3. In Supplement I to Part 1026—Official Interpretations:

A. Under *Section 1026.32—Requirements for High-Cost Mortgages:*

i. Under *32(b) Definitions:*

a. Under *Paragraph 32(b)(1)(ii)*, as amended by [INSERT ATR FINAL RULE FR CITATION], paragraph 5 under that heading is added.

B. Under *Section 1026.43—Minimum Standards for Transactions Secured by a Dwelling*, as added by [INSERT ATR FINAL RULE FR CITATION]:

i. Under *43(a) Scope:*

a. The heading *Paragraph 43(a)(3)(v)(D)* and paragraph 1 under that heading are added.

b. The heading *Paragraph 43(a)(3)(vi)* and paragraph 1 under that heading are added.

c. The heading *Paragraph 43(a)(3)(vii)* and paragraph 1 under that heading are added.

ii. Under *43(e) Qualified Mortgages:*

a. The heading *Paragraph 43(e)(5)* and paragraphs 1 through 10 under that heading are added.

Supplement I to Part 1026—Official Interpretations

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Subpart E—Special Rules for Certain Home Mortgage Transactions

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Section 1026.32—Requirements for High-Cost Mortgages

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32(b) Definitions.

Paragraph 32(b)(1).

Paragraph 32(b)(1)(ii).

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►5. *Loan originator compensation—calculating loan originator compensation in connection with other charges or payments included in the finance charge or made to loan originators*. i. *Consumer payments to mortgage brokers.* Mortgage broker fees already included in the points and fees calculation under § 1026.32(b)(1)(i) need not be counted again under § 1026.32(b)(1)(ii). For example, assume a mortgage broker charges a consumer a $3,000 fee for a transaction. The $3,000 mortgage broker fee is included in the finance charge under § 1026.4(a)(3). Because the $3,000 mortgage broker fee is already included in points and fees under § 1026.32(b)(1)(i), it is not counted again under § 1026.32(b)(1)(ii).

ii. *Payments by a mortgage broker to its individual loan originator employee.* Compensation paid by a mortgage broker to its individual loan originator employee is not included in points and fees under § 1026.32(b)(1)(ii). For example, assume a consumer pays a $3,000 fee to a mortgage broker, and the mortgage broker pays a $1,500 commission to its individual loan originator employee for that transaction. The $3,000 mortgage broker fee is included in points and fees, but the $1,500 commission is not included in points and fees because it has already been included in points and fees as part of the $3,000 mortgage broker fee.

ALTERNATIVE 1:

iii. *Creditor's origination fees*. Section 1026.32(b)(1)(ii) requires a creditor to include compensation paid by a consumer or creditor to a loan originator in the calculation of points and fees in addition to any fees or charges paid by the consumer to the creditor included in points and fees under § 1026.32(b)(1)(i). For example, assume that a consumer pays to the creditor a $3,000 origination fee and that the creditor pays to its loan officer employee $1,500 in compensation attributed to the transaction. Assume further that the consumer pays no other

charges to the creditor that are included in points and fees under § 1026.32(b)(1)(i) and the loan officer receives no other compensation that is included in points and fees under § 1026.32(b)(1)(ii). For purposes of calculating points and fees, the $3,000 origination fee is included in points and fees under § 1026.32(b)(1)(i) and the $1,500 in loan officer compensation is included in points and fees under § 1026.32(b)(1)(ii), equaling $4,500 in total points and fees, provided that no other points and fees are paid or compensation received.

ALTERNATIVE 2:

iii. *Creditor's origination fees.* Section 1026.32(b)(1)(ii) requires a creditor to reduce the amount of loan originator compensation included in the points and fees calculation under § 1026.32(b)(1)(ii) by any amount included in the points and fees calculation under § 1026.32(b)(1)(i). For example, assume that a consumer pays to the creditor a $3,000 origination fee and that the creditor pays to the loan originator $1,500 in compensation attributed to the transaction. Assume further that the consumer pays no other charges to the creditor that are included in points and fees under § 1026.32(b)(1)(i) and the loan originator receives no other compensation that is included in points and fees under § 1026.32(b)(1)(ii). For purposes of calculating points and fees, the $3,000 origination fee is included in points and fees under § 1026.32(b)(1)(i), but the $1,500 in loan originator compensation need not be included in points and fees. If, however, the consumer pays to the creditor a $1,000 origination fee and the creditor pays to the loan originator $1,500 in compensation, then the $1,000 origination fee is included in points and fees under § 1026.32(b)(1)(i), and $500 of the loan originator compensation is included in points and fees under § 1026.32(b)(1)(ii), equaling $1,500 in total points and fees, provided that no other points and fees are paid or compensation received. This example illustrates the requirements of § 1026.32(b)(1)(ii) for both retail and wholesale transactions.◄

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Section 1026.43—Minimum Standards for Transactions Secured by a Dwelling

43(a) Scope.

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►*Paragraph 43(a)(3)(v)(D).*

1. *General*. An extension of credit is exempt from the requirements of § 1026.43(c) through (f) if the credit is extended by a creditor described in § 1026.43(a)(3)(v)(D), provided the conditions specified in that section are satisfied. The conditions specified in § 1026.43(a)(3)(v)(D)(*1*) and (*2*) are determined according to activity that occurred in the calendar year preceding the calendar year in which the consumer's application was received. Section 1026.43(a)(3)(v)(D)(*2*) provides that, during the preceding calendar year, the creditor must have extended credit only to consumers with income that did not exceed the qualifying limit then in effect for moderate income families, as specified in regulations prescribed by the U.S. Department of Housing and Urban Development pursuant to section 8 of the United States Housing Act of 1937. For example, a creditor has satisfied the requirement in § 1026.43(a)(3)(v)(D)(*2*) if the creditor extended credit only to consumers with incomes that did not exceed the qualifying limit in effect on the dates the creditor received each consumer's individual application. The condition specified in § 1026.43(a)(3)(v)(D)(*3*), which relates to the current extension of credit, provides that the extension of credit must be to a consumer with income that does not exceed the qualifying limit specified in § 1026.43(a)(3)(v)(D)(*2*) in effect on the date the creditor received the consumer's application. For example, assume that a creditor with a tax exemption ruling under section 501(c)(3) of the Internal Revenue Code of 1986 has satisfied the conditions identified in § 1026.43(a)(3)(v)(D)(*1*) and (*2*). If, on May 21, 2014, the

creditor in this example extends credit secured by a dwelling to a consumer whose application reflected income in excess of the qualifying limit identified in § 1026.43(a)(3)(v)(D)(*2*) in effect on the date the creditor received that consumer's application, the creditor has not satisfied the condition in § 1026.43(a)(3)(v)(D)(*3*) and this extension of credit is not exempt from the requirements of § 1026.43(c) through (f).

Paragraph 43(a)(3)(vi).

1. *General.* The requirements of § 1026.43(c) through (f) do not apply to a mortgage loan modification made in connection with a program authorized by sections 101 and 109 of the Emergency Economic Stabilization Act of 2008. If a creditor is underwriting an extension of credit that is a refinancing, as defined by § 1026.20(a), that will be made pursuant to a program authorized by sections 101 and 109 of the Emergency Economic Stabilization Act of 2008, the creditor also need not comply with § 1026.43(c) through (f). A creditor need not determine whether the mortgage loan modification is considered a refinancing under § 1026.20(a) for purposes of determining applicability of § 1026.43; if the transaction is made in connection with these programs, the requirements of § 1026.43(c) through (f) do not apply. In addition, if a creditor underwrites a new extension of credit, such as a subordinate-lien mortgage loan, that will be made pursuant to a program authorized by sections 101 and 109 of the Emergency Economic Stabilization Act of 2008, the creditor need not comply with the requirements of § 1026.43(c) through (f).

Paragraph 43(a)(3)(vii).

1. *General.* The requirements of § 1026.43(c) through (f) do not apply to an extension of credit that is a refinancing, as defined by § 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 programs administered by the Federal agencies identified in § 1026.43(a)(3)(vii), provided that rules issued by such agencies pursuant to section 129C(b)(3)(B)(ii) or 129C(a)(5) of TILA have not become effective on or before the date the refinancing is consummated. For example:

i. Assume that a consumer applies for a refinancing that is eligible to be insured, guaranteed, or made pursuant to a program administered by the U.S. Department of Veterans Affairs. If the U.S. Department of Veterans Affairs has issued rules pursuant to TILA section 129C(b)(3)(B)(ii) or 129C(a)(5) that have become effective, the exemption in § 1026.43(a)(3)(vii) does not apply because those rules will separately govern the status of U.S. Department of Veterans Affairs loans.

ii. Assume that a consumer applies for a refinancing of a subordinate-lien mortgage loan that is eligible to be insured, guaranteed, or made pursuant to a program administered by the U.S. Department of Veterans Affairs and the U.S. Department of Veterans Affairs has issued rules pursuant to TILA section 129C(b)(3)(B)(ii) or 129C(a)(5) that have become effective. Assume further that such effective rules apply to refinancings of first-lien mortgage loans, but not subordinate-lien mortgage loans. The exemption in § 1026.43(a)(3)(vii) does not apply, regardless of the status of the particular loans under the rules issued, because the U.S. Department of Veterans Affairs has issued rules pursuant to TILA section 129C(b)(3)(B)(ii) or 129C(a)(5) that have become effective. The exemption does not apply even if the applicability of such Federal agency rules is determined based on program type instead of loan type. Thus, the exemption in § 1026.43(a)(3)(vii) does not apply even if the U.S. Department of Veterans Affairs rules do not apply to the particular U.S. Department of Veterans Affairs program under which the refinancing is eligible to be insured, guaranteed, or made.

iii. Assume that a consumer applies for a refinancing that is eligible to be insured, guaranteed, or made pursuant to a program administered by the Federal Housing Administration and the Federal Housing Administration has issued rules pursuant to TILA section 129C(b)(3)(B)(ii) or 129C(a)(5) that have become effective. Assume further that the refinancing for which the consumer applies is also eligible to be insured, guaranteed, or made pursuant to a program administered by the U.S. Department of Agriculture, but the U.S. Department of Agriculture has not issued rules pursuant to TILA section 129C(b)(3)(B)(ii) or 129C(a)(5), or the U.S. Department of Agriculture has issued rules implementing TILA section 129C(b)(3)(B)(ii) or 129C(a)(5) that have not yet taken effect at the time the refinancing is consummated. The exemption applies to that refinancing because the refinancing is eligible to be to be insured, guaranteed, or made pursuant to a pursuant to program administered by a Federal agency identified in § 1026.43(a)(3)(vii), and such Federal agency has not issued rules pursuant to section 129C(b)(3)(B)(ii) or 129C(a)(5) of TILA that have become effective.

Paragraph 43(a)(3)(viii).

1. *General.* Section 1026.43(a)(3)(viii) provides an exemption from the requirements of § 1026.43(c) through (f) for certain extensions of credit that are considered refinancings, as defined in § 1026.20(a) but without regard for whether the creditor is the creditor, holder, or servicer of the original obligation, that are eligible for purchase or guarantee by Fannie Mae or Freddie Mac. The exemption provided by § 1026.43(a)(3)(viii) is available only while these entities remain in conservatorship. For example, if Fannie Mae remains in conservatorship, but Freddie Mac exits conservatorship, the exemption continues to apply to refinancings that are eligible for purchase by Fannie Mae, provided the other conditions specified in § 1026.43(a)(3)(viii) are met. Further, the exemption is available only if the existing obligation

that will be satisfied and replaced by the refinancing was consummated prior to January 10, 2014. For example, if a consumer applies for an extension of credit that is a refinancing, as defined by § 1026.20(a), that is eligible to be purchased by Fannie Mae or Freddie Mac, but the consumer's current mortgage loan was consummated on or after January 10, 2014, the exemption provided by § 1026.43(a)(3)(viii) does not apply.◄

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43(e) Qualified mortgages.

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►*Paragraph 43(e)(5).*

1. *Satisfaction of qualified mortgage requirements*. For a covered transaction to be a qualified mortgage under § 1026.43(e)(5), the mortgage must satisfy the requirements for a qualified mortgage under § 1026.43(e)(2), other than the requirements regarding debt-to-income ratio. For example, a qualified mortgage under § 1026.43(e)(5) may not have a loan term in excess of 30 years because longer terms are prohibited for qualified mortgages under § 1026.43(e)(2)(ii). Similarly, a qualified mortgage under § 1026.43(e)(5) may not result in a balloon payment because § 1026.43(e)(2)(i)(C) provides that qualified mortgages may not have balloon payments except as provided under § 1026.43(f). However, a covered transaction need not comply with § 1026.43(e)(2)(vi), which prohibits consumer monthly debt-to-income ratios in excess of 43 percent. A covered transaction therefore can be a qualified mortgage under § 1026.43(e)(5) even though the consumer's monthly debt-to-income ratio is greater than 43 percent.

2. *Debt-to-income ratio or residual income.* Section 1026.43(e)(5) does not prescribe a specific monthly debt-to-income ratio with which creditors must comply. Instead, creditors must

consider a consumer's debt-to-income ratio or residual income calculated generally in accordance with § 1026.43(c)(7) and verify the information used to calculate the debt-to-income ratio or residual income in accordance with § 1026.43(c)(3) and (4). However, § 1026.43(c)(7) refers creditors to § 1026.43(c)(5) for instructions on calculating the payment on the covered transaction. Section 1026.43(c)(5) requires creditors to calculate the payment differently than § 1026.43(e)(2)(iv). For purposes of the qualified mortgage definition in § 1026.43(e)(5), creditors must base their calculation of the consumer's debt-to-income ratio or residual income on the payment on the covered transaction calculated according to § 1026.43(e)(2)(iv) instead of according to § 1026.43(c)(5). Creditors are not required to calculate the consumer's monthly debt-to-income ratio in accordance with appendix Q as is required under the general definition of qualified mortgages by § 1026.43(e)(2)(vi).

3. *Forward commitments.* A creditor may make a mortgage loan that will be transferred or sold to a purchaser pursuant to an agreement that has been entered into at or before the time the transaction is consummated. Such an agreement is sometimes known as a "forward commitment." A mortgage that will be acquired by a purchaser pursuant to a forward commitment does not satisfy the requirements of § 1026.43(e)(5), whether the forward commitment provides for the purchase and sale of the specific transaction or for the purchase and sale of transactions with certain prescribed criteria that the transaction meets. However, a forward commitment to another person that also meets the requirements of § 1026.43(e)(5)(i)(D) is permitted. For example: assume a creditor that is eligible to make qualified mortgages under § 1026.43(e)(5) makes a mortgage. If that mortgage meets the purchase criteria of an investor with which the creditor has an agreement to sell loans after consummation, then the loan does not meet the definition of a qualified mortgage under § 1026.43(e)(5). However, if the investor

meets the requirements of § 1026.43(e)(5)(i)(D), the mortgage will be a qualified mortgage if all other applicable criteria also are satisfied.

4. *Creditor qualifications.* To be eligible to make qualified mortgages under § 1026.43(e)(5), a creditor must satisfy the requirements stated in § 1026.35(b)(2)(iii)(B) and (C). Section 1026.35(b)(2)(iii)(B) requires that, during the preceding calendar year, the creditor and its affiliates together originated 500 or fewer first-lien covered transactions. Section 1026.35(b)(2)(iii)(C) requires that, as of the end of the preceding calendar year, the creditor had total assets of less than $2 billion, adjusted annually by the Bureau for inflation.

5. *Requirement to hold in portfolio*. Creditors generally must hold a loan in portfolio to maintain the transaction's status as a qualified mortgage under § 1026.43(e)(5), subject to four exceptions. Unless one of these exceptions applies, a loan is no longer a qualified mortgage under § 1026.43(e)(5) once legal title to the debt obligation is sold, assigned, or otherwise transferred to another person. Accordingly, unless one of the exceptions applies, the transferee could not benefit from the presumption of compliance for qualified mortgages under § 1026.43(e)(1) unless the loan also met the requirements of another qualified mortgage definition.

6. *Application to subsequent transferees*. The exceptions contained in § 1026.43(e)(5)(ii) apply not only to an initial sale, assignment, or other transfer by the originating creditor but to subsequent sales, assignments, and other transfers as well. For example, assume Creditor A originates a qualified mortgage under § 1026.43(e)(5). Six months after consummation, Creditor A sells the qualified mortgage to Creditor B pursuant to § 1026.43(e)(5)(ii)(B) and the loan retains its qualified mortgage status because Creditor B complies with the limits on asset size and number of transactions. If Creditor B sells the qualified mortgage, it will lose its qualified

mortgage status under § 1026.43(e)(5) unless the sale qualifies for one of the § 1026.43(e)(5)(ii) exceptions for sales three or more years after consummation, to another qualifying institution, as required by supervisory action, or pursuant to a merger or acquisition.

7. *Transfer three years after consummation*. Under § 1026.43(e)(5)(ii)(A), if a qualified mortgage under § 1026.43(e)(5) is sold, assigned, or otherwise transferred three years or more after consummation, the loan retains its status as a qualified mortgage under § 1026.43(e)(5) following the transfer. The transferee need not be eligible to originate qualified mortgages under § 1026.43(e)(5). The loan will continue to be a qualified mortgage throughout its life, and the transferee, and any subsequent transferees, may invoke the presumption of compliance for qualified mortgages under § 1026.43(e)(1).

8. *Transfer to another qualifying creditor*. Under § 1026.43(e)(5)(ii)(B), a qualified mortgage under § 1026.43(e)(5) may be sold, assigned, or otherwise transferred at any time to another creditor that meets the requirements of § 1026.43(e)(5)(v). That section requires that a creditor, during the preceding calendar year, together with all affiliates, 500 or fewer first-lien covered transactions and had total assets less than $2 billion (as adjusted for inflation) at the end of the preceding calendar year. A qualified mortgage under § 1026.43(e)(5) transferred to a creditor that meets these criteria would retain its qualified mortgage status even if it is transferred less than three years after consummation.

9. *Supervisory sales*. Section 1026.43(e)(5)(ii)(C) facilitates sales that are deemed necessary by supervisory agencies to revive troubled creditors and resolve failed creditors. A qualified mortgage under § 1026.43(e)(5) retains its qualified mortgage status if it is sold, assigned, or otherwise transferred to another person pursuant to: (1) a capital restoration plan or other action under 12 U.S.C. 1831o; (2) the actions or instructions of any person acting as

conservator, receiver or bankruptcy trustee; (3) an order of a State or Federal government agency with jurisdiction to examine the creditor pursuant to State or Federal law; or (4) an agreement between the creditor and such an agency. A qualified mortgage under § 1026.43(e)(5) that is sold, assigned, or otherwise transferred under these circumstances retains its qualified mortgage status regardless of how long after consummation it is sold and regardless of the size or other characteristics of the transferee. Section 1026.43(e)(5)(ii)(C) does not apply to transfers done to comply with a generally applicable regulation with future effect designed to implement, interpret, or prescribe law or policy in the absence of a specific order by or a specific agreement with a governmental agency described in § 1026.43(e)(5)(ii)(C) directing the sale of one or more qualified mortgages under § 1026.43(e)(5) held by the creditor or one of the other circumstances listed in § 1026.43(e)(5)(ii)(C). For example, a qualified mortgage under § 1026.43(e)(5) that is sold pursuant to a capital restoration plan under 12 U.S.C. 1831o would retain its status as a qualified mortgage following the sale. However, if the creditor simply chose to sell the same qualified mortgage as one way to comply with general regulatory capital requirements in the absence of supervisory action or agreement it would lose its status as a qualified mortgage following the sale unless it qualifies under another definition of qualified mortgage.

10. *Mergers and acquisitions*. A qualified mortgage under § 1026.43(e)(5) retains its qualified mortgage status if a creditor merges with, is acquired by, or acquires another person regardless of whether the creditor or its successor is eligible to originate new qualified mortgages under § 1026.43(e)(5) after the merger or acquisition. However, the creditor or its successor can originate new qualified mortgages under § 1026.43(e)(5) only if it complies with all of the requirements of § 1026.43(e)(5) after the merger or acquisition. For example, assume a creditor that originates 250 covered transactions each year and originates qualified mortgages under

§ 1026.43(e)(5) is acquired by a larger creditor that originates 10,000 covered transactions each year. Following the acquisition, the small creditor would no longer be able to originate § 1026.43(e)(5) qualified mortgages because, together with its affiliates, it would originate more than 500 covered transactions each year. However, the § 1026.43(e)(5) qualified mortgages originated by the small creditor before the acquisition would retain their qualified mortgage status. ◄