

## Truth in Lending Act<sup>1</sup>

### Introduction

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

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

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

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

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

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

regulation and provide guidance on the electronic delivery of disclosures consistent with the E-Sign Act.

In July 2008, Regulation Z was amended to protect consumers in the mortgage market from unfair, abusive, or deceptive lending and servicing practices. Specifically, the change applied protections to a newly defined category of “higher-priced mortgages” that includes virtually all closed-end subprime loans secured by a consumer's principal dwelling. The revisions also applied new protections to mortgage loans secured by a dwelling, regardless of loan price, and required the delivery of early disclosures for more types of transactions. The revisions also banned several advertising practices deemed deceptive or misleading. The Mortgage Disclosure Improvement Act of 2008 (MDIA) broadened and added to the requirements of the Board's July 2008 final rule by requiring early truth-in-lending disclosures for more types of transactions and by adding a waiting period between the time when disclosures are given and consummation of the transaction. In 2009, Regulation Z was amended to address those provisions. The MDIA also requires disclosure of payment examples if the loan's interest rate or payments can change, as well as disclosure of a statement that there is no guarantee the consumer will be able to refinance in the future. In 2010, Regulation Z was amended to address these provisions, which became effective on January 30, 2011.

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

The Credit CARD Act provisions are effective in three stages. The provisions effective first required creditors to increase the amount of notice consumers receive before the rate on a credit card account is increased or a significant change is made to the account's terms. These amendments also allowed consumers to

<sup>1</sup> This section fully incorporates the examination procedures issued under DSC RD Memo 2011-20: Regulation Z: Truth in Lending: Updated Examination Procedures.

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reject such increases and changes by informing the creditor before the increase or change goes into effect. The provisions effective next involved rules regarding interest rate increases, over-the-limit transactions, and student cards. Finally, the provisions effective last addressed the reasonableness and proportionality of penalty fees and charges and re-evaluation of rate increases.

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

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

In 2010, the Board further amended Regulation Z to prohibit payment to a loan originator that is based on the terms or conditions of the loan, other than the amount of credit extended. The amendment applies to mortgage brokers and the companies that employ them, as well as to mortgage loan officers employed by depository institutions and other lenders. In addition, the amendment prohibits a loan originator from directing or “steering” a consumer to a loan that is not in the consumer’s interest to increase the loan originator’s compensation. Separately, the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) amended TILA to include several provisions that protect the integrity of the appraisal process when a consumer’s home is securing the loan. The rule also requires that appraisers receive customary and reasonable payments for their services. The appraiser and loan originator compensation requirements became effective on April 1, 2011.

The Dodd-Frank Act granted rulemaking authority under TILA to the Consumer Financial Protection Bureau (CFPB) and, with respect to the entities under the CFPB’s jurisdiction, granted the CFPB authority to supervise for and enforce compliance with TILA and its implementing regulations.<sup>2</sup>

### Format of Regulation Z

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

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

Subpart B (§§1026.5 through 1026.16) of the regulation contains rules for disclosures for home-equity loans, credit and charge card accounts, and other open-end credit.

Subpart B also covers rules for resolving billing errors, calculating annual percentage rates, credit balances, and advertising open-end credit. Special rules apply to credit card transactions only, such as certain prohibitions on the issuance of credit cards and restrictions on the right to offset a cardholder’s indebtedness. Additional special rules apply to home-equity lines of credit, such as certain prohibitions against closing accounts or changing account terms.

Subpart C (§§1026.17 through 1026.24) includes provisions for closed-end credit. Residential mortgage transactions, demand loans, and installment credit contracts, including direct loans by banks and purchased dealer paper, are included in the closed-end credit category. Subpart C also contains disclosure rules for regular and variable rate loans, refinancings and assumptions, credit balances, calculating annual percentage rates, and advertising closed-end credit.

Subpart D (§§1026.25 through 1026.30), which applies to both open-end and closed-end credit, sets forth the duty of creditors to retain evidence of compliance with the regulation. It also clarifies the relationship between the regulation and state law, and requires creditors to set a cap for variable rate transactions secured by a consumer’s dwelling.

Subpart E (§§1026.31 through 1026.36) contains special requirements for mortgages that fit the criteria in §1026.32(a) (“high-cost mortgages”), §1026.33(a) (“reverse mortgages”), and §1026.35(a) (“higher-priced mortgage loans”), as well as loans secured by a consumer’s principal dwelling.

Subpart F (§§1026.46 through 1026.48) includes disclosure and timing requirements that apply to creditors making private education loans. It also limits certain practices by creditors including “co-branding” products with educational institutions in the marketing of private student loans. The rule requires that creditors obtain a self-certification form signed by the consumer before consummating the loan. It also requires creditors with preferred lender arrangements with educational institutions to provide certain information to those institutions.

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<sup>2</sup> Dodd-Frank Act §§1002(12)(O), 1024(b)-(c), and 1025(b)-(c); 12 U.S.C. §§5481(12)(O), 5514(b)-(c), and 5515(b)-(c).

Subpart G (§§1026.51 through 1026.59) 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). This subpart contains rules on the evaluation of a consumer's ability to pay, limits on fees during the first year after account opening, limits and prohibitions on penalty fees, and rules on allocation of payments in excess of the minimum payment. The subpart also limits increases in the annual percentage rate (APR), fees, and charges, and prohibits the assessment of fees for over-the-limit transactions unless the consumer consents. There are also rules for reporting and marketing of college student open-end credit, requirements for the internet posting of credit card account agreements under an open-end (not home-secured) consumer credit plan, and requirements to reevaluate rate increases.

The appendices to the regulation set forth model forms and clauses that creditors may use when providing open-end and closed-end disclosures. The appendices contain detailed rules for calculating the APR for open-end credit (appendix F) and closed-end credit (appendixes D and J). Appendixes K and L provide total annual loan cost rate computations and assumed loan periods for reverse mortgage transactions. Appendixes M1 and M2 provide guidance for calculating the minimum payment repayment estimate.

Official staff interpretations of the regulation are published in a commentary that is normally updated annually in March. Good faith compliance with the commentary protects creditors from civil liability under the act. In addition, the commentary includes mandates, which are not necessarily explicit in Regulation Z, on disclosures or other actions required of creditors. It is virtually impossible to comply with Regulation Z without reference to and reliance on the commentary.

*NOTE: The following narrative does not discuss all the sections of Regulation Z, but rather highlights only certain sections of the regulation and the Truth in Lending Act.*

## Subpart A—General

### Purpose of the TILA and Regulation Z

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

- Protects consumers against inaccurate and unfair credit billing and credit card practices;
- Provides consumers with rescission rights;
- Provides for rate caps on certain dwelling-secured loans;

- Imposes limitations on home equity lines of credit and certain closed-end home mortgages; and
- Delineates and prohibits unfair or deceptive mortgage lending practices.

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

### Summary of Coverage Considerations §§1026.1 & 1026.2

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

### Exempt Transactions §1026.3

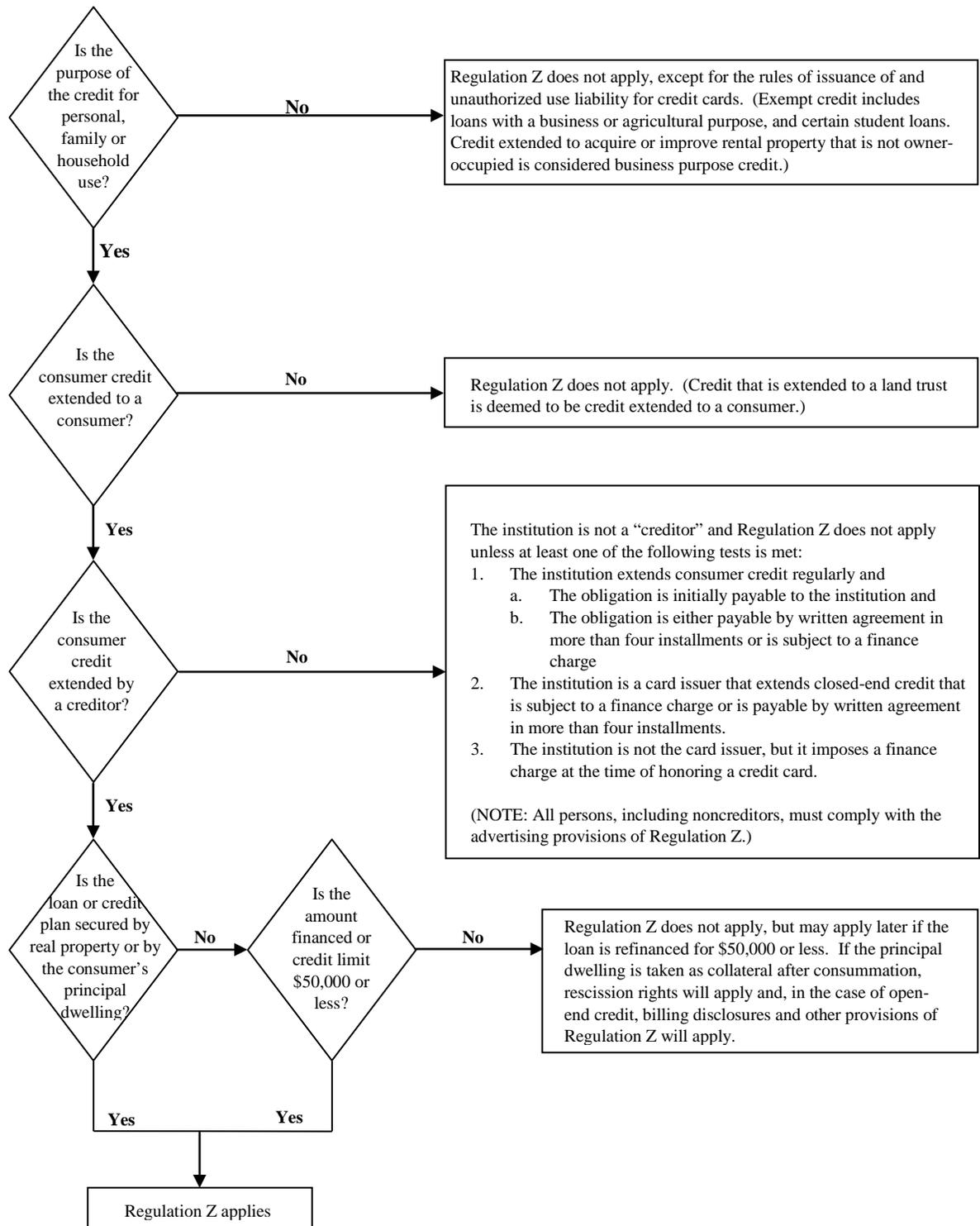
The following transactions are exempt from Regulation Z:

- Credit extended primarily for a business, commercial, or agricultural purpose;<sup>3</sup>
- Credit extended to other than a natural person (including credit to government agencies or instrumentalities);
- Credit in excess of \$50 thousand not secured by real property or by personal property used or expected to be used as the principal dwelling of the consumer;<sup>4</sup>
- If a credit card is involved, generally exempt credit (e.g., business or agricultural purpose credit) is still subject to requirements that govern the issuance of credit cards and liability for their unauthorized use. Credit cards must not be issued on an unsolicited basis and, if a credit card is lost or stolen, the cardholder must not be held liable for more than \$50 for the unauthorized use of the card.
- Public utility credit;
- Credit extended by a broker-dealer registered with the Securities and Exchange Commission (SEC) or the Commodity Futures Trading Commission (CFTC), involving securities or commodities accounts;
- Home fuel budget plans; and
- Certain student loan programs.

<sup>3</sup> If a credit card is involved, generally exempt credit (e.g., business or agricultural purpose credit) is still subject to requirements that govern the issuance of credit cards and liability for their unauthorized use. Credit cards must not be issued on an unsolicited basis and, if a credit card is lost or stolen, the cardholder must not be held liable for more than \$50 for the unauthorized use of the card.

<sup>4</sup> The Dodd-Frank Act requires that this threshold be adjusted annually by any annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W). Accordingly, based on the annual percentage increase in the CPI-W as of June 1, 2011, the exemption threshold will increase from \$50,000 to \$51,800, effective January 1, 2012.

Coverage Considerations under Regulation Z



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

- Any statement obtained from the consumer describing the purpose of the proceeds.
  - For example, a statement that the proceeds will be used for a vacation trip would indicate a consumer purpose.
  - If the loan has a mixed-purpose (e.g., proceeds will be used to buy a car that will be used for personal and business purposes), the lender must look to the primary purpose of the loan to decide whether disclosures are necessary. A statement of purpose from the consumer will help the lender make that decision.
  - A checked box indicating that the loan is for a business purpose, absent any documentation showing the intended use of the proceeds could be insufficient evidence that the loan did not have a consumer purpose.
- The consumer's primary occupation and how it relates to the use of the proceeds. The higher the correlation between the consumer's occupation and the property purchased from the loan proceeds, the greater the likelihood that the loan has a business purpose. For example, proceeds used to purchase dental supplies for a dentist would indicate a business purpose.
- Personal management of the assets purchased from proceeds. The lower the degree of the borrower's personal involvement in the management of the investment or enterprise purchased by the loan proceeds, the less likely the loan will have a business purpose. For example, money borrowed to purchase stock in an automobile company by an individual who does not work for that company would indicate a personal investment and a consumer purpose.
- The amount of income derived from the property acquired by the loan proceeds relative to the borrower's total income. The lesser the income derived from the acquired property, the more likely the loan will have a consumer purpose. For example, if the borrower has an annual salary of \$100,000 and receives about \$500 in annual dividends from the acquired property, that would indicate a consumer purpose.

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

## Determination of Finance Charge and APR

### Finance Charge (Open-End and Closed-End Credit) §1026.4

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

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

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

### Accuracy Tolerances (Closed-End Credit) §§1026.18(d) & 1026.23(h)

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

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

Tolerances for the finance charge in a closed-end transaction are generally \$5 if the amount financed is less than or equal to \$1,000 and \$10 if the amount financed exceeds \$1,000.

Tolerances for certain transactions consummated on or after September 30, 1995 are noted below.

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

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

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

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

### Calculating the Finance Charge (Closed-End Credit)

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

### Prepaid Finance Charges §1026.18(b)(3)

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

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

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

### Precomputed Finance Charges

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

### Annual Percentage Rate Definition §1026.22 (Closed-End Credit)

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

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

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

Since an APR measures the total cost of credit, including costs such as transaction charges or premiums for credit guarantee insurance, it is not an “interest” rate, as that term is generally used. APR calculations do not rely on definitions of interest in state law and often include charges, such as a commitment fee

paid by the consumer, that are not viewed by some state usury statutes as interest. Conversely, an APR might not include a charge, such as a credit report fee in a real property transaction, which some state laws might view as interest for usury purposes. Furthermore, measuring the timing of value received and of payments made, which is essential if APR calculations are to be accurate, must be consistent with parameters under Regulation Z.

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

The APR is a function of:

- The amount financed, which is not necessarily equivalent to the loan amount. For example, if the consumer must pay at closing a separate 1 percent loan origination fee (prepaid finance charge) on a \$100,000 residential mortgage loan, the loan amount is \$100,000, but the amount financed would be \$100,000 less the \$1,000 loan fee, or \$99,000.
- The finance charge, which is not necessarily equivalent to the total interest amount (interest is not defined by Regulation Z, but rather is defined by state or other federal law). For example:
  - If the consumer must pay a \$25 credit report fee for an auto loan, the fee must be included in the finance charge. The finance charge in that case is the sum of the interest on the loan (i.e., interest generated by the application of a percentage rate against the loan amount) plus the \$25 credit report fee.
  - If the consumer must pay a \$25 credit report fee for a home improvement loan secured by real property, the credit report fee must be excluded from the finance charge. The finance charge in that case would be only the interest on the loan.
- The payment schedule, which does not necessarily include only principal and interest (P + I) payments. For example:
  - If the consumer borrows \$2,500 for a vacation trip at 14 percent simple interest per annum and repays that amount with 25 equal monthly payments beginning one

month from consummation of the transaction, the monthly P + I payment will be \$115.87, if all months are considered equal, and the amount financed would be \$2,500. If the consumer's payments are increased by \$2.00 a month to pay a non-financed \$50 loan fee during the life of the loan, the amount financed would remain at \$2,500 but the payment schedule would be increased to \$117.87 a month, the finance charge would increase by \$50, and there would be a corresponding increase in the APR. This would be the case whether or not state law defines the \$50 loan fee as interest.

- If the loan above has 55 days to the first payment and the consumer prepays interest at consummation (\$24.31 to cover the first 25 days), the amount financed would be \$2,500 - \$24.31, or \$2,475.69. Although the amount financed has been reduced to reflect the consumer's reduced use of available funds at consummation, the time interval during which the consumer has use of the \$2,475.69, 55 days to the first payment, has not changed. Since the first payment period exceeds the limitations of the regulation's minor irregularities provisions (see §1026.17(c)(4)), it may not be treated as regular. In calculating the APR, the first payment period must not be reduced by 25 days (i.e., the first payment period may not be treated as one month).

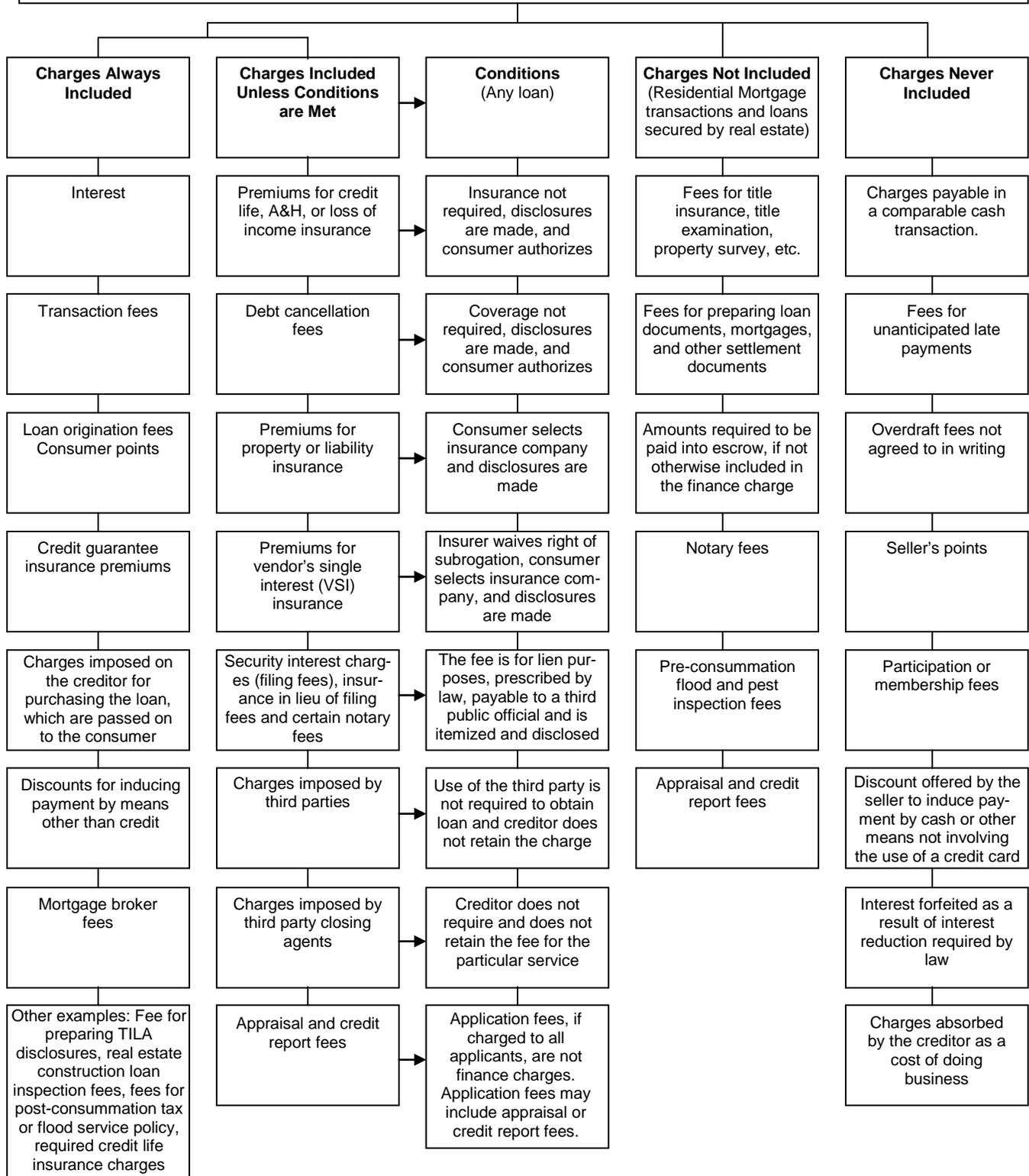
Financial institutions may, if permitted by state or other law, precompute interest by applying a rate against a loan balance using a simple interest, add-on, discount or some other method, and may earn interest using a simple interest accrual system, the Rule of 78's (if permitted by law) or some other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

#### **Special Requirements for Calculating the Finance Charge and APR**

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

Finance Charge Chart

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



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

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

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

### **Subpart B—Open-End Credit**

#### **Time of Disclosures (Periodic Statements) §1026.5(b)**

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

#### **Subsequent Disclosures (Open-End Credit) §1026.9**

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

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

Changes that do not require advance notice include:

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

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

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

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

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

### **Finance Charge (Open-End Credit) §1026.6(a)**

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

#### ***Determining the Balance and Computing the Finance Charge***

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

- Previous balance method. The balance on which the periodic finance charge is computed is based on the balance outstanding at the start of the billing cycle. The periodic rate is multiplied by this balance to compute the finance charge.
- Daily balance method. A daily periodic rate is applied to either the balance on each day in the cycle or the sum of the balances on each of the days in the cycle. If a daily periodic rate is multiplied by the balance on each day in the billing cycle, the finance charge is the sum of the products. If the daily periodic rate is multiplied by the sum of all the daily balances, the result is the finance charge.
- Average daily balance method. The average daily balance is the sum of the daily balances (either including or excluding current transactions) divided by the number of days in the billing cycle. A periodic rate is then multiplied by the average daily balance to determine the finance charge. If the periodic rate is a daily one, the product of the rate multiplied by the average balance is multiplied by the number of days in the cycle.

In addition to those common methods, financial institutions have other ways of calculating the balance to which the periodic rate is applied. By reading the financial institution's explanation, the examiner should be able to calculate the balance to which the periodic rate was applied. In some cases, the examiner may need to obtain additional information from the financial institution to verify the explanation disclosed.

Any inability to understand the disclosed explanation should be discussed with management, who should be reminded of Regulation Z's requirement that disclosures be clear and conspicuous.

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

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

- A balance for each day in the billing cycle. The daily periodic rate is multiplied by the balance on each day and the sum of the products is the finance charge.
- A balance for each day in the billing cycle on which the balance in the account changes. The finance charge is figured by the same method as discussed previously, but the statement shows the balance only for those days on which the balance changed.
- The sum of the daily balances during the billing cycle. The balance on which the finance charge is computed is the sum of all the daily balances in the billing cycle. The daily periodic rate is multiplied by that balance to determine the finance charge.
- The average daily balance during the billing cycle. If this is stated, the financial institution may, at its option, explain that the average daily balance is or can be multiplied by the number of days in the billing cycle and the periodic rate applied to the product to determine the amount of interest.

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

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

In explaining the method used to find the balance on which the finance charge is computed, the financial institution need not reveal how it allocates payments or credits. That information

may be disclosed as additional information, but all required information must be clear and conspicuous.

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

#### **Finance Charge Resulting from Two or More Periodic Rates**

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

#### **Annual Percentage Rate (Open-End Credit)**

##### **Determination of APR §1026.14**

The disclosed APR on an open-end credit account is accurate if it is within one-eighth of one percentage point of the APR calculated under Regulation Z. The regulation states two basic methods for determining the APR in open-end credit transactions. The first involves multiplying each periodic rate by the number of periods in a year. This method is used for disclosing:

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

The corresponding APR is prospective. In other words, it does not involve any particular finance charge or periodic balance.

The second method is the quotient method, used in computing the APR for periodic statements. The quotient method reflects the annualized equivalent of the rate that was actually applied during a cycle. This rate, also known as the historical rate, will differ from the corresponding APR if the creditor applies minimum, fixed, or transaction charges to the account during the cycle.

If the finance charge is determined by applying one or more periodic rates to a balance, and does not include any of the charges just mentioned, the financial institution may compute the historical rate using the quotient method. In that method, the financial institution divides the total finance charge for the cycle by the sum of the balances to which the periodic rates

were applied and multiplies the quotient (expressed as a percentage) by the number of cycles in a year.

Alternatively, the financial institution may use the method for computing the corresponding APR. In that method, the financial institution multiplies each periodic rate by the number of periods in one year. If the finance charge includes a minimum, fixed, or transaction charge, the financial institution must use the appropriate variation of the quotient method. When transaction charges are imposed, the financial institution should refer to appendix F of this handbook for computational examples.

The regulation also contains a computation rule for small finance charges. If the finance charge includes a minimum, fixed, or transaction charge, and the total finance charge for the cycle does not exceed 50 cents, the financial institution may multiply each applicable periodic rate by the number of periods in a year to compute the APR.

Optional calculation methods also are provided for accounts involving daily periodic rates. (§1026.14(d))

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

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

I. APR when finance charge is determined solely by applying one or more periodic rates:

A. Monthly periodic rates:

1. Monthly rate x 12 = APR

*or*

2. (Total finance charge / applicable balance<sup>5</sup>) x 12 = APR

**This calculation may be used when different rates apply to different balances.**

B. Daily periodic rates:

1. Daily rate x 365 = APR

*or*

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

*or*

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

II. APR when finance charge includes a minimum, fixed, or other charge that is not calculated using a periodic rate

<sup>5</sup> For the following formulas, the APR cannot be determined if the applicable balance is zero.

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(and does not include charges related to a specific transaction, like cash advance fees):

### A. Monthly periodic rates:

1.  $(\text{Total finance charge} / \text{amount of applicable balance}) \times 12 = \text{APR}$ <sup>6</sup>

### B. Daily periodic rates

1.  $(\text{Total finance charge} / \text{amount of applicable balance}) \times 365 = \text{APR}$
2. The following may be used if at least a portion of the finance charge is determined by the application of a daily periodic rate. If not, use the formula above.
  - a.  $(\text{Total finance charge} / \text{average daily balance}) \times 12 = \text{APR}$   
*or*
  - b.  $(\text{Total finance charge} / \text{sum of balances}) \times 365 = \text{APR}$

### C. Monthly and daily periodic rates

1. If the finance charge imposed during the billing cycle does not exceed \$.50 for a monthly or longer billing cycles (or pro rata part of \$.50 for a billing cycle shorter than monthly), the APR may be calculated by multiplying the monthly rate by 12 or the daily rate by 365.
- III. If the total finance charge included a charge related to a specific transaction (such as a cash advance fee), even if the total finance charge also included any other minimum, fixed, or other charge not calculated using a periodic rate, then the monthly and daily APRs are calculated as follows:  $(\text{total finance charge} / \text{the greater of: the transaction amounts that created the transaction fees or the sum of the balances and other amounts on which a finance charge was imposed during the billing cycle}^7) \times \text{number of billing cycles in a year} (12) = \text{APR}$ <sup>8</sup>

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<sup>6</sup> Loan fees, points, or similar finance charges that related to the opening of the account must not be included in the calculation of the APR.

<sup>7</sup> The sum of the balances may include amounts computed by the average daily balance, adjusted balance, or previous balance method. When a portion of the finance charge is determined by application of one or more daily periodic rates, the sum of the balances also means the average of daily balances.

<sup>8</sup> If the product is less than the highest periodic rate applied, expressed as an APR, the higher figure must be disclosed as the APR.

### Timely Settlement of Estates §1026.11(c)

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

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

### Minimum Payments §1026.7(b)(12)

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

### Subpart C—Closed-End Credit

#### Finance Charge (Closed-End Credit) §1026.17(a)

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

#### Annual Percentage Rate (Closed-End Credit) §1026.22

##### Accuracy Tolerances

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

- Regular transactions (which include any single advance transaction with equal payments and equal payment periods, or an irregular first payment period and/or a first or last irregular payment), if it is within one-eighth of 1 percentage point of the APR calculated under Regulation Z (§1026.22(a)(2)).
- Irregular transactions (which include multiple advance transactions and other transactions not considered regular), if it is within one-quarter of 1 percentage point of the APR calculated under Regulation Z (§1026.22(a)(3)).

- Mortgage transactions, if it is within one-eighth of 1 percentage point for regular transactions or one-quarter of 1 percentage point for irregular transactions **or**:
  1. The rate results from the disclosed finance charge, and the disclosed finance is considered accurate under §§1026.18(d)(1) or 1026.23(g) or (h) (§1026.22(a)(4)); or
  2. The disclosed finance charge is calculated incorrectly but is considered accurate under §§1026.18(d)(1) or 1026.23(g) or (h) and either:
    - a. the finance charge is understated and the disclosed APR is also understated but is closer to the actual APR than the APR that would be considered accurate under §1026.22(a)(4); or
    - b. the disclosed finance charge is overstated and the disclosed APR is also overstated but is closer to the actual APR than the APR that would be considered accurate under §1026.22(a)(4).

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

#### **Construction Loans §1026.17(c)(6) and Appendix D**

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

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

On loans involving a series of advances under an agreement to extend credit up to a certain amount, a financial institution

may treat all of the advances as a single transaction or disclose each advance as a separate transaction. If advances are disclosed separately, disclosures must be provided before each advance occurs, with the disclosures for the first advance provided before consummation.

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

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

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

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

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

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

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

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### Calculating the Annual Percentage Rate §1026.22

The APR must be determined under one of the following:

The actuarial method, which is defined by Regulation Z and explained in appendix J to the regulation.

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

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

### 360-Day and 365-Day Years §1026.17(c)(3)

Confusion often arises over whether to use the 360-day or 365-day year in computing interest, particularly when the finance charge is computed by applying a daily rate to an unpaid balance. Many single payment loans or loans payable on demand are in this category. There are also loans in this category that call for periodic installment payments.

Regulation Z does not require the use of one method of interest computation in preference to another (although state law may). It does, however, permit financial institutions to disregard the fact that months have different numbers of days when calculating and making disclosures. This means financial institutions may base their disclosures on calculation tools that assume all months have an equal number of days, even if their practice is to take account of the variations in months to collect interest.

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

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

For example, a 12 percent simple interest rate divided by 360 days results in a daily rate of .033333 percent. If no charges are imposed except interest, and the amount financed is the same as the loan amount, applying the daily rate on a daily basis for a 365-day year on a \$10,000 one year, single payment, unsecured loan results in an APR of 12.17 percent

(.033333% x 365 = 12.17%), and a finance charge of \$1,216.67. There would be a violation if the APR were disclosed as 12 percent or if the finance charge were disclosed as \$1,200 (12% x \$10,000).

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

### Variable Rate Information §1026.18(f)

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

- Some of the more important transaction-specific variable rate disclosure requirements under §1026.18 follow.
- Disclosures for variable rate loans must be given for the full term of the transaction and must be based on the terms in effect at the time of consummation.
- If the variable rate transaction includes either a seller buy-down that is reflected in a contract or a consumer buy-down, the disclosed APR should be a composite rate based on the lower rate for the buy-down period and the rate that is the basis for the variable rate feature for the remainder of the term.
- If the initial rate is not determined by the index or formula used to make later interest rate adjustments, as in a discounted variable rate transaction, the disclosed APR must reflect a composite rate based on the initial rate for as long as it is applied and, for the remainder of the term, the rate that would have been applied using the index or formula at the time of consummation (i.e., the fully indexed rate).
  - If a loan contains a rate or payment cap that would prevent the initial rate or payment, at the time of the adjustment, from changing to the fully indexed rate, the effect of that rate or payment cap needs to be reflected in the disclosures.
  - The index at consummation need not be used if the contract provides a delay in the implementation of changes in an index value (e.g., the contract indicates that future rate changes are based on the index value in effect for some specified period, like 45 days before the

change date). Instead, the financial institution may use any rate from the date of consummation back to the beginning of the specified period (e.g., during the previous 45-day period).

- If the initial interest rate is set according to the index or formula used for later adjustments, but is set at a value as of a date before consummation, disclosures should be based on the initial interest rate, even though the index may have changed by the consummation date.

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

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

#### **Payment Schedule §1026.18(g)**

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

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

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

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

If there are no renewal conditions or if the financial institution guarantees to renew the obligation in a refinancing, the payment schedule must be disclosed using the shorter balloon

payment term. The short-term loan must be disclosed as a fixed rate loan, unless it contains a variable rate feature during the initial loan term.

#### **Amount Financed §1026.18(b)**

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

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

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

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

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

#### **Required Deposit §1026.18(r)**

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

### Calculating the Amount Financed

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

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

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

### Other Calculations

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

### Refinancings §1026.20

When an obligation is satisfied and replaced by a new obligation to the original financial institution (or a holder or servicer of the original obligation) and is undertaken by the same consumer, it must be treated as a refinancing for which a complete set of new disclosures must be furnished. A refinancing may involve the consolidation of several existing obligations, disbursement of new money to the consumer, or the rescheduling of payments under an existing obligation. In any form, the new obligation must completely replace the earlier one to be considered a refinancing under the regulation. The finance charge on the

new disclosure must include any unearned portion of the old finance charge that is not credited to the existing obligation. (§1026.20(a))

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

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

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

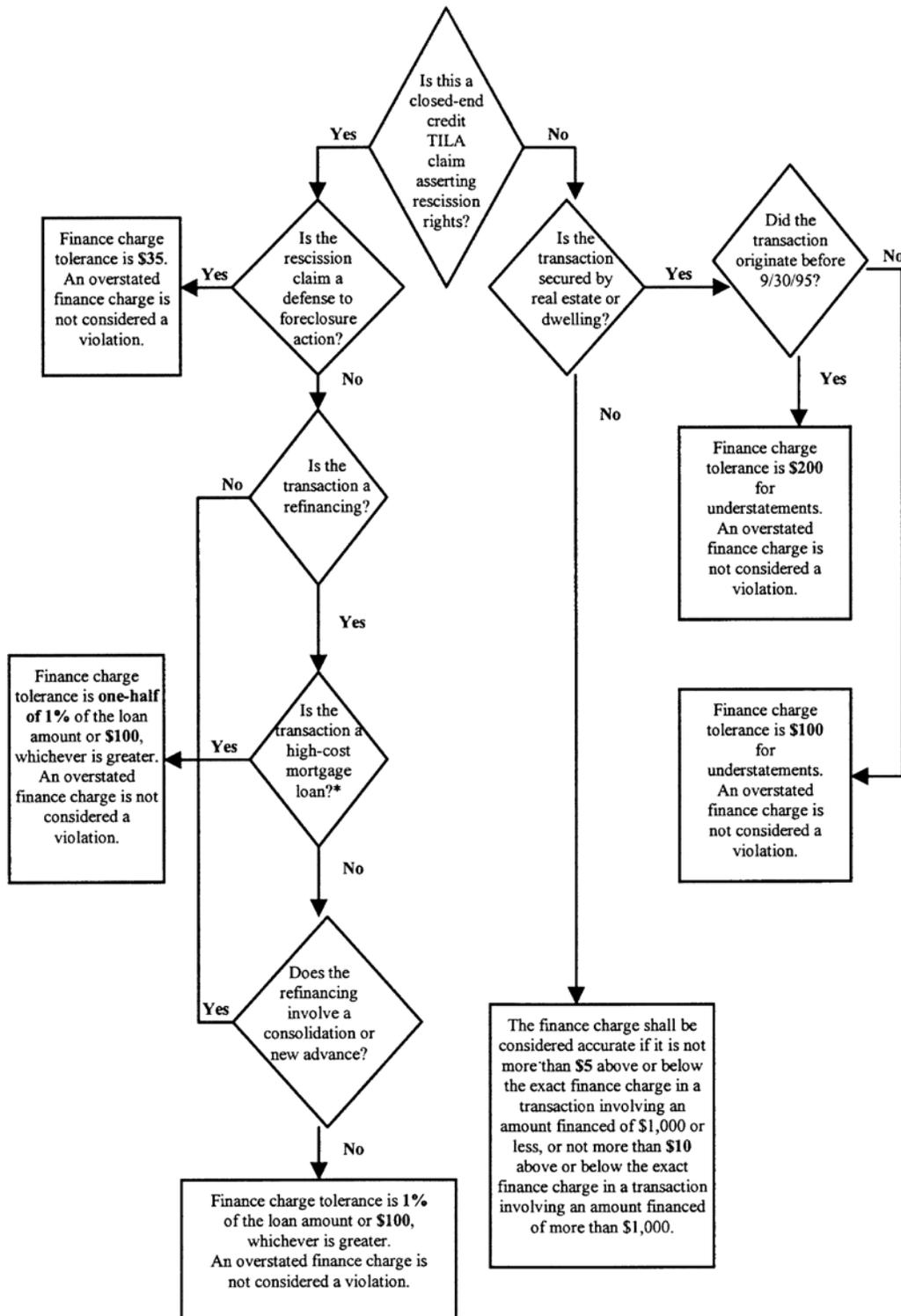
- Increases the rate based on a variable rate feature that was not previously disclosed; or
- Adds a variable rate feature to the obligation.

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

### Advertising §1026.16 and §1026.24

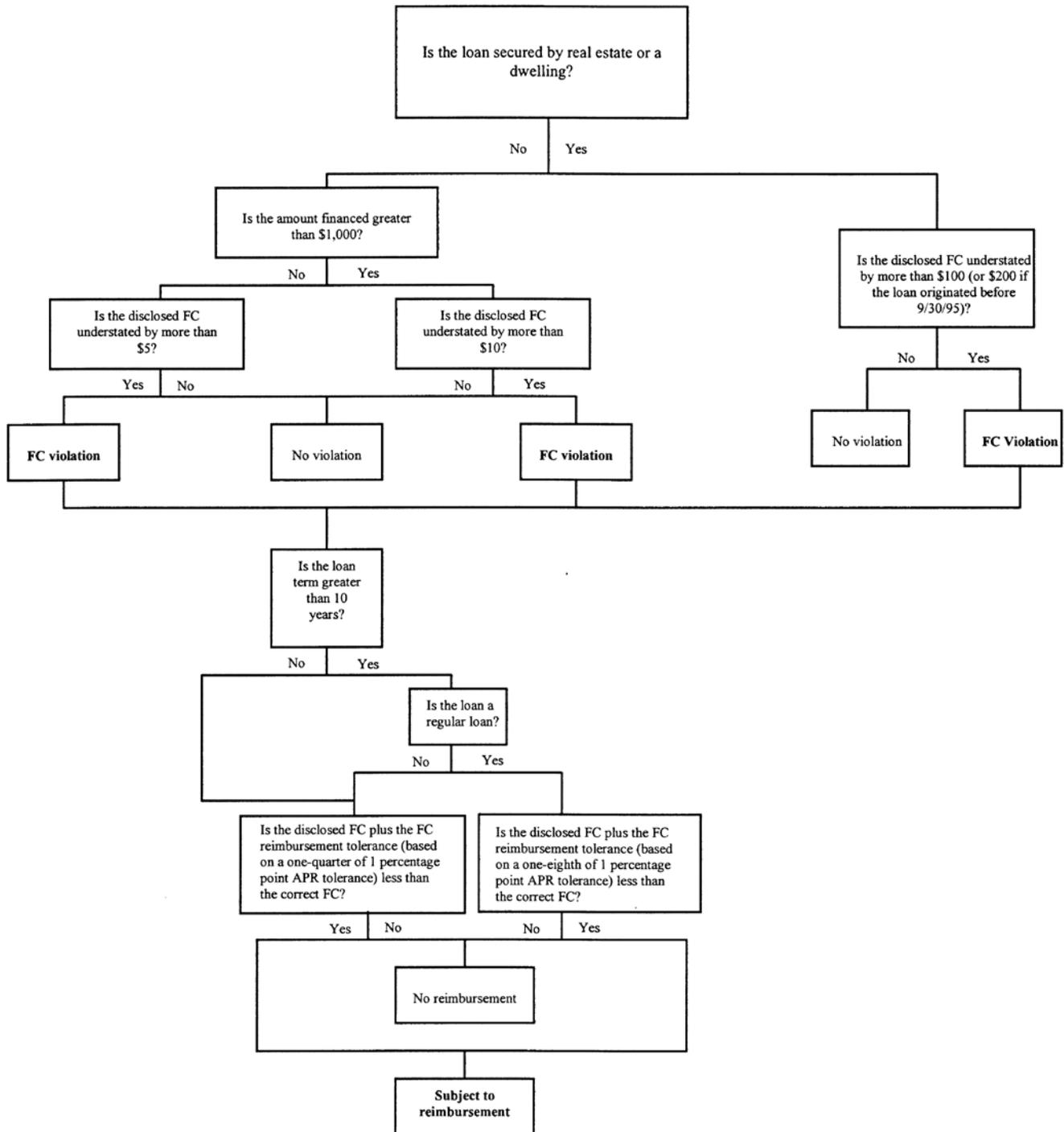
The regulation requires that loan product advertisements provide accurate and balanced information, in a clear and conspicuous manner, about rates, monthly payments, and other loan features. The advertising rules ban several deceptive or misleading advertising practices, including representations that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

Closed-End Credit: Finance Charge Accuracy Tolerances

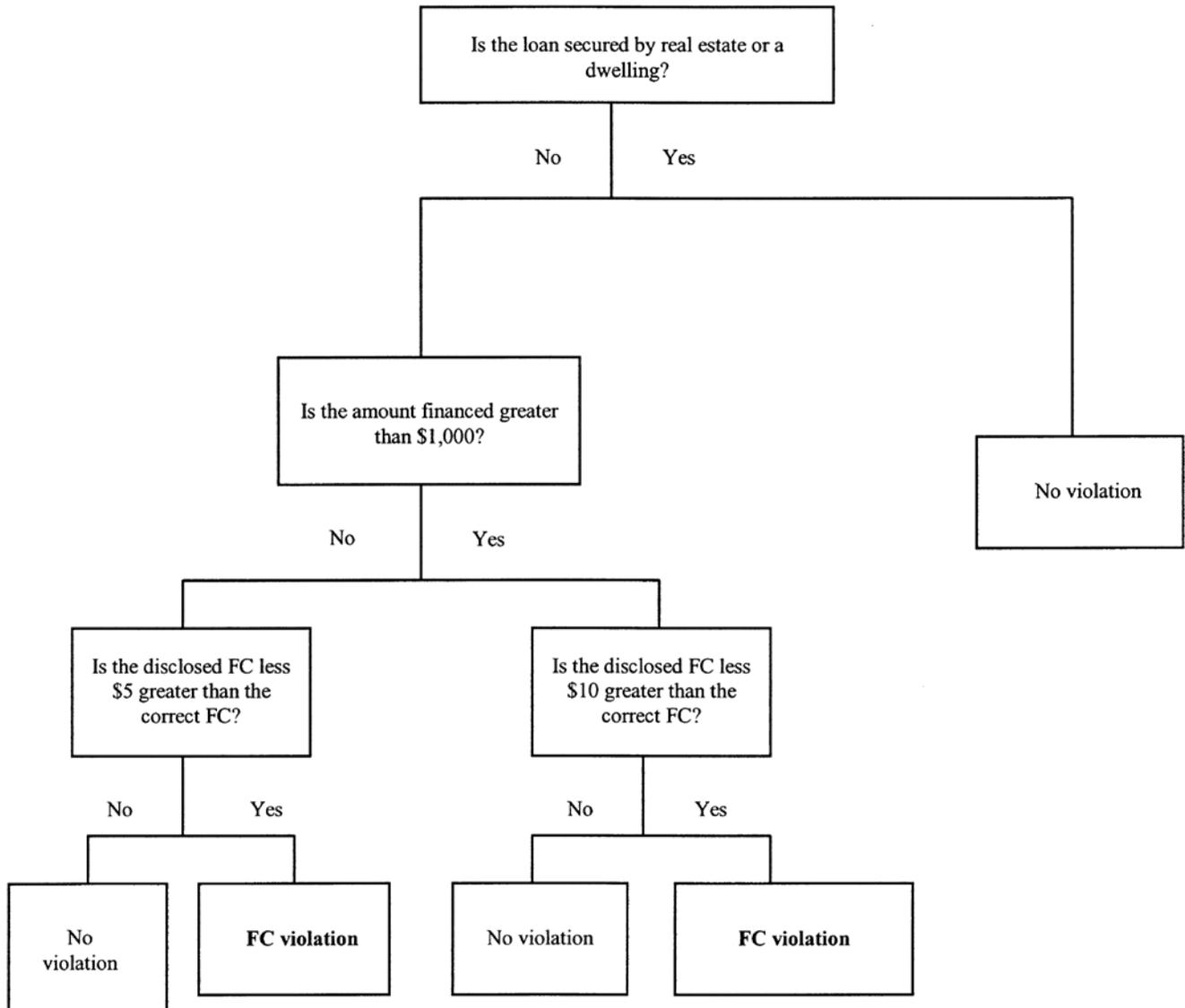


\* See 15 U.S.C. § 160 (aa) and 12 C.F.R. § 1026.32

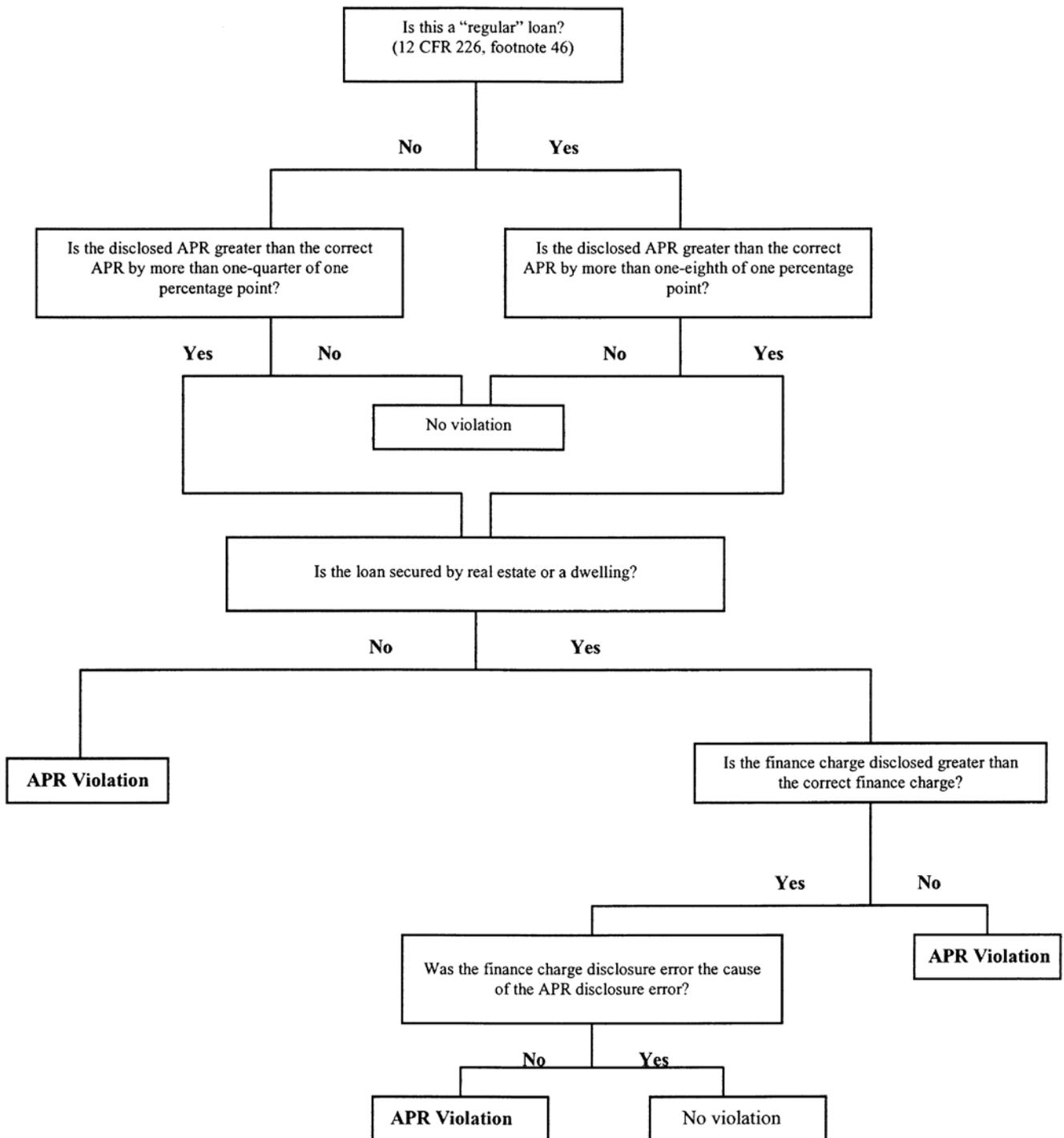
Closed-End Credit: Accuracy and Reimbursement Tolerances for UNDERSTATED FINANCE CHARGES



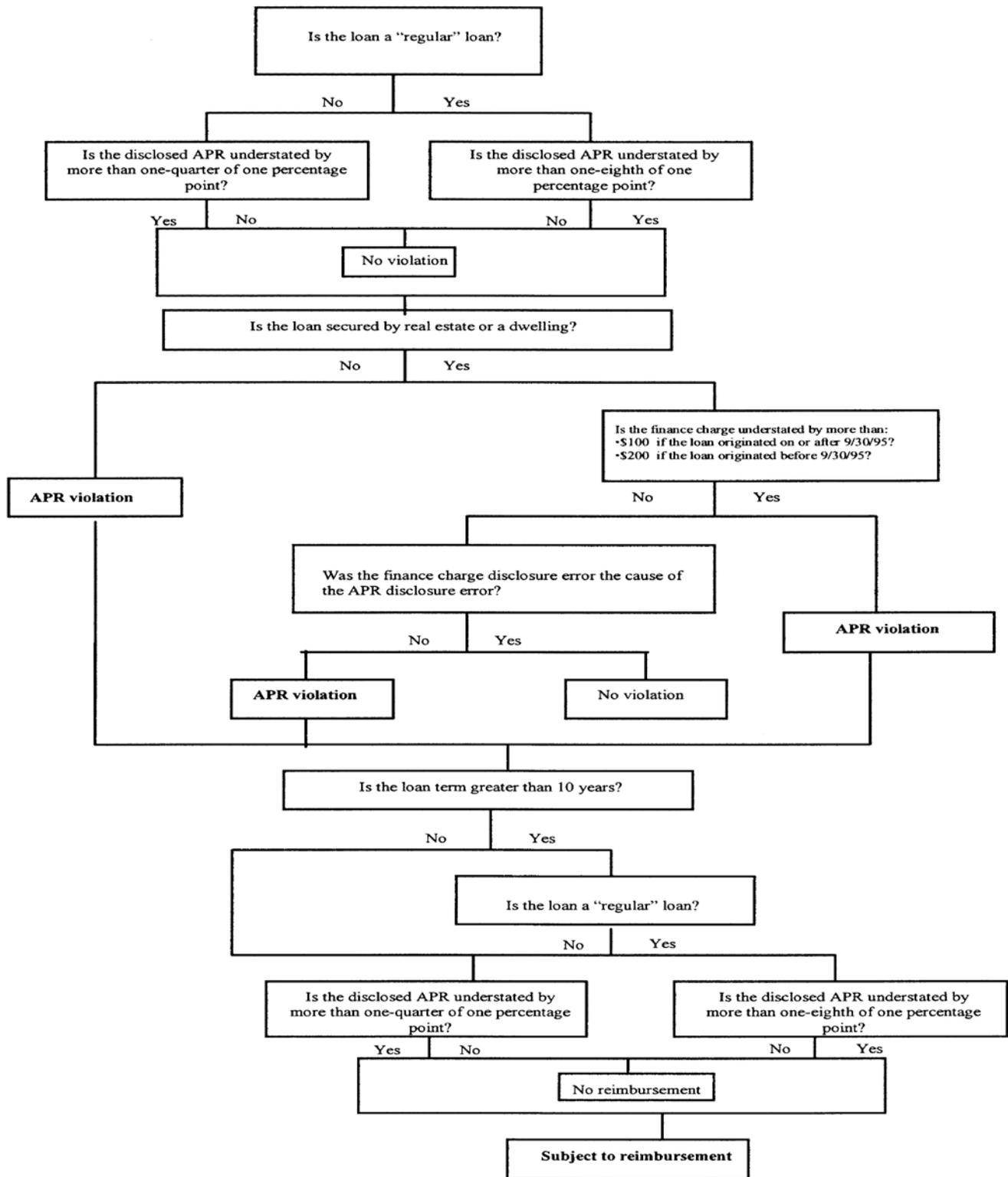
Closed-End Credit: Accuracy Tolerances for  
OVERSTATED FINANCE CHARGES



Closed-End Credit: Accuracy Tolerances for OVERSTATED APRs



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



### *Advertising Rules for Open-End Plans (§1026.16)*

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

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

If any finance charges or other charge or payment terms are set forth, affirmatively or negatively, in an advertisement for a home-equity plan subject to the requirements of section 1026.5b, the advertisement also must clearly and conspicuously set forth the following:

- Any loan fee that is a percentage of the credit limit under the plan and an estimate of any other fees imposed for opening the plan, stated as a single dollar amount or a reasonable range;
- Any periodic rate used to compute the finance charge, expressed as an APR as determined under section §1026.14(b); and
- The maximum APR that may be imposed in a variable-rate plan.

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

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

### *Closed-End Advertising (§1026.24)*

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

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

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

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

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

“Triggering terms” - The following are triggering terms that require additional disclosures:

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

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

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

For any advertisement secured by a dwelling, other than television or radio advertisements, that states a simple annual rate of interest and more than one simple annual rate of

interest will apply over the term of the advertised loan, the advertisement must state in a clear and conspicuous manner:

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

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

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

#### Subpart D—Miscellaneous

##### Civil Liability (TILA §§130 and 131)

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

- Actual damage, and
- The cost of any legal action together with reasonable attorney’s fees in a successful action.

If it violates certain requirements of the TILA, the creditor also may be held liable for either of the following:

- In an individual action, twice the amount of the finance charge involved, but not less than \$100 or more than \$1,000. However, in an individual action relating to a closed-end credit transaction secured by real property or a dwelling, twice the amount of the finance charge involved, but not less than \$200 or more than \$2,000.
- In a class action, such amount as the court may allow. The total amount of recovery, however, cannot be more than \$500,000 or 1 percent of the creditor’s net worth, whichever is less.

Civil actions that may be brought against a creditor also may be maintained against any assignee of the creditor if the violation is apparent on the face of the disclosure statement or other documents assigned, except where the assignment was involuntary.

A creditor that fails to comply with TILA’s requirements for loans that meet the criteria in §1026.32(a) (“high-cost mortgage loans”) or §1026.35(a) (“higher-priced mortgage loans”) may be held liable to the consumer for all finance charges and fees paid to the creditor. For high-cost mortgage loans (under §1026.32(a)), any subsequent assignee is subject to all claims and defenses that the consumer could assert against the creditor, unless the assignee demonstrates that it could not reasonably have determined that the loan was subject to §1026.32.

##### Criminal Liability (TILA §112)

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

##### Administrative Actions (TILA §108)

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

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

- Patterns or practices of violations (e.g., errors that occurred, often with a common cause, consistently or frequently, reflecting a pattern with a specific type or types of consumer credit).

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- Gross negligence.
- Willful noncompliance intended to mislead the person to whom the credit was extended.

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

### Relationship to State Law (TILA §111)

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

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

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

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

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

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

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

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

State law provisions are preempted if they differ from the rights, responsibilities, or procedures contained in sections 161 or 162. An exception is made, however, for state law that allows a consumer to inquire about an account and requires the bank to respond to such inquiry beyond the time limits provided by federal law. Such a state law would not be preempted for the extra time period.

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

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

### Subpart E—Special Rules for Certain Home Mortgage Transactions

#### General Rules §1026.31

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

#### Credit Subject to §1026.32

The requirements of this section apply to a consumer credit transaction secured by the consumer's principal dwelling, in which either:

- The APR at consummation will exceed by more than 8 percentage points for first-lien mortgage loans, or by more than 10 percentage points for subordinate-lien mortgage loans, the yield on Treasury securities having comparable periods of maturity to the loan's maturity (as of the 15th

day of the month immediately preceding the month in which the application for the extension of credit is received by the creditor); or

- The total points and fees (see definition below) payable by the consumer at or before loan closing will exceed the greater of eight percent of the total loan amount or \$592 for the calendar year 2011. (This dollar amount is adjusted annually based on changes in the Consumer Price Index. See staff commentary to 32(a)(1)(ii) for a historical list of dollar amount adjustments. (§1026.32(a)(1))

**Exemptions:**

- Residential mortgage transactions (generally purchase money mortgages);
- Reverse mortgage transactions subject to §1026.33; or
- Open-end credit plans subject to Subpart B of Regulation Z.

**Points and fees include the following:**

- All items required to be disclosed under §1026.4(a) and (b), except interest or the time-price differential;
- All compensation paid to mortgage brokers; and
- All items listed in §1026.4(c)(7), other than amounts held for future taxes, unless all of the following conditions are met:
  - The charge is reasonable;
  - The creditor receives no direct or indirect compensation in connection with the charge; and
  - The charge is not paid to an affiliate of the creditor; and
- Premiums or other charges paid at or before closing whether paid in cash or financed, for optional credit life, accident, health, or loss-of-income insurance, and other debt-protection or debt cancellation products written in connection with the credit transaction. (§1026.32(b)(1))

**Prohibited Acts or Practices in Connection with Credit Subject to §1026.32**

Among other requirements, a creditor extending mortgage credit subject to §1026.32 (“high-cost” mortgage loans) must not make such loans based on the value of the consumer’s collateral without regard to the consumer’s repayment ability as of consummation, including *mortgage-related obligations*.

- Mortgage-related obligations are expected property taxes, premiums for mortgage-related insurance required by the creditor, and similar expenses.
- A creditor must also verify amounts of income or assets that it relies on to determine repayment ability using tax returns, payroll receipts, financial institution records, or other third party documents that provide reasonably reliable evidence of the consumer’s income or assets.

A presumption of compliance is available for some transactions, but only if the creditor:

- Verifies the consumer’s repayment ability as required;
- 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; and
- Assesses the consumer’s repayment ability taking into account either the ratio of total debts to income or the income the consumer will have after paying debt obligations.

For high-cost mortgage loans, the regulation prohibits the imposition of prepayment penalties under certain circumstances, and in no case may a penalty be imposed after two years following consummation.

The regulation prohibits prepayment penalties at any time for high-cost mortgage if:

- Other applicable law (e.g., state law) prohibits such penalty;
- The penalty applies where the source of the prepayment funds is a refinancing by the same mortgage lender or an affiliate;
- The consumer’s mortgage payment can change during the first four years of the loan term (*applicable only to loans originated on or after October 1, 2009*); or,
- The consumer’s total monthly debt payments (at consummation), including amounts owed under the mortgage, exceed 50 percent of the consumer’s monthly gross income.

The regulation prohibits creditors from structuring a home-secured loan as an open-end plan to evade these requirements.

**Reverse Mortgages §1026.33**

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

**Higher-Priced Mortgage Loans §1026.35**

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

- 1.5 or more percentage points for loans secured by a first lien on a dwelling, or

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- 3.5 or more percentage points for loans secured by a subordinate lien on a dwelling.

*Average prime offer rate* means an APR that is derived from average interest rates, points, and other loan pricing terms currently offered to consumers by a representative sample of creditors for mortgage transactions that have low-risk pricing characteristics. The Consumer Financial Protection 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 it uses to derive these rates. These rates are available on the website of the Federal Financial Institutions Examination Council.

A higher-priced mortgage loan does not include:

- a transaction to finance the initial construction of a dwelling,
- a temporary “bridge” loan with a term of twelve months or less,
- a reverse mortgage subject to §1026.33, or
- a home equity line of credit subject to §1026.5b.

The regulation prohibits prepayment penalties at any time for higher-priced mortgage loans if:

- Other applicable law (e.g., state law) prohibits such penalty;
- The penalty will apply after the two-year period following consummation;
- The source of the prepayment funds is a refinancing by the same mortgage lender or an affiliate; or,
- The consumer’s mortgage payment can change during the first four years of the loan term.

The regulation prohibits creditors from structuring a home-secured loan as an open-end plan to evade these requirements.

With few exceptions, a creditor may not extend a higher-priced mortgage loan secured by a first lien on a principal dwelling unless an escrow account is established before consummation for payment of property taxes and premiums for mortgage-related insurance required by the creditor. The exceptions involve loans secured by shares in a cooperative or condominium units where the condominium association has an obligation to maintain a master insurance policy. Additionally, a “jumbo” loan secured by a first lien is not subject to the escrow requirement unless its APR rate exceeds the average prime offer rate for a comparable transaction as of the date the interest rate is set by 2.5 or more percentage points. A “jumbo” loan is a transaction with a principal obligation at consummation that exceeds the limit in effect for the maximum principal obligation eligible for purchase by Freddie Mac. §1026.35(b)(3)(v).

A creditor may allow a consumer to cancel the escrow account one year after consummation if a consumer’s written cancellation request is received no earlier than 365 days after consummation.

### **Prohibited Acts or Practices in Connection with Credit Secured by a Consumer's Dwelling §1026.36**

#### ***Loan Servicing Practices***

Companies that service mortgage loans are prohibited from engaging in certain practices, such as pyramiding late fees. In addition, servicers are required to credit consumers' loan payments as of the date of receipt and provide a payoff statement within a reasonable time of request.

Specifically, for a consumer credit transaction secured by a consumer’s principal dwelling, a loan servicer cannot:

- Fail, with limited exception, to credit a payment to the consumer’s loan account as of the date of receipt;
- Impose on the consumer any late fee or delinquency charge in connection with a timely payment made in full, when the only delinquency is attributable to late fees or delinquency charges assessed on an earlier payment; or
- Fail to provide, within a reasonable time after receiving a request from the consumer or person acting on behalf of the consumer, an accurate statement of the total outstanding balance that would be required to satisfy the consumer’s obligations in full as of a specific date.

#### ***Loan Originator Compensation***

To protect borrowers in the residential mortgage market, certain unfair practices relating to compensation of mortgage brokers and other loan originators are prohibited.

Loan originators include mortgage broker companies, including those companies that close loans in their own names in table-funded transactions, and loan officers and other employees of creditors that originate loans. Creditors are not considered to be loan originators unless they use table funding or function as a mortgage broker in the transaction.

Loan originators cannot:

- Receive, and no person can pay directly or indirectly, compensation based on a loan’s terms or conditions other than the loan amount (and then only provided that such compensation is based on a fixed percentage of the loan amount);
- Receive compensation, directly or indirectly, from a creditor or another party for a loan when a consumer directly pays the loan originator’s compensation; or
- Direct or “steer” a consumer to a loan that is not in a consumer’s interest to increase the loan originator’s compensation.

A loan originator can obtain a “safe harbor” for compliance with the anti-steering requirement by obtaining loan options from a significant number of the creditors with which the loan originator regularly does business and, for each loan type in which the consumer has expressed interest, presenting the consumer with loan options for which the loan originator believes in good faith the consumer likely qualifies, that include:

1. The loan with the lowest interest rate;
2. The loan with the lowest interest rate without any risky features (such as prepayment penalties, negative amortization, or a balloon payment in the first seven years); and
3. The loan with the lowest total dollar amount for origination points or fees and discount points.

The loan originator compensation provisions do not apply to open-end home-equity lines of credit or to loans secured by a consumer’s interest in a timeshare plan.

#### **Notification of Sale or Transfer of Mortgage Loans §1026.39**

Notice of new owner – No later than 30 calendar days after the date on which a mortgage loan is acquired by or otherwise sold, assigned, or otherwise transferred<sup>9</sup> to a third party, the “covered person”<sup>10</sup> shall notify the consumer clearly and conspicuously in writing, in a form that the consumer may keep, of such transfer and include:

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

recorded in public records at the time the disclosure is provided; and

- At the option of the covered person, any other relevant information regarding the transaction.

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

Regulation Z also establishes special rules regarding the delivery of the notice when there is more than one covered person. In a joint acquisition of a loan, the covered persons must provide a single disclosure that lists the contact information for all covered persons. However, if one of the covered persons is authorized to receive a notice of rescission and to resolve issues concerning the consumer’s payments, the disclosure may state contact information only for that covered person. In addition, if the multiple covered persons each acquire a partial interest in the loan pursuant to separate and unrelated agreements, they may provide either a single notice or separate notices. Finally, if a covered person acquires a loan and subsequently transfers it to another covered person, a single notice may be provided on behalf of both of them, as long as the notice satisfies the timing and content requirements with respect to each of them.

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

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

#### **Subpart F—Special Rules for Private Education Loans**

##### **Special Disclosure Requirements for Private Education Loans §1026.46**

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

<sup>9</sup> 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.

<sup>10</sup> A “covered person” means any person, as defined in 12 C.F.R. § 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 it is assigned to the servicer solely for the administrative convenience of the servicer in servicing the obligation. *See* §1026.39(a)(1).

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addition to the requirements of the other subparts of Regulation Z.

A private education loan means an extension of credit that:

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

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

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

### **Content of Disclosures §1026.47**

#### ***Disclosure Requirements***

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

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

#### ***Rights of the Consumer***

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

### **Limitations on Private Educational Loans §1026.48**

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

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

2. Rules governing the thirty-day acceptance period and three business-day cancellation period and prohibition on disbursement of loan proceeds until the cancellation period has expired;
3. The requirement that the creditor obtain a self-certification form from the consumer before consummation; and
4. The requirement that creditors in preferred lender arrangements provide certain information to covered educational institutions.

#### ***Co-Branding Prohibited***

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

### **Subpart G—Special Rules Applicable To Credit Card Accounts and Open-End Credit Offered To College Students**

#### **Evaluation of the Consumer's Ability to Pay §1026.51**

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

When evaluating a consumer's ability to pay, credit card issuers must perform a review of a consumer's income or assets and current obligations. Creditors are permitted, however, to rely on information provided by the consumer. The rule does not require issuers to verify a consumer's statements. A card issuer may also consider information obtained through any empirically derived, demonstrably and statistically sound model that reasonably estimates a consumer's income or assets.

The rule also requires that issuers consider at least one of the following:

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

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

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

1. Assumes utilization, from the first day of the billing cycle, of the full credit line that the issuer is considering offering to the consumer; and
2. Uses a minimum payment formula employed by the issuer for the product the issuer is considering offering to the consumer or, in the case of an existing account, the minimum payment formula that currently applies to that account, provided that:
  - a. If the minimum payment formula includes interest charges, the card issuer estimates those charges using an interest rate that the issuer is considering offering to the consumer for purchases or, in the case of an existing account, the interest rate that currently applies to purchases; and
  - b. If the applicable minimum payment formula includes mandatory fees, the card issuer must assume that such fees have been charged to the account.

**Specific Requirements for Underage Consumers §1026.51(b)(1)**

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

- Information indicating that the underage consumer has an independent means of repaying any debts incurred in connection with the account; or
- The signature of a cosigner who has attained the age of 21, who has the independent means to repay debts incurred by

the underage consumer in connection with the account, and who assumes joint liability for such debts.

If the account is opened based on a cosigner's ability to pay, the issuer must also obtain written consent from the cosigner before increasing the credit limit.

**Limitations of Fees §1026.52**

**Limitations Prior to Account Opening and During First Year After Account Opening §1026.52(a)**

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

**Limitations on Penalty Fees §1026.52(b)**

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

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

**Payment Allocation §1026.53**

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

For deferred interest programs, however, issuers must allocate excess payments first to the deferred interest balance during

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

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

### **Double-Cycle Billing and Partial Grace Period §1026.54**

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

### **Restrictions on Applying Increased Rates to Existing Balances and Increasing Certain Fees and Charges §1026.55**

There are some general exceptions to the prohibition against applying increased rates to existing balances and increasing certain fees or charges:

- A temporary or promotional rate or temporary fee or charge subject to §1026.55 lasting at least six months expires, provided that the credit card issuer complied with applicable disclosure requirements;
- The rate is increased due to the operation of an index available to the general public and not under the card issuer's control (i.e., the rate is a variable rate);
- The minimum payment has not been received within 60 days after the due date;
- The consumer successfully completes or fails to comply with the terms of a workout arrangement; and
- The APR on an existing balance or a fee or charge subject to §1026.55 has been reduced pursuant to the Servicemembers Civil Relief Act (SCRA) or a similar federal or state statute or regulation. The creditor is permitted to increase the rate, fee, or charge once the SCRA ceases to apply, but only to the rate, fee, or charge that applied prior to the reduction.

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

Issuers are generally prevented from increasing the APR applicable to new transactions or a fee or charge subject to §1026.55 during the first year after an account is opened. After

the first year, issuers are permitted to increase the APRs that apply to new transactions or a fee or charge subject to §1026.55 so long as the creditor complies with the regulation's 45-day advance notice requirement (§1026.9).

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

### **Fees for Transactions that Exceed the Credit Limit §1026.56**

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

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

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

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

- Assessing an over-the-limit fee because the creditor failed to promptly replenish the consumer's available credit;

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

#### Special Rules for Marketing to Students §1026.57

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

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

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

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

#### Online Disclosure of Credit Card Agreements §1026.58

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

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

for a limited time that involves fewer than 10,000 open accounts.

#### Reevaluation of Rate Increases §1026.59

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

This review must consider either the same factors on which the increase was originally based or the factors the card issuer currently considers in determining the annual percentage rate applicable to similar new credit card accounts. However, the first two reviews of rate increases that occurred between January 1, 2009, and February 21, 2010, must use the factors the card issuer currently considers in determining the annual percentage rate applicable to similar new credit card accounts.

#### Specific Defenses (TILA §108)

##### *Defense Against Civil, Criminal, and Administrative Actions*

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

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

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

An error is "discovered" if it is:

- Discussed in a final, written report of examination.
- Identified through the financial institution's own procedures.

## V. Lending — TILA

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- An inaccurately disclosed APR or finance charge included in a regulatory agency notification to the financial institution.

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

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

### *Additional Defenses Against Civil Actions*

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

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

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

### **Statute of Limitations (TILA §§108 and 130)**

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

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

Regulatory administrative enforcement actions also are not subject to the one-year statute of limitations. However, enforcement actions under the policy guide involving erroneously disclosed APRs and finance charges are subject to time limitations by the TILA. Those limitations range from the date of the last regulatory examination of the financial institution, to as far back as 1969, depending on when loans

were made, when violations were identified, whether the violations were repeat violations, and other factors.

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

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

### **Rescission Rights (Open-End and Closed-End Credit) §1026.15 and §1026.23**

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

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

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

- Consummation of the transaction,
- Delivery of material TILA disclosures, or
- Receipt<sup>11</sup> of the required notice of the right to rescind.

For purposes of rescission, business day means every calendar day except Sundays and the legal public holidays

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<sup>11</sup> 12 C.F.R. 1026.15(b) and 1026.23(b)(1) were amended to include the electronic delivery of the notice of the right to rescind. If a paper notice of the right to rescind is used, a creditor must deliver two copies of the notice to each consumer entitled to rescind. However, under the final rule on electronic delivery of disclosures if the notice is in electronic form, in accordance with the consumer consent and other applicable provisions of the E-Sign Act, only one copy to each customer is required.

(§1026.2(a)(6)). The term “material disclosures” is defined in §1026.23(a)(3) to mean the required disclosures of the APR, the finance charge, the amount financed, the total of payments, the payment schedule, and the disclosures and limitations referred to in §1026.32(c) and (d).

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

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

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

### Examination Objectives

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

### Examination Procedures

#### General Procedures

1. Obtain information pertinent to the area of examination from the financial institution's compliance management system program (historical examination findings, com-

plaint information, and significant findings from compliance review and audit).

2. Through discussions with management and review of the following documents, determine whether the financial institution's internal controls are adequate to ensure compliance in the area under review. Identify procedures used daily to detect errors/violations promptly. Also, review the procedures used to ensure compliance when changes occur (e.g., changes in interest rates, service charges, computation methods, and software programs).
  - Organizational charts.
  - Process flowcharts.
  - Policies and procedures.
  - Loan documentation and disclosures.
  - Checklists/worksheets and review documents.
  - Computer programs.
3. Review compliance review and audit work papers and determine whether:
  - a. The procedures used address all regulatory provisions (see Transactional Testing section).
  - b. Steps are taken to follow up on previously identified deficiencies.
  - c. The procedures used include samples that cover all product types and decision centers.
  - d. The work performed is accurate (through a review of some transactions).
  - e. Significant deficiencies, and the root cause of the deficiencies, are included in reports to management/board.
  - f. Corrective actions are timely and appropriate.
  - g. The area is reviewed at an appropriate interval.
4. Review the financial institution's record retention practices to determine whether evidence of compliance (for other than the advertising requirements) is retained for at least two years after the disclosures were required to be made or other action was required to be taken. (§1026.25)

#### Disclosure Forms

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

Verify the accuracy of each disclosure by reviewing the following:

- Credit card application/solicitation disclosures (§1026.5a(b)-(e)).
- HELOC disclosures (§1026.5b(d) and (e)).
- Initial disclosures (§1026.6(a)-(d)) and, if applicable, additional HELOC disclosures (§1026.6(e)).
- Periodic statement disclosures (§1026.7)
- Statement of billing rights and change in terms notice (§1026.9(a),(b),(c) or (g)).
- Note and/or contract forms (including those furnished to dealers).

- Notice of Right to Rescind/Cancel (§§1026.15(b), 1026.23(b)(1)) and 1026.47(c)(4).
- Standard closed-end credit disclosures (§§1026.17(a) and 1026.18).
- ARM disclosures (§1026.19(b)).
- High cost mortgage disclosures (§1026.32(c)).
- Reverse mortgage disclosures (§1026.33(b)).
- Private education loan disclosures (§1026.47).

### ***Closed-End Credit Disclosure Forms Review Procedures***

- a. Determine that the disclosures are clear, conspicuous, and grouped together or segregated as required, in a form the consumer may keep. The terms “Finance Charge” and “Annual Percentage Rate” and corresponding rates or amounts should be more conspicuous than other terms, except for the creditor’s identity. For private student loans the term “Annual Percentage Rate” and corresponding rate must be less conspicuous than the term “finance charge” and the corresponding amount, as well as less conspicuous than the interest rate, the notice of the right to cancel and creditor’s identity. (§§1026.17(a), 1026.47(b), and (c))
- b. Determine the disclosures include the following as applicable. (§1026.18)
  - Identity of the creditor
  - Brief description of the finance charge
  - Brief description of the APR
  - Variable rate information (§1026.18(f)(1) or (2))
  - Payment schedule
  - Brief description of the total of payments
  - Demand feature
  - Description of total sales price in a credit sale
  - Prepayment penalties or rebates
  - Late payment amount or percentage
  - Description for security interest
  - Insurance conditions for finance charge exclusions (§1026.4(d))
  - Statement referring to the contract
  - Statement regarding assumption of the note
  - Statement regarding required deposits.
- c. Determine that the creditor discloses the number, amounts, and timing of payments scheduled to repay the obligation (other than for a transaction that is subject to §1026.18(s).12 (§1026.18(g))
- d. For a closed-end transaction secured by real property or a dwelling (other than a transaction secured by a consumer’s interest in a timeshare plan described in 11 U.S.C. 101(53D)), determine that the creditor discloses the following information about the interest rate and payments, as applicable (§1026.18(s)):

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

### ***Interest Rates***

- i. For a fixed-rate mortgage, the interest rate at consummation. (§1026.18(s)(2)(i)(A))
- ii. For an adjustable-rate or step-rate mortgage (§1026.18(s)(2)(i)(B)):
  - The interest rate at consummation and the period of time until the first interest rate adjustment may occur, labeled as the “introductory rate and monthly payment”; (Note: as set forth in comment 18(s)-1, if periodic payments are not due monthly, the creditor should use the appropriate term, such as “quarterly” or “annually.”)
  - 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
  - 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.”
- iii. For a loan that provides for payment increases occurring without regard to an interest rate adjustment<sup>13</sup> (as described in §1026.18(s)(3)(i)(B)), the interest rate in effect at the time the first such payment increase is scheduled to occur and the date on which the increase will occur, labeled as “first adjustment”<sup>14</sup> if the loan is an adjustable-rate mortgage or, otherwise, labeled as “first increase.” (§1026.18(s)(2)(i)(C))
- iv. For a negative amortization loan<sup>15</sup> (§1026.18(s)(2)(ii)):
  - 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”;
  - The maximum interest rate that could apply when the consumer must begin making fully amortizing payments under the terms of the legal obligation;
  - If the minimum required payment will increase before the consumer must begin making fully amortizing payments, the

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13 Note: this category includes interest-only loans, as set forth in comment 18(s)(2)(i)(C)-1.

14 Because model forms and clauses published by the Board are safe harbors, this rate may also be labeled “Maximum Ever,” pursuant to model clause H-4(H). See comment App. G and H-1.

15 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. §1026.18(s)(7)(v)

maximum interest rate that could apply at the time of the first payment increase and the date the increase is scheduled to occur; and

- 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.
- v. For an amortizing adjustable-rate mortgage, if the interest rate at consummation is less than the fully indexed rate, the following (placed in a box directly beneath the table required by paragraph 18 (s)(1) of the regulation, in a format substantially similar to Model Clause H-4(I) in the regulation's Appendix H):
- The interest rate that applies at consummation and the period of time for which it applies;
  - A statement that, even if market rates do not change, the interest rate will increase at the first adjustment and a designation of the place in sequence of the month or year, as applicable, of such rate adjustment (e.g., "in the third year"); and
  - The fully-indexed rate.

**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 §1026.18(s)(2)(i) (§1026.18(s)(3)(i)):
- The corresponding periodic principal and interest payment, labeled as "principal and interest";
  - 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;
  - If an escrow account is established, an estimate of the amount of taxes and insurance, including any mortgage insurance payable with each periodic payment; and
  - The sum of the amounts disclosed under §§1026.18(s)(3)(i)(A) and (C) or (s)(3)(i)(B) and (C), 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 §1026.18(s)(2)(i), the corresponding periodic payment and (§1026.18(s)(3)(ii)):

- 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;
  - 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;
  - The escrow information described in §1026.18(s)(3)(i)(C); and
  - The sum of all amounts required to be disclosed under §§1026.18(s)(3)(ii)(A) and (C) or (s)(3)(ii)(B) and (C), as applicable, labeled as "total estimated monthly payment."
- iii. Payments for negative amortization loans. If the loan is a negative amortization loan (§1026.18(s)(4)):
- The minimum periodic payment required until the first payment increase or interest rate increase, corresponding to the interest rate disclosed under §1026.18(s)(2)(ii)(A);
  - 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 §1026.18(s)(2)(ii)(C) and (D);
  - A statement that the minimum payment pays only some interest, does not repay any principal, and will cause the loan amount to increase;
  - The fully amortizing periodic payment amount at the earliest time when such a payment must be made, corresponding to the interest rate disclosed under §1026.18(s)(2)(ii)(B); and
  - If applicable, in addition to the payments in §§1026.18(s)(4)(i) and (ii), for each interest rate disclosed under §1026.18(s)(2)(ii), the amount of the fully amortizing periodic payment, labeled as the "full payment option," and a statement that these payments pay all principal and all accrued interest.

*NOTE: The information in §§1026.18(s)(2)-(4) must be disclosed in the form of a table with no more than five columns, and with headings and format substantially similar to Model Clause H-4(E), H-4(F), H-4(G), or H-4(H) in Appendix H of the regulation. The table should contain only the information required in §§1026.18 (s)(2)-(4), be*

*placed in a prominent location, and be in a minimum 10-point font. (§1026.18(s)(1))*

- iv. Balloon payments. For loans with balloon payments (defined as a payment that is more than two times a regular periodic payment) (§1026.18(s)(5)):
  - Except as provided below, the balloon payment is disclosed separately from other periodic payments disclosed in the table (i.e., is outside the table and in a manner substantially similar to Model Clause H-4(J) in Appendix H to the regulation);
  - If the balloon payment is scheduled to occur at the same time as another payment required to be disclosed in the table, the balloon payment must be disclosed in the table.
- e. For a closed-end transaction secured by real property or a dwelling (other than a transaction secured by a consumer's interest in a timeshare plan described in 11 U.S.C. 101(53D)), that is a negative amortization loan, determine that the following information is disclosed (in close proximity to the table required in §1026.18(s)(1), with headings, content, and format substantially similar to Model Clause H-4(G) in Appendix H to this part) (§1026.18(s)(6)):
  - i. The maximum interest rate, the shortest period of time in which such interest rate could be reached, the amount of estimated taxes and insurance included in each payment disclosed, and a statement that the loan offers payment options, two of which are shown; and
  - ii. The dollar amount of the increase in the loan's principal balance if the consumer makes only the minimum required payments for the maximum possible time and the earliest date on which the consumer must begin making fully amortizing payments, assuming that the maximum interest rate is reached at the earliest possible time.
- f. For a closed end transaction secured by real property or a dwelling, (other than a transaction secured by a consumer's interest in a timeshare plan described in 11 U.S.C. 101(53D)), determine that the creditor disclosed a statement that there is no guarantee the consumer can refinance the transaction to lower the interest rate or periodic payments. (§1026.18(t)(1))
- g. Determine all variable rate loans with a maturity greater than one year secured by a principal dwelling are given the following disclosures at the time of application. (§1026.19)
  - i. Consumer handbook on adjustable rate mortgages or substitute
  - ii. Statement that interest rate payments and or terms can change
  - iii. The index/formula and a source of information
  - iv. Explanation of the interest rate/payment determination and margin
  - v. Statement that the consumer should ask for the current interest rate and margin
  - vi. Statement that the interest rate is discounted, if applicable
  - vii. Frequency of interest rate and payment changes
  - viii. Rules relating to all changes
  - ix. Either a historical example based on 15 years, or the initial rate and payment with a statement that the periodic payment may substantially increase or decrease together with a maximum interest rate and payment
  - x. Explanation of how to compute the loan payment, giving an example
  - xi. Demand feature, if applicable
  - xii. Statement of content and timing of adjustment notices
  - xiii. Statement that other variable rate loan program disclosures are available, if applicable
- h. Determine that the disclosures required for high-cost mortgage transactions (§1026.32) clearly and conspicuously include the items below. (§1026.32(c), see Form H-16 in Appendix H)
  - i. The required statement "you are not required to complete this agreement merely because you have received these disclosures or have signed a loan application. If you obtain this loan, the lender will have a mortgage on your home. You could lose your home, and any money you have put into it, if you do not meet your obligations under the loan."
  - ii. The APR.
  - iii. Amount of the regular monthly (or other periodic) payment and the amount of any balloon payment. The regular payment should include amounts for voluntary items, such as credit life insurance or debt-cancellation coverage, only if the consumer has previously agreed to the amount (See staff commentary to 32(c)(3)).
  - iv. Statement that the interest rate may increase, and the amount of the single maximum monthly payment, based on the maximum interest rate allowed under the contract, if applicable.

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

- v. For a mortgage refinancing, the total amount borrowed, as reflected by the face amount of the note; and where the amount borrowed includes premiums or other charges for optional credit insurance or debt-cancellation coverage, that fact shall be stated (grouped together with the amount borrowed).
- i. For any closed-end mortgage loan (credit transaction that is secured by the principal dwelling of a consumer) that was sold, assigned, or otherwise transferred to the covered person, determine that the covered person notifies the borrower clearly and conspicuously in writing, in a form that the consumer may keep of such transfer, including (§1026.39):
- i. An identification of the loan that was sold, assigned, or otherwise transferred;
  - ii. The name, address, and telephone number of the covered person who owns the mortgage loan;
  - iii. The date of transfer (either the date of acquisition recognized in the books and records of the covered person or that of the transferring party) identified by the covered person;
  - iv. The name, address, and telephone number of an agent or party having authority, on behalf of the covered person, to receive notice of the right to rescind and resolve issues concerning the consumer's payments on the mortgage loan;
  - v. Where transfer of ownership of the debt to the covered person is or may be recorded in public records or, alternatively, that the transfer of ownership has not been recorded in public records at the time the disclosure is provided; and,
  - vi. At the option of the covered person, any other relevant information regarding the transaction.
  - vii. If there are multiple covered persons, contact information for each of them, unless one of them has been authorized to receive the consumer's notice of the right to rescind and resolve issues concerning the consumer's payments on the loan.
- NOTE: This notice of sale or transfer must be provided for any consumer credit transaction that is secured by the principal dwelling of a consumer. This notification is required of the covered person even if the loan servicer remains the same. In addition, if more than one consumer is liable on the obligation, the covered person may mail or deliver the disclosure notice to any consumer who is primarily liable. And, if an acquisition involves multiple covered persons who each acquire a partial interest in the loan pursuant to separate and unrelated agreements, each covered person has a duty to ensure that disclosures related to its acquisition are accurate and provided in a timely manner unless an exception in 1026.39(c) applies. The parties may, but are not required to, provide a single notice that satisfies the timing and content requirements applicable to each covered person. (Commentary §1026.39(b)(5)–2)*
- j. For private education loans subject to Subpart F, ensure that the required disclosures are accurate (§1026.47) and contain the following information:
- i. Application or solicitation disclosures disclose the following:
    - Interest rate, including:
      - Rate or range, and if the rate depends in part on a determination of the borrower's creditworthiness or other factors, a statement to that effect;
      - Whether rate is fixed or variable;
      - If rate may increase after consummation, any limitations, or lack thereof, and if the limitation is imposed by law, that fact. Also, the creditor must state that the consumer's actual rate may be higher or lower than that disclosed, if applicable; and
      - Whether the rate will typically be higher if the loan is not co-signed or guaranteed.
    - Fees and default or late payment costs.
    - Repayment terms, including:
      - Term of the loan, which is the period during which regularly scheduled payments of principal and interest will be due.
      - Deferral options, or if consumer does not have the option to defer, that fact.
      - For each available deferral option applicable, information as to:
        - Whether interest will accrue during deferral period; and
        - If interest accrues, whether payment of interest may be deferred and added to the principal balance; and
        - A statement that, if the consumer files bankruptcy, the consumer may still be required to repay the loan.
    - Cost estimates, based on an example of the total cost of the loan, calculated using:
      - The highest interest rate and including all applicable finance charges,

- An amount financed of \$10,000, or \$5,000, if the creditor offers loans less than \$10,000; and
- Calculated for each payment option.
- Eligibility (e.g., any age or school enrollment eligibility requirements).
- Alternatives to private education loans, including:
  - A statement that the consumer may qualify for Federal student loans,
  - The interest rates available for each program available under title IV of the Higher Education Act of 1965, and whether the rate is variable or fixed;
  - A statement that the consumer may obtain additional information regarding student federal financial assistance from his school or U.S. Department of Education, including an appropriate website; and
  - A statement that a covered educational institution may have school specific educational loan benefits and terms not detailed in the loan disclosure forms.
- A statement that if the loan is approved, that the loan will be available for 30 days and the terms will not change, except for changes to the interest rate in the case of a variable rate and other changes permitted by law.
- A statement that before consummation, the borrower must complete a self-certification form obtained from the student's institution of higher education.
- ii. For approval disclosures, the following information is required under §1026.18:
  - Interest rate, information, including:
    - Interest rate applicable to the loan
    - Whether the interest rate is variable or fixed; and
    - If the interest rate may increase after consummation, any limitations on the rate adjustments, or lack thereof.
  - Fees and default or late payment costs, including:
    - An itemization of the fees or range of fees required to obtain the loan; and
    - Any fees, changes to the interest rate, and adjustments to principal based on the consumer's defaults or late payments.
  - Repayment terms, including:
    - Principal amount;
    - Term of the loan;
- 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;
- Any payments required while the student is enrolled at the educational institution, based on the deferral option chosen by the consumer;
- Amount of any unpaid interest that will accrue while the student is enrolled in school, based upon the deferral option chosen by the consumer;
- A statement that if the consumer files for bankruptcy, that the consumer may still be required to pay back the loan;
- An estimate of the total amount of payments calculated based upon:
  - The interest rate applicable to the loan (compliance with §1026.18(h) constitutes compliance with this requirement);
  - The maximum possible rate of interest for the loan, or, if a maximum rate cannot be determined, a rate of 25%.
  - If a maximum rate cannot be determined, the estimate of the total amount for repayment must include a statement that there is no maximum rate and that the total amount for repayment disclosed is an estimate.
- The maximum monthly payment based on the maximum rate of interest for the loan, or, if a maximum rate of interest cannot be determined, a rate of 25%. 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.
- Alternatives to private education loans, including:
  - A statement that the consumer may qualify for Federal student loans,
  - The interest rates available for each program available under title IV of the Higher Education Act of 1965, and whether the rate is variable or fixed; and
  - A statement that the consumer may obtain additional information regarding student federal financial assistance



### **Open-End Credit Forms Review Procedures**

- a. Determine that the creditor made the disclosures clearly and conspicuously. §1026.5(a)
- b. Determine that the creditor made the applicable disclosures in writing, in a form that the consumer may keep, except (§1026.5(a)(1)(ii)):
  - i. 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).
  - ii. 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 §1026.5a; home-equity disclosures under §1026.5b(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 §§1026.5a, 1026.5b, and 1026.16 may be provided to the consumer in electronic form without regard to the consumer consent or other provisions of the E-Sign Act in the circumstances set forth in those sections.
- c. Determine that the terminology used in providing the disclosures required by §1026.5 is consistent. (§1026.5(a)(2)(i))
- d. Determine that, for home-equity plans subject to §1026.5b, 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. (§1026.5(a)(2)(ii))
- e. Determine that, if disclosures are required to be presented in a tabular format pursuant to §1026.5(a)(3), that the term penalty APR shall be used, as applicable. §1026.5(a)(2)(iii)

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

### **Credit and Charge Card Application and Solicitation Disclosures §1026.5a**

- a. Determine that the credit card solicitation or application disclosures were made clearly and conspicuously on or with a solicitation or an application. (§1026.5a)
- b. For the disclosures in §§1026.5a(b)(1) through (5) (except for (b)(1)(iv)(B) and (b)(1)(iv)(C)) and (b)(7) through (15), determine that the creditor made the disclosures required for §§1026.5a(c), (d)(2), (e)(1) and (f) in the form of a table with headings, content, and format substantially similar to the applicable tables found in G-10 in appendix G. (§1026.5a(a)(2)(i))
- c. Determine that the table required by §1026.5a(a)(2)(i) contains only the information required or permitted by that section. If the creditor provides other information, determine that such information appears outside the table. (§1026.5a(a)(2)(ii))
- d. Determine that the disclosures required by §1026.5a(b)(1)(iv)(B), (b)(1)(iv)(C), and (b)(6) are placed directly beneath the table required by §1026.5a(a)(2)(i). (§1026.5a(a)(2)(iii))
- e. When a tabular format is required, determine that the following disclosures are disclosed in bold text (§1026.5a(a)(2)(iv)):
  - i. Annual percentage rate required to be disclosed pursuant to paragraph (b)(1) of this section;

- ii. Introductory rate required to be disclosed pursuant to paragraph (b)(1)(ii) of this section;
- iii. Rate that will apply after a premium initial rate expires required to be disclosed under paragraph (b)(1)(iii) of this section; and
- iv. Fee or percentage amounts or maximum limits on fee amounts required to be disclosed pursuant to paragraphs (b)(2), (b)(4), (b)(8) through (b)(13).

*NOTE: Bold text shall not be used for the amount of any periodic fee disclosed pursuant to paragraph (b)(2) of this section that is not an annualized amount; and other APRs or fee amounts disclosed in the table.*  
(§1026.5a(a)(2)(iv))

- f. Determine that the card issuer discloses, on or with an solicitation or application: (§1026.5a(b))
  - 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. When more than one rate applies for a category of transactions, determine that the range of balances to which each rate is applicable is also disclosed. (§1026.5a(b)(1))

*NOTE: The APR for purchases disclosed pursuant to §1026.5a(b)(1) shall be in at least 16-point type, except for the following: Oral disclosures of the annual percentage rate for purchases; or a penalty rate that may apply upon the occurrence of one or more specific events.*

- Variable rate information. If a rate is a variable rate, determine that the card issuer discloses the fact that the rate may vary and how the rate is determined. Determine that the card issuer identifies the type of index or formula that is used in setting the rate. Determine that the value of the index and the amount of the margin that are used to calculate the variable rate are not disclosed in the table. Determine further that any applicable limitations on rate increases are not included in the table. (§1026.5a(b)(1)(i))
- Discounted initial rate. If the initial rate is an introductory rate, determine that the card issuer discloses in the table the introductory rate, the time period during which the introductory rate will remain in effect, and the term “introductory” or “intro” in immediate proximity to the introductory rate. Determine further that the card issuer discloses,

as applicable, either the variable or fixed rate that would otherwise apply to the account. (§1026.5a(b)(1)(ii))

- Premium initial rate. If the initial rate is temporary and is higher than the rate that will apply after the temporary rate expires, determine that the card issuer discloses the premium initial rate and the time period during which the premium initial rate will remain in effect. Determine that the premium initial rate for purchases is in at least 16-point type. Determine that the issuer discloses in the table the rate that will apply after the premium initial rate expires, in at least 16-point type. (§1026.5a(b)(1)(iii))
- Penalty rates. Except as for provided introductory rate or employee preferential rate requirements (discussed below), if a rate may increase as a penalty for one or more events specified in the account agreement, such as a late payment or an extension of credit that exceeds the credit limit, determine that the card issuer discloses the increased rate that may apply, a brief description of the event or events that may result in the increased rate, and a brief description of how long the increased rate will remain in effect. (§1026.5a(b)(1)(iv)(A))
- Introductory rate. If the issuer discloses an introductory rate in the table or in any written or electronic promotional materials accompanying applications or solicitations (and subject to paragraph (c) or (e) of §1026.5a), determine that the issuer briefly discloses, directly beneath the table, the circumstances, if any, under which the introductory rate may be revoked, and the type of rate that will apply after the introductory rate is revoked. (§1026.5a(b)(1)(iv)(B))
- Employee preferential rates. If the issuer discloses in the table a preferential APR for which only employees of the card issuer, employees of a third party, or other individuals with similar affiliations with the card issuer or third party are eligible, determine that the issuer briefly discloses directly beneath the table the circumstances under which such preferential rate may be revoked, and the rate that will apply after such preferential rate is revoked. (§1026.5a(b)(1)(iv)(C))
- 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 de-

termination of the consumer's creditworthiness, determine that the card issuer discloses the specific rates or the range of rates that could apply and a statement that the rate for which the consumer may qualify at account opening will depend on the consumer's creditworthiness, and other factors if applicable. (§1026.5a(b)(1)(v))

*NOTE: if the rate that depends, at least in part, on a later determination of the consumer's creditworthiness is a penalty rate, as described in (b)(1)(iv), the card issuer at its option may disclose the highest rate that could apply, instead of disclosing the specific rates or the range of rates that could apply.*  
(§1026.5a(b)(1)(v))

- APRs that vary by state. Determine that the card issuer does not list annual percentage rates for multiple states in the table. Note, however, that issuers imposing annual percentage rates that vary by state may, at the issuer's option, disclose in the table: the specific annual percentage rate applicable to the consumer's account; or the range of the annual percentage rates, if the disclosure includes a statement that the annual percentage rate varies by state and refers the consumer to a disclosure provided with the table where the annual percentage rate applicable to the consumer's account is disclosed. (§1026.5a(b)(1)(vi))
- ii. *Fees for issuance or availability.* Determine that the card issuer discloses any annual or other periodic fee, expressed as an annualized amount, or any other fee that may be imposed for the issuance or availability of a credit or charge card, including any fee based on account activity or inactivity. (§1026.5a(b)(2))
- iii. *Fixed finance charge; minimum interest charge.* Determine that the creditor discloses any fixed finance charge that could be imposed during a billing cycle, as well as a brief description of that charge. Determine that the creditor discloses any minimum interest charge if it exceeds \$1.00 that could be imposed during a billing cycle, and a brief description of the charge. (§1026.5a(b)(3))
- iv. *Transaction charge.* Determine that the creditor discloses any transaction charge imposed for the use of the card for purchases. (§1026.5a(b)(4))
- v. *Grace period.* Determine that the issuer discloses the date by which or the period within which any credit extended for purchases may be repaid

without incurring a finance charge due to a periodic interest rate and any conditions on the availability of the grace period. If no grace period is provided, determine that this fact is disclosed. In disclosing in the tabular format a grace period that applies to all types of purchases, determine that the issuer uses the phrase "How to Avoid Paying Interest on Purchases" as the heading for the row describing the grace period. If a grace period is not offered on all types of purchases, in disclosing this fact in the tabular format, determine that the issuer uses the phrase "Paying Interest" as the heading for the row describing this fact. Note: If the length of the grace period varies, the card issuer may disclose the range of days, the minimum number of days, or the average number of days in the grace period, if the disclosure is identified as a range, minimum, or average. (§1026.5a(b)(5))

- vi. *Balance computation method.* Determine that the creditor disclosed the name of the balance computation method that is used to determine the balance on which the finance charge is computed, or an explanation of the method used if it is not listed. In determining which balance computation method to disclose, the creditor should have assumed that the credit extended will not be repaid within any grace period. (§1026.5a(b)(6))

*NOTE: Disclosures required by §1026.5a(b)(6) must be placed directly beneath the table.*

- vii. *Statement on charge card payments.* Determine that the creditor discloses a statement that charges incurred by use of the charge card are due when the periodic statement is received. (§1026.5a(b)(7))
- viii. *Cash advance fee.* Determine that the creditor disclosed any fee imposed for an extension of credit in the form of cash or its equivalent. (§1026.5a(b)(8))
- ix. *Late payment fee.* Determine that the creditor disclosed any fee imposed for a late payment. (§1026.5a(b)(9))
- x. *Over-the-limit fee.* Determine that the creditor disclosed any fee imposed for exceeding the credit limit. (§1026.5a(b)(10))
- xi. *Balance transfer fee.* Determine that the creditor disclosed any fee imposed to transfer a balance. (§1026.5a(b)(11))
- xii. *Returned payment fee.* Determine that the creditor disclosed any fee imposed for a returned payment. (§1026.5a(b)(12))

- xiii. *Required insurance*, debt cancellation, or debt suspension coverage. Determine that the fee imposed required insurance, debt cancellation or suspension coverage is disclosed if the insurance, debt cancellation or coverage is required as part of the plan. (§1026.5a(b)(13))
- xiv. *Available credit*. Determine whether total of required fees for the issuance or availability of credit and/or security deposit debited to the account at account opening equal or exceed 15 percent of minimum credit limit for the account. If so, determine that the creditor disclosed, as applicable, the available credit remaining after the fees and/or security deposit are debited to the account. (§1026.5a(b)(14))
- xv. *Website reference*. For issuers of credit cards that are not charge cards, determine that the creditor disclosed a reference to the website established by the Bureau and a statement that the consumers may obtain on the website information about shopping for and using credit cards. (§1026.5a(b)(15))
- sumer may receive a good faith itemization of third party fees
- xiv. Statement regarding negative amortization, as applicable
- xv. Transaction requirements
- xvi. Statement that the consumer should consult a tax advisor regarding the deductibility of interest and charges under the plan
- xvii. For variable rate home equity plans, disclose the following:
  - That the APR, payment, or term may change
  - The APR excludes costs other than interest
  - Identify the index and its source
  - How the rate will be determined
  - Statement that the consumer should request information on the current index value, margin, discount, premium, or APR
  - Statement that the initial rate is discounted and the duration of the discount, if applicable
  - Frequency of APR changes
  - Rules relating to changes in the index, APR, and payment amount
  - Lifetime rate cap and any annual caps, or a statement that there is no annual limitation
  - The minimum payment requirement, using the maximum APR, and when the maximum APR may be imposed
  - A table, based on a \$10,000 balance, reflecting all significant plan terms
  - Statement that rate information will be provided on or with each periodic statement.

**Requirements for Home Equity Plans §1026.5b**

- a. Determine that the following home equity disclosures were made clearly and conspicuously, at the time of application. (§1026.5b)
  - i. Home equity brochure
  - ii. Statement that the consumer should retain a copy of the disclosure
  - iii. Statement of the time the specific terms are available
  - iv. Statement that terms are subject to change before the plan opens
  - v. Statement that the consumer may receive a full refund of all fees
  - vi. Statement that the consumer's dwelling secures the credit
  - vii. Statement that the consumer could lose the dwelling
  - viii. Creditors right to change, freeze, or terminate the account
  - ix. Statement that information about conditions for adverse action are available upon request
  - x. Payment terms including the length of the draw and repayment periods, how the minimum payment is determined, the timing of payments, and an example based on \$10,000 and a recent APR
  - xi. A recent APR imposed under the plan and a statement that the rate does not include costs other than interest (fixed rate plans only)
  - xii. Itemization of all fees paid to creditor
  - xiii. Estimate of any fees payable to third parties to open the account and a statement that the con-

- b. For home-equity plans subject to §1026.5b, determine that the terms finance charge and annual percentage rate, when required to be disclosed with a corresponding amount or percentage rate, are more conspicuous than any other required disclosure.

*NOTE: the terms need not be more conspicuous when used for periodic statement disclosures under §1026.7(a)(4) and for advertisements under §1026.16. (§1026.5(a)(2)(ii))*

**Account Opening Initial Disclosures §1026.6**

- a. The following requirements apply only to home-equity plans subject to the requirements of §1026.5b. Determine that the creditor discloses, as applicable (§1026.6(a)):
  - i. *Finance charge*. The circumstances under which a finance charge will be imposed and an explanation of how it will be determined, including: a statement of when finance charges begin to accrue, and an explanation of whether or not any time period exists within which any credit ex-

tended may be repaid without incurring a finance charge; a disclosure of each periodic rate that may be used to compute the finance charge, the range of balances to which it is applicable, and the corresponding annual percentage rate; an explanation of the method used to determine the balance on which the finance charge may be computed; and, an explanation of how the amount of any finance charge will be determined, including a description of how any finance charge other than the periodic rate will be determined. (§1026.6(a)(1))

If a creditor offers a variable-rate plan, determine that the creditor discloses: the circumstances under which the rate(s) may increase; any limitations on the increase; and the effect(s) of an increase. When different periodic rates apply to different types of transactions, determine that the types of transactions to which the periodic rates shall apply shall also be disclosed. (§1026.6(a)(1))

- ii. *Other charges.* The amount of any charge other than a finance charge that may be imposed as part of the plan, or an explanation of how the charge will be determined. (§1026.6(a)(2))
- iii. *Home-equity plan information.* The following disclosures, as applicable (§1026.6(a)(3)):
  - A statement of the conditions under which the creditor may take certain action, as described in §1026.5b(d)(4)(i), such as terminating the plan or changing the terms.
  - The payment information described in §1026.5b(d)(5)(i) and (ii) for both the draw period and any repayment period.
  - A statement that negative amortization may occur as described in §1026.5b(d)(9).
  - A statement of any transaction requirements as described in §1026.5b(d)(10).
  - A statement regarding the tax implications as described in §1026.5b(d)(11).
  - A statement that the annual percentage rate imposed under the plan does not include costs other than interest as described in §1026.5b(d)(6) and (d)(12)(ii).
  - The variable-rate disclosures described in §1026.5b(d)(12)(viii), (d)(12)(x), (d)(12)(xi), and (d)(12)(xii), as well as the disclosure described in §1026.5b(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.
- iv. *Security interests.* The fact that the creditor has or will acquire a security interest in the property

purchased under the plan, or in other property identified by item or type. (§1026.6(a)(4))

- v. *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. (§1026.6(a)(5))
- b. For open-end (not home-secured) plans determine that the creditor provided the account-opening disclosures specified in §1026.6 (b)(2)(i) through (b)(2)(v) (except for §1026.6 (b)(2)(i)(D)(2) and (b)(2)(i)(D)(3)) and §1026.6 (b)(2)(vii) through (b)(2)(xiv) in the form of a table with the headings, content, and format substantially similar to any of the applicable tables in G-17 in appendix G. (§1026.6(b)(1))
- c. For open-end (not home-secured) plans, determine that the following disclosures are disclosed in bold text (§1026.6(b)(1)(i)):
  - i. Any APR required to be disclosed pursuant to §1026.6 (b)(2)(i);
  - ii. 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;
  - iii. 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
  - iv. Any fee or percentage amounts or maximum limits on fee amounts disclosed pursuant to paragraphs (b)(2)(ii), (b)(2)(iv), (b)(2)(vii) through (b)(2)(xii).
- d. Determine that bold text is not used for: The amount of any periodic fee disclosed pursuant to paragraph (b)(2) of this section that is not an annualized amount; and other annual percentage rates or fee amounts disclosed in the table. (§1026.6(b)(1)(i))
- e. Determine that only the information required or permitted by §1026.6 (b)(2)(i) through (b)(2)(v) (except for (b)(2)(i)(D)(2) and (b)(2)(i)(D)(3)) and (b)(2)(vii) through (b)(2)(xiv) are provided in the table. Disclosures required by paragraphs (b)(2)(i)(D)(2), (b)(2)(i)(D)(3), (b)(2)(vi) and (b)(2)(xv) of this section shall be placed directly below the table required by §1026.6(b)(1). (§1026.6(b)(1)(ii))

*NOTE: Disclosures required by §1026.6 (b)(3) through (b)(5) that are not otherwise required to be in the table and other information may be presented with the account agreement or account-opening disclosure statement, provided such information appears outside the required table.*

- f. For creditors that impose fees referred to in §1026.6(b)(2)(vii) through (b)(2)(xi) that vary by state and that provide the disclosures required by §1026.6(b) in person at the time the open-end (not home-secured) plan is established in connection with financing the purchase of goods or services determine that the creditor discloses in the account-opening table either:
- i. The specific fee applicable to the consumer's account, or
  - ii. The range of fees, a statement that the amount of the fee varies by state, and a reference to the account agreement or other disclosure provided with the account-opening table where the amount of the fee applicable to the consumer's account is disclosed. (§1026.6(b)(1)(iii))

*NOTE: A creditor is not permitted to list fees for multiple states in the account-opening summary table (§1026.6(b)(1)(iii)). If the amount of any fee required to be disclosed under this section is determined on the basis of a percentage of another amount, the percentage used and the identification of the amount against which the percentage is applied may be disclosed instead of the amount of the fee. (§1026.6(b)(1)(iv))*

- g. The following requirements apply to open-end (not home-secured). Determine that the creditor discloses in the appropriate format, as applicable:
- 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 APR. When more than one rate applies for a category of transactions, determine that the creditor discloses the range of balances to which each rate is applicable. Ensure that the APR for purchases disclosed pursuant to this paragraph is in at least 16-point type, except for a penalty rate that may apply upon the occurrence of one or more specific events. (§1026.6(b)(2)(i))
  - ii. *Variable rate information.* If the rate is a variable rate, determine that the creditor also disclosed the fact that the rate may vary and how the rate is determined (i.e., identify the type of index or formula used in setting the rate). (§1026.6(b)(2)(i)(A))
  - iii. *Discounted initial rate.* If the initial rate is an introductory rate, determine that the creditor disclosed that the rate would otherwise apply to the account. Where the rate is not tied to an index or formula, determine that the creditor disclosed the rate that will apply after the introductory rate expires. For a variable rate account, determine

- that the creditor disclosed a rate based on the applicable index or formula in accordance with the accuracy requirements. (§1026.6(b)(2)(i)(B))
- iv. *Premium initial rate.* If the initial rate is temporary and is higher than the rate that will apply after the temporary rate expires, determine that the creditor disclosed the premium initial rate. Determine that the premium rate for purchases is in at least 16-point type. (§1026.6(b)(2)(i)(C))
  - v. *Penalty rates.* Except for introductory rates and employee preferential rates (discussed below), if the rate is a penalty rate, determine that the creditor disclosed as part of the APR disclosure the increased rate that may apply, a brief description of the event or events that may result in the increased rate, and a brief description of how long the increased rate will remain in effect. (§1026.6(b)(2)(i)(D)(1))
  - vi. *Introductory rates.* If the creditor discloses in the table an introductory rate, as that term is defined in §1026.16(g)(2)(ii), determine that the creditor briefly disclosed directly beneath the table the circumstances under which the introductory rate may be revoked, and the rate that will apply after the introductory rate is revoked. (§1026.6(b)(2)(i)(D)(2))
  - vii. *Employee preferential rates.* If the creditor discloses in the table a preferential APR for which only employees of the creditor, employees of a third party, or other individuals with similar affiliations with the creditor or third party are eligible, determine that the creditor briefly disclosed directly beneath the table the circumstances under which the preferential rate may be revoked, and the rate that will apply after the preferential rate is revoked. (§1026.6(b)(2)(i)(D)(3))
  - viii. *Point of sale where APRs vary by state or based on creditworthiness.* If the creditor imposes an APR that varies by state or based on the consumer's creditworthiness and provides required disclosures in person at the time the open-end (not home-secured) plan is established in connection with financing the purchase of goods or services, determine that the creditor discloses either (§1026.6(b)(2)(i)(E)):
    - The specific APR applicable to the consumer's account, or
    - The range of the APRs, if the disclosure includes a statement that the APR varies by state or will be determined based on the consumer's creditworthiness and refers the consumer to the account agreement or other disclosure provided with the account-opening table where the AP applicable to

- the consumer's account is disclosed. Determine that the creditor does not list APRs for multiple states in the account opening table.
- ix. *Credit card accounts under an open-end (not home-secured) consumer credit plan.* Determine that the issuer discloses in the table (§1026.6(b)(2)(i)(F)):
    - Any introductory rate, and
    - Any rate that would apply upon expiration of a premium initial rate.
  - x. *Fees for issuance or availability.* Determine that the creditor disclosed any annual or periodic fee that may be imposed for the issuance or availability of an open-end plan (including any fee based on account activity or inactivity); how frequently the fee will be imposed; and the annualized amount of the fee. (§1026.6(b)(2)(ii))
  - xi. *Fixed finance charge (minimum interest charge).* Determine that the creditor disclosed any fixed finance 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. (§1026.6(b)(2)(iii))
  - xii. *Transaction charges.* Determine that the creditor discloses any transaction charge imposed by the creditor for use of the open-end plan for purchases. (§1026.6(b)(2)(iv))
  - xiii. *Grace period.* The date by which or the period within which any credit extended may be repaid without incurring a finance charge due to a periodic interest rate and any conditions on the availability of the grace period. If no grace period is provided, that fact must be disclosed. If the length of the grace period varies, the creditor may disclose the range of days, the minimum number of days, or the average number of the days in the grace period, if the disclosure is identified as a range, minimum, or average. In disclosing in the tabular format a grace period that applies to all features on the account, the phrase "How to Avoid Paying Interest" shall be used as the heading for the row describing the grace period. If a grace period is not offered on all features of the account, in disclosing this fact in the tabular format, the phrase "Paying Interest" shall be used as the heading for the row describing this fact. (§1026.6(b)(2)(v))
  - xiv. *Balance computation method.* Determine that the creditor disclosed in the account opening disclosures the name of the balance computation method that is used to determine the balance on which the finance charge is computed for each feature, or an explanation of the method used if it is not listed, along with a statement that an explanation of the methods required by §1026.6(b)(4)(i)(D). In determining which balance computation method to disclose, the creditor should have assumed that the credit extended will not be repaid within any grace period. (§1026.6(b)(2)(vi))
  - xv. *Cash advance fee.* Determine that the creditor disclosed any fee imposed for an extension of credit in the form of cash or its equivalent. (§1026.6(b)(2)(vii))
  - xvi. *Late payment fee.* Determine that the creditor disclosed any fee imposed for a late payment. (§1026.6(b)(2)(viii))
  - xvii. *Over-the-limit fee.* Determine that the creditor disclosed any fee imposed for exceeding the credit limit. (§1026.6(b)(2)(ix))
  - xviii. *Balance transfer fee.* Determine that the creditor disclosed any fee imposed to transfer a balance. (§1026.6(b)(2)(x))
  - xix. *Returned payment fee.* Determine that the creditor disclosed any fee imposed for a returned payment. (§1026.6(b)(2)(xi))
  - xx. *Required insurance, debt cancellation, or debt suspension coverage.* Determine that the fee imposed required insurance, debt cancellation or suspension coverage is disclosed if the insurance, debt cancellation or coverage is required as part of the plan. (§1026.6(b)(2)(xii))
  - xxi. *Available credit.* Determine whether total of required fees for the issuance or availability of credit and/or security deposit debited to the account at account opening equal or exceed 15 percent of the credit limit for the account. If so, determine that the creditor disclosed, as applicable, the available credit remaining after the fees and/or security deposit are debited to the account. (§1026.6(b)(2)(xiii))
  - xxii. *Website reference.* For issuers of credit cards that are not charge cards, determine that the creditor disclosed a reference to the website established by the Bureau and a statement that the consumers may obtain on the website information about shopping for and using credit cards. (§1026.6(b)(2)(xiv))
  - xxiii. *Billing error rights reference.* Determine that the creditor disclosed a statement that information about consumers' right to dispute transactions is included in the account-opening disclosures. (§1026.6(b)(2)(xv))
  - xxiv. *Charges and finance charges.* For charges imposed as part of open-end (not home-secured) plan, the circumstances under which the charge may be imposed, including the amount of the charge or explanation of how the charge is determined. For finance charges, a statement of

when finance charges begin to accrue, including an explanation of whether or not any time period exists within which any credit extended may be repaid without incurring a finance charge. If such a time period is provided, a creditor may, at its option and without disclosure, impose no finance charge when payment is received after the time period's expiration. (§1026.6(b)(3)(i))

xxv. *Disclosure of rates for open-end (not home-secured) plans.* Determine that the creditor disclosed, as applicable, for each periodic rate that may be used to calculate interest (§1026.6(b)(4)(i)):

- The rate (expressed as a periodic rate and a corresponding APR),
- The range of balances to which the rate is applicable,
- The type of transaction to which the periodic rate applies,
- An explanation of the method used to determine the balance to which the rate is applied.

xxvi. *Variable-rate Accounts.* For interest rate changes that are tied to increases in an index or formula (variable-rate accounts) determine that the following are specifically set forth in the account agreement (§1026.6(b)(4)(ii)):

- The fact that the annual percentage rate may increase.
- How the rate is determined, including the margin.
- The circumstances under which the rate may increase.
- The frequency with which the rate may increase.
- Any limitation on the amount the rate may change.
- The effect(s) of an increase.
- 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.

xxvii. *Rate changes not due to index or formula.* For interest rate changes that are specifically set forth in the account agreement and not tied to increases in an index or formula, determine that the creditor discloses (§1026.6(b)(4)(iii)):

- The initial rate (expressed as a periodic rate and a corresponding APR)
- How long the initial rate will remain in effect and the specific events that cause the initial rate to change.
- The rate (expressed as a periodic rate and a corresponding APR) that will apply when

the initial rate is no longer in effect and any limitation on the time period the new rate will remain in effect.

- The balances to which the new rate will apply.
- The balances to which the current rate at the time of the change will apply.

xxviii. *Voluntary credit insurance,* debt cancellation, or debt suspension. Determine that the creditor disclosed the applicable disclosures if the creditor offers optional credit insurance, or debt cancellation or debt suspension coverage. (§1026.6(b)(5)(i))

xxix. *Security interests.* Determine that the creditor disclosed the fact that the creditor has or will acquire a security interest in the property purchased under the plan, or in other property identified by item or type. (§1026.6(b)(5)(ii))

xxx. *Statement of billing rights.* Determine that the creditor disclosed a statement that outlines the consumer's rights and the creditor's responsibilities. (§1026.6(b)(5)(iii))

#### **Periodic Statement Disclosures §1026.7**

- a. *Rules affecting home-equity plans.* For home-equity plans subject to the requirements of §1026.5b, determine that the creditor disclosed on the periodic statement items 1 through 10 below (§1026.7(a)):

*NOTE: The requirements of §1026.7(a) apply only to home-equity plans subject to the requirements of §1026.5b. Additionally, a creditor may, at its option, comply with any of the requirements of paragraph §1026.7(b); however, any creditor that chooses to replace the disclosures required under paragraph (a)(7) with paragraph (b)(7) must also disclose the information required under paragraph (b)(6).*

- i. *Previous balance.* The account balance outstanding at the beginning of the billing cycle. (§1026.7(a)(1))
- ii. *Identification of transactions.* An identification of each credit transaction in accordance with §1026.8. (§1026.7(a)(2))
- iii. *Credits.* Any credit to the account during the billing cycle, including the amount and the date of crediting. The date need not be provided if a delay in accounting does not result in any finance or other charge. (§1026.7(a)(3))
- iv. *Periodic rates.* Each periodic rate that may be used to compute the finance charge, the range of balances to which it is applicable, and the corresponding annual percentage rate. If different periodic rates apply to different types of transactions, the types of transactions to which the pe-

periodic rates apply shall also be disclosed. For variable-rate plans, the fact that the periodic rate(s) may vary. (§1026.7(a)(4))

*NOTE: If no finance charge is imposed when the outstanding balance is less than a certain amount, the creditor is not required to disclose that fact, or the balance below which no finance charge will be imposed*

*NOTE: 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.*

v. *Balance on which finance charge computed.* The amount of the balance to which a periodic rate was applied and an explanation of how that balance was determined. When a balance is determined without first deducting all credits and payments made during the billing cycle, the fact and the amount of the credits and payments shall be disclosed. (§1026.7(a)(5))

vi. *Amount of finance charge and other charges.* (§1026.7(a)(6))

- *Finance charges.* The amount of any finance charge debited or added to the account during the billing cycle, using the term finance charge. Determine that the components of the finance charge are individually itemized and identified to show the amount(s) due to the application of any periodic rates and the amounts(s) of any other type of finance charge. Note: If there is more than one periodic rate, the amount of the finance charge attributable to each rate need not be separately itemized and identified. (§1026.7(a)(6)(i))
- *Other charges.* The amounts, itemized and identified by type, of any charges other than finance charges debited to the account during the billing cycle. (§1026.7(a)(6)(ii))

*NOTE: Creditors may comply with paragraphs (a)(6) of §1026.7, or with paragraph (b)(6) of §1026.7, at their option.*

vii. *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. (§1026.7(a)(7))

viii. *Grace period.* The date by which or the time period within which the new balance or any por-

tion of the new balance must be paid to avoid additional finance charges. (§1026.7(a)(8))

ix. *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). (§1026.7(a)(9))

x. *Closing date of billing cycle; new balance.* The closing date of the billing cycle and the account balance outstanding on that date. (§1026.7(a)(10))

b. *Rules affecting open-end (not home-secured) plans.* The requirements of paragraph (b) of this section (1 through 14 below) apply only to plans other than home-equity plans subject to the requirements of §1026.5b. For applicable plans, determine that the creditor discloses on the periodic statement (§1026.7(b)):

i. *Previous balance.* The account balance outstanding at the beginning of the billing cycle. (§1026.7(b)(1))

ii. *Identification of transactions.* An identification of each credit transaction in accordance with §1026.8. (§1026.7(b)(2))

iii. *Credits.* Any credit to the account during the billing cycle, including the amount and the date of crediting. The date need not be provided if a delay in crediting does not result in any finance or other charge. (§1026.7(b)(3))

iv. *Periodic rates.* Each periodic rate that may be used to compute the interest charge expressed as an annual percentage rate and using the term Annual Percentage Rate, along with the range of balances to which it is applicable. (§1026.7(b)(4))

*NOTE: If no interest charge is imposed when the outstanding balance is less than a certain amount, the creditor is not required to disclose that fact, or the balance below which no interest charge will be imposed. The types of transactions to which the periodic rates apply shall also be disclosed. For variable-rate plans, the fact that the APR may vary.*

*NOTE: 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.*

v. *Balance on which finance charge computed.* The amount of the balance to which a periodic rate was applied and an explanation of how that balance was determined, using the term Balance Subject to Interest Rate. (§1026.7(b)(5))

vi. *Charges imposed.* 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.

(§1026.7(b)(6))

- *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).
  - *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).
- vii. *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). (§1026.7(b)(7))
- viii. *Grace period.* The date by which or the time period within which the new balance or any portion of the new balance must be paid to avoid additional finance charges. If such a time period is provided, a creditor may, at its option and without disclosure, impose no finance charge if payment is received after the time period's expiration. (§1026.7(b)(8))
- ix. *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). (§1026.7(b)(9))
- x. *Closing date of billing cycle; new balance.* The closing date of the billing cycle and the account balance outstanding on that date disclosed in accordance with §1026.7(b)(13). (§1026.7(b)(10))
- xi. *Due date; late payment costs.* With the exception of periodic statements provided solely for

charge cards and periodic statements provided for a charged-off account where payment of the entire account balance is due immediately, determine that the creditor disclosed (in accordance with §1026.7(b)(13)) for a credit card account under an open-end (not home-secured) consumer credit plan:

- The due date for a payment (the due date must be the same day of the month for each billing cycle). (§1026.7(b)(11)(i)(A))
- The amount of any late payment fee and any increased periodic rate(s) (expressed as an annual percentage rate(s)) that may be imposed on the account as a result of a late payment. If a range of late payment fees may be assessed, verify that the card issuer either states a range of fees or the highest fee and an indication that the fee imposed could be lower. (§1026.7(b)(11)(i)(B))

*NOTE: If the rate may be increased for more than one feature or balance, the card issuer may state the range of rates or the highest rate that could apply and at the issuer's option an indication that the rate imposed could be lower.*

*NOTE: With the exception of the negative or no amortization disclosures required by §1026.7(b)(12)(ii), the repayment disclosures in §1026.7(b)(12) (as listed in step 12 below) are not required for:*

- Charge card accounts that require payment of outstanding balances in full at the end of each billing cycle;
  - 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
  - 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.
- xii. Given those exceptions above, determine that the card issuer disclosed on the periodic statement §1026.7(b)(12):
- The following statement with a bold heading: “Minimum Payment Warning: If you make only the minimum payment each period, you will pay more in interest and it will take you longer to pay off your balance” (§1026.7(b)(12)(i)(A));
  - The minimum payment repayment estimate, as described in Appendix M1 to this

part. Note: If the minimum payment repayment estimate is less than 2 years, determine that the card issuer disclosed the estimate in months. Otherwise, the estimate must be disclosed in years and rounded to the nearest whole year (§1026.7(b)(12)(i)(B));

- The minimum payment total cost estimate, as described in Appendix M1 to this part, rounded to the nearest whole dollar or to the nearest cent, at the card issuer's option (§1026.7(b)(12)(i)(C));
- A statement that the minimum payment repayment estimate and the minimum payment total cost estimate are based on the current outstanding balance shown on the periodic statement. A statement that the minimum payment repayment estimate and the minimum payment total cost estimate are based on the assumption that only minimum payments are made and no other amounts are added to the balance (§1026.7(b)(12)(i)(D));
- A toll-free telephone number where the consumer may obtain from the card issuer information about credit counseling services (§1026.7(b)(12)(i)(E)); and
- The disclosures required for §1026.7(b)(12)(i)(F)(1):
  - The estimated monthly payment for repayment in 36 months, as described in Appendix M1 to this part. The estimated monthly payment for repayment in 36 months must be rounded to the nearest whole dollar or to the nearest cent, at the card issuer's option (§1026.7(b)(12)(i)(F)(1)(i));
  - 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 for 3 years (§1026.7(b)(12)(i)(F)(1)(ii));
  - The total cost estimate for repayment in 36 months, as described in Appendix M1 to this part. The total cost estimate for repayment in 36 months must be rounded to the nearest whole dollar or to the nearest cent, at the card issuer's option (§1026.7(b)(12)(i)(F)(1)(iii)); and
  - The savings estimate for repayment in 36 months, as described in Appendix M1 to this part. The savings estimate

for repayment in 36 months must be rounded to the nearest whole dollar or to the nearest cent, at the card issuer's option (§1026.7(b)(12)(i)(F)(1)(iv)).

*NOTE: The disclosures (a through d above) required for §1026.7(b)(12)(i)(F)(1) do not apply to a periodic statement in any of the following circumstances:*

- 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;
  - The estimated monthly payment for repayment in 36 months, as described in Appendix M1 to this part, rounded to the nearest whole dollar or nearest cent that is calculated for a particular billing cycle is less than the minimum payment required for the plan for that billing cycle; and
  - 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.
- If negative or no amortization occurs when calculating the minimum payment estimate as described in Appendix M1, determine that the card issuer provides the following disclosures on each periodic statement instead of the disclosures set forth in §1026.7(b)(12)(i) (§1026.7(b)(12)(ii)):
    - “**Minimum Payment Warning:** Even if you make no more charges using this card, if you make only the minimum payment each month we estimate **you will never pay off the balance shown on this statement** because your payment will be less than the interest charged each month” (§1026.7(b)(12)(ii)(A));
    - “If you make more than the minimum payment each period, you will pay less

- in interest and pay off your balance sooner” (§1026.7(b)(12)(ii)(B));
  - The estimated monthly payment for repayment in 36 months rounded to the nearest whole dollar or to the nearest cent, at the creditor’s option (§1026.7(b)(12)(ii)(C));
  - 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 (§1026.7(b)(12)(ii)(D)); and
  - A toll-free telephone number where the consumer may obtain from the card issuer information about credit counseling services consistent with §1026.7(b)(12)(iv) (§1026.7(b)(12)(ii)(E)).
  - Verify that the items required to be disclosed, as addressed in the procedures in step 12 above (required by §1026.7(b)(12)) are disclosed in accordance with the format requirements of §1026.7(b)(13) and are substantially similar to the samples provided in Appendix G of Regulation Z.
  - Determine that a card issuer provides (to the extent available from the United States Trustee or a bankruptcy administrator) through the disclosed toll-free telephone number the name, street address, telephone number, and website address for at least three organizations that have been approved by the United States Trustee or a bankruptcy administrator to provide credit counseling services in either the state in which the billing address for the account is located or the state specified by the consumer. (§1026.7(b)(12)(iv)(A))
  - Determine that the card issuer at least annually updates the credit counseling information it discloses for consistency with the information available from the United States Trustee or a bankruptcy administrator. (§1026.7(b)(12)(iv)(B))
- xiii. Determine that the card issuer provided periodic statement disclosures according to the following format requirements (§1026.7(b)(13)):
- The due date is disclosed on the front of the first page of the periodic statement and that the amount of the late payment fee and the APR(s) are stated in close proximity thereto.
  - The ending balance and the repayment disclosures (required by paragraph (b)(12) of §1026.7) are disclosed closely proximate to the minimum payment due.
  - The due date, late payment fee and APR, ending balance, minimum payment due, and repayment disclosures are grouped together.
- NOTE: Sample G-18(D) in Appendix G of Regulation Z sets forth an example of how these terms may be grouped.*
- xiv. For accounts with an outstanding balance subject to a deferred interest or similar program, determine that the creditor disclosed the date by which that outstanding balance must be paid in full in order to avoid the obligation to pay finance charges on such balance on the front of any page of each periodic statement issued during the deferred interest period beginning with the first periodic statement issued during the deferred interest period that reflects the deferred interest or similar transaction. The disclosure provided pursuant to this paragraph must be substantially similar to Sample G–18(H) in Appendix G to this part. (§1026.7(b)(14))

**Subsequent Disclosure Requirements §1026.9**

- a. Determine whether the creditor mailed or delivered the billing rights statement at least once per calendar year, at intervals of not less than 6 months or more than 18 months, customers and whether the institution used the short form notice with each periodic statement. (§1026.9(a)(1))

*NOTE: As an alternative to the annual billing rights statement (§1026.9(a)(1)), the creditor may mail or deliver, on or with each periodic statement, a statement substantially similar to Model Form G–4 or Model Form G–4(A) in appendix G to this part, as applicable. Creditors offering home-equity plans subject to the requirements of §1026.5b may use either Model Form, at their option. (§1026.9(a)(2))*

- b. If, 30 days after mailing or delivering the account-opening disclosures under §1026.6(a)(1) or (b)(3)(ii)(A), the creditor adds a credit feature or furnishes a credit access device (other than as a renewal, resupply, or the original issuance of a credit card, or except with regard to checks that access a credit card account) on the same finance charge terms, determine that the creditor discloses, before the consumer uses the feature or device for the first time, that it is

for use in obtaining credit under the terms previously disclosed. (§1026.9(b)(1))

- c. Determine that, except with regard to checks that access a credit card account, whenever a credit feature is added or a credit access device is mailed or delivered to the consumer, and the finance charge terms for the feature or device differ from disclosures previously given, the disclosures required by §1026.6(a)(1) or (b)(3)(ii)(A) that are applicable to the added feature or device are given before the consumer uses the feature or device for the first time. (§1026.9(b)(2))
  - d. *Checks that access a credit card account.* For open-end plans not subject to the requirements of §1026.5b, 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, determine that the creditor discloses on the front of the page containing the checks the following terms in the form of a table with the headings, content, and form substantially similar to Sample G-19 in appendix G to this part (§1026.9(b)(3)):
    - i. If a promotional rate applies to the checks, determine that the creditor discloses:
      - The promotional rate and the time period during which the promotional rate will remain in effect (§1026.9(b)(3)(i)(A)(1));
      - The type of rate that will apply (such as whether the purchase or cash advance rate applies) after the promotional rate expires, and the annual percentage rate that will apply after the promotional rate expires. For a variable-rate account, a creditor must disclose an annual percentage rate based on the applicable index or formula in accordance with the accuracy requirements set forth in paragraph (b)(3)(ii) of this section (§1026.9(b)(3)(i)(A)(2)); and
      - The date, if any, by which the consumer must use the checks in order to qualify for the promotional rate. If the creditor will honor checks used after such date but will apply an annual percentage rate other than the promotional rate, the creditor must disclose this fact and the type of annual percentage rate that will apply if the consumer uses the checks after such date (§1026.9(b)(3)(i)(A)(3)).
    - ii. If any APR required to be disclosed pursuant to §1026.9(b)(3)(i) is a variable rate, determine that the creditor also disclosed the fact that the rate may vary and how the rate is determined. Determine that the creditor identified the type of index or formula used in setting the rate. Determine that the creditor does not disclose the value of the index and the amount of the margin that are used to calculate the variable rate in the table and that any applicable limitations on rate increases are not included in the table (§1026.9(b)(3)(iii)).
  - iii. If no promotional rate applies to the checks, determine that the creditor discloses:
    - 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 §1026.9(b)(3)(ii). (§1026.9(b)(3)(i)(B)(1))
  - iv. Determine that the creditor discloses:
    - Any transaction fees applicable to the checks disclosed under §1026.6(b)(2)(iv). (§1026.9(b)(3)(i)(C))
    - Whether or not a grace period is given within which any credit extended by use of the checks may be repaid without incurring a finance charge due to a periodic interest rate. When disclosing whether there is a grace period, the phrase “How to Avoid Paying Interest on Check Transactions” shall be used as the row heading when a grace period applies to credit extended by the use of the checks. When disclosing the fact that no grace period exists for credit extended by use of the checks, the phrase “Paying Interest” shall be used as the row heading. (§1026.9(b)(3)(i)(D))
- NOTE: The disclosures in §1026.9(b)(3)(i) must be accurate as of the time the disclosures are mailed or delivered. A variable APR is accurate if it was in effect within 60 days of when the disclosures are mailed or delivered.*
- e. Determine, for home-equity plans subject to the requirements of §1026.5b:
    - i. Whenever any term required to be disclosed under section §1026.6(a) is changed or the required minimum periodic payment is increased, the creditor mailed or delivered written notice of the change at least 15 days prior to the effective date of the change. If the consumer agreed to the change, determine that notice was provided before the change went into effect. (§1026.9(c)(1)(i))

- ii. If the creditor prohibits additional extensions of credit or reduces the credit limit that the creditor mailed or delivered notice of the action not later than three business days after such action is taken. The notice must contain the specific reasons for the action. (§1026.9(c)(1)(iii))

*NOTE: Notice is not required when the change involves a reduction of any component of a finance charge or other charge or when the change results from an agreement involving a court proceeding. (§1026.9(c)(1)(ii))*

- f. For plans other than home-equity plans subject to the requirements of §1026.5b, except as provided in §§1026.9(c)(2)(i)(B), (c)(2)(iii) and (c)(2)(v), when a significant change in account terms as described in §1026.9(c)(2)(ii) is made, determine that the creditor provides a written notice of the change at least 45 days prior to the effective date of the change to each consumer who may be affected. (§1026.9(c)(2)(i)(A))
- g. The 45-day timing requirement, however, does not apply if the consumer has agreed to a particular change as described in §1026.9(c)(2)(i)(B). For these instances, however, determine that the creditor provided a notice in accordance with the timing requirements of §1026.9(c)(2)(i)(B). (§1026.9(c)(2)(i)(A))
- h. For open-end (not home-secured) plans, determine that increases in the rate applicable to a consumer's account due to delinquency, default or as a penalty described in §1026.9(g) that are not due to a change in the contractual terms of the consumer's account are disclosed pursuant to §1026.9(g) instead of §1026.9(c)(2). (§1026.9(c)(2)(i)(A))
- i. When a notice of change in terms is required, determine that it is mailed or delivered no later than the effective date of the change, if the consumer agrees to the particular change. §1026.9(c)(2)(i)(B) applies only when a consumer substitutes collateral or when the creditor can advance additional credit only if a change relatively unique to that consumer is made, such as the consumer's providing additional security or paying an increased minimum payment amount. (§1026.9(c)(2)(i)(B))

*NOTE: The that the 45-day timing requirements discussed in step f above does not apply in certain narrow circumstances, as described in §1026.9(c)(2)(i)(B). The following are not considered agreements between the consumer and the creditor for purposes of §1026.9(c)(2)(i)(B):*

- i. The consumer's general acceptance of the creditor's contract reservation of the right to change terms;
- ii. The consumer's use of the account (which might imply acceptance of its terms under state law);
- iii. 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,
- iv. The consumer's request to reopen a closed account or to upgrade an existing account to another account offered by the creditor with different credit or other features. (§1026.9(c)(2)(i)(B))
- j. The 45-day advance notice requirement applies to changes to the following terms (§1026.9(c)(2)(ii)):
  - i. APR increase, including each periodic rate that may be used to compute the finance charge on outstanding balances for purchases, a cash advance, or a balance transfer (such rates may include any discounted initial rate, premium initial rate, or penalty rate that may be applied to the account);
    - Variable-rate information;
    - Discounted or premium initial rates;
    - Penalty rates;
  - ii. Fees for issuance or availability, including any fee based upon account activity or inactivity;
  - iii. Fixed finance charge or minimum interest charge, if it exceeds \$1.00;
  - iv. Transaction charge for purchases;
  - v. Grace period;
  - vi. Balance computation method;
  - vii. Cash advance fee;
  - viii. Late payment fee;
  - ix. Over-the-limit fee;
  - x. Balance transfer fee;
  - xi. Returned payment fee;
  - xii. Required insurance, debt cancellation, or debt suspension coverage; and
  - xiii. Increase in required minimum periodic payment, or the acquisition of a security interest.
- k. Except as provided in §1026.9(c)(2)(vi), 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, determine that the creditor either (§1026.9(c)(2)(iii)):
  - i. Complies with the requirements of §1026.9(c)(2)(i), or
  - ii. Provides notice of the amount of the charge before the consumer agrees to or becomes obligated to pay the charge, at a time and in a manner that a consumer would be likely to notice the

disclosure of the charge, either in writing or orally.

1. Ensure that the written change-in-terms notice contains the following disclosures (§1026.9(c)(2)(iv)(A)):
  - i. A summary of the changes made to terms required by §§1026.6(b)(1) and (b)(2), a description of any increase in the required minimum payment, and a description of any security interests being acquired by the creditor.
  - ii. A statement that changes are being made to the account.
  - iii. 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 that the consumer has the right to opt-out of the changes, if applicable, and a reference to the opt-out right provided in the notice, if applicable.
  - iv. The date the changes will become effective.
  - v. If applicable, a statement that the consumer may find additional information about the summarized changes, and other changes, in the notice.
  - vi. In the case of a rate change, other than a penalty rate, a statement that if a penalty rate currently applies to the consumer's account, the new rate described in the notice will not apply to the consumer's account until the consumer's account balances are no longer subject to the penalty rate.
  - vii. If the change in terms being disclosed is an increase in the APR, the balances to which the increased rate will apply. If applicable, creditors should disclose a statement identifying the balances to which the current rate will apply as of the effective date of the change.
  - viii. If the change in terms being disclosed is an increase in an annual percentage rate for a credit card account under an open-end (not home-secured) consumer credit plan, a statement of no more than four principal reasons for the rate increase, listed in their order of importance.

*NOTE: The disclosed reasons must accurately describe the principal factors actually considered by the card issuer in increasing the rate. (Commentary §1026.9(c)(2)(iv) - 11)*

- m. In addition to the disclosures in §1026.9(c)(2)(iv)(A), if a card issuer makes a significant change in account terms on a credit card account under an open-end (not home-secured) consumer credit plan, determine that the creditor provides the following information on the notice provided pursuant to §1026.9(c)(2)(i) (§1026.9(c)(2)(iv)(B)):

*NOTE: This information is not required to be provided in the case of an increase in the required minimum periodic payment, an increase in a fee as a result of a reevaluation of a determination made under §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 (Servicemembers Civil Relief Act) or similar Federal or State statute or regulation if the amount of the increased fee does not exceed the amount of that fee prior to the reduction, or when the change results from the creditor not receiving the consumer's required minimum periodic payment within 60 days after the due date for that payment.*

- i. 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;
  - ii. 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
  - iii. If applicable, a statement that if the consumer rejects the change or changes, the consumer's ability to use the account for further advances will be terminated or suspended.
- n. *Changes resulting from failure to make minimum periodic payment within 60 days from due date for credit card accounts under an open-end (not home-secured) consumer credit plan.* For a credit card account under an open-end (not home-secured) consumer credit plan (§1026.9(c)(2)(iv)(C)):
    - i. If the significant change required to be disclosed pursuant to §1026.9(c)(2)(i) of this section is an increase in an annual percentage rate or a fee or charge required to be disclosed under §§1026.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii) based on the consumer's failure to make a minimum periodic payment within 60 days from the due date for that payment, determine that the notice provided pursuant to paragraph (c)(2)(i) of this section states that the increase will cease to apply to transactions that occurred prior to or within 14 days of provision of the notice, if the creditor receives six consecutive required minimum periodic payments on or before the payment due date, beginning with the first payment due following the effective date of the increase.
    - ii. If the significant change required to be disclosed pursuant to §1026.9(c)(2)(i) 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, determine that the notice provided pursuant to §1026.9(c)(2)(i) also states the reason for the increase.

- o. Determine that the summary of changes described in §1026.9(c)(2)(iv)(A)(1) is in a tabular format (except for a summary of any increase in the required minimum periodic payment, a summary of a term required to be disclosed under §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. Determine that the table discloses the changed term and information relevant to the change, if that relevant information is required by §1026.6(b)(1) and (b)(2). Determine that the new terms are described in the same level of detail as required when disclosing the terms under §1026.6(b)(2). (§1026.9(c)(2)(iv)(D)(1))
- p. If a notice required by §1026.9(c)(2)(i) (change in terms) is included on or with a periodic statement, determine that the information described in §1026.6(c)(2)(iv)(A)(1) is disclosed on the front of any page of the statement. Determine that the summary of changes described in §1026.9(c)(2)(iv)(A)(1) immediately follows the information described in §1026.9(c)(2)(iv)(A)(2) through §1026.9(c)(2)(iv)(A)(7) and, if applicable, paragraphs §1026.9(c)(2)(iv)(A)(8), §1026.9(c)(2)(iv)(B), and §1026.9(c)(2)(iv)(C), and is substantially similar to the format shown in Sample G-20 or G-21 in appendix G to this part. (§1026.9(c)(2)(iv)(D)(2))
- q. If a notice required by §1026.9(c)(2)(i) is not included on or with a periodic statement, determine that the information described in §1026.9(c)(2)(iv)(A)(1) is disclosed on the front of the first page of the notice or segregated on a separate page from other information given with the notice. (§1026.9(c)(2)(iv)(D)(3))

*NOTE: The summary of changes required to be in a table pursuant to paragraph (c)(2)(iv)(A)(1) of this section may be on more than one page, and may use both the front and reverse sides, so long as the table begins on the front of the first page of the notice and there is a reference on the first page indicating that the table continues on the following page.*

- r. Determine that the summary of changes described in §1026.9(c)(2)(iv)(A)(1) immediately follows the in-

formation described in §1026.9(c)(2)(iv)(A)(2) through §1026.9(c)(2)(iv)(A)(7) and, if applicable, §§ 1026.9(c)(2)(iv)(A)(8), (c)(2)(iv)(B), and (c)(2)(iv)(C), of this section, and is substantially similar to the format shown in Sample G-20 or G-21 in appendix G to this part. (§1026.9(c)(2)(iv)(D)(3))

- s. For open-end plans (other than home equity plans subject to the requirements of §1026.5b), note that a creditor is not required to provide notice under this section if (§1026.9(c)(2)(v)):
  - i. The change involves:
    - Charges for documentary evidence;
    - A reduction of any component of a finance or other charge;
    - A suspension of future credit privileges (except as provided in §1026.9(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
    - 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 §1026.9(b)(3) (§1026.9(c)(2)(v)(A));
  - ii. The change is an increase in an APR upon the expiration of a specified period of time, provided that (§1026.9(c)(2)(v)(B)):
    - Prior to commencement of that period, the creditor disclosed in writing to the consumer, in a clear and conspicuous manner, the length of the period and the APR or fee that would apply after expiration of the period;
    - The disclosure of the length of the period and the APR or fee that would apply after expiration of the period are set forth in close proximity and in equal prominence to the first listing of the disclosure of the rate or fee that applies during the specified period of time; and
    - The APR or fee that applies after that period does not exceed the rate disclosed pursuant to §1026.9(c)(2)(v)(B)(1) or, if the rate disclosed pursuant to §1026.9(c)(2)(v)(B)(1) was a variable rate, the rate following any such increase is a variable rate determined by the same formula (index and margin) that was used to calculate the variable rate disclosed pursuant to §1026.9(c)(2)(v)(B)(1);
  - iii. The change is an increase in a variable APR in accordance with a credit card or other account agreement that provides for changes in the rate

- according to operation of an index that is not under the control of the creditor and is available to the general public (§1026.9(c)(2)(v)(C)); or
- iv. The change is an increase in an APR, a fee or charge required to be disclosed under §§1026.6(b)(2)(ii), (b)(2)(iii), (b)(2)(viii), (b)(2)(ix) or (b)(2)(xii), or the required minimum periodic payment due to the completion of a workout or temporary hardship arrangement by the consumer or the consumer's failure to comply with the terms of such an arrangement, provided that (§1026.9(c)(2)(v)(D)):
    - The APR or fee or charge applicable to a category of transactions or the required minimum periodic payment following any such increase does not exceed the rate or fee or charge or required minimum periodic payment that applied to that category of transactions prior to commencement of the arrangement or, if the rate that applied to a category of transactions prior to the commencement of the workout or temporary hardship arrangement was a variable rate, the rate following any such increase is a variable rate determined by the same formula (index and margin) that applied to the category of transactions prior to commencement of the workout or temporary hardship arrangement; and
    - The creditor has provided the consumer, prior to the commencement of such arrangement, with a clear and conspicuous disclosure of the terms of the arrangement (including any increases due to such completion or failure). This disclosure must generally be provided in writing. However, a creditor may provide the disclosure of the terms of the arrangement orally by telephone, provided that the creditor mails or delivers a written disclosure of the terms of the arrangement to the consumer as soon as reasonably practicable after the oral disclosure is provided.
  - t. For open-end plans that are not subject to the requirements of §1026.5b, if a creditor decreases the credit limit on the account, determine that advance notice of the decrease is provided before an over-the-limit fee or a penalty rate can be imposed solely as a result of the consumer exceeding the newly decreased credit limit. Determine that notice is provided in writing or orally at least 45 days prior to imposing the over-the-limit fee or penalty rate and that it states that the credit limit on the account has been or will be decreased. (§1026.9(c)(2)(vi))
  - u. Determine that the disclosures contained in §1026.5a(b)(1) through (b)(7) are provided if the account is renewed and (1) the card issuer imposes an annual or other periodic fee for the renewal or (2) the card issuer has changed or amended any term of the account required to be disclosed under §1026.6(b)(1) and (b)(2) that has not previously been disclosed to the consumer. Additionally, the disclosure provided upon renewal must disclose how and when the cardholder may terminate the credit to avoid paying the renewal fee, if any. (§1026.9(e))
  - v. For plans other than home-equity plans subject to the requirements of §1026.5b (except as provided in §1026.9(g)(4)), determine that the creditor provides a written notice to each consumer who may be affected when (§1026.9(g)(1)):
    - 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.
  - w. Whenever any notice is required to be given pursuant to paragraph (g)(1) of this section, determine that the creditor provided written notice of the increase in rates at least 45 days prior to the effective date of the increase. The notice must be provided after the occurrence of the events described in §1026.9(g)(1)(i) and (g)(1)(ii) that trigger the imposition of the rate increase. (§1026.9(g)(2))
  - x. If a creditor is increasing the rate due to delinquency or default or as a penalty, determine that the creditor provided the following information on the notice sent pursuant to §1026.9(g)(1) (§1026.9(g)(3)(i)(A)):
    - i. A statement that the delinquency or default rate or penalty rate, as applicable, has been triggered;
    - ii. The date on which the delinquency or default rate or penalty rate will apply;
    - iii. 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;
    - iv. A statement indicating to which balances the delinquency or default rate or penalty rate will be applied;
    - v. 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
    - vi. For a credit card account under an open-end (not home-secured) consumer credit plan, a state-

ment of no more than four principal reasons for the rate increase, listed in their order of importance.

*NOTE: The disclosed reasons must accurately describe the principal factors actually considered by the card issuer in increasing the rate. (Commentary §1026.9(g) - 7)*

- y. For a credit card account under an open-end (not home-secured) consumer credit plan, if the rate increase required to be disclosed pursuant to paragraph (g)(1) of this section is an increase pursuant to §1026.55(b)(4) based on the consumer's failure to make a minimum periodic payment within 60 days from the due date for that payment, determine that the notice provided pursuant to paragraph (g)(1) of this section also states that the increase will cease to apply to transactions that occurred prior to or within 14 days of provision of the notice, if the creditor receives six consecutive required minimum periodic payments on or before the payment due date, beginning with the first payment due following the effective date of the increase. (§1026.9(g)(3)(i)(B))
- z. If a notice required by §1026.9(g)(1) (Increase in rates due to delinquency or default or as a penalty) is included on or with a periodic statement, determine that the disclosure described in paragraph (g)(3)(i) is in the form of a table and provided on the front of any page of the periodic statement, above the notice described in paragraph (c)(2)(iv) of this section if that notice is provided on the same statement. (§1026.9(g)(3)(ii)(A))
- aa. If a notice required by §1026.9(g)(1) (increase in rates) is not included on or with a periodic statement, determine that the information described in §1026.9(g)(3)(i) is disclosed on the front of the first page of the notice. Ensure that only information related to the increase in the rate to a penalty rate is included with the notice. Note: This notice may be combined with a notice described in §§1026.9(c)(2)(iv) or (g)(4) (A statement indicating to which balances the delinquency or default rate or penalty rate will be applied) of this section. (§1026.9(g)(3)(ii)(B))
- bb. *Exception for Decreases in the Credit Limit* – If a creditor does not provide the 45 day notice under §1026.9(g)(1) prior to increasing the rate for obtaining an extension of credit that exceeds the credit limit, determine that the creditor provides at least 45 days in advance of imposing the penalty rate a notice, in writing, that includes (§1026.9(g)(4)):
  - i. A statement that the credit limit on the account has or will be decreased.
  - ii. The date on which the penalty rate will apply, if the outstanding balance exceeds the credit limit as of that date;
  - iii. A statement that the penalty rate will not be imposed on that date, if the outstanding balance does not exceed the credit limit as of that date;
  - iv. The circumstances under which the penalty rate, if applied, will cease to apply to the account, or that the penalty rate, if applied, will remain in effect for a potentially indefinite period of time;
  - v. A statement indicating to which balances the penalty rate may be applied; and
  - vi. If applicable, a description of any balances to which the current rate will continue to apply as of the effective date of the rate increase, unless the consumer fails to make a minimum periodic payment within 60 days from the due date for that payment.

In addition to this notice, determine that the creditor does not increase the applicable rate to the penalty rate if the outstanding balance does not exceed the credit limit on the date set forth in the notice. (§1026.9(g)(4)(ii))
- cc. If a notice provided pursuant to §1026.9(g)(4)(i) is included on or with a periodic statement, determine that the information described in §1026.9(g)(4)(i) is in the form of a table and provided on the front of any page of the periodic statement (§1026.9(g)(4)(iii)(A)); or,
- dd. If a notice required by §1026.9(g)(4)(i) is not included on or with a periodic statement, determine that the information described in §1026.9(g)(4)(i) is disclosed on the front of the first page of the notice. Determine that only information related to the reduction in credit limit is included with the notice, except that this notice may be combined with a notice described in §§1026.9(c)(2)(iv) or (g)(1). (§1026.9(g)(4)(iii)(B))
- ee. When the consumer is given the right to reject a significant change to an account term prior to the effective date of the change, determine whether the consumer was given the option to reject the change by notifying the creditor of the rejection before the effective date of the change. (§1026.9(h)(1))
- ff. If the creditor was notified of the rejection of a significant change to an account term, determine that the creditor did not:
  - i. Apply the charge 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 following methods:

- The method of repayment for the account on the date on which the creditor was notified of the rejection;
- An amortization period of not less than five years, beginning no earlier than the date on which the creditor was notified of the rejection; or
- A required minimum periodic payment that includes a percentage of the balance that is equal to no more than twice the percentage required on the date on which the creditor was notified of the rejection.  
(§1026.9(h)(2))

*NOTE: These requirements do not apply if the creditor has not received the consumer's required minimum periodic payment within 60 days after the due date for that payment and the creditor has provided timely change in terms disclosures.*  
(§1026.9(h)(3))

- gg. Determine that a statement of the maximum interest rate that may be imposed during the term of the obligation is made for any loan in which the APR may increase during the plan. (§1026.30(b))
- hh. For any open-end mortgage loan (credit transaction that is secured by the principal dwelling of a consumer) that was sold, assigned, or otherwise transferred to the covered person, determine that the covered person notifies the borrower in writing of such transfer, including (§1026.39):
- An identification of the loan that was sold, assigned, or otherwise transferred;
  - The name, address, and telephone number of the covered person who owns the mortgage loan;
  - The date of transfer (either the date of acquisition recognized in the books and records of the covered person or that of the transferring party) identified by the covered person;
  - The name, address, and telephone number of an agent or party having authority, on behalf of the covered person, to receive notice of the right to rescind and resolve issues concerning the consumer's payments on the mortgage loan;
  - Where transfer of ownership of the debt to the covered person is or may be recorded in public records or, alternatively, that the transfer of ownership has not been recorded in public records at the time the disclosure is provided; and
  - At the option of the covered person, any other relevant information regarding the transaction.
  - If there are multiple covered persons, contact information for each of them, unless one of them has been authorized to receive the consumer's notice of the right to rescind and resolve issues

concerning the consumer's payments on the loan.

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

### **Disclosure Requirements for Over-the-Limit Transactions §1026.56**

- Determine that the oral, written or electronic "opt-in" notice includes all of the following applicable items (and not any information not specified in or otherwise permitted) (§1026.56(e)(1)):
  - 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;
  - APR(s) – Any increased periodic rate(s) (expressed as an APR(s)) that may be imposed on the account as a result of an over-the-limit transaction; and
  - 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.
- Determine that the written notice informing the consumer of the right to revoke consent following the assessment of an over-the-limit fee or charge describes that right, including the method(s) by which the consumer may revoke consent. (§1026.56(e)(2))

### **Reverse Mortgage Forms Review Procedures (Both Open and Closed-End)**

- Determine that the disclosures required for reverse mortgage transactions are substantially similar to the model form in Appendix K and include the items below:
  - A statement that the consumer is not obligated to complete the reverse mortgage transaction

merely because he or she has received the disclosures or signed an application.

- ii. A good faith projection of the total cost of the credit expressed as a table of “total annual loan cost rates” including payments to the consumer, additional creditor compensation, limitations on consumer liability, assumed annual appreciation, and the assumed loan period.
- iii. An itemization of loan terms, charges, the age of the youngest borrower, and the appraised property value.
- iv. An explanation of the table of total annual loan costs rates.

*NOTE: Forms that include or involve current transactions, such as change in terms notices, periodic billing statements, rescission notices, and billing error communications, are verified for accuracy when the file review worksheets are completed.*

#### Timing Requirements

- 6. Review financial institution policies, procedures, and systems to determine, either separately or when completing the actual file review, whether the applicable disclosures listed below are furnished when required by Regulation Z. Take into account products that have different features, such as closed-end loans or credit card accounts that are fixed or variable rate.
  - a. Credit card application and solicitation disclosures – On or with the application (§1026.5a(b))
  - b. HELOC disclosures – At the time the application is provided or within three business days under certain circumstances. (§1026.5b(b))
  - c. Open-end credit initial disclosures – Before the first transaction is made under the plan. (§1026.5(b)(1))
  - d. Card Holder Agreement – Verify that the card issuer sends to the cardholder or otherwise make available to the cardholder a copy of the cardholder’s agreement in electronic or paper form no later than 30 days after the issuer receives the cardholder’s request (§1026.58(e)(1)(ii)(B)). Determine that the issuer has adequate procedures for ensuring that this requirement is met.
  - e. Periodic statement disclosures for open-end credit under §1026.7 – Required if at the end of a billing cycle the account has a debit or credit balance of \$1 or more or if a finance charge has been imposed (§1026.5(b)(2)(i)). Also, the creditor must adopt reasonable procedures designed to ensure that periodic statements for credit card accounts are mailed or delivered at least 21 days prior to the payment due date and the date on which any grace period expires (for non-credit card open-end credit, there is a 21-day

- rule if there is a grace period and a 14-day rule if there is no grace period). (§1026.5(b)(2)(ii)(B)(2))
- f. Statement of billing rights – At least once per year. (§1026.9(a))
- g. Supplemental credit devices – Before the first transaction under the plan. (§1026.9(b))
- h. Open-end credit change in significant terms as a result of a change in contractual terms -- 45 days prior to the effective change date. (§1026.9(c)(2))
- i. Open-end change in terms or rates due to delinquency or default or as a penalty – 45 days prior to the effective change date. (§1026.9(g))
- j. Finance charge imposed at time of transaction – Prior to imposing any fee. (§1026.9(d))
- k. Disclosures upon renewal of credit or charge card – 30 days or one billing cycle, whichever is less before the delivery of the periodic statement on which the renewal fee is charged, or at least 30 days prior to the scheduled renewal date if the creditor has changed or amended any term required to be disclosed under §1026.6(b)(1) and (b)(2) that has not previously been disclosed to the consumer. (§1026.9(e))
- l. Change in credit account insurance provider – Certain information 30 days before the change in provider occurs and certain information 30 days after the change in provider occurs. The institution may provide a combined disclosure 30 days before the change in provider occurs. (§1026.9(f))
- m. Closed-end credit disclosures – Before consummation. (§1026.17(b))
- n. For disclosures for dwelling-secured transactions subject to RESPA (other than open-end), multiple timing requirements apply. Determine whether the creditor provides early disclosures within three business days after receiving the consumer’s written application. The creditor is required to deliver or mail the early disclosures no later than three business days after receiving the consumer’s application and at least seven business days before consummation (§§1026.19(a)(1)(i) and 1026.19(a)(2)(i)). If the APR stated in the early disclosures is not considered accurate under § 1026.22 when compared to the APR at consummation, determine whether the creditor provided corrected disclosures of all changed terms, including the APR, that the consumer received no later than the third business day before consummation. (§1026.19(a)(2)(ii))
- o. Disclosures for transactions subject to §1026.32 – Three business days prior to consummation. If such disclosures became inaccurate due to a change by the creditor, ensure that the creditor provided new, accurate disclosures no later than three business days prior to consummation. (§1026.31(c)(1))
- p. Disclosures for reverse mortgages – Three days prior to consummation of a closed-end credit transaction

- or prior to the first transaction under an open-end credit plan. (§1026.31(c)(2))
- q. Disclosures for adjustable-rate mortgages – 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 new payment amount is due, or in accordance with other variable-rate subsequent-disclosure regulations issued by a supervisory agency. (§1026.20(c))
  - r. Notice of new creditor (§1026.39) – On or before the 30th calendar day following the acquisition.
  - s. For private education loans subject to Subpart F, determine that:
    - i. Application or solicitation disclosures were provided on or with any application or solicitation (§1026.46(d)(1)(i));
    - ii. Approval disclosures were provided before consummation on or with any notice of approval provided to the consumer (§1026.46(d)(2)); and
    - iii. Final disclosures were provided after the consumer accepts the loan and at least three business days prior to disbursing the private education loan funds. (§1026.46(d)(3))
  - t. Determine that the issuer provides a written over-the-limit notice prior to the assessment of any over-the-limit fee or charge on a consumer's account. (§1026.56(d)(1)(i))
  - u. Determine that, if a consumer consents to the card issuer's payment of any over-the-limit transaction by oral or electronic means, the card issuer provides the required written notice immediately prior to obtaining that consent. (§1026.56(d)(1)(ii))
  - v. Determine that the notice confirming the consumer's consent is provided no later than the first periodic statement sent after the consumer has consented to the card issuer's payment of over-the-limit transactions. In no case may the creditor assess an over-the-limit fee on the consumer's account without first providing written confirmation. (§1026.56(d)(2))
  - w. Determine that the notice providing the consumer notice in writing of the right to revoke consent following the assessment of an over-the-limit fee or charge is provided on the front of any page of each periodic statement that reflects the assessment of an over-the-limit fee or charge on a consumer's account. (§1026.56(d)(3))
  - x. For home-equity plans subject to the requirements of §1026.5b, whenever any term required to be disclosed under §1026.6(a) is changed or the required minimum periodic payment is increased, determine that the creditor mails or delivers written notice of the change to each consumer who may be affected. Determine that the notice is mailed or delivered at least 15 days prior to the effective date of the change.

If the change has been agreed to by the consumer, determine that the notice is given before the effective date of the change. (§1026.9(c)(1)(i))

- y. *Notice to restrict credit.* For home-equity plans subject to the requirements of §1026.5b, if the creditor prohibits additional extensions of credit or reduces the credit limit pursuant to §1026.5b(f)(3)(i) or (f)(3)(vi), determine that the creditor mails or delivers written notice of the action to each consumer who will be affected not later than three business days after the action is taken and contains specific reasons for the action. If the creditor requires the consumer to request reinstatement of credit privileges, determine that the notice states that fact. (§1026.9(c)(1)(iii))

### Electronic Disclosures

- 7. Assess compliance for an institution's electronic disclosure requirements.

### E-Sign Act

- a. Disclosures may be provided to the consumer in electronic form, subject to compliance with the consumer consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. 7001 et seq.). The E-Sign Act does not mandate that institutions or consumers use or accept electronic records or signatures. It permits institutions to satisfy any statutory or regulatory requirements by providing the information electronically after obtaining the consumer's affirmative consent. Before consent can be given, consumers must be provided with the following information:
  - i. Any right or option to have the information provided in paper or non-electronic form;
  - ii. The right to withdraw the consent to receive information electronically and the consequences, including fees, of doing so;
  - iii. The scope of the consent (for example, whether the consent applies only to a particular transaction or to identified categories of records that may be provided during the course of the parties' relationship);
  - iv. The procedures to withdraw consent and to update information needed to contact the consumer electronically; and
  - v. The methods by which a consumer may obtain, upon request, a paper copy of an electronic record after consent has been given to receive the information electronically and whether any fee will be charged.
- b. The consumer must consent electronically or confirm consent electronically in a manner that "reasonably demonstrates that the consumer can access information in the electronic form that will be used to

provide the information that is the subject of the consent.” After the consent, if an institution changes the hardware or software requirements such that a consumer may be prevented from accessing and retaining information electronically, the institution must notify the consumer of the new requirements and must allow the consumer to withdraw consent without charge.

- c. If the financial institution makes its disclosures available to consumers in electronic form, determine that the forms comply with the appropriate sections — §1026.5(a)(1); §1026.5a(a)(2)(v); §1026.5b(a)(3); §1026.15(b); §1026.16(c); §1026.17(a)(1); §1026.17(g); §1026.19(c); §1026.23(b)(1); §1026.24(d) and §1026.31(b).
- d. 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 E-Sign Act. (§1026.58(f))

#### **Annual Report to the Bureau §1026.57**

- a. If the card issuer was a party to one or more college credit card agreements in effect at any time during a calendar year, verify that the card issuer submits to the Bureau an annual report regarding those agreements in the form and manner prescribed by the Bureau. (§1026.57(d)(1))

*NOTE: A college credit card agreement is any business, marketing, or promotional agreement between a card issuer and an institution of higher education (or an affiliated alumni organization or foundation) in connection with which credit cards are issued to college students at that institution of higher education. (§1026.57(a)(5))*

- b. The annual report to the Bureau must include the following (§1026.57(d)(2)):
  - 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 di-

rects 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 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.
- vi. If the card issuer is subject to reporting, determine if the card issuer submits 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. (§1026.57(d)(3))

#### **The Submission of Agreements to the Bureau §1026.58(c)**

- a. For card issuers that issue credit cards under a credit card account under an open-end (not home-secured) consumer credit plan, determine that the card issuer makes quarterly submissions to the Bureau in the form and manner specified by the Bureau that 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) (1026.58(c)(1)(i));
  - 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 (1026.58(c)(1)(ii));
  - 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) (1026.58(c)(1)(iii)); 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) (1026.58(c)(1)(iv)).
- b. Verify that, except for the first two submissions on February 22, 2010 and August 2, 2010, quarterly submissions were 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. (§1026.58(c)(1))

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- c. If a credit card agreement that previously has been submitted to the Bureau is amended, verify that the card issuer submits 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. (§1026.58(c)(3))

*NOTE: 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.*

- d. If a card issuer no longer offers to the public a credit card agreement that previously has been submitted to the Bureau, ensure that the card issuer notifies 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. (§1026.58(c)(4))

*NOTE: 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. (§1026.58(c)(5)(i))*

- e. If an issuer that previously qualified for the de minimis exception ceases to qualify, determine that the card issuer begins making quarterly submissions to the Bureau no later than the first quarterly submission deadline after the date as of which the issuer ceased to qualify. (§1026.58(c)(5)(ii))
- f. If a card issuer that did not previously qualify for the de minimis exception qualifies for the de minimis exception, determine that the card issuer continues to make quarterly submissions to the Bureau until the issuer notifies the Bureau that the card issuer is withdrawing all agreements it previously submitted to the Bureau. (§1026.58(c)(5)(iii))
- g. 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 is offered for accounts under one or more private label credit card plans each of which has fewer than 10,000 open accounts and is not offered to the public other than for accounts under such a plan. (§1026.58(c)(6)(i))

*NOTE: A private label credit card is one that is usable only at a single merchant or affiliated group of merchants. A private label credit card plan is all private label credit card accounts issued by a particular issuer with credit cards usable at the same single merchant or affiliated group of merchants. (§1026.58(b)(7))*

- h. If an agreement that previously qualified for the private label credit card exception ceases to qualify, determine that the card issuer submits the agreement to the Bureau no later than the first quarterly submission deadline after the date as of which the agreement ceased to qualify. (§1026.58(c)(6)(ii))
- i. If an agreement that did not previously qualify for the private label credit card exception qualifies for the exception, determine that the card issuer continues to make quarterly submissions to the Bureau with respect to that agreement until the issuer notifies the Bureau that the agreement is being withdrawn. (§1026.58(c)(6)(iii))

*NOTE: 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 is offered as part of a product test offered to only a limited group of consumers for a limited period of time, is used for fewer than 10,000 open accounts, and is not offered to the public other than in connection with such a product test. (§1026.58(c)(7)(i))*

- j. If an agreement that previously qualified for the product testing exception ceases to qualify, determine that the card issuer submits the agreement to the Bureau no later than the first quarterly submission deadline after the date as of which the agreement ceased to qualify. (§1026.58(c)(7)(ii))
- k. If an agreement that did not previously qualify for the product testing exception qualifies for the exception, determine that the card issuer continues to make quarterly submissions to the Bureau with respect to that agreement until the issuer notifies the Bureau that the agreement is being withdrawn. (§1026.58(c)(7)(iii))
- l. Verify that each agreement contains the provisions of the agreement and the pricing information in effect as of the last business day of the preceding calendar quarter. (§1026.58(c)(8)(i)(A))
- m. Verify that agreements do not include any personally identifiable information relating to any cardholder, such as name, address, telephone number, or account number. (§1026.58(c)(8)(i)(B))
- n. Verify that agreements are presented in a clear and legible font. (§1026.58(c)(8)(i)(D))
- o. Verify that pricing information is set forth in a single addendum to the agreement that contains only the pricing information. (§1026.58(c)(8)(ii)(A))

*NOTE: With respect to information other than the pricing information that may vary between cardholders depending on creditworthiness, state of residence, or other factors, issuers may, but are not*

*required to, include that information in a single addendum (the optional variable terms addendum) to the agreement separate from the pricing addendum.*

- p. If pricing information varies from one cardholder to another depending on the cardholder's creditworthiness or state of residence or other factors, verify that the pricing information is disclosed either by setting forth all the possible variations (such as purchase APRs of 13 percent, 15 percent, 17 percent, and 19 percent) or by providing a range of possible variations (such as purchase APRs ranging from 13 percent to 19 percent). (§1026.58(c)(8)(ii)(B))
- q. If a rate included in the pricing information is a variable rate, verify that the issuer identifies the index or formula used in setting the rate and the margin. (§1026.58(c)(8)(ii)(C))
- r. If rates vary from one cardholder to another, verify that the issuer discloses such rates by providing the index and the possible margins (such as the prime rate plus 5 percent, 8 percent, 10 percent, or 12 percent) or range of margins (such as the prime rate plus from 5 to 12 percent). (§1026.58(c)(8)(ii)(C))

*NOTE: The value of the rate and the value of the index are not required to be disclosed.*

- s. Determine that issuers do not provide provisions of the agreement or pricing information in the form of change-in-terms notices or riders (other than the pricing information addendum and the optional variable terms addendum). (§1026.58(c)(8)(iv))
- t. Determine that changes in provisions or pricing information are integrated into the text of the agreement, the pricing information addendum or the optional variable terms addendum, as appropriate. (§1026.58(c)(8)(iv))

**The Posting of Agreements Offered to the Public §1026.58(d)**

- a. Determine that the card issuer posts and maintains on its publicly available website the credit card agreements that the issuer is required to submit to the Bureau under §1026.58(c). (§1026.58(d)(1))
- b. With respect to an agreement offered solely for accounts under one or more private label credit card plans (and the issuer does not post and maintain the agreements on its publicly available website), determine that the issuer posts and maintains the agreement on the publicly available website of at least one of the merchants where cards issued under each private label credit card plan with 10,000 or more open accounts may be used. (§1026.58(d)(1))
- c. Verify that agreements posted pursuant to §1026.58(d) conform to the form and content re-

- quirements for agreements submitted to the Bureau specified in §1026.58(c)(8). (§1026.58(d)(2))
- d. Determine that agreements are posted in an electronic format that is readily usable by the general public. (§1026.58(d)(3))
- e. Verify that agreements are placed in a location on its website that is prominent and readily accessible by the public and accessible without submission of personally identifiable information. (§1026.58(d)(3))
- f. Determine that the card issuer updates the agreements posted on its website at least as frequently as the quarterly schedule required for submission of agreements to the Bureau under § 1026.58(c). (§1026.58(d)(4))

*NOTE: If the issuer chooses to update the agreements on its website more frequently, the agreements posted on the issuer's website may contain the provisions of the agreement and the pricing information in effect as of a date other than the last business day of the preceding calendar quarter.*

**The Posting of Agreements for "Open" Accounts §1026.58(e)**

- a. With respect to any open (i.e., the cardholder can obtain extensions or there is an outstanding balance on the account that has not been charged off) credit card account, determine that the card issuer either:
  - i. Posts and maintains the cardholder's agreement on its website; or
  - ii. Promptly provides a copy of the cardholder's agreement to the cardholder upon the cardholder's request.
- b. If the card issuer makes an agreement available upon request, ensure that the issuer provides the cardholder with the ability to request a copy of the agreement both by:
  - i. Using the issuer's website (such as by clicking on a clearly identified box to make the request) §1026.58(e)(1)(ii)(A), and
  - ii. Calling a readily available telephone line the number for which is displayed on the issuer's Web site and clearly identified as to purpose. (§1026.58(e)(1)(ii)(B) and (e)(2))
- c. If an issuer does not maintain a website from which cardholders can access specific information about their individual accounts determine that the issuer makes agreements available upon request by providing the cardholder with the ability to request a copy of the agreement by calling a readily available telephone line the number for which is (§1026.58(e)(2)):
  - i. Displayed on the issuer's website and clearly identified as to purpose; or

- ii. Included on each periodic statement sent to the cardholder and clearly identified as to purpose.
  - d. Verify that the card issuer sends to the cardholder or otherwise make available to the cardholder a copy of the cardholder's agreement in electronic or paper form no later than 30 days after the issuer receives the cardholder's request. (§1026.58(e)(1)(ii)(B))
  - e. Determine that agreements posted on the card issuer's website or made available upon the cardholder's request conform to the form and content requirements for agreements submitted to the Bureau specified in §1026.58(c)(8). (§1026.58(e)(3)(i))
  - f. If the card issuer posts an agreement on its website or otherwise provides an agreement to a cardholder electronically, verify that the agreement is posted or provided in an electronic format that is readily usable by the general public and is placed in a location that is prominent and readily accessible to the cardholder. (§1026.58(e)(3)(ii))
  - g. If agreements posted or otherwise provided contain personally identifiable information relating to the cardholder, such as name, address, telephone number, or account number, ensure that the issuer takes appropriate measures to make the agreement accessible only to the cardholder or other authorized persons. (§1026.58(e)(3)(iii))
  - h. Determine that agreements posted or otherwise provided set forth the specific provisions and pricing information applicable to the particular cardholder. (§1026.58(e)(3)(iv))
  - i. Determine that provisions and pricing information are complete and accurate as of a date no more than 60 days prior to (§1026.58(e)(3)(iv)):
    - i. The date on which the agreement is posted on the card issuer's website under §1026.58(e)(1)(i);
    - ii. The date the cardholder's request is received under §1026.58(e)(1)(ii) or (e)(2).
- i. If a rate of finance charge was stated, determine that it was stated as an APR.
  - ii. If an APR will increase after consummation, verify that a statement to that fact is made.
  - iii. Determine whether there are deceptive or misleading statements or practices.
  - b. Determine that the creditor does not offer college students any tangible item to induce such students to apply for or open an open-end consumer credit plan offered by such creditor, if such offer is made:
    - i. On the campus of an institution of higher education;
    - ii. Near the campus of an institution of higher education; or
    - iii. At an event sponsored by or related to an institution of higher education. (§1026.57(c))
  - c. If an open-end credit advertisement refers to an APR as "fixed" (or similar term), determine 1) that the advertisement also specifies a time period that the rate will be fixed and 2) that the rate will not increase during that period. (§1026.16(f))
  - d. If an open-end credit advertisement used the word "fixed" or a similar word and no time period is specified in which the rate will be fixed, determine that the rate will not increase while the plan is open. (§1026.16(f))
  - e. For any advertisement of an open-end (not home-secured) plan, if APR or fee that may be applied to the account is an introductory rate or fee, determine that the term introductory or intro is in immediate proximity to each listing of the introductory rate or introductory fee. (§1026.16(g)(3))
  - f. For any advertisement of an open-end (not home-secured) plan, if any APR or fee that may be applied to the account is a promotional rate under §1026.16(g)(2)(i) or any fee that may be applied to the account is a promotional fee under §1026.16(g)(2)(iv), determine that the following information is stated in a clear and conspicuous manner in the advertisement (§1026.16(g)(4)):
    - i. When the promotional rate or promotional fee will end; and
    - ii. The annual percentage rate or fee that will apply after the end of the promotional period.

*NOTE: 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.). (§1026.58(f))*

### Advertising (Open- and Closed-End)

- 8. For open- and closed-end loans, sample advertising copy, including any electronic advertising, since the previous examination and verify that the terms of credit are accurate, clear, balanced, and conspicuous. If triggering terms are used, determine that the required disclosures are made (§§1026.16 and 1026.24).
  - a. For advertisements for closed-end credit:

*NOTE: If such rate is variable, determine that the annual percentage rate complies with the accuracy standards in §§1026.5a(c)(2), 1026.5a(d)(3), 1026.5a(e)(4), or 1026.16(b)(1)(ii), as applicable. If such rate cannot be determined at the time disclosures are given because the rate depends at least in part on a later determination of the consumer's creditworthiness, determine that the advertisement discloses the specific rates or the range of rates that might apply. Further, if the*

*promotional rate or fee is stated in a written or electronic advertisement, determine that the information in §1026.16 (g)(4)(i), and, as applicable, (g)(4)(ii), or (g)(4)(iii) are also stated in a prominent location closely proximate to the first listing of the promotional rate.*

- g. If a deferred interest offer is advertised for an open-end account not subject to §1026.5b, determine that the deferred interest period is stated in a clear and conspicuous manner in the advertisement. If the phrase “no interest” or similar term regarding the possible avoidance of interest obligations under the deferred interest program is stated, determine that the term “if paid in full” is also stated in a clear and conspicuous manner preceding the disclosure of the deferred interest period in the advertisement. If the deferred interest offer is included in a written or electronic advertisement, determine that the deferred interest period and, if applicable, the term “if paid in full” are stated in immediate proximity to each statement of “no interest,” “no payments,” “deferred interest,” “same as cash,” or similar term regarding interest or payments during the deferred interest period. (§1026.16(h)(3))
- h. If any deferred interest offer is advertised for an open-end account not subject to §1026.5b, determine that the (h)(4)(i) and (h)(4)(ii) language (of §1026.16(h)(4) ) is stated in the advertisement and is similar to Sample G–24 in Appendix G. If the deferred interest offer is included in a written or electronic advertisement, determine that this information is stated in a prominent location closely proximate to the first statement of “no interest,” “no payments,” “deferred interest,” “same as cash,” or similar term regarding interest or payments during the deferred interest period. (§1026.16(h)(4))

*NOTE: The requirements in §1026.16(h)(4) apply to any advertisement of an open-end credit plan not subject to §1026.5b (requirements for home equity plans) §1026.16(h)(1). However, the requirements do not apply to an envelope or other enclosure in which an application or solicitation is mailed, or to a banner advertisement or pop-up advertisement linked to an application or solicitation provided electronically. (§1026.16(h)(5))*

### Transactional Testing

*NOTE: When verifying APR accuracies, use the OCC's APR calculation model or other calculation tool acceptable to your regulatory agency.*

9. Review the financial institution's closed-end and open-end transactions to ensure accuracy and completeness.

### Closed-End Credit Transactional Testing Procedures

- a. For each type of closed-end loan being tested, determine the accuracy of the disclosures by comparing the disclosures to the contract and other financial institution documents. (§1026.17)
- b. Determine whether the required disclosures were made before consummation of the transaction and ensure the presence and accuracy of the items below, as applicable. (§1026.18)
- i. Amount financed
  - ii. Itemization of the amount financed (RESPA GFE may substitute)
  - iii. Finance charge
  - iv. APR
  - v. Variable rate verbiage as follows for loans not secured by a principal dwelling or with terms of one year or less:
    - Circumstances which permit rate increase
    - Limitations on the increase (periodic or lifetime)
    - Effects of the increase
    - Hypothetical example of new payment terms
  - vi. Payment schedule including amount, timing and number of payments.
  - vii. Total of payments
  - viii. Total sales price (credit sale)
  - ix. Description of security interest
  - x. Credit life insurance premium included in the finance charge unless:
    - Insurance is not required; and
    - Premium for the initial term is disclosed; and
    - Consumer signs or initials an affirmative written request for the insurance
  - xi. Property insurance available from the creditor excluded from the finance charge if the premium for the initial term of the insurance is disclosed
  - xii. Required deposit
- c. Determine for adjustable rate mortgage loans with maturities of more than one year that the required early and subsequent disclosures are complete, accurate, and timely. Early disclosures required by §1026.19(a) are verified during the closed-end credit forms review. Subsequent disclosures should include the items below, as applicable. (§1026.20(c))
- i. Current and prior interest rates
  - ii. Index values used to determine current and prior interest rates
  - iii. Extent to which the creditor has foregone an increase in the interest rate
  - iv. Contractual effects of the adjustment (new payment and loan balance)
  - v. Payment required to avoid negative amortization.

*NOTE: The accuracy of the adjusted interest rates and indexes should be verified by comparing them with the contract and early disclosures. Refer to the Additional Variable Rate Testing section of these examination procedures.*

- d. Determine, for each type of closed-end rescindable loan being tested, the appropriate number of copies of the rescission notice are provided to each person whose ownership interest is or will be subject to the security interest. The rescission notice must disclose the items below. (§1026.23(b)(1))
  - i. Security interest taken in the consumer's principal dwelling
  - ii. 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. Effects of rescission
  - v. Date the rescission period expires.
- e. Ensure funding was delayed until the rescission period expired. (§1026.23(c))
- f. Determine if the institution has waived the three-day right to rescind since the previous examination. If applicable, test rescission waivers. (§1026.23(e))
- g. Determine whether the maximum interest rate in the contract is disclosed for any adjustable rate consumer credit contract secured by a dwelling. (§1026.30(a))
- h. For private student loans with a right to cancel, review cancellation requests to determine if they were properly handled. (§1026.47(c))

### ***Certain Home Mortgage Transactions Subject to Subpart E***

- a. Determine whether the financial institution originates consumer credit transactions subject to Subpart E of Regulation Z; specifically, certain closed-end home mortgages (high-cost mortgages (§1026.32), reverse mortgages (§1026.33), and “higher-priced mortgage loans” (§1026.35). (Examiners may use the attached worksheet as an aid for identifying and reviewing high-cost mortgages.)
- b. In addition to reviewing high-cost mortgages and reverse mortgages for compliance with requirements in other subparts of Regulation Z (for example, disclosure timing requirements under §1026.19(a)), review such mortgages to ensure the following:
  - i. Required disclosures are provided to consumers in addition to, not in lieu of, the disclosures contained in other subparts of Regulation Z. (§1026.31(a))
  - ii. Disclosures are clear and conspicuous, in writing, and in a form that the consumer may keep. (§1026.31(b))
  - iii. Disclosures are furnished at least three business days prior to consummation of a mortgage

- transaction covered by §1026.32 or a closed-end reverse mortgage transaction (or at least three business days prior to the first transaction under an open-end reverse mortgage). (§1026.31(c))
- iv. Disclosures reflect the terms of the legal obligation between the parties. (§1026.31(d))
- v. If the transaction involves more than one creditor, that only one creditor provided the disclosures. Where the obligation involves multiple consumers, ensure that the disclosures were provided to any consumer who is primarily liable on the obligation. Further, for rescindable transactions, verify that the disclosures were provided to each consumer who has the right to rescind. (§1026.31(e))
- vi. The APR is accurately calculated and disclosed in accordance with the requirements and within the tolerances allowed in §1026.22. (§1026.31(g))
- c. For high-cost mortgages (§1026.32), ensure that, in addition to other required disclosures, the creditor discloses the following at least three business days prior to consummation (See model disclosure at App. H-16):
  - i. Notice containing the prescribed language. (§1026.32(c)(1))
  - ii. The APR. (§1026.32(c)(2))
  - iii. Amount of regular loan payment and the amount of any balloon payment. The disclosed regular payment should be treated as accurate if it is based on an amount borrowed that is deemed accurate under § 1026.32(c)(5). (§1026.32(c)(3))
  - iv. For variable rate loans, a statement that the interest rate and monthly payment may increase, and the amount of the single maximum monthly payment allowed under the contract. (§1026.32(c)(4))
  - v. For a mortgage refinancing, the total amount the consumer will borrow (the face amount) and if this amount includes premiums or other charges for optional credit insurance or debt-cancellation coverage, that fact is stated. This disclosure should be treated as accurate if within \$100 of the actual amount borrowed. (§1026.32(c)(5))
  - vi. A new disclosure is required if, subsequent to providing the additional disclosure but prior to consummation, there are changes in any terms that make the disclosures inaccurate. For example, if a consumer purchases optional credit insurance and, as a result, the monthly payment differs from the payment previously disclosed, re-disclosure is required and a new three-day waiting period applies. (§1026.31(c)(1)(i))
  - vii. If a creditor provides new disclosures by telephone when the consumer initiates a change in

- terms, then at consummation (§1026.31(c)(1)(ii)) : The creditor must provide new written disclosures and both parties must sign a statement that these new disclosures were provided by telephone at least three days prior to consummation.
- viii. If a consumer waives the right to a three-day waiting period to meet a bona fide personal financial emergency, the consumer's waiver must be a dated written statement (not a pre-printed form) describing the emergency and bearing the signature of all entitled to the waiting period (a consumer can waive only after receiving the required disclosures and prior to consummation). (§1026.31(c)(1)(iii))
- d. High-cost mortgage transactions (§1026.32) do not provide for any of the following loan terms:
- i. Balloon payment (if term is less than 5 years, with exceptions). (§1026.32(d)(1)(i) and (ii))
  - ii. Negative amortization. (§1026.32(d)(2))
  - iii. Advance payments from the proceeds of more than 2 periodic payments. (§1026.32(d)(3))
  - iv. Increased interest rate after default. (§1026.32(d)(4)) A rebate of interest, arising from a loan acceleration due to default, calculated by a method less favorable than the actuarial method. (§1026.32(d)(5))
  - v. Prepayment penalty, unless:
    - it will not apply after the two-year period following consummation;
    - it will not apply if the source of prepayment funds is a refinancing by the creditor or an affiliate of the creditor;
    - the consumer's total monthly debt payments (including amounts owed under mortgage), at consummation, is 50 percent or less of the consumer's monthly gross income (as verified in accordance with section §1026.34(a)(4)(ii)); and,
    - The amount of the periodic payment of principal or interest or both may not change during the four-year period following consummation. (§§1026.32(d)(6) and §1026.32(d)(7))
  - vi. A due-on-demand clause permitting the creditor to terminate the loan in advance of maturity and accelerate the balance, with certain exceptions. (§1026.32(d)(8))
- e. The creditor is not engaged in the following acts and practices for high-cost mortgages:
- i. Home improvement contracts — paying a contractor under a home improvement contract from the proceeds of a mortgage unless certain conditions are met. (§1026.34(a)(1))
  - ii. Notice to assignee — selling or otherwise assigning a high-cost mortgage without furnishing the required statement to the purchaser or assignee. (§1026.34(a)(2))
  - iii. Refinancing within one year of extending credit—within one year of making a high-cost mortgage (§1026.32), a creditor may not refinance any high-cost mortgage to the same borrower into another high-cost mortgage that is not in the borrower's interest. This also applies to assignees that hold or service the high-cost mortgage. Commentary to 34(a)(3) has examples applying the refinancing prohibition and addressing "borrower's interest." (§1026.34(a)(3))
- f. For higher-priced mortgage loans (§1026.35), ensure that the loan terms do not provide for a prepayment penalty, unless:
- i. The penalty is otherwise permitted by law, including §1026.32(d)(6);
  - ii. The penalty will not apply after the two-year period following consummation;
  - iii. The penalty will not apply if the source of prepayment funds is a refinancing by the creditor or an affiliate of the creditor; and
  - iv. The amount of the periodic payment of principal or interest or both may not change during the four-year period following consummation. (§1026.35(b))
- g. For higher-priced mortgage loans secured by a first lien on a principal dwelling escrow accounts are established before consummation for property taxes and premiums for mortgage-related insurance required by the creditor.
- h. For both high-cost (§1026.32) and higher-priced mortgages (§1026.35), review for the following:
- i. Ensure the subject loans are not being extended based on the consumer's collateral without regard to repayment ability, including the consumer's current and expected income, current obligations, mortgage related obligations, assets other than collateral, and employment.
  - ii. Review underwriting standards.
  - iii. Ensure the creditor bases its determination of repayment ability on current or reasonably expected income from employment or other sources, on assets other than the collateral, or both.
  - iv. Determine that a creditor verifies 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.

- v. To establish whether a presumption of compliance applies, determine whether a creditor verifies the consumer's current obligations by:
  - Verifying repayment ability as described above;
  - Determining the consumer's repayment ability by using the largest payment of principal and interest in the first seven years following consummation, taking into account current and mortgage-related obligations; and
  - Assessing the consumer's repayment ability taking into account at least one of the following: the ratio of total debt obligations to income, or the income the consumer will have after paying debt obligations.
- vi. Evasion of requirements: Ensure that the creditor does not structure a high-cost or higher-priced mortgage loan as an open-end plan ("spurious open-end credit") to evade the requirements of Regulation Z. See staff commentary to 34(b) for factors to be considered. (§1026.35(b)(4))
- i. The following are prohibited acts or practices in connection with credit secured by a consumer's principal dwelling (§1026.36):
  - Loan Servicing Practices: For a consumer credit transaction secured by a consumer's principal dwelling, determine if loan servicer:
  - Failed to credit a conforming payment to the consumer's loan account as of the date of receipt, where the delay in crediting resulted in a charge to the consumer or in the reporting of negative information to a credit reporting agency (§1026.36(c)(1)(i));
  - Imposed on the consumer any late fee or delinquency charge in connection with a payment, when the only delinquency was attributable to late fees or delinquency charges assessed on an earlier payment, and the payment is otherwise a full payment for the applicable period and is paid on its due date or within any applicable grace period (§1026.36(c)(1)(ii)); or,
  - Failed to provide, within a reasonable time after receiving a request from the consumer or person acting on behalf of the consumer, an accurate statement of the total outstanding balance that would be required to satisfy the consumer's obligations in full as of a specific date. A reasonable time under most circumstances would be to provide the statement within 5 business days, unless refinance application volume is unusually high. (§1026.36(c)(1)(iii))

### **Prohibited Payments to Loan Originators**<sup>16</sup>

- a. Determine that, in connection with a consumer credit transaction secured by a dwelling,<sup>17</sup> no loan originator receives and no person pays to a loan originator, directly or indirectly, compensation<sup>18</sup> that is based on any of the transaction's terms or conditions. (§1026.36(d)(1)(i))

*NOTE: This prohibition does not apply if the loan originator receives compensation directly from a consumer in a consumer credit transaction secured by a dwelling. Additionally, the amount of credit extended is not deemed to be a transaction term or condition, provided compensation received by or paid to a loan originator, directly or indirectly, is based on a fixed percentage of the amount of credit extended. Such compensation may be subject to a minimum or maximum dollar amount.*

- b. If any loan originator receives compensation directly from a consumer in a consumer credit transaction secured by a dwelling, determine that (§1026.36(d)(2)):
  - i. No loan originator receives compensation, directly or indirectly, from any person other than the consumer in connection with the transaction (§1026.36(d)(2)(i)); and
  - ii. No person who knows or has reason to know of the consumer-paid compensation to the loan originator (other than the consumer) pays any compensation to a loan originator, directly or indirectly, in connection with the transaction. (§1026.36(d)(2)(ii))

### **Prohibition on Steering**

- a. Determine that, in connection with a consumer credit transaction secured by a dwelling, a loan originator does not direct or "steer" a consumer to consummate a transaction based on the fact that the origina-

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<sup>16</sup> 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, negotiates, or otherwise obtains an extension of consumer credit for another person. The term "loan originator" includes an employee of the creditor if the employee meets this definition. The term "loan originator" includes the creditor only if the creditor does not provide the funds for the transaction at consummation out of the creditor's own resources, including drawing on a *bona fide* warehouse line of credit, or out of deposits held by the creditor. A mortgage broker with respect to a particular transaction is any loan originator that is not an employee of the creditor. See 12 C.F.R. §1026.36 (a)(1)&(2)

<sup>17</sup> Sections 36(d) and (e) do not apply to a home-equity line of credit subject to §1026.5b or to a loan that is secured by a consumer's interest in a timeshare plan described in 11 U.S.C. 101(53D). (§1026.36(f))

<sup>18</sup> Compensation includes salaries, commissions, and any financial or similar incentive, such as an annual or periodic bonus. (comment §1026.36(d)(1)-1)

tor will receive greater compensation from the creditor in that transaction than in other transactions the originator offered or could have offered to the consumer, unless the consummated transaction is in the consumer's interest. (§1026.36(e)(1))

*NOTE: The rule provides a safe harbor to facilitate compliance with the prohibition on steering in §1026.36(e)(1). The loan originator is deemed to comply with the anti-steering prohibition if the consumer is presented with loan options that meet all of the following conditions for each type of transaction in which the consumer expressed an interest:*<sup>19</sup>

- i. The loan originator obtains loan options from a significant number of the creditors with which the originator regularly does business and, for each type of transaction in which the consumer expressed an interest, presents the consumer with loan options that include (§1026.36(e)(3)(i)):
  - The loan with the lowest interest rate;
  - 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
  - The loan with the lowest total dollar amount for origination points or fees and discount points.
- ii. The loan originator has a good faith belief that the options (presented to the consumer that are set forth, above) are loans for which the consumer likely qualifies. (§1026.36(e)(3)(ii))
- iii. For each type of transaction, if the originator presents to the consumer more than three loans, the originator highlights the loans that satisfy options listed under i above. (§1026.36(e)(3)(iii))

*NOTE: If the requirements set forth in §1026.36(e) are met, the loan originator can, without steering, present fewer than three loans. (§1026.36(e)(4))*

#### **Open-End Credit Transactional Testing Procedures**

- a. For each open-end credit product tested, determine the accuracy of the disclosures by comparing the disclosure with the contract and other financial institution documents. (§1026.5(c))
- b. Review the financial institution's policies, procedures, and practices to determine whether it provides appropriate disclosures for creditor-initiated direct mail applications and solicitations to open charge card accounts, telephone applications and solicitations to open charge card accounts, and applications and solicitations made available to the general public to open charge card accounts. (§1026.5a(b), (c), and (d))
- c. Determine for all home equity plans with a variable rate that the APR is based on an independent index. Further, ensure home equity plans are terminated or terms changed only if certain conditions exist. (§1026.5b(f))
- d. Determine that, if any consumer rejected a home equity plan because a disclosed term changed before the plan was opened, all fees were refunded. Verify that non-refundable fees were not imposed until three business days after the consumer received the required disclosures and brochure. (§1026.5b(g) and (h))
- e. Review consecutive periodic billing statements for each major type of open-end credit activity offered (overdraft and home-equity lines of credit, credit card programs, etc.). Determine whether disclosures were calculated accurately and are consistent with the initial disclosure statement furnished in connection with the accounts (or any subsequent change in terms notice) and the underlying contractual terms governing the plan(s).
- f. Determine whether the consumer was given notice of the right to reject the significant change, with the exception of:
  - i. An increase in the required minimum periodic payment,
  - ii. A change in the APR,
  - iii. A change in the balance computation method necessary to comply with §1026.54, which sets forth certain limitations on the imposition of finance charges as a result of a loss of a grace period, or
  - iv. When the change results from the creditor not receiving the required minimum periodic payment within 60 days after the due date for that payment. (§1026.9(c)(2)(iv)(B))
- g. Determine that the creditor did not increase the rate applicable to the consumer's account to the penalty rate if the outstanding balance did not exceed the credit limit on the date set forth in the notice. (§1026.9(g)(4))

<sup>19</sup> The term "type of transaction" refers to whether: (i) A loan has an APR that cannot increase after consummation; (ii) A loan has an APR that may increase after consummation; or (iii) A loan is a reverse mortgage. (§1026.36(e)(2))

- h. Determine, for each type of open-end rescindable loan being tested, the appropriate number of copies of the rescission notice are provided to each person whose ownership interest is or will be subject to the security interest and perform the procedures 12, 13, and 14 under Closed-End Credit section. (§1026.15(b), (c) and (e))
- i. Additional variable rate testing: Verify that when accounts were opened or loans were consummated that loan contract terms were recorded correctly in the financial institution's calculation systems (e.g., its computer). Determine the accuracy of the following recorded information:
  - i. Index value,
  - ii. Margin and method of calculating rate changes,
  - iii. Rounding method, and
  - iv. Adjustment caps (periodic and lifetime).
- j. Using a sample of periodic disclosures for open-end variable rate accounts (e.g., home equity accounts) and closed-end rate change notices for adjustable rate mortgage loans:
  - i. Compare the rate-change date and rate on the credit obligation to the actual rate-change date and rate imposed.
  - ii. Determine that the index disclosed and imposed is based on the terms of the contract (example: the weekly average of one-year Treasury constant maturities, taken as of 45 days before the change date). (§§1026.7(g) and 1026.20(c)(2))
  - iii. Determine that the new interest rate is correctly disclosed by adding the correct index value with the margin stated in the note, plus or minus any contractual fractional adjustment. (§§1026.7(g) and 1026.20 (c)(1))
  - iv. Determine that the new payment disclosed (§1026.20(c)(4)) was based on an interest rate and loan balance in effect at least 25 days before the payment change date (consistent with the contract). (§1026.20(c))
- d. If the creditor promotes a method for making payments, determine that the creditor considers such payments conforming payments in accordance with §1026.10(b) and that they are credited to the consumer's account as of the date of receipt, except when a delay in crediting does not result in a finance charge or other charge. (§1026.10(b)(4)(ii))
- e. If the creditor sets a cut-off time for payments to be received by mail, by electronic means, by telephone, or in person, verify that the cut-off time is 5 p.m. or later on the payment due date at the location specified by the creditor for the receipt of such payments. (§1026.10(b)(2)(ii))
- f. For in-person payments on a credit card account under an open-end (not home-secured) consumer credit plan at a financial institution branch or office that accepts such payments, a card issuer shall not impose a cut-off time earlier than the close of business for any such payments made in person at any branch or office of the card issuer at which such payments are accepted. However, a card issuer may impose a cut-off time earlier than 5 p.m. for such payments, if the close of business of the branch or office is earlier than 5 p.m. (§1026.10(b)(3)(i))
- g. If a creditor fails to credit a payment as required and imposes a finance or other charge, ensure that the creditor credits the charge(s) to the consumer's account during the next billing cycle. (§1026.10(c))
- h. If (due to a weekend or holiday, for example) a creditor does not receive or accept payments by mail on the due date for payments, determine that the creditor treats as timely a payment received on the next business day. (§1026.10(d)(1))

*NOTE: If a creditor accepts or receives payments made on the due date by a method other than mail, such as electronic or telephone payments, the creditor is not required to treat a payment made by that method on the next business day as timely.*

### **Crediting a Consumer's Account §1026.10**

- a/ Ensure that the creditor credits payment to a consumer's account as of the date of receipt, except when a delay in crediting does not result in a finance charge or other charge. (§1026.10(a))
  - b. If a creditor specifies requirements for payments, determine that they are reasonable and allow most consumers to make conforming payments. (§1026.10(b))
  - c. Except as provided by §1026.10(b)(4)(ii), if a creditor specifies, on or with the periodic statement, requirements for the consumer to follow in making payments as permitted under §1026.10, but accepts a payment that does not conform to the requirements, determine that the payment is credited within five days of receipt. (§1026.10(b)(4)(i))
  - i. For credit card accounts under an open-end (not home-secured) consumer credit plan, determine that the creditor does not impose a separate fee to allow consumers to make a payment by any method, such as mail, electronic, or telephone payments, unless such payment method involves an expedited service by a customer service representative of the creditor. (§1026.10(e))
- NOTE: For purposes of §1026.10(e), the term "creditor" includes a third party that collects, receives, or processes payments on behalf of a creditor.*
- j. If a card issuer makes a material change in the address for receiving payments or procedures for han-

ding payments, and such change causes a material delay in the crediting of a payment to a consumer's account during the 60-day period following the date on which such change took effect, ensure that the card issuer does not impose any late fee or finance charge for a late payment on the credit card account during the 60-day period following the date on which the change took effect. (§1026.10(f))

#### **Treatment of Credit Balances, Account Termination** **§1026.11**

- a. Determine institution's treatment of credit balances. Specifically, if the account's credit balance is in excess of \$1, the institution must take the actions listed below. (§1026.11)
  - i. Credit the amount to the consumer's account; and
  - ii. Either:
    - Refund any part of the remaining credit balance within seven business days from receiving a written request from the consumer; or
    - If no written request is received and the credit remains for more than six months, make a good faith effort to refund the amount of the credit to the consumer by cash, check, money order, or credit to a deposit account of the consumer. No further action is required if the consumer's current location is not known to the creditor and cannot be traced through the consumer's last known address or telephone number.
- b. Determine that institution has not terminated an account prior to its expiration date solely because the consumer did not incur a finance charge. However, a creditor is not prohibited from closing an account that, for three consecutive months, no credit has been extended (such as by purchase, cash advance, or balance transfer) and the account has had no outstanding balance. (§1026.11(b))
- c. Determine that, for credit card accounts under an open-end (not home-secured) consumer credit plan, the card issuer has adopted reasonable written policies and procedures designed to ensure that an administrator of an estate of a deceased account holder can determine the amount of and pay any balance on the account in a timely manner. (§1026.11(c)(1)(i))

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

- d. Ensure that, upon request by the administrator of an estate, the card issuer provides the administrator with

the amount of the balance on a deceased consumer's account in a timely manner. (§1026.11(c)(2)(i))

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

- e. Verify that, after receiving a request from the administrator of an estate for the amount of the balance on a deceased consumer's account, the card issuer does not impose any fees on the account (such as a late fee, annual fee, or over the-limit fee) or increase any annual percentage rate, except as provided by §1026.55(b)(2) (i.e., due to the operation of an index). (§1026.11(c)(3)(i))
- f. Determine that, if payment in full of the disclosed balance, pursuant to paragraph 1026.11(c)(2), is received within 30 days after disclosure, the card issuer waives or rebates any additional finance charge due to a periodic interest rate. (§1026.11(c)(3)(ii))

#### **Special Credit Card Provisions and Billing Error Resolution** **§§1026.12 and 13**

- a. *Repayment disclosures.* Review a sample of billing error resolution files and a sample of consumers who have asserted a claim or defense against the financial institution for a credit card dispute regarding property or services. Verify the following (§§1026.12 and 1026.13):
  - i. Credit cards are issued only upon request;
  - ii. Liability for unauthorized credit card use is limited to \$50;
  - iii. Disputed amounts are not reported delinquent unless remaining unpaid after the dispute has been settled;
  - iv. Offsetting credit card indebtedness is prohibited; and
  - v. Errors are resolved within two complete billing cycles.

#### **Ability to Make the Required Minimum Payments §1026.51**

- a. Determine that the card issuer does not open a credit card account for a consumer under an open-end (not home-secured) consumer credit plan, or increase any credit limit applicable to such account, unless the card issuer considers the independent ability of the consumer to make the required minimum periodic payments under the terms of the account based on the consumer's income or assets and current obligations. (§1026.51(a)(1)(i))
- b. Verify that the card issuer establishes and maintains reasonable written policies and procedures to consider a consumer's income or assets and current obligations. Reasonable policies and procedures to consider a consumer's ability to make the required payments

include a consideration of at least one of the following:

- i. The ratio of debt obligations to income;
  - ii. The ratio of debt obligations to assets; or
  - iii. The income the consumer will have after paying debt obligations.
- c. Confirm that the card issuer does not issue a credit card to a consumer who does not have any income or assets, and that the credit does not issue a credit card without reviewing any information about a consumer's income, assets, or current obligations. (§1026.51(a)(1)(ii))

*NOTE: A card issuer may consider the consumer's income or assets based on information provided by the consumer, in connection with the credit card account or any other financial relationship the card issuer or its affiliates has with the consumer, subject to any applicable information-sharing rules, and information obtained through third parties, subject to any applicable information-sharing rules. A card issuer may also consider information obtained through any empirically derived, demonstrably and statistically sound model that reasonably estimates a consumer's income or assets. (See Regulation Z Commentary: §1026.51(a)(1-4).*

- d. Determine that the card issuer uses a reasonable method for estimating the minimum periodic payments the consumer would be required to pay under the terms of the account. (§1026.51(a)(2)(i))
- e. A card issuer's estimate of the minimum periodic payment is compliant (i.e., receives the benefit of a safe harbor) if it uses the following method (§1026.51(a)(2)(ii)):
- i. 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
  - ii. 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:
    - 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
    - If the applicable minimum payment formula includes mandatory fees, the card issuer

must assume that such fees have been charged to the account.

- f. Rules affecting young consumers: If the card issuer opens a credit card account under an open-end (not home-secured) consumer credit plan for a consumer less than 21 years old, verify that the issuer requires that such consumers:
- i. Submit a written application; and
  - ii. Possess an independent ability to make the required minimum periodic payments on the proposed extension of credit in connection with the account under §1026.51(b)(1)(i) or provide a signed agreement of a cosigner, guarantor, or joint applicant who is at least 21 years old who has the ability to make the required minimum periodic payments on such debts, and be either jointly or secondarily liable for any debt on the account incurred by the consumer before the consumer has attained the age of 21 pursuant to §1026.51(b)(1)(ii)(A) and (B).
- g. If a credit card account has been opened for a consumer less than 21 years old with a cosigner, guarantor, or joint applicant pursuant to §1026.51(b)(1)(ii), determine that the issuer does not increase the credit limit on such account before the consumer attains the age of 21 unless the cosigner, guarantor, or joint account holder who assumed liability at account opening agrees in writing to assume liability on the increase. (§1026.51(b)(2))

### **Limitations on Fees §1026.52**

- a. Prior to account opening and during the first year after the opening of a credit card account under an open-end (not home-secured) consumer credit plan, determine whether the card issuer required the consumer to pay covered fees in excess of the 25 percent of the credit limit prior to account opening and during the first year after account opening. (§1026.52(a))

*NOTE: An account is considered opened no earlier than the date on which the account may first be used by the consumer to engage in transactions.*

Covered fees include fees:

- i. For the issuance or availability of credit, including any fees based on account activity or inactivity;
- ii. For insurance, debt cancellation or debt suspension coverage, if the insurance or debt cancellation or suspension coverage is required by the terms of the account;
- iii. The consumer is required to pay to engage in transactions using the account, such as:
  - Cash advance fees;

- Balance transfer fees;
  - Foreign transaction fees; and
  - Fees for using the account for purchases.
- iv. Fees the consumer is required to pay for violating the terms of the account, except to the extent they are specifically excluded (see below);
- v. Fixed finance charges; and
- vi. Minimum charges imposed if a charge would otherwise have been determined by applying a periodic interest rate to a balance except for the fact that such charge is smaller than the minimum.

*NOTE: §1026.52(a) does not authorize the imposition or payment of fees or charges otherwise prohibited by law.*

- b. Fees not covered by this limitation include:
- 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, such as:
    - An expedited payment fee;
    - Fees for optional services like travel insurance;
    - Fees for reissuing a lost or stolen card; or
    - Statement reproduction fees.
- c. Review penetration rates of various optional services to determine if they are truly optional and therefore not covered by the 25 percent limitation.
- d. Ensure that the card issuer does not impose a fee for violating the terms or other requirements of a credit card account under an open-end (not home-secured) consumer credit plan unless the dollar amount of the fee is consistent with §§1026.52(b)(1) and (b)(2). (§1026.52(b))
- e. Determine that a card issuer imposes a fee for violating the terms or other requirements of a credit card account under an open-end (not home-secured) consumer credit plan only if the dollar amount of the fee is consistent with either §1026.52(b)(1)(i) or §1026.52(b)(1)(ii). (§1026.52(b)(1))
- f. *Cost determination.* A card issuer may impose a fee for a particular violation (e.g., late payment) if the card issuer has determined that the fee represents a reasonable proportion of the total costs incurred by the issuer as a result of that type of violation. If a card issuer is relying on a cost determination instead of the safe harbors (see below), review (§1026.52(b)(1)(i)):
- i. The number of violations of a particular type experienced by the card issuer during a prior period of reasonable length (e.g., a 12-month period).

- ii. The costs incurred by the card issuer during that period as a result of those violations. Losses and associated costs (including the cost of holding reserves against potential losses and the cost of funding delinquent accounts) must be excluded from this analysis.
- iii. If used by the card issuer when making its determination:
  - The number of fees imposed by the card issuer as a result of the type of violation during the period that the issuer reasonably estimates it will be unable to collect.
  - Reasonable estimates for an upcoming period of changes in the number of violations of the relevant type, the resulting costs, and the number of fees that the card issuer will be unable to collect.
- iv. If applicable, whether the items in paragraph 1-3 have been reevaluated by the card issuer at least once during the prior 12 months. If as a result of the reevaluation the card issuer determines that a lower fee represents a reasonable proportion of the total costs incurred by the card issuer as a result of that type of violation, determine that the card issuer begins imposing the lower fee within 45 days after completing the reevaluation.

*NOTE: If as a result of the reevaluation the card issuer determines that a higher fee represents a reasonable proportion of the total costs incurred by the card issuer as a result of that type of violation, the card issuer may begin imposing the higher fee after complying with the notice requirements in §1026.9. (§1026.52(b)(1)(i))*

- g. *Safe harbors.* A card issuer may impose a fee for violating the terms or other requirements of the account if the dollar amount of the fee does not exceed, as applicable (§1026.52(b)(1)(ii) (A) - (C)):
- i. \$25.00;
  - ii. \$35.00 if the card issuer previously imposed a fee pursuant to §1026.52(b)(1)(ii)(A) for a violation of the same type that occurred during the same billing cycle or one of the next six billing cycles; or
  - iii. Three percent of the delinquent balance on a charge card account that requires payment of outstanding balances in full at the end of each billing cycle if the card issuer has not received the required payment for two or more consecutive billing cycles.

*NOTE: The dollar amounts in paragraphs 1 and 2 above will be adjusted annually by the CFPB to the*

*extent that changes in the Consumer Price Index warrant an increase or decrease of a whole dollar.*

- h. Determine that the card issuer does not impose a fee for violating the terms or other requirements of a credit card account under an open-end (not home-secured) consumer credit plan that exceeds the dollar amount associated with the violation. (§1026.52(b)(2)(i)(A))
- i. Determine that a card issuer does not impose a fee for violating the terms or other requirements of a credit card account under an open end (not home-secured) consumer credit plan when there is no dollar amount associated with the violation. For purposes of §1026.52(b)(2)(i), there is no dollar amount associated with the following violations (§1026.52(b)(2)(i)(B)):
  - Transactions that the card issuer declines to authorize;
  - Account inactivity; and
  - The closure or termination of an account.
- j. Determine that the card issuer does not impose more than one fee for violating the terms or other requirements of a credit card account under an open-end (not home-secured) consumer credit plan based on a single event or transaction. (§1026.52(b)(2)(ii))

### **Allocation of Payments §1026.53**

- a. Determine whether, when a consumer makes a payment in excess of the required minimum periodic payment, the card issuer allocates the excess amount:
  - i. First to the balance with the highest APR, and
  - ii. Any remaining portion to the other balances in descending order based on the applicable APR.
- b. For balances on a credit card account subject to a deferred interest or similar program, determine whether the card issuer allocated any amount paid by the consumer in excess of the required minimum periodic payment:
  - i. Consistent with the general requirement discussed in (a) above, except that, during the two billing cycles immediately preceding expiration of the deferred interest period, the excess amount must have been allocated first to the balance subject to the deferred interest or similar program and any remaining portion allocated to any other balances consistent with §1026.53(a) (§1026.53(b)(1)(i)); or
  - ii. In the manner requested by the consumer (§1026.53(b)(1)(ii)).
- c. When a balance on a credit card account is secured, the card issuer may at its option allocate any amount paid by the consumer in excess of the required minimum periodic payment to that balance if requested by the consumer. (§1026.53(b)(2))

### **Loss of a Grace Period §1026.54**

- a. Determine whether the card issuer imposed finance charges as a result of the loss of a grace period on a credit card account under an open-end (not home-secured) consumer credit plan based on:
  - i. Balances for days in billing cycles that precede the most recent billing cycle, a prohibited practice; or
  - ii. Any portion of a balance subject to a grace period that was repaid prior to the expiration of the grace period. (§1026.54).
- b. With respect to the prohibition in a.2 above, issuers are not required to follow any specific methodology, but an issuer is in compliance if it applies the consumer's payment to the balance subject to the grace period and calculates interest charges on the amount of the balance that remains unpaid.

Exceptions: This rule does not apply to adjustments to the finance charge as a result of:

  - i. The resolution of a dispute under §1026.12, unauthorized use, or §1026.13, billing error; or
  - ii. The return of a payment.

### **Limitations on Increasing Annual Percentage Rates, Fees, and Charges §1026.55**

- a. With respect to a credit card account under an open-end (not home-secured) consumer credit plan, determine that the card issuer did not increase an APR or fee or charge required to be disclosed under §1026.6(b)(2)(ii) (fee for issuance or availability (e.g., an annual fee)), (b)(2)(iii) (fixed finance charge or minimum interest charge), or (b)(2)(xii) (fee for required insurance, debt cancellation, or debt suspension coverage), unless as permitted by one of the six exceptions:
  - i. Temporary rate, fee, or charge exception;
  - ii. Variable rate exception;
  - iii. Advance notice exception;
  - iv. Delinquency exception;
  - v. Workout and temporary hardship arrangement; and
  - vi. Servicemembers Civil Relief Act exception (§1026.55(a)-(b)).
- b. To assess whether the temporary rate, fee, or charge exception applies (§1026.55(b)(1)), determine whether:
  - i. The card issuer increased the APR, fee, or charge upon the expiration of a specified period of six months or longer; and
  - ii. Prior to the commencement of that period, the card issuer disclosed in writing to the consumer, in a clear and conspicuous manner, the length of

- the period and the APR, fee, or charge that would apply after expiration of the period.
- c. If the temporary rate exception applies, determine that the card issuer:
    - i. Did not apply an APR, fee, or charge to transactions that occurred prior to the period that exceeds the APR, fee, or charge that applied to those transactions prior to the period;
    - ii. Provided the required notice, but did not apply an APR, fee, or charge (to transactions that occurred within 14 days after provision of the notice) that exceeds the APR, fee, or charge that applied to that category of transactions prior to provision of the notice; and
    - iii. Did not apply an annual percentage rate to transactions that occurred during the period that exceeds the increased APR, fee, or charge.
  - d. If the variable rate exception applies (§1026.55(b)(2)), determine that the card issuer did not increase an APR unless:
    - i. The increase in the APR is due to an increase in the index; and
    - ii. The annual percentage rate varies according to an index that is not under the card issuer's control and is available to the general public. Note: For purposes of qualifying under this exception, an index is considered under the card issuer's control if the card issuer applies a minimum rate or floor below which the rate cannot decrease. However, because there is no disadvantage to consumers, issuers are not prevented from setting a maximum rate or ceiling.
  - e. If the advance notice exception applies (§1026.55(b)(3)), determine that the card issuer:
    - i. Did not apply that increased APR, fee, or charge to transactions that occurred prior to provision of the notice;
    - ii. Did not apply the increased APR, fee, or charge to transactions that occurred prior to or within 14 days after provision of the notice; and
    - iii. Did not increase the APR, fee, or charge during the first year after the account is opened.
  - f. If the delinquency exception applies (§1026.55(b)(4)), determine that the card issuer:
    - i. Disclosed in a clear and conspicuous manner in the required notice a statement of the reason for the increase, and
    - ii. Will cease the increase if the card issuer receives six consecutive required minimum periodic payments on or before the payment due date, beginning with the first payment due following the effective date of the increase.
  - g. If the delinquency exception applies and the card issuer received six consecutive required minimum periodic payments on or before the payment due date beginning with the first payment due following the effective date of the increase, determine that the card issuer reduces any APR, fee, or charge (increased pursuant to the delinquency exception) to the original APR, fee, or charge that applied prior to the increase with respect to transactions that occurred prior to or within 14 days after provision of the required notice.
  - h. If the workout and temporary hardship arrangement exception applies (§1026.55(b)(5)), determine that:
    - i. Prior to commencement of the arrangement (except as provided in §1026.9(c)(2)(v)(D)) the card issuer provided the consumer with a clear and conspicuous written disclosure of the terms of the arrangement (including any increases due to the completion or failure of the arrangement); and
    - ii. Upon the completion or failure of the arrangement, the card issuer did not apply to any transactions that occurred prior to commencement of the arrangement an APR, fee, or charge that exceeds the APR, fee, or charge that applied to those transactions prior to commencement of the arrangement.
  - i. If the Servicemembers Civil Relief Act exception applies (§1026.55(b)(6)), determine that the card issuer increased the APR, fee, or charge only after 50 U.S.C. app. 527 or a similar Federal or State statute or regulation no longer applied. Further, determine that the issuer did not apply to any transactions that occurred prior to the decrease an APR, fee, or charge that exceeded the APR, fee, or charge that applied to those transactions prior to the decrease.
  - j. For protected balances (§1026.55(c)), determine that the card issuer did not require repayment using a method that is less beneficial to the consumer than one of the following methods:
    - 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.
  - k. If a card issuer promotes the waiver or rebate of finance charges due to a periodic interest rate or fees or charges covered by §1026.55 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 §1026.55.

### **Requirements for Over-the-Limit Transactions §1026.56**

- a. Determine that, if two or more consumers are jointly liable on a credit card account under an open-end (not home-secured) consumer credit plan, the card issuer treats the affirmative consent of any of the joint consumers as affirmative consent for that account. Similarly, determine that the card issuer treats a revocation of consent by any of the joint consumers as revocation of consent for that account. (§1026.56(f))
- b. Notwithstanding a consumer's affirmative consent to a card issuer's payment of over-the-limit transactions, determine that the card issuer does not (§1026.56(j)):
  - i. Impose more than one over-the-limit fee or charge on a consumer's credit card account per billing cycle, and, in any event, only if the credit limit was exceeded during the billing cycle. In addition, the card issuer may not impose an over-the-limit fee or charge on the consumer's credit card account for more than three billing cycles for the same over-the-limit transaction where the consumer has not reduced the account balance below the credit limit by the payment due date for either of the last two billing cycles.
  - ii. 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.
  - iii. 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
  - iv. Impose an over-the-limit fee or charge for a billing cycle if a consumer exceeds a credit limit solely because of fees or interest charged by the card issuer (defined as charges imposed as part of the plan under §1026.6(b)(3)) to the consumer's account during that billing cycle.

### **Reevaluation of Rate Increases §1026.59**

- a. If a card issuer increases an APR that applies to a credit card account under an open-end (not home-secured) consumer credit plan, based on the credit risk of the consumer, market conditions, or other factors, or increased such a rate on or after January 1, 2009, and 45 days' advance notice of the rate increase is required pursuant to §1026.9(c)(2) or (g), determine that the card issuer (§1026.59(a)(1)):
  - i. Evaluates the factors described in §1026.59(d); and
  - ii. Based on its review of such factors, reduces the APR applicable to the consumer's account, as appropriate.

- b. If a card issuer is required to reduce the rate applicable to an account pursuant to §1026.59(a)(1), determine that the card issuer reduces the rate not later than 45 days after completion of the evaluation described in §1026.59(a)(1). (§1026.59(a)(2)(i))

Note that any reduction in an APR required pursuant to §1026.59(a)(1) of this section shall apply to (§1026.59(a)(2)(ii)):

- i. Any outstanding balances to which the increased rate described in §1026.59(a)(1) has been applied; and
  - ii. New transactions that occur after the effective date of the rate reduction that would otherwise have been subject to the increased rate.
- c. Determine that the card issuer has reasonable written policies and procedures in place to conduct the review described in §1026.59(a). (§1026.59(b))
  - d. Determine that a card issuer that is subject to §1026.59(a) conducts the review described in §1026.59(a)(1) not less frequently than once every six months after the rate increase. (§1026.59(c))
  - e. Except as provided in §1026.59(d)(2), determine that the card issuer reviews either (§1026.59(d)(1)):
    - i. The factors on which the increase in an APR was originally based; or
    - ii. The factors that the card issuer currently considers when determining the APRs applicable to similar new credit card accounts under an open-end (not home-secured) consumer credit plan.
  - f. For rate increases imposed between January 1, 2009 and February 21, 2010, determine that an issuer considers the factors described in §1026.59(d)(1)(ii) when conducting the first two reviews required under §1026.59(a), unless the rate increase subject to §1026.59(a) was based solely upon factors specific to the consumer, such as a decline in the consumer's credit risk, the consumer's delinquency or default, or a violation of the terms of the account. (§1026.59(d)(2))
  - g. If an issuer increases a rate applicable to a consumer's account pursuant to §1026.55(b)(4) based on the card issuer not receiving the consumer's required minimum periodic payment within 60 days after the due date, note that the issuer is not required to perform the review described in §1026.59(a) prior to the sixth payment due date after the effective date of the increase. However, if the APR applicable to the consumer's account is not reduced pursuant to §1026.55(b)(4)(ii), determine that the card issuer performs the review described in §1026.59(a). Determine that the first such review occurs no later than six months after the sixth payment due following the effective date of the rate increase. (§1026.59(e))

- h. The obligation to review factors described in §§1026.59(a) and (d) ceases to apply (§1026.59(f)):
  - i. If the issuer reduces the APR applicable to a credit card account under an open-end (not home-secured) consumer credit plan to the rate applicable immediately prior to the increase, or, if the rate applicable immediately prior to the increase was a variable rate, to a variable rate determined by the same formula (index and margin) that was used to calculate the rate applicable immediately prior to the increase; or
  - ii. If the issuer reduces the APR to a rate that is lower than the rate described in §1026.59(f)(1) of this section.
- i. Except as provided in §1026.59(g)(2), §1026.59 applies to credit card accounts that have been acquired by the card issuer from another card issuer. (§1026.59(g))
- j. Determine that a card issuer that complies with this section by reviewing the factors described in §1026.59(d)(1)(i) reviews the factors considered by the card issuer from which it acquired the accounts in connection with the rate increase. (§1026.59(g)(1))
- k. If, not later than six months after the acquisition of such accounts, a card issuer reviews all of the credit card accounts it acquires in accordance with the factors that it currently considers in determining the rates applicable to its similar new credit card accounts (§1026.59(g)(2)):
  - i. Except as provided in §1026.59(g)(2)(iii), determine that the card issuer conducts reviews described in §1026.59(a) of this section for rate increases that are imposed as a result of its review under this paragraph.
  - ii. Except as provided in §1026.59(g)(2)(iii), note that the card issuer is not required to conduct reviews in accordance with §1026.59(a) of this section for any rate increases made prior to the card issuer's acquisition of such accounts.
  - iii. Note that if as a result of the card issuer's review, an account is subject to, or continues to be subject to, an increased rate as a penalty, or due to the consumer's delinquency or default, the requirements of §1026.59(a) of this section apply.

*Servicemembers Civil Relief Act exception:* Note that the requirements of §1026.59 do not apply to increases in an APR that was previously decreased pursuant to the Servicemembers Civil Relief Act (50 U.S.C. app. 527), provided that such a rate increase is made in accordance with §1026.55(b)(6). (§1026.59(h)(1))

*Charged off accounts exception:* Note that the requirements of §1026.59 do not apply to accounts that the

card issuer has charged off in accordance with loan-loss provisions. (§1026.59(h)(2))

*NOTE: Appendix G to part 1026 is amended by revising Forms G-10(B), G-10(C), G-10(E), G-17(B), G-17(C), G-18(B), G-18(D), G-18(F), G-18(G), G-20, G-21, G-22, G-25(A), and G-25(B).*

#### Administrative Enforcement

- 10. If there is noncompliance involving understated finance charges or understated APRs subject to reimbursement under the FFIEC Policy Guide on Reimbursement (policy guide):
  - a. Document the date on which the administrative enforcement of the TILA policy statement would apply for reimbursement purposes by determining the date of the preceding examination.
  - b. If the noncompliance involves indirect (third-party paper) disclosure errors and affected consumers have not been reimbursed.
  - c. Prepare comments, discussing the need for improved internal controls to be included in the report of examination.
  - d. Notify your supervisory office for follow up with the regulator that has primary responsibility for the original creditor.
  - e. If the noncompliance involves direct credit:
    - i. Make an initial determination whether the violation is a pattern or practice.
    - ii. Calculate the reimbursement for the loans or accounts in an expanded sample of the identified population.
    - iii. Estimate the total impact on the population based on the expanded sample.
    - iv. Inform management that reimbursement may be necessary under the law and the policy guide, and discuss all substantive facts including the sample loans and calculations.
    - v. Inform management of the financial institution's options under section 130 of the TILA for avoiding civil liability and of its option under the policy guide and section 108 (e)(6) of the TILA for avoiding a regulatory agency's order to reimburse affected borrowers.

#### References

- 12 C.F.R. § 1026: Truth in Lending—Regulation Z (CFPB's regulation and official staff interpretation (commentary))*
- Joint Statement of Policy: Administrative Enforcement of the Truth in Lending Act—Restitution*
- 12 U.S.C. § 1461 Dodd-Frank Wall Street Reform and Consumer Protection Act amendments to Truth in Lending Act*
- 15 U.S.C. § 1601 et seq., Truth in Lending Act*
- 15 U.S.C. § 1666 et seq., Fair Credit Billing Act*

## **V. Lending — TILA**

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*15 U.S.C. § 7001 et seq., Electronic Signatures in Global and*

*National Commerce Act*

HIGH-COST MORTGAGE (§1026.32) WORKSHEET		
Borrower's Name	Loan Number:	
COVERAGE		
	Yes	No
Is the loan secured by the consumer's principal dwelling? [§1026.2(a)(19), §1026.32(a)(1)]		
If the answer is No, STOP HERE		
Is the loan for the following purpose?		
1. Residential Mortgage Transaction – [§1026.2(a)(24)]		
2. Reverse Mortgage Transaction – [§1026.33]		
3. Open-End Credit Plan – Subpart B [note prohibition against structuring loans as open-end plans to evade §1026.32 – [§1026.34(b)]]		
If the answer is Yes to Box 1, 2, or 3, STOP HERE. If No, continue to Test 1.		

**V. Lending — TILA**

<b>TEST 1 – CALCULATION OF APR</b>		
A. Disclosed APR		
<p>Treasury Security Yield of Comparable Maturity</p> <p>Obtain the Treasury Constant Maturities Yield from the FRB’s Statistical Release, H-15 – Selected Interest Rates (the “Business” links will display daily yields). Use the yield that has the most comparable maturity to the loan term and is from the 15th day of the month that immediately precedes the month of the application. If the 15th is not a business day, use the yield for the business day immediately preceding the 15th. If the loan term is exactly halfway between two published security maturities, use the lower of the two yields.) Note: Creditors may use the FRB’s Selected Interest Rates or the actual auction results. See Staff Commentary to Regulation Z for further details. [§ 1026.32(a)(1)(i)]</p> <p><a href="http://www.federalreserve.gov/releases/H15/data.htm">http://www.federalreserve.gov/releases/H15/data.htm</a></p>		
<p>Treasury Security Yield of Comparable Maturity (Box B)</p> <p><u>Plus:</u> 8 percentage points for first-lien loan; or 10 percentage points for subordinate-lien loan</p>		
	<b>Yes</b>	<b>No</b>
D. Is Box A greater than Box C?		
<b>If Yes, the transaction is a High-Cost Mortgage. If No, continue to Test 2, Points and Fees.</b>		

HIGH-COST MORTGAGE (§1026.32) WORKSHEET		
TEST 2 – CALCULATION OF POINTS AND FEES		
<b>STEP 1: Identify all Charges Paid by the Consumer at or before Loan Closing</b>		
<b>A. Finance Charges – §1026.4(a) and (b)</b> (Interest, including per-diem interest, and time price differential are excluded from these amounts.)		
	<b>Fee</b>	<b>Subtotals</b>
Loan Points		
Mortgage Broker Fee		
Loan Service Fees		
Required Closing Agent/3 <sup>rd</sup> Party Fees		
Required Credit Insurance		
Private Mortgage Insurance		
Life of Loan Charges (flood, taxes, etc.)		
Any Other Fees Considered Finance Charges		
<b>Subtotal</b>		
<b>B. Certain Non-Finance Charges Under §1026.4(c)(7)</b> – Include fees paid by consumers <u>only</u> if the amount of the fee is unreasonable or if the creditor receives direct or indirect compensation from the charge or the charge is paid to an affiliate of the bank. (See the example in §1026.32(b)(1)(ii) of the commentary for further explanation.)		
Title Examination		
Title Insurance		
Property Survey		
Document Preparation Charge		
Credit Report		
Appraisal		
Fee for “Initial” Flood Hazard Determination		
Pest Inspection		
Any Other Fees Not Considered Finance Charges		
<b>Subtotal</b>		
<b>C. Premiums or Other Charges for Optional Credit Life, Accident, Health, or Loss-of-Income Insurance, or Debt-Cancellation Coverage</b>		
<b>D. Total Points &amp; Fees: Add Subtotals for A, B, C</b>		

**V. Lending — TILA**

HIGH-COST MORTGAGE (§1026.32) WORKSHEET	
TEST 2 – CALCULATION OF POINTS AND FEES (continued)	
<b>STEP 2: Determine the Total Loan Amount for Cost Calculation</b> [§1026.32(a)(1)(ii)]	
<b>Determine the Amount Financed</b> [§1026.18(b)] <u>Principal Loan Amount</u>	
<u>Plus:</u> Other Amounts Financed by the Lender (not already included in the principal and not part of the finance charge)	
<u>Less:</u> Prepaid Finance Charges [§1026.2(a)(23)]	
<u>Equals:</u> Amount Financed	
<b>B. Deduct costs included in the points and fees under §1026.32(b)(1)(iii) and (iv) (Step 1, Box B and Box C) that are financed by the creditor</b>	
<b>C. Total Loan Amount (Step 2, Box A minus Box B)</b>	

## Questions and Answers Regarding Joint Interagency Statement Of Policy for Administrative Enforcement of the Truth In Lending Act—Reimbursement\*

### General

1. **Q.** Do the enforcement standards and accuracy tolerances in the Policy Guide supersede the requirements of the Truth in Lending Act (Act) and Regulation Z?

**A.** No, the Policy Guide applies only to agency enforcement procedures. It does not alter a creditor's responsibility to comply fully with all the requirements of the Act and Regulation Z, including finance charge and annual percentage rate (APR) accuracy requirements.

2. **Q.** When violations are discovered in purchased or assigned loans that are initially payable to a person other than the financial institution, will the financial institution be ordered to make the necessary adjustments to the accounts of affected customers?

**A.** No, the financial institution is not the creditor, even if the obligation by its terms is initially payable to a third party and simultaneously assigned to the financial institution. The violations will be referred to the creditor's enforcing agency.

3. **Q.** If the creditor must itemize the amount financed but fails to disclose or understates the prepaid finance charge, will reimbursement be required?

**A.** No, this violation of Regulation Z will require prospective corrective action only, assuming the prepaid finance charges are properly included in the computation of the APR and finance charge.

4. **Q.** If APR or finance charge disclosures not required by Regulation Z have been made, will reimbursement be required when such optional disclosures are understated?

**A.** No, however, errors in disclosures not required by Regulation Z for a particular transaction are violations of either 12 CFR 1026.5(a)(1) or 12 CFR 1026.17(a)(1), both of which require that credit disclosures be made clearly and conspicuously.

### Definitions

#### *Current examination*

1. **Q.** How should the Policy Guide apply to a situation where an examiner, in an examination in progress discovers that reimbursement had not been undertaken as requested by the enforcement agency following the prior examination? What if the institution states that this examination is the "current examination" thereby requiring it to only make adjustments to those loans found

to be in violation and consummated since the prior examination?

**A.** TILA does not limit the agencies' authority to require correction of violations detected in earlier examinations and that have not been corrected as of the date of the current examination [see §108(e)(3)(C)(i) of the Act, found at 15 USC 1607(e)(3)(c)(i)]. In addition, if the practice giving rise to the violations identified in the earlier examination has not been corrected, the institution will be required to make adjustments on any loans containing the violation that were consummated since the date it was first notified in writing of the violation and comply with the corrective action already ordered.

#### *Understated APR*

1. **Q.** What is meant by "actual APR" and "annual percentage rate calculated in accordance with the Act," as used in the Policy Guide?

**A.** Those terms mean the lowest permissible APR that can be computed, applying all applicable provisions of Regulation Z.

#### *De Minimis Rule*

1. **Q.** How should the de minimis rule be applied in closed-end credit transactions?

**A.** The de minimis rule should always be applied to the amount of the adjustment calculated under the "lump sum method" of reimbursement as of the maturity date of the transaction, regardless of which reimbursement method is ultimately used by the creditor.

2. **Q.** How should the de minimis rule be applied in open-end credit transactions?

**A.** The de minimis rule should be applied to the total amount of the adjustment calculated for each consumer's account under the "lump sum method" for the period of time from the date of the current examination back to the date of the first occurrence of the violation. However, the total time period may not exceed the two-year period prior to the date of the current examination.

#### *Corrective Action Period*

1. **Q.** Have the agencies changed their position on the time period required for taking corrective action for violations involving closed-end credit?

**A.** Yes. Prior to 1997, the agencies took the position that the statutory phrase "immediately preceding examination" (which serves as the cutoff date for retroactive application of a reimbursement requirement) referred to the most recent examination (prior to the current examination) in which compliance with Regulation Z and the Act was reviewed. Because of decisions reached by the Eighth and Eleventh Circuits of the United States Courts of Appeal,

\* Issued by The FFIEC On July 11, 1980 And Revised September 1998.

the agencies have adopted a new policy. The agencies by policy now interpret the phrase “immediately preceding examination” to mean an examination of any type conducted for any purpose by a federal regulatory agency with designated administrative enforcement responsibility under the TILA. However, supervisory visitations, inspections, or other reviews that are not considered examinations by the agencies are not considered examinations for purposes of applying retroactivity limitation. In addition, an examination of an affiliated entity, such as an operating subsidiary or an institution’s holding company, is not considered an examination for purposes of determining the corrective action time period under the Act.

2. **Q.** What is the effective date of the new policy change regarding the time period for corrective action for violations involving closed-end credit?

**A.** The policy change regarding the corrective action time period was effective as of August 7, 1997.

3. **Q.** Can an institution terminate the remainder of its restitution obligation to a borrower in light of this change in policy?

**A.** No. The policy change applies to future and pending cases as of the effective date.

There will be no change in reimbursement obligations arising in connection with restitution cases that have been previously resolved. Once the institution makes its decision about the restitution method that it will pursue, it is expected to complete its obligations to affected borrowers as agreed.

For example, under the “Lump Sum/Payment Reduction” method of reimbursement, an institution remits to the borrower a lump sum covering excess money paid to the point that restitution is made, and then reduces future payments to cover the remaining restitution obligation. Under the new policy, the agencies will not permit the institution to terminate its remaining restitution obligation by increasing the borrower’s payments to the level they were prior to the restitution action.

4. **Q.** How will the agencies apply the policy change when “concurrent” examinations are being conducted at a financial institution?

**A.** Concurrent examinations occur when several different types of examinations begin on the same day or when examinations begin in succession. Concurrent examinations may also begin several weeks or months apart but within the same examination cycle, based on factors such as the availability of working space for the examination teams, or the expressed preferences of the institution’s management.

For purposes of applying the policy change regarding the corrective action time period, the agencies consider a

concurrent examination to be one event. Assume, for example, the situation where a safety and soundness examination begins on Monday, a trust examination begins on Tuesday, and the compliance examination starts on Wednesday. Assume further that the compliance team identifies a pattern or practice of violations triggering the restitution provisions of the Act. The agencies will consider the immediately preceding examination to be the last completed examination, not the trust examination that began on Tuesday, or the safety and soundness examination that began on Monday.

Similarly, assume an institution’s examination is to be conducted in succession, meaning that the compliance examination would begin after the safety and soundness and/or trust examination on site work in the institution is completed, which could be several months after the start date of the concurrent examination. The agencies will consider those concurrent examinations to be part of the same examination cycle for purposes of the policy.

5. **Q.** Does the policy change limit or otherwise affect the corrective action time period where a practice identified at a prior examination is not corrected by the date of the current examination?

**A.** No. The Policy Guide and statute provide that if a practice is identified during a current examination and the examiner determines that the same practice was identified during a prior examination but is not corrected by the date of the current examination, the corrective action time period is retroactive to the date of the prior examination in which the violation was identified. This will be true even if there have been intervening examinations that did not review for compliance with the Act and Regulation Z. [see § 108(e)(3)(c)(I) found at 15 USC 1107(e)(3)(c)(I)]

6. **Q.** Are there any differences in application of the policy change when restitution situations involve open-end credit rather than closed-end credit?

**A.** Yes. The Act provides different corrective action time periods for open-end and closed-end credit. The policy change applies to restitution situations involving closed-end credit. The corrective action time period for open-end credit covers the 24-month period preceding the date of the current examination, regardless of whether another examination intervenes during that period.

7. **Q.** What is the corrective action period with respect to terminated closed-end loans if an institution elects to comply voluntarily with the restitution provisions of the Policy Guide, absent a current examination?

**A.** The Policy Guide states that “for terminated loans . . . an adjustment will not be ordered if the violation occurred in a transaction consummated more than two years prior to the date of the current examination.” If an institution elects to comply voluntarily with the Policy Guide absent

a current examination, the financial institution will have the option of either: (1) Deferring reimbursement on any terminated loans until its regulatory agency conducts a current examination, or (2) Reimbursing on any terminated loans falling within the period prior to the discovery of the violation up to the date of the immediately preceding examination. If that time frame is in excess of two years, then reimbursement may be limited to the two-year period prior to the date of discovery of the violation.

8. **Q.** How will the Policy Guide apply when loans subject to reimbursement are acquired through a merger, consolidation, or in exchange for the assumption of deposit liabilities?

**A.** In the case of a merger or consolidation, the receiving institution or the consolidated institution is liable for all liabilities of the merged or consolidating institutions, and the Policy Guide will apply.

In the case of loans acquired in exchange for the assumption of deposit liabilities, the Policy Guide will apply to the original creditor.

### Calculating the Adjustment

1. **Q.** How will disclosures containing information properly estimated under 12 CFR 1026.5(c), 12 CFR 1026.17(c), and Appendix D be treated for reimbursement determinations and computations?

**A.** If an APR or finance charge is in error for any reason other than a properly made estimate, the determination of whether the error constitutes a reimbursable overcharge will be made using the estimated information as disclosed. At the creditor's option, reimbursement will be based on either:

- (1) The actual amount of loan advances, with consideration given to the amount and dates payments were actually made by the borrower; or
- (2) The disclosed amounts of time intervals between advances and between payments. The basis selected shall be applied, using the lump sum or lump sum-payment reduction method (at the creditor's discretion), to all loans of the same type subject to reimbursement.

2. **Q.** If a creditor has failed to reflect private mortgage insurance premiums in the APR or finance charge disclosures, may the institution cancel the insurance after it first reimburses the customer with a lump sum payment to cover the period up to the date of the reimbursement?

**A.** The creditor may elect to cancel the insurance if applicable laws and regulations are not violated. The effect of canceling the insurance will be to reduce the amount of the customer's future payments, as permitted by

the "lump sum-payment reduction" method of reimbursement.

3. **Q.** If a creditor has failed to reflect private mortgage insurance premiums in the APR or finance charge disclosures and restitution is required, but the loan has been sold into the secondary market, how should reimbursement be made?

**A.** The creditor is responsible for reimbursement, even if the loan has been sold. If its ability to cancel the insurance is limited by terms of the loan sales agreement, the creditor may make payments either to the consumer directly or (if it is agreeable to all parties) to the new owner of the loan. The new owner of the loan would make appropriate adjustments to the account so that the consumer receives the full benefit of the reimbursement.

4. **Q.** If the creditor failed to include any component of the finance charge (e.g., a loan origination fee) in the APR or finance charge disclosures, may the amount of reimbursement be reduced to account for fees excludable from the finance charge under 12 CFR 1026.4(c) which are paid for by such finance charge components?

**A.** If the borrower has not otherwise paid such excludable fees (e.g., title insurance fees) to the creditor or to a third party, reimbursement may be computed after first deducting from the finance charge those fees qualifying under 12 CFR 1026.4(c).

5. **Q.** A transaction involves a loan with a term of 36 months, a payment schedule where the first 35 payments are calculated using a 30-year amortization and a balloon amount for the final payment. What tolerance should be used when applying the Policy Guide? One eighth of one percent or one quarter of one-percent?

**A.** The applicable tolerance is based on the amortization of the loan. Since the loan is completely amortized within a three-year period (i.e., the 36-month payment schedule), a tolerance of one quarter of one-percent should be used because the amortization period is less than ten years (15 USC 1607(e)(1)).

6. **Q.** How will the Policy Guide apply if a credit transaction has an interest rate or APR subject to increase and the variable rate feature was not provided on the disclosure statement?

**A.** If the disclosure statement did not state that the rate would be subject to change, the borrower may be charged only the original APR disclosed. Reimbursement under the Policy Guide will apply only to the period of time in which the borrower made payments at an increased rate.

7. **Q.** How will the Policy Guide apply if a creditor disclosed that a rate will be prospectively subject to increase, but the APR disclosed or the finance charge disclosed or both were originally understated?

### A. The Policy Guide will apply as follows:

- (1) If only the APR is understated, reimbursement will be required only for the period of time before the first scheduled change in rate under the variable rate feature in the contract. The term “the first scheduled change in rate” refers to a date on which the rate will change to a level that is unknown or unpredictable at consummation. It does not include changes, such as step-rates, that are agreed upon before consummation.

For example, if the loan terms provide for a 9 percent rate for the first year and a 10 percent rate for the second year, followed by a variable-rate feature to be invoked at the beginning of the third year, reimbursement will apply only to the initial 24-month period. The lump sum-payment reduction adjustment method may be used, using two payment streams for the initial two-year period. Payments after the 24th month would not be affected by the adjustment.

- (2) If only the finance charge is understated, reimbursement generally will be required for a period covering the entire life of the loan consistent with the following:

- If a prepaid finance charge was not included in the disclosed finance charge (such as a loan origination fee paid separately by the consumer at loan closing), the entire loan fee (less the applicable dollar tolerance) must be refunded as a “lump sum” payment.
- If, however, the loan fee was financed (included in the loan amount), the finance charge reimbursement may be prorated on a straight-line basis over the life of the loan and refunded under the lump sum/payment reduction method.

However, a finance charge adjustment will be required only for the period of time before the first scheduled change in rate if the error occurred solely because the interest component of the disclosed finance charge was based on either:

- (a) The interest to be earned before the first scheduled change in rate, or
- (b) The interest to be earned assuming an initial discounted rate over the life of the loan.

For example, the interest component of the disclosed finance charge might incorrectly reflect only loan interest for the first year on a transaction with variable-rate changes scheduled annually. Alternatively, it might incorrectly reflect interest calculated only at an initial discounted variable rate for the full term of the loan. In either case, if the loan terms in the example provide that the variable interest rate is subject to change annually, the finance charge reimbursement will apply only to the initial 12-month period.

The adjustment may be prorated on a straight-line basis over the life of the loan. Reimbursement of prorated amounts covering the period of time after the first scheduled change in rate (after month 12 in this example) would not be required.

- (3) If both the APR and finance charge are understated, normally the lump sum finance charge adjustment is compared to the lump sum APR adjustment as of the loan maturity date and the larger adjustment determines which disclosure error is subject to reimbursement. In the case of variable-rate transactions, however, the lump sum APR adjustment used for comparison is calculated for the period of time before the first scheduled change in rate in the manner indicated by (1) above and the finance charge adjustment is calculated in the manner indicated by (2) above.

For example, assume a loan in which both the APR and finance charge are understated on a 30-year, variable-rate loan that calls for rate changes annually. If both understatements were caused by the same failure to take into account a prepaid loan origination fee:

- The APR reimbursement amount is the lump sum value for a 12-month period, which is determined by using the lump sum/payment reduction method and appropriate reimbursement tolerances.
- The finance charge reimbursement amount is the lump sum value for a 360-month period, which is determined by subtracting the appropriate reimbursement tolerance from the amount of the loan fee.

The APR adjustment is compared to the finance charge adjustment to determine the larger of the two. In the example, the finance charge adjustment (and not the APR adjustment) would be reimbursable.

8. **Q.** If a creditor uses a simple interest rate, which is disclosed as the APR, to compute a monthly payment schedule, and the time interval from the date the finance charge begins to be earned to the date of the first payment is treated as if it were one month, even though that period is greater than one month and is not a “minor irregularity” under 12 CFR 1026.17(c)(4), will the Policy Guide apply if the resulting application of the simple interest rate generates a higher finance charge than the one disclosed?

### A. The Policy Guide will apply if:

- (1) The creditor’s method used to compute the payment schedule, as previously described, is also used to compute the disclosed finance charge (i.e., the total of payments less the amount financed); and

- (2) The final payment collected or scheduled under the contract (as generated by the application of the simple interest rate to the unpaid principal balance over the life of the loan) is greater than the one disclosed; and
- (3) The finance charge resulting from the conditions described under (1) and (2) is understated.

9. **Q.** Will reimbursement be required for demand loans with disclosures based on a one-year maturity when the demand loan contract calls for periodic payments that will amortize the loan over a definite time period?

**A.** Yes. A formal amortization schedule recorded in the demand loan contract is, under 12 CFR 1026.17(c)(5), equivalent to an alternate maturity date, and disclosures based on the amortization schedule should be made, as opposed to the one-year disclosure.

10. **Q.** Will reimbursement be required on demand loans when:

- (1) An alternate maturity date is disclosed and reflected in the contract, but the finance charge disclosure is based on one year?
- (2) There is no alternate maturity date disclosed or reflected in the contract, but the finance charge disclosure is based on a period of time less than one year?

**A.** In the first case, since there is an alternate maturity date in the contract, which is disclosed, the finance charge disclosure should have been based on that alternate maturity date, as required under 12 CFR 1026.17(c)(5), not on the disclosure period to be used when the instrument has no alternate maturity date.

In the second case, the actual finance charge disclosure should have been based on a one-year period, as required by 12 CFR 1026.17(c)(5), not on some period less than that required when the instrument has no alternate maturity date.

After considering appropriate tolerances, reimbursement will be required in both cases if:

- (1) The disclosed finance charge is less than the actual finance charge for the initial required disclosure period; and
- (2) The demand loan has been on the institution's books past the period for which finance charge disclosures were made.

Reimbursement will be calculated for the required disclosure period only. The amount reimbursed to the consumer is the difference between the finance charge actually paid and the finance charge disclosed (which may be increased by the applicable finance charge reimbursement tolerance).

If the demand loan has not been on the institution's books past the period for which finance charge disclosures were

made (e.g., the finance charge was disclosed for a one-year period, but should have been disclosed for a five-year period, and only 10 months have elapsed), no reimbursement is required. However, if the institution takes no prospective corrective action (i.e., if it does not at least disclose in writing a refinancing of the original loan) and the loan remains on the institution's books past the period for which the original finance charge disclosures were made, reimbursement will be required as previously indicated.

Those concepts apply both to straight and variable rate demand loans whenever the disclosed finance charge is less than the actual finance charge after considering appropriate tolerances.

11. **Q.** How will the Policy Guide apply to violations of the early disclosure requirements of 12 CFR 1026.19(a)?

**A.** As a general rule, the Policy Guide will not apply to violations involving early Truth in Lending disclosures, but will apply to violations of the pre-consummation disclosures required by 12 CFR 1026.17. However, if the creditor has provided erroneous early disclosures and has not made pre-consummation disclosures, the Policy Guide will apply to the erroneous early disclosures.

### Methods of Adjustment

1. **Q.** Must reimbursements resulting from understated finance charges always be made as a single "lump sum" amount?

**A.** No. Reimbursements resulting from the creditor's failure to include prepaid finance charges in the total finance charge must always be refunded as a "lump sum" payment, but reimbursements resulting from failure to include finance charge components that accrue over time may be prorated on a straight-line basis (no time value) over the life of the loan and refunded under the lump sum/payment reduction method.

2. **Q.** Must a creditor use one reimbursement method consistently on all affected loans?

**A.** No. The creditor's right to choose between the two methods (lump sum or lump sum/payment reduction) applies to each transaction.

3. **Q.** May a creditor apply a lump sum reimbursement to the consumer's loan balance on a loan requiring reimbursement instead of making a cash payment to the consumer?

**A.** If the loan is a closed-end loan, the creditor must make a cash payment or a deposit into an existing unrestricted consumer asset account such as, an unrestricted savings, NOW, or demand deposit account. However, if the loan is delinquent, in default, or has been charged off, the creditor may apply all or part of the reimbursement to the amount past due, if permissible under law.

If the reimbursement involves an open-end account, the creditor must make a cash payment or a deposit into an existing unrestricted consumer asset account such as an unrestricted savings, NOW, or demand deposit account. However, on a case-by-case basis, the agencies may permit the creditor to credit the consumer's open account by the amount of the reimbursement if the consumer consents. Creditors should be aware that crediting open-end accounts might create credit balances subject to the requirements of 12 CFR 1026.11. In addition, if the open-end account is delinquent, in default, or has been charged off, the creditor may apply all or part of the reimbursement to the amount past due, if permissible under law.

4. **Q.** If a transaction involves more than one consumer, to whom must reimbursement be made?

**A.** The reimbursement is the property of, and is to be made to, the primary obligor in the credit transaction. If there is more than one primary obligor, reimbursement must be made jointly. If the primary obligor(s) is deceased, the payment should be made pursuant to the estate and unclaimed property laws of the state. If the creditor is unable to locate the primary obligor(s), after having at least mailed the reimbursement amount to the consumer's last known address, the amount of the reimbursement is subject to the unclaimed property laws of the state.

5. **Q.** How will the Policy Guide apply to residential mortgage transactions that have been assumed by a third party?

**A.** Reimbursement will be made only to the original borrower and only to the extent of overcharges that occurred before the assumption if:

- (1) A reimbursable violation is found on the original borrower's disclosure statement; and
- (2) The original borrower is not released from liability on the loan. The original transaction will be considered terminated with respect to the original borrower on the date of the assumption and the rules for application of the Policy Guide to terminated loans will apply.

Reimbursement will be made to the original borrower for the period before the assumption occurred if:

- (1) A reimbursable violation is found on the original borrower's disclosure statement; and
- (2) The original borrower is not released from liability on the loan. However, in the event the subsequent borrower defaults and the original borrower must again assume payments on the loan, such payments will be based on the payment amount which would have been calculated under the lump sum-payment reduction method, at the time of reimbursement, had no assumption occurred.

If a required disclosure to a subsequent borrower contains reimbursable violations, that borrower shall be reimbursed for the period after the assumption occurred, based on the new disclosure.

### Non-Disclosure of the APR or Finance Charge

1. **Q.** How will the Policy Guide apply to loans for which no disclosure statements are on file?

**A.** If there is no evidence that the creditor furnished disclosures or if there is a preponderance of evidence that disclosures containing violations subject to reimbursements were destroyed before the record retention period expired, either violation will be treated as a failure to disclose the APR. The creditor will be given the opportunity to substantiate the claim that an accurate disclosure was made before final action is taken. The absence of compliance documentation will be viewed relative to known practices of the creditor for record retention and Regulation Z compliance.

2. **Q.** How will the Policy Guide apply if a creditor did not provide required disclosures to the consumer before consummation, but did supply them after consummation?

**A.** If required disclosures were not provided before consummation of the transaction, the transaction will be viewed as having no APR disclosed and the Policy Guide will apply. If the creditor's failure to provide disclosures included the credit life, accident, and health insurance disclosures, the insurance premiums must be treated as finance charges.

3. **Q.** Will the Policy Guide apply when a creditor has disclosed the APR as "2% OP" to mean a fluctuating rate of two percent over the prime rate, or has disclosed similar prime rate terminology instead of the APR?

**A.** If the disclosure statement (not the note) clearly provides the numerical value of the prime rate as it pertains to the credit transaction, as of the time disclosures are given to the consumer, that rate (the prime rate or 2% OP) will be considered to be the disclosed APR under the Policy Guide. If the prime rate is not provided on the disclosure statement, the transaction will be viewed under the Policy Guide as if no APR has been disclosed.

4. **Q.** Will reimbursement be required on demand loans when the variable rate feature has not been disclosed and the rate is increased?

**A.** Yes. If the consumer has not been notified in writing of the rate change on or before the date of the change, reimbursement will be required if the financial institution has not made the variable rate disclosures.

Each time the rate is changed and the customer is not given written notification of the new rate, the rate change period(s) will be treated as if no APR had been disclosed,

and the Policy Guide will apply. The rate on the most recent notification will serve as the contract rate.

### Improper Disclosure of Credit Life, Accident, Health, or Loss of Income Insurance

1. **Q.** Are the credit insurance provisions of the Policy Guide applicable to terminated loans?

**A.** Yes. The credit insurance provisions apply if such loans originated within the Policy Guide’s corrective action period for terminated loans.

2. **Q.** How will the Policy Guide apply if the cost of credit insurance premiums is disclosed as a rate (e.g., as a percentage or in dollars and cents per hundred per month) in a closed-end transaction?

**A.** Regulation Z permits creditors to disclose credit insurance premiums on a unit-cost basis in closed-end transactions by mail or telephone under 12 CFR 1026.17(g), and in certain closed-end transactions involving an insurance plan that limits the total amount of indebtedness subject to coverage.

In all other closed-end credit transactions, however, the dollar amount of insurance premiums must be disclosed. If the premium cost in those cases is disclosed as dollars or cents per hundred or as a percentage, it will be treated as if no disclosure of the cost had been made and the Policy Guide will apply accordingly.

3. **Q.** How will the Policy Guide apply if:

- (1) The creditor does not include premiums for credit life, accident and health insurance in the APR or finance charge disclosures; and
- (2) The creditor fails to disclose the optional nature of the insurance; but
- (3) The creditor has afforded the borrower the option of taking or refusing the insurance by checking a block or initialing a line opposite a statement similar to the following, both of which are disclosed in writing to the borrower: “I desire credit life, accident and health insurance” and “I do not desire credit life, accident and health insurance?”

**A.** In those cases, the Policy Guide will apply because the creditor has not disclosed to the customer in writing, as required by 12 CFR 1026.4(d)(1)(i), that the credit life, accident and health insurance are optional.

4. **Q.** How will the Policy Guide apply if:

- (1) The consumer is charged for credit life, accident and health insurance premiums; and
- (2) The creditor did not include the premiums in the APR or finance charge disclosures; and
- (3) The creditor disclosed the optional nature and cost of credit life insurance to the consumer in writing and

the customer signed or initialed close to those disclosures; and

- (4) Either no affirmative statement indicating a desire to obtain the insurance was provided or the appropriate box or line was not checked or otherwise marked to indicate whether the customer did or did not desire the insurance?

**A.** If the disclosure provided a choice to the customer through statements such as “I desire the insurance” and “I do not desire the insurance” and neither choice has been marked to designate the customer’s selection, the Policy Guide will apply because the creditor did not meet the requirements of 12 CFR 1026.4(d)(1)(iii).

If no affirmative statement indicating a desire to purchase the insurance has been provided, and the customer has only signed or initialed near the optional nature statements or cost disclosures, the Policy Guide will apply because the creditor did not meet the requirements of 12 CFR 1026.4(d)(1)(iii).

5. **Q.** How will the Policy Guide apply if:

- (1) The creditor does not include premiums for credit life, accident and health insurance in the APR or finance charge disclosures; and
- (2) The creditor provides disclosures stating that the insurance is not required; and
- (3) The creditor provides the cost of each type of insurance, with a statement that the customer’s signature will indicate a desire to purchase the insurance listed below and the customer signs once, below the cost disclosure, but does not initial each type of insurance desired?

**A.** If the disclosures clearly indicate that the customer, by signing where indicated, elects to purchase each type of insurance for which the cost has been provided, the Policy Guide will not apply. However, prospectively the creditor shall clarify such disclosures, by obtaining the customer’s initials for each type of insurance selected, or by changing the manner in which the customer signs for credit insurance when more than one type is offered.

6. **Q.** If vendor’s single interest (VSI) insurance is written in connection with a credit transaction, the insurance premiums are not included in the finance charge, and the creditor does not obtain a waiver of the right of subrogation from the insurer, is the resulting finance charge understatement subject to reimbursement under the Policy Guide?

**A.** Yes. However, if the insurer has not exercised such right of subrogation and agrees to prospectively waive that right for outstanding loans, the Policy Guide will not apply to those loans.

### Obvious Errors

1. **Q.** What are examples of Obvious Errors described in the Policy Guide?

**A.** Consider a situation where the APR is disclosed correctly and the correct finance charge is \$600, no

adjustment would be required if the amount of the disclosed finance charge is shown as \$60 or less. Likewise, if the finance charge is correctly disclosed and the correct APR is 18.568%, no adjustment would be required if the disclosed APR is shown as 1.8568% or less.