

# **TRUTH IN LENDING ACT (TILA)**

## **Examination Procedures**

### **Examination Objectives**

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

# General Procedures

1. Obtain information pertinent to the area of examination from the financial institution's compliance management system program (historical examination findings, complaint information, and significant findings from compliance review and audit).

2. Through discussions with management and review of the following documents, determine whether the financial institution's internal controls are adequate to ensure compliance in the area under review. Identify procedures used daily to detect errors/violations promptly. Also, review the procedures used to ensure compliance when changes occur (e.g., changes in interest rates, service charges, computation methods, and software programs).

- Organizational charts.
- Process flowcharts.
- Policies and procedures.
- Loan documentation and disclosures.
- Checklists/worksheets and review documents.
- Computer programs.

3. Review compliance review and audit workpapers and determine whether:

- a. The procedures used address all regulatory provisions (see Transactional Testing section).
- b. Steps are taken to follow up on previously identified deficiencies.
- c. The procedures used include samples that cover all product types and decision centers.
- d. The work performed is accurate (through a review of some transactions).
- e. Significant deficiencies, and the root cause of the deficiencies, are included in reports to management/board.
- f. Corrective actions are timely and appropriate.
- g. The area is reviewed at an appropriate interval.

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

- a. Two years after the disclosures were required to be made or other action was required to be taken, other than for the advertising requirements and certain requirements for mortgages described below. (§1026.25(a))

- b. Three years after the date of receipt of payment to show compliance with loan originator compensation requirements. (§1026.25(c)(2))
- c. Three years after consummation to show compliance with ability-to-repay minimum standards (§1026.43(c)-(f)) and prepayment penalty restrictions (§1026.43(g)) for loans secured by a dwelling. (§1026.25(c)(3))

## **Disclosure Forms**

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

Verify the accuracy of each disclosure by reviewing the following:

- Credit card application/solicitation disclosures (§1026.60(b)-(e)).
- HELOC disclosures (§1026.40(d) and (e)).
- Initial disclosures (§1026.6) and, if applicable, additional HELOC disclosures (§1026.40).
- Periodic statement disclosures (§1026.7)
- Statement of billing rights and change in terms notice (§1026.9(a),(b),(c) or (g)).
- Note and/or contract forms (including those furnished to dealers).
- Notice of Right to Rescind/Cancel (§§1026.15(b), 1026.23(b)(1)) and 1026.47(c)(4).
- Standard closed-end credit disclosures (§§1026.17(a) and 1026.18).
- ARM disclosures (§1026.19(b)).
- High-cost mortgage disclosures (§1026.32(c)).
- Reverse mortgage disclosures (§1026.33(b)).
- Private education loan disclosures (§1026.47).

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

a. Determine that the disclosures are clear, conspicuous, and grouped together or segregated as required, in a form the consumer may keep. The terms “Finance Charge” and “Annual Percentage Rate” and corresponding rates or amounts should be more conspicuous than other terms, except for the creditor’s identity. For private student loans the term “Annual Percentage Rate” and corresponding rate must be less

conspicuous than the term “finance charge” and the corresponding amount, as well as less conspicuous than the interest rate, the notice of the right to cancel and creditor’s identity. (§§1026.17(a), 1026.47(b), and (c))

b. Determine the disclosures include the following as applicable. (§1026.18)

1. Identity of the creditor
2. Brief description of the finance charge
3. Brief description of the APR
4. Variable rate information (§1026.18(f)(1) or (2))
5. Payment schedule
6. Brief description of the total of payments
7. Demand feature
8. Description of total sales price in a credit sale
9. Prepayment penalties or rebates
10. Late payment amount or percentage
11. Description for security interest
12. Insurance conditions for finance charge exclusions (§1026.4(d))
13. Statement referring to the contract
14. Statement regarding assumption of the note
15. Statement regarding required deposits.

c. Determine that the creditor discloses the number, amounts, and timing of payments scheduled to repay the obligation (other than for a transaction that is subject to section 1026.18(s)2. (§1026.18(g))

d. For a closed-end transaction secured by real property or a dwelling (other than a transaction secured by a consumer’s interest in a time-share plan described in 11 U.S.C. 101(53D)), determine that the creditor discloses the following information about the interest rate and payments, as applicable (§1026.18(s)):

## Interest Rates

1. For a fixed-rate mortgage, the interest rate at consummation. (§1026.18(s)(2)(i)(A))
2. For an adjustable-rate or step-rate mortgage (§1026.18(s)(2)(i)(B)):
  - i. The interest rate at consummation and the period of time until the first interest rate adjustment may occur, labeled as the “introductory rate and monthly payment”; NOTE: As set forth in comment 18(s)-1, if periodic payments are not due monthly, the creditor should use the appropriate term, such as “quarterly” or “annually.”
  - ii. The maximum interest rate that may apply during the first five years after the date on which the first regular periodic payment will be due and the earliest date on which that rate may apply, labeled as “maximum during first five years”; and
  - iii. The maximum interest rate that may apply during the life of the loan and the earliest date on which that rate may apply, labeled as “maximum ever.”
3. For a loan that provides for payment increases occurring without regard to an interest rate adjustment (this category includes interest-only loans, as set forth in comment 1026.18(s)(2)(i)(C)-1.) (as described in section 1026.18(s)(3)(i)(B)), the interest rate in effect at the time the first such payment increase is scheduled to occur and the date on which the increase will occur, labeled as “first adjustment” if the loan is an adjustable-rate mortgage or, otherwise, labeled as “first increase.” (§1026.18(s)(2)(i)(C)) (Because model forms and clauses published by the CFPB are safe harbors, this rate may also be labeled “Maximum Ever,” pursuant to section 1026.18(s)(2)(i)(B)(3).)
4. For a negative amortization loan (§1026.18(s)(2)(ii)): (“negative amortization loan” means a loan, other than a reverse mortgage subject to section 1026.33 that provides for a minimum periodic payment that covers only a portion of the accrued interest, resulting in negative amortization. section 1026.18(s)(7)(v))
  - i. The interest rate at consummation and, if it will adjust after consummation, the length of time until it will adjust, and the label “introductory” or “intro”;
  - ii. The maximum interest rate that could apply when the consumer must begin making fully amortizing payments under the terms of the legal obligation;
  - iii. If the minimum required payment will increase before the consumer must begin making fully amortizing payments, the maximum interest rate that could apply at the time of the first payment increase and the date the increase is scheduled to occur; and
  - iv. If a second increase in the minimum required payment may occur before the consumer must begin making fully amortizing payments, the maximum interest rate that could apply at the time of the second payment increase and

the date the increase is scheduled to occur.

5. For an amortizing adjustable-rate mortgage, if the interest rate at consummation is less than the fully indexed rate, the following (placed in a box directly beneath the table required by paragraph 18 (s)(1) of the regulation, in a format substantially similar to Model Clause H-4(I) in the regulation's Appendix H):

- i. The interest rate that applies at consummation and the period of time for which it applies;
- ii. A statement that, even if market rates do not change, the interest rate will increase at the first adjustment and a designation of the place in sequence of the month or year, as applicable, of such rate adjustment (e.g., "in the third year"); and
- iii. The fully-indexed rate.

#### Payments for Amortizing Loans

1. Principal and interest payments. If all periodic payments will be applied to accrued interest and principal, for each interest rate disclosed under section 1026.18(s)(2)(i) (§1026.18(s)(3)(i)):

- i. The corresponding periodic principal and interest payment, labeled as "principal and interest;"
- ii. If the periodic payment may increase without regard to an interest rate adjustment, the payment that corresponds to the first such increase and the earliest date on which the increase could occur;
- iii. If an escrow account is established, an estimate of the amount of taxes and insurance, including any mortgage insurance payable with each periodic payment; and
- iv. The sum of the amounts disclosed under sections 1026.18(s)(3)(i)(A) and (C) or (s)(3)(i)(B) and (C), as applicable, labeled as "total estimated monthly payment."

2. Interest-only payments. If the loan is an interest-only loan, for each interest rate disclosed under section 1026.18(s)(2)(i), the corresponding periodic payment and (§1026.18(s)(3)(ii)):

- i. If the payment will be applied to only accrued interest, the amount applied to interest, labeled as "interest payment," and a statement that none of the payment is being applied to principal;

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

iii. The escrow information described in section 1026.18(s)(3)(i)(C); and

iv. The sum of all amounts required to be disclosed under sections 1026.18(s)(3)(ii)(A) and (C) or (s)(3)(ii)(B) and (C), as applicable, labeled as “total estimated monthly payment.”

3. Payments for negative amortization loans. If the loan is a negative amortization loan (§1026.18(s)(4)):

i. The minimum periodic payment required until the first payment increase or interest rate increase, corresponding to the interest rate disclosed under section 1026.18(s)(2)(ii)(A);

ii. The minimum periodic payment that would be due at the first payment increase and the second, if any, corresponding to the interest rates described in section 1026.18(s)(2)(ii)(C) and (D);

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

iv. The fully amortizing periodic payment amount at the earliest time when such a payment must be made, corresponding to the interest rate disclosed under section 1026.18 (s)(2)(ii)(B); and

v. If applicable, in addition to the payments in sections 1026.18(s)(4)(i) and (ii), for each interest rate disclosed under section 1026.18(s)(2)(ii), the amount of the fully amortizing periodic payment, labeled as the “full payment option,” and a statement that these payments pay all principal and all accrued interest.

NOTE: The information in sections 1026.18(s)(2)–(4) must be disclosed in the form of a table with no more than five columns, and with headings and format substantially similar to Model Clause H–4(E), H–4(F), H–4(G), or H–4(H) in Appendix H of the regulation. The table should contain only the information required in sections 1026.18 (s)(2)–(4), be placed in a prominent location, and be in a minimum 10-point font. (§1026.18(s)(1))

4. Balloon payments. For loans with balloon payments (defined as a payment that is more than two times a regular periodic payment) (§1026.18(s)(5)):

i. Except as provided below, the balloon payment is disclosed separately from other periodic payments disclosed in the table (i.e., is outside the table and in a manner substantially similar to Model Clause H–4(J) in Appendix H to the

regulation);

ii. If the balloon payment is scheduled to occur at the same time as another payment required to be disclosed in the table, the balloon payment must be disclosed in the table.

e. For a closed-end transaction secured by real property or a dwelling (other than a transaction secured by a consumer's interest in a time-share plan described in 11 U.S.C. 101(53D)), that is a negative amortization loan, determine that the following information is disclosed (in close proximity to the table required in section 1026.18(s)(1), with headings, content, and format substantially similar to Model Clause H-4(G) in Appendix H to this part) (§1026.18(s)(6)):

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

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

f. For a closed end transaction secured by real property or a dwelling, (other than a transaction secured by a consumer's interest in a time-share plan described in 11 U.S.C. 101(53D)), determine that the creditor disclosed a statement that there is no guarantee the consumer can refinance the transaction to lower the interest rate or periodic payments. (§1026.18(t)(1))

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

g. Determine all variable rate loans with a maturity greater than one year secured by a principal dwelling are given the following disclosures at the time of application. (§1026.19)

1. Consumer Handbook on Adjustable Rate Mortgages or substitute
2. Statement that interest rate payments and or terms can change
3. The index/formula and a source of information
4. Explanation of the interest rate/payment determination and margin
5. Statement that the consumer should ask for the current interest rate and margin

6. Statement that the interest rate is discounted, if applicable
7. Frequency of interest rate and payment changes
8. Rules relating to all changes
9. Either a historical example based on 15 years, or the initial rate and payment with a statement that the periodic payment may substantially increase or decrease together with a maximum interest rate and payment
10. Explanation of how to compute the loan payment, giving an example
11. Demand feature, if applicable
12. Statement of content and timing of adjustment notices
13. Statement that other variable rate loan program disclosures are available, if applicable

h. Determine that for any closed-end adjustable-rate mortgage with a maturity date greater than one year, secured by a principal dwelling, the creditor, assignee, or servicer provides the following initial rate adjustment disclosures (for disclosure timing requirements, see **Timing Requirements** below): (§1026.20(d)(2))

1. The date of the disclosure;
2. An explanation that under the terms of the consumer's adjustable rate mortgage, the time frame that the current rate has been in effect, when the current rate is scheduled to expire, the effective date of the new rate, when additional future interest rate adjustments are scheduled to occur and any other changes to loan terms, features, and options taking effect on the same date, and how the rate change may affect the payment and other loan terms;
3. A table explaining the current interest rate and payment, the new interest rate and payment, and the date the first new payment is due;

NOTE: For interest-only and negative amortization adjustable-rate mortgages, the table must include how the current and new rates and payment will be allocated to interest, principal, and escrow (if applicable). See section 1026.20(d)(2)(iii)(C) for more on payment allocation disclosure requirements.

4. An explanation of how the interest rate is determined, including the specific index or formula used and a source of information about that index or formula, and the type and amount of any adjustment, including a margin and an explanation that a margin is the addition of a certain number of percentage points to the index;
5. Any limits on the interest rate or payment increases at each interest rate adjustment and over the life of the loan (as applicable), including the extent to which such limits result in the creditor, assignee, or servicer foregoing any increase in the interest rate and the earliest date that such foregone interest rate increases may apply to future interest rate adjustments, subject to those limits;

6. An explanation of how the new payment was determined, including the index or formula used to determine the new interest rate;
7. Any adjustments to the index or formula used to determine the new payment, such as the addition of a margin;
8. The expected loan balance on the date of the interest rate adjustment;
9. The remaining loan term expected on the date of the interest rate adjustment and any changes to the term that may have occurred due to the interest rate change;
10. If an estimated rate payment is provided, a statement that another disclosure with the actual interest rate will be provided to the consumer between two and four months prior to the first payment at the adjusted level is due, and that the creditor is using an estimated rate;
11. If applicable, a statement that the new payment will not be allocated to pay loan principal and will not reduce the loan balance. If the new payment will result in negative amortization, a statement that the new payment will not be allocated to pay loan principal and that only part of the interest will be paid, which will add to the loan balance. If the new payment will result in negative amortization as a result of the interest rate adjustment, the statement must set forth the payment required to fully amortize the remaining balance at the new interest rate over the remainder of the loan term;
12. A statement indicating the circumstances under which any prepayment penalty may be imposed, the time period during which it may be imposed, and a statement that the consumer may contact the servicer for additional information, including the maximum amount of the penalty that may be charged to the consumer;
13. A telephone number of the creditor, assignee, or servicer to call if the consumer anticipates not being able to make the new payment;
14. A statement listing alternatives that consumers may pursue if they anticipate not being able to make the new payment;
15. A web address to access either the CFPB or the Department of Housing and Urban Development's (HUD) approved list of homeownership counselors and counseling organizations, the HUD toll-free number to access the HUD list of homeownership counselors and counseling organizations, and the Bureau website to access state housing finance authorities' contact information.

i. Determine that for any closed-end adjustable-rate mortgage with a maturity date greater than one year, secured by a principal dwelling, the creditor, assignee, or servicer provides the following rate adjustment disclosures for rate adjustments with a corresponding payment change (for disclosure timing requirements see **Timing Requirements** below): (§1026.20(c))

1. An explanation that under the terms of the consumer's adjustable rate mortgage, the time frame that the current rate has been in effect is ending and the interest rate and payment will change, the effective date of the new rate, when additional future interest rate adjustments are scheduled to occur and any other changes to loan terms, features, and options taking effect on the same date, such as the expiration of interest-only or payment-option features; a table explaining the current interest rate and payment, the new interest rate and payment, and the date the first new payment is due;  
NOTE: For interest-only and negatively amortizing payments, the table must include how the current and new rates and payment will be allocated to interest, principal, and escrow (if applicable). See section 1026.20(d)(2)(iii)(C) for more on payment allocation disclosure requirements.

2. An explanation of how the interest rate is determined, including the specific index or formula used and a source of information about that index or formula, and the type and amount of any adjustment, including a margin and an explanation that a margin is the addition of a certain number of percentage points to the index, and any application of previously foregone interest rate increases from past rate adjustments;
3. Any limits on the interest rate or payment increases at each interest rate adjustment and over the life of the loan (as applicable), including the extent to which such limits result in the creditor, assignee, or servicer foregoing any increase in the interest rate and the earliest date that such foregone interest rate increases may apply to future interest rate adjustments, subject to those limits;
4. An explanation of how the new payment is determined, including the index or formula used to determine the new interest rate;
5. Any adjustments to the index or formula used to determine the new payment, such as the addition of a margin or the application of any previously foregone interest rate increases from past interest rate adjustments;
6. The expected loan balance on the date of the interest rate adjustment;
7. The remaining loan term expected on the date of the interest rate adjustment and any changes to the term that may have occurred due to the interest rate change;
8. If applicable, a statement that the new payment will not be allocated to pay loan principal and will not reduce the loan balance. If the new payment will result in negative amortization, a statement that the new payment will not be allocated to pay loan principal and that only part of the interest will be paid, which will add to the loan balance. If the new payment will result in negative amortization as a result of the interest rate adjustment, the statement must set forth the payment required to fully amortize the remaining balance at the new interest rate over the remainder of the loan term;
9. A statement indicating the circumstances under which any prepayment penalty may be imposed, the time period during which it may be imposed, and a statement that the consumer may contact the servicer for additional information, including the maximum amount of the penalty that may be charged to the consumer;

NOTE: Model and sample disclosures H-4(D)(1) through (4) containing all necessary information can be found in appendix H. The disclosures required under section 1026.20(c) and (d) generally should be in the form of a table and in the same order as, and with headings and format substantially similar to, the model disclosures (§§1026.20(c)(3) and (d)(3)).

NOTE: When examining a creditor, an assignee, or a servicer that continues to own the loan, if the entity states that another entity has the obligation to provide the disclosures, examiners should determine whether the entity takes steps to ensure that the other party (the creditor, assignee, or servicer, as applicable) is complying with the obligation to provide the disclosures.

j. Determine that the disclosures required for high-cost mortgage transactions (§1026.32) clearly and conspicuously include the items below. (§1026.32(c), see Form H-16 in Appendix H)

1. The required statement “you are not required to complete this agreement merely because you have received these disclosures or have signed a loan application. If

you obtain this loan, the lender will have a mortgage on your home. You could lose your home, and any money you have put into it, if you do not meet your obligations under the loan.”

2. The APR.

3. Amount of the regular monthly (or other periodic) payment and the amount of any balloon payment. The regular payment should include amounts for voluntary items, such as credit life insurance or debt-cancellation coverage, only if the consumer has previously agreed to the amount (See staff commentary to 32(c)(3)).

4. Statement that the interest rate may increase, and the amount of the single maximum monthly payment, based on the maximum interest rate allowed under the contract, if applicable.

5. The amount borrowed. For a closed-end mortgage, the amount borrowed is the total amount borrowed, as reflected by the face amount of the note; and where the amount borrowed includes premiums or other charges for optional credit insurance or debt-cancellation coverage (grouped together with the amount borrowed), that fact shall be stated. For an open-end credit plan, the amount borrowed is the credit limit for the plan when the account is opened.

k. For any closed-end mortgage loan (credit transaction that is secured by the principal dwelling of a consumer) that was sold, assigned, or otherwise transferred to the covered person, determine that the covered person notifies the borrower clearly and conspicuously in writing, in a form that the consumer may keep of such transfer, including (§1026.39):

1. An identification of the loan that was sold, assigned, or otherwise transferred;
2. The name, address, and telephone number of the covered person who owns the mortgage loan;
3. The date of transfer (either the date of acquisition recognized in the books and records of the covered person or that of the transferring party) identified by the covered person;
4. The name, address, and telephone number of an agent or party having authority, on behalf of the covered person, to receive notice of the right to rescind and resolve issues concerning the consumer’s payments on the mortgage loan;
5. Where transfer of ownership of the debt to the covered person is or may be recorded in public records or, alternatively, that the transfer of ownership has not been recorded in public records at the time the disclosure is provided; and,
6. At the option of the covered person, any other relevant information regarding the transaction.
7. If there are multiple covered persons, contact information for each of them, unless

one of them has been authorized to receive the consumer's notice of the right to rescind and resolve issues concerning the consumer's payments on the loan.

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

1. For private education loans subject to Subpart F, ensure that the required disclosures are accurate (§1026.47) and contain the following information:

1. Application or solicitation disclosures disclose the following:

a. Interest rate, including:

i. Rate or range, and if the rate depends in part on a determination of the borrower's creditworthiness or other factors, a statement to that effect;

ii. Whether rate is fixed or variable;

iii. If rate may increase after consummation, any limitations, or lack thereof, and if the limitation is imposed by law, that fact. Also, the creditor must state that the consumer's actual rate may be higher or lower than that disclosed, if applicable; and

iv. Whether the rate will typically be higher if the loan is not co-signed or guaranteed.

b. Fees and default or late payment costs.

c. Repayment terms, including:

i. Term of the loan, which is the period during which regularly scheduled payments of principal and interest will be due.

ii. Deferral options, or if consumer does not have the option to defer, that fact.

- iii. For each available deferral option applicable, information as to:
    - 1. Whether interest will accrue during deferral period; and
    - 2. If interest accrues, whether payment of interest may be deferred and added to the principal balance; and
  - iv. A statement that, if the consumer files bankruptcy, the consumer may still be required to repay the loan.
  - d. Cost estimates, based on an example of the total cost of the loan, calculated using:
    - i. The highest interest rate and including all applicable finance charges,
    - ii. An amount financed of \$10,000, or \$5,000, if the creditor offers loans less than \$10,000; and
    - iii. Calculated for each payment option.
  - e. Eligibility (e.g., any age or school enrollment eligibility requirements).
  - f. Alternatives to private education loans, including:
    - i. A statement that the consumer may qualify for Federal student loans,
    - ii. The interest rates available for each program available under title IV of the Higher Education Act of 1965, and whether the rate is variable or fixed;
    - iii. A statement that the consumer may obtain additional information regarding student federal financial assistance from his school or U.S. Department of Education, including an appropriate website; and
    - iv. A statement that a covered educational institution may have school specific educational loan benefits and terms not detailed in the loan disclosure forms.
  - g. A statement that if the loan is approved, that the loan will be available for 30 days and the terms will not change, except for changes to the interest rate in the case of a variable rate and other changes permitted by law.
  - h. A statement that before consummation, the borrower must complete a self-certification form obtained from the student's institution of higher education.
2. For approval disclosures, the following information is required under section 1026.47(b):
- a. Interest rate, information, including:

- i. Interest rate applicable to the loan
  - ii. Whether the interest rate is variable or fixed; and
  - iii. If the interest rate may increase after consummation, any limitations on the rate adjustments, or lack thereof.
- b. Fees and default or late payment costs, including:
- i. An itemization of the fees or range of fees required to obtain the loan; and
  - ii. Any fees, changes to the interest rate, and adjustments to principal based on the consumer's defaults or late payments.
- c. Repayment terms, including:
- i. Principal amount;
  - ii. Term of the loan;
  - iii. A description of the payment deferral option chosen by the consumer, if applicable, and any other payment deferral options that the consumer may elect at a later time;
  - iv. Any payments required while the student is enrolled at the educational institution, based on the deferral option chosen by the consumer;
  - v. Amount of any unpaid interest that will accrue while the student is enrolled in school, based upon the deferral option chosen by the consumer;
  - vi. A statement that if the consumer files for bankruptcy, that the consumer may still be required to pay back the loan;
  - vii. An estimate of the total amount of payments calculated based upon:
    - 1. The interest rate applicable to the loan (compliance with section 1026.18(h) constitutes compliance with this requirement);
    - 2. The maximum possible rate of interest for the loan, or, if a maximum rate cannot be determined, a rate of 25%.
    - 3. If a maximum rate cannot be determined, the estimate of the total amount for repayment must include a statement that there is no maximum rate and that the total amount for repayment disclosed is an estimate.

viii. The maximum monthly payment based on the maximum rate of interest for the loan, or, if a maximum rate of interest cannot be determined, a rate of 25%. If a maximum cannot be determined, a statement that there is no maximum rate and that the monthly payment amount disclosed is an estimate and will be higher if the applicable interest rate increases.

d. Alternatives to private education loans, including:

i. A statement that the consumer may qualify for Federal student loans,

ii. The interest rates available for each program available under title IV of the Higher Education Act of 1965, and whether the rate is variable or fixed; and

iii. A statement that the consumer may obtain additional information regarding student federal financial assistance from his school or U.S. Department of Education, including an appropriate website.

e. A statement that the consumer may accept the terms of the loan until the acceptance period under section 1026.48(c)(1) has expired. The statement must include:

i. The specific date on which the acceptance period expires, based on the date upon which the consumer receives the disclosures required under this subsection for the loan;

ii. The method or methods by which the consumer may communicate the acceptance (written, oral, or by electronic means; and

iii. A statement that except for changes to the interest rate and other changes permitted by law, the rates and the terms of the loan may not be changed by the creditor during the 30-day acceptance period.

3. After the consumer has accepted the loan in accordance with section 1026.48(c)(1), final disclosures must disclose the information required under section 1026.47(c) and the following:

a. Interest rate, including:

i. Interest rate applicable to the loan

ii. Whether the interest rate is variable or fixed; and

iii. If the interest rate may increase after consummation, any limitations on the rate adjustments, or lack thereof.

b. Fees and default or late payment costs, including:

i. An itemization of the fees or range of fees required to obtain the loan; and

ii. Any fees, changes to the interest rate, and adjustments to principal based on the consumer's defaults or late payments.

- c. Repayment terms, including:
- i. Principal amount;
  - ii. Term of the loan;
  - iii. A description of the payment deferral option chosen by the consumer, if applicable, and any other payment deferral options that the consumer may elect at a later time;
  - iv. Any payments required while the student is enrolled at the educational institution, based on the deferral option chosen by the consumer;
  - v. Amount of any unpaid interest that will accrue while the student is enrolled in school, based upon the deferral option chosen by the consumer;
  - vi. A statement that if the consumer files for bankruptcy, that the consumer may still be required to pay back the loan;
  - vii. An estimate of the total amount of payments calculated based upon:
    1. The interest rate applicable to the loan (compliance with section 1026.18(h) constitutes compliance with this requirement);
    2. The maximum possible rate of interest for the loan, or, if a maximum rate cannot be determined, a rate of 25 percent;
    3. If a maximum rate cannot be determined, the estimate of the total amount for repayment must include a statement that there is no maximum rate and that the total amount for repayment disclosed is an estimate.
  - viii. The maximum monthly payment based on the maximum rate of interest for the loan, or, if a maximum rate of interest cannot be determined, a rate of 25 percent. If a maximum cannot be determined, a statement that there is no maximum rate and that the monthly payment amount disclosed is an estimate and will be higher if the applicable interest rate increases.
- d. In a text more conspicuous than any other required disclosure, except for the finance charge, the interest rate, and the creditor's identify the following disclosures:
- i. A statement that the consumer has the right to cancel the loan, without penalty, at any time before the midnight of the third business day following the date on which the consumer receives the final loan disclosures. The statement must include the specific date on which the cancellation period expires and that the consumer may cancel by that date.

(§1026.47(c)(4)(i))

ii. A statement that the loan proceeds will not be disbursed until the cancellation period expires. (§1026.47(c)(4)(ii))

iii. The method or methods by which the consumer may cancel; (§1026.47(c)(4)(ii)) and

iv. If the creditor permits cancellation by mail, the statement specifying that the consumer's mailed request will be deemed timely if placed in the mail not later than the cancellation date specified on the disclosures. (§1026.47(c)(4)(ii))

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

a. Determine that the creditor made the disclosures clearly and conspicuously. (§1026.5(a))

b. Determine that the creditor made the applicable disclosures in writing, in a form that the consumer may keep, except (§1026.5(a)(1)(ii)):

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

2. The following disclosures need not be in a retainable form: Disclosures that need not be written under paragraph 1026.5(a)(1)(ii)(A) of this section; the alternative summary billing-rights statement under section 1026.9(a)(2); the credit and charge card renewal disclosures required under section 1026.9(e); the payment requirements under section 1026.10(b), except as provided in section 1026.7(b)(13); ; home-equity disclosures under section 1026.40(d); and disclosures for credit and charge card applications and solicitations under section 1026.60.

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

c. Determine that the terminology used in providing the disclosures required by section 1026.5 is consistent. (§1026.5(a)(2)(i))

d. Determine that, for home-equity plans subject to section 1026.40, the terms finance charge and annual percentage rate (APR), when required to be disclosed with a corresponding amount or percentage rate, shall be more conspicuous than any other required disclosure. The terms need not be more conspicuous when used for periodic statement disclosures under section 1026.7(a)(4) and for advertisements under section 1026.16. (§1026.5(a)(2)(ii))

e. Determine that, if disclosures are required to be presented in a tabular format pursuant to section 1026.5(a)(3), that the term penalty APR shall be used, as applicable. (§1026.5(a)(2)(iii))

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

## **Credit and Charge Card Application and Solicitation Disclosures – Section 1026.60**

a. Determine that the credit card solicitation or application disclosures were made clearly and conspicuously on or with a solicitation or an application. (§1026.60)

b. For the disclosures in sections 1026.60(b)(1) through (5) (except for (b)(1)(iv)(B) and (b)(7) through (15)), determine that the creditor made the disclosures required for sections 1026.60(c), (d)(2), (e)(1) and (f) in the form of a table with headings, content, and format substantially similar to the applicable tables found in G-10 in Appendix G. (§1026.60(a)(2)(i))

c. Determine that the table required by section 1026.60(a)(2)(i) contains only the information required or permitted by that section. If the creditor provides other information, determine that such information appears outside the table. (§1026.60(a)(2)(ii))

d. Determine that the disclosures required by section 1026.60(b)(1)(iv)(B), (b)(1)(iv)(C), and (b)(6) are placed directly beneath the table required by section 1026.60(a)(2)(i). (§1026.60(a)(2)(iii))

e. When a tabular format is required, determine that the following disclosures are disclosed in bold text (§1026.60(a)(2)(iv)):

i. Annual percentage rate required to be disclosed pursuant to paragraph (b)(1) of this section,

ii. Introductory rate required to be disclosed pursuant to paragraph (b)(1)(ii) of this section,

iii. Rate that will apply after a premium initial rate expires required to be disclosed under paragraph (b)(1)(iii) of this section, and

iv. Fee or percentage amounts or maximum limits on fee amounts required to be disclosed pursuant to paragraphs (b)(2), (b)(4), (b)(8) through (b)(13).

NOTE: Bold text shall not be used for the amount of any periodic fee disclosed pursuant to paragraph (b)(2) of this section that is not an annualized amount; and other APRs or fee amounts disclosed in the table. (§1026.60(a)(2)(iv))

f. Determine that the card issuer discloses, on or with an solicitation or application: (§1026.60(b))

1. Annual percentage rate. Each periodic rate that may be used to compute the finance charge on an outstanding balance for purchases, a cash advance, or a balance transfer, expressed as an annual percentage rate. When more than one rate applies for a category of transactions, determine that the range of balances to which each rate is applicable is also disclosed. (§1026.60(b)(1))

NOTE: The APR for purchases disclosed pursuant to section 1026.60(b)(1) shall be in at least 16-point type, except for the following: Oral disclosures of the annual percentage rate for purchases; or a penalty rate that may apply upon the occurrence of one or more specific events.

i. Variable rate information. If a rate is a variable rate, determine that the card issuer discloses the fact that the rate may vary and how the rate is determined. Determine that the card issuer identifies the type of index or formula that is used in setting the rate. Determine that the value of the index and the amount of the margin that are used to calculate the variable rate are not disclosed in the table. Determine further that any applicable limitations on rate increases are not included in the table. (§1026.60(b)(1)(i))

ii. Discounted initial rate. If the initial rate is an introductory rate, determine that the card issuer discloses in the table the introductory rate, the time period during which the introductory rate will remain in effect, and the term “introductory” or “intro” in immediate proximity to the introductory rate. Determine further that the card issuer discloses, as applicable, either the variable or fixed rate that would otherwise apply to the account. (§1026.60(b)(1)(ii))

iii. Premium initial rate. If the initial rate is temporary and is higher than the rate that will apply after the temporary rate expires, determine that the card issuer discloses the premium initial rate and the time period during which the premium initial rate will remain in effect. Determine that the premium initial rate for purchases is in at least 16-point type. Determine that the issuer discloses in the table the rate that will apply after the premium initial rate expires, in at least 16-point type. (§1026.60(b)(1)(iii))

iv. Penalty rates. Except as for provided introductory rate or employee preferential rate requirements (discussed below), if a rate may increase as a penalty for one or more events specified in the account agreement, such as a late payment or an extension of credit that exceeds the credit limit, determine that the card issuer discloses the increased rate that may apply, a brief description of the event or events that may result in the increased rate, and a brief description of how long the increased rate will remain in effect. (§1026.60(b)(1)(iv)(A))

v. Introductory rate. If the issuer discloses an introductory rate in the table or in any written or electronic promotional materials accompanying applications or solicitations (and subject to paragraph (c) or (e) of section 1026.60), determine that the issuer briefly discloses, directly beneath the table, the circumstances, if any, under which the introductory rate may be revoked, and the type of rate that will apply after the introductory rate is revoked. (§1026.60(b)(1)(iv)(B))

vi. Employee preferential rates. If the issuer discloses in the table a preferential APR for which only employees of the card issuer, employees of a third party, or other individuals with similar affiliations with the card issuer or third party are eligible, determine that the issuer briefly discloses directly beneath the table the circumstances under which such preferential rate may be revoked and the rate that will apply after such preferential rate is revoked. (§1026.60(b)(1)(iv)(C))

vii. Rates that depend on consumer's creditworthiness. If a rate cannot be determined at the time disclosures are given because the rate depends, at least in part, on a later determination of the consumer's creditworthiness, determine that the card issuer discloses the specific rates or the range of rates that could apply and a statement that the rate for which the consumer may qualify at

account opening will depend on the consumer's creditworthiness, and other factors if applicable. (§1026.60(b)(1)(v))

NOTE: If the rate that depends, at least in part, on a later determination of the consumer's creditworthiness is a penalty rate, as described in (b)(1)(iv), the card issuer at its option may disclose the highest rate that could apply, instead of disclosing the specific rates or the range of rates that could apply. (§1026.60(b)(1)(v))

viii. APRs that vary by state. Determine that the card issuer does not list annual percentage rates for multiple states in the table. Note, however, that issuers imposing annual percentage rates that vary by state may, at the issuer's option, disclose in the table: the specific annual percentage rate applicable to the consumer's account; or the range of the annual percentage rates, if the disclosure includes a statement that the annual percentage rate varies by state and refers the consumer to a disclosure provided with the table where the annual percentage rate applicable to the consumer's account is disclosed. (§1026.60(b)(1)(vi))

2. Fees for issuance or availability. Determine that the card issuer discloses any annual or other periodic fee, expressed as an annualized amount, or any other fee that may be imposed for the issuance or availability of a credit or charge card, including any fee based on account activity or inactivity. (§1026.60(b)(2))

3. Fixed finance charge; minimum interest charge. Determine that the creditor discloses any fixed finance charge that could be imposed during a billing cycle, as well as a brief description of that charge. Determine that the creditor discloses any minimum interest charge if it exceeds \$1.00 that could be imposed during a billing cycle, and a brief description of the charge. (§1026.60(b)(3))

4. Transaction charge. Determine that the creditor discloses any transaction charge imposed for the use of the card for purchases. (§1026.60(b)(4))

5. Grace period. Determine that the issuer discloses the date by which or the period within which any credit extended for purchases may be repaid without incurring a finance charge due to a periodic interest rate and any conditions on the availability of the grace period. If no grace period is provided, determine that this fact is disclosed. In disclosing in the tabular format a grace period that applies to all types of purchases, determine that the issuer uses the phrase "How to Avoid Paying Interest on Purchases" as the heading for the row describing the grace period. If a grace period is not offered on all types of purchases, in disclosing this fact in the tabular format, determine that the issuer uses the phrase "Paying Interest" as the heading for the row describing this fact.

NOTE: If the length of the grace period varies, the card issuer may disclose the range of days, the minimum number of days, or the average number of days in the

grace period, if the disclosure is identified as a range, minimum, or average. (§1026.60(b)(5))

6. Balance computation method. Determine that the creditor disclosed the name of the balance computation method that is used to determine the balance on which the finance charge is computed, or an explanation of the method used if it is not listed. In determining which balance computation method to disclose, the creditor should have assumed that the credit extended will not be repaid within any grace period. (§1026.60(b)(6))

NOTE: Disclosures required by section 1026.60(b)(6) must be placed directly beneath the table.

7. Statement on charge card payments. Determine that the creditor discloses a statement that charges incurred by use of the charge card are due when the periodic statement is received. (§1026.60(b)(7))

8. Cash advance fee. Determine that the creditor disclosed any fee imposed for an extension of credit in the form of cash or its equivalent. (§1026.60(b)(8))

9. Late payment fee. Determine that the creditor disclosed any fee imposed for a late payment. (§1026.60(b)(9))

10. Over-the-limit fee. Determine that the creditor disclosed any fee imposed for exceeding the credit limit. (§1026.60(b)(10))

11. Balance transfer fee. Determine that the creditor disclosed any fee imposed to transfer a balance. (§1026.60(b)(11))

12. Returned payment fee. Determine that the creditor disclosed any fee imposed for a returned payment. (§1026.60(b)(12))

13. Required insurance, debt cancellation, or debt suspension coverage. Determine that the fee imposed required insurance, debt cancellation or suspension coverage is disclosed if the insurance, debt cancellation or coverage is required as part of the plan. (§1026.60(b)(13))

14. Available credit. Determine whether total of required fees for the issuance or availability of credit and/or security deposit debited to the account at account opening equal or exceed 15 percent of minimum credit limit for the account. If so, determine that the creditor disclosed, as applicable, the available credit remaining after the fees and/or security deposit are debited to the account. (§1026.60(b)(14))

15. Website reference. For issuers of credit cards that are not charge cards, determine that the creditor disclosed a reference to the website established by the Consumer Financial Protection Bureau (CFPB) and a statement that the consumers may obtain on the website information about shopping for and using credit cards. §1026.60(b)(15))

## Requirements for Home Equity Plans – Section 1026.40

a. Determine that the following home equity disclosures were made clearly and conspicuously, at the time of application. (§1026.40)

1. Home equity brochure
2. Statement that the consumer should retain a copy of the disclosure
3. Statement of the time the specific terms are available
4. Statement that terms are subject to change before the plan opens
5. Statement that the consumer may receive a full refund of all fees
6. Statement that the consumer's dwelling secures the credit
7. Statement that the consumer could lose the dwelling
8. Creditors right to change, freeze, or terminate the account
9. Statement that information about conditions for adverse action are available upon request
10. Payment terms including the length of the draw and repayment periods, how the minimum payment is determined, the timing of payments, and an example based on \$10,000 and a recent APR
11. A recent APR imposed under the plan and a statement that the rate does not include costs other than interest (fixed rate plans only)
12. Itemization of all fees paid to creditor
13. Estimate of any fees payable to third parties to open the account and a statement that the consumer may receive a good faith itemization of third-party fees
14. Statement regarding negative amortization, as applicable
15. Transaction requirements
16. Statement that the consumer should consult a tax advisor regarding the deductibility of interest and charges under the plan
17. For variable rate home equity plans, disclose the following:
  - i. That the APR, payment, or term may change
  - ii. The APR excludes costs other than interest

- iii. Identify the index and its source
  - iv. How the APR will be determined
  - v. Statement that the consumer should request information on the current index value, margin, discount, premium, or APR
  - vi. Statement that the initial rate is discounted and the duration of the discount, if applicable
  - vii. Frequency of APR changes
  - viii. Rules relating to changes in the index, APR, and payment amount
  - ix. Lifetime rate cap and any annual caps, or a statement that there is no annual limitation
  - x. The minimum payment requirement, using the maximum APR, and when the maximum APR may be imposed
  - xi. A historical example, based on a \$10,000 balance, reflecting all significant plan terms
  - xii. Statement that rate information will be provided on or with each periodic statement.
- b. For home-equity plans subject to section 1026.40, determine that the terms finance charge and annual percentage rate, when required to be disclosed with a corresponding amount or percentage rate, are more conspicuous than any other required disclosure.

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

## **Account Opening Initial Disclosures – Section 1026.6**

- a. The following requirements apply only to home-equity plans subject to the requirements of section 1026.40. Determine that the creditor discloses, as applicable (§1026.6(a)):
- 1. Finance charge. The circumstances under which a finance charge will be imposed and an explanation of how it will be determined, including: a statement of when finance charges begin to accrue, and an explanation of whether or not any time period exists within which any credit extended may be repaid without incurring a finance charge; a disclosure of each periodic rate that may be used to compute the finance charge, the range of balances to which it is applicable, and the

corresponding annual percentage rate; an explanation of the method used to determine the balance on which the finance charge may be computed; and, an explanation of how the amount of any finance charge will be determined, including a description of how any finance charge other than the periodic rate will be determined. (§1026.6(a)(1))

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

2. Other charges. The amount of any charge other than a finance charge that may be imposed as part of the plan, or an explanation of how the charge will be determined. (§1026.6(a)(2))

3. Home-equity plan information. The following disclosures , as applicable (§1026.6(a)(3)):

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

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

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

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

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

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

vii. The variable-rate disclosures described in section 1026.40(d)(12)(viii), (d)(12)(x), (d)(12)(xi), and (d)(12)(xii), as well as the disclosure described in section 1026.40(d)(5)(iii), unless the disclosures provided with the application were in a form the consumer could keep and included a representative payment example for the category of payment option chosen by the consumer.

4. Security interests. The fact that the creditor has or will acquire a security interest

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

5. Statement of billing rights. A statement that outlines the consumer's rights and the creditor's responsibilities under sections 1026.12(c) and 1026.13 and that is substantially similar to the statement found in Model Form G-3 or, at the creditor's option, G-3(A), in Appendix G to this part. (§1026.6(a)(5))

b. For open-end (not home-secured) plans determine that the creditor provided the account-opening disclosures specified in section 1026.6(b)(2)(i) through (b)(2)(v) (except for section 1026.6 (b)(2)(i)(D)(2) and section 1026.6 (b)(2)(vii) through (b)(2)(xiv) in the form of a table with the headings, content, and format substantially similar to any of the applicable tables in G-17 in Appendix G. (§1026.6(b)(1))

c. For open-end (not home-secured) plans, determine that the following disclosures are disclosed in bold text (§1026.6(b)(1)(i)):

1. Any APR required to be disclosed pursuant to section 1026.6(b)(2)(i);
2. Any introductory rate permitted to be disclosed pursuant to paragraph (b)(2)(i)(B) or required to be disclosed under paragraph (b)(2)(i)(F) of this section;
3. Any rate that will apply after a premium initial rate expires permitted to be disclosed pursuant to paragraph (b)(2)(i)(C) or required to be disclosed pursuant to paragraph (b)(2)(i)(F); and
4. Any fee or percentage amounts or maximum limits on fee amounts disclosed pursuant to paragraphs (b)(2)(ii), (b)(2)(iv), (b)(2)(vii) through (b)(2)(xii).

d. Determine that bold text is not used for: The amount of any periodic fee disclosed pursuant to paragraph (b)(2) of this section that is not an annualized amount; and other annual percentage rates or fee amounts disclosed in the table. (§1026.6(b)(1)(i))

e. Determine that only the information required or permitted by section 1026.6 (b)(2)(i) through (b)(2)(v) (except for (b)(2)(i)(D)(2)) and (b)(2)(vii) through (b)(2)(xiv) are provided in the table. Disclosures required by paragraphs (b)(2)(i)(D)(2), (b)(2)(i)(D)(3), (b)(2)(vi) and (b)(2)(xv) of this section shall be placed directly below the table required by section 1026.6(b)(1). (§1026.6(b)(1)(ii))

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

f. For creditors that impose fees referred to in section 1026.6(b)(2)(vii) through (b)(2)(xi) that vary by state and that provide the disclosures required by section 1026.6(b) in person at the time the open-end (not home-secured) plan is established in

connection with financing the purchase of goods or services determine that the creditor discloses in the account-opening table either:

1. The specific fee applicable to the consumer's account, or
2. The range of fees, a statement that the amount of the fee varies by state, and a reference to the account agreement or other disclosure provided with the account-opening table where the amount of the fee applicable to the consumer's account is disclosed. (§1026.6(b)(1)(iii))

NOTE: A creditor is not permitted to list fees for multiple states in the account opening summary table (§1026.6(b)(1)(iii)).

3. If the amount of any fee required to be disclosed under this section is determined on the basis of a percentage of another amount, the percentage used and the identification of the amount against which the percentage is applied may be disclosed instead of the amount of the fee. (§1026.6(b)(1)(iv))

g. The following requirements apply to open-end (not home-secured). Determine that the creditor discloses in the appropriate format, as applicable:

1. Annual percentage rate. Each periodic rate that may be used to compute the finance charge on an outstanding balance for purchases, a cash advance, or a balance transfer, expressed as an APR. When more than one rate applies for a category of transactions, determine that the creditor discloses the range of balances to which each rate is applicable. Ensure that the APR for purchases disclosed pursuant to this paragraph is in at least 16-point type, except for a penalty rate that may apply upon the occurrence of one or more specific events. (§1026.6(b)(2)(i))

2. Variable rate information. If the rate is a variable rate, determine that the creditor also disclosed the fact that the rate may vary and how the rate is determined (i.e., identify the type of index or formula used in setting the rate). (§1026.6(b)(2)(i)(A))

3. Discounted initial rate. If the initial rate is an introductory rate, determine that the creditor disclosed that the rate would otherwise apply to the account. Where the rate is not tied to an index or formula, determine that the creditor disclosed the rate that will apply after the introductory rate expires. For a variable rate account, determine that the creditor disclosed a rate based on the applicable index or formula in accordance with the accuracy requirements. (§1026.6(b)(2)(i)(B))

4. Premium initial rate. If the initial rate is temporary and is higher than the rate that will apply after the temporary rate expires, determine that the creditor disclosed the premium initial rate. Determine that the premium rate for purchases is in at least 16-point type. (§1026.6(b)(2)(i)(C))

5. Penalty rates. Except for introductory rates and employee preferential rates

(discussed below), if the rate is a penalty rate, determine that the creditor disclosed as part of the APR disclosure the increased rate that may apply, a brief description of the event or events that may result in the increased rate, and a brief description of how long the increased rate will remain in effect. (§1026.6(b)(2)(i)(D)(1))

6. Introductory rates. If the creditor discloses in the table an introductory rate, as that term is defined in section 1026.16(g)(2)(ii), determine that the creditor briefly disclosed directly beneath the table the circumstances under which the introductory rate may be revoked, and the rate that will apply after the introductory rate is revoked. (§1026.6(b)(2)(i)(D)(2))

7. Employee preferential rates. If the creditor discloses in the table a preferential APR for which only employees of the creditor, employees of a third party, or other individuals with similar affiliations with the creditor or third party are eligible, determine that the creditor briefly disclosed directly beneath the table the circumstances under which the preferential rate may be revoked, and the rate that will apply after the preferential rate is revoked. (§1026.6(b)(2)(i)(D)(3))

8. Point of sale where APRs vary by state or based on creditworthiness. If the creditor imposes an APR that varies by state or based on the consumer's creditworthiness and provides required disclosures in person at the time the open-end (not home-secured) plan is established in connection with financing the purchase of goods or services, determine that the creditor discloses either (§1026.6(b)(2)(i)(E)):

- i. The specific APR applicable to the consumer's account, or
- ii. The range of the APRs, if the disclosure includes a statement that the APR varies by state or will be determined based on the consumer's creditworthiness and refers the consumer to the account agreement or other disclosure provided with the account-opening table where the AP applicable to the consumer's account is disclosed. Determine that the creditor does not list APRs for multiple states in the account opening table.

9. Credit card accounts under an open-end (not home-secured) consumer credit plan. Determine that the issuer discloses in the table (§1026.6(b)(2)(i)(F)):

- i. Any introductory rate, and
- ii. Any rate that would apply upon expiration of a premium initial rate.

10. Fees for issuance or availability. Determine that the credit disclosed any annual or periodic fee that may be imposed for the issuance or availability of an open-end plan (including any fee based on account activity or inactivity); how frequently the fee will be imposed; and the annualized amount of the fee. (§1026.6(b)(2)(ii))

11. Fixed finance charge and minimum interest charge. Determine that the creditor disclosed any fixed finance charge and any minimum interest charge if it exceeds \$1.00 that could be imposed during a billing cycle, and a brief description of the charge. (§1026.6(b)(2)(iii))

12. Determine that the creditor disclosed any non-periodic fee that relates to opening the plan. A creditor must disclose that the fee is a one-time fee. (§1026.6(b)(2)(ii)(B))

13. Transaction charges. Determine that the creditor discloses any transaction charge imposed by the creditor for use of the open-end plan for purchases. (§1026.6(b)(2)(iv))

14. Grace period. The date by which or the period within which any credit extended may be repaid without incurring a finance charge due to a periodic interest rate and any conditions on the availability of the grace period. If no grace period is provided, that fact must be disclosed. If the length of the grace period varies, the creditor may disclose the range of days, the minimum number of days, or the average number of the days in the grace period, if the disclosure is identified as a range, minimum, or average. In disclosing in the tabular format a grace period that applies to all features on the account, the phrase “How to Avoid Paying Interest” shall be used as the heading for the row describing the grace period. If a grace period is not offered on all features of the account, in disclosing this fact in the tabular format, the phrase “Paying Interest” shall be used as the heading for the row describing this fact. (§1026.6(b)(2)(v))

15. Balance computation method. Determine that the creditor disclosed in the account opening disclosures the name of the balance computation method that is used to determine the balance on which the finance charge is computed for each feature, or an explanation of the method used if it is not listed, along with a statement that an explanation of the methods required by section 1026.6(b)(4)(i)(D). In determining which balance computation method to disclose, the creditor should have assumed that the credit extended will not be repaid within any grace period. (§1026.6(b)(2)(vi))

16. Cash advance fee. Determine that the creditor disclosed any fee imposed for an extension of credit in the form of cash or its equivalent. (§1026.6(b)(2)(vii))

17. Late payment fee. Determine that the creditor disclosed any fee imposed for a late payment. (§1026.6(b)(2)(viii))

18. Over-the-limit fee. Determine that the creditor disclosed any fee imposed for exceeding the credit limit. (§1026.6(b)(2)(ix))

19. Balance transfer fee. Determine that the creditor disclosed any fee imposed to transfer a balance. (§1026.6(b)(2)(x))

20. Returned payment fee. Determine that the creditor disclosed any fee imposed for a returned payment. (§1026.6(b)(2)(xi))

21. Required insurance, debt cancellation, or debt suspension coverage. Determine

that the fee imposed for required insurance, debt cancellation or suspension coverage is disclosed if the insurance, debt cancellation or coverage is required as part of the plan. Creditors must also cross reference additional information about the insurance or coverage as applicable. (§1026.6(b)(2)(xii))

22. Available credit. Determine whether total of required fees for the issuance or availability of credit and/or security deposit debited to the account at account opening equal or exceed 15 percent of the credit limit for the account. If so, determine that the creditor disclosed, as applicable, the available credit remaining after the fees and/or security deposit are debited to the account. (§1026.6(b)(2)(xiii))

23. Website reference. For issuers of credit cards that are not charge cards, determine that the creditor disclosed a reference to the website established by the CFPB and a statement that the consumers may obtain on the website information about shopping for and using credit cards. (§1026.6(b)(2)(xiv))

24. Billing error rights reference. Determine that the creditor disclosed a statement that information about consumers' right to dispute transactions is included in the account-opening disclosures. (§1026.6(b)(2)(xv))

25. Charges and finance charges. For charges imposed as part of open-end (not home-secured) plan, the circumstances under which the charge may be imposed, including the amount of the charge or explanation of how the charge is determined. For finance charges, a statement of when finance charges begin to accrue, including an explanation of whether or not any time period exists within which any credit extended may be repaid without incurring a finance charge. If such a time period is provided, a creditor may, at its option and without disclosure, impose no finance charge when payment is received after the time period's expiration. (§1026.6(b)(3)(i))

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

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

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

- i. The fact that the annual percentage rate may increase.
- ii. How the rate is determined, including the margin.
- iii. The circumstances under which the rate may increase.
- iv. The frequency with which the rate may increase.
- v. Any limitation on the amount the rate may change.
- vi. The effect(s) of an increase.
- vii. Except as specified in paragraph (b)(4)(ii)(H) of this section, a rate is accurate if it is a rate as of a specified date and this rate was in effect within the last 30 days before the disclosures are provided.

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

- i. The initial rate (expressed as a periodic rate and a corresponding APR)
- ii. How long the initial rate will remain in effect and the specific events that cause the initial rate to change.
- iii. The rate (expressed as a periodic rate and a corresponding APR) that will apply when the initial rate is no longer in effect and any limitation on the time period the new rate will remain in effect.
- iv. The balances to which the new rate will apply.
- v. The balances to which the current rate at the time of the change will apply.

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

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

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

## Periodic Statement Disclosures – Section 1026.7

a. Rules affecting home-equity plans. For home-equity plans subject to the requirements of section 1026.40, determine that the creditor disclosed on the periodic statement items 1 through 10 below (§1026.7(a)):

NOTE: The requirements of section 1026.7(a) apply only to home-equity plans subject to the requirements of section 1026.40. Alternatively, a creditor subject to the rules affecting home-equity plans may, at its option, comply with any of the requirements of section 1026.7(b); however, any creditor that chooses not to provide a disclosure under section 1026.7(a)(7) must comply with section 1026.7(b)(6).

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

2. Identification of transactions. An identification of each credit transaction in accordance with section 1026.8. (§1026.7(a)(2))

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

4. Periodic rates. Each periodic rate that may be used to compute the finance charge, the range of balances to which it is applicable, and the corresponding annual percentage rate. If different periodic rates apply to different types of transactions, the types of transactions to which the periodic rates apply shall also be disclosed. For variable-rate plans, the fact that the periodic rate(s) may vary. (§1026.7(a)(4))

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

NOTE: Further, an annual percentage rate that differs from the rate that would otherwise apply and is offered only for a promotional period need not be disclosed except in periods in which the offered rate is actually applied.

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

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

i. Finance charges. The amount of any finance charge debited or added to the

account during the billing cycle, using the term finance charge. Determine that the components of the finance charge are individually itemized and identified to show the amount(s) due to the application of any periodic rates and the amounts(s) of any other type of finance charge.

NOTE: If there is more than one periodic rate, the amount of the finance charge attributable to each rate need not be separately itemized and identified. (§1026.7(a)(6)(i))

ii. Other charges. The amounts, itemized and identified by type, of any charges other than finance charges debited to the account during the billing cycle. (§1026.7(a)(6)(ii))

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

7. Annual percentage rate. At a creditor's option, when a finance charge is imposed during the billing cycle, the annual percentage rate(s) determined under section 1026.14(c) using the term annual percentage rate. (§1026.7(a)(7))

8. Grace period. The date by which or the time period within which the new balance or any portion of the new balance must be paid to avoid additional finance charges. (§1026.7(a)(8))

9. Address for notice of billing errors. The address to be used for notice of billing errors. Alternatively, the address may be provided on the billing rights statement permitted by section 1026.9(a)(2). (§1026.7(a)(9))

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

b. Rules affecting open-end (not home-secured) plans. The requirements of paragraph (b) of this section (1 through 14 below) apply only to plans other than home-equity plans subject to the requirements of section 1026.40. For applicable plans, determine that the creditor discloses on the periodic statement (§1026.7(b)):

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

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

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

4. Periodic rates. Each periodic rate that may be used to compute the interest charge expressed as an annual percentage rate and using the term Annual Percentage

Rate, along with the range of balances to which it is applicable. (§1026.7(b)(4))

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

A promotional rate, as that term is defined in section 1026.16(g)(2)(i), is required to be disclosed only in periods in which the offered rate is actually applied.

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

6. Charges imposed. The amounts of any charges imposed as part of a plan as stated in section 1026.6(b)(3), grouped together, in proximity to transactions identified under paragraph (b)(2) of this section, substantially similar to Sample G-18(A) in Appendix G to this part. (§1026.7(b)(6))

i. Interest. Finance charges attributable to periodic interest rates, using the term Interest Charge, must be grouped together under the heading Interest Charged, itemized and totaled by type of transaction, and a total of finance charges attributable to periodic interest rates, using the term Total Interest, must be disclosed for the statement period and calendar year to date, using a format substantially similar to Sample G-18(A).

ii. Fees. Charges imposed as part of the plan other than charges attributable to periodic interest rates must be grouped together under the heading Fees, identified consistent with the feature or type, and itemized, and a total of charges, using the term Fees, must be disclosed for the statement period and calendar year to date, using a format substantially similar to Sample G-18(A).

7. Change-in-terms and increased penalty rate summary for open-end (not home-secured) plans. Creditors that provide a change-in-terms notice required by section 1026.9(c), or a rate increase notice required by section 1026.9(g), on or with the periodic statement, must disclose the information in sections 1026.9(c)(2)(iv)(A) and (c)(2)(iv)(B) (if applicable) or section 1026.9(g)(3)(i) on the periodic statement in accordance with the format requirements in section 1026.9(c)(2)(iv)(D), and section 1026.9(g)(3)(ii). See Forms G-18(F) and G-18(G). (§1026.7(b)(7))

8. Grace period. The date by which or the time period within which the new balance or any portion of the new balance must be paid to avoid additional finance charges. If such a time period is provided, a creditor may, at its option and without disclosure, impose no finance charge if payment is received after the time

period's expiration. (§1026.7(b)(8))

9. Address for notice of billing errors. The address to be used for notice of billing errors. Alternatively, the address may be provided on the billing rights statement permitted by section 1026.9(a)(2). (§1026.7(b)(9))

10. Closing date of billing cycle; new balance. The closing date of the billing cycle and the account balance outstanding on that date disclosed in accordance with section 1026.7(b)(13). (§1026.7(b)(10))

11. Due date; late payment costs. With the exception of periodic statements provided solely for charge cards and periodic statements provided for a charged-off account where payment of the entire account balance is due immediately, determine that the creditor disclosed (in accordance with section 1026.7(b)(13)) for a credit card account under an open-end (not home-secured) consumer credit plan:

i. The due date for a payment (the due date must be the same day of the month for each billing cycle). (§1026.7(b)(11)(i)(A))

ii. The amount of any late payment fee and any increased periodic rate(s) (expressed as an annual percentage rate(s)) that may be imposed on the account as a result of a late payment. If a range of late payment fees may be assessed, verify that the card issuer either states a range of fees or the highest fee and an indication that the fee imposed could be lower. (§1026.7(b)(11)(i)(B))

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

NOTE: Further, with the exception of the negative or no amortization disclosures required.7(b)(12) (as listed in step 12 below) are not required for:

- i. Charge card accounts that require payment of outstanding balances in full at the end of each billing cycle;
- ii. A billing cycle immediately following two consecutive billing cycles in which the consumer paid the entire balance in full, had a zero outstanding balance or had a credit balance; and
- iii. A billing cycle where paying the minimum payment due for that billing cycle will pay the entire outstanding balance on the account for that billing cycle.

12. Given those exceptions above, determine that the card issuer disclosed on the periodic statement section 1026.7(b)(12):

- i. The following statement with a bold heading: "Minimum Payment

Warning: If you make only the minimum payment each period, you will pay more in interest and it will take you longer to pay off your balance” (§1026.7(b)(12)(i)(A));

ii. The minimum payment repayment estimate, as described in Appendix M1 to this part. NOTE: If the minimum payment repayment estimate is less than two years, determine that the card issuer disclosed the estimate in months. Otherwise, the estimate must be disclosed in years and rounded to the nearest whole year (§1026.7(b)(12)(i)(B));

iii. The minimum payment total cost estimate, as described in Appendix M1 to this part, rounded to the nearest whole dollar or to the nearest cent, at the card issuer’s option (§1026.7(b)(12)(i)(C));

iv. A statement that the minimum payment repayment estimate and the minimum payment total cost estimate are based on the current outstanding balance shown on the periodic statement. A statement that the minimum payment repayment estimate and the minimum payment total cost estimate are based on the assumption that only minimum payments are made and no other amounts are added to the balance (§1026.7(b)(12)(i)(D));

v. A toll-free telephone number where the consumer may obtain from the card issuer information about credit counseling services (§1026.7(b)(12)(i)(E)); and

vi. The disclosures required for section 1026.7(b)(12)(i)(F)(1):

a. The estimated monthly payment for repayment in 36 months, as described in Appendix M1 to this part. The estimated monthly payment for repayment in 36 months must be rounded to the nearest whole dollar or to the nearest cent, at the card issuer's option (§1026.7(b)(12)(i)(F)(1)(i));

b. A statement that the card issuer estimates that the consumer will repay the outstanding balance shown on the periodic statement in three years if the consumer pays the estimated monthly payment for three years (§1026.7(b)(12)(i)(F)(1)(ii));

c. The total cost estimate for repayment in 36 months, as described in Appendix M1 to this part. The total cost estimate for repayment in 36 months must be rounded to the nearest whole dollar or to the nearest cent, at the card issuer's option (§1026.7(b)(12)(i)(F)(1)(iii)); and

d. The savings estimate for repayment in 36 months, as described in Appendix M1 to this part. The savings estimate for repayment in 36 months must be rounded to the nearest whole dollar or to the nearest cent, at the card issuer's option (§1026.7(b)(12)(i)(F)(1)(iv)).

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

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

b. The estimated monthly payment for repayment in 36 months, as described in Appendix M1 to this part, rounded to the nearest whole dollar or nearest cent that is calculated for a particular billing cycle is less than the minimum payment required for the plan for that billing cycle; and

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

vii. If negative or no amortization occurs when calculating the minimum payment estimate as described in Appendix M1, determine that the card issuer provides the following disclosures on each periodic statement instead of the disclosures set forth in section 1026.7(b)(12)(i) (§1026.7(b)(12)(ii)):

a. “Minimum Payment Warning: Even if you make no more charges using this card, if you make only the minimum payment each month we estimate you will never pay off the balance shown on this statement because your payment will be less than the interest charged each month” (§1026.7(b)(12)(ii)(A));

b. “If you make more than the minimum payment each period, you will pay less in interest and pay off your balance sooner” (§1026.7(b)(12)(ii)(B));

c. The estimated monthly payment for repayment in 36 months rounded to the nearest whole dollar or to the nearest cent, at the creditor’s option (§1026.7(b)(12)(ii)(C));

d. A statement that the card issuer estimates that the consumer will repay the outstanding balance shown on the periodic statement in three years if the consumer pays the estimated monthly payment each month for three years (§1026.7(b)(12)(ii)(D)); and

e. A toll-free telephone number where the consumer may obtain from the card issuer information about credit counseling services consistent with

section 1026.7(b)(12)(iv) (§1026.7(b)(12)(ii)(E)).

viii. Verify that the items required to be disclosed, as addressed in the procedures in step 12 above (required by section 1026.7(b)(12)) are disclosed in accordance with the format requirements of section 1026.7(b)(13) and are substantially similar to the samples provided in Appendix G of Regulation Z.

ix. Determine that a card issuer provides (to the extent available from the United States Trustee or a bankruptcy administrator) through the disclosed toll-free telephone number the name, street address, telephone number, and website address for at least three organizations that have been approved by the United States Trustee or a bankruptcy administrator to provide credit counseling services in either the state in which the billing address for the account is located or the state specified by the consumer. (§1026.7(b)(12)(iv)(A))

x. Determine that the card issuer at least annually updates the credit counseling information it discloses for consistency with the information available from the United States Trustee or a bankruptcy administrator. (§1026.7(b)(12)(iv)(B))

13. Determine that the card issuer provided periodic statement disclosures according to the following format requirements (§1026.7(b)(13)):

i. The due date is disclosed on the front of the first page of the periodic statement and that the amount of the late payment fee and the APR(s) are stated in close proximity thereto.

ii. The ending balance and the repayment disclosures (required by paragraph (b)(12) of section 1026.7 are disclosed closely proximate to the minimum payment due.

iii. The due date, late payment fee and APR, ending balance, minimum payment due, and repayment disclosures are grouped together.

NOTE: Sample G-18(D) in Appendix G of Regulation Z sets forth an example of how these terms may be grouped.

14. For accounts with an outstanding balance subject to a deferred interest or similar program, determine that the creditor disclosed the date by which that outstanding balance must be paid in full in order to avoid the obligation to pay finance charges on such balance on the front of any page of each periodic statement issued during the deferred interest period beginning with the first periodic statement issued during the deferred interest period that reflects the deferred interest or similar transaction. The disclosure provided pursuant to this paragraph must be substantially similar to Sample G-18(H) in Appendix G to this part. (§1026.7(b)(14))

## Subsequent Disclosure Requirements – Section 1026.9

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

NOTE: As an alternative to the annual billing rights statement (§1026.9(a)(1)), the creditor may mail or deliver, on or with each periodic statement, a statement substantially similar to Model Form G–4 or Model Form G–4(A) in Appendix G to this part, as applicable. Creditors offering home-equity plans subject to the requirements of section 1026.40 may use either Model Form, at their option. (§1026.9(a)(2))

b. If, 30 days after mailing or delivering the account-opening disclosures under sections 1026.6(a)(1) or (b)(3)(ii)(A), the creditor adds a credit feature or furnishes a credit access device (other than as a renewal, resupply, or the original issuance of a credit card, or except with regard to checks that access a credit card account) on the same finance charge terms, determine that the creditor discloses, before the consumer uses the feature or device for the first time, that it is for use in obtaining credit under the terms previously disclosed. (§1026.9(b)(1))

c. Determine that, except with regard to checks that access a credit card account, whenever a credit feature is added or a credit access device is mailed or delivered to the consumer, and the finance charge terms for the feature or device differ from disclosures previously given, the disclosures required by sections 1026.6(a)(1) or (b)(3)(ii)(A) that are applicable to the added feature or device are given before the consumer uses the feature or device for the first time. (§1026.9(b)(2))

d. Checks that access a credit card account. For open-end plans not subject to the requirements of section 1026.40, if checks that can be used to access a credit card account are provided more than 30 days after account-opening disclosures under section 1026.6(b) are mailed or delivered, or are provided within 30 days of the account-opening disclosures and the finance charge terms for the checks differ from the finance charge terms previously disclosed, determine that the creditor discloses on the front of the page containing the checks the following terms in the form of a table with the headings, content, and form substantially similar to Sample G–19 in Appendix G to this part (§1026.9(b)(3)):

1. If a promotional rate applies to the checks, determine that the creditor discloses:

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

ii. The type of rate that will apply (such as whether the purchase or cash advance rate applies) after the promotional rate expires, and the annual percentage rate that will apply after the promotional rate expires. For a variable-rate account,

a creditor must disclose an annual percentage rate based on the applicable index or formula in accordance with the accuracy requirements set forth in paragraph (b)(3)(ii) of this section (§1026.9(b)(3)(i)(A)(2)); and

iii. The date, if any, by which the consumer must use the checks in order to qualify for the promotional rate. If the creditor will honor checks used after such date but will apply an annual percentage rate other than the promotional rate, the creditor must disclose this fact and the type of annual percentage rate that will apply if the consumer uses the checks after such date (§1026.9(b)(3)(i)(A)(3)).

2. If any APR required to be disclosed pursuant to section 1026.9(b)(3)(i) is a variable rate, determine that the creditor also disclosed the fact that the rate may vary and how the rate is determined. Determine that the creditor identified the type of index or formula used in setting the rate. Determine that the creditor does not disclose the value of the index and the amount of the margin that are used to calculate the variable rate in the table and that any applicable limitations on rate increases are not included in the table (§1026.9(b)(3)(iii)).

3. If no promotional rate applies to the checks, determine that the creditor discloses:

i. The type of rate that will apply to the checks and the applicable annual percentage rate. For a variable-rate account, a creditor must disclose an annual percentage rate based on the applicable index or formula in accordance with the accuracy requirements set forth in section 1026.9(b)(3)(ii). (§1026.9(b)(3)(i)(B)(1))

4. Determine that the creditor discloses:

i. Any transaction fees applicable to the checks disclosed under section 1026.6(b)(2)(iv). (§1026.9(b)(3)(i)(C))

ii. Whether or not a grace period is given within which any credit extended by use of the checks may be repaid without incurring a finance charge due to a periodic interest rate. When disclosing whether there is a grace period, the phrase “How to Avoid Paying Interest on Check Transactions” shall be used as the row heading when a grace period applies to credit extended by the use of the checks. When disclosing the fact that no grace period exists for credit extended by use of the checks, the phrase “Paying Interest” shall be used as the row heading. (§1026.9(b)(3)(i)(D))

NOTE: The disclosures in section 1026.9(b)(3)(i) must be accurate as of the time the disclosures are mailed or delivered. A variable APR is accurate if it was in effect within 60 days of when the disclosures are mailed or delivered. (1026.9(b)(3)(ii))

e. Determine, for home-equity plans subject to the requirements of section 1026.40:

1. Whenever any term required to be disclosed under section 1026.6(a) is changed or the required minimum periodic payment is increased, the creditor mailed or delivered written notice of the change at least 15 days prior to the effective date of the change. If the consumer agreed to the change, determine that notice was provided before the change went into effect. (§1026.9(c)(1)(i))

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

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

f. For plans other than home-equity plans subject to the requirements of section 1026.40, except as provided in sections 1026.9(c)(2)(i)(B), (c)(2)(iii) and (c)(2)(v), when a significant change in account terms as described in section 1026.9(c)(2)(ii) is made, determine that the creditor provides a written notice of the change at least 45 days prior to the effective date of the change to each consumer who may be affected. (§1026.9(c)(2)(i)(A))

g. The 45-day timing requirement, however, does not apply if the consumer has agreed to a particular change as described in section 1026.9(c)(2)(i)(B). For these instances, however, determine that the creditor provided a notice in accordance with the timing requirements of section 1026.9(c)(2)(i)(B). (§1026.9(c)(2)(i)(A))

h. For open-end (not home-secured) plans, determine that increases in the rate applicable to a consumer's account due to delinquency, default or as a penalty described in section 1026.9(g) that are not due to a change in the contractual terms of the consumer's account are disclosed pursuant to section 1026.9(g) instead of section 1026.9(c)(2). (§1026.9(c)(2)(i)(A))

i. When a notice of change in terms is required, determine that it is mailed or delivered no later than the effective date of the change, if the consumer agrees to the particular change. section 1026.9(c)(2)(i)(B) applies only when a consumer substitutes collateral or when the creditor can advance additional credit only if a change relatively unique to that consumer is made, such as the consumer's providing additional security or paying an increased minimum payment amount. (§1026.9(c)(2)(i)(B))

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

1. The consumer's general acceptance of the creditor's contract reservation of the right to change terms;
2. The consumer's use of the account (which might imply acceptance of its terms under state law);
3. The consumer's acceptance of a unilateral term change that is not particular to that consumer, but rather is of general applicability to consumers with that type of account; and,
4. The consumer's request to reopen a closed account or to upgrade an existing account to another account offered by the creditor with different credit or other features. (§1026.9(c)(2)(i)(B))

j. The 45-day advance notice requirement applies to changes to the following terms (§1026.9(c)(2)(ii)):

1. APR increase, including each periodic rate that may be used to compute the finance charge on outstanding balances for purchases, a cash advance, or a balance transfer (such rates may include any discounted initial rate, premium initial rate, or penalty rate that may be applied to the account);
  - i. Variable-rate information;
  - ii. Discounted or premium initial rates;
  - iii. Penalty rates;
2. Fees for issuance or availability, including any fee based upon account activity or inactivity;
3. Fixed finance charge or minimum interest charge, if it exceeds \$1.00;
4. Transaction charge for purchases;
5. Grace period;
6. Balance computation method;
7. Cash advance fee;
8. Late payment fee;
9. Over-the-limit fee;
10. Balance transfer fee;
11. Returned payment fee;

12. Required insurance, debt cancellation, or debt suspension coverage; and

13. Increase in required minimum periodic payment, or the acquisition of a security interest.

k. Except as provided in section 1026.9(c)(2)(vi), if a creditor increases any component of a charge, or introduces a new charge, required to be disclosed under section 1026.6(b)(3) that is not a significant change in account terms as described in paragraph (c)(2)(ii) of this section, determine that the creditor either (§1026.9(c)(2)(iii)):

1. Complies with the requirements of section 1026.9(c)(2)(i), or

2. Provides notice of the amount of the charge before the consumer agrees to or becomes obligated to pay the charge, at a time and in a manner that a consumer would be likely to notice the disclosure of the charge, either in writing or orally.

l. Ensure that the written change-in-terms notice contains the following disclosures (§1026.9(c)(2)(iv)(A)):

1. A summary of the changes made to terms required by sections 1026.6(b)(1) and (b)(2) or section 1026.6(b)(4), a description of any increase in the required minimum payment, and a description of any security interests being acquired by the creditor.

2. A statement that changes are being made to the account.

3. For accounts other than credit card accounts under an open-end (not home-secured) consumer credit plan subject to section 1026.9(c)(2)(iv)(B), a statement indicating that the consumer has the right to opt out of the changes, if applicable, and a reference to the opt-out right provided in the notice, if applicable.

4. The date the changes will become effective.

5. If applicable, a statement that the consumer may find additional information about the summarized changes, and other changes, in the notice.

6. In the case of a rate change, other than a penalty rate, a statement that if a penalty rate currently applies to the consumer's account, the new rate described in the notice will not apply to the consumer's account until the consumer's account balances are no longer subject to the penalty rate.

7. If the change in terms being disclosed is an increase in the APR, the balances to which the increased rate will apply. If applicable, creditors should disclose a statement identifying the balances to which the current rate will apply as of the effective date of the change.

8. If the change in terms being disclosed is an increase in an annual percentage rate

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

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

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

NOTE: This information is not required to be provided in the case of an increase in the required minimum periodic payment, an increase in a fee as a result of a reevaluation of a determination made under section 1026.52(b)(1)(i) or an adjustment to the safe harbors in section 1026.52(b)(1)(ii) to reflect changes in the Consumer Price Index, a change in an annual percentage rate applicable to a consumer's account, an increase in a fee previously reduced consistent with 50 U.S.C. app. 527 (Servicemembers Civil Relief Act) or similar Federal or State statute or regulation if the amount of the increased fee does not exceed the amount of that fee prior to the reduction, or when the change results from the creditor not receiving the consumer's required minimum periodic payment within 60 days after the due date for that payment.

1. A statement that the consumer has the right to reject the change or changes prior to the effective date of the changes, unless the consumer fails to make a required minimum periodic payment within 60 days after the due date for that payment;
2. Instructions for rejecting the change or changes, and a toll-free telephone number that the consumer may use to notify the creditor of the rejection; and
3. If applicable, a statement that if the consumer rejects the change or changes, the consumer's ability to use the account for further advances will be terminated or suspended.

n. Changes resulting from failure to make minimum periodic payment within 60 days from due date for credit card accounts under an open-end (not home-secured) consumer credit plan. For a credit card account under an open-end (not home-secured) consumer credit plan (§1026.9(c)(2)(iv)(C)):

1. If the significant change required to be disclosed pursuant to section 1026.9(c)(2)(i) of this section is an increase in an annual percentage rate or a fee or charge required to be disclosed under sections 1026.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii) based on the consumer's failure to make a minimum periodic payment within 60 days from the due date for that payment, determine that the notice provided pursuant to paragraph (c)(2)(i) of this section states that the increase will

cease to apply to transactions that occurred prior to or within 14 days of provision of the notice, if the creditor receives six consecutive required minimum periodic payments on or before the payment due date, beginning with the first payment due following the effective date of the increase.

2. If the significant change required to be disclosed pursuant to section 1026.9(c)(2)(i) is an increase in a fee or charge required to be disclosed under sections 1026.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii) based on the consumer's failure to make a minimum periodic payment within 60 days from the due date for that payment, determine that the notice provided pursuant to section 1026.9(c)(2)(i) also states the reason for the increase.

o. Determine that the summary of changes described in section 1026.9(c)(2)(iv)(A)(1) is in a tabular format (except for a summary of any increase in the required minimum periodic payment, a summary of a term required to be disclosed under section 1026.6(b)(4) that is not required to be disclosed under section 1026.6(b)(1) and (b)(2), or a description of any security interest being acquired by the creditor), with headings and format substantially similar to any of the account-opening tables found in G-17 in Appendix G. Determine that the table discloses the changed term and information relevant to the change, if that relevant information is required by section 1026.6(b)(1) and (b)(2). Determine that the new terms are described in the same level of detail as required when disclosing the terms under section 1026.6(b)(2).

(§1026.9(c)(2)(iv)(D)(1))

p. If a notice required by section 1026.9(c)(2)(i) (change in terms) is included on or with a periodic statement, determine that the information described in section 1026.6(c)(2)(iv)(A)(1) is disclosed on the front of any page of the statement. Determine that the summary of changes described in section 1026.9(c)(2)(iv)(A)(1) immediately follows the information described in section 1026.9(c)(2)(iv)(A)(2) through section 1026.9(c)(2)(iv)(A)(7) and, if applicable, sections 1026.9(c)(2)(iv)(A)(8), 1026.9(c)(2)(iv)(B), and 1026.9(c)(2)(iv)(C), and is substantially similar to the format shown in Sample G-20 or G-21 in Appendix G to this part. (§1026.9(c)(2)(iv)(D)(2))

q. If a notice required by section 1026.9(c)(2)(i) is not included on or with a periodic statement, determine that the information described in section 1026.9(c)(2)(iv)(A)(1) is disclosed on the front of the first page of the notice or segregated on a separate page from other information given with the notice. (§1026.9(c)(2)(iv)(D)(3))

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

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

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

s. For open-end plans (other than home equity plans subject to the requirements of section 1026.40), note that a creditor is not required to provide notice under this section if (§1026.9(c)(2)(v)):

1. The change involves:

i. Charges for documentary evidence;

ii. A reduction of any component of a finance or other charge;

iii. A suspension of future credit privileges (except as provided in section 1026.9(c)(2)(vi) of this section) or termination of an account or plan;

iv. When the change results from an agreement involving a court proceeding;

v. When the change is an extension of the grace period; or

vi. The change is applicable only to checks that access a credit card account and the changed terms are disclosed on or with the checks in accordance with section 1026.9(b)(3) (§1026.9(c)(2)(v)(A));

2. The change is an increase in an APR upon the expiration of a specified period of time, provided that (§1026.9(c)(2)(v)(B)):

i. Prior to commencement of that period, the creditor disclosed in writing to the consumer, in a clear and conspicuous manner, the length of the period and the APR or fee that would apply after expiration of the period;

ii. The disclosure of the length of the period and the APR or fee that would apply after expiration of the period are set forth in close proximity and in equal prominence to the first listing of the disclosure of the rate or fee that applies during the specified period of time; and

iii. The APR or fee that applies after that period does not exceed the rate disclosed pursuant to section 1026.9(c)(2)(v)(B)(1) or, if the rate disclosed pursuant to section 1026.9(c)(2)(v)(B)(1) was a variable rate, the rate following any such increase is a variable rate determined by the same formula (index and margin) that was used to calculate the variable rate disclosed pursuant to section 1026.9(c)(2)(v)(B)(1);

3. The change is an increase in a variable APR in accordance with a credit card or

other account agreement that provides for changes in the rate according to operation of an index that is not under the control of the creditor and is available to the general public (§1026.9(c)(2)(v)(C)); or

4. The change is an increase in an APR, a fee or charge required to be disclosed under sections 1026.6(b)(2)(ii), (b)(2)(iii), (b)(2)(viii), (b)(2)(ix) or (b)(2)(xii), or the required minimum periodic payment due to the completion of a workout or temporary hardship arrangement by the consumer or the consumer's failure to comply with the terms of such an arrangement, provided that (§1026.9(c)(2)(v)(D)):

i. The APR or fee or charge applicable to a category of transactions or the required minimum periodic payment following any such increase does not exceed the rate or fee or charge or required minimum periodic payment that applied to that category of transactions prior to commencement of the arrangement or, if the rate that applied to a category of transactions prior to the commencement of the workout or temporary hardship arrangement was a variable rate, the rate following any such increase is a variable rate determined by the same formula (index and margin) that applied to the category of transactions prior to commencement of the workout or temporary hardship arrangement; and

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

t. For open-end plans that are not subject to the requirements of section 1026.40, if a creditor decreases the credit limit on the account, determine that advance notice of the decrease is provided before an over-the-limit fee or a penalty rate can be imposed solely as a result of the consumer exceeding the newly decreased credit limit. Determine that notice is provided in writing or orally at least 45 days prior to imposing the over-the-limit fee or penalty rate and that it states that the credit limit on the account has been or will be decreased. (§1026.9(c)(2)(vi))

u. Determine that the disclosures contained in section 1026.60(b)(1) through (b)(7) are provided if the account is renewed and (1) the card issuer imposes an annual or other periodic fee for the renewal or (2) the card issuer has changed or amended any term of the account required to be disclosed under section 1026.6(b)(1) and (b)(2) that has not previously been disclosed to the consumer. Additionally, the disclosure provided upon renewal must disclose how and when the cardholder may terminate the credit to avoid paying the renewal fee, if any. (§1026.9(e))

v. For plans other than home-equity plans subject to the requirements of section 1026.40 (except as provided in section 1026.9(g)(4)), determine that the creditor provides a written notice to each consumer who may be affected when (§1026.9(g)(1)):

1. A rate is increased due to the consumer's delinquency or default; or
2. A rate is increased as a penalty for one or more events specified in the account agreement, such as making a late payment or obtaining an extension of credit that exceeds the credit limit.

w. Whenever any notice is required to be given pursuant to paragraph (g)(1) of this section, determine that the creditor provided written notice of the increase in rates at least 45 days prior to the effective date of the increase. The notice must be provided after the occurrence of the events described in section 1026.9(g)(1)(i) and (g)(1)(ii) that trigger the imposition of the rate increase. (§1026.9(g)(2))

x. If a creditor is increasing the rate due to delinquency or default or as a penalty, determine that the creditor provided the following information on the notice sent pursuant to section 1026.9(g)(1) (§1026.9(g)(3)(i)(A)):

1. A statement that the delinquency or default rate or penalty rate, as applicable, has been triggered;
2. The date on which the delinquency or default rate or penalty rate will apply;
3. The circumstances under which the delinquency or default rate or penalty rate, as applicable, will cease to apply to the consumer's account, or that the delinquency or default rate or penalty rate will remain in effect for a potentially indefinite time period;
4. A statement indicating to which balances the delinquency or default rate or penalty rate will be applied;
5. If applicable, a description of any balances to which the current rate will continue to apply as of the effective date of the rate increase, unless a consumer fails to make a minimum periodic payment within 60 days from the due date for that payment; and
6. For a credit card account under an open-end (not home-secured) consumer credit plan, a statement of no more than four principal reasons for the rate increase, listed in their order of importance.

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

y. For a credit card account under an open-end (not home-secured) consumer credit plan, if the rate increase required to be disclosed pursuant to paragraph (g)(1) of this

section is an increase pursuant to section 1026.55(b)(4) based on the consumer's failure to make a minimum periodic payment within 60 days from the due date for that payment, determine that the notice provided pursuant to paragraph (g)(1) of this section also states that the increase will cease to apply to transactions that occurred prior to or within 14 days of provision of the notice, if the creditor receives six consecutive required minimum periodic payments on or before the payment due date, beginning with the first payment due following the effective date of the increase. (§1026.9(g)(3)(i)(B))

z. If a notice required by section 1026.9(g)(1) (Increase in rates due to delinquency or default or as a penalty) is included on or with a periodic statement, determine that the disclosure described in paragraph (g)(3)(i) is in the form of a table and provided on the front of any page of the periodic statement, above the notice described in paragraph (c)(2)(iv) of this section if that notice is provided on the same statement. (§1026.9(g)(3)(ii)(A))

aa. If a notice required by section 1026.9(g)(1) (increase in rates) is not included on or with a periodic statement, determine that the information described in section 1026.9(g)(3)(i) is disclosed on the front of the first page of the notice. Ensure that only information related to the increase in the rate to a penalty rate is included with the notice.

NOTE: This notice may be combined with a notice described in sections 1026.9(c)(2)(iv) or (g)(4) (A statement indicating to which balances the delinquency or default rate or penalty rate will be applied) of this section. (§1026.9(g)(3)(ii)(B))

bb. Exception for Decreases in the Credit Limit – If a creditor does not provide the 45-day notice under section 1026.9(g)(1) prior to increasing the rate for obtaining an extension of credit that exceeds the credit limit, determine that the creditor provides at least 45 days in advance of imposing the penalty rate a notice, in writing, that includes (§1026.9(g)(4)):

1. A statement that the credit limit on the account has or will be decreased.
2. The date on which the penalty rate will apply, if the outstanding balance exceeds the credit limit as of that date;
3. A statement that the penalty rate will not be imposed on that date, if the outstanding balance does not exceed the credit limit as of that date;
4. The circumstances under which the penalty rate, if applied, will cease to apply to the account, or that the penalty rate, if applied, will remain in effect for a potentially indefinite period of time;
5. A statement indicating to which balances the penalty rate may be applied; and

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

In addition to this notice, determine that the creditor does not increase the applicable rate to the penalty rate if the outstanding balance does not exceed the credit limit on the date set forth in the notice. (§1026.9(g)(4)(ii))

cc. If a notice provided pursuant to section 1026.9(g)(4)(i) is included on or with a periodic statement, determine that the information described in section 1026.9(g)(4)(i) is in the form of a table and provided on the front of any page of the periodic statement (§1026.9(g)(4)(iii)(A)); or,

dd. If a notice required by section 1026.9(g)(4)(i) is not included on or with a periodic statement, determine that the information described in section 1026.9(g)(4)(i) is disclosed on the front of the first page of the notice. Determine that only information related to the reduction in credit limit is included with the notice, except that this notice may be combined with a notice described in sections 1026.9(c)(2)(iv) or (g)(1). (§1026.9(g)(4)(iii)(B))

ee. When the consumer is given the right to reject a significant change to an account term prior to the effective date of the change, determine whether the consumer was given the option to reject the change by notifying the creditor of the rejection before the effective date of the change. (§1026.9(h)(1))

ff. If the creditor was notified of the rejection of a significant change to an account term, determine that the creditor did not:

1. Apply the charge to the account;
2. Impose a fee or charge or treat the account as in default solely as a result of the rejection; or
3. Require repayment of the balance on the account using a method that is LESS beneficial to the consumer than one of the following methods:
  - a. The method of repayment for the account on the date on which the creditor was notified of the rejection;
  - b. An amortization period of not less than five years, beginning no earlier than the date on which the creditor was notified of the rejection; or
  - c. A required minimum periodic payment that includes a percentage of the balance that is equal to no more than twice the percentage required on the date on which the creditor was notified of the rejection. (§1026.9(h)(2))

NOTE: These requirements do not apply if the creditor has not received the

consumer's required minimum periodic payment within 60 days after the due date for that payment and the creditor has provided timely change in terms disclosures.  
(§1026.9(h)(3))

d. Determine that a statement of the maximum interest rate that may be imposed during the term of the obligation is made for any dwelling-secured loan in which the APR may increase during the plan. (§1026.30(b))

e. For any open-end mortgage loan (credit transaction that is secured by the principal dwelling of a consumer) that was sold, assigned, or otherwise transferred to the covered person, determine that the covered person notifies the borrower in writing of such transfer, including (§1026.39):

1. An identification of the loan that was sold, assigned, or otherwise transferred;
2. The name, address, and telephone number of the covered person who owns the mortgage loan;
3. The date of transfer (either the date of acquisition recognized in the books and records of the covered person or that of the transferring party) identified by the covered person;
4. The name, address, and telephone number of an agent or party having authority, on behalf of the covered person, to receive notice of the right to rescind and resolve issues concerning the consumer's payments on the mortgage loan;
5. Where transfer of ownership of the debt to the covered person is or may be recorded in public records or, alternatively, that the transfer of ownership has not been recorded in public records at the time the disclosure is provided; and
6. At the option of the covered person, any other relevant information regarding the transaction.
7. If there are multiple covered persons, contact information for each of them, unless one of them has been authorized to receive the consumer's notice of the right to rescind and resolve issues concerning the consumer's payments on the loan.  
(§§1026.39(d)-(e))

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

notice that satisfies the timing and content requirements applicable to each covered person. (Commentary §1026.39(b)(5) – 2)

## **Disclosure Requirements for Over-the-Limit Transactions – Section 1026.56**

a. Determine that the oral, written or electronic “opt-in” notice includes all of the following applicable items (and not any information not specified in or otherwise permitted) (§1026.56(e)(1)):

1. Fees – The dollar amount of any fees or charges assessed by the card issuer on a consumer’s account for an over-the-limit transaction;
2. APR(s) – Any increased periodic rate(s) (expressed as an APR(s)) that may be imposed on the account as a result of an over-the-limit transaction; and
3. Disclosure of opt-in right – An explanation of the consumer’s right to affirmatively consent to the card issuer’s payment of over-the-limit transactions, including the method(s) by which the consumer may consent.

b. Determine that the written notice informing the consumer of the right to revoke consent following the assessment of an over-the-limit fee or charge describes that right, including the method(s) by which the consumer may revoke consent. (§1026.56(e)(2))

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

a. Determine that the disclosures required for reverse mortgage transactions are substantially similar to the model form in Appendix K and include the items below (§1026.33):

1. A statement that the consumer is not obligated to complete the reverse mortgage transaction merely because he or she has received the disclosures or signed an application.
2. A good faith projection of the total cost of the credit expressed as a table of “total annual loan cost rates” including payments to the consumer, additional creditor compensation, limitations on consumer liability, assumed annual appreciation, and the assumed loan period.
3. An itemization of loan terms, charges, the age of the youngest borrower, and the appraised property value.
4. An explanation of the table of total annual loan costs rates.

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

## Timing Requirements

6. Review financial institution policies, procedures, and systems to determine, either separately or when completing the actual file review, whether the applicable disclosures listed below are furnished when required by Regulation Z. Take into account products that have different features, such as closed-end loans or credit card accounts that are fixed or variable rate.

a. Credit card application and solicitation disclosures – On or with the application (§1026.60(b))

b. HELOC disclosures – At the time the application is provided or within three business days under certain circumstances. (§1026.40(b))

c. Open-end credit initial disclosures – Before the first transaction is made under the plan. (§1026.5(b)(1))

d. Card Holder Agreement – Verify that the card issuer sends to the cardholder or otherwise make available to the cardholder a copy of the cardholder’s agreement in electronic or paper form no later than 30 days after the issuer receives the cardholder’s request (§1026.58(e)(1)(ii)). Determine that the issuer has adequate procedures for ensuring that this requirement is met.

e. Periodic statement disclosures for open-end credit under section 1026.7 – Required if at the end of a billing cycle, the account has a debit or credit balance of \$1 or more or if a finance charge has been imposed (§1026.5(b)(2)(i)). Also, the creditor must adopt reasonable procedures designed to ensure that periodic statements for credit card accounts are mailed or delivered at least 21 days prior to the payment due date and the date on which any grace period expires (for non-credit card open-end credit, there is a 21-day rule if there is a grace period and a 14-day rule if there is no grace period). (§1026.5(b)(2)(ii)(B)(2))

f. Statement of billing rights – At least once per year. (§1026.9(a))

g. Supplemental credit devices – Before the first transaction under the plan. (§1026.9(b))

h. Open-end credit change in significant terms as a result of a change in contractual terms – 45 days prior to the effective change date. (§1026.9(c)(2))

i. Open-end change in terms or rates due to delinquency or default or as a penalty – 45 days prior to the effective change date. (§1026.9(g))

j. Finance charge imposed at time of transaction – Prior to imposing any fee. (§1026.9(d))

k. Disclosures upon renewal of credit or charge card – 30 days or one billing cycle, whichever is less before the delivery of the periodic statement on which the renewal fee is charged, or at least 30 days prior to the scheduled renewal date if the creditor has changed or amended any term required to be disclosed under section 1026.6(b)(1) and (b)(2) that has not previously been disclosed to the consumer. (§1026.9(e))

l. Change in credit account insurance provider – Certain information 30 days before the change in provider occurs and certain information 30 days after the change in provider occurs. The institution may provide a combined disclosure 30 days before the change in provider occurs. (§1026.9(f))

m. Closed-end credit disclosures – Before consummation. (§1026.17(b))

n. For disclosures for dwelling-secured transactions subject to RESPA (other than open-end), multiple timing requirements apply. Determine whether the creditor provides early disclosures within three business days after receiving the consumer's written application. The creditor is required to deliver or mail the early disclosures no later than three business days after receiving the consumer's application and at least seven business days before consummation (§§1026.19(a)(1)(i) and 1026.19(a)(2)(i)). If the APR stated in the early disclosures is not considered accurate under section 1026.22 when compared to the APR at consummation, determine whether the creditor provided corrected disclosures of all changed terms, including the APR, that the consumer received no later than the third business day before consummation. (§1026.19(a)(2)(ii))

o. *Disclosures for high-cost mortgages* – Three business days prior to consummation or account opening. If such disclosures became inaccurate due to a change by the creditor, ensure that the creditor provided new, accurate disclosures no later than three business days prior to consummation or account opening. (§1026.31(c)(1))

p. Disclosures for reverse mortgages – Three days prior to consummation of a closed-end credit transaction or prior to the first transaction under an open-end credit plan. (§1026.31(c)(2))

q. Disclosures for initial rate change to an adjustable-rate mortgage securing a principal dwelling with terms of more than one year:

1. For adjustable-rate mortgages, creditors, assignees, or servicers are generally required to provide information regarding the first interest rate change to consumers between 210 and 240 days prior to the date the first payment at the new rate is due;

NOTE: If the first payment change occurs within the first 210 days, creditors, assignees, or servicers are required to provide the disclosure at consummation.

2. For adjustable-rate mortgages, verify that the creditor, assignee, or servicer provided consumers with disclosures of the new rate and payment within the first 210 days after consummation.

provided to consumers between 25 and 120 days before the first payment at the new rate;

3. For adjustable-rate mortgages originated prior to January 10, 2015, where the interest rate and payment are calculated based on an index that is available less than 45 days prior to the change, disclosures must be provided between 25 and 120 days before the first payment at the new rate is due; and

4. For adjustable-rate mortgages where the payment adjustment occurs within 60 days of consummation and the new interest rate after adjustment provided at consummation was an estimate, disclosure are required as soon as practicable, but no later than 25 days prior to the first payment at the new rate is due. (§1026.20(c))

s. Notice of new creditor (§1026.39) – On or before the 30th calendar day following the acquisition.

t. For private education loans subject to Subpart F (§1026.46), determine that:

1. Application or solicitation disclosures were provided on or with any application or solicitation (§1026.46(d)(1)(i));

2. Approval disclosures were provided before consummation on or with any notice of approval provided to the consumer (§1026.46(d)(2)); and

3. Final disclosures were provided after the consumer accepts the loan and at least three business days prior to disbursing the private education loan funds. (§1026.46(d)(3))

u. Determine that the issuer provides a written over-the-limit notice prior to the assessment of any over-the-limit fee or charge on a consumer's account. (§1026.56(d)(1)(i))

v. Determine that, if a consumer consents to the card issuer's payment of any over-the-limit transaction by oral or electronic means, the card issuer provides the required written notice immediately prior to obtaining that consent. (§1026.56(d)(1)(ii))

w. Determine that the notice confirming the consumer's consent is provided no later than the first periodic statement sent after the consumer has consented to the card issuer's payment of over-the-limit transactions. The creditor must not assess an over-the-limit fee on the consumer's account without first providing written confirmation. (§1026.56(d)(2))

x. Determine that the notice providing the consumer notice in writing of the right to revoke consent following the assessment of an over-the-limit fee or charge is provided on the front of any page of each periodic statement that reflects the assessment of an over-the-limit fee or charge on a consumer's account. (§1026.56(d)(3))

y. For home-equity plans subject to the requirements of section 1026.40, whenever any term required to be disclosed under section 1026.6(a) is changed or the required minimum periodic payment is increased, determine that the creditor mails or delivers written notice of the change to each consumer who may be affected. Determine that the notice is mailed or delivered at least 15 days prior to the effective date of the change. If the change has been agreed to by the consumer, determine that the notice is given before the effective date of the change. (§1026.9(c)(1)(i))

z. Notice to restrict credit. For home-equity plans subject to the requirements of section 1026.40, if the creditor prohibits additional extensions of credit or reduces the credit limit pursuant to section 1026.40(f)(3)(i) or (f)(3)(vi), determine that the creditor mails or delivers written notice of the action to each consumer who will be affected not later than three business days after the action is taken and contains specific reasons for the action. If the creditor requires the consumer to request reinstatement of credit privileges, determine that the notice states that fact. (§1026.9(c)(1)(iii))  
Electronic Disclosures

## Electronic Disclosures

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

### E-Sign Act

a. Disclosures may be provided to the consumer in electronic form, subject to compliance with the consumer consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. 7001 et seq.). The E-Sign Act does not mandate that institutions or consumers use or accept electronic records or signatures. It permits institutions to satisfy any statutory or regulatory requirements by providing the information electronically after obtaining the consumer's affirmative consent. Before consent can be given, consumers must be provided with the following information:

1. Any right or option to have the information provided in paper or non-electronic form;
2. The right to withdraw the consent to receive information electronically and the consequences, including fees, of doing so;
3. The scope of the consent (for example, whether the consent applies only to a particular transaction or to identified categories of records that may be provided during the course of the parties' relationship);
4. The procedures to withdraw consent and to update information needed to contact the consumer electronically; and
5. The methods by which a consumer may obtain, upon request, a paper copy of an

electronic record after consent has been given to receive the information electronically and whether any fee will be charged.

b. The consumer must consent electronically or confirm consent electronically in a manner that “reasonably demonstrates that the consumer can access information in the electronic form that will be used to provide the information that is the subject of the consent.” After the consent, if an institution changes the hardware or software requirements such that a consumer may be prevented from accessing and retaining information electronically, the institution must notify the consumer of the new requirements and must allow the consumer to withdraw consent without charge.

c. If the financial institution makes its disclosures available to consumers in electronic form, determine that the forms comply with the appropriate sections – §1026.5(a)(1); §1026.15(b); §1026.16(c); §1026.17(a)(1); §1026.17(g); §1026.19(c); §1026.23(b)(1); §1026.24(d); §1026.31(b); §1026.40(a)(3); and §1026.60(a)(2)(v).

d. Card issuers may provide credit card agreements in electronic form under Section 1026.58(d) and (e) without regard to the consumer notice and consent requirements of section 101(c) of the E-Sign Act. (§1026.58(f))

## **Annual Report to the CFPB – Section 1026.57**

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

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

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

1. Identifying information about the card issuer and the agreements submitted, including the issuer’s name, address, and identifying number (such as an RSSD ID number or tax identification number);
2. A copy of any college credit card agreement to which the card issuer was a party that was in effect at any time during the period covered by the report;
3. A copy of any memorandum of understanding in effect at any time during the period covered by the report between the card issuer and an institution of higher education or affiliated organization that directly or indirectly relates to the college credit card agreement or that controls or directs any obligations or distribution of benefits between any such entities;

4. The total dollar amount of any payments pursuant to a college credit card agreement from the card issuer to an institution of higher education or affiliated organization during the period covered by the report, and the method or formula used to determine such amounts;

5. The total number of credit card accounts opened pursuant to any college credit card agreement during the period covered by the report; and

6. The total number of credit card accounts opened pursuant to any such agreement that were open at the end of the period covered by the report.

c. If the card issuer is subject to reporting, determine if the card issuer submits its annual report for each calendar year to the CFPB by the first business day on or after March 31 of the following calendar year. (§1026.57(d)(3))

## **The Submission of Agreements to the CFPB – Section 1026.58(c)**

a. For card issuers that issue credit cards under a credit card account under an open-end (not home-secured) consumer credit plan, determine that the card issuer makes quarterly submissions to the CFPB in the form and manner specified by the CFPB that contain:

1. Identifying information about the card issuer and the agreements submitted, including the issuer's name, address, and identifying number (such as an RSSD ID number or tax identification number) (§1026.58(c)(1)(i));

2. The credit card agreements that the card issuer offered to the public as of the last business day of the preceding calendar quarter that the card issuer has not previously submitted to the CFPB (§1026.58(c)(1)(ii));

3. Any credit card agreement previously submitted to the CFPB that was amended during the preceding calendar quarter and that the card issuer offered to the public as of the last business day of the preceding calendar quarter as described in section 1026.58(c)(3) (§1026.58(c)(1)(iii)); and

4. Notification regarding any credit card agreement previously submitted to the CFPB that the issuer is withdrawing, as described in section 1026.58(c)(4), (c)(5), (c)(6), and (c)(7) (§1026.58(c)(1)(iv)).

b. Verify that quarterly submissions were sent to the CFPB no later than the first business day on or after January 31, April 30, July 31, and October 31, of each year. (§1026.58(c)(1))

c. If a credit card agreement that previously has been submitted to the CFPB is amended, verify that the card issuer submits the entire amended agreement to the CFPB, in the form and manner specified by the CFPB, by the first quarterly submission deadline after the last day of the calendar quarter in which the change became effective. (§1026.58(c)(3))

NOTE: If a credit card agreement has been submitted to the CFPB, the agreement has not been amended and the card issuer continues to offer the agreement to the public, no additional submission regarding that agreement is required.

d. If a card issuer no longer offers to the public a credit card agreement that previously has been submitted to the CFPB, ensure that the card issuer notifies the CFPB by the first quarterly submission deadline after the last day of the calendar quarter in which the issuer ceased to offer the agreement. (§1026.58(c)(4))

NOTE: A card issuer is not required to submit any credit card agreements to the CFPB if the card issuer had fewer than 10,000 open credit card accounts as of the last business day of the calendar quarter. (§1026.58(c)(5)(i))

e. If an issuer that previously qualified for the *de minimis* exception ceases to qualify, determine that the card issuer begins making quarterly submissions to the CFPB no later than the first quarterly submission deadline after the date as of which the issuer ceased to qualify. (§1026.58(c)(5)(ii))

f. If a card issuer that did not previously qualify for the *de minimis* exception qualifies for the *de minimis* exception, determine that the card issuer continues to make quarterly submissions to the CFPB until the issuer notifies the CFPB that the card issuer is withdrawing all agreements it previously submitted to the CFPB. (§1026.58(c)(5)(iii))

g. A card issuer is not required to submit to the CFPB a credit card agreement if, as of the last business day of the calendar quarter, the agreement is offered for accounts under one or more private label credit card plans each of which has fewer than 10,000 open accounts and is not offered to the public other than for accounts under such a plan. (§1026.58(c)(6)(i))

NOTE: A private label credit card is one that is usable only at a single merchant or affiliated group of merchants. A private label credit card plan is all private label credit card accounts issued by a particular issuer with credit cards usable at the same single merchant or affiliated group of merchants. (§1026.58(b)(8))

h. If an agreement that previously qualified for the private label credit card exception ceases to qualify, determine that the card issuer submits the agreement to the CFPB no later than the first quarterly submission deadline after the date as of which the agreement ceased to qualify. (§1026.58(c)(6)(ii))

i. If an agreement that did not previously qualify for the private label credit card exception qualifies for the exception, determine that the card issuer continues to make quarterly submissions to the CFPB with respect to that agreement until the issuer notifies the CFPB that the agreement is being withdrawn. (§1026.58(c)(6)(iii))

NOTE: A card issuer is not required to submit to the CFPB a credit card agreement if, as of the last business day of the calendar quarter, the agreement is offered as part of a

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

j. If an agreement that previously qualified for the product testing exception ceases to qualify, determine that the card issuer submits the agreement to the CFPB no later than the first quarterly submission deadline after the date as of which the agreement ceased to qualify. (§1026.58(c)(7)(ii))

k. If an agreement that did not previously qualify for the product testing exception qualifies for the exception, determine that the card issuer continues to make quarterly submissions to the CFPB with respect to that agreement until the issuer notifies the CFPB that the agreement is being withdrawn. (§1026.58(c)(7)(iii))

l. Verify that each agreement contains the provisions of the agreement and the pricing information in effect as of the last business day of the preceding calendar quarter. (§1026.58(c)(8)(i)(A))

m. Verify that agreements do not include any personally identifiable information relating to any cardholder, such as name, address, telephone number, or account number. (§1026.58(c)(8)(i)(B))

n. Verify that agreements are presented in a clear and legible font. (§1026.58(c)(8)(i)(D))

o. Verify that pricing information is set forth in a single addendum to the agreement that contains only the pricing information. (§1026.58(c)(8)(ii)(A))

NOTE: With respect to information other than the pricing information that may vary between cardholders depending on creditworthiness, state of residence, or other factors, issuers may, but are not required to, include that information in a single addendum (the optional variable terms addendum) to the agreement separate from the pricing addendum (§1026.58(c)(8)(iii)).

p. If pricing information varies from one cardholder to another depending on the cardholder's creditworthiness or state of residence or other factors, verify that the pricing information is disclosed either by setting forth all the possible variations (such as purchase APRs of 13 percent, 15 percent, 17 percent, and 19 percent) or by providing a range of possible variations (such as purchase APRs ranging from 13 percent to 19 percent). (§1026.58(c)(8)(ii)(B))

q. If a rate included in the pricing information is a variable rate, verify that the issuer identifies the index or formula used in setting the rate and the margin. (§1026.58(c)(8)(ii)(C))

r. If rates vary from one cardholder to another, verify that the issuer discloses such rates by providing the index and the possible margins (such as the prime rate plus 5 percent, 8

percent, 10 percent, or 12 percent) or range of margins (such as the prime rate plus from 5 to 12 percent). (§1026.58(c)(8)(ii)(C))

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

s. Determine that issuers do not provide provisions of the agreement or pricing information in the form of change-in-terms notices or riders (other than the pricing information addendum and the optional variable terms addendum). (§1026.58(c)(8)(iv))

t. Determine that changes in provisions or pricing information are integrated into the text of the agreement, the pricing information addendum or the optional variable terms addendum, as appropriate. (§1026.58(c)(8)(iv))

## **The Posting of Agreements Offered to the Public – Section 1026.58(d)**

a. Determine that the card issuer posts and maintains on its publicly available website the credit card agreements that the issuer is required to submit to the CFPB under section 1026.58(c). (§1026.58(d)(1))

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

c. Verify that agreements posted pursuant to section 1026.58(d) conform to the form and content requirements for agreements submitted to the CFPB specified in section 1026.58(c)(8). (§1026.58(d)(2))

d. Determine that agreements are posted in an electronic format that is readily usable by the general public. (§1026.58(d)(3))

e. Verify that agreements are placed in a location on its website that is prominent and readily accessible by the public and accessible without submission of personally identifiable information. (§1026.58(d)(3))

f. Determine that the card issuer updates the agreements posted on its website at least as frequently as the quarterly schedule required for submission of agreements to the CFPB under section 1026.58(c). (§1026.58(d)(4))

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

## **The Posting of Agreements for “Open” Accounts – Section 1026.58(e)**

- a. With respect to any open (i.e., the cardholder can obtain extensions or there is an outstanding balance on the account that has not been charged off) credit card account, determine that the card issuer either:
1. Posts and maintains the cardholder’s agreement on its website; or
  2. Promptly provides a copy of the cardholder’s agreement to the cardholder upon the cardholder’s request.
- b. If the card issuer makes an agreement available upon request, ensure that the issuer provides the cardholder with the ability to request a copy of the agreement both by:
1. Using the issuer’s website, such as by clicking on a clearly identified box to make the request (§1026.58(e)(1)(ii)), and
  2. Calling a readily available telephone line the number for which is displayed on the issuer’s website and clearly identified as to purpose. (§1026.58(e)(1)(ii) and (e)(2))
- c. If an issuer does not maintain a website from which cardholders can access specific information about their individual accounts determine that the issuer makes agreements available upon request by providing the cardholder with the ability to request a copy of the agreement by calling a readily available telephone line the number for which is (§1026.58(e)(2)):
1. Displayed on the issuer’s website and clearly identified as to purpose; or
  2. Included on each periodic statement sent to the cardholder and clearly identified as to purpose.
- d. Verify that the card issuer sends to the cardholder or otherwise make available to the cardholder a copy of the cardholder’s agreement in electronic or paper form no later than 30 days after the issuer receives the cardholder’s request. (§1026.58(e)(1)(ii))
- e. Determine that agreements posted on the card issuer’s website or made available upon the cardholder’s request conform to the form and content requirements for agreements submitted to the CFPB specified in section 1026.58(c)(8). (§1026.58(e)(3)(i))
- f. If the card issuer posts an agreement on its website or otherwise provides an agreement to a cardholder electronically, verify that the agreement is posted or provided in an electronic format that is readily usable by the general public and is placed in a location that is prominent and readily accessible to the cardholder. (§1026.58(e)(3)(ii))
- g. If agreements posted or otherwise provided contain personally identifiable information

relating to the cardholder, such as name, address, telephone number, or account number, ensure that the issuer takes appropriate measures to make the agreement accessible only to the cardholder or other authorized persons. (§1026.58(e)(3)(iii))

h. Determine that agreements posted or otherwise provided set forth the specific provisions and pricing information applicable to the particular cardholder. (§1026.58(e)(3)(iv))

i. Determine that provisions and pricing information are complete and accurate as of a date no more than 60 days prior to (§1026.58(e)(3)(iv)):

1. The date on which the agreement is posted on the card issuer's website under section 1026.58(e)(1)(i);

2. The date the cardholder's request is received under section 1026.58(e)(1)(ii) or (e)(2).  
NOTE: Card issuers may provide credit card agreements in electronic form under section 1026.58(d) and (e) without regard to the consumer notice and consent requirements of section 101(c) of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. 7001 et seq.). (§1026.58(f))

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

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

a. For advertisements for closed-end credit:

1. If a rate of finance charge was stated, determine that it was stated as an APR.
2. If an APR will increase after consummation, verify that a statement to that fact is made.
3. Determine whether there are deceptive or misleading statements or practices.

b. Determine that the creditor does not offer college students any tangible item to induce such students to apply for or open an open-end consumer credit plan offered by such creditor, if such offer is made:

1. On the campus of an institution of higher education;
2. Near the campus of an institution of higher education; or
3. At an event sponsored by or related to an institution of higher education.  
(§1026.57(c))

c. If an open-end credit advertisement refers to an APR as "fixed" (or similar term),

determine 1) that the advertisement also specifies a time period that the rate will be fixed and 2) that the rate will not increase during that period. (§1026.16(f))

d. If an open-end credit advertisement used the word “fixed” or a similar word and no time period is specified in which the rate will be fixed, determine that the rate will not increase while the plan is open. (§1026.16(f))

e. For any advertisement of an open-end (not home-secured) plan, if an APR or fee that may be applied to the account is an introductory rate or introductory fee, determine that the term introductory or intro is in immediate proximity to each listing of the introductory rate or introductory fee in a written or electronic advertisement. (§1026.16(g)(3))

f. For any advertisement of an open-end (not home-secured) plan, if any APR or fee that may be applied to the account is a promotional rate under section 1026.16(g)(2)(i) or any fee that may be applied to the account is a promotional fee under section 1026.16(g)(2)(iv), determine that the following information is stated in a clear and conspicuous manner in the advertisement (§1026.16(g)(4)):

1. When the promotional rate or promotional fee will end and
2. The annual percentage rate that will apply after the end of the promotional period.

NOTE: If such rate is variable, determine that the annual percentage rate complies with the accuracy standards in sections 1026.60(c)(2), 1026.60(d)(3), 1026.60(e)(4), or 1026.16(b)(1)(ii), as applicable. If such rate cannot be determined at the time disclosures are given because the rate depends at least in part on a later determination of the consumer’s creditworthiness, determine that the advertisement discloses the specific rates or the range of rates that might apply. (§1026.16(g)(4)(ii)). Further, if the promotional rate or fee is stated in a written or electronic advertisement, determine that the information in sections 1026.16 (g)(4)(i), and, as applicable, (g)(4)(ii), or (g)(4)(iii) are also stated in a prominent location closely proximate to the first listing of the promotional rate or promotional fee.

g. If a deferred interest offer is advertised for an open-end account not subject to Section 1026.40, determine that the deferred interest period is stated in a clear and conspicuous manner in the advertisement. If the phrase “no interest” or similar term regarding the possible avoidance of interest obligations under the deferred interest program is stated, determine that the term “if paid in full” is also stated in a clear and conspicuous manner preceding the disclosure of the deferred interest period in the advertisement. If the deferred interest offer is included in a written or electronic advertisement, determine that the deferred interest period and, if applicable, the term “if paid in full” are stated in immediate proximity to each statement of “no interest,” “no payments,” “deferred interest,” “same as cash,” or similar term regarding interest or payments during the deferred interest period. (§1026.16(h)(3))

h. If any deferred interest offer is advertised for an open-end account not subject to

Section 1026.40, determine that the (h)(4)(i) and (h)(4)(ii) language (of Section 1026.16(h)(4) ) is stated in the advertisement and is similar to Sample G–24 in Appendix G. If the deferred interest offer is included in a written or electronic advertisement, determine that this information is stated in a prominent location closely proximate to the first statement of “no interest,” “no payments,” “deferred interest,” “same as cash,” or similar term regarding interest or payments during the deferred interest period. (§1026.16(h)(4))

NOTE: The requirements in Section 1026.16(h)(4) apply to any advertisement of an open-end credit plan not subject to Section 1026.40 (requirements for home equity plans) Section 1026.16(h)(1). However, the requirements do not apply to an envelope or other enclosure in which an application or solicitation is mailed, or to a banner advertisement or pop-up advertisement linked to an application or solicitation provided electronically. (§1026.16(h)(5))

## **Transactional Testing**

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

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

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

a. For each type of closed-end loan being tested, determine the accuracy of the disclosures by comparing the disclosures to the contract and other financial institution documents. (§1026.17)

b. Determine whether the required disclosures were made before consummation of the transaction and ensure the presence and accuracy of the items below, as applicable. (§1026.18)

1. Creditor

2. Amount financed

3. Itemization of the amount financed (RESPA GFE may substitute)

4. Finance charge

5. APR

6. Variable rate information as follows for loans not secured by a principal dwelling or secured by a principal dwelling with terms of one year or less:

a. Circumstances which permit rate increase

- b. Limitations on the increase (periodic or lifetime)
  - c. Effect of the increase
  - d. Hypothetical example of new payment terms that would result from an increase
7. Payment schedule including the number, amount, and timing of payments.
  8. Total of payments
  9. Demand feature
  10. Total sale price (credit sale)
  11. Prepayment
  12. Late payment
  13. Security interest
  14. Insurance and debt cancellation
  15. Certain security interest charges
  16. Contract reference
  17. Assumption policy
  18. Required deposit
  19. Interest rate and payment summary for mortgage transactions
  20. No-guarantee-to-refinance statement
- c. For adjustable-rate mortgages, verify that the creditor, assignee, or servicer provides disclosures in connection with the initial interest rate adjustment pursuant to the contract and for rate changes that result in corresponding changes in payment.
  - d. For adjustable-rate mortgages, verify that the creditor, assignee, or servicer includes the appropriate content (as identified in the Closed-End Credit Disclosure Forms Review Procedures section above).
  - e. For adjustable-rate mortgages, verify that the creditor, assignee, or servicer provides the disclosures consistent with timing requirements (see **Timing Requirements** section of the procedures above).

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

f. Determine, for each type of closed-end rescindable loan being tested, the appropriate number of copies of the rescission notice are provided to each person whose ownership interest is or will be subject to the security interest. The creditor must deliver two copies of the notice of right to rescind to each consumer entitled to rescind. The rescission notice must disclose the items below. (§1026.23(b)(1))

1. Security interest taken in the consumer's principal dwelling
2. Consumer's right to rescind the transaction
3. How to exercise the right to rescind, with a form for that purpose, designating the address of the creditor's place of business
4. Effects of rescission
5. Date the rescission period expires.

g. Ensure funding was delayed until the rescission period expired. (§1026.23(c))

h. Determine if the consumer has waived the three-day right to rescind since the previous examination. If applicable, test rescission waivers. (§1026.23(e))

i. Determine whether the maximum interest rate in the contract is disclosed for any consumer credit contract secured by a dwelling if the APR may increase after consummation. (§1026.30(a))

j. For private student loans with a right to cancel, review cancellation requests to determine if they were properly handled. (§1026.47(c))

## **Minimum standards for transactions secured by a dwelling – Section 1026.43**

a. Determine whether the financial institution is a creditor that originates covered transactions. Covered transactions are transactions secured by a dwelling, including any real property attached to a dwelling. They do not include: home equity lines of credit; timeshare loans (except for the prepayment penalty provisions in section 1026.43(g)); reverse mortgages; temporary, “bridge,” or construction loans of 12 months or less; renewable or non-renewable construction loans of 12 months or less that are a part of a construction-to-permanent transaction; or an extension of credit under a program administered by a Housing Finance Agency (defined in 24 CFR 266.5); by community development or non-profit lenders specified in section 1026.43(a)(3)(v); or in connection with certain federal emergency economic stabilization programs). (§1026.43(a))

b. Determine if a loan is a streamline refinance under section 1026.20(a) and Commentary 1026.20(a) and whether it qualifies under section 1026.43(d), below.

## **Refinancing Non-Standard Mortgages – Section 1026.43(d)**

a. Determine whether a creditor that has refinanced a non-standard mortgage defined in 1026.43(d)(i) (an ARM with an introductory rate fixed for a year or more, an interest-only loan, or a negative amortization loan) into a standard mortgage as defined in 1026.43(d)(ii) has considered whether the standard mortgage likely will prevent a default by the consumer once the loan is recast. In addition, determine that the following conditions are met (§1026.43(d)(3)):

1. At the time of the refinance, the creditor for the standard mortgage is the current holder of the existing non-standard mortgage or the servicer acting on behalf of the current holder (§1026.43(d)(2)(i));
2. The monthly payment for the standard mortgage is materially lower (a payment reduction of 10 percent or more is sufficient) than the monthly payment for the non-standard mortgage using the payment calculation rules in section 1026.43(d)(5) (§1026.43(d)(2)(ii));
3. The creditor received the consumer's written application for the standard mortgage no later than two months after the non-standard mortgage had recast (§1026.43(d)(2)(iii));
4. The consumer had made no more than one payment more than 30 days late on the non-standard mortgage during the 12 months immediately before the creditor receives the consumer's written application for the standard mortgage (§1026.43(d)(2)(iv));
5. The consumer had made no payments more than 30 days late during the six months immediately before the creditor received the consumer's written application for the standard mortgage (§1026.43(d)(2)(v)); and
6. If the non-standard mortgage was consummated on or after January 10, 2014, the non-standard mortgage was made in accordance with the ability to repay or the qualified mortgage requirements (§1026.43(c) or (e)). (§1026.43(d)(vi))

## **Ability to Repay – Section 1026.43(c)**

NOTE: For all covered transactions, except streamline refinances, creditors must make a good faith determination that the consumer will have a reasonable ability to repay the loan, and must verify the information upon which it relied. A creditor can meet this obligation by complying with the ability-to-repay requirement in section 1026.43(c) or by making qualified mortgages under section 1026.43(e) and (f) (which limit certain risky loan features and practices), which are presumed to satisfy the ability-to-repay requirements.

- a. Determine whether the creditor makes a reasonable and good faith determination at or before consummation that the consumer will have a reasonable ability to repay the loan according to its terms, based (except as otherwise provided for loans under section 1026.43 (d), (e), and (f) for refinancing non-standard to standard mortgages, qualified mortgages, and certain balloon qualified mortgages respectively), at a minimum, on the criteria set forth below. (§1026.43(c)(1))
- b. Determine whether the creditor considered the following, at a minimum, in determining the consumer's ability to repay: (§1026.43(c)(2))

1. The consumer's current or reasonably expected income or assets (other than the value of the dwelling, including any real property attached to the dwelling, that secures the loan); (§1026.43(c)(2)(i))
2. If the creditor relies on employment income, the consumer's current employment status; (§1026.43(c)(2)(ii))
3. The consumer's monthly payment on the covered transaction, calculated in accordance with section 1026.43(c)(5); (§1026.43(c)(2)(iii)) (see g. below)
4. The consumer's monthly payment on any simultaneous loan that the creditor knows or has reason to know will be made, calculated in accordance with section 1026.43(c)(6); (§1026.43(c)(2)(iv))
5. The consumer's monthly payment for mortgage-related obligations; (§1026.43(c)(2)(v))
6. The consumer's current debt obligations, alimony, and child support; (§1026.43(c)(2)(vi))
7. The consumer's monthly debt-to-income ratio or residual income in accordance with section 1026.43(c)(7) and section 1026.43(c)(2)(vii) and (viii)); and
8. The consumer's credit history (§1026.43(c)(2)(viii)).

c. Determine whether the creditor verified the information it relied upon when considering the eight factors listed above using reasonably reliable third-party records, except that special rules apply for verification of income or assets, employment, and current debt obligations that are not shown on the consumer's credit report.

### **Income and Assets, Employment and Debt Obligations**

d. For purposes of c. above, determine that the creditor verified the information that it relied on using reliable third-party records except that:

1. A creditor may verify a consumer's employment status orally if the creditor prepares a written record of the information obtained orally; and (§1026.43(c)(3)(ii))
2. A creditor that relies on a credit report to verify a consumer's current obligations need not independently verify obligations that the consumer lists on the application that are not in the consumer's credit report. (§1026.43(c)(3)(iii))

e. For the purposes of c. above, determine whether the creditor verified the income or assets it relied upon, by using third-party records that provide reasonably reliable evidence, (§1026.43(c)(4)) such as:

1. A tax-return transcript issued by the Internal Revenue Service (IRS); (§1026.43(c)(4))
2. Copies of tax returns the consumer filed with the IRS or a state taxing authority; (§1026.43(c)(4)(i))
3. IRS Form W-2s or similar IRS forms used for reporting wages or tax withholding; (§1026.43(c)(4)(ii))

4. Payroll statements, including military Leave and Earnings Statements; (§1026.43(c)(4)(iii))
  5. Financial institution records; (§1026.43(c)(4)(iv))
  6. Records from the consumer's employer or a third party that obtained information from the employer; (§1026.43(c)(4)(v))
  7. Records from a federal, state, or local government agency stating the consumer's income from benefits or entitlements; (§1026.43(c)(4)(vi))
  8. Receipts from the consumer's use of check cashing services; and (§1026.43(c)(4)(vii))
  9. Receipts from the consumer's use of a funds transfer service. (§1026.43(c)(4)(viii))
- f. For employment status, if the creditor orally verified employment status, determine whether the creditor prepared a written record of the information obtained orally. (§1026.43(c)(3)(ii))

### **Monthly payment calculation**

g. For purposes of b. 3 above, determine whether the creditor calculated the monthly payment (except for balloon payment, interest-only and negative amortization loans) by using:

1. The fully indexed rate or any introductory interest rate, whichever is greater; and monthly, fully amortizing payments that are substantially equal. (§1026.43(c)(5))
2. For a loan with a balloon payment:
  - i. The maximum payment scheduled during the first five years after the date on which the first regular periodic payment will be due for a loan that is not a higher-priced covered transaction as defined under section 1026.43(b)(4); (§1026.43(c)(5)(ii)(A)(1)) or
  - ii. The maximum payment in the payment schedule, including any balloon payment, for a higher-priced covered transaction. (§1026.43(c)(5)(ii)(A)(2))
3. For an interest-only loan:
  - i. The fully indexed rate or any introductory interest rate, whichever is greater; and
  - ii. Substantially equal, monthly payments of principal and interest that will repay the loan amount over the term of the loan remaining as of the date the loan is recast. (§1026.43(c)(5)(ii)(B))
4. For a negative amortization loan:
  - i. The fully indexed rate or any introductory interest rate, whichever is greater; and

ii. Substantially equal, monthly payments of principal and interest that will repay the maximum loan amount as defined in section 1026.43(b)(7) over the term of the loan remaining as of the date the loan is recast. (§1026.43(c)(5)(ii)(C))

### **Monthly payment calculation for simultaneous loans**

h. For the purposes of b. 4 above, determine whether the creditor calculated the monthly payment on any simultaneous loan that was used to determine the consumer's repayment ability, including any mortgage-related obligations, as follows:

1. For a simultaneous loan that is a covered transaction, using the payment calculation rules for covered transactions, described above (§1026.43(c)(6)(i)); or
2. For a home equity line of credit, by using the periodic payment required under the terms of the plan and the amount of credit drawn at or before consummation of the covered transaction. (§1026.43(c)(6)(ii)).

### **Monthly debt-to-income ratio or residual income**

i. When a creditor considers the consumer's monthly debt-to-income ratio, determine whether the creditor considered the ratio of the consumer's total monthly debt obligations to the consumer's total monthly income. (§1026.43(c)(7)(ii)(A))

1. Total monthly debt obligations means the total of: the monthly payment on the covered transaction (as required by §1026.43(c)(2)(iii) and (c)(5)), simultaneous loans (as required by §1026.43(c)(2)(iv) and (c)(6)), mortgage-related obligations (as required by §1026.43(c)(2)(v)), and current debt obligations, alimony, and child support (as required by §1026.43(c)(2)(vi))

2. Total monthly income means the total of the consumer's current or reasonably expected income, including any income from assets (as required by §1026.43(c)(2)(i) and (4)).

j. If a creditor considers the consumer's monthly residual income, determine whether the creditor considered the consumer's remaining income after subtracting the consumer's total monthly debt obligations from the consumer's total monthly income. (§1026.43(c)(7)(ii)(B)) Total monthly debt obligations and total monthly income are defined in section 1026.43(c)(7)(i)(A) and (B).

### **Qualified Mortgages – Section 1026.43(e)**

a. Determine whether the creditor has complied with the ability-to-repay requirements of section 1026.43(c) by making a loan that is a qualified mortgage, including a higher-priced qualified mortgage, under the general qualified mortgage definition. (§1026.43(e)) Except as provided in section 1026.43(e)(4), (5), (6), or (f) (all discussed below), a qualified mortgage is a covered transaction:

1. That provides for regular, substantially equal, periodic payments, except for the effect any interest rate change after consummation has on adjustable-rate mortgages or step-rate mortgages (§1026.43(e)(2)(i)) that do not:
  - i. Result in an increase of the principal balance (§1026.43(e)(2)(i)(A)), or

- ii. Allow balloon payments or deferment of principal payments (except for balloon-payment qualified mortgages described in section 1026.43(f) and (e)(6); (§§1026.43(e)(2)(i)(B) and (C)).
2. For which the loan term does not exceed 30 years; (§1026.43(e)(2)(ii))
  3. For which the total points and fees (as defined in §1026.32(b)(1)(i)) do not exceed: (§1026.43(e)(2)(iii) and (3))
    - i. \$100,000 or over: 3 percent of the total loan amount (see §1026.32(b)(4)(i));
    - ii. \$60,000 or over but less than \$100,000: \$3,000;
    - iii. \$20,000 or over but less than \$60,000: 5 percent of the total loan amount;
    - iv. \$12,500 or over but less than \$20,000: \$1,000;
    - v. Less than \$12,500: 8 percent of the total loan amount.

NOTE: These numbers will be annually adjusted for inflation on January 1.

4. For which the creditor underwrites the loan, taking into account the monthly payment for mortgage-related obligations, using: (§1026.43(e)(2)(iv))
  - i. The maximum interest rate that may apply during the first 5 years after the date on which the first regular periodic payment will be due; and
  - ii. Periodic payments of principal and interest that will repay either:
    - A. The outstanding principal balance over the remaining term of the loan. This should be calculated as of the date the interest rate adjusts to the maximum interest rate that may apply during the first 5 years after the date on which the first regular periodic payment will be due, assuming the consumer will have made all required payments as due prior to that date; or
    - B. The loan amount over the loan term;
5. For which the creditor considers and verifies at or before consummation the following: (§1026.43(e)(2)(v))
  - i. The consumer's current or reasonably expected income or assets other than the value of the dwelling (including any real property attached to the dwelling) that secures the loan, in accordance with appendix Q and sections 1026.43(c)(2)(i) and (c)(4); and
  - ii. The consumer's current debt obligations, alimony, and child support in accordance with appendix Q and sections 1026.43(c)(2)(vi) and (c)(3); and
6. For which the ratio of the consumer's total monthly debt to total monthly income at the time of consummation does not exceed 43 percent. For purposes of section 1026.43(e)(2)(vi), the ratio of the consumer's total monthly debt to total monthly income is determined: (§1026.43(e)(2)(vi))
  - i. In accordance with the standards in appendix Q; (§1026.43(e)(2)(vi)(A)), except
  - ii. The creditor calculates the consumer's monthly payment on: (§1026.43(e)(2)(vi)(B))

A. The covered transaction, including the monthly payment for mortgage-related obligations, in accordance with section 1026.43(e)(2)(iv) (see also a.4 above) and

B. Any simultaneous loan that the creditor knows or has reason to know will be made, in accordance with sections 1026.43 (c)(2)(iv) and (c)(6) (see also h. in “Ability to Repay” above)

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

a. Determine whether the creditor has complied with the ability-to-repay requirements of section 1026.43(c) by making loans that

1. Meet the requirements of section 1026.43(e)(2)(i) through (iii) (i.e., have substantially equal, periodic payments; restrictions on loan features; a maximum 30-year term; and limited points and fees); and are

2. Eligible to be purchased, guaranteed, or insured by the listed federal government sponsored entities or agencies

(Federal National Mortgage Association (Fannie Mae) or the Federal Home Loan Mortgage Corporation (Freddie Mac), operating under the conservatorship or receivership of the Federal Housing Finance Agency pursuant to section 1367(a) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4617(a)); or any limited-life regulatory entity succeeding the charter of either the Fannie Mae or Freddie Mac pursuant to §1367(i) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4617(i)); the U.S. Department of Housing and Urban Development under the National Housing Act; U.S. Department of Veterans Affairs; the U.S. Department of Agriculture pursuant to 42 U.S.C. 1472(h); or the Rural Housing Service. This provision expires on the effective date of a rule issued by each respective agency pursuant to its authority under TILA §129C(b)(3)(ii) to define a qualified mortgage. These special rules in §1026.43(e)(4) are available only for covered transactions consummated on or before January 10, 2021.)

## **Small creditor portfolio loan qualified mortgages – Section 1026.43(e)(5)**

a. Determine whether a creditor has complied with the ability-to-repay requirements of section 1026.43(c) by making a qualified mortgage as follows:

1. The creditor satisfies the creditor requirements of section 1026.35(b)(2)(iii)(B), and (C), which require that: (§1026.43(e)(5)(D))

A. During the preceding calendar year, the creditor, together with its affiliates, originated 500 or fewer first-lien covered transactions; and

B. As of the end of the preceding calendar year, the creditor had total assets of less than \$2 billion (this threshold will adjust annually).

NOTE: This category of qualified mortgages does not require a small creditor to operate predominantly in a rural or underserved area.

2. The creditor makes a loan that meets the requirements for a qualified mortgage in section 1026.43(e)(2), other than section 1026.43(e)(2)(vi), and without regard to the standards in appendix Q: (§1026.43(e)(5)(A)), and

NOTE: This means, among other things, that the loan does not have negative amortization, interest-only, or balloon payment features (1026.43(e)(2)(i)); has a loan term of 30 years or less ((1026.43(e)(2)(ii)); points and fees are under certain thresholds (1026.43(e)(2)(iii); and the creditor underwrites the loan, taking into account the monthly payment for mortgage related obligations (1026.43(e)(2)(iv)). Further, the creditor considers and verifies at or before consummation: the consumer's current or reasonably expected income or assets other than the value of the dwelling (including any real property attached to the dwelling) that secures the loan, in accordance with the general repayment ability standards; and the consumer's current debt obligations, alimony, and child support in accordance with the general repayment ability standards (§1026.43(e)(5)(B))

3. Considers at or before consummation, the consumer's monthly debt-to-income ratio or residual income and verifies the debt obligations and income used to determine that ratio in accordance with the repayment ability requirements of section 1026.43(c)(7), except that the calculation of the payment for determining the consumer's total monthly debt obligations in section 1026.43(c)(7)(i)(A) is determined in accordance with section 1026.43(e)(2)(iv) (based on the maximum interest rate in the first five years after the date the first periodic payment is due) instead of section 1026.43(c)(5) (fully indexed rate); (§1026.43(e)(5)(B))

4. The loan was not subject to a forward commitment at consummation, except to a person that satisfies the requirements of sections 1026.35(b)(2)(iii) (B) and (C) (i.e., small creditors) (§1026.43(e)(5)(C)).

b. Determine whether the small creditor portfolio mortgage does not have a qualified mortgage status because it was subject to a forward commitment at consummation, or the creditor has transferred it in any circumstances other than where the transfer was:

1. Three years or more after consummation;

2. To a creditor that satisfies the requirements of section 1026.43(e)(5)(i)(D) of this section (i.e., small creditors under section 1026.35(b)(2)(iii)(B) and (C));

3. Made pursuant to a capital restoration plan or other action under 12 U.S.C. 1831o, or to actions or instructions of a conservator, receiver, or bankruptcy trustee, or to orders by or agreements with a state or federal governmental agency with jurisdiction to examine the creditor; or

4. Made pursuant to a merger of the creditor and another person or the acquisition of the creditor by another person, or the creditor's acquisition of another person. (§§1026.43(f)(2)(ie)(5)(ii).

NOTE: If a small creditor portfolio qualified mortgage has lost its qualified mortgage status, the creditor must have complied with the general ability-to-repay requirements under section 1026.43(c)).

## **Balloon-payment Qualified Mortgages Made By Certain Small Creditors – Section 1026.43(f)**

a. Determine whether a creditor has complied with the ability-to-repay requirements of section 1026.43(c) by making a qualified mortgage that provides for a balloon payment as follows:

1. The creditor satisfies the creditor requirements of section 1026.35(b)(2)(iii)(A),(B), and (C), which require that: (§1026.43(f)(1)(vi))

A. During the preceding calendar year, the creditor extended more than 50 percent of its first-lien covered transactions on properties that are located in “rural” or “underserved” counties;

B. During the preceding calendar year, the creditor, together with its affiliates, originated 500 or fewer first-lien covered transactions; and

C. As of the end of the preceding calendar year, the creditor had total assets of less than \$2 billion (this threshold will adjust annually).

2. Makes a loan that meets the requirements for a qualified mortgage in section 1026.43(e)(2)(i)(A) (substantially equal payments or ARMs or step-rate mortgages that do not increase the principal balance), (e)(2)(ii) (loan term 30 years or less), (e)(2)(iii) (points and fees under certain thresholds), and (e)(2)(v) (income, assets, and obligations are considered and verified), but without regard to the standards in appendix Q: (§1026.43(f)(1)(iv)(A));

3. Determines that the consumer can make all of the scheduled payments under the loan and the monthly payments for all mortgage-related obligations (excluding the balloon payment) from the consumer’s current or reasonably expected income or assets (other than the dwelling that secures the loan); (§1026.43(f)(1)(ii))

4. Considers at or before consummation, the consumer’s monthly debt-to-income ratio or residual income and verifies the debt obligations and income used to determine that ratio in accordance with the repayment ability requirements of section 1026.43(c)(7), except that the calculation of the payment for determining the consumer’s total monthly debt obligations in section 1026.43(c)(7)(i)(A) is based on the scheduled payments for the balloon-payment qualified mortgage in accordance with section 1026.43(f)(1)(iv)(A), together with the consumer’s monthly payments for all mortgage-related obligations other than the balloon payment; (§1026.43(f)(1)(iii))

5. The legal obligation provides for:

i. Scheduled payments that are substantially equal, calculated using an amortization period that does not exceed 30 years, with

ii. An interest rate that does not increase over the term of the loan, and

iii. A loan term of five years or longer; (§1026.43(f)(1)(iv)(A)-(C))

6. The loan was not subject to a forward commitment at consummation, except to a person that satisfies the requirements of sections 1026.35(b)(2)(iii)(A), (B), and (C) (i.e., small creditors serving rural or underserved counties).

a. Determine whether the balloon-payment qualified mortgage does not have qualified mortgage status because it was subject to a forward commitment at consummation, or the creditor has transferred it in any circumstances other than where the transfer was:

1. Three years or more after consummation;
2. To a creditor that satisfies the requirements of section 1026.43(f)(1)(vi) of this section (i.e., meets the definition of 1026.35(b)(2)(iii)(A)-(C), establishing criteria for small creditors serving rural or underserved counties);
3. Made pursuant to a capital restoration plan or other action under 12 U.S.C. 1831o, or to actions or instructions of a conservator, receiver or bankruptcy trustee, or to orders by or agreements with a state or federal governmental agency with jurisdiction to examine the creditor; or
4. Due to a merger of the creditor with another person or the acquisition of the creditor by another person or another person by the creditor. (§§1026.43(f)(2)(i) and (iv))

NOTE: If a balloon-payment qualified mortgage has lost its qualified mortgage status, the creditor must have complied with the general ability-to-repay requirements under section 1026.43(c).

## **Temporary balloon-payment Qualified Mortgages Made By Small Creditors – Section 1026.43(e)(6)**

a. Determine whether a creditor has complied with the ability-to-repay requirements of section 1026.43(c) by making a qualified mortgage that meets the requirements of the small creditor balloon-payment qualified mortgage definition in section 1026.43(f) (above), except that the creditor requirement in section 1026.35(b)(2)(iii)(A) (operate predominantly in a rural or underserved area) does not apply.

NOTE: This temporary qualified mortgage category applies only to loans that are consummated on or before January 10, 2016.

## **Prepayment Penalties – Section 1026.43(g)**

a. Determine whether mortgage is a covered transaction (which excludes HELOCs and timeshares but, for purposes of the prepayment penalty provisions, includes reverse mortgages, temporary loans, and loans made by certain community development, non-profit, and other lenders otherwise excluded from ability-to-repay provisions under section 1026.43(a)). If yes, then the loan may not have a prepayment penalty unless:

1. It is a qualified mortgage under sections 1026.43(e)(2), (e)(4), (e)(5), (e)(6), or (f);
2. The prepayment penalty is otherwise allowed by law;

3. The mortgage has an APR that cannot increase after consummation; and
4. The loan is not a higher-priced mortgage loan, as defined in section 1026.35(a). (§1026.43(g)(1)).

NOTE: Covered transactions are generally prohibited from having prepayment penalties unless certain conditions are met.

b. Determine if the prepayment penalty improperly exceeds the following percentages of the outstanding balance prepaid:

1. 2 percent during the first two years following consummation;
2. 1 percent during the third year following consummation; and
3. 0 percent thereafter. (§1026.43(g)(2))

c. Determine whether a creditor offering a consumer a mortgage with a prepayment penalty has also offered the consumer an alternative without a prepayment penalty and the alternative: (§1026.43(g)(3))

1. Has an APR that cannot increase after consummation and has the same type of interest rate (fixed or step rate) as the loan with a prepayment penalty;
2. Has the same loan term as the loan with a prepayment penalty;
3. Satisfies the periodic payment conditions under section 1026.43(e)(2)(i);
4. Satisfies the points and fees conditions under section 1026.43(e)(2)(iii), based on the information known to the creditor at the time of the offer; and
5. Is a loan for which the creditor has a good faith belief that the consumer likely qualifies, based on the information known to the creditor at the time the creditor offers the loan without a prepayment penalty. (§1026.43(g)(3))

d. Determine whether a creditor offering a loan with a prepayment penalty through a mortgage broker:

1. Presents the mortgage broker an alternative covered transaction without a prepayment penalty that satisfies the requirements of section 1026.43(g)(3) (see c. above); and
2. Establishes by agreement that the mortgage broker must present to the consumer an alternative covered transaction without a prepayment penalty offered by the creditor that satisfies the requirements of section 1026.43(g) (see c. above); or another creditor, if the other creditor offers a lower interest rate or a lower total dollar amount of discount points and origination points or fees. (§1026.43(g)(4))

e. Determine whether a creditor that is a loan originator, as defined in section 1026.36(a)(1), who presents a covered transaction with a prepayment penalty offered by another person to whom the loan would be assigned after consummation also presents the consumer an alternative covered transaction without a prepayment penalty that satisfies the requirements of section 1026.43(g), offered by the assignee; or another person offering a lower interest rate or a lower total dollar amount of origination discount points and points or fees. (§1026.43(g)(5))

## **Evasion of Minimum Standards for Loans Secured By a Dwelling – Section 1026.43(h)**

a. Determine whether the creditor has structured credit secured by a dwelling that does not meet the definition of open-end credit in section 1026.2(a)(20) as an open-end plan to evade the requirements for minimum standards for loans secured by a dwelling.

## **High-Cost Mortgages, Reverse Mortgages, and Higher-Priced Mortgages Loans – Sections 1026.32, 1026.33, and 1026.35**

a. Determine whether the financial institution originates consumer credit transactions subject to Subpart E of Regulation Z; specifically, high-cost mortgages (§1026.32), reverse mortgages (§1026.33), and “higher-priced mortgage loans” (§1026.35).

b. In addition to reviewing high-cost mortgages, reverse mortgages, and higher-priced mortgage loans for compliance with requirements in other subparts of Regulation Z (for example, disclosure timing requirements under section 1026.19(a)), review such mortgages to ensure the following:

1. Required disclosures are provided to consumers in addition to, not in lieu of, the disclosures contained in other subparts of Regulation Z. (§1026.31(a))
2. Disclosures are clear and conspicuous, in writing, and in a form that the consumer may keep. (§1026.31(b))
3. Disclosures are furnished at least three business days prior to consummation or account opening of a high-cost mortgage or a closed-end reverse mortgage transaction (or at least three business days prior to the first transaction under an open-end reverse mortgage). (§1026.31(c))
4. Disclosures reflect the terms of the legal obligation between the parties. (§1026.31(d))
5. If the transaction involves more than one creditor, that only one creditor provided the disclosures. Where the obligation involves multiple consumers, ensure that the disclosures were provided to any consumer who is primarily liable on the obligation. Further, for rescindable transactions, verify that the disclosures were provided to each consumer who has the right to rescind. (§1026.31(e))
6. The APR is accurately calculated and disclosed in accordance with the requirements and within the tolerances allowed in section 1026.22 for closed-end credit transactions. (§1026.31(g))

c. For high-cost mortgages (§1026.32), ensure that, in addition to other required disclosures, the creditor discloses the following at least three business days prior to consummation or account opening (See model disclosure at App. H-16):

1. Notice containing the prescribed language. (§1026.32(c)(1))
2. The APR. (§1026.32(c)(2))
3. Regular payment and balloon payment. (§1026.32(c)(3)).

4. For a closed-end credit transaction, the amount of regular loan payment and the amount of any balloon payment. The disclosed regular payment should be treated as accurate if it is based on an amount borrowed that is deemed accurate under section 1026.32(c)(5). (§1026.32(c)(3))

5. For an open-end credit plan:

A. An example showing the first minimum periodic payment for the draw period, the first minimum periodic payment for any repayment period, and the balance outstanding at the beginning of any repayment period. (§1026.32(c)(3)(ii)(A))

NOTE: The example must be based on the assumption that the consumer borrows the full credit line at account opening and does not obtain any additional extensions of credit, that the consumer makes only the minimum periodic payments during the draw period and any repayment period, and that the APR used to calculate the example payments remains the same during the draw period and any repayment period. Creditors must provide the minimum period payment example based on the APR, except that if an introductory APR applies, the creditor must use the rate that will apply to the plan after the introductory rate expires. (§§1026.32(c)(3)(ii)(A)-(C))

B. If the credit contract provides for a balloon payment, a disclosure of that fact and an example showing the amount of the balloon payment based on the assumptions described in the note above. (§1026.32(c)(3)(ii)(B))

C. A statement that the example payments show the first minimum periodic payments at the current annual percentage rate if the consumer borrows the maximum credit available when the account is opened and does not obtain any additional extensions of credit, or substantially similar statement. (§1026.32(c)(3)(ii)(C))

D. A statement that the example payments are not the consumer's actual payments and that the actual minimum periodic payments will depend on the amount the consumer borrows, the interest rate applicable to that period, and whether the consumer pays more than the required minimum periodic payment, or a substantially similar statement. (§1026.32(c)(3)(ii)(D))

6. For variable rate transactions, a statement that the interest rate and monthly payment may increase, and the amount of the single maximum monthly payment allowed under the contract based on the maximum rate required to be disclosed under section 1026.30. (§1026.32(c)(4))

7. For a closed-end credit transaction, the total amount the consumer will borrow (the face amount of the note) and if this amount includes financed charges that are not prohibited under section 1026.34(a)(10), that fact. This disclosure should be treated as accurate if within \$100 of the actual amount borrowed. For an open-end credit plan, the credit limit for the plan when the account is opened. (§1026.32(c)(5))

d. For high-cost mortgages (§1026.32), ensure that the creditor follows these additional rules concerning the disclosures required by section 1026.32(c):

a. Determine if a new disclosure is required if, subsequent to providing the additional disclosure but prior to consummation or account opening, the creditor changes any terms that make the disclosures inaccurate. For example, if a consumer finances the payment of premiums or other charges as permitted under section 1026.34(a)(10) and, as a result, the monthly payment differs from the

payment previously disclosed, re-disclosure is required and a new three-day waiting period applies. (§1026.31(c)(1)(i))

b. Determine if a creditor provides new disclosures by telephone when the consumer initiates a change in terms, then prior to or at consummation or account opening the creditor must provide new written disclosures and both parties must sign a statement that these new disclosures were provided by telephone at least three days prior to consummation or account opening. (§1026.31(c)(1)(ii))

c. If a consumer waives the right to a three-day waiting period to meet a bona fide personal financial emergency, the consumer's waiver must be a dated written statement (not a pre-printed form) describing the emergency and bearing the signature of all the consumers entitled to the waiting period (a consumer can waive *only after* receiving the required disclosures and prior to consummation or account opening). (§1026.31(c)(1)(iii))

e. For high-cost mortgages (§1026.32) determine that the creditor has not included any of the following loan terms:

1. A payment schedule that provides for a balloon payment (with exceptions). (§1026.32(d)(1)(i)-(iii))

2. Negative amortization. (§1026.32(d)(2))

3. Advance payments from the proceeds of more than 2 periodic payments. (§1026.32(d)(3))

4. Increased interest rate after default. (§1026.32(d)(4))

5. A rebate of interest, arising from a loan acceleration due to default, calculated by a method less favorable than the actuarial method. (§1026.32(d)(5))

6. Prepayment penalty as defined in section 1026.32(b)(6).

7. A due-on-demand clause that permits the creditor to terminate the loan in advance of maturity and accelerate the balance, except in cases of fraud or material misrepresentation by the consumer, failure by the consumer to meet the repayment terms of the agreement for any outstanding balance, or action or inaction by the consumer that adversely affects the creditor's security interest in the loan. (§1026.32(d)(8))

f. For high-cost mortgages under section 1026.32, determine that the creditor is not engaged in the following acts and practices:

1. Home improvement contracts – Paying a contractor under a home improvement contract from the proceeds of a mortgage unless certain conditions are met. (§1026.34(a)(1))

2. Notice to assignee – Selling or otherwise assigning a high-cost mortgage without furnishing the required statement to the purchaser or assignee. (§1026.34(a)(2))

3. Refinancing within one year of extending credit – Within one year of making a high-cost mortgage, a creditor may not refinance any high-cost mortgage to the same consumer into another high-cost mortgage that is not in the consumer's interest. This also applies to assignees that hold or

service the high-cost mortgage. Commentary to 1026.34(a)(3) has examples applying the refinancing prohibition and addressing “consumer’s interest.” (§1026.34(a)(3))

4. Extending high-cost mortgage credit without regard to the consumer’s repayment ability. (Temporary or bridge loans with a term of 12 months or less are exempt from this requirement.) (§1026.34(a)(4)):

i. For closed-end credit transactions that are high-cost mortgages, ensure the creditor is complying with the repayment ability requirements set forth in section 1026.43

ii. For open-end credit plans that are high-cost mortgages, ensure the creditor is not extending credit without regard to the consumer’s repayment ability as of account opening, including the consumer’s current and reasonably expected income, current obligations, assets other than collateral, and employment. A creditor must determine repayment ability for open-end high-cost mortgages by:

A. Verifying amounts of income or assets that it relies on to determine repayment ability, including expected income or assets, by the consumer’s Internal Revenue Service Form W-2, tax returns, payroll receipts, financial institution records, or other third-party documents that provide reasonably reliable evidence of the consumer’s income or assets.

B. Verifying the consumer’s current obligations, including any mortgage-related obligations that are required by another credit obligation undertaken prior to or at account opening and secured by the same dwelling that secures the high-cost mortgage.

iii. Alternatively determines whether the creditor complies with the repayment ability requirement by:

A. Verifying repayment ability as described above;

B. Determining the consumer’s repayment ability by using the largest required minimum periodic payment based on the assumptions that:

i. The consumer borrows the full credit line at account opening with no additional extensions of credit;

ii. The consumer makes only required minimum periodic payments during the draw period and any repayment period

iii. If the annual percentage rate can increase during the plan, the maximum percentage rate that is included in the contract ; and

C. Assessing the consumer’s repayment ability, taking into account at least one of the following: the ratio of total debt obligations to income (including any mortgage-related obligations that are required by another credit obligation undertaken prior to or at account opening, and are secured by the same dwelling that secures the high-cost mortgage transaction, or the income the consumer will have after paying debt obligations. (§1026.34(a)(4)).

5. *Pre-loan counseling* – Determine whether the creditor extending a high-cost mortgage received written certification confirming that the consumer received approved home ownership counseling after receiving the initial GFE or, for open-end credit plans, the initial TILA disclosure. (§1026.34(a)(5)). Requirements include:

- i. Verify that home ownership counseling was not provided by an employee or affiliate of the creditor
- ii. If the creditor paid fees associated with homeownership counseling, confirm that the payment was not contingent upon the consumer obtaining the high-cost mortgage or receipt of a counseling certification
- iii. Verify that the counseling certificate contains the name of the consumer, date of counseling, name and address of the counselor, and statements required by section 1026.34(a)(5)(iv).

g. *Late Fees* – For high-cost mortgages, confirm that late payment charges are disclosed in the terms of the loan contract or open-end credit agreement and that such fees do not exceed four percent of the amount past due. No such charge may be imposed more than once for a single late payment. (§1026.34(a)(8))

### **Higher-priced mortgage loans: Appraisals**

(The higher-priced mortgage loans appraisal requirement was adopted pursuant to an interagency rulemaking conducted by the Board, the CFPB, the FDIC, FHFA, NCUA and OCC. The Board codified the rule at 12 CFR 226.43, and the OCC codified the rule at 12 CFR Part 34 and 12 CFR Part 164. There is no substantive difference among these three sets of rules.)

h. For higher-priced mortgage loans secured by principal dwelling that are not exempt under section 1026.35(c)(2), determine whether the creditor obtained a written appraisal from a state-licensed or certified appraiser that included a physical visit to the interior of the dwelling. (§1026.35(c)(3))

NOTE: Section 1026.35(c)(2) exempts several types of loans from the appraisal requirements, including qualified mortgages under section 1026.43.

- i. Determine whether the creditor is deemed to comply with the requirement by:
  - 1. Ordering that the appraiser perform the appraisal in conformity with the Uniform Standards of Professional Appraisal Practice and title XI of FIRREA and any implementing regulations. (§1026.35(c)(3)(ii)(A))
  - 2. Verifying through the National Registry that the appraiser who signed the appraiser's certification was a certified or licensed appraiser in the state in which the appraised property is located as of the date the appraiser signed the appraiser's certification. (§1026.35(c)(3)(ii)(B))
  - 3. Confirming that the appraisal includes elements set forth in appendix N. (§1026.35(c)(ii)(3)(C))
  - 4. Having no actual knowledge contrary to the facts or certifications contained in the written appraisal.

j. Assess whether the creditor exercised reasonable diligence in determining if a second interior appraisal was necessary (see m. below for testing to verify second appraisal was obtained when required). A creditor can exercise reasonable diligence by basing its determination on written source documents such as:

1. A copy of the recorded deed from the seller.
2. A copy of a property tax bill.
3. A copy of any owner's title insurance policy obtained by the seller.
4. A copy of the RESPA settlement statement from the seller's acquisition.
5. A property sales history report or title report from a third-party reporting service.
6. Sales price data recorded in multiple listing services.
7. Tax assessment records or transfer tax records obtained from local governments.
8. A written appraisal performed in compliance with section 1026.35(c)(3)(i) for the same transaction.
9. A copy of a title commitment report detailing the seller's ownership of the property.
10. A property abstract.

k. For higher-priced mortgage loans that are not exempt under section 1026.35(c)(2) or section 1026.35(c)(4)(vii), determine whether a second written interior appraisal from a state certified or licensed appraiser was both required and performed because the seller acquired the property 180 days or less before the consumer's purchase agreement, and the sales price increased:

1. Greater than 10 percent over the previous purchase price, if acquired 90 or fewer days prior to the consumer's purchase agreement; or (§1026.35(c)(4)(i)(A)) or
2. Greater than 20 percent over the previous purchase price, if acquired 91 to 180 days prior to the consumer's purchase agreement. (§1026.35(C)(4)(i)(B))

NOTE: Section 1026.35(c)(4)(vii) provides for eight exemptions from the second appraisal requirement, such as for extensions of credit to finance the acquisition of property from a local, state, or federal government agency.

l. For higher-priced mortgage loans (that are not exempt under section 1026.35(c)(2) or section 1026.35(c)(4)(vii)) where the creditor is required to obtain a second interior appraisal:

1. Confirm that the creditor obtained an appraisal from a different state certified or licensed appraiser than the one who conducted the first appraisal. (§1026.35(c)(4)(ii))
2. Confirm that the creditor charged the consumer for only one of the appraisals. (§1026.35(c)(4)(v))

NOTE: Reviewing the HUD-1 may assist in identifying whether a second appraisal fee was charged to the consumer.

3. For higher-priced mortgage loans that are not exempt under section 1026.35(c)(2), determine that the creditor provided a written disclosure in a timely manner informing consumers that an appraisal may be necessary and that there is a cost associated with the appraisal, as specified in section 1026.35(c)(5)).

i. Disclosures must be provided to consumers within three business days after receipt of an application for a higher-priced mortgage loan. A creditor can meet this requirement by placing the disclosure in the mail within three business days after receipt of the application for a higher-priced mortgage loan. (§1026.35(c)(5)(ii))

ii. If the loan becomes a higher-priced mortgage loan during the application process, but after initial receipt of the application, a creditor has three business days from the time the loan became a higher priced mortgage loan to provide the necessary disclosure. (§1026.35(c)(5)(ii))

4. Confirm that the creditor provided consumers with a free copy of any written appraisal performed in connection with a higher-priced mortgage loan that is not exempt under section 1026.35(c)(2). (§1026.35(c)(6))

i. Determine whether the creditor is providing consumers with a copy of their appraisal(s) no later than three business days prior to consummation of the loan; (§1026.35(c)(6)(ii)(A)) or

ii. If the loan is not consummated, determine whether the creditor is providing consumers with a copy of the appraisal(s) within 30 days after determining that the loan will not be consummated. (§1026.35(c)(6)(ii)(B))

### **Higher-priced mortgage loans: Escrow Accounts**

m. For most higher-priced mortgage loans secured by a first lien on a principal dwelling escrow accounts must be established before consummation for property taxes and premiums for mortgage-related insurance required by the creditor. (§1026.35(b)(1))

n. For higher-priced mortgage loans where the creditor did not establish an escrow account, determine whether the transaction or the creditor would fall into an exemption. (§1026.35(b)(2))

1. Is the transaction secured by shares in a cooperative (§1026.35(b)(2)(i)(A));

2. Is the transaction to finance the initial construction of the dwelling (§1026.35(b)(2)(i)(B));

3. Is the transaction a temporary or “bridge” loan with a term less than 12 months (§1026.35(b)(2)(i)(C));

4. Is the transaction a reverse mortgage under section 1026.33 (§1026.35(b)(2)(i)(D));

NOTE: There is a limited exemption for transactions secured by a dwelling in a condominium, planned unit development, or other “common interest community” where a dwelling ownership requires participation in a governing association that is obligated to maintain a master insurance

policy insuring all dwellings (§1026.35(b)(2)(ii)). In these common interest communities, creditors must maintain an escrow account for the payment of taxes only.

5. Does the creditor, or loan originator, qualify for an exemption under sections 1026.35(b)(2)(iii)(A)-(D).

i. During the preceding calendar year, the creditor extended more than 50 percent of its total covered transactions, as defined by section 1026.43(b)(1), secured by a first lien, on properties that are located in counties that are either “rural” or “underserved” ( this asset threshold will adjust automatically each year, based on the year-to-year change in the average of the Consumer Price Index for Urban Wage Earners and Clerical Workers, not seasonally adjusted, for each 12-month period ending in November, with rounding to the nearest million dollars (see comment 35(b)(2)(iii)-1.iii for the current threshold)); and

ii. Neither the creditor nor its affiliate maintains an escrow account of the type described in section 1026.35(b)(1) for any extension of consumer credit secured by real property or a dwelling that the creditor or its affiliate currently services, other than:

1. Escrow accounts established for first-lien higher-priced mortgage loans on or after April 1, 2010, and before June 1, 2013; or

2. Escrow accounts established after consummation as an accommodation to distressed consumers to assist such consumers in avoiding default or foreclosure.

o. Evasion of requirements: Ensure that the creditor does not structure a higher-priced mortgage loan as an open-end plan (“spurious open-end credit”) to evade the requirements of Regulation Z. (§1026.35(d))

## **Prohibited Payments to Loan Originators**

a. Determine that, in connection with a closed-end consumer credit transaction secured by a dwelling, no loan originator receives and no person pays to a loan originator, directly or indirectly, compensation that is based on:

NOTE: The term “loan originator” means, a person who, in expectation of direct or indirect compensation or other monetary gain or for direct or indirect compensation or other monetary gain: takes an application, offers, arranges, assists a consumer in obtaining or applying to obtain, negotiates, or otherwise obtains or makes an extension of consumer credit for another person; or through advertising or other means of communication represents to the public that such person can or will perform any of these activities. The term “loan originator” includes an employee, agent, or contractor of the creditor or loan originator organization if the employee, agent, or contractor meets this definition. The term “loan originator” also includes a creditor that engages in loan origination activities if the creditor does not finance the transaction at consummation out of the creditor’s own resources, including by drawing on a *bona fide* warehouse line of credit or out of deposits held by the creditor.

(Sections 1026.36(d) and (e) do not apply to a home-equity line of credit subject to section 1026.40 or to a loan that is secured by a consumer’s interest in a timeshare plan described in 11 U.S.C. 101(53D). (§1026.36(b))

9 Compensation includes salaries, commissions, and any financial or similar incentive, such as an annual or periodic bonus or awards of merchandise, services, trips, or similar prizes. See 12 CFR §1026.36(a)(3) and comment 1026.36(a)-5.)

1. A term of a transaction, the terms of multiple transactions by an individual loan originator, or the terms of multiple transactions by multiple individual loan originators, or

NOTE: For purposes of section 1026.36(d)(1) only, a “term of a transaction” is any right or obligation of the parties to a credit transaction. The amount of credit extended is not a term of a transaction or a proxy for a term of a transaction, provided that compensation received by or paid to a loan originator, directly or indirectly, is based on a fixed percentage of the amount of credit extended; however, such compensation may be subject to a minimum or maximum dollar amount. (§1026.36(d)(1)(ii))

2. A proxy<sup>10</sup> for a term of a transaction. (§1026.36(d)(1)(i))

(A factor that is not itself a term of a transaction is a proxy for a term of the transaction if the factor consistently varies with that term over a significant number of transactions, and the loan originator has the ability, directly or indirectly, to add, drop, or change the factor in originating the transaction. (§1026.36(d)(1)(i)))

b. Determine that a loan originator that receives a contribution to a defined contribution, tax-advantaged plan that meets the applicable requirements of the Internal Revenue Code does not receive a contribution that is directly or indirectly based on the terms of the individual loan originator’s transactions. (§1026.36(d)(1)(iii))

c. Determine whether an individual loan originator receives compensation pursuant to a non-deferred, profits-based compensation plan only if:

1. The compensation paid to an individual loan originator is not directly or indirectly based on the terms of that individual loan originator’s transactions that are subject to section 1026.36(d); and

2. At least one of the following conditions is satisfied:

i. The compensation paid to an individual loan originator does not, in the aggregate, exceed 10 percent of the individual loan originator’s total compensation corresponding to the time period for which the compensation under the non-deferred profits-based compensation plan is paid; or

ii. The individual loan originator was a loan originator for ten or fewer transactions consummated during the 12-month period preceding the date of the compensation determination.

## **Prohibition on Dual Compensation**

a. If any loan originator receives compensation directly from a consumer in a closed-end consumer credit transaction secured by a dwelling, determine that (§1026.36(d)(2)):

1. No loan originator receives compensation, directly or indirectly, from any person other than the consumer in connection with the transaction (§1026.36(d)(2)(i)(A)(1)) except that a loan originator organization may receive compensation from a consumer and pay compensation to its individual loan originator ; and

2. No person who knows or has reason to know of the consumer-paid compensation to the loan originator (other than the consumer) pays any compensation to a loan originator, directly or indirectly, in connection with the transaction. (§1026.36(d)(2)(i)(A)(2))

NOTE: Loan originator organizations are permitted to compensate their employees if the organization receives compensation directly from a consumer, subject to the prohibition on payments to loan originators in section 1026.36(d)(1).

## **Prohibition on Steering**

a. Determine that, in connection with a consumer credit transaction secured by a dwelling, a loan originator does not direct or “steer” a consumer to consummate a transaction based on the fact that the originator will receive greater compensation from the creditor in that transaction than in other transactions the originator offered or could have offered to the consumer, unless the consummated transaction is in the consumer’s interest. (§1026.36(e)(1))

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

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

1. The loan originator obtains loan options from a significant number of the creditors with which the originator regularly does business and, for each type of transaction in which the consumer expressed an interest, presents the consumer with loan options that include (§1026.36(e)(3)(i)):

i. The loan with the lowest interest rate; (§1026.36(e)(3)(i)(A))

ii. The loan with the lowest interest rate without negative amortization, a prepayment penalty, interest-only payments, a balloon payment in the first seven years of the life of the loan, a demand feature, shared equity, or shared appreciation; or, in the case of a reverse mortgage, a loan without a prepayment penalty, or shared equity or shared appreciation; and (§1026.36(e)(3)(i)(B))

iii. The loan with the lowest total dollar amount of discount points, origination points or origination fees (or, if two or more loans have the same total dollar amount of discount points, origination points or origination fees, the loan with the lowest interest rate that has the lowest total dollar amount of discount points, origination points or origination fees). (§1026.36(e)(3)(i)(C))

2. The loan originator has a good faith belief that the options (presented to the consumer that are set forth, above) are loans for which the consumer likely qualifies. (§1026.36(e)(3)(ii))

3. For each type of transaction, if the originator presents to the consumer more than three loans, the originator highlights the loans that satisfy options 1.i, 1.ii, and 1.iii above. (§1026.36(e)(3)(iii))

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

## Loan Originator Qualifications and Documentation

(For the purposes of §§1026.36(f) and (g), all creditors are loan originators.)

- a. Determine whether the loan originator organization complies with all applicable state law requirements for legal existence and foreign qualification. (§1026.36(f)(1))
  
- b. Determine whether the loan originator organization ensures that individual loan originators who work for it (e.g., employees, under a brokerage agreement) are licensed or registered as required by the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (SAFE Act), its implementing regulations (12 CFR §§1007 and 1008), and any state SAFE Act law. (§1026.36(f)(2))
  
- c. For individual loan originators who are its employees and who are not required to be licensed and are not licensed as a loan originator under section 1008.103 or state SAFE Act implementing law, determine whether the loan originator organization, prior to allowing the individual to act as a loan originator:
  1. Obtained a copy of the individual's background check through the Nationwide Mortgage Licensing System and Registry (NMLSR) or a criminal background check from a law enforcement agency or commercial service; (§1026.36(f)(3)(i)(A))
  2. Obtained a credit report from a consumer reporting agency in compliance with FCRA section 604(b); (§1026.36(f)(3)(i)(B))
  3. Obtained information from the NMLSR, or from the individual as applicable, about administrative, civil, or criminal findings against the individual; (§1026.36(f)(3)(i)(C))
  4. Determined on the basis of obtained information or any other information reasonably available that the individual has not been convicted of, plead guilty or *nolo contendere* to a felony in a domestic or military court during the preceding seven year period; (§1026.36(f)(3)(ii)(A)(I))
  5. Determined on the basis of obtained information or any other information reasonably available that the individual has not been convicted of, plead guilty or *nolo contendere* to a felony involving an act of fraud, dishonesty, breach of trust, or money laundering, at any time; (§1026.36(f)(3)(ii)(A)(I))
  6. Confirmed that if the individual has a felony conviction and is employed as an individual loan originator, that the FDIC (or FRB, as applicable), NCUA, or Farm Credit Administration has provided consent to employ the individual under their own statutory authorities; (§1026.36(f)(ii)(A)(2) (iii))
  7. Confirmed that the individual demonstrated financial responsibility, character, and general fitness such as to warrant a determination that the individual loan originator will operate honestly, fairly, and efficiently; (§1026(f)(3)(ii)(B))
  8. Provides periodic training covering federal and state law requirements that apply to the individual loan originator's loan origination activities. (§1026.36(f)(3)(iii))

NOTE: Paragraph (c) only applies to an individual loan originator hired on after January 10, 2014 (or an individual loan originator the loan originator organization hired before this date but for whom there were no applicable statutory or regulatory background standards in effect at the time of hire or

used to screen the individual) or an individual loan originator regardless of when hired who, based on reliable information known to the loan originator organization, likely does not meet the qualification standards.

d. Verify that the loan originator organization and individual loan originator include their names and NMLSR IDs on all required loan documentation, including: (§1026.36(g))

1. The credit application;
2. The note or loan contract; and
3. The security instrument.

## **Policies and Procedures for Depository Institutions to Ensure and Monitor Compliance**

a. Verify that loan originator organizations that are depositories (including credit unions) have established and maintain written policies and procedures reasonably designed (i.e., appropriate to the nature, size, complexity and scope of the mortgage lending activities of the depository and its subsidiaries) to ensure that the depository, its subsidiaries and their collective employees comply with the loan originator requirements of section 1026.36(d)–(g). (§1026.36(j))

## **Prohibition on Mandatory Arbitration Clauses and Waiver of Certain Consumer Rights**

a. Verify that the contract or other agreement for a consumer credit transaction secured by a dwelling (including a home equity line of credit secured by the consumer's principal dwelling) does 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. (§1026.36(h)(1))

b. Verify that the contract or other agreement relating to a consumer credit transaction secured by a dwelling (including a home equity line of credit secured by the consumer's principal dwelling) has not been applied or interpreted to bar a consumer from bringing a claim in court pursuant to any provision of law for damages or other relief in connection with any alleged violation of any federal law. (§1026.36(h)(2))

## **Prohibition on Financing Single-Premium Credit Insurance**

a. Determine that the creditor does not finance, directly or indirectly, premiums or fees for credit insurance (including credit life, credit disability, credit unemployment, or credit property insurance, or any other accident, loss-of-income, life, or health insurance or payment for debt cancellation/suspension) on the transaction secured by a dwelling. (§1026.36(i))

NOTE: Credit unemployment insurance is not subject to this prohibition where the premiums are reasonable, the creditor receives no direct or indirect compensation in connection with the premiums, and the premiums are paid under a separate insurance contract and are not paid to an affiliate of the creditor. Additionally, this prohibition does not extend to credit insurance that is paid in full monthly.

## Negative Amortization Counseling

a. Verify that the creditor received documentation that first-time borrowers received pre-loan counseling from a HUD certified or approved counselor on each negative amortizing mortgage loan to prior to originating the loan. (§1026.36(k))

NOTE: This restriction does not apply to reverse mortgages covered under section 1026.33 or transactions secured by a timeshare plan. For more information, please see the commentary to section 1026.36(k).

## Servicing Requirements for Certain Home Mortgages Subject to Subpart E

a. Determine whether the creditor, assignee, or servicer provides consumers with reasonably prompt periodic statements for closed-end loans secured by a dwelling. (§1026.41)

NOTE: This requirement does not apply to reverse mortgages under section 1026.33, timeshare plans, fixed-rate loans where the servicer currently provides consumers with coupon books that contain account payment, fees, and contact information specified under section 1026.41(e)(3), or small servicers under section 1026.41(e)(4). A small servicer is defined as either a servicer that, together with any affiliates, services 5,000 or fewer loans, for all of which the servicer or any affiliate is the creditor or assignee or a servicer that is a housing finance agency under 24 CFR 226.5. Small servicer status is based on the loans serviced by the servicer and any affiliates as of January 1 for the remainder of the year. Servicers that cease to qualify as a small servicer will have the later of six months after the date they ceased to qualify, or until the next January 1 to come into compliance.

NOTE ALSO: When examining a creditor or assignee that continues to own the loan, or a servicer, if the entity states that another entity has the obligation to provide the disclosures, examiners should determine whether the examined entity takes steps to ensure that the other party (a creditor, assignee, or servicer) is complying with the obligation to provide the disclosures.

b. Verify that the periodic statements contain:

1. The payment due date; the amount of any late payment fee, and the date on which that fee will be imposed; and the amount due (the latter shown more prominently than other disclosures on the page and, if the transaction has multiple payment options, the amount due under each of the payment options), grouped together in close proximity to each other and located at the top of the first page; (§1026.41(d)(1))

2. The monthly payment amount, including a breakdown of how it will be applied to principal, interest, and escrow, and if a mortgage loan has multiple payment options along with information regarding how each payment will affect the principal, a breakdown of each of the payment options; the total sum of any fees or charges imposed since the last statement; and any payment amount past due, grouped together in close proximity to each other and located at the top of the first page. (§1026.41(d)(2))

3. The total of all payments received since the last statement, including a breakdown showing how the payment was applied to principal, interests, escrow, fees, and charges, and any amount sent to a

suspense or unapplied funds account grouped together in close proximity to each other and located at the top of the first page; (§1026.41(d)(3)(i))

4. The total of all payments received for the calendar year, including a breakdown of how those payments were applied to principal, interest, escrow, fees, and charges and any amount currently held in a suspense or unapplied funds account, grouped together in close proximity to each other and located at the top of the first page; (§1026.41(d)(3)(ii))

5. A list of transaction activity that occurred since the last statement, including the date, amount, and brief description of the transaction. Transaction activity includes any activity that caused a credit or debit to the amount currently due; (§1026.41(d)(4))

6. For statements where a partial payment was received and the creditor or servicer held the partial payment in a suspense or unapplied funds account, information explaining what must be done for the funds to be applied to the balance, located on the front page or a separate page of the statement or in a separate letter; (§1026.41(d)(5))

7. A toll-free number, and if applicable, an email address, that consumers may use to obtain account information located on the front page; (§1026.41(d)(6))

8. The amount of the outstanding principal balance; (§1026.41(d)(7)(i))

9. The current interest rate for the mortgage; (§1026.41(d)(7)(ii))

10. The date that the interest may change (if applicable); (§1026.41(d)(7)(iii))

11. Information regarding whether the loan contains a prepayment penalty; (§1026.41(d)(7)(iv))

12. The web address to the CFPB or HUD's list of homeownership counselors or counseling organizations and HUD's toll-free telephone number to obtain contact information for counselors or counseling organizations; (§1026.41(d)(7)(v))

13. For consumers more than 45 days delinquent, creditors, assignees, or servicers also must provide on the first page or on a separate page of the statement or in a separate letter:

i. The date that the consumer's account became delinquent; (§1026.41(d)(8)(i))

ii. A notification of the possible risks, such as foreclosure, and expenses that may occur if the consumer does not become current; (§1026.41(d)(8)(ii))

iii. An account history showing the shorter of the previous six months or from the time the account was last current, the amount of payment that is past due from each billing cycle; (§1026.41(d)(8)(iii))

NOTE: If any payment was accepted as a full payment, the creditor or servicer must show that the payment was credited to the consumer's account and the date that the payment was credited.

iv. A notice indicating any loss mitigation program that the consumer has agreed to; (§1026.41(d)(8)(iv))

v. A notice of whether the servicer has initiated foreclosure proceedings; (§1026.41(d)(8)(v))

vi. The total payment amount needed to bring the account current; and (§1026.41(d)(8)(vi))

vii. A reference to homeownership counseling information required under section 1026.41(d)(7)(v). (§1026.41(d)(8)(vii))

c. For high-cost mortgages, ensure the creditor or servicer does not charge any fee to modify, renew, extend, or amend a high-cost mortgage, or to defer any payment due under the terms of the mortgage. (§1026.34(a)(7))

d. For high-cost mortgages, determine whether the creditor or servicer charged a late payment greater than four percent of the payment past due. (§1026.34(a)(8)(i))

e. For high-cost mortgages, determine that the creditor or servicer did not impose any late fee or delinquency charge in connection with a payment, when the only delinquency was attributable to late fees or delinquency charges assessed on an earlier payment, and the payment is otherwise a full payment for the applicable period and is paid on its due date or within any applicable grace period (§§1026.34(a)(8)(iii)).

f. For high-cost mortgages, determine whether the creditor or servicer assessed any fees for providing consumers with a payoff statement related to the high-cost mortgage. (§1026.34(a)(9))

NOTE: Creditors or servicers are permitted to assess a processing fee if the payoff statement is provided by courier or by fax, the fee is comparable to fees for similar services provided for non-high-cost mortgages, and the creditor or servicer discloses that payoff statements are available by an alternative method free of charge. Additionally, within a calendar year, if the creditor or servicer has already provided four payoff statements in compliance with section 1026.34(a)(9), it may assess fees for additional statements.

g. For high-cost mortgages, determine that the creditor or servicer is providing payoff statements within five business days after receiving a request from the consumer (or consumer's authorized representative). (§1026.34(a)(9)(v))

h. For higher-priced mortgage loans that are subject to the escrow account requirements, ensure the creditor or servicer maintains the consumer's escrow account for a minimum of five years after consummation of the loan, unless: (1026.35(b)(3))

1. The creditor or servicer terminated the escrow account upon termination of the underlying debt obligation (§1026.35(b)(3)(i)(A)); or

2. The creditor or servicer terminated the escrow account upon request from the consumer, no earlier than five years after consummation of the loan. (§1026.35(b)(3)(i)(B))

NOTE: Upon request from the consumer, the creditor or servicer must verify that the unpaid principal balance of the higher-priced mortgage loan is less than 80 percent of the original value of

the property securing the loan and that the consumer is not delinquent or in default on the loan, prior to cancelling the escrow account. (§1026.35(b)(3)(ii))

i. For consumer credit transactions secured by a consumer's principal dwelling, determine that the creditor or servicer credited consumer's periodic payments as of the date the payment was received or ensured that any delay in crediting did not result in any charge to the consumer or in the reporting of any negative information to a consumer reporting agency. (§§1026.34(a)(8)-(9) and 1026.36(c)(1)(i))

j. For consumer credit transactions secured by a consumer's principal dwelling, determine whether the creditor or servicer uses a suspense or unapplied payment account for partial payments.

1. For creditors or servicers that use suspense or unapplied payment accounts for consumers' partial payments, verify that the creditor or servicer discloses to consumers that amount held in the suspense account on the periodic statement required by section 1026.41(d)(3) if one is required; and

2. Verify that creditors or servicers credit a periodic payment to the consumer's account once the amount in the suspense account equals a periodic payment. (§1026.36(c)(1)(ii)(B))

k. For consumer credit transactions secured by a consumer's principal dwelling, and for creditors or servicers that accept non-conforming payments from consumers, verify that the creditor or servicer credited the non-conforming payment to the consumer's account as of five days after receipt of the payment. (§1026.36(c)(1)(iii))

l. Determine whether there were any of the following prohibited acts or practices in connection with credit secured by a consumer's principal dwelling (§1026.36(c)):

1. Imposing on the consumer any late fee or delinquency charge in connection with a payment, when the only delinquency was attributable to late fees or delinquency charges assessed on an earlier payment, and the payment is otherwise a full payment for the applicable period and is received on its due date or within any applicable grace period (§1026.36(c)(1)(ii)); or,

2. A creditor, assignee, or servicer failing to provide, within a reasonable time, but no later than seven business days after receiving a written request from the consumer or person acting on behalf of the consumer, an accurate statement of the total outstanding balance that would be required to satisfy the consumer's obligations in full as of a specific date except when a delay is because a loan is in bankruptcy or foreclosure, the loan is a reverse or shared appreciation mortgage, or because of a natural disaster, in which case the payoff statement must be provided within a reasonable period of time. (§1026.36(c)(3))

## **Valuation Independence**

a. Determine that the covered person did not 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. Examples of such attempts include (§1026.42(c)):

1. Seeking to influence a person that prepares a valuation to report a minimum or maximum value for the consumer's principal dwelling;

2. 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;
3. 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;
4. 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
5. Conditioning the compensation paid to a person that prepares a valuation on consummation of the covered transaction.

b. Determine that the valuation does not materially misrepresent the value of the consumer's principal dwelling. (§1026.42(c)(2)(i))

NOTE: A misrepresentation is material 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.

c. Determine that a valuation was not falsified or materially altered. (§1026.42(c)(2)(ii))

NOTE: An alteration is material if it is likely to significantly affect the value assigned to the consumer's principal dwelling.

d. Determine that the covered person does not induce a person to materially misrepresent or falsify the value of a consumer's principal dwelling (in violation of section 1026.42(c)(2)(i) or (ii)). (§1026.42(c)(2)(iii))

e. Prohibition on conflicts of interest. To the extent applicable, determine that the person who prepared the valuations or performed the valuation management functions for a covered transaction did not have a direct or indirect interest, financial or otherwise, in the property or transaction for which the valuation is or will be performed. (§1026.42(d)(1)(i))

NOTE: No person violates this section solely because 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, as long as the conditions discussed below ((f), (g), and (h)) are met. If they are not met, whether the conflicts of interest provisions are violated by the above persons or entities depends on all of the facts and circumstances. In other words, the conditions in (f), (g), and (h) are a safe harbor, but not required.

f. For any consumer credit transaction secured by the consumer's principal dwelling in which the creditor had assets of more than \$250 million as of December 31st for both of the past two calendar years, determine that a person subject to section 1026.42(d)(1)(i) who is employed by or affiliated with the creditor does not have a conflict of interest in violation of section 1026.42(d)(1)(i) based solely on the person's employment or affiliate relationship with the creditor if (§1026.42(d)(2)):

1. The compensation of the person preparing a valuation or performing valuation management functions is not based on the value arrived at in any valuation;
2. The person preparing a valuation or performing valuation management functions reports to a person who is not part of the creditor's loan production function, as defined in section 1026.42(d)(5)(i), and whose compensation is not based on the closing of the transaction to which the valuation relates; and
3. No employee, officer or director in the creditor's loan production function, as defined in section 1026.42(d)(5)(i), 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.

g. 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, determine that a person subject to section 1026.42(d)(1)(i) who is employed by or affiliated with the creditor does not have a conflict of interest in violation of section 1026.42(d)(1)(i) based solely on the person's employment or affiliate relationship with the creditor if (§1026.42(d)(3)):

1. The compensation of the person preparing a valuation or performing valuation management functions is not based the value arrived at in any valuation; and
2. 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.

h. For any covered transaction, determine that 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 section 1026.42(d)(1)(i) as a result of the person or the person's affiliate performing another settlement service for the transaction if (§1026.42(d)(4)):

1. 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

2. 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.

i. If the creditor did know at or before consummation of a violation of sections 1026.42(c) or (d) in connection with a valuation, determine that the creditor did not extend credit based on the valuation, unless the creditor documented that it acted with reasonable diligence to determine that the valuation did not materially misstate or misrepresent the value of the consumer's principal dwelling. (§1026.42(e))

NOTE: For purposes of section 1026.42(e), a valuation materially misstates or misrepresents the value of the consumer's principal dwelling if the valuation contains a misstatement or misrepresentation that affects the credit decision or the terms on which credit is extended.

j. Customary and reasonable compensation. For any covered transaction, determine that the creditor and its agents compensated 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. (§1026.42(f)(1))

NOTE: For purposes of section 1026.42(f), “agents” of the creditor do not include any fee appraiser as defined in section 1026.42(f)(4)(i). An “agent” could be an appraisal management company to which the creditor has outsourced the valuation function.

k. If the creditor 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, determine that the creditor referred the matter within a reasonable period of time to the appropriate state agency if the failure to comply is material. (§1026.42(g)(1))

NOTE: For purposes of section 1026.42(g), a failure to comply is material if it is likely to significantly affect the value assigned to the consumer's principal dwelling.

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

a. For each open-end credit product tested, determine the accuracy of the disclosures by comparing the disclosure with the contract and other financial institution documents. (§1026.5(c))

b. Review the financial institution's policies, procedures, and practices to determine whether it provides appropriate disclosures for creditor-initiated direct mail applications and solicitations to open charge card accounts, telephone applications and solicitations to open charge card accounts, and applications and solicitations made available to the general public to open charge card accounts. (§1026.60(b), (c), and (d))

c. Determine for all home equity plans with a variable rate that the APR is based on an independent index. Further, ensure home equity plans are terminated or terms changed only if certain conditions exist. (§1026.40(f))

d. Determine that, if any consumer rejected a home equity plan because a disclosed term changed before the plan was opened, all fees were refunded. Verify that nonrefundable fees were not imposed until three business days after the consumer received the required disclosures and brochure. (§1026.40(g) and (h))

e. Review consecutive periodic billing statements for each major type of open-end credit activity offered (overdraft and home-equity lines of credit, credit card programs, etc.). Determine whether disclosures were calculated accurately and are consistent with the initial disclosure statement furnished in connection with the accounts (or any subsequent change in terms notice) and the underlying contractual terms governing the plan(s).

f. Determine whether the consumer was given notice of the right to reject the significant change, with the exception of:

1. An increase in the required minimum periodic payment (§1026.9(c)(2)(iv)(B)),
2. A change in the APR (§1026.9(c)(2)(iv)(B)),
3. A change in the balance computation method necessary to comply with section 1026.54, which sets forth certain limitations on the imposition of finance charges as a result of a loss of a grace period, or
4. Increase in fee pursuant to evaluation under section 1026.52 or adjustment to safe harbors
5. Increase in fees previously reduced under SCRA
6. When the change results from the creditor not receiving the required minimum periodic payment within 60 days after the due date for that payment. (§1026.9(c)(2)(iv)(B))

g. Determine that the creditor did not increase the rate applicable to the consumer's account to the penalty rate if the outstanding balance did not exceed the credit limit on the date set forth in the notice. (§1026.9(g)(4))

h. Determine, for each type of open-end rescindable loan being tested, the appropriate number of copies of the rescission notice are provided to each person whose ownership interest is or will be subject to the security interest and perform the procedures 12, 13, and 14 under Closed-End Credit section. (§1026.15(b), (c) and (e))

i. Additional variable rate testing: Verify that when accounts were opened or loans were

consummated that loan contract terms were recorded correctly in the financial institution's calculation systems (e.g., its computer). Determine the accuracy of the following recorded information:

1. Index value,
2. Margin and method of calculating rate changes,
3. Rounding method, and
4. Adjustment caps (periodic and lifetime).

j. Using a sample of periodic disclosures for open-end variable rate accounts (e.g., home equity accounts) and closed-end rate change notices for adjustable rate mortgage loans:

1. Compare the rate-change date and rate on the credit obligation to the actual rate change date and rate imposed.
2. Determine that the index disclosed and imposed is based on the terms of the contract (example: the weekly average of one-year Treasury constant maturities, taken as of 45 days before the change date). (§§1026.7(a) and 1026.20(c)(2))
3. Determine that the new interest rate is correctly disclosed by adding the correct index value with the margin stated in the note, plus or minus any contractual fractional adjustment. (§§1026.7(g) and 1026.20 (c)(1))
4. Determine that the new payment disclosed (§1026.20(c)(4)) was based on an interest rate and loan balance in effect at least 25 days before the payment change date (consistent with the contract). (§1026.20(c))

## **Crediting a Consumer's Account – Section 1026.10**

- a. Ensure that the creditor credits payment to a consumer's account as of the date of receipt, except when a delay in crediting does not result in a finance charge or other charge. (§1026.10(a))
- b. If a creditor specifies requirements for payments, determine that they are reasonable and enable most consumers to make conforming payments. (§1026.10(b))
- c. Except as provided by section 1026.10(b)(4)(ii), if a creditor specifies, on or with the periodic statement, requirements for the consumer to follow in making payments as permitted under section 1026.10, but accepts a payment that does not conform to the requirements, determine that the payment is credited within five days of receipt. (§1026.10(b)(4)(i))
- d. If the creditor promotes a method for making payments, determine that the creditor considers such payments conforming payments in accordance with section 1026.10(b) and that they are

credited to the consumer's account as of the date of receipt, except when a delay in crediting does not result in a finance charge or other charge. (§1026.10(b)(4)(ii))

e. If the creditor sets a cut-off time for payments to be received by mail, by electronic means, by telephone, or in person, verify that the cut-off time is 5 p.m. or later on the payment due date at the location specified by the creditor for the receipt of such payments. (§1026.10(b)(2)(ii))

f. For in-person payments on a credit card account under an open-end (not home-secured) consumer credit plan at a financial institution branch or office that accepts such payments, a card issuer shall not impose a cut-off time earlier than the close of business for any such payments made in person at any branch or office of the card issuer at which such payments are accepted. However, a card issuer may impose a cut-off time earlier than 5 p.m. for such payments, if the close of business of the branch or office is earlier than 5 p.m. (§1026.10(b)(3)(i))

g. If a creditor fails to credit a payment as required and imposes a finance or other charge, ensure that the creditor credits the charge(s) to the consumer's account during the next billing cycle. (§1026.10(c))

h. If (due to a weekend or holiday, for example) a creditor does not receive or accept payments by mail on the due date for payments, determine that the creditor treats as timely a payment received on the next business day. (§1026.10(d)(1))

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

i. For credit card accounts under an open-end (not home-secured) consumer credit plan, determine that the creditor does not impose a separate fee to allow consumers to make a payment by any method, such as mail, electronic, or telephone payments, unless such payment method involves an expedited service by a customer service representative of the creditor. (§1026.10(e))

NOTE: For purposes of section 1026.10(e), the term "creditor" includes a third party that collects, receives, or processes payments on behalf of a creditor.

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

## **Treatment of Credit Balances, Account Termination – Section 1026.11**

a. Determine institution's treatment of credit balances. Specifically, if the account's credit balance is in excess of \$1, the institution must take the actions listed below.

(§1026.11)

1. Credit the amount to the consumer's account; and

2. Either:

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

ii. If no written request is received and the credit remains for more than six months, make a good faith effort to refund the amount of the credit to the consumer by cash, check, money order, or credit to a deposit account of the consumer. No further action is required if the consumer's current location is not known to the creditor and cannot be traced through the consumer's last known address or telephone number.

b. Determine that institution has not terminated an account prior to its expiration date solely because the consumer did not incur a finance charge. However, a creditor is not prohibited from closing an account that, for three consecutive months, no credit has been extended (such as by purchase, cash advance, or balance transfer) and the account has had no outstanding balance.

(§1026.11(b))

c. Determine that, for credit card accounts under an open-end (not home-secured) consumer credit plan, the card issuer has adopted reasonable written policies and procedures designed to ensure that an administrator of an estate of a deceased account holder can determine the amount of and pay any balance on the account in a timely manner. (§1026.11(c)(1)(i))

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

d. Ensure that, upon request by the administrator of an estate, the card issuer provides the administrator with the amount of the balance on a deceased consumer's account in a timely manner.

(§1026.11(c)(2)(i))

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

e. Verify that, after receiving a request from the administrator of an estate for the amount of the balance on a deceased consumer's account, the card issuer does not impose any fees on the account (such as a late fee, annual fee, or over-the-limit fee) or increase any annual percentage rate, except as provided by section 1026.55(b)(2) (i.e., due to the operation of an index). (§1026.11(c)(3)(i))

f. Determine that, if payment in full of the disclosed balance, pursuant to section 1026.11(c)(2), is received within 30 days after disclosure, the card issuer waives or rebates any additional finance charge due to a periodic interest rate. (§1026.11(c)(3)(ii))

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

a. Review a sample of billing error resolution files and a sample of consumers who have asserted a claim or defense against the financial institution for a credit card dispute regarding property or services. Verify the following (§§1026.12 and 1026.13):

1. Credit cards are issued only upon request;
2. Liability for unauthorized credit card use is limited to \$50;
3. Disputed amounts are not reported delinquent unless remaining unpaid after the dispute has been settled;
4. Offsetting credit card indebtedness is prohibited; and
5. Errors are resolved within two complete billing cycles.

## **Ability to Make the Required Minimum Payments – Section 1026.51**

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

b. Verify that the card issuer establishes and maintains reasonable written policies and procedures to consider a consumer's independent income or assets and current obligations. Reasonable policies and procedures to consider a consumer's ability to make the required payments include a consideration of at least one of the following: (§1026.51(a)(1)(ii))

1. The ratio of debt obligations to income;
2. The ratio of debt obligations to assets; or
3. The income the consumer will have after paying debt obligations.

NOTE: Reasonable written policies and procedures may include treating any income and assets to which the consumer has a reasonable expectation of access as the consumer's income or assets, or may be limited to consideration to the consumer's independent income and assets.

c. Confirm that the card issuer does not issue a credit card to a consumer who does not have any income or assets, and that the credit does not issue a credit card without reviewing any information about a consumer's income, assets, or current obligations. (§1026.51(a)(1)(ii))

NOTE: A card issuer may consider the consumer's income or assets based on information provided by the consumer, in connection with the credit card account or any other financial relationship the card issuer or its affiliates has with the consumer, subject to any applicable information-sharing rules, and information obtained through third parties, subject to any applicable information-sharing rules. A card issuer may also consider information obtained through any empirically derived, demonstrably and statistically sound model that reasonably estimates a consumer's income or assets. (Comment 1026.51(a)-5)

d. Determine that the card issuer uses a reasonable method for estimating the minimum periodic payments the consumer would be required to pay under the terms of the account. (§1026.51(a)(2)(i))

e. A card issuer's estimate of the minimum periodic payment is compliant (i.e., receives the benefit of a safe harbor) if it uses the following method (§1026.51(a)(2)(ii)):

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

f. Rules affecting young consumers: If the card issuer opens a credit card account under an open-end (not home-secured) consumer credit plan for a consumer less than 21 years old, verify that the issuer requires that such consumers:

1. Submit a written application; and
2. Either possess an independent ability to make the required minimum periodic payments on the proposed extension of credit in connection with the account under section 1026.51(b)(1)(i) or provide a signed agreement of a cosigner, guarantor, or joint applicant who is at least 21 years old who has the ability to make the required minimum periodic payments on such debts, and be either jointly liable with the consumer for any debt on the account, or secondarily liable for any debt on the account incurred by the consumer before the consumer has attained the age of 21 pursuant to section 1026.51(b)(1)(ii)(A) and (B).

g. If a credit card account was opened for such consumer without a cosigner, guarantor, or joint applicant pursuant to section 1026.51(b)(1), determine that the issuer does not increase the credit limit on the account before the consumer turns 21 unless:

a. At the time of the contemplated increase, the consumer has an independent ability to make the required minimum periodic payments; or

b. A cosigner, guarantor, or joint accountholder who is at least 21 years old and has the ability to make the required minimum periodic payments agrees in writing to assume liability for any debt incurred on the account. (§1026.51(b)(2)(i))

h. If a credit card account was opened for such a consumer with a cosigner, guarantor, or joint applicant pursuant to section 1026.51(b)(1)(ii), determine that the issuer does not increase the credit limit on such account before the consumer attains the age of 21 unless the cosigner, guarantor, or joint accountholder who assumed liability at account opening agrees in writing to assume liability on the increase. (§1026.51(b)(2))

## **Limitations on Fees – Section 1026.52**

a. During the first year after the opening of a credit card account under an open-end (not home-secured) consumer credit plan, determine whether the card issuer required the consumer to pay covered fees in excess of the 25 percent of the credit limit in effect when the account is opened. (§1026.52(a)(1))

NOTE: The 25 percent limitation on fees does not apply to fees assessed prior to opening the account.

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

Covered fees include fees (Comment 1026.52(a)(2)-1):

1. For the issuance or availability of credit, including any fees based on account activity or inactivity;
2. For insurance, debt cancellation or debt suspension coverage, if the insurance or debt cancellation or suspension coverage is required by the terms of the account;
3. The consumer is required to pay to engage in transactions using the account, such as:
  - i. Cash advance fees;
  - ii. Balance transfer fees;
  - iii. Foreign transaction fees; and
  - iv. Fees for using the account for purchases.

4. Fees the consumer is required to pay for violating the terms of the account, except to the extent they are specifically excluded (see below);

5. Fixed finance charges; and

6. Minimum charges imposed if a charge would otherwise have been determined by applying a periodic interest rate to a balance except for the fact that such charge is smaller than the minimum.

NOTE: Section 1026.52(a) does not authorize the imposition or payment of fees or charges otherwise prohibited by law. (§1026.52(a)(3))

b. Fees not covered by this limitation include: (§1026.52(a)(2)(i))

1. Late payment fees, over-the-limit fees, and returned-payment fees; or

2. Fees that the consumer is not required to pay with respect to the account, such as:

i. An expedited payment fee;

ii. Fees for optional services like travel insurance;

iii. Fees for reissuing a lost or stolen card; or

iv. Statement reproduction fees.

c. Review penetration rates of various optional services to determine if they are truly optional and therefore not covered by the 25 percent limitation.

d. Ensure that the card issuer does not impose a fee for violating the terms or other requirements of a credit card account under an open-end (not home-secured) consumer credit plan unless the dollar amount of the fee is consistent with sections 1026.52(b)(1) and (b)(2). (§1026.52(b))

e. Determine that a card issuer imposes a fee for violating the terms or other requirements of a credit card account under an open-end (not home-secured) consumer credit plan only if the dollar amount of the fee is consistent with either section 1026.52(b)(1)(i) or section 1026.52(b)(1)(ii). (§1026.52(b)(1))

f. Cost determination. A card issuer may impose a fee for a particular violation (e.g., late payment) if the card issuer has determined that the fee represents a reasonable proportion of the total costs incurred by the issuer as a result of that type of violation. If a card issuer is relying on a cost determination instead of the safe harbors (see below), review (§1026.52(b)(1)(i)):

1. The number of violations of a particular type experienced by the card issuer during a prior period of reasonable length (e.g., a 12-month period).

2. The costs incurred by the card issuer during that period as a result of those violations. Losses and associated costs (including the cost of holding reserves against potential losses and the cost of funding delinquent accounts) must be excluded from this analysis.

3. If used by the card issuer when making its determination:

i. The number of fees imposed by the card issuer as a result of the type of violation during the period that the issuer reasonably estimates it will be unable to collect.

ii. Reasonable estimates for an upcoming period of changes in the number of violations of the relevant type, the resulting costs, and the number of fees that the card issuer will be unable to collect.

4. If applicable, whether the items in paragraph 1-3 have been reevaluated by the card issuer at least once during the prior 12 months. If as a result of the reevaluation the card issuer determines that a lower fee represents a reasonable proportion of the total costs incurred by the card issuer as a result of that type of violation, determine that the card issuer begins imposing the lower fee within 45 days after completing the reevaluation.

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

g. Safe harbors. A card issuer may impose a fee for violating the terms or other requirements of the account if the dollar amount of the fee does not exceed, as applicable (§§1026.52(b)(1)(ii)(A)-(C)):

1. \$25.00,

2. \$35.00 if the card issuer previously imposed a fee pursuant to section 1026.52(b)(1)(ii)(A) for a violation of the same type that occurred during the same billing cycle or one of the next six billing cycles or

3. Three percent of the delinquent balance on a charge card account that requires payment of outstanding balances in full at the end of each billing cycle if the card issuer has not received the required payment for two or more consecutive billing cycles.

NOTE: The dollar amounts in paragraphs 1 and 2 above will be adjusted annually by the CFPB to the extent that changes in the Consumer Price Index warrant an increase or decrease of a whole dollar.

h. Determine that the card issuer does not impose a fee for violating the terms or other requirements of a credit card account under an open-end (not home-secured) consumer credit plan that exceeds the dollar amount associated with the violation. (§1026.52(b)(2)(i)(A))

i. Determine that a card issuer does not impose a fee for violating the terms or other requirements of a credit card account under an open end (not home-secured) consumer credit plan when there is no dollar amount associated with the violation. For purposes of section 1026.52(b)(2)(i), there is no dollar amount associated with the following violations (§1026.52(b)(2)(i)(B)):

1. Transactions that the card issuer declines to authorize;
2. Account inactivity; and
3. The closure or termination of an account.

j. Determine that the card issuer does not impose more than one fee for violating the terms or other requirements of a credit card account under an open-end (not home-secured) consumer credit plan based on a single event or transaction. (§1026.52(b)(2)(ii))

## **Allocation of Payments – Section 1026.53**

a. Determine whether, when a consumer makes a payment in excess of the required minimum periodic payment, the card issuer allocates the excess amount:

1. First to the balance with the highest APR, and
2. Any remaining portion to the other balances in descending order based on the applicable APR.

b. For balances on a credit card account subject to a deferred interest or similar program, determine whether the card issuer allocated any amount paid by the consumer in excess of the required minimum periodic payment:

1. Consistent with the general requirement discussed in (a) above, except that, during the two billing cycles immediately preceding expiration of the deferred interest period, the excess amount must have been allocated first to the balance subject to the deferred interest or similar program and any remaining portion allocated to any other balances consistent with section 1026.53(a) (§1026.53(b)(1)(i)), or
2. In the manner requested by the consumer (§1026.53(b)(1)(ii)).

c. When a balance on a credit card account is secured, the card issuer may at its option allocate any amount paid by the consumer in excess of the required minimum periodic payment to that balance if requested by the consumer. (§1026.53(b)(2))

## **Loss of a Grace Period – Section 1026.54**

a. Determine whether the card issuer imposed finance charges as a result of the loss of a grace period on a credit card account under an open-end (not home-secured) consumer credit plan based on:

1. Balances for days in billing cycles that precede the most recent billing cycle, a prohibited practice; or
2. Any portion of a balance subject to a grace period that was repaid prior to the expiration of the grace period. (§1026.54).

b. With respect to the prohibition in a.2 above, issuers are not required to follow any specific methodology, but an issuer is in compliance if it applies the consumer's payment to the balance subject to the grace period and calculates interest charges on the amount of the balance that remains unpaid. (Comment 1026.54(a)(1)-5)

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

1. The resolution of a dispute under section 1026.12, unauthorized use, or section 1026.13, billing error; or
2. The return of a payment.

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

a. With respect to a credit card account under an open-end (not home-secured) consumer credit plan, determine that the card issuer did not increase an APR or fee or charge required to be disclosed under sections 1026.6(b)(2)(ii) (fee for issuance or availability (e.g., an annual fee)), (b)(2)(iii) (fixed finance charge or minimum interest charge), or (b)(2)(xii) (fee for required insurance, debt cancellation, or debt suspension coverage), unless as permitted by one of the six exceptions:

1. Temporary rate, fee, or charge exception;
2. Variable rate exception;
3. Advance notice exception;
4. Delinquency exception;
5. Workout and temporary hardship arrangement; and
6. Service members Civil Relief Act exception (§1026.55(a)-(b)).

b. To assess whether the temporary rate, fee, or charge exception applies (§1026.55(b)(1)), determine whether:

1. The card issuer increased the APR, fee, or charge upon the expiration of a specified period of six months or longer and
2. Prior to the commencement of that period, the card issuer disclosed in writing to the consumer, in a clear and conspicuous manner, the length of the period and the APR, fee, or charge that would apply after expiration of the period.

c. If the temporary rate exception applies, determine that the card issuer:

1. Did not apply an APR, fee, or charge to transactions that occurred prior to the period that exceeds the APR, fee, or charge that applied to those transactions prior to the period;
2. Provided the required notice, but did not apply an APR, fee, or charge (to transactions that occurred within 14 days after provision of the notice) that exceeds the APR, fee, or charge that applied to that category of transactions prior to provision of the notice; and
3. Did not apply an annual percentage rate to transactions that occurred during the period that exceeds the increased APR, fee, or charge.

d. If the variable rate exception applies (§1026.55(b)(2)), determine that the card issuer did not increase an APR unless:

1. The increase in the APR is due to an increase in the index; and
2. The annual percentage rate varies according to an index that is not under the card issuer's control and is available to the general public.

NOTE: For purposes of qualifying under this exception, an index is considered under the card issuer's control if the card issuer applies a minimum rate or floor below which the rate cannot decrease. However, because there is no disadvantage to consumers, issuers are not prevented from setting a maximum rate or ceiling. (Comment 1026.55(b)(2) – 2ii)

e. If the advance notice exception applies (§1026.55(b)(3)), determine that the card issuer:

1. Did not apply that increased APR, fee, or charge to transactions that occurred prior to provision of the notice;
2. Did not apply the increased APR, fee, or charge to transactions that occurred prior to or within 14 days after provision of the notice; and
3. Did not increase the APR, fee, or charge during the first year after the account is opened.

f. If the delinquency exception applies (§1026.55(b)(4)), determine that the card issuer:

1. Disclosed in a clear and conspicuous manner in the required notice a statement of the reason for the increase, and
2. Will cease the increase if the card issuer receives six consecutive required minimum periodic payments on or before the payment due date, beginning with the first payment due following the effective date of the increase.

g. If the delinquency exception applies and the card issuer received six consecutive required minimum periodic payments on or before the payment due date beginning with the first payment due following the effective date of the increase, determine that the card issuer reduces any APR, fee, or charge (increased pursuant to the delinquency exception) to the original APR, fee, or charge that applied prior to the increase with respect to transactions that occurred prior to or within 14 days after provision of the required notice.

h. If the workout and temporary hardship arrangement exception applies (§1026.55(b)(5)), determine that:

1. Prior to commencement of the arrangement (except as provided in section 1026.9(c)(2)(v)(D)) the card issuer provided the consumer with a clear and conspicuous written disclosure of the terms of the arrangement (including any increases due to the completion or failure of the arrangement); and
2. Upon the completion or failure of the arrangement, the card issuer did not apply to any transactions that occurred prior to commencement of the arrangement an APR, fee, or charge that exceeds the APR, fee, or charge that applied to those transactions prior to commencement of the arrangement.

i. If the Service members Civil Relief Act exception applies (§1026.55(b)(6)), determine that the card issuer increased the APR, fee, or charge only after 50 U.S.C. app. 527 or a similar Federal or State statute or regulation no longer applied. Further, determine that the issuer did not apply to any transactions that occurred prior to the decrease an APR, fee, or charge that exceeded the APR, fee, or charge that applied to those transactions prior to the decrease.

j. For protected balances (§1026.55(c)), determine that the card issuer did not require repayment using a method that is less beneficial to the consumer than one of the following methods:

1. The method of repayment for the account before the effective date of the increase;
2. An amortization period of not less than five years, beginning no earlier than the effective date of the increase; or
3. A required minimum periodic payment that includes a percentage of the balance that is equal to no more than twice the percentage required before the effective date of the increase.

k. If a card issuer promotes the waiver or rebate of finance charges due to a periodic interest rate or fees or charges (§§1026.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii)) and applies the waiver or rebate to a credit card account under an open-end (not home-secured) consumer credit plan, any cessation of the waiver or rebate on that account constitutes an increase in an annual percentage rate, fee, or charge for purposes of section 1026.55.

## **Requirements for Over-the-Limit Transactions – Section 1026.56**

a. Joint Relationships. Determine that, if two or more consumers are jointly liable on a credit card account under an open-end (not home-secured) consumer credit plan, the card issuer treats the affirmative consent of any of the joint consumers as affirmative consent for that account. Similarly, determine that the card issuer treats a revocation of consent by any of the joint consumers as revocation of consent for that account. (§1026.56(f))

b. Notwithstanding a consumer's affirmative consent to a card issuer's payment of over-the-limit transactions, determine that the card issuer does not (§1026.56(j)):

1. Impose more than one over-the-limit fee or charge on a consumer's credit card account per billing cycle, and, in any event, only if the credit limit was exceeded during the billing cycle. In addition, the card issuer may not impose an over-the-limit fee or charge on the consumer's credit card account for more than three billing cycles for the same over-the-limit transaction where the consumer has not reduced the account balance below the credit limit by the payment due date for either of the last two billing cycles.

NOTE: There is an exception to the latter prohibition if another over-the-limit transaction occurred in the last two billing cycles

2. Impose an over-the-limit fee or charge solely because of the card issuer's failure to promptly replenish the consumer's available credit following the crediting of the consumer's payment following the crediting of the consumer's payment under section 1026.10.

3. Condition the amount of a consumer's credit limit on the consumer affirmatively consenting to the card issuer's payment of over-the-limit transactions if the card issuer assesses a fee or charge for such service.

4. Impose an over-the-limit fee or charge for a billing cycle if a consumer exceeds a credit limit solely because of fees or interest charged by the card issuer (defined as charges imposed as part of the plan under section 1026.6(b)(3)) to the consumer's account during that billing cycle.

## Re-evaluation of Rate Increases – Section 1026.59

a. If a card issuer increases an APR that applies to a credit card account under an open end (not home-secured) consumer credit plan, based on the credit risk of the consumer, market conditions, or other factors, or increased such a rate on or after January 1, 2009, and 45 days' advance notice of the rate increase is required pursuant to section 1026.9(c)(2) or (g), determine that the card issuer (§1026.59(a)(1)):

1. Evaluates the factors described in section 1026.59(d); and
2. Based on its review of such factors, reduces the APR applicable to the consumer's account, as appropriate.

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

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

1. Any outstanding balances to which the increased rate described in section 1026.59(a)(1) has been applied; and
2. New transactions that occur after the effective date of the rate reduction that would otherwise have been subject to the increased rate.

c. Determine that the card issuer has reasonable written policies and procedures in place to conduct the review described in section 1026.59(a). (§1026.59(b))

d. Determine that a card issuer that is subject to section 1026.59(a) conducts the review described in section 1026.59(a)(1) not less frequently than once every six months after the rate increase. (§1026.59(c))

e. Except as provided in section 1026.59(d)(2), determine that the card issuer reviews either (§1026.59(d)(1)):

1. The factors on which the increase in an APR was originally based; or
2. The factors that the card issuer currently considers when determining the APRs applicable to similar new credit card accounts under an open-end (not home-secured) consumer credit plan.

f. For rate increases imposed between January 1, 2009 and February 21, 2010, determine that an issuer considered the factors described in section 1026.59(d)(1)(ii) when conducting the first two reviews required under section 1026.59(a), unless the rate increase subject to section 1026.59(a) was based solely upon factors specific to the consumer, such as a decline in the consumer's credit

risk, the consumer's delinquency or default, or a violation of the terms of the account. (§1026.59(d)(2))

g. If an issuer increases a rate applicable to a consumer's account pursuant to section 1026.55(b)(4) based on the card issuer not receiving the consumer's required minimum periodic payment within 60 days after the due date, note that the issuer is not required to perform the review described in section 1026.59(a) prior to the sixth payment due date after the effective date of the increase. However, if the APR applicable to the consumer's account is not reduced pursuant to section 1026.55(b)(4)(ii), determine that the card issuer performs the review described in section 1026.59(a). Determine that the first such review occurs no later than six months after the sixth payment due following the effective date of the rate increase. (§1026.59(e))

h. The obligation to review factors described in sections 1026.59(a) and (d) ceases to apply (§1026.59(f)):

1. If the issuer reduces the APR applicable to a credit card account under an open end (not home-secured) consumer credit plan to the rate applicable immediately prior to the increase, or, if the rate applicable immediately prior to the increase was a variable rate, to a variable rate determined by the same formula (index and margin) that was used to calculate the rate applicable immediately prior to the increase; or

2. If the issuer reduces the APR to a rate that is lower than the rate described in §1026.59(f)(1) of this section.

i. Except as provided in section 1026.59(g)(2), section 1026.59 applies to credit card accounts that have been acquired by the card issuer from another card issuer. (§1026.59(g))

j. Determine that a card issuer that complies with this section by reviewing the factors described in section 1026.59(d)(1)(i) reviews the factors considered by the card issuer from which it acquired the accounts in connection with the rate increase. (§1026.59(g)(1))

k. If, not later than six months after the acquisition of such accounts, a card issuer reviews all of the credit card accounts it acquires in accordance with the factors that it currently considers in determining the rates applicable to its similar new credit card accounts (§1026.59(g)(2)):

1. Except as provided in section 1026.59(g)(2)(iii), determine that the card issuer conducts reviews described in section 1026.59(a) for rate increases that are imposed as a result of its review under this paragraph.

2. Except as provided in section 1026.59(g)(2)(iii), note that the card issuer is not required to conduct reviews in accordance with section 1026.59(a) for any rate increases made prior to the card issuer's acquisition of such accounts.

3. Note that if as a result of the card issuer's review, an account is subject to, or continues to be subject to, an increased rate as a penalty, or due to the consumer's

delinquency or default, the requirements of section 1026.59(a) apply.

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

Charged off accounts exception: Note that the requirements of section 1026.59 do not apply to accounts that the card issuer has charged off in accordance with loan-loss provisions. (§1026.59(h)(2))

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

## **Administrative Enforcement**

10. If there is noncompliance involving understated finance charges or understated APRs subject to reimbursement under the FFIEC Policy Guide on Reimbursement (policy guide):

- a. Document the date on which the administrative enforcement of the TILA policy statement would apply for reimbursement purposes by determining the date of the preceding examination.
- b. If the noncompliance involves indirect (third-party paper) disclosure errors and affected consumers have not been reimbursed.
- c. Prepare comments, discussing the need for improved internal controls to be included in the report of examination.
- d. Notify your supervisory office for follow up with the regulator that has primary responsibility for the original creditor.
- e. If the noncompliance involves direct credit:
  1. Make an initial determination whether the violation is a pattern or practice.
  2. Calculate the reimbursement for the loans or accounts in an expanded sample of the identified population.
  3. Estimate the total impact on the population based on the expanded sample.
  4. Inform management that reimbursement may be necessary under the law and the policy guide, and discuss all substantive facts including the sample loans and calculations.

5. Inform management of the financial institution's options under section 130 of the TILA for avoiding civil liability and of its option under the policy guide and section 108 (e)(6) of the TILA for avoiding a regulatory agency's order to reimburse affected borrowers.