

List of Subjects

12 CFR Part 1024

Condominiums, Consumer protection, Housing, Mortgagees, Mortgages, Mortgage Servicing, Recordkeeping requirements, Reporting.

12 CFR Part 1026

Advertising, Consumer Protection, Mortgages, Reporting and recordkeeping requirements, Truth in lending.

Authority and Issuance

For the reasons stated in the preamble, the Bureau amends Regulation X, 12 CFR part 1024, and Regulation Z, 12 CFR part 1026, as set forth below:

PART 1024—REAL ESTATE SETTLEMENT PROCEDURES ACT (REGULATION X)

1. The authority citation for part 1024 continues to read as follows:

AUTHORITY: 12 U.S.C. 2603-2605, 2607, 2609, 2617, 5512, 5581.

2. Section 1024.20 is added to read as follows:

§ 1024.20 List of homeownership counseling organizations.

(a) *Provision of list.* (1) Except as otherwise provided in this section, not later than three business days after a lender, mortgage broker, or dealer receives an application, or information sufficient to complete an application, the lender must provide the loan applicant with a clear and conspicuous written list of homeownership counseling organizations that provide relevant counseling services in the loan applicant's location. The list of homeownership counseling organizations distributed to each loan applicant under this section shall be obtained no earlier than 30 days prior to the time when the list is provided to the loan applicant from either:

(i) The website maintained by the Bureau for lenders to use in complying with the requirements of this section; or

(ii) Data made available by the Bureau or HUD for lenders to use in complying with the requirements of this section, provided that the data is used in accordance with instructions provided with the data.

(2) The list of homeownership counseling organizations provided under this section may be combined and provided with other mortgage loan disclosures required pursuant to Regulation Z, 12 CFR part 1026, or this part unless prohibited by Regulation Z or this part.

(3) A mortgage broker or dealer may provide the list of homeownership counseling organizations required under this section to any loan applicant from whom it receives or for whom it prepares an application. If the mortgage broker or dealer has provided the required list of homeownership counseling organizations, the lender is not required to provide an additional list. The lender is responsible for ensuring that the list of homeownership counseling organizations is provided to a loan applicant in accordance with this section.

(4) If the lender, mortgage broker, or dealer does not provide the list of homeownership counseling organizations required under this section to the loan applicant in person, the lender must mail or deliver the list to the loan applicant by other means. The list may be provided in electronic form, subject to compliance with the consumer consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act), 15 U.S.C. 7001 *et seq.*

(5) The lender is not required to provide the list of homeownership counseling organizations required under this section if, before the end of the three-business-day period

provided in paragraph (a)(1) of this section, the lender denies the application or the loan applicant withdraws the application.

(6) If a mortgage loan transaction involves more than one lender, only one list of homeownership counseling organizations required under this section shall be given to the loan applicant and the lenders shall agree among themselves which lender will comply with the requirements that this section imposes on any or all of them. If there is more than one loan applicant, the required list of homeownership counseling organizations may be provided to any loan applicant with primary liability on the mortgage loan obligation.

(b) *Open-end lines of credit (home-equity plans) under Regulation Z.* For a federally related mortgage loan that is a home-equity line of credit subject to Regulation Z, 12 CFR 1026.40, a lender or mortgage broker that provides the loan applicant with the list of homeownership organizations required under this section may comply with the timing and delivery requirements set out in either paragraph (a) of this section or 12 CFR 1026.40(b).

(c) *Exemptions.* (1) *Reverse mortgage transactions.* A lender is not required to provide an applicant for a reverse mortgage transaction subject to 12 CFR 1026.33(a) the list of homeownership counseling organizations required under this section.

(2) *Timeshare plans.* A lender is not required to provide an applicant for a mortgage loan secured by a timeshare, as described under 11 U.S.C. 101(53D), the list of homeownership counseling organizations required under this section.

PART 1026—TRUTH IN LENDING (REGULATION Z)

3. 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 A—General

4. Section 1026.1 is amended by revising paragraph (d)(5) to read as follows:

§ 1026.1 Authority, purpose, coverage, organization, enforcement, and liability.

* * * * *

(d) * * *

(5) Subpart E contains special rules for mortgage transactions. Section 1026.32 requires certain disclosures and provides limitations for closed-end credit transactions and open-end credit plans that have rates or fees above specified amounts or certain prepayment penalties. Section 1026.33 requires special disclosures, including the total annual loan cost rate, for reverse mortgage transactions. Section 1026.34 prohibits specific acts and practices in connection with high-cost mortgages, as defined in § 1026.32(a). Section 1026.35 prohibits specific acts and practices in connection with closed-end higher-priced mortgage loans, as defined in § 1026.35(a). Section 1026.36 prohibits specific acts and practices in connection with an extension of credit secured by a dwelling.

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Subpart E—Special Rules for Certain Home Mortgage Transactions

5. Section 1026.31 is amended by revising paragraph (c)(1) and adding paragraph (h) to read as follows:

§ 1026.31 General rules.

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(c) *Timing of disclosure.* (1) *Disclosures for high-cost mortgages.* The creditor shall furnish the disclosures required by § 1026.32 at least three business days prior to consummation or account opening of a high-cost mortgage as defined in § 1026.32(a).

(i) *Change in terms.* After complying with this paragraph (c)(1) and prior to consummation or account opening, if the creditor changes any term that makes the disclosures inaccurate, new disclosures shall be provided in accordance with the requirements of this subpart.

(ii) *Telephone disclosures.* A creditor may provide new disclosures required by paragraph (c)(1)(i) of this section by telephone if the consumer initiates the change and if, prior to or at consummation or account opening:

(A) The creditor provides new written disclosures; and

(B) The consumer and creditor sign a statement that the new disclosures were provided by telephone at least three days prior to consummation or account opening, as applicable.

(iii) *Consumer's waiver of waiting period before consummation or account opening.* The consumer may, after receiving the disclosures required by this paragraph (c)(1), modify or waive the three-day waiting period between delivery of those disclosures and consummation or account opening if the consumer determines that the extension of credit is needed to meet a bona fide personal financial emergency. To modify or waive the right, the consumer shall give the creditor a dated written statement that describes the emergency, specifically modifies or waives the waiting period, and bears the signature of all the consumers entitled to the waiting period.

Printed forms for this purpose are prohibited, except when creditors are permitted to use printed forms pursuant to § 1026.23(e)(2).

* * * * *

(h) *Corrections and unintentional violations.* A creditor or assignee in a high-cost mortgage, as defined in § 1026.32(a), who, when acting in good faith, failed to comply with any requirement under section 129 of the Act will not be deemed to have violated such requirement if

the creditor or assignee satisfies either of the following sets of conditions:

(1) (i) Within 30 days of consummation or account opening and prior to the institution of any action, the consumer is notified of or discovers the violation;

(ii) Appropriate restitution is made within a reasonable time; and

(iii) Within a reasonable time, whatever adjustments are necessary are made to the loan or credit plan to either, at the choice of the consumer:

(A) Make the loan or credit plan satisfy the requirements of this chapter; or

(B) Change the terms of the loan or credit plan in a manner beneficial to the consumer so that the loan or credit plan will no longer be a high-cost mortgage.

(2) (i) Within 60 days of the creditor's discovery or receipt of notification of an unintentional violation or bona fide error and prior to the institution of any action, the consumer is notified of the compliance failure;

(ii) Appropriate restitution is made within a reasonable time; and

(iii) Within a reasonable time, whatever adjustments are necessary are made to the loan or credit plan to either, at the choice of the consumer:

(A) Make the loan or credit plan satisfy the requirements of this chapter; or

(B) Change the terms of the loan or credit plan in a manner beneficial to the consumer so that the loan or credit plan will no longer be a high-cost mortgage.

6. Section 1026.32 is amended by:

A. Revising paragraph (a);

B. Adding paragraphs (b)(2), (3)(ii), (4)(ii), and (6)(ii);

C. Revising paragraphs (c)(3) through (5); and

D. Revising paragraph (d) introductory text, revising paragraphs (d)(1) and (6), removing

and reserving paragraph (d)(7), and revising paragraph (d)(8).

The additions and revisions read as follows:

§ 1026.32 Requirements for high-cost mortgages.

(a) *Coverage.* (1) The requirements of this section apply to a *high-cost mortgage*, which is any consumer credit transaction that is secured by the consumer's principal dwelling, other than as provided in paragraph (a)(2) of this section, and in which:

(i) The annual percentage rate applicable to the transaction, as determined in accordance with paragraph (a)(3) of this section, will exceed the average prime offer rate, as defined in § 1026.35(a)(2), for a comparable transaction by more than:

(A) 6.5 percentage points for a first-lien transaction, other than as described in paragraph (a)(1)(i)(B) of this section;

(B) 8.5 percentage points for a first-lien transaction if the dwelling is personal property and the loan amount is less than \$50,000; or

(C) 8.5 percentage points for a subordinate-lien transaction; or

(ii) The transaction's total points and fees, as defined in paragraphs (b)(1) and (2) of this section, will exceed:

(A) 5 percent of the total loan amount for a transaction with a loan amount of \$20,000 or more; the \$20,000 figure shall be adjusted annually on January 1 by the annual percentage change in the Consumer Price Index that was reported on the preceding June 1; or

(B) The lesser of 8 percent of the total loan amount or \$1,000 for a transaction with a loan amount of less than \$20,000; the \$1,000 and \$20,000 figures shall be adjusted annually on January 1 by the annual percentage change in the Consumer Price Index that was reported on the preceding June 1; or

(iii) Under the terms of the loan contract or open-end credit agreement, the creditor can charge a prepayment penalty, as defined in paragraph (b)(6) of this section, more than 36 months after consummation or account opening, or prepayment penalties that can exceed, in total, more than 2 percent of the amount prepaid.

(2) *Exemptions.* This section does not apply to the following:

(i) A reverse mortgage transaction subject to § 1026.33;

(ii) A transaction to finance the initial construction of a dwelling;

(iii) A transaction originated by a Housing Finance Agency, where the Housing Finance Agency is the creditor for the transaction;

(iv) A transaction originated pursuant to the United States Department of Agriculture's Rural Development Section 502 Direct Loan Program.

(3) *Determination of annual percentage rate.* For purposes of paragraph (a)(1)(i) of this section, a creditor shall determine the annual percentage rate for a closed- or open-end credit transaction based on the following:

(i) For a transaction in which the annual percentage rate will not vary during the term of the loan or credit plan, the interest rate in effect as of the date the interest rate for the transaction is set;

(ii) For a transaction in which the interest rate may vary during the term of the loan or credit plan in accordance with an index, the interest rate that results from adding the maximum margin permitted at any time during the term of the loan or credit plan to the value of the index rate in effect as of the date the interest rate for the transaction is set, or the introductory interest rate, whichever is greater; and

(iii) For a transaction in which the interest rate may or will vary during the term of the

loan or credit plan, other than a transaction described in paragraph (a)(3)(ii) of this section, the maximum interest rate that may be imposed during the term of the loan or credit plan.

(b) * * *

(2) In connection with an open-end credit plan, *points and fees* means the following fees or charges that are known at or before account opening:

(i) All items included in the finance charge under § 1026.4(a) and (b), except that the following items are excluded:

(A) Interest or the time-price differential;

(B) Any premium or other charge imposed in connection with any Federal or State agency program for any guaranty or insurance that protects the creditor against the consumer's default or other credit loss;

(C) 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:

(1) If the premium or other charge is payable after account opening, the entire amount of such premium or other charge; or

(2) If the premium or other charge is payable at or before account opening, the portion of any such premium or other charge that is not in excess of the amount payable under policies in effect at the time of account opening under section 203(c)(2)(A) of the National Housing Act (12 U.S.C. 1709(c)(2)(A)), provided that the premium or charge is required to be refundable on a pro rata basis and the refund is automatically issued upon notification of the satisfaction of the underlying mortgage transaction;

(D) Any bona fide third-party charge not retained by the creditor, loan originator, or an

affiliate of either, unless the charge is required to be included in points and fees under paragraphs (b)(2)(i)(C), (iii) or (iv) of this section;

(E) Up to two bona fide discount points payable by the consumer in connection with the transaction, provided that the conditions specified in paragraph (b)(1)(i)(E) of this section are met; and

(F) Up to one bona fide discount point payable by the consumer in connection with the transaction, provided that no discount points have been excluded under paragraph (b)(2)(i)(E) of this section and the conditions specified in paragraph (b)(1)(i)(F) of this section are met;

(ii) All compensation paid directly or indirectly by a consumer or creditor to a loan originator, as defined in § 1026.36(a)(1), that can be attributed to that transaction at the time the interest rate is set;

(iii) All items listed in § 1026.4(c)(7) (other than amounts held for future payment of taxes) unless:

(A) The charge is reasonable;

(B) The creditor receives no direct or indirect compensation in connection with the charge; and

(C) The charge is not paid to an affiliate of the creditor;

(iv) Premiums or other charges payable at or before account opening for any credit life, credit disability, credit unemployment, or credit property insurance, or any other life, accident, health, or loss-of-income insurance for which the creditor is a beneficiary, or any payments directly or indirectly for any debt cancellation or suspension agreement or contract;

(v) The maximum prepayment penalty, as defined in paragraph (b)(6)(ii) of this section, that may be charged or collected under the terms of the open-end credit plan;

(vi) The total prepayment penalty, as defined in paragraph (b)(6)(ii) of this section, incurred by the consumer if the consumer refinances an existing closed-end credit transaction with an open-end credit plan, or terminates an existing open-end credit plan in connection with obtaining a new closed- or open-end credit transaction, with the current holder of the existing plan, a servicer acting on behalf of the current holder, or an affiliate of either;

(vii) Any fees charged for participation in an open-end credit plan, payable at or before account opening, as described in § 1026.4(c)(4); and

(viii) Any transaction fee, including any minimum fee or per-transaction fee, that will be charged for a draw on the credit line, where the creditor must assume that the consumer will make at least one draw during the term of the plan.

(3) * * *

(ii) *Open-end credit*. The term *bona fide discount point* means an amount equal to 1 percent of the credit limit for the plan when the account is opened, paid by the consumer, and that reduces the interest rate or time-price differential applicable to the transaction based on a calculation that is consistent with established industry practices for determining the amount of reduction in the interest rate or time-price differential appropriate for the amount of discount points paid by the consumer. See comment 32(b)(3)(i)-1 for additional guidance in determining whether a discount point is bona fide.

(4) *Total loan amount*. * * *

(ii) *Open-end credit*. The total loan amount for an open-end credit plan is the credit limit for the plan when the account is opened.

* * * * *

(6) *Prepayment penalty*. * * *

(ii) *Open-end credit.* For an open-end credit plan, *prepayment penalty* means a charge imposed by the creditor if the consumer terminates the open-end credit plan prior to the end of its term, other than a waived bona fide third-party charge that the creditor imposes if the consumer terminates the open-end credit plan sooner than 36 months after account opening.

(c) * * *

(3) *Regular payment; minimum periodic payment example; balloon payment.* (i) For a closed-end credit transaction, the amount of the regular monthly (or other periodic) payment and the amount of any balloon payment provided in the credit contract, if permitted under paragraph (d)(1) of this section. The regular payment disclosed under this paragraph shall be treated as accurate if it is based on an amount borrowed that is deemed accurate and is disclosed under paragraph (c)(5) of this section.

(ii) For an open-end credit plan:

(A) An example showing the first minimum periodic payment for the draw period, the first minimum periodic payment for any repayment period, and the balance outstanding at the beginning of any repayment period. The example must be based on the following assumptions:

(1) The consumer borrows the full credit line, as disclosed in paragraph (c)(5) of this section, at account opening and does not obtain any additional extensions of credit;

(2) The consumer makes only minimum periodic payments during the draw period and any repayment period; and

(3) The annual percentage rate used to calculate the example payments remains the same during the draw period and any repayment period. The creditor must provide the minimum periodic payment example based on the annual percentage rate for the plan, as described in paragraph (c)(2) of this section, except that if an introductory annual percentage rate applies, the

creditor must use the rate that will apply to the plan after the introductory rate expires.

(B) If the credit contract provides for a balloon payment under the plan as permitted under paragraph (d)(1) of this section, a disclosure of that fact and an example showing the amount of the balloon payment based on the assumptions described in paragraph (c)(3)(ii)(A) of this section.

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

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

(4) *Variable-rate.* For variable-rate transactions, a statement that the interest rate and monthly payment may increase, and the amount of the single maximum monthly payment, based on the maximum interest rate required to be included in the contract by § 1026.30.

(5) *Amount borrowed; credit limit.* (i) For a closed-end credit transaction, the total amount the consumer will borrow, as reflected by the face amount of the note. Where the amount borrowed includes financed charges that are not prohibited under § 1026.34(a)(10), that fact shall be stated, grouped together with the disclosure of the amount borrowed. The disclosure of the amount borrowed shall be treated as accurate if it is not more than \$100 above or below the amount required to be disclosed.

(ii) For an open-end credit plan, the credit limit for the plan when the account is opened.

(d) *Limitations.* A high-cost mortgage shall not include the following terms:

(1)(i) *Balloon payment.* Except as provided by paragraphs (d)(1)(ii) and (iii) of this section, a payment schedule with a payment that is more than two times a regular periodic payment.

(ii) *Exceptions.* The limitations in paragraph (d)(1)(i) of this section do not apply to:

(A) A mortgage transaction with a payment schedule that is adjusted to the seasonal or irregular income of the consumer;

(B) A loan with maturity of 12 months or less, if the purpose of the loan is a “bridge” loan connected with the acquisition or construction of a dwelling intended to become the consumer’s principal dwelling; or

(C) A loan that meets the criteria set forth in §§ 1026.43(f)(1)(i) through (vi) and 1026.43(f)(2).

(iii) *Open-end credit plans.* 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 paragraph (d)(1)(i) of this section do not apply to any adjustment in the regular periodic payment that results solely from the credit plan’s transition from the draw period to the repayment period. If the terms of an open-end credit plan do not provide for any repayment period, the limitations in paragraph (d)(1)(i) of this section apply to all periods of the credit plan.

* * * * *

(6) *Prepayment penalties.* A prepayment penalty, as defined in paragraph (b)(6) of this section.

(7) [Removed and reserved.]

(8) *Acceleration of debt.* A demand feature that permits the creditor to accelerate the

indebtedness by terminating the high-cost mortgage in advance of the original maturity date and to demand repayment of the entire outstanding balance, except in the following circumstances:

(i) There is fraud or material misrepresentation by the consumer in connection with the loan or open-end credit agreement;

(ii) The consumer fails to meet the repayment terms of the agreement for any outstanding balance that results in a default in payment under the loan; or

(iii) There is any action or inaction by the consumer that adversely affects the creditor's security for the loan, or any right of the creditor in such security.

* * * * *

7. Section 1026.34 is amended by revising paragraphs (a) and (b) to read as follows:

§ 1026.34 Prohibited acts or practices in connection with high-cost mortgages.

(a) *Prohibited acts or practices for high-cost mortgages.* (1) *Home improvement contracts.* A creditor shall not pay a contractor under a home improvement contract from the proceeds of a high-cost mortgage, other than:

(i) By an instrument payable to the consumer or jointly to the consumer and the contractor; or

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

(2) *Notice to assignee.* A creditor may not sell or otherwise assign a high-cost mortgage without furnishing the following statement to the purchaser or assignee: "Notice: This is a mortgage subject to special rules under the Federal Truth in Lending Act. Purchasers or assignees of this mortgage could be liable for all claims and defenses with respect to the

mortgage that the consumer could assert against the creditor.”

(3) *Refinancings within one-year period.* Within one year of having extended a high-cost mortgage, a creditor shall not refinance any high-cost mortgage to the same consumer into another high-cost mortgage, unless the refinancing is in the consumer’s interest. An assignee holding or servicing a high-cost mortgage shall not, for the remainder of the one-year period following the date of origination of the credit, refinance any high-cost mortgage to the same consumer into another high-cost mortgage, unless the refinancing is in the consumer’s interest. A creditor (or assignee) is prohibited from engaging in acts or practices to evade this provision, including a pattern or practice of arranging for the refinancing of its own loans by affiliated or unaffiliated creditors.

(4) *Repayment ability for high-cost mortgages.* In connection with an open-end, high-cost mortgage, a creditor shall not open a plan for a consumer where credit is or will be extended without regard to the consumer’s repayment ability as of account opening, including the consumer’s current and reasonably expected income, employment, assets other than the collateral, and current obligations including any mortgage-related obligations that are required by another credit obligation undertaken prior to or at account opening, and are secured by the same dwelling that secures the high-cost mortgage transaction. The requirements set forth in § 1026.34(a)(4)(i)-(iv) apply to open-end high-cost mortgages, but do not apply to closed-end high-cost mortgages. In connection with a closed-end, high-cost mortgage, a creditor must comply with the repayment ability requirements set forth in § 1026.43. Temporary or “bridge” loans with terms of twelve months or less, such as a loan to purchase a new dwelling where the consumer plans to sell a current dwelling within twelve months, are exempt from this repayment ability requirement.

(i) *Mortgage-related obligations.* For purposes of this paragraph (a)(4), mortgage-related obligations are property taxes; premiums and similar charges identified in § 1026.4(b)(5), (7), (8), and (10) that are required by the creditor; fees and special assessments imposed by a condominium, cooperative, or homeowners association; ground rent; and leasehold payments.

(ii) *Basis for determination of repayment ability.* Under this paragraph (a)(4) a creditor must determine the consumer's repayment ability in connection with an open-end, high cost mortgage as follows:

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

(B) A creditor must verify the consumer's current obligations, including any mortgage-related obligations that are required by another credit obligation undertaken prior to or at account opening, and are secured by the same dwelling that secures the high-cost mortgage transaction.

(iii) *Presumption of compliance.* For an open-end, high cost mortgage, a creditor is presumed to have complied with this paragraph (a)(4) with respect to a transaction if the creditor:

(A) Determines the consumer's repayment ability as provided in paragraph (a)(4)(ii);

(B) Determines the consumer's repayment ability taking into account current obligations and mortgage-related obligations as defined in paragraph (a)(4)(i) of this section, and using the largest required minimum periodic payment based on the following assumptions:

(1) The consumer borrows the full credit line at account opening with no additional extensions of credit;

(2) The consumer makes only required minimum periodic payments during the draw

period and any repayment period;

(3) 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 and will apply during the draw period and any repayment period.

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

(iv) *Exclusions from presumption of compliance.* Notwithstanding the previous paragraph, no presumption of compliance is available for an open-end, high-cost mortgage transaction for which the regular periodic payments when aggregated do not fully amortize the outstanding principal balance except as otherwise provided by § 1026.32(d)(1)(ii).

(5) *Pre-loan counseling.* (i) *Certification of counseling required.* A creditor shall not extend a high-cost mortgage to a consumer unless the creditor receives written certification that the consumer has obtained counseling on the advisability of the mortgage from a counselor that is approved to provide such counseling by the Secretary of the U.S. Department of Housing and Urban Development or, if permitted by the Secretary, by a State housing finance authority.

(ii) *Timing of counseling.* The counseling required under this paragraph (a)(5) must occur after the consumer receives either the good faith estimate required by section 5(c) of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2604(c)) or the disclosures required by § 1026.40.

(iii) *Affiliation prohibited.* The counseling required under this paragraph (a)(5) shall not

be provided by a counselor who is employed by or affiliated with the creditor.

(iv) *Content of certification.* The certification of counseling required under paragraph (a)(5)(i) must include:

(A) The name(s) of the consumer(s) who obtained counseling;

(B) The date(s) of counseling;

(C) The name and address of the counselor;

(D) A statement that the consumer(s) received counseling on the advisability of the high-cost mortgage based on the terms provided in either the good faith estimate required by section 5(c) of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2604(c)) or the disclosures required by § 1026.40; and

(E) A statement that the counselor has verified that the consumer(s) received the disclosures required by either § 1026.32(c) or the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2601 *et seq.*) with respect to the transaction.

(v) *Counseling fees.* A creditor may pay the fees of a counselor or counseling organization for providing counseling required under this paragraph (a)(5) but may not condition the payment of such fees on the consummation or account-opening of a mortgage transaction. If the consumer withdraws the application that would result in the extension of a high-cost mortgage, a creditor may not condition the payment of such fees on the receipt of certification from the counselor required by paragraph (a)(5)(i) of this section. A creditor may, however, confirm that a counselor has provided counseling to the consumer pursuant to this paragraph (a)(5) prior to paying the fee of a counselor or counseling organization.

(vi) *Steering prohibited.* A creditor that extends a high-cost mortgage shall not steer or otherwise direct a consumer to choose a particular counselor or counseling organization for the

counseling required under this paragraph (a)(5).

(6) *Recommended default.* A creditor or mortgage broker, as defined in section 1026.36(a)(2), may not recommend or encourage default on an existing loan or other debt prior to and in connection with the consummation or account opening of a high-cost mortgage that refinances all or any portion of such existing loan or debt.

(7) *Modification and deferral fees.* A creditor, successor-in-interest, assignee, or any agent of such parties may not charge a consumer any fee to modify, renew, extend or amend a high-cost mortgage, or to defer any payment due under the terms of such mortgage.

(8) *Late fees.* (i) *General.* Any late payment charge imposed in connection with a high-cost mortgage must be specifically permitted by the terms of the loan contract or open-end credit agreement and may not exceed 4 percent of the amount of the payment past due. No such charge may be imposed more than once for a single late payment.

(ii) *Timing.* A late payment charge may be imposed in connection with a high-cost mortgage only if the payment is not received by the end of the 15-day period beginning on the date the payment is due or, in the case of a high-cost mortgage on which interest on each installment is paid in advance, the end of the 30-day period beginning on the date the payment is due.

(iii) *Multiple late charges assessed on payment subsequently paid.* A late payment charge may not be imposed in connection with a high-cost mortgage payment if any delinquency is attributable only to a late payment charge imposed on an earlier payment, and the payment otherwise is a full payment for the applicable period and is paid by the due date or within any applicable grace period.

(iv) *Failure to make required payment.* The terms of a high-cost mortgage agreement

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

(9) *Payoff statements.* (i) *Fee prohibition.* In general, a creditor or servicer (as defined in 12 CFR 1024.2(b)) may not charge a fee for providing to a consumer, or a person authorized by the consumer to obtain such information, a statement of the amount due to pay off the outstanding balance of a high-cost mortgage.

(ii) *Processing fee.* A creditor or servicer may charge a processing fee to cover the cost of providing a payoff statement, as described in paragraph (a)(9)(i) of this section, by fax or courier, provided that such fee may not exceed an amount that is comparable to fees imposed for similar services provided in connection with consumer credit transactions that are secured by the consumer's principal dwelling and are not high-cost mortgages. A creditor or servicer shall make a payoff statement available to a consumer, or a person authorized by the consumer to obtain such information, by a method other than by fax or courier and without charge pursuant to paragraph (a)(9)(i) of this section.

(iii) *Processing fee disclosure.* Prior to charging a processing fee for provision of a payoff statement by fax or courier, as permitted pursuant to paragraph (a)(9)(ii) of this section, a creditor or servicer shall disclose to a consumer or a person authorized by the consumer to obtain the consumer's payoff statement that payoff statements, as described in paragraph (a)(9)(i) of this section, are available by a method other than by fax or courier without charge.

(iv) *Fees permitted after multiple requests.* A creditor or servicer that has provided a

payoff statement, as described in paragraph (a)(9)(i) of this section, to a consumer, or a person authorized by the consumer to obtain such information, without charge, other than the processing fee permitted under paragraph (a)(9)(ii) of this section, four times during a calendar year, may thereafter charge a reasonable fee for providing such statements during the remainder of the calendar year. Fees for payoff statements provided to a consumer, or a person authorized by the consumer to obtain such information, in a subsequent calendar year are subject to the requirements of this section.

(v) *Timing of delivery of payoff statements.* A payoff statement, as described in paragraph (a)(9)(i) of this section, for a high-cost mortgage shall be provided by a creditor or servicer within five business days after receiving a request for such statement by a consumer or a person authorized by the consumer to obtain such statement.

(10) *Financing of points and fees.* A creditor that extends credit under a high-cost mortgage may not finance charges that are required to be included in the calculation of points and fees, as that term is defined in § 1026.32(b)(1) and (2). Credit insurance premiums or debt cancellation or suspension fees that are required to be included in points and fees under § 1026.32(b)(1)(iv) or (2)(iv) shall not be considered financed by the creditor when they are calculated and paid in full on a monthly basis.

(b) *Prohibited acts or practices for dwelling-secured loans; structuring loans to evade high-cost mortgage requirements.* A creditor shall not structure any transaction that is otherwise a high-cost mortgage in a form, for the purpose, and with the intent to evade the requirements of a high-cost mortgage subject to this subpart, including by dividing any loan transaction into separate parts.

8. Section 1026.36 is amended by adding and reserving paragraphs (g) and (j) and adding

paragraph (k) to read as follows:

* * * * *

§ 1026.36 Prohibited acts or practices in connection with credit secured by a dwelling.

* * * * *

(g) [Reserved]

* * * * *

(j) [Reserved]

(k) *Negative amortization counseling.* (1) *Counseling required.* A creditor shall not extend credit to a first-time borrower in connection with a closed-end transaction secured by a dwelling, other than a reverse mortgage transaction subject to § 1026.33 or a transaction secured by a consumer's interest in a timeshare plan described in 11 U.S.C. 101(53D), that may result in negative amortization, unless the creditor receives documentation that the consumer has obtained homeownership counseling from a counseling organization or counselor certified or approved by the U.S. Department of Housing and Urban Development to provide such counseling.

(2) *Definitions.* For the purposes of this paragraph (k), the following definitions apply:

(i) A "first-time borrower" means a consumer who has not previously received a closed-end credit transaction or open-end credit plan secured by a dwelling.

(ii) "Negative amortization" means a payment schedule with regular periodic payments that cause the principal balance to increase.

(3) *Steering prohibited.* A creditor that extends credit to a first-time borrower in connection with a closed-end transaction secured by a dwelling, other than a reverse mortgage transaction subject to § 1026.33 or a transaction secured by a consumer's interest in a timeshare plan described in 11 U.S.C. 101(53D), that may result in negative amortization shall not steer or

otherwise direct a consumer to choose a particular counselor or counseling organization for the counseling required under this paragraph (k).