

List of Subjects in 12 CFR Part 1026

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

Text of Proposed Revisions

Certain conventions have been used to highlight the proposed revisions. New language is shown inside ► bold-faced arrows ◀, while language that would be deleted is shown inside [bold-faced brackets].

Authority and Issuance

For the reasons set forth above, the Bureau of Consumer Financial Protection proposes to amend Regulation Z, 12 CFR part 1026, as set forth below:

PART 1026—TRUTH IN LENDING (REGULATION Z)

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

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

Subpart E—Special Rules for Certain Home Mortgage Transactions

2. Section 1026.43 is amended by adding new paragraphs (a)(3)(iv) through (viii), revising paragraphs (b)(4), (e)(1), (e)(2), and (g)(1)(ii)(B), and adding new paragraph (e)(5), to read as follows:

§ 1026.43 Minimum standards for transactions secured by a dwelling.

(a) * * *

(3) * * *

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

within 12 months or a loan to finance the initial construction of a dwelling; [or]

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

[.]

▶(iv) An extension of credit made pursuant to a program administered by a Housing Finance Agency, as defined under 24 CFR 266.5;

(v) An extension of credit made by:

(A) A creditor designated as a Community Development Financial Institution, as defined under 12 CFR 1805.104(h);

(B) A creditor designated as a Downpayment Assistance through Secondary Financing Provider, pursuant to 24 CFR 200.194(a), operating in accordance with regulations prescribed by the U.S. Department of Housing and Urban Development applicable to such persons;

(C) A creditor designated as a Community Housing Development Organization, as defined under 24 CFR 92.2, operating in accordance with regulations prescribed by the U.S. Department of Housing and Urban Development applicable to such persons; or

(D) A creditor with a tax exemption ruling or determination letter from the Internal Revenue Service under section 501(c)(3) of the Internal Revenue Code of 1986 (26 CFR 1.501(c)(3)-1), provided that:

(1) During the calendar year preceding receipt of the consumer's application, the entity extended credit secured by a dwelling no more than 100 times;

(2) During the calendar year preceding receipt of the consumer's application, the entity extended credit secured by a dwelling only to consumers with income that did not exceed the qualifying limit for moderate income families as established pursuant to section 8 of the United States Housing Act of 1937 and amended from time to time by the U.S. Department of Housing

and Urban Development;

(3) The extension of credit is to a consumer with income that does not exceed the qualifying limit specified in paragraph (a)(3)(v)(D)(2) of this section; and

(4) The creditor determines, in accordance with written procedures, that the consumer has a reasonable ability to repay the extension of credit.

(vi) An extension of credit made pursuant to a program authorized by sections 101 and 109 of the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5211; 5219);

(vii) An extension of credit that is a refinancing, as defined under § 1026.20(a) but without regard for whether the creditor is the creditor, holder, or servicer of the original obligation, that is eligible to be insured, guaranteed, or made pursuant to a program administered by the Federal Housing Administration, U.S. Department of Veterans Affairs, or the U.S. Department of Agriculture, provided that the agency administering the program under which the extension of credit is eligible to be insured, guaranteed, or made has not prescribed rules pursuant to section 129C(a)(5) or 129C(b)(3)(B)(ii) of TILA; or

(viii) An extension of credit that is a refinancing, as defined under § 1026.20(a) but without regard for whether the creditor is the creditor, holder, or servicer of the original obligation, that is eligible to be purchased or guaranteed by the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, provided that:

(A) The refinancing is made pursuant to an eligible targeted refinancing program, as defined under 12 CFR 1291.1;

(B) Such entities are operating under the conservatorship or receivership of the Federal Housing Finance Agency pursuant to section 1367 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4617(i)) on the date the refinancing is

consummated;

(C) The existing obligation satisfied and replaced by the refinancing is owned by the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation;

(D) The existing obligation satisfied and replaced by the refinancing was not consummated on or after January 10, 2014; and

(E) The refinancing is not consummated on or after January 10, 2021. ◀

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

* * * * *

(4) *Higher-priced covered transaction* means a covered transaction with an annual percentage rate that exceeds the average prime offer rate for a comparable transaction as of the date the interest rate is set by 1.5 or more percentage points for a first-lien covered transaction ▶, other than a qualified mortgage under paragraph (e)(5) or (f) of this section; by 3.5 or more percentage points for a first-lien covered transaction that is a qualified mortgage under paragraph (e)(5) or (f) of this section; ◀ or by 3.5 or more percentage points for a subordinate-lien covered transaction.

* * * * *

(e) *Qualified mortgages.* (1) *Safe harbor and presumption of compliance.* (i) *Safe harbor for loans that are not higher-priced covered transactions.* A creditor or assignee of a qualified mortgage, as defined in paragraphs (e)(2), (e)(4), ▶(e)(5), ◀ or (f) of this section, that is not a higher-priced covered transaction, as defined in paragraph (b)(4) of this section, complies with the repayment ability requirements of paragraph (c) of this section.

(ii) *Presumption of compliance for higher-priced covered transactions.* (A) A creditor or assignee of a qualified mortgage, as defined in paragraph (e)(2), (e)(4), ▶(e)(5), ◀ or (f) of this

section, that is a higher-priced covered transaction, as defined in paragraph (b)(4) of this section, is presumed to comply with the repayment ability requirements of paragraph (c) of this section.

(B) To rebut the presumption of compliance described in paragraph (e)(1)(ii)(A) of this section, it must be proven that, despite meeting the prerequisites of paragraph (e)(2), (e)(4), ►(e)(5), ◀ or (f) of this section, the creditor did not make a reasonable and good faith determination of the consumer’s repayment ability at the time of consummation, by showing that the consumer’s income, debt obligations, alimony, child support, and the consumer’s monthly payment (including mortgage-related obligations) on the covered transaction and on any simultaneous loans of which the creditor was aware at consummation would leave the consumer with insufficient residual income or assets other than the value of the dwelling (including any real property attached to the dwelling) that secures the loan with which to meet living expenses, including any recurring and material non-debt obligations of which the creditor was aware at the time of consummation.

(2) *Qualified mortgage defined—general.* Except as provided in paragraph (e)(4)►, (e)(5), ◀ or (f) of this section, a qualified mortgage is a covered transaction:

* * * * *

►(5) *Qualified mortgage defined—small creditor portfolio loans.* (i) Notwithstanding paragraph (e)(2) of this section, a qualified mortgage is a covered transaction:

(A) That satisfies the requirements of paragraph (e)(2) of this section other than the requirements of paragraph (e)(2)(vi) and without regard to the standards in appendix Q;

(B) For which the creditor considers at or before consummation the consumer’s monthly debt-to-income ratio or residual income and verifies the debt obligations and income used to determine that ratio in accordance with paragraph (c)(7) of this section, except that the

calculation of the payment on the covered transaction for purposes of determining the consumer's total monthly debt obligations in (c)(7)(i)(A) shall be determined in accordance with paragraph (e)(2)(iv) of this section instead of paragraph (c)(5) of this section;

(C) That is not subject, at consummation, to a commitment to be acquired by another person, other than a person that satisfies the requirements of paragraph (e)(5)(i)(D) of this section; and

(D) For which the creditor satisfies the requirements stated in § 1026.35(b)(2)(iii)(B) and (C).

(ii) A qualified mortgage extended pursuant to paragraph (e)(5)(i) immediately loses its status as a qualified mortgage under paragraph (e)(5)(i) if legal title to the qualified mortgage is sold, assigned, or otherwise transferred to another person except when:

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

(B) The qualified mortgage is sold, assigned, or otherwise transferred to a creditor that satisfies the requirements of paragraph (e)(5)(i)(D) of this section;

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

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

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(g) *Prepayment penalties.* * * *

(ii) * * *

(B) Is a qualified mortgage under paragraph (e)(2), (e)(4), ►(e)(5), ◄ or (f) of this section; and

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