

Advertising, Consumer protection, Mortgages, Reporting and recordkeeping requirements, Truth in Lending.

Authority and Issuance

For the reasons set forth in the preamble, the Bureau amends Regulation Z, 12 CFR part 1026, as set forth below:

PART 1026—TRUTH IN LENDING (REGULATION Z)

1. The authority citation for part 1026 continues to read as follows:

AUTHORITY: 12 U.S.C. 2601; 2603-2605, 2607, 2609, 2617, 5511, 5512, 5532, 5581; 15 U.S.C. 1601 *et seq.*

Subpart D—Miscellaneous

2. Section 1026.25 is amended by:

A. Revising paragraph (a); and

B. Adding and reserving paragraphs (c)(1) and (c)(2).

C. Adding paragraph (c)(3).

The additions and revisions read as follows:

§ 1026.25 Record retention.

(a) *General rule.* A creditor shall retain evidence of compliance with this regulation, other than advertising requirements under §§ 1026.16 and 1026.24 and certain requirements for mortgage loans under paragraph (c) of this section, for two years after the date disclosures are required to be made or action is required to be taken. The administrative agencies responsible for enforcing the regulation may require a creditor under their jurisdictions to retain records for a longer period if necessary to carry out their enforcement responsibilities under section 108 of the Act.

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(c) *Records related to certain requirements for mortgage loans.* (1) [Reserved]

(2) [Reserved]

(3) *Records related to minimum standards for transactions secured by a dwelling.*

Notwithstanding paragraph (a) of this section, a creditor shall retain evidence of compliance with § 1026.43 of this regulation for three years after consummation of a transaction covered by that section.

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Subpart E—Special Rules for Certain Home Mortgage Transactions

3. Section 1026.32 is amended by:

A. Revising the section heading;

B. Revising paragraph (b)(1);

C. Removing and reserving paragraph (b)(2);

D. Adding paragraph (b)(3)(i) and adding and reserving paragraph (b)(3)(ii);

E. Adding paragraph (b)(4)(i) and adding and reserving paragraph (b)(4)(ii);

F. Adding paragraph (b)(5); and

G. Adding paragraph (b)(6)(i) and adding and reserving paragraph (b)(6)(ii).

The additions and revisions read as follows:

§ 1026.32 Requirements for high-cost mortgages.

* * * * *

(b) *Definitions.* For purposes of this subpart, the following definitions apply:

(1) In connection with a closed-end credit transaction, *points and fees* means the following fees or charges that are known at or before consummation:

(i) All items included in the finance charge under § 1026.4(a) and (b), except that the

following items are excluded:

(A) Interest or the time-price differential;

(B) Any premium or other charge imposed in connection with any Federal or State agency program for any guaranty or insurance that protects the creditor against the consumer's default or other credit loss;

(C) For any guaranty or insurance that protects the creditor against the consumer's default or other credit loss and that is not in connection with any Federal or State agency program:

(1) If the premium or other charge is payable after consummation, the entire amount of such premium or other charge; or

(2) If the premium or other charge is payable at or before consummation, the portion of any such premium or other charge that is not in excess of the amount payable under policies in effect at the time of origination under section 203(c)(2)(A) of the National Housing Act (12 U.S.C. 1709(c)(2)(A)), provided that the premium or charge is required to be refundable on a pro rata basis and the refund is automatically issued upon notification of the satisfaction of the underlying mortgage loan;

(D) Any bona fide third-party charge not retained by the creditor, loan originator, or an affiliate of either, unless the charge is required to be included in points and fees under paragraph (b)(1)(i)(C), (iii), or (iv) of this section;

(E) Up to two bona fide discount points paid by the consumer in connection with the transaction, if the interest rate without any discount does not exceed:

(1) The average prime offer rate, as defined in § 1026.35(a)(2), by more than one percentage point; or

(2) For purposes of paragraph (a)(1)(ii) of this section, for transactions that are secured by personal property, the average rate for a loan insured under Title I of the National Housing Act (12 U.S.C. 1702 *et seq.*) by more than one percentage point; and

(F) If no discount points have been excluded under paragraph (b)(1)(i)(E) of this section, then up to one bona fide discount point paid by the consumer in connection with the transaction, if the interest rate without any discount does not exceed:

(1) The average prime offer rate, as defined in § 1026.35(a)(2), by more than two percentage points; or

(2) For purposes of paragraph (a)(1)(ii) of this section, for transactions that are secured by personal property, the average rate for a loan insured under Title I of the National Housing Act (12 U.S.C. 1702 *et seq.*) by more than two percentage points;

(ii) All compensation paid directly or indirectly by a consumer or creditor to a loan originator, as defined in § 1026.36(a)(1), that can be attributed to that transaction at the time the interest rate is set;

(iii) All items listed in § 1026.4(c)(7) (other than amounts held for future payment of taxes), unless:

(A) The charge is reasonable;

(B) The creditor receives no direct or indirect compensation in connection with the charge; and

(C) The charge is not paid to an affiliate of the creditor;

(iv) Premiums or other charges payable at or before consummation for any credit life, credit disability, credit unemployment, or credit property insurance, or any other life, accident, health, or loss-of-income insurance for which the creditor is a beneficiary, or any payments

directly or indirectly for any debt cancellation or suspension agreement or contract;

(v) The maximum prepayment penalty, as defined in paragraph (b)(6)(i) of this section, that may be charged or collected under the terms of the mortgage loan; and

(vi) The total prepayment penalty, as defined in paragraph (b)(6)(i) of this section, incurred by the consumer if the consumer refinances the existing mortgage loan with the current holder of the existing loan, a servicer acting on behalf of the current holder, or an affiliate of either.

(2) [Reserved]

(3) *Bona fide discount point.* (i) *Closed-end credit.* The term *bona fide discount point* means an amount equal to 1 percent of the loan amount paid by the consumer that reduces the interest rate or time-price differential applicable to the transaction based on a calculation that is consistent with established industry practices for determining the amount of reduction in the interest rate or time-price differential appropriate for the amount of discount points paid by the consumer.

(ii) [Reserved]

(4) *Total loan amount.* (i) *Closed-end credit.* The total loan amount for a closed-end credit transaction is calculated by taking the amount financed, as determined according to § 1026.18(b), and deducting any cost listed in § 1026.32(b)(1)(iii), (iv), or (vi) that is both included as points and fees under § 1026.32(b)(1) and financed by the creditor.

(ii) [Reserved]

(5) *Affiliate* means any company that controls, is controlled by, or is under common control with another company, as set forth in the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*).

(6) *Prepayment penalty.* (i) *Closed-end credit transactions.* For a closed-end credit transaction, *prepayment penalty* means a charge imposed for paying all or part of the transaction's principal before the date on which the principal is due, other than a waived, bona fide third-party charge that the creditor imposes if the consumer prepays all of the transaction's principal sooner than 36 months after consummation, provided, however, that interest charged consistent with the monthly interest accrual amortization method is not a prepayment penalty for extensions of credit insured by the Federal Housing Administration that are consummated before January 21, 2015.

(ii) [Reserved]

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4. New § 1026.43 is added to read as follows:

§ 1026.43 Minimum standards for transactions secured by a dwelling.

(a) *Scope.* This section applies to any consumer credit transaction that is secured by a dwelling, as defined in § 1026.2(a)(19), including any real property attached to a dwelling, other than:

(1) A home equity line of credit subject to § 1026.40;

(2) A mortgage transaction secured by a consumer's interest in a timeshare plan, as defined in 11 U.S.C. 101(53(D)); or

(3) For purposes of paragraphs (c) through (f) of this section:

(i) A reverse mortgage subject to § 1026.33;

(ii) A temporary or "bridge" loan with a term of 12 months or less, such as a loan to finance the purchase of a new dwelling where the consumer plans to sell a current dwelling within 12 months or a loan to finance the initial construction of a dwelling; or

(iii) A construction phase of 12 months or less of a construction-to-permanent loan.

(b) *Definitions.* For purposes of this section:

(1) *Covered transaction* means a consumer credit transaction that is secured by a dwelling, as defined in § 1026.2(a)(19), including any real property attached to a dwelling, other than a transaction exempt from coverage under paragraph (a) of this section.

(2) *Fully amortizing payment* means a periodic payment of principal and interest that will fully repay the loan amount over the loan term.

(3) *Fully indexed rate* means the interest rate calculated using the index or formula that will apply after recast, as determined at the time of consummation, and the maximum margin that can apply at any time during the loan term.

(4) *Higher-priced covered transaction* means a covered transaction with an annual percentage rate that exceeds the average prime offer rate for a comparable transaction as of the date the interest rate is set by 1.5 or more percentage points for a first-lien covered transaction, or by 3.5 or more percentage points for a subordinate-lien covered transaction.

(5) *Loan amount* means the principal amount the consumer will borrow as reflected in the promissory note or loan contract.

(6) *Loan term* means the period of time to repay the obligation in full.

(7) *Maximum loan amount* means the loan amount plus any increase in principal balance that results from negative amortization, as defined in § 1026.18(s)(7)(v), based on the terms of the legal obligation assuming:

(i) The consumer makes only the minimum periodic payments for the maximum possible time, until the consumer must begin making fully amortizing payments; and

(ii) The maximum interest rate is reached at the earliest possible time.

(8) *Mortgage-related obligations* mean property taxes; premiums and similar charges identified in § 1026.4(b)(5), (7), (8), and (10) that are required by the creditor; fees and special assessments imposed by a condominium, cooperative, or homeowners association; ground rent; and leasehold payments.

(9) *Points and fees* has the same meaning as in § 1026.32(b)(1).

(10) *Prepayment penalty* has the same meaning as in § 1026.32(b)(6).

(11) *Recast* means:

(i) For an adjustable-rate mortgage, as defined in § 1026.18(s)(7)(i), the expiration of the period during which payments based on the introductory fixed interest rate are permitted under the terms of the legal obligation;

(ii) For an interest-only loan, as defined in § 1026.18(s)(7)(iv), the expiration of the period during which interest-only payments are permitted under the terms of the legal obligation; and

(iii) For a negative amortization loan, as defined in § 1026.18(s)(7)(v), the expiration of the period during which negatively amortizing payments are permitted under the terms of the legal obligation.

(12) *Simultaneous loan* means another covered transaction or home equity line of credit subject to § 1026.40 that will be secured by the same dwelling and made to the same consumer at or before consummation of the covered transaction or, if to be made after consummation, will cover closing costs of the first covered transaction.

(13) *Third-party record* means:

(i) A document or other record prepared or reviewed by an appropriate person other than the consumer, the creditor, or the mortgage broker, as defined in § 1026.36(a)(2), or an agent of

the creditor or mortgage broker;

(ii) A copy of a tax return filed with the Internal Revenue Service or a State taxing authority;

(iii) A record the creditor maintains for an account of the consumer held by the creditor;
or

(iv) If the consumer is an employee of the creditor or the mortgage broker, a document or other record maintained by the creditor or mortgage broker regarding the consumer's employment status or employment income.

(c) *Repayment ability. (1) General requirement.* A creditor shall not make a loan that is a covered transaction unless the creditor makes a reasonable and good faith determination at or before consummation that the consumer will have a reasonable ability to repay the loan according to its terms.

(2) *Basis for determination.* Except as provided otherwise in paragraphs (d), (e), and (f) of this section, in making the repayment ability determination required under paragraph (c)(1) of this section, a creditor must consider the following:

(i) The consumer's current or reasonably expected income or assets, other than the value of the dwelling, including any real property attached to the dwelling, that secures the loan;

(ii) If the creditor relies on income from the consumer's employment in determining repayment ability, the consumer's current employment status;

(iii) The consumer's monthly payment on the covered transaction, calculated in accordance with paragraph (c)(5) of this section;

(iv) The consumer's monthly payment on any simultaneous loan that the creditor knows or has reason to know will be made, calculated in accordance with paragraph (c)(6) of this

section;

(v) The consumer's monthly payment for mortgage-related obligations;

(vi) The consumer's current debt obligations, alimony, and child support;

(vii) The consumer's monthly debt-to-income ratio or residual income in accordance with paragraph (c)(7) of this section; and

(viii) The consumer's credit history.

(3) *Verification using third-party records.* A creditor must verify the information that the creditor relies on in determining a consumer's repayment ability under § 1026.43(c)(2) using reasonably reliable third-party records, except that:

(i) For purposes of paragraph (c)(2)(i) of this section, a creditor must verify a consumer's income or assets that the creditor relies on in accordance with § 1026.43(c)(4);

(ii) For purposes of paragraph (c)(2)(ii) of this section, a creditor may verify a consumer's employment status orally if the creditor prepares a record of the information obtained orally; and

(iii) For purposes of paragraph (c)(2)(vi) of this section, if a creditor relies on a consumer's credit report to verify a consumer's current debt obligations and a consumer's application states a current debt obligation not shown in the consumer's credit report, the creditor need not independently verify such an obligation.

(4) *Verification of income or assets.* A creditor must verify the amounts of income or assets that the creditor relies on under § 1026.43(c)(2)(i) to determine a consumer's ability to repay a covered transaction using third-party records that provide reasonably reliable evidence of the consumer's income or assets. A creditor may verify the consumer's income using a tax-return transcript issued by the Internal Revenue Service (IRS). Examples of other records the

creditor may use to verify the consumer's income or assets include:

- (i) Copies of tax returns the consumer filed with the IRS or a State taxing authority;
- (ii) IRS Form W-2s or similar IRS forms used for reporting wages or tax withholding;
- (iii) Payroll statements, including military Leave and Earnings Statements;
- (iv) Financial institution records;
- (v) Records from the consumer's employer or a third party that obtained information

from the employer;

(vi) Records from a Federal, State, or local government agency stating the consumer's income from benefits or entitlements;

(vii) Receipts from the consumer's use of check cashing services; and

(viii) Receipts from the consumer's use of a funds transfer service.

(5) *Payment calculation.* (i) *General rule.* Except as provided in paragraph (c)(5)(ii) of this section, a creditor must make the consideration required under paragraph (c)(2)(iii) of this section using:

(A) The fully indexed rate or any introductory interest rate, whichever is greater; and

(B) Monthly, fully amortizing payments that are substantially equal.

(ii) *Special rules for loans with a balloon payment, interest-only loans, and negative amortization loans.* A creditor must make the consideration required under paragraph (c)(2)(iii) of this section for:

(A) A loan with a balloon payment, as defined in § 1026.18(s)(5)(i), using:

(I) The maximum payment scheduled during the first five years after the date on which the first regular periodic payment will be due for a loan that is not a higher-priced covered transaction; or

(2) The maximum payment in the payment schedule, including any balloon payment, for a higher-priced covered transaction;

(B) An interest-only loan, as defined in § 1026.18(s)(7)(iv), using:

(1) The fully indexed rate or any introductory interest rate, whichever is greater; and

(2) Substantially equal, monthly payments of principal and interest that will repay the loan amount over the term of the loan remaining as of the date the loan is recast.

(C) A negative amortization loan, as defined in § 1026.18(s)(7)(v), using:

(1) The fully indexed rate or any introductory interest rate, whichever is greater; and

(2) Substantially equal, monthly payments of principal and interest that will repay the maximum loan amount over the term of the loan remaining as of the date the loan is recast.

(6) *Payment calculation for simultaneous loans.* For purposes of making the evaluation required under paragraph (c)(2)(iv) of this section, a creditor must consider, taking into account any mortgage-related obligations, a consumer's payment on a simultaneous loan that is:

(i) A covered transaction, by following paragraph (c)(5) of this section; or

(ii) A home equity line of credit subject to § 1026.40, by using the periodic payment required under the terms of the plan and the amount of credit to be drawn at or before consummation of the covered transaction.

(7) *Monthly debt-to-income ratio or residual income.* (i) *Definitions.* For purposes of this paragraph (c)(7), the following definitions apply:

(A) *Total monthly debt obligations.* The term *total monthly debt obligations* means the sum of: the payment on the covered transaction, as required to be calculated by paragraphs (c)(2)(iii) and (c)(5) of this section; simultaneous loans, as required by paragraphs (c)(2)(iv) and (c)(6) of this section; mortgage-related obligations, as required by paragraph (c)(2)(v) of this

section; and current debt obligations, alimony, and child support, as required by paragraph (c)(2)(vi) of this section.

(B) *Total monthly income.* The term *total monthly income* means the sum of the consumer's current or reasonably expected income, including any income from assets, as required by paragraphs (c)(2)(i) and (c)(4) of this section.

(ii) *Calculations.* (A) *Monthly debt-to-income ratio.* If a creditor considers the consumer's monthly debt-to-income ratio under paragraph (c)(2)(vii) of this section, the creditor must consider the ratio of the consumer's total monthly debt obligations to the consumer's total monthly income.

(B) *Monthly residual income.* If a creditor considers the consumer's monthly residual income under paragraph (c)(2)(vii) of this section, the creditor must consider the consumer's remaining income after subtracting the consumer's total monthly debt obligations from the consumer's total monthly income.

(d) *Refinancing of non-standard mortgages.* (1) *Definitions.* For purposes of this paragraph (d), the following definitions apply:

(i) *Non-standard mortgage.* The term *non-standard mortgage* means a covered transaction that is:

(A) An adjustable-rate mortgage, as defined in § 1026.18(s)(7)(i), with an introductory fixed interest rate for a period of one year or longer;

(B) An interest-only loan, as defined in § 1026.18(s)(7)(iv); or

(C) A negative amortization loan, as defined in § 1026.18(s)(7)(v).

(ii) *Standard mortgage.* The term *standard mortgage* means a covered transaction:

(A) That provides for regular periodic payments that do not:

- (1) Cause the principal balance to increase;
- (2) Allow the consumer to defer repayment of principal; or
- (3) Result in a balloon payment, as defined in § 1026.18(s)(5)(i);

(B) For which the total points and fees payable in connection with the transaction do not exceed the amounts specified in paragraph (e)(3) of this section;

(C) For which the term does not exceed 40 years;

(D) For which the interest rate is fixed for at least the first five years after consummation;

and

(E) For which the proceeds from the loan are used solely for the following purposes:

(1) To pay off the outstanding principal balance on the non-standard mortgage; and

(2) To pay closing or settlement charges required to be disclosed under the Real Estate

Settlement Procedures Act, 12 U.S.C. 2601 *et seq.*

(iii) *Refinancing.* The term *refinancing* has the same meaning as in § 1026.20(a).

(2) *Scope.* The provisions of this paragraph (d) apply to the refinancing of a non-standard mortgage into a standard mortgage when the following conditions are met:

(i) The creditor for the standard mortgage is the current holder of the existing non-standard mortgage or the servicer acting on behalf of the current holder;

(ii) The monthly payment for the standard mortgage is materially lower than the monthly payment for the non-standard mortgage, as calculated under paragraph (d)(5) of this section.

(iii) The creditor receives the consumer's written application for the standard mortgage no later than two months after the non-standard mortgage has recast.

(iv) The consumer has made no more than one payment more than 30 days late on the non-standard mortgage during the 12 months immediately preceding the creditor's receipt of the

consumer's written application for the standard mortgage.

(v) The consumer has made no payments more than 30 days late during the six months immediately preceding the creditor's receipt of the consumer's written application for the standard mortgage; and

(vi) If the non-standard mortgage was consummated on or after January 10, 2014, the non-standard mortgage was made in accordance with paragraph (c) or (e) of this section, as applicable.

(3) *Exemption from repayment ability requirements.* A creditor is not required to comply with the requirements of paragraph (c) of this section if:

(i) The conditions in paragraph (d)(2) of this section are met; and

(ii) The creditor has considered whether the standard mortgage likely will prevent a default by the consumer on the non-standard mortgage once the loan is recast.

(4) *Offer of rate discounts and other favorable terms.* A creditor making a covered transaction under this paragraph (d) may offer to the consumer rate discounts and terms that are the same as, or better than, the rate discounts and terms that the creditor offers to new consumers, consistent with the creditor's documented underwriting practices and to the extent not prohibited by applicable State or Federal law.

(5) *Payment calculations.* For purposes of determining whether the consumer's monthly payment for a standard mortgage will be materially lower than the monthly payment for the non-standard mortgage, the following provisions shall be used:

(i) *Non-standard mortgage.* For purposes of the comparison conducted pursuant to paragraph (d)(2)(ii) of this section, the creditor must calculate the monthly payment for a non-standard mortgage based on substantially equal, monthly, fully amortizing payments of principal

and interest using:

(A) The fully indexed rate as of a reasonable period of time before or after the date on which the creditor receives the consumer's written application for the standard mortgage;

(B) The term of the loan remaining as of the date on which the recast occurs, assuming all scheduled payments have been made up to the recast date and the payment due on the recast date is made and credited as of that date; and

(C) A remaining loan amount that is:

(1) For an adjustable-rate mortgage under paragraph (d)(1)(i)(A) of this section, the outstanding principal balance as of the date of the recast, assuming all scheduled payments have been made up to the recast date and the payment due on the recast date is made and credited as of that date;

(2) For an interest-only loan under paragraph (d)(1)(i)(B) of this section, the outstanding principal balance as of the date of the recast, assuming all scheduled payments have been made up to the recast date and the payment due on the recast date is made and credited as of that date; or

(3) For a negative amortization loan under paragraph (d)(1)(i)(C) of this section, the maximum loan amount, determined after adjusting for the outstanding principal balance.

(ii) *Standard mortgage.* For purposes of the comparison conducted pursuant to paragraph (d)(2)(ii) of this section, the monthly payment for a standard mortgage must be based on substantially equal, monthly, fully amortizing payments based on the maximum interest rate that may apply during the first five years after consummation.

(e) *Qualified mortgages.* (1) *Safe harbor and presumption of compliance.* (i) *Safe harbor for transactions that are not higher-priced covered transactions.* A creditor or assignee

of a qualified mortgage, as defined in paragraphs (e)(2), (e)(4), or (f) of this section, that is not a higher-priced covered transaction, as defined in paragraph (b)(4) of this section, complies with the repayment ability requirements of paragraph (c) of this section.

(ii) *Presumption of compliance for higher-priced covered transactions.* (A) A creditor or assignee of a qualified mortgage, as defined in paragraphs (e)(2), (e)(4), or (f) of this section, that is a higher-priced covered transaction, as defined in paragraph (b)(4) of this section, is presumed to comply with the repayment ability requirements of paragraph (c) of this section.

(B) To rebut the presumption of compliance described in paragraph (e)(1)(ii)(A) of this section, it must be proven that, despite meeting the requirements of paragraphs (e)(2), (e)(4), or (f) of this section, the creditor did not make a reasonable and good faith determination of the consumer's repayment ability at the time of consummation, by showing that the consumer's income, debt obligations, alimony, child support, and the consumer's monthly payment (including mortgage-related obligations) on the covered transaction and on any simultaneous loans of which the creditor was aware at consummation would leave the consumer with insufficient residual income or assets other than the value of the dwelling (including any real property attached to the dwelling) that secures the loan with which to meet living expenses, including any recurring and material non-debt obligations of which the creditor was aware at the time of consummation.

(2) *Qualified mortgage defined—general.* Except as provided in paragraphs (e)(4) or (f) of this section, a qualified mortgage is a covered transaction:

(i) That provides for regular periodic payments that are substantially equal, except for the effect that any interest rate change after consummation has on the payment in the case of an adjustable-rate or step-rate mortgage, that do not:

(A) Result in an increase of the principal balance;

(B) Allow the consumer to defer repayment of principal, except as provided in paragraph (f) of this section; or

(C) Result in a balloon payment, as defined in § 1026.18(s)(5)(i), except as provided in paragraph (f) of this section;

(ii) For which the loan term does not exceed 30 years;

(iii) For which the total points and fees payable in connection with the loan do not exceed the amounts specified in paragraph (e)(3) of this section;

(iv) For which the creditor underwrites the loan, taking into account the monthly payment for mortgage-related obligations, using:

(A) The maximum interest rate that may apply during the first five years after the date on which the first regular periodic payment will be due; and

(B) Periodic payments of principal and interest that will repay either:

(I) The outstanding principal balance over the remaining term of the loan as of the date the interest rate adjusts to the maximum interest rate set forth in paragraph (e)(2)(iv)(A) of this section, assuming the consumer will have made all required payments as due prior to that date; or

(2) The loan amount over the loan term;

(v) For which the creditor considers and verifies at or before consummation the following:

(A) The consumer's current or reasonably expected income or assets other than the value of the dwelling (including any real property attached to the dwelling) that secures the loan, in accordance with appendix Q and paragraphs (c)(2)(i) and (c)(4) of this section; and

(B) The consumer's current debt obligations, alimony, and child support in accordance with appendix Q and paragraphs (c)(2)(vi) and (c)(3) of this section; and

(vi) For which the ratio of the consumer's total monthly debt to total monthly income at the time of consummation does not exceed 43 percent. For purposes of this paragraph (e)(2)(vi), the ratio of the consumer's total monthly debt to total monthly income is determined:

(A) Except as provided in paragraph (e)(2)(vi)(B) of this section, in accordance with the standards in appendix Q;

(B) Using the consumer's monthly payment on:

(1) The covered transaction, including the monthly payment for mortgage-related obligations, in accordance with paragraph (e)(2)(iv) of this section; and

(2) Any simultaneous loan that the creditor knows or has reason to know will be made, in accordance with paragraphs (c)(2)(iv) and (c)(6) of this section.

(3) *Limits on points and fees for qualified mortgages.* (i) A covered transaction is not a qualified mortgage unless the transaction's total points and fees, as defined in § 1026.32(b)(1), do not exceed:

(A) For a loan amount greater than or equal to \$100,000 (indexed for inflation): 3 percent of the total loan amount;

(B) For a loan amount greater than or equal to \$60,000 (indexed for inflation) but less than \$100,000 (indexed for inflation): \$3,000 (indexed for inflation);

(C) For a loan amount greater than or equal to \$20,000 (indexed for inflation) but less than \$60,000 (indexed for inflation): 5 percent of the total loan amount;

(D) For a loan amount greater than or equal to \$12,500 (indexed for inflation) but less than \$20,000 (indexed for inflation): \$1,000 (indexed for inflation);

(E) For a loan amount less than \$12,500 (indexed for inflation): 8 percent of the total loan amount.

(ii) The dollar amounts, including the loan amounts, in paragraph (e)(3)(i) of this section shall be adjusted annually on January 1 by the annual percentage change in the Consumer Price Index for All Urban Consumers (CPI-U) that was reported on the preceding June 1. See the official commentary to this paragraph (e)(3)(ii) for the current dollar amounts.

(4) *Qualified mortgage defined—special rules.* (i) *General.* Notwithstanding paragraph (e)(2) of this section, a qualified mortgage is a covered transaction that satisfies:

(A) The requirements of paragraphs (e)(2)(i) through (iii) of this section; and

(B) One or more of the criteria in paragraph (e)(4)(ii) of this section.

(ii) *Eligible loans.* A qualified mortgage under this paragraph (e)(4) must be one of the following at consummation:

(A) A loan that is eligible:

(1) To be purchased or guaranteed by the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation operating under the conservatorship or receivership of the Federal Housing Finance Agency pursuant to section 1367(a) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4617(a)); or

(2) To be purchased or guaranteed by any limited-life regulatory entity succeeding the charter of either the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation pursuant to section 1367(i) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4617(i));

(B) A loan that is eligible to be insured by the U.S. Department of Housing and Urban Development under the National Housing Act (12 U.S.C. 1707 *et seq.*);

(C) A loan that is eligible to be guaranteed the U.S. Department of Veterans Affairs;

(D) A loan that is eligible to be guaranteed by the U.S. Department of Agriculture pursuant to 42 U.S.C. 1472(h); or

(E) A loan that is eligible to be insured by the Rural Housing Service.

(iii) *Sunset of special rules.* (A) Each respective special rule described in paragraph (e)(4)(ii)(B), (C), (D), or (E) of this section shall expire on the effective date of a rule issued by each respective agency pursuant to its authority under TILA section 129C(b)(3)(ii) to define a qualified mortgage.

(B) Unless otherwise expired under paragraph (e)(4)(iii)(A) of this section, the special rules in this paragraph (e)(4) are available only for covered transactions consummated on or before January 10, 2021.

(f) *Balloon-payment qualified mortgages made by certain creditors.* (1) *Exemption.* Notwithstanding paragraph (e)(2) of this section, a qualified mortgage may provide for a balloon payment, provided:

(i) The loan satisfies the requirements for a qualified mortgage in paragraphs (e)(2)(i)(A), (e)(2)(ii), (e)(2)(iii), and (e)(2)(v) of this section, but without regard to the standards in appendix Q;

(ii) The creditor determines at or before consummation that the consumer can make all of the scheduled payments under the terms of the legal obligation, as described in paragraph (f)(1)(iv) of this section, together with the consumer's monthly payments for all mortgage-related obligations and excluding the balloon payment, from the consumer's current or reasonably expected income or assets other than the dwelling that secures the loan;

(iii) The creditor considers at or before consummation the consumer's monthly debt-to-

income ratio or residual income and verifies the debt obligations and income used to determine that ratio in accordance with paragraph (c)(7) of this section, except that the calculation of the payment on the covered transaction for purposes of determining the consumer's total monthly debt obligations in (c)(7)(i)(A) shall be determined in accordance with paragraph (f)(iv)(A) of this section, together with the consumer's monthly payments for all mortgage-related obligations and excluding the balloon payment;

(iv) The legal obligation provides for:

(A) Scheduled payments that are substantially equal, calculated using an amortization period that does not exceed 30 years;

(B) An interest rate that does not increase over the term of the loan; and

(C) A loan term of five years or longer.

(v) The loan is not subject, at consummation, to a commitment to be acquired by another person, other than a person that satisfies the requirements of paragraph (f)(1)(vi) of this section; and

(vi) The creditor satisfies the requirements stated in § 1026.35(b)(2)(iii)(A), (B), and (C).

(2) *Post-consummation transfer of balloon-payment qualified mortgage.* A balloon-payment qualified mortgage, extended pursuant to paragraph (f)(1), immediately loses its status as a qualified mortgage under paragraph (f)(1) if legal title to the balloon-payment qualified mortgage is sold, assigned, or otherwise transferred to another person except when:

(i) The balloon-payment qualified mortgage is sold, assigned, or otherwise transferred to another person three years or more after consummation of the balloon-payment qualified mortgage;

(ii) The balloon-payment qualified mortgage is sold, assigned, or otherwise transferred to a creditor that satisfies the requirements of paragraph (f)(1)(vi) of this section;

(iii) The balloon-payment qualified mortgage is sold, assigned, or otherwise transferred to another person pursuant to a capital restoration plan or other action under 12 U.S.C. 1831o, actions or instructions of any person acting as conservator, receiver or bankruptcy trustee, an order of a State or Federal governmental agency with jurisdiction to examine the creditor pursuant to State or Federal law, or an agreement between the creditor and such an agency; or

(iv) The balloon-payment qualified mortgage is sold, assigned, or otherwise transferred pursuant to a merger of the creditor with another person or acquisition of the creditor by another person or of another person by the creditor.

(g) *Prepayment penalties.* (1) *When permitted.* A covered transaction must not include a prepayment penalty unless:

(i) The prepayment penalty is otherwise permitted by law; and

(ii) The transaction:

(A) Has an annual percentage rate that cannot increase after consummation;

(B) Is a qualified mortgage under paragraph (e)(2), (e)(4), or (f) of this section; and

(C) Is not a higher-priced mortgage loan, as defined in § 1026.35(a).

(2) *Limits on prepayment penalties.* A prepayment penalty:

(i) Must not apply after the three-year period following consummation; and

(ii) Must not exceed the following percentages of the amount of the outstanding loan balance prepaid:

(A) 2 percent, if incurred during the first two years following consummation; and

(B) 1 percent, if incurred during the third year following consummation.

(3) *Alternative offer required.* A creditor must not offer a consumer a covered transaction with a prepayment penalty unless the creditor also offers the consumer an alternative covered transaction without a prepayment penalty and the alternative covered transaction:

(i) Has an annual percentage rate that cannot increase after consummation and has the same type of interest rate as the covered transaction with a prepayment penalty; for purposes of this paragraph (g), the term “type of interest rate” refers to whether a transaction:

(A) Is a fixed-rate mortgage, as defined in § 1026.18(s)(7)(iii); or

(B) Is a step-rate mortgage, as defined in § 1026.18(s)(7)(ii);

(ii) Has the same loan term as the loan term for the covered transaction with a prepayment penalty;

(iii) Satisfies the periodic payment conditions under paragraph (e)(2)(i) of this section;

(iv) Satisfies the points and fees conditions under paragraph (e)(2)(iii) of this section, based on the information known to the creditor at the time the transaction is offered; and

(v) Is a transaction for which the creditor has a good faith belief that the consumer likely qualifies, based on the information known to the creditor at the time the creditor offers the covered transaction without a prepayment penalty.

(4) *Offer through a mortgage broker.* If the creditor offers a covered transaction with a prepayment penalty to the consumer through a mortgage broker, as defined in § 1026.36(a)(2), the creditor must:

(i) Present the mortgage broker an alternative covered transaction without a prepayment penalty that satisfies the requirements of paragraph (g)(3) of this section; and

(ii) Establish by agreement that the mortgage broker must present the consumer an alternative covered transaction without a prepayment penalty that satisfies the requirements of

paragraph (g)(3) of this section, offered by:

(A) The creditor; or

(B) Another creditor, if the transaction offered by the other creditor has a lower interest rate or a lower total dollar amount of discount points and origination points or fees.

(5) *Creditor that is a loan originator.* If the creditor is a loan originator, as defined in § 1026.36(a)(1), and the creditor presents the consumer a covered transaction offered by a person to which the creditor would assign the covered transaction after consummation, the creditor must present the consumer an alternative covered transaction without a prepayment penalty that satisfies the requirements of paragraph (g)(3) of this section, offered by:

(i) The assignee; or

(ii) Another person, if the transaction offered by the other person has a lower interest rate or a lower total dollar amount of origination discount points and points or fees.

(6) *Applicability.* This paragraph (g) applies only if a covered transaction is consummated with a prepayment penalty and is not violated if:

(i) A covered transaction is consummated without a prepayment penalty; or

(ii) The creditor and consumer do not consummate a covered transaction.

(h) *Evasion; open-end credit.* In connection with credit secured by a consumer's dwelling that does not meet the definition of open-end credit in § 1026.2(a)(20), a creditor shall not structure the loan as an open-end plan to evade the requirements of this section.

* * * * *

5. Appendices N, O, and P are added and reserved, and appendix Q is added to read as follows:

Appendix N to Part 1026 [Reserved]