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

A. Under *Section 1026.31—General Rules*:

i. Under *31(c) Timing of disclosure*:

a. Under *31(c)(1) Disclosures for certain closed-end home mortgages*, the heading is revised.

b. Under revised *31(c)(1) Disclosures for high-cost mortgages*, paragraph 1 is revised.

c. Under *31(c)(1)(i) Change in terms*, paragraph 2 is revised.

d. Under *31(c)(1)(ii) Telephone disclosures*, paragraph 1 is revised.

e. Under *31(c)(1)(iii) Consumer's waiver of waiting period before consummation*, the heading is revised.

ii. *31(h) Corrections and unintentional violations* and paragraphs 1 and 2 are added.

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

i. Under *32(a) Coverage*:

a. *Paragraph 32(a)(1)* and paragraph 1 are added.

b. Under *Paragraph 32(a)(1)(i)*, paragraphs 1, 2, and 3 are revised, and paragraph 4 is removed.

c. *Paragraph 32(a)(1)(i)(B)* and paragraph 1 are added.

d. Under *Paragraph 32(a)(1)(ii)*, paragraphs 1 and 2 are revised and paragraph 3 is added.

e. *Paragraph 32(a)(1)(iii)* and paragraphs 1 and 2 are added.

f. Under *Paragraph 32(a)(2)*, the heading is revised.

g. *Paragraph 32(a)(2)(ii)* and paragraph 1 are added.

h. *Paragraph 32(a)(2)(iii)* and paragraph 1 are added.

i. *32(a)(3) Determination of annual percentage rate* and paragraphs 1, 2, 3, 4, and 5 are added.

ii. Under *32(b) Definitions*:

a. *Paragraph 32(b)(2)*, *Paragraph 32(b)(2)(i)*, and paragraph 1 are added.

b. *Paragraph 32(b)(2)(i)(B)* and paragraph 1 are added.

c. *Paragraph 32(b)(2)(i)(C)* and paragraph 1 are added.

d. *Paragraph 32(b)(2)(i)(D)* and paragraph 1 are added.

e. *Paragraph 32(b)(2)(i)(E)* and paragraph 1 are added.

f. *Paragraph 32(b)(2)(i)(F)* and paragraph are is added.

g. *Paragraph 32(b)(2)(ii)* and paragraph 1 are added.

h. *Paragraph 32(b)(2)(iii)* and paragraph 1 are added.

i. *Paragraph 32(b)(2)(iv)* and paragraph 1 are added.

j. *Paragraph 32(b)(2)(vii)* and paragraph 1 are added.

k. *Paragraph 32(b)(2)(viii)* and paragraphs 1 and 2 are added.

l. Under *Paragraph 32(b)(6)*, paragraphs 3 and 4 are added.

iii. Under *32(c) Disclosures*:

a. *32(c)(2) Annual percentage rate* and paragraph 1 are added.

b. Under *32(c)(3) Regular payment; balloon payment*, the heading is revised.

c. Under revised *32(c)(3) Regular payment; minimum periodic payment example; balloon payment*, paragraph 1 is revised.

d. *Paragraph 32(c)(3)(i)* and paragraph 1 are added.

e. Under *32(c)(4) Variable rate*, paragraph 1 is revised.

iv. Under *32(d) Limitations*:

a. Paragraph 1 is revised.

b. Under *32(d)(1)(i) Balloon payment*, paragraph 1 is revised and paragraphs 2 and 3 are added.

c. Under *32(d)(2) Negative Amortization*, paragraph 1 is revised.

d. *32(d)(6) Prepayment Penalties* and paragraph 1 are removed.

e. *32(d)(7) Prepayment Penalty Exception*, *Paragraph 32(d)(7)(iii)* and paragraphs 1, 2, and 3, and *Paragraph 32(d)(7)(iv)* and paragraphs 1 and 2 are removed.

f. Under *32(d)(8) Due-on-demand clause*, the heading is revised.

g. Under revised *32(d)(8) Acceleration of debt*, *Paragraph 32(d)(8)(i)* and paragraph 1 are added.

h. Under *Paragraph 32(d)(8)(ii)*, paragraph 1 is revised.

i. Under *Paragraph 32(d)(8)(iii)*, paragraphs 1 and 2.ii are revised.

C. Under *Section 1026.34—Prohibited Acts or Practices for High-Cost Mortgages*:

i. Under *34(a) Prohibited Acts or Practices for High-Cost Mortgages*:

a. Under *34(a)(4) Repayment ability*, paragraphs 1 through 5 are revised.

b. Under *Paragraph 34(a)(4)(ii)(B)*, paragraph 1 is revised and paragraph 2 is removed.

c. *Paragraph 34(a)(4)(ii)(C)* and paragraph 1 are removed.

d. Under *34(a)(4)(iii) Presumption of compliance*, paragraph 1 is revised.

e. Under *Paragraph 34(a)(4)(iii)(B)*, paragraph 1 is revised.

f. *34(a)(5) Pre-loan counseling*, *34(a)(5)(i) Certification of counseling required*, and paragraphs 1 through 5 are added.

g. *34(a)(5)(ii) Timing of counseling* and paragraphs 1 and 2 are added.

h. *34(a)(5)(iv) Content of certification* and paragraphs 1 and 2 are added.

i. *34(a)(5)(v) Counseling fees* and paragraph 1 are added.

j. *34(a)(5)(vi) Steering prohibited* and paragraphs 1 and 2 are added.

k. *34(a)(6) Recommended default* and paragraphs 1 and 2 are added.

l. *34(a)(8) Late Fees*, *34(a)(8)(i) General*, and paragraph 1 are added.

m. *34(a)(8)(iii) Multiple late charges assessed on payment subsequently paid* and paragraph 1 are added.

n. *34(a)(8)(iv) Failure to make required payment* and paragraph 1 are added.

o. *34(a)(10) Financing of points and fees* and paragraphs 1 and 2 are added.

ii. Under *34(b) Prohibited Acts or Practices for Dwelling-Secured Loans; Open-End Credit*, the heading is revised.

iii. Under revised *34(b) Prohibited acts or practices for dwelling-secured loans; structuring loans to evade high-cost mortgage requirements*, paragraph 1 is revised and paragraph 2 is added.

D. Under *Section 1026.36—Prohibited Acts or Practices in Connection with Credit Secured by a Dwelling*:

i. *36(k) Negative amortization counseling* is added.

a. *36(k)(1)Counseling required* and paragraphs 1 through 4 are added.

b. *36(k)(3) Steering prohibited* and paragraph 1 are added.`

The revisions, removals, and additions read as follows:

SUPPLEMENT I TO PART 1026—OFFICIAL INTERPRETATIONS

* * * * *

SUBPART E—SPECIAL RULES FOR CERTAIN HOME MORTGAGE TRANSACTIONS

Section 1026.31—General Rules

* * * * *

31(c)(1) Disclosures for high-cost mortgages.

1. *Pre-consummation or account opening waiting period.* A creditor must furnish § 1026.32 disclosures at least three business days prior to consummation for a closed-end, high-cost mortgage and at least three business days prior to account opening for an open-end, high-cost mortgage. Under § 1026.32, "business day" has the same meaning as the rescission rule in comment 2(a)(6)-2—all calendar days except Sundays and the Federal legal holidays listed in 5 U.S.C. 6103(a). However, while the disclosure rule under §§ 1026.15 and 1026.23 extends to midnight of the third business day, the rule under § 1026.32 does not. For example, under § 1026.32, if disclosures were provided on a Friday, consummation or account opening could occur any time on Tuesday, the third business day following receipt of the disclosures. If the timing of the rescission rule were to be used, consummation or account opening could not occur until after midnight on Tuesday.

31(c)(1)(i) Change in terms.

* * * * *

2. *Premiums or other charges financed at consummation or account opening.* If the consumer finances the payment of premiums or other charges as permitted under § 1026.34(a)(10), and as a result the monthly payment differs from what was previously disclosed under § 1026.32, redisclosure is required and a new three-day waiting period applies.

31(c)(1)(ii) Telephone disclosures.

1. *Telephone disclosures.* Disclosures by telephone must be furnished at least three business days prior to consummation or account opening, as applicable, calculated in accordance with the timing rules under § 1026.31(c)(1).

31(c)(1)(iii) Consumer's waiver of waiting period before consummation or account opening.

* * * * *

31(h) Corrections and unintentional violations.

1. *Notice requirements*. Notice of a violation pursuant to § 1026.31(h)(1) or (2) should be in writing. The notice should make the consumer aware of the choices available under § 1026.31(h)(1)(iii) and (2)(iii). For notice to be adequate, the consumer should have at least 60 days in which to consider the available options and communicate a choice to the creditor or assignee.

2. *Reasonable time*. To claim the benefit of § 1026.31(h), a creditor or assignee must implement appropriate restitution and the consumer's elected adjustment within a reasonable time after the consumer provides notice of that election to the creditor or assignee. What length of time is reasonable will depend on what changes to a loan or credit plan's documentation, disclosure, or terms are necessary to effectuate the adjustment. In general, implementing appropriate restitution and completing an adjustment within 30 days of the consumer's providing notice of the election can be considered reasonable.

Section 1026.32—Requirements for High-Cost Mortgages

32(a) Coverage.

Paragraph 32(a)(1).

1. The term *high-cost mortgage* includes both a closed-end credit transaction and an open-end credit plan secured by the consumer's principal dwelling. For purposes of determining coverage under § 1026.32, an open-end consumer credit transaction is the account opening of an open-end credit plan. An advance of funds or a draw on the credit line under an open-end credit

plan subsequent to account opening does not constitute an open-end "transaction."

Paragraph 32(a)(1)(i).

1. *Average prime offer rate*. *High-cost mortgages* include closed- and open-end consumer credit transactions secured by the consumer's principal dwelling 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 the specified amount. The term "average prime offer rate" is defined in § 1026.35(a)(2).

2. *Comparable transaction*. Guidance for determining a comparable transaction is set forth in comments 35(a)(1)-1 and 35(a)(2)-2 and -3, which direct creditors to published tables of average prime offer rates for fixed- and variable-rate closed-end credit transactions. Creditors opening open-end credit plans must compare the annual percentage rate for the plan to the average prime offer rate for the most closely comparable closed-end transaction. To identify the most closely comparable closed-end transaction, the creditor should identify (1) whether the credit plan is fixed- or variable-rate; (2) if the plan is fixed-rate, the term of the plan to maturity; (3) if the plan is variable-rate, the duration of any initial, fixed-rate period; and (4) the date the interest rate for the plan is set. If a fixed-rate plan has no definite plan length, a creditor must use the average prime offer rate for a 30-year fixed-rate loan. If a variable-rate plan has an optional, fixed-rate feature, a creditor must use the rate table for variable-rate transactions. If a variable-rate plan has an initial, fixed-rate period that is not in whole years, a creditor must identify the most closely-comparable transaction by using the number of whole years closest to the actual fixed-rate period. For example, if a variable-rate plan has an initial fixed-rate period of 20 months, a creditor must use the average prime offer rate for a two-year adjustable-rate loan. If a variable-rate plan has no initial fixed-rate period, or if it has an initial fixed-rate period of less

than one year, a creditor must use the average prime offer rate for a one-year adjustable-rate loan. Thus, for example, if the initial fixed-rate period is six months, a creditor must use the average prime offer rate for a one-year adjustable-rate loan.

3. *Rate set*. Comment 35(a)(1)-2 provides guidance for determining the average prime offer rate in effect on the date that the interest rate for the transaction is set.

Paragraph 32(a)(1)(i)(B).

1. *Loan amount less than $50,000*. The creditor must determine whether to apply the APR threshold in § 1026.32(a)(1)(i)(B) based on the loan amount, which is the face amount of the note.

Paragraph 32(a)(1)(ii).

1. *Annual adjustment of $1,000 amount*. The $1,000 figure in § 1026.32(a)(1)(ii)(B) is adjusted annually on January 1 by the annual percentage change in the CPI that was in effect on the preceding June 1. The Bureau will publish adjustments after the June figures become available each year.

2. *Historical adjustment of $400 amount*. Prior to January 10, 2014, a mortgage loan was covered by § 1026.32 if the total points and fees payable by the consumer at or before loan consummation exceeded the greater of $400 or 8 percent of the total loan amount. The $400 figure was adjusted annually on January 1 by the annual percentage change in the CPI that was in effect on the preceding June 1, as follows:

* * * * *

3. *Applicable threshold*. For purposes of § 1026.32(a)(1)(ii), a creditor must determine the applicable points and fees threshold based on the face amount of the note (or, in the case of an open-end credit plan, the credit limit for the plan when the account is opened). However, the

creditor must apply the allowable points and fees percentage to the "total loan amount," as defined in § 1026.32(b)(4). For closed-end credit transactions, the total loan amount may be different than the face amount of the note. The $20,000 amount in § 1026.32(a)(1)(ii)(A) and (B) is adjusted annually on January 1 by the annual percentage change in the CPI that was in effect on the preceding June 1.

Paragraph 32(a)(1)(iii).

1. *Maximum period and amount*. Section 1026.32(a)(1)(iii) provides that a closed-end credit transaction or an open-end credit plan is a high-cost mortgage if, under the terms of the loan contract or open-end credit agreement, a creditor can charge either (i) a prepayment penalty more than 36 months after consummation or account opening, or (ii) total prepayment penalties that exceed 2 percent of any amount prepaid. Section 1026.32(a)(1)(iii) applies only for purposes of determining whether a transaction is subject to the high-cost mortgage requirements and restrictions in § 1026.32(c) and (d) and § 1026.34. However, if a transaction is subject to those requirements and restrictions by operation of any provision of § 1026.32(a)(1), including by operation of § 1026.32(a)(1)(iii), then the transaction may not include a prepayment penalty. *See* § 1026.32(d)(6). As a result, § 1026.32(a)(1)(iii) effectively establishes a maximum period during which a prepayment penalty may be imposed, and a maximum prepayment penalty amount that may be imposed, on a closed-end credit transaction or open-end credit plan (other than such a mortgage as described in § 1026.32(a)(2)) secured by a consumer's principal dwelling. Closed-end credit transactions covered by § 1026.43 are subject to the additional prepayment penalty restrictions set forth in § 1026.43(g).

2. *Examples; open-end credit.* If the terms of an open-end credit agreement allow for a prepayment penalty that exceeds 2 percent of the initial credit limit for the plan, the agreement

will be deemed to be a transaction with a prepayment penalty that exceeds 2 percent of the "amount prepaid" within the meaning of § 1026.32(a)(1)(iii). The following examples illustrate how to calculate whether the terms of an open-end credit agreement comply with the maximum prepayment penalty period and amounts described in § 1026.32(a)(1)(iii).

i. Assume that the terms of a home-equity line of credit with an initial credit limit of $10,000 require the consumer to pay a $500 flat fee if the consumer terminates the plan less than 36 months after account opening. The $500 fee constitutes a prepayment penalty under § 1026.32(b)(6)(ii), and the penalty is greater than 2 percent of the $10,000 initial credit limit, which is $200. Under § 1026.32(a)(1)(iii), the plan is a high-cost mortgage subject to the requirements and restrictions set forth in §§ 1026.32 and 1026.34.

ii. Assume that the terms of a home-equity line of credit with an initial credit limit of $10,000 and a ten-year term require the consumer to pay a $200 flat fee if the consumer terminates the plan prior to its normal expiration. The $200 prepayment penalty does not exceed 2 percent of the initial credit limit, but the terms of the agreement permit the creditor to charge the fee more than 36 months after account opening. Thus, under § 1026.32(a)(1)(iii), the plan is a high-cost mortgage subject to the requirements and restrictions set forth in §§ 1026.32 and 1026.34.

iii. Assume that, under the terms of a home-equity line of credit with an initial credit limit of $150,000, the creditor may charge the consumer any closing costs waived by the creditor if the consumer terminates the plan less than 36 months after account opening. Assume also that the creditor waived closing costs of $1,000. Bona fide third-party charges comprised $800 of the $1,000 in waived closing costs, and origination charges retained by the creditor or its affiliate comprised the remaining $200. Under § 1026.32(b)(6)(ii), the $800 in bona fide third-party

charges is not a prepayment penalty, while the $200 for the creditor's own originations costs is a prepayment penalty. The total prepayment penalty of $200 is less than 2 percent of the initial $150,000 credit limit, and the penalty does not apply if the consumer terminates the plan more than 36 months after account opening. Thus, the plan is not a high-cost mortgage under § 1026.32(a)(1)(iii).

32(a)(2) Exemptions

* * * * *

Paragraph 32(a)(2)(ii).

1. *Construction-permanent loans*. Section 1026.32 does not apply to a transaction to finance the initial construction of a dwelling. This exemption applies to a construction-only loan as well as to the construction phase of a construction-to-permanent loan. Section 1026.32 may apply, however, to permanent financing that replaces a construction loan, whether the permanent financing is extended by the same or a different creditor. When a construction loan may be permanently financed by the same creditor, § 1026.17(c)(6)(ii) permits the creditor to give either one combined disclosure for both the construction financing and the permanent financing, or a separate set of disclosures for each of the two phases as though they were two separate transactions. *See also* comment 17(c)(6)–2. Section 1026.17(c)(6)(ii) addresses only how a creditor may elect to disclose a construction to permanent transaction. Which disclosure option a creditor elects under § 1026.17(c)(6)(ii) does not affect the determination of whether the permanent phase of the transaction is subject to § 1026.32. When the creditor discloses the two phases as separate transactions, the annual percentage rate for the permanent phase must be compared to the average prime offer rate for a transaction that is comparable to the permanent financing to determine coverage under § 1026.32. Likewise, a single amount of points and fees,

also reflecting the appropriate charges from the permanent phase, must be calculated and compared with the total loan amount to determine coverage under § 1026.32. When the creditor discloses the two phases as a single transaction, a single annual percentage rate, reflecting the appropriate charges from both phases, must be calculated for the transaction in accordance with § 1026.32(a)(3) and appendix D to part 1026. This annual percentage rate must be compared to the average prime offer rate for a transaction that is comparable to the permanent financing to determine coverage under § 1026.32. Likewise, a single amount of points and fees, also reflecting the appropriate charges from both phases of the transaction, must be calculated and compared with the total loan amount to determine coverage under § 1026.32. If the transaction is determined to be a high-cost mortgage, only the permanent phase is subject to the requirements of §§ 1026.32 and 1026.34.

Paragraph 32(a)(2)(iii).

1. *Housing Finance Agency.* For purposes of § 1026.32(a)(2)(iii), a Housing Finance Agency means a housing finance agency as defined in 24 CFR 266.5.

32(a)(3) Determination of annual percentage rate.

1. *In general.* The guidance set forth in the commentary to § 1026.17(c)(1) and in § 1026.40 addresses calculation of the annual percentage rate disclosures for closed-end credit transactions and open-end credit plans, respectively. Section 1026.32(a)(3) requires a different calculation of the annual percentage rate solely to determine coverage under § 1026.32(a)(1)(i).

2. *Open-end credit.* The annual percentage rate for an open-end credit plan must be determined in accordance with § 1026.32(a)(3), regardless of whether there is an advance of funds at account opening. Section 1026.32(a)(3) does not require the calculation of the annual percentage rate for any extensions of credit subsequent to account opening. Any draw on the

credit line subsequent to account opening is not treated as a separate transaction for purposes of determining annual percentage rate threshold coverage.

3. *Rates that vary; index rate plus maximum margin.* i. Section 1026.32(a)(3)(ii) applies in the case of a closed- or open-end credit transaction when the interest rate for the transaction varies solely in accordance with an index. For purposes of § 1026.32(a)(3)(ii), a transaction's interest rate varies in accordance with an index even if the transaction has an initial rate that is not determined by the index used to make later interest rate adjustments provided that, following the first rate adjustment, the interest rate for the transaction varies solely in accordance with an index.

ii. In general, for transactions subject to § 1026.32(a)(3)(ii), the annual percentage rate is determined by adding the index rate in effect on the date that the interest rate for the transaction is set to the maximum margin for the transaction, as set forth in the agreement for the loan or plan. In some cases, a transaction subject to § 1026.32(a)(3)(ii) may have an initial rate that is a premium rate and is higher than the index rate plus the maximum margin as of the date the interest rate for the transaction is set. In such cases, the annual percentage rate is determined based on the initial "premium" rate.

iii. The following examples illustrate the rule:

A. Assume that the terms of a closed-end, adjustable-rate mortgage loan provide for a fixed, initial interest rate of 2 percent for two years following consummation, after which the interest rate will adjust annually in accordance with an index plus a 2 percent margin. Also assume that the applicable index is 3 percent as of the date the interest rate for the transaction is set, and a lifetime interest rate cap of 15 percent applies to the transaction. Pursuant to § 1026.32(a)(3)(ii), for purposes of determining the annual percentage rate for § 1026.32(a)(1)(i),

the interest rate for the transaction is 5 percent (3 percent index rate plus 2 percent margin).

B. Assume the same transaction terms set forth in paragraph 3.iii.A, except that an initial interest rate of 6 percent applies to the transaction. Pursuant to § 1026.32(a)(3)(ii), for purposes of determining the annual percentage rate for § 1026.32(a)(1)(i), the interest rate for the transaction is 6 percent.

C. Assume that the terms of an open-end credit agreement with a five-year draw period and a five-year repayment period provide for a fixed, initial interest rate of 2 percent for the first year of the repayment period, after which the interest rate will adjust annually pursuant to a publicly-available index outside the creditor's control, in accordance with the limitations applicable to open-end credit plans in § 1026.40(f). Also assume that, pursuant to the terms of the open-end credit agreement, a margin of 2 percent applies because the consumer is employed by the creditor, but that the margin will increase to 4 percent if the consumer's employment with the creditor ends. Finally, assume that the applicable index rate is 3.5 percent as of the date the interest rate for the transaction is set, and a lifetime interest rate cap of 15 percent applies to the transaction. Pursuant to § 1026.32(a)(3)(ii), for purposes of determining the annual percentage rate for § 1026.32(a)(1)(i), the interest rate for the transaction is 7.5 percent (3.5 percent index rate plus 4 percent maximum margin).

D. Assume the same transaction terms set forth in paragraph 3.iii.C, except that an initial interest rate of 8 percent applies to the transaction. Pursuant to § 1026.32(a)(3)(ii), for purposes of determining the annual percentage rate for § 1026.32(a)(1)(i), the interest rate for the transaction is 8 percent.

4. *Rates that vary other than in accordance with an index.* Section 1026.32(a)(3)(iii) applies when the interest rate applicable to a closed- or open-end transaction may or will vary,

except as described in § 1026.32(a)(3)(ii). Section 1026.32(a)(3)(iii) thus applies where multiple fixed rates apply to a transaction, such as in a step-rate mortgage. For example, assume the following interest rates will apply to a transaction: 3 percent for the first six months, 4 percent for the next 10 years, and 5 percent for the remaining loan term. In this example, § 1026.32(a)(3)(iii) would be used to determine the interest rate, and 5 percent would be the maximum interest rate applicable to the transaction used to determine the annual percentage rate for purposes of § 1026.32(a)(1)(i). Section 1026.32(a)(3)(iii) also applies to any other adjustable-rate loan where the interest rate may vary but according to a formula other than the sum of an index and a margin.

5. *Fixed-rate and -term payment options*. If an open-end credit plan has only a fixed rate during the draw period, a creditor must use the interest rate applicable to that feature to determine the annual percentage rate, as required by § 1026.32(a)(3)(i). However, if an open-end credit plan has a variable rate, but also offers a fixed-rate and -term payment option during the draw period, § 1026.32(a)(3) requires a creditor to use the terms applicable to the variable-rate feature for determining the annual percentage rate, as described in § 1026.32(a)(3)(ii).

32(b) Definitions.

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Paragraph 32(b)(2)(i).

1. *Finance charge*. The points and fees calculation under § 1026.32(b)(2) generally does not include items that are included in the finance charge but that are not known until after account opening, such as minimum monthly finance charges or charges based on account activity or inactivity. Transaction fees also generally are not included in the points and fees calculation, except as provided in § 1026.32(b)(2)(vi). See comments 32(b)(1)-1 and 32(b)(1)(i)-1 and -2 for

additional guidance concerning the calculation of points and fees.

Paragraph 32(b)(2)(i)(B).

1. See comment 32(b)(1)(i)(B)-1 for further guidance concerning the exclusion of mortgage insurance premiums payable in connection with any Federal or State agency program.

Paragraph 32(b)(2)(i)(C).

1. See comment 32(b)(1)(i)(C)-1 and -2 for further guidance concerning the exclusion of mortgage insurance premiums payable for any guaranty or insurance that protects the creditor against the consumer's default or other credit loss and that is not in connection with any Federal or State agency program.

Paragraph 32(b)(2)(i)(D).

1. For purposes of § 1026.32(b)(2)(i)(D), the term *loan originator* means a loan originator as that term is defined in § 1026.36(a)(1), without regard to § 1026.36(a)(2). See comments 32(b)(1)(i)(D)-1, -3, and -4 for further guidance concerning the exclusion of bona fide third-party charges from points and fees.

Paragraph 32(b)(2)(i)(E).

1. See comments 32(b)(1)(i)(E)-1 through -3 for further guidance concerning the exclusion of up to two bona fide discount points from points and fees.

Paragraph 32(b)(2)(i)(F).

1. See comments 32(b)(1)(i)(F)-1 and -2 for further guidance concerning the exclusion of up to one bona fide discount point from points and fees.

Paragraph 32(b)(2)(ii).

1. For purposes of § 1026.32(b)(2)(ii), the term *loan originator* means a loan originator as that term is defined in § 1026.36(a)(1), without regard to § 1026.36(a)(2). See the

commentary to § 1026.32(b)(1)(ii) for additional guidance concerning the inclusion of loan originator compensation in points and fees.

Paragraph 32(b)(2)(iii).

1. *Other charges*. See comment 32(b)(1)(iii)-1 for further guidance concerning the inclusion of items listed in § 1026.4(c)(7) in points and fees.

Paragraph 32(b)(2)(iv).

1. *Credit insurance and debt cancellation or suspension coverage*. See comments 32(b)(1)(iv)-1 through -3 for further guidance concerning the inclusion of premiums for credit insurance and debt cancellation or suspension coverage in points and fees.

Paragraph 32(b)(2)(vii).

1. *Participation fees.* Fees charged for participation in a credit plan must be included in the points and fees calculation for purposes of § 1026.32 if payable at or before account opening. These fees include annual fees or other periodic fees that must be paid as a condition of access to the plan itself. See commentary to § 1026.4(c)(4) for a description of these fees.

Paragraph 32(b)(2)(viii).

1. *Transaction fees to draw down the credit line.* Section 1026.32(b)(2)(viii) requires creditors in open-end credit plans to include in points and fees any transaction fee, including any per-transaction fee, that will be charged for a draw on the credit line. Section 1026.32(b)(2)(viii) requires the creditor to assume that the consumer will make at least one draw during the term of the credit plan. Thus, if the terms of the open-end credit plan permit the creditor to charge a $10 transaction fee each time the consumer draws on the credit line, § 1026.32(b)(2)(viii) requires the creditor to include one $10 charge in the points and fees calculation.

2. *Fixed-rate loan option.* If the terms of an open-end credit plan permit a consumer to

draw on the credit line using either a variable-rate feature or a fixed-rate feature, § 1026.32(b)(2)(viii) requires the creditor to use the terms applicable to the variable-rate feature for determining the transaction fee that must be included in the points and fees calculation.

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32(b)(6) Prepayment penalty.

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3. *Examples of prepayment penalties; open-end credit.* For purposes of § 1026.32(b)(6)(ii), the term *prepayment penalty* includes a charge, including a waived closing cost, imposed by the creditor if the consumer terminates the open-end credit plan prior to the end of its term. This includes a charge imposed if the consumer terminates the plan outright or, for example, if the consumer terminates the plan in connection with obtaining a new loan or plan with the current holder of the existing plan, a servicer acting on behalf of the current holder, or an affiliate of either. However, the term *prepayment penalty* does not include a waived bona fide third-party charge imposed by the creditor if the consumer terminates the open-end credit plan during the first 36 months after account opening.

4. *Fees that are not prepayment penalties; open-end credit.* For purposes of § 1026.32(b)(6)(ii), fees that are not prepayment penalties include, for example:

i. Fees imposed for preparing and providing documents when an open-end credit plan is terminated, if such fees are imposed whether or not the consumer terminates the plan prior to the end of its term. Examples include a payoff statement, a reconveyance document, or another document releasing the creditor's security interest in the dwelling that secures the line of credit.

ii. Loan guarantee fees.

iii. Any fee that the creditor may impose in lieu of termination and acceleration under

comment 40(f)(2)-2.

32(c) Disclosures.

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32(c)(2) Annual percentage rate.

1. *Disclosing annual percentage rate for open-end high-cost mortgages*. In disclosing the annual percentage rate for an open-end, high-cost mortgage under § 1026.32(c)(2), creditors must comply with § 1026.6(a)(1). If a fixed-rate, discounted introductory or initial interest rate is offered on the transaction, § 1026.32(c)(2) requires a creditor to disclose the annual percentage rate of the fixed-rate, discounted introductory or initial interest rate feature, and the rate that would apply when the feature expires.

32(c)(3) Regular payment; minimum periodic payment example; balloon payment.

1. *Balloon payment*. Except as provided in § 1026.32(d)(1)(ii) and (iii), a mortgage transaction subject to this section may not include a payment schedule that results in a balloon payment.

Paragraph 32(c)(3)(i)

1. *General.* The regular payment is the amount due from the consumer at regular intervals, such as monthly, bimonthly, quarterly, or annually. There must be at least two payments, and the payments must be in an amount and at such intervals that they fully amortize the amount owed. In disclosing the regular payment, creditors may rely on the rules set forth in § 1026.18(g); however, the amounts for voluntary items, such as credit life insurance, may be included in the regular payment disclosure only if the consumer has previously agreed to the amounts.

i. If the loan has more than one payment level, the regular payment for each level must be

disclosed. For example:

A. In a 30-year graduated payment mortgage where there will be payments of $300 for the first 120 months, $400 for the next 120 months, and $500 for the last 120 months, each payment amount must be disclosed, along with the length of time that the payment will be in effect.

B. If interest and principal are paid at different times, the regular amount for each must be disclosed.

C. In discounted or premium variable-rate transactions where the creditor sets the initial interest rate and later rate adjustments are determined by an index or formula, the creditor must disclose both the initial payment based on the discount or premium and the payment that will be in effect thereafter. Additional explanatory material which does not detract from the required disclosures may accompany the disclosed amounts. For example, if a monthly payment is $250 for the first six months and then increases based on an index and margin, the creditor could use language such as the following: "Your regular monthly payment will be $250 for six months. After six months your regular monthly payment will be based on an index and margin, which currently would make your payment $350. Your actual payment at that time may be higher or lower."

32(c)(4) Variable-rate.

1. *Calculating "worst-case" payment example.* For a closed-end credit transaction, creditors may rely on instructions in § 1026.19(b)(2)(viii)(B) for calculating the maximum possible increases in rates in the shortest possible timeframe, based on the face amount of the note (not the hypothetical loan amount of $10,000 required by § 1026.19(b)(2)(viii)(B)). The creditor must provide a maximum payment for each payment level, where a payment schedule

provides for more than one payment level and more than one maximum payment amount is possible. For an open-end credit plan, the maximum monthly payment must be based on the following assumptions:

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

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

iii. If the annual percentage rate may increase during the plan, the maximum annual percentage rate that is included in the contract, as required by § 1026.30, applies to the plan at account opening.

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32(d) Limitations.

1. *Additional prohibitions applicable under other sections.* Section 1026.34 sets forth certain prohibitions in connection with high-cost mortgages, in addition to the limitations in § 1026.32(d). Further, § 1026.35(b) prohibits certain practices in connection with closed-end transactions that meet the coverage test in § 1026.35(a). Because the coverage test in § 1026.35(a) is generally broader than the coverage test in § 1026.32(a), most closed-end high-cost mortgages are also subject to the prohibitions set forth in § 1026.35(b) (such as escrows), in addition to the limitations in § 1026.32(d).

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32(d)(1)(i) Balloon payment.

1. *Regular periodic payments.* The repayment schedule for a high-cost mortgage must fully amortize the outstanding principal balance through "regular periodic payments." A

payment is a "regular periodic payment" if it is not more than two times the amount of other payments. For purposes of open-end credit plans, the term "regular periodic payment" or "periodic payment" means the required minimum periodic payment.

2. *Repayment period.* If the terms of an open-end credit plan provide for a repayment period during which no further draws may be taken, the limitations in § 1026.32(d)(1)(i) apply to regular periodic payments required by the credit plan during the draw period, but do not apply to any adjustment in the regular periodic payment that results from the transition from the credit plan's draw period to its repayment period. Further, the limitation on balloon payments in § 1026.32(d)(1)(i) does not preclude increases in regular periodic payments that result solely from the initial draw or additional draws on the credit line during the draw period.

3. *No repayment period.* If the terms of an open-end credit plan do not provide for a repayment period, the repayment schedule must fully amortize any outstanding principal balance in the draw period through regular periodic payments. However, the limitation on balloon payments in § 1026.32(d)(1)(i) does not preclude increases in regular periodic payments that result solely from the initial draw or additional draws on the credit line during the draw period.

32(d)(2) Negative amortization.

1. *Negative amortization.* The prohibition against negative amortization in a high-cost mortgage does not preclude reasonable increases in the principal balance that result from events permitted by the legal obligation unrelated to the payment schedule. For example, when a consumer fails to obtain property insurance and the creditor purchases insurance, the creditor may add a reasonable premium to the consumer's principal balance, to the extent permitted by applicable law and the consumer's legal obligation.

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32(d)(8) Acceleration of debt.

Paragraph 32(d)(8)(i).

1. *Fraud or material misrepresentation.* A creditor may terminate a loan or open-end credit agreement and accelerate the balance if there has been fraud or material misrepresentation by the consumer in connection with the loan or open-end credit agreement. What constitutes fraud or misrepresentation is determined by applicable State law and may include acts of omission as well as overt acts, as long as any necessary intent on the part of the consumer exists.

Paragraph 32(d)(8)(ii).

1. *Failure to meet repayment terms.* A creditor may terminate a loan or open-end credit agreement and accelerate the balance when the consumer fails to meet the repayment terms resulting in a default in payment under the agreement; a creditor may do so, however, only if the consumer actually fails to make payments resulting in a default in the agreement. For example, a creditor may not terminate and accelerate if the consumer, in error, sends a payment to the wrong location, such as a branch rather than the main office of the creditor. If a consumer files for or is placed in bankruptcy, the creditor may terminate and accelerate under § 1026.32(d)(8)(i) if the consumer fails to meet the repayment terms resulting in a default of the agreement. Section 1026.32(d)(8)(i) does not override any State or other law that requires a creditor to notify a consumer of a right to cure, or otherwise places a duty on the creditor before it can terminate a loan or open-end credit agreement and accelerate the balance.

Paragraph 32(d)(8)(iii).

1. *Impairment of security.* A creditor may terminate a loan or open-end credit agreement and accelerate the balance if the consumer's action or inaction adversely affects the creditor's security for the loan, or any right of the creditor in that security. Action or inaction by third

parties does not, in itself, permit the creditor to terminate and accelerate.

2. *Examples.* * ***** *****

ii. By contrast, the filing of a judgment against the consumer would be cause for termination and acceleration only if the amount of the judgment and collateral subject to the judgment is such that the creditor's security is adversely and materially affected in violation of the loan or open-end credit agreement. If the consumer commits waste or otherwise destructively uses or fails to maintain the property, including demolishing or removing structures from the property, such that the action adversely affects the security in a material way, the loan or open-end credit agreement may be terminated and the balance accelerated. Illegal use of the property by the consumer would permit termination and acceleration if it subjects the property to seizure. If one of two consumers obligated on a loan dies, the creditor may terminate the loan and accelerate the balance if the security is adversely affected. If the consumer moves out of the dwelling that secures the loan and that action adversely affects the security in a material way, the creditor may terminate a loan or open-end credit agreement and accelerate the balance.

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Section 1026.34—Prohibited Acts or Practices in Connection with High-Cost Mortgages

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34(a)(4) Repayment ability for high-cost mortgages.

1. *Application of repayment ability rule.* The § 1026.34(a)(4) prohibition against making loans without regard to consumers' repayment ability applies to open-end, high-cost mortgages. The § 1026.43 repayment ability provisions apply to closed-end, high-cost mortgages. Accordingly, in connection with a closed-end, high-cost mortgage, § 1026.34(a)(4) requires a creditor to comply with the repayment ability requirements set forth in § 1026.43.

2. *General prohibition.* Section 1026.34(a)(4) prohibits a creditor from extending credit under a high-cost, open-end credit plan based on the value of the consumer's collateral without regard to the consumer's repayment ability as of account opening, including the consumer's current and reasonably expected income, employment, assets other than the collateral, current obligations, and property tax and insurance obligations. A creditor may base its determination of repayment ability on current or reasonably expected income from employment or other sources, on assets other than the collateral, or both.

3. *Other dwelling-secured obligations.* For purposes of § 1026.34(a)(4), current obligations include another credit obligation of which the creditor has knowledge undertaken prior to or at account opening and secured by the same dwelling that secures the high-cost mortgage transaction.

4. *Discounted introductory rates and non-amortizing payments.* A credit agreement may determine a consumer's initial payments using a temporarily discounted interest rate or permit the consumer to make initial payments that are non-amortizing. In such cases the creditor may determine repayment ability using the assumptions provided in § 1026.34(a)(4)(iv).

5. *Repayment ability as of account opening.* Section 1026.34(a)(4) prohibits a creditor from disregarding repayment ability based on the facts and circumstances known to the creditor as of account opening. In general, a creditor does not violate this provision if a consumer defaults because of a significant reduction in income (for example, a job loss) or a significant obligation (for example, an obligation arising from a major medical expense) that occurs after account opening. However, if a creditor has knowledge as of account opening of reductions in income (for example, if a consumer's written application states that the consumer plans to retire within twelve months without obtaining new employment, or states that the consumer will

transition from full-time to part-time employment), the creditor must consider that information.

6. * * *

7. * * *

34(a)(4)(ii) Verification of Repayment Ability

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Paragraph 34(a)(4)(ii)(B).

1. *In general.* A credit report may be used to verify current obligations. A credit report, however, might not reflect an obligation that a consumer has listed on an application. The creditor is responsible for considering such an obligation, but the creditor is not required to independently verify the obligation. Similarly, a creditor is responsible for considering certain obligations undertaken just before or at account opening and secured by the same dwelling that secures the transaction (for example, a "piggy back" loan), of which the creditor knows, even if not reflected on a credit report. *See* comment 34(a)(4)-3.

34(a)(4)(iii) Presumption of compliance.

1. *In general.* A creditor is presumed to have complied with § 1026.34(a)(4) if the creditor follows the three underwriting procedures specified in paragraph 34(a)(4)(iii) for verifying repayment ability, determining the payment obligation, and measuring the relationship of obligations to income. The procedures for verifying repayment ability are required under § 1026.34(a)(4)(ii); the other procedures are not required but, if followed along with the required procedures, create a presumption that the creditor has complied with § 1026.34(a)(4). The consumer may rebut the presumption with evidence that the creditor nonetheless disregarded repayment ability despite following these procedures. For example, evidence of a very high debt-to-income ratio and a very limited residual income could be sufficient to rebut the

presumption, depending on all of the facts and circumstances. If a creditor fails to follow one of the non-required procedures set forth in § 1026.34(a)(4)(iii), then the creditor's compliance is determined based on all of the facts and circumstances without there being a presumption of either compliance or violation.

Paragraph 34(a)(4)(iii)(B).

1. *Determination of payment schedule.* To retain a presumption of compliance under § 1026.34(a)(4)(iii), a creditor must determine the consumer's ability to pay the principal and interest obligation based on the maximum scheduled payment. In general, a creditor should determine a payment schedule for purposes of § 1026.34(a)(4)(iii)(B) based on the guidance in the commentary to § 1026.32(c)(3).

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34(a)(5) Pre-loan counseling.

34(a)(5)(i) Certification of counseling required.

1. *HUD-approved counselor.* For purposes of § 1026.34(a)(5), counselors approved by the Secretary of the U.S. Department of Housing and Urban Development are homeownership counselors certified pursuant to section 106(e) of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x(e)), or as otherwise determined by the Secretary.

2. *State housing finance authority.* For purposes of § 1026.34(a)(5), a "State housing finance authority" has the same meaning as "State housing finance agency" provided in 24 CFR 214.3.

3. *Processing applications.* Prior to receiving certification of counseling, a creditor may not extend a high-cost mortgage, but may engage in other activities, such as processing an application that will result in the extension of a high-cost mortgage (by, for example, ordering an

appraisal or title search).

4. *Form of certification.* The written certification of counseling required by § 1026.34(a)(5)(i) may be received by mail, email, facsimile, or any other method, so long as the certification is in a retainable form.

5. *Purpose of certification.* Certification of counseling indicates that a consumer has received counseling as required by § 1026.34(a)(5), but it does not indicate that a counselor has made a judgment or determination as to the appropriateness of the transaction for the consumer.

34(a)(5)(ii) Timing of counseling.

1. *Disclosures for open-end credit plans.* Section 1026.34(a)(5)(ii) permits receipt of either the good faith estimate required by section 5(c) of RESPA or the disclosures required under § 1026.40 to allow counseling to occur. Pursuant to 12 CFR 1024.7(h), the disclosures required by § 1026.40 can be provided in lieu of a good faith estimate for open-end credit plans.

2. *Initial disclosure.* Counseling may occur after receipt of either an initial good faith estimate required by section 5(c) of RESPA or a disclosure form pursuant to § 1026.40, regardless of whether a revised good faith estimate or revised disclosure form pursuant to § 1026.40 is subsequently provided to the consumer.

34(a)(5)(iv) Content of certification.

1. *Statement of counseling on advisability.* A statement that a consumer has received counseling on the advisability of the high-cost mortgage means that the consumer has received counseling about key terms of the mortgage transaction, as set out in either the good faith estimate required by section 5(c) of RESPA or the disclosures provided to the consumer pursuant to § 1026.40; the consumer's budget, including the consumer's income, assets, financial obligations, and expenses; and the affordability of the mortgage transaction for the consumer.

Examples of such terms of the mortgage transaction include the initial interest rate, the initial monthly payment, whether the payment may increase, how the minimum periodic payment will be determined, and fees imposed by the creditor, as may be reflected in the applicable disclosure. A statement that a consumer has received counseling on the advisability of the high-cost mortgage does not require the counselor to have made a judgment or determination as to the appropriateness of the mortgage transaction for the consumer.

2. *Statement of verification.* A statement that a counselor has verified that the consumer has received the disclosures required by either § 1026.32(c) or by RESPA for the high-cost mortgage means that a counselor has confirmed, orally, in writing, or by some other means, receipt of such disclosures with the consumer.

34(a)(5)(v) Counseling fees.

1. *Financing.* Section 1026.34(a)(5)(v) does not prohibit a creditor from financing the counseling fee as part of the transaction for a high-cost mortgage, if the fee is a bona fide third-party charge as provided by § 1026.32(b)(5)(i).

34(a)(5)(vi) Steering prohibited.

1. An example of an action that constitutes steering would be when a creditor repeatedly highlights or otherwise distinguishes the same counselor in the notices the creditor provides to consumers pursuant to § 1026.34(a)(5)(vii).

2. Section 1026.34(a)(5)(vi) does not prohibit a creditor from providing a consumer with objective information related to counselors or counseling organizations in response to a consumer's inquiry. An example of an action that would not constitute steering would be when a consumer asks the creditor for information about the fees charged by a counselor, and the creditor responds by providing the consumer information about fees charged by the counselor to

other consumers that previously obtained counseling pursuant to § 1026.34(a)(5).

34(a)(6) Recommended default.

1. *Facts and circumstances*. Whether a creditor or mortgage broker "recommends or encourages" default for purposes of § 1026.34(a)(6) depends on all of the relevant facts and circumstances.

2. *Examples*. i. A creditor or mortgage broker "recommends or encourages" default when the creditor or mortgage broker advises the consumer to stop making payments on an existing loan in a manner that is likely to cause the consumer to default on the existing loan.

ii. When delay of consummation of a high-cost mortgage occurs for reasons outside the control of a creditor or mortgage broker, that creditor or mortgage broker does not "recommend or encourage" default because the creditor or mortgage broker informed a consumer that:

A. The consumer's high-cost mortgage is scheduled to be consummated prior to the due date for the next payment due on the consumer's existing loan, which is intended to be paid by the proceeds of the new high-cost mortgage; and

B. Any delay of consummation of the new high-cost mortgage beyond the payment due date of the existing loan will not relieve the consumer of the obligation to make timely payment on that loan.

34(a)(8) Late fees.

34(a)(8)(i) General.

1. For purposes of § 1026.34(a)(8), in connection with an open-end credit plan, the amount of the payment past due is the required minimum periodic payment as provided under the terms of the open-end credit agreement.

34(a)(8)(iii) Multiple late charges assessed on payment subsequently paid.

1. Section 1026.34(a)(8)(iii) prohibits the pyramiding of late fees or charges in connection with a high-cost mortgage payment. For example, assume that a consumer's regular periodic payment of $500 is due on the 1st of each month. On August 25, the consumer makes a $500 payment which was due on August 1, and as a result, a $10 late charge is assessed. On September 1, the consumer makes another $500 payment for the regular periodic payment due on September 1, but does not pay the $10 late charge assessed on the August payment. Under § 1026.34(h)(2), it is impermissible to allocate $10 of the consumer's September 1 payment to cover the late charge, such that the September payment becomes delinquent. In short, because the $500 payment made on September 1 is a full payment for the applicable period and is paid by its due date or within any applicable grace period, no late charge may be imposed on the account in connection with the September payment.

34(a)(8)(iv) Failure to make required payment.

1. Under § 1026.34(a)(8)(iv), if a consumer fails to make one or more required payments and then resumes making payments but fails to bring the account current, it is permissible, if permitted by the terms of the loan contract or open-end credit agreement, to apply the consumer's payments first to the past due payment(s) and to impose a late charge on each subsequent required payment until the account is brought current. To illustrate: Assume that a consumer's regular periodic payment of $500 is due on the 1st of each month, or before the expiration of a 15-day grace period. Also assume that the consumer fails to make a timely installment payment by August 1 (or within the applicable grace period), and a $10 late charge therefore is imposed. The consumer resumes making monthly payments on September 1. Under § 1026.34(a)(8)(iv), if permitted by the terms of the loan contract, the creditor may apply the $500 payment made on September 1 to satisfy the missed $500 payment that was due on August

1. If the consumer makes no other payment prior to the end of the grace period for the payment that was due on September 1, the creditor may also impose a $10 late fee for the payment that was due on September 1.

34(a)(10) Financing of points and fees.

1. *Points and fees*. For purposes of § 1026.34(a)(10), "points and fees" means those items that are required to be included in the calculation of points and fees under § 1026.32(b)(1) and (2). Thus, for example, in connection with the extension of credit under a high-cost mortgage, a creditor may finance a fee charged by a third-party counselor in connection with the consumer's receipt of pre-loan counseling under § 1026.34(a)(5), because, pursuant to § 1026.32(b)(1)(i)(D) and (b)(2)(i)(D), such a fee is excluded from the calculation of points and fees as a bona fide third-party charge.

2. *Examples of financing points and fees*. For purposes of § 1026.34(a)(10), points and fees are financed if, for example, they are added to the loan balance or financed through a separate note, if the note is payable to the creditor or to an affiliate of the creditor. In the case of an open-end credit plan, a creditor also finances points and fees if the creditor advances funds from the credit line to cover the fees.

34(b) Prohibited acts or practices for dwelling-secured loans; structuring loans to evade high-cost mortgage requirements.

1. *Examples*. i. A creditor structures a transaction in violation of § 1026.34(b) if, for example, the creditor structures a loan that would otherwise be a high-cost mortgage as two or more loans, whether made consecutively or at the same time, for example, to divide the loan fees to avoid the points and fees threshold for high-cost mortgages in § 1026.32(a)(1)(ii).

ii. A creditor does not structure a transaction in violation of § 1026.34(b) when a loan to

finance the initial construction of a dwelling may be permanently financed by the same creditor, such as a "construction-to-permanent" loan, and the construction phase and the permanent phase are treated as separate transactions. Section 1026.17(c)(6)(ii) permits the creditor to give either one combined disclosure for both the construction financing and the permanent financing, or a separate set of disclosures for each of the two phases as though they were two separate transactions. *See also* comment 17(c)(6)–2.

2. *Amount of credit extended.* Where a loan is documented as open-end credit but the features and terms or other circumstances demonstrate that it does not meet the definition of open-end credit, the loan is subject to the rules for closed-end credit. Thus, in determining the "total loan amount" for purposes of applying the triggers under § 1026.32, the amount of credit that would have been extended if the loan had been documented as a closed-end loan is a factual determination to be made in each case. Factors to be considered include the amount of money the consumer originally requested, the amount of the first advance or the highest outstanding balance, or the amount of the credit line. The full amount of the credit line is considered only to the extent that it is reasonable to expect that the consumer might use the full amount of credit.

Section 1026.36—Prohibited Acts or Practices in Connection with Credit Secured by a Dwelling

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36(k) Negative amortization counseling.

36(k)(1) Counseling required.

1. *HUD-certified or - approved counselor or counseling organization.* For purposes of § 1026.36(k), organizations or counselors certified or approved by the U.S. Department of Housing and Urban Development (HUD) to provide the homeownership counseling required by § 1026.36(k) include counselors and counseling organizations that are certified or approved

pursuant to section 106(e) of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x(e)) or 24 CFR part 214, unless HUD determines otherwise.

2. *Homeownership counseling.* The counseling required under § 1026.36(k) must include information regarding the risks and consequences of negative amortization.

3. *Documentation.* Examples of documentation that demonstrate a consumer has received the counseling required under § 1026.36(k) include a certificate of counseling, letter, or email from a HUD-certified or -approved counselor or counseling organization indicating that the consumer has received homeownership counseling.

4. *Processing applications.* Prior to receiving documentation that a consumer has received the counseling required under § 1026.36(k), a creditor may not extend credit to a first-time borrower in connection with a closed-end transaction secured by a dwelling that may result in negative amortization, but may engage in other activities, such as processing an application for such a transaction (by, for example, ordering an appraisal or title search).

36(k)(3) Steering prohibited.

1. See comments 34(a)(5)(vi)-1 and -2 for guidance concerning steering.