) plan, the circumstances under which the charge may be imposed, including the amount of the charge or an explanation of how the charge is determined. For finance charges, a statement of when the charge begins to accrue and an explanation of whether or not any time period exists within which any credit that has been extended may be repaid without incurring the charge. If such a time period is provided, a creditor may, at its option and without disclosure, elect not to impose a finance charge when payment is received after the time period expires.

(ii) Charges imposed as part of the plan are:

(A) Finance charges identified under § 1026.4(a) and § 1026.4(b).

(B) Charges resulting from the consumer's failure to use the plan as agreed, except amounts payable for collection activity after default, attorney's fees whether or not automatically imposed, and post-judgment interest rates permitted by law.

(C) Taxes imposed on the credit transaction by a state or other governmental body, such as documentary stamp taxes on cash advances.

(D) Charges for which the payment, or nonpayment, affect the consumer's access to the plan, the duration of the plan, the amount of credit extended, the period for which credit is extended, or the timing or method of billing or payment.

(E) Charges imposed for terminating a plan.

(F) Charges for voluntary credit insurance, debt cancellation or debt suspension.

(iii) Charges that are not imposed as part of the plan include:

(A) Charges imposed on a cardholder by an institution other than the card issuer for the use of the other institution's ATM in a shared or interchange system.

(B) A charge for a package of services that includes an open-end credit feature, if the fee is required whether or not the open-end credit feature is included and the non-credit services are not merely incidental to the credit feature.

(C) Charges under § 1026.4(e) disclosed as specified.

(4) *Disclosure of rates for open-end (not home-secured) plans.* A creditor shall disclose, to the extent applicable:

(i) For each periodic rate that may be used to calculate interest:

(A) *Rates.* The rate, expressed as a periodic rate and a corresponding annual percentage rate.

(B) *Range of balances.* The range of balances to which the rate is applicable; however, a creditor is not required to adjust the range of balances disclosure to reflect the balance below which only a minimum charge applies.

(C) *Type of transaction.* The type of transaction to which the rate applies, if different rates apply to different types of transactions.

(D) *Balance computation method.* An explanation of the method used to determine the balance to which the rate is applied.

(ii) *Variable-rate accounts.* For interest rate changes that are tied to increases in an index or formula (variable-rate accounts) specifically set forth in the account agreement:

(A) The fact that the annual percentage rate may increase.

(B) How the rate is determined, including the margin.

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

(D) The frequency with which the rate may increase.

(E) Any limitation on the amount the rate may change.

(F) The effect(s) of an increase.

(G) Except as specified in paragraph (b)(4)(ii)(H) of this section, a rate is accurate if it is a rate as of a specified date and this rate was in effect within the last 30 days before the disclosures are provided.

(H) Creditors imposing annual percentage rates that vary according to an index that is not under the creditor's control that provide the disclosures required by paragraph (b) of this section in person at the time the open-end (not home-secured) plan is established in connection with financing the purchase of goods or services may disclose in the table a rate, or range of rates to the extent permitted by § 1026.6(b)(2)(i)(E), that was in effect within the last 90 days before the disclosures are provided, along with a reference directing the consumer to the account agreement or other disclosure provided with the account-opening table where an annual percentage rate applicable to the consumer's account in effect within the last 30 days before the disclosures are provided is disclosed.

(iii) *Rate changes not due to index or formula.* For interest rate changes that are specifically set forth in the account agreement and not tied to increases in an index or formula:

(A) The initial rate (expressed as a periodic rate and a corresponding annual percentage rate) required under paragraph (b)(4)(i)(A) of this section.

(B) How long the initial rate will remain in effect and the specific events that cause the initial rate to change.

(C) The rate (expressed as a periodic rate and a corresponding annual percentage rate) that will apply when the initial rate is no longer in effect and any limitation on the time period the new rate will remain in effect.

(D) The balances to which the new rate will apply.

(E) The balances to which the current rate at the time of the change will apply.

(5) *Additional disclosures for open-end (not home-secured) plans.* A creditor shall disclose, to the extent applicable:

(i) *Voluntary credit insurance, debt cancellation or debt suspension.* The disclosures in §§ 1026.4(d)(1)(i) and (d)(1)(ii) and (d)(3)(i) through (d)(3)(iii) if the creditor offers optional credit insurance or debt cancellation or debt suspension coverage that is identified in § 1026.4(b)(7) or (b)(10).

(ii) *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.

(iii) *Statement of billing rights.* A statement that outlines the consumer's rights and the creditor's responsibilities under §§ 1026.12(c) and 1026.13 and that is substantially similar to the statement found in Model Form G-3(A) in Appendix G to this part.

[Reg. Z, 34 Fed. Reg. 2,002 (Feb. 11, 1969), *as amended at* 38 Fed. Reg. 18,457 (July 11, 1973); 39 Fed. Reg. 2,755 (Jan. 24, 1974); 40 Fed. Reg. 43,203 (Sept. 19, 1975); 40 Fed. Reg. 54,424 (Nov. 24, 1975); 41 Fed. Reg. 45,538 (Oct. 15, 1976); 42 Fed. Reg. 3 (Jan. 3, 1977); 42 Fed. Reg. 20,455 (Apr. 20, 1977); 43 Fed. Reg. 22,928 (May 30, 1978); 54 Fed. Reg. 24,688 (June 9, 1989); 75 Fed. Reg. 7800 (Feb. 22, 2010); 75 Fed. Reg. 37,568 (June 29, 2010); 76 Fed. Reg. 22,999 (Apr. 25, 2011); 76 Fed. Reg. 79,772 (Dec. 22, 2011)]

SECTION 1026.7 Periodic Statement [§ 226.7]

The creditor shall furnish the consumer with a periodic statement that discloses the following items, to the extent applicable:

(a) *Rules affecting home-equity plans.* The requirements of paragraph (a) of this section apply only to home-equity plans subject to the requirements of § 1026.40. Alternatively, a creditor subject to this paragraph may, at its option, comply with any of the requirements of paragraph (b) of this section; however, any creditor that chooses not to provide a disclosure under paragraph (a)(7) of this section must comply with paragraph (b)(6) of this section.

(1) *Previous balance.* The account balance outstanding at the beginning of the billing cycle.

(2) *Identification of transactions.* An identification of each credit transaction in accordance with § 1026.8.

(3) *Credits.* Any credit to the account during the billing cycle, including the amount and the date of crediting. The date need not be provided if a delay in accounting does not result in any finance or other charge.

(4) *Periodic rates.*

(i) Except as provided in paragraph (a)(4)(ii) of this section, each periodic rate that may be used to compute the finance charge, the range of balances to which it is applicable, and the corresponding annual percentage rate. If no finance charge is imposed when the outstanding balance is less than a certain amount, the creditor is not required to disclose that fact, or the balance below which no finance charge will be imposed. If different periodic rates apply to different types of transactions, the types of transactions to which the periodic rates apply shall also be disclosed. For variable-rate plans, the fact that the periodic rate(s) may vary.

(ii) *Exception.* An annual percentage rate that differs from the rate that would otherwise apply and is offered only for a promotional period need not be disclosed except in periods in which the offered rate is actually applied.

(5) *Balance on which finance charge computed.* The amount of the balance to which a periodic rate was applied and an explanation of how that balance was determined. When a balance is determined without first deducting all credits and payments made during the billing cycle, the fact and the amount of the credits and payments shall be disclosed.

(6) *Amount of finance charge and other charges.* Creditors may comply with paragraphs (a)(6) of this section, or with paragraph (b)(6) of this section, at their option.

(i) *Finance charges.* The amount of any finance charge debited or added to the account during the billing cycle, using the term finance charge. The components of the finance charge shall be individually itemized and identified to show the amount(s) due to the application of any periodic rates and the amounts(s) of any other type of finance charge. If there is more than one periodic rate, the amount of the finance charge attributable to each rate need not be separately itemized and identified.

(ii) *Other charges.* The amounts, itemized and identified by type, of any charges other than finance charges debited to the account during the billing cycle.

(7) *Annual percentage rate.* At a creditor's option, when a finance charge is imposed during the billing cycle, the annual percentage rate(s) determined under § 1026.14(c) using the term annual percentage rate.

(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.

(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 § 1026.9(a)(2).

(10) *Closing date of billing cycle; new balance.* The closing date of the billing cycle and the account balance outstanding on that date.

(b) *Rules affecting open-end (not home-secured) plans.* The requirements of paragraph (b) of this section apply only to plans other than home-equity plans subject to the requirements of § 1026.40.

(1) *Previous balance.* The account balance outstanding at the beginning of the billing cycle.

(2) *Identification of transactions.* An identification of each credit transaction in accordance with § 1026.8.

(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.

(4) *Periodic rates.*

(i) Except as provided in paragraph (b)(4)(ii) of this section, 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. 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 annual percentage rate may vary.

(ii) *Exception.* A promotional rate, as that term is defined in § 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. When a balance is determined without first deducting all credits and payments made during the billing cycle, the fact and the amount of the credits and payments shall be disclosed. As an alternative to providing an explanation of how the balance was determined, a creditor that uses a balance computation method identified in § 1026.60(g) may, at the creditor's option, identify the name of the balance computation method and provide a toll-free telephone number where consumers may obtain from the creditor more information about the balance computation method and how resulting interest charges were determined. If the method used is not identified in § 1026.60(g), the creditor shall provide a brief explanation of the method used.

(6) *Charges imposed.*

(i) The amounts of any charges imposed as part of a plan as stated in § 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.

(ii) *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) in Appendix G to this part.

(iii) *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) in Appendix G to this part.

(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 § 1026.9(c), or a rate increase notice required by § 1026.9(g), on or with the periodic statement, must disclose the information in § 1026.9(c)(2)(iv)(A) and (c)(2)(iv)(B) (if applicable) or § 1026.9(g)(3)(i) on the periodic statement in accordance with the format requirements in § 1026.9(c)(2)(iv)(D), and § 1026.9(g)(3)(ii). See Forms G-18(F) and G-18(G) in Appendix G to this part.

(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.

(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 § 1026.9(a)(2).

(10) *Closing date of billing cycle; new balance.* The closing date of the billing cycle and the account balance outstanding on that date. The new balance must be disclosed in accordance with the format requirements of paragraph (b)(13) of this section.

(11) *Due date; late payment costs.*

(i) Except as provided in paragraph (b)(11)(ii) of this section and in accordance with the format requirements in paragraph (b)(13) of this section, for a credit card account under an open-end (not home-secured) consumer credit plan, a card issuer must provide on each periodic statement:

(A) The due date for a payment. The due date disclosed pursuant to this paragraph shall be the same day of the month for each billing cycle.

(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, the card issuer may state the range of fees, or the highest fee and an indication that the fee imposed could be lower. 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.

(ii) *Exception.* The requirements of paragraph (b)(11)(i) of this section do not apply to the following:

(A) Periodic statements provided solely for charge card accounts; and

(B) Periodic statements provided for a charged-off account where payment of the entire account balance is due immediately.

(12) *Repayment disclosures.*

(i) *In general.* Except as provided in paragraphs (b)(12)(ii) and (b)(12)(v) of this section, for a credit card account under an open-end (not home-secured) consumer credit plan, a card issuer must provide the following disclosures on each periodic statement:

(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;"

(B) The minimum payment repayment estimate, as described in Appendix M1 to this part. If the minimum payment repayment estimate is less than 2 years, the card issuer must disclose the estimate in months. Otherwise, the estimate must be disclosed in years and rounded to the nearest whole year;

(C) The minimum payment total cost estimate, as described in Appendix M1 to this part. The minimum payment total cost estimate must be rounded either to the nearest whole dollar or to the nearest cent, at the card issuer's option;

(D) A statement that the minimum payment repayment estimate and the minimum payment total cost estimate are based on the current outstanding balance shown on the periodic statement. A statement that the minimum payment repayment estimate and the minimum payment total cost estimate are based on the assumption that only minimum payments are made and no other amounts are added to the balance;

(E) A toll-free telephone number where the consumer may obtain from the card issuer information about credit counseling services consistent with paragraph (b)(12)(iv) of this section; and

(F)(1) Except as provided in paragraph (b)(12)(i)(F)(2) of this section, the following disclosures:

(i) The estimated monthly payment for repayment in 36 months, as described in Appendix M1 to this part. The estimated monthly payment for repayment in 36 months must be rounded either to the nearest whole dollar or to the nearest cent, at the card issuer's option;

(ii) A statement that the card issuer estimates that the consumer will repay the outstanding balance shown on the periodic statement in 3 years if the consumer pays the estimated monthly payment each month for 3 years;

(iii) The total cost estimate for repayment in 36 months, as described in Appendix M1 to this part. The total cost estimate for repayment in 36 months must be rounded either to the nearest whole dollar or to the nearest cent, at the card issuer's option; and

(iv) The savings estimate for repayment in 36 months, as described in Appendix M1 to this part. The savings estimate for repayment in 36 months must be rounded either to the nearest whole dollar or to the nearest cent, at the card issuer's option.

(2) The requirements of paragraph (b)(12)(i)(F)(1) of this section do not apply to a periodic statement in any of the following circumstances:

(i) The minimum payment repayment estimate that is disclosed on the periodic statement pursuant to paragraph (b)(12)(i)(B) of this section after rounding is three years or less;

(ii) The estimated monthly payment for repayment in 36 months, as described in Appendix M1 to this part, after rounding as set forth in paragraph (b)(12)(i)(F)(1)(i) of this section that is calculated for a particular billing cycle is less than the minimum payment required for the plan for that billing cycle; and

(iii) A billing cycle where an account has both a balance in a revolving feature where the required minimum payments for this feature will not amortize that balance in a fixed amount of time specified in the account agreement and a balance in a fixed repayment feature where the required minimum payment for this fixed repayment feature will amortize that balance in a fixed amount of time specified in the account agreement which is less than 36 months.

(ii) *Negative or no amortization.* If negative or no amortization occurs when calculating the minimum payment repayment estimate as described in Appendix M1 of this part,

a card issuer must provide the following disclosures on the periodic statement instead of the disclosures set forth in paragraph (b)(12)(i) of this section:

(A) The following statement: “Minimum Payment Warning: Even if you make no more charges using this card, if you make only the minimum payment each month we estimate you will never pay off the balance shown on this statement because your payment will be less than the interest charged each month”;

(B) The following statement: “If you make more than the minimum payment each period, you will pay less in interest and pay off your balance sooner”;

(C) The estimated monthly payment for repayment in 36 months, as described in Appendix M1 to this part. The estimated monthly payment for repayment in 36 months must be rounded either to the nearest whole dollar or to the nearest cent, at the issuer’s option;

(D) A statement that the card issuer estimates that the consumer will repay the outstanding balance shown on the periodic statement in 3 years if the consumer pays the estimated monthly payment each month for 3 years; and

(E) A toll-free telephone number where the consumer may obtain from the card issuer information about credit counseling services consistent with paragraph (b)(12)(iv) of this section.

(iii) *Format requirements.* A card issuer must provide the disclosures required by paragraph (b)(12)(i) or (b)(12)(ii) of this section in accordance with the format requirements of paragraph (b)(13) of this section, and in a format substantially similar to Samples G-18(C)(1), G-18(C)(2) and G-18(C)(3) in Appendix G to this part, as applicable.

(iv) *Provision of information about credit counseling services.*

(A) *Required information.* To the extent available from the United States Trustee or a bankruptcy administrator, a card issuer must provide through the toll-free telephone number disclosed pursuant to paragraphs (b)(12)(i) or (b)(12)(ii) of this section the name, street address, telephone number, and Web site address for at least three organizations that have been approved by the United States Trustee or a bankruptcy administrator pursuant to 11 U.S.C. 111(a)(1) to provide credit counseling services in, at the card issuer’s option, either the state in which the billing address for the account is located or the state specified by the consumer.

(B) *Updating required information.* At least annually, a card issuer must update the information provided pursuant to paragraph (b)(12)(iv)(A) of this section for consistency with the information available from the United States Trustee or a bankruptcy administrator.

(v) *Exemptions.* Paragraph (b)(12) of this section does not apply to:

(A) Charge card accounts that require payment of outstanding balances in full at the end of each billing cycle;

(B) 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

(C) 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.

(13) *Format requirements.* The due date required by paragraph (b)(11) of this section shall be disclosed on the front of the first page of the periodic statement. The amount of the late payment fee and the annual percentage rate(s) required by paragraph (b)(11) of this section shall be stated in close proximity to the due date. The ending balance required by paragraph (b)(10) of this section and the disclosures required by paragraph (b)(12) of this section shall be disclosed closely proximate to the minimum payment due. The due date, late payment fee and annual percentage rate, ending balance, minimum payment due, and disclosures required by paragraph (b)(12) of this section shall be grouped together. Sample G-18(D) in Appendix G to this part sets forth an example of how these terms may be grouped.

(14) *Deferred interest or similar transactions.* For accounts with an outstanding balance subject to a deferred interest or similar program, 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 must be disclosed 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.

[Reg. Z, 34 Fed. Reg. 2,002 (Feb. 11, 1969); 34 Fed. Reg. 5,237 (Mar. 18, 1969), *as amended at* 37 Fed. Reg. 24,338 (Nov. 16, 1972); 40 Fed. Reg. 30,086 (July 17, 1975); 40 Fed. Reg. 43,200, 43,204 (Sept. 19, 1975); 40 Fed. Reg. 45,158 (Oct. 1, 1975); 41 Fed. Reg. 36,664 (Aug. 31, 1976); 43 Fed. Reg. 4,419 (Feb. 2, 1978); 43 Fed. Reg. 7,979 (Feb. 27, 1978); 43 Fed. Reg. 22,929 (May 30, 1978); 46 Fed. Reg. 20,892 (Apr. 7, 1981); 46 Fed. Reg. 29,246 (June 1, 1981); 71 Fed. Reg. 30,577 (May 30, 2006); 75 Fed. Reg. 7804 (Feb. 22, 2010); 75 Fed. Reg. 37,568 (June 29, 2010); 76 Fed. Reg. 23,000 (Apr. 25, 2011); 76 Fed. Reg. 79,772 (Dec. 22, 2011)]

SECTION 1026.8 Identifying Transactions on Periodic Statements [§ 226.8]

The creditor shall identify credit transactions on or with the first periodic statement that reflects the transaction by furnishing the following information, as applicable.

(a) *Sale credit.*

(1) Except as provided in paragraph (a)(2) of this section, for each credit transaction involving the sale of property or services, the creditor must disclose the amount and date of the transaction, and either:

(i) A brief identification of the property or services purchased, for creditors and sellers that are the same or related; or

(ii) The seller's name; and the city and state or foreign country where the transaction took place. The creditor may omit the address or provide any suitable designation that helps the consumer to identify the transaction when the transaction took place at a location that is not fixed; took place in the consumer's home; or was a mail, Internet, or telephone order.

(2) Creditors need not comply with paragraph (a)(1) of this section if an actual copy of the receipt or other credit document is provided with the first periodic statement reflecting the transaction, and the amount of the transaction and either the date of the transaction to the consumer's account or the date of debiting the transaction are disclosed on the copy or on the periodic statement.

(b) *Nonsale credit.* For each credit transaction not involving the sale of property or services, the creditor must disclose a brief identification of the transaction; the amount of the transaction; and at least one of the following dates: The date of the transaction, the date the transaction was debited to the consumer's account, or, if the consumer signed the credit document, the date appearing on the document. If an actual copy of the receipt or other credit document is provided and that copy shows the amount and at least one of the specified dates, the brief identification may be omitted.

(c) *Alternative creditor procedures; consumer inquiries for clarification or documentation.* The following procedures apply to creditors that treat an inquiry for clarification or documentation as a notice of a billing error, including correcting the account in accordance with § 1026.13(e):

(1) Failure to disclose the information required by paragraphs (a) and (b) of this section is not a failure to comply with the regulation, provided that the creditor also maintains procedures reasonably designed to obtain and provide the information. This applies to transactions that take place outside a state, as defined in § 1026.2(a)(26), whether or not the creditor maintains procedures reasonably adapted to obtain the required information.

(2) As an alternative to the brief identification for sale or nonsale credit, the creditor may disclose a number or symbol that also appears on the receipt or other credit document given to the consumer, if the number or symbol reasonably identifies that transaction with that creditor.

[Reg. Z, 34 Fed. Reg. 2,002 (Feb. 11, 1969); 34 Fed. Reg. 5,327 (Mar. 18, 1969), *as amended at* 34 Fed. Reg. 13,410 (Aug. 20, 1969); 34 Fed. Reg. 13,242 (Nov. 14, 1969); 38 Fed. Reg. 19,814 (July 24, 1973); 40 Fed. Reg. 43,207 (Sept. 19, 1975); 40 Fed. Reg. 54,424 (Nov. 24, 1975); 41 Fed. Reg. 5,098 (Feb. 4, 1976); 41 Fed. Reg. 28,945 (July 14, 1976); 42 Fed. Reg. 20,456 (Apr. 20, 1977); 43 Fed. Reg. 38,813 (Aug. 31, 1978); 43 Fed. Reg. 49,529 (Aug. 14, 1978); 44 Fed. Reg. 77,145 (Dec. 31, 1979); 45 Fed. Reg. 33,599 (May 20, 1980); 45 Fed. Reg. 35,802 (May 28, 1980); 46 Fed. Reg. 20,892 (Apr. 7, 1981); 46 Fed. Reg. 29,246 (June 1, 1981); 75 Fed. Reg. 7806 (Feb. 22, 2010); 76 Fed. Reg. 79,772 (Dec. 22, 2011)]

SECTION 1026.9 Subsequent Disclosure Requirements [§ 226.9]

(a) *Furnishing statement of billing rights.*

(1) *Annual statement.* The creditor shall mail or deliver the billing rights statement required by § 1026.6(a)(5) and (b)(5)(iii) at least once per calendar year, at intervals of not less than 6 months nor more than 18 months, either to all consumers or to each consumer entitled to receive a periodic statement under § 1026.5(b)(2) for any one billing cycle.

(2) *Alternative summary statement.* As an alternative to paragraph (a)(1) of this section, 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 § 1026.40 may use either Model Form, at their option.

(b) *Disclosures for supplemental credit access devices and additional features.*

(1) If a creditor, within 30 days after mailing or delivering the account-opening disclosures under § 1026.6(a)(1) or (b)(3)(ii)(A), as applicable, adds a credit feature to the consumer's account or mails or delivers to the consumer a credit access device, including but not limited to checks that access a credit card account, for which the finance charge terms are the same as those previously disclosed, no additional disclosures are necessary. Except as provided in paragraph (b)(3) of this section, after 30 days, if 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) on the same finance charge terms, the creditor shall disclose, 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.

(2) Except as provided in paragraph (b)(3) of this section, 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 § 1026.6(a)(1) or (b)(3)(ii)(A), as applicable, that are applicable to the added feature or device shall be given before the consumer uses the feature or device for the first time.

(3) *Checks that access a credit card account.*

(i) *Disclosures.* For open-end plans not subject to the requirements of § 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 § 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, the creditor shall disclose 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:

(A) If a promotional rate, as that term is defined in § 1026.16(g)(2)(i) applies to the checks:

(1) The promotional rate and the time period during which the promotional rate will remain in effect;

(2) 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; and

(3) 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.

(B) If no promotional rate applies to the checks:

(1) The type of rate that will apply to the checks and the applicable annual percentage rate. For a variable-rate account, a creditor must disclose an annual percentage rate based on the applicable index or formula in accordance with the accuracy requirements set forth in paragraph (b)(3)(ii) of this section.

(2) [Reserved]

(C) Any transaction fees applicable to the checks disclosed under § 1026.6(b)(2)(iv); and

(D) Whether or not a grace period is given within which any credit extended by use of the checks may be repaid without incurring a finance charge due to a periodic interest rate. When disclosing whether there is a grace period, the phrase “How to Avoid Paying Interest on Check Transactions” shall be used as the row heading when a grace period applies to credit extended by the use of the checks. When disclosing the fact that no grace period exists for credit extended by use of the checks, the phrase “Paying Interest” shall be used as the row heading.

(ii) *Accuracy*. The disclosures in paragraph (b)(3)(i) of this section must be accurate as of the time the disclosures are mailed or delivered. A variable annual percentage rate is accurate if it was in effect within 60 days of when the disclosures are mailed or delivered.

(iii) *Variable rates*. If any annual percentage rate required to be disclosed pursuant to paragraph (b)(3)(i) of this section is a variable rate, the card issuer shall also disclose the fact that the rate may vary and how the rate is determined. In describing how the applicable rate will be determined, the card issuer must identify the type of index or formula that is used in setting the rate. The value of the index and the amount of the margin that are used to calculate

the variable rate shall not be disclosed in the table. A disclosure of any applicable limitations on rate increases shall not be included in the table.

(c) *Change in terms.*

(1) *Rules affecting home-equity plans.*

(i) *Written notice required.* For home-equity plans subject to the requirements of § 1026.40, whenever any term required to be disclosed under § 1026.6(a) is changed or the required minimum periodic payment is increased, the creditor shall mail or deliver written notice of the change to each consumer who may be affected. The notice shall be mailed or delivered at least 15 days prior to the effective date of the change. The 15-day timing requirement does not apply if the change has been agreed to by the consumer; the notice shall be given, however, before the effective date of the change.

(ii) *Notice not required.* For home-equity plans subject to the requirements of § 1026.40, a creditor is not required to provide notice under this section when the change involves a reduction of any component of a finance or other charge or when the change results from an agreement involving a court proceeding.

(iii) *Notice to restrict credit.* For home-equity plans subject to the requirements of § 1026.40, if the creditor prohibits additional extensions of credit or reduces the credit limit pursuant to § 1026.40(f)(3)(i) or (f)(3)(vi), the creditor shall mail or deliver written notice of the action to each consumer who will be affected. The notice must be provided not later than three business days after the action is taken and shall contain specific reasons for the action. If the creditor requires the consumer to request reinstatement of credit privileges, the notice also shall state that fact.

(2) *Rules affecting open-end (not home-secured) plans*

(i) *Changes where written advance notice is required*

(A) *General.* For plans other than home-equity plans subject to the requirements of § 1026.40, except as provided in paragraphs (c)(2)(i)(B), (c)(2)(iii) and (c)(2)(v) of this section, when a significant change in account terms as described in paragraph (c)(2)(ii) of this section is made, a creditor must provide a written notice of the change at least 45 days prior to the effective date of the change to each consumer who may be affected. The 45-day timing requirement does not apply if the consumer has agreed to a particular change as described in paragraph (c)(2)(i)(B) of this section; for such changes, notice must be given in accordance with the timing requirements of paragraph (c)(2)(i)(B) of this section. Increases in the rate applicable to a consumer's account due to delinquency, default or as a penalty described in paragraph (g) of this section that are not due to a change in the contractual terms of the consumer's account must be disclosed pursuant to paragraph (g) of this section instead of paragraph (c)(2) of this section.

(B) *Changes agreed to by the consumer.* A notice of change in terms is required, but it may be mailed or delivered as late as the effective date of the change if the

consumer agrees to the particular change. This paragraph (c)(2)(i)(B) applies only when a consumer substitutes collateral or when the creditor can advance additional credit only if a change relatively unique to that consumer is made, such as the consumer's providing additional security or paying an increased minimum payment amount. The following are not considered agreements between the consumer and the creditor for purposes of this paragraph (c)(2)(i)(B): The consumer's general acceptance of the creditor's contract reservation of the right to change terms; the consumer's use of the account (which might imply acceptance of its terms under state law); the consumer's acceptance of a unilateral term change that is not particular to that consumer, but rather is of general applicability to consumers with that type of account; and the consumer's request to reopen a closed account or to upgrade an existing account to another account offered by the creditor with different credit or other features.

(ii) *Significant changes in account terms.* For purposes of this section, a "significant change in account terms" means a change to a term required to be disclosed under § 1026.6(b)(1) and (b)(2), an increase in the required minimum periodic payment, a change to a term required to be disclosed under § 1026.6(b)(4), or the acquisition of a security interest.

(iii) *Charges not covered by § 1026.6(b)(1) and (b)(2).* Except as provided in paragraph (c)(2)(vi) of this section, if a creditor increases any component of a charge, or introduces a new charge, required to be disclosed under § 1026.6(b)(3) that is not a significant change in account terms as described in paragraph (c)(2)(ii) of this section, a creditor must either, at its option:

(A) Comply with the requirements of paragraph (c)(2)(i) of this section;

or

(B) Provide notice of the amount of the charge before the consumer agrees to or becomes obligated to pay the charge, at a time and in a manner that a consumer would be likely to notice the disclosure of the charge. The notice may be provided orally or in writing.

(iv) *Disclosure requirements.*

(A) *Significant changes in account terms.* If a creditor makes a significant change in account terms as described in paragraph (c)(2)(ii) of this section, the notice provided pursuant to paragraph (c)(2)(i) of this section must provide the following information:

(1) A summary of the changes made to terms required by § 1026.6(b)(1) and (b)(2) or § 1026.6(b)(4), a description of any increase in the required minimum periodic payment, and a description of any security interest being acquired by the creditor;

(2) A statement that changes are being made to the account;

(3) For accounts other than credit card accounts under an open-end (not home-secured) consumer credit plan subject to § 1026.9(c)(2)(iv)(B), a statement

indicating the consumer has the right to opt out of these changes, if applicable, and a reference to additional information describing the opt-out right provided in the notice, if applicable;

(4) The date the changes will become effective;

(5) If applicable, a statement that the consumer may find additional information about the summarized changes, and other changes to the account, in the notice;

(6) If the creditor is changing a rate on the account, other than a penalty rate, a statement that if a penalty rate currently applies to the consumer's account, the new rate described in the notice will not apply to the consumer's account until the consumer's account balances are no longer subject to the penalty rate;

(7) If the change in terms being disclosed is an increase in an annual percentage rate, the balances to which the increased rate will be applied. If applicable, a statement identifying the balances to which the current rate will continue to apply as of the effective date of the change in terms; and

(8) If the change in terms being disclosed is an increase in an annual percentage rate for a credit card account under an open-end (not home-secured) consumer credit plan, a statement of no more than four principal reasons for the rate increase, listed in their order of importance.

(B) *Right to reject for credit card accounts under an open-end (not home-secured) consumer credit plan.* In addition to the disclosures in paragraph (c)(2)(iv)(A) of this section, if a card issuer makes a significant change in account terms on a credit card account under an open-end (not home-secured) consumer credit plan, the creditor must generally provide the following information on the notice provided pursuant to paragraph (c)(2)(i) of this section. This information is not required to be provided in the case of an increase in the required minimum periodic payment, an increase in a fee as a result of a reevaluation of a determination made under § 1026.52(b)(1)(i) or an adjustment to the safe harbors in § 1026.52(b)(1)(ii) to reflect changes in the Consumer Price Index, a change in an annual percentage rate applicable to a consumer's account, an increase in a fee previously reduced consistent with 50 U.S.C. app. 527 or a similar Federal or state statute or regulation if the amount of the increased fee does not exceed the amount of that fee prior to the reduction, or when the change results from the creditor not receiving the consumer's required minimum periodic payment within 60 days after the due date for that payment:

(1) A statement that the consumer has the right to reject the change or changes prior to the effective date of the changes, unless the consumer fails to make a required minimum periodic payment within 60 days after the due date for that payment;

(2) Instructions for rejecting the change or changes, and a toll-free telephone number that the consumer may use to notify the creditor of the rejection; and

(3) If applicable, a statement that if the consumer rejects the change or changes, the consumer's ability to use the account for further advances will be terminated or suspended.

(C) *Changes resulting from failure to make minimum periodic payment within 60 days from due date for credit card accounts under an open-end (not home-secured) consumer credit plan.* For a credit card account under an open-end (not home-secured) consumer credit plan:

(1) If the significant change required to be disclosed pursuant to paragraph (c)(2)(i) of this section is an increase in an annual percentage rate or a fee or charge required to be disclosed under § 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, the notice provided pursuant to paragraph (c)(2)(i) of this section must state that the increase will cease to apply to transactions that occurred prior to or within 14 days of provision of the notice, if the creditor receives six consecutive required minimum periodic payments on or before the payment due date, beginning with the first payment due following the effective date of the increase.

(2) If the significant change required to be disclosed pursuant to paragraph (c)(2)(i) of this section is an increase in a fee or charge required to be disclosed under § 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, the notice provided pursuant to paragraph (c)(2)(i) of this section must also state the reason for the increase.

(D) *Format requirements.*

(1) *Tabular format.* The summary of changes described in paragraph (c)(2)(iv)(A)(1) of this section must be 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 § 1026.6(b)(4) that is not required to be disclosed under § 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 to this part. The table must disclose the changed term and information relevant to the change, if that relevant information is required by § 1026.6(b)(1) and (b)(2). The new terms shall be described in the same level of detail as required when disclosing the terms under § 1026.6(b)(2).

(2) *Notice included with periodic statement.* If a notice required by paragraph (c)(2)(i) of this section is included on or with a periodic statement, the information described in paragraph (c)(2)(iv)(A)(1) of this section must be disclosed on the front of any page of the statement. The summary of changes described in paragraph (c)(2)(iv)(A)(1) of this section must immediately follow the information described in paragraph (c)(2)(iv)(A)(2) through (c)(2)(iv)(A)(7) and, if applicable, paragraphs (c)(2)(iv)(A)(8), (c)(2)(iv)(B), and (c)(2)(iv)(C) of this section, and be substantially similar to the format shown in Sample G-20 or G-21 in Appendix G to this part.

(3) *Notice provided separately from periodic statement.* If a notice required by paragraph (c)(2)(i) of this section is not included on or with a periodic statement, the information described in paragraph (c)(2)(iv)(A)(1) of this section must, at the creditor's option, be disclosed on the front of the first page of the notice or segregated on a separate page from other information given with the notice. The summary of changes required to be in a table pursuant to paragraph (c)(2)(iv)(A)(1) of this section may be on more than one page, and may use both the front and reverse sides, so long as the table begins on the front of the first page of the notice and there is a reference on the first page indicating that the table continues on the following page. The summary of changes described in paragraph (c)(2)(iv)(A)(1) of this section must immediately follow the information described in paragraph (c)(2)(iv)(A)(2) through (c)(2)(iv)(A)(7) and, if applicable, paragraphs (c)(2)(iv)(A)(8), (c)(2)(iv)(B), and (c)(2)(iv)(C), of this section, substantially similar to the format shown in Sample G-20 or G-21 in Appendix G to this part.

(v) *Notice not required.* For open-end plans (other than home equity plans subject to the requirements of § 1026.40) a creditor is not required to provide notice under this section:

(A) When the change involves charges for documentary evidence; a reduction of any component of a finance or other charge; suspension of future credit privileges (except as provided in paragraph (c)(2)(vi) of this section) or termination of an account or plan; when the change results from an agreement involving a court proceeding; when the change is an extension of the grace period; or if the change is applicable only to checks that access a credit card account and the changed terms are disclosed on or with the checks in accordance with paragraph (b)(3) of this section;

(B) When the change is an increase in an annual percentage rate or fee upon the expiration of a specified period of time, provided that:

(1) Prior to commencement of that period, the creditor disclosed in writing to the consumer, in a clear and conspicuous manner, the length of the period and the annual percentage rate or fee that would apply after expiration of the period;

(2) The disclosure of the length of the period and the annual percentage rate or fee that would apply after expiration of the period are set forth in close proximity and in equal prominence to the first listing of the disclosure of the rate or fee that applies during the specified period of time; and

(3) The annual percentage rate or fee that applies after that period does not exceed the rate or fee disclosed pursuant to paragraph (c)(2)(v)(B)(1) of this paragraph or, if the rate disclosed pursuant to paragraph (c)(2)(v)(B)(1) of this section 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 paragraph (c)(2)(v)(B)(1);

(C) When the change is an increase in a variable annual percentage rate 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; or

(D) When the change is an increase in an annual percentage rate, a fee or charge required to be disclosed under § 1026.6(b)(2)(ii), (b)(2)(iii), (b)(2)(viii), (b)(2)(ix), (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:

(1) The annual percentage rate 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

(2) The creditor has provided the consumer, prior to the commencement of such arrangement, with a clear and conspicuous disclosure of the terms of the arrangement (including any increases due to such completion or failure). This disclosure must generally be provided in writing. However, a creditor may provide the disclosure of the terms of the arrangement orally by telephone, provided that the creditor mails or delivers a written disclosure of the terms of the arrangement to the consumer as soon as reasonably practicable after the oral disclosure is provided.

(vi) *Reduction of the credit limit.* For open-end plans that are not subject to the requirements of § 1026.40, if a creditor decreases the credit limit on an account, advance notice of the decrease must be provided before an over-the-limit fee or a penalty rate can be imposed solely as a result of the consumer exceeding the newly decreased credit limit. Notice shall be provided in writing or orally at least 45 days prior to imposing the over-the-limit fee or penalty rate and shall state that the credit limit on the account has been or will be decreased.

(d) *Finance charge imposed at time of transaction.*

(1) Any person, other than the card issuer, who imposes a finance charge at the time of honoring a consumer's credit card, shall disclose the amount of that finance charge prior to its imposition.

(2) The card issuer, other than the person honoring the consumer's credit card, shall have no responsibility for the disclosure required by paragraph (d)(1) of this section, and shall not consider any such charge for the purposes of §§ 1026.60, 1026.6 and 1026.7.

(e) *Disclosures upon renewal of credit or charge card.*

(1) *Notice prior to renewal.* A card issuer that imposes any annual or other periodic fee to renew a credit or charge card account of the type subject to § 1026.60, including any fee based on account activity or inactivity or any card issuer that has changed or amended any term of a cardholder's account required to be disclosed under § 1026.6(b)(1) and (b)(2) that has not previously been disclosed to the consumer, shall mail or deliver written notice of the renewal to the cardholder. If the card issuer imposes any annual or other periodic fee for renewal, the notice shall be provided at least 30 days or one billing cycle, whichever is less, before the mailing or the delivery of the periodic statement on which any renewal fee is initially charged to the account. If the card issuer has changed or amended any term required to be disclosed under § 1026.6(b)(1) and (b)(2) and such changed or amended term has not previously been disclosed to the consumer, the notice shall be provided at least 30 days prior to the scheduled renewal date of the consumer's credit or charge card. The notice shall contain the following information:

(i) The disclosures contained in § 1026.60(b)(1) through (b)(7) that would apply if the account were renewed; and

(ii) How and when the cardholder may terminate credit availability under the account to avoid paying the renewal fee, if applicable.

(2) *Notification on periodic statements.* The disclosures required by this paragraph may be made on or with a periodic statement. If any of the disclosures are provided on the back of a periodic statement, the card issuer shall include a reference to those disclosures on the front of the statement.

(f) *Change in credit card account insurance provider.*

(1) *Notice prior to change.* If a credit card issuer plans to change the provider of insurance for repayment of all or part of the outstanding balance of an open-end credit card account of the type subject to § 1026.60, the card issuer shall mail or deliver to the cardholder written notice of the change not less than 30 days before the change in provider occurs. The notice shall also include the following items, to the extent applicable:

(i) Any increase in the rate that will result from the change;

(ii) Any substantial decrease in coverage that will result from the change; and

(iii) A statement that the cardholder may discontinue the insurance.

(2) *Notice when change in provider occurs.* If a change described in paragraph (f)(1) of this section occurs, the card issuer shall provide the cardholder with a written notice no later than 30 days after the change, including the following items, to the extent applicable:

(i) The name and address of the new insurance provider;

(ii) A copy of the new policy or group certificate containing the basic terms of the insurance, including the rate to be charged; and

(iii) A statement that the cardholder may discontinue the insurance.

(3) *Substantial decrease in coverage.* For purposes of this paragraph, a substantial decrease in coverage is a decrease in a significant term of coverage that might reasonably be expected to affect the cardholder's decision to continue the insurance. Significant terms of coverage include, for example, the following:

(i) Type of coverage provided;

(ii) Age at which coverage terminates or becomes more restrictive;

(iii) Maximum insurable loan balance, maximum periodic benefit payment, maximum number of payments, or other term affecting the dollar amount of coverage or benefits provided;

(iv) Eligibility requirements and number and identity of persons covered;

(v) Definition of a key term of coverage such as disability;

(vi) Exclusions from or limitations on coverage; and

(vii) Waiting periods and whether coverage is retroactive.

(4) *Combined notification.* The notices required by paragraph (f)(1) and (2) of this section may be combined provided the timing requirement of paragraph (f)(1) of this section is met. The notices may be provided on or with a periodic statement.

(g) *Increase in rates due to delinquency or default or as a penalty.*

(1) *Increases subject to this section.* For plans other than home-equity plans subject to the requirements of § 1026.40, except as provided in paragraph (g)(4) of this section, a creditor must provide a written notice to each consumer who may be affected when:

(i) A rate is increased due to the consumer's delinquency or default; or

(ii) A rate is increased as a penalty for one or more events specified in the account agreement, such as making a late payment or obtaining an extension of credit that exceeds the credit limit.

(2) *Timing of written notice.* Whenever any notice is required to be given pursuant to paragraph (g)(1) of this section, the creditor shall provide written notice of the increase in rates at least 45 days prior to the effective date of the increase. The notice must be provided after the occurrence of the events described in paragraphs (g)(1)(i) and (g)(1)(ii) of this section that trigger the imposition of the rate increase.

(3)(i) *Disclosure requirements for rate increases.*

(A) *General.* If a creditor is increasing the rate due to delinquency or default or as a penalty, the creditor must provide the following information on the notice sent pursuant to paragraph (g)(1) of this section:

(1) A statement that the delinquency or default rate or penalty rate, as applicable, has been triggered;

(2) The date on which the delinquency or default rate or penalty rate will apply;

(3) The circumstances under which the delinquency or default rate or penalty rate, as applicable, will cease to apply to the consumer's account, or that the delinquency or default rate or penalty rate will remain in effect for a potentially indefinite time period;

(4) A statement indicating to which balances the delinquency or default rate or penalty rate will be applied;

(5) If applicable, a description of any balances to which the current rate will continue to apply as of the effective date of the rate increase, unless a consumer fails to make a minimum periodic payment within 60 days from the due date for that payment; and

(6) For a credit card account under an open-end (not home-secured) consumer credit plan, a statement of no more than four principal reasons for the rate increase, listed in their order of importance.

(B) *Rate increases resulting from failure to make minimum periodic payment within 60 days from due date.* For a credit card account under an open-end (not home-secured) consumer credit plan, if the rate increase required to be disclosed pursuant to paragraph (g)(1) of this section is an increase pursuant to § 1026.55(b)(4) based on the consumer's failure to make a minimum periodic payment within 60 days from the due date for that payment, the notice provided pursuant to paragraph (g)(1) of this section must also state that the increase will cease to apply to transactions that occurred prior to or within 14 days of provision of the notice, if the creditor receives six consecutive required minimum periodic payments on or before the payment due date, beginning with the first payment due following the effective date of the increase.

(ii) *Format requirements.*

(A) If a notice required by paragraph (g)(1) of this section is included on or with a periodic statement, the information described in paragraph (g)(3)(i) of this section must be in the form of a table and provided on the front of any page of the periodic statement, above

the notice described in paragraph (c)(2)(iv) of this section if that notice is provided on the same statement.

(B) If a notice required by paragraph (g)(1) of this section is not included on or with a periodic statement, the information described in paragraph (g)(3)(i) of this section must be disclosed on the front of the first page of the notice. Only information related to the increase in the rate to a penalty rate may be included with the notice, except that this notice may be combined with a notice described in paragraph (c)(2)(iv) or (g)(4) of this section.

(4) *Exception for decrease in credit limit.* A creditor is not required to provide a notice pursuant to paragraph (g)(1) of this section prior to increasing the rate for obtaining an extension of credit that exceeds the credit limit, provided that:

(i) The creditor provides at least 45 days in advance of imposing the penalty rate a notice, in writing, that includes:

(A) A statement that the credit limit on the account has been or will be decreased.

(B) A statement indicating the date on which the penalty rate will apply, if the outstanding balance exceeds the credit limit as of that date;

(C) A statement that the penalty rate will not be imposed on the date specified in paragraph (g)(4)(i)(B) of this section, if the outstanding balance does not exceed the credit limit as of that date;

(D) The circumstances under which the penalty rate, if applied, will cease to apply to the account, or that the penalty rate, if applied, will remain in effect for a potentially indefinite time period;

(E) A statement indicating to which balances the penalty rate may be applied; and

(F) If applicable, a description of any balances to which the current rate will continue to apply as of the effective date of the rate increase, unless the consumer fails to make a minimum periodic payment within 60 days from the due date for that payment; and

(ii) The creditor does not increase the rate applicable to the consumer's account to the penalty rate if the outstanding balance does not exceed the credit limit on the date set forth in the notice and described in paragraph (g)(4)(i)(B) of this section.

(iii)(A) If a notice provided pursuant to paragraph (g)(4)(i) of this section is included on or with a periodic statement, the information described in paragraph (g)(4)(i) of this section must be in the form of a table and provided on the front of any page of the periodic statement; or

(B) If a notice required by paragraph (g)(4)(i) of this section is not included on or with a periodic statement, the information described in paragraph (g)(4)(i) of this section must be disclosed on the front of the first page of the notice. Only information related to the reduction in credit limit may be included with the notice, except that this notice may be combined with a notice described in paragraph (c)(2)(iv) or (g)(1) of this section.

(h) *Consumer rejection of certain significant changes in terms.*

(1) *Right to reject.* If paragraph (c)(2)(iv)(B) of this section requires disclosure of the consumer's right to reject a significant change to an account term, the consumer may reject that change by notifying the creditor of the rejection before the effective date of the change.

(2) *Effect of rejection.* If a creditor is notified of a rejection of a significant change to an account term as provided in paragraph (h)(1) of this section, the creditor must not:

(i) Apply the change to the account;

(ii) Impose a fee or charge or treat the account as in default solely as a result of the rejection; or

(iii) Require repayment of the balance on the account using a method that is less beneficial to the consumer than one of the methods listed in § 1026.55(c)(2).

(3) *Exception.* Section 1026.9(h) does not apply when the creditor has not received the consumer's required minimum periodic payment within 60 days after the due date for that payment.

[Reg. Z, 34 Fed. Reg. 2,002 (Feb. 11, 1969); 34 Fed. Reg. 5,327 (Mar. 18, 1969), *as amended at* 34 Fed. Reg. 18,242 (Nov. 14, 1969); 36 Fed. Reg. 4,113 (Mar. 4, 1971); 36 Fed. Reg. 19,671 (Oct. 9, 1971); 40 Fed. Reg. 30,086 (July 17, 1975); 43 Fed. Reg. 34,113 (Aug. 3, 1978); 46 Fed. Reg. 20,892 (Apr. 7, 1981); 46 Fed. Reg. 29,246 (June 1, 1981); 54 Fed. Reg. 13,867 (Apr. 6, 1989); 54 Fed. Reg. 24,688 (June 9, 1989); 54 Fed. Reg. 32,954 (Aug. 11, 1989); 55 Fed. Reg. 38,312 (Sept. 18, 1990); 55 Fed. Reg. 39,538 (Sept. 27, 1990); 55 Fed. Reg. 42,148 (Oct. 17, 1990); 74 Fed. Reg. 36,094 (July 22, 2009) (interim final rule); 75 Fed. Reg. 7807 (Feb. 22, 2010); 75 Fed. Reg. 37,568 (June 29, 2010); 76 Fed. Reg. 23,000, 23,001 (Apr. 25, 2011); 76 Fed. Reg. 79,772 (Dec. 22, 2011)]

SECTION 1026.10 Payments [§ 226.10]

(a) *General rule.* A creditor shall credit a payment to the consumer's account as of the date of receipt, except when a delay in crediting does not result in a finance or other charge or except as provided in paragraph (b) of this section.

(b) *Specific requirements for payments.*

(1) *General rule.* A creditor may specify reasonable requirements for payments that enable most consumers to make conforming payments.

(2) *Examples of reasonable requirements for payments.* Reasonable requirements for making payment may include:

(i) Requiring that payments be accompanied by the account number or payment stub;

(ii) Setting reasonable cut-off times for payments to be received by mail, by electronic means, by telephone, and in person (except as provided in paragraph (b)(3) of this section), provided that such cut-off times shall be no earlier than 5 p.m. on the payment due date at the location specified by the creditor for the receipt of such payments;

(iii) Specifying that only checks or money orders should be sent by mail;

(iv) Specifying that payment is to be made in U.S. dollars; or

(v) Specifying one particular address for receiving payments, such as a post office box.

(3) *In-person payments on credit card accounts.*

(i) *General.* Notwithstanding § 1026.10(b), payments on a credit card account under an open-end (not home-secured) consumer credit plan made in person at a branch or office of a card issuer that is a financial institution prior to the close of business of that branch or office shall be considered received on the date on which the consumer makes the payment. A card issuer that is a financial institution shall not impose a cut-off time earlier than the close of business for any such payments made in person at any branch or office of the card issuer at which such payments are accepted. Notwithstanding § 1026.10(b)(2)(ii), a card issuer may impose a cut-off time earlier than 5 p.m. for such payments, if the close of business of the branch or office is earlier than 5 p.m.

(ii) *Financial institution.* For purposes of paragraph (b)(3) of this section, “financial institution” shall mean a bank, savings association, or credit union.

(4) *Nonconforming payments.*

(i) *In general.* Except as provided in paragraph (b)(4)(ii) of this section, if a creditor specifies, on or with the periodic statement, requirements for the consumer to follow in making payments as permitted under this § 1026.10, but accepts a payment that does not conform to the requirements, the creditor shall credit the payment within five days of receipt.

(ii) *Payment methods promoted by creditor.* If a creditor promotes a method for making payments, such payments shall be considered conforming payments in accordance with

this paragraph (b) and shall be credited to the consumer's account as of the date of receipt, except when a delay in crediting does not result in a finance or other charge.

(c) *Adjustment of account.* If a creditor fails to credit a payment, as required by paragraphs (a) or (b) of this section, in time to avoid the imposition of finance or other charges, the creditor shall adjust the consumer's account so that the charges imposed are credited to the consumer's account during the next billing cycle.

(d) *Crediting of payments when creditor does not receive or accept payments on due date.*

(1) *General.* Except as provided in paragraph (d)(2) of this section, if a creditor does not receive or accept payments by mail on the due date for payments, the creditor may generally not treat a payment received the next business day as late for any purpose. For purposes of this paragraph (d), the "next business day" means the next day on which the creditor accepts or receives payments by mail.

(2) *Payments accepted or received other than by mail.* If a creditor accepts or receives payments made on the due date by a method other than mail, such as electronic or telephone payments, the creditor is not required to treat a payment made by that method on the next business day as timely, even if it does not accept mailed payments on the due date.

(e) *Limitations on fees related to method of payment.* For credit card accounts under an open-end (not home-secured) consumer credit plan, a creditor may not impose a separate fee to allow consumers to make a payment by any method, such as mail, electronic, or telephone payments, unless such payment method involves an expedited service by a customer service representative of the creditor. For purposes of paragraph (e) of this section, the term "creditor" includes a third party that collects, receives, or processes payments on behalf of a creditor.

(f) *Changes by card issuer.* 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 the consumer's account during the 60-day period following the date on which such change took effect, the card issuer may 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.

[Reg. Z, 34 Fed. Reg. 2,002 (Feb. 11, 1969); 34 Fed. Reg. 5,327 (Mar. 18, 1969), *as amended at* 36 Fed. Reg. 4,113 (Mar. 4, 1971); 38 Fed. Reg. 18,457 (July 11, 1973); 40 Fed. Reg. 30,085 (July 17, 1975); 41 Fed. Reg. 45,539 (Oct. 15, 1976); 42 Fed. Reg. 3 (Jan. 3, 1977); 75 Fed. Reg. 7811 (Feb. 22, 2010); 76 Fed. Reg. 23,002 (Apr. 25, 2011); 76 Fed. Reg. 79,772 (Dec. 22, 2011)]

SECTION 1026.11 Treatment of Credit Balances; Account Termination [§ 226.11]

(a) *Credit balances.* When a credit balance in excess of \$1 is created on a credit account (through transmittal of funds to a creditor in excess of the total balance due on an account, through rebates

of unearned finance charges or insurance premiums, or through amounts otherwise owed to or held for the benefit of the consumer), the creditor shall:

(1) Credit the amount of the credit balance to the consumer's account;

(2) Refund any part of the remaining credit balance within seven business days from receipt of a written request from the consumer;

(3) Make a good faith effort to refund to the consumer by cash, check, or money order, or credit to a deposit account of the consumer, any part of the credit balance remaining in the account for more than six months. 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) *Account termination.*

(1) A creditor shall not terminate an account prior to its expiration date solely because the consumer does not incur a finance charge.

(2) Nothing in paragraph (b)(1) of this section prohibits a creditor from terminating an account that is inactive for three or more consecutive months. An account is inactive for purposes of this paragraph if no credit has been extended (such as by purchase, cash advance or balance transfer) and if the account has no outstanding balance.

(c) *Timely settlement of estate debts.*

(1) *General rule.*

(i) *Reasonable policies and procedures required.* For credit card accounts under an open-end (not home-secured) consumer credit plan, card issuers must adopt reasonable written policies and procedures designed to ensure that an administrator of an estate of a deceased accountholder can determine the amount of and pay any balance on the account in a timely manner.

(ii) *Application to joint accounts.* Paragraph (c) of this section does not apply to the account of a deceased consumer if a joint accountholder remains on the account.

(2) *Timely statement of balance.*

(i) *Requirement.* Upon request by the administrator of an estate, a card issuer must provide the administrator with the amount of the balance on a deceased consumer's account in a timely manner.

(ii) *Safe harbor.* For purposes of paragraph (c)(2)(i) of this section, providing the amount of the balance on the account within 30 days of receiving the request is deemed to be timely.

(3) *Limitations after receipt of request from administrator.*

(i) *Limitation on fees and increases in annual percentage rates.* After receiving a request from the administrator of an estate for the amount of the balance on a deceased consumer's account, a card issuer must 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 § 1026.55(b)(2).

(ii) *Limitation on trailing or residual interest.* A card issuer must waive or rebate any additional finance charge due to a periodic interest rate if payment in full of the balance disclosed pursuant to paragraph (c)(2) of this section is received within 30 days after disclosure.

[Reg. Z, 34 Fed. Reg. 2,002 (Feb. 11, 1969), *as amended at* 40 Fed. Reg. 43,207 (Sept. 19, 1975); 75 Fed. Reg. 7812 (Feb. 22, 2010); 76 Fed. Reg. 79,772 (Dec. 22, 2011)]

SECTION 1026.12 Special Credit Card Provisions [§ 226.12]

(a) *Issuance of credit cards.* Regardless of the purpose for which a credit card is to be used, including business, commercial, or agricultural use, no credit card shall be issued to any person except:

(1) In response to an oral or written request or application for the card; or

(2) As a renewal of, or substitute for, an accepted credit card.

(b) *Liability of cardholder for unauthorized use.*

(1)(i) *Definition of unauthorized use.* For purposes of this section, the term “unauthorized use” means the use of a credit card by a person, other than the cardholder, who does not have actual, implied, or apparent authority for such use, and from which the cardholder receives no benefit.

(ii) *Limitation on amount.* The liability of a cardholder for unauthorized use of a credit card shall not exceed the lesser of \$50 or the amount of money, property, labor, or services obtained by the unauthorized use before notification to the card issuer under paragraph (b)(3) of this section.

(2) *Conditions of liability.* A cardholder shall be liable for unauthorized use of a credit card only if:

(i) The credit card is an accepted credit card;

(ii) The card issuer has provided adequate notice of the cardholder's maximum potential liability and of means by which the card issuer may be notified of loss or theft of the card. The notice shall state that the cardholder's liability shall not exceed \$50 (or any lesser

amount) and that the cardholder may give oral or written notification, and shall describe a means of notification (for example, a telephone number, an address, or both); and

(iii) The card issuer has provided a means to identify the cardholder on the account or the authorized user of the card.

(3) *Notification to card issuer.* Notification to a card issuer is given when steps have been taken as may be reasonably required in the ordinary course of business to provide the card issuer with the pertinent information about the loss, theft, or possible unauthorized use of a credit card, regardless of whether any particular officer, employee, or agent of the card issuer does, in fact, receive the information. Notification may be given, at the option of the person giving it, in person, by telephone, or in writing. Notification in writing is considered given at the time of receipt or, whether or not received, at the expiration of the time ordinarily required for transmission, whichever is earlier.

(4) *Effect of other applicable law or agreement.* If state law or an agreement between a cardholder and the card issuer imposes lesser liability than that provided in this paragraph, the lesser liability shall govern.

(5) *Business use of credit cards.* If 10 or more credit cards are issued by one card issuer for use by the employees of an organization, this section does not prohibit the card issuer and the organization from agreeing to liability for unauthorized use without regard to this section. However, liability for unauthorized use may be imposed on an employee of the organization, by either the card issuer or the organization, only in accordance with this section.

(c) *Right of cardholder to assert claims or defenses against card issuer.*

(1) *General rule.* When a person who honors a credit card fails to resolve satisfactorily a dispute as to property or services purchased with the credit card in a consumer credit transaction, the cardholder may assert against the card issuer all claims (other than tort claims) and defenses arising out of the transaction and relating to the failure to resolve the dispute. The cardholder may withhold payment up to the amount of credit outstanding for the property or services that gave rise to the dispute and any finance or other charges imposed on that amount.

(2) *Adverse credit reports prohibited.* If, in accordance with paragraph (c)(1) of this section, the cardholder withholds payment of the amount of credit outstanding for the disputed transaction, the card issuer shall not report that amount as delinquent until the dispute is settled or judgment is rendered.

(3) *Limitations.*

(i) *General.* The rights stated in paragraphs (c)(1) and (c)(2) of this section apply only if:

(A) The cardholder has made a good faith attempt to resolve the dispute with the person honoring the credit card; and

(B) The amount of credit extended to obtain the property or services that result in the assertion of the claim or defense by the cardholder exceeds \$50, and the disputed transaction occurred in the same state as the cardholder's current designated address or, if not within the same state, within 100 miles from that address.

(ii) *Exclusion.* The limitations stated in paragraph (c)(3)(i)(B) of this section shall not apply when the person honoring the credit card:

(A) Is the same person as the card issuer;

(B) Is controlled by the card issuer directly or indirectly;

(C) Is under the direct or indirect control of a third person that also directly or indirectly controls the card issuer;

(D) Controls the card issuer directly or indirectly;

(E) Is a franchised dealer in the card issuer's products or services; or

(F) Has obtained the order for the disputed transaction through a mail solicitation made or participated in by the card issuer.

(d) *Offsets by card issuer prohibited.*

(1) A card issuer may not take any action, either before or after termination of credit card privileges, to offset a cardholder's indebtedness arising from a consumer credit transaction under the relevant credit card plan against funds of the cardholder held on deposit with the card issuer.

(2) This paragraph does not alter or affect the right of a card issuer acting under state or Federal law to do any of the following with regard to funds of a cardholder held on deposit with the card issuer if the same procedure is constitutionally available to creditors generally: Obtain or enforce a consensual security interest in the funds; attach or otherwise levy upon the funds; or obtain or enforce a court order relating to the funds.

(3) This paragraph does not prohibit a plan, if authorized in writing by the cardholder, under which the card issuer may periodically deduct all or part of the cardholder's credit card debt from a deposit account held with the card issuer (subject to the limitations in § 1026.13(d)(1)).

(e) *Prompt notification of returns and crediting of refunds.*

(1) When a creditor other than the card issuer accepts the return of property or forgives a debt for services that is to be reflected as a credit to the consumer's credit card account, that creditor shall, within 7 business days from accepting the return or forgiving the debt, transmit a credit statement to the card issuer through the card issuer's normal channels for credit statements.

(2) The card issuer shall, within 3 business days from receipt of a credit statement, credit the consumer's account with the amount of the refund.

(3) If a creditor other than a card issuer routinely gives cash refunds to consumers paying in cash, the creditor shall also give credit or cash refunds to consumers using credit cards, unless it discloses at the time the transaction is consummated that credit or cash refunds for returns are not given. This section does not require refunds for returns nor does it prohibit refunds in kind.

(f) *Discounts; tie-in arrangements.* No card issuer may, by contract or otherwise:

(1) Prohibit any person who honors a credit card from offering a discount to a consumer to induce the consumer to pay by cash, check, or similar means rather than by use of a credit card or its underlying account for the purchase of property or services; or

(2) Require any person who honors the card issuer's credit card to open or maintain any account or obtain any other service not essential to the operation of the credit card plan from the card issuer or any other person, as a condition of participation in a credit card plan. If maintenance of an account for clearing purposes is determined to be essential to the operation of the credit card plan, it may be required only if no service charges or minimum balance requirements are imposed.

(g) *Relation to Electronic Fund Transfer Act and Regulation E.* For guidance on whether Regulation Z (12 CFR part 1026) or Regulation E (12 CFR part 1005) applies in instances involving both credit and electronic fund transfer aspects, refer to Regulation E, 12 CFR 1005.12(a) regarding issuance and liability for unauthorized use. On matters other than issuance and liability, this section applies to the credit aspects of combined credit/electronic fund transfer transactions, as applicable.

[Reg. Z, 36 Fed. Reg. 1,040 (Jan. 22, 1971), *as amended at* 40 Fed. Reg. 43,207 (Sept. 19, 1975); 41 Fed. Reg. 45,539 (Oct. 15, 1976); 65 Fed. Reg. 17,131 (Mar. 31, 2000); 75 Fed. Reg. 7812 (Feb. 22, 2010); 76 Fed. Reg. 79,772 (Dec. 22, 2011)]

SECTION 1026.13 Billing-Error Resolution [§ 226.13]

(a) *Definition of billing error.* For purposes of this section, the term billing error means:

(1) A reflection on or with a periodic statement of an extension of credit that is not made to the consumer or to a person who has actual, implied, or apparent authority to use the consumer's credit card or open-end credit plan.

(2) A reflection on or with a periodic statement of an extension of credit that is not identified in accordance with the requirements of §§ 1026.7(a)(2) or (b)(2), as applicable, and 1026.8.

(3) A reflection on or with a periodic statement of an extension of credit for property or services not accepted by the consumer or the consumer's designee, or not delivered to the consumer or the consumer's designee as agreed.

(4) A reflection on a periodic statement of the creditor's failure to credit properly a payment or other credit issued to the consumer's account.

(5) A reflection on a periodic statement of a computational or similar error of an accounting nature that is made by the creditor.

(6) A reflection on a periodic statement of an extension of credit for which the consumer requests additional clarification, including documentary evidence.

(7) The creditor's failure to mail or deliver a periodic statement to the consumer's last known address if that address was received by the creditor, in writing, at least 20 days before the end of the billing cycle for which the statement was required.

(b) *Billing error notice.* A billing error notice is a written notice from a consumer that:

(1) Is received by a creditor at the address disclosed under § 1026.7(a)(9) or (b)(9), as applicable, no later than 60 days after the creditor transmitted the first periodic statement that reflects the alleged billing error;

(2) Enables the creditor to identify the consumer's name and account number; and

(3) To the extent possible, indicates the consumer's belief and the reasons for the belief that a billing error exists, and the type, date, and amount of the error.

(c) *Time for resolution; general procedures.*

(1) The creditor shall mail or deliver written acknowledgment to the consumer within 30 days of receiving a billing error notice, unless the creditor has complied with the appropriate resolution procedures of paragraphs (e) and (f) of this section, as applicable, within the 30-day period; and

(2) The creditor shall comply with the appropriate resolution procedures of paragraphs (e) and (f) of this section, as applicable, within 2 complete billing cycles (but in no event later than 90 days) after receiving a billing error notice.

(d) *Rules pending resolution.* Until a billing error is resolved under paragraph (e) or (f) of this section, the following rules apply:

(1) Consumer's right to withhold disputed amount; collection action prohibited. The consumer need not pay (and the creditor may not try to collect) any portion of any required payment that the consumer believes is related to the disputed amount (including related finance or other charges). If the cardholder has enrolled in an automatic payment plan offered by the card

issuer and has agreed to pay the credit card indebtedness by periodic deductions from the cardholder's deposit account, the card issuer shall not deduct any part of the disputed amount or related finance or other charges if a billing error notice is received any time up to 3 business days before the scheduled payment date.

(2) *Adverse credit reports prohibited.* The creditor or its agent shall not (directly or indirectly) make or threaten to make an adverse report to any person about the consumer's credit standing, or report that an amount or account is delinquent, because the consumer failed to pay the disputed amount or related finance or other charges.

(3) *Acceleration of debt and restriction of account prohibited.* A creditor shall not accelerate any part of the consumer's indebtedness or restrict or close a consumer's account solely because the consumer has exercised in good faith rights provided by this section. A creditor may be subject to the forfeiture penalty under 15 U.S.C. 1666(e) for failure to comply with any of the requirements of this section.

(4) *Permitted creditor actions.* A creditor is not prohibited from taking action to collect any undisputed portion of the item or bill; from deducting any disputed amount and related finance or other charges from the consumer's credit limit on the account; or from reflecting a disputed amount and related finance or other charges on a periodic statement, provided that the creditor indicates on or with the periodic statement that payment of any disputed amount and related finance or other charges is not required pending the creditor's compliance with this section.

(e) *Procedures if billing error occurred as asserted.* If a creditor determines that a billing error occurred as asserted, it shall within the time limits in paragraph (c)(2) of this section:

(1) Correct the billing error and credit the consumer's account with any disputed amount and related finance or other charges, as applicable; and

(2) Mail or deliver a correction notice to the consumer.

(f) *Procedures if different billing error or no billing error occurred.* If, after conducting a reasonable investigation, a creditor determines that no billing error occurred or that a different billing error occurred from that asserted, the creditor shall within the time limits in paragraph (c)(2) of this section:

(1) Mail or deliver to the consumer an explanation that sets forth the reasons for the creditor's belief that the billing error alleged by the consumer is incorrect in whole or in part;

(2) Furnish copies of documentary evidence of the consumer's indebtedness, if the consumer so requests; and

(3) If a different billing error occurred, correct the billing error and credit the consumer's account with any disputed amount and related finance or other charges, as applicable.

(g) *Creditor's rights and duties after resolution.* If a creditor, after complying with all of the requirements of this section, determines that a consumer owes all or part of the disputed amount and related finance or other charges, the creditor:

(1) Shall promptly notify the consumer in writing of the time when payment is due and the portion of the disputed amount and related finance or other charges that the consumer still owes;

(2) Shall allow any time period disclosed under § 1026.6(a)(1) or (b)(2)(v), as applicable, and § 1026.7(a)(8) or (b)(8), as applicable, during which the consumer can pay the amount due under paragraph (g)(1) of this section without incurring additional finance or other charges;

(3) May report an account or amount as delinquent because the amount due under paragraph (g)(1) of this section remains unpaid after the creditor has allowed any time period disclosed under § 1026.6(a)(1) or (b)(2)(v), as applicable, and § 1026.7(a)(8) or (b)(8), as applicable or 10 days (whichever is longer) during which the consumer can pay the amount; but

(4) May not report that an amount or account is delinquent because the amount due under paragraph (g)(1) of the section remains unpaid, if the creditor receives (within the time allowed for payment in paragraph (g)(3) of this section) further written notice from the consumer that any portion of the billing error is still in dispute, unless the creditor also:

(i) Promptly reports that the amount or account is in dispute;

(ii) Mails or delivers to the consumer (at the same time the report is made) a written notice of the name and address of each person to whom the creditor makes a report; and

(iii) Promptly reports any subsequent resolution of the reported delinquency to all persons to whom the creditor has made a report.

(h) *Reassertion of billing error.* A creditor that has fully complied with the requirements of this section has no further responsibilities under this section (other than as provided in paragraph (g) (4) of this section) if a consumer reasserts substantially the same billing error.

(i) *Relation to Electronic Fund Transfer Act and Regulation E.* If an extension of credit is incident to an electronic fund transfer, under an agreement between a consumer and a financial institution to extend credit when the consumer's account is overdrawn or to maintain a specified minimum balance in the consumer's account, the creditor shall comply with the requirements of Regulation E, 12 CFR 1005.11 governing error resolution rather than those of paragraphs (a), (b), (c), (e), (f), and (h) of this section.

[40 Fed. Reg. 43,207 (Sept. 19, 1975), *as amended at* 41 Fed. Reg. 36,665 (Aug. 31, 1976); 42 Fed. Reg. 38,173 (July 27, 1977); 75 Fed. Reg. 7814 (Feb. 22, 2010); 76 Fed. Reg. 79,772 (Dec. 22, 2011)]

SECTION 1026.14 Determination of Annual Percentage Rate [§ 226.14]

(a) *General rule.* The annual percentage rate is a measure of the cost of credit, expressed as a yearly rate. An annual percentage rate shall be considered accurate if it is not more than 1/8th of 1 percentage point above or below the annual percentage rate determined in accordance with this section. An error in disclosure of the annual percentage rate or finance charge shall not, in itself, be considered a violation of this part if:

(1) The error resulted from a corresponding error in a calculation tool used in good faith by the creditor; and

(2) Upon discovery of the error, the creditor promptly discontinues use of that calculation tool for disclosure purposes, and notifies the Bureau in writing of the error in the calculation tool.

(b) *Annual percentage rate--in general.* Where one or more periodic rates may be used to compute the finance charge, the annual percentage rate(s) to be disclosed for purposes of §§ 1026.60, 1026.40, 1026.6, 1026.7(a)(4) or (b)(4), 1026.9, 1026.15, 1026.16, 1026.26, 1026.55, and 1026.56 shall be computed by multiplying each periodic rate by the number of periods in a year.

(c) *Optional effective annual percentage rate for periodic statements for creditors offering open-end credit plans secured by a consumer's dwelling.* A creditor offering an open-end plan subject to the requirements of § 1026.40 need not disclose an effective annual percentage rate. Such a creditor may, at its option, disclose an effective annual percentage rate(s) pursuant to § 1026.7(a)(7) and compute the effective annual percentage rate as follows:

(1) *Solely periodic rates imposed.* If the finance charge is determined solely by applying one or more periodic rates, at the creditor's option, either:

(i) By multiplying each periodic rate by the number of periods in a year; or

(ii) By dividing the total finance charge for the billing cycle by the sum of the balances to which the periodic rates were applied and multiplying the quotient (expressed as a percentage) by the number of billing cycles in a year.

(2) *Minimum or fixed charge, but not transaction charge, imposed.* If the finance charge imposed during the billing cycle is or includes a minimum, fixed, or other charge not due to the application of a periodic rate, other than a charge with respect to any specific transaction during the billing cycle, by dividing the total finance charge for the billing cycle by the amount of the balance(s) to which it is applicable and multiplying the quotient (expressed as a percentage) by the number of billing cycles in a year. If there is no balance to which the finance charge is applicable, an annual percentage rate cannot be determined under this section. Where the finance charge imposed during the billing cycle is or includes a loan fee, points, or similar charge that relates to opening, renewing, or continuing an account, the amount of such charge shall not be included in the calculation of the annual percentage rate.

(3) *Transaction charge imposed.* If the finance charge imposed during the billing cycle is or includes a charge relating to a specific transaction during the billing cycle (even if the total finance charge also includes any other minimum, fixed, or other charge not due to the application of a periodic rate), by dividing the total finance charge imposed during the billing cycle by the total of all balances and other amounts on which a finance charge was imposed during the billing cycle without duplication, and multiplying the quotient (expressed as a percentage) by the number of billing cycles in a year, except that the annual percentage rate shall not be less than the largest rate determined by multiplying each periodic rate imposed during the billing cycle by the number of periods in a year. Where the finance charge imposed during the billing cycle is or includes a loan fee, points, or similar charge that relates to the opening, renewing, or continuing an account, the amount of such charge shall not be included in the calculation of the annual percentage rate. See Appendix F to this part regarding determination of the denominator of the fraction under this paragraph.

(4) If the finance charge imposed during the billing cycle is or includes a minimum, fixed, or other charge not due to the application of a periodic rate and the total finance charge imposed during the billing cycle does not exceed 50 cents for a monthly or longer billing cycle, or the pro rata part of 50 cents for a billing cycle shorter than monthly, at the creditor's option, by multiplying each applicable periodic rate by the number of periods in a year, notwithstanding the provisions of paragraphs (c)(2) and (c)(3) of this section.

(d) *Calculations where daily periodic rate applied.* If the provisions of paragraph (c)(1)(ii) or (c)(2) of this section apply and all or a portion of the finance charge is determined by the application of one or more daily periodic rates, the annual percentage rate may be determined either:

(1) By dividing the total finance charge by the average of the daily balances and multiplying the quotient by the number of billing cycles in a year; or

(2) By dividing the total finance charge by the sum of the daily balances and multiplying the quotient by 365.

[40 Fed. Reg. 43,209 (Sept. 19, 1975); 41 Fed. Reg. 5,098 (Feb. 4, 1976); 46 Fed. Reg. 20,892 (Apr. 7, 1981), *as amended at* 47 Fed. Reg. 756 (Jan. 7, 1982); 54 Fed. Reg. 13,867 (Apr. 6, 1989); 54 Fed. Reg. 24,688 (June 9, 1989); 75 Fed. Reg. 7815 (Feb. 22, 2010); 76 Fed. Reg. 79,772 (Dec. 22, 2011)]

SECTION 1026.15 Right of Rescission [§ 226.15]

(a) *Consumer's right to rescind.*

(1)(i) Except as provided in paragraph (a)(1)(ii) of this section, in a credit plan in which a security interest is or will be retained or acquired in a consumer's principal dwelling, each consumer whose ownership interest is or will be subject to the security interest shall have the right to rescind: each credit extension made under the plan; the plan when the plan is opened; a

security interest when added or increased to secure an existing plan; and the increase when a credit limit on the plan is increased.

(ii) As provided in section 125(e) of the Act, the consumer does not have the right to rescind each credit extension made under the plan if such extension is made in accordance with a previously established credit limit for the plan.

(2) To exercise the right to rescind, the consumer shall notify the creditor of the rescission by mail, telegram, or other means of written communication. Notice is considered given when mailed, or when filed for telegraphic transmission, or, if sent by other means, when delivered to the creditor's designated place of business.

(3) The consumer may exercise the right to rescind until midnight of the third business day following the occurrence described in paragraph (a)(1) of this section that gave rise to the right of rescission, delivery of the notice required by paragraph (b) of this section, or delivery of all material disclosures, whichever occurs last. If the required notice and material disclosures are not delivered, the right to rescind shall expire 3 years after the occurrence giving rise to the right of rescission, or upon transfer of all of the consumer's interest in the property, or upon sale of the property, whichever occurs first. In the case of certain administrative proceedings, the rescission period shall be extended in accordance with section 125(f) of the Act. The term material disclosures means the information that must be provided to satisfy the requirements in § 1026.6 with regard to the method of determining the finance charge and the balance upon which a finance charge will be imposed, the annual percentage rate, the amount or method of determining the amount of any membership or participation fee that may be imposed as part of the plan, and the payment information described in § 1026.40(d)(5)(i) and (ii) that is required under § 1026.6(e)(2).

(4) When more than one consumer has the right to rescind, the exercise of the right by one consumer shall be effective as to all consumers.

(b) *Notice of right to rescind.* In any transaction or occurrence subject to rescission, a creditor shall deliver two copies of the notice of the right to rescind to each consumer entitled to rescind (one copy to each if the notice is delivered in electronic form in accordance with the consumer consent and other applicable provisions of the E-Sign Act). The notice shall identify the transaction or occurrence and clearly and conspicuously disclose the following:

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

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

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

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

(5) The date the rescission period expires.

(c) *Delay of creditor's performance.* Unless a consumer waives the right to rescind under paragraph (e) of this section, no money shall be disbursed other than in escrow, no services shall be performed, and no materials delivered until after the rescission period has expired and the creditor is reasonably satisfied that the consumer has not rescinded. A creditor does not violate this section if a third party with no knowledge of the event activating the rescission right does not delay in providing materials or services, as long as the debt incurred for those materials or services is not secured by the property subject to rescission.

(d) *Effects of rescission.*

(1) When a consumer rescinds a transaction, the security interest giving rise to the right of rescission becomes void, and the consumer shall not be liable for any amount, including any finance charge.

(2) Within 20 calendar days after receipt of a notice of rescission, the creditor shall return any money or property that has been given to anyone in connection with the transaction and shall take any action necessary to reflect the termination of the security interest.

(3) If the creditor has delivered any money or property, the consumer may retain possession until the creditor has met its obligation under paragraph (d)(2) of this section. When the creditor has complied with that paragraph, the consumer shall tender the money or property to the creditor or, where the latter would be impracticable or inequitable, tender its reasonable value. At the consumer's option, tender of property may be made at the location of the property or at the consumer's residence. Tender of money must be made at the creditor's designated place of business. If the creditor does not take possession of the money or property within 20 calendar days after the consumer's tender, the consumer may keep it without further obligation.

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

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

(1) The consumer may modify or waive the right to rescind if the consumer determines that the extension of credit is needed to meet a bona fide personal financial emergency. To modify or waive the right, the consumer shall give the creditor a dated written statement that describes the emergency, specifically modifies or waives the right to rescind, and bears the signature of all the consumers entitled to rescind. Printed forms for this purpose are prohibited.

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

(1) A residential mortgage transaction.

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

[41 Fed. Reg. 45,540 (Oct. 15, 1976); 42 Fed. Reg. 3 (Jan. 3, 1977); 54 Fed. Reg. 24,688 (June 9, 1989); 58 Fed. Reg. 40,583 (July 29, 1993); 59 Fed. Reg. 40,204 (Aug. 5, 1994); 59 Fed. Reg. 63,715 (Dec. 9, 1994); 66 Fed. Reg. 17,338 (Mar. 30, 2001); 66 Fed. Reg. 41,440 (Aug. 8, 2001) (*COMPLIANCE DATE NOTE*: At 66 Fed. Reg. 41,440 (Aug. 8, 2001) the Oct. 1, 2001, mandatory compliance date for the interim final rules published at 66 Fed. Reg. 17,311 (Mar. 30, 2001) was lifted.); 72 Fed. Reg. 63,474 (Nov. 9, 2007); 76 Fed. Reg. 79,772 (Dec. 22, 2011)]

SECTION 1026.16 Advertising [§ 226.16]

(a) *Actually available terms.* If an advertisement for credit states specific credit terms, it shall state only those terms that actually are or will be arranged or offered by the creditor.

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

(1) Any term required to be disclosed under § 1026.6(b)(3) set forth affirmatively or negatively in an advertisement for an open-end (not home-secured) credit plan triggers additional disclosures under this section. Any term required to be disclosed under § 1026.6(a)(1) or (a)(2) set forth affirmatively or negatively in an advertisement for a home-equity plan subject to the requirements of § 1026.40 triggers additional disclosures under this section. If any of the terms that trigger additional disclosures under this paragraph is set forth in an advertisement, the advertisement shall also clearly and conspicuously set forth the following:

(i) Any minimum, fixed, transaction, activity or similar charge that is a finance charge under § 1026.4 that could be imposed.

(ii) Any periodic rate that may be applied expressed as an annual percentage rate as determined under § 1026.14(b). If the plan provides for a variable periodic rate, that fact shall be disclosed.

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

(2) If an advertisement for credit to finance the purchase of goods or services specified in the advertisement states a periodic payment amount, the advertisement shall also state the total of payments and the time period to repay the obligation, assuming that the consumer pays only the periodic payment amount advertised. The disclosure of the total of payments and the time period to repay the obligation must be equally prominent to the statement of the periodic payment amount.

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

(1) If a catalog or other multiple-page advertisement, or an electronic advertisement (such as an advertisement appearing on an Internet Web site), gives information in a table or schedule in sufficient detail to permit determination of the disclosures required by paragraph (b) of this section, it shall be considered a single advertisement if:

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

(ii) Any statement of terms set forth in § 1026.6 appearing anywhere else in the catalog or advertisement clearly refers to the page or location where the table or schedule begins.

(2) A catalog or other multiple-page advertisement or an electronic advertisement (such as an advertisement appearing on an Internet Web site) complies with this paragraph if the table or schedule of terms includes all appropriate disclosures for a representative scale of amounts up to the level of the more commonly sold higher-priced property or services offered.

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

(1) *Advertisement of terms that require additional disclosures.* If any of the terms required to be disclosed under § 1026.6(a)(1) or (a)(2) or the payment terms of the plan are set forth, affirmatively or negatively, in an advertisement for a home-equity plan subject to the requirements of § 1026.40, the advertisement also shall clearly and conspicuously set forth the following:

(i) Any loan fee that is a percentage of the credit limit under the plan and an estimate of any other fees imposed for opening the plan, stated as a single dollar amount or a reasonable range.

(ii) Any periodic rate used to compute the finance charge, expressed as an annual percentage rate as determined under § 1026.14(b).

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

(2) *Discounted and premium rates.* If an advertisement states an initial annual percentage rate that is not based on the index and margin used to make later rate adjustments in a variable-rate plan, the advertisement also shall state with equal prominence and in close proximity to the initial rate:

(i) The period of time such initial rate will be in effect; and

(ii) A reasonably current annual percentage rate that would have been in effect using the index and margin.

(3) *Balloon payment.* If an advertisement contains a statement of any minimum periodic payment and a balloon payment may result if only the minimum periodic payments are made, even if such a payment is uncertain or unlikely, the advertisement also shall state with equal prominence and in close proximity to the minimum periodic payment statement that a balloon payment may result, if applicable. A balloon payment results if paying the minimum periodic payments does not fully amortize the outstanding balance by a specified date or time, and the consumer is required to repay the entire outstanding balance at such time. If a balloon payment will occur when the consumer makes only the minimum payments required under the plan, an

advertisement for such a program which contains any statement of any minimum periodic payment shall also state with equal prominence and in close proximity to the minimum periodic payment statement:

(i) That a balloon payment will result; and

(ii) The amount and timing of the balloon payment that will result if the consumer makes only the minimum payments for the maximum period of time that the consumer is permitted to make such payments.

(4) *Tax implications.* An advertisement that states that any interest expense incurred under the home-equity plan is or may be tax deductible may not be misleading in this regard. If an advertisement distributed in paper form or through the Internet (rather than by radio or television) is for a home-equity plan secured by the consumer's principal dwelling, and the advertisement states that the advertised extension of credit may exceed the fair market value of the dwelling, the advertisement shall clearly and conspicuously state that:

(i) The interest on the portion of the credit extension that is greater than the fair market value of the dwelling is not tax deductible for Federal income tax purposes; and

(ii) The consumer should consult a tax adviser for further information regarding the deductibility of interest and charges.

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

(6) *Promotional rates and payments.*

(i) *Definitions.* The following definitions apply for purposes of paragraph (d)(6) of this section:

(A) *Promotional rate.* The term "*promotional rate*" means, in a variable-rate plan, any annual percentage rate that is not based on the index and margin that will be used to make rate adjustments under the plan, if that rate is less than a reasonably current annual percentage rate that would be in effect under the index and margin that will be used to make rate adjustments under the plan.

(B) *Promotional payment.* The term "*promotional payment*" means:

(1) For a variable-rate plan, any minimum payment applicable for a promotional period that:

(i) Is not derived by applying the index and margin to the outstanding balance when such index and margin will be used to determine other minimum payments under the plan; and

(ii) Is less than other minimum payments under the plan derived by applying a reasonably current index and margin that will be used to determine the amount of such payments, given an assumed balance.

(2) For a plan other than a variable-rate plan, any minimum payment applicable for a promotional period if that payment is less than other payments required under the plan given an assumed balance.

(C) *Promotional period.* A “promotional period” means a period of time, less than the full term of the loan, that the promotional rate or promotional payment may be applicable.

(ii) *Stating the promotional period and post-promotional rate or payments.* If any annual percentage rate that may be applied to a plan is a promotional rate, or if any payment applicable to a plan is a promotional payment, the following must be disclosed in any advertisement, other than television or radio advertisements, in a clear and conspicuous manner with equal prominence and in close proximity to each listing of the promotional rate or payment:

(A) The period of time during which the promotional rate or promotional payment will apply;

(B) In the case of a promotional rate, any annual percentage rate that will apply under the plan. If such rate is variable, the annual percentage rate must be disclosed in accordance with the accuracy standards in §§ 1026.40 or 1026.16(b)(1)(ii) as applicable; and

(C) In the case of a promotional payment, the amounts and time periods of any payments that will apply under the plan. In variable-rate transactions, payments that will be determined based on application of an index and margin shall be disclosed based on a reasonably current index and margin.

(iii) *Envelope excluded.* The requirements in paragraph (d)(6)(ii) of this section do not apply to an envelope in which an application or solicitation is mailed, or to a banner advertisement or pop-up advertisement linked to an application or solicitation provided electronically.

(e) *Alternative disclosures--television or radio advertisements.* An advertisement made through television or radio stating any of the terms requiring additional disclosures under paragraphs (b)(1) or (d)(1) of this section may alternatively comply with paragraphs (b)(1) or (d)(1) of this section by stating the information required by paragraphs (b)(1)(ii) or (d)(1)(ii) of this section, as applicable, and listing a toll-free telephone number, or any telephone number that allows a consumer to reverse the phone charges when calling for information, along with a reference that such number may be used by consumers to obtain the additional cost information.

(f) *Misleading terms.* An advertisement may not refer to an annual percentage rate as “fixed,” or use a similar term, unless the advertisement 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.

(g) *Promotional rates and fees.*

(1) *Scope.* The requirements of this paragraph apply to any advertisement of an open-end (not home-secured) plan, including promotional materials accompanying applications or solicitations subject to § 1026.60(c) or accompanying applications or solicitations subject to § 1026.60(e).

(2) *Definitions.*

(i) *Promotional rate* means any annual percentage rate applicable to one or more balances or transactions on an open-end (not home-secured) plan for a specified period of time that is lower than the annual percentage rate that will be in effect at the end of that period on such balances or transactions.

(ii) *Introductory rate* means a promotional rate offered in connection with the opening of an account.

(iii) *Promotional period* means the maximum time period for which a promotional rate or promotional fee may be applicable.

(iv) *Promotional fee* means a fee required to be disclosed under § 1026.6(b)(1) and (2) applicable to an open-end (not home-secured) plan, or to one or more balances or transactions on an open-end (not home-secured) plan, for a specified period of time that is lower than the fee that will be in effect at the end of that period for such plan or types of balances or transactions.

(v) *Introductory fee* means a promotional fee offered in connection with the opening of an account.

(3) *Stating the term “introductory”.* If any annual percentage rate or fee that may be applied to the account is an introductory rate or introductory fee, the term introductory or intro must be in immediate proximity to each listing of the introductory rate or introductory fee in a written or electronic advertisement.

(4) *Stating the promotional period and post-promotional rate or fee.* If any annual percentage rate that may be applied to the account is a promotional rate under paragraph (g)(2)(i) of this section or any fee that may be applied to the account is a promotional fee under paragraph (g)(2)(iv) of this section, the information in paragraphs (g)(4)(i) and, as applicable, (g)(4)(ii) or (iii) of this section must be stated in a clear and conspicuous manner in the advertisement. If the rate or fee is stated in a written or electronic advertisement, the information in paragraphs (g)(4)(i) and, as applicable, (g)(4)(ii) or (iii) of this section must also be stated in a prominent location closely proximate to the first listing of the promotional rate or promotional fee.

(i) When the promotional rate or promotional fee will end;

(ii) The annual percentage rate that will apply after the end of the promotional period. If such rate is variable, the annual percentage rate must comply with the accuracy standards in §§ 1026.60(c)(2), 1026.60(d)(3), 1026.60(e)(4), or 1026.16(b)(1)(ii), as applicable. If such rate cannot be determined at the time disclosures are given because the rate depends at least in part on a later determination of the consumer's creditworthiness, the advertisement must disclose the specific rates or the range of rates that might apply; and

(iii) The fee that will apply after the end of the promotional period.

(5) *Envelope excluded.* The requirements in paragraph (g)(4) of this section do not apply to an envelope or other enclosure in which an application or solicitation is mailed, or to a banner advertisement or pop-up advertisement, linked to an application or solicitation provided electronically.

(h) *Deferred interest or similar offers.*

(1) *Scope.* The requirements of this paragraph apply to any advertisement of an open-end credit plan not subject to § 1026.40, including promotional materials accompanying applications or solicitations subject to § 1026.60(c) or accompanying applications or solicitations subject to § 1026.60(e).

(2) *Definitions.* "Deferred interest" means finance charges, accrued on balances or transactions, that a consumer is not obligated to pay or that will be waived or refunded to a consumer if those balances or transactions are paid in full by a specified date. The maximum period from the date the consumer becomes obligated for the balance or transaction until the specified date by which the consumer must pay the balance or transaction in full in order to avoid finance charges, or receive a waiver or refund of finance charges, is the "deferred interest period." "Deferred interest" does not include any finance charges the consumer avoids paying in connection with any recurring grace period.

(3) *Stating the deferred interest period.* If a deferred interest offer is advertised, the deferred interest period must be stated in a clear and conspicuous manner in the advertisement. If the phrase "no interest" or similar term regarding the possible avoidance of interest obligations under the deferred interest program is stated, the term "if paid in full" must also be stated in a clear and conspicuous manner preceding the disclosure of the deferred interest period in the advertisement. If the deferred interest offer is included in a written or electronic advertisement, the deferred interest period and, if applicable, the term "if paid in full" must also be stated in immediate proximity to each statement of "no interest," "no payments," "deferred interest," "same as cash," or similar term regarding interest or payments during the deferred interest period.

(4) *Stating the terms of the deferred interest or similar offer.* If any deferred interest offer is advertised, the information in paragraphs (h)(4)(i) and (h)(4)(ii) of this section must be stated in the advertisement, in language similar to Sample G-24 in Appendix G to this part. If the

deferred interest offer is included in a written or electronic advertisement, the information in paragraphs (h)(4)(i) and (h)(4)(ii) of this section must also be stated in a prominent location closely proximate to the first statement of “no interest,” “no payments,” “deferred interest,” “same as cash,” or similar term regarding interest or payments during the deferred interest period.

(i) A statement that interest will be charged from the date the consumer becomes obligated for the balance or transaction subject to the deferred interest offer if the balance or transaction is not paid in full within the deferred interest period; and

(ii) A statement, if applicable, that interest will be charged from the date the consumer incurs the balance or transaction subject to the deferred interest offer if the account is in default before the end of the deferred interest period.

(5) *Envelope excluded.* The requirements in paragraph (h)(4) of this section do not apply to an envelope or other enclosure in which an application or solicitation is mailed, or to a banner advertisement or pop-up advertisement linked to an application or solicitation provided electronically.

[54 Fed. Reg. 13,867 (Apr. 6, 1989); 54 Fed. Reg. 24,688 (June 9, 1989); 54 Fed. Reg. 28,665 (July 7, 1989); 58 Fed. Reg. 40,583 (July 29, 1993); 59 Fed. Reg. 40,204 (Aug. 5, 1994); 59 Fed. Reg. 63,715 (Dec. 9, 1994); 66 Fed. Reg. 17,338 (Mar. 30, 2001); 66 Fed. Reg. 41,440 (Aug. 8, 2001) (*COMPLIANCE DATE NOTE:* At 66 Fed. Reg. 41,440 (Aug. 8, 2001) the Oct. 1, 2001, mandatory compliance date for the interim final rules published at 66 Fed. Reg. 17,311 (Mar. 30, 2001) was lifted.); 72 Fed. Reg. 63,474 (Nov. 9, 2007); 73 Fed. Reg. 44,599, 44,600 (July 30, 2008); 75 Fed. Reg. 7816 (Feb. 22, 2010); 76 Fed. Reg. 23,002 (Apr. 25, 2011); 76 Fed. Reg. 79,772 (Dec. 22, 2011)]

[3c]SUBPART C--CLOSED-END CREDIT

SECTION 1026.17 General Disclosure Requirements [§ 226.17]

(a) *Form of disclosures.*⁴

(1) The creditor shall make the disclosures required by this subpart clearly and conspicuously in writing, in a form that the consumer may keep. The disclosures required by this subpart may be provided to the consumer in electronic form, subject to compliance with the consumer consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. 7001 *et seq.*). The disclosures required by §§ 1026.17(g), 1026.19(b), and 1026.24 may be provided to the consumer in electronic form without regard to the consumer consent or other provisions of the E-Sign Act in the circumstances set forth in those sections. The disclosures shall be grouped together, shall be segregated from everything else, and shall not contain any information not directly related to the disclosures required under § ~~1026.18 or § 1026.47.~~ 1026.18, § 1026.20(c) and (d), or § 1026.47.

⁴ Paragraph (a)(1) is effective Jan. 10, 2014. 78 Fed. Reg. 10,902 (Feb. 14, 2013).

The disclosures required by § 1026.20(d) shall be provided as a separate document from all other written materials. The disclosures may include an acknowledgment of receipt, the date of the transaction, and the consumer's name, address, and account number. The following disclosures may be made together with or separately from other required disclosures: ~~the~~The creditor's identity under § 1026.18(a), the variable rate example under § 1026.18(f)(1)(iv), insurance or debt cancellation under § 1026.18(n), and certain security interest charges under § 1026.18(o). The itemization of the amount financed under § 1026.18(c)(1) must be separate from the other disclosures under § 1026.18, except for private education loan disclosures made in compliance with § 1026.47.

(2) Except for private education loan disclosures made in compliance with § 1026.47, the terms “*finance charge*” and “*annual percentage rate*,” when required to be disclosed under § 1026.18 (d) and (e) together with a corresponding amount or percentage rate, shall be more conspicuous than any other disclosure, except the creditor's identity under § 1026.18(a). For private education loan disclosures made in compliance with § 1026.47, the term “*annual percentage rate*,” and the corresponding percentage rate must be less conspicuous than the term “*finance charge*” and corresponding amount under § 1026.18(d), the interest rate under §§ 1026.47(b)(1)(i) and (c)(1), and the notice of the right to cancel under § 1026.47(c)(4).

(b) *Time of disclosures.*⁵ The creditor shall make disclosures before consummation of the transaction. In certain residential mortgage transactions, special timing requirements are set forth in § 1026.19(a). In certain variable-rate transactions, special timing requirements for variable-rate disclosures are set forth in § 1026.19(b) and § 1026.20(c) and (d). For private education loan disclosures made in compliance with § 1026.47, special timing requirements are set forth in § 1026.46(d). In certain transactions involving mail or telephone orders or a series of sales, the timing of disclosures may be delayed in accordance with paragraphs (g) and (h) of this section.

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

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

(2)(i) If any information necessary for an accurate disclosure is unknown to the creditor, the creditor shall make the disclosure based on the best information reasonably available at the time the disclosure is provided to the consumer, and shall state clearly that the disclosure is an estimate.

(ii) For a transaction in which a portion of the interest is determined on a per-diem basis and collected at consummation, any disclosure affected by the per-diem interest shall be considered accurate if the disclosure is based on the information known to the creditor at the time that the disclosure documents are prepared for consummation of the transaction.

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

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

⁵ Paragraph (b) is effective Jan. 10, 2014. 78 Fed. Reg. 10,902 (Feb. 14, 2013).

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

(iii) That months have different numbers of days.

(iv) The occurrence of leap year.

(4) In making calculations and disclosures, the creditor may disregard any irregularity in the first period that falls within the limits described below and any payment schedule irregularity that results from the irregular first period:

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

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

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

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

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

(ii) When a multiple-advance loan to finance the construction of a dwelling may be permanently financed by the same creditor, the construction phase and the permanent phase may be treated as either one transaction or more than one transaction.

(d) *Multiple creditors; multiple consumers.* If a transaction involves more than one creditor, only one set of disclosures shall be given and the creditors shall agree among themselves which creditor must comply with the requirements that this part imposes on any or all of them. If there is more than one consumer, the disclosures may be made to any consumer who is primarily liable on the obligation. If the transaction is rescindable under § 1026.23, however, the disclosures shall be made to each consumer who has the right to rescind.

(e) *Effect of subsequent events.* If a disclosure becomes inaccurate because of an event that occurs after the creditor delivers the required disclosures, the inaccuracy is not a violation of this part, although new disclosures may be required under paragraph (f) of this section, § 1026.19, § 1026.20, or § 1026.48(c)(4).

(f) *Early disclosures.* Except for private education loan disclosures made in compliance with § 1026.47, if disclosures required by this subpart are given before the date of consummation of a

transaction and a subsequent event makes them inaccurate, the creditor shall disclose before consummation (subject to the provisions of § 1026.19(a)(2) and § 1026.19(a)(5)(iii)):

(1) Any changed term unless the term was based on an estimate in accordance with § 1026.17(c)(2) and was labeled an estimate;

(2) All changed terms, if the annual percentage rate at the time of consummation varies from the annual percentage rate disclosed earlier by more than $\frac{1}{8}$ of 1 percentage point in a regular transaction, or more than $\frac{1}{4}$ of 1 percentage point in an irregular transaction, as defined in § 1026.22(a).

(g) *Mail or telephone orders--delay in disclosures.* Except for private education loan disclosures made in compliance with § 1026.47, if a creditor receives a purchase order or a request for an extension of credit by mail, telephone, or facsimile machine without face-to-face or direct telephone solicitation, the creditor may delay the disclosures until the due date of the first payment, if the following information for representative amounts or ranges of credit is made available in written form or in electronic form to the consumer or to the public before the actual purchase order or request:

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

(2) The total sale price.

(3) The finance charge.

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

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

(ii) Any limitations on the increase.

(iii) The effect of an increase.

(5) The terms of repayment.

(h) *Series of sales--delay in disclosures.* If a credit sale is one of a series made under an agreement providing that subsequent sales may be added to an outstanding balance, the creditor may delay the required disclosures until the due date of the first payment for the current sale, if the following two conditions are met:

(1) The consumer has approved in writing the annual percentage rate or rates, the range of balances to which they apply, and the method of treating any unearned finance charge on an existing balance.

(2) The creditor retains no security interest in any property after the creditor has received payments equal to the cash price and any finance charge attributable to the sale of that property. For purposes of this provision, in the case of items purchased on different dates, the first purchased is deemed the first item paid for; in the case of items purchased on the same date, the lowest priced is deemed the first item paid for.

(i) *Interim student credit extensions.* For transactions involving an interim credit extension under a student credit program for which an application is received prior to the mandatory compliance date of §§ 1026.46, 47, and 48, the creditor need not make the following disclosures: the finance charge under § 1026.18(d), the payment schedule under § 1026.18(g), the total of payments under § 1026.18(h), or the total sale price under § 1026.18(j) at the time the credit is actually extended. The creditor must make complete disclosures at the time the creditor and consumer agree upon the repayment schedule for the total obligation. At that time, a new set of disclosures must be made of all applicable items under § 1026.18.

[52 Fed. Reg. 48,670 (Dec. 24, 1987); 61 Fed. Reg. 49,246 (Sept. 19, 1996); 66 Fed. Reg. 17,338 (Mar. 30, 2001); 66 Fed. Reg. 41,440 (Aug. 8, 2001) (*COMPLIANCE DATE NOTE*: At 66 Fed. Reg. 41,440 (Aug. 8, 2001) the Oct. 1, 2001, mandatory compliance date for the interim final rules published at 66 Fed. Reg. 17,311 (Mar. 30, 2001) was lifted.); 67 Fed. Reg. 16,982 (Apr. 9, 2002); 72 Fed. Reg. 63,474 (Nov. 9, 2007); 73 Fed. Reg. 44,600 (July 30, 2008); 74 Fed. Reg. 23,301 (May 19, 2009); 74 Fed. Reg. 41,232 (Aug. 14, 2009); 76 Fed. Reg. 79,772 (Dec. 22, 2011); [78 Fed. Reg. 10,902 \(Feb. 14, 2013\)](#)]

SECTION 1026.18 Content of Disclosures [§ 226.18]

For each transaction, the creditor shall disclose the following information as applicable:

(a) *Creditor.* The identity of the creditor making the disclosures.

(b) *Amount financed.* The *amount financed*, using that term, and a brief description such as the amount of credit provided to you or on your behalf. The amount financed is calculated by:

(1) Determining the principal loan amount or the cash price (subtracting any downpayment);

(2) Adding any other amounts that are financed by the creditor and are not part of the finance charge; and

(3) Subtracting any prepaid finance charge.

(c) *Itemization of amount financed.*

(1) Except as provided in paragraphs (c)(2) and (c)(3) of this section, a separate written itemization of the amount financed, including:

(i) The amount of any proceeds distributed directly to the consumer.

(ii) The amount credited to the consumer's account with the creditor.

(iii) Any amounts paid to other persons by the creditor on the consumer's behalf. The creditor shall identify those persons. The following payees may be described using generic or other general terms and need not be further identified: public officials or government agencies, credit reporting agencies, appraisers, and insurance companies.

(iv) The prepaid finance charge.

(2) The creditor need not comply with paragraph (c)(1) of this section if the creditor provides a statement that the consumer has the right to receive a written itemization of the amount financed, together with a space for the consumer to indicate whether it is desired, and the consumer does not request it.

(3) Good faith estimates of settlement costs provided for transactions subject to the Real Estate Settlement Procedures Act (12 U.S.C. 2601 et seq.) may be substituted for the disclosures required by paragraph (c)(1) of this section.

(d) *Finance charge.* The *finance charge*, using that term, and a brief description such as "the dollar amount the credit will cost you."

(1) *Mortgage loans.* In a transaction secured by real property or a dwelling, the disclosed finance charge and other disclosures affected by the disclosed finance charge (including the amount financed and the annual percentage rate) shall be treated as accurate if the amount disclosed as the finance charge:

(i) Is understated by no more than \$100; or

(ii) Is greater than the amount required to be disclosed.

(2) *Other credit.* In any other transaction, the amount disclosed as the finance charge shall be treated as accurate if, in a transaction involving an amount financed of \$1,000 or less, it is not more than \$5 above or below the amount required to be disclosed; or, in a transaction involving an amount financed of more than \$1,000, it is not more than \$10 above or below the amount required to be disclosed.

(e) *Annual percentage rate.* The *annual percentage rate*, using that term, and a brief description such as "the cost of your credit as a yearly rate." For any transaction involving a finance charge of \$5 or less on an amount financed of \$75 or less, or a finance charge of \$7.50 or less on an amount financed of more than \$75, the creditor need not disclose the annual percentage rate.

(f) *Variable rate.*

(1) Except as provided in paragraph (f)(3) of this section, if the annual percentage rate may increase after consummation in a transaction not secured by the consumer's principal

dwelling or in a transaction secured by the consumer's principal dwelling with a term of one year or less, the following disclosures:

- (i) The circumstances under which the rate may increase.
- (ii) Any limitations on the increase.
- (iii) The effect of an increase.
- (iv) An example of the payment terms that would result from an increase.

(2) If the annual percentage rate may increase after consummation in a transaction secured by the consumer's principal dwelling with a term greater than one year, the following disclosures:

- (i) The fact that the transaction contains a variable-rate feature.
- (ii) A statement that variable-rate disclosures have been provided earlier.

(3) Information provided in accordance with §§ 1026.18(f)(2) and 1026.19(b) may be substituted for the disclosures required by paragraph (f)(1) of this section.

(g) *Payment schedule.* Other than for a transaction that is subject to paragraph (s) of this section, the number, amounts, and timing of payments scheduled to repay the obligation.

(1) In a demand obligation with no alternate maturity date, the creditor may comply with this paragraph by disclosing the due dates or payment periods of any scheduled interest payments for the first year.

(2) In a transaction in which a series of payments varies because a finance charge is applied to the unpaid principal balance, the creditor may comply with this paragraph by disclosing the following information:

- (i) The dollar amounts of the largest and smallest payments in the series.
- (ii) A reference to the variations in the other payments in the series.

(h) *Total of payments.* The *total of payments*, using that term, and a descriptive explanation such as "the amount you will have paid when you have made all scheduled payments." In any transaction involving a single payment, the creditor need not disclose the total of payments.

(i) *Demand feature.* If the obligation has a demand feature, that fact shall be disclosed. When the disclosures are based on an assumed maturity of 1 year as provided in § 1026.17(c)(5), that fact shall also be disclosed.

(j) *Total sale price.* In a credit sale, the *total sale price*, using that term, and a descriptive explanation (including the amount of any downpayment) such as “the total price of your purchase on credit, including your downpayment of \$____.” The total sale price is the sum of the cash price, the items described in paragraph (b)(2), and the finance charge disclosed under paragraph (d) of this section.

(k) *Prepayment.*

(1) When an obligation includes a finance charge computed from time to time by application of a rate to the unpaid principal balance, a statement indicating whether or not a penalty may be imposed if the obligation is prepaid in full.

(2) When an obligation includes a finance charge other than the finance charge described in paragraph (k)(1) of this section, a statement indicating whether or not the consumer is entitled to a rebate of any finance charge if the obligation is prepaid in full.

(l) *Late payment.* Any dollar or percentage charge that may be imposed before maturity due to a late payment, other than a deferral or extension charge.

(m) *Security interest.* The fact that the creditor has or will acquire a security interest in the property purchased as part of the transaction, or in other property identified by item or type.

(n) *Insurance and debt cancellation.* The items required by § 1026.4(d) in order to exclude certain insurance premiums and debt cancellation fees from the finance charge.

(o) *Certain security interest charges.* The disclosures required by § 1026.4(e) in order to exclude from the finance charge certain fees prescribed by law or certain premiums for insurance in lieu of perfecting a security interest.

(p) *Contract reference.* A statement that the consumer should refer to the appropriate contract document for information about nonpayment, default, the right to accelerate the maturity of the obligation, and prepayment rebates and penalties. At the creditor’s option, the statement may also include a reference to the contract for further information about security interests and, in a residential mortgage transaction, about the creditor’s policy regarding assumption of the obligation.

(q) *Assumption policy.* In a residential mortgage transaction, a statement whether or not a subsequent purchaser of the dwelling from the consumer may be permitted to assume the remaining obligation on its original terms.

(r) *Required deposit.* If the creditor requires the consumer to maintain a deposit as a condition of the specific transaction, a statement that the annual percentage rate does not reflect the effect of the required deposit. A required deposit need not include, for example:

(1) An escrow account for items such as taxes, insurance or repairs;

(2) A deposit that earns not less than 5 percent per year; or

(3) Payments under a Morris Plan.

(s) *Interest rate and payment summary for mortgage transactions.* 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), the creditor shall disclose the following information about the interest rate and payments:

(1) *Form of disclosures.* The information in paragraphs (s)(2)-(4) of this section shall be in the form of a table, with no more than five columns, with headings and format substantially similar to Model Clause H-4(E), H-4(F), H-4(G), or H-4(H) in Appendix H to this part. The table shall contain only the information required in paragraphs (s)(2)-(4) of this section, shall be placed in a prominent location, and shall be in a minimum 10-point font.

(2) *Interest rates.*

(i) *Amortizing loans.*

(A) For a fixed-rate mortgage, the interest rate at consummation.

(B) For an adjustable-rate or step-rate mortgage:

(1) 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";

(2) 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

(3) 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."

(C) If the loan provides for payment increases as described in paragraph (s)(3)(i)(B) of this section, 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."

(ii) *Negative amortization loans.* For a negative amortization loan:

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

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

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

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

(iii) *Introductory rate disclosure for amortizing adjustable-rate mortgages.* For an amortizing adjustable-rate mortgage, if the interest rate at consummation is less than the fully-indexed rate, placed in a box directly beneath the table required by paragraph (s)(1) of this section, in a format substantially similar to Model Clause H-4(I) in Appendix H to this part:

(A) The interest rate that applies at consummation and the period of time for which it applies;

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

(C) The fully-indexed rate.

(3) *Payments for amortizing loans.*

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

(A) The corresponding periodic principal and interest payment, labeled as “principal and interest;”

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

(C) If an escrow account will be established, an estimate of the amount of taxes and insurance, including any mortgage insurance, payable with each periodic payment; and

(D) The sum of the amounts disclosed under paragraphs (s)(3)(i)(A) and (C) of this section or (s)(3)(i)(B) and (C) of this section, as applicable, labeled as “total estimated monthly payment.”

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

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

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

(C) The escrow information described in paragraph (s)(3)(i)(C) of this section; and

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

(4) Payments for negative amortization loans. For negative amortization loans:

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

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

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

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

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

(5) Balloon payments.

(i) Except as provided in paragraph (s)(5)(ii) of this section, if the transaction will require a balloon payment, defined as a payment that is more than two times a regular periodic payment, the balloon payment shall be disclosed separately from other periodic payments disclosed in the table under this paragraph (s), outside the table and in a manner substantially similar to Model Clause H-4(J) in Appendix H to this part.

(ii) If the balloon payment is scheduled to occur at the same time as another payment required to be disclosed in the table pursuant to paragraph (s)(3) or (s)(4) of this section, then the balloon payment must be disclosed in the table.

(6) *Special disclosures for loans with negative amortization.* For a negative amortization loan, the following information, in close proximity to the table required in paragraph (s)(1) of this section, with headings, content, and format substantially similar to Model Clause H-4(G) in Appendix H to this part:

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

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

(7) *Definitions.* For purposes of this § 1026.18(s):

(i) The term “*adjustable-rate mortgage*” means a transaction secured by real property or a dwelling for which the annual percentage rate may increase after consummation.

(ii) The term “*step-rate mortgage*” means a transaction secured by real property or a dwelling for which the interest rate will change after consummation, and the rates that will apply and the periods for which they will apply are known at consummation.

(iii) The term “*fixed-rate mortgage*” means a transaction secured by real property or a dwelling that is not an adjustable-rate mortgage or a step-rate mortgage.

(iv) The term “*interest-only*” means that, under the terms of the legal obligation, one or more of the periodic payments may be applied solely to accrued interest and not to loan principal; an “*interest-only loan*” is a loan that permits interest-only payments.

(v) The term “*amortizing loan*” means a loan in which payment of the periodic payments does not result in an increase in the principal balance under the terms of the legal obligation; the term “*negative amortization*” means payment of periodic payments that will result in an increase in the principal balance under the terms of the legal obligation; the term “*negative amortization loan*” means a loan, other than a reverse mortgage subject to § 1026.33, that provides for a minimum periodic payment that covers only a portion of the accrued interest, resulting in negative amortization.

(vi) The term “*fully-indexed rate*” means the interest rate calculated using the index value and margin at the time of consummation.

(t) “*No-guarantee-to-refinance*” statement.

(1) *Disclosure.* 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), the creditor shall disclose a statement that there is no guarantee the consumer can refinance the transaction to lower the interest rate or periodic payments.

(2) *Format.* The statement required by paragraph (t)(1) of this section must be in a form substantially similar to Model Clause H-4(K) in Appendix H to this part.

[46 Fed. Reg. 20,892 (Apr. 7, 1981); 46 Fed. Reg. 29,246 (June 1, 1981); 52 Fed. Reg. 48,670 (Dec. 24, 1987); 61 Fed. Reg. 49,246 (Sept. 19, 1996); 75 Fed. Reg. 58,483 (Sept. 24, 2010); 75 Fed. Reg. 81,841 (Dec. 29, 2010); 76 Fed. Reg. 79,772 (Dec. 22, 2011)]

SECTION 1026.19 Certain Mortgage and Variable-Rate Transactions [§ 226.19]

(a) *Mortgage transactions subject to RESPA.*

(1)(i) *Time of disclosures.* In a mortgage transaction subject to the Real Estate Settlement Procedures Act (12 U.S.C. 2601 *et seq.*) that is secured by the consumer's dwelling, other than a home equity line of credit subject to § 1026.40 or mortgage transaction subject to paragraph (a) (5) of this section, the creditor shall make good faith estimates of the disclosures required by § 1026.18 and shall deliver or place them in the mail not later than the third business day after the creditor receives the consumer's written application.

(ii) *Imposition of fees.* Except as provided in paragraph (a)(1)(iii) of this section, neither a creditor nor any other person may impose a fee on a consumer in connection with the consumer's application for a mortgage transaction subject to paragraph (a)(1)(i) of this section before the consumer has received the disclosures required by paragraph (a)(1)(i) of this section. If the disclosures are mailed to the consumer, the consumer is considered to have received them three business days after they are mailed.

(iii) *Exception to fee restriction.* A creditor or other person may impose a fee for obtaining the consumer's credit history before the consumer has received the disclosures required by paragraph (a)(1)(i) of this section, provided the fee is bona fide and reasonable in amount.

(2) *Waiting periods for early disclosures and corrected disclosures.*

(i) The creditor shall deliver or place in the mail the good faith estimates required by paragraph (a)(1)(i) of this section not later than the seventh business day before consummation of the transaction.

(ii) If the annual percentage rate disclosed under paragraph (a)(1)(i) of this section becomes inaccurate, as defined in § 1026.22, the creditor shall provide corrected disclosures with all changed terms. The consumer must receive the corrected disclosures no later

than three business days before consummation. If the corrected disclosures are mailed to the consumer or delivered to the consumer by means other than delivery in person, the consumer is deemed to have received the corrected disclosures three business days after they are mailed or delivered.

(3) *Consumer's waiver of waiting period before consummation.* If the consumer determines that the extension of credit is needed to meet a bona fide personal financial emergency, the consumer may modify or waive the seven-business-day waiting period or the three-business-day waiting period required by paragraph (a)(2) of this section, after receiving the disclosures required by § 1026.18. To modify or waive a waiting period, the consumer shall give the creditor a dated written statement that describes the emergency, specifically modifies or waives the waiting period, and bears the signature of all the consumers who are primarily liable on the legal obligation. Printed forms for this purpose are prohibited.

(4) *Notice.* Disclosures made pursuant to paragraph (a)(1) or paragraph (a)(2) of this section shall contain the following statement: "You are not required to complete this agreement merely because you have received these disclosures or signed a loan application." The disclosure required by this paragraph shall be grouped together with the disclosures required by paragraphs (a)(1) or (a)(2) of this section.

(5) *Timeshare plans.* In a mortgage transaction subject to the Real Estate Settlement Procedures Act (12 U.S.C. 2601 *et seq.*) that is secured by a consumer's interest in a timeshare plan described in 11 U.S.C. 101(53(D)):

(i) The requirements of paragraphs (a)(1) through (a)(4) of this section do not apply;

(ii) The creditor shall make good faith estimates of the disclosures required by § 1026.18 before consummation, or shall deliver or place them in the mail not later than three business days after the creditor receives the consumer's written application, whichever is earlier; and

(iii) If the annual percentage rate at the time of consummation varies from the annual percentage rate disclosed under paragraph (a)(5)(ii) of this section by more than 1/8 of 1 percentage point in a regular transaction or more than 1/4 of 1 percentage point in an irregular transaction, as defined in § 1026.22, the creditor shall disclose all the changed terms no later than consummation or settlement.

(b) *Certain variable-rate transactions.* Except as provided in paragraph (d) of this section, if the annual percentage rate may increase after consummation in a transaction secured by the consumer's principal dwelling with a term greater than one year, the following disclosures must be provided at the time an application form is provided or before the consumer pays a non-refundable fee, whichever is earlier (except that the disclosures may be delivered or placed in the mail not later than three business days following receipt of a consumer's application when the application reaches the creditor by telephone, or through an intermediary agent or broker):

(1) The booklet titled *Consumer Handbook on Adjustable Rate Mortgages*, or a suitable substitute.

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

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

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

(iii) An explanation of how the interest rate and payment will be determined, including an explanation of how the index is adjusted, such as by the addition of a margin.

(iv) A statement that the consumer should ask about the current margin value and current interest rate.

(v) The fact that the interest rate will be discounted, and a statement that the consumer should ask about the amount of the interest rate discount.

(vi) The frequency of interest rate and payment changes.

(vii) Any rules relating to changes in the index, interest rate, payment amount, and outstanding loan balance including, for example, an explanation of interest rate or payment limitations, negative amortization, and interest rate carryover.

(viii) At the option of the creditor, either of the following:

(A) A historical example, based on a \$10,000 loan amount, illustrating how payments and the loan balance would have been affected by interest rate changes implemented according to the terms of the loan program disclosure. The example shall reflect the most recent 15 years of index values. The example shall reflect all significant loan program terms, such as negative amortization, interest rate carryover, interest rate discounts, and interest rate and payment limitations, that would have been affected by the index movement during the period.

(B) The maximum interest rate and payment for a \$10,000 loan originated at the initial interest rate (index value plus margin, adjusted by the amount of any discount or premium) in effect as of an identified month and year for the loan program disclosure assuming the maximum periodic increases in rates and payments under the program; and the initial interest rate and payment for that loan and a statement that the periodic payment may increase or decrease substantially depending on changes in the rate.

(ix) An explanation of how the consumer may calculate the payments for the loan amount to be borrowed based on either:

(A) The most recent payment shown in the historical example in paragraph (b)(2)(viii)(A) of this section; or

(B) The initial interest rate used to calculate the maximum interest rate and payment in paragraph (b)(2)(viii)(B) of this section.

(x) The fact that the loan program contains a demand feature.

(xi) The type of information that will be provided in notices of adjustments and the timing of such notices.

(xii) A statement that disclosure forms are available for the creditor's other variable-rate loan programs.

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

(d) Information provided in accordance with variable-rate regulations of other Federal agencies may be substituted for the disclosures required by paragraph (b) of this section.

[52 Fed. Reg. 48,670 (Dec. 24, 1987); 53 Fed. Reg. 467 (Jan. 7, 1988); 61 Fed. Reg. 49,246 (Sept. 19, 1996); 62 Fed. Reg. 63,443 (Dec. 1, 1997); 72 Fed. Reg. 63,474 (Nov. 9, 2007); 73 Fed. Reg. 44,600 (July 30, 2008); 74 Fed. Reg. 23,301 (May 19, 2009); 76 Fed. Reg. 79,772 (Dec. 22, 2011)]

SECTION 1026.20 Subsequent Disclosure Requirements [§ 226.20]

(a) *Refinancings.* A refinancing occurs when an existing obligation that was subject to this subpart is satisfied and replaced by a new obligation undertaken by the same consumer. A refinancing is a new transaction requiring new disclosures to the consumer. The new finance charge shall include any unearned portion of the old finance charge that is not credited to the existing obligation. The following shall not be treated as a refinancing:

(1) A renewal of a single payment obligation with no change in the original terms.

(2) A reduction in the annual percentage rate with a corresponding change in the payment schedule.

(3) An agreement involving a court proceeding.

(4) A change in the payment schedule or a change in collateral requirements as a result of the consumer's default or delinquency, unless the rate is increased, or the new amount financed

exceeds the unpaid balance plus earned finance charge and premiums for continuation of insurance of the types described in § 1026.4(d).

(5) The renewal of optional insurance purchased by the consumer and added to an existing transaction, if disclosures relating to the initial purchase were provided as required by this subpart.

(b) *Assumptions.* An assumption occurs when a creditor expressly agrees in writing with a subsequent consumer to accept that consumer as a primary obligor on an existing residential mortgage transaction. Before the assumption occurs, the creditor shall make new disclosures to the subsequent consumer, based on the remaining obligation. If the finance charge originally imposed on the existing obligation was an add-on or discount finance charge, the creditor need only disclose:

- (1) The unpaid balance of the obligation assumed.
- (2) The total charges imposed by the creditor in connection with the assumption.
- (3) The information required to be disclosed under § 1026.18(k), (l), (m), and (n).
- (4) The annual percentage rate originally imposed on the obligation.

(5) The payment schedule under § 1026.18(g) and the total of payments under § 1026.18(h) based on the remaining obligation.

~~(c) *Variable-rate adjustments.* Except as provided in paragraph (d) of this section, an adjustment to the interest rate with or without a corresponding adjustment to the payment in a variable-rate transaction subject to § 1026.19(b) is an event requiring new disclosures to the consumer. At least once each year during which an interest rate adjustment is implemented without an accompanying payment change, and at least 25, but no more than 120, calendar days before a payment at a new level is due, the following disclosures, as applicable, must be delivered or placed in the mail: Rate adjustments with a corresponding change in payment.⁶ The creditor, assignee, or servicer of an adjustable-rate mortgage shall provide consumers with disclosures, as described in this paragraph (c), in connection with the adjustment of interest rates pursuant to the loan contract that results in a corresponding adjustment to the payment. To the extent that other provisions of this subpart C govern the disclosures required by this paragraph (c), those provisions apply to assignees and servicers as well as to creditors. The disclosures required by this paragraph (c) also shall be provided for an interest rate adjustment resulting from the conversion of an adjustable-rate mortgage to a fixed-rate transaction, if that interest rate adjustment results in a corresponding payment change.~~

(1) Coverage.

⁶ Paragraph (c) is effective Jan. 10, 2014. 78 Fed. Reg. 10,902 (Feb. 14, 2013).

(i) *In general.* For purposes of this paragraph (c), an adjustable-rate mortgage or “ARM” is a closed-end consumer credit transaction secured by the consumer’s principal dwelling in which the annual percentage rate may increase after consummation.

(ii) *Exemptions.* The requirements of this paragraph (c) do not apply to:

(A) ARMs with terms of one year or less; or

(B) The first interest rate adjustment to an ARM if the first payment at the adjusted level is due within 210 days after consummation and the new interest rate disclosed at consummation pursuant to § 1026.20(d) was not an estimate.

(2) *Timing and content.* Except as otherwise provided in paragraph (c)(2) of this section, the disclosures required by this paragraph (c) shall be provided to consumers at least 60, but no more than 120, days before the first payment at the adjusted level is due. The disclosures shall be provided to consumers **at least 25, but no more than 120**, days before the first payment at the adjusted level is due for ARMs with uniformly scheduled interest rate adjustments occurring every 60 days or more frequently and for ARMs originated prior to January 10, 2015 in which the loan contract requires the adjusted interest rate and payment to be calculated based on the index figure available as of a date that is less than 45 days prior to the adjustment date. The disclosures shall be provided to consumers as soon as practicable, but not less than 25 days before the first payment at the adjusted level is due, for the first adjustment to an ARM if it occurs within 60 days of consummation and the new interest rate disclosed at consummation pursuant to § 1026.20(d) was an estimate. The disclosures required by this paragraph (c) shall include:

(i) A statement providing:

(A) An explanation that under the terms of the consumer’s adjustable-rate mortgage, the specific time period in which the current interest rate has been in effect is ending and the interest rate and mortgage payment will change;

(B) The effective date of the interest rate adjustment and when additional future interest rate adjustments are scheduled to occur; and

(C) Any other changes to loan terms, features, or options taking effect on the same date as the interest rate adjustment, such as the expiration of interest-only or payment-option features.

(ii) A table containing the following information:

(A) The current and new interest rates;

(B) The current and new payments and the date the first new payment is due; and

(C) For interest-only or negatively-amortizing payments, the amount of the current and new payment allocated to principal, interest, and taxes and insurance in escrow, as applicable. The current payment allocation disclosed shall be the payment allocation for the last payment prior to the date of the disclosure. The new payment allocation disclosed shall be the expected payment allocation for the first payment for which the new interest rate will apply.

(iii) An explanation of how the interest rate is determined, including:

~~(1) The current and prior interest rates.~~ (A) The specific index or formula used in making interest rate adjustments and a source of information about the index or formula; and

~~(2) The index values upon which the current and prior interest rates are based.~~

(B) The type and amount of any adjustment to the index, including any margin and an explanation that the margin is the addition of a certain number of percentage points to the index, and any application of previously foregone interest rate increases from past interest rate adjustments.

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

(v) An explanation of how the new payment is determined, including:

(A) The index or formula used;

(B) Any adjustment to the index or formula, such as the addition of a margin or the application of any previously foregone interest rate increases from past interest rate adjustments;

(C) The loan balance expected on the date of the interest rate adjustment; and

(D) The length of the remaining loan term expected on the date of the interest rate adjustment and any change in the term of the loan caused by the adjustment.

(vi) 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 will pay only part of the loan interest, thereby adding to the balance of the loan. If the new payment will result in negative amortization as a result of the interest rate adjustment, the statement shall set forth the payment required to amortize fully the remaining balance at the new interest rate over the remainder of the loan term.

(vii) The circumstances under which any prepayment penalty, as defined in § 1026.32(b)(6)(i), may be imposed, such as when paying the loan in full or selling or refinancing the principal dwelling; the time period during which such a penalty may be imposed; and a statement that the consumer may contact the servicer for additional information, including the maximum amount of the penalty.

(3) *Format.*

~~— (4) The contractual effects of the adjustment, including the payment due after the adjustment is made, and a statement of the loan balance.—~~

(i) The disclosures required by this paragraph (c) shall be provided in the form of a table and in the same order as, and with headings and format substantially similar to, forms H-4(D)(1) and (2) in appendix H to this part; and

~~— (5) The payment, if different from that referred to in paragraph (c)(4) of this section, that would be required to fully amortize the loan at the new interest rate over the remainder of the loan term.—~~

(ii) The disclosures required by paragraph (c)(2)(ii) of this section shall be in the form of a table located within the table described in paragraph (c)(3)(i) of this section. These disclosures shall appear in the same order as, and with headings and format substantially similar to, the table inside the larger table in forms H-4(D)(1) and (2) in appendix H to this part.

(d) *Initial rate adjustment.*⁷ The creditor, assignee, or servicer of an adjustable-rate mortgage shall provide consumers with disclosures, as described in this paragraph (d), in connection with the initial interest rate adjustment pursuant to the loan contract. To the extent that other provisions of this subpart C govern the disclosures required by this paragraph (d), those provisions apply to assignees and servicers as well as to creditors. The disclosures required by this paragraph (d) shall be provided as a separate document from other documents provided by the creditor, assignee, or servicer. The disclosures shall be provided to consumers at least 210, but no more than 240, days before the first payment at the adjusted level is due. If the first payment at the adjusted level is due within the first 210 days after consummation, the disclosures shall be provided at consummation.

~~(d) Information provided in accordance with variable-rate subsequent disclosure regulations of other Federal agencies may be substituted for the disclosure required by paragraph (c) of this section. (1) *Coverage.*~~

(i) *In general.* For purposes of this paragraph (d), an adjustable-rate mortgage or “ARM” is a closed-end consumer credit transaction secured by the consumer's principal dwelling in which the annual percentage rate may increase after consummation.

(ii) *Exemptions.* The requirements of this paragraph (d) do not apply to ARMs with terms of one year or less.

⁷ Paragraph (d) is effective Jan. 10, 2014. 78 Fed. Reg. 10,902 (Feb. 14, 2013).

(2) *Content.* If the new interest rate (or the new payment calculated from the new interest rate) is not known as of the date of the disclosure, an estimate shall be disclosed and labeled as such. This estimate shall be based on the calculation of the index reported in the source of information described in paragraph (d)(2)(iv)(A) of this section within fifteen business days prior to the date of the disclosure. The disclosures required by this paragraph (d) shall include:

(i) The date of the disclosure.

(ii) A statement providing:

(A) An explanation that under the terms of the consumer's adjustable-rate mortgage, the specific time period in which the current interest rate has been in effect is ending and that any change in the interest rate may result in a change in the mortgage payment;

(B) The effective date of the interest rate adjustment and when additional future interest rate adjustments are scheduled to occur; and

(C) Any other changes to loan terms, features, or options taking effect on the same date as the interest rate adjustment, such as the expiration of interest-only or payment-option features.

(iii) A table containing the following information:

(A) The current and new interest rates;

(B) The current and new payments and the date the first new payment is due; and

(C) For interest-only or negatively-amortizing payments, the amount of the current and new payment allocated to principal, interest, and taxes and insurance in escrow, as applicable. The current payment allocation disclosed shall be the payment allocation for the last payment prior to the date of the disclosure. The new payment allocation disclosed shall be the expected payment allocation for the first payment for which the new interest rate will apply.

(iv) An explanation of how the interest rate is determined, including:

(A) The specific index or formula used in making interest rate adjustments and a source of information about the index or formula; and

(B) The type and amount of any adjustment to the index, including any margin and an explanation that the margin is the addition of a certain number of percentage points to the index.

(v) Any limits on the interest rate or payment increases at each interest rate adjustment and over the life of the loan, as applicable, including the extent to which such limits result in the creditor, assignee, or servicer foregoing any increase in the interest rate and the

earliest date that such foregone interest rate increases may apply to future interest rate adjustments, subject to those limits.

(vi) An explanation of how the new payment is determined, including:

(A) The index or formula used;

(B) Any adjustment to the index or formula, such as the addition of a margin;

(C) The loan balance expected on the date of the interest rate adjustment;

(D) The length of the remaining loan term expected on the date of the interest rate adjustment and any change in the term of the loan caused by the adjustment; and

(E) If the new interest rate or new payment provided is an estimate, a statement that another disclosure containing the actual new interest rate and new payment will be provided to the consumer between two and four months before the first payment at the adjusted level is due for interest rate adjustments that result in a corresponding payment change.

(vii) 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 will pay only part of the loan interest, thereby adding to the balance of the loan. If the new payment will result in negative amortization as a result of the interest rate adjustment, the statement shall set forth the payment required to amortize fully the remaining balance at the new interest rate over the remainder of the loan term.

(viii) The circumstances under which any prepayment penalty, as defined in § 1026.32(b)(6)(i), may be imposed, such as when paying the loan in full or selling or refinancing the principal dwelling; the time period during which such a penalty may be imposed; and a statement that the consumer may contact the servicer for additional information, including the maximum amount of the penalty.

(ix) The telephone number of the creditor, assignee, or servicer for consumers to call if they anticipate not being able to make their new payments.

(x) The following alternatives to paying at the new rate that consumers may be able to pursue and a brief explanation of each alternative, expressed in simple and clear terms:

(A) Refinancing the loan with the current or another creditor or assignee;

(B) Selling the property and using the proceeds to pay the loan in full;

(C) Modifying the terms of the loan with the creditor, assignee, or servicer; and

(D) Arranging payment forbearance with the creditor, assignee, or servicer.

(xi) The Web site to access either the Bureau list or the HUD list of homeownership counselors and counseling organizations, the HUD toll-free telephone number to access the HUD list of homeownership counselors and counseling organizations, and the Bureau Web site to access contact information for State housing finance authorities (as defined in § 1301 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989).

(3) Format.

(i) Except for the disclosures required by paragraph (d)(2)(i) of this section, the disclosures required by this paragraph (d) shall be provided in the form of a table and in the same order as, and with headings and format substantially similar to, forms H-4(D)(3) and (4) in appendix H to this part;

(ii) The disclosures required by paragraph (d)(2)(i) of this section shall appear outside of and above the table required in paragraph (d)(3)(i) of this section; and

(iii) The disclosures required by paragraph (d)(2)(iii) of this section shall be in the form of a table located within the table described in paragraph (d)(3)(i) of this section. These disclosures shall appear in the same order as, and with headings and format substantially similar to, the table inside the larger table in forms H-4(D)(3) and (4) in appendix H to this part.

[52 Fed. Reg. 48,671 (Dec. 24, 1987); 76 Fed. Reg. 79,772 (Dec. 22, 2011); 78 Fed. Reg. 10,902 (Feb. 14, 2013)]

SECTION 1026.21 Treatment of Credit Balances [§ 226.21]

When a credit balance in excess of \$1 is created in connection with a transaction (through transmittal of funds to a creditor in excess of the total balance due on an account, through rebates of unearned finance charges or insurance premiums, or through amounts otherwise owed to or held for the benefit of a consumer), the creditor shall:

- (a) Credit the amount of the credit balance to the consumer's account;
- (b) Refund any part of the remaining credit balance, upon the written request of the consumer; and
- (c) Make a good faith effort to refund to the consumer by cash, check, or money order, or credit to a deposit account of the consumer, any part of the credit balance remaining in the account for more than 6 months, except that 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.

SECTION 1026.22 Determination of Annual Percentage Rate [§ 226.22]

(a) Accuracy of annual percentage rate.

(1) The annual percentage rate is a measure of the cost of credit, expressed as a yearly rate, that relates the amount and timing of value received by the consumer to the amount and timing of payments made. The annual percentage rate shall be determined in accordance with either the actuarial method or the United States Rule method. Explanations, equations and instructions for determining the annual percentage rate in accordance with the actuarial method are set forth in Appendix J to this part. An error in disclosure of the annual percentage rate or finance charge shall not, in itself, be considered a violation of this part if:

(i) The error resulted from a corresponding error in a calculation tool used in good faith by the creditor; and

(ii) Upon discovery of the error, the creditor promptly discontinues use of that calculation tool for disclosure purposes and notifies the Bureau in writing of the error in the calculation tool.

(2) As a general rule, the annual percentage rate shall be considered accurate if it is not more than $\frac{1}{8}$ of 1 percentage point above or below the annual percentage rate determined in accordance with paragraph (a)(1) of this section.

(3) In an irregular transaction, the annual percentage rate shall be considered accurate if it is not more than $\frac{1}{4}$ of 1 percentage point above or below the annual percentage rate determined in accordance with paragraph (a)(1) of this section. For purposes of this paragraph (a)(3), an irregular transaction is one that includes one or more of the following features: multiple advances, irregular payment periods, or irregular payment amounts (other than an irregular first period or an irregular first or final payment).

(4) Mortgage loans. If the annual percentage rate disclosed in a transaction secured by real property or a dwelling varies from the actual rate determined in accordance with paragraph (a)(1) of this section, in addition to the tolerances applicable under paragraphs (a)(2) and (3) of this section, the disclosed annual percentage rate shall also be considered accurate if:

(i) The rate results from the disclosed finance charge; and

(ii) (A) The disclosed finance charge would be considered accurate under § 1026.18(d)(1); or

(B) For purposes of rescission, if the disclosed finance charge would be considered accurate under § 1026.23(g) or (h), whichever applies.

(5) Additional tolerance for mortgage loans. In a transaction secured by real property or a dwelling, in addition to the tolerances applicable under paragraphs (a)(2) and (3) of this section, if the disclosed finance charge is calculated incorrectly but is considered accurate under § 1026.18(d)(1) or § 1026.23(g) or (h), the disclosed annual percentage rate shall be considered accurate:

(i) If the disclosed finance charge is understated, and the disclosed annual percentage rate is also understated but it is closer to the actual annual percentage rate than the rate that would be considered accurate under paragraph (a)(4) of this section;

(ii) If the disclosed finance charge is overstated, and the disclosed annual percentage rate is also overstated but it is closer to the actual annual percentage rate than the rate that would be considered accurate under paragraph (a)(4) of this section.

(b) *Computation tools.*

(1) The Regulation Z Annual Percentage Rate Tables produced by the Bureau may be used to determine the annual percentage rate, and any rate determined from those tables in accordance with the accompanying instructions complies with the requirements of this section. Volume I of the tables applies to single advance transactions involving up to 480 monthly payments or 104 weekly payments. It may be used for regular transactions and for transactions with any of the following irregularities: an irregular first period, an irregular first payment, and an irregular final payment. Volume II of the tables applies to transactions involving multiple advances and any type of payment or period irregularity.

(2) Creditors may use any other computation tool in determining the annual percentage rate if the rate so determined equals the rate determined in accordance with Appendix J to this part, within the degree of accuracy set forth in paragraph (a) of this section.

(c) *Single add-on rate transactions.* If a single add-on rate is applied to all transactions with maturities up to 60 months and if all payments are equal in amount and period, a single annual percentage rate may be disclosed for all those transactions, so long as it is the highest annual percentage rate for any such transaction.

(d) *Certain transactions involving ranges of balances.* For purposes of disclosing the annual percentage rate referred to in § 1026.17(g)(4) (Mail or telephone orders--delay in disclosures) and (h) (Series of sales--delay in disclosures), if the same finance charge is imposed on all balances within a specified range of balances, the annual percentage rate computed for the median balance may be disclosed for all the balances. However, if the annual percentage rate computed for the median balance understates the annual percentage rate computed for the lowest balance by more than 8 percent of the latter rate, the annual percentage rate shall be computed on whatever lower balance will produce an annual percentage rate that does not result in an understatement of more than 8 percent of the rate determined on the lowest balance.

[46 Fed. Reg. 20,892 (Apr. 7, 1981), *as amended at* 47 Fed. Reg. 756 (Jan. 7, 1982); 52 Fed. Reg. 48,670 (Dec. 24, 1987); 61 Fed. Reg. 49,246 (Sept. 19, 1996); 76 Fed. Reg. 79,772 (Dec. 22, 2011)]

SECTION 1026.23 Right of Rescission [§ 226.23]

(a) *Consumer's right to rescind.*

(1) In a credit transaction in which a security interest is or will be retained or acquired in a consumer's principal dwelling, each consumer whose ownership interest is or will be subject to the security interest shall have the right to rescind the transaction, except for transactions described in paragraph (f) of this section. For purposes of this section, the addition to an existing obligation of a security interest in a consumer's principal dwelling is a transaction. The right of rescission applies only to the addition of the security interest and not the existing obligation. The creditor shall deliver the notice required by paragraph (b) of this section but need not deliver new material disclosures. Delivery of the required notice shall begin the rescission period.

(2) To exercise the right to rescind, the consumer shall notify the creditor of the rescission by mail, telegram or other means of written communication. Notice is considered given when mailed, when filed for telegraphic transmission or, if sent by other means, when delivered to the creditor's designated place of business.

(3) (i) The consumer may exercise the right to rescind until midnight of the third business day following consummation, delivery of the notice required by paragraph (b) of this section, or delivery of all material disclosures, whichever occurs last. If the required notice or material disclosures are not delivered, the right to rescind shall expire 3 years after consummation, upon transfer of all of the consumer's interest in the property, or upon sale of the property, whichever occurs first. In the case of certain administrative proceedings, the rescission period shall be extended in accordance with section 125(f) of the Act.

(ii) For purposes of this paragraph (a)(3), the term "material disclosures" means the required disclosures of the annual percentage rate, the finance charge, the amount financed, the total of payments, the payment schedule, and the disclosures and limitations referred to in §§ 1026.32(c) and (d) and 1026.35(b)(2).⁸

(4) When more than one consumer in a transaction has the right to rescind, the exercise of the right by one consumer shall be effective as to all consumers.

(b)(1) *Notice of right to rescind.* In a transaction subject to rescission, a creditor shall deliver two copies of the notice of the right to rescind to each consumer entitled to rescind (one copy to each if the notice is delivered in electronic form in accordance with the consumer consent and other applicable provisions of the E-Sign Act). The notice shall be on a separate document that identifies the transaction and shall clearly and conspicuously disclose the following:

⁸ [Paragraph \(a\)\(3\)\(ii\) is effective June 1, 2013. 78 Fed. Reg. 30,739 \(May 23, 2013\).](#)

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

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

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

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

(v) The date the rescission period expires.

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

(c) *Delay of creditor's performance.* Unless a consumer waives the right of rescission under paragraph (e) of this section, no money shall be disbursed other than in escrow, no services shall be performed and no materials delivered until the rescission period has expired and the creditor is reasonably satisfied that the consumer has not rescinded.

(d) *Effects of rescission.*

(1) When a consumer rescinds a transaction, the security interest giving rise to the right of rescission becomes void and the consumer shall not be liable for any amount, including any finance charge.

(2) Within 20 calendar days after receipt of a notice of rescission, the creditor shall return any money or property that has been given to anyone in connection with the transaction and shall take any action necessary to reflect the termination of the security interest.

(3) If the creditor has delivered any money or property, the consumer may retain possession until the creditor has met its obligation under paragraph (d)(2) of this section. When the creditor has complied with that paragraph, the consumer shall tender the money or property to the creditor or, where the latter would be impracticable or inequitable, tender its reasonable value. At the consumer's option, tender of property may be made at the location of the property or at the consumer's residence. Tender of money must be made at the creditor's designated place of business. If the creditor does not take possession of the money or property within 20 calendar days after the consumer's tender, the consumer may keep it without further obligation.

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

(e) *Consumer's waiver of right to rescind.* The consumer may modify or waive the right to rescind if the consumer determines that the extension of credit is needed to meet a bona fide

personal financial emergency. To modify or waive the right, the consumer shall give the creditor a dated written statement that describes the emergency, specifically modifies or waives the right to rescind, and bears the signature of all the consumers entitled to rescind. Printed forms for this purpose are prohibited.

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

(1) A residential mortgage transaction.

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

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

(4) An advance, other than an initial advance, in a series of advances or in a series of single-payment obligations that is treated as a single transaction under § 1026.17(c)(6), if the notice required by paragraph (b) of this section and all material disclosures have been given to the consumer.

(5) A renewal of optional insurance premiums that is not considered a refinancing under § 1026.20(a)(5).

(g) *Tolerances for accuracy.*

(1) *One-half of 1 percent tolerance.* Except as provided in paragraphs (g)(2) and (h)(2) of this section, the finance charge and other disclosures affected by the finance charge (such as the amount financed and the annual percentage rate) shall be considered accurate for purposes of this section if the disclosed finance charge:

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

(ii) Is greater than the amount required to be disclosed.

(2) *One percent tolerance.* In a refinancing of a residential mortgage transaction with a new creditor (other than a transaction covered by § 1026.32), if there is no new advance and no consolidation of existing loans, the finance charge and other disclosures affected by the finance charge (such as the amount financed and the annual percentage rate) shall be considered accurate for purposes of this section if the disclosed finance charge:

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

(ii) Is greater than the amount required to be disclosed.

(h) *Special rules for foreclosures.*

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

(i) A mortgage broker fee that should have been included in the finance charge was not included; or

(ii) The creditor did not provide the properly completed appropriate model form in Appendix H of this part, or a substantially similar notice of rescission.

(2) *Tolerance for disclosures.* After the initiation of foreclosure on the consumer's principal dwelling that secures the credit obligation, the finance charge and other disclosures affected by the finance charge (such as the amount financed and the annual percentage rate) shall be considered accurate for purposes of this section if the disclosed finance charge:

(i) Is understated by no more than \$35; or

(ii) Is greater than the amount required to be disclosed.

[51 Fed. Reg. 45,299 (Dec. 18, 1986); 51 Fed. Reg. 47,106 (Dec. 30, 1986); 58 Fed. Reg. 40,583 (July 29, 1993); 59 Fed. Reg. 40,204 (Aug. 5, 1994); 59 Fed. Reg. 63,715 (Dec. 9, 1994); 60 Fed. Reg. 15,471 (Mar. 24, 1995); 61 Fed. Reg. 49,246 (Sept. 19, 1996); 66 Fed. Reg. 17,338 (Mar. 30, 2001); 66 Fed. Reg. 41,440 (Aug. 8, 2001) (*COMPLIANCE DATE NOTE*: At 66 Fed. Reg. 41,440 (Aug. 8, 2001) the Oct. 1, 2001, mandatory compliance date for the interim final rules published at 66 Fed. Reg. 17,311 (Mar. 30, 2001) was lifted.); 72 Fed. Reg. 63,474 (Nov. 9, 2007); 73 Fed. Reg. 44,601 (July 30, 2008); 76 Fed. Reg. 79,772 (Dec. 22, 2011); [78 Fed. Reg. 30,745 \(May 23, 2013\)](#)]

SECTION 1026.24 Advertising [§ 226.24]

(a) *Actually available terms.* If an advertisement for credit states specific credit terms, it shall state only those terms that actually are or will be arranged or offered by the creditor.

(b) *Clear and conspicuous standard.* Disclosures required by this section shall be made clearly and conspicuously.

(c) *Advertisement of rate of finance charge.* If an advertisement states a rate of finance charge, it shall state the rate as an “annual percentage rate,” using that term. If the annual percentage rate may be increased after consummation, the advertisement shall state that fact. If an advertisement is for credit not secured by a dwelling, the advertisement shall not state any other rate, except that a simple annual rate or periodic rate that is applied to an unpaid balance may be stated in conjunction with, but not more conspicuously than, the annual percentage rate. If an

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

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

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

- (i) The amount or percentage of any downpayment.
- (ii) The number of payments or period of repayment.
- (iii) The amount of any payment.
- (iv) The amount of any finance charge.

(2) *Additional terms.* An advertisement stating any of the terms in paragraph (d)(1) of this section shall state the following terms, as applicable (an example of one or more typical extensions of credit with a statement of all the terms applicable to each may be used):

- (i) The amount or percentage of the downpayment.
- (ii) The terms of repayment, which reflect the repayment obligations over the full term of the loan, including any balloon payment.
- (iii) The “*annual percentage rate*,” using that term, and, if the rate may be increased after consummation, that fact.

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

(1) If a catalog or other multiple-page advertisement, or an electronic advertisement (such as an advertisement appearing on an Internet Web site), gives information in a table or schedule in sufficient detail to permit determination of the disclosures required by paragraph (d)(2) of this section, it shall be considered a single advertisement if:

- (i) The table or schedule is clearly and conspicuously set forth; and
- (ii) Any statement of the credit terms in paragraph (d)(1) of this section appearing anywhere else in the catalog or advertisement clearly refers to the page or location where the table or schedule begins.

(2) A catalog or other multiple-page advertisement or an electronic advertisement (such as an advertisement appearing on an Internet Web site) complies with paragraph (d)(2) of this section if the table or schedule of terms includes all appropriate disclosures for a representative

scale of amounts up to the level of the more commonly sold higher-priced property or services offered.

(f) Disclosure of rates and payments in advertisements for credit secured by a dwelling.

(1) *Scope.* The requirements of this paragraph apply to any advertisement for credit secured by a dwelling, other than television or radio advertisements, including promotional materials accompanying applications.

(2) Disclosure of rates.

(i) *In general.* If an advertisement for credit secured by a dwelling states a simple annual rate of interest and more than one simple annual rate of interest will apply over the term of the advertised loan, the advertisement shall disclose in a clear and conspicuous manner:

(A) Each simple annual rate of interest that will apply. In variable-rate transactions, a rate determined by adding an index and margin shall be disclosed based on a reasonably current index and margin;

(B) The period of time during which each simple annual rate of interest will apply; and

(C) The annual percentage rate for the loan. If such rate is variable, the annual percentage rate shall comply with the accuracy standards in §§ 1026.17(c) and 1026.22.

(ii) *Clear and conspicuous requirement.* For purposes of paragraph (f)(2)(i) of this section, clearly and conspicuously disclosed means that the required information in paragraphs (f)(2)(i)(A) through (C) shall be disclosed with equal prominence and in close proximity to any advertised rate that triggered the required disclosures. The required information in paragraph (f)(2)(i)(C) may be disclosed with greater prominence than the other information.

(3) Disclosure of payments.

(i) *In general.* In addition to the requirements of paragraph (c) of this section, if an advertisement for credit secured by a dwelling states the amount of any payment, the advertisement shall disclose in a clear and conspicuous manner:

(A) The amount of each payment that will apply over the term of the loan, including any balloon payment. In variable-rate transactions, payments that will be determined based on the application of the sum of an index and margin shall be disclosed based on a reasonably current index and margin;

(B) The period of time during which each payment will apply; and

(C) In an advertisement for credit secured by a first lien on a dwelling, the fact that the payments do not include amounts for taxes and insurance premiums, if applicable, and that the actual payment obligation will be greater.

(ii) *Clear and conspicuous requirement.* For purposes of paragraph (f)(3)(i) of this section, a clear and conspicuous disclosure means that the required information in paragraphs (f)(3)(i)(A) and (B) shall be disclosed with equal prominence and in close proximity to any advertised payment that triggered the required disclosures, and that the required information in paragraph (f)(3)(i)(C) shall be disclosed with prominence and in close proximity to the advertised payments.

(4) *Envelope excluded.* The requirements in paragraphs (f)(2) and (f)(3) of this section do not apply to an envelope in which an application or solicitation is mailed, or to a banner advertisement or pop-up advertisement linked to an application or solicitation provided electronically.

(g) *Alternative disclosures--television or radio advertisements.* An advertisement made through television or radio stating any of the terms requiring additional disclosures under paragraph (d)(2) of this section may comply with paragraph (d)(2) of this section either by:

(1) Stating clearly and conspicuously each of the additional disclosures required under paragraph (d)(2) of this section; or

(2) Stating clearly and conspicuously the information required by paragraph (d)(2)(iii) of this section and listing a toll-free telephone number, or any telephone number that allows a consumer to reverse the phone charges when calling for information, along with a reference that such number may be used by consumers to obtain additional cost information.

(h) *Tax implications.* If an advertisement distributed in paper form or through the Internet (rather than by radio or television) is for a loan secured by the consumer's principal dwelling, and the advertisement states that the advertised extension of credit may exceed the fair market value of the dwelling, the advertisement shall clearly and conspicuously state that:

(1) The interest on the portion of the credit extension that is greater than the fair market value of the dwelling is not tax deductible for Federal income tax purposes; and

(2) The consumer should consult a tax adviser for further information regarding the deductibility of interest and charges.

(i) *Prohibited acts or practices in advertisements for credit secured by a dwelling.* The following acts or practices are prohibited in advertisements for credit secured by a dwelling:

(1) *Misleading advertising of "fixed" rates and payments.* Using the word "fixed" to refer to rates, payments, or the credit transaction in an advertisement for variable-rate transactions or other transactions where the payment will increase, unless:

(i) In the case of an advertisement solely for one or more variable-rate transactions,

(A) The phrase “Adjustable-Rate Mortgage,” “Variable-Rate Mortgage,” or “ARM” appears in the advertisement before the first use of the word “fixed” and is at least as conspicuous as any use of the word “fixed” in the advertisement; and

(B) Each use of the word “fixed” to refer to a rate or payment is accompanied by an equally prominent and closely proximate statement of the time period for which the rate or payment is fixed, and the fact that the rate may vary or the payment may increase after that period;

(ii) In the case of an advertisement solely for non-variable-rate transactions where the payment will increase (e.g., a stepped-rate mortgage transaction with an initial lower payment), each use of the word “fixed” to refer to the payment is accompanied by an equally prominent and closely proximate statement of the time period for which the payment is fixed, and the fact that the payment will increase after that period; or

(iii) In the case of an advertisement for both variable-rate transactions and non-variable-rate transactions,

(A) The phrase “Adjustable-Rate Mortgage,” “Variable-Rate Mortgage,” or “ARM” appears in the advertisement with equal prominence as any use of the term “fixed,” “Fixed-Rate Mortgage,” or similar terms; and

(B) Each use of the word “fixed” to refer to a rate, payment, or the credit transaction either refers solely to the transactions for which rates are fixed and complies with paragraph (i)(1)(ii) of this section, if applicable, or, if it refers to the variable-rate transactions, is accompanied by an equally prominent and closely proximate statement of the time period for which the rate or payment is fixed, and the fact that the rate may vary or the payment may increase after that period.

(2) *Misleading comparisons in advertisements.* Making any comparison in an advertisement between actual or hypothetical credit payments or rates and any payment or simple annual rate that will be available under the advertised product for a period less than the full term of the loan, unless:

(i) *In general.* The advertisement includes a clear and conspicuous comparison to the information required to be disclosed under § 1026.24(f)(2) and (3); and

(ii) *Application to variable-rate transactions.* If the advertisement is for a variable-rate transaction, and the advertised payment or simple annual rate is based on the index and margin that will be used to make subsequent rate or payment adjustments over the term of the loan, the advertisement includes an equally prominent statement in close proximity to the payment or rate that the payment or rate is subject to adjustment and the time period when the first adjustment will occur.

(3) *Misrepresentations about government endorsement.* Making any statement in an advertisement that the product offered is a “government loan program”, “government-supported loan”, or is otherwise endorsed or sponsored by any Federal, state, or local government entity, unless the advertisement is for an FHA loan, VA loan, or similar loan program that is, in fact, endorsed or sponsored by a Federal, state, or local government entity.

(4) *Misleading use of the current lender’s name.* Using the name of the consumer’s current lender in an advertisement that is not sent by or on behalf of the consumer’s current lender, unless the advertisement:

(i) Discloses with equal prominence the name of the person or creditor making the advertisement; and

(ii) Includes a clear and conspicuous statement that the person making the advertisement is not associated with, or acting on behalf of, the consumer’s current lender.

(5) *Misleading claims of debt elimination.* Making any misleading claim in an advertisement that the mortgage product offered will eliminate debt or result in a waiver or forgiveness of a consumer’s existing loan terms with, or obligations to, another creditor.

(6) *Misleading use of the term “counselor”.* Using the term “counselor” in an advertisement to refer to a for-profit mortgage broker or mortgage creditor, its employees, or persons working for the broker or creditor that are involved in offering, originating or selling mortgages.

(7) *Misleading foreign-language advertisements.* Providing information about some trigger terms or required disclosures, such as an initial rate or payment, only in a foreign language in an advertisement, but providing information about other trigger terms or required disclosures, such as information about the fully-indexed rate or fully amortizing payment, only in English in the same advertisement.

[66 Fed. Reg. 17,338 (Mar. 30, 2001); 66 Fed. Reg. 41,440 (Aug. 8, 2001) (*COMPLIANCE DATE NOTE*: At 66 Fed. Reg. 41,440 (Aug. 8, 2001) the Oct. 1, 2001, mandatory compliance date for the interim final rules published at 66 Fed. Reg. 17,311 (Mar. 30, 2001) was lifted.); 72 Fed. Reg. 63,474 (Nov. 9, 2007); 73 Fed. Reg. 44,601, 44,602 (July 30, 2008); 76 Fed. Reg. 79,772 (Dec. 22, 2011)]

[3c]SUBPART D--MISCELLANEOUS

SECTION 1026.25 Record Retention [§ 226.25]

(a) *General rule.* A creditor shall retain evidence of compliance with this ~~part~~(regulation, other than advertising requirements under §§ 1026.16 and 1026.24)~~for 2~~ and certain requirements for mortgage loans under paragraph (c) of this section, for two years after the date disclosures are required to be made or action is required to be taken. The administrative agencies responsible for

enforcing the regulation may require ~~creditors~~ a creditor under their jurisdictions to retain records for a longer period if necessary to carry out their enforcement responsibilities under section 108 of the Act.⁹

(b) *Inspection of records.* A creditor shall permit the agency responsible for enforcing this part with respect to that creditor to inspect its relevant records for compliance.

(c) *Records related to certain requirements for mortgage loans.*

(1) [Reserved]¹⁰

(2) *Records related to requirements for loan originator compensation.*¹¹
Notwithstanding paragraph (a) of this section, for transactions subject to § 1026.36:

(i) A creditor shall maintain records sufficient to evidence all compensation it pays to a loan originator, as defined in § 1026.36(a)(1), and the compensation agreement that governs those payments for three years after the date of payment.

(ii) A loan originator organization, as defined in § 1026.36(a)(1)(iii), shall maintain records sufficient to evidence all compensation it receives from a creditor, a consumer, or another person; all compensation it pays to any individual loan originator, as defined in § 1026.36(a)(1)(ii); and the compensation agreement that governs each such receipt or payment, for three years after the date of each such receipt or payment.

(3) *Records related to minimum standards for transactions secured by a dwelling.*
Notwithstanding paragraph (a) of this section, a creditor shall retain evidence of compliance with § 1026.43 of this regulation for three years after consummation of a transaction covered by that section.¹²

[76 Fed. Reg. 79,772 (Dec. 22, 2011); 78 Fed. Reg. 6408 (Jan. 30, 2013); 78 Fed. Reg. 11,280 (Feb. 15, 2013)]

SECTION 1026.26 Use of Annual Percentage Rate in Oral Disclosures [§ 226.26]

(a) *Open-end credit.* In an oral response to a consumer's inquiry about the cost of open-end credit, only the annual percentage rate or rates shall be stated, except that the periodic rate or rates also may be stated. If the annual percentage rate cannot be determined in advance because there are finance charges other than a periodic rate, the corresponding annual percentage rate shall be stated, and other cost information may be given.

⁹ Paragraph (a) is effective Jan. 10, 2014. 78 Fed. Reg. 6408 (Jan. 30, 2013).

¹⁰ Paragraph (c)(1) is effective Jan. 10, 2014. 78 Fed. Reg. 6408 (Jan. 30, 2013).

¹¹ Paragraph (c)(2) is effective January 10, 2014. 78 Fed. Reg. 6408 (Jan. 30, 2013); 78 Fed. Reg. 11280 (Feb. 15, 2013).

¹² Paragraph (c)(3) is effective Jan. 10, 2014. 78 Fed. Reg. 6408 (Jan. 30, 2013).

(b) *Closed-end credit.* In an oral response to a consumer's inquiry about the cost of closed-end credit, only the annual percentage rate shall be stated, except that a simple annual rate or periodic rate also may be stated if it is applied to an unpaid balance. If the annual percentage rate cannot be determined in advance, the annual percentage rate for a sample transaction shall be stated, and other cost information for the consumer's specific transaction may be given.

[76 Fed. Reg. 79,772 (Dec. 22, 2011)]

SECTION 1026.27 Language of Disclosures [§ 226.27]

Disclosures required by this part may be made in a language other than English, provided that the disclosures are made available in English upon the consumer's request. This requirement for providing English disclosures on request does not apply to advertisements subject to §§ 1026.16 and 1026.24.

[66 Fed. Reg. 17,339 (Mar. 30, 2001); 66 Fed. Reg. 41,440 (Aug. 8, 2001) (*COMPLIANCE DATE NOTE*: At 66 Fed. Reg. 41,440 (Aug. 8, 2001) the Oct. 1, 2001, mandatory compliance date for the interim final rules published at 66 Fed. Reg. 17,311 (Mar. 30, 2001) was lifted.); 76 Fed. Reg. 79,772 (Dec. 22, 2011)]

SECTION 1026.28 Effect on State Laws [§ 226.28]

(a) *Inconsistent disclosure requirements.*

(1) Except as provided in paragraph (d) of this section, state law requirements that are inconsistent with the requirements contained in chapter 1 (General Provisions), chapter 2 (Credit Transactions), or chapter 3 (Credit Advertising) of the Act and the implementing provisions of this part are preempted to the extent of the inconsistency. A state law is inconsistent if it requires a creditor to make disclosures or take actions that contradict the requirements of the Federal law. A state law is contradictory if it requires the use of the same term to represent a different amount or a different meaning than the Federal law, or if it requires the use of a term different from that required in the Federal law to describe the same item. A creditor, state, or other interested party may request the Bureau to determine whether a state law requirement is inconsistent. After the Bureau determines that a state law is inconsistent, a creditor may not make disclosures using the inconsistent term or form.

(2)(i) State law requirements are inconsistent with the requirements contained in sections 161 (Correction of billing errors) or 162 (Regulation of credit reports) of the Act and the implementing provisions of this part and are preempted if they provide rights, responsibilities, or procedures for consumers or creditors that are different from those required by the Federal law. However, a state law that allows a consumer to inquire about an open-end credit account and imposes on the creditor an obligation to respond to such inquiry after the time allowed in the Federal law for the consumer to submit written notice of a billing error shall not be preempted in any situation where the time period for making written notice under this part has expired. If a

creditor gives written notice of a consumer's rights under such state law, the notice shall state that reliance on the longer time period available under state law may result in the loss of important rights that could be preserved by acting more promptly under Federal law; it shall also explain that the state law provisions apply only after expiration of the time period for submitting a proper written notice of a billing error under the Federal law. If the state disclosures are made on the same side of a page as the required Federal disclosures, the state disclosures shall appear under a demarcation line below the Federal disclosures, and the Federal disclosures shall be identified by a heading indicating that they are made in compliance with Federal law.

(ii) State law requirements are inconsistent with the requirements contained in chapter 4 (Credit billing) of the Act (other than section 161 or 162) and the implementing provisions of this part and are preempted if the creditor cannot comply with state law without violating Federal law.

(iii) A state may request the Bureau to determine whether its law is inconsistent with chapter 4 of the Act and its implementing provisions.

(b) *Equivalent disclosure requirements.* If the Bureau determines that a disclosure required by state law (other than a requirement relating to the finance charge, annual percentage rate, or the disclosures required under § 1026.32) is substantially the same in meaning as a disclosure required under the Act or this part, creditors in that state may make the state disclosure in lieu of the Federal disclosure. A creditor, state or other interested party may request the Bureau to determine whether a state disclosure is substantially the same in meaning as a Federal disclosure.

(c) *Request for determination.* The procedures under which a request for a determination may be made under this section are set forth in Appendix A.

(d) *Special rule for credit and charge cards.* State law requirements relating to the disclosure of credit information in any credit or charge card application or solicitation that is subject to the requirements of section 127(c) of chapter 2 of the Act (§ 1026.60 of the regulation) or in any renewal notice for a credit or charge card that is subject to the requirements of section 127(d) of chapter 2 of the Act (§ 1026.9(e) of the regulation) are preempted. State laws relating to the enforcement of section 127 (c) and (d) of the Act are not preempted.

[54 Fed. Reg. 13,867 (Apr. 6, 1989); 54 Fed. Reg. 32,954 (Aug. 11, 1989); 60 Fed. Reg. 15,471 (Mar. 24, 1995); 76 Fed. Reg. 79,772 (Dec. 22, 2011)]

SECTION 1026.29 State Exemptions [§ 226.29]

(a) *General rule.* Any state may apply to the Bureau to exempt a class of transactions within the state from the requirements of chapter 2 (Credit transactions) or chapter 4 (Credit billing) of the Act and the corresponding provisions of this part. The Bureau shall grant an exemption if it determines that:

(1) The state law is substantially similar to the Federal law or, in the case of chapter 4, affords the consumer greater protection than the Federal law; and

(2) There is adequate provision for enforcement.

(b) *Civil liability.*

(1) No exemptions granted under this section shall extend to the civil liability provisions of sections 130 and 131 of the Act.

(2) If an exemption has been granted, the disclosures required by the applicable state law (except any additional requirements not imposed by Federal law) shall constitute the disclosures required by the Act.

(c) *Applications.* The procedures under which a state may apply for an exemption under this section are set forth in Appendix B to this part.

[46 Fed. Reg. 20,892 (Apr. 7, 1981); 46 Fed. Reg. 29,246 (June 1, 1981); 76 Fed. Reg. 79,772 (Dec. 22, 2011)]

SECTION 1026.30 Limitation on Rates [§ 226.30]

A creditor shall include in any consumer credit contract secured by a dwelling and subject to the Act and this part the maximum interest rate that may be imposed during the term of the obligation when:

(a) In the case of closed-end credit, the annual percentage rate may increase after consummation, or

(b) In the case of open-end credit, the annual percentage rate may increase during the plan.

[52 Fed. Reg. 43,181 (Nov. 9, 1987); 52 Fed. Reg. 45,611 (Dec. 1, 1987); 75 Fed. Reg. 7818 (Feb. 22, 2010); 76 Fed. Reg. 79,772 (Dec. 22, 2011)]

[3c]SUBPART E--SPECIAL RULES FOR CERTAIN HOME MORTGAGE TRANSACTIONS

SECTION 1026.31 General Rules [§ 226.31]

(a) *Relation to other subparts in this part.* The requirements and limitations of this subpart are in addition to and not in lieu of those contained in other subparts of this part.

(b) *Form of disclosures.* The creditor shall make the disclosures required by this subpart clearly and conspicuously in writing, in a form that the consumer may keep. The disclosures required by this subpart may be provided to the consumer in electronic form, subject to compliance with the

consumer consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. 7001 *et seq.*).

(c) *Timing of disclosure.*

(1) *Disclosures for ~~certain closed-end home~~ high-cost mortgages.* The creditor shall furnish the disclosures required by § 1026.32 at least three business days prior to consummation or account opening of a high-cost mortgage ~~transaction covered by § 1026.32 as defined in § 1026.32(a).~~¹³

(i) *Change in terms.* After complying with this paragraph (c)(1) ~~of this section~~ and prior to consummation or account opening, if the creditor changes any term that makes the disclosures inaccurate, new disclosures shall be provided in accordance with the requirements of this subpart.

(ii) *Telephone disclosures.* A creditor may provide new disclosures required by paragraph (c)(1)(i) of this section by telephone if the consumer initiates the change and if, prior to or at consummation or account opening:

(A) The creditor provides new written disclosures; and

(B) The consumer and creditor sign a statement that the new disclosures were provided by telephone at least three days prior to consummation or account opening, as applicable.

(iii) *Consumer²'s waiver of waiting period before consummation or account opening.* The consumer may, after receiving the disclosures required by this paragraph (c)(1) ~~of this section~~, modify or waive the three-day waiting period between delivery of those disclosures and consummation or account opening if the consumer determines that the extension of credit is needed to meet a bona fide personal financial emergency. To modify or waive the right, the consumer shall give the creditor a dated written statement that describes the emergency, specifically modifies or waives the waiting period, and bears the signature of all the consumers entitled to the waiting period. Printed forms for this purpose are prohibited, except when creditors are permitted to use printed forms pursuant to § 1026.23(e)(2).

(2) *Disclosures for reverse mortgages.* The creditor shall furnish the disclosures required by § 1026.33 at least three business days prior to:

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

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

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

¹³ Paragraph (c)(1) is effective Jan. 10, 2014. 78 Fed. Reg. 6856 (Jan. 31, 2013).

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

(2) *Estimates.* If any information necessary for an accurate disclosure is unknown to the creditor, the creditor shall make the disclosure based on the best information reasonably available at the time the disclosure is provided, and shall state clearly that the disclosure is an estimate.

(3) *Per-diem interest.* For a transaction in which a portion of the interest is determined on a per-diem basis and collected at consummation, any disclosure affected by the per-diem interest shall be considered accurate if the disclosure is based on the information known to the creditor at the time that the disclosure documents are prepared.

(e) *Multiple creditors; multiple consumers.* If a transaction involves more than one creditor, only one set of disclosures shall be given and the creditors shall agree among themselves which creditor must comply with the requirements that this part imposes on any or all of them. If there is more than one consumer, the disclosures may be made to any consumer who is primarily liable on the obligation. If the transaction is rescindable under § 1026.15 or § 1026.23, however, the disclosures shall be made to each consumer who has the right to rescind.

(f) *Effect of subsequent events.* If a disclosure becomes inaccurate because of an event that occurs after the creditor delivers the required disclosures, the inaccuracy is not a violation of Regulation Z (12 CFR part 1026), although new disclosures may be required for mortgages covered by § 1026.32 under paragraph (c) of this section, § 1026.9(c), § 1026.19, or § 1026.20.

(g) *Accuracy of annual percentage rate.* For purposes of § 1026.32, the annual percentage rate shall be considered accurate, and may be used in determining whether a transaction is covered by § 1026.32, if it is accurate according to the requirements and within the tolerances under § 1026.22. The finance charge tolerances for rescission under § 1026.23(g) or (h) shall not apply for this purpose.

(h) *Corrections and unintentional violations.* A creditor or assignee in a high-cost mortgage, as defined in § 1026.32(a), who, when acting in good faith, failed to comply with any requirement under section 129 of the Act will not be deemed to have violated such requirement if the creditor or assignee satisfies either of the following sets of conditions:¹⁴

(1)(i) Within 30 days of consummation or account opening and prior to the institution of any action, the consumer is notified of or discovers the violation;

(ii) Appropriate restitution is made within a reasonable time; and

(iii) Within a reasonable time, whatever adjustments are necessary are made to the loan or credit plan to either, at the choice of the consumer:

(A) Make the loan or credit plan satisfy the requirements of this chapter;
or

¹⁴ Paragraph (h) is effective Jan. 10, 2014. 78 Fed. Reg. 6856 (Jan. 31, 2013).

(B) Change the terms of the loan or credit plan in a manner beneficial to the consumer so that the loan or credit plan will no longer be a high-cost mortgage.

(2)(i) Within 60 days of the creditor's discovery or receipt of notification of an unintentional violation or bona fide error and prior to the institution of any action, the consumer is notified of the compliance failure;

(ii) Appropriate restitution is made within a reasonable time; and

(iii) Within a reasonable time, whatever adjustments are necessary are made to the loan or credit plan to either, at the choice of the consumer;

(A) Make the loan or credit plan satisfy the requirements of this chapter;
or

(B) Change the terms of the loan or credit plan in a manner beneficial to the consumer so that the loan or credit plan will no longer be a high-cost mortgage.

[60 Fed. Reg. 29,969 (June 7, 1995); 61 Fed. Reg. 49,247 (Sept. 19, 1996); 66 Fed. Reg. 17,339 (Mar. 30, 2001); 66 Fed. Reg. 41,440 (Aug. 8, 2001) (*COMPLIANCE DATE NOTE*: At 66 Fed. Reg. 41,440 (Aug. 8, 2001) the Oct. 1, 2001, mandatory compliance date for the interim final rules published at 66 Fed. Reg. 17,311 (Mar. 30, 2001) was lifted.); 72 Fed. Reg. 63,475 (Nov. 9, 2007); 76 Fed. Reg. 79,772 (Dec. 22, 2011); [78 Fed. Reg. 6856 \(Jan. 31, 2013\)](#)]

SECTION 1026.32 Requirements for ~~Certain Closed-End Home~~High-Cost Mortgages¹⁵ [§ 226.32]

(a) Coverage. ¹⁶

(1) ~~Except as provided in paragraph (a)(2) of this section, the~~The requirements of this section apply to a high-cost mortgage, which is any consumer credit transaction that is secured by the consumer's principal dwelling, other than as provided in paragraph (a)(2) of this section, and in which ~~either~~:

(i) The annual percentage rate ~~at consummation will exceed~~applicable to the transaction, as determined in accordance with paragraph (a)(3) of this section, will exceed the average prime offer rate, as defined in § 1026.35(a)(2), for a comparable transaction by more than ~~8~~;

~~(A) 6.5 percentage points for a first-lien loans, or by more than 10 percentage points for subordinate-lien loans, the yield on Treasury securities having comparable periods of maturity to the loan maturity as of the fifteenth day of the month immediately~~

¹⁵ The new section heading is effective Jan. 10, 2014. 78 Fed. Reg. 6408 (Jan. 30, 2013).

¹⁶ Paragraph (a) is effective Jan. 10, 2014. 78 Fed. Reg. 6856 (Jan. 31, 2013).

~~preceding the month in which the application for the extension of credit is received by the creditor~~ transaction, other than as described in paragraph (a)(1)(i)(B) of this section;

(B) 8.5 percentage points for a first-lien transaction if the dwelling is personal property and the loan amount is less than \$50,000; or

(C) 8.5 percentage points for a subordinate-lien transaction; or

(ii) The transaction's total points and fees ~~payable by the consumer at or before loan closing will exceed the greater of 8,~~ as defined in paragraphs (b)(1) and (2) of this section, will exceed:

(A) 5 percent of the total loan amount, or \$400; the \$400 for a transaction with a loan amount of \$20,000 or more; the \$20,000 figure shall be adjusted annually on January 1 by the annual percentage change in the Consumer Price Index that was reported on the preceding June 1; or

~~(2) This section does not apply to the following:~~ (B) The lesser of 8 percent of the total loan amount or \$1,000 for a transaction with a loan amount of less than \$20,000; the \$1,000 and \$20,000 figures shall be adjusted annually on January 1 by the annual percentage change in the Consumer Price Index that was reported on the preceding June 1; or

(iii) Under the terms of the loan contract or open-end credit agreement, the creditor can charge a prepayment penalty, as defined in paragraph (b)(6) of this section, more than 36 months after consummation or account opening, or prepayment penalties that can exceed, in total, more than 2 percent of the amount prepaid.

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

~~(i) A residential mortgage transaction.~~ ~~(ii) A reverse mortgage transaction subject to § 1026.33.~~ 1026.33;

(ii) A transaction to finance the initial construction of a dwelling;

(iii) ~~An open-end credit plan subject to subpart B of this part.~~ A transaction originated by a Housing Finance Agency, where the Housing Finance Agency is the creditor for the transaction;

(iv) A transaction originated pursuant to the United States Department of Agriculture's Rural Development Section 502 Direct Loan Program.

(3) Determination of annual percentage rate. For purposes of paragraph (a)(1)(i) of this section, a creditor shall determine the annual percentage rate for a closed- or open-end credit transaction based on the following:

(i) For a transaction in which the annual percentage rate will not vary during the term of the loan or credit plan, the interest rate in effect as of the date the interest rate for the transaction is set;

(ii) For a transaction in which the interest rate may vary during the term of the loan or credit plan in accordance with an index, the interest rate that results from adding the maximum margin permitted at any time during the term of the loan or credit plan to the value of the index rate in effect as of the date the interest rate for the transaction is set, or the introductory interest rate, whichever is greater; and

(iii) For a transaction in which the interest rate may or will vary during the term of the loan or credit plan, other than a transaction described in paragraph (a)(3)(ii) of this section, the maximum interest rate that may be imposed during the term of the loan or credit plan.

(b) *Definitions.* For purposes of this subpart, the following definitions apply:¹⁷

(1) ~~For purposes of paragraph (a)(1)(ii) of this section~~ In connection with a closed-end credit transaction, points and fees means the following fees or charges that are known at or before consummation:

(i) All items included in the finance charge under § 1026.4(a) and (b), except that the following items are excluded:

(A) Interest or the time-price differential;

(B) Any premium or other charge imposed in connection with any Federal or State agency program for any guaranty or insurance that protects the creditor against the consumer's default or other credit loss;

(C) For any guaranty or insurance that protects the creditor against the consumer's default or other credit loss and that is not in connection with any Federal or State agency program:

(1) If the premium or other charge is payable after consummation, the entire amount of such premium or other charge; or

(2) 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 amount payable under policies in effect at the time of origination under section 203(c)(2)(A) of the National Housing Act (12 U.S.C. 1709(c)(2)(A)), provided that the premium or charge is required to be refundable on a pro rata basis and the refund is automatically issued upon notification of the satisfaction of the underlying mortgage loan;

¹⁷ Paragraph (b)(1) is effective Jan. 10, 2014. 78 Fed. Reg. 6408 (Jan. 30, 2013).

(D) Any bona fide third-party charge not retained by the creditor, loan originator, or an affiliate of either, unless the charge is required to be included in points and fees under paragraph (b)(1)(i)(C), (iii), or (iv) of this section;

(E) Up to two bona fide discount points paid by the consumer in connection with the transaction, if the interest rate without any discount does not exceed:

(1) The average prime offer rate, as defined in § 1026.35(a)(2), by more than one percentage point; or

(2) For purposes of paragraph (a)(1)(ii) of this section, for transactions that are secured by personal property, the average rate for a loan insured under Title I of the National Housing Act (12 U.S.C. 1702 *et seq.*) by more than one percentage point; and

(F) If no discount points have been excluded under paragraph (b)(1)(i)(E) of this section, then up to one bona fide discount point paid by the consumer in connection with the transaction, if the interest rate without any discount does not exceed:

(1) The average prime offer rate, as defined in § 1026.35(a)(2), by more than two percentage points; or

(2) For purposes of paragraph (a)(1)(ii) of this section, for transactions that are secured by personal property, the average rate for a loan insured under Title I of the National Housing Act (12 U.S.C. 1702 *et seq.*) by more than two percentage points;

(ii) All compensation paid directly or indirectly by a consumer or creditor to a loan originator, as defined in § 1026.36(a)(1), that can be attributed to that transaction at the time the interest rate is set unless:¹⁸

(A) That compensation is paid by a consumer to a mortgage broker, as defined in § 1026.36(a)(2), and already has been included in points and fees under paragraph (b)(1)(i) of this section;

(B) That compensation is paid by a mortgage broker, as defined in § 1026.36(a)(2), to a loan originator that is an employee of the mortgage broker; or

(C) That compensation is paid by a creditor to a loan originator that is an employee of the creditor.

(iii) All items listed in § 1026.4(c)(7) (other than amounts held for future payment of taxes), unless:

(A) The charge is reasonable;

¹⁸ Paragraph (b)(1)(ii) is effective Jan. 10, 2014. 78 Fed. Reg. 35,430 (June 12, 2013).

(B) The creditor receives no direct or indirect compensation in connection with the charge; and

(C) The charge is not paid to an affiliate of the creditor;

(iv) Premiums or other charges payable at or before consummation for any credit life, credit disability, credit unemployment, or credit property insurance, or 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;

(v) The maximum prepayment penalty, as defined in paragraph (b)(6)(i) of this section, that may be charged or collected under the terms of the mortgage loan; and

(vi) The total prepayment penalty, as defined in paragraph (b)(6)(i) of this section, incurred by the consumer if the consumer refinances the existing mortgage loan with the current holder of the existing loan, a servicer acting on behalf of the current holder, or an affiliate of either.

(2) In connection with an open-end credit plan, *points and fees* means the following fees or charges that are known at or before account opening:¹⁹

(i) All items included in the finance charge under § 1026.4(a) and (b), except that the following items are excluded:

(A) Interest or the time-price differential;

(B) Any premium or other charge imposed in connection with any Federal or State agency program for any guaranty or insurance that protects the creditor against the consumer's default or other credit loss;

(C) For any guaranty or insurance that protects the creditor against the consumer's default or other credit loss and that is not in connection with any Federal or State agency program:

(1) If the premium or other charge is payable after account opening, the entire amount of such premium or other charge; or

(2) If the premium or other charge is payable at or before account opening, the portion of any such premium or other charge that is not in excess of the amount payable under policies in effect at the time of account opening under section 203(c)(2)(A) of the National Housing Act (12 U.S.C. 1709(c)(2)(A)), provided that the premium or charge is required to be refundable on a pro rata basis and the refund is automatically issued upon notification of the satisfaction of the underlying mortgage transaction;

¹⁹ Paragraph (b)(2) is effective Jan. 10, 2014. 78 Fed. Reg. 6408 (Jan. 30, 2013); 78 Fed. Reg. 6856 (Jan. 31, 2013).

(D) Any bona fide third-party charge not retained by the creditor, loan originator, or an affiliate of either, unless the charge is required to be included in points and fees under paragraphs (b)(2)(i)(C), (b)(2)(iii) or (b)(2)(iv) of this section;

(E) Up to two bona fide discount points payable by the consumer in connection with the transaction, provided that the conditions specified in paragraph (b)(1)(i)(E) of this section are met; and

(F) Up to one bona fide discount point payable by the consumer in connection with the transaction, provided that no discount points have been excluded under paragraph (b)(2)(i)(E) of this section and the conditions specified in paragraph (b)(1)(i)(F) of this section are met;

(ii) All compensation paid directly or indirectly by a consumer or creditor to a loan originator, as defined in § 1026.36(a)(1), that can be attributed to that transaction at the time the interest rate is set unless:²⁰

(A) That compensation is paid by a consumer to a mortgage broker, as defined in § 1026.36(a)(2), and already has been included in points and fees under paragraph (b)(2)(i) of this section;

(B) That compensation is paid by a mortgage broker, as defined in § 1026.36(a)(2), to a loan originator that is an employee of the mortgage broker; or

(C) That compensation is paid by a creditor to a loan originator that is an employee of the creditor.

(iii) All items listed in § 1026.4(c)(7) (other than amounts held for future payment of taxes) unless:

(A) The charge is reasonable;

(B) The creditor receives no direct or indirect compensation in connection with the charge; and

(C) The charge is not paid to an affiliate of the creditor;

(iv) Premiums or other charges payable at or before account opening for any credit life, credit disability, credit unemployment, or credit property insurance, or 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;

(v) The maximum prepayment penalty, as defined in paragraph (b)(6)(ii) of this section, that may be charged or collected under the terms of the open-end credit plan;

²⁰ Paragraph (b)(2)(ii) is effective Jan. 10, 2014. 78 Fed. Reg. 35,430 (June 12, 2013).

(vi) The total prepayment penalty, as defined in paragraph (b)(6)(ii) of this section, incurred by the consumer if the consumer refinances an existing closed-end credit transaction with an open-end credit plan, or terminates an existing open-end credit plan in connection with obtaining a new closed- or open-end credit transaction, with the current holder of the existing plan, a servicer acting on behalf of the current holder, or an affiliate of either;

(vii) Any fees charged for participation in an open-end credit plan, payable at or before account opening, as described in § 1026.4(c)(4); and

(viii) Any transaction fee, including any minimum fee or per-transaction fee, that will be charged for a draw on the credit line, where the creditor must assume that the consumer will make at least one draw during the term of the plan.

(3) *Bona fide discount point*²¹

(i) *Closed-end credit*. The term *bona fide discount point* means an amount equal to 1 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.

~~(i) All items required to be disclosed under § 1026.4(a) and 1026.4(b), except interest or the time-price differential;~~ii) *Open-end credit*. The term *bona fide discount point* means an amount equal to 1 percent of the credit limit for the plan when the account is opened, paid by the consumer, and 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. See comment 32(b)(3)(i)-1 for additional guidance in determining whether a discount point is bona fide.²²

~~(ii) All compensation paid to mortgage brokers;~~4) *Total loan amount*²³

~~(iii) All items listed in § 1026.4(c)(7) (other than amounts held for future payment of taxes) unless the charge is reasonable, the creditor receives no direct or indirect compensation in connection with the charge, and the charge is not paid to an affiliate of the creditor; and~~i) *Closed-end credit*. The total loan amount for a closed-end credit transaction is calculated by taking the amount financed, as determined according to § 1026.18(b), and deducting any cost listed in § 1026.32(b)(1)(iii), (iv), or (vi) that is both included as points and fees under § 1026.32(b)(1) and financed by the creditor.

¹²¹ Paragraph (b)(3) is effective Jan. 10, 2014. 78 Fed. Reg. 6408 (Jan. 30, 2013).

²²² Paragraph (b)(3)(ii) is effective Jan. 10, 2014. 78 Fed. Reg. 6856 (Jan. 31, 2013).

³²³ Paragraph (b)(4) is effective Jan. 10, 2014. 78 Fed. Reg. 6408 (Jan. 30, 2013).

~~(iv) Premiums or other charges for credit life, accident, health, or loss-of-income insurance, or debt-cancellation coverage (whether or not the debt-cancellation coverage is insurance under applicable law) that provides for cancellation of all or part of the consumer's liability in the event of the loss of life, health, or income or in the case of accident, written in connection with the credit transaction.~~ ii) Open-end credit. The total loan amount for an open-end credit plan is the credit limit for the plan when the account is opened.²⁴

(25) *Affiliate* means any company that controls, is controlled by, or is under common control with another company, as set forth in the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*).²⁵

(6) Prepayment penalty.²⁶

(i) Closed-end credit transactions. For a closed-end credit transaction, prepayment penalty means a charge imposed for paying all or part of the transaction's principal before the date on which the principal is due, other than a waived, bona fide third-party charge that the creditor imposes if the consumer prepays all of the transaction's principal sooner than 36 months after consummation, provided, however, that interest charged consistent with the monthly interest accrual amortization method is not a prepayment penalty for extensions of credit insured by the Federal Housing Administration that are consummated before January 21, 2015.

(ii) Open-end credit. For an open-end credit plan, prepayment penalty means a charge imposed by the creditor if the consumer terminates the open-end credit plan prior to the end of its term, other than a waived bona fide third-party charge that the creditor imposes if the consumer terminates the open-end credit plan sooner than 36 months after account opening.²⁷

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

(1) *Notices.* The following statement: “You are not required to complete this agreement merely because you have received these disclosures or have signed a loan application. If you obtain this loan, the lender will have a mortgage on your home. You could lose your home, and any money you have put into it, if you do not meet your obligations under the loan.”

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

(3) *Regular payment; minimum periodic payment example; balloon payment.* ~~The~~²⁸

²⁴ Paragraph (b)(4)(ii) is effective Jan. 10, 2014. 78 Fed. Reg. 6856 (Jan. 31, 2013).

²⁵ Paragraph (b)(5) is effective Jan. 10, 2014. 78 Fed. Reg. 6408 (Jan. 30, 2013).

²⁶ Paragraph (b)(6) is effective Jan. 10, 2014. 78 Fed. Reg. 6408 (Jan. 30, 2013).

²⁷ Paragraph (b)(6)(ii) is effective Jan. 10, 2014. 78 Fed. Reg. 6856 (Jan. 31, 2013).

²⁸ Paragraph (c)(3) is effective Jan. 10, 2014. 78 Fed. Reg. 6856 (Jan. 31, 2013).

(i) For a closed-end credit transaction, the amount of the regular monthly (or other periodic) payment and the amount of any balloon payment provided in the credit contract, if permitted under paragraph (d)(1) of this section. The regular payment disclosed under this paragraph shall be treated as accurate if it is based on an amount borrowed that is deemed accurate and is disclosed under paragraph (c)(5) of this section.

(ii) For an open-end credit plan:

(A) An example showing the first minimum periodic payment for the draw period, the first minimum periodic payment for any repayment period, and the balance outstanding at the beginning of any repayment period. The example must be based on the following assumptions:

(1) The consumer borrows the full credit line, as disclosed in paragraph (c)(5) of this section, at account opening and does not obtain any additional extensions of credit;

(2) The consumer makes only minimum periodic payments during the draw period and any repayment period; and

(3) The annual percentage rate used to calculate the example payments remains the same during the draw period and any repayment period. The creditor must provide the minimum periodic payment example based on the annual percentage rate for the plan, as described in paragraph (c)(2) of this section, except that if an introductory annual percentage rate applies, the creditor must use the rate that will apply to the plan after the introductory rate expires.

(B) If the credit contract provides for a balloon payment under the plan as permitted under paragraph (d)(1) of this section, a disclosure of that fact and an example showing the amount of the balloon payment based on the assumptions described in paragraph (c)(3)(ii)(A) of this section.

(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 a substantially similar statement.

(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.

(4) *Variable-rate.* For variable-rate transactions, a statement that the interest rate and monthly payment may increase, and the amount of the single maximum monthly payment, based

on the maximum interest rate required to be ~~disclosed under § 1026.30~~included in the contract by § 1026.30.²⁹

(5) *Amount borrowed*~~;~~ credit limit.³⁰

(i) For a ~~mortgage refinancing~~ closed-end credit transaction, the total amount the consumer will borrow, as reflected by the face amount of the note;~~and where~~. Where the amount borrowed includes ~~premiums or other charges for optional credit insurance or debt cancellation coverage~~financed charges that are not prohibited under § 1026.34(a)(10), that fact shall be stated, grouped together with the disclosure of the amount borrowed. The disclosure of the amount borrowed shall be treated as accurate if it is not more than \$100 above or below the amount required to be disclosed.

(ii) For an open-end credit plan, the credit limit for the plan when the account is opened.

(d) *Limitations*. A high-cost mortgage ~~transaction subject to this section~~ shall not include the following terms:³¹

(1)(i) *Balloon payment*. ~~For a loan with a term of less than five years~~Except as provided by paragraphs (d)(1)(ii) and (iii) of this section, a payment schedule with a payment that is more than two times a regular periodic ~~payments that when aggregated do not fully amortize the outstanding principal balance~~payment.

(ii) ~~Exception~~Exceptions. The limitations in paragraph (d)(1)(i) of this section do not apply to ~~loans with maturities of less than one year~~.

(A) A mortgage transaction with a payment schedule that is adjusted to the seasonal or irregular income of the consumer;

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

(C) A loan that meets the criteria set forth in §§ 1026.43(f)(1)(i) through (vi) and 1026.43(f)(2).

(iii) Open-end credit plans. If the terms of an open-end credit plan provide for a repayment period during which no further draws may be taken, the limitations in paragraph (d)(1)(i) of this section do not apply to any adjustment in the regular periodic payment that results solely from the credit plan’s transition from the draw period to the repayment period. If the terms

²⁹ Paragraph (c)(4) is effective Jan. 10, 2014. 78 Fed. Reg. 6856 (Jan. 31, 2013).

³⁰ Paragraph (c)(5) is effective Jan. 10, 2014. 78 Fed. Reg. 6856 (Jan. 31, 2013).

³¹ The introductory text to paragraph (d)(1) and paragraph (d)(1) are effective Jan. 10, 2014. 78 Fed. Reg. 6856 (Jan. 31, 2013).

of an open-end credit plan do not provide for any repayment period, the limitations in paragraph (d)(1)(i) of this section apply to all periods of the credit plan.

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

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

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

(5) *Rebates.* A refund calculated by a method less favorable than the actuarial method (as defined by section 933(d) of the Housing and Community Development Act of 1992, 15 U.S.C. 1615(d)), for rebates of interest arising from a loan acceleration due to default.

(6) *Prepayment penalties.* ~~Except as allowed under paragraph (d)(7) of this section, a penalty for paying all or part of the principal before the date on which the principal is due. A prepayment penalty includes computing a refund of unearned interest by a method that is less favorable to the consumer than the actuarial method, as defined by section 933(d) of the Housing and Community Development Act of 1992, 15 U.S.C. 1615(d).~~ A prepayment penalty, as defined in paragraph (b)(6) of this section.³²

(7) *Prepayment penalty exception.* ~~A mortgage transaction subject to this section may provide for a prepayment penalty (including a refund calculated according to the rule of 78s) otherwise permitted by law if, under the terms of the loan:~~ [Reserved.]³³

~~—————(i) The penalty will not apply after the two-year period following consummation;~~

~~—————(ii) The penalty will not apply if the source of the prepayment funds is a refinancing by the creditor or an affiliate of the creditor;~~

~~—————(iii) At consummation, the consumer's total monthly debt payments (including amounts owed under the mortgage) do not exceed 50 percent of the consumer's monthly gross income, as verified in accordance with § 1026.34(a)(4)(ii); and~~

~~—————(iv) The amount of the periodic payment of principal or interest or both may not change during the four-year period following consummation.~~

(8) ~~*Due-on-demand clause*~~ *Acceleration of debt.* A demand feature that permits the creditor to ~~terminate the loan~~ accelerate the indebtedness by terminating the high-cost mortgage in advance of the original maturity date and to demand repayment of the entire outstanding balance, except in the following circumstances:³⁴

³² Paragraph (d)(6) is effective Jan. 10, 2014. 78 Fed. Reg. 6856 (Jan. 31, 2013).

³³ Paragraph (d)(7) is effective Jan. 10, 2014. 78 Fed. Reg. 6856 (Jan. 31, 2013).

³⁴ Paragraph (d)(8) is effective Jan. 10, 2014. 78 Fed. Reg. 6856 (Jan. 31, 2013).

(i) There is fraud or material misrepresentation by the consumer in connection with the loan [or open-end credit agreement](#);

(ii) The consumer fails to meet the repayment terms of the agreement for any outstanding balance [that results in a default in payment under the loan](#); or

(iii) There is any action or inaction by the consumer that adversely affects the creditor's security for the loan, or any right of the creditor in such security.

[60 Fed. Reg. 29,969 (June 7, 1995); 66 Fed. Reg. 65,617 (Dec. 20, 2001); 73 Fed. Reg. 44,603 (July 30, 2008); 76 Fed. Reg. 79,772 (Dec. 22, 2011); [78 Fed. Reg. 6856 \(Jan. 31, 2013\)](#); [78 Fed. Reg. 35,430 \(June 12, 2013\)](#)]

SECTION 1026.33 Requirements for Reverse Mortgages [§ 226.33]

(a) *Definition.* For purposes of this subpart, *reverse mortgage transaction* means a nonrecourse consumer credit obligation in which:

(1) A mortgage, deed of trust, or equivalent consensual security interest securing one or more advances is created in the consumer's principal dwelling; and

(2) Any principal, interest, or shared appreciation or equity is due and payable (other than in the case of default) only after:

(i) The consumer dies;

(ii) The dwelling is transferred; or

(iii) The consumer ceases to occupy the dwelling as a principal dwelling.

(b) *Content of disclosures.* In addition to other disclosures required by this part, in a reverse mortgage transaction the creditor shall provide the following disclosures in a form substantially similar to the model form found in paragraph (d) of Appendix K of this part:

(1) *Notice.* A statement that the consumer is not obligated to complete the reverse mortgage transaction merely because the consumer has received the disclosures required by this section or has signed an application for a reverse mortgage loan.

(2) *Total annual loan cost rates.* A good-faith projection of the total cost of the credit, determined in accordance with paragraph (c) of this section and expressed as a table of "*total annual loan cost rates*," using that term, in accordance with Appendix K of this part.

(3) *Itemization of pertinent information.* An itemization of loan terms, charges, the age of the youngest borrower and the appraised property value.

(4) *Explanation of table.* An explanation of the table of total annual loan cost rates as provided in the model form found in paragraph (d) of Appendix K of this part.

(c) *Projected total cost of credit.* The projected total cost of credit shall reflect the following factors, as applicable:

(1) *Costs to consumer.* All costs and charges to the consumer, including the costs of any annuity the consumer purchases as part of the reverse mortgage transaction.

(2) *Payments to consumer.* All advances to and for the benefit of the consumer, including annuity payments that the consumer will receive from an annuity that the consumer purchases as part of the reverse mortgage transaction.

(3) *Additional creditor compensation.* Any shared appreciation or equity in the dwelling that the creditor is entitled by contract to receive.

(4) *Limitations on consumer liability.* Any limitation on the consumer's liability (such as nonrecourse limits and equity conservation agreements).

(5) *Assumed annual appreciation rates.* Each of the following assumed annual appreciation rates for the dwelling:

(i) 0 percent.

(ii) 4 percent.

(iii) 8 percent.

(6) *Assumed loan period.*

(i) Each of the following assumed loan periods, as provided in Appendix L of this part:

(A) Two years.

(B) The actuarial life expectancy of the consumer to become obligated on the reverse mortgage transaction (as of that consumer's most recent birthday). In the case of multiple consumers, the period shall be the actuarial life expectancy of the youngest consumer (as of that consumer's most recent birthday).

(C) The actuarial life expectancy specified by paragraph (c)(6)(i)(B) of this section, multiplied by a factor of 1.4 and rounded to the nearest full year.

(ii) At the creditor's option, the actuarial life expectancy specified by paragraph (c)(6)(i)(B) of this section, multiplied by a factor of .5 and rounded to the nearest full year.

[76 Fed. Reg. 79,772 (Dec. 22, 2011)]

SECTION 1026.34 Prohibited Acts or Practices in Connection with High-Cost Mortgages ~~§ 226.34~~³⁵

(a) *Prohibited acts or practices for high-cost mortgages.* ~~A creditor extending mortgage credit subject to § 1026.32 shall not:~~

(1) *Home improvement contracts.* ~~Pay~~ A creditor shall not pay a contractor under a home improvement contract from the proceeds of a high-cost mortgage ~~covered by § 1026.32,~~ other than:

(i) By an instrument payable to the consumer or jointly to the consumer and the contractor; or

(ii) At the election of the consumer, through a third-party escrow agent in accordance with terms established in a written agreement signed by the consumer, the creditor, and the contractor prior to the disbursement.

(2) *Notice to assignee.* ~~Sell~~ A creditor may not sell or otherwise assign a high-cost mortgage ~~subject to § 1026.32~~ without furnishing the following statement to the purchaser or assignee: “Notice: This is a mortgage subject to special rules under the Federal Truth in Lending Act. Purchasers or assignees of this mortgage could be liable for all claims and defenses with respect to the mortgage that the ~~borrower~~consumer could assert against the creditor.”

(3) *Refinancings within one-year period.* Within one year of having extended ~~credit subject to § 1026.32,~~ a high-cost mortgage, a creditor shall not refinance any ~~loan subject to § 1026.32~~ high-cost mortgage to the same ~~borrower~~consumer into another ~~loan subject to § 1026.32,~~ high-cost mortgage, unless the refinancing is in the ~~borrower's~~consumer's interest. An assignee holding or servicing ~~an extension of a~~ high-cost mortgage ~~credit subject to § 1026.32,~~ shall not, for the remainder of the one-year period following the date of origination of the credit, refinance any ~~loan subject to § 1026.32~~ high-cost mortgage to the same ~~borrower~~consumer into another ~~loan subject to § 1026.32,~~ high-cost mortgage, unless the refinancing is in the ~~borrower's~~consumer's interest. A creditor (or assignee) is prohibited from engaging in acts or practices to evade this provision, including a pattern or practice of arranging for the refinancing of its own loans by affiliated or unaffiliated creditors, ~~or modifying a loan agreement (whether or not the existing loan is satisfied and replaced by the new loan) and charging a fee.~~

(4) *Repayment ability.* ~~Extend credit subject to § 1026.32 to a consumer based on the value of the consumer's collateral~~ for high-cost mortgages. In connection with an open-end, high-cost mortgage, a creditor shall not open a plan for a consumer where credit is or will be extended without regard to the consumer's² repayment ability as of consummation account opening, including the consumer's² current and reasonably expected income, employment, assets other than the collateral, and current obligations, ~~and~~ including any mortgage-related obligations.

³⁵ Section 1026.34 is effective Jan. 10, 2014. 78 Fed. Reg. 6856 (Jan. 31, 2013).

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. The requirements set forth in § 1026.34(a)(4)(i) through (iv) apply to open-end high-cost mortgages, but do not apply to closed-end high-cost mortgages. In connection with a closed-end, high-cost mortgage, a creditor must comply with the repayment ability requirements set forth in § 1026.43. Temporary or “bridge” loans with terms of twelve months or less, such as a loan to purchase a new dwelling where the consumer plans to sell a current dwelling within twelve months, are exempt from this repayment ability requirement.

(i) *Mortgage-related obligations.* For purposes of this paragraph (a)(4), mortgage-related obligations are ~~expected property taxes, premiums for mortgage-related insurance~~ property taxes; premiums and similar charges identified in § 1026.4(b)(5), (7), (8), and (10) that are required by the creditor as set forth in § 1026.35(b)(3)(i), and similar expenses; fees and special assessments imposed by a condominium, cooperative, or homeowners association; ground rent; and leasehold payments.

(ii) ~~Verification~~ Basis for determination of repayment ability. Under this paragraph (a)(4) a creditor must ~~verify~~ determine the consumer's repayment ability in connection with an open-end, high cost mortgage as follows:

(A) A creditor must verify amounts of income or assets that it relies on to determine repayment ability, including expected income or assets, by the consumer's Internal Revenue Service Form W-2, tax returns, payroll receipts, financial institution records, or other third-party documents that provide reasonably reliable evidence of the consumer's income or assets.

(B) ~~Notwithstanding paragraph (a)(4)(ii)(A), a creditor has not violated paragraph (a)(4)(ii) if the amounts of income and assets that the creditor relied upon in determining repayment ability are not materially greater than the amounts of the consumer's income or assets that the creditor could have verified pursuant to paragraph (a)(4)(ii)(A) at the time the loan was consummated. A creditor must verify 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 are secured by the same dwelling that secures the high-cost mortgage transaction.~~

~~(C) A creditor must verify the consumer's current obligations:~~

(iii) *Presumption of compliance.* ~~A~~ For an open-end, high cost mortgage, a creditor is presumed to have complied with this paragraph (a)(4) with respect to a transaction if the creditor:

(A) ~~Verifies~~ Determines the consumer's repayment ability as provided in paragraph (a)(4)(ii);

(B) Determines the consumer's repayment ability ~~using the largest payment of principal and interest scheduled in the first seven years following consummation and~~

taking into account current obligations and mortgage-related obligations as defined in paragraph (a)(4)(i); ~~and~~ of this section, and using the largest required minimum periodic payment based on the following assumptions:

(1) The consumer borrows the full credit line at account opening with no additional extensions of credit;

(2) The consumer makes only required minimum periodic payments during the draw period and any repayment period;

(3) If the annual percentage rate may increase during the plan, the maximum annual percentage rate that is included in the contract, as required by § 1026.30, applies to the plan at account opening and will apply during the draw period and any repayment period.

(C) Assesses the consumer's repayment ability taking into account at least one of the following: The ratio of total ~~debt obligations~~ current obligations, 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, to income, or the income the consumer will have after paying ~~debt~~ current obligations.

(iv) *Exclusions from presumption of compliance.* Notwithstanding the previous paragraph, no presumption of compliance is available for ~~a~~ an open-end, high-cost mortgage transaction for which:

~~(A) The regular periodic payments for the first seven years would cause the principal balance to increase; or (B) The term of the loan is less than seven years and~~ the regular periodic payments when aggregated do not fully amortize the outstanding principal balance except as otherwise provided by § 1026.32(d)(1)(ii).

(5) Pre-loan counseling. (i) Certification of counseling required. A creditor shall not extend a high-cost mortgage to a consumer unless the creditor receives written certification that the consumer has obtained counseling on the advisability of the mortgage from a counselor that is approved to provide such counseling by the Secretary of the U.S. Department of Housing and Urban Development or, if permitted by the Secretary, by a State housing finance authority.

(ii) Timing of counseling. The counseling required under this paragraph (a)(5) must occur after the consumer receives either the good faith estimate required by section 5(c) of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2604(c)) or the disclosures required by § 1026.40.

(iii) Affiliation prohibited. The counseling required under this paragraph (a)(5) shall not be provided by a counselor who is employed by or affiliated with the creditor.

(iv) *Content of certification.* The certification of counseling required under paragraph (a)(5)(i) must include:

(A) The name(s) of the consumer(s) who obtained counseling;

(B) The date(s) of counseling;

(C) The name and address of the counselor;

(D) A statement that the consumer(s) received counseling on the advisability of the high-cost mortgage based on the terms provided in either the good faith estimate required by section 5(c) of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2604(c)) or the disclosures required by § 1026.40; and

(E) A statement that the counselor has verified that the consumer(s) received the disclosures required by either § 1026.32(c) or the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2601 *et seq.*) with respect to the transaction.

(v) *Exemption.* ~~This paragraph (a)(4) does not apply to temporary or “bridge” loans with terms of twelve months or less, such as a loan to purchase a new dwelling where the consumer plans to sell a current dwelling within twelve months.~~ *Counseling fees.* A creditor may pay the fees of a counselor or counseling organization for providing counseling required under this paragraph (a)(5) but may not condition the payment of such fees on the consummation or account-opening of a mortgage transaction. If the consumer withdraws the application that would result in the extension of a high-cost mortgage, a creditor may not condition the payment of such fees on the receipt of certification from the counselor required by paragraph (a)(5)(i) of this section. A creditor may, however, confirm that a counselor has provided counseling to the consumer pursuant to this paragraph (a)(5) prior to paying the fee of a counselor or counseling organization.

(vi) *Steering prohibited.* A creditor that extends a high-cost mortgage shall not steer or otherwise direct a consumer to choose a particular counselor or counseling organization for the counseling required under this paragraph (a)(5).

(6) *Recommended default.* A creditor or mortgage broker, as defined in section 1026.36(a)(2), may not recommend or encourage default on an existing loan or other debt prior to and in connection with the consummation or account opening of a high-cost mortgage that refinances all or any portion of such existing loan or debt.

(7) *Modification and deferral fees.* A creditor, successor-in-interest, assignee, or any agent of such parties may not charge a consumer any fee to modify, renew, extend or amend a high-cost mortgage, or to defer any payment due under the terms of such mortgage.

(8) *Late fees.* (i) *General.* Any late payment charge imposed in connection with a high-cost mortgage must be specifically permitted by the terms of the loan contract or open-end credit

agreement and may not exceed 4 percent of the amount of the payment past due. No such charge may be imposed more than once for a single late payment.

(ii) *Timing.* A late payment charge may be imposed in connection with a high-cost mortgage only if the payment is not received by the end of the 15-day period beginning on the date the payment is due or, in the case of a high-cost mortgage on which interest on each installment is paid in advance, the end of the 30-day period beginning on the date the payment is due.

(iii) *Multiple late charges assessed on payment subsequently paid.* A late payment charge may not be imposed in connection with a high-cost mortgage payment if any delinquency is attributable only to a late payment charge imposed on an earlier payment, and the payment otherwise is a full payment for the applicable period and is paid by the due date or within any applicable grace period.

(iv) *Failure to make required payment.* The terms of a high-cost mortgage agreement may provide that any payment shall first be applied to any past due balance. If the consumer fails to make a timely payment by the due date and subsequently resumes making payments but has not paid all past due payments, the creditor may impose a separate late payment charge for any payment(s) outstanding (without deduction due to late fees or related fees) until the default is cured.

(9) *Payoff statements.* (i) *Fee prohibition.* In general, a creditor or servicer (as defined in 12 CFR 1024.2(b)) may not charge a fee for providing to a consumer, or a person authorized by the consumer to obtain such information, a statement of the amount due to pay off the outstanding balance of a high-cost mortgage.

(ii) *Processing fee.* A creditor or servicer may charge a processing fee to cover the cost of providing a payoff statement, as described in paragraph (a)(9)(i) of this section, by fax or courier, provided that such fee may not exceed an amount that is comparable to fees imposed for similar services provided in connection with consumer credit transactions that are secured by the consumer's principal dwelling and are not high-cost mortgages. A creditor or servicer shall make a payoff statement available to a consumer, or a person authorized by the consumer to obtain such information, by a method other than by fax or courier and without charge pursuant to paragraph (a)(9)(i) of this section.

(iii) *Processing fee disclosure.* Prior to charging a processing fee for provision of a payoff statement by fax or courier, as permitted pursuant to paragraph (a)(9)(ii) of this section, a creditor or servicer shall disclose to a consumer or a person authorized by the consumer to obtain the consumer's payoff statement that payoff statements, as described in paragraph (a)(9)(i) of this section, are available by a method other than by fax or courier without charge.

(iv) *Fees permitted after multiple requests.* A creditor or servicer that has provided a payoff statement, as described in paragraph (a)(9)(i) of this section, to a consumer, or a person authorized by the consumer to obtain such information, without charge, other than the processing fee permitted under paragraph (a)(9)(ii) of this section, four times during a calendar

year, may thereafter charge a reasonable fee for providing such statements during the remainder of the calendar year. Fees for payoff statements provided to a consumer, or a person authorized by the consumer to obtain such information, in a subsequent calendar year are subject to the requirements of this section.

(v) Timing of delivery of payoff statements. A payoff statement, as described in paragraph (a)(9)(i) of this section, for a high-cost mortgage shall be provided by a creditor or servicer within five business days after receiving a request for such statement by a consumer or a person authorized by the consumer to obtain such statement.

(10) Financing of points and fees. A creditor that extends credit under a high-cost mortgage may not finance charges that are required to be included in the calculation of points and fees, as that term is defined in § 1026.32(b)(1) and (2). Credit insurance premiums or debt cancellation or suspension fees that are required to be included in points and fees under § 1026.32(b)(1)(iv) or (2)(iv) shall not be considered financed by the creditor when they are calculated and paid in full on a monthly basis.

(b) Prohibited acts or practices for dwelling-secured loans; ~~open-end credit. In connection with credit secured by the consumer's dwelling that does not meet the definition in § 1026.2(a)(20), a structuring loans to evade high-cost mortgage requirements.~~ A creditor shall not structure a home-secured loan as an open-end planany transaction that is otherwise a high-cost mortgage in a form, for the purpose, and with the intent to evade the requirements of § 1026.32; a high-cost mortgage subject to this subpart, including by dividing any loan transaction into separate parts.

[66 Fed. Reg. 65,618 (Dec. 20, 2001); 73 Fed. Reg. 44,603 (July 30, 2008); 76 Fed. Reg. 79,772 (Dec. 22, 2011); 78 Fed. Reg. 6856 (Jan. 31, 2013); 78 Fed. Reg. 30,745 (May 23, 2013)]

SECTION 1026.35 ~~Prohibited Acts or Practices in Connection with~~ Requirements for Higher-Priced Mortgage Loans ~~§ 226.35~~³⁶

(a) ~~Higher-priced mortgage loans~~ Definitions. — (1) For purposes of this section, ~~except as provided in paragraph (b)(3)(v) of this section, a higher:~~³⁷

(1) “Higher-priced mortgage loan ~~is a~~” means a closed-end consumer credit transaction secured by the consumer's principal dwelling with an annual percentage rate that exceeds the average prime offer rate for a comparable transaction as of the date the interest rate is set ~~by:~~

(i) By 1.5 or more percentage points ~~for loans, for a loan~~ secured by a first lien ~~on a dwelling, or by~~ with a principal obligation at consummation that does not exceed the limit in effect as of the date the transaction's interest rate is set for the maximum principal obligation eligible for purchase by Freddie Mac;

³⁶ Section 1026.35 is effective June 1, 2013. 78 Fed. Reg. 4726 (Jan. 22, 2013).

³⁷ The introductory text to paragraph (a) and paragraph (a)(1) are effective Jan. 18, 2014. 78 Fed. Reg. 10,442 (Feb. 13, 2013).

(ii) By 2.5 or more percentage points, for a loan secured by a first lien with a principal obligation at consummation that exceeds the limit in effect as of the date the transaction's interest rate is set for the maximum principal obligation eligible for purchase by Freddie Mac; or

(iii) By 3.5 or more percentage points, for ~~loans~~a loan secured by a subordinate lien ~~on a dwelling~~.

(2) "Average prime offer rate" means an annual percentage rate that is derived from average interest rates, points, and other loan pricing terms currently offered to consumers by a representative sample of creditors for mortgage transactions that have low-risk pricing characteristics. The Bureau publishes average prime offer rates for a broad range of types of transactions in a table updated at least weekly as well as the methodology the Bureau uses to derive these rates.

~~(3) Notwithstanding paragraph (a)(1) of this section, the term "higher-priced mortgage loan" does not include a transaction to finance the initial construction of a dwelling, a temporary or "bridge" loan with a term of twelve months or less, such as a loan to purchase a new dwelling where the consumer plans to sell a current dwelling within twelve months, a reverse mortgage transaction subject to § 1026.33, or a home equity line of credit subject to § 1026.40.~~

~~(b) Rules for higher-priced mortgage loans. Higher-priced mortgage loans are subject to the following restrictions:~~Escrow accounts.

(1) Requirement to escrow for property taxes and insurance. Except as provided in paragraph (b)(2) of this section, a creditor may not extend a higher-priced mortgage loan secured by a first lien on a consumer's principal dwelling unless an escrow account is established before consummation for payment of property taxes and premiums for mortgage-related insurance required by the creditor, such as insurance against loss of or damage to property, or against liability arising out of the ownership or use of the property, or insurance protecting the creditor against the consumer's default or other credit loss. For purposes of this paragraph (b), the term "escrow account" has the same meaning as under Regulation X (12 CFR 1024.17(b)), as amended.³⁸

(2) Exemptions. Notwithstanding paragraph (b)(1) of this section:

(i) An escrow account need not be established for:

(A) A transaction secured by shares in a cooperative;

(B) A transaction to finance the initial construction of a dwelling;

³⁸ The last sentence of paragraph (b)(1) is amended and effective June 1, 2013. 78 Fed. Reg. 30,739 (May 23, 2013).

(C) A temporary or “bridge” loan with a loan term of twelve months or less, such as a loan to purchase a new dwelling where the consumer plans to sell a current dwelling within twelve months; or

(D) A reverse mortgage transaction subject to § 1026.33(c).

(ii) Insurance premiums described in paragraph (b)(1) of this section need not be included in escrow accounts for loans secured by dwellings in condominiums, planned unit developments, or other common interest communities in which dwelling ownership requires participation in a governing association, where the governing association has an obligation to the dwelling owners to maintain a master policy insuring all dwellings.

(iii) Except as provided in paragraph (b)(2)(v) of this section, an escrow account need not be established for a transaction if, at the time of consummation:

During the preceding calendar year, the creditor extended more than 50 percent of its total covered transactions, as defined by § 1026.43(b)(1), secured by a first lien, on properties that are located in counties that are either “rural” or “underserved,” as set forth in paragraph (b)(2)(iv) of this section;³⁹

(B) During the preceding calendar year, the creditor and its affiliates together originated 500 or fewer covered transactions, as defined by § 1026.43(b)(1), secured by a first lien; and

(C) As of the end of the preceding calendar year, the creditor had total assets of less than \$2,000,000,000; this asset threshold shall adjust automatically each year, based on the year-to-year change in the average of the Consumer Price Index for Urban Wage Earners and Clerical Workers, not seasonally adjusted, for each 12-month period ending in November, with rounding to the nearest million dollars (see comment 35(b)(2)(iii)-1.iii for the current threshold); and

(D) Neither the creditor nor its affiliate maintains an escrow account of the type described in paragraph (b)(1) of this section for any extension of consumer credit secured by real property or a dwelling that the creditor or its affiliate currently services, other than:

(1) Escrow accounts established for first-lien higher-priced mortgage loans on or after April 1, 2010, and before June 1, 2013; or

(2) Escrow accounts established after consummation as an accommodation to distressed consumers to assist such consumers in avoiding default or foreclosure.

(iv) For purposes of paragraph (b)(2)(iii)(A) of this section:

³⁹ Paragraph (b)(2)(iii)(A) is amended and effective June 1, 2013. 78 Fed. Reg. 30,739 (May 23, 2013).

A county is “rural” during a calendar year if it is neither in a metropolitan statistical area nor in a micropolitan statistical area that is adjacent to a metropolitan statistical area, as those terms are defined by the U.S. Office of Management and Budget and as they are applied under currently applicable Urban Influence Codes (UICs), established by the United States Department of Agriculture's Economic Research Service (USDA-ERS). A creditor may rely as a safe harbor on the list of counties published by the Bureau to determine whether a county qualifies as “rural” for a particular calendar year.⁴⁰

(B) A county is “underserved” during a calendar year if, according to Home Mortgage Disclosure Act (HMDA) data for the preceding calendar year, no more than two creditors extended covered transactions, as defined in § 1026.43(b)(1), secured by a first lien, five or more times in the county. A creditor may rely as a safe harbor on the list of counties published by the Bureau to determine whether a county qualifies as “underserved” for a particular calendar year.⁴¹

(v) Notwithstanding paragraph (b)(2)(iii) of this section, an escrow account must be established pursuant to paragraph (b)(1) of this section for any first-lien higher-priced mortgage loan that, at consummation, is subject to a commitment to be acquired by a person that does not satisfy the conditions in paragraph (b)(2)(iii) of this section, unless otherwise exempted by this paragraph (b)(2).

(3) Cancellation.

(i) General. Except as provided in paragraph (b)(3)(ii) of this section, a creditor or servicer may cancel an escrow account required in paragraph (b)(1) of this section only upon the earlier of:

(A) Termination of the underlying debt obligation; or

(B) Receipt no earlier than five years after consummation of a consumer's request to cancel the escrow account.

(ii) Delayed cancellation. Notwithstanding paragraph (b)(3)(i) of this section, a creditor or servicer shall not cancel an escrow account pursuant to a consumer's request described in paragraph (b)(3)(i)(B) of this section unless the following conditions are satisfied:

(A) The unpaid principal balance is less than 80 percent of the original value of the property securing the underlying debt obligation; and

(B) The consumer currently is not delinquent or in default on the underlying debt obligation.

(c) Appraisals for higher-priced mortgage loans.⁴²

⁰⁴⁰ Paragraph (b)(iv)(A) is amended and effective June 1, 2013. 78 Fed. Reg. 30,739 (May 23, 2013).

¹⁴¹ Paragraph (b)(iv)(B) is amended and effective June 1, 2013. 78 Fed. Reg. 30,739 (May 23, 2013).

²⁴² Paragraph (c) is effective Jan. 18, 2014. 78 Fed. Reg. 10,442 (Feb. 13, 2013).

(1) Definitions. For purposes of this section:

(i) *Certified or licensed appraiser* means a person who is certified or licensed by the State agency in the State in which the property that secures the transaction is located, and who performs the appraisal in conformity with the Uniform Standards of Professional Appraisal Practice and the requirements applicable to appraisers in title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended (12 U.S.C. 3331 *et seq.*), and any implementing regulations in effect at the time the appraiser signs the appraiser's certification.

(ii) *Manufactured home* has the same meaning as in 24 CFR 3280.2 .

(iii) *National Registry* means the database of information about State certified and licensed appraisers maintained by the Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

(iv) *State agency* means a “State appraiser certifying and licensing agency” recognized in accordance with section 1118(b) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3347(b)) and any implementing regulations.

(2) *Exemptions.* The requirements in paragraphs (c)(3) through (6) of this section do not apply to the following types of transactions:

(i) A qualified mortgage as defined in 12 CFR 1026.43(e).

(ii) A transaction secured by a new manufactured home.

(iii) A transaction secured by a mobile home, boat, or trailer.

(iv) A transaction to finance the initial construction of a dwelling.

(v) A loan with maturity of 12 months or less, if the purpose of the loan is a “bridge” loan connected with the acquisition of a dwelling intended to become the consumer's principal dwelling.

(vi) A reverse-mortgage transaction subject to 12 CFR 1026.33(a).

(3) *Appraisals required.*

(i) *In general.* Except as provided in paragraph (c)(2) of this section, a creditor shall not extend a higher-priced mortgage loan to a consumer without obtaining, prior to consummation, a written appraisal of the property to be mortgaged. The appraisal must be performed by a certified or licensed appraiser who conducts a physical visit of the interior of the property that will secure the transaction.

(ii) *Safe harbor.* A creditor obtains a written appraisal that meets the requirements for an appraisal required under paragraph (c)(3)(i) of this section if the creditor:

(A) Orders that the appraiser perform the appraisal in conformity with the Uniform Standards of Professional Appraisal Practice and title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended (12 U.S.C. 3331 *et seq.*), and any implementing regulations in effect at the time the appraiser signs the appraiser's certification;

(B) Verifies through the National Registry that the appraiser who signed the appraiser's certification was a certified or licensed appraiser in the State in which the appraised property is located as of the date the appraiser signed the appraiser's certification;

(C) Confirms that the elements set forth in appendix N to this part are addressed in the written appraisal; and

(D) Has no actual knowledge contrary to the facts or certifications contained in the written appraisal.

(4) *Additional appraisal for certain higher-priced mortgage loans.*

(i) *In general.* Except as provided in paragraphs (c)(2) and (c)(4)(vii) of this section, a creditor shall not extend a higher-priced mortgage loan to a consumer to finance the acquisition of the consumer's principal dwelling without obtaining, prior to consummation, two written appraisals, if:

(A) The seller acquired the property 90 or fewer days prior to the date of the consumer's agreement to acquire the property and the price in the consumer's agreement to acquire the property exceeds the seller's acquisition price by more than 10 percent; or

(B) The seller acquired the property 91 to 180 days prior to the date of the consumer's agreement to acquire the property and the price in the consumer's agreement to acquire the property exceeds the seller's acquisition price by more than 20 percent.

(ii) *Different certified or licensed appraisers.* The two appraisals required under paragraph (c)(4)(i) of this section may not be performed by the same certified or licensed appraiser.

(iii) *Relationship to general appraisal requirements.* If two appraisals must be obtained under paragraph (c)(4)(i) of this section, each appraisal shall meet the requirements of paragraph (c)(3)(i) of this section.

(iv) *Required analysis in the additional appraisal.* One of the two required appraisals must include an analysis of:

(A) The difference between the price at which the seller acquired the property and the price that the consumer is obligated to pay to acquire the property, as specified in the consumer's agreement to acquire the property from the seller;

(B) Changes in market conditions between the date the seller acquired the property and the date of the consumer's agreement to acquire the property; and

(C) Any improvements made to the property between the date the seller acquired the property and the date of the consumer's agreement to acquire the property.

(v) *No charge for the additional appraisal.* If the creditor must obtain two appraisals under paragraph (c)(4)(i) of this section, the creditor may charge the consumer for only one of the appraisals.

(vi) *Creditor's determination of prior sale date and price.*

(A) *Reasonable diligence.* A creditor must obtain two written appraisals under paragraph (c)(4)(i) of this section unless the creditor can demonstrate by exercising reasonable diligence that the requirement to obtain two appraisals does not apply. A creditor acts with reasonable diligence if the creditor bases its determination on information contained in written source documents, such as the documents listed in Appendix O to this part.

(B) *Inability to determine prior sale date or price--modified requirements for additional appraisal.* If, after exercising reasonable diligence, a creditor cannot determine whether the conditions in paragraphs (c)(4)(i)(A) and (c)(4)(i)(B) are present and therefore must obtain two written appraisals in accordance with paragraphs (c)(4)(i) through (v) of this section, one of the two appraisals shall include an analysis of the factors in paragraph (c)(4)(iv) of this section only to the extent that the information necessary for the appraiser to perform the analysis can be determined.

(vii) *Exemptions from the additional appraisal requirement.* The additional appraisal required under paragraph (c)(4)(i) of this section shall not apply to extensions of credit that finance a consumer's acquisition of property:

(A) From a local, State or Federal government agency;

(B) From a person who acquired title to the property through foreclosure, deed-in-lieu of foreclosure, or other similar judicial or non-judicial procedure as a result of the person's exercise of rights as the holder of a defaulted mortgage loan;

(C) From a non-profit entity as part of a local, State, or Federal government program under which the non-profit entity is permitted to acquire title to single-family properties for resale from a seller who acquired title to the property through the process of foreclosure, deed-in-lieu of foreclosure, or other similar judicial or non-judicial procedure;

(D) From a person who acquired title to the property by inheritance or pursuant to a court order of dissolution of marriage, civil union, or domestic partnership, or of partition of joint or marital assets to which the seller was a party;

(E) From an employer or relocation agency in connection with the relocation of an employee;

(F) From a servicemember, as defined in 50 U.S.C. App. 511(1), who received a deployment or permanent change of station order after the servicemember purchased the property;

(G) Located in an area designated by the President as a federal disaster area, if and for as long as the Federal financial institutions regulatory agencies, as defined in 12 U.S.C. 3350(6), waive the requirements in title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended (12 U.S.C. 3331 *et seq.*), and any implementing regulations in that area; or

(H) Located in a rural county, as defined in 12 CFR 1026.35(b)(2)(iv)(A).

(5) *Required disclosure.*

(i) *In general.* Except as provided in paragraph (c)(2) of this section, a creditor shall disclose the following statement, in writing, to a consumer who applies for a higher-priced mortgage loan: “We may order an appraisal to determine the property’s value and charge you for this appraisal. We will give you a copy of any appraisal, even if your loan does not close. You can pay for an additional appraisal for your own use at your own cost.” Compliance with the disclosure requirement in Regulation B, 12 CFR 1002.14(a)(2), satisfies the requirements of this paragraph.

(ii) *Timing of disclosure.* The disclosure required by paragraph (c)(5)(i) of this section shall be delivered or placed in the mail no later than the third business day after the creditor receives the consumer’s application for a higher-priced mortgage loan subject to paragraph (c) of this section. In the case of a loan that is not a higher-priced mortgage loan subject to paragraph (c) of this section at the time of application, but becomes a higher-priced mortgage loan subject to paragraph (c) of this section after application, the disclosure shall be delivered or placed in the mail not later than the third business day after the creditor determines that the loan is a higher-priced mortgage loan subject to paragraph (c) of this section.

(6) *Copy of appraisals.*

(i) *In general.* Except as provided in paragraph (c)(2) of this section, a creditor shall provide to the consumer a copy of any written appraisal performed in connection with a higher-priced mortgage loan pursuant to paragraphs (c)(3) and (c)(4) of this section.

(ii) *Timing.* A creditor shall provide to the consumer a copy of each written appraisal pursuant to paragraph (c)(6)(i) of this section:

(A) No later than three business days prior to consummation of the loan; or

(B) In the case of a loan that is not consummated, no later than 30 days after the creditor determines that the loan will not be consummated.

(iii) *Form of copy.* Any copy of a written appraisal required by paragraph (c)(6)(i) of this section may be provided to the applicant in electronic form, subject to compliance with the consumer consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. 7001 *et seq.*).

(iv) *No charge for copy of appraisal.* A creditor shall not charge the consumer for a copy of a written appraisal required to be provided to the consumer pursuant to paragraph (c)(6)(i) of this section.

(7) *Relation to other rules.* The rules in this paragraph (c) were adopted jointly by the Federal Reserve Board (Board), the Office of the Comptroller of the Currency (OCC), the Federal Deposit Insurance Corporation, the National Credit Union Administration, the Federal Housing Finance Agency, and the Bureau. These rules are substantively identical to the Board's and the OCC's higher-priced mortgage loan appraisal rules published separately in 12 CFR 226.43 (for the Board) and in 12 CFR part 34, subpart G and 12 CFR part 164, subpart B (for the OCC).

(d) *Evasion; open-end credit.* In connection with credit secured by a consumer's principal dwelling that does not meet the definition of open-end credit in § 1026.2(a)(20), a creditor shall not structure a home-secured loan as an open-end plan to evade the requirements of this section.

(e) *Repayment ability, prepayment penalties.* Higher-priced mortgage loans are subject to the following restrictions:⁴³

(1) *Repayment ability.* A creditor shall not extend credit based on the value of the consumer's collateral without regard to the consumer's repayment ability as of consummation as provided in § 1026.34(a)(4).

(2) *Prepayment penalties.* A loan may not include a penalty described by § 1026.32(d)(6) unless:

(i) The penalty is otherwise permitted by law, including § 1026.32(d)(7) if the loan is a mortgage transaction described in § 1026.32(a); and

(ii) Under the terms of the loan:

³⁴³ Paragraph (e) is effective June 1, 2013. 78 Fed. Reg. 30,739 (May 23, 2013).

(A) The penalty will not apply after the two-year period following consummation;

(B) The penalty will not apply if the source of the prepayment funds is a refinancing by the creditor or an affiliate of the creditor; and

(C) The amount of the periodic payment of principal or interest or both may not change during the four-year period following consummation.

(3) ~~*Escrows.*~~ *Sunset of requirements on repayment ability and prepayment penalties.*
The requirements described in this paragraph (e) shall expire at 11:59 p.m. on January 9, 2014.

~~—————(i) *Failure to escrow for property taxes and insurance.* Except as provided in paragraph (b)(3)(ii) of this section, a creditor may not extend a loan secured by a first lien on a principal dwelling unless an escrow account is established before consummation for payment of property taxes and premiums for mortgage-related insurance required by the creditor, such as insurance against loss of or damage to property, or against liability arising out of the ownership or use of the property, or insurance protecting the creditor against the consumer's default or other credit loss.~~

~~—————(ii) *Exemptions for loans secured by shares in a cooperative and for certain condominium units.*~~

~~—————(A) Escrow accounts need not be established for loans secured by shares in a cooperative; and~~

~~—————(B) Insurance premiums described in paragraph (b)(3)(i) of this section need not be included in escrow accounts for loans secured by condominium units, where the condominium association has an obligation to the condominium unit owners to maintain a master policy insuring condominium units.~~

~~—————(iii) *Cancellation.* A creditor or servicer may permit a consumer to cancel the escrow account required in paragraph (b)(3)(i) of this section only in response to a consumer's dated written request to cancel the escrow account that is received no earlier than 365 days after consummation.~~

~~—————(iv) *Definition of escrow account.* For purposes of this section, "escrow account" shall have the same meaning as in 12 CFR 1024.17(b) as amended.~~

~~—————(v) *"Jumbo" loans.* For purposes of this § 1026.35(b)(3), for a transaction with a principal obligation at consummation that exceeds the limit in effect as of the date the transaction's interest rate is set for the maximum principal obligation eligible for purchase by Freddie Mac, the coverage threshold set forth in paragraph (a)(1) of this section for loans secured by a first lien on a dwelling shall be 2.5 or more percentage points greater than the applicable average prime offer rate.~~

~~——— (4) Evasion; open-end credit. In connection with credit secured by a consumer's principal dwelling that does not meet the definition of open-end credit in § 1026.2(a)(20), a creditor shall not structure a home-secured loan as an open-end plan to evade the requirements of this section.~~

[66 Fed. Reg. 17,339 (Mar. 30, 2001); 66 Fed. Reg. 41,440 (Aug. 8, 2001); 73 Fed. Reg. 44,603, 44,604 (July 30, 2008); 76 Fed. Reg. 11,324 (Mar. 2, 2011); 76 Fed. Reg. 79,772 (Dec. 22, 2011); 78 Fed. Reg. 4753 (Jan. 22, 2013) (effective June 1, 2013); 78 Fed. Reg. 10,442 (Feb. 13, 2013); 78 Fed. Reg. 30,745 (May 23, 2013) (effective June 1, 2013; paragraph (e) sunsets on Jan. 9, 2014)]

SECTION 1026.36 Prohibited Acts or Practices ~~in Connection with~~ Certain Requirements for Credit Secured by a Dwelling ~~§ 226.36~~⁴⁴

(a) ~~Loan originator and mortgage broker defined.~~ Definitions.⁴⁵

(1) *Loan originator.*

(i) For purposes of this section, the term “loan originator” means ~~with respect to a particular transaction, a person who for compensation or other monetary gain, or in expectation of compensation or other monetary gain, arranges, 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” includes ~~the~~ a creditor ~~only that engages in loan origination activities~~ if the creditor does not ~~provide the funds for 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. All creditors that engage in any of the foregoing loan origination activities are loan originators for purposes of paragraphs (f) and (g) of this section. The term does not include:

(A) A person who does not take a consumer credit application or offer or negotiate credit terms available from a creditor, but who performs purely administrative or clerical tasks on behalf of a person who does engage in such activities.

(B) An employee of a manufactured home retailer who does not take a consumer credit application, offer or negotiate credit terms available from a creditor, or advise a consumer on credit terms (including rates, fees, and other costs) available from a creditor.

⁴⁴ Section 1026.36 heading is effective January 10, 2014. 78 Fed. Reg. 11280 (Feb. 15, 2013).

⁴⁵ Paragraph (a) heading and paragraph (a)(1) are effective January 10, 2014. 78 Fed. Reg. 11280 (Feb. 15, 2013).

(C) A person that performs only real estate brokerage activities and is licensed or registered in accordance with applicable State law, unless such person is compensated by a creditor or loan originator or by any agent of such creditor or loan originator for a particular consumer credit transaction subject to this section.

(D) A seller financier that meets the criteria in paragraph (a)(4) or (a)(5) of this section, as applicable.

(E) A servicer or servicer's employees, agents, and contractors who offer or negotiate terms for purposes of renegotiating, modifying, replacing, or subordinating principal of existing mortgages where consumers are behind in their payments, in default, or have a reasonable likelihood of defaulting or falling behind. This exception does not apply, however, to a servicer or servicer's employees, agents, and contractors who offer or negotiate a transaction that constitutes a refinancing under § 1026.20(a) or obligates a different consumer on the existing debt.

(ii) An "individual loan originator" is a natural person who meets the definition of "loan originator" in paragraph (a)(1)(i) of this section.

(iii) A "loan originator organization" is any loan originator, as defined in paragraph (a)(1)(i) of this section, that is not an individual loan originator.

(2) *Mortgage broker.* For purposes of this section, a mortgage broker with respect to a particular transaction is any loan originator that is not an employee of the creditor.

(3) *Compensation.*⁴⁶ The term "compensation" includes salaries, commissions, and any financial or similar incentive.

(4) *Seller financiers; three properties.*⁴⁷ A person (as defined in § 1026.2(a)(22)) that meets all of the following criteria is not a loan originator under paragraph (a)(1) of this section:

(i) The person provides seller financing for the sale of three or fewer properties in any 12-month period to purchasers of such properties, each of which is owned by the person and serves as security for the financing.

(ii) The person has not constructed, or acted as a contractor for the construction of, a residence on the property in the ordinary course of business of the person.

(iii) The person provides seller financing that meets the following requirements:

(A) The financing is fully amortizing.

(B) The financing is one that the person determines in good faith the consumer has a reasonable ability to repay.

⁴⁶ Paragraph (a)(3) is effective January 10, 2014. 78 Fed. Reg. 11280 (Feb. 15, 2013).

⁴⁷ Paragraph (a)(4) is effective January 10, 2014. 78 Fed. Reg. 11280 (Feb. 15, 2013).

(C) The financing has a fixed rate or an adjustable rate that is adjustable after five or more years, subject to reasonable annual and lifetime limitations on interest rate increases. If the financing agreement has an adjustable rate, the rate is determined by the addition of a margin to an index rate and is subject to reasonable rate adjustment limitations. The index the adjustable rate is based on is a widely available index such as indices for U.S. Treasury securities or LIBOR.

(5) Seller financiers; one property.⁴⁸ A natural person, estate, or trust that meets all of the following criteria is not a loan originator under paragraph (a)(1) of this section:

(i) The natural person, estate, or trust provides seller financing for the sale of only one property in any 12-month period to purchasers of such property, which is owned by the natural person, estate, or trust and serves as security for the financing.

(ii) The natural person, estate, or trust has not constructed, or acted as a contractor for the construction of, a residence on the property in the ordinary course of business of the person.

(iii) The natural person, estate, or trust provides seller financing that meets the following requirements:

(A) The financing has a repayment schedule that does not result in negative amortization.

(B) The financing has a fixed rate or an adjustable rate that is adjustable after five or more years, subject to reasonable annual and lifetime limitations on interest rate increases. If the financing agreement has an adjustable rate, the rate is determined by the addition of a margin to an index rate and is subject to reasonable rate adjustment limitations. The index the adjustable rate is based on is a widely available index such as indices for U.S. Treasury securities or LIBOR.

(b) ~~Reserved~~ Scope.⁴⁹ Paragraph (c) of this section applies to closed-end consumer credit transactions secured by a consumer's principal dwelling. Paragraphs (d), (e), (f), (g), (h), and (i) of this section apply to closed-end consumer credit transactions secured by a dwelling. This section does not apply to a home equity line of credit subject to § 1026.40, except that paragraphs (h) and (i) of this section apply to such credit when secured by the consumer's principal dwelling. Paragraphs (d), (e), (f), (g), (h), and (i) of this section do not apply to a loan that is secured by a consumer's interest in a timeshare plan described in 11 U.S.C. 101(53D).

(c) Servicing practices.⁵⁰ For purposes of this paragraph (c), the terms “servicer” and “servicing” have the same meanings as provided in 12 CFR 1024.2(b).

⁴⁸ Paragraph (a)(5) is effective January 10, 2014. 78 Fed. Reg. 11280 (Feb. 15, 2013).

⁴⁹ Paragraph (b) is effective January 10, 2014. 78 Fed. Reg. 11280 (Feb. 15, 2013).

⁵⁰ Paragraph (c) is effective Jan. 10, 2014. 78 Fed. Reg. 10,902 (Feb. 14, 2013).

(1) Payment processing. In connection with a consumer credit transaction secured by a consumer's principal dwelling, ~~no servicer shall:~~

(i) ~~Fail~~Periodic payments. No servicer shall fail to credit a periodic payment to the consumer's loan account as of the date of receipt, except when a delay in crediting does not result in any charge to the consumer or in the reporting of negative information to a consumer reporting agency, or except as provided in paragraph (c)(~~2) of this section;~~1)(iii) of this section. A periodic payment, as used in this paragraph (c), is an amount sufficient to cover principal, interest, and escrow (if applicable) for a given billing cycle. A payment qualifies as a periodic payment even if it does not include amounts required to cover late fees, other fees, or non-escrow payments a servicer has advanced on a consumer's behalf.

(ii) ~~Impose on the consumer any late fee or delinquency charge in connection with a payment, when the only delinquency is 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; or~~Partial payments. Any servicer that retains a partial payment, meaning any payment less than a periodic payment, in a suspense or unapplied funds account shall:

~~(iii) Fail to provide, within a reasonable time after receiving a request from the consumer or any person acting on behalf of the consumer, an accurate statement of the total outstanding balance that would be required to satisfy the consumer's obligation in full as of a specified date.~~ (A) Disclose to the consumer the total amount of funds held in such suspense or unapplied funds account on the periodic statement as required by § 1026.41(d)(3), if a periodic statement is required; and

(B) On accumulation of sufficient funds to cover a periodic payment in any suspense or unapplied funds account, treat such funds as a periodic payment received in accordance with paragraph (c)(1)(i) of this section.

(~~2~~)iii) Non-conforming payments. If a servicer specifies in writing requirements for the consumer to follow in making payments, but accepts a payment that does not conform to the requirements, the servicer shall credit the payment as of 5~~five~~ days after receipt.

(~~3~~)~~For purposes of this paragraph (c), the terms "servicer" and "servicing" have the same meanings as provided in 12 CFR 1024.2(b), as amended.~~2) No pyramiding of late fees. In connection with a consumer credit transaction secured by a consumer's principal dwelling, a servicer shall not impose any late fee or delinquency charge for a payment if:

(i) Such a fee or charge is attributable solely to failure of the consumer to pay a late fee or delinquency charge on an earlier payment; and

(ii) The payment is otherwise a periodic payment received on the due date, or within any applicable courtesy period.

(3) Payoff statements. In connection with a consumer credit transaction secured by a consumer's dwelling, a creditor, assignee or servicer, as applicable, must provide an accurate statement of the total outstanding balance that would be required to pay the consumer's obligation in full as of a specified date. The statement shall be sent within a reasonable time, but in no case more than seven business days, after receiving a written request from the consumer or any person acting on behalf of the consumer. When a creditor, assignee, or servicer, as applicable, is not able to provide the statement within seven business days of such a request because a loan is in bankruptcy or foreclosure, because the loan is a reverse mortgage or shared appreciation mortgage, or because of natural disasters or other similar circumstances, the payoff statement must be provided within a reasonable time. A creditor or assignee that does not currently own the mortgage loan or the mortgage servicing rights is not subject to the requirement in this paragraph (c)(3) to provide a payoff statement.

(d) *Prohibited payments to loan originators.*

(1) Payments based on a term of a transaction ~~terms or conditions~~.⁵¹

(i) ~~In~~ Except as provided in paragraph (d)(1)(iii) or (iv) of this section, in connection with a consumer credit transaction secured by a dwelling, no loan originator shall receive and no person shall pay to a loan originator, directly or indirectly, compensation in an amount that is based on ~~any of the transaction's terms or conditions~~ a term of a transaction, the terms of multiple transactions by an individual loan originator, or the terms of multiple transactions by multiple individual loan originators. If a loan originator's compensation is based in whole or in part on a factor that is a proxy for a term of a transaction, the loan originator's compensation is based on a term of a transaction. 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.

(ii) For purposes of this paragraph (d)(1), ~~the only~~ a “term of a transaction” is any right or obligation of the parties to a credit transaction. The amount of credit extended is not ~~deemed to be~~ a term of a transaction or a proxy for a term or condition of a transaction, provided ~~that~~ that compensation received by or paid to a loan originator, directly or indirectly, is based on a fixed percentage of the amount of credit extended; however, such compensation may be subject to a minimum or maximum dollar amount.

(iii) ~~This paragraph (d)(1) shall not apply to any transaction in which paragraph (d)(2) of this section applies.~~ An individual loan originator may receive, and a person may pay to an individual loan originator, compensation in the form of a contribution to a defined contribution plan that is a designated tax-advantaged plan or a benefit under a defined benefit plan that is a designated tax-advantaged plan. In the case of a contribution to a defined contribution plan, the contribution shall not be directly or indirectly based on the terms of that individual loan originator's transactions. As used in this paragraph (d)(1)(iii), “designated tax-advantaged plan” means any plan that meets the requirements of Internal Revenue Code section 401(a), 26 U.S.C. 401(a); employee annuity plan described in Internal Revenue Code section

⁵¹ Paragraph (d)(1) is effective January 10, 2014. 78 Fed. Reg. 11280 (Feb. 15, 2013).

403(a), 26 U.S.C. 403(a); simple retirement account, as defined in Internal Revenue Code section 408(p), 26 U.S.C. 408(p); simplified employee pension described in Internal Revenue Code section 408(k), 26 U.S.C. 408(k); annuity contract described in Internal Revenue Code section 403(b), 26 U.S.C. 403(b); or eligible deferred compensation plan, as defined in Internal Revenue Code section 457(b), 26 U.S.C. 457(b).

(iv) An individual loan originator may receive, and a person may pay to an individual loan originator, compensation under a non-deferred profits-based compensation plan (i.e., any arrangement for the payment of non-deferred compensation that is determined with reference to the profits of the person from mortgage-related business), provided that:

(A) The compensation paid to an individual loan originator pursuant to this paragraph (d)(1)(iv) is not directly or indirectly based on the terms of that individual loan originator's transactions that are subject to this paragraph (d); and

(B) At least one of the following conditions is satisfied:

(1) The compensation paid to an individual loan originator pursuant to this paragraph (d)(1)(iv) 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

(2) The individual loan originator was a loan originator for ten or fewer transactions subject to this paragraph (d) consummated during the 12-month period preceding the date of the compensation determination.

(2) Payments by persons other than consumer. ~~If any loan originator receives compensation directly from a consumer in a consumer credit transaction secured by a dwelling:~~⁵²

(i) Dual compensation.

(A) Except as provided in paragraph (d)(2)(i)(C) of this section, if any loan originator receives compensation directly from a consumer in a consumer credit transaction secured by a dwelling:

(1) No loan originator shall receive compensation, directly or indirectly, from any person other than the consumer in connection with the transaction; and

(~~1~~2) No person who knows or has reason to know of the consumer-paid compensation to the loan originator (other than the consumer) shall pay any compensation to a loan originator, directly or indirectly, in connection with the transaction.

(B) Compensation received directly from a consumer includes payments to a loan originator made pursuant to an agreement between the consumer and a person other

⁵² Paragraph (d)(2) is effective January 10, 2014. 78 Fed. Reg. 11280 (Feb. 15, 2013).

than the creditor or its affiliates, under which such other person agrees to provide funds toward the consumer's costs of the transaction (including loan originator compensation).

(C) If a loan originator organization receives compensation directly from a consumer in connection with a transaction, the loan originator organization may pay compensation to an individual loan originator, and the individual loan originator may receive compensation from the loan originator organization, subject to paragraph (d)(1) of this section.

(ii) *Exemption.* A payment to a loan originator that is otherwise prohibited by section 129B(c)(2)(A) of the Truth in Lending Act is nevertheless permitted pursuant to section 129B(c)(2)(B) of the Act, regardless of whether the consumer makes any upfront payment of discount points, origination points, or fees, as described in section 129B(c)(2)(B)(ii) of the Act, as long as the loan originator does not receive any compensation directly from the consumer as described in section 129B(c)(2)(B)(i) of the Act.

(3) *Affiliates.* For purposes of this paragraph (d), affiliates shall be treated as a single “person.”

(e) *Prohibition on steering.*

(1) *General.* In connection with a consumer credit transaction secured by a dwelling, a loan originator shall 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.

(2) *Permissible transactions.* A transaction does not violate paragraph (e)(1) of this section if the consumer is presented with loan options that meet the conditions in paragraph (e) (3) of this section for each type of transaction in which the consumer expressed an interest. For purposes of paragraph (e) of this section, the term “*type of transaction*” refers to whether:

(i) A loan has an annual percentage rate that cannot increase after consummation;

(ii) A loan has an annual percentage rate that may increase after consummation;

or

(iii) A loan is a reverse mortgage.

(3) *Loan options presented.* A transaction satisfies paragraph (e)(2) of this section only if the loan originator presents the loan options required by that paragraph and all of the following conditions are met:

(i) The loan originator must obtain loan options from a significant number of the creditors with which the originator regularly does business and, for each type of transaction in which the consumer expressed an interest, must present the consumer with loan options that include:

(A) The loan with the lowest interest rate;

(B) The loan with the lowest interest rate without negative amortization, a prepayment penalty, interest-only payments, a balloon payment in the first 7 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

(C) The loan with the lowest total dollar amount ~~for origination points or fees and discount points~~ 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).⁵³

(ii) The loan originator must have a good faith belief that the options presented to the consumer pursuant to paragraph (e)(3)(i) of this section are loans for which the consumer likely qualifies.

(iii) For each type of transaction, if the originator presents to the consumer more than three loans, the originator must highlight the loans that satisfy the criteria specified in paragraph (e)(3)(i) of this section.

(4) *Number of loan options presented.* The loan originator can present fewer than three loans and satisfy paragraphs (e)(2) and (e)(3)(i) of this section if the loan(s) presented to the consumer satisfy the criteria of the options in paragraph (e)(3)(i) of this section and the provisions of paragraph (e)(3) of this section are otherwise met.

~~(f) This section does not apply to a home equity line of credit subject to § 1026.40. Section 1026.36(d) and (e) do not apply to a loan that is secured by a consumer's interest in a timeshare plan described in 11 U.S.C. 101(53D).~~ *Loan originator qualification requirements.*⁵⁴ A loan originator for a consumer credit transaction secured by a dwelling must, when required by applicable State or Federal law, be registered and licensed in accordance with those laws, including the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (SAFE Act, 12 U.S.C. 5102 et seq.), its implementing regulations (12 CFR part 1007 or part 1008), and State SAFE Act implementing law. To comply with this paragraph (f), a loan originator organization that is not a government agency or State housing finance agency must:

(1) Comply with all applicable State law requirements for legal existence and foreign qualification;

(2) Ensure that each individual loan originator who works for the loan originator organization is licensed or registered to the extent the individual is required to be licensed or registered under the SAFE Act, its implementing regulations, and State SAFE Act implementing

⁵³ Paragraph (e)(3)(i)(C) is effective January 10, 2014. 78 Fed. Reg. 11280 (Feb. 15, 2013).

⁵⁴ Paragraph (f) is effective January 10, 2014. 78 Fed. Reg. 11280 (Feb. 15, 2013).

law before the individual acts as a loan originator in a consumer credit transaction secured by a dwelling; and

(3) For each of its individual loan originator employees who is not required to be licensed and is not licensed as a loan originator pursuant to § 1008.103 of this chapter or State SAFE Act implementing law:

(i) Obtain for any individual whom the loan originator organization hired on or after January 10, 2014 (or whom 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 before January 10, 2014, used to screen the individual) and for any individual regardless of when hired who, based on reliable information known to the loan originator organization, likely does not meet the standards under § 1026.36(f)(3)(ii), before the individual acts as a loan originator in a consumer credit transaction secured by a dwelling:

(A) 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 the NMLSR, a criminal background check from a law enforcement agency or commercial service;

(B) A credit report from a consumer reporting agency described in section 603(p) of the Fair Credit Reporting Act (15 U.S.C. 1681a(p)) secured, where applicable, in compliance with the requirements of section 604(b) of the Fair Credit Reporting Act, 15 U.S.C. 1681b(b); and

(C) 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;

(ii) Determine on the basis of the information obtained pursuant to paragraph (f)(3)(i) of this section and any other information reasonably available to the loan originator organization, for any individual whom the loan originator organization hired on or after January 10, 2014 (or whom 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 before January 10, 2014, used to screen the individual) and for any individual regardless of when hired who, based on reliable information known to the loan originator organization, likely does not meet the standards under this § 1026.36(f)(3)(ii), before the individual acts as a loan originator in a consumer credit transaction secured by a dwelling, that the individual loan originator:

(A)(1) 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;

(2) For purposes of this paragraph (f)(3)(ii)(A):

(i) A crime is a felony only if at the time of conviction it was classified as a felony under the law of the jurisdiction under which the individual was convicted;

(ii) Expunged convictions and pardoned convictions do not render an individual unqualified; and

(iii) A conviction or plea of guilty or *nolo contendere* does not render an individual unqualified under this § 1026.36(f) if the loan originator organization has obtained consent to employ the individual from the Federal Deposit Insurance Corporation (or the Board of Governors of the Federal Reserve System, as applicable) pursuant to section 19 of the Federal Deposit Insurance Act (FDIA), 12 U.S.C. 1829, the National Credit Union Administration pursuant to section 205 of the Federal Credit Union Act (FCUA), 12 U.S.C. 1785(d), or the Farm Credit Administration pursuant to section 5.65(d) of the Farm Credit Act of 1971 (FCA), 12 U.S.C. 227a-14(d), notwithstanding the bars posed with respect to that conviction or plea by the FDIA, FCUA, and FCA, as applicable; and

(B) 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; and

(iii) Provide periodic training covering Federal and State law requirements that apply to the individual loan originator's loan origination activities.

(g) Name and NMLSR ID on loan documents. (1) For a consumer credit transaction secured by a dwelling, a loan originator organization must include on the loan documents described in paragraph (g)(2) of this section, whenever each such loan document is provided to a consumer or presented to a consumer for signature, as applicable:⁵⁵

(i) Its name and NMLSR ID, if the NMLSR has provided it an NMLSR ID; and

(ii) The name of the individual loan originator (as the name appears in the NMLSR) with primary responsibility for the origination and, if the NMLSR has provided such person an NMLSR ID, that NMLSR ID.

(2) The loan documents that must include the names and NMLSR IDs pursuant to paragraph (g)(1) of this section are:

(i) The credit application;

(ii) [Reserved]

(iii) The note or loan contract; and

⁵⁵ Paragraph (g) is effective Jan. 10, 2014. 78 Fed. Reg. 6856 (Jan. 31, 2013); 78 Fed. Reg. 11,410 (Feb. 15, 2013).

(iv) The security instrument.

(3) For purposes of this section, NMLSR ID means a number assigned by the Nationwide Mortgage Licensing System and Registry to facilitate electronic tracking and uniform identification of loan originators and public access to the employment history of, and the publicly adjudicated disciplinary and enforcement actions against, loan originators.

(h) Prohibition on mandatory arbitration clauses and waivers of certain consumer rights.⁵⁶

(1) Arbitration. A contract or other agreement for a consumer credit transaction secured by a dwelling (including a home equity line of credit secured by the consumer's principal dwelling) may not include terms that require arbitration or any other non-judicial procedure to resolve any controversy or settle any claims arising out of the transaction. This prohibition does not limit a consumer and creditor or any assignee from agreeing, after a dispute or claim under the transaction arises, to settle or use arbitration or other non-judicial procedure to resolve that dispute or claim.

(2) No waivers of Federal statutory causes of action. A contract or other agreement relating to a consumer credit transaction secured by a dwelling (including a home equity line of credit secured by the consumer's principal dwelling) may not be applied or interpreted to bar a consumer from bringing a claim in court pursuant to any provision of law for damages or other relief in connection with any alleged violation of any Federal law. This prohibition does not limit a consumer and creditor or any assignee from agreeing, after a dispute or claim under the transaction arises, to settle or use arbitration or other non-judicial procedure to resolve that dispute or claim.

(i) Prohibition on financing single-premium credit insurance.⁵⁷

(1) A creditor may not finance, directly or indirectly, any premiums or fees for credit insurance in connection with a consumer credit transaction secured by a dwelling (including a home equity line of credit secured by the consumer's principal dwelling). This prohibition does not apply to credit insurance for which premiums or fees are calculated and paid in full on a monthly basis.

(2) For purposes of this paragraph (i), "credit insurance":

(i) Means credit life, credit disability, credit unemployment, or credit property insurance, or any other accident, loss-of-income, life, or health insurance, or any payments directly or indirectly for any debt cancellation or suspension agreement or contract, but

(ii) Excludes credit unemployment insurance for which the unemployment insurance premiums are reasonable, the creditor receives no direct or indirect compensation in connection with the unemployment insurance premiums, and the unemployment insurance

⁵⁶ Paragraph (h) is effective June 1, 2013. 78 Fed. Reg. 11,410 (Feb. 15, 2013).

⁵⁷ Paragraph (i) is effective January 10, 2014. 78 Fed. Reg. 11280 (Feb. 15, 2013).

premiums are paid pursuant to a separate insurance contract and are not paid to an affiliate of the creditor.

(j) *Policies and procedures to ensure and monitor compliance.*⁵⁸

(1) A depository institution must establish and maintain written policies and procedures reasonably designed to ensure and monitor the compliance of the depository institution, its employees, its subsidiaries, and its subsidiaries' employees with the requirements of paragraphs (d), (e), (f), and (g) of this section. These written policies and procedures must be appropriate to the nature, size, complexity, and scope of the mortgage lending activities of the depository institution and its subsidiaries.

(2) For purposes of this paragraph (j), “depository institution” has the meaning in section 1503(2) of the SAFE Act, 12 U.S.C. 5102(2). For purposes of this paragraph (j), “subsidiary” has the meaning in section 3 of the Federal Deposit Insurance Act, 12 U.S.C. 1813.

(k) *Negative amortization counseling.*⁵⁹

(1) *Counseling required.* A creditor shall not extend credit to a first-time borrower in connection with a closed-end transaction secured by a dwelling, other than a reverse mortgage transaction subject to § 1026.33 or a transaction secured by a consumer's interest in a timeshare plan described in 11 U.S.C. 101(53D), that may result in negative amortization, unless the creditor receives documentation that the consumer has obtained homeownership counseling from a counseling organization or counselor certified or approved by the U.S. Department of Housing and Urban Development to provide such counseling.

(2) *Definitions.* For the purposes of this paragraph (k), the following definitions apply:

(i) A “first-time borrower” means a consumer who has not previously received a closed-end credit transaction or open-end credit plan secured by a dwelling.

(ii) “Negative amortization” means a payment schedule with regular periodic payments that cause the principal balance to increase.

(3) *Steering prohibited.* A creditor that extends credit to a first-time borrower in connection with a closed-end transaction secured by a dwelling, other than a reverse mortgage transaction subject to § 1026.33 or a transaction secured by a consumer's interest in a timeshare plan described in 11 U.S.C. 101(53D), that may result in negative amortization shall not steer or otherwise direct a consumer to choose a particular counselor or counseling organization for the counseling required under this paragraph (k).

[66 Fed. Reg. 17,338 (Mar. 30, 2001) (*COMPLIANCE DATE NOTE*: At 66 Fed. Reg. 41,440 (Aug. 8, 2001) the Oct. 1, 2001, mandatory compliance date for the interim final rules published at 66 Fed. Reg. 17,311 (Mar. 30, 2001) was lifted.); 72 Fed. Reg. 63,475 (Nov. 9, 2007); 73 Fed.

⁵⁸ Paragraph (j) is effective Jan. 10, 2014. 78 Fed. Reg. 6856 (Jan. 31, 2013); 78 Fed. Reg. 11,410 (Feb. 15, 2013).

⁵⁹ Paragraph (j) is effective Jan. 10, 2014. 78 Fed. Reg. 6856 (Jan. 31, 2013).

Reg. 44,604 (July 30, 2008); 75 Fed. Reg. 58,533 (Sept. 24, 2010) (*EFFECTIVE DATE NOTE*: Effective Apr. 1, 2011); 75 Fed. Reg. 66,580 (Oct. 28, 2010) (*EFFECTIVE DATE NOTE*: Effective Apr. 1, 2011); 76 Fed. Reg. 79,772 (Dec. 22, 2011); [78 Fed. Reg. 6856 \(Jan. 31, 2013\)](#); [78 Fed. Reg. 11,006 \(Feb. 14, 2013\)](#); [78 Fed. Reg. 11,280 \(Feb. 15, 2013\)](#); [78 Fed. Reg. 32,547 \(May 31, 2013\)](#) (delaying the effective date of paragraph (i) until Jan. 10, 2014)]

SECTIONS 1026.37–1026.38 [§§ 226.37–226.38]

[Reserved.]

[76 Fed. Reg. 79,772 (Dec. 22, 2011)]

SECTION 1026.39 Mortgage Transfer Disclosures [§ 226.39]

(a) *Scope*. The disclosure requirements of this section apply to any covered person except as otherwise provided in this section. For purposes of this section:

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

(2) A “*mortgage loan*” means any consumer credit transaction that is secured by the principal dwelling of a consumer.

(b) *Disclosure required*. Except as provided in paragraph (c) of this section, each covered person is subject to the requirements of this section and shall mail or deliver the disclosures required by this section to the consumer on or before the 30th calendar day following the date of transfer.

(1) *Form of disclosures*. The disclosures required by this section shall be provided clearly and conspicuously in writing, in a form that the consumer may keep. The disclosures required by this section may be provided to the consumer in electronic form, subject to compliance with the consumer consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. 7001 *et seq.*).

(2) *The date of transfer*. For purposes of this section, the date of transfer to the covered person may, at the covered person’s option, be either the date of acquisition recognized in the books and records of the acquiring party, or the date of transfer recognized in the books and records of the transferring party.

(3) *Multiple consumers*. If more than one consumer is liable on the obligation, a covered person may mail or deliver the disclosures to any consumer who is primarily liable.

(4) *Multiple transfers.* If a mortgage loan is acquired by a covered person and subsequently sold, assigned, or otherwise transferred to another covered person, a single disclosure may be provided on behalf of both covered persons if the disclosure satisfies the timing and content requirements applicable to each covered person.

(5) *Multiple covered persons.* If an acquisition involves multiple covered persons who jointly acquire the loan, a single disclosure must be provided on behalf of all covered persons.

(c) *Exceptions.* Notwithstanding paragraph (b) of this section, a covered person is not subject to the requirements of this section with respect to a particular mortgage loan if:

(1) The covered person sells, or otherwise transfers or assigns legal title to the mortgage loan on or before the 30th calendar day following the date that the covered person acquired the mortgage loan which shall be the date of transfer recognized for purposes of paragraph (b)(2) of this section;

(2) The mortgage loan is transferred to the covered person in connection with a repurchase agreement that obligates the transferor to repurchase the loan. However, if the transferor does not repurchase the loan, the covered person must provide the disclosures required by this section within 30 days after the date that the transaction is recognized as an acquisition on its books and records; or

(3) The covered person acquires only a partial interest in the loan and the party authorized to receive the consumer's notice of the right to rescind and resolve issues concerning the consumer's payments on the loan does not change as a result of the transfer of the partial interest.

(d) *Content of required disclosures.* The disclosures required by this section shall identify the loan that was sold, assigned or otherwise transferred, and state the following:

(1) The name, address, and telephone number of the covered person.

(i) If a single disclosure is provided on behalf of more than one covered person, the information required by this paragraph shall be provided for each of them unless paragraph (d)(1)(ii) of this section applies.

(ii) If a single disclosure is provided on behalf of more than one covered person and one of them has been authorized in accordance with paragraph (d)(3) of this section to receive the consumer's notice of the right to rescind and resolve issues concerning the consumer's payments on the loan, the information required by paragraph (d)(1) of this section may be provided only for that covered person.

(2) The date of transfer.

(3) The name, address and telephone number of an agent or party authorized to receive notice of the right to rescind and resolve issues concerning the consumer's payments on the loan.

However, no information is required to be provided under this paragraph if the consumer can use the information provided under paragraph (d)(1) of this section for these purposes.

(4) 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.

(e) *Optional disclosures.* In addition to the information required to be disclosed under paragraph (d) of this section, a covered person may, at its option, provide any other information regarding the transaction.

[74 Fed. Reg. 60,151 (Nov. 20, 2009); 75 Fed. Reg. 58,501 (Sept. 24, 2010); 76 Fed. Reg. 79,772 (Dec. 22, 2011)]

SECTION 1026.40 Requirements for Home-Equity Plans [§ 226.5b]

The requirements of this section apply to open-end credit plans secured by the consumer's dwelling. For purposes of this section, an annual percentage rate is the annual percentage rate corresponding to the periodic rate as determined under § 1026.14(b).

(a) Form of disclosures

(1) *General.* The disclosures required by paragraph (d) of this section shall be made clearly and conspicuously and shall be grouped together and segregated from all unrelated information. The disclosures may be provided on the application form or on a separate form. The disclosure described in paragraph (d)(4)(iii), the itemization of third-party fees described in paragraph (d)(8), and the variable-rate information described in paragraph (d)(12) of this section may be provided separately from the other required disclosures.

(2) *Precedence of certain disclosures.* The disclosures described in paragraph (d)(1) through (4)(ii) of this section shall precede the other required disclosures.

(3) For an application that is accessed by the consumer in electronic form, the disclosures required under this section may be provided to the consumer in electronic form on or with the application.

(b) *Time of disclosures.* The disclosures and brochure required by paragraphs (d) and (e) of this section shall be provided at the time an application is provided to the consumer. The disclosures and the brochure may be delivered or placed in the mail not later than three business days following receipt of a consumer's application in the case of applications contained in magazines or other publications, or when the application is received by telephone or through an intermediary agent or broker.

(c) *Duties of third parties.* Persons other than the creditor who provide applications to consumers for home equity plans must provide the brochure required under paragraph (e) of this section at the time an application is provided. If such persons have the disclosures required under

paragraph (d) of this section for a creditor's home equity plan, they also shall provide the disclosures at such time. The disclosures and the brochure may be delivered or placed in the mail not later than three business days following receipt of a consumer's application in the case of applications contained in magazines or other publications, or when the application is received by telephone or through an intermediary agent or broker.

(d) *Content of disclosures.* The creditor shall provide the following disclosures, as applicable:

(1) *Retention of information.* A statement that the consumer should make or otherwise retain a copy of the disclosures.

(2) *Conditions for disclosed terms.*

(i) A statement of the time by which the consumer must submit an application to obtain specific terms disclosed and an identification of any disclosed term that is subject to change prior to opening the plan.

(ii) A statement that, if a disclosed term changes (other than a change due to fluctuations in the index in a variable-rate plan) prior to opening the plan and the consumer therefore elects not to open the plan, the consumer may receive a refund of all fees paid in connection with the application.

(3) *Security interest and risk to home.* A statement that the creditor will acquire a security interest in the consumer's dwelling and that loss of the dwelling may occur in the event of default.

(4) *Possible actions by creditor.*

(i) A statement that, under certain conditions, the creditor may terminate the plan and require payment of the outstanding balance in full in a single payment and impose fees upon termination; prohibit additional extensions of credit or reduce the credit limit; and, as specified in the initial agreement, implement certain changes in the plan.

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

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

(5) *Payment terms.* The payment terms of the plan. If different payment terms may apply to the draw and any repayment period, or if different payment terms may apply within either period, the disclosures shall reflect the different payment terms. The payment terms of the plan include:

(i) The length of the draw period and any repayment period.

(ii) An explanation of how the minimum periodic payment will be determined and the timing of the payments. If paying only the minimum periodic payments may not repay any of the principal or may repay less than the outstanding balance, a statement of this fact, as well as a statement that a balloon payment may result. A balloon payment results if paying the minimum periodic payments does not fully amortize the outstanding balance by a specified date or time, and the consumer must repay the entire outstanding balance at such time.

(iii) An example, based on a \$10,000 outstanding balance and a recent annual percentage rate, showing the minimum periodic payment, any balloon payment, and the time it would take to repay the \$10,000 outstanding balance if the consumer made only those payments and obtained no additional extensions of credit. For fixed-rate plans, a recent annual percentage rate is a rate that has been in effect under the plan within the twelve months preceding the date the disclosures are provided to the consumer. For variable-rate plans, a recent annual percentage rate is the most recent rate provided in the historical example described in paragraph (d)(12)(xi) of this section or a rate that has been in effect under the plan since the date of the most recent rate in the table.

(6) *Annual percentage rate.* For fixed-rate plans, a recent annual percentage rate imposed under the plan and a statement that the rate does not include costs other than interest. A recent annual percentage rate is a rate that has been in effect under the plan within the twelve months preceding the date the disclosures are provided to the consumer.

(7) *Fees imposed by creditor.* An itemization of any fees imposed by the creditor to open, use, or maintain the plan, stated as a dollar amount or percentage, and when such fees are payable.

(8) *Fees imposed by third parties to open a plan.* A good faith estimate, stated as a single dollar amount or range, of any fees that may be imposed by persons other than the creditor to open the plan, as well as a statement that the consumer may receive, upon request, a good faith itemization of such fees. In lieu of the statement, the itemization of such fees may be provided.

(9) *Negative amortization.* A statement that negative amortization may occur and that negative amortization increases the principal balance and reduces the consumer's equity in the dwelling.

(10) *Transaction requirements.* Any limitations on the number of extensions of credit and the amount of credit that may be obtained during any time period, as well as any minimum outstanding balance and minimum draw requirements, stated as dollar amounts or percentages.

(11) *Tax implications.* A statement that the consumer should consult a tax advisor regarding the deductibility of interest and charges under the plan.

(12) *Disclosures for variable-rate plans.* For a plan in which the annual percentage rate is variable, the following disclosures, as applicable:

(i) The fact that the annual percentage rate, payment, or term may change due to the variable-rate feature.

(ii) A statement that the annual percentage rate does not include costs other than interest.

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

(iv) An explanation of how the annual percentage rate will be determined, including an explanation of how the index is adjusted, such as by the addition of a margin.

(v) A statement that the consumer should ask about the current index value, margin, discount or premium, and annual percentage rate.

(vi) A statement that the initial annual percentage rate is not based on the index and margin used to make later rate adjustments, and the period of time such initial rate will be in effect.

(vii) The frequency of changes in the annual percentage rate.

(viii) Any rules relating to changes in the index value and the annual percentage rate and resulting changes in the payment amount, including, for example, an explanation of payment limitations and rate carryover.

(ix) A statement of any annual or more frequent periodic limitations on changes in the annual percentage rate (or a statement that no annual limitation exists), as well as a statement of the maximum annual percentage rate that may be imposed under each payment option.

(x) The minimum periodic payment required when the maximum annual percentage rate for each payment option is in effect for a \$10,000 outstanding balance, and a statement of the earliest date or time the maximum rate may be imposed.

(xi) An historical example, based on a \$10,000 extension of credit, illustrating how annual percentage rates and payments would have been affected by index value changes implemented according to the terms of the plan. The historical example shall be based on the most recent 15 years of index values (selected for the same time period each year) and shall reflect all significant plan terms, such as negative amortization, rate carryover, rate discounts, and rate and payment limitations, that would have been affected by the index movement during the period.

(xii) A statement that rate information will be provided on or with each periodic statement.

(e) *Brochure*. The home equity brochure entitled “What You Should Know About Home Equity Lines of Credit” or a suitable substitute shall be provided.

(f) *Limitations on home-equity plans.* No creditor may, by contract or otherwise:

(1) Change the annual percentage rate unless:

- (i) Such change is based on an index that is not under the creditor's control; and
- (ii) Such index is available to the general public.

(2) Terminate a plan and demand repayment of the entire outstanding balance in advance of the original term (except for reverse mortgage transactions that are subject to paragraph (f)(4) of this section) unless:

(i) There is fraud or material misrepresentation by the consumer in connection with the plan;

(ii) The consumer fails to meet the repayment terms of the agreement for any outstanding balance;

(iii) Any action or inaction by the consumer adversely affects the creditor's security for the plan, or any right of the creditor in such security; or

(iv) Federal law dealing with credit extended by a depository institution to its executive officers specifically requires that as a condition of the plan the credit shall become due and payable on demand, provided that the creditor includes such a provision in the initial agreement.

(3) Change any term, except that a creditor may:

(i) Provide in the initial agreement that it may prohibit additional extensions of credit or reduce the credit limit during any period in which the maximum annual percentage rate is reached. A creditor also may provide in the initial agreement that specified changes will occur if a specified event takes place (for example, that the annual percentage rate will increase a specified amount if the consumer leaves the creditor's employment).

(ii) Change the index and margin used under the plan if the original index is no longer available, the new index has an historical movement substantially similar to that of the original index, and the new index and margin would have resulted in an annual percentage rate substantially similar to the rate in effect at the time the original index became unavailable.

(iii) Make a specified change if the consumer specifically agrees to it in writing at that time.

(iv) Make a change that will unequivocally benefit the consumer throughout the remainder of the plan.

(v) Make an insignificant change to terms.

(vi) Prohibit additional extensions of credit or reduce the credit limit applicable to an agreement during any period in which:

(A) The value of the dwelling that secures the plan declines significantly below the dwelling's appraised value for purposes of the plan;

(B) The creditor reasonably believes that the consumer will be unable to fulfill the repayment obligations under the plan because of a material change in the consumer's financial circumstances;

(C) The consumer is in default of any material obligation under the agreement;

(D) The creditor is precluded by government action from imposing the annual percentage rate provided for in the agreement;

(E) The priority of the creditor's security interest is adversely affected by government action to the extent that the value of the security interest is less than 120 percent of the credit line; or

(F) The creditor is notified by its regulatory agency that continued advances constitute an unsafe and unsound practice.

(4) For reverse mortgage transactions that are subject to § 1026.33, terminate a plan and demand repayment of the entire outstanding balance in advance of the original term except:

(i) In the case of default;

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

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

(iv) Upon the consumer's death.

(g) *Refund of fees.* A creditor shall refund all fees paid by the consumer to anyone in connection with an application if any term required to be disclosed under paragraph (d) of this section changes (other than a change due to fluctuations in the index in a variable-rate plan) before the plan is opened and, as a result, the consumer elects not to open the plan.

(h) *Imposition of nonrefundable fees.* Neither a creditor nor any other person may impose a nonrefundable fee in connection with an application until three business days after the consumer receives the disclosures and brochure required under this section. If the disclosures and brochure

are mailed to the consumer, the consumer is considered to have received them three business days after they are mailed.

[54 Fed. Reg. 24,686 (June 9, 1989); 55 Fed. Reg. 38,312 (Sept. 18, 1990); 55 Fed. Reg. 39,538 (Sept. 27, 1990); 55 Fed. Reg. 42,148 (Oct. 17, 1990); 57 Fed. Reg. 34,681 (Aug. 6, 1992); 60 Fed. Reg. 15,471 (Mar. 24, 1995); 66 Fed. Reg. 17,338 (Mar. 30, 2001); 66 Fed. Reg. 41,440 (Aug. 8, 2001) (*COMPLIANCE DATE NOTE*: At 66 Fed. Reg. 41,440 (Aug. 8, 2001) the Oct. 1, 2001, mandatory compliance date for the interim final rules published at 66 Fed. Reg. 17,311 (Mar. 30, 2001) was lifted.); 72 Fed. Reg. 63,474 (Nov. 9, 2007); 76 Fed. Reg. 79,772 (Dec. 22, 2011)]

~~SECTION 1026.41~~ ~~§ 226.41~~ Periodic Statements for Residential Mortgage Loans⁶⁰

(a) In general.

(1) Scope. This section applies to a closed-end consumer credit transaction secured by a dwelling, unless an exemption in paragraph (e) of this section applies. Such transactions are referred to as *mortgage loans* for the purposes of this section.

(2) Periodic statements. A servicer of a transaction subject to this section shall provide the consumer, for each billing cycle, a periodic statement meeting the requirements of paragraphs (b), (c), and (d) of this section. If a mortgage loan has a billing cycle shorter than a period of 31 days (for example, a bi-weekly billing cycle), a periodic statement covering an entire month may be used. For the purposes of this section, *servicer* includes the creditor, assignee, or servicer, as applicable. A creditor or assignee that does not currently own the mortgage loan or the mortgage servicing rights is not subject to the requirement in this section to provide a periodic statement.

(b) Timing of the periodic statement. The periodic statement must be delivered or placed in the mail within a reasonably prompt time after the payment due date or the end of any courtesy period provided for the previous billing cycle.

(c) Form of the periodic statement. The servicer must make the disclosures required by this section clearly and conspicuously in writing, or electronically if the consumer agrees, and in a form that the consumer may keep. Sample forms for periodic statements are provided in appendix H-30. Proper use of these forms complies with the requirements of this paragraph (c) and the layout requirements in paragraph (d) of this section.

(d) Content and layout of the periodic statement. The periodic statement required by this section shall include:

(1) Amount due. Grouped together in close proximity to each other and located at the top of the first page of the statement:

⁶⁰ Section 1026.41 is effective Jan. 10, 2014. 78 Fed. Reg. 10,902 (Feb. 14, 2013).

(i) The payment due date;

(ii) The amount of any late payment fee, and the date on which that fee will be imposed if payment has not been received; and

(iii) The amount due, shown more prominently than other disclosures on the page and, if the transaction has multiple payment options, the amount due under each of the payment options.

(2) *Explanation of amount due.* The following items, grouped together in close proximity to each other and located on the first page of the statement:

(i) The monthly payment amount, including a breakdown showing how much, if any, will be applied to principal, interest, and escrow and, if a mortgage loan has multiple payment options, a breakdown of each of the payment options along with information on whether the principal balance will increase, decrease, or stay the same for each option listed;

(ii) The total sum of any fees or charges imposed since the last statement; and

(iii) Any payment amount past due.

(3) *Past Payment Breakdown.* The following items, grouped together in close proximity to each other and located on the first page of the statement:

(i) The total of all payments received since the last statement, including a breakdown showing the amount, if any, that was applied to principal, interest, escrow, fees and charges, and the amount, if any, sent to any suspense or unapplied funds account; and

(ii) The total of all payments received since the beginning of the current calendar year, including a breakdown of that total showing the amount, if any, that was applied to principal, interest, escrow, fees and charges, and the amount, if any, currently held in any suspense or unapplied funds account.

(4) *Transaction activity.* A list of all the transaction activity that occurred since the last statement. For purposes of this paragraph (d)(4), *transaction activity* means any activity that causes a credit or debit to the amount currently due. This list must include the date of the transaction, a brief description of the transaction, and the amount of the transaction for each activity on the list.

(5) *Partial payment information.* If a statement reflects a partial payment that was placed in a suspense or unapplied funds account, information explaining what must be done for the funds to be applied. The information must be on the front page of the statement or, alternatively, may be included on a separate page enclosed with the periodic statement or in a separate letter.

(6) *Contact information.* A toll-free telephone number and, if applicable, an electronic mailing address that may be used by the consumer to obtain information about the consumer's account, located on the front page of the statement.

(7) *Account information.* The following information:

(i) The amount of the outstanding principal balance;

(ii) The current interest rate in effect for the mortgage loan;

(iii) The date after which the interest rate may next change;

(iv) The existence of any prepayment penalty, as defined in § 1026.32(b)(6)(i), that may be charged;

(v) The Web site to access either the Bureau list or the HUD list of homeownership counselors and counseling organizations and the HUD toll-free telephone number to access contact information for homeownership counselors or counseling organizations; and

(8) *Delinquency information.* If the consumer is more than 45 days delinquent, the following items, grouped together in close proximity to each other and located on the first page of the statement or, alternatively, on a separate page enclosed with the periodic statement or in a separate letter:

(i) The date on which the consumer became delinquent;

(ii) A notification of possible risks, such as foreclosure, and expenses, that may be incurred if the delinquency is not cured;

(iii) An account history showing, for the previous six months or the period since the last time the account was current, whichever is shorter, the amount remaining past due from each billing cycle or, if any such payment was fully paid, the date on which it was credited as fully paid;

(iv) A notice indicating any loss mitigation program to which the consumer has agreed, if applicable;

(v) A notice of whether the servicer has made the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process, if applicable;

(vi) The total **payment amount needed to** bring the account current; and

(vii) A reference to the homeownership counselor information disclosed pursuant to paragraph (d)(7)(v) of this section.

(e) Exemptions.

(1) Reverse mortgages. Reverse mortgage transactions, as defined by § 1026.33(a), are exempt from the requirements of this section.

(2) Timeshare plans. Transactions secured by consumers' interests in timeshare plans, as defined by 11 U.S.C. 101(53D), are exempt from the requirements of this section.

(3) Coupon books. The requirements of paragraph (a) of this section do not apply to fixed-rate loans if the servicer:

(i) Provides the consumer with a coupon book that includes on each coupon the information listed in paragraph (d)(1) of this section;

(ii) Provides the consumer with a coupon book that includes anywhere in the coupon book:

(A) The account information listed in paragraph (d)(7) of this section;

(B) The contact information for the servicer, listed in paragraph (d)(6) of this section; and

(C) Information on how the consumer can obtain the information listed in paragraph (e)(3)(iii) of this section;

(iii) Makes available upon request to the consumer by telephone, in writing, in person, or electronically, if the consumer consents, the information listed in paragraph (d)(2) through (5) of this section; and

(iv) Provides the consumer the information listed in paragraph (d)(8) of this section in writing, for any billing cycle during which the consumer is more than 45 days delinquent.

(4) Small servicers.

(i) Exemption. A creditor, assignee, or servicer is exempt from the requirements of this section for mortgage loans serviced by a small servicer.

(ii) Small servicer defined. A small servicer is a servicer that either:

(A) Services 5,000 or fewer mortgage loans, for all of which the servicer (or an affiliate) is the creditor or assignee; or

(B) Is a Housing Finance Agency, as defined in 24 CFR 266.5.

[Reserved.]

(iii) *Small servicer determination.* In determining whether a small servicer services 5,000 or fewer mortgage loans, a servicer is evaluated based on the number of mortgage loans serviced by the servicer and any affiliates as of January 1 for the remainder of the calendar year. A servicer that crosses the threshold will have six months after crossing the threshold or until the next January 1, whichever is later, to comply with any requirements for which a servicer is no longer exempt as a small servicer.

[74 Fed. Reg. 41,232 (Aug. 14, 2009); 75 Fed. Reg. 66,580 (Oct. 28, 2010); 76 Fed. Reg. 79,772 (Dec. 22, 2011); [78 Fed. Reg. 10902 \(Feb. 14, 2013\)](#)]

SECTION 1026.42 Valuation Independence [§ 226.42]

(a) *Scope.* This section applies to any consumer credit transaction secured by the consumer's principal dwelling.

(b) *Definitions.* For purposes of this section:

(1) "Covered person" means a creditor with respect to a covered transaction or a person that provides "settlement services," as defined in 12 U.S.C. 2602(3) and implementing regulations, in connection with a covered transaction.

(2) "Covered transaction" means an extension of consumer credit that is or will be secured by the consumer's principal dwelling, as defined in § 1026.2(a)(19).

(3) "Valuation" means an estimate of the value of the consumer's principal dwelling in written or electronic form, other than one produced solely by an automated model or system.

(4) "Valuation management functions" means:

(i) Recruiting, selecting, or retaining a person to prepare a valuation;

(ii) Contracting with or employing a person to prepare a valuation;

(iii) Managing or overseeing the process of preparing a valuation, including by providing administrative services such as receiving orders for and receiving a valuation, submitting a completed valuation to creditors and underwriters, collecting fees from creditors and underwriters for services provided in connection with a valuation, and compensating a person that prepares valuations; or

(iv) Reviewing or verifying the work of a person that prepares valuations.

(c) *Valuation of consumer's principal dwelling.*

(1) *Coercion.* In connection with a covered transaction, no covered person shall or shall attempt to directly or indirectly cause the value assigned to the consumer's principal dwelling to be based on any factor other than the independent judgment of a person that prepares valuations,

through coercion, extortion, inducement, bribery, or intimidation of, compensation or instruction to, or collusion with a person that prepares valuations or performs valuation management functions.

(i) Examples of actions that violate paragraph (c)(1) include:

(A) Seeking to influence a person that prepares a valuation to report a minimum or maximum value for the consumer's principal dwelling;

(B) Withholding or threatening to withhold timely payment to a person that prepares a valuation or performs valuation management functions because the person does not value the consumer's principal dwelling at or above a certain amount;

(C) Implying to a person that prepares valuations that current or future retention of the person depends on the amount at which the person estimates the value of the consumer's principal dwelling;

(D) Excluding a person that prepares a valuation from consideration for future engagement because the person reports a value for the consumer's principal dwelling that does not meet or exceed a predetermined threshold; and

(E) Conditioning the compensation paid to a person that prepares a valuation on consummation of the covered transaction.

(2) *Mischaracterization of value.*

(i) *Misrepresentation.* In connection with a covered transaction, no person that prepares valuations shall materially misrepresent the value of the consumer's principal dwelling in a valuation. A misrepresentation is material for purposes of this paragraph (c)(2)(i) if it is likely to significantly affect the value assigned to the consumer's principal dwelling. A bona fide error shall not be a misrepresentation.

(ii) *Falsification or alteration.* In connection with a covered transaction, no covered person shall falsify and no covered person other than a person that prepares valuations shall materially alter a valuation. An alteration is material for purposes of this paragraph (c)(2)(ii) if it is likely to significantly affect the value assigned to the consumer's principal dwelling.

(iii) *Inducement of mischaracterization.* In connection with a covered transaction, no covered person shall induce a person to violate paragraph (c)(2)(i) or (ii) of this section.

(3) *Permitted actions.* Examples of actions that do not violate paragraph (c)(1) or (c)(2) include:

(i) Asking a person that prepares a valuation to consider additional, appropriate property information, including information about comparable properties, to make or support a valuation;

(ii) Requesting that a person that prepares a valuation provide further detail, substantiation, or explanation for the person's conclusion about the value of the consumer's principal dwelling;

(iii) Asking a person that prepares a valuation to correct errors in the valuation;

(iv) Obtaining multiple valuations for the consumer's principal dwelling to select the most reliable valuation;

(v) Withholding compensation due to breach of contract or substandard performance of services; and

(vi) Taking action permitted or required by applicable Federal or state statute, regulation, or agency guidance.

(d) *Prohibition on conflicts of interest.*

(1)(i) *In general.* No person preparing a valuation or performing valuation management functions for a covered transaction may have a direct or indirect interest, financial or otherwise, in the property or transaction for which the valuation is or will be performed.

(ii) Employees and affiliates of creditors; providers of multiple settlement services. In any covered transaction, no person violates paragraph (d)(1)(i) of this section based solely on the fact that the person:

(A) Is an employee or affiliate of the creditor; or

(B) Provides a settlement service in addition to preparing valuations or performing valuation management functions, or based solely on the fact that the person's affiliate performs another settlement service.

(2) *Employees and affiliates of creditors with assets of more than \$250 million for both of the past two calendar years.* For any covered transaction in which the creditor had assets of more than \$250 million as of December 31st for both of the past two calendar years, a person subject to paragraph (d)(1)(i) of this section who is employed by or affiliated with the creditor does not have a conflict of interest in violation of paragraph (d)(1)(i) of this section based on the person's employment or affiliate relationship with the creditor if:

(i) The compensation of the person preparing a valuation or performing valuation management functions is not based on the value arrived at in any valuation;

(ii) The person preparing a valuation or performing valuation management functions reports to a person who is not part of the creditor's loan production function, as defined in paragraph (d)(5)(i) of this section, and whose compensation is not based on the closing of the transaction to which the valuation relates; and

(iii) No employee, officer or director in the creditor's loan production function, as defined in paragraph (d)(5)(i) of this section, is directly or indirectly involved in selecting, retaining, recommending or influencing the selection of the person to prepare a valuation or perform valuation management functions, or to be included in or excluded from a list of approved persons who prepare valuations or perform valuation management functions.

(3) *Employees and affiliates of creditors with assets of \$250 million or less for either of the past two calendar years.* For any covered transaction in which the creditor had assets of \$250 million or less as of December 31st for either of the past two calendar years, a person subject to paragraph (d)(1)(i) of this section who is employed by or affiliated with the creditor does not have a conflict of interest in violation of paragraph (d)(1)(i) of this section based on the person's employment or affiliate relationship with the creditor if:

(i) The compensation of the person preparing a valuation or performing valuation management functions is not based on the value arrived at in any valuation; and

(ii) The creditor requires that any employee, officer or director of the creditor who orders, performs, or reviews a valuation for a covered transaction abstain from participating in any decision to approve, not approve, or set the terms of that transaction.

(4) *Providers of multiple settlement services.* For any covered transaction, a person who prepares a valuation or performs valuation management functions in addition to performing another settlement service for the transaction, or whose affiliate performs another settlement service for the transaction, does not have a conflict of interest in violation of paragraph (d)(1)(i) of this section as a result of the person or the person's affiliate performing another settlement service for the transaction if:

(i) The creditor had assets of more than \$250 million as of December 31st for both of the past two calendar years and the conditions in paragraph (d)(2)(i)-(iii) are met; or

(ii) The creditor had assets of \$250 million or less as of December 31st for either of the past two calendar years and the conditions in paragraph (d)(3)(i)-(ii) are met.

(5) *Definitions.* For purposes of this paragraph (d), the following definitions apply:

(i) *Loan production function.* The term "loan production function" means an employee, officer, director, department, division, or other unit of a creditor with responsibility for generating covered transactions, approving covered transactions, or both.

(ii) *Settlement service.* The term "settlement service" has the same meaning as in the Real Estate Settlement Procedures Act, 12 U.S.C. 2601 *et seq.*

(iii) *Affiliate.* The term "affiliate" has the same meaning as in Regulation Y of the Board of Governors of the Federal Reserve System, 12 CFR 225.2(a).

(e) *When extension of credit prohibited.* In connection with a covered transaction, a creditor that knows, at or before consummation, of a violation of paragraph (c) or (d) of this section in connection with a valuation shall not extend credit based on the valuation, unless the creditor documents that it has acted with reasonable diligence to determine that the valuation does not materially misstate or misrepresent the value of the consumer's principal dwelling. For purposes of this paragraph (e), a valuation materially misstates or misrepresents the value of the consumer's principal dwelling if the valuation contains a misstatement or misrepresentation that affects the credit decision or the terms on which credit is extended.

(f) *Customary and reasonable compensation.*

(1) *Requirement to provide customary and reasonable compensation to fee appraisers.* In any covered transaction, the creditor and its agents shall compensate a fee appraiser for performing appraisal services at a rate that is customary and reasonable for comparable appraisal services performed in the geographic market of the property being appraised. For purposes of paragraph (f) of this section, "agents" of the creditor do not include any fee appraiser as defined in paragraph (f)(4)(i) of this section.

(2) *Presumption of compliance.* A creditor and its agents shall be presumed to comply with paragraph (f)(1) of this section if:

(i) The creditor or its agents compensate the fee appraiser in an amount that is reasonably related to recent rates paid for comparable appraisal services performed in the geographic market of the property being appraised. In determining this amount, a creditor or its agents shall review the factors below and make any adjustments to recent rates paid in the relevant geographic market necessary to ensure that the amount of compensation is reasonable:

- (A) The type of property,
- (B) The scope of work,
- (C) The time in which the appraisal services are required to be performed,
- (D) Fee appraiser qualifications,
- (E) Fee appraiser experience and professional record, and
- (F) Fee appraiser work quality; and

(ii) The creditor and its agents do not engage in any anticompetitive acts in violation of state or Federal law that affect the compensation paid to fee appraisers, including:

(A) Entering into any contracts or engaging in any conspiracies to restrain trade through methods such as price fixing or market allocation, as prohibited under section 1 of the Sherman Antitrust Act, 15 U.S.C. 1, or any other relevant antitrust laws; or

(B) Engaging in any acts of monopolization such as restricting any person from entering the relevant geographic market or causing any person to leave the relevant geographic market, as prohibited under section 2 of the Sherman Antitrust Act, 15 U.S.C. 2, or any other relevant antitrust laws.

(3) *Alternative presumption of compliance.* A creditor and its agents shall be presumed to comply with paragraph (f)(1) of this section if the creditor or its agents determine the amount of compensation paid to the fee appraiser by relying on information about rates that:

(i) Is based on objective third-party information, including fee schedules, studies, and surveys prepared by independent third parties such as government agencies, academic institutions, and private research firms;

(ii) Is based on recent rates paid to a representative sample of providers of appraisal services in the geographic market of the property being appraised or the fee schedules of those providers; and

(iii) In the case of information based on fee schedules, studies, and surveys, such fee schedules, studies, or surveys, or the information derived therefrom, excludes compensation paid to fee appraisers for appraisals ordered by appraisal management companies, as defined in paragraph (f)(4)(iii) of this section.

(4) *Definitions.* For purposes of this paragraph (f), the following definitions apply:

(i) *Fee appraiser.* The term “fee appraiser” means--

(A) A natural person who is a state-licensed or state-certified appraiser and receives a fee for performing an appraisal, but who is not an employee of the person engaging the appraiser; or

(B) An organization that, in the ordinary course of business, employs state-licensed or state-certified appraisers to perform appraisals, receives a fee for performing appraisals, and is not subject to the requirements of section 1124 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3353).

(ii) *Appraisal services.* The term “appraisal services” means the services required to perform an appraisal, including defining the scope of work, inspecting the property, reviewing necessary and appropriate public and private data sources (for example, multiple listing services, tax assessment records and public land records), developing and rendering an opinion of value, and preparing and submitting the appraisal report.

(iii) *Appraisal management company.* The term “appraisal management company” means any person authorized to perform one or more of the following actions on behalf of the creditor:

(A) Recruit, select, and retain fee appraisers;

(B) Contract with fee appraisers to perform appraisal services;

(C) Manage the process of having an appraisal performed, including providing administrative services such as receiving appraisal orders and appraisal reports, submitting completed appraisal reports to creditors and underwriters, collecting fees from creditors and underwriters for services provided, and compensating fee appraisers for services performed; or

(D) Review and verify the work of fee appraisers.

(g) *Mandatory reporting.*

(1) *Reporting required.* Any covered person that reasonably believes an appraiser has not complied with the Uniform Standards of Professional Appraisal Practice or ethical or professional requirements for appraisers under applicable state or Federal statutes or regulations shall refer the matter to the appropriate state agency if the failure to comply is material. For purposes of this paragraph (g)(1), a failure to comply is material if it is likely to significantly affect the value assigned to the consumer's principal dwelling.

(2) *Timing of reporting.* A covered person shall notify the appropriate state agency within a reasonable period of time after the person determines that there is a reasonable basis to believe that a failure to comply required to be reported under paragraph (g)(1) of this section has occurred.

(3) *Definition.* For purposes of this paragraph (g), "state agency" means "state appraiser certifying and licensing agency" under 12 U.S.C. 3350(1) and any implementing regulations. The appropriate state agency to which a covered person must refer a matter under paragraph (g)(1) of this section is the agency for the state in which the consumer's principal dwelling is located.

[75 Fed. Reg. 66,580 (Oct. 28, 2010) (*EFFECTIVE DATE NOTE*: Effective Dec. 27, 2010, but compliance optional until Apr. 1, 2011); 75 Fed. Reg. 80,676 (Dec. 23, 2010); 76 Fed. Reg. 79,772 (Dec. 22, 2011)]

SECTION 1026.43 Minimum standards for transactions secured by a dwelling.⁶¹

(a) *Scope.* This section applies to any consumer credit transaction that is secured by a dwelling, as defined in § 1026.2(a)(19), including any real property attached to a dwelling, other than:

(1) A home equity line of credit subject to § 1026.40;

(2) A mortgage transaction secured by a consumer's interest in a timeshare plan, as defined in 11 U.S.C. 101(53(D)); or

⁶¹ Section 1026.43 is effective Jan. 10, 2014. 78 Fed. Reg. 6408 (Jan. 30, 2013)

(3) For purposes of paragraphs (c) through (f) of this section:

(i) A reverse mortgage subject to § 1026.33;

(ii) A temporary or “bridge” loan with a term of 12 months or less, such as a loan to finance the purchase of a new dwelling where the consumer plans to sell a current dwelling within 12 months or a loan to finance the initial construction of a dwelling;

(iii) A construction phase of 12 months or less of a construction-to-permanent loan;

(iv) An extension of credit made pursuant to a program administered by a Housing Finance Agency, as defined under 24 CFR 266.5;

(v) An extension of credit made by:

(A) A creditor designated as a Community Development Financial Institution, as defined under 12 CFR 1805.104(h);

(B) A creditor designated as a Downpayment Assistance through Secondary Financing Provider, pursuant to 24 CFR 200.194(a), operating in accordance with regulations prescribed by the U.S. Department of Housing and Urban Development applicable to such persons;

(C) A creditor designated as a Community Housing Development Organization provided that the creditor has entered into a commitment with a participating jurisdiction and is undertaking a project under the HOME program, pursuant to the provisions of 24 CFR 92.300(a), and as the terms community housing development organization, commitment, participating jurisdiction, and project are defined under 24 CFR 92.2; or

(D) A creditor with a tax exemption ruling or determination letter from the Internal Revenue Service under section 501(c)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 501(c)(3); 26 CFR 1.501(c)(3)-1), provided that:

(1) During the calendar year preceding receipt of the consumer's application, the creditor extended credit secured by a dwelling no more than 200 times;

(2) During the calendar year preceding receipt of the consumer's application, the creditor extended credit secured by a dwelling only to consumers with income that did not exceed the low- and moderate-income household limit as established pursuant to section 102 of the Housing and Community Development Act of 1974 (42 U.S.C. 5302(a)(20)) and amended from time to time by the U.S. Department of Housing and Urban Development, pursuant to 24 CFR 570.3;

(3) The extension of credit is to a consumer with income that does not exceed the household limit specified in paragraph (a)(3)(v)(D)(2) of this section; and

(4) The creditor determines, in accordance with written procedures, that the consumer has a reasonable ability to repay the extension of credit.

(vi) An extension of credit made pursuant to a program authorized by sections 101 and 109 of the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5211; 5219);

(b) Definitions. For purposes of this section:

(1) Covered transaction means a consumer credit transaction that is secured by a dwelling, as defined in § 1026.2(a)(19), including any real property attached to a dwelling, other than a transaction exempt from coverage under paragraph (a) of this section.

(2) Fully amortizing payment means a periodic payment of principal and interest that will fully repay the loan amount over the loan term.

(3) Fully indexed rate means the interest rate calculated using the index or formula that will apply after recast, as determined at the time of consummation, and the maximum margin that can apply at any time during the loan term.

(4) Higher-priced covered transaction means a covered transaction with an annual percentage rate that exceeds the average prime offer rate for a comparable transaction as of the date the interest rate is set by 1.5 or more percentage points for a first-lien covered transaction, other than a qualified mortgage under paragraph (e)(5), (e)(6), or (f) of this section; by 3.5 or more percentage points for a first-lien covered transaction that is a qualified mortgage under paragraph (e)(5), (e)(6), or (f) of this section; or by 3.5 or more percentage points for a subordinate-lien covered transaction.

(5) Loan amount means the principal amount the consumer will borrow as reflected in the promissory note or loan contract.

(6) Loan term means the period of time to repay the obligation in full.

(7) Maximum loan amount means the loan amount plus any increase in principal balance that results from negative amortization, as defined in § 1026.18(s)(7)(v), based on the terms of the legal obligation assuming:

(i) The consumer makes only the minimum periodic payments for the maximum possible time, until the consumer must begin making fully amortizing payments; and

(ii) The maximum interest rate is reached at the earliest possible time.

(8) Mortgage-related obligations mean property taxes; premiums and similar charges identified in § 1026.4(b)(5), (7), (8), and (10) that are required by the creditor; fees and special

assessments imposed by a condominium, cooperative, or homeowners association; ground rent; and leasehold payments.

(9) *Points and fees* has the same meaning as in § 1026.32(b)(1).

(10) *Prepayment penalty* has the same meaning as in § 1026.32(b)(6).

(11) *Recast* means:

(i) For an adjustable-rate mortgage, as defined in § 1026.18(s)(7)(i), the expiration of the period during which payments based on the introductory fixed interest rate are permitted under the terms of the legal obligation;

(ii) For an interest-only loan, as defined in § 1026.18(s)(7)(iv), the expiration of the period during which interest-only payments are permitted under the terms of the legal obligation; and

(iii) For a negative amortization loan, as defined in § 1026.18(s)(7)(v), the expiration of the period during which negatively amortizing payments are permitted under the terms of the legal obligation.

(12) *Simultaneous loan* means another covered transaction or home equity line of credit subject to § 1026.40 that will be secured by the same dwelling and made to the same consumer at or before consummation of the covered transaction or, if to be made after consummation, will cover closing costs of the first covered transaction.

(13) *Third-party record* means:

(i) A document or other record prepared or reviewed by an appropriate person other than the consumer, the creditor, or the mortgage broker, as defined in § 1026.36(a)(2), or an agent of the creditor or mortgage broker;

(ii) A copy of a tax return filed with the Internal Revenue Service or a State taxing authority;

(iii) A record the creditor maintains for an account of the consumer held by the creditor; or

(iv) If the consumer is an employee of the creditor or the mortgage broker, a document or other record maintained by the creditor or mortgage broker regarding the consumer's employment status or employment income.

(c) *Repayment ability*.

(1) *General requirement.* A creditor shall not make a loan that is a covered transaction unless 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.

(2) *Basis for determination.* Except as provided otherwise in paragraphs (d), (e), and (f) of this section, in making the repayment ability determination required under paragraph (c)(1) of this section, a creditor must consider the following:

(i) The consumer's current or reasonably expected income or assets, other than the value of the dwelling, including any real property attached to the dwelling, that secures the loan;

(ii) If the creditor relies on income from the consumer's employment in determining repayment ability, the consumer's current employment status;

(iii) The consumer's monthly payment on the covered transaction, calculated in accordance with paragraph (c)(5) of this section;

(iv) 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 paragraph (c)(6) of this section;

(v) The consumer's monthly payment for mortgage-related obligations;

(vi) The consumer's current debt obligations, alimony, and child support;

(vii) The consumer's monthly debt-to-income ratio or residual income in accordance with paragraph (c)(7) of this section; and

(viii) The consumer's credit history.

(3) *Verification using third-party records.* A creditor must verify the information that the creditor relies on in determining a consumer's repayment ability under § 1026.43(c)(2) using reasonably reliable third-party records, except that:

(i) For purposes of paragraph (c)(2)(i) of this section, a creditor must verify a consumer's income or assets that the creditor relies on in accordance with § 1026.43(c)(4);

(ii) For purposes of paragraph (c)(2)(ii) of this section, a creditor may verify a consumer's employment status orally if the creditor prepares a record of the information obtained orally; and

(iii) For purposes of paragraph (c)(2)(vi) of this section, if a creditor relies on a consumer's credit report to verify a consumer's current debt obligations and a consumer's application states a current debt obligation not shown in the consumer's credit report, the creditor need not independently verify such an obligation.

(4) *Verification of income or assets.* A creditor must verify the amounts of income or assets that the creditor relies on under § 1026.43(c)(2)(i) to determine a consumer's ability to repay a covered transaction using third-party records that provide reasonably reliable evidence of the consumer's income or assets. A creditor may verify the consumer's income using a tax-return transcript issued by the Internal Revenue Service (IRS). Examples of other records the creditor may use to verify the consumer's income or assets include:

(i) Copies of tax returns the consumer filed with the IRS or a State taxing authority;

(ii) IRS Form W-2s or similar IRS forms used for reporting wages or tax withholding;

(iii) Payroll statements, including military Leave and Earnings Statements;

(iv) Financial institution records;

(v) Records from the consumer's employer or a third party that obtained information from the employer;

(vi) Records from a Federal, State, or local government agency stating the consumer's income from benefits or entitlements;

(vii) Receipts from the consumer's use of check cashing services; and

(viii) Receipts from the consumer's use of a funds transfer service.

(5) *Payment calculation.*

(i) *General rule.* Except as provided in paragraph (c)(5)(ii) of this section, a creditor must make the consideration required under paragraph (c)(2)(iii) of this section using:

(A) The fully indexed rate or any introductory interest rate, whichever is greater; and

(B) Monthly, fully amortizing payments that are substantially equal.

(ii) *Special rules for loans with a balloon payment, interest-only loans, and negative amortization loans.* A creditor must make the consideration required under paragraph (c)(2)(iii) of this section for:

(A) A loan with a balloon payment, as defined in § 1026.18(s)(5)(i), using:

(1) The maximum payment scheduled during the first five years after the date on which the first regular periodic payment will be due for a loan that is not a higher-priced covered transaction; or

(2) The maximum payment in the payment schedule, including any balloon payment, for a higher-priced covered transaction;

(B) An interest-only loan, as defined in § 1026.18(s)(7)(iv), using:

(1) The fully indexed rate or any introductory interest rate, whichever is greater; and

(2) Substantially equal, monthly payments of principal and interest that will repay the loan amount over the term of the loan remaining as of the date the loan is recast.

(C) A negative amortization loan, as defined in § 1026.18(s)(7)(v), using:

(1) The fully indexed rate or any introductory interest rate, whichever is greater; and

(2) Substantially equal, monthly payments of principal and interest that will repay the maximum loan amount over the term of the loan remaining as of the date the loan is recast.

(6) *Payment calculation for simultaneous loans.* For purposes of making the evaluation required under paragraph (c)(2)(iv) of this section, a creditor must consider, taking into account any mortgage-related obligations, a consumer's payment on a simultaneous loan that is:

(i) A covered transaction, by following paragraph (c)(5) of this section; or

(ii) A home equity line of credit subject to § 1026.40, by using the periodic payment required under the terms of the plan and the amount of credit to be drawn at or before consummation of the covered transaction.

(7) *Monthly debt-to-income ratio or residual income.*

(i) *Definitions.* For purposes of this paragraph (c)(7), the following definitions apply:

(A) *Total monthly debt obligations.* The term *total monthly debt obligations* means the sum of: the payment on the covered transaction, as required to be calculated by paragraphs (c)(2)(iii) and (c)(5) of this section; simultaneous loans, as required by paragraphs (c)(2)(iv) and (c)(6) of this section; mortgage-related obligations, as required by paragraph (c)(2)(v) of this section; and current debt obligations, alimony, and child support, as required by paragraph (c)(2)(vi) of this section.

(B) *Total monthly income.* The term *total monthly income* means the sum of the consumer's current or reasonably expected income, including any income from assets, as required by paragraphs (c)(2)(i) and (c)(4) of this section.

(ii) *Calculations.*

(A) *Monthly debt-to-income ratio.* If a creditor considers the consumer's monthly debt-to-income ratio under paragraph (c)(2)(vii) of this section, the creditor must consider the ratio of the consumer's total monthly debt obligations to the consumer's total monthly income.

(B) *Monthly residual income.* If a creditor considers the consumer's monthly residual income under paragraph (c)(2)(vii) of this section, the creditor must consider the consumer's remaining income after subtracting the consumer's total monthly debt obligations from the consumer's total monthly income.

(d) *Refinancing of non-standard mortgages.*

(1) *Definitions.* For purposes of this paragraph (d), the following definitions apply:

(i) *Non-standard mortgage.* The term *non-standard mortgage* means a covered transaction that is:

(A) An adjustable-rate mortgage, as defined in § 1026.18(s)(7)(i), with an introductory fixed interest rate for a period of one year or longer;

(B) An interest-only loan, as defined in § 1026.18(s)(7)(iv); or

(C) A negative amortization loan, as defined in § 1026.18(s)(7)(v).

(ii) *Standard mortgage.* The term *standard mortgage* means a covered transaction:

(A) That provides for regular periodic payments that do not:

(1) Cause the principal balance to increase;

(2) Allow the consumer to defer repayment of principal; or

(3) Result in a balloon payment, as defined in § 1026.18(s)(5)(i);

(B) For which the total points and fees payable in connection with the transaction do not exceed the amounts specified in paragraph (e)(3) of this section;

(C) For which the term does not exceed 40 years;

(D) For which the interest rate is fixed for at least the first five years after consummation; and

(E) For which the proceeds from the loan are used solely for the following purposes:

(1) To pay off the outstanding principal balance on the non-standard mortgage; and

(2) To pay closing or settlement charges required to be disclosed under the Real Estate Settlement Procedures Act, 12 U.S.C. 2601 *et seq.*

(iii) *Refinancing*. The term *refinancing* has the same meaning as in § 1026.20(a).

(2) *Scope*. The provisions of this paragraph (d) apply to the refinancing of a non-standard mortgage into a standard mortgage when the following conditions are met:

(i) 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;

(ii) The monthly payment for the standard mortgage is materially lower than the monthly payment for the non-standard mortgage, as calculated under paragraph (d)(5) of this section.

(iii) The creditor receives the consumer's written application for the standard mortgage no later than two months after the non-standard mortgage has recast.

(iv) The consumer has made no more than one payment more than 30 days late on the non-standard mortgage during the 12 months immediately preceding the creditor's receipt of the consumer's written application for the standard mortgage.

(v) The consumer has made no payments more than 30 days late during the six months immediately preceding the creditor's receipt of the consumer's written application for the standard mortgage; and

(vi) If the non-standard mortgage was consummated on or after January 10, 2014, the non-standard mortgage was made in accordance with paragraph (c) or (e) of this section, as applicable.

(3) *Exemption from repayment ability requirements*. A creditor is not required to comply with the requirements of paragraph (c) of this section if:

(i) The conditions in paragraph (d)(2) of this section are met; and

(ii) The creditor has considered whether the standard mortgage likely will prevent a default by the consumer on the non-standard mortgage once the loan is recast.

(4) Offer of rate discounts and other favorable terms. A creditor making a covered transaction under this paragraph (d) may offer to the consumer rate discounts and terms that are the same as, or better than, the rate discounts and terms that the creditor offers to new consumers, consistent with the creditor's documented underwriting practices and to the extent not prohibited by applicable State or Federal law.

(5) Payment calculations. For purposes of determining whether the consumer's monthly payment for a standard mortgage will be materially lower than the monthly payment for the non-standard mortgage, the following provisions shall be used:

(i) Non-standard mortgage. For purposes of the comparison conducted pursuant to paragraph (d)(2)(ii) of this section, the creditor must calculate the monthly payment for a non-standard mortgage based on substantially equal, monthly, fully amortizing payments of principal and interest using:

(A) The fully indexed rate as of a reasonable period of time before or after the date on which the creditor receives the consumer's written application for the standard mortgage;

(B) The term of the loan remaining as of the date on which the recast occurs, assuming all scheduled payments have been made up to the recast date and the payment due on the recast date is made and credited as of that date; and

(C) A remaining loan amount that is:

(1) For an adjustable-rate mortgage under paragraph (d)(1)(i)(A) of this section, the outstanding principal balance as of the date of the recast, assuming all scheduled payments have been made up to the recast date and the payment due on the recast date is made and credited as of that date;

(2) For an interest-only loan under paragraph (d)(1)(i)(B) of this section, the outstanding principal balance as of the date of the recast, assuming all scheduled payments have been made up to the recast date and the payment due on the recast date is made and credited as of that date; or

(3) For a negative amortization loan under paragraph (d)(1)(i)(C) of this section, the maximum loan amount, determined after adjusting for the outstanding principal balance.

(ii) Standard mortgage. For purposes of the comparison conducted pursuant to paragraph (d)(2)(ii) of this section, the monthly payment for a standard mortgage must be based on substantially equal, monthly, fully amortizing payments based on the maximum interest rate that may apply during the first five years after consummation.

(e) Qualified mortgages.

(1) Safe harbor and presumption of compliance.

(i) Safe harbor for loans that are not higher-priced covered transactions. A creditor or assignee of a qualified mortgage, as defined in paragraphs (e)(2), (e)(4), (e)(5), (e)(6), or (f) of this section, that is not a higher-priced covered transaction, as defined in paragraph (b)(4) of this section, complies with the repayment ability requirements of paragraph (c) of this section.

(ii) Presumption of compliance for higher-priced covered transactions.

(A) A creditor or assignee of a qualified mortgage, as defined in paragraph (e)(2), (e)(4), (e)(5), (e)(6), or (f) of this section, that is a higher-priced covered transaction, as defined in paragraph (b)(4) of this section, is presumed to comply with the repayment ability requirements of paragraph (c) of this section.

(B) To rebut the presumption of compliance described in paragraph (e)(1)(ii)(A) of this section, it must be proven that, despite meeting the prerequisites of paragraph (e)(2), (e)(4), (e)(5), (e)(6), or (f) of this section, the creditor did not make a reasonable and good faith determination of the consumer's repayment ability at the time of consummation, by showing that the consumer's income, debt obligations, alimony, child support, and the consumer's monthly payment (including mortgage-related obligations) on the covered transaction and on any 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 (including any real property attached to the dwelling) that secures the loan with which to meet living expenses, including any recurring and material non-debt obligations of which the creditor was aware at the time of consummation.

(2) Qualified mortgage defined--general. Except as provided in paragraph (e)(4), (e)(5), (e)(6), or (f) of this section, a qualified mortgage is a covered transaction:

(i) That provides for regular periodic payments that are substantially equal, except for the effect that any interest rate change after consummation has on the payment in the case of an adjustable-rate or step-rate mortgage, that do not:

(A) Result in an increase of the principal balance;

(B) Allow the consumer to defer repayment of principal, except as provided in paragraph (f) of this section; or

(C) Result in a balloon payment, as defined in § 1026.18(s)(5)(i), except as provided in paragraph (f) of this section;

(ii) For which the loan term does not exceed 30 years;

(iii) For which the total points and fees payable in connection with the loan do not exceed the amounts specified in paragraph (e)(3) of this section;

(iv) For which the creditor underwrites the loan, taking into account the monthly payment for mortgage-related obligations, using:

(A) 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

(B) Periodic payments of principal and interest that will repay either:

(1) The outstanding principal balance over the remaining term of the loan as of the date the interest rate adjusts to the maximum interest rate set forth in paragraph (e)(2)(iv)(A) of this section, assuming the consumer will have made all required payments as due prior to that date; or

(2) The loan amount over the loan term;

(v) For which the creditor considers and verifies at or before consummation the following:

(A) The consumer's current or reasonably expected income or assets other than the value of the dwelling (including any real property attached to the dwelling) that secures the loan, in accordance with appendix Q and paragraphs (c)(2)(i) and (c)(4) of this section; and

(B) The consumer's current debt obligations, alimony, and child support in accordance with appendix Q and paragraphs (c)(2)(vi) and (c)(3) of this section; and

(vi) For which the ratio of the consumer's total monthly debt to total monthly income at the time of consummation does not exceed 43 percent. For purposes of this paragraph (e)(2)(vi), the ratio of the consumer's total monthly debt to total monthly income is determined:

(A) Except as provided in paragraph (e)(2)(vi)(B) of this section, in accordance with the standards in appendix Q;

(B) Using the consumer's monthly payment on:

(1) The covered transaction, including the monthly payment for mortgage-related obligations, in accordance with paragraph (e)(2)(iv) of this section; and

(2) Any simultaneous loan that the creditor knows or has reason to know will be made, in accordance with paragraphs (c)(2)(iv) and (c)(6) of this section.

(3) Limits on points and fees for qualified mortgages.

(i) A covered transaction is not a qualified mortgage unless the transaction's total points and fees, as defined in § 1026.32(b)(1), do not exceed:

(A) For a loan amount greater than or equal to \$100,000 (indexed for inflation): 3 percent of the total loan amount;

(B) For a loan amount greater than or equal to \$60,000 (indexed for inflation) but less than \$100,000 (indexed for inflation): \$3,000 (indexed for inflation);

(C) For a loan amount greater than or equal to \$20,000 (indexed for inflation) but less than \$60,000 (indexed for inflation): 5 percent of the total loan amount;

(D) For a loan amount greater than or equal to \$12,500 (indexed for inflation) but less than \$20,000 (indexed for inflation): \$1,000 (indexed for inflation);

(E) For a loan amount less than \$12,500 (indexed for inflation): 8 percent of the total loan amount.

(ii) The dollar amounts, including the loan amounts, in paragraph (e)(3)(i) of this section shall be adjusted annually on January 1 by the annual percentage change in the Consumer Price Index for All Urban Consumers (CPI-U) that was reported on the preceding June 1. See the official commentary to this paragraph (e)(3)(ii) for the current dollar amounts.

(4) *Qualified mortgage defined--special rules.*

(i) *General.* Notwithstanding paragraph (e)(2) of this section, a qualified mortgage is a covered transaction that satisfies:

(A) The requirements of paragraphs (e)(2)(i) through (iii) of this section; and

(B) One or more of the criteria in paragraph (e)(4)(ii) of this section.

(ii) *Eligible loans.* A qualified mortgage under this paragraph (e)(4) must be one of the following at consummation:

(A) A loan that is eligible:

(1) To be purchased or guaranteed by the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation operating under the conservatorship or receivership of the Federal Housing Finance Agency pursuant to section 1367(a) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4617(a)); or

(2) To be purchased or guaranteed by any limited-life regulatory entity succeeding the charter of either the Federal National Mortgage Association or the Federal

Home Loan Mortgage Corporation pursuant to section 1367(i) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4617(i));

(B) A loan that is eligible to be insured by the U.S. Department of Housing and Urban Development under the National Housing Act (12 U.S.C. 1707 *et seq.*);

(C) A loan that is eligible to be guaranteed the U.S. Department of Veterans Affairs;

(D) A loan that is eligible to be guaranteed by the U.S. Department of Agriculture pursuant to 42 U.S.C. 1472(h); or

(E) A loan that is eligible to be insured by the Rural Housing Service.

(iii) *Sunset of special rules.*

(A) Each respective special rule described in paragraph (e)(4)(ii)(B), (C), (D), or (E) of this section shall expire on the effective date of a rule issued by each respective agency pursuant to its authority under TILA section 129C(b)(3)(ii) to define a qualified mortgage.

(B) Unless otherwise expired under paragraph (e)(4)(iii)(A) of this section, the special rules in this paragraph (e)(4) are available only for covered transactions consummated on or before January 10, 2021.

(5) *Qualified mortgage defined--small creditor portfolio loans.*

(i) Notwithstanding paragraph (e)(2) of this section, a qualified mortgage is a covered transaction:

(A) That satisfies the requirements of paragraph (e)(2) of this section other than the requirements of paragraph (e)(2)(vi) and without regard to the standards in appendix Q to this part;

(B) For which the creditor 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 paragraph (c)(7) of this section, except that the calculation of the payment on the covered transaction for purposes of determining the consumer's total monthly debt obligations in paragraph (c)(7)(i)(A) shall be determined in accordance with paragraph (e)(2)(iv) of this section instead of paragraph (c)(5) of this section;

(C) That is not subject, at consummation, to a commitment to be acquired by another person, other than a person that satisfies the requirements of paragraph (e)(5)(i)(D) of this section; and

(D) For which the creditor satisfies the requirements stated in § 1026.35(b)(2)(iii)(B) and (C).

(ii) A qualified mortgage extended pursuant to paragraph (e)(5)(i) of this section immediately loses its status as a qualified mortgage under paragraph (e)(5)(i) if legal title to the qualified mortgage is sold, assigned, or otherwise transferred to another person except when:

(A) The qualified mortgage is sold, assigned, or otherwise transferred to another person three years or more after consummation of the qualified mortgage;

(B) The qualified mortgage is sold, assigned, or otherwise transferred to a creditor that satisfies the requirements of paragraph (e)(5)(i)(D) of this section;

(C) The qualified mortgage is sold, assigned, or otherwise transferred to another person pursuant to a capital restoration plan or other action under 12 U.S.C. 1831o, actions or instructions of any person acting as conservator, receiver, or bankruptcy trustee, an order of a State or Federal government agency with jurisdiction to examine the creditor pursuant to State or Federal law, or an agreement between the creditor and such an agency; or

(D) The qualified mortgage is sold, assigned, or otherwise transferred pursuant to a merger of the creditor with another person or acquisition of the creditor by another person or of another person by the creditor.

(6) *Qualified mortgage defined--temporary balloon-payment qualified mortgage rules.*

(i) Notwithstanding paragraph (e)(2) of this section, a qualified mortgage is a covered transaction:

(A) That satisfies the requirements of paragraph (f) of this section other than the requirements of paragraph (f)(1)(vi); and

(B) For which the creditor satisfies the requirements stated in § 1026.35(b)(2)(iii)(B) and (C).

(ii) The provisions of this paragraph (e)(6) apply only to covered transactions consummated on or before January 10, 2016.

(f) *Balloon-payment qualified mortgages made by certain creditors.*

(1) *Exemption.* Notwithstanding paragraph (e)(2) of this section, a qualified mortgage may provide for a balloon payment, provided:

(i) The loan satisfies the requirements for a qualified mortgage in paragraphs (e)(2)(i)(A), (e)(2)(ii), (e)(2)(iii), and (e)(2)(v) of this section, but without regard to the standards in appendix Q;

(ii) The creditor determines at or before consummation that the consumer can make all of the scheduled payments under the terms of the legal obligation, as described in paragraph (f)(1)(iv) of this section, together with the consumer's monthly payments for all mortgage-related obligations and excluding the balloon payment, from the consumer's current or reasonably expected income or assets other than the dwelling that secures the loan;

(iii) The creditor 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 paragraph (c)(7) of this section, except that the calculation of the payment on the covered transaction for purposes of determining the consumer's total monthly debt obligations in (c)(7)(i)(A) shall be determined in accordance with paragraph (f)(iv)(A) of this section, together with the consumer's monthly payments for all mortgage-related obligations and excluding the balloon payment;

(iv) The legal obligation provides for:

(A) Scheduled payments that are substantially equal, calculated using an amortization period that does not exceed 30 years;

(B) An interest rate that does not increase over the term of the loan; and

(C) A loan term of five years or longer.

(v) The loan is not subject, at consummation, to a commitment to be acquired by another person, other than a person that satisfies the requirements of paragraph (f)(1)(vi) of this section; and

(vi) The creditor satisfies the requirements stated in § 1026.35(b)(2)(iii)(A), (B), and (C).

(2) *Post-consummation transfer of balloon-payment qualified mortgage.* A balloon-payment qualified mortgage, extended pursuant to paragraph (f)(1), immediately loses its status as a qualified mortgage under paragraph (f)(1) if legal title to the balloon-payment qualified mortgage is sold, assigned, or otherwise transferred to another person except when:

(i) The balloon-payment qualified mortgage is sold, assigned, or otherwise transferred to another person three years or more after consummation of the balloon-payment qualified mortgage;

(ii) The balloon-payment qualified mortgage is sold, assigned, or otherwise transferred to a creditor that satisfies the requirements of paragraph (f)(1)(vi) of this section;

(iii) The balloon-payment qualified mortgage is sold, assigned, or otherwise transferred to another person pursuant to a capital restoration plan or other action under 12 U.S.C. 1831o, actions or instructions of any person acting as conservator, receiver or bankruptcy trustee, an order of a State or Federal governmental agency with jurisdiction to examine the

creditor pursuant to State or Federal law, or an agreement between the creditor and such an agency; or

(iv) The balloon-payment qualified mortgage is sold, assigned, or otherwise transferred pursuant to a merger of the creditor with another person or acquisition of the creditor by another person or of another person by the creditor.

(g) Prepayment penalties.

(1) When permitted. A covered transaction must not include a prepayment penalty unless:

(i) The prepayment penalty is otherwise permitted by law; and

(ii) The transaction:

(A) Has an annual percentage rate that cannot increase after consummation;

(B) Is a qualified mortgage under paragraph (e)(2), (e)(4), (e)(5), (e)(6), or (f) of this section; and

(C) Is not a higher-priced mortgage loan, as defined in § 1026.35(a).

(2) Limits on prepayment penalties. A prepayment penalty:

(i) Must not apply after the three-year period following consummation; and

(ii) Must not exceed the following percentages of the amount of the outstanding loan balance prepaid:

(A) 2 percent, if incurred during the first two years following consummation; and

(B) 1 percent, if incurred during the third year following consummation.

(3) Alternative offer required. A creditor must not offer a consumer a covered transaction with a prepayment penalty unless the creditor also offers the consumer an alternative covered transaction without a prepayment penalty and the alternative covered transaction:

(i) Has an annual percentage rate that cannot increase after consummation and has the same type of interest rate as the covered transaction with a prepayment penalty; for purposes of this paragraph (g), the term “type of interest rate” refers to whether a transaction:

(A) Is a fixed-rate mortgage, as defined in § 1026.18(s)(7)(iii); or

(B) Is a step-rate mortgage, as defined in § 1026.18(s)(7)(ii);

(ii) Has the same loan term as the loan term for the covered transaction with a prepayment penalty;

(iii) Satisfies the periodic payment conditions under paragraph (e)(2)(i) of this section;

(iv) Satisfies the points and fees conditions under paragraph (e)(2)(iii) of this section, based on the information known to the creditor at the time the transaction is offered; and

(v) Is a transaction 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 covered transaction without a prepayment penalty.

(4) Offer through a mortgage broker. If the creditor offers a covered transaction with a prepayment penalty to the consumer through a mortgage broker, as defined in § 1026.36(a)(2), the creditor must:

(i) Present the mortgage broker an alternative covered transaction without a prepayment penalty that satisfies the requirements of paragraph (g)(3) of this section; and

(ii) Establish by agreement that the mortgage broker must present the consumer an alternative covered transaction without a prepayment penalty that satisfies the requirements of paragraph (g)(3) of this section, offered by:

(A) The creditor; or

(B) Another creditor, if the transaction offered by the other creditor has a lower interest rate or a lower total dollar amount of discount points and origination points or fees.

(5) Creditor that is a loan originator. If the creditor is a loan originator, as defined in § 1026.36(a)(1), and the creditor presents the consumer a covered transaction offered by a person to which the creditor would assign the covered transaction after consummation, the creditor must present the consumer an alternative covered transaction without a prepayment penalty that satisfies the requirements of paragraph (g)(3) of this section, offered by:

(i) The assignee; or

(ii) Another person, if the transaction offered by the other person has a lower interest rate or a lower total dollar amount of origination discount points and points or fees.

(6) Applicability. This paragraph (g) applies only if a covered transaction is consummated with a prepayment penalty and is not violated if:

(i) A covered transaction is consummated without a prepayment penalty; or

(ii) The creditor and consumer do not consummate a covered transaction.

(h) *Evasion; open-end credit.* In connection with credit secured by a consumer's dwelling that does not meet the definition of open-end credit in § 1026.2(a)(20), a creditor shall not structure the loan as an open-end plan to evade the requirements of this section.

[78 Fed. Reg. 6584 (Jan. 30, 2013) (effective Jan. 10, 2014); 78 Fed. Reg. 35,502 (June 12, 2013) (effective Jan. 10, 2014)]

SECTIONS ~~1026.43~~1026.44–1026.45 [§§ 226.43–226.45]

[Reserved.]

[74 Fed. Reg. 41,232 (Aug. 14, 2009); 76 Fed. Reg. 79,772 (Dec. 22, 2011)]

[3c]SUBPART F--SPECIAL RULES FOR PRIVATE EDUCATION LOANS

SECTION 1026.46 Special Disclosure Requirements for Private Education Loans [§ 226.46]

(a) *Coverage.* The requirements of this subpart apply to private education loans as defined in § 1026.46(b)(5). A creditor may, at its option, comply with the requirements of this subpart for an extension of credit subject to §§ 1026.17 and 1026.18 that is extended to a consumer for expenses incurred after graduation from a law, medical, dental, veterinary, or other graduate school and related to relocation, study for a bar or other examination, participation in an internship or residency program, or similar purposes.

(1) Relation to other subparts in this part. Except as otherwise specifically provided, the requirements and limitations of this subpart are in addition to and not in lieu of those contained in other subparts of this Part.

(2) [Reserved]

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

(1) *Covered educational institution* means:

(i) An educational institution that meets the definition of an institution of higher education, as defined in paragraph (b)(2) of this section, without regard to the institution's accreditation status; and

(ii) Includes an agent, officer, or employee of the institution of higher education. An agent means an institution-affiliated organization as defined by section 151 of the Higher

Education Act of 1965 (20 U.S.C. 1019) or an officer or employee of an institution-affiliated organization.

(2) *Institution of higher education* has the same meaning as in sections 101 and 102 of the Higher Education Act of 1965 (20 U.S.C. 1001-1002) and the implementing regulations published by the U.S. Department of Education.

(3) *Postsecondary educational expenses* means any of the expenses that are listed as part of the cost of attendance, as defined under section 472 of the Higher Education Act of 1965 (20 U.S.C. 10871l), of a student at a covered educational institution. These expenses include tuition and fees, books, supplies, miscellaneous personal expenses, room and board, and an allowance for any loan fee, origination fee, or insurance premium charged to a student or parent for a loan incurred to cover the cost of the student's attendance.

(4) *Preferred lender arrangement* has the same meaning as in section 151 of the Higher Education Act of 1965 (20 U.S.C. 1019).

(5) *Private education loan* means an extension of credit that:

(i) Is not made, insured, or guaranteed under Title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 *et seq.*);

(ii) Is extended to a consumer expressly, in whole or in part, for postsecondary educational expenses, regardless of whether the loan is provided by the educational institution that the student attends;

(iii) Does not include open-end credit or any loan that is secured by real property or a dwelling; and

(iv) Does not include an extension of credit in which the covered educational institution is the creditor if:

(A) The term of the extension of credit is 90 days or less; or

(B) 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.

(c) *Form of disclosures*

(1) *Clear and conspicuous.* The disclosures required by this subpart shall be made clearly and conspicuously.

(2) *Transaction disclosures.*

(i) The disclosures required under §§ 1026.47(b) and (c) shall be made in writing, in a form that the consumer may keep. The disclosures shall be grouped together, shall be segregated from everything else, and shall not contain any information not directly related to the disclosures required under §§ 1026.47(b) and (c), which include the disclosures required under § 1026.18.

(ii) The disclosures may include an acknowledgement of receipt, the date of the transaction, and the consumer's name, address, and account number. The following disclosures may be made together with or separately from other required disclosures: the creditor's identity under § 1026.18(a), insurance or debt cancellation under § 1026.18(n), and certain security interest charges under § 1026.18(o).

(iii) The term "*finance charge*" and corresponding amount, when required to be disclosed under § 1026.18(d), and the interest rate required to be disclosed under §§ 1026.47(b)(1)(i) and (c)(1), shall be more conspicuous than any other disclosure, except the creditor's identity under § 1026.18(a).

(3) *Electronic disclosures.* The disclosures required under §§ 1026.47(b) and (c) may be provided to the consumer in electronic form, subject to compliance with the consumer consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. 7001 *et seq.*). The disclosures required by § 1026.47(a) may be provided to the consumer in electronic form on or with an application or solicitation that is accessed by the consumer in electronic form without regard to the consumer consent or other provisions of the E-Sign Act. The form required to be received under § 1026.48(e) may be accepted by the creditor in electronic form as provided for in that section.

(d) *Timing of disclosures*

(1) *Application or solicitation disclosures.*

(i) The disclosures required by § 1026.47(a) shall be provided on or with any application or solicitation. For purposes of this subpart, the term solicitation means an offer of credit that does not require the consumer to complete an application. A "*firm offer of credit*" as defined in section 603(l) of the Fair Credit Reporting Act (15 U.S.C. 1681a(l)) is a solicitation for purposes of this section.

(ii) The creditor may, at its option, disclose orally the information in § 1026.47(a) in a telephone application or solicitation. Alternatively, if the creditor does not disclose orally the information in § 1026.47(a), the creditor must provide the disclosures or place them in the mail no later than three business days after the consumer has applied for the credit, except that, if the creditor either denies the consumer's application or provides or places in the mail the disclosures in § 1026.47(b) no later than three business days after the consumer requests the credit, the creditor need not also provide the § 1026.47(a) disclosures.

(iii) Notwithstanding paragraph (d)(1)(i) of this section, for a loan that the consumer may use for multiple purposes including, but not limited to, postsecondary educational expenses, the creditor need not provide the disclosures required by § 1026.47(a).

(2) *Approval disclosures.* The creditor shall provide the disclosures required by § 1026.47(b) before consummation on or with any notice of approval provided to the consumer. If the creditor mails notice of approval, the disclosures must be mailed with the notice. If the creditor communicates notice of approval by telephone, the creditor must mail the disclosures within three business days of providing the notice of approval. If the creditor communicates notice of approval electronically, the creditor may provide the disclosures in electronic form in accordance with § 1026.46(d)(3); otherwise the creditor must mail the disclosures within three business days of communicating the notice of approval. If the creditor communicates approval in person, the creditor must provide the disclosures to the consumer at that time.

(3) *Final disclosures.* The disclosures required by § 1026.47(c) shall be provided after the consumer accepts the loan in accordance with § 1026.48(c)(1).

(4) *Receipt of mailed disclosures.* If the disclosures under paragraphs (d)(1), (d)(2) or (d)(3) of this section are mailed to the consumer, the consumer is considered to have received them three business days after they are mailed.

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

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

(2) *Estimates.* If any information necessary for an accurate disclosure is unknown to the creditor, the creditor shall make the disclosure based on the best information reasonably available at the time the disclosure is provided, and shall state clearly that the disclosure is an estimate.

(f) *Multiple creditors; multiple consumers.* If a transaction involves more than one creditor, only one set of disclosures shall be given and the creditors shall agree among themselves which creditor will comply with the requirements that this part imposes on any or all of them. If there is more than one consumer, the disclosures may be made to any consumer who is primarily liable on the obligation.

(g) *Effect of subsequent events.*

(1) *Approval disclosures.* If a disclosure under § 1026.47(b) becomes inaccurate because of an event that occurs after the creditor delivers the required disclosures, the inaccuracy is not a violation of Regulation Z (12 CFR part 1026), although new disclosures may be required under § 1026.48(c).

(2) *Final disclosures.* If a disclosure under § 1026.47(c) becomes inaccurate because of an event that occurs after the creditor delivers the required disclosures, the inaccuracy is not a violation of Regulation Z (12 CFR part 1026).

[74 Fed. Reg. 41,233 (Aug. 14, 2009); 76 Fed. Reg. 79,772 (Dec. 22, 2011)]

§ 1026.47 Content of Disclosures [§ 226.47]

(a) *Application or solicitation disclosures.* A creditor shall provide the disclosures required under paragraph (a) of this section on or with a solicitation or an application for a private education loan.

(1) Interest Rates.

(i) The interest rate or range of interest rates applicable to the loan and actually offered by the creditor at the time of application or solicitation. If the rate will depend, in part, on a later determination of the consumer's creditworthiness or other factors, a statement that the rate for which the consumer may qualify will depend on the consumer's creditworthiness and other factors, if applicable.

(ii) Whether the interest rates applicable to the loan are fixed or variable.

(iii) If the interest rate may increase after consummation of the transaction, any limitations on the interest rate adjustments, or lack thereof; a statement that the consumer's actual rate could be higher or lower than the rates disclosed under paragraph (a)(1)(i) of this section, if applicable; and, if the limitation is determined by applicable law, that fact.

(iv) Whether the applicable interest rates typically will be higher if the loan is not co-signed or guaranteed.

(2) Fees and default or late payment costs.

(i) An itemization of the fees or range of fees required to obtain the private education loan.

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

(3) Repayment terms.

(i) The term of the loan, which is the period during which regularly scheduled payments of principal and interest will be due.

(ii) A description of any payment deferral options, or, if the consumer does not have the option to defer payments, that fact.

(iii) For each payment deferral option applicable while the student is enrolled at a covered educational institution:

(A) Whether interest will accrue during the deferral period; and

(B) If interest accrues, whether payment of interest may be deferred and added to the principal balance.

(iv) A statement that if the consumer files for bankruptcy, the consumer may still be required to pay back the loan.

(4) *Cost estimates.* An example of the total cost of the loan calculated as the total of payments over the term of the loan:

(i) Using the highest rate of interest disclosed under paragraph (a)(1) of this section and including all finance charges applicable to loans at that rate;

(ii) Using an amount financed of \$10,000, or \$5000 if the creditor only offers loans of this type for less than \$10,000; and

(iii) Calculated for each payment option.

(5) *Eligibility.* Any age or school enrollment eligibility requirements relating to the consumer or cosigner.

(6) *Alternatives to private education loans.*

(i) A statement that the consumer may qualify for Federal student financial assistance through a program under Title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 *et seq.*).

(ii) The interest rates available under each program under Title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 *et seq.*) and whether the rates are fixed or variable.

(iii) A statement that the consumer may obtain additional information concerning Federal student financial assistance from the institution of higher education that the student attends, or at the Web site of the U.S. Department of Education, including an appropriate Web site address.

(iv) A statement that a covered educational institution may have school-specific education loan benefits and terms not detailed on the disclosure form.

(7) *Rights of the consumer.* A statement that if the loan is approved, the terms of the loan will be available and will not change for 30 days except as a result of adjustments to the interest rate and other changes permitted by law.

(8) *Self-certification information.* A statement that, before the loan may be consummated, the consumer must complete the self-certification form and that the form may be obtained from the institution of higher education that the student attends.

(b) *Approval disclosures.* On or with any notice of approval provided to the consumer, the creditor shall disclose the information required under § 1026.18 and the following information:

(1) *Interest rate.*

- (i) The interest rate applicable to the loan.
- (ii) Whether the interest rate is fixed or variable.
- (iii) If the interest rate may increase after consummation of the transaction, any limitations on the rate adjustments, or lack thereof.

(2) *Fees and default or late payment costs.*

- (i) An itemization of the fees or range of fees required to obtain the private education loan.
- (ii) Any fees, changes to the interest rate, and adjustments to principal based on the consumer's defaults or late payments.

(3) *Repayment terms.*

- (i) The principal amount of the loan for which the consumer has been approved.
- (ii) The term of the loan, which is the period during which regularly scheduled payments of principal and interest will be due.
- (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 a covered educational institution, based on the deferral option chosen by the consumer.
- (v) The amount of any unpaid interest that will accrue while the student is enrolled at a covered educational institution, based on the deferral option chosen by the consumer.
- (vi) A statement that if the consumer files for bankruptcy, the consumer may still be required to pay back the loan.
- (vii) An estimate of the total amount of payments calculated based on:
 - (A) The interest rate applicable to the loan. Compliance with § 1026.18(h) constitutes compliance with this requirement.

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

(C) 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 under paragraph (b)(3)(vii)(B) of this section is an estimate and will be higher if the applicable interest rate increases.

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

(4) Alternatives to private education loans.

(i) A statement that the consumer may qualify for Federal student financial assistance through a program under Title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 *et seq.*).

(ii) The interest rates available under each program under Title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 *et seq.*), and whether the rates are fixed or variable.

(iii) A statement that the consumer may obtain additional information concerning Federal student financial assistance from the institution of higher education that the student attends, or at the Web site of the U.S. Department of Education, including an appropriate Web site address.

(5) Rights of the consumer.

(i) A statement that the consumer may accept the terms of the loan until the acceptance period under § 1026.48(c)(1) has expired. The statement must include 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. The disclosure must also specify the method or methods by which the consumer may communicate acceptance.

(ii) A statement that, except for changes to the interest rate and other changes permitted by law, the rates and terms of the loan may not be changed by the creditor during the period described in paragraph (b)(5)(i) of this section.

(c) *Final disclosures.* After the consumer has accepted the loan in accordance with § 1026.48(c)(1), the creditor shall disclose to the consumer the information required by § 1026.18 and the following information:

(1) *Interest rate.* Information required to be disclosed under § 1026.47(b)(1).

(2) *Fees and default or late payment costs.* Information required to be disclosed under § 1026.47(b)(2).

(3) *Repayment terms.* Information required to be disclosed under § 1026.47(b)(3).

(4) *Cancellation right.* A statement that:

(i) The consumer has the right to cancel the loan, without penalty, at any time before the cancellation period under § 1026.48(d) expires, and

(ii) Loan proceeds will not be disbursed until after the cancellation period under § 1026.48(d) expires. The statement must include the specific date on which the cancellation period expires and state that the consumer may cancel by that date. The statement must also specify the method or methods by which the consumer may cancel. If the creditor permits cancellation by mail, the statement must specify that the consumer's mailed request will be deemed timely if placed in the mail not later than the cancellation date specified on the disclosure. The disclosures required by this paragraph (c)(4) must be made more conspicuous than any other disclosure required under this section, except for the finance charge, the interest rate, and the creditor's identity, which must be disclosed in accordance with the requirements of § 1026.46(c)(2)(iii).

[74 Fed. Reg. 41,234 (Aug. 14, 2009); 76 Fed. Reg. 79,772 (Dec. 22, 2011)]

§ 1026.48 Limitations on Private Education Loans [§ 226.48]

(a) *Co-branding prohibited.*

(1) Except as provided in paragraph (b) of this section, a creditor, other than the covered educational institution itself, shall not use the name, emblem, mascot, or logo of a covered educational institution, or other words, pictures, or symbols identified with a covered educational institution, in the marketing of private education loans in a way that implies that the covered education institution endorses the creditor's loans.

(2) A creditor's marketing of private education loans does not imply that the covered education institution endorses the creditor's loans if the marketing includes a clear and conspicuous disclosure that is equally prominent and closely proximate to the reference to the covered educational institution that the covered educational institution does not endorse the creditor's loans and that the creditor is not affiliated with the covered educational institution.

(b) *Endorsed lender arrangements.* If a creditor and a covered educational institution have entered into an arrangement where the covered educational institution agrees to endorse the creditor's private education loans, and such arrangement is not prohibited by other applicable law or regulation, paragraph (a)(1) of this section does not apply if the private education loan marketing includes a clear and conspicuous disclosure that is equally prominent and closely proximate to the reference to the covered educational institution that the creditor's loans are not offered or made by the covered educational institution, but are made by the creditor.

(c) *Consumer's right to accept.*

(1) The consumer has the right to accept the terms of a private education loan at any time within 30 calendar days following the date on which the consumer receives the disclosures required under § 1026.47(b).

(2) Except for changes permitted under paragraphs (c)(3) and (c)(4), the rate and terms of the private education loan that are required to be disclosed under §§ 1026.47(b) and (c) may not be changed by the creditor prior to the earlier of:

(i) The date of disbursement of the loan; or

(ii) The expiration of the 30 calendar day period described in paragraph (c)(1) of this section if the consumer has not accepted the loan within that time.

(3) *Exceptions not requiring re-disclosure.*

(i) Notwithstanding paragraph (c)(2) of this section, nothing in this section prevents the creditor from:

(A) Withdrawing an offer before consummation of the transaction if the extension of credit would be prohibited by law or if the creditor has reason to believe that the consumer has committed fraud in connection with the loan application;

(B) Changing the interest rate based on adjustments to the index used for a loan;

(C) Changing the interest rate and terms if the change will unequivocally benefit the consumer; or

(D) Reducing the loan amount based upon a certification or other information received from the covered educational institution, or from the consumer, indicating that the student's cost of attendance has decreased or the consumer's other financial aid has increased. A creditor may make corresponding changes to the rate and other terms only to the extent that the consumer would have received the terms if the consumer had applied for the reduced loan amount.

(ii) If the creditor changes the rate or terms of the loan under this paragraph (c)(3), the creditor need not provide the disclosures required under § 1026.47(b) for the new loan terms, nor need the creditor provide an additional 30-day period to the consumer to accept the new terms of the loan under paragraph (c)(1) of this section.

(4) *Exceptions requiring re-disclosure.*

(i) Notwithstanding paragraphs (c)(2) or (c)(3) of this section, nothing in this section prevents the creditor, at its option, from changing the rate or terms of the loan to accommodate a specific request by the consumer. For example, if the consumer requests a different repayment option, the creditor may, but need not, offer to provide the requested repayment option and make any other changes to the rate and terms.

(ii) If the creditor changes the rate or terms of the loan under this paragraph (c)(4), the creditor shall provide the disclosures required under § 1026.47(b) and shall provide the consumer the 30-day period to accept the loan under paragraph (c)(1) of this section. The creditor shall not make further changes to the rates and terms of the loan, except as specified in paragraphs (c)(3) and (4) of this section. Except as permitted under § 1026.48(c)(3), unless the consumer accepts the loan offered by the creditor in response to the consumer's request, the creditor may not withdraw or change the rates or terms of the loan for which the consumer was approved prior to the consumer's request for a change in loan terms.

(d) *Consumer's right to cancel.* The consumer may cancel a private education loan, without penalty, until midnight of the third business day following the date on which the consumer receives the disclosures required by § 1026.47(c). No funds may be disbursed for a private education loan until the three-business day period has expired.

(e) *Self-certification form.* For a private education loan intended to be used for the postsecondary educational expenses of a student while the student is attending an institution of higher education, the creditor shall obtain from the consumer or the institution of higher education the form developed by the Secretary of Education under section 155 of the Higher Education Act of 1965, signed by the consumer, in written or electronic form, before consummating the private education loan.

(f) *Provision of information by preferred lenders.* A creditor that has a preferred lender arrangement with a covered educational institution shall provide to the covered educational institution the information required under §§ 1026.47(a)(1) through (5), for each type of private education loan that the lender plans to offer to consumers for students attending the covered educational institution for the period beginning July 1 of the current year and ending June 30 of the following year. The creditor shall provide the information annually by the later of the 1st day of April, or within 30 days after entering into, or learning the creditor is a party to, a preferred lender arrangement.

[74 Fed. Reg. 41,235 (Aug. 14, 2009); 76 Fed. Reg. 79,772 (Dec. 22, 2011)]

SUBPART G--SPECIAL RULES APPLICABLE TO CREDIT CARD ACCOUNTS AND OPEN-END CREDIT OFFERED TO COLLEGE STUDENTS

SECTION 1026.51 Ability to Pay [§ 226.51]

(a) *General rule.* ⁶²

⁶² [Paragraph \(a\)\(1\) is effective May 3, 2013. 78 Fed. Reg. 25,818 \(May 3, 2013\).](#)

(1)(i) *Consideration of ability to pay.* A card issuer must 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 consumer's ~~independent's~~ ability to make the required minimum periodic payments under the terms of the account based on the consumer's income or assets and the consumer's current obligations.

(ii) *Reasonable policies and procedures.* Card issuers must establish and maintain reasonable written policies and procedures to consider ~~a consumer's independent~~ the consumer's ability to make the required minimum payments under the terms of the account based on a consumer's income or assets and a consumer's current obligations. Reasonable policies and procedures ~~to consider a consumer's independent ability to make the required payments include the~~ include treating any income and assets to which the consumer has a reasonable expectation of access as the consumer's income or assets, or limiting consideration of the consumer's income or assets to the consumer's independent income and assets. Reasonable policies and procedures also include consideration of 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. It would be unreasonable for a card issuer ~~to not~~ to review any information about a consumer's income, ~~or~~ or assets, ~~or~~ and current obligations, or to issue a credit card to a consumer who does not have any ~~independent~~ income or assets.

(2) *Minimum periodic payments.*

(i) *Reasonable method.* For purposes of paragraph (a)(1) of this section, a card issuer must use a reasonable method for estimating the minimum periodic payments the consumer would be required to pay under the terms of the account.

(ii) *Safe harbor.* A card issuer complies with paragraph (a)(2)(i) of this section if it estimates required minimum periodic payments using the following method:

(A) 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

(B) 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:

(1) 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

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

(b) *Rules affecting young consumers.*⁶³

(1) *Applications from young consumers.* A card issuer may not open a credit card account under an open-end (not home-secured) consumer credit plan for a consumer less than 21 years old, unless the consumer has submitted a written application and the card issuer has:

(i) Financial information indicating the consumer has an independent ability to make the required minimum periodic payments on the proposed extension of credit in connection with the account, ~~consistent with paragraph (a) of this section~~; or

(ii)(A) A signed agreement of a cosigner, guarantor, or joint applicant who is at least 21 years old to be either secondarily liable for any debt on the account incurred by the consumer before the consumer has attained the age of 21 or jointly liable with the consumer for any debt on the account;³ and

(B) Financial information indicating such cosigner, guarantor, or joint applicant has the ~~independent~~ ability to make the required minimum periodic payments on such debts, consistent with paragraph (a) of this section.

(2) *Credit line increases for young consumers.*

(i) If a credit card account has been opened pursuant to paragraph (b)(1)(i) of this section, no increase in the credit limit may be made on such account before the consumer attains the age of 21 unless:

(A) At the time of the contemplated increase, the consumer has an independent ability to make the required minimum periodic payments on the increased limit consistent with paragraph (b)(1)(i) of this section; or

(B) A cosigner, guarantor, or joint applicant who is at least 21 years old agrees in writing to assume liability for any debt incurred on the account, consistent with paragraph (b)(1)(ii) of this section.

(ii) If a credit card account has been opened pursuant to paragraph (b)(1)(ii) of this section, no increase in the credit limit may be made on such account before the consumer attains the age of 21 unless the cosigner, guarantor, or joint accountholder who assumed liability at account opening agrees in writing to assume liability on the increase.

[75 Fed. Reg. 7818 (Feb. 22, 2010); 76 Fed. Reg. 23,002 (Apr. 25, 2011); 76 Fed. Reg. 79,772 (Dec. 22, 2011); 78 Fed. Reg. 25,818 (May 3, 2013)]

SECTION 1026.52 Limitations on Fees [§ 226.52]

³Paragraph (b) is effective May 3, 2013. 78 Fed. Reg. 25,818 (May 3, 2013).

(a) *Limitations ~~prior to account opening and~~ during first year after account opening.*

(1) *General rule.* Except as provided in paragraph (a)(2) of this section, the total amount of fees a consumer is required to pay with respect to a credit card account under an open-end (not home-secured) consumer credit plan ~~prior to account opening and~~ during the first year after account opening must not exceed 25 percent of the credit limit in effect when the account is opened. For purposes of this paragraph, 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.⁶⁴

(2) *Fees not subject to limitations.* Paragraph (a) of this section does not apply to:

- (i) Late payment fees, over-the-limit fees, and returned-payment fees; or
- (ii) Fees that the consumer is not required to pay with respect to the account.

(3) *Rule of construction.* Paragraph (a) of this section does not authorize the imposition or payment of fees or charges otherwise prohibited by law.

(b) *Limitations on penalty fees.* A card issuer must not impose a fee for violating the terms or other requirements of a credit card account under an open-end (not home-secured) consumer credit plan unless the dollar amount of the fee is consistent with paragraphs (b)(1) and (b)(2) of this section.

(1) *General rule.* Except as provided in paragraph (b)(2) of this section, a card issuer may impose a fee for violating the terms or other requirements of a credit card account under an open-end (not home-secured) consumer credit plan if the dollar amount of the fee is consistent with either paragraph (b)(1)(i) or (b)(1)(ii) of this section.

(i) *Fees based on costs.* A card issuer may impose a fee for violating the terms or other requirements of an account if the card issuer has determined that the dollar amount of the fee represents a reasonable proportion of the total costs incurred by the card issuer as a result of that type of violation. A card issuer must reevaluate this determination at least once every twelve months. If as a result of the reevaluation the card issuer determines that a lower fee represents a reasonable proportion of the total costs incurred by the card issuer as a result of that type of violation, the card issuer must begin imposing the lower fee within 45 days after completing the reevaluation. If as a result of the reevaluation the card issuer determines that a higher fee represents a reasonable proportion of the total costs incurred by the card issuer as a result of that type of violation, the card issuer may begin imposing the higher fee after complying with the notice requirements in § 1026.9.

(ii) *Safe harbors.* A card issuer may impose a fee for violating the terms or other requirements of an account if the dollar amount of the fee does not exceed, as applicable:

(A) \$25.00;

⁶⁴ [Paragraph \(a\)\(1\) is effective Mar. 28, 2013. 78 Fed. Reg. 18,795 \(Mar. 28, 2013\).](#)

(B) \$35.00 if the card issuer previously imposed a fee pursuant to paragraph (b)(1)(ii)(A) of this section for a violation of the same type that occurred during the same billing cycle or one of the next six billing cycles; or

(C) Three percent of the delinquent balance on a charge card account that requires payment of outstanding balances in full at the end of each billing cycle if the card issuer has not received the required payment for two or more consecutive billing cycles.

(D) The amounts in paragraphs (b)(1)(ii)(A) and (b)(1)(ii)(B) of this section will be adjusted annually by the Bureau to reflect changes in the Consumer Price Index.

(2) *Prohibited fees.*

(i) *Fees that exceed dollar amount associated with violation.*

(A) *Generally.* A card issuer must not impose a fee for violating the terms or other requirements of a credit card account under an open-end (not home-secured) consumer credit plan that exceeds the dollar amount associated with the violation.

(B) *No dollar amount associated with violation.* A card issuer must not impose a fee for violating the terms or other requirements of a credit card account under an open-end (not home-secured) consumer credit plan when there is no dollar amount associated with the violation. For purposes of paragraph (b)(2)(i) of this section, there is no dollar amount associated with the following violations:

(1) Transactions that the card issuer declines to authorize;

(2) Account inactivity; and

(3) The closure or termination of an account.

(ii) *Multiple fees based on a single event or transaction.* A card issuer must not impose more than one fee for violating the terms or other requirements of a credit card account under an open-end (not home-secured) consumer credit plan based on a single event or transaction. A card issuer may, at its option, comply with this prohibition by imposing no more than one fee for violating the terms or other requirements of an account during a billing cycle.

[75 Fed. Reg. 7819 (Feb. 22, 2010); 75 Fed. Reg. 37,571 (June 29, 2010); 76 Fed. Reg. 23,002, 23,003 (Apr. 25, 2011); 76 Fed. Reg. 79,772 (Dec. 22, 2011); [78 Fed. Reg. 18,795 \(Mar. 28, 2013\)](#)]

SECTION 1026.53 Allocation of Payments [§ 226.53]

(a) *General rule.* Except as provided in paragraph (b) of this section, when a consumer makes a payment in excess of the required minimum periodic payment for a credit card account under an open-end (not home-secured) consumer credit plan, the card issuer must allocate the excess

amount first to the balance with the highest annual percentage rate and any remaining portion to the other balances in descending order based on the applicable annual percentage rate.

(b) *Special rules.*

(1) *Accounts with balances subject to deferred interest or similar program.* When a balance on a credit card account under an open-end (not home-secured) consumer credit plan is subject to a deferred interest or similar program that provides that a consumer will not be obligated to pay interest that accrues on the balance if the balance is paid in full prior to the expiration of a specified period of time:

(i) *Last two billing cycles.* The card issuer must allocate any amount paid by the consumer in excess of the required minimum periodic payment consistent with paragraph (a) of this section, except that, during the two billing cycles immediately preceding expiration of the specified period, the excess amount must be allocated first to the balance subject to the deferred interest or similar program and any remaining portion allocated to any other balances consistent with paragraph (a) of this section; or

(ii) *Consumer request.* The card issuer may at its option allocate any amount paid by the consumer in excess of the required minimum periodic payment among the balances on the account in the manner requested by the consumer.

(2) *Accounts with secured balances.* When a balance on a credit card account under an open-end (not home-secured) consumer credit plan 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.

[75 Fed. Reg. 7819 (Feb. 22, 2010); 76 Fed. Reg. 23,003 (Apr. 25, 2011); 76 Fed. Reg. 79,772 (Dec. 22, 2011)]

SECTION 1026.54 Limitations on the Imposition of Finance Charges [§ 226.54]

(a) *Limitations on imposing finance charges as a result of the loss of a grace period.*

(1) *General rule.* Except as provided in paragraph (b) of this section, a card issuer must not impose 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 if those finance charges are based on:

(i) Balances for days in billing cycles that precede the most recent billing cycle;
or

(ii) Any portion of a balance subject to a grace period that was repaid prior to the expiration of the grace period.

(2) *Definition of grace period.* For purposes of paragraph (a)(1) of this section, “grace period” has the same meaning as in § 1026.5(b)(2)(ii)(B)(3).

(b) *Exceptions.* Paragraph (a) of this section does not apply to:

(1) Adjustments to finance charges as a result of the resolution of a dispute under § 1026.12 or § 1026.13; or

(2) Adjustments to finance charges as a result of the return of a payment.

[75 Fed. Reg. 7819 (Feb. 22, 2010); 76 Fed. Reg. 79,772 (Dec. 22, 2011)]

SECTION 1026.55 Limitations on Increasing Annual Percentage Rates, Fees, and Charges [§ 226.55]

(a) *General rule.* Except as provided in paragraph (b) of this section, a card issuer must not increase an annual percentage rate or a fee or charge required to be disclosed under § 1026.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii) on a credit card account under an open-end (not home-secured) consumer credit plan.

(b) *Exceptions.* A card issuer may increase an annual percentage rate or a fee or charge required to be disclosed under § 1026.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii) pursuant to an exception set forth in this paragraph even if that increase would not be permitted under a different exception.

(1) *Temporary rate, fee, or charge exception.* A card issuer may increase an annual percentage rate or a fee or charge required to be disclosed under § 1026.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii) upon the expiration of a specified period of six months or longer, provided that:

(i) Prior to the commencement of that period, the card issuer disclosed in writing to the consumer, in a clear and conspicuous manner, the length of the period and the annual percentage rate, fee, or charge that would apply after expiration of the period; and

(ii) Upon expiration of the specified period:

(A) The card issuer must not apply an annual percentage rate, fee, or charge to transactions that occurred prior to the period that exceeds the annual percentage rate, fee, or charge that applied to those transactions prior to the period;

(B) If the disclosures required by paragraph (b)(1)(i) of this section are provided pursuant to § 1026.9(c), the card issuer must not apply an annual percentage rate, fee, or charge to transactions that occurred within 14 days after provision of the notice that exceeds the annual percentage rate, fee, or charge that applied to that category of transactions prior to provision of the notice; and

(C) The card issuer must not apply an annual percentage rate, fee, or charge to transactions that occurred during the period that exceeds the increased annual percentage rate, fee, or charge disclosed pursuant to paragraph (b)(1)(i) of this section.

(2) *Variable rate exception.* A card issuer may increase an annual percentage rate when:

(i) The annual percentage rate varies according to an index that is not under the card issuer's control and is available to the general public; and

(ii) The increase in the annual percentage rate is due to an increase in the index.

(3) *Advance notice exception.* A card issuer may increase an annual percentage rate or a fee or charge required to be disclosed under § 1026.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii) after complying with the applicable notice requirements in § 1026.9(b), (c), or (g), provided that:

(i) If a card issuer discloses an increased annual percentage rate, fee, or charge pursuant to § 1026.9(b), the card issuer must not apply that rate, fee, or charge to transactions that occurred prior to provision of the notice;

(ii) If a card issuer discloses an increased annual percentage rate, fee, or charge pursuant to § 1026.9(c) or (g), the card issuer must not apply that rate, fee, or charge to transactions that occurred prior to or within 14 days after provision of the notice; and

(iii) This exception does not permit a card issuer to increase an annual percentage rate or a fee or charge required to be disclosed under § 1026.6(b)(2)(ii), (iii), or (xii) during the first year after the account is opened, while the account is closed, or while the card issuer does not permit the consumer to use the account for new transactions. For purposes of this paragraph, 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.

(4) *Delinquency exception.* A card issuer may increase an annual percentage rate or a fee or charge required to be disclosed under § 1026.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii) due to the card issuer not receiving the consumer's required minimum periodic payment within 60 days after the due date for that payment, provided that:

(i) The card issuer must disclose in a clear and conspicuous manner in the notice of the increase pursuant to § 1026.9(c) or (g):

(A) A statement of the reason for the increase; and

(B) That the increased annual percentage rate, fee, or charge will cease to apply 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; and

(ii) 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, the card issuer must reduce any annual percentage rate, fee, or charge increased pursuant to this exception to the annual percentage rate, 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 § 1026.9(c) or (g) notice.

(5) *Workout and temporary hardship arrangement exception.* A card issuer may increase an annual percentage rate or a fee or charge required to be disclosed under § 1026.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii) due to the consumer's completion of a workout or temporary hardship arrangement or the consumer's failure to comply with the terms of such an arrangement, provided that:

(i) Prior to commencement of the arrangement (except as provided in § 1026.9(c)(2)(v)(D)), the card issuer has 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

(ii) Upon the completion or failure of the arrangement, the card issuer must not apply to any transactions that occurred prior to commencement of the arrangement an annual percentage rate, fee, or charge that exceeds the annual percentage rate, fee, or charge that applied to those transactions prior to commencement of the arrangement.

(6) *Servicemembers Civil Relief Act exception.* If an annual percentage rate or a fee or charge required to be disclosed under § 1026.6(b)(2)(ii), (iii), or (xii) has been decreased pursuant to 50 U.S.C. app. 527 or a similar Federal or state statute or regulation, a card issuer may increase that annual percentage rate, fee, or charge once 50 U.S.C. app. 527 or the similar statute or regulation no longer applies, provided that the card issuer must not apply to any transactions that occurred prior to the decrease an annual percentage rate, fee, or charge that exceeds the annual percentage rate, fee, or charge that applied to those transactions prior to the decrease.

(c) *Treatment of protected balances.*

(1) *Definition of protected balance.* For purposes of this paragraph, "protected balance" means the amount owed for a category of transactions to which an increased annual percentage rate or an increased fee or charge required to be disclosed under § 1026.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii) cannot be applied after the annual percentage rate, fee, or charge for that category of transactions has been increased pursuant to paragraph (b)(3) of this section.

(2) *Repayment of protected balance.* The card issuer must not require repayment of the protected balance using a method that is less beneficial to the consumer than one of the following methods:

(i) The method of repayment for the account before the effective date of the increase;

(ii) An amortization period of not less than five years, beginning no earlier than the effective date of the increase; or

(iii) 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.

(d) *Continuing application.* This section continues to apply to a balance on a credit card account under an open-end (not home-secured) consumer credit plan after:

(1) The account is closed or acquired by another creditor; or

(2) The balance is transferred from a credit card account under an open-end (not home-secured) consumer credit plan issued by a creditor to another credit account issued by the same creditor or its affiliate or subsidiary (unless the account to which the balance is transferred is subject to § 1026.40).

(e) *Promotional waivers or rebates of interest, fees, and other charges.* If a card issuer promotes the waiver or rebate of finance charges due to a periodic interest rate or fees or charges required to be disclosed under § 1026.6(b)(2)(ii), (iii), or (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 this section.

[75 Fed. Reg. 7819 (Feb. 22, 2010); 76 Fed. Reg. 23,003 (Apr. 25, 2011); 76 Fed. Reg. 79,772 (Dec. 22, 2011)]

SECTION 1026.56 Requirements for Over-the-Limit Transactions [§ 226.56]

(a) *Definition.* For purposes of this section, the term “*over-the-limit transaction*” means any extension of credit by a card issuer to complete a transaction that causes a consumer’s credit card account balance to exceed the credit limit.

(b) *Opt-in requirement.*

(1) *General.* A card issuer shall not assess a fee or charge on a consumer’s credit card account under an open-end (not home-secured) consumer credit plan for an over-the-limit transaction unless the card issuer:

(i) Provides the consumer with an oral, written or electronic notice, segregated from all other information, describing the consumer’s right to affirmatively consent, or opt in, to the card issuer’s payment of an over-the-limit transaction;

(ii) Provides a reasonable opportunity for the consumer to affirmatively consent, or opt in, to the card issuer’s payment of over-the-limit transactions;

(iii) Obtains the consumer's affirmative consent, or opt-in, to the card issuer's payment of such transactions;

(iv) Provides the consumer with confirmation of the consumer's consent in writing, or if the consumer agrees, electronically; and

(v) Provides the consumer notice in writing of the right to revoke that consent following the assessment of an over-the-limit fee or charge.

(2) *Completion of over-the-limit transactions without consumer consent.*

Notwithstanding the absence of a consumer's affirmative consent under paragraph (b)(1)(iii) of this section, a card issuer may pay any over-the-limit transaction on a consumer's account provided that the card issuer does not impose any fee or charge on the account for paying that over-the-limit transaction.

(c) *Method of election.* A card issuer may permit a consumer to consent to the card issuer's payment of any over-the-limit transaction in writing, orally, or electronically, at the card issuer's option. The card issuer must also permit the consumer to revoke his or her consent using the same methods available to the consumer for providing consent.

(d) *Timing and placement of notices.*

(1) *Initial notice.*

(i) *General.* The notice required by paragraph (b)(1)(i) of this section shall be provided prior to the assessment of any over-the-limit fee or charge on a consumer's account.

(ii) *Oral or electronic consent.* If a consumer consents to the card issuer's payment of any over-the-limit transaction by oral or electronic means, the card issuer must provide the notice required by paragraph (b)(1)(i) of this section immediately prior to obtaining that consent.

(2) *Confirmation of opt-in.* The notice required by paragraph (b)(1)(iv) of this section may be provided no later than the first periodic statement sent after the consumer has consented to the card issuer's payment of over-the-limit transactions.

(3) *Notice of right of revocation.* The notice required by paragraph (b)(1)(v) of this section shall be provided on the front of any page of each periodic statement that reflects the assessment of an over-the-limit fee or charge on a consumer's account.

(e) *Content.*

(1) *Initial notice.* The notice required by paragraph (b)(1)(i) of this section shall include all applicable items in this paragraph (e)(1) and may not contain any information not specified in or otherwise permitted by this paragraph.

(i) *Fees*. The dollar amount of any fees or charges assessed by the card issuer on a consumer's account for an over-the-limit transaction;

(ii) *APRs*. Any increased periodic rate(s) (expressed as an annual percentage rate(s)) that may be imposed on the account as a result of an over-the-limit transaction; and

(iii) *Disclosure of opt-in right*. An explanation of the consumer's right to affirmatively consent to the card issuer's payment of over-the-limit transactions, including the method(s) by which the consumer may consent.

(2) *Subsequent notice*. The notice required by paragraph (b)(1)(v) of this section shall describe the consumer's right to revoke any consent provided under paragraph (b)(1)(iii) of this section, including the method(s) by which the consumer may revoke.

(3) *Safe harbor*. Use of Model Forms G-25(A) or G-25(B) of Appendix G to this part, or substantially similar notices, constitutes compliance with the notice content requirements of paragraph (e) of this section.

(f) *Joint relationships*. 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 shall treat the affirmative consent of any of the joint consumers as affirmative consent for that account. Similarly, the card issuer shall treat a revocation of consent by any of the joint consumers as revocation of consent for that account.

(g) *Continuing right to opt in or revoke opt-in*. A consumer may affirmatively consent to the card issuer's payment of over-the-limit transactions at any time in the manner described in the notice required by paragraph (b)(1)(i) of this section. Similarly, the consumer may revoke the consent at any time in the manner described in the notice required by paragraph (b)(1)(v) of this section.

(h) *Duration of opt-in*. A consumer's affirmative consent to the card issuer's payment of over-the-limit transactions is effective until revoked by the consumer, or until the card issuer decides for any reason to cease paying over-the-limit transactions for the consumer.

(i) *Time to comply with revocation request*. A card issuer must comply with a consumer's revocation request as soon as reasonably practicable after the card issuer receives it.

(j) *Prohibited practices*. Notwithstanding a consumer's affirmative consent to a card issuer's payment of over-the-limit transactions, a card issuer is prohibited from engaging in the following practices:

(1) *Fees or charges imposed per cycle*.

(i) *General rule*. A card issuer may not impose more than one over-the-limit fee or charge on a consumer's credit card account per billing cycle, and, in any event, only if the credit limit was exceeded during the billing cycle. In addition, except as provided in paragraph

(j)(1)(ii) of this section, a card issuer may not impose an over-the-limit fee or charge on the consumer's credit card account for more than three billing cycles for the same over-the-limit transaction where the consumer has not reduced the account balance below the credit limit by the payment due date for either of the last two billing cycles.

(ii) *Exception.* The prohibition in paragraph (j)(1)(i) of this section on imposing an over-the-limit fee or charge in more than three billing cycles for the same over-the-limit transaction(s) does not apply if another over-the-limit transaction occurs during either of the last two billing cycles.

(2) *Failure to promptly replenish.* A card issuer may not impose an over-the-limit fee or charge solely because of the card issuer's failure to promptly replenish the consumer's available credit following the crediting of the consumer's payment under § 1026.10.

(3) *Conditioning.* A card issuer may not condition the amount of a consumer's credit limit on the consumer affirmatively consenting to the card issuer's payment of over-the-limit transactions if the card issuer assesses a fee or charge for such service.

(4) *Over-the-limit fees attributed to fees or interest.* A card issuer may not impose an over-the-limit fee or charge for a billing cycle if a consumer exceeds a credit limit solely because of fees or interest charged by the card issuer to the consumer's account during that billing cycle. For purposes of this paragraph (j)(4), the relevant fees or interest charges are charges imposed as part of the plan under § 1026.6(b)(3).

[75 Fed. Reg. 7820 (Feb. 22, 2010); 76 Fed. Reg. 79,772 (Dec. 22, 2011)]

SECTION 1026.57 Reporting and Marketing Rules for College Student Open-End Credit [§ 226.57]

(a) *Definitions.*

(1) *College student credit card.* The term “college student credit card” as used in this section means a credit card issued under a credit card account under an open-end (not home-secured) consumer credit plan to any college student.

(2) *College student.* The term “college student” as used in this section means a consumer who is a full-time or part-time student of an institution of higher education.

(3) *Institution of higher education.* The term “institution of higher education” as used in this section has the same meaning as in sections 101 and 102 of the Higher Education Act of 1965 (20 U.S.C. 1001 and 1002).

(4) *Affiliated organization.* The term “affiliated organization” as used in this section means an alumni organization or foundation affiliated with or related to an institution of higher education.

(5) *College credit card agreement.* The term “*college credit card agreement*” as used in this section means any business, marketing or promotional agreement between a card issuer and an institution of higher education or an affiliated organization in connection with which college student credit cards are issued to college students currently enrolled at that institution.

(b) *Public disclosure of agreements.* An institution of higher education shall publicly disclose any contract or other agreement made with a card issuer or creditor for the purpose of marketing a credit card.

(c) *Prohibited inducements.* No card issuer or creditor may offer a college student any tangible item to induce such student to apply for or open an open-end consumer credit plan offered by such card issuer or creditor, if such offer is made:

- (1) On the campus of an institution of higher education;
- (2) Near the campus of an institution of higher education; or
- (3) At an event sponsored by or related to an institution of higher education.

(d) *Annual report to the Bureau.*

(1) *Requirement to report.* Any card issuer that was a party to one or more college credit card agreements in effect at any time during a calendar year must submit to the Bureau an annual report regarding those agreements in the form and manner prescribed by the Bureau.

(2) *Contents of report.* The annual report to the Bureau must include the following:

(i) 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);

(ii) A copy of any college credit card agreement to which the card issuer was a party that was in effect at any time during the period covered by the report;

(iii) A copy of any memorandum of understanding in effect at any time during the period covered by the report between the card issuer and an institution of higher education or affiliated organization that directly or indirectly relates to the college credit card agreement or that controls or directs any obligations or distribution of benefits between any such entities;

(iv) The total dollar amount of any payments pursuant to a college credit card agreement from the card issuer to an institution of higher education or affiliated organization during the period covered by the report, and the method or formula used to determine such amounts;

(v) The total number of credit card accounts opened pursuant to any college credit card agreement during the period covered by the report; and

(vi) The total number of credit card accounts opened pursuant to any such agreement that were open at the end of the period covered by the report.

(3) *Timing of reports.* Except for the initial report described in this paragraph (d)(3), a card issuer must submit its annual report for each calendar year to the Bureau by the first business day on or after March 31 of the following calendar year.

[75 Fed. Reg. 7821 (Feb. 22, 2010); 76 Fed. Reg. 79,772 (Dec. 22, 2011)]

SECTION ~~1026~~1026.58 Internet Posting of Credit Card Agreements [§ 226.58]

(a) *Applicability.* The requirements of this section apply to any card issuer that issues credit cards under a credit card account under an open-end (not home-secured) consumer credit plan.

(b) *Definitions.*

(1) *Agreement.* For purposes of this section, “agreement” or “credit card agreement” means the written document or documents evidencing the terms of the legal obligation, or the prospective legal obligation, between a card issuer and a consumer for a credit card account under an open-end (not home-secured) consumer credit plan. “Agreement” or “credit card agreement” also includes the pricing information, as defined in § 1026.58(b)(7).

(2) *Amends.* For purposes of this section, an issuer “amends” an agreement if it makes a substantive change (an “amendment”) to the agreement. A change is substantive if it alters the rights or obligations of the card issuer or the consumer under the agreement. Any change in the pricing information, as defined in § 1026.58(b)(7), is deemed to be substantive.

(3) *Business day.* For purposes of this section, “business day” means a day on which the creditor’s offices are open to the public for carrying on substantially all of its business functions.

(4) *Card issuer.* For purposes of this section, “card issuer” or “issuer” means the entity to which a consumer is legally obligated, or would be legally obligated, under the terms of a credit card agreement.

(5) *Offers.* For purposes of this section, an issuer “offers” or “offers to the public” an agreement if the issuer is soliciting or accepting applications for accounts that would be subject to that agreement.

(6) *Open account.* For purposes of this section, an account is an “open account” or “open credit card account” if it is a credit card account under an open-end (not home-secured) consumer credit plan and either:

(i) The cardholder can obtain extensions of credit on the account; or

(ii) There is an outstanding balance on the account that has not been charged off. An account that has been suspended temporarily (for example, due to a report by the cardholder of unauthorized use of the card) is considered an “open account” or “open credit card account.”

(7) *Pricing information.* For purposes of this section, “pricing information” means the information listed in § 1026.6(b)(2)(i) through (b)(2)(xii). Pricing information does not include temporary or promotional rates and terms or rates and terms that apply only to protected balances.

(8) *Private label credit card account and private label credit card plan.* For purposes of this section:

(i) “private label credit card account” means a credit card account under an open-end (not home-secured) consumer credit plan with a credit card that can be used to make purchases only at a single merchant or an affiliated group of merchants; and

(ii) “private label credit card plan” means all of the private label credit card accounts issued by a particular issuer with credit cards usable at the same single merchant or affiliated group of merchants.

(c) *Submission of agreements to Bureau.*

(1) *Quarterly submissions.* A card issuer must make quarterly submissions to the Bureau, in the form and manner specified by the Bureau. Quarterly submissions must be sent to the Bureau no later than the first business day on or after January 31, April 30, July 31, and October 31 of each year. Each submission must contain:

(i) 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);

(ii) 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 Bureau;

(iii) Any credit card agreement previously submitted to the Bureau 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 § 1026.58(c)(3); and

(iv) Notification regarding any credit card agreement previously submitted to the Bureau that the issuer is withdrawing, as described in § 1026.58(c)(4), (c)(5), (c)(6), and (c)(7).

(2) [Reserved].

(3) *Amended agreements.* If a credit card agreement has been submitted to the Bureau, the agreement has not been amended and the card issuer continues to offer the agreement to the

public, no additional submission regarding that agreement is required. If a credit card agreement that previously has been submitted to the Bureau is amended and the card issuer offered the amended agreement to the public as of the last business day of the calendar quarter in which the change became effective, the card issuer must submit the entire amended agreement to the Bureau, in the form and manner specified by the Bureau, by the first quarterly submission deadline after the last day of the calendar quarter in which the change became effective.

(4) *Withdrawal of agreements.* If a card issuer no longer offers to the public a credit card agreement that previously has been submitted to the Bureau, the card issuer must notify the Bureau, in the form and manner specified by the Bureau, by the first quarterly submission deadline after the last day of the calendar quarter in which the issuer ceased to offer the agreement.

(5) *De minimis exception.*

(i) A card issuer is not required to submit any credit card agreements to the Bureau if the card issuer had fewer than 10,000 open credit card accounts as of the last business day of the calendar quarter.

(ii) If an issuer that previously qualified for the de minimis exception ceases to qualify, the card issuer must begin making quarterly submissions to the Bureau no later than the first quarterly submission deadline after the date as of which the issuer ceased to qualify.

(iii) If a card issuer that did not previously qualify for the de minimis exception qualifies for the de minimis exception, the card issuer must continue to make quarterly submissions to the Bureau until the issuer notifies the Bureau that the card issuer is withdrawing all agreements it previously submitted to the Bureau.

(6) *Private label credit card exception.*

(i) A card issuer is not required to submit to the Bureau a credit card agreement if, as of the last business day of the calendar quarter, the agreement:

(A) Is offered for accounts under one or more private label credit card plans each of which has fewer than 10,000 open accounts; and

(B) Is not offered to the public other than for accounts under such a plan.

(ii) If an agreement that previously qualified for the private label credit card exception ceases to qualify, the card issuer must submit the agreement to the Bureau no later than the first quarterly submission deadline after the date as of which the agreement ceased to qualify.

(iii) If an agreement that did not previously qualify for the private label credit card exception qualifies for the exception, the card issuer must continue to make quarterly submissions to the Bureau with respect to that agreement until the issuer notifies the Bureau that the agreement is being withdrawn.

(7) Product testing exception.

(i) A card issuer is not required to submit to the Bureau a credit card agreement if, as of the last business day of the calendar quarter, the agreement:

(A) Is offered as part of a product test offered to only a limited group of consumers for a limited period of time;

(B) Is used for fewer than 10,000 open accounts; and

(C) Is not offered to the public other than in connection with such a product test.

(ii) If an agreement that previously qualified for the product testing exception ceases to qualify, the card issuer must submit the agreement to the Bureau no later than the first quarterly submission deadline after the date as of which the agreement ceased to qualify.

(iii) If an agreement that did not previously qualify for the product testing exception qualifies for the exception, the card issuer must continue to make quarterly submissions to the Bureau with respect to that agreement until the issuer notifies the Bureau that the agreement is being withdrawn.

(8) Form and content of agreements submitted to the Bureau.

(i) Form and content generally.

(A) Each agreement must contain the provisions of the agreement and the pricing information in effect as of the last business day of the preceding calendar quarter.

(B) Agreements must not include any personally identifiable information relating to any cardholder, such as name, address, telephone number, or account number.

(C) The following are not deemed to be part of the agreement for purposes of § 1026.58, and therefore are not required to be included in submissions to the Bureau:

(1) Disclosures required by state or Federal law, such as affiliate marketing notices, privacy policies, billing rights notices, or disclosures under the E-Sign Act;

(2) Solicitation materials;

(3) Periodic statements;

(4) Ancillary agreements between the issuer and the consumer, such as debt cancellation contracts or debt suspension agreements;

(5) Offers for credit insurance or other optional products and other similar advertisements; and

(6) Documents that may be sent to the consumer along with the credit card or credit card agreement such as a cover letter, a validation sticker on the card, or other information about card security.

(D) Agreements must be presented in a clear and legible font.

(ii) *Pricing information.*

(A) Pricing information must be set forth in a single addendum to the agreement. The addendum must contain all of the pricing information, as defined by § 1026.58(b)(7). The addendum may, but is not required to, contain any other information listed in § 1026.6(b), provided that information is complete and accurate as of the applicable date under § 1026.58. The addendum may not contain any other information.

(B) Pricing information that may vary from one cardholder to another depending on the cardholder's creditworthiness or state of residence or other factors must be disclosed either by setting forth all the possible variations (such as purchase APRs of 13 percent, 15 percent, 17 percent, and 19 percent) or by providing a range of possible variations (such as purchase APRs ranging from 13 percent to 19 percent).

(C) If a rate included in the pricing information is a variable rate, the issuer must identify the index or formula used in setting the rate and the margin. Rates that may vary from one cardholder to another must be disclosed by providing the index and the possible margins (such as the prime rate plus 5 percent, 8 percent, 10 percent, or 12 percent) or range of margins (such as the prime rate plus from 5 to 12 percent). The value of the rate and the value of the index are not required to be disclosed.

(iii) *Optional variable terms addendum.* Provisions of the agreement other than the pricing information that may vary from one cardholder to another depending on the cardholder's creditworthiness or state of residence or other factors may be set forth in a single addendum to the agreement separate from the pricing information addendum.

(iv) *Integrated agreement.* Issuers may not provide provisions of the agreement or pricing information in the form of change-in-terms notices or riders (other than the pricing information addendum and the optional variable terms addendum). Changes in provisions or pricing information must be integrated into the text of the agreement, the pricing information addendum or the optional variable terms addendum, as appropriate.

(d) *Posting of agreements offered to the public.*

(1) Except as provided below, a card issuer must post and maintain on its publicly available Web site the credit card agreements that the issuer is required to submit to the Bureau

under § 1026.58(c). With respect to an agreement offered solely for accounts under one or more private label credit card plans, an issuer may fulfill this requirement by posting and maintaining the agreement in accordance with the requirements of this section on the publicly available Web site of at least one of the merchants at which credit cards issued under each private label credit card plan with 10,000 or more open accounts may be used.

(2) Except as provided in § 1026.58(d), agreements posted pursuant to § 1026.58(d) must conform to the form and content requirements for agreements submitted to the Bureau specified in § 1026.58(c)(8).

(3) Agreements posted pursuant to § 1026.58(d) may be posted in any electronic format that is readily usable by the general public. Agreements must be placed in a location that is prominent and readily accessible by the public and must be accessible without submission of personally identifiable information.

(4) The card issuer must update the agreements posted on its Web site pursuant to § 1026.58(d) at least as frequently as the quarterly schedule required for submission of agreements to the Bureau under § 1026.58(c). If the issuer chooses to update the agreements on its Web site more frequently, the agreements posted on the issuer's Web site 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.

(e) Agreements for all open accounts.

(1) *Availability of individual cardholder's agreement.* With respect to any open credit card account, a card issuer must either:

(i) Post and maintain the cardholder's agreement on its Web site; or

(ii) Promptly provide a copy of the cardholder's agreement to the cardholder upon the cardholder's request. If the card issuer makes an agreement available upon request, the issuer must provide the cardholder with the ability to request a copy of the agreement both by using the issuer's Web site (such as by clicking on a clearly identified box to make the request) and by calling a readily available telephone line the number for which is displayed on the issuer's Web site and clearly identified as to purpose. The card issuer must send 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.

(2) *Special rule for issuers without interactive Web sites.* An issuer that does not maintain a Web site from which cardholders can access specific information about their individual accounts, instead of complying with § 1026.58(e)(1), may make 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 displayed on the issuer's Web site and clearly identified as to purpose or included on each periodic statement sent to the cardholder and clearly identified as to purpose. The issuer must send 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.

(3) *Form and content of agreements.*

(i) Except as provided in § 1026.58(e), agreements posted on the card issuer's Web site pursuant to § 1026.58(e)(1)(i) or made available upon the cardholder's request pursuant to § 1026.58(e)(1)(ii) or (e)(2) must conform to the form and content requirements for agreements submitted to the Bureau specified in § 1026.58(c)(8).

(ii) If the card issuer posts an agreement on its Web site or otherwise provides an agreement to a cardholder electronically under § 1026.58(e), the agreement may be posted or provided in any electronic format that is readily usable by the general public and must be placed in a location that is prominent and readily accessible to the cardholder.

(iii) Agreements posted or otherwise provided pursuant to § 1026.58(e) may contain personally identifiable information relating to the cardholder, such as name, address, telephone number, or account number, provided that the issuer takes appropriate measures to make the agreement accessible only to the cardholder or other authorized persons.

(iv) Agreements posted or otherwise provided pursuant to § 1026.58(e) must set forth the specific provisions and pricing information applicable to the particular cardholder. Provisions and pricing information must be complete and accurate as of a date no more than 60 days prior to:

(A) The date on which the agreement is posted on the card issuer's Web site under § 1026.58(e)(1)(i); or

(B) The date the cardholder's request is received under § 1026.58(e)(1)(ii) or (e)(2).

(v) Agreements provided upon cardholder request pursuant to § 1026.58(e)(1)(ii) or (e)(2) may be provided by the issuer in either electronic or paper form, regardless of the form of the cardholder's request.

(f) *E-Sign Act requirements.* Card issuers may provide credit card agreements in electronic form under § 1026.58(d) and (e) without regard to the consumer notice and consent requirements of section 101(c) of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. 7001 et seq.).

[75 Fed. Reg. 7822 (Feb. 22, 2010); 76 Fed. Reg. 23,003, 23,004 (Apr. 25, 2011); 76 Fed. Reg. 31,221 (May 31, 2011); 76 Fed. Reg. 79,772 (Dec. 22, 2011)]

SECTION 1026.59 Reevaluation of Rate Increases [§ 226.59]

(a) *General rule.*

(1) *Evaluation of increased rate.* If a card issuer increases an annual percentage rate that applies to a credit card account under an open-end (not home-secured) consumer credit plan, based on the credit risk of the consumer, market conditions, or other factors, or increased such a rate on or after January 1, 2009, and 45 days' advance notice of the rate increase is required pursuant to § 1026.9(c)(2) or (g), the card issuer must:

(i) Evaluate the factors described in paragraph (d) of this section; and

(ii) Based on its review of such factors, reduce the annual percentage rate applicable to the consumer's account, as appropriate.

(2) *Rate reductions.*

(i) *Timing.* If a card issuer is required to reduce the rate applicable to an account pursuant to paragraph (a)(1) of this section, the card issuer must reduce the rate not later than 45 days after completion of the evaluation described in paragraph (a)(1).

(ii) *Applicability of rate reduction.* Any reduction in an annual percentage rate required pursuant to paragraph (a)(1) of this section shall apply to:

(A) Any outstanding balances to which the increased rate described in paragraph (a)(1) of this section has been applied; and

(B) New transactions that occur after the effective date of the rate reduction that would otherwise have been subject to the increased rate.

(b) *Policies and procedures.* A card issuer must have reasonable written policies and procedures in place to conduct the review described in paragraph (a) of this section.

(c) *Timing.* A card issuer that is subject to paragraph (a) of this section must conduct the review described in paragraph (a)(1) of this section not less frequently than once every six months after the rate increase.

(d) *Factors.*

(1) *In general.* Except as provided in paragraph (d)(2) of this section, a card issuer must review either:

(i) The factors on which the increase in an annual percentage rate was originally based; or

(ii) The factors that the card issuer currently considers when determining the annual percentage rates applicable to similar new credit card accounts under an open-end (not home-secured) consumer credit plan.

(2) *Rate increases imposed between January 1, 2009 and February 21, 2010.* For rate increases imposed between January 1, 2009 and February 21, 2010, an issuer must consider the factors described in paragraph (d)(1)(ii) when conducting the first two reviews required under paragraph (a) of this section, unless the rate increase subject to paragraph (a) of this section was based solely upon factors specific to the consumer, such as a decline in the consumer's credit risk, the consumer's delinquency or default, or a violation of the terms of the account.

(e) *Rate increases due to delinquency.* If an issuer increases a rate applicable to a consumer's account pursuant to § 1026.55(b)(4) based on the card issuer not receiving the consumer's required minimum periodic payment within 60 days after the due date, the issuer is not required to perform the review described in paragraph (a) of this section prior to the sixth payment due date after the effective date of the increase. However, if the annual percentage rate applicable to the consumer's account is not reduced pursuant to § 1026.55(b)(4)(ii), the card issuer must perform the review described in paragraph (a) of this section. The first such review must occur no later than six months after the sixth payment due following the effective date of the rate increase.

(f) *Termination of obligation to review factors.* The obligation to review factors described in paragraph (a) and (d) of this section ceases to apply:

(1) If the issuer reduces the annual percentage rate applicable to a credit card account under an open-end (not home-secured) consumer credit plan to the rate applicable immediately prior to the increase, or, if the rate applicable immediately prior to the increase was a variable rate, to a variable rate determined by the same formula (index and margin) that was used to calculate the rate applicable immediately prior to the increase; or

(2) If the issuer reduces the annual percentage rate to a rate that is lower than the rate described in paragraph (f)(1) of this section.

(g) *Acquired accounts.*

(1) *General.* Except as provided in paragraph (g)(2) of this section, this section applies to credit card accounts that have been acquired by the card issuer from another card issuer. A card issuer that complies with this section by reviewing the factors described in paragraph (d)(1)(i) must review the factors considered by the card issuer from which it acquired the accounts in connection with the rate increase.

(2) *Review of acquired portfolio.* If, not later than six months after the acquisition of such accounts, a card issuer reviews all of the credit card accounts it acquires in accordance with the factors that it currently considers in determining the rates applicable to its similar new credit card accounts:

(i) Except as provided in paragraph (g)(2)(iii), the card issuer is required to conduct reviews described in paragraph (a) of this section only for rate increases that are imposed as a result of its review under this paragraph. See §§ 1026.9 and 1026.55 for additional requirements regarding rate increases on acquired accounts.

(ii) Except as provided in paragraph (g)(2)(iii) of this section, the card issuer is not required to conduct reviews in accordance with paragraph (a) of this section for any rate increases made prior to the card issuer's acquisition of such accounts.

(iii) If as a result of the card issuer's review, an account is subject to, or continues to be subject to, an increased rate as a penalty, or due to the consumer's delinquency or default, the requirements of paragraph (a) of this section apply.

(h) *Exceptions.*

(1) *Servicemembers Civil Relief Act exception.* The requirements of this section do not apply to increases in an annual percentage rate that was previously decreased pursuant to 50 U.S.C. app. 527, provided that such a rate increase is made in accordance with § 1026.55(b)(6).

(2) *Charged off accounts.* The requirements of this section do not apply to accounts that the card issuer has charged off in accordance with loan-loss provisions.

[75 Fed. Reg. 37,572 (June 29, 2010); 76 Fed. Reg. 79,772 (Dec. 22, 2011)]

SECTION 1026.60 Credit and Charge Card Applications and Solicitations [§ 226.5a]

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

(1) *Definition of solicitation.* For purposes of this section, the term *solicitation* means an offer by the card issuer to open a credit or charge card account that does not require the consumer to complete an application. A "firm offer of credit" as defined in section 603(l) of the Fair Credit Reporting Act (15 U.S.C. 1681a(l)) for a credit or charge card is a solicitation for purposes of this section.

(2) *Form of disclosures; tabular format.*

(i) The disclosures in paragraphs (b)(1) through (5) (except for (b)(1)(iv)(B)) and (b)(7) through (15) of this section made pursuant to paragraph (c), (d)(2), (e)(1) or (f) of this section generally shall be in the form of a table with headings, content, and format substantially similar to any of the applicable tables found in G-10 in Appendix G to this part.

(ii) The table described in paragraph (a)(2)(i) of this section shall contain only the information required or permitted by this section. Other information may be presented on or with an application or solicitation, provided such information appears outside the required table.

(iii) Disclosures required by paragraphs (b)(1)(iv)(B), (b)(1)(iv)(C) and (b)(6) of this section must be placed directly beneath the table.

(iv) When a tabular format is required, any annual percentage rate required to be disclosed pursuant to paragraph (b)(1) of this section, any introductory rate required to be disclosed pursuant to paragraph (b)(1)(ii) of this section, any rate that will apply after a premium initial rate expires required to be disclosed under paragraph (b)(1)(iii) of this section, and any fee or percentage amounts or maximum limits on fee amounts disclosed pursuant to paragraphs (b)(2), (b)(4), (b)(8) through (b)(13) of this section must be disclosed in bold text. However, 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 annual percentage rates or fee amounts disclosed in the table.

(v) For an application or a solicitation that is accessed by the consumer in electronic form, the disclosures required under this section may be provided to the consumer in electronic form on or with the application or solicitation.

(vi)(A) Except as provided in paragraph (a)(2)(vi)(B) of this section, the table described in paragraph (a)(2)(i) of this section must be provided in a prominent location on or with an application or a solicitation.

(B) If the table described in paragraph (a)(2)(i) of this section is provided electronically, it must be provided in close proximity to the application or solicitation.

(3) *Fees based on a percentage.* If the amount of any fee required to be disclosed under this section is determined on the basis of a percentage of another amount, the percentage used and the identification of the amount against which the percentage is applied may be disclosed instead of the amount of the fee.

(4) *Fees that vary by state.* Card issuers that impose fees referred to in paragraphs (b)(8) through (12) of this section that vary by state may, at the issuer's option, disclose in the table required by paragraph (a)(2)(i) of this section: The specific fee applicable to the consumer's account; or the range of the fees, if the disclosure includes a statement that the amount of the fee varies by state and refers the consumer to a disclosure provided with the table where the amount of the fee applicable to the consumer's account is disclosed. A card issuer may not list fees for multiple states in the table.

(5) *Exceptions.* This section does not apply to:

(i) Home-equity plans accessible by a credit or charge card that are subject to the requirements of § 1026.40;

(ii) Overdraft lines of credit tied to asset accounts accessed by check-guarantee cards or by debit cards;

(iii) Lines of credit accessed by check-guarantee cards or by debit cards that can be used only at automated teller machines;

(iv) Lines of credit accessed solely by account numbers;

(v) Additions of a credit or charge card to an existing open-end plan;

(vi) General purpose applications unless the application, or material accompanying it, indicates that it can be used to open a credit or charge card account; or

(vii) Consumer-initiated requests for applications.

(b) *Required disclosures.* The card issuer shall disclose the items in this paragraph on or with an application or a solicitation in accordance with the requirements of paragraphs (c), (d), (e)(1) or (f) of this section. A credit card issuer shall disclose all applicable items in this paragraph except for paragraph (b)(7) of this section. A charge card issuer shall disclose the applicable items in paragraphs (b)(2), (4), (7) through (12), and (15) of this section.

(1) *Annual percentage rate.* Each periodic rate that may be used to compute the finance charge on an outstanding balance for purchases, a cash advance, or a balance transfer, expressed as an annual percentage rate (as determined by § 1026.14(b)). When more than one rate applies for a category of transactions, the range of balances to which each rate is applicable shall also be disclosed. The annual percentage rate for purchases disclosed pursuant to this paragraph shall be in at least 16-point type, except for the following: Oral disclosures of the annual percentage rate for purchases; or a penalty rate that may apply upon the occurrence of one or more specific events.

(i) *Variable rate information.* If a rate disclosed under paragraph (b)(1) of this section is a variable rate, the card issuer shall also disclose the fact that the rate may vary and how the rate is determined. In describing how the applicable rate will be determined, the card issuer must identify the type of index or formula that is used in setting the rate. The value of the index and the amount of the margin that are used to calculate the variable rate shall not be disclosed in the table. A disclosure of any applicable limitations on rate increases shall not be included in the table.

(ii) *Discounted initial rate.* If the initial rate is an introductory rate, as that term is defined in § 1026.16(g)(2)(ii), the card issuer must disclose in the table the introductory rate, the time period during which the introductory rate will remain in effect, and must use the term “introductory” or “intro” in immediate proximity to the introductory rate. The card issuer also must disclose the rate that would otherwise apply to the account pursuant to paragraph (b)(1) of this section. Where the rate is not tied to an index or formula, the card issuer must disclose the rate that will apply after the introductory rate expires. In a variable-rate account, the card issuer must disclose a rate based on the applicable index or formula in accordance with the accuracy requirements set forth in paragraphs (c)(2), (d)(3), or (e)(4) of this section, as applicable.

(iii) *Premium initial rate.* If the initial rate is temporary and is higher than the rate that will apply after the temporary rate expires, the card issuer must disclose the premium initial rate pursuant to paragraph (b)(1) of this section and the time period during which the premium initial rate will remain in effect. Consistent with paragraph (b)(1) of this section, the premium

initial rate for purchases must be in at least 16-point type. The issuer must also disclose in the table the rate that will apply after the premium initial rate expires, in at least 16-point type.

(iv) *Penalty rates.*

(A) *In general.* Except as provided in paragraph (b)(1)(iv)(B) and (C) of this section, if a rate may increase as a penalty for one or more events specified in the account agreement, such as a late payment or an extension of credit that exceeds the credit limit, the card issuer must disclose pursuant to this paragraph (b)(1) the increased rate that may apply, a brief description of the event or events that may result in the increased rate, and a brief description of how long the increased rate will remain in effect.

(B) *Introductory rates.* If the issuer discloses an introductory rate, as that term is defined in § 1026.16(g)(2)(ii), in the table or in any written or electronic promotional materials accompanying applications or solicitations subject to paragraph (c) or (e) of this section, the issuer must briefly disclose directly beneath the table the circumstances, if any, under which the introductory rate may be revoked, and the type of rate that will apply after the introductory rate is revoked.

(C) *Employee preferential rates.* If a card issuer discloses in the table a preferential annual percentage rate for which only employees of the card issuer, employees of a third party, or other individuals with similar affiliations with the card issuer or third party, such as executive officers, directors, or principal shareholders are eligible, the card issuer must briefly disclose directly beneath the table the circumstances under which such preferential rate may be revoked, and the rate that will apply after such preferential rate is revoked.

(v) *Rates that depend on consumer's creditworthiness.* If a rate cannot be determined at the time disclosures are given because the rate depends, at least in part, on a later determination of the consumer's creditworthiness, the card issuer must disclose the specific rates or the range of rates that could apply and a statement that the rate for which the consumer may qualify at account opening will depend on the consumer's creditworthiness, and other factors if applicable. If the rate that depends, at least in part, on a later determination of the consumer's creditworthiness is a penalty rate, as described in paragraph (b)(1)(iv) of this section, the card issuer at its option may disclose the highest rate that could apply, instead of disclosing the specific rates or the range of rates that could apply.

(vi) *APRs that vary by state.* Issuers imposing annual percentage rates that vary by state may, at the issuer's option, disclose in the table: the specific annual percentage rate applicable to the consumer's account; or the range of the annual percentage rates, if the disclosure includes a statement that the annual percentage rate varies by state and refers the consumer to a disclosure provided with the table where the annual percentage rate applicable to the consumer's account is disclosed. A card issuer may not list annual percentage rates for multiple states in the table.

(2) *Fees for issuance or availability.*

(i) Any annual or other periodic fee that may be imposed for the issuance or availability of a credit or charge card, including any fee based on account activity or inactivity; how frequently it will be imposed; and the annualized amount of the fee.

(ii) Any non-periodic fee that relates to opening an account. A card issuer must disclose that the fee is a one-time fee.

(3) *Fixed finance charge; minimum interest charge.* Any fixed finance charge and a brief description of the charge. Any minimum interest charge if it exceeds \$1.00 that could be imposed during a billing cycle, and a brief description of the charge. The \$1.00 threshold amount shall be adjusted periodically by the Bureau to reflect changes in the Consumer Price Index. The Bureau shall calculate each year a price level adjusted minimum interest charge using the Consumer Price Index in effect on June 1 of that year. When the cumulative change in the adjusted minimum value derived from applying the annual Consumer Price level to the current minimum interest charge threshold has risen by a whole dollar, the minimum interest charge will be increased by \$1.00. The issuer may, at its option, disclose in the table minimum interest charges below this threshold.

(4) *Transaction charges.* Any transaction charge imposed by the card issuer for the use of the card for purchases.

(5) *Grace period.* The date by which or the period within which any credit extended for purchases may be repaid without incurring a finance charge due to a periodic interest rate and any conditions on the availability of the grace period. If no grace period is provided, that fact must be disclosed. If the length of the grace period varies, the 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. In disclosing in the tabular format a grace period that applies to all types of purchases, the phrase “How to Avoid Paying Interest on Purchases” shall be used 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, the phrase “Paying Interest” shall be used as the heading for the row describing this fact.

(6) *Balance computation method.* The name of the balance computation method listed in paragraph (g) of this section that is used to determine the balance for purchases on which the finance charge is computed, or an explanation of the method used if it is not listed. In determining which balance computation method to disclose, the card issuer shall assume that credit extended for purchases will not be repaid within the grace period, if any.

(7) *Statement on charge card payments.* A statement that charges incurred by use of the charge card are due when the periodic statement is received.

(8) *Cash advance fee.* Any fee imposed for an extension of credit in the form of cash or its equivalent.

(9) *Late payment fee.* Any fee imposed for a late payment.

(10) *Over-the-limit fee.* Any fee imposed for exceeding a credit limit.

(11) *Balance transfer fee.* Any fee imposed to transfer an outstanding balance.

(12) *Returned-payment fee.* Any fee imposed by the card issuer for a returned payment.

(13) *Required insurance, debt cancellation or debt suspension coverage.*

(i) A fee for insurance described in § 1026.4(b)(7) or debt cancellation or suspension coverage described in § 1026.4(b)(10), if the insurance or debt cancellation or suspension coverage is required as part of the plan; and

(ii) A cross reference to any additional information provided about the insurance or coverage accompanying the application or solicitation, as applicable.

(14) *Available credit.* If a card issuer requires fees for the issuance or availability of credit described in paragraph (b)(2) of this section, or requires a security deposit for such credit, and the total amount of those required fees and/or security deposit that will be imposed and charged to the account when the account is opened is 15 percent or more of the minimum credit limit for the card, a card issuer must disclose the available credit remaining after these fees or security deposit are debited to the account, assuming that the consumer receives the minimum credit limit. In determining whether the 15 percent threshold test is met, the issuer must only consider fees for issuance or availability of credit, or a security deposit, that are required. If fees for issuance or availability are optional, these fees should not be considered in determining whether the disclosure must be given. Nonetheless, if the 15 percent threshold test is met, the issuer in providing the disclosure must disclose the amount of available credit calculated by excluding those optional fees, and the available credit including those optional fees. This paragraph does not apply with respect to fees or security deposits that are not debited to the account.

(15) *Web site reference.* A reference to the Web site established by the Bureau and a statement that consumers may obtain on the Web site information about shopping for and using credit cards. Until January 1, 2013, issuers may substitute for this reference a reference to the Web site established by the Board of Governors of the Federal Reserve System.

(c) *Direct mail and electronic applications and solicitations.*

(1) *General.* The card issuer shall disclose the applicable items in paragraph (b) of this section on or with an application or solicitation that is mailed to consumers or provided to consumers in electronic form.

(2) *Accuracy.*

(i) Disclosures in direct mail applications and solicitations must be accurate as of the time the disclosures are mailed. An accurate variable annual percentage rate is one in effect within 60 days before mailing.

(ii) Disclosures provided in electronic form must be accurate as of the time they are sent, in the case of disclosures sent to a consumer's email address, or as of the time they are viewed by the public, in the case of disclosures made available at a location such as a card issuer's Web site. An accurate variable annual percentage rate provided in electronic form is one in effect within 30 days before it is sent to a consumer's email address, or viewed by the public, as applicable.

(d) Telephone applications and solicitations.

(1) *Oral disclosure.* The card issuer shall disclose orally the information in paragraphs (b)(1) through (7) and (b)(14) of this section, to the extent applicable, in a telephone application or solicitation initiated by the card issuer.

(2) *Alternative disclosure.* The oral disclosure under paragraph (d)(1) of this section need not be given if the card issuer either:

(i)(A) Does not impose a fee described in paragraph (b)(2) of this section; or

(B) Imposes such a fee but provides the consumer with a right to reject the plan consistent with § 1026.5(b)(1)(iv); and

(ii) The card issuer discloses in writing within 30 days after the consumer requests the card (but in no event later than the delivery of the card) the following:

(A) The applicable information in paragraph (b) of this section; and

(B) As applicable, the fact that the consumer has the right to reject the plan and not be obligated to pay fees described in paragraph (b)(2) or any other fees or charges until the consumer has used the account or made a payment on the account after receiving a billing statement.

(3) Accuracy.

(i) The oral disclosures under paragraph (d)(1) of this section must be accurate as of the time they are given.

(ii) The alternative disclosures under paragraph (d)(2) of this section generally must be accurate as of the time they are mailed or delivered. A variable annual percentage rate is one that is accurate if it was:

(A) In effect at the time the disclosures are mailed or delivered; or

(B) In effect as of a specified date (which rate is then updated from time to time, but no less frequently than each calendar month).

(e) *Applications and solicitations made available to general public.* The card issuer shall provide disclosures, to the extent applicable, on or with an application or solicitation that is made available to the general public, including one contained in a catalog, magazine, or other generally available publication. The disclosures shall be provided in accordance with paragraph (e)(1) or (e)(2) of this section.

(1) *Disclosure of required credit information.* The card issuer may disclose in a prominent location on the application or solicitation the following:

(i) The applicable information in paragraph (b) of this section;

(ii) The date the required information was printed, including a statement that the required information was accurate as of that date and is subject to change after that date; and

(iii) A statement that the consumer should contact the card issuer for any change in the required information since it was printed, and a toll-free telephone number or a mailing address for that purpose.

(2) *No disclosure of credit information.* If none of the items in paragraph (b) of this section is provided on or with the application or solicitation, the card issuer may state in a prominent location on the application or solicitation the following:

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

(ii) The consumer may contact the card issuer to request specific information about the costs, along with a toll-free telephone number and a mailing address for that purpose.

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

(4) *Accuracy.* The disclosures given pursuant to paragraph (e)(1) of this section must be accurate as of the date of printing. A variable annual percentage rate is accurate if it was in effect within 30 days before printing.

(f) *In-person applications and solicitations.* A card issuer shall disclose the information in paragraph (b) of this section, to the extent applicable, on or with an application or solicitation that is initiated by the card issuer and given to the consumer in person. A card issuer complies with the requirements of this paragraph if the issuer provides disclosures in accordance with paragraph (c)(1) or (e)(1) of this section.

(g) *Balance computation methods defined.* The following methods may be described by name. Methods that differ due to variations such as the allocation of payments, whether the finance charge begins to accrue on the transaction date or the date of posting the transaction, the existence or length of a grace period, and whether the balance is adjusted by charges such as late payment fees, annual fees and unpaid finance charges do not constitute separate balance computation methods.

(1) (i) *Average daily balance (including new purchases).* This balance is figured by adding the outstanding balance (including new purchases and deducting payments and credits) for each day in the billing cycle, and then dividing by the number of days in the billing cycle.

(ii) *Average daily balance (excluding new purchases).* This balance is figured by adding the outstanding balance (excluding new purchases and deducting payments and credits) for each day in the billing cycle, and then dividing by the number of days in the billing cycle.

(2) *Adjusted balance.* This balance is figured by deducting payments and credits made during the billing cycle from the outstanding balance at the beginning of the billing cycle.

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

(4) *Daily balance.* For each day in the billing cycle, this balance is figured by taking the beginning balance each day, adding any new purchases, and subtracting any payment and credits.

[54 Fed. Reg. 13,865 (Apr. 6, 1989); 54 Fed. Reg. 24,686 (June 9, 1989); 54 Fed. Reg. 32,954 (Aug. 11, 1989); 65 Fed. Reg. 17,131 (Mar. 31, 2000); 65 Fed. Reg. 58,908 (Oct. 3, 2000); 66 Fed. Reg. 17,338 (Mar. 30, 2001); 66 Fed. Reg. 41,440 (Aug. 8, 2001) (*COMPLIANCE DATE NOTE*: At 66 Fed. Reg. 41,440 (Aug. 8, 2001) the Oct. 1, 2001, mandatory compliance date for the interim final rules published at 66 Fed. Reg. 17,311 (Mar. 30, 2001) was lifted.); 72 Fed. Reg. 63,473 (Nov. 9, 2007); 75 Fed. Reg. 7798 (Feb. 22, 2010); 75 Fed. Reg. 37,568 (June 29, 2010); 76 Fed. Reg. 22,999 (Apr. 25, 2011); 76 Fed. Reg. 79,772 (Dec. 22, 2011)]

APPENDIX A Effect on State Laws

Request for Determination

A request for a determination that a state law is inconsistent or that a state law is substantially the same as the Act and regulation shall be in writing and addressed to the Executive Secretary, Bureau of Consumer Financial Protection, 1700 G Street NW., Washington, DC 20006. The request shall be made pursuant to the procedures herein.

Supporting Documents

A request for a determination shall include the following items:

- (1) The text of the state statute, regulation, or other document that is the subject of the request.
- (2) Any other statute, regulation, or judicial or administrative opinion that implements, interprets, or applies the relevant provision.
- (3) A comparison of the state law with the corresponding provision of the Federal law, including a full discussion of the basis for the requesting party's belief that the state provision is either inconsistent or substantially the same.
- (4) Any other information that the requesting party believes may assist the Bureau in its determination.

Public Notice of Determination

Notice that the Bureau intends to make a determination (either on request or on its own motion) will be published in the Federal Register, with an opportunity for public comment, unless the Bureau finds that notice and opportunity for comment would be impracticable, unnecessary, or contrary to the public interest and publishes its reasons for such decision.

Subject to the Bureau's rules on Disclosure of Records and Information (12 CFR Part 1070), all requests made, including any documents and other material submitted in support of the requests, will be made available for public inspection and copying.

Notice After Determination

Notice of a final determination will be published in the Federal Register, and the Bureau will furnish a copy of such notice to the party who made the request and to the appropriate state official.

Reversal of Determination

The Bureau reserves the right to reverse a determination for any reason bearing on the coverage or effect of state or Federal law.

Notice of reversal of a determination will be published in the Federal Register and a copy furnished to the appropriate state official.

[46 Fed. Reg. 20,892 (Apr. 7, 1981); 46 Fed. Reg. 29,246 (June 1, 1981); 76 Fed. Reg. 79,772 (Dec. 22, 2011)]

APPENDIX B State Exemptions

Application

Any state may apply to the Bureau for a determination that a class of transactions subject to state law is exempt from the requirements of the Act and this part. An application shall be in writing and addressed to the Executive Secretary, Bureau of Consumer Financial Protection, 1700 G Street, NW., Washington, DC 20006, and shall be signed by the appropriate state official. The application shall be made pursuant to the procedures herein.

Supporting Documents

An application shall be accompanied by:

(1) The text of the state statute or regulation that is the subject of the application, and any other statute, regulation, or judicial or administrative opinion that implements, interprets, or applies it.

(2) A comparison of the state law with the corresponding provisions of the Federal law.

(3) The text of the state statute or regulation that provides for civil and criminal liability and administrative enforcement of the state law.

(4) A statement of the provisions for enforcement, including an identification of the state office that administers the relevant law, information on the funding and the number and qualifications of personnel engaged in enforcement, and a description of the enforcement procedures to be followed, including information on examination procedures, practices, and policies. If an exemption application extends to federally chartered institutions, the applicant must furnish evidence that arrangements have been made with the appropriate Federal agencies to ensure adequate enforcement of state law in regard to such creditors.

(5) A statement of reasons to support the applicant's claim that an exemption should be granted.

Public Notice of Application

Notice of an application will be published, with an opportunity for public comment, in the Federal Register, unless the Bureau finds that notice and opportunity for comment would be impracticable, unnecessary, or contrary to the public interest and publishes its reasons for such decision.

Subject to the Bureau's rules on Disclosure of Records and Information (12 CFR Part 1070), all applications made, including any documents and other material submitted in support of the applications, will be made available for public inspection and copying.

Favorable Determination

If the Bureau determines on the basis of the information before it that an exemption should be granted, notice of the exemption will be published in the Federal Register, and a copy furnished to the applicant and to each Federal official responsible for administrative enforcement.

The appropriate state official shall inform the Bureau within 30 days of any change in its relevant law or regulations. The official shall file with the Bureau such periodic reports as the Bureau may require.

The Bureau will inform the appropriate state official of any subsequent amendments to the Federal law, regulation, interpretations, or enforcement policies that might require an amendment to state law, regulation, interpretations, or enforcement procedures.

Adverse Determination

If the Bureau makes an initial determination that an exemption should not be granted, the Bureau will afford the applicant a reasonable opportunity to demonstrate further that an exemption is proper. If the Bureau ultimately finds that an exemption should not be granted, notice of an adverse determination will be published in the Federal Register and a copy furnished to the applicant.

Revocation of Exemption

The Bureau reserves the right to revoke an exemption if at any time it determines that the standards required for an exemption are not met.

Before taking such action, the Bureau will notify the appropriate state official of its intent, and will afford the official such opportunity as it deems appropriate in the circumstances to demonstrate that revocation is improper. If the Bureau ultimately finds that revocation is proper, notice of the Bureau's intention to revoke such exemption will be published in the Federal Register with a reasonable period of time for interested persons to comment.

Notice of revocation of an exemption will be published in the Federal Register. A copy of such notice will be furnished to the appropriate state official and to the Federal officials responsible for enforcement. Upon revocation of an exemption, creditors in that state shall then be subject to the requirements of the Federal law.

[76 Fed. Reg. 79,772 (Dec. 22, 2011)]

APPENDIX C Issuance of Official Interpretations

Official Interpretations

Interpretations of this part issued by officials of the Bureau provide the protection afforded under section 130(f) of the Act. Except in unusual circumstances, such interpretations will not be issued separately but will be incorporated in an official commentary to the regulation which will be amended periodically.

Requests for Issuance of Official Interpretations

A request for an official interpretation shall be in writing and addressed to the Assistant Director, Office of Regulations, Division of Research, Markets, and Regulations, Bureau of Consumer Financial Protection, 1700 G Street, NW., Washington, DC 20006. The request shall contain a complete statement of all relevant facts concerning the issue, including copies of all pertinent documents.

Scope of Interpretations

No interpretations will be issued approving creditors' forms, statements, or calculation tools or methods. This restriction does not apply to forms, statements, tools, or methods whose use is required or sanctioned by a government agency.

[76 Fed. Reg. 79,772 (Dec. 22, 2011)]

APPENDIX D Multiple Advance Construction Loans

Section 1026.17(c)(6) permits creditors to treat multiple advance loans to finance construction of a dwelling that may be permanently financed by the same creditor either as a single transaction or as more than one transaction. If the actual schedule of advances is not known, the following methods may be used to estimate the interest portion of the finance charge and the annual percentage rate and to make disclosures. If the creditor chooses to disclose the construction phase separately, whether interest is payable periodically or at the end of construction, part I may be used. If the creditor chooses to disclose the construction and the permanent financing as one transaction, part II may be used.

Part I--Construction Period Disclosed Separately

A. If interest is payable only on the amount actually advanced for the time it is outstanding:

1. Estimated interest--Assume that one-half of the commitment amount is outstanding at the contract interest rate for the entire construction period.

2. Estimated annual percentage rate--Assume a single payment loan that matures at the end of the construction period. The finance charge is the sum of the estimated interest and any prepaid finance charge. The amount financed for computation purposes is determined by subtracting any prepaid finance charge from one-half of the commitment amount.

3. Repayment schedule--The number and amounts of any interest payments may be omitted in disclosing the payment schedule under § 1026.18(g). The fact that interest payments are required and the timing of such payments shall be disclosed.

4. Amount financed--The amount financed for disclosure purposes is the entire commitment amount less any prepaid finance charge.

B. If interest is payable on the entire commitment amount without regard to the dates or amounts of actual disbursement:

1. Estimated interest--Assume that the entire commitment amount is outstanding at the contract interest rate for the entire construction period.

2. Estimated annual percentage rate--Assume a single payment loan that matures at the end of the construction period. The finance charge is the sum of the estimated interest and any prepaid finance charge. The amount financed for computation purposes is determined by subtracting any prepaid finance charge from one-half of the commitment amount.

3. Repayment schedule--Interest payments shall be disclosed in making the repayment schedule disclosure under § 1026.18(g).

4. Amount financed--The amount financed for disclosure purposes is the entire commitment amount less any prepaid finance charge.

EXAMPLE:

Assume a \$50,000 loan commitment at 10.5% interest with a 5-month construction period and a prepaid finance charge of 2 points.

[Table not reprinted herein.]

Part II--Construction and Permanent Financing Disclosed as One Transaction

A. The creditor shall estimate the interest payable during the construction period to be included in the total finance charge as follows:

1. If interest is payable only on the amount actually advanced for the time it is outstanding, assume that one-half of the commitment amount is outstanding at the contract interest rate for the entire construction period.

2. If interest is payable on the entire commitment amount without regard to the dates or amounts of actual disbursements, assume that the entire commitment amount is outstanding at the contract rate for the entire construction period.

B. The creditor shall compute the estimated annual percentage rate as follows:

1. Estimated interest payable during the construction period shall be treated for computation purposes as a prepaid finance charge (although it shall not be treated as a prepaid finance charge for disclosure purposes).

2. The number of payment shall not include any payments of interest only that are made during the construction period.

3. The first payment period shall consist of one-half of the construction period plus the period between the end of the construction period and the amortization payment.

C. The creditor shall disclose the repayment schedule as follows:

1. For loans under paragraph A.1. of Part II, without reflecting the number or amounts of payments of interest only that are made during the construction period. The fact that interest payments must be made and the timing of such payments shall be disclosed.

2. For loans under paragraph A.2. of Part II, including any payments of interest only that are made during the construction period.

D. The creditor shall disclose the amount financed as the entire commitment amount less any prepaid finance charge.

EXAMPLE:

Assume a \$50,000 loan commitment at 10.5% interest with a 5-month construction period and a prepaid finance charge of 2 points, followed by 30-year permanent financing at the same rate with monthly amortization payments of \$457.37.

Computation of Estimated APR
[Table not reprinted herein.]

[46 Fed. Reg. 20,892 (Apr. 7, 1981); 46 Fed. Reg. 29,246 (June 1, 1981); 76 Fed. Reg. 79,772 (Dec. 22, 2011)]

APPENDIX E Rules for Card Issuers That Bill on a Transaction-By-Transaction Basis

The following provisions of Subpart B apply if credit cards are issued and the card issuer and the seller are the same or related persons; no finance charge is imposed; consumers are billed in full for each use of the card on a transaction-by-transaction basis, by means of an invoice or other statement reflecting each use of the card; and no cumulative account is maintained which reflects the transactions by each consumer during a period of time, such as a month. The term “related person” refers to, for example, a franchised or licensed seller of a creditor’s product or service or a seller who assigns or sells sales accounts to a creditor or arranges for credit under a plan that allows the consumer to use the credit only in transactions with that seller. A seller is not related to the creditor merely because the seller and the creditor have an agreement authorizing the seller to honor the creditor’s credit card.

1. *Section 1026.6(a)(5) or § 1026.6(b)(5)(iii).*

2. *Section 1026.6(a)(2) or § 1026.6(b)(3)(ii)(B), as applicable.* The disclosure required by § 1026.6(a)(2) or § 1026.6(b)(3)(ii)(B) shall be limited to those charges that are or may be

imposed as a result of the deferral of payment by use of the card, such as late payment or delinquency charges. A tabular format is not required.

3. *Section 1026.6(a)(4) or § 1026.6(b)(5)(ii).*

4. *Section 1026.7(a)(2) or § 1026.7(b)(2), as applicable; § 1026.7(a)(9) or § 1026.7(b)(9), as applicable.* Creditors may comply by placing the required disclosures on the invoice or statement sent to the consumer for each transaction.

5. *Section 1026.9(a).* Creditors may comply by mailing or delivering the statement required by § 1026.6(a)(5) or § 1026.6(b)(5)(iii) (see Appendix G-3 and G-3(A) to this part) to each consumer receiving a transaction invoice during a one-month period chosen by the card issuer or by sending either the statement prescribed by § 1026.6(a)(5) or § 1026.6(b)(5)(iii), or an alternative billing error rights statement substantially similar to that in Appendix G-4 and G-4(A) to this part, with each invoice sent to a consumer.

6. *Section 1026.9(c).* A tabular format is not required.

7. *Section 1026.10.*

8. *Section 1026.11(a).* This section applies when a card issuer receives a payment or other credit that exceeds by more than \$1 the amount due, as shown on the transaction invoice. The requirement to credit amounts to an account may be complied with by other reasonable means, such as by a credit memorandum. Since no periodic statement is provided, a notice of the credit balance shall be sent to the consumer within a reasonable period of time following its occurrence unless a refund of the credit balance is mailed or delivered to the consumer within seven business days of its receipt by the card issuer.

9. *Section 1026.12 including § 1026.12(c) and (d), as applicable.* Section 1026.12(e) is inapplicable.

10. *Section 1026.13, as applicable.* All references to “periodic statement” shall be read to indicate the invoice or other statement for the relevant transaction. All actions with regard to correcting and adjusting a consumer’s account may be taken by issuing a refund or a new invoice, or by other appropriate means consistent with the purposes of the section.

11. *Section 1026.15, as applicable.*

[46 Fed. Reg. 20,892 (Apr. 7, 1981), *as amended at* 46 Fed. Reg. 60,190 (Dec. 9, 1981); 75 Fed. Reg. 7824 (Feb. 22, 2010); 76 Fed. Reg. 79,772 (Dec. 22, 2011)]

APPENDIX F Optional Annual Percentage Rate Computations for Creditors Offering Open-End Credit Plans Secured by a Consumer’s Dwelling

In determining the denominator of the fraction under § 1026.14(c)(3), no amount will be used more than once when adding the sum of the balances subject to periodic rates to the sum of the

amounts subject to specific transaction charges. (Where a portion of the finance charge is determined by application of one or more daily periodic rates, the phrase “sum of the balances” shall also mean the “average of daily balances.”) In every case, the full amount of transactions subject to specific transaction charges shall be included in the denominator. Other balances or parts of balances shall be included according to the manner of determining the balance subject to a periodic rate, as illustrated in the following examples of accounts on monthly billing cycles:

1. Previous balance--none.

A specific transaction of \$100 occurs on the first day of the billing cycle. The average daily balance is \$100. A specific transaction charge of 3% is applicable to the specific transaction. The periodic rate is 1 1/2% applicable to the average daily balance. The numerator is the amount of the finance charge, which is \$4.50. The denominator is the amount of the transaction (which is \$100), plus the amount by which the balance subject to the periodic rate exceeds the amount of the specific transactions (such excess in this case is 0), totaling \$100.

The annual percentage rate is the quotient (which is 4 1/2%) multiplied by 12 (the number of months in a year), i.e., 54%.

2. Previous balance--\$100.

A specific transaction of \$100 occurs at the midpoint of the billing cycle. The average daily balance is \$150. A specific transaction charge of 3% is applicable to the specific transaction. The periodic rate is 1 1/2% applicable to the average daily balance. The numerator is the amount of the finance charge which is \$5.25. The denominator is the amount of the transaction (which is \$100), plus the amount by which the balance subject to the periodic rate exceeds the amount of the specific transaction (such excess in this case is \$50), totaling \$150. As explained in example 1, the annual percentage rate is $3\frac{1}{2}\% \times 12 = 42\%$.

3. If, in example 2, the periodic rate applies only to the previous balance, the numerator is \$4.50 and the denominator is \$200 (the amount of the transaction, \$100, plus the balance subject only to the periodic rate, the \$100 previous balance). As explained in example 1, the annual percentage rate is $2\frac{1}{4}\% \times 12 = 27\%$.

4. If, in example 2, the periodic rate applies only to an adjusted balance (previous balance less payments and credits) and the consumer made a payment of \$50 at the midpoint of the billing cycle, the numerator is \$3.75 and the denominator is \$150 (the amount of the transaction, \$100, plus the balance subject to the periodic rate, the \$50 adjusted balance). As explained in example 1, the annual percentage rate is $2\frac{1}{2}\% \times 12 = 30\%$.

5. Previous balance--\$100.

A specific transaction (check) of \$100 occurs at the midpoint of the billing cycle. The average daily balance is \$150. The specific transaction charge is \$.25 per check. The periodic rate is 1 1/2% applied to the average daily balance. The numerator is the amount of the finance charge, which is \$2.50 and includes the \$.25 check charge and the \$2.25 resulting from the

application of the periodic rate. The denominator is the full amount of the specific transaction (which is \$100) plus the amount by which the average daily balance exceeds the amount of the specific transaction (which in this case is \$50), totaling \$150. As explained in example 1, the annual percentage rate would be $1\frac{2}{3}\% \times 12 = 20\%$.

6. Previous balance--none.

A specific transaction of \$100 occurs at the midpoint of the billing cycle. The average daily balance is \$50. The specific transaction charge is 3% of the transaction amount or \$3.00. The periodic rate is $1\frac{1}{2}\%$ per month applied to the average daily balance. The numerator is the amount of the finance charge, which is \$3.75, including the \$3.00 transaction charge and \$.75 resulting from application of the periodic rate. The denominator is the full amount of the specific transaction (\$100) plus the amount by which the balance subject to the periodic rate exceeds the amount of the transaction (\$0). Where the specific transaction amount exceeds the balance subject to the periodic rate, the resulting number is considered to be zero rather than a negative number ($\$50 - \$100 = -\$50$). The denominator, in this case, is \$100. As explained in example 1, the annual percentage rate is $3\frac{3}{4}\% \times 12 = 45\%$.

[75 Fed. Reg. 7824 (Feb. 22, 2010); 76 Fed. Reg. 79,772 (Dec. 22, 2011)]

APPENDIX G Open-End Model Forms and Clauses

[table;2]

G-1 Balance Computation Methods Model Clauses (Home-equity Plans) (§§ 1026.6 and 1026.7)

G-1(A)Balance Computation Methods Model Clauses (Plans other than Home-equity Plans) (§§ 1026.6 and 1026.7)

G-2 Liability for Unauthorized Use Model Clause (Home-equity Plans) (§ 1026.12)

G-2(A)Liability for Unauthorized Use Model Clause (Plans Other Than Home-equity Plans) (§ 1026.12)

G-3 Long-Form Billing-Error Rights Model Form (Home-equity Plans) (§§ 1026.6 and 1026.9)

G-3(A)Long-Form Billing-Error Rights Model Form (Plans Other Than Home-equity Plans) (§§ 1026.6 and 1026.9)

G-4 Alternative Billing-Error Rights Model Form (Home-equity Plans) (§ 1026.9)

G-4(A)Alternative Billing-Error Rights Model Form (Plans Other Than Home-equity Plans) (§ 1026.9)

G-5 Rescission Model Form (When Opening an Account) (§ 1026.15)

- G-6 Rescission Model Form (For Each Transaction) (§ 1026.15)
- G-7 Rescission Model Form (When Increasing the Credit Limit) (§ 1026.15)
- G-8 Rescission Model Form (When Adding a Security Interest) (§ 1026.15)
- G-9 Rescission Model Form (When Increasing the Security) (§ 1026.15)
- G-10(A) Applications and Solicitations Model Form (Credit Cards) (§ 1026.60(b))
- G-10(B) Applications and Solicitations Sample (Credit Cards) (§ 1026.60(b))
- G-10(C) Applications and Solicitations Sample (Credit Cards) (§ 1026.60(b))
- G-10(D) Applications and Solicitations Model Form (Charge Cards) (§ 1026.60(b))
- G-10(E) Applications and Solicitations Sample (Charge Cards) (§ 1026.60(b))
- G-11 Applications and Solicitations Made Available to General Public Model Clauses (§ 1026.60(e))
- G-12 Reserved
- G-13(A) Change in Insurance Provider Model Form (Combined Notice) (§ 1026.9(f))
- G-13(B) Change in Insurance Provider Model Form (§ 1026.9(f)(2))
- G-14A Home-equity Sample
- G-14B Home-equity Sample
- G-15 Home-equity Model Clauses
- G-16(A) Debt Suspension Model Clause (§ 1026.4(d)(3))
- G-16(B) Debt Suspension Sample (§ 1026.4(d)(3))
- G-17(A) Account-opening Model Form (§ 1026.6(b)(2))
- G-17(B) Account-opening Sample (§ 1026.6(b)(2))
- G-17(C) Account-opening Sample (§ 1026.6(b)(2))
- G-17(D) Account-opening Sample (§ 1026.6(b)(2))

G-18(A)	Transactions; Interest Charges; Fees Sample (§ 1026.7(b))
G-18(B)	Late Payment Fee Sample (§ 1026.7(b))
G-18(C)(1)	Minimum Payment Warning (When Amortization Occurs and the 36-Month Disclosures Are Required) (§ 1026.7(b))
G-18(C)(2)	Minimum Payment Warning (When Amortization Occurs and the 36-Month Disclosures Are Not Required) (§ 1026.7(b))
G-18(C)(3)	Minimum Payment Warning (When Negative or No Amortization Occurs) (§ 1026.7(b))
G-18(D)	Periodic Statement New Balance, Due Date, Late Payment and Minimum Payment Sample (Credit cards) (§ 1026.7(b))
G-18(E)	[Reserved]
G-18(F)	Periodic Statement Form
G-18(G)	Periodic Statement Form
G-18(H)	Deferred Interest Periodic Statement Clause
G-19	Checks Accessing a Credit Card Account Sample (§ 1026.9(b)(3))
G-20	Change-in-Terms Sample (Increase in Annual Percentage Rate) (§ 1026.9(c)(2))
G-21	Change-in-Terms Sample (Increase in Fees) (§ 1026.9(c)(2))
G-22	Penalty Rate Increase Sample (Payment 60 or Fewer Days Late) (§ 1026.9(g)(3))
G-23	Penalty Rate Increase Sample (Payment More Than 60 Days Late) (§ 1026.9(g)(3))
G-24	Deferred Interest Offer Clauses (§ 1026.16(h))
G-25(A)	Consent Form for Over-the-Limit Transactions (§ 1026.56)
G-25(B)	Revocation Notice for Periodic Statement Regarding Over-the-Limit Transactions (§ 1026.56)
[end table]	

G-1--Balance Computation Methods Model Clauses (Home-Equity Plans)

(a) Adjusted Balance Method

We figure [a portion of] the finance charge on your account by applying the periodic rate to the “adjusted balance” of your account. We get the “adjusted balance” by taking the balance you owed at the end of the previous billing cycle and subtracting [any unpaid finance charges and] any payments and credits received during the present billing cycle.

(b) Previous Balance Method

We figure [a portion of] the finance charge on your account by applying the periodic rate to the amount you owe at the beginning of each billing cycle [minus any unpaid finance charges]. We do not subtract any payments or credits received during the billing cycle. [The amount of payments and credits to your account this billing cycle was \$ ____.]

(c) Average Daily Balance Method (Excluding Current Transactions)

We figure [a portion of] the finance charge on your account by applying the periodic rate to the “average daily balance” of your account (excluding current transactions). To get the “average daily balance” we take the beginning balance of your account each day and subtract any payments or credits [and any unpaid finance charges]. We do not add in any new [purchases/advances/loans]. This gives us the daily balance. Then, we add all the daily balances for the billing cycle together and divide the total by the number of days in the billing cycle. This gives us the “average daily balance.”

(d) Average Daily Balance Method (Including Current Transactions)

We figure [a portion of] the finance charge on your account by applying the periodic rate to the “average daily balance” of your account (including current transactions). To get the “average daily balance” we take the beginning balance of your account each day, add any new [purchases/advances/loans], and subtract any payments or credits, [and unpaid finance charges]. This gives us the daily balance. Then, we add up all the daily balances for the billing cycle and divide the total by the number of days in the billing cycle. This gives us the “average daily balance.”

(e) Ending Balance Method

We figure [a portion of] the finance charge on your account by applying the periodic rate to the amount you owe at the end of each billing cycle (including new purchases and deducting payments and credits made during the billing cycle).

(f) Daily Balance Method (Including Current Transactions)

We figure [a portion of] the finance charge on your account by applying the periodic rate to the “daily balance” of your account for each day in the billing cycle. To get the “daily balance” we take the beginning balance of your account each day, add any new [purchases/advances/fees], and subtract [any unpaid finance charges and] any payments or credits. This gives us the daily balance.

G-1(A)--Balance Computation Methods Model Clauses (Plans Other Than Home-Equity Plans)

(a) Adjusted Balance Method

We figure the interest charge on your account by applying the periodic rate to the “adjusted balance” of your account. We get the “adjusted balance” by taking the balance you owed at the end of the previous billing cycle and subtracting [any unpaid interest or other finance charges and] any payments and credits received during the present billing cycle.

(b) Previous Balance Method

We figure the interest charge on your account by applying the periodic rate to the amount you owe at the beginning of each billing cycle. We do not subtract any payments or credits received during the billing cycle.

(c) Average Daily Balance Method (Excluding Current Transactions)

We figure the interest charge on your account by applying the periodic rate to the “average daily balance” of your account. To get the “average daily balance” we take the beginning balance of your account each day and subtract [any unpaid interest or other finance charges and] any payments or credits. We do not add in any new [purchases/advances/fees]. This gives us the daily balance. Then, we add all the daily balances for the billing cycle together and divide the total by the number of days in the billing cycle. This gives us the “average daily balance.”

(d) Average Daily Balance Method (Including Current Transactions)

We figure the interest charge on your account by applying the periodic rate to the “average daily balance” of your account. To get the “average daily balance” we take the beginning balance of your account each day, add any new [purchases/advances/fees], and subtract [any unpaid interest or other finance charges and] any payments or credits. This gives us the daily balance. Then, we add up all the daily balances for the billing cycle and divide the total by the number of days in the billing cycle. This gives us the “average daily balance.”

(e) Ending Balance Method

We figure the interest charge on your account by applying the periodic rate to the amount you owe at the end of each billing cycle (including new [purchases/advances/fees] and deducting payments and credits made during the billing cycle).

(f) Daily Balance Method (Including Current Transactions)

We figure the interest charge on your account by applying the periodic rate to the “daily balance” of your account for each day in the billing cycle. To get the “daily balance” we take the beginning balance of your account each day, add any new [purchases/advances/fees], and

subtract [any unpaid interest or other finance charges and] any payments or credits. This gives us the daily balance.

G-2--Liability for Unauthorized Use Model Clause (Home-Equity Plans)

You may be liable for the unauthorized use of your credit card [or other term that describes the credit card]. You will not be liable for unauthorized use that occurs after you notify [name of card issuer or its designee] at [address], orally or in writing, of the loss, theft, or possible unauthorized use. [You may also contact us on the Web: [Creditor Web or email address]] In any case, your liability will not exceed [insert \$50 or any lesser amount under agreement with the cardholder].

G-2(A)--Liability for Unauthorized Use Model Clause (Plans Other Than Home-Equity Plans)

If you notice the loss or theft of your credit card or a possible unauthorized use of your card, you should write to us immediately at: [address] [address listed on your bill],

or call us at [telephone number].

[You may also contact us on the Web: [Creditor Web or email address]]

You will not be liable for any unauthorized use that occurs after you notify us. You may, however, be liable for unauthorized use that occurs before your notice to us. In any case, your liability will not exceed [insert \$50 or any lesser amount under agreement with the cardholder].

G-3--Long-Form Billing-Error Rights Model Form (Home-Equity Plans)

YOUR BILLING RIGHTS

KEEP THIS NOTICE FOR FUTURE USE

This notice contains important information about your rights and our responsibilities under the Fair Credit Billing Act.

Notify Us in Case of Errors or Questions About Your Bill

If you think your bill is wrong, or if you need more information about a transaction on your bill, write us [on a separate sheet] at [address] [the address listed on your bill]. Write to us as soon as possible. We must hear from you no later than 60 days after we sent you the first bill on which the error or problem appeared. [You may also contact us on the Web: [Creditor Web or email address]] You can telephone us, but doing so will not preserve your rights.

In your letter, give us the following information:

* Your name and account number.

* The dollar amount of the suspected error.

* Describe the error and explain, if you can, why you believe there is an error. If you need more information, describe the item you are not sure about.

If you have authorized us to pay your credit card bill automatically from your savings or checking account, you can stop the payment on any amount you think is wrong. To stop the payment your letter must reach us three business days before the automatic payment is scheduled to occur.

Your Rights and Our Responsibilities After We Receive Your Written Notice

We must acknowledge your letter within 30 days, unless we have corrected the error by then. Within 90 days, we must either correct the error or explain why we believe the bill was correct.

After we receive your letter, we cannot try to collect any amount you question, or report you as delinquent. We can continue to bill you for the amount you question, including finance charges, and we can apply any unpaid amount against your credit limit. You do not have to pay any questioned amount while we are investigating, but you are still obligated to pay the parts of your bill that are not in question.

If we find that we made a mistake on your bill, you will not have to pay any finance charges related to any questioned amount. If we didn't make a mistake, you may have to pay finance charges, and you will have to make up any missed payments on the questioned amount. In either case, we will send you a statement of the amount you owe and the date that it is due.

If you fail to pay the amount that we think you owe, we may report you as delinquent. However, if our explanation does not satisfy you and you write to us within ten days telling us that you still refuse to pay, we must tell anyone we report you to that you have a question about your bill. And, we must tell you the name of anyone we reported you to. We must tell anyone we report you to that the matter has been settled between us when it finally is.

If we don't follow these rules, we can't collect the first \$50 of the questioned amount, even if your bill was correct.

Special Rule for Credit Card Purchases

If you have a problem with the quality of property or services that you purchased with a credit card, and you have tried in good faith to correct the problem with the merchant, you may have the right not to pay the remaining amount due on the property or services.

There are two limitations on this right:

(a) You must have made the purchase in your home state or, if not within your home state within 100 miles of your current mailing address; and

(b) The purchase price must have been more than \$50.

These limitations do not apply if we own or operate the merchant, or if we mailed you the advertisement for the property or services.

G-3(A)--Long-Form Billing-Error Rights Model Form (Plans Other Than Home-Equity Plans)

Your Billing Rights: Keep This Document For Future Use

This notice tells you about your rights and our responsibilities under the Fair Credit Billing Act.

What To Do If You Find A Mistake On Your Statement

If you think there is an error on your statement, write to us at:

[Creditor Name]

[Creditor Address]

[You may also contact us on the Web: [Creditor Web or email address]]

In your letter, give us the following information:

* *Account information:* Your name and account number.

* *Dollar amount:* The dollar amount of the suspected error.

* *Description of problem:* If you think there is an error on your bill, describe what you believe is wrong and why you believe it is a mistake.

You must contact us:

* Within 60 days after the error appeared on your statement.

* At least 3 business days before an automated payment is scheduled, if you want to stop payment on the amount you think is wrong.

You must notify us of any potential errors in writing [or electronically]. You may call us, but if you do we are not required to investigate any potential errors and you may have to pay the amount in question.

What Will Happen After We Receive Your Letter

When we receive your letter, we must do two things:

1. Within 30 days of receiving your letter, we must tell you that we received your letter. We will also tell you if we have already corrected the error.

2. Within 90 days of receiving your letter, we must either correct the error or explain to you why we believe the bill is correct.

While we investigate whether or not there has been an error:

- * We cannot try to collect the amount in question, or report you as delinquent on that amount.

- * The charge in question may remain on your statement, and we may continue to charge you interest on that amount.

- * While you do not have to pay the amount in question, you are responsible for the remainder of your balance.

- * We can apply any unpaid amount against your credit limit.

After we finish our investigation, one of two things will happen:

- * *If we made a mistake:* You will not have to pay the amount in question or any interest or other fees related to that amount.

- * *If we do not believe there was a mistake:* You will have to pay the amount in question, along with applicable interest and fees. We will send you a statement of the amount you owe and the date payment is due. We may then report you as delinquent if you do not pay the amount we think you owe.

If you receive our explanation but still believe your bill is wrong, you must write to us within 10 days telling us that you still refuse to pay. If you do so, we cannot report you as delinquent without also reporting that you are questioning your bill. We must tell you the name of anyone to whom we reported you as delinquent, and we must let those organizations know when the matter has been settled between us.

If we do not follow all of the rules above, you do not have to pay the first \$50 of the amount you question even if your bill is correct.

Your Rights If You Are Dissatisfied With Your Credit Card Purchases

If you are dissatisfied with the goods or services that you have purchased with your credit card, and you have tried in good faith to correct the problem with the merchant, you may have the right not to pay the remaining amount due on the purchase.

To use this right, all of the following must be true:

1. The purchase must have been made in your home state or within 100 miles of your current mailing address, and the purchase price must have been more than \$50. (Note: Neither of these are necessary if your purchase was based on an advertisement we mailed to you, or if we own the company that sold you the goods or services.)

2. You must have used your credit card for the purchase. Purchases made with cash advances from an ATM or with a check that accesses your credit card account do not qualify.

3. You must not yet have fully paid for the purchase.

If all of the criteria above are met and you are still dissatisfied with the purchase, contact us in writing [or electronically] at:

[Creditor Name]

[Creditor Address]

[[Creditor Web or email address]]

While we investigate, the same rules apply to the disputed amount as discussed above. After we finish our investigation, we will tell you our decision. At that point, if we think you owe an amount and you do not pay, we may report you as delinquent.

G-4--Alternative Billing-Error Rights Model Form (Home-Equity Plans)

BILLING RIGHTS SUMMARY

In Case of Errors or Questions About Your Bill

If you think your bill is wrong, or if you need more information about a transaction on your bill, write us [on a separate sheet] at [address] [the address shown on your bill] as soon as possible. [You may also contact us on the Web: [Creditor Web or email address]] We must hear from you no later than 60 days after we sent you the first bill on which the error or problem appeared. You can telephone us, but doing so will not preserve your rights.

In your letter, give us the following information:

* Your name and account number.

* The dollar amount of the suspected error.

* Describe the error and explain, if you can, why you believe there is an error. If you need more information, describe the item you are unsure about.

You do not have to pay any amount in question while we are investigating, but you are still obligated to pay the parts of your bill that are not in question. While we investigate your question, we cannot report you as delinquent or take any action to collect the amount you question.

Special Rule for Credit Card Purchases

If you have a problem with the quality of goods or services that you purchased with a credit card, and you have tried in good faith to correct the problem with the merchant, you may not have to pay the remaining amount due on the goods or services. You have this protection only when the purchase price was more than \$50 and the purchase was made in your home state or within 100 miles of your mailing address. (If we own or operate the merchant, or if we mailed you the advertisement for the property or services, all purchases are covered regardless of amount or location of purchase.)

G-4(A)--Alternative Billing-Error Rights Model Form (Plans Other Than Home-Equity Plans)

What To Do If You Think You Find A Mistake On Your Statement

If you think there is an error on your statement, write to us at:

[Creditor Name]

[Creditor Address]

[You may also contact us on the Web: [Creditor Web or email address]]

In your letter, give us the following information:

* *Account information:* Your name and account number.

* *Dollar amount:* The dollar amount of the suspected error.

* *Description of Problem:* If you think there is an error on your bill, describe what you believe is wrong and why you believe it is a mistake.

You must contact us within 60 days after the error appeared on your statement.

You must notify us of any potential errors *in writing* [or electronically]. You may call us, but if you do we are not required to investigate any potential errors and you may have to pay the amount in question.

While we investigate whether or not there has been an error, the following are true:

* We cannot try to collect the amount in question, or report you as delinquent on that amount.

* The charge in question may remain on your statement, and we may continue to charge you interest on that amount. But, if we determine that we made a mistake, you will not have to pay the amount in question or any interest or other fees related to that amount.

* While you do not have to pay the amount in question, you are responsible for the remainder of your balance.

* We can apply any unpaid amount against your credit limit.

Your Rights If You Are Dissatisfied With Your Credit Card Purchases

If you are dissatisfied with the goods or services that you have purchased with your credit card, and you have tried in good faith to correct the problem with the merchant, you may have the right not to pay the remaining amount due on the purchase.

To use this right, all of the following must be true:

1. The purchase must have been made in your home state or within 100 miles of your current mailing address, and the purchase price must have been more than \$50. (Note: Neither of these is necessary if your purchase was based on an advertisement we mailed to you, or if we own the company that sold you the goods or services.)
2. You must have used your credit card for the purchase. Purchases made with cash advances from an ATM or with a check that accesses your credit card account do not qualify.
3. You must not yet have fully paid for the purchase.

If all of the criteria above are met and you are still dissatisfied with the purchase, contact us in writing [or electronically] at:

[Creditor Name]

[Creditor Address]

[[Creditor Web address]]

While we investigate, the same rules apply to the disputed amount as discussed above. After we finish our investigation, we will tell you our decision. At that point, if we think you owe an amount and you do not pay we may report you as delinquent.

G-5--Rescission Model Form (When Opening An Account)

NOTICE OF RIGHT TO CANCEL

1. *Your Right to Cancel.*

We have agreed to establish an open-end credit account for you, and you have agreed to give us a [mortgage/lien/security interest] [on/in] your home as security for the account. You have a legal right under federal law to cancel the account, without cost, within three business days after the latest of the following events:

- (1) the opening date of your account which is _____; or
- (2) the date you received your Truth-in-Lending disclosures; or
- (3) the date you received this notice of your right to cancel the account.

If you cancel the account, the [mortgage/lien/security interest] [on/in] your home is also cancelled. Within 20 days of receiving your notice, we must take the necessary steps to reflect the fact that the [mortgage/lien/security interest] [on/in] your home has been cancelled. We must return to you any money or property you have given to us or to anyone else in connection with the account.

You may keep any money or property we have given you until we have done the things mentioned above, but you must then offer to return the money or property. If it is impractical or unfair for you to return the property, you must offer its reasonable value. You may offer to return the property at your home or at the location of the property. Money must be returned to the address shown below. If we do not take possession of the money or property within 20 calendar days of your offer, you may keep it without further obligation.

2. *How to Cancel.*

If you decide to cancel the account, you may do so by notifying us, in writing, at

(creditor's name and business address).

You may use any written statement that is signed and dated by you and states your intention to cancel, or you may use this notice by dating and signing below. Keep one copy of this notice no matter how you notify us because it contains important information about your rights.

If you cancel by mail or telegram, you must send the notice no later than midnight of

(date)

(or midnight of the third business day following the latest of the three events listed above). If you send or deliver your written notice to cancel some other way, it must be delivered to the above address no later than that time.

I WISH TO CANCEL.

Consumer's Signature

Date

G-6--Rescission Model Form (For Each Transaction)

NOTICE OF RIGHT TO CANCEL

1. Your Right to Cancel

We have extended credit to you under your open-end credit account. This extension of credit will increase the amount you owe on your account. We already have a [mortgage/lien/security interest] [on/in] your home as security for your account. You have a legal right under federal law to cancel the extension of credit, without cost, within three business days after the latest of the following events:

- (1) the date of the additional extension of credit which is _____; or
- (2) the date you received your Truth-in-Lending disclosures; or
- (3) the date you received this notice of your right to cancel the additional extension of credit.

If you cancel the additional extension of credit, your cancellation will only apply to the additional amount and to any increase in the [mortgage/lien/security interest] that resulted because of the additional amount. It will not affect the amount you presently owe, and it will not affect the [mortgage/lien/security interest] we already have [on/in] your home. Within 20 calendar days after we receive your notice of cancellation, we must take the necessary steps to reflect the fact that any increase in the [mortgage/lien/security interest] [on/in] your home has been cancelled. We must also return to you any money or property you have given to us or to anyone else in connection with this extension of credit.

You may keep any money or property we have given you until we have done the things mentioned above, but you must then offer to return the money or property. If it is impractical or unfair for you to return the property, you must offer its reasonable value. You may offer to return the property at your home or at the location of the property. Money must be returned to the address shown below. If we do not take possession of the money or property within 20 calendar days of your offer, you may keep it without further obligation.

2. How to Cancel

If you decide to cancel the additional extension of credit, you may do so by notifying us, in writing, at

(creditor's name and business address).

You may use any written statement that is signed and dated by you and states your intention to cancel, or you may use this notice by dating and signing below. Keep one copy of this notice no matter how you notify us because it contains important information about your rights.

If you cancel by mail or telegram, you must send the notice no later than midnight of

(date)

(or midnight of the third business day following the latest of the three events listed above). If you send or deliver your written notice to cancel some other way, it must be delivered to the above address no later than that time.

I WISH TO CANCEL.

Consumer's Signature

Date

G-7--Rescission Model Form (When Increasing the Credit Limit)

NOTICE OF RIGHT TO CANCEL

1. *Your Right to Cancel*

We have agreed to increase the credit limit on your open-end credit account. We have a [mortgage/lien/security interest] [on/in] your home as security for you account. Increasing the credit limit will increase the amount of the [mortgage/lien/security interest] [on/in] your home. You have a legal right under federal law to cancel the increase in your credit limit, without cost, within three business days after the latest of the following events:

- (1) the date of the increase in your credit limit which is _____; or
- (2) the date you received your Truth-in-Lending disclosures; or
- (3) the date you received this notice of your right to cancel the increase in your credit limit.

If you cancel, your cancellation will apply only to the increase in your credit limit and to the [mortgage/lien/security interest] that resulted from the increase in your credit limit. It will not affect the amount you presently owe, and it will not affect the [mortgage/lien/security interest] we already have [on/in] your home. Within 20 calendar days after we received your notice of cancellation, we must take the necessary steps to reflect the fact that any increase in the [mortgage/lien/security interest] [on/in] your home has been cancelled. We must also return to you any money or property you have given to us or to anyone else in connection with this increase.

You may keep any money or property we have given you until we have done the things mentioned above, but you must then offer to return the money or property. If it is impractical or unfair for you to return the property, you must offer its reasonable value. You may offer to return the property at your home or at the location of the property. Money must be returned to the address shown below. If we do not take possession of the money or property within 20 calendar days of your offer, you may keep it without further obligation.

2. *How to Cancel*

If you decide to cancel the increase in your credit limit, you may do so by notifying us, in writing, at

(creditor's name and business address).

You may use any written statement that is signed and dated by you and states your intention to cancel, or you may use this notice by dating and signing below. Keep one copy of this notice no matter how you notify us because it contains important information about your rights.

If you cancel by mail or telegram, you must send the notice no later than midnight of

(date)

(or midnight of the third business day following the latest of the three events listed above). If you send or deliver your written notice to cancel some other way, it must be delivered to the above address no later than that time.

I WISH TO CANCEL.

Consumer's Signature

Date

G-8--Rescission Model Form (When Adding a Security Interest)

NOTICE OF RIGHT TO CANCEL

1. *Your Right to Cancel*

You have agreed to give us a [mortgage/lien/security interest] [on/in] your home as security for your existing open-end credit account. You have a legal right under federal law to cancel the [mortgage/lien/security interest], without cost, within three business days after the latest of the following events:

(1) the date of the [mortgage/lien/security interest] which is _____;
or

(2) the date you received your Truth-in-Lending disclosures; or

(3) the date you received this notice of your right to cancel the [mortgage/lien/security interest].

If you cancel the [mortgage/lien/security interest], your cancellation will apply only to the [mortgage/lien/security interest]. It will not affect the amount you owe on your account. Within 20 calendar days after we receive your notice of cancellation, we must take the necessary steps to reflect that any [mortgage/lien/security interest] [on/in] your home has been cancelled. We must also return to you any money or property you have given to us or to anyone else in connection with this increase.

You may keep any money or property we have given you until we have done the things mentioned above, but you must then offer to return the money or property. If it is impractical or unfair for you to return the property, you must offer its reasonable value. You may make the offer at your home or at the location of the property. Money must be returned to the address shown below. If we do not take possession of the money or property within 20 calendar days of your offer, you may keep it without further obligation.

2. How to Cancel

If you decide to cancel the [mortgage/lien/security interest], you may do so by notifying us, in writing, at

(creditor's name and business address).

You may use any written statement that is signed and dated by you and states your intention to cancel, or you may use this notice by dating and signing below. Keep one copy of this notice no matter how you notify us because it contains important information about your rights.

If you cancel by mail or telegram, you must send the notice no later than midnight of

(date)

(or midnight of the third business day following the latest of the three events listed above). If you send or deliver your written notice to cancel some other way, it must be delivered to the above address no later than that time.

I WISH TO CANCEL

Consumer's Signature [Date

G-9--Rescission Model Form (When Increasing the Security)

NOTICE OF RIGHT TO CANCEL

1. *Your Right to Cancel*

You have agreed to increase the amount of the [mortgage/lien/security interest] [on/in] your home that we hold as security for your open-end credit account. You have a legal right under federal law to cancel the increase, without cost, within three business days after the latest of the following events:

- (1) the date of the increase in the security which is _____; or
- (2) the date you received your Truth-in-Lending disclosures; or
- (3) the date you received this notice of your right to cancel the increase in the security.

If you cancel the increase in the security, your cancellation will apply only to the increase in the amount of the [mortgage/lien/security interest]. It will not affect the amount you presently owe on your account, and it will not affect the [mortgage/lien/security interest] we already have [on/in] your home. Within 20 calendar days after we receive your notice of cancellation, we must take the necessary steps to reflect that any increase in the [mortgage/lien/security interest] [on/in] your home has been cancelled. We must also return to you any money or property you have given to us or to anyone else in connection with this increase.

You may keep any money or property we have given you until we have done the things mentioned above, but you must then offer to return the money or property. If it is impractical or unfair for you to return the property, you must offer its reasonable value. You may offer to return the property at your home or at the location of the property. Money must be returned to the address shown below. If we do not take possession of the money or property within 20 calendar days of your offer, you may keep it without further obligation.

2. *How to Cancel*

If you decide to cancel the increase in security, you may do so by notifying us, in writing, at
(creditor's name and business address).

You may use any written statement that is signed and dated by you and states your intention to cancel, or you may use this notice by dating and signing below. Keep one copy of this notice no matter how you notify us because it contains important information about your rights.

If you cancel by mail or telegram, you must send the notice no later than midnight of

(date)

(or midnight of the third business day following the latest of the three events listed above). If you send or deliver your written notice to cancel some other way, it must be delivered to the above address no later than that time.

I WISH TO CANCEL.

Consumer's Signature Date

[Images not reprinted herein.]

G-11--Applications and Solicitations Made Available to the General Public Model Clauses

(a) Disclosure of Required Credit Information

The information about the costs of the card described in this [application]/[solicitation] is accurate as of (month/year). This information may have changed after that date. To find out what may have changed, [call us at (telephone number)][write to us at (address)].

(b) No Disclosure of Credit Information

There are costs associated with the use of this card. To obtain information about these costs, call us at (telephone number) or write to us at (address).

G-12 [Reserved]

G-13(A)--Change in Insurance Provider Model Form (Combined Notice)

The credit card account you have with us is insured. This is to notify you that we plan to replace your current coverage with insurance coverage from a different insurer.

If we obtain insurance for your account from a different insurer, you may cancel the insurance.

[Your premium rate will increase to \$ ____ per ____.]

[Your coverage will be affected by the following:

[] The elimination of a type of coverage previously provided to you. [(explanation)] [See ____ of the attached policy for details.]

[] A lowering of the age at which your coverage will terminate or will become more restrictive. [(explanation)] [See ____ of the attached policy or certificate for details.]

[] A decrease in your maximum insurable loan balance, maximum periodic benefit payment, maximum number of payments, or any other decrease in the dollar amount of your coverage or benefits. [(explanation)] [See ____ of the attached policy or certificate for details.]

[] A restriction on the eligibility for benefits for you or others. [(explanation)] [See ____ of the attached policy or certificate for details.]

[] A restriction in the definition of “disability” or other key term of coverage. [(explanation)] [See ____ of the attached policy or certificate for details.]

[] The addition of exclusions or limitations that are broader or other than those under the current coverage. [(explanation)] [See ____ of the attached policy or certificate for details.]

[] An increase in the elimination (waiting) period or a change to nonretroactive coverage. [(explanation)] [See ____ of the attached policy or certificate for details.]

[The name and mailing address of the new insurer providing the coverage for your account is (name and address).]

G-13(B)--Change in Insurance Provider Model Form

We have changed the insurer providing the coverage for your account. The new insurer’s name and address are (name and address). A copy of the new policy or certificate is attached.

You may cancel the insurance for your account.

G-14A Home Equity Sample

IMPORTANT TERMS of our HOME EQUITY LINE OF CREDIT

This disclosure contains important information about our Home Equity Line of Credit. You should read it carefully and keep a copy for your records.

Availability of Terms: To obtain the terms described below, you must submit your application before January 1, 1990.

If these terms change (other than the annual percentage rate) and you decide, as a result, not to enter into an agreement with us, you are entitled to a refund of any fees that you have paid to us or anyone else in connection with your application.

Security Interest: We will take a mortgage on your home. You could lose your home if you do not meet the obligations in your agreement with us.

Possible Actions: Under certain circumstances, we can (1) terminate your line, require you to pay us the entire outstanding balance in one payment, and charge you certain fees; (2) refuse to make additional extensions of credit; and (3) reduce your credit limit.

If you ask, we will give you more specific information concerning when we can take these actions.

Minimum Payment Requirements: You can obtain advances of credit for 10 years (the “draw period”). During the draw period, payments will be due monthly. Your minimum monthly payment will equal the greater of \$100 or 1/360 th of the outstanding balance plus the finance charges that have accrued on the outstanding balance.

After the draw period ends, you will no longer be able to obtain credit advances and must pay the outstanding balance over 5 years (the “repayment period”). During the repayment period, payments will be due monthly. Your minimum monthly payment will equal 1/60 th of the balance that was outstanding at the end of the draw period plus the finance charges that have accrued on the remaining balance.

Minimum Payment Example: If you made only the minimum monthly payments and took no other credit advances, it would take 15 years to pay off a credit advance of \$10,000 at an ANNUAL PERCENTAGE RATE of 12%. During that period, you would make 120 monthly payments varying between \$127.78 and \$100.00 followed by 60 monthly payments varying between \$187.06 and \$118.08.

Fees and Charges: To open and maintain a line of credit, you must pay the following fees to us:

- * Application fee: \$150 (due at application)
- * Points: 1% of credit limit (due when account opened)
- * Annual maintenance fee: \$75 (due each year)

You also must pay certain fees to third parties to open a line. These fees generally total between \$500 and \$900. If you ask, we will give you an itemization of the fees you will have to pay to third parties.

Minimum Draw and Balance Requirements: The minimum credit advance you can receive is \$500. You must maintain an outstanding balance of at least \$100.

Tax Deductibility: You should consult a tax advisor regarding the deductibility of interest and charges for the line.

Variable-Rate Information: The line has a variable-rate feature, and the annual percentage rate (corresponding to the periodic rate) and the minimum payment can change as a result.

The annual percentage rate includes only interest and not other costs.

The annual percentage rate is based on the value of an index. The index is the monthly average prime rate charged by banks and is published in the Federal Reserve Bulletin. To determine the annual percentage rate that will apply to your line, we add a margin to the value of the index.

Ask us for the current index value, margin and annual percentage rate. After you open a credit line, rate information will be provided on periodic statements that we will send you.

Rate Changes: The annual percentage rate can change each month. The maximum ANNUAL PERCENTAGE RATE that can apply is 18%. Except for this 18% “cap,” there is no limit on the amount by which the rate can change during any one-year period.

Maximum Rate and Payment Examples: If you had an outstanding balance of \$10,000 during the draw period, the minimum monthly payment at the maximum ANNUAL PERCENTAGE RATE of 18% would be \$177.78. This annual percentage rate could be reached during the first month of the draw period.

If you had an outstanding balance of \$10,000 at the beginning of the repayment period, the minimum monthly payment at the maximum ANNUAL PERCENTAGE RATE of 18% would be \$316.67. This annual percentage rate could be reached during the first month of the repayment period.

Historical Example: The following table shows how the annual percentage rate and the minimum monthly payments for a single \$10,000 credit advance would have changed based on changes in the index over the past 15 years. The index values are from September of each year. While only one payment amount per year is shown, payments would have varied during each year.

The table assumes that no additional credit advances were taken, that only the minimum payments were made each month, and that the rate remained constant during each year. It does not necessarily indicate how the index or your payments will change in the future.

[Table not reprinted herein.]

G-14B Home Equity Sample

IMPORTANT TERMS of our HOME EQUITY LINE OF CREDIT

This disclosure contains important information about our Home Equity Line of Credit. You should read it carefully and keep a copy for your records.

Availability of Terms: All of the terms described below are subject to change.

If these terms change (other than the annual percentage rate) and you decide, as a result, not to enter into an agreement with us, you are entitled to a refund of any fees you paid to us or anyone else in connection with your application.

Security Interest: We will take a mortgage on your home. You could lose your home if you do not meet the obligations in your agreement with us.

Possible Actions: We can terminate your line, require you to pay us the entire outstanding balance in one payment, and charge you certain fees if:

- * You engage in fraud or material misrepresentation in connection with the line.
- * You do not meet the repayment terms.
- * Your action or inaction adversely affects the collateral or our rights in the collateral.

We can refuse to make additional extensions of credit or reduce your credit limit if:

- * The value of the dwelling securing the line declines significantly below its appraised value for purposes of the line.
- * We reasonably believe you will not be able to meet the repayment requirements due to a material change in your financial circumstances.
- * You are in default of a material obligation in the agreement.
- * Government action prevents us from imposing the annual percentage rate provided for or impairs our security interest such that the value of the interest is less than 120 percent of the credit line.
- * A regulatory agency has notified us that continued advances would constitute an unsafe and unsound practice.
- * The maximum annual percentage rate is reached.

The initial agreement permits us to make certain changes to the terms of the agreement at specified times or upon the occurrence of specified events.

Minimum Payment Requirements: You can obtain advances of credit for 10 years (the “draw period”). You can choose one of three payment options for the draw period:

* *Monthly interest-only payments.* Under this option, your payments will be due monthly and will equal the finance charges that accrued on the outstanding balance during the preceding month.

* *Quarterly interest-only payments.* Under this option, your payments will be due quarterly and will equal the finance charges that accrued on the outstanding balance during the preceding quarter.

* *2% of the balance.* Under this option, your payments will be due monthly and will equal 2% of the outstanding balance on your line plus finance charges that accrued on the outstanding balance during the preceding month.

If the payment determined under any option is less than \$50, the minimum payment will equal \$50 or the outstanding balance on your line, whichever is less.

Under both the monthly and quarterly interest-only payment options, the minimum payment will not reduce the principal that is outstanding on your line.

After the draw period ends, you will no longer be able to obtain credit advances and must repay the outstanding balance (the “repayment period”). The length of the repayment period will depend on the balance outstanding at the beginning of it. During the repayment period, payments will be due monthly and will equal 3% of the outstanding balance on your line plus finance charges that accrued on the outstanding balance or \$50, whichever is greater.

Minimum Payment Examples: If you took a single \$10,000 advance and the ANNUAL PERCENTAGE RATE was 9.52%:

* Under the monthly interest-only payment option, it would take 18 years and 1 month to pay off the advance if you made only the minimum payments. During that period, you would make 120 payments of \$79.33, followed by 96 payments varying between \$379.33 and \$50 and one final payment of \$10.75.

* Under the 2% of the balance payment option, it would take 10 years and 8 months to pay off the advance if you made only the minimum payments. During that period, you would make 120 payments varying between \$279.33 and \$50, followed by 7 payments of \$50 and one final payment of \$21.53.

Fees and Charges: To open and maintain a line of credit, you must pay us the following fees:

* Application fee: \$100 (due at application)

* Points: 1% of credit limit (due when account opened)

* Annual maintenance fee: \$50 during the first 3 years, \$75 thereafter (due each year)

You also must pay certain fees to third parties to open a line. These fees generally total between \$500 and \$900. If you ask, we will give you an itemization of the fees you will have to pay to third parties.

Minimum Draw Requirement: The minimum credit advance that you can receive is \$200.

Tax Deductibility: You should consult a tax advisor regarding the deductibility of interest and charges for the line.

Variable-Rate Feature: The line has a variable-rate feature, and the annual percentage rate (corresponding to the periodic rate) and the minimum monthly payment can change as a result.

The annual percentage rate includes only interest and not other costs.

The annual percentage rate is based on the value of an index. During the draw period, the index is the monthly average prime rate charged by banks. During the repayment period, the index is the weekly average yield on U.S. Treasury securities adjusted to a constant maturity of one year. Information on these indices is published in the Federal Reserve Bulletin. To determine the annual percentage rate that will apply to your line, we add a margin to the value of the index.

The initial annual percentage rate is “discounted”—it is not based on the index and margin used for later rate adjustments. The initial rate will be in effect for the first year your credit line is open.

Ask us for the current index values, margin, discount and annual percentage rate. After you open a credit line, rate information will be provided on periodic statements that we send you.

Rate Changes: The annual percentage rate can change monthly. The maximum ANNUAL PERCENTAGE RATE that can apply is 18%. Apart from this rate “cap,” there is no limit on the amount by which the rate can change during any one-year period.

Maximum Rate and Payment Examples: If the ANNUAL PERCENTAGE RATE during the draw period equaled the 18% maximum and you had an outstanding balance of \$10,000:

* Under the monthly interest-only payment option, the minimum monthly payment would be \$150.

* Under the 2% of the balance payment option, the minimum monthly payment would be \$350.

This annual percentage rate could be reached during the first month of the draw period.

If you had an outstanding balance of \$10,000 during the repayment period, the minimum monthly payment at the maximum ANNUAL PERCENTAGE RATE of 18% would be \$450. This annual percentage rate could be reached during the first month of the repayment period.

Historical Example: The following table shows how the annual percentage rate and the monthly payments for a single \$10,000 credit advance would have changed based on changes in the indices over the past 15 years. For the draw period, the index values for the prime rate are from September of each year. For the repayment period, the index values for the yield on U.S. Treasury securities are from the first week ending in July. While only one payment amount per

year is shown, payments under the 2% of the balance payment option and during the repayment period would have varied during each year.

The table assumes that no additional credit advances were taken, that only the minimum payments were made, and that the rate remained constant during each year. It does not necessarily indicate how the indices or your payments will change in the future.

[Table not reprinted herein.]

G-15 Home Equity Model Clauses

(a) Retention of Information: This disclosure contains important information about your Home Equity Line of Credit. You should read it carefully and keep a copy for your records.

(b) Availability of Terms: To obtain the terms described below, you must submit your application before (date). However the (description of terms) are subject to change.

or

All of the terms described below are subject to change.

If these terms change [(other than the annual percentage rate)] and you decide, as a result, not to enter into an agreement with us, you are entitled to a refund of any fees you paid to us or anyone else in connection with your application.

(c) Security Interest: We will take a [security interest in/mortgage on] your home. You could lose your home if you do not meet the obligations in your agreement with us.

(d) Possible Actions: Under certain circumstances, we can (1) terminate your line, require you to pay us the entire outstanding balance in one payment [, and charge you certain fees]; (2) refuse to make additional extensions of credit; (3) reduce your credit limit [, and (4) make specific changes that are set forth in your agreement with us].

If you ask, we will give you more specific information about when we can take these actions.

or

Possible Actions: We can terminate your account, require you to pay us the entire outstanding balance in one payment [, and charge your certain fees] if:

- * You engage in fraud or material misrepresentation in connection with the line.
- * You do not meet the repayment terms.
- * Your action or inaction adversely affects the collateral or our rights in the collateral.

We can refuse to make additional extensions of credit or reduce your credit limit if:

* The value of the dwelling securing the line declines significantly below its appraised value for purposes of the line.

* We reasonably believe you will not be able to meet the repayment requirements due to a material change in your financial circumstances.

* You are in default of a material obligation in the agreement.

* Government action prevents us from imposing the annual percentage rate provided for or impairs our security interest such that the value of the interest is less than 120 percent of the credit line.

* A regulatory agency has notified us that continued advances would constitute an unsafe and unsound practice.

* The maximum annual percentage rate is reached.

[The initial agreement permits us to make certain changes to the terms of the agreement at specified times or upon the occurrence of specified events.]

(e) Minimum Payment Requirements: The length of the [draw period/repayment period] is (*length*). Payments will be due (*frequency*). Your minimum payment will equal (*how payment determined*).

[The minimum payment will not reduce the principal that is outstanding on your line./The minimum payment will not fully repay the principal that is outstanding on your line.] You will then be required to pay the entire balance in a single “balloon” payment.

(f) Minimum Payment Example: If you made only the minimum payments and took no other credit advance, it would take (*length of time*) to pay off a credit advance of \$10,000 at an ANNUAL PERCENTAGE RATE of (*recent rate*). During that period, you would make (*number*) (*frequency*) payments of \$____.

(g) Fees and Charges: To open and maintain a line of credit, you must pay the following fees to us:

(*Description of fee*) [\$____/____% of ____] (*When payable*)

(*Description of fee*) [\$____/____% of ____] (*When payable*)

You also must pay certain fees to third parties. These fees generally total [\$____/____% of ____/between \$____ and \$____]. If you ask, we will give you an itemization of the fees you will have to pay to third parties.

(h) Minimum Draw and Balance Requirements: The minimum credit advance you can receive is \$____. You must maintain an outstanding balance of at least \$____.

(i) Negative Amortization: Under some circumstances, your payments will not cover the finance charges that accrue and “negative amortization” will occur. Negative amortization will increase the amount that you owe us and reduce your equity in your home.

(j) Tax Deductibility: You should consult a tax advisor regarding the deductibility of interest and charges for the line.

(k) Other Products: If you ask, we will provide you with information on our other available home equity lines.

(l) Variable-Rate Feature: The plan has a variable-rate feature and the annual percentage rate (corresponding to the periodic rate) and the [minimum payment/term of the line] can change as a result.

The annual percentage rate includes only interest and not other costs.

The annual percentage rate is based on the value of an index. The index is the (*identification of index*) and is [published in/available from] (*source of information*). To determine the annual percentage rate that will apply to your line, we add a margin to the value of the index.

[The initial annual percentage rate is “discounted”--it is not based on the index and margin used for later rate adjustments. The initial rate will be in effect for (*period*).]

Ask us for the current index value, margin, [discount,] and annual percentage rate. After you open a credit line, rate information will be provided on periodic statements that we send you.

(m) Rate Changes: The annual percentage rate can change (*frequency*). [The rate cannot increase by more than ____ percentage points in any one year period./There is no limit on the amount by which the rate can change in any one year period.] [The maximum ANNUAL PERCENTAGE RATE that can apply is ____%. The ANNUAL PERCENTAGE RATE cannot increase by more than ____ percentage points above the initial rate.] [Ask us for the specific rate limitations that will apply to your credit line.]

(n) Maximum Rate and Payment Examples: If you had an outstanding balance of \$10,000, the minimum payment at the maximum ANNUAL PERCENTAGE RATE of ____% would be \$____. This annual percentage rate could be reached (*when maximum rate could be reached*).

(o) Historical Example: The following table shows how the annual percentage rate and the minimum payments for a single \$10,000 credit advance would have changed based on changes in the index over the past 15 years. The index values are from (*when values are measured*). [While only one payment amount per year is shown, payments would have varied during each year.]

The table assumes that no additional credit advances were taken, that only the minimum payments were made, and that the rate remained constant during each year. It does not necessarily indicate how the index or your payments will change in the future.

[Table not reprinted herein.]

G-16(A) Debt Suspension Model Clause

Please enroll me in the optional [insert name of program], and bill my account the fee of [how cost is determined]. I understand that enrollment is not required to obtain credit. I also understand that depending on the event, the protection may only temporarily suspend my duty to make minimum payments, not reduce the balance I owe. I understand that my balance will actually grow during the suspension period as interest continues to accumulate.

[To Enroll, Sign Here]/[To Enroll, Initial Here]. X _____

G-16(B) Debt Suspension Sample

Please enroll me in the optional [name of program], and bill my account the fee of \$.83 per \$100 of my month-end account balance. I understand that enrollment is not required to obtain credit. I also understand that depending on the event, the protection may only temporarily suspend my duty to make minimum payments, not reduce the balance I owe. I understand that my balance will actually grow during the suspension period as interest continues to accumulate.

To Enroll, Initial Here. X _____

[Table and images not reprinted herein.]

G-18(B)--Late Payment Fee Sample

Late Payment Warning: If we do not receive your minimum payment by the date listed above, you may have to pay a \$35 late fee and your APRs may be increased up to the Penalty APR of 28.99%.

[Tables not reprinted herein.]

G-24--Deferred Interest Offer Clauses

(a) For Credit Card Accounts Under an Open-End (Not Home-Secured) Consumer Credit Plan

[Interest will be charged to your account from the purchase date if the purchase balance is not paid in full within the/by [deferred interest period/date] or if you make a late payment.]

(b) For Other Open-End Plans

[Interest will be charged to your account from the purchase date if the purchase balance is not paid in full within the/by [deferred interest period/date] or if your account is otherwise in default.]

G-25(A)--Consent Form for Over-the-Credit Limit Transactions

Your Choice Regarding Over-the-Credit Limit Coverage

Unless you tell us otherwise, we will decline any transaction that causes you to go over your credit limit. If you want us to authorize these transactions, you can request over-the-credit limit coverage.

If you have over-the-credit limit coverage and you go over your credit limit, we will charge you a fee of up to \$35. We may also increase your APRs to the Penalty APR of XX.XX%. You will only pay one fee per billing cycle, even if you go over your limit multiple times in the same cycle.

Even if you request over-the-credit limit coverage, in some cases we may still decline a transaction that would cause you to go over your limit, such as if you are past due or significantly over your credit limit.

If you want over-the-limit coverage and to allow us to authorize transactions that go over your credit limit, please:

--Call us at [telephone number];

--Visit [Web site]; or

--Check or initial the box below, and return the form to us at [address].

___ I want over-the-limit coverage. I understand that if I go over my credit limit, my APRs may be increased and I will be charged a fee of up to \$35. [I have the right to cancel this coverage at any time.]

___ I do not want over-the-limit coverage. I understand that transactions that exceed my credit limit will not be authorized.]

Printed Name: _____

Date: _____

[Account Number]: _____

G-25(B)--Revocation Notice for Periodic Statement Regarding Over-the-Credit Limit Transactions

You currently have over-the-credit limit coverage on your account, which means that we pay transactions that cause you to go over your credit limit. If you do go over your credit limit, we will charge you a fee of up to \$35. We may also increase your APRs. To remove over-the-credit-limit coverage from your account, call us at 1-800-xxxxxxx or visit [insert Web site]. [You may also write us at: [insert address].]

[You may also check or initial the box below and return this form to us at: [insert address].]

___ I want to cancel over-the-limit coverage for my account.

Printed Name: _____

Date: _____

[Account Number]: _____

[46 Fed. Reg. 20,892 (Apr. 7, 1981), *as amended at* 46 Fed. Reg. 60,191 (Dec. 9, 1981); 54 Fed. Reg. 13,868 (Apr. 6, 1989); 54 Fed. Reg. 24,689 (June 9, 1989); 55 Fed. Reg. 38,312 (Sept. 18, 1990); 65 Fed. Reg. 58,908 (Oct. 3, 2000); 66 Fed. Reg. 43,463 (Aug. 20, 2001); 75 Fed. Reg. 7825 (Feb. 22, 2010); 75 Fed. Reg. 37,573 (June 29, 2010); 76 Fed. Reg. 79,772 (Dec. 22, 2011)]

APPENDIX H Closed-End Model Forms and Clauses

H-1 Credit Sale Model Form (§ 1026.18)

H-2 Loan Model Form (§ 1026.18)

H-3 Amount Financed Itemization Model Form (§ 1026.18(c))

H-4(A) Variable-Rate Model Clauses (§ 1026.18(f)(1))

H-4(B) Variable-Rate Model Clauses (§ 1026.18(f)(2))

H-4(C) Variable-Rate Model Clauses (§ 1026.19(b))

H-4(D)(1) ~~Variable~~Adjustable-Rate Mortgage Model ~~Clauses~~Form (§ 1026.20(c))

H-4(D)(2) Adjustable-Rate Mortgage Sample Form (§ 1026.20(c))

[H-4\(D\)\(3\) Adjustable-Rate Mortgage Model Form \(§ 1026.20\(d\)\)](#)

[H-4\(D\)\(4\) Adjustable-Rate Mortgage Sample Form \(§ 1026.20\(d\)\)](#)

H-4(E) Fixed-Rate Mortgage Interest Rate and Payment Summary Model Clause (§ 1026.18(s))

H-4(F) Adjustable-Rate Mortgage or Step-Rate Mortgage Interest Rate and Payment Summary Model Clause (§ 1026.18(s))

H-4(G) Mortgage with Negative Amortization Interest Rate and Payment Summary Model Clause (§ 1026.18(s))

H-4(H) Fixed-Rate Mortgage with Interest-Only Interest Rate and Payment Summary Model Clause (§ 1026.18(s))

H-4(I) Adjustable-Rate Mortgage Introductory Rate Disclosure Model Clause (§ 1026.18(s)(2)(iii))

H-4(J) Balloon Payment Disclosure Model Clause (§ 1026.18(s)(5))

H-4(K) No Guarantee to Refinance Statement Model Clause (§ 1026.18(t))

H-5 Demand Feature Model Clauses (§ 1026.18(i))

H-6 Assumption Policy Model Clause (§ 1026.18(q))

H-7 Required Deposit Model Clause (§ 1026.18(r))

H-8 Rescission Model Form (General) (§ 1026.23)

H-9 Rescission Model Form (Refinancing (with Original Creditor)) (§ 1026.23)

H-10 Credit Sale Sample

H-11 Installment Loan Sample

H-12 Refinancing Sample

H-13 Mortgage with Demand Feature Sample

H-14 Variable-Rate Mortgage Sample (§ 1026.19(b))

H-15 Graduated-Payment Mortgage Sample

H-16 Mortgage Sample

H-17(A) Debt Suspension Model Clause

H-17(B) Debt Suspension Sample

H-18 Private Education Loan Application and Solicitation Model Form

H-19 Private Education Loan Approval Model Form

H-20 Private Education Loan Final Model Form

H-21 Private Education Loan Application and Solicitation Sample

H-22 Private Education Loan Approval Sample

H-23 Private Education Loan Final Sample

[H-30\(A\) Sample Form of Periodic Statement \(§ 1026.41\)](#)

[H-30\(B\) Sample Form of Periodic Statement with Delinquency Box \(§ 1026.41\)](#)

[H-30\(C\) Sample Form of Periodic Statement for a Payment-Options Loan \(§ 1026.41\)](#)

[H-30\(D\) Sample Clause for Homeownership Counselor Contact Information \(§ 1026.41\)](#)

[end table]

H-1-Credit Sale Model Form

[Tables not reprinted herein.]

H-3-Amount Financed Itemization Model Form

Itemization of the Amount Financed of \$____

\$_____ Amount given to you directly

\$_____ Amount paid on your account

Amount paid to others on your behalf

\$____ to [public officials]

[credit bureau]

[appraiser]

[insurance company]

\$____ to (name of another creditor)

\$____ to (other)

\$____ Prepaid finance charge

H-4(A)-Variable-Rate Model Clauses

The annual percentage rate may increase during the term of this transaction if:

[the prime interest rate of (*creditor*) increases.]

[the balance in your deposit account falls below \$_____.]

[you terminate your employment with (*employer*).]

[The interest rate will not increase above ____%.]

[The maximum interest rate increase at one time will be ____%.]

[The rate will not increase more than once every (*time period*).]

Any increase will take the form of:

[higher payment amounts.]

[more payments of the same amount.]

[a larger amount due at maturity.]

Example based on the specific transaction

[If the interest rate increases by ____% in (*time period*),

[your regular payments will increase to \$_____.]

[you will have to make ____ additional payments.]

[your final payment will increase to \$_____..]

Example based on a typical transaction

[If your loan were for \$____ at ____% for (*term*) and the rate increased to ____% in (*time period*),

[your regular payments would increase by \$_____.]

[you would have to make ____ additional payments.]

[your final payment would increase by \$_____..]

H-4(B)-Variable-Rate Model Clauses

Your loan contains a variable-rate feature. Disclosures about the variable-rate feature have been provided to you earlier.

H-4(C)--Variable-Rate Model Clauses

This disclosure describes the features of the adjustable-rate mortgage (ARM) program you are considering. Information on other ARM programs is available upon request.

How Your Interest Rate and Payment Are Determined

* Your interest rate will be based on [an index plus a margin] [a formula].

* Your payment will be based on the interest rate, loan balance, and loan term.

--[The interest rate will be based on (identification of index) plus our margin. Ask for our current interest rate and margin.]

--[The interest rate will be based on (identification of formula). Ask us for our current interest rate.]

--Information about the index [formula for rate adjustments] is published [can be found] _____.

--[The initial interest rate is not based on the (index) (formula) used to make later adjustments. Ask us for the amount of current interest rate discounts.]

How Your Interest Rate Can Change

* Your interest rate can change (frequency).

* [Your interest rate cannot increase or decrease more than ____ percentage points at each adjustment.]

* Your interest rate cannot increase [or decrease] more than ____ percentage points over the term of the loan.

How Your Payment Can Change

* Your payment can change (frequency) based on changes in the interest rate.

* [Your payment cannot increase more than (amount or percentage) at each adjustment.]

* You will be notified in writing ____ days before the due date of a payment at a new level. This notice will contain information about your interest rates, payment amount, and loan balance.

* [You will be notified once each year during which interest rate adjustments, but no payment adjustments, have been made to your loan. This notice will contain information about your interest rates, payment amount, and loan balance.]

* [For example, on a \$10,000 [term] loan with an initial interest rate of ____ [(the rate shown in the interest rate column below for the year 19____)] [(in effect (month) (year))], the maximum amount that the interest rate can rise under this program is ____ percentage points, to ____%, and the monthly payment can rise from a first-year payment of \$____ to a maximum of \$____ in the ____ year. To see what your payments would be, divide your mortgage amount by \$10,000; then multiply the monthly payment by that amount. (For example, the monthly payment for a mortgage amount of \$60,000 would be: $\$60,000 \div \$10,000 = 6$; $6 \times ___ = \$___$ per month.)]

[Example

The example below shows how your payments would have changed under this ARM program based on actual changes in the index from 1982 to 1996. This does not necessarily indicate how your index will change in the future.

The example is based on the following assumptions:

Amount \$10,000

Term ____

Change date ____

Payment adjustment (frequency)

Interest adjustment (frequency)

[Margin]¹ ____

Caps ____ [periodic interest rate cap]

____ [lifetime interest rate cap]

____ [payment cap]

[Interest rate carryover]

[Negative amortization]

[Interest rate discount]²

Index.....(identification of index or formula)

[Tables not reprinted herein.]

¹ This is a margin we have used recently, your margin may be different.

² This is the amount of a discount we have provided recently; your loan may be discounted by a different amount.]

Note:⁶⁵ To see what your payments would have been during that period, divide your mortgage by \$10,000; then multiply the monthly payment by that amount. (For example, in 1996 the monthly payment for a mortgage amount of \$60,000 taken out in 1982 would be: $\$60,000 \div \$10,000 = 6$; $6 \times$ = \$ _____ per month.)

[Images not reprinted herein.]

H-4(D)---~~Variable~~(1)---Adjustable-Rate Mortgage Model ~~Clauses~~ Form (§ 1026.20(c))

~~Your new interest rate will be _____%, which is based on an index value of _____%.~~

~~Your previous interest rate was _____%, which was based on an index value of _____%.~~

~~[The new interest rate does not reflect a change of _____ percentage point in the index value which was not added because of _____.]~~

~~[The new payment will be \$_____.]~~

~~[Your new loan balance is \$_____.]~~

H-4(D)(2)---Adjustable-Rate Mortgage Sample Form (§ 1026.20(c))

~~[Your (new) (existing) payment will not be sufficient to cover the interest due and the difference will be added to the loan amount. The ~~payment amount needed to~~ pay your loan in full by the end of the term at the new interest rate is \$_____.]~~

H-4(D)(3)---Adjustable-Rate Mortgage Model Form (§ 1026.20(d))

~~[The following interest rate adjustments have been implemented this year without changing your payment: _____.]~~

H-4(D)(4)---Adjustable-Rate Mortgage Sample Form (§ 1026.20(d))

~~These interest rates were based on the following index values: _____.]~~

H-4(E)---Fixed-Rate Mortgage Interest Rate and Payment Summary Model Clause (§ 1026.18(s))

[Table not reprinted herein.]

H-4(F)---Adjustable-Rate Mortgage or Step-Rate Mortgage Interest Rate and Payment Summary Model Clause (§ 1026.18(s))

[Table not reprinted herein.]

⁶⁵ Note to H-4(C) Paragraph (a)(1) is effective Jan. 10, 2014. 78 Fed. Reg. 10,902 (Feb. 14, 2013).

H-4(G)--Mortgage with Negative Amortization Interest Rate and Payment Summary Model Clause (§ 1026.18(s))

[Table not reprinted herein.]

H-4(H)--Fixed-Rate Mortgage with Interest-Only Interest Rate and Payment Summary Model Clause (§ 1026.18(s))

[Table not reprinted herein.]

H-4(I)--Introductory Rate Model Clause

[Introductory Rate Notice

You have a discounted introductory rate of ____ % that ends after (period).

In the (period in sequence), even if market rates do not change, this rate will increase to ____ %.]

H-4(J)--Balloon Payment Model Clause

[Final Balloon Payment due (date): \$____]

H-4(K)--“No-Guarantee-to-Refinance” Statement Model Clause

There is no guarantee that you will be able to refinance to lower your rate and payments.

H-5--Demand Feature Model Clauses

This obligation [is payable on demand.]
[has a demand feature.]

[All disclosures are based on an assumed maturity of one year.]

H-6--Assumption Policy Model Clause

Assumption: Someone buying your house [may, subject to conditions, be allowed to] [cannot] assume the remainder of the mortgage on the original terms.

H-7--Required Deposit Model Clause

The annual percentage rate does not take into account your required deposit.

H-8--Rescission Model Form (General)

NOTICE OF RIGHT TO CANCEL

Your Right to Cancel

You are entering into a transaction that will result in a [mortgage/lien/security interest] [on/in] your home. You have a legal right under federal law to cancel this transaction, without cost, within three business days from whichever of the following events occurs last:

- (1) the date of the transaction, which is ____; or
- (2) the date you received your Truth in Lending disclosures; or
- (3) the date you received this notice of your right to cancel.

If you cancel the transaction, the [mortgage/lien/security interest] is also cancelled. Within 20 calendar days after we receive your notice, we must take the steps necessary to reflect the fact that the [mortgage/lien/security interest] [on/in] your home has been cancelled, and we must return to you any money or property you have given to us or to anyone else in connection with this transaction.

You may keep any money or property we have given you until we have done the things mentioned above, but you must then offer to return the money or property. If it is impractical or unfair for you to return the property, you must offer its reasonable value. You may offer to return the property at your home or at the location of the property. Money must be returned to the address below. If we do not take possession of the money or property within 20 calendar days of your offer, you may keep it without further obligation.

How to Cancel

If you decide to cancel this transaction, you may do so by notifying us in writing, at

(creditor's name and business address).

You may use any written statement that is signed and dated by you and states your intention to cancel, or you may use this notice by dating and signing below. Keep one copy of this notice because it contains important information about your rights.

If you cancel by mail or telegram, you must send the notice no later than midnight of

(Date)

(or midnight of the third business day following the latest of the three events listed above). If you send or deliver your written notice to cancel some other way, it must be delivered to the above address no later than that time.

I WISH TO CANCEL

Consumer's Signature Date

H-9--Rescission Model Form (Refinancing With Original Creditor)

NOTICE OF RIGHT TO CANCEL

Your Right To Cancel

You are entering into a new transaction to increase the amount of credit previously provided to you. Your home is the security for this new transaction. You have a legal right under Federal law to cancel this new transaction, without cost, within three business days from whichever of the following events occurs last:

- (1) the date of this new transaction, which is ____; or
- (2) the date you received your new Truth in Lending disclosures; or
- (3) the date you received this notice of your right to cancel.

If you cancel this new transaction, it will not affect any amount that you presently owe. Your home is the security for that amount. Within 20 calendar days after we receive your notice of cancellation of this new transaction, we must take the steps necessary to reflect the fact that your home does not secure the increase of credit. We must also return any money you have given to us or anyone else in connection with this new transaction.

You may keep any money we have given you in this new transaction until we have done the things mentioned above, but you must then offer to return the money at the address below.

If we do not take possession of the money within 20 calendar days of your offer, you may keep it without further obligation.

How To Cancel

If you decide to cancel this new transaction, you may do so by notifying us in writing, at

(Creditor's name and business address).

You may use any written statement that is signed and dated by you and states your intention to cancel, or you may use this notice by dating and signing below. Keep one copy of this notice because it contains important information about your rights.

If you cancel by mail or telegram, you must send the notice no later than midnight of

(Date)

(or midnight of the third business day following the latest of the three events listed above).

If you send or deliver your written notice to cancel some other way, it must be delivered to the above address no later than that time.

I WISH TO CANCEL

Consumer's Signature

Date

[Tables not reprinted herein.]

H-14--Variable-Rate Mortgage Sample

This disclosure describes the features of the adjustable-rate mortgage (ARM) program you are considering. Information on other ARM programs is available upon request.

How Your Interest Rate and Payment Are Determined

* Your interest rate will be based on an index rate plus a margin.

* Your payment will be based on the interest rate, loan balance, and loan term.

--The interest rate will be based on the weekly average yield on United States Treasury securities adjusted to a constant maturity of 1 year (your index), plus our margin. Ask us for our current interest rate and margin.

--Information about the index rate is published weekly in the Wall Street Journal.

* Your interest rate will equal the index rate plus our margin unless your interest rate "caps" limit the amount of change in the interest rate.

How Your Interest Rate Can Change

* Your interest rate can change yearly.

* Your interest rate cannot increase or decrease more than 2 percentage points per year.

* Your interest rate cannot increase or decrease more than 5 percentage points over the term of the loan.

How Your Monthly Payment Can Change

* Your monthly payment can increase or decrease substantially based on annual changes in the interest rate.

* [For example, on a \$10,000, 30-year loan with an initial interest rate of 12.41 percent in effect in July 1996, the maximum amount that the interest rate can rise under this program is 5 percentage points, to 17.41 percent, and the monthly payment can rise from a first-year payment of \$106.03 to a maximum of \$145.34 in the fourth year. To see what your payment is, divide your mortgage amount by \$10,000; then multiply the monthly payment by that amount. (For example, the monthly payment for a mortgage amount of \$60,000 would be: $\$60,000 \div \$10,000 = 6$; $6 \times 106.03 = \$636.18$ per month.)

* You will be notified in writing 25 days before the annual payment adjustment may be made. This notice will contain information about your interest rates, payment amount and loan balance.]

[Example

The example below shows how your payments would have changed under this ARM program based on actual changes in the index from 1982 to 1996. This does not necessarily indicate how your index will change in the future. The example is based on the following assumptions:

Amount \$10,000
Term 30 years Payment adjustment 1 year
Interest adjustment 1 year
Margin 3 percentage
points

Caps ____ 2 percentage points annual interest rate
 ____ 5 percentage points lifetime interest rate

Index ____ Weekly average yield on U.S. Treasury securities adjusted to a constant maturity of one year.

* You will be notified in writing 25 days before the annual payment adjustment may be made. This notice will contain information about your interest rates, payment amount and loan balance.]

[Table not reprinted herein.]

H-15 Graduated Payment Mortgage Sample

[Table not reprinted herein.]

H-16 Mortgage Sample

[Table not reprinted herein.]

H-17(A) Debt Suspension Model Clause

Please enroll me in the optional [insert name of program], and bill my account the fee of [insert charge for the initial term of coverage]. I understand that enrollment is not required to obtain credit. I also understand that depending on the event, the protection may only temporarily suspend my duty to make minimum payments, not reduce the balance I owe. I understand that my balance will actually grow during the suspension period as interest continues to accumulate.

[To Enroll, Sign Here]/[To Enroll, Initial Here]. X _____

H-17(B) Debt Suspension Sample

Please enroll me in the optional [name of program], and bill my account the fee of \$200.00. I understand that enrollment is not required to obtain credit. I also understand that depending on the event, the protection may only temporarily suspend my duty to make minimum payments, not reduce the balance I owe. I understand that my balance will actually grow during the suspension period as interest continues to accumulate.

To Enroll, Initial Here. X _____

[Tables not reprinted herein.]

H-30(A)---Sample Form of Periodic Statement (§ 1026.41)

H-30(B)---Sample Form of Periodic Statement with Delinquency Box (§ 1026.41)

H-30(C)---Sample Form of Periodic Statement for a Payment-Options Loan (§ 1026.41)

[Images not reprinted herein.]

H-30(D)---Sample Clause for Homeownership Counselor Contact Information (§ 1026.41)⁶⁸

Housing Counselor Information: If you would like counseling or assistance, you can contact the following:

* U.S. Department of Housing and Urban Development (HUD): For a list of homeownership counselors or counseling organizations in your area, go to <http://www.hud.gov/offices/hsg/sfh/hcc/hcs.cfm> or call 800-569-4287.

[46 Fed. Reg. 20,892 (Apr. 7, 1981), *as amended at* 46 Fed. Reg. 29,246 (June 1, 1981); 52 Fed. Reg. 48,671 (Dec. 24, 1987); 53 Fed. Reg. 467 (Jan. 7, 1988); 60 Fed. Reg. 15,473 (Mar. 24, 1995); 61 Fed. Reg. 49,247 (Sept. 19, 1996); 62 Fed. Reg. 63,444 (Dec. 1, 1997); 62 Fed. Reg. 66,179 (Dec. 17, 1997); 63 Fed. Reg. 2,723 (Jan. 16, 1998); 66 Fed. Reg. 65,618 (Dec. 20, 2001); 74 Fed. Reg. 41,237–41,248 (Aug. 14, 2009); 75 Fed. Reg. 7846 (Feb. 22, 2010); 75 Fed. Reg. 58,484 (Sept. 24, 2010); 76 Fed. Reg. 79,772 (Dec. 22, 2011); [78 Fed. Reg. 10,902 \(Feb. 14, 2013\)](#)]

APPENDIX I Federal Enforcement Agencies

The following list indicates which federal agency enforces Regulation Z for particular classes of businesses. Any questions concerning compliance by a particular business should be directed to the appropriate enforcement agency. Terms that are not defined in the Federal Deposit Insurance Act (12 U.S.C. 1813(s)) shall have the meaning given to them in the International Banking Act of 1978 (12 U.S.C. 3101).

National banks and federal branches and federal agencies of foreign banks

District office of the Office of the Comptroller of the Currency for the district in which the institution is located.

State member banks, branches and agencies of foreign banks (other than federal branches, federal agencies, and insured state branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25A of the Federal Reserve Act

Federal Reserve Bank serving the district in which the institution is located.

Non-member insured banks and insured state branches of foreign banks

Federal Deposit Insurance Corporation Regional director for the region in which the institution is located.

⁶⁸ [Appendix H-30\(D\) is effective Jan. 10, 2014. 78 Fed. Reg. 10,902 \(Feb. 14, 2013\).](#)

Savings institutions insured under the Savings Association Insurance Fund of the FDIC and federally chartered savings banks insured under the Bank Insurance Fund of the FDIC (but not including state-chartered savings banks insured under the Bank Insurance Fund).

Office of Thrift Supervision Regional Director for the region in which the institution is located.

Federal Credit Unions

Regional office of the National Credit Union Administration serving the area in which the federal credit union is located.

Air Carriers

Assistant General Counsel for Aviation Enforcement and Proceedings, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

Creditors Subject to Packers and Stockyards Act

Nearest Packers and Stockyards Administration area supervisor.

Federal Land Banks, Federal Land Bank Associations, Federal Intermediate Credit Banks and Production Credit Associations.

Farm Credit Administration, 490 L'Enfant Plaza, SW., Washington, DC 20578.

Retail, Department Stores, Consumer Finance Companies, All Other Creditors, and All Nonbank Credit Card Issuers (Creditors operating on a local or regional basis should use the address of the FTC Regional Office in which they operate.)

Division of Credit Practices, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580.

[50 Fed. Reg. 8,708 (Mar. 5, 1985); 54 Fed. Reg. 53,539 (Dec. 29, 1989); 56 Fed. Reg. 51,322 (Oct. 11, 1991); 57 Fed. Reg. 20,400 (May 13, 1992); 76 Fed. Reg. 79,772 (Dec. 22, 2011)]

APPENDIX J Annual Percentage Rate Computations for Closed-End Credit Transactions

(a) Introduction

(1) Section 1026.22(a) of Regulation Z provides that the annual percentage rate for other than open-end credit transactions shall be determined in accordance with either the actuarial method or the United States Rule method. This appendix contains an explanation of the actuarial method as well as equations, instructions and examples of how this method applies to single advance and multiple advance transactions.

(2) Under the actuarial method, at the end of each unit-period (or fractional unit-period) the unpaid balance of the amount financed is increased by the finance charge earned during that period and is decreased by the total payment (if any) made at the end of that period. The determination of unit-periods and fractional unit-periods shall be consistent with the definitions and rules in paragraphs (b)(3), (4) and (5) of this section and the general equation in paragraph (b)(8) of this section.

(3) In contrast, under the United States Rule method, at the end of each payment period, the unpaid balance of the amount financed is increased by the finance charge earned during that payment period and is decreased by the payment made at the end of that payment period. If the payment is less than the finance charge earned, the adjustment of the unpaid balance of the amount financed is postponed until the end of the next payment period. If at that time the sum of the two payments is still less than the total earned finance charge for the two payment periods, the adjustment of the unpaid balance of the amount financed is postponed still another payment period, and so forth.

(b) Instructions and Equations for the Actuarial Method

(1) General Rule

The annual percentage rate shall be the nominal annual percentage rate determined by multiplying the unit-period rate by the number of unit-periods in a year.

(2) Term of the Transaction

The term of the transaction begins on the date of its consummation, except that if the finance charge or any portion of it is earned beginning on a later date, the term begins on the later date. The term ends on the date the last payment is due, except that if an advance is scheduled after that date, the term ends on the later date. For computation purposes, the length of the term shall be equal to the time interval between any point in time on the beginning date to the same point in time on the ending date.

(3) Definitions of Time Intervals

(i) A period is the interval of time between advances or between payments and includes the interval of time between the date the finance charge begins to be earned and the date of the first advance thereafter or the date of the first payment thereafter, as applicable.

(ii) A common period is any period that occurs more than once in a transaction.

(iii) A standard interval of time is a day, week, semimonth, month, or a multiple of a week or a month up to, but not exceeding, 1 year.

(iv) All months shall be considered equal. Full months shall be measured from any point in time on a given date of a given month to the same point in time on the same date of

another month. If a series of payments (or advances) is scheduled for the last day of each month, months shall be measured from the last day of the given month to the last day of another month. If payments (or advances) are scheduled for the 29th or 30th of each month, the last day of February shall be used when applicable.

(4) Unit-Period

(i) In all transactions other than a single advance, single payment transaction, the unit-period shall be that common period, not to exceed 1 year, that occurs most frequently in the transaction, except that

(A) If 2 or more common periods occur with equal frequency, the smaller of such common periods shall be the unit-period; or

(B) If there is no common period in the transaction, the unit-period shall be that period which is the average of all periods rounded to the nearest whole standard interval of time. If the average is equally near 2 standard intervals of time, the lower shall be the unit-period.

(ii) In a single advance, single payment transaction, the unit-period shall be the term of the transaction, but shall not exceed 1 year.

(5) Number of Unit-Periods Between 2 Given Dates

(i) The number of days between 2 dates shall be the number of 24-hour intervals between any point in time on the first date to the same point in time on the second date.

(ii) If the unit-period is a month, the number of full unit-periods between 2 dates shall be the number of months measured back from the later date. The remaining fraction of a unit-period shall be the number of days measured forward from the earlier date to the beginning of the first full unit-period, divided by 30. If the unit-period is a month, there are 12 unit-periods per year.

(iii) If the unit-period is a semimonth or a multiple of a month not exceeding 11 months, the number of days between 2 dates shall be 30 times the number of full months measured back from the later date, plus the number of remaining days. The number of full unit-periods and the remaining fraction of a unit-period shall be determined by dividing such number of days by 15 in the case of a semimonthly unit-period or by the appropriate multiple of 30 in the case of a multimonthly unit-period. If the unit-period is a semimonth, the number of unit-periods per year shall be 24. If the number of unit-periods is a multiple of a month, the number of unit-periods per year shall be 12 divided by the number of months per unit-period.

(iv) If the unit-period is a day, a week, or a multiple of a week, the number of full unit-periods and the remaining fractions of a unit-period shall be determined by dividing the number of days between the 2 given dates by the number of days per unit-period. If the unit-period is a day, the number of unit-periods per year shall be 365. If the unit-period is a week or a

multiple of a week, the number of unit-periods per year shall be 52 divided by the number of weeks per unit-period.

(v) If the unit-period is a year, the number of full unit-periods between 2 dates shall be the number of full years (each equal to 12 months) measured back from the later date. The remaining fraction of a unit-period shall be

(A) The remaining number of months divided by 12 if the remaining interval is equal to a whole number of months, or

(B) The remaining number of days divided by 365 if the remaining interval is not equal to a whole number of months.

(vi) In a single advance, single payment transaction in which the term is less than a year and is equal to a whole number of months, the number of unit-periods in the term shall be 1, and the number of unit-periods per year shall be 12 divided by the number of months in the term or 365 divided by the number of days in the term.

(vii) In a single advance, single payment transaction in which the term is less than a year and is not equal to a whole number of months, the number of unit-periods in the term shall be 1, and the number of unit-periods per year shall be 365 divided by the number of days in the term.

(6) Percentage Rate for a Fraction of a Unit-Period

The percentage rate of finance charge for a fraction (less than 1) of a unit-period shall be equal to such fraction multiplied by the percentage rate of finance charge per unit-period.

(7) *Symbols.* The symbols used to express the terms of a transaction in the equation set forth in paragraph (b)(8) of this section are defined as follows:

A_k = The amount of the k th advance.

q_k = The number of full unit-periods from the beginning of the term of the transaction to the k th advance.

e_k = The fraction of a unit-period in the time interval from the beginning of the term of the transaction to the k th advance.

m = The number of advances.

P_j = The amount of the j th payment.

t_j = The number of full unit-periods from the beginning of the term of the transaction to the j th payment.

f_j = The fraction of a unit-period in the time interval from the beginning of the term of the transaction to the j th payment.

n = The number of payments.

i = The percentage rate of finance charge per unit-period, expressed as a decimal equivalent.

Symbols used in the examples shown in this appendix are defined as follows:

[Omitted.]

Appendix M1 to Part 1026--Repayment Disclosures

(a) *Definitions.*

(1) “Promotional terms” means terms of a cardholder’s account that will expire in a fixed period of time, as set forth by the card issuer.

(2) “Deferred interest or similar plan” means a plan where a consumer will not be obligated to pay interest that accrues on balances or transactions if those balances or transactions are paid in full prior to the expiration of a specified period of time.

(b) *Calculating minimum payment repayment estimates.*

(1) *Minimum payment formulas.* When calculating the minimum payment repayment estimate, card issuers must use the minimum payment formula(s) that apply to a cardholder’s account. If more than one minimum payment formula applies to an account, the issuer must apply each minimum payment formula to the portion of the balance to which the formula applies. In this case, the issuer must disclose the longest repayment period calculated. For example, assume that an issuer uses one minimum payment formula to calculate the minimum payment amount for a general revolving feature, and another minimum payment formula to calculate the minimum payment amount for special purchases, such as a “club plan purchase.” Also, assume that based on a consumer’s balances in these features and the annual percentage rates that apply to such features, the repayment period calculated pursuant to this Appendix for the general revolving feature is 5 years, while the repayment period calculated for the special purchase feature is 3 years. This issuer must disclose 5 years as the repayment period for the entire balance to the consumer. If any promotional terms related to payments apply to a cardholder’s account, such as a deferred billing plan where minimum payments are not required for 12 months, card issuers may assume no promotional terms apply to the account. For example, assume that a promotional minimum payment of \$10 applies to an account for six months, and then after the promotional period expires, the minimum payment is calculated as 2 percent of the outstanding balance on the account or \$20 whichever is greater. An issuer may assume during the promotional period that the \$10 promotional minimum payment does not apply, and instead calculate the minimum payment disclosures based on the minimum payment formula of 2 percent of the outstanding balance or \$20, whichever is greater. Alternatively, during the

promotional period, an issuer in calculating the minimum payment repayment estimate may apply the promotional minimum payment until it expires and then apply the minimum payment formula that applies after the promotional minimum payment expires. In the above example, an issuer could calculate the minimum payment repayment estimate during the promotional period by applying the \$10 promotional minimum payment for the first six months and then applying the 2 percent or \$20 (whichever is greater) minimum payment formula after the promotional minimum payment expires. In calculating the minimum payment repayment estimate during a promotional period, an issuer may not assume that the promotional minimum payment will apply until the outstanding balance is paid off by making only minimum payments (assuming the repayment estimate is longer than the promotional period). In the above example, the issuer may not calculate the minimum payment repayment estimate during the promotional period by assuming that the \$10 promotional minimum payment will apply beyond the six months until the outstanding balance is repaid.

(2) *Annual percentage rate.* When calculating the minimum payment repayment estimate, a card issuer must use the annual percentage rates that apply to a cardholder's account, based on the portion of the balance to which the rate applies. If any promotional terms related to annual percentage rates apply to a cardholder's account, other than deferred interest or similar plans, a card issuer in calculating the minimum payment repayment estimate during the promotional period must apply the promotional annual percentage rate(s) until it expires and then must apply the rate that applies after the promotional rate(s) expires. If the rate that applies after the promotional rate(s) expires is a variable rate, a card issuer must calculate that rate based on the applicable index or formula. This variable rate is accurate if it was in effect within the last 30 days before the minimum payment repayment estimate is provided. For deferred interest plans or similar plans, if minimum payments under the deferred interest or similar plan will repay the balances or transactions in full prior to the expiration of the specified period of time, a card issuer must assume that the consumer will not be obligated to pay the accrued interest. This means, in calculating the minimum payment repayment estimate, the card issuer must apply a zero percent annual percentage rate to the balance subject to the deferred interest or similar plan. If, however, minimum payments under the deferred interest plan or similar plan may not repay the balances or transactions in full prior to the expiration of the specified period of time, a card issuer must assume that a consumer will not repay the balances or transactions in full prior to the expiration of the specified period of time and thus the consumer will be obligated to pay the accrued interest. This means, in calculating the minimum payment repayment estimate, the card issuer must apply the annual percentage rate at which interest is accruing to the balance subject to the deferred interest or similar plan.

(3) *Beginning balance.* When calculating the minimum payment repayment estimate, a card issuer must use as the beginning balance the outstanding balance on a consumer's account as of the closing date of the last billing cycle. When calculating the minimum payment repayment estimate, a card issuer may round the beginning balance as described above to the nearest whole dollar.

(4) *Assumptions.* When calculating the minimum payment repayment estimate, a card issuer for each of the terms below, may either make the following assumption about that term, or use the account term that applies to a consumer's account.

(i) Only minimum monthly payments are made each month. In addition, minimum monthly payments are made each month--for example, a debt cancellation or suspension agreement, or skip payment feature does not apply to the account.

(ii) No additional extensions of credit are obtained, such as new purchases, transactions, fees, charges or other activity. No refunds or rebates are given.

(iii) The annual percentage rate or rates that apply to a cardholder's account will not change, through either the operation of a variable rate or the change to a rate, except as provided in paragraph (b)(2) of this Appendix. For example, if a penalty annual percentage rate currently applies to a consumer's account, a card issuer may assume that the penalty annual percentage rate will apply to the consumer's account indefinitely, even if the consumer may potentially return to a non-penalty annual percentage rate in the future under the account agreement.

(iv) There is no grace period.

(v) The final payment pays the account in full (*i.e.*, there is no residual finance charge after the final month in a series of payments).

(vi) The average daily balance method is used to calculate the balance.

(vii) All months are the same length and leap year is ignored. A monthly or daily periodic rate may be assumed. If a daily periodic rate is assumed, the issuer may either assume (1) a year is 365 days long, and all months are 30.41667 days long, or (2) a year is 360 days long, and all months are 30 days long.

(viii) Payments are credited either on the last day of the month or the last day of the billing cycle.

(ix) Payments are allocated to lower annual percentage rate balances before higher annual percentage rate balances.

(x) The account is not past due and the account balance does not exceed the credit limit.

(xi) When calculating the minimum payment repayment estimate, the assumed payments, current balance and interest charges for each month may be rounded to the nearest cent, as shown in Appendix M2 to this part.

(5) *Tolerance.* A minimum payment repayment estimate shall be considered accurate if it is not more than 2 months above or below the minimum payment repayment estimate determined in accordance with the guidance in this Appendix (prior to rounding described in § 1026.7(b)(12)(i)(B) and without use of the assumptions listed in paragraph (b)(4) of this Appendix to the extent a card issuer chooses instead to use the account terms that apply to a consumer's account). For

example, assume the minimum payment repayment estimate calculated using the guidance in this Appendix is 28 months (2 years, 4 months), and the minimum payment repayment estimate calculated by the issuer is 30 months (2 years, 6 months). The minimum payment repayment estimate should be disclosed as 2 years, due to the rounding rule set forth in § 1026.7(b)(12)(i)(B). Nonetheless, based on the 30-month estimate, the issuer disclosed 3 years, based on that rounding rule. The issuer would be in compliance with this guidance by disclosing 3 years, instead of 2 years, because the issuer's estimate is within the 2 months' tolerance, prior to rounding. In addition, even if an issuer's estimate is more than 2 months above or below the minimum payment repayment estimate calculated using the guidance in this Appendix, so long as the issuer discloses the correct number of years to the consumer based on the rounding rule set forth in § 1026.7(b)(12)(i)(B), the issuer would be in compliance with this guidance. For example, assume the minimum payment repayment estimate calculated using the guidance in this Appendix is 32 months (2 years, 8 months), and the minimum payment repayment estimate calculated by the issuer is 38 months (3 years, 2 months). Under the rounding rule set forth in § 1026.7(b)(12)(i)(B), both of these estimates would be rounded and disclosed to the consumer as 3 years. Thus, if the issuer disclosed 3 years to the consumer, the issuer would be in compliance with this guidance even though the minimum payment repayment estimate calculated by the issuer is outside the 2 months' tolerance amount.

(c) Calculating the minimum payment total cost estimate. When calculating the minimum payment total cost estimate, a card issuer must total the dollar amount of the interest and principal that the consumer would pay if he or she made minimum payments for the length of time calculated as the minimum payment repayment estimate under paragraph (b) of this Appendix. The minimum payment total cost estimate is deemed to be accurate if it is based on a minimum payment repayment estimate that is within the tolerance guidance set forth in paragraph (b)(5) of this Appendix. For example, assume the minimum payment repayment estimate calculated using the guidance in this Appendix is 28 months (2 years, 4 months), and the minimum payment repayment estimate calculated by the issuer is 30 months (2 years, 6 months). The minimum payment total cost estimate will be deemed accurate even if it is based on the 30 month estimate for length of repayment, because the issuer's minimum payment repayment estimate is within the 2 months' tolerance, prior to rounding. In addition, assume the minimum payment repayment estimate calculated under this Appendix is 32 months (2 years, 8 months), and the minimum payment repayment estimate calculated by the issuer is 38 months (3 years, 2 months). Under the rounding rule set forth in § 1026.7(b)(12)(i)(B), both of these estimates would be rounded and disclosed to the consumer as 3 years. If the issuer based the minimum payment total cost estimate on 38 months (or any other minimum payment repayment estimate that would be rounded to 3 years), the minimum payment total cost estimate would be deemed to be accurate.

(d) Calculating the estimated monthly payment for repayment in 36 months.

(1) In general. When calculating the estimated monthly payment for repayment in 36 months, a card issuer must calculate the estimated monthly payment amount that would be required to pay off the outstanding balance shown on the statement within 36 months, assuming the consumer paid the same amount each month for 36 months.

(2) *Weighted annual percentage rate.* In calculating the estimated monthly payment for repayment in 36 months, an issuer may use a weighted annual percentage rate that is based on the annual percentage rates that apply to a cardholder's account and the portion of the balance to which the rate applies, as shown in Appendix M2 to this part. If a card issuer uses a weighted annual percentage rate and any promotional terms related to annual percentage rates apply to a cardholder's account, other than deferred interest plans or similar plans, in calculating the weighted annual percentage rate, the issuer must calculate a weighted average of the promotional rate and the rate that will apply after the promotional rate expires based on the percentage of 36 months each rate will apply, as shown in Appendix M2 to this part. For deferred interest plans or similar plans, if minimum payments under the deferred interest or similar plan will repay the balances or transactions in full prior to the expiration of the specified period of time, if a card issuer uses a weighted annual percentage rate, the card issuer must assume that the consumer will not be obligated to pay the accrued interest. This means, in calculating the weighted annual percentage rate, the card issuer must apply a zero percent annual percentage rate to the balance subject to the deferred interest or similar plan. If, however, minimum payments under the deferred interest plan or similar plan may not repay the balances or transactions in full prior to the expiration of the specified period of time, a card issuer in calculating the weighted annual percentage rate must assume that a consumer will not repay the balances or transactions in full prior to the expiration of the specified period of time and thus the consumer will be obligated to pay the accrued interest. This means, in calculating the weighted annual percentage rate, the card issuer must apply the annual percentage rate at which interest is accruing to the balance subject to the deferred interest or similar plan. A card issuer may use a method of calculating the estimated monthly payment for repayment in 36 months other than a weighted annual percentage rate, so long as the calculation results in the same payment amount each month and so long as the total of the payments would pay off the outstanding balance shown on the periodic statement within 36 months.

(3) *Assumptions.* In calculating the estimated monthly payment for repayment in 36 months, a card issuer must use the same terms described in paragraph (b) of this Appendix, as appropriate.

(4) *Tolerance.* An estimated monthly payment for repayment in 36 months shall be considered accurate if it is not more than 10 percent above or below the estimated monthly payment for repayment in 36 months determined in accordance with the guidance in this Appendix (after rounding described in § 1026.7(b)(12)(i)(F)(1)(i)).

(e) *Calculating the total cost estimate for repayment in 36 months.* When calculating the total cost estimate for repayment in 36 months, a card issuer must total the dollar amount of the interest and principal that the consumer would pay if he or she made the estimated monthly payment calculated under paragraph (d) of this appendix each month for 36 months. The total cost estimate for repayment in 36 months shall be considered accurate if it is based on the estimated monthly payment for repayment in 36 months that is calculated in accordance with paragraph (d) of this appendix.

(f) *Calculating the savings estimate for repayment in 36 months.* When calculating the savings estimate for repayment in 36 months, if a card issuer chooses under § 1026.7(b)(12)(i) to round

the disclosures to the nearest whole dollar when disclosing them on the periodic statement, the card issuer must calculate the savings estimate for repayment in 36 months by subtracting the total cost estimate for repayment in 36 months calculated under paragraph (e) of this appendix (rounded to the nearest whole dollar) from the minimum payment total cost estimate calculated under paragraph (c) of this appendix (rounded to the nearest whole dollar). If a card issuer chooses under § 1026.7(b)(12)(i), however, to round the disclosures to the nearest cent when disclosing them on the periodic statement, the card issuer must calculate the savings estimate for repayment in 36 months by subtracting the total cost estimate for repayment in 36 months calculated under paragraph (e) of this appendix (rounded to the nearest cent) from the minimum payment total cost estimate calculated under paragraph (c) of this appendix (rounded to the nearest cent). The savings estimate for repayment in 36 months shall be considered accurate if it is based on the total cost estimate for repayment in 36 months that is calculated in accordance with paragraph (e) of this appendix and the minimum payment total cost estimate calculated under paragraph (c) of this appendix.

[75 Fed. Reg. 7846 (Feb. 22, 2010); 76 Fed. Reg. 23,004 (Apr. 25, 2011); 76 Fed. Reg. 79,772 (Dec. 22, 2011)]

Appendix M2 to Part 1026--Sample Calculations of Repayment

Disclosures

The following is an example of how to calculate the minimum payment repayment estimate, the minimum payment total cost estimate, the estimated monthly payment for repayment in 36 months, the total cost estimate for repayment in 36 months, and the savings estimate for repayment in 36 months using the guidance in Appendix M1 to this part where three annual percentage rates apply (where one of the rates is a promotional APR), the total outstanding balance is \$1000, and the minimum payment formula is 2 percent of the outstanding balance or \$20, whichever is greater. The following calculation is written in SAS code.

```
data one;
```

```
/*
```

Note: pmt01 = estimated monthly payment to repay balance in 36 months
sumpmts36 = sum of payments for repayment in 36 months

month = number of months to repay total balance if making only minimum payments

pmt = minimum monthly payment

fc = monthly finance charge

sumpmts = sum of payments for minimum payments

```
*/
```

```

* inputs;

* annual percentage rates; apr1=0.0; apr2=0.17; apr3=0.21; * insert in ascending order;

* outstanding balances; cbal1=500; cbal2=250; cbal3=250;

* dollar minimum payment; dmin=20;

* percent minimum payment; pmin=0.02; * (0.02+perrate);

* promotional rate information;

* last month for promotional rate; expm=6; * = 0 if no promotional rate;

* regular rate; rrate=.17; * = 0 if no promotional rate;

array apr(3); array perrate(3);

days=365/12; * calculate days in month;

* calculate estimated monthly payment to pay off balances in 36 months, and total cost of
repaying balance in 36 months;

array xperrate(3);

do I=1 to 3;

xperrate(I)=(apr(I)/365)*days; * calculate periodic rate;

end;

if expm gt 0 then xperrate1a=(expm/36)*xperrate1+(1-(expm/36))*(rrate/365)*days; else
xperrate1a=xperrate1;

tbal=cbal1+cbal2+cbal3;

perrate36=(cbal1*xperrate1a+ cbal2*xperrate2+cbal3*xperrate3)/ (cbal1+cbal2+cbal3);

* months to repay; dmonths=36;

* initialize counters for sum of payments for repayment in 36 months; Sumpmts36=0;

pvaf=(1-(1+perrate36)**-dmonths)/perrate36; * calculate present value of annuity factor;

pmt01=round(tbal/pvaf,0.01); * calculate monthly payment for designated number of months;

```

```

sumpmts36 = pmt01 * 36;

* calculate time to repay and total cost of making minimum payments each month;

* initialize counter for months, and sum of payments;

month=0;

sumpmts=0;

do I=1 to 3;

perrate(I)=(apr(I)/365)*days; * calculate periodic rate;

end;

put perrate1=perrate2=perrate3=;

eins:

month=month+1; * increment month counter;

pmt=round(pmin*tbal,0.01); * calculate payment as percentage of balance;

if month ge expm and expm ne 0 then perrate1=(rrate/365)*days;

if pmt lt dmin then pmt=dmin; * set dollar minimum payment;

array xxxbal(3); array cbal(3);

do I=1 to 3;

xxxbal(I)=round(cbal(I)*(1+perrate(I)),0.01);

end;

fc=xxxbal1+xxxbal2+xxxbal3-tbal;

if pmt gt (tbal+fc) then do;

do I=1 to 3;

if cbal(I) gt 0 then pmt=round(cbal(I)*(1+perrate(I)),0.01); * set final payment amount;

end;

```

```

end;

if pmt le xxxbal1 then do;

cbal1=xxxbal1-pmt;

cbal2=xxxbal2;

cbal3=xxxbal3;

end;

if pmt gt xxxbal1 and xxxbal2 gt 0 and pmt le (xxxbal1+xxxbal2) then do;

cbal2=xxxbal2-(pmt-xxxbal1);

cbal1=0;

cbal3=xxxbal3;

end;

if pmt gt xxxbal2 and xxxbal3 gt 0 then do;

cbal3=xxxbal3-(pmt-xxxbal1-xxxbal2);

cbal2=0;

end;

sumpmts=sumpmts+pmt; * increment sum of payments;

tbal=cbal1+cbal2+cbal3; * calculate new total balance;

* print month, balance, payment amount, and finance charge;

put month=tbal=cbal1=cbal2=cbal3=pmt= fc=;

if tbal gt 0 then go to eins; * go to next month if balance is greater than zero;

* initialize total cost savings;

savtot=0;

savtot= round(sumpmts,1)--round (sumpmts36,1);

```

* print number of months to repay debt if minimum payments made, final balance (zero), total cost if minimum payments made, estimated monthly payment for repayment in 36 months, total cost for repayment in 36 months, and total savings if repaid in 36 months;

put title=``;

put title=`number of months to repay debt if minimum payment made, final balance, total cost if minimum payments made, estimated monthly payment for repayment in 36 months, total cost for repayment in 36 months, and total savings if repaid in 36 months`;

put month=tbal=sumpmts=pmt01= sumpmts36=savtot=;

put title=``;

run;

[75 Fed. Reg. 7848 (Feb. 22, 2010); 76 Fed. Reg. 79,772 (Dec. 22, 2011)]

Appendix N to Part 1026--Higher-Priced Mortgage Loan Appraisal Safe Harbor Review⁶⁹

To qualify for the safe harbor provided in § 1026.35(c)(3)(ii), a creditor must confirm that the written appraisal:

1. Identifies the creditor who ordered the appraisal and the property and the interest being appraised.
2. Indicates whether the contract price was analyzed.
3. Addresses conditions in the property's neighborhood.
4. Addresses the condition of the property and any improvements to the property.
5. Indicates which valuation approaches were used, and includes a reconciliation if more than one valuation approach was used.
6. Provides an opinion of the property's market value and an effective date for the opinion.
7. Indicates that a physical property visit of the interior of the property was performed.
8. Includes a certification signed by the appraiser that the appraisal was prepared in accordance with the requirements of the Uniform Standards of Professional Appraisal Practice.
9. Includes a certification signed by the appraiser that the appraisal was prepared in accordance with the requirements of title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, as amended (12 U.S.C. 3331 *et seq.*), and any implementing regulations.

[78 Fed. Reg. 6408 (Jan. 30, 2013); 78 Fed. Reg. 10,442 (Feb. 13, 2013)]

⁶⁹ Appendix N is effective Jan. 18, 2014. 78 Fed. Reg. 6408 (Jan. 30, 2013); 78 Fed. Reg. 10,442 (Feb. 13, 2013).

Appendix O to Part 1026--Illustrative Written Source Documents for Higher-Priced Mortgage Loan Appraisal Rules⁷⁰

A creditor acts with reasonable diligence under § 1026.35(c)(4)(vi)(A) if the creditor bases its determination on information contained in written source documents, such as:

1. A copy of the recorded deed from the seller.
2. A copy of a property tax bill.
3. A copy of any owner's title insurance policy obtained by the seller.
4. A copy of the RESPA settlement statement from the seller's acquisition (i.e., the HUD-1 or any successor form).
5. A property sales history report or title report from a third-party reporting service.
6. Sales price data recorded in multiple listing services.
7. Tax assessment records or transfer tax records obtained from local governments.
8. A written appraisal performed in compliance with § 1026.35(c)(3)(i) for the same transaction.
9. A copy of a title commitment report detailing the seller's ownership of the property, the date it was acquired, or the price at which the seller acquired the property.
10. A property abstract.

[78 Fed. Reg. 6408 (Jan. 30, 2013); 78 Fed. Reg. 10,442 (Feb. 13, 2013)]

Appendix P to Part 1026--[Reserved]⁷¹

[78 Fed. Reg. 6408 (Jan. 30, 2013)]

Appendix Q to Part 1026—Standards for Determining Monthly Debt and Income⁷²

Section 1026.43(e)(2)(vi) provides that, to satisfy the requirements for a qualified mortgage under § 1026.43(e)(2), the ratio of the consumer's total monthly debt to total monthly income at the time of consummation cannot exceed 43 percent. Section 1026.43(e)(2)(vi)(A) requires the creditor to calculate the ratio of the consumer's total monthly debt to total monthly income using the following standards, with additional requirements for calculating debt and income appearing in § 1026.43(e)(2)(vi)(B).

I. Consumer Eligibility

⁷⁰ Appendix O is effective Jan. 18, 2014. 78 Fed. Reg. 6408 (Jan. 30, 2013); 78 Fed. Reg. 10,442 (Feb. 13, 2013).

⁷¹ Appendix P is effective Jan. 10, 2014. 78 Fed. Reg. 6408 (Jan. 30, 2013).

⁷² Appendix Q is effective Jan. 10, 2014. 78 Fed. Reg. 6408 (Jan. 30, 2013).

A. Stability of Income.

1. Effective Income. Income may not be used in calculating the consumer's income ratios if it comes from any source that cannot be verified, is not stable, or will not continue.

2. Verifying Employment History.

a. The creditor must verify the consumer's employment for the most recent two full years, and the consumer must:

i. Explain any gaps in employment that span one or more months, and

ii. Indicate if he/she was in school or the military for the recent two full years, providing evidence supporting this claim, such as college transcripts, or discharge papers.

b. Allowances can be made for seasonal employment, typical for the building trades and agriculture, if documented by the creditor.

Note: A consumer with a 25 percent or greater ownership interest in a business is considered self-employed and will be evaluated as a self-employed consumer for underwriting purposes.

3. Analyzing a Consumer's Employment Record.

a. When analyzing the probability of continued employment, creditors must examine:

i. The consumer's past employment record;

ii. Qualifications for the position;

iii. Previous training and education; and

iv. The employer's confirmation of continued employment.

b. Favorably consider a consumer for a mortgage if he/she changes jobs frequently within the same line of work, but continues to advance in income or benefits. In this analysis, income stability takes precedence over job stability.

4. Consumers Returning to Work After an Extended Absence. A consumer's income may be considered effective and stable when recently returning to work after an extended absence if he/she:

a. Is employed in the current job for six months or longer; and

b. Can document a two-year work history prior to an absence from employment using;

i. Traditional employment verifications; and/or

ii. Copies of IRS Form W-2s or pay stubs.

Note: An acceptable employment situation includes individuals who took several years off from employment to raise children, then returned to the workforce.

c. Important: Situations not meeting the criteria listed above may not be used in qualifying. Extended absence is defined as six months.

B. Salary, Wage and Other Forms of Income.

1. General Policy on Consumer Income Analysis.

a. The income of each consumer who will be obligated for the mortgage debt must be analyzed to determine whether his/her income level can be reasonably expected to continue through at least the first three years of the mortgage loan.

b. In most cases, a consumer's income is limited to salaries or wages. Income from other sources can be considered as effective, when properly verified and documented by the creditor.

Notes:

i. Effective income for consumers planning to retire during the first three-year period must include the amount of:

a. Documented retirement benefits;

b. Social Security payments; or

c. Other payments expected to be received in retirement.

ii. Creditors must not ask the consumer about possible, future maternity leave.

2. Overtime and Bonus Income.

a. Overtime and bonus income can be used to qualify the consumer if he/she has received this income for the past two years, and it will likely continue. If the employment verification states that the overtime and bonus income is unlikely to continue, it may not be used in qualifying.

b. The creditor must develop an average of bonus or overtime income for the past two years. Periods of overtime and bonus income less than two years may be acceptable.

provided the creditor can justify and document in writing the reason for using the income for qualifying purposes.

3. Establishing an Overtime and Bonus Income Earning Trend.

a. The creditor must establish and document an earnings trend for overtime and bonus income. If either type of income shows a continual decline, the creditor must document in writing a sound rationalization for including the income when qualifying the consumer.

b. A period of more than two years must be used in calculating the average overtime and bonus income if the income varies significantly from year to year.

4. Qualifying Part-Time Income.

a. Part-time and seasonal income can be used to qualify the consumer if the creditor documents that the consumer has worked the part-time job uninterrupted for the past two years, and plans to continue. Many low and moderate income families rely on part-time and seasonal income for day to day needs, and creditors should not restrict consideration of such income when qualifying these consumers.

b. Part-time income received for less than two years may be included as effective income, provided that the creditor justifies and documents that the income is likely to continue.

c. Part-time income not meeting the qualifying requirements may not be used in qualifying.

Note: For qualifying purposes, “part-time” income refers to employment taken to supplement the consumer's income from regular employment; part-time employment is not a primary job and it is worked less than 40 hours.

5. Income from Seasonal Employment.

a. Seasonal income is considered uninterrupted, and may be used to qualify the consumer, if the creditor documents that the consumer:

i. Has worked the same job for the past two years, and

ii. Expects to be rehired the next season.

b. Seasonal employment includes:

i. Umpiring baseball games in the summer; or

ii. Working at a department store during the holiday shopping season.

6. Primary Employment Less Than 40 Hour Work Week.

a. When a consumer's primary employment is less than a typical 40-hour work week, the creditor should evaluate the stability of that income as regular, on-going primary employment.

b. Example: A registered nurse may have worked 24 hours per week for the last year. Although this job is less than the 40-hour work week, it is the consumer's primary employment, and should be considered effective income.

7. Commission Income.

a. Commission income must be averaged over the previous two years. To qualify commission income, the consumer must provide:

i. Copies of signed tax returns for the last two years; and

ii. The most recent pay stub.

b. Consumers whose commission income was received for more than one year, but less than two years may be considered favorably if the underwriter can:

i. Document the likelihood that the income will continue, and

ii. Soundly rationalize accepting the commission income.

Notes:

i. Unreimbursed business expenses must be subtracted from gross income.

ii. A commissioned consumer is one who receives more than 25 percent of his/her annual income from commissions.

iii. A tax transcript obtained directly from the IRS may be used in lieu of signed tax returns, and the cost of the transcript may be charged to the consumer.

8. Qualifying Commission Income Earned for Less Than One Year.

a. Commission income earned for less than one year is not considered effective income. Exceptions may be made for situations in which the consumer's compensation was changed from salary to commission within a similar position with the same employer.

b. A consumer may also qualify when the portion of earnings not attributed to commissions would be sufficient to qualify the consumer for the mortgage.

9. Employer Differential Payments. If the employer subsidizes a consumer's mortgage payment through direct payments, the amount of the payments:

a. Is considered gross income, and

b. Cannot be used to offset the mortgage payment directly, even if the employer pays the servicing creditor directly.

10. *Retirement Income.* Retirement income must be verified from the former employer, or from Federal tax returns. If any retirement income, such as employer pensions or 401(k)'s, will cease within the first full three years of the mortgage loan, such income may not be used in qualifying.

11. *Social Security Income.* Social Security income must be verified by the Social Security Administration or on Federal tax returns. If any benefits expire within the first full three years of the loan, the income source may not be used in qualifying.

Notes:

i. The creditor must obtain a complete copy of the current awards letter.

ii. Not all Social Security income is for retirement-aged recipients; therefore, documented continuation is required.

iii. Some portion of Social Security income may be “grossed up” if deemed nontaxable by the IRS.

12. *Automobile Allowances and Expense Account Payments.*

a. Only the amount by which the consumer's automobile allowance or expense account payments exceed actual expenditures may be considered income.

b. To establish the amount to add to gross income, the consumer must provide the following:

i. IRS Form 2106, Employee Business Expenses, for the previous two years; and

ii. Employer verification that the payments will continue.

c. If the consumer uses the standard per-mile rate in calculating automobile expenses, as opposed to the actual cost method, the portion that the IRS considers depreciation may be added back to income.

d. Expenses that must be treated as recurring debt include:

i. The consumer's monthly car payment; and

ii. Any loss resulting from the calculation of the difference between the actual expenditures and the expense account allowance.

C. Consumers Employed by a Family Owned Business.

1. Income Documentation Requirement.

In addition to normal employment verification, a consumer employed by a family owned business is required to provide evidence that he/she is not an owner of the business, which may include:

a. Copies of signed personal tax returns, or

b. A signed copy of the corporate tax return showing ownership percentage.

Note: A tax transcript obtained directly from the IRS may be used in lieu of signed tax returns, and the cost of the transcript may be charged to the consumer.

D. General Information on Self-Employed Consumers and Income Analysis.

1. Definition: Self Employed Consumer. A consumer with a 25 percent or greater ownership interest in a business is considered self-employed.

2. Types of Business Structures. There are four basic types of business structures. They include:

a. Sole proprietorships;

b. Corporations;

c. Limited liability or “S” corporations; and

d. Partnerships.

3. Minimum Length of Self Employment.

a. Income from self-employment is considered stable, and effective, if the consumer has been self-employed for two or more years.

b. Due to the high probability of failure during the first few years of a business, the requirements described in the table below are necessary for consumers who have been self-employed for less than two years.

If the period of self-employment is:
Between one and two years

Then:
To be eligible for a mortgage loan, the individual must have at least two years of

Less than one year

documented previous successful employment in the line of work in which the individual is self-employed, or in a related occupation.

Note: A combination of one year of employment and formal education or training in the line of work in which the individual is self-employed or in a related occupation is also acceptable.

The income from the consumer may not be considered effective income.

4. General Documentation Requirements for Self Employed Consumers. Self-employed consumers must provide the following documentation:

a. Signed, dated individual tax returns, with all applicable tax schedules for the most recent two years;

b. For a corporation, "S" corporation, or partnership, signed copies of Federal business income tax returns for the last two years, with all applicable tax schedules;

c. Year to date profit and loss (P&L) statement and balance sheet; and

d. Business credit report for corporations and "S" corporations.

5. Establishing a Consumer's Earnings Trend.

a. When qualifying a consumer for a mortgage loan, the creditor must establish the consumer's earnings trend from the previous two years using the consumer's tax returns.

b. If a consumer:

i. Provides quarterly tax returns, the income analysis may include income through the period covered by the tax filings, or

ii. Is not subject to quarterly tax returns, or does not file them, then the income shown on the P&L statement may be included in the analysis, provided the income stream based on the P&L is consistent with the previous years' earnings.

c. If the P&L statements submitted for the current year show an income stream considerably greater than what is supported by the previous year's tax returns, the creditor must base the income analysis solely on the income verified through the tax returns.

d. If the consumer's earnings trend for the previous two years is downward and the most recent tax return or P&L is less than the prior year's tax return, the consumer's most recent year's tax return or P&L must be used to calculate his/her income.

6. Analyzing the Business's Financial Strength:

a. To determine if the business is expected to generate sufficient income for the consumer's needs, the creditor must carefully analyze the business's financial strength, including the:

i. Source of the business's income;

ii. General economic outlook for similar businesses in the area.

b. Annual earnings that are stable or increasing are acceptable, while businesses that show a significant decline in income over the analysis period are not acceptable.

E. Income Analysis: Individual Tax Returns (IRS Form 1040).

1. General Policy on Adjusting Income Based on a Review of IRS Form 1040.

The amount shown on a consumer's IRS Form 1040 as adjusted gross income must either be increased or decreased based on the creditor's analysis of the individual tax return and any related tax schedules.

2. Guidelines for Analyzing IRS Form 1040. The table below contains guidelines for analyzing IRS Form 1040:

<u>IRS Form 1040 heading</u>	<u>Description</u>
<u>Wages, Salaries and Tips</u>	<u>An amount shown under this heading may indicate that the individual:</u> <u>* Is a salaried employee of a corporation, or</u> <u>* Has other sources of income.</u> <u>This section may also indicate that the spouse is employed, in which case the spouse's income must be subtracted from the consumer's adjusted gross income.</u>
<u>Business Income and Loss (from Schedule C)</u>	<u>Sole proprietorship income calculated on Schedule C is business income.</u> <u>Depreciation or depletion may be added back to the adjusted gross income.</u>
<u>Rents, Royalties, Partnerships (from Schedule E)</u>	<u>Any income received from rental properties or royalties may be used as income, after adding back any depreciation shown on Schedule E.</u>
<u>Capital Gain and Losses (from Schedule D)</u>	<u>Capital gains or losses generally occur only one time, and should not be considered when determining effective income.</u> <u>However, if the individual has a constant turnover of assets resulting in gains or losses,</u>

	<p>the capital gain or loss must be considered when determining the income. Three years' tax returns are required to evaluate an earning trend. If the trend:</p> <ul style="list-style-type: none"> * Results in a gain, it may be added as effective income, or * Consistently shows a loss, it must be deducted from the total income. <p>Creditor must document anticipated continuation of income through verified assets. <i>Example:</i> A creditor can consider the capital gains for an individual who purchases old houses, remodels them, and sells them for profit.</p>
<u>Interest and Dividend Income (from Schedule B)</u>	<p>This taxable/tax-exempt income may be added back to the adjusted gross income only if it:</p> <ul style="list-style-type: none"> * Has been received for the past two years; and * Is expected to continue. <p>If the interest-bearing asset will be liquidated as a source of the cash investment, the creditor must appropriately adjust the amount.</p>
<u>Farm Income or Loss (from Schedule F)</u>	<p>Any depreciation shown on Schedule F may be added back to the adjusted gross income.</p>
<u>IRA Distributions, Pensions, Annuities, and Social Security Benefits</u>	<p>The non-taxable portion of these items may be added back to the adjusted gross income, if the income is expected to continue for the first three years of the mortgage.</p>
<u>Adjustments to Income</u>	<p>Adjustments to income may be added back to the adjusted gross income if they are:</p> <ul style="list-style-type: none"> * IRA and Keogh retirement deductions; * Penalties on early withdrawal of savings; * Health insurance deductions; and * Alimony payments.
<u>Employee Business Expenses</u>	<p>Employee business expenses are actual cash expenses that must be deducted from the adjusted gross income.</p>

F. Income Analysis: Corporate Tax Returns (IRS Form 1120).

1. Description: Corporation. A corporation is a State-chartered business owned by its stockholders.

2. Need To Obtain Consumer Percentage of Ownership Information.

a. Corporate compensation to the officers, generally in proportion to the percentage of ownership, is shown on the:

i. Corporate tax return IRS Form 1120; and

ii. Individual tax returns.

b. When a consumer's percentage of ownership does not appear on the tax returns, the creditor must obtain the information from the corporation's accountant, along with evidence that the consumer has the right to any compensation.

3. Analyzing Corporate Tax Returns.

a. In order to determine a consumer's self-employed income from a corporation the adjusted business income must:

i. Be determined; and

ii. Multiplied by the consumer's percentage of ownership in the business.

b. The table below describes the items found on IRS Form 1120 for which an adjustment must be made in order to determine adjusted business income.

<u>Adjustment item</u>	<u>Description of adjustment</u>
<u>Depreciation and Depletion</u>	<u>Add the corporation's depreciation and depletion back to the after-tax income.</u>
<u>Taxable Income</u>	<u>Taxable income is the corporation's net income before Federal taxes. Reduce taxable income by the tax liability.</u>
<u>Fiscal Year vs. Calendar Year</u>	<u>If the corporation operates on a fiscal year that is different from the calendar year, an adjustment must be made to relate corporation income to the individual tax return.</u>
<u>Cash Withdrawals</u>	<u>The consumer's withdrawal of cash from the corporation may have a severe negative impact on the corporation's ability to continue operating.</u>

G. Income Analysis: "S" Corporation Tax Returns (IRS Form 1120S).

1. Description: "S" Corporation.

a. An “S” corporation is generally a small, start-up business, with gains and losses passed to stockholders in proportion to each stockholder's percentage of business ownership.

b. Income for owners of “S” corporations comes from IRS Form W-2 wages, and is taxed at the individual rate. The IRS Form 1120S, Compensation of Officers line item is transferred to the consumer's individual IRS Form 1040.

2. Analyzing “S” Corporation Tax Returns.

a. “S” corporation depreciation and depletion may be added back to income in proportion to the consumer's share of the corporation's income.

b. In addition, the income must also be reduced proportionately by the total obligations payable by the corporation in less than one year.

c. Important: The consumer's withdrawal of cash from the corporation may have a severe negative impact on the corporation's ability to continue operating, and must be considered in the income analysis.

H. Income Analysis: Partnership Tax Returns (IRS Form 1065).

1. Description: Partnership.

a. A partnership is formed when two or more individuals form a business, and share in profits, losses, and responsibility for running the company.

b. Each partner pays taxes on his/her proportionate share of the partnership's net income.

2. Analyzing Partnership Tax Returns.

a. Both general and limited partnerships report income on IRS Form 1065, and the partners' share of income is carried over to Schedule E of IRS Form 1040.

b. The creditor must review IRS Form 1065 to assess the viability of the business. Both depreciation and depletion may be added back to the income in proportion to the consumer's share of income.

c. Income must also be reduced proportionately by the total obligations payable by the partnership in less than one year.

d. Important: Cash withdrawals from the partnership may have a severe negative impact on the partnership's ability to continue operating, and must be considered in the income analysis.

II. Non-Employment Related Consumer Income

A. Alimony, Child Support, and Maintenance Income Criteria. Alimony, child support, or maintenance income may be considered effective, if:

1. Payments are likely to be received consistently for the first three years of the mortgage;

2. The consumer provides the required documentation, which includes a copy of the:

i. Final divorce decree;

ii. Legal separation agreement;

iii. Court order; or

iv. Voluntary payment agreement; and

3. The consumer can provide acceptable evidence that payments have been received during the last 12 months, such as:

i. Cancelled checks;

ii. Deposit slips;

iii. Tax returns; or

iv. Court records.

Notes:

i. Periods less than 12 months may be acceptable, provided the creditor can adequately document the payer's ability and willingness to make timely payments.

ii. Child support may be "grossed up" under the same provisions as non-taxable income sources.

B. Investment and Trust Income.

1. Analyzing Interest and Dividends.

a. Interest and dividend income may be used as long as tax returns or account statements support a two-year receipt history. This income must be averaged over the two years.

b. Subtract any funds that are derived from these sources, and are required for the cash investment, before calculating the projected interest or dividend income.

2. Trust Income.

a. Income from trusts may be used if guaranteed, constant payments will continue for at least the first three years of the mortgage term.

b. Required trust income documentation includes a copy of the Trust Agreement or other trustee statement, confirming the:

i. Amount of the trust;

ii. Frequency of distribution; and

iii. Duration of payments.

c. Trust account funds may be used for the required cash investment if the consumer provides adequate documentation that the withdrawal of funds will not negatively affect income. The consumer may use funds from the trust account for the required cash investment, but the trust income used to determine repayment ability cannot be affected negatively by its use.

3. Notes Receivable Income.

a. In order to include notes receivable income to qualify a consumer, he/she must provide:

i. A copy of the note to establish the amount and length of payment, and

ii. Evidence that these payments have been consistently received for the last 12 months through deposit slips, cancelled checks, or tax returns.

b. If the consumer is not the original payee on the note, the creditor must establish that the consumer is now a holder in due course, and able to enforce the note.

4. Eligible Investment Properties.

Follow the steps in the table below to calculate an investment property's income or loss if the property to be subject to a mortgage is an eligible investment property.

1

Subtract the monthly payment (PITI) from the monthly net rental income of the subject property.

Note: Calculate the monthly net rental by taking the gross rents, and subtracting the 25 percent reduction for vacancies and repairs.

2

Does the calculation in Step 1 yield a positive number?

* If yes, add the number to the consumer's monthly gross income.

* If no, and the calculation yields a negative number, consider it a recurring monthly obligation

C. Military, Government Agency, and Assistance Program Income.

1. Military Income.

a. Military personnel not only receive base pay, but oftentimes are entitled to additional forms of pay, such as:

i. Income from variable housing allowances;

ii. Clothing allowances;

iii. Flight or hazard pay;

iv. Rations; and

v. Proficiency pay.

b. These types of additional pay are acceptable when analyzing a consumer's income as long as the probability of such pay to continue is verified in writing.

Note: The tax-exempt nature of some of the above payments should also be considered.

2. VA Benefits.

a. Direct compensation for service-related disabilities from the Department of Veterans Affairs (VA) is acceptable, provided the creditor receives documentation from the VA.

b. Education benefits used to offset education expenses are not acceptable.

3. Government Assistance Programs.

a. Income received from government assistance programs is acceptable as long as the paying agency provides documentation indicating that the income is expected to continue for at least three years.

b. If the income from government assistance programs will not be received for at least three years, it may not be used in qualifying.

c. Unemployment income must be documented for two years, and there must be reasonable assurance that this income will continue. This requirement may apply to seasonal employment.

4. Mortgage Credit Certificates.

a. If a government entity subsidizes the mortgage payments either through direct payments or tax rebates, these payments may be considered as acceptable income.

b. Either type of subsidy may be added to gross income, or used directly to offset the mortgage payment, before calculating the qualifying ratios.

5. Homeownership Subsidies.

a. A monthly subsidy may be treated as income, if a consumer is receiving subsidies under the housing choice voucher home ownership option from a public housing agency (PHA). Although continuation of the homeownership voucher subsidy beyond the first year is subject to Congressional appropriation, for the purposes of underwriting, the subsidy will be assumed to continue for at least three years.

b. If the consumer is receiving the subsidy directly, the amount received is treated as income. The amount received may also be treated as nontaxable income and be “grossed up” by 25 percent, which means that the amount of the subsidy, plus 25 percent of that subsidy may be added to the consumer's income from employment and/or other sources.

c. Creditors may treat this subsidy as an “offset” to the monthly mortgage payment (that is, reduce the monthly mortgage payment by the amount of the home ownership assistance payment before dividing by the monthly income to determine the payment-to-income and debt-to-income ratios). The subsidy payment must not pass through the consumer's hands.

d. The assistance payment must be:

i. Paid directly to the servicing creditor; or

ii. Placed in an account that only the servicing creditor may access.

Note: Assistance payments made directly to the consumer must be treated as income.

D. Rental Income.

1. Analyzing the Stability of Rental Income.

a. Rent received for properties owned by the consumer is acceptable as long as the creditor can document the stability of the rental income through:

i. A current lease;

ii. An agreement to lease, or

iii. A rental history over the previous 24 months that is free of unexplained gaps greater than three months (such gaps could be explained by student, seasonal, or military renters, or property rehabilitation).

b. A separate schedule of real estate is not required for rental properties as long as all properties are documented on the Uniform Residential Loan Application.

Note: The underwriting analysis may not consider rental income from any property being vacated by the consumer, except under the circumstances described below.

2. Rental Income From Consumer Occupied Property.

a. The rent for multiple unit property where the consumer resides in one or more units and charges rent to tenants of other units may be used for qualifying purposes.

b. Projected rent for the tenant-occupied units only may:

i. Be considered gross income, only after deducting vacancy and maintenance factors, and

ii. Not be used as a direct offset to the mortgage payment.

3. Income from Roommates in a Single Family Property.

a. Income from roommates in a single family property occupied as the consumer's primary residence is not acceptable. Rental income from boarders however, is acceptable, if the boarders are related by blood, marriage, or law.

b. The rental income may be considered effective, if shown on the consumer's tax return. If not on the tax return, rental income paid by the boarder may not be used in qualifying.

4. Documentation Required To Verify Rental Income.

Analysis of the following required documentation is necessary to verify all consumer rental income:

a. IRS Form 1040 Schedule E; and

b. Current leases/rental agreements.

5. Analyzing IRS Form 1040 Schedule E.

a. The IRS Form 1040 Schedule E is required to verify all rental income. Depreciation shown on Schedule E may be added back to the net income or loss.

b. Positive rental income is considered gross income for qualifying purposes, while negative income must be treated as a recurring liability.

c. The creditor must confirm that the consumer still owns each property listed, by comparing Schedule E with the real estate owned section of the URLA.

6. Using Current Leases To Analyze Rental Income.

a. The consumer can provide a current signed lease or other rental agreement for a property that was acquired since the last income tax filing, and is not shown on Schedule E.

b. In order to calculate the rental income:

i. Reduce the gross rental amount by 25 percent for vacancies and maintenance;

ii. Subtract PITI and any homeowners association dues; and

iii. Apply the resulting amount to income, if positive, or recurring debts, if negative.

7. Exclusion of Rental Income From Property Being Vacated by the Consumer.

Underwriters may not consider any rental income from a consumer's principal residence that is being vacated in favor of another principal residence, except under the conditions described below:

Notes:

i. This policy assures that a consumer either has sufficient income to make both mortgage payments without any rental income, or has an equity position not likely to result in defaulting on the mortgage on the property being vacated.

ii. This applies solely to a principal residence being vacated in favor of another principal residence. It does not apply to existing rental properties disclosed on the loan application and confirmed by tax returns (Schedule E of form IRS 1040).

8. Policy Exceptions Regarding the Exclusion of Rental Income From a Principal Residence Being Vacated by a Consumer.

When a consumer vacates a principal residence in favor of another principal residence, the rental income, reduced by the appropriate vacancy factor, may be considered in the underwriting analysis under the circumstances listed in the table below.

<u>Exception</u>	<u>Description</u>
<u>Relocations</u>	<p><u>The consumer is relocating with a new employer, or being transferred by the current employer to an area not within reasonable and locally-recognized commuting distance.</u></p> <p><u>A properly executed lease agreement (that is, a lease signed by the consumer and the lessee) of at least one year's duration after the loan is closed is required.</u></p> <p><u>Note: Underwriters should also obtain evidence of the security deposit and/or evidence the first month's rent was paid to the homeowner.</u></p>
<u>Sufficient Equity in Vacated Property</u>	<p><u>The consumer has a loan-to-value ratio of 75 percent or less, as determined either by:</u></p> <ul style="list-style-type: none"> <u>* A current (no more than six months old) residential appraisal, or</u> <u>* Comparing the unpaid principal balance to the original sales price of the property.</u> <p><u>Note: The appraisal, in addition to using forms Fannie Mae 1004/Freddie Mac 70, may be an exterior-only appraisal using form Fannie Mae/Freddie Mac 2055, and for condominium units, for Fannie Mae 1075/Freddie Mac 466.</u></p>

E. Non Taxable and Projected Income.

1. Types of Non Taxable Income.

Certain types of regular income may not be subject to Federal tax. Such types of nontaxable income include:

a. Some portion of Social Security, some Federal government employee retirement income, Railroad Retirement Benefits, and some State government retirement income:

b. Certain types of disability and public assistance payments:

c. Child support;

d. Military allowances; and

e. Other income that is documented as being exempt from Federal income taxes.

2. Adding Non Taxable Income to a Consumer's Gross Income.

a. The amount of continuing tax savings attributed to regular income not subject to Federal taxes may be added to the consumer's gross income.

b. The percentage of non-taxable income that may be added cannot exceed the appropriate tax rate for the income amount. Additional allowances for dependents are not acceptable.

c. The creditor:

i. Must document and support the amount of income grossed up for any non-taxable income source, and

ii. Should use the tax rate used to calculate the consumer's last year's income tax.

Note: If the consumer is not required to file a Federal tax return, the tax rate to use is 25 percent.

3. Analyzing Projected Income.

a. Projected or hypothetical income is not acceptable for qualifying purposes. However, exceptions are permitted for income from the following sources:

i. Cost-of-living adjustments;

ii. Performance raises; and

iii. Bonuses.

b. For the above exceptions to apply, the income must be:

i. Verified in writing by the employer; and

ii. Scheduled to begin within 60 days of loan closing.

4. Project Income for New Job.

a. Projected income is acceptable for qualifying purposes for a consumer scheduled to start a new job within 60 days of loan closing if there is a guaranteed, non-revocable contract for employment.

b. The creditor must verify that the consumer will have sufficient income or cash reserves to support the mortgage payment and any other obligations between loan closing and the start of employment. Examples of this type of scenario are teachers whose contracts begin with the new school year, or physicians beginning a residency after the loan closes fall under this category.

c. The loan is not eligible for endorsement if the loan closes more than 60 days before the consumer starts the new job. To be eligible for endorsement, the creditor must obtain from the consumer a pay stub or other acceptable evidence indicating that he/she has started the new job.

III. Consumer Liabilities: Recurring Obligations

1. Types of Recurring Obligation. Recurring obligations include:

a. All installment loans;

b. Revolving charge accounts;

c. Real estate loans;

d. Alimony;

e. Child support; and

f. Other continuing obligations.

2. Debt to Income Ratio Computation for Recurring Obligations.

a. The creditor must include the following when computing the debt to income ratios for recurring obligations:

i. Monthly housing expense; and

ii. Additional recurring charges extending ten months or more, such as

a. Payments on installment accounts;

b. Child support or separate maintenance payments;

c. Revolving accounts; and

d. Alimony.

b. Debts lasting less than ten months must be included if the amount of the debt affects the consumer's ability to pay the mortgage during the months immediately after loan closing, especially if the consumer will have limited or no cash assets after loan closing.

Note: Monthly payments on revolving or open-ended accounts, regardless of the balance, are counted as a liability for qualifying purposes even if the account appears likely to be paid off within 10 months or less.

3. *Revolving Account Monthly Payment Calculation.* If the credit report shows any revolving accounts with an outstanding balance but no specific minimum monthly payment, the payment must be calculated as the greater of:

a. 5 percent of the balance; or

b. \$10.

Note: If the actual monthly payment is documented from the creditor or the creditor obtains a copy of the current statement reflecting the monthly payment, that amount may be used for qualifying purposes.

4. *Reduction of Alimony Payment for Qualifying Ratio Calculation.* Since there are tax consequences of alimony payments, the creditor may choose to treat the monthly alimony obligation as a reduction from the consumer's gross income when calculating qualifying ratios, rather than treating it as a monthly obligation.

IV. Consumer Liabilities: Contingent Liability

1. *Definition: Contingent Liability.* A contingent liability exists when an individual is held responsible for payment of a debt if another party, jointly or severally obligated, defaults on the payment.

2. *Application of Contingent Liability Policies.* The contingent liability policies described in this topic apply unless the consumer can provide conclusive evidence from the debt holder that there is no possibility that the debt holder will pursue debt collection against him/her should the other party default.

3. *Contingent Liability on Mortgage Assumptions.* Contingent liability must be considered when the consumer remains obligated on an outstanding FHA-insured, VA-guaranteed, or conventional mortgage secured by property that:

a. Has been sold or traded within the last 12 months without a release of liability, or

b. Is to be sold on assumption without a release of liability being obtained.

4. *Exemption From Contingent Liability Policy on Mortgage Assumptions.*

When a mortgage is assumed, contingent liabilities need not be considered if the:

a. Originating creditor of the mortgage being underwritten obtains, from the servicer of the assumed loan, a payment history showing that the mortgage has been current during the previous 12 months, or

b. Value of the property, as established by an appraisal or the sales price on the HUD-1 Settlement Statement from the sale of the property, results in a loan-to-value (LTV) ratio of 75 percent or less.

5. *Contingent Liability on Cosigned Obligations.*

a. Contingent liability applies, and the debt must be included in the underwriting analysis, if an individual applying for a mortgage is a cosigner/co-obligor on:

i. A car loan;

ii. A student loan;

iii. A mortgage; or

iv. Any other obligation.

b. If the creditor obtains documented proof that the primary obligor has been making regular payments during the previous 12 months, and does not have a history of delinquent payments on the loan during that time, the payment does not have to be included in the consumer's monthly obligations.

V. Consumer Liabilities: Projected Obligations and Obligations Not Considered Debt

1. *Projected Obligations.*

a. Debt payments, such as a student loan or balloon-payment note scheduled to begin or come due within 12 months of the mortgage loan closing, must be included by the creditor as anticipated monthly obligations during the underwriting analysis.

b. Debt payments do not have to be classified as projected obligations if the consumer provides written evidence that the debt will be deferred to a period outside the 12-month timeframe.

c. Balloon-payment notes that come due within one year of loan closing must be considered in the underwriting analysis.

2. *Obligations Not Considered Debt.* Obligations not considered debt, and therefore not subtracted from gross income, include:

- a. Federal, State, and local taxes;
- b. Federal Insurance Contributions Act (FICA) or other retirement contributions, such as 401(k) accounts (including repayment of debt secured by these funds);
- c. Commuting costs;
- d. Union dues;
- e. Open accounts with zero balances;
- f. Automatic deductions to savings accounts;
- g. Child care; and
- h. Voluntary deductions.

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