Regulation Z
Truth in Lending
HELOCs

Community Bankers for Compliance School

LENDING

2016

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Section 1: Subpart B: Open-End Credit Disclosure Requirements

Introduction

Open-end credit has a unique position under Truth in Lending. Unlike most other consumer loans, open-end credit has more frequent disclosures that must be issued in coordination with more specific responsibilities concerning the account's activity.

General Disclosure Requirements: [12 C.F.R. §1026.5]

Form of Disclosures: [12 C.F.R. §1026.5(a)]

Open-end credit requires that the creditor provide written disclosures that the customer may keep, unless the open-end credit is a credit or charge card. If it is a credit or charge card, then the disclosure can be provided as directed under §1026.60.

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

The terms "finance charge" and "annual percentage rate" must be more conspicuous than any other disclosure. There are several ways of doing this, including:

- Capitalization of specific words/phrases while all other disclosures are in lower case
- Writing them in bold print or another contrasting color
- By underlining them
- By setting them off with *** asterisks ***
- Printing them in larger type

Time of Disclosures: [12 C.F.R. §1026.5(b)]

The bank must be concerned with two general types of disclosures for open-end credit – initial and periodic.

Initial disclosures must be provided to the customer before the completion of the first transaction.

Periodic disclosures must be provided to the customer at the end of each billing cycle wherein the account has a debit or credit balance of $1.00 or more. 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 and the date on which any grace period expires. A creditor that fails to meet this requirement shall not treat a payment as late for any purpose or collect any finance or other charge imposed as a result of such failure. For purposes of this paragraph, "grace period" means a period within which any credit extended may be repaid without incurring a finance charge due to a periodic interest rate.

Basis of Disclosures: [12 C.F.R. §1026.5(c)]

The disclosures must accurately reflect the terms and conditions of the agreement between the customer and the bank. When accurate information is not available, then estimates may be used, provided they are indicated as estimates.

Multiple Creditors/Consumers: [12 C.F.R. §1026.5(d)]

If there are multiple creditors, then only one set of disclosures is required to be provided from any one of the creditors. If there are multiple consumers, then only one set of disclosures is required, except for the right of rescission. The right of rescission requires that a set of rescission disclosures be provided to each consumer having an interest in the real property being used as collateral for the loan.

Section 1026.60 contains specific rules for credit card disclosures. Section 1026.40 contains specific rules for home equity loan disclosures. These are reviewed in detail later in this manual.

Account-Opening Disclosures: Home Equity Plans [12 C.F.R. §1026.6(a)]

The account-opening disclosures for home equity plans subject to §1026.40 require, before the first transaction, that the bank provide a disclosure statement that explains the account. These required disclosures include:

- ***Finance Charges:*** The circumstances under which a finance charge will be imposed and an explanation of how it will be determined, as follows:
    - A statement of when finance charges begin to accrue, including an explanation of whether or not there is a grace period. If a grace 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.
    - A disclosure of each periodic rate that may be used to compute the finance charge, the range of balances to which it is applicable, and the corresponding annual percentage rate. If a creditor offers a variable-rate plan, the creditor shall also disclose: the circumstances under which the rate(s) may increase; any limitations on the increase; and the effect(s) of an increase. When different periodic rates apply to different types of transactions, the types of transactions to which the periodic rates shall apply shall also be disclosed. A creditor is not required to adjust the range of balances disclosure to reflect the balance below which only a minimum charge applies.
    - An explanation of the method used to determine the balance on which the finance charge may be computed.
    - 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.
- ***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.

- ***Home-equity plan information***. The following disclosures, as applicable:
  - A statement of the conditions under which the creditor may take certain action, as described in §1026.40(d)(4)(i), such as terminating the plan or changing the terms.
  - The payment information described in §1026.40(d)(5)(i) and (ii) for both the draw period and any repayment period.
  - A statement that negative amortization may occur as described in §1026.40(d)(9).
  - A statement of any transaction requirements as described in §1026.40(d)(10).
  - A statement regarding the tax implications as described in §1026.40(d)(11).
  - A statement that the annual percentage rate imposed under the plan does not include costs other than interest as described in §1026.40(d)(6) and (d)(12)(ii).
  - The variable-rate disclosures described in §1026.40(d)(12)(viii), (d)(12)(x), (d)(12)(xi), and (d)(12)(xii), as well as the disclosure described in §1026.40(d)(5)(iii), unless the disclosures provided with the application were in a form the consumer could keep and included a representative payment example for the category of payment option chosen by the consumer.
- ***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.
- ***Statement of billing rights.*** A statement that outlines the consumer's rights and the creditor's responsibilities under §1026.12(c) and §1026.13 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.

Periodic Statement: Home Equity Plans [12 C.F.R. §1026.7(a)]

A periodic statement is required for home equity plans subject to § 1026.40 and must include the following items.

- ***Previous balance.*** The account balance at the beginning of the billing cycle.
- ***Identification of transactions.*** An identification of each credit transaction in accordance with §1026.8.
- ***Credits.*** Any credit to the account during the billing cycle, including the amount and date of crediting. The date need not be provided if a delay in accounting does not result in any finance or other charge.
- ***Periodic rates.***
  - Except as provided in paragraph (a)(4)(ii) of this section, each periodic rate that may be used to compute the finance charge, the range of balances to which it is applicable, and the corresponding annual percentage rate. If no finance charge is imposed when the outstanding balance is less than a certain amount, the creditor is not required to disclose that fact, or the balance below which no finance charge will be imposed. If different periodic rates apply to different types of transactions, the types of transactions to which the periodic rates apply shall also be disclosed. For variable-rate plans, the fact that the periodic rate(s) may vary.

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

- ***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.
- ***Amount of finance charge and other charges.*** Creditors may comply with paragraphs (a)(6) of this section, or with paragraph (b)(6) of this section, at their option.
- ***Finance charges.*** The amount of any finance charge debited or added to the account during the billing cycle, using the term finance charge. The components of the finance charge shall be individually itemized and identified to show the amount(s) due to the application of any periodic rates and the amounts(s) of any other type of finance charge. If there is more than one periodic rate, the amount of the finance charge attributable to each rate need not be separately itemized and identified.
- ***Other charges.*** The amounts, itemized and identified by type, of any charges other than finance charges debited to the account during the billing cycle.
- ***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.
- ***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.
- ***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).
- ***Closing date of billing cycle; new balance.*** The closing date of the billing cycle and the account balance outstanding on that date.

Alternatively, a creditor subject to the above may, at its option, comply with any of the requirements of paragraph (b) of this section; however, any creditor that chooses not to provide a disclosure under paragraph (a)(7) of this section must comply with paragraph (b)(6) of this section.

Subsequent Disclosure Requirements: [12 C.F.R. §1026.9]

There are several subsequent disclosure requirements.

Statement of Billing Rights: [12 C.F.R. §1026.9(a)]

The bank must provide a statement of billing rights to the customer either as an annual detailed statement or the alternative summary statement on or with each periodic statement, as provided in Appendix G of the regulation.

Disclosures for Supplemental Credit Devices and Additional Features: [12 C.F.R. §1026.9(b)]

If a creditor, within 30 days after mailing or delivering the account-opening disclosures under section 12 C.F.R. §1026.6(a)(1) or (b)(3)(ii)(A), adds a credit feature to the consumer's account or mails or delivers to the consumer a credit access device for which the finance charge terms are the same as those previously disclosed, no additional disclosures are necessary. After 30 days, if the creditor adds a credit feature or furnishes a credit access device (other than as a renewal, resupply, or the original issuance of a credit card) on the same finance charge terms, the creditor shall disclose, before the consumer uses the feature or device for the first time, that it is for use in obtaining credit under the terms previously disclosed.

Whenever a credit feature is added or a credit access device is mailed or delivered, 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 shall be given before the consumer uses the feature or device for the first time.

Change in Terms: [12 C.F.R. §1026.9(c)]

Rules affecting home-equity plans [12 C.F.R. §1026.9(c)(1)]

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

Notice not required. For home-equity plans, no notice under this section is required when the change involves a reduction of any component of a finance or other charge or when the change results from an agreement involving a court proceeding.

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

Section 2: Miscellaneous Open End Rules

Crediting Payments: [12 C.F.R. §1026.10]

In general, the bank must credit payments to the customer's account as of the date of receipt, unless the delay in crediting does not result in a finance charge or other charge.

A creditor may specify reasonable requirements for payments that enable most consumers to make conforming payments. Examples of reasonable requirements for payments may include:

- Requiring that payments be accompanied by the account number or payment stub;
- Setting reasonable cut-off times for payments to be received by mail, by electronic means, by telephone, and in person (except as provided in paragraph (b)(3) of this section), provided that such cut-off times shall be no earlier than 5 p.m. on the payment due date at the location specified by the creditor for the receipt of such payments;
- Specifying that only checks or money orders should be sent by mail;
- Specifying that payment is to be made in U.S. dollars; or
- Specifying one particular address for receiving payments, such as a post office box.

Nonconforming payments.

General. If the bank specifies, on or with the periodic statement, requirements for the consumer to follow in making payments, but accepts a payment that does not conform to the requirements, the bank must credit the payment within five days of receipt.

Payment methods promoted by creditor. If a creditor promotes a method for making payments, such payments shall be considered conforming payments in accordance with this paragraph and shall be credited to the consumer's account as of the date of receipt, except when a delay in crediting does not result in a finance or other charge.

Adjustment of account. If the bank fails to credit the payment as noted, and a finance charge or other charge is levied, the charge must be reversed during the next billing cycle.

Crediting of payments when creditor does not receive or accept payments on due date.

- ***General.*** Except as provided in the next bullet point, if a bank does not receive or accept payments by mail on the due date for payments, the bank may generally not treat a payment received the next business day as late for any purpose. The "next business day" means the next day on which the bank accepts or receives payments by mail.
- ***Payments accepted or received other than by mail.*** If the bank accepts or receives payments made on the due date by a method other than mail, such as electronic or telephone payments, the bank is not required to treat a payment made by that method on the next business day as timely, even if it does not accept mailed payments on the due date.

Treatment of Credit Balances: [12 C.F.R. §1026.11]

If a credit balance exceeds $1.00, then the bank must:

- Credit the amount of the credit balance to the customer's account;
- Refund any part of the remaining credit balance within seven business days from receipt of a written request from the customer; or
- Make a good faith effort to refund to the consumer by cash, check, or money order, or credit to a deposit account of the consumer, any part of the credit balance remaining in the account for more than six months. No further action is required if the consumer's current location is not known to the creditor and cannot be traced through the consumer's last known address or telephone number.

Section 3: Billing Error Resolution [12 C.F.R. §1026.13]

Definition of Billing Error: [12 C.F.R. §1026.13(a)]

The term "billing error" means:

- A reflection on or with a periodic statement of an extension of credit that is not made to the consumer or to a person who has actual, implied, or apparent authority to use the consumer's credit card or open end credit plan.
- A reflection on or with a periodic statement of an extension of credit that is not identified in accordance with the requirements of §1026.7(a)(2) or §1026.7(b)(2), as applicable, and §1026.8.
- A reflection on or with a periodic statement of an extension of credit for property or services not accepted by the consumer or the consumer's designee, or not delivered to the consumer or the consumer's designee as agreed.
- A reflection on a periodic statement of the creditor's failure to credit properly a payment or other credit issued to the consumer's account.
- A reflection on a periodic statement of a computational or similar error of an accounting nature that is made by the creditor.
- A reflection on a periodic statement of an extension of credit for which the consumer requests additional clarification, including documentary evidence.
- The creditor's failure to mail or deliver a periodic statement to the consumer's last known address if that address was received by the creditor, in writing, at least 20 days before the end of the billing cycle for which the statement was required.

Billing Error Notice: [12 C.F.R. §1026.13(b)]

A billing error notice is a written notice from a consumer that:

- Is received by a creditor at the address disclosed under §1026.7(a)(9) or (b)(9), as applicable, no later than 60 days after the creditor transmitted the first periodic statement that reflects the alleged billing error;
- Enables the creditor to identify the consumer's name and account number; and
- To the extent possible, indicates the consumer's belief and the reasons for the belief that a billing error exists, and the type, date, and amount of the error.

The creditor may require that the written notice not be made on the payment medium or other material accompanying the periodic statement if the creditor so stipulates in the billing rights statement required by §§1026.6(a)(5) or (b)(5)(iii), and §1026.9(a). In addition, if the creditor stipulates in the billing rights statement that it accepts billing error notices submitted electronically, and states the means by which a consumer may electronically submit a billing error notice, a notice sent in such manner will be deemed to satisfy the written notice requirement for purposes of §1026.13(b).

Time for Resolution: [12 C.F.R. §1026.13(c)]

Upon receiving a notice of a billing error from a customer, the bank must do the following:

- Mail or deliver written acknowledgment to the customer within 30 days, unless the dispute is resolved before then; and
- Either correct the error and notify the customer, or notify the customer in writing within two billing cycles (but not more than 90 days from receipt of the dispute) why the billing is correct and the amount that is due.

Rules Pending Resolution: [12 C.F.R. §1026.13(d)]

Until a billing error is resolved, the following rules apply:

- ***Consumer's Right to Withhold Disputed Amount; Collection Action Prohibited***. The consumer need not pay (and the creditor may not try to collect) any portion of any required payment that the consumer believes is related to the disputed amount (including related finance or other charges). If the cardholder has enrolled in an automatic payment plan offered by the card issuer and has agreed to pay the credit card indebtedness by periodic deductions from the cardholder's deposit account, the card issuer shall not deduct any part of the disputed amount or related finance or other charges if a billing error notice is received any time up to three business days before the scheduled payment date.
- ***Adverse Credit Reports Prohibited.*** The creditor or its agent shall not (directly or indirectly) make or threaten to make an adverse report to any person about the consumer's credit standing, or report that an amount or account is delinquent, because the consumer failed to pay the disputed amount or related finance or other charges.
- ***Acceleration of debt and restriction of account prohibited.*** A creditor shall not accelerate any part of the consumer's indebtedness or restrict or close a consumer's account solely because the consumer has exercised in good faith rights provided by this section. A creditor may be subject to the forfeiture penalty under 15 U.S.C. 1666(e) for failure to comply with any of the requirements of this section.
- ***Permitted creditor actions.*** A creditor is not prohibited from taking action to collect any undisputed portion of the item or bill; from deducting any disputed amount and related finance or other charges from the consumer's credit limit on the account; or from reflecting a disputed amount and related finance or other charges on a periodic statement, provided that the creditor indicates on or with the periodic statement that payment of any disputed amount and related finance or other charges is not required pending the creditor's compliance with this section.

Procedures if Billing Error Occurred as Asserted: [12 C.F.R. §1026.13(e)]

If a creditor determines that a billing error occurred as asserted, it shall, within 2 complete billing cycles (but in no event later than 90 days) after receiving a billing error notice:

- Correct the billing error and credit the consumer's account with any disputed amount and related finance or other charges, as applicable; and
- Mail or deliver a correction notice to the consumer.

Procedures if Different Billing Error or No Billing Error Occurred: [12 C.F.R. §1026.13(f)]

If, after conducting a reasonable investigation, a creditor determines that no billing error occurred or that a different billing error occurred from that asserted, the creditor shall, within 2 complete billing cycles (but in no event later than 90 days) after receiving a billing error notice:

- Mail or deliver to the consumer an explanation that sets forth the reasons for the creditor's belief that the billing error alleged by the consumer is incorrect in whole or in part;
- Furnish copies of documentary evidence of the consumer's indebtedness, if the consumer so requests; and
- If a different billing error occurred, correct the billing error and credit the consumer's account with any disputed amount and related finance or other charges, as applicable.

Creditor's Rights and Duties After Resolution: [12 C.F.R. §1026.13(g)]

If a creditor, after complying with all of the requirements of this section, determines that a consumer owes all or part of the disputed amount and related finance or other charges, the creditor:

- Shall promptly notify the consumer in writing of the time when payment is due and the portion of the disputed amount and related finance or other charges that the consumer still owes;
- Shall allow any time period disclosed, during which the consumer can pay the amount due without incurring additional finance or other charges;
- May report an account or amount as delinquent because the amount due remains unpaid after the creditor has allowed any time period disclosed or 10 days (whichever is longer) during which the consumer can pay the amount; but
- May not report that an amount or account is delinquent because the amount due remains unpaid, if the creditor receives (within the time allowed for payment) further written notice from the consumer that any portion of the billing error is still in dispute, unless the creditor also;
    - Promptly reports that the amount or account is in dispute;
    - Mails or delivers to the consumer (at the same time the report is made) a written notice of the name and address of each person to whom the creditor makes a report; and
    - Promptly reports any subsequent resolution of the reported delinquency to all persons to whom the creditor has made a report.

Reassertion of Billing Error: [12 C.F.R. §1026.13(h)]

A creditor that has fully complied with the requirements has no further responsibilities (other than as provided above in "Creditor's Rights and Duties After Resolution" – bullet point four) if a consumer reasserts substantially the same billing error.

Relation to Electronic Fund Transfer Act and Regulation E: [12 C.F.R. §1026.13(i)]

If an extension of credit is incident to an electronic fund transfer, under an agreement between a consumer and a financial institution to extend credit when the consumer's account is overdrawn or to maintain a specified minimum balance in the consumer's account, the creditor shall comply with the requirements of Regulation E, 12 C.F.R. §1005.11 governing error resolution rather than this section.

Section 4: Determination of APR [12 C.F.R. §1026.14]

Determination of Annual Percentage Rate: [12 C.F.R. §1026.14]

General Rule: [12 C.F.R. §1026.14(a)]

The annual percentage rate is a measure of the cost of credit, expressed as a yearly rate. An annual percentage rate shall be considered accurate if it is not more than 1/8 of 1 percentage point above or below the annual percentage rate determined in accordance with this section.

An error in disclosure of the annual percentage rate or finance charge shall not, in itself, be considered a violation of this regulation if:

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

Note: There is no significant issue here, so we have chosen to eliminate any additional information in this section

Section 5: Open End Right of Rescission [12 C.F.R. §1026.15]

Introduction

The right of rescission arose from consumers who placed mortgages on their homes without realizing it or the potential consequences. The right to cancel was established to allow the customers to reconsider such transactions.

Consumer's Right to Rescind: [12 C.F.R. §1026.15(a)(1)]

The right of rescission applies to credit plans that take a security interest in the consumer's principal dwelling. Each person having an ownership interest in the dwelling, and for whom it is his principal dwelling, has the right to rescind:

- Each credit extension made under the plan
- The credit plan when it is opened
- A security interest when added or increased to secure an existing plan
- The increase when a credit limit is increased

The consumer does not have the right to rescind each credit extension made under the plan when it is made in accordance with a previously established credit limit for the plan if the right of rescission requirements were met when the plan was opened, security interest was added, or limit was increased.

Exercising Right to Rescind: [12 C.F.R. §1026.15(a)(2-4)]

To exercise the right to rescind, the consumer must notify the creditor of the rescission by mail, telegram, or other means of written communication. Notice is considered given when mailed, transmitted, or when delivered to the creditor's designated place of business, if sent by other means.

The consumer may exercise the right of rescission until midnight of the third business day following the occurrence of retaining or acquiring a security interest in the consumer's principal dwelling, delivery of the rescission notice, or delivery of all material disclosures, whichever occurs last. If the required notice of the right to rescind and material disclosures are not provided to the consumer by the creditor, then the right to rescind will expire three years from the date the security interest was retained or acquired in the consumer's principal dwelling.

Any consumer with ownership interest in the principal dwelling may exercise the right to rescind, and this rescission will then be effective for all consumers.

The creditor must deliver two copies of the notice of the right to rescind and one copy of the material TIL disclosures to each consumer entitled to rescind. The notice must identify the transaction and clearly and conspicuously disclose:

- The security interest in the consumer's principal dwelling;

- The consumer's right to rescind;
- How the consumer can exercise the right to rescind, including a form for such purpose and the street address of the creditor's place of business;
- The effects of rescission; and
- The date the rescission period expires.

Delay of Creditor's Performance: [12 C.F.R. §1026.15(c)]

Unless the consumer waives the right to rescind:

- No money may be disbursed other than in escrow;
- No services can be performed; and
- No materials can be delivered until after the rescission period has expired and the creditor is reasonably satisfied that the consumer has not rescinded.

Effects of Rescission: [12 C.F.R. §1026.15(d)]

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

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

If the creditor has delivered any money or property, the consumer may retain it until the creditor satisfies the above paragraph. If the creditor does not take possession of the property or money within 20 calendar days after the consumer's tender, the consumer may keep it without further obligation.

Consumer's Waiver of Right to Rescind: [12 C.F.R. §1026.15(e)]

The consumer may modify or waive the right to rescind if the consumer determines that a bona fide financial emergency exists. To modify or waive the right, the consumer must give the creditor a dated written statement that:

- Describes the emergency;
- Specifically modifies or waives the right to rescind; and
- Bears the signatures of the consumers entitled to rescind.

Printed forms for this purpose are prohibited.

Exempt Transactions: [12 C.F.R. §1026.15(f)]

The right of rescission does not apply to

- A residential mortgage transaction; or
- A transaction where a state agency is a creditor.

There are numerous versions of the right of rescission document. Two examples are included in this manual. We have not included:

- G-6 -- Rescission Model Form (For Each Transaction)
- G-8 -- Rescission Model Form (When Adding a Security Interest)
- G-9 -- Rescission Model Form (When Increasing the Security)

G-5 -- Rescission Model Form (When Opening an Account)

Notice of Right to Cancel

Your Right to Cancel

We have agreed to establish an open-end credit account for you, and you have agreed to give us a [mortgage/lien/security interest] [on/in] your home as security for the account. You have a legal right under Federal law to cancel the account, without cost, within three business days after the latest of the following events:

a. The opening date of your account which is ________________; or

b. The date you received your Truth-in-Lending disclosures; or

c. The date you received this notice of your right to cancel the account.

If you cancel the account, the [mortgage/lien/security interest] [on/in] your home is also canceled. Within 20 days of receiving your notice, we must take the necessary steps to reflect the fact that the [mortgage/lien/security interest] [on/in] your home has been canceled. We must return to you any money or property you have given to us or to anyone else in connection with the account.

You may keep any money or property we have given you until we have done the things mentioned above, but you must then offer to return the money or property. If it is impractical or unfair for you to return the property, you must offer its reasonable value. You may offer to return the property at your home or at the location of the property. Money must be returned to the address shown below. If we do not take possession of the money or property within 20 calendar days of your offer, you may keep it without further obligation.

How to Cancel

If you decide to cancel the account, you may do so by notifying us, in writing, at (creditor's name and business address). You may use any written statement that is signed and dated by you and states your intention to cancel, or you may use this notice by dating and signing below. Keep one copy of this notice no matter how you notify us because it contains important information about your rights.

If you cancel by mail or telegram, you must send the notice no later than midnight of (date) (or midnight of the third business day following the latest of the three events listed above). If you send or deliver your written notice to cancel some other way, it must be delivered to the above address no later than that time.

I WISH TO CANCEL.

______________________________ ______________________

Consumer's Signature Date

G-7 -- Rescission Model Form (When Increasing the Credit Limit)

Notice of Right to Cancel

Your Right to Cancel

We have agreed to increase the credit limit on your open-end credit account. We have a [mortgage/lien/security interest] [on/in] your home as security for your account. Increasing the credit limit will increase the amount of the [mortgage/lien/security interest] [on/in] your home. You have a legal right under Federal law to cancel the increase in your credit limit, without cost, within three business days after the latest of the following events:

a. The date of the increase in your credit limit which is ___________________________; or

b. The date you received your Truth-in-Lending disclosures; or

c. The date you received this notice of your right to cancel the increase in your credit limit.

If you cancel, your cancellation will apply only to the increase in your credit limit and to the [mortgage/lien/security interest] that resulted from the increase in your credit limit. It will not affect the amount you presently owe, and it will not affect the [mortgage/lien/security interest] we already have [on/in] your home. Within 20 calendar days after we receive your notice of cancellation, we must take the necessary steps to reflect the fact that any increase in the [mortgage/lien/security interest] [on/in] your home has been canceled. We must also return to you any money or property you have given to us or to anyone else in connection with this increase.

You may keep any money or property we have given you until we have done the things mentioned above, but you must then offer to return the money or property. If it is impractical or unfair for you to return the property, you must offer its reasonable value. You may offer to return the property at your home or at the location of the property. Money must be returned to the address shown below. If we do not take possession of the money or property within 20 calendar days of your offer, you may keep it without further obligation.

How to Cancel

If you decide to cancel the increase in your credit limit, you may do so by notifying us, in writing, at (creditor's name and business address). You may use any written statement that is signed and dated by you and states your intention to cancel, or you may use this notice by dating and signing below. Keep one copy of this notice no matter how you notify us because it contains important information about your rights.

If you cancel by mail or telegram, you must send the notice no later than midnight of (date) (or midnight of the third business day following the latest of the three events listed above). If you send or deliver your written notice to cancel some other way, it must be delivered to the above address no later than that time.

I WISH TO CANCEL.

______________________________	____________________
Consumer's Signature	Date

Section 6: Home Equity Plans [12 C.F.R. §1026.40]

Introduction

Similar to adjustable-rate mortgages, home equity plans require specific additional disclosures. These are explained below.

Form of Disclosures: [12 C.F.R. §1026.40(a)]

The home equity disclosures must be made clearly and conspicuously and must be grouped together and segregated from all other information. These disclosures may be included on the application or provided on a separate form.

The disclosures listed in bullets 1-6 below must precede the other required disclosures.

Timing of Disclosures: [12 C.F.R. §1026.40(b)]

The initial disclosures and brochure must be given to the consumer at the time of application. In the case of telephone applications or applications through third parties, the creditor has three business days to deliver or mail these disclosures after receipt of the application.

Third Parties: [12 C.F.R. §1026.40(c)]

Persons who provide applications to consumers on behalf of the creditor must provide the consumer with the home equity plan brochure, and if they have the creditor's home equity plan disclosures they must provide them at this time.

Content of Disclosures: [12 C.F.R. §1026.40(d)]

The creditor must disclose the following information to the consumer in its home equity plan disclosures:

- ***Retain a Copy:*** A statement that the consumer should make or retain a copy of the disclosures.
- ***Time Limits:*** A statement of the time limitations by which the consumer must submit an application to obtain certain, specific terms disclosed and an identification of any term that may change before opening the plan.

- ***Refunds:*** A statement saying that, if the plan does change before the opening of the plan, other than an interest rate change prompted by a change in an index, the consumer may receive a refund of all of the fees paid in connection with the application.
- ***Security Interest in Home:*** A statement that the creditor will acquire an interest in the consumer's dwelling and that, in the event of default, the consumer may lose his or her home.
- ***Actions by Creditor:*** A statement of possible actions to be taken by the creditor, if certain conditions should exist (termination of the plan, prohibition/reduction of additional extensions of credit, or modification of certain terms of the plan).
- ***Consumer Request:*** A statement that the consumer may request information about the conditions under which these actions may occur, or a statement of these conditions.
- ***Payment Terms:*** Payment terms, including the length of the plan (draw period and repayment period), how the periodic payment is derived, the timing of the payments, a statement relating that paying only the minimum periodic payment will not repay the principal or will repay less than the outstanding balance, and any balloon payment that will result.
- ***Historical Example:*** A historical example, based on a $10,000 outstanding balance, a recent annual percentage rate, the minimum periodic payment, any balloon payment, and the time it would take to repay the balance if no new extensions were made.
- ***Different Payment Terms*****:** If different payment terms may apply during different periods within the plan (draw period versus repayment period), then the disclosures must reflect the different payment terms.
- ***Annual Percentage Rate:*** For fixed-rate plans, a recent APR based on a rate that has been in effect within the last 12 months of the plan. For variable-rate plans, the most recent rate provided in the historical example or a rate that's been in effect under the plan since the date of the most recent table. The disclosure also must include a statement that the annual percentage rate does not include costs other than interest.
- ***Creditor Fees:*** An itemization of fees imposed by the creditor to open, use, or maintain the plan, stated as a dollar amount or percentage, and when the fees are payable.
- ***Third-Party Fees:*** A good faith estimate of fees imposed by third parties, stated as a dollar amount or range of fees, and a statement that the consumer may request a good faith itemization of those fees. Instead of the statement, the itemization of the fees may be provided.
- ***Negative Amortization:*** A statement that negative amortization may occur and that it may increase the principal balance and reduce the consumer's equity in the dwelling.
- ***Transaction Requirements:*** There must be a statement regarding any limitations on the number of extensions of credit, the amount of credit that may be obtained, any minimum requirements on draws, or outstanding balances. These must be stated as percentages or dollar amounts.
- ***Tax Advisor:*** A statement that the consumer should consult a tax advisor regarding the deductibility of interest/charges under the plan.

Variable-Rate Plans: [12 C.F.R. §1026.40(d)(12)]

Variable-rate plans should include the following disclosures as applicable:

- ***Variable Rate Feature*:** The APR, payment, or term may change due to the variable-rate feature.
- ***APR Statement:*** The APR does not include costs other than interest.
- ***Index/Source:*** The index that the bank intends to use and the source of information about the index.
- ***APR Description:*** An explanation of how the APR will be determined, including how the index will be adjusted (e.g., prime rate + margin = APR).
- ***Consumer Request:*** A statement that the consumer should ask about the current index value, margin, discount or premium, and APR.
- ***Discount Statement:*** A statement that the initial APR is not based on the index and margin used to make later rate adjustments and the period of time that the initial rate will be in effect, if applicable.
- ***Frequency of Change*:** The frequency of changes in the APR.
- ***Payment Change Rules:*** Any rules relating to changes in the index value and the resulting changes in the APR and payment amount, such as an explanation of payment limitations and interest rate carryover.
- ***Rate Change Limits*:** A statement of the maximum amount the APR may change in any change period, such as one year, or that may be imposed under each payment option. Also, a statement if no limitation exists.
- ***Minimum Periodic Payments:*** A statement regarding the minimum periodic payment required when the maximum APR for each payment option is in effect for a $10,000 outstanding balance, and the earliest date the maximum rate may be imposed.
- ***Historical Example:*** A historical example based on a $10,000 extension of credit, using the most recent 15 years of index values showing how APRs and payments would have been affected by the index value changes implemented according to the terms of the plan. This example shall reflect, as closely as possible, all terms and conditions as expressed by the consumer in their loan request.
- ***Periodic Statement Disclosures:*** A statement that rate information will be provided on or with each periodic statement.

Brochure: [12 C.F.R. §1026.40(e)]

The home equity brochure available on the Bureau's Web site or a suitable substitute must be provided to the consumer.

Limitations on Home Equity Plans: [12 C.F.R. §1026.40(f)]

There are several limitations concerning changing the home equity plan by the creditor.

- ***Change of APR:*** No creditor may change the APR on a contract unless:
  - The change is based on an index that is not under the creditor's control; and
  - The index is available to the public
- ***Termination of Plan:*** No creditor may terminate the plan and demand repayment of the entire outstanding balance in advance of the original term unless:
  - There has been fraud/misrepresentation by the consumer in connection with the plan;
  - The consumer has failed to meet the repayment terms of the contract for any outstanding balance;
  - Any action or inaction by the consumer has adversely affected the creditor's security for the plan, or any right of the creditor in that security; or
  - Federal law dealing with credit extended by a depository institution to its executive officers specifically requires that as a condition of the plan the credit shall become due and payable on demand, provided that the creditor includes such a provision in the initial agreement.
- ***Change of Agreement:*** No creditor may change any terms of the agreement, except that a creditor may:
  - Provide in the initial agreement that it may prohibit additional extensions of credit or reduce the credit limit during any period in which the maximum APR is reached;
  - Provide in the initial agreement that, should a specific event occur, certain changes will occur in the plan;
  - Change the index and margin used under the plan if the original index is no longer available. The new index must reflect an historical movement that is substantially similar to that of the original index, and the new index and margin would have resulted in an APR substantially similar to the rate in effect at the time the original index became unavailable;
  - Make a specified change if the consumer specifically agrees to it in writing at that time;
  - Make any change that will unequivocally benefit the consumer throughout the remainder of the plan;
  - Make an insignificant change to terms;
  - Prohibit additional extensions of credit or reduce the credit limit applicable to an agreement during any period in which:
    - The value of the dwelling that secures the plan declines significantly below the dwelling's appraised value for purposes of the plan;
    - The creditor reasonably believes that the consumer will be unable to fulfill the repayment obligations under the plan because of a material change in the consumer's financial circumstances;
    - The consumer is in default of any material obligation under the agreement;

    - The creditor is precluded by government action from imposing the annual percentage rate provided for in the agreement;
    - The priority of the creditor's security interest is adversely affected by government action to the extent that the value of the security interest is less than 120 percent of the credit line; or
    - The creditor is notified by its regulatory agency that continued advances constitute an unsafe and unsound practice.
- ***Reverse Mortgages:*** No creditor may terminate a plan and demand repayment of the entire outstanding balance in advance of the original term except:
  - In the case of default;
  - If the consumer transfers title to the property securing the note;
  - If the consumer ceases using the property securing the note as the primary dwelling; or
  - Upon the consumer's death.

Refund of Fees: [12 C.F.R. §1026.40(g)]

A creditor must refund all fees paid by the consumer to anyone in connection with an application if any term required to be disclosed under paragraph (d) above changes (other than a change due to fluctuations in the index in a variable rate plan) before the plan is opened and if, as a result, the consumer elects not to open the plan.

Neither a creditor nor any other person may impose a nonrefundable fee in connection with an application until three business days after the consumer receives the disclosures and brochure required under this section.

If the disclosures and brochure are mailed to the consumer, the consumer is considered to have received them three business days after they are mailed.

Section 7: Subpart D: Miscellaneous

Record Retention: [12 C.F.R. §1026.25]

TIL documents must be retained for a period of two years following the required action or disclosure, unless extended by order from a regulatory agency or court. Typically, most banks keep them for the life of the loan.

If right of rescission violations occur, the customer has three years to rescind the transaction. Thus, the bank should retain these documents for three years or for the life of the loan.

In HELOC plans, written procedures for compliance with the record retention requirements as well as a sample disclosure form and contract for each home equity program represent adequate evidence of compliance.

Use of Annual Percentage Rate in Oral Disclosures: [12 C.F.R. §1026.26]

In an oral response to a consumer's inquiry about the cost of open-end credit, only the annual percentage rate or rates shall be stated, except that the periodic rate or rates also may be stated. If the annual percentage rate cannot be determined in advance because there are finance charges other than a periodic rate, the corresponding annual percentage rate shall be stated, and other cost information may be given.

Limitation on Rates: [12 C.F.R. §1026.30]

Any consumer credit contract secured by a "dwelling" and subject to the Truth in Lending Act and Regulation Z shall include the maximum interest rate that may be imposed during the term of the obligation when the annual percentage rate may increase during the life of the plan (open-end credit).

The definition of "dwelling" is a residential structure that contains one-to-four units, whether or not that structure is attached to real property. The term includes an individual condominium unit, cooperative unit, mobile home, and trailer, if it is used as a residence.

Section 8: Subpart E: Special Rules for Certain Home Mortgage Transactions

General Rules: [12 C.F.R. §1026.31]

The final rule implemented by the Dodd-Frank Act expanded the universe of loans potentially covered by the Home Equity Ownership and Equity Protection Act (HOEPA). Under the rule effective January 1, 2014, most types of mortgage loans secured by a consumer's principal dwelling are subject to HOEPA coverage, including HELOCs.

Relation to Other Subparts: [12 C.F.R. §1026.31(a)]

The requirements and limitations of this subpart are in addition to and not in lieu of those contained in other subparts of Regulation Z.

Form of Disclosures: [12 C.F.R. §1026.31(b)]

The creditor must make the disclosures required by this subpart clearly and conspicuously in writing, in a form that the consumer may keep.

Timing of Disclosure: [12 C.F.R. §1026.31(c)]

Disclosures for certain closed-end home mortgages. The creditor must furnish the disclosures required by section 1026.32 at least three business days prior to account opening for an open-end high-cost mortgage.

Change in terms. After giving the early disclosures for certain closed-end home mortgages, and before consummation, if the creditor changes any term that makes the disclosures inaccurate, new disclosures must be provided in accordance with the requirements of this subpart.

Telephone disclosures. A creditor may provide new disclosures by telephone if the consumer initiates the change and if, at consummation:

- The creditor provides new written disclosures; and
- The consumer and creditor sign a statement that the new disclosures were provided by telephone at least three days before consummation.

Consumer's waiver of waiting period before consummation. The consumer may, after receiving the early disclosures, modify or waive the three-day waiting period between delivery of those disclosures and consummation if the consumer determines that the extension of credit is needed to meet a bona fide personal financial emergency. To modify or waive the right, the consumer must give the creditor a dated written statement that describes the emergency, specifically modifies or waives the waiting period, and bears the signature of all the consumers entitled to the waiting period. Printed forms for this purpose are prohibited, except when creditors are permitted to use printed forms for declared emergencies under the rescission rules.

Disclosures for reverse mortgages. The creditor must furnish the disclosures required by section 1026.33 at least three business days before the first transaction under an open-end credit plan.

Basis of Disclosures and Use of Estimates: [12 C.F.R. §1026.31(d)]

Legal obligation. Disclosures must reflect the terms of the legal obligation between the parties.

Estimates. If any information necessary for an accurate disclosure is unknown to the creditor, the creditor must make the disclosure based on the best information reasonably available at the time the disclosure is provided, and must state clearly that the disclosure is an estimate.

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

Multiple Creditors; Multiple Consumers: [12 C.F.R. §1026.31(e)]

If a transaction involves more than one creditor, only one set of disclosures shall be given and the creditors shall agree among themselves which creditor must comply with the requirements that this part imposes on any or all of them.

If there is more than one consumer, the disclosures may be made to any consumer who is primarily liable on the obligation. If the transaction is rescindable, however, the disclosures must be made to each consumer who has the right to rescind.

Effect of Subsequent Events: [12 C.F.R. §1026.31(f)]

If a disclosure becomes inaccurate because of an event that occurs after the creditor delivers the required disclosures, the inaccuracy is not a violation of Regulation Z, although new disclosures may be required.

Accuracy of Annual Percentage Rate: [12 C.F.R. §1026.31(g)]

For purposes of section 1026.32, the annual percentage rate shall be considered accurate, and may be used in determining whether a transaction is covered by this section, if it is accurate according to the requirements and within the tolerances under section 1026.6(a).

Corrections and Unintentional Violations [12 C.F.R. §1026.31(h)]

A creditor acting in good faith who failed to comply with any requirements for high-cost mortgages will not be deemed to have violated such requirements if the creditor satisfies either of the following sets of conditions:

- Within 30 days of account opening and prior to the institution of any action, the consumer is notified of or discovers the violation, appropriate restitution is made within a reasonable time and necessary adjustments to the loan are made at the consumer's option to either comply with the high-cost mortgage provisions or change the loan terms so that the credit plan is no longer a high-cost mortgage.
- Within 60 days of the creditor's discovery or receipt of notification of an unintentional violation or bona fide error and prior to the institution of any action, the consumer is notified, appropriate restitution is made within a reasonable time, and necessary adjustments to the loan are made at the consumer's option to either comply with the high-cost mortgage provisions or change the loan terms so that the credit plan is no longer a high-cost mortgage.

Requirements for High-Cost Mortgages: [12 C.F.R. §1026.32]

Coverage: [12 C.F.R. §1026.32(a)]

Certain requirements apply to consumer credit transactions that are secured by the consumer's principal dwelling and in which one of the following apply:

- The APR at consummation will exceed the Average Prime Offer Rate (APOR) for a comparable transaction by more than:
  - 6.5 percentage points for a first-lien transaction
  - 8.5 percentage points for a first-lien transaction if the dwelling is personal property and the loan amount is less than $50,000, or
  - 8.5 percentage points for a subordinate-lien transaction
- The transaction's total points and fees will exceed:
  - 5 percent of the total loan amount for a transaction with a loan amount of $20,000 or more (the threshold will be adjusted annually based on the CPI)
  - The lesser of 8 percent of the total loan amount or $1,000 for a transaction with a loan amount less than $20,000 (the threshold will be adjusted annually based on the CPI)
- Under the terms of the HELOC agreement, the creditor can charge a prepayment penalty more than 36 months after account opening, or prepayment penalties that can exceed, in total, more than 2 percent of the amount prepaid.

Exceptions

The above requirements do not apply to the following:

- A reverse-mortgage transaction subject to §1026.33

- A transaction to finance the initial construction of a dwelling

Determination of the APR [12 C.F.R. §1026.32(a)(3)]

A creditor shall determine the APR for an open-end plan based on the following:

- For a transaction in which the APR will not vary during the term of the credit plan, the interest rate in effect as of the date the interest rate is set
- For a transaction in which the interest rate may vary during the open-end credit plan in accordance with an index, the interest rate that results from adding the maximum margin permitted during the plan to the value of the index rate in effect as of the date the interest rate is set, or the introductory interest rate, whichever is greater
- For a transaction in which the interest rate may vary during the term of the open-end credit plan other than one tied to an index value, the maximum interest rate that may be imposed during the term of the credit plan.

Definitions: [12 C.F.R. §1026.32(b)(2)]

For the purposes of this section, certain definitions must be understood:

Points and fees for an open-end credit plan mean the following:

- All items required to be disclosed under §§1026.4(a) and (b), except interest or the time-price differential;
- All compensation paid directly or indirectly by a consumer to a loan originator; as defined in §1026.36(a)(1) that can be attributed to that transaction at the time the interest is set unless excluded;
- Up to two bona fide discount points;
- The maximum prepayment penalty that may be collected under the terms of the plan;
- The total prepayment penalty incurred if the consumer refinances an existing closed-end credit with an open-end plan, or terminates an existing open-end credit plan with a new open-end plan with the same creditor or its affiliate;
- Any fees for participation in an open-end credit plan payable at or before account opening;
- Any transaction fee, including any minimum fee or per-transaction fee, that will be charged for a draw on the credit line, where the creditor must assume that the consumer will make at least one draw during the term of the plan;
- All single premium insurance amounts; and
- All items listed in §1026.4(c)(7) (other than monies held for future payment of taxes) unless:
  - The charge is reasonable;
  - The creditor receives no direct or indirect compensation in connection with the charge; and
  - The charge is not paid to an affiliate of the creditor.

The parameters of loan officer compensation rules outlined in §1026.36 are outside the scope of today's presentation.

Affiliate means any company that controls, is controlled by, or is under common control with another company.

Prepayment Penalty means a charge imposed by the creditor if the consumer terminates the open-end credit plan prior to the end of its term, other than a waived, bona fide third-party charge that the creditor imposes if the consumer terminates the open-end plan sooner than 36 months after account opening.

Disclosures: [12 C.F.R. §1026.32(c)]

In a mortgage loan covered by this section, the creditor must disclose the following, three days prior to account opening in a conspicuous type size:

- *Notice.* "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."
- Annual percentage rate
- An example showing the first minimum periodic payment for the draw period, the first minimum periodic payment for any repayment period, and the balance outstanding at the beginning of any repayment period. The example must be based on the following assumptions:
    - The consumer borrows the full credit line at account opening and does not obtain any additional extensions of credit;
    - The consumer makes only minimum periodic payments during the draw period and any repayment period; and
    - The APR remains the same during the draw period and any repayment period. If an introductory APR applies, the creditor must use the rate that will apply to the plan after the introductory rate expires
- Disclosure of any applicable balloon payment and an example showing the amount based on the assumptions above
- A statement that the example payments show the first minimum periodic payments at the current APR if the consumer borrows the maximum credit available when the account is opened and does not obtain any additional extensions of credit
- A statement that the example payments are not the consumer's actual payments, and that the actual minimum payments will depend on the amount borrowed, the interest rate applicable to that period, and whether more than the required minimum payment is made
- The credit limit for the plan when the account is opened

- *Variable rate.* For variable loans, the disclosure must contain a statement indicating that the monthly payment may increase, and the amount of the single maximum monthly payment, based on the maximum interest rate required to be disclosed under §1026.30.

Limitations: [12 C.F.R. §1026.32(d)]

The following limitations also apply. A high-cost mortgage subject to this section may not provide for the following:

- Balloon payment, if the loan has a term less than five years (except for bridge loans with maturities of less than one year, and adjustments to the payment resulting solely from a transition from the draw period to the repayment period of the plan);
- Negative amortization;
- Advance payments (consolidating more than two periodic payments and paying them in advance from loan proceeds);
- Increased interest rates after default;
- Rebates (calculated less favorably than actuarial method) of interest arising from a loan acceleration due to default;
- Prepayment penalties other than a waived, bona fide third-party charge that the creditor imposes if the consumer terminates the plan sooner than 36 months after account opening; and
- Due-on-demand clause. A demand feature that permits the creditor to terminate the high-cost mortgage in advance of the original maturity date and to demand repayment of the entire outstanding balance, except in the following circumstances:
  - There is fraud or material misrepresentation by the consumer in connection with the open-end credit agreement;
  - The consumer fails to meet the repayment terms of the agreement for any outstanding balance that results in a default in payment under the loan; or
  - There is any action or inaction by the consumer that adversely affects the creditor's security for the loan, or any right of the creditor in such security.

Prohibited Acts or Practices in Connection with High-Cost Mortgages: [12 C.F.R. §1026.34]

Section 32 Loans: [12 C.F.R. §1026.34(a)]

A creditor extending mortgage credit subject to §1026.32 must not—

Home improvement contracts. Pay a contractor under a home improvement contract from the proceeds of a Section 32 mortgage loan, other than:

- By an instrument payable to the consumer or jointly to the consumer and the contractor; or

- At the election of the consumer, through a third-party escrow agent in accordance with terms established in a written agreement signed by the consumer, the creditor, and the contractor before the disbursement.

Notice to assignee. Sell or otherwise assign a Section 32 mortgage loan without furnishing the following statement to the purchaser or assignee: "Notice: This is a mortgage subject to special rules under the Federal Truth in Lending Act. Purchasers or assignees of this mortgage could be liable for all claims and defenses with respect to the mortgage that the borrower could assert against the creditor."

Refinancings within one-year period. Within one year of having extended a Section 32 loan, refinance any Section 32 loan to the same borrower into another Section 32 loan, unless the refinancing is in the borrower's interest. An assignee holding or servicing an extension of Section 32 mortgage credit, must not, for the remainder of the one-year period following the date of origination of the credit, refinance any Section 32 loan to the same borrower into another Section 32 loan, unless the refinancing is in the borrower's interest. A creditor (or assignee) is prohibited from engaging in acts or practices to evade this provision, including a pattern or practice of arranging for the refinancing of its own loans by affiliated or unaffiliated creditors, or modifying a loan agreement (whether or not the existing loan is satisfied and replaced by the new loan) and charging a fee.

Repayment ability. A creditor shall not open a plan for a consumer where credit is or will be extended without regard to the consumer's repayment ability as of account opening, including the consumer's current and expected income, assets other than the collateral, employment, and current obligations including any mortgage-related obligations that are required by another credit obligation undertaken prior to or at account opening and that are secured by the same dwelling as the high-cost mortgage. There is a presumption that a creditor has violated this paragraph if the creditor engages in a pattern or practice of making Section 32 loans without verifying and documenting consumers' repayment ability.

Pre-loan counseling. A creditor shall not extend a high-cost mortgage to a consumer unless the creditor receives written certification that the consumer has obtained counseling on the advisability of the mortgage from a HUD-approved counselor not affiliated or employed by the creditor. The certification must include: the name(s) of the consumer who received counseling; the date(s) of the counseling; the name and address of the counselor; a statement that the consumer(s) received counseling on the advisability of the high-cost mortgage based on the HELOC terms; and a statement that the counselor has verified that the consumer received the HOEPA disclosures described in §1026.32 (c).

Counseling fees. A creditor may pay the fees of a counselor but may not condition the payment of such fees on the account opening of the HRLOC. If the consumer withdraws the application that would result in a high-cost mortgage, a creditor may not condition the payment of such fees on the receipt of certification from the counselor. A creditor may, however, verify that a counselor provided the service prior to paying the fee.

Steering prohibited. A creditor that extends a high-cost mortgage shall not steer or otherwise direct a consumer to choose a particular counselor.

Recommended default. A creditor may not recommend or encourage default on an existing loan or other debt prior to and in connection with the account opening of a high-cost mortgage that refinances all or any portion of such existing loan or debt.

Modification and deferral fees. A creditor may not charge a consumer any fee to modify, renew, extend or amend a high-cost mortgage, or to defer any payment due under the terms of the mortgage.

Late fees. Any late fee payment charge imposed in connection with a high-cost mortgage must be specifically permitted by the terms of the open-end credit agreement and may not exceed 4 percent of the amount of the payment past due (i.e., the required minimum periodic payment under the HELOC agreement). No such charge may be imposed more than once for a single late payment. The charge may be imposed only if the payment is not received by the end of the 15-day period beginning on the date the payment is due.

A late payment charge may not be imposed on a high-cost mortgage if any delinquency is attributable only to a late payment charge imposed on an earlier payment, and the payment is otherwise a full payment for the applicable period and is paid on or before the due date or within the grace period.

Failure to make required payment. The terms of a high-cost mortgage agreement may provide that any payment shall first be applied to any past due balance. If the consumer fails to make a timely payment by the due date and subsequently resumes making payments but has not paid all past due payments, the creditor may impose a separate late payment charge for any payment(s) outstanding (without deduction due to late fees or related fees) until the default is cured.

Payoff statements: fee prohibition. In general, a creditor may not charge a fee for providing to a consumer, or a person authorized by the consumer, a statement of the amount due to pay off the outstanding balance of a high-cost mortgage.

Payoff statements: processing fee. A creditor may charge a processing fee to cover the cost of providing a payoff statement by fax or courier as long as the fee is comparable to fees imposed for similar services for non-high-cost mortgages. A creditor shall make a payoff statement available by a method other than fax or courier without charge.

Payoff statements: processing fee disclosure. Prior to charging a processing fee for providing a payoff statement by fax or courier, a creditor must disclose to the consumer or his/her designee that other methods are available without charge.

Payoff statements: fees permitted after multiple requests. A creditor that has provided a payoff statement without charge other than a permitted processing fee four times during a calendar year may thereafter charge a reasonable fee for providing such statements during the remainder of the calendar year. Payoff statements provided in subsequent calendar years are subject to the fee and disclosure requirements.

Timing of delivery of payoff statements. A payoff statement for a high-cost mortgage shall be provided within five business days after receiving a request for such statement.

Financing points and fees. A creditor that extends a high-cost mortgage may not finance charges that are required to be included in the points and fees calculation. Credit insurance premiums or debt cancellation fees are not considered financed when they are calculated and paid in full on a monthly basis.

Dwelling-Secured Loans; Structuring: [12 C.F.R. §1026.34(b)]

A creditor must not structure a home-secured loan that is otherwise a high-cost mortgage in a form and with the intent of evading the requirements of this subpart, including by dividing any loan transaction into separate parts.

Section 9: Prohibited Act or Practices in Connection with Credit Secured by a Dwelling [12 C.F.R. §1026.36]

Servicing practices [12 C.F.R. §1026.36(c)(3)]

In connection with a consumer open-end credit transaction secured by a consumer's dwelling, no servicer shall fail to provide an accurate statement of the total outstanding balance that would be required to pay the consumer's obligation in full as of a specified date. The creditor shall send the statement within a reasonable time period, but in no case more than seven business days after receipt of a written request. When a creditor is unable to provide a statement within seven business days because a loan is in bankruptcy or foreclosure, or because of natural disasters or similar circumstances, the payoff statement must be provided within a reasonable time.

Prohibition on mandatory arbitration clauses [12 C.F.R. §1026.36(h)]

A contract or other agreement for a consumer credit transaction secured by a dwelling (including a home equity line of credit (HELOC) secured by the consumer's principal dwelling) may not include terms that require arbitration or any other non-judicial procedure to resolve any controversy or settle any claims arising out of the transaction.

Prohibition on financing credit insurance [12 C.F.R. §1026.36(i)]

A creditor may not finance, directly or indirectly, any premiums or fees for credit insurance in connection with a consumer credit transaction secured by a dwelling, including a HELOC secured by a consumer's principal dwelling. This prohibition does not apply to credit insurance for which premiums or fees are calculated and paid in full on a monthly basis.

"Credit insurance" means credit life, credit disability, credit unemployment or credit property insurance or any other accident, loss-of-income, life, or health insurance, or any payments directly or indirectly for any debt cancellation or suspension agreement or contract.

Credit insurance excludes credit unemployment insurance for which the unemployment insurance premiums are reasonable, the creditor receives no direct or indirect compensation in connection with the insurance premiums, and the unemployment insurance premiums are paid pursuant to a separate insurance contract and are not paid to an affiliate of the creditor.

Section 10: Valuation Independence [12 C.F.R. §1026.42]

Introduction

This section of the Truth in Lending Act (Regulation Z) applies to any consumer credit transaction secured by the consumer's principal dwelling.

Definitions. [12 C.F.R. §1026.42(b)]

Covered person

A creditor with respect to a covered transaction or a person that provides "settlement services," as defined in 12 U.S.C. 2602(3) and implementing regulations, in connection with a covered transaction.

Covered transaction

An extension of consumer credit that is or will be secured by the consumer's principal dwelling, as defined in §1026.2(a)(19).

Valuation

An estimate of the value of the consumer's principal dwelling in written or electronic form, other than one produced solely by an automated model or system.

Valuation management functions means

- Recruiting, selecting, or retaining a person to prepare a valuation;
- Contracting with or employing a person to prepare a valuation;
- Managing or overseeing the process of preparing a valuation, including by providing administrative services such as receiving orders for and receiving a valuation, submitting a completed valuation to creditors and underwriters, collecting fees from creditors and underwriters for services provided in connection with a valuation, and compensating a person that prepares valuations; or
- Reviewing or verifying the work of a person that prepares valuations.

Valuation of consumer's principal dwelling. [12 C.F.R. §1026.42(c)]

Coercion. [12 C.F.R. §1026.42(c)(1)]

In connection with a covered transaction, no covered person shall or shall attempt to directly or indirectly cause the value assigned to the consumer's principal dwelling to be based on any factor other than the independent judgment of a person that prepares valuations, through coercion, extortion, inducement, bribery, or intimidation of, compensation or instruction to, or collusion with a person that prepares valuations or performs valuation management functions. Examples of actions that violate this paragraph include:

- Seeking to influence a person that prepares a valuation to report a minimum or maximum value for the consumer's principal dwelling;
- Withholding or threatening to withhold timely payment to a person that prepares a valuation or performs valuation management functions because the person does not value the consumer's principal dwelling at or above a certain amount;
- Implying to a person that prepares valuations that current or future retention of the person depends on the amount at which the person estimates the value of the consumer's principal dwelling;
- Excluding a person that prepares a valuation from consideration for future engagement because the person reports a value for the consumer's principal dwelling that does not meet or exceed a predetermined threshold; and
- Conditioning the compensation paid to a person that prepares a valuation on consummation of the covered transaction.

Mischaracterization of value. [12 C.F.R. §1026.42(c)(2)]

Misrepresentation. In connection with a covered transaction, no person that prepares valuations shall materially misrepresent the value of the consumer's principal dwelling in a valuation. A misrepresentation is material for purposes of this paragraph (c)(2)(i) if it is likely to significantly affect the value assigned to the consumer's principal dwelling. A bona fide error shall not be a misrepresentation.

Falsification or alteration. In connection with a covered transaction, no covered person shall falsify and no covered person other than a person that prepares valuations shall materially alter a valuation. An alteration is material for purposes of this paragraph (c)(2)(ii) if it is likely to significantly affect the value assigned to the consumer's principal dwelling.

Inducement of mischaracterization. In connection with a covered transaction, no covered person shall induce a person to violate paragraph (c)(2)(i) or (ii) of this section.

Permitted actions. [12 C.F.R. §1026.42(c)(3)]

Examples of actions that do not violate coercion and mischaracterization of value as stated above include:

- Asking a person that prepares a valuation to consider additional, appropriate property information, including information about comparable properties, to make or support a valuation;
- Requesting that a person that prepares a valuation provide further detail, substantiation, or explanation for the person's conclusion about the value of the consumer's principal dwelling;
- Asking a person that prepares a valuation to correct errors in the valuation;
- Obtaining multiple valuations for the consumer's principal dwelling to select the most reliable valuation;
- Withholding compensation due to breach of contract or substandard performance of services; and

- Taking action permitted or required by applicable Federal or state statute, regulation, or agency guidance.

Prohibition on conflicts of interest. [12 C.F.R. §1026.42(d)]

General. [12 C.F.R. §1026.42(d)(1)]

- No person preparing a valuation or performing valuation management functions for a covered transaction may have a direct or indirect interest, financial or otherwise, in the property or transaction for which the valuation is or will be performed.
- Employees and affiliates of creditors; providers of multiple settlement services. In any covered transaction, no person violates paragraph (d)(1)(i) of this section based solely on the fact that the person:
  - Is an employee or affiliate of the creditor; or
  - Provides a settlement service in addition to preparing valuations or performing valuation management functions, or based solely on the fact that the person's affiliate performs another settlement service.

Employees and affiliates of creditors with assets of more than $250 million for both of the past two calendar years. [12 C.F.R. §1026.42(d)(2)]

- For any covered transaction in which the creditor had assets of more than $250 million as of December 31st for both of the past two calendar years, a person subject to paragraph (d)(1)(i) of this section who is employed by or affiliated with the creditor does not have a conflict of interest in violation of said paragraph based on the person's employment or affiliate relationship with the creditor if:
  - The compensation of the person preparing a valuation or performing valuation management functions is not based on the value arrived at in any valuation;
  - The person preparing a valuation or performing valuation management functions reports to a person who is not part of the creditor's loan production function, as defined below and whose compensation is not based on the closing of the transaction to which the valuation relates; and
  - No employee, officer or director in the creditor's loan production function, as defined below, is directly or indirectly involved in selecting, retaining, recommending or influencing the selection of the person to prepare a valuation or perform valuation management functions, or to be included in or excluded from a list of approved persons who prepare valuations or perform valuation management functions.

Employees and affiliates of creditors with assets of $250 million or less for either of the past two calendar years. [12 C.F.R. §1026.42(d)(3)]

- For any covered transaction in which the creditor had assets of $250 million or less as of December 31st for either of the past two calendar years, a person subject to paragraph (d)(1)(i) of this section who is employed by or affiliated with the creditor does not have a conflict of interest in violation of paragraph (d)(1)(i) of this section based on the person's employment or affiliate relationship with the creditor if:

- o The compensation of the person preparing a valuation or performing valuation management functions is not based on the value arrived at in any valuation; and
- o The creditor requires that any employee, officer or director of the creditor who orders, performs, or reviews a valuation for a covered transaction abstain from participating in any decision to approve, not approve, or set the terms of that transaction.

Providers of multiple settlement services. [12 C.F.R. §1026.42(d)(4)]

- For any covered transaction, a person who prepares a valuation or performs valuation management functions in addition to performing another settlement service for the transaction, or whose affiliate performs another settlement service for the transaction, does not have a conflict of interest in violation of paragraph (d)(1)(i) of this section as a result of the person or the person's affiliate performing another settlement service for the transaction if:
  - o The creditor had assets of more than $250 million as of December 31st for both of the past two calendar years and the conditions in paragraph (d)(2)(i)–(iii) are met; or
  - o The creditor had assets of $250 million or less as of December 31st for either of the past two calendar years and the conditions in paragraph (d)(3)(i)–(ii) are met.

Definitions. [12 C.F.R. §1026.42(d)(5)]

Loan production function:

An employee, officer, director, department, division, or other unit of a creditor with responsibility for generating covered transactions, approving covered transactions, or both.

Settlement service:

Has the same meaning as in the Real Estate Settlement Procedures Act, 12 U.S.C. 2601 et seq.

Affiliate:

Has the same meaning as in Regulation Y, 12 C.F.R. §1025.2(a).

When extension of credit prohibited. [12 C.F.R. §1026.42(e)]

In connection with a covered transaction, a creditor that knows, at or before consummation, of a violation of paragraph (c) or (d) of this section in connection with a valuation shall not extend credit based on the valuation, unless the creditor documents that it has acted with reasonable diligence to determine that the valuation does not materially misstate or misrepresent the value of the consumer's principal dwelling. For purposes of this paragraph, a valuation materially misstates or misrepresents the value of the consumer's principal dwelling if the valuation contains a misstatement or misrepresentation that affects the credit decision or the terms on which credit is extended.

Customary and reasonable compensation [12 C.F.R. §1026.42(f)]

Requirement to provide customary and reasonable compensation to fee appraisers. [12 C.F.R. §1026.42(f)(1)]

In any covered transaction, the creditor and its agents shall compensate a fee appraiser for performing appraisal services at a rate that is customary and reasonable for comparable appraisal services performed in the geographic market of the property being appraised. For purposes of this section, "agents" of the creditor do not include any fee appraiser as defined in paragraph (f)(4)(i) of this section.

Presumption of compliance. [12 C.F.R. §1026.42(f)(2)]

A creditor and its agents shall be presumed to comply with paragraph (f)(1) if:

- The creditor or its agents compensate the fee appraiser in an amount that is reasonably related to recent rates paid for comparable appraisal services performed in the geographic market of the property being appraised. In determining this amount, a creditor or its agents shall review the factors below and make any adjustments to recent rates paid in the relevant geographic market necessary to ensure that the amount of compensation is reasonable:
  - The type of property,
  - The scope of work,
  - The time in which the appraisal services are required to be performed,
  - Fee appraiser qualifications,
  - Fee appraiser experience and professional record, and
  - Fee appraiser work quality; and
- The creditor and its agents do not engage in any anticompetitive acts in violation of state or Federal law that affect the compensation paid to fee appraisers, including:
  - Entering into any contracts or engaging in any conspiracies to restrain trade through methods such as price fixing or market allocation, as prohibited under section 1 of the Sherman Antitrust Act, 15 U.S.C. 1, or any other relevant antitrust laws; or
  - Engaging in any acts of monopolization such as restricting any person from entering the relevant geographic market or causing any person to leave the relevant geographic market, as prohibited under section 2 of the Sherman Antitrust Act, 15 U.S.C. 2, or any other relevant antitrust laws.

Alternative presumption of compliance. [12 C.F.R. §1026.42(f)(3)]

A creditor and its agents shall be presumed to comply with paragraph (f)(1) if the creditor or its agents determine the amount of compensation paid to the fee appraiser by relying on information about rates that:

- Is based on objective third-party information, including fee schedules, studies, and surveys prepared by independent third parties such as government agencies, academic institutions, and private research firms;

- Is based on recent rates paid to a representative sample of providers of appraisal services in the geographic market of the property being appraised or the fee schedules of those providers; and
- In the case of information based on fee schedules, studies, and surveys, such fee schedules, studies, or surveys, or the information derived therefrom, excludes compensation paid to fee appraisers for appraisals ordered by appraisal management companies, as defined in paragraph (f)(4)(iii) of this section.

Definitions. For purposes of this paragraph. [12 C.F.R. §1026.42(f)(4)]:

Fee appraiser means:

- A natural person who is a state-licensed or state-certified appraiser and receives a fee for performing an appraisal, but who is not an employee of the person engaging the appraiser; or
- An organization that, in the ordinary course of business, employs state-licensed or state-certified appraisers to perform appraisals, receives a fee for performing appraisals, and is not subject to the requirements of section 1124 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3331 et seq.).

Appraisal services:

The services required to perform an appraisal, including defining the scope of work, inspecting the property, reviewing necessary and appropriate public and private data sources (for example, multiple listing services, tax assessment records and public land records), developing and rendering an opinion of value, and preparing and submitting the appraisal report.

Appraisal management company:

Any person authorized to perform one or more of the following actions on behalf of the creditor:

- Recruit, select, and retain fee appraisers;
- Contract with fee appraisers to perform appraisal services;
- Manage the process of having an appraisal performed, including providing administrative services such as receiving appraisal orders and appraisal reports, submitting completed appraisal reports to creditors and underwriters, collecting fees from creditors and underwriters for services provided, and compensating fee appraisers for services performed; or
- Review and verify the work of fee appraisers.

Mandatory reporting [12 C.F.R. §1026.42(g)]

Reporting required. [12 C.F.R. §1026.42(g)(1)]

Any covered person that reasonably believes an appraiser has not complied with the Uniform Standards of Professional Appraisal Practice or ethical or professional requirements for appraisers under applicable state or Federal statutes or regulations shall refer the matter to the appropriate state agency if the failure to comply is material. A failure to comply is material if it is likely to significantly affect the value assigned to the consumer's principal dwelling.

Timing of reporting. [12 C.F.R. §1026.42(g)(2)]

A covered person shall notify the appropriate state agency within a reasonable period of time after the person determines that there is a reasonable basis to believe that a failure to comply required to be reported under paragraph (g)(1) of this section has occurred.

Definition. [12 C.F.R. §1026.42(g)(3)]

For purposes of this paragraph, "state agency" means "state appraiser certifying and licensing agency" under 12 U.S.C. 3350(1) and any implementing regulations. The appropriate state agency to which a covered person must refer a matter under paragraph (g)(1) of this section is the agency for the state in which the consumer's principal dwelling is located.

Commentary - Section 1026.42 – Valuation Independence

42(a) Scope.

1. ***Open- and closed-end credit.*** Section 1026.42 applies to both open-end and closed-end transactions secured by the consumer's principal dwelling.

2. ***Consumer's principal dwelling.*** Section 1026.42 applies only if the dwelling that will secure a consumer credit transaction is the principal dwelling of the consumer who obtains credit.

42(b) Definitions.

Paragraph 42(b)(1).

1. ***Examples of covered persons.*** "Covered persons" include creditors, mortgage brokers, appraisers, appraisal management companies, real estate agents, and other persons that provide "settlement services" as defined under the Real Estate Settlement Procedures Act and implementing regulations. (*See* 12 U.S.C. 2602(3).)

2. ***Examples of persons not covered***. The following persons are not "covered persons" (unless, of course, they are creditors with respect to a covered transaction or perform "settlement services" in connection with a covered transaction):

   i. The consumer who obtains credit through a covered transaction.

   ii. A person secondarily liable for a covered transaction, such as a guarantor.

   iii. A person that resides in or will reside in the consumer's principal dwelling but will not be liable on the covered transaction, such as a non-obligor spouse.

Paragraph 42(b)(2).

1. ***Principal dwelling***. The term "principal dwelling" has the same meaning under §1026.42(b) as under §§1026.2(a)(24), 1026.15(a), and 1026.23(a). (*See* comments 2(a)(24)–3, 15(a)–5, and 23(a)–3.)

Paragraph 42(b)(3).

1. ***Valuation.*** A “valuation” is an estimate of value prepared by a natural person, such as an appraisal report prepared by an appraiser or an estimate of market value prepared by a real estate agent. The term includes photographic or other information included with a written estimate of value. A “valuation” includes an estimate provided or viewed electronically, such as an estimate transmitted via electronic mail or viewed using a computer.

2. ***Automated model or system.*** A “valuation” does not include an estimate of value produced exclusively using an automated model or system. However, a “valuation” includes an estimate of value developed by a natural person based in part on an estimate of value produced using an automated model or system.

3. ***Estimate.*** An estimate of the value of the consumer's principal dwelling includes an estimate of a range of values for the consumer's principal dwelling.

42(c) Valuation for consumer's principal dwelling.

42(c)(1) Coercion.

1. ***State law.*** The terms “coercion,” “extortion,” “inducement,” “bribery,” “intimidation,” “compensation,” “instruction,” and “collusion” have the meanings given to them by applicable state law or contract. (*See* §1026.2(b)(3).)

2. ***Purpose.*** A covered person does not violate §1026.42(c)(1) if the person does not engage in an act or practice set forth in §1026.42(c)(1) for the purpose of causing the value assigned to the consumer's principal dwelling to be based on a factor other than the independent judgment of a person that prepares valuations. For example, requesting that a person that prepares a valuation take certain actions, such as consider additional, appropriate property information, does not violate §1026.42(c), because such request does not supplant the independent judgment of the person that prepares a valuation. (*See* §1026.42(c)(3)(i).) A covered person also may provide incentives, such as additional compensation, to a person that prepares valuations or performs valuation management functions under §1026.42(c)(1), as long as the covered person does not cause or attempt to cause the value assigned to the consumer's principal dwelling to be based on a factor other than the independent judgment of the person that prepares valuations.

3. ***Person that prepares valuations***. For purposes of §1026.42, the term “valuation” includes an estimate of value regardless of whether it is an appraisal prepared by a state-certified or -licensed appraiser. (See comment 42(b)(3)–1.) A person that prepares valuations may or may not be a state-licensed or state-certified appraiser. Thus a person violates §1026.42(c)(1) by engaging in prohibited acts or practices directed towards any person that prepares or may prepare a valuation of the consumer's principal dwelling for a covered transaction. For example, a person violates §1026.42(c)(1) by seeking to coerce a real estate agent to assign a value to the consumer's principal dwelling based on a factor other than the independent judgment of the real estate agent, in connection with a covered transaction.

4. ***Indirect acts or practices***. Section 1026.42(c)(1) prohibits both direct and indirect attempts to cause the value assigned to the consumer's principal dwelling to be based on a factor other than the independent judgment of the person that prepares the valuation, through coercion

and certain other acts and practices. For example, a creditor violates §1026.42(c)(1) if the creditor attempts to cause the value an appraiser engaged by an appraisal management company assigns to the consumer's principal dwelling to be based on a factor other than the appraiser's independent judgment, by threatening to withhold future business from a title company affiliated with the appraisal management company unless the appraiser assigns a value to the dwelling that meets or exceeds a minimum threshold.

Paragraph 42(c)(1)(i).

1. ***Applicability of examples.*** Section 1026.42(c)(1)(i) provides examples of coercion of a person that prepares valuations. However, §1026.42(c)(1)(i) also applies to coercion of a person that performs valuation management functions or its affiliate. (*See* §1026.42(c)(1); comment 42(c)(1)–4.)
2. ***Specific value or predetermined threshold.*** As used in the examples of actions prohibited under §1026.42(c)(1), a "specific value" and a "predetermined threshold" include a predetermined minimum, maximum, or range of values. Further, although the examples assume a covered person's prohibited actions are designed to cause the value assigned to the consumer's principal dwelling to equal or exceed a certain amount, the rule applies equally to cases where a covered person's prohibited actions are designed to cause the value assigned to the dwelling to be below a certain amount.

42(c)(2) Mischaracterization of value.

42(c)(2)(i) Misrepresentation.

1. ***Opinion of value.*** Section 1026.42(c)(2)(i) prohibits a person that performs valuations from misrepresenting the value of the consumer's principal dwelling in a valuation. Such person misrepresents the value of the consumer's principal dwelling by assigning a value to such dwelling that does not reflect the person's opinion of the value of such dwelling. For example, an appraiser misrepresents the value of the consumer's principal dwelling if the appraiser estimates that the value of such dwelling is $250,000 applying the standards required by the Uniform Standards of Professional Appraisal Standards but assigns a value of $300,000 to such dwelling in a Uniform Residential Appraisal Report.

42(c)(2)(iii) Inducement of mischaracterization.

1. ***Inducement.*** A covered person may not induce a person to materially misrepresent the value of the consumer's principal dwelling in a valuation or to falsify or alter a valuation. For example, a loan originator may not coerce a loan underwriter to alter an appraisal report to increase the value assigned to the consumer's principal dwelling.

42(d) Prohibition on conflicts of interest.

42(d)(1)(i) In general.

1. ***Prohibited interest in the property.*** A person preparing a valuation or performing valuation management functions for a covered transaction has a prohibited interest in the property under paragraph (d)(1)(i) if the person has any ownership or reasonably foreseeable ownership interest in the property. For example, a person who seeks a mortgage to purchase a home has a reasonably foreseeable ownership interest in the property securing the mortgage, and therefore is not permitted to prepare the valuation or

perform valuation management functions for that mortgage transaction under paragraph (d)(1)(i).

2. ***Prohibited interest in the transaction.*** A person preparing a valuation or performing valuation management functions has a prohibited interest in the transaction under paragraph (d)(1)(i) if that person or an affiliate of that person also serves as a loan officer of the creditor, mortgage broker, real estate broker, or other settlement service provider for the transaction and the conditions under paragraph (d)(4) are not satisfied. A person also has a prohibited interest in the transaction if the person is compensated or otherwise receives financial or other benefits based on whether the transaction is consummated. Under these circumstances, the person is not permitted to prepare the valuation or perform valuation management functions for that transaction under paragraph (d)(1)(i).

42(d)(1)(ii) Employees and affiliates of creditors; providers of multiple settlement services.

1. ***Employees and affiliates of creditors.*** In general, a creditor may use employees or affiliates to prepare a valuation or perform valuation management functions without violating paragraph (d)(1)(i). However, whether an employee or affiliate has a direct or indirect interest in the property or transaction that creates a prohibited conflict of interest under paragraph (d)(1)(i) depends on the facts and circumstances of a particular case, including the structure of the employment or affiliate relationship.

2. ***Providers of multiple settlement services.*** In general, a person who prepares a valuation or perform valuation management functions for a covered transaction may perform another settlement service for the same transaction, or the person's affiliate may perform another settlement service, without violating paragraph (d)(1)(i). However, whether the person has a direct or indirect interest in the property or transaction that creates a prohibited conflict of interest under paragraph (d)(1)(i) depends on the facts and circumstances of a particular case.

42(d)(2) Employees and affiliates of creditors with assets of more than $250 million for both of the past two calendar years.

1. ***Safe harbor.*** A person who a prepares valuation or performs valuation management functions for a covered transaction and is an employee or affiliate of the creditor will not be deemed to have an interest prohibited under paragraph (d)(1)(i) on the basis of the employment or affiliate relationship with the creditor if the conditions in paragraph (d)(2) are satisfied. Even if the conditions in paragraph (d)(2) are satisfied, however, the person may have a prohibited conflict of interest on other grounds, such as if the person performs a valuation for a purchase-money mortgage transaction in which the person is the buyer or seller of the subject property. Thus, in general, in any covered transaction in which the creditor had assets of more than $250 million for both of the past two years, the creditor may use its own employee or affiliate to prepare a valuation or perform valuation management functions for a particular transaction, as long as the conditions described in paragraph (d)(2) are satisfied. If the conditions in paragraph (d)(2) are not satisfied, whether a person preparing a valuation or performing valuation management functions has violated paragraph (d)(1)(i) depends on all of the facts and circumstances.

Paragraph 42(d)(2)(ii).

1. ***Prohibition on reporting to a person who is part of the creditor's loan production***

function. To qualify for the safe harbor under paragraph (d)(2), the person preparing a valuation or performing valuation management functions may not report to a person who is part of the creditor's loan production function (as defined in paragraph (d)(5)(i) and comment 42(d)(5)(i)–1). For example, if a person preparing a valuation is directly supervised or managed by a loan officer or other person in the creditor's loan production function, or by a person who is directly supervised or managed by a loan officer, the condition under paragraph (d)(2)(ii) is not met.

2. ***Prohibition on reporting to a person whose compensation is based on the transaction closing***. To qualify for the safe harbor under paragraph (d)(2), the person preparing a valuation or performing valuation management functions may not report to a person whose compensation is based on the closing of the transaction to which the valuation relates. For example, assume an appraisal management company performs valuation management functions for a transaction in which the creditor is an affiliate of the appraisal management company. If the employee of the appraisal management company who is in charge of valuation management functions for that transaction is supervised by a person who earns a commission or bonus based on the percentage of closed transactions for which the appraisal management company provides valuation management functions, the condition under paragraph (d)(2)(ii) is not met.

Paragraph 42(d)(2)(iii).

1. ***Direct or indirect involvement in selection of person who prepares a valuation.*** In any covered transaction, the safe harbor under paragraph (d)(2) is available if, among other things, no employee, officer or director in the creditor's loan production function (as defined in paragraph (d)(4)(ii) and comment 42(d)(4)(ii)–1) is directly or indirectly involved in selecting, retaining, recommending or influencing the selection of the person to prepare a valuation or perform valuation management functions, or to be included in or excluded from a list or panel of approved persons who prepare valuations or perform valuation management functions. For example, if the person who selects the person to prepare the valuation for a covered transaction is supervised by an employee of the creditor who also supervises loan officers, the condition in paragraph (d)(2)(iii) is not met.

42(d)(3) Employees and affiliates of creditors with assets of $250 million or less for either of the past two calendar years.

1. ***Safe harbor***. A person who prepares a valuation or performs valuation management functions for a covered transaction and is an employee or affiliate of the creditor will not be deemed to have interest prohibited under paragraph (d)(1)(i) on the basis of the employment or affiliate relationship with the creditor if the conditions in paragraph (d)(3) are satisfied. Even if the conditions in paragraph (d)(3) are satisfied, however, the person may have a prohibited conflict of interest on other grounds, such as if the person performs a valuation for a purchase-money mortgage transaction in which the person is the buyer or seller of the subject property. Thus, in general, in any covered transaction in which the creditor had assets of $250 million or less for either of the past two calendar years, the creditor may use its own employee or affiliate to prepare a valuation or perform valuation management functions for a particular transaction, as long as the conditions described in paragraph (d)(3) are satisfied. If the conditions in paragraph (d)(3) are not satisfied, whether a person preparing valuations or performing valuation management functions has violated paragraph (d)(1)(i) depends on all of the facts and circumstances.

42(d)(4) Providers of multiple settlement services.

Paragraph 42(d)(4)(i).

1. ***Safe harbor in transactions in which the creditor had assets of more than $250 million for both of the past two calendar years.*** A person preparing a valuation or performing valuation management functions in addition to performing another settlement service for the same transaction, or whose affiliate performs another settlement service for the transaction, will not be deemed to have interest prohibited under paragraph (d)(1)(i) as a result of the person or the person's affiliate performing another settlement service if the conditions in paragraph (d)(4)(i) are satisfied. Even if the conditions in paragraph (d)(4)(i) are satisfied, however, the person may have a prohibited conflict of interest on other grounds, such as if the person performs a valuation for a purchase-money mortgage transaction in which the person is the buyer or seller of the subject property. Thus, in general, in any covered transaction with a creditor that had assets of more than $250 million for the past two years, a person preparing a valuation or performing valuation management functions, or its affiliate, may provide another settlement service for the same transaction, as long as the conditions described in paragraph (d)(4)(i) are satisfied. If the conditions in paragraph (d)(4)(i) are not satisfied, whether a person preparing valuations or performing valuation management functions has violated paragraph (d)(1)(i) depends on all of the facts and circumstances.
2. ***Reporting.*** The safe harbor under paragraph (d)(4)(i) is available if the condition specified in paragraph (d)(2)(ii), among others, is met. Paragraph (d)(2)(ii) prohibits a person preparing a valuation or performing valuation management functions from reporting to a person whose compensation is based on the closing of the transaction to which the valuation relates. For example, assume an appraisal management company performs both valuation management functions and title services, including providing title insurance, for the same covered transaction. If the appraisal management company employee in charge of valuation management functions for the transaction is supervised by the title insurance agent in the transaction, whose compensation depends in whole or in part on whether title insurance is sold at the loan closing, the condition in paragraph (d)(2)(ii) is not met.

Paragraph 42(d)(4)(ii).

1. ***Safe harbor in transactions in which the creditor had assets of $250 million or less for either of the past two calendar years***. A person preparing a valuation or performing valuation management functions in addition to performing another settlement service for the same transaction, or whose affiliate performs another settlement service for the transaction, will not be deemed to have an interest prohibited under paragraph (d)(1)(i) as a result of the person or the person's affiliate performing another settlement service if the conditions in paragraph (d)(4)(ii) are satisfied. Even if the conditions in paragraph (d)(4)(ii) are satisfied, however, the person may have a prohibited conflict of interest on other grounds, such as if the person performs a valuation for a purchase-money mortgage transaction in which the person is the buyer or seller of the subject property. Thus, in general, in any covered transaction in which the creditor had assets of $250 million or less for either of the past two years, a person preparing a valuation or performing valuation management functions, or its affiliate, may provide other settlement services for the same transaction, as long as the conditions described in paragraph (d)(4)(ii) are satisfied. If the conditions in paragraph (d)(4)(ii) are not satisfied, whether a person preparing valuations or performing valuation management functions has violated paragraph (d)(1)(i) depends on all of the facts and circumstances.

42(d)(5) Definitions.

Paragraph 42(d)(5)(i).

1. ***Loan production function***. One condition of the safe harbors under paragraphs (d)(2) and (d)(4)(i), involving transactions in which the creditor had assets of more than $250 million for both of the past two calendar years, is that the person who prepares a valuation or performs valuation management functions must report to a person who is not part of the creditor's "loan production function." A creditor's "loan production function" includes retail sales staff, loan officers, and any other employee of the creditor with responsibility for taking a loan application, offering or negotiating loan terms or whose compensation is based on loan processing volume. A person is not considered part of a creditor's loan production function solely because part of the person's compensation includes a general bonus not tied to specific transactions or a specific percentage of transactions closing, or a profit sharing plan that benefits all employees. A person solely responsible for credit administration or risk management is also not considered part of a creditor's loan production function. Credit administration and risk management includes, for example, loan underwriting, loan closing functions (e.g., loan documentation), disbursing funds, collecting mortgage payments and otherwise servicing the loan (e.g., escrow management and payment of taxes), monitoring loan performance, and foreclosure processing.

42(e) When extension of credit prohibited.

1. ***Reasonable diligence***. A creditor will be deemed to have acted with reasonable diligence under §1026.42(e) if the creditor extends credit based on a valuation other than the valuation subject to the restriction in §1026.42(e). A creditor need not obtain a second valuation to document that the creditor has acted with reasonable diligence to determine that the valuation does not materially misstate or misrepresent the value of the consumer's principal dwelling, however. For example, assume an appraiser notifies a creditor before consummation that a loan originator attempted to cause the value assigned to the consumer's principal dwelling to be based on a factor other than the appraiser's independent judgment, through coercion. If the creditor reasonably determines and documents that the appraisal does not materially misstate or misrepresent the value of the consumer's principal dwelling, for purposes of §1026.42(e), the creditor may extend credit based on the appraisal.

42(f) Customary and reasonable compensation.

42(f)(1) Requirement to provide customary and reasonable compensation to fee appraisers.

1. ***Agents of the creditor.*** Whether a person is an agent of the creditor is determined by applicable law; however, a "fee appraiser" as defined in paragraph (f)(4)(i) is not an agent of the creditor for purposes of paragraph (f), and therefore is not required to pay other fee appraisers customary and reasonable compensation under paragraph (f).

2. ***Geographic market***. For purposes of paragraph (f), the "geographic market of the property being appraised" means the geographic market relevant to compensation levels for appraisal services. Depending on the facts and circumstances, the relevant geographic market may be a state, metropolitan statistical area (MSA), metropolitan division, area outside of an MSA, county, or other geographic area. For example, assume that fee appraisers who normally work only in County A generally accept $400 to appraise an

attached single-family property in County A. Assume also that *very few or no* fee appraisers who work only in contiguous County B will accept a rate comparable to $400 to appraise an attached single-family property in County A. The relevant geographic market for an attached single-family property in County A may reasonably be defined as County A. On the other hand, assume that fee appraisers who normally work only in County A generally accept $400 to appraise an attached single-family property in County A. Assume also that *many* fee appraisers who normally work only in contiguous County B will accept a rate comparable to $400 to appraise an attached single-family property in County A. The relevant geographic market for an attached single-family property in County A may reasonably be defined to include both County A and County B.

3. ***Failure to perform contractual obligations***. Paragraph (f)(1) does not prohibit a creditor or its agent from withholding compensation from a fee appraiser for failing to meet contractual obligations, such as failing to provide the appraisal report or violating state or Federal appraisal laws in performing the appraisal.

4. ***Agreement that fee is "customary and reasonable."*** A document signed by a fee appraiser indicating that the appraiser agrees that the fee paid to the appraiser is "customary and reasonable" does not by itself create a presumption of compliance with §1026.42(f) or otherwise satisfy the requirement to pay a fee appraiser at a customary and reasonable rate.

5. ***Volume-based discounts.*** Section 1026.42(f)(1) does not prohibit a fee appraiser and a creditor (or its agent) from agreeing to compensation based on transaction volume, so long as the compensation is customary and reasonable. For example, assume that a fee appraiser typically receives $300 for appraisals from creditors with whom it does business; the fee appraiser, however, agrees to reduce the fee to $280 for a particular creditor, in exchange for a minimum number of assignments from the creditor.

42(f)(2) Presumption of compliance.

1. ***In general***. A creditor and its agent are presumed to comply with paragraph (f)(1) if the creditor or its agent meets the conditions specified in paragraph (f)(2) in determining the compensation paid to a fee appraiser. These conditions are not requirements for compliance but, if met, create a presumption that the creditor or its agent has complied with §1026.42(f)(1). A person may rebut this presumption with evidence that the amount of compensation paid to a fee appraiser was not customary and reasonable for reasons unrelated to the conditions in paragraph (f)(2)(i) or (f)(2)(ii). If a creditor or its agent does not meet one of the non-required conditions set forth in paragraph (f)(2), the creditor's and its agent's compliance with paragraph (f)(1) is determined based on all of the facts and circumstances without a presumption of either compliance or violation.

42(f)(2)(i) Presumption of compliance.

1. ***Two-step process for determining customary and reasonable rates***. Paragraph (f)(2)(i) sets forth a two-step process for a creditor or its agent to determine the amount of compensation that is customary and reasonable in a given transaction. First, the creditor or its agent must identify recent rates paid for comparable appraisal services in the relevant geographic market. Second, once recent rates have been identified, the creditor or its agent must review the factors listed in paragraph (f)(2)(i)(A)–(F) and make any appropriate adjustments to the rates to ensure that the amount of compensation is reasonable.

2. ***Identifying recent rates***. Whether rates may reasonably be considered "recent" depends on the facts and circumstances. Generally, "recent" rates would include rates charged within one year of the creditor's or its agent's reliance on this information to qualify for the presumption of compliance under paragraph (f)(2). For purposes of the presumption of compliance under paragraph (f)(2), a creditor or its agent may gather information about recent rates by using a reasonable method that provides information about rates for appraisal services in the geographic market of the relevant property; a creditor or its agent may, but is not required to, use or perform a fee survey.

3. ***Accounting for factors***. Once recent rates in the relevant geographic market have been identified, the creditor or its agent must review the factors listed in paragraph (f)(2)(i)(A)–(F) to determine the appropriate rate for the current transaction. For example, if the recent rates identified by the creditor or its agent were solely for appraisal assignments in which the scope of work required consideration of two comparable properties, but the current transaction required an appraisal that considered three comparable properties, the creditor or its agent might reasonably adjust the rate by an amount that accounts for the increased scope of work, in addition to making any other appropriate adjustments based on the remaining factors.

Paragraph 42(f)(2)(i)(A).

1. ***Type of property***. The type of property may include, for example, detached or attached single-family property, condominium or cooperative unit, or manufactured home.

Paragraph 42(f)(2)(i)(B).

1. ***Scope of work***. The scope of work may include, for example, the type of inspection (such as exterior only or both interior and exterior) or number of comparables required for the appraisal.

Paragraph 42(f)(2)(i)(D).

1. ***Fee appraiser qualifications***. The fee appraiser qualifications may include, for example, a state license or certification in accordance with the minimum criteria issued by the Appraisal Qualifications Board of the Appraisal Foundation, or completion of continuing education courses on effective appraisal methods and related topics.

2. ***Membership in professional appraisal organization.*** Paragraph 42(f)(2)(i)(D) does not override state or Federal laws prohibiting the exclusion of an appraiser from consideration for an assignment solely by virtue of membership or lack of membership in any particular appraisal organization. (*See, e.g.,* 12 C.F.R. §1025.66(a).)

Paragraph 42(f)(2)(i)(E).

1. ***Fee appraiser experience and professional record***. The fee appraiser's level of experience may include, for example, the fee appraiser's years of service as a state-licensed or state-certified appraiser, or years of service appraising properties in a particular geographical area or of a particular type. The fee appraiser's professional record may include, for example, whether the fee appraiser has a past record of suspensions, disqualifications, debarments, or judgments for waste, fraud, abuse or breach of legal or professional standards.

Paragraph 42(f)(2)(i)(F).

1. ***Fee appraiser work quality***. The fee appraiser's work quality may include, for example, the past quality of appraisals performed by the appraiser based on the written performance and review criteria of the creditor or agent of the creditor.

Paragraph 42(f)(2)(ii).

1. ***Restraining trade***. Under §1026.42(f)(2)(ii)(A), creditor or its agent would not qualify for the presumption of compliance under paragraph (f)(2) if it engaged in any acts to restrain trade such as entering into a price fixing or market allocation agreement that affect the compensation of fee appraisers. For example, if appraisal management company A and appraisal management company B agreed to compensate fee appraisers at no more than a specific rate or range of rates, neither appraisal management company would qualify for the presumption of compliance. Likewise, if appraisal management company A and appraisal management company B agreed that appraisal management company A would limit its business to a certain portion of the relevant geographic market and appraisal management company B would limit its business to a different portion of the relevant geographic market, and as a result each appraisal management company unilaterally set the fees paid to fee appraisers in their respective portions of the market, neither appraisal management company would qualify for the presumption of compliance under paragraph (f)(2).

2. ***Acts of monopolization***. Under §1026.42(f)(2)(ii)(B), a creditor or its agent would not qualify for the presumption of compliance under paragraph (f)(2) if it engaged in any act of monopolization such as restricting entry into the relevant geographic market or causing any person to leave the relevant geographic market, resulting in anticompetitive effects that affect the compensation paid to fee appraisers. For example, if only one appraisal management company exists or is predominant in a particular market area, that appraisal management company might not qualify for the presumption of compliance if it entered into exclusivity agreements with all creditors in the market or all fee appraisers in the market, such that other appraisal management companies had to leave or could not enter the market. Whether this behavior would be considered an anticompetitive act that affects the compensation paid to fee appraisers depends on all of the facts and circumstances, including applicable law.

42(f)(3) Alternative presumption of compliance.

1. ***In general***. A creditor and its agent are presumed to comply with paragraph (f)(1) if the creditor or its agent determine the compensation paid to a fee appraiser based on information about customary and reasonable rates that satisfies the conditions in paragraph (f)(3) for that information. Reliance on information satisfying the conditions in paragraph (f)(3) is not a requirement for compliance with paragraph (f)(1), but creates a presumption that the creditor or its agent has complied. A person may rebut this presumption with evidence that the rate of compensation paid to a fee appraiser by the creditor or its agent is not customary and reasonable based on facts or information other than third-party information satisfying the conditions of this paragraph (f)(3). If a creditor or its agent does not rely on information that meets the conditions in paragraph (f)(3), the creditor's and its agent's compliance with paragraph (f)(1) is determined based on all of the facts and circumstances without a presumption of either compliance or violation.

2. ***Geographic market***. The meaning of "geographic market" for purposes of paragraph (f) is explained in comment (f)(1)–1.

3. ***Recent rates.*** Whether rates may reasonably be considered "recent" depends on the facts and circumstances. Generally, "recent" rates would include rates charged within one year of the creditor's or its agent's reliance on this information to qualify for the presumption of compliance under paragraph (f)(3).

42(f)(4) Definitions.

***42(f)(4)(i) Fee appraiser*.**

1. ***Organization.*** The term "organization" in paragraph 42(d)(4)(i)(B) includes a corporation, partnership, proprietorship, association, cooperative, or other business entity and does not include a natural person.

42(g) Mandatory reporting.

42(g)(1) Reporting required.

1. ***Reasonable basis***. A person reasonably believes that an appraiser has materially failed to comply with the Uniform Standards of Professional Appraisal Practice (USPAP) established by the Appraisal Standards Board of the Appraisal Foundation (as defined in 12 U.S.C. 3350(9)) or ethical or professional requirements for appraisers under applicable state or Federal statutes or regulations if the person possesses knowledge or information that would lead a reasonable person in the same circumstances to conclude that the appraiser has materially failed to comply with USPAP or such statutory or regulatory requirements.
2. ***Material failure to comply***. For purposes of §1026.42(g)(1), a material failure to comply is one that is likely to affect the value assigned to the consumer's principal dwelling. The following are examples of a material failure to comply with USPAP or ethical or professional requirements:
   i. Mischaracterizing the value of the consumer's principal dwelling in violation of §1026.42(c)(2)(i).
   ii. Performing an assignment in a grossly negligent manner, in violation of a rule under USPAP.
   iii. Accepting an appraisal assignment on the condition that the appraiser will report a value equal to or greater than the purchase price for the consumer's principal dwelling, in violation of a rule under USPAP.
3. ***Other matters***. Section 1026.42(g)(1) does not require reporting of a matter that is not material under §1026.42(g)(1), for example:
   i. An appraiser's disclosure of confidential information in violation of applicable state law.
   ii. An appraiser's failure to maintain errors and omissions insurance in violation of applicable state law.
4. ***Examples of covered persons***. "Covered persons" include creditors, mortgage brokers, appraisers, appraisal management companies, real estate agents, and other persons that provide "settlement services" as defined under the Real Estate Settlement Procedures Act and implementing regulations. (*See* 12 U.S.C. 2602(3); §1026.42(b)(1).)
5. ***Examples of persons not covered.*** The following persons are not "covered persons" (unless, of course, they are creditors with respect to a covered transaction or perform "settlement services" in connection with a covered transaction):

i. The consumer who obtains credit through a covered transaction.

ii. A person secondarily liable for a covered transaction, such as a guarantor.

iii. A person that resides in or will reside in the consumer's principal dwelling but will not be liable on the covered transaction, such as a non-obligor spouse.

6. ***Appraiser.*** For purposes of §1026.42(g)(1), an "appraiser" is a natural person who provides opinions of the value of dwellings and is required to be licensed or certified under the laws of the state in which the consumer's principal dwelling is located or otherwise is subject to the jurisdiction of the appraiser certifying and licensing agency for that state. (*See* 12 U.S.C. 3350(1).)

Section 11: Mortgage Transfer Disclosures [12 C.F.R. §1026.39]

Mortgage Transfer Disclosures [12 C.F.R. §1026.39]

A creditor who becomes the owner of a mortgage loan secured by the consumer's principal dwelling shall mail or deliver the disclosures required by this section to the consumer on or before the 30th calendar day following the date of transfer.

Form of Disclosures

The required disclosures shall be provided clearly and conspicuously in writing, and in a form that the consumer may keep. The 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 Date of Transfer

The date of transfer to the creditor may, at the creditor's option, be either the date of acquisition or the date of transfer.

Multiple Consumers

If more than one consumer is liable on the obligation, the creditor may mail or deliver the disclosures to any consumer who is primarily liable.

Multiple Transfers

If a mortgage loan is acquired by a creditor and subsequently sold, assigned, or otherwise transferred to another creditor, a single disclosure may be provided on behalf of both creditors if the disclosure satisfies the timing and content requirements applicable to each creditor.

Multiple Creditors

If an acquisition involves multiple creditors who jointly acquire the loan, a single disclosure must be provided on behalf of all creditors.

Exceptions

A creditor is not subject to the requirements of this section if:

- The creditor sells, or otherwise transfers or assigns legal title to the mortgage loan on or before the 30th calendar day following the date that the creditor acquired the mortgage loan which shall be the date of transfer;
- The mortgage loan is transferred to the creditor in connection with a repurchase agreement that obligates the transferor to repurchase the loan. However, if the transferor does not repurchase the loan, the creditor must provide the disclosures required by this section within 30 days after the date that the transaction is recognized as an acquisition; or

- The creditor acquires only a partial interest in the loan and the party authorized to receive the consumer's notice of the right to rescind and resolve issues concerning the consumer's payments on the loan does not change as a result of the transfer of the partial interest.

Content of Required Disclosures

The disclosures required by this section shall identify the loan that was sold, assigned or otherwise transferred, and state the following:

- The name, address, and telephone number of the creditor.
  - o If a single disclosure is provided on behalf of more than one creditor, the information required by this paragraph shall be provided for each of them unless paragraph (d)(1)(ii) of this section applies.
  - o If a single disclosure is provided on behalf of more than one creditor and one of them has been authorized in accordance with paragraph (d)(3) of this section to receive the consumer's notice of the right to rescind and resolve issues concerning the consumer's payments on the loan, the information required by paragraph (d)(1) of this section may be provided only for that creditor.
- The date of transfer.
- The name, address and telephone number of an agent or party authorized to receive notice of the right to rescind and resolve issues concerning the consumer's payments on the loan. However, no information is required to be provided under this paragraph if the consumer can use the information provided under paragraph (d)(1) of this section for these purposes.
- Where transfer of ownership of the debt to the creditor 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.

Optional Disclosures

In addition to the information required to be disclosed above, a creditor may, at its option, provide any other information regarding the transaction.

Commentary - Section 1026.39 – Mortgage Transfer Disclosures

Section 1026.39—Mortgage transfer disclosures.

39(a) Scope.

Paragraph 39(a)(1).

1. ***Covered persons.*** The disclosure requirements of this section apply to any "covered person" that becomes the legal owner of an existing mortgage loan, whether through a purchase, or other transfer or assignment, regardless of whether the person also meets the definition of a "creditor" in Regulation Z. The fact that a person purchases or acquires mortgage loans and provides the disclosures under this section does not by itself make that person a "creditor" as defined in the regulation.

2. ***Acquisition of legal title***. To become a "covered person" subject to this section, a person must become the owner of an existing mortgage loan by acquiring legal title to the debt obligation.

   i. ***Partial interest.*** A person may become a covered person by acquiring a partial interest in the mortgage loan. If the original creditor transfers a partial interest in the loan to one or more persons, all such transferees are covered persons under this section.

   ii. ***Joint acquisitions.*** All persons that jointly acquire legal title to the loan are covered persons under this section, and under §1026.39(b)(5), a single disclosure must be provided on behalf of all such covered persons. Multiple persons are deemed to jointly acquire legal title to the loan if each acquires a partial interest in the loan pursuant to the same agreement or by otherwise acting in concert. (See comments 39(b)(5)–1 and 39(d)(1)(ii)–1 regarding the disclosure requirements for multiple persons that jointly acquire a loan.)

   iii. ***Affiliates.*** An acquiring party that is a separate legal entity from the transferor must provide the disclosures required by this section even if the parties are affiliated entities.

3. Exclusions.

   i. ***Beneficial interest***. Section 1026.39 does not apply to a party that acquires only a beneficial interest or a security interest in the loan, or to a party that assumes the credit risk without acquiring legal title to the loan. For example, an investor that acquires mortgage-backed securities, pass-through certificates, or participation interests and does not acquire legal title in the underlying mortgage loans is not covered by this section.

   ii. ***Loan servicers***. Pursuant to TILA Section 131(f)(2), the servicer of a mortgage loan is not the owner of the obligation for purposes of this section if the servicer holds title to the loan as a result of the assignment of the obligation to the servicer solely for the administrative convenience of the servicer in servicing the obligation.

4. ***Mergers, corporate acquisitions, or reorganizations***. Disclosures are required under this section when, as a result of a merger, corporate acquisition, or reorganization, the ownership of a mortgage loan is transferred to a different legal entity.

Paragraph 39(a)(2).

1. ***Mortgage transactions covered.*** Section 1026.39 applies to closed-end or open-end consumer credit transactions secured by the principal dwelling of a consumer.

39(b) Disclosure required.

1. ***Generally.*** A covered person must mail or deliver the disclosures required by this section on or before the 30th calendar day following the date of transfer, unless an exception in §1026.39(c) applies. For example, if a covered person acquires a mortgage loan on March 15, the disclosure must be mailed or delivered on or before April 14.

***39(b)(1) Form of disclosure*.**

1. ***Combining disclosures***. The disclosures under this section can be combined with other materials or disclosures, including the transfer of servicing notices required by the Real Estate Settlement Procedure Act (12 U.S.C. 2601 et seq.) so long as the combined disclosure satisfies the timing and other requirements of this section.

***39(b)(4) Multiple transfers*.**

1. ***Single disclosure for multiple transfers***. A mortgage loan might be acquired by a covered person and subsequently transferred to another entity that is also a covered person required to provide the disclosures under this section. In such cases, a single disclosure may be provided on behalf of both covered persons instead of providing two separate disclosures if the disclosure satisfies the timing and content requirements applicable to each covered person. For example, if a covered person acquires a loan on March 15 with the intent to assign the loan to another entity on April 30, the covered person could mail the disclosure on or before April 14 to provide the required information for both entities and indicate when the subsequent transfer is expected to occur.

2. ***Estimating the date.*** When a covered person provides the disclosure required by this section that also describes a subsequent transfer, the date of the subsequent transfer may be estimated when the exact date is unknown at the time the disclosure is made. Information is unknown if it is not reasonably available to the covered person at the time the disclosure is made. The "reasonably available" standard requires that the covered person, acting in good faith, exercise due diligence in obtaining information. The covered person normally may rely on the representations of other parties in obtaining information. The covered person might make the disclosure using an estimated date even though the covered person knows that more precise information will be available in the future. For example, a covered person may provide a disclosure on March 31 stating that it acquired the loan on March 15 and that a transfer to another entity is expected to occur "on or around" April 30, even if more precise information will be available by April 14.

3. ***Duty to comply.*** Even though one covered person provides the disclosures for another covered person, each 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.

39(b)(5) Multiple covered person.

1. ***Single disclosure required***. If multiple covered persons jointly acquire the loan, a single disclosure must be provided on behalf of all covered persons instead of providing separate disclosures. (See comment 39(a)(1)–2(ii) regarding a joint acquisition of legal title, and comment 39(d)(1)(ii)–1 regarding the disclosure requirements for multiple persons that jointly acquire a loan.) If multiple covered persons jointly acquire the loan and complete the acquisition on separate dates, a single disclosure must be provided on behalf of all persons on or before the 30th day following the earliest acquisition date. For example, if covered persons A and B enter into an agreement with the original creditor to jointly acquire the loan, and complete the acquisition on March 15 and March 25, respectively, a single disclosure must be provided on behalf of both persons on or before April 14. If the two acquisition dates are more than 30 days apart, a single disclosure must be provided on behalf of both persons on or before the 30th day following the earlier acquisition date, even though one person has not completed its acquisition. (See comment 39(b)(4)–2 regarding use of an estimated date of transfer.)

2. ***Single disclosure not required.*** If multiple covered persons each acquire a partial interest in the loan pursuant to separate and unrelated agreements and not jointly, 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 disclosure that satisfies the timing and content requirements applicable to each covered person.

3. ***Timing requirements.*** A single disclosure provided on behalf of multiple covered persons must satisfy the timing and content requirements applicable to each covered person unless an exception in §1026.39(c) applies.

4. ***Duty to comply***. Even though one covered person provides the disclosures for another covered person, each 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. (See comments 39(c)(1)–2, 39(c)(3)–1 and 39(c)(3)–2 regarding transfers of a partial interest in the mortgage loan.)

39(c) Exceptions.

Paragraph 39(c)(1).

1. ***Transfer of all interest.*** A covered person is not required to provide the disclosures required by this section if it sells, assigns or otherwise transfers all of its interest in the mortgage loan on or before the 30th calendar day following the date that it acquired the loan. For example, if covered person A acquires the loan on March 15 and subsequently transfers all of its interest in the loan to covered person B on April 1, person A is not required to provide the disclosures required by this section. Person B, however, must provide the disclosures required by this section unless an exception in §1026.39(c) applies.

2. ***Transfer of partial interests***. A covered person that subsequently transfers a partial interest in the loan is required to provide the disclosures required by this section if the covered person retains a partial interest in the loan on the 30th calendar day after it acquired the loan, unless an exception in §1026.39(c) applies. For example, if covered person A acquires the loan on March 15 and subsequently transfers fifty percent of its interest in the loan to covered person B on April 1, person A is required to provide the disclosures under this section if it retains a partial interest in the loan on April 14. Person B in this example must also provide the disclosures required under this section unless an exception in §1026.39(c) applies. Either person A or person B could provide the disclosure on behalf of both of them if the disclosure satisfies the timing and content requirements applicable to each of them. In this example, a single disclosure for both covered persons would have to be provided on or before April 14 to satisfy the timing requirements for person A's acquisition of the loan on March 15. (See comment 39(b)(4)–1 regarding a single disclosure for multiple transfers.)

Paragraph 39(c)(2).

1. ***Repurchase agreements.*** The original creditor or owner of the mortgage loan might sell, assign or otherwise transfer legal title to the loan to secure temporary business financing under an agreement that obligates the original creditor or owner to repurchase the loan. The covered person that acquires the loan in connection with such a repurchase agreement

is not required to provide disclosures under this section. However, if the transferor does not repurchase the mortgage loan, the acquiring party must provide the disclosures required by this section within 30 days after the date that the transaction is recognized as an acquisition on its books and records.

2. ***Intermediary parties***. The exception in §1026.39(c)(2) applies regardless of whether the repurchase arrangement involves an intermediary party. For example, legal title to the loan may transfer from the original creditor to party A through party B as an intermediary. If the original creditor is obligated to repurchase the loan, neither party A nor party B is required to provide the disclosures under this section. However, if the original creditor does not repurchase the loan, party A must provide the disclosures required by this section within 30 days after the date that the transaction is recognized as an acquisition on its books and records unless another exception in §1026.39(c) applies.

Paragraph 39(c)(3).

1. ***Acquisition of partial interests***. This exception applies if the covered person acquires only a partial interest in the loan, and there is no change in the agent or person authorized to receive notice of the right to rescind and resolve issues concerning the consumer's payments. If, as a result of the transfer of a partial interest in the loan, a different agent or party is authorized to receive notice of the right to rescind and resolve issues concerning the consumer's payments, the disclosures under this section must be provided.

2. ***Examples.***

   i. A covered person is not required to provide the disclosures under this section if it acquires a partial interest in the loan from the original creditor who remains authorized to receive the notice of the right to rescind and resolve issues concerning the consumer's payments after the transfer.

   ii. The original creditor transfers fifty percent of its interest in the loan to covered person A. Person A does not provide the disclosures under this section because the exception in §1026.39(c)(3) applies. The creditor then transfers the remaining fifty percent of its interest in the loan to covered person B and does not retain any interest in the loan. Person B must provide the disclosures under this section.

   iii. The original creditor transfers fifty percent of its interest in the loan to covered person A and also authorizes party X as its agent to receive notice of the right to rescind and resolve issues concerning the consumer's payments on the loan. Since there is a change in an agent or party authorized to receive notice of the right to rescind and resolve issues concerning the consumer's payments, person A is required to provide the disclosures under this section. Person A then transfers all of its interest in the loan to covered person B. Person B is not required to provide the disclosures under this section if the original creditor retains a partial interest in the loan and party X retains the same authority.

   iv. The original creditor transfers all of its interest in the loan to covered person A. Person A provides the disclosures under this section and notifies the consumer that party X is authorized to receive notice of the right to rescind and resolve issues concerning the consumer's payments on the loan. Person A then transfers fifty percent of its interest in the loan to covered person B. Person B is not required to provide the disclosures under this section if person A retains a partial interest in the loan and party X retains the same authority.

39(d) Content of required disclosures.

1. ***Identifying the loan***. The disclosures required by this section must identify the loan that was acquired or transferred. The covered person has flexibility in determining what information to provide for this purpose and may use any information that would reasonably inform a consumer which loan was acquired or transferred. For example, the covered person may identify the loan by stating:

   i. The address of the mortgaged property along with the account number or loan number previously disclosed to the consumer, which may appear in a truncated format;

   ii. The account number alone, or other identifying number, if that number has been previously provided to the consumer, such as on a statement that the consumer receives monthly; or

   iii. The date on which the credit was extended and the original amount of the loan or credit line.

Paragraph 39(d)(1).

1. ***Identification of covered person***. Section 1026.39(d)(1) requires a covered person to provide its name, address, and telephone number. The party identified must be the covered person who owns the mortgage loan, regardless of whether another party services the loan or is the covered person's agent. In addition to providing its name, address and telephone number, the covered person may, at its option, provide an address for receiving electronic mail or an Internet Web site address, but is not required to do so.

39(d)(1)(i)

1. ***Multiple transfers, single disclosure***. If a mortgage loan is acquired by a covered person and subsequently transferred to another covered person, a single disclosure may be provided on behalf of both covered persons instead of providing two separate disclosures as long as the disclosure satisfies the timing and content requirements applicable to each covered person. (See comment 39(b)(4)–1 regarding multiple transfers.) A single disclosure for multiple transfers must state the name, address, and telephone number of each covered person unless §1026.39(d)(1)(ii) applies.

39(d)(1)(ii)

1. ***Multiple covered persons, single disclosure***. If multiple covered persons jointly acquire the loan, a single disclosure must be provided on behalf of all covered persons instead of providing separate disclosures. The single disclosure must provide the name, address, and telephone number of each covered person unless §1026.39(d)(1)(ii) applies and one of the covered persons has been authorized in accordance with §1026.39(d)(3) of this section to receive the consumer's notice of the right to rescind and resolve issues concerning the consumer's payments on the loan. In such cases, the information required by §1026.39(d)(1) may be provided only for that covered person.

2. ***Multiple covered persons, multiple disclosures***. If multiple covered persons each acquire a partial interest in the loan in separate transactions and not jointly, each covered person must comply with the disclosure requirements of this section unless an exception in §1026.39(c) applies. (See comment 39(a)(1)–2(ii) regarding a joint acquisition of legal title, and comment 39(b)(5)–2 regarding the disclosure requirements for multiple covered persons.)

Paragraph 39(d)(3).

1. ***Identifying agents***. Under §1026.39(d)(3), the covered person must provide the name, address and telephone number for the agent or other party having authority to receive the notice of the right to rescind and resolve issues concerning the consumer's payments on the loan. If multiple persons are identified under this paragraph, the disclosure shall provide the name, address and telephone number for each and indicate the extent to which the authority of each person differs. Section 1026.39(d)(3) does not require that a covered person designate an agent or other party, but if the consumer cannot contact the covered person for these purposes, the disclosure must provide the name, address and telephone number for an agent or other party that can address these matters. If an agent or other party is authorized to receive the notice of the right to rescind and resolve issues concerning the consumer's payments on the loan, the disclosure can state that the consumer may contact that agent regarding any questions concerning the consumer's account without specifically mentioning rescission or payment issues. However, if multiple agents are listed on the disclosure, the disclosure shall state the extent to which the authority of each agent differs by indicating if only one of the agents is authorized to receive notice of the right to rescind, or only one of the agents is authorized to resolve issues concerning payments.
2. ***Other contact information***. The covered person may also provide an agent's electronic mail address or Internet Web site address, but is not required to do so.

Paragraph 39(d)(4).

1. ***Where recorded***. Section 1026.39(d)(4) requires the covered person to disclose where transfer of ownership of the debt to the covered person is recorded if it has been recorded in public records. Alternatively, the disclosure can state that the transfer of ownership of the debt has not been recorded in public records at the time the disclosure is provided, if that is the case, or the disclosure can state where the transfer may later be recorded. An exact address is not required and it would be sufficient, for example, to state that the transfer of ownership is recorded in the office of public land records or the recorder of deeds office for the county or local jurisdiction where the property is located.

39(e) Optional disclosures.

1. ***Generally.*** Section 1026.39(e) provides that covered persons may, at their option, include additional information about the mortgage transaction that they consider relevant or helpful to consumers. For example, the covered person may choose to inform consumers that the location where they should send mortgage payments has not changed. (See comment 39(b)(1)–1 regarding combined disclosures.)