Consumer Financial Protection Bureau

1700 G Street NW, Washington, DC 20552

June 4, 2020

Unofficial Redline of the LIBOR Transition Proposed Rule

On June 4, 2020, the Consumer Financial Protection Bureau (Bureau) issued a proposal (LIBOR Transition Proposed Rule) to revise several provisions of Regulation Z and its commentary to facilitate creditors' transition away from using LIBOR as an index for variable-rate consumer credit products. The Bureau is releasing this unofficial, informal redline to assist industry and other stakeholders in reviewing the changes that the proposal would make to Regulation Z's regulatory text and commentary.

The underlying (unmarked) text in this document reflects the existing text of the relevant provisions of Regulation Z and its commentary that are impacted by the proposal. The changes that the proposal would make to Regulation Z and its commentary, if the Bureau were to adopt the changes as proposed, are marked in red.

This redline is not a substitute for reviewing Regulation Z, its commentary, or the proposal. If any conflicts exist between this redline and the text of Regulation Z, its commentary, or the proposal, the documents published in the *Federal Register* are the controlling documents. The redline includes asterisks to indicate where it omits text from current Regulation Z or its commentary that the proposal would not change.

PART 1026—TRUTH IN LENDING (REGULATION Z)

Authority: 12 U.S.C. 2601, 2603-2605, 2607, 2609, 2617, 3353, 5511, 5512, 5532, 5581; 15 U.S.C. 1601 *et seq*.

Subpart B—Open-End Credit

§ 1026.9 Subsequent disclosure requirements.

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(c) *Change in terms* —(1) *Rules affecting home-equity plans* —(i) *Written notice required*. * * *

(ii) *Notice not required*. For home-equity plans subject to the requirements of § 1026.40, a creditor is not required to provide notice under this section when the change involves a reduction of any component of a finance or other charge (except that on or after October 1, 2021, this provision on when the change involves a reduction of any component of a finance or other charge does not apply to any change in the margin when a LIBOR index is replaced, as permitted by § 1026.40(f)(3)(ii)(A) or § 1026.40(f)(3)(ii)(B)) or when the change results from an agreement involving a court proceeding.

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(2) *Rules affecting open-end (not home-secured) plans* —(i) *Changes where written advance notice is required* —* * *

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(v) *Notice not required*. For open-end plans (other than home equity plans subject to the requirements of § 1026.40) a creditor is not required to provide notice under this section: (A) When the change involves charges for documentary evidence; a reduction of any component of a finance or other charge (except that on or after October 1, 2021, this provision on when the change involves a reduction of any component of a finance or other charge does not apply to any change in the margin when a LIBOR index is replaced, as permitted by § 1026.55(b)(7)(i) or

§ 1026.55(b)(7)(ii)); suspension of future credit privileges (except as provided in paragraph (c)(2)(vi) of this section) or termination of an account or plan; when the change results from an agreement involving a court proceeding; when the change is an extension of the grace period; or if the change is applicable only to checks that access a credit card account and the changed terms are disclosed on or with the checks in accordance with paragraph (b)(3) of this section;

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Subpart E—Special Rules for Certain Home Mortgage Transactions

§ 1026.36 Prohibited acts or practices and certain requirements for credit secured by a dwelling.

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(a) *Definitions*—* * *

(4) *Seller financers; three properties*. A person (as defined in § 1026.2(a)(22)) that meets all of the following criteria is not a loan originator under paragraph (a)(1) of this section:

*   *   *   *   *

(iii) The person provides seller financing that meets the following requirements:

*   *   *   *   *

(C) The financing has a fixed rate or an adjustable rate that is adjustable after five or more years, subject to reasonable annual and lifetime limitations on interest rate increases. If the financing agreement has an adjustable rate, the rate is determined by the addition of a margin to an index rate and is subject to reasonable rate adjustment limitations. The index the adjustable rate is based on is a widely available index such as indices for U.S. Treasury securities or SOFR~~LIBOR~~.

*   *   *   *   *

(5) *Seller financers; one property*. A natural person, estate, or trust that meets all of the following criteria is not a loan originator under paragraph (a)(1) of this section:

*   *   *   *   *

(iii) The natural person, estate, or trust provides seller financing that meets the following requirements:

*   *   *   *   *

(B) The financing has a fixed rate or an adjustable rate that is adjustable after five or more years, subject to reasonable annual and lifetime limitations on interest rate increases. If the financing agreement has an adjustable rate, the rate is determined by the addition of a margin to an index rate and is subject to reasonable rate adjustment limitations. The index the adjustable rate is based on is a widely available index such as indices for U.S. Treasury securities or SOFR~~LIBOR~~.

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§ 1026.40 Requirements for home equity plans.

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(f) *Limitations on home equity plans*. No creditor may, by contract or otherwise:

*   *   *   *   *

(3) Change any term, except that a creditor may:

*   *   *   *   *

(ii)(A) Change the index and margin used under the plan if the original index is no longer available, the replacement ~~new~~ index has ~~an~~ historical fluctuations~~movement~~ substantially similar to that of the original index, and the replacement~~new~~ index and replacement margin would have resulted in an annual percentage rate substantially similar to the rate in effect at the time the original index became unavailable. If the replacement index is newly established and therefore does not have any rate history, it may be used if it and the replacement margin will produce an annual percentage rate substantially similar to the rate in effect when the original index became unavailable; or

(B) If a variable rate on the plan is calculated using a LIBOR index, change the LIBOR index and the margin for calculating the variable rate on or after March 15, 2021, to a replacement index and a replacement margin, as long as historical fluctuations in the LIBOR index and replacement index were substantially similar, and as long as the replacement index value in effect on December 31, 2020, and replacement margin will produce an annual percentage rate substantially similar to the rate calculated using the LIBOR index value in effect on December 31, 2020, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. If the replacement index is newly established and therefore does not have any rate history, it may be used if the replacement index value in effect on December 31, 2020, and the replacement margin will produce an annual percentage rate substantially similar to the rate calculated using the LIBOR index value in effect on December 31, 2020, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. If either the LIBOR index or the replacement index is not published on December 31, 2020, the creditor must use the next calendar day that both indices are published as the date on which the annual percentage rate based on the replacement index must be substantially similar to the rate based on the LIBOR index.

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Subpart G—Special Rules Applicable to Credit Card Accounts and Open-End Credit Offered to College Students

§ 1026.55 Limitations on increasing annual percentage rates, fees, and charges.

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(b) *Exceptions*. A card issuer may increase an annual percentage rate or a fee or charge required to be disclosed under § 1026.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii) pursuant to an exception set forth in this paragraph even if that increase would not be permitted under a different exception.

*   *   *   *   *

(7) *Index replacement and margin change exception.* A card issuer may increase an annual percentage rate when:

(i) The card issuer changes the index and margin used to determine the annual percentage rate if the original index becomes unavailable, as long as historical fluctuations in the original and replacement indices were substantially similar, and as long as the replacement index and replacement margin will produce a rate substantially similar to the rate that was in effect at the time the original index became unavailable. If the replacement index is newly established and therefore does not have any rate history, it may be used if it and the replacement margin will produce a rate substantially similar to the rate in effect when the original index became unavailable; or

(ii) If a variable rate on the plan is calculated using a LIBOR index, the card issuer changes the LIBOR index and the margin for calculating the variable rate on or after March 15, 2021, to a replacement index and a replacement margin, as long as historical fluctuations in the LIBOR index and replacement index were substantially similar, and as long as the replacement index value in effect on December 31, 2020, and replacement margin will produce an annual percentage rate substantially similar to the rate calculated using the LIBOR index value in effect on December 31, 2020, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. If the replacement index is newly established and therefore does not have any rate history, it may be used if the replacement index value in effect on December 31, 2020, and the replacement margin will produce an annual percentage rate substantially similar to the rate calculated using the LIBOR index value in effect on December 31, 2020, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. If either the LIBOR index or the replacement index is not published on December 31, 2020, the card issuer must use the next calendar day that both indices are published as the date on which the annual percentage rate based on the replacement index must be substantially similar to the rate based on the LIBOR index.

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§ 1026.59 Reevaluation of rate increases.

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(f) *Termination of the obligation to review such factors*. The obligation to review factors described in paragraph (a) and (d) of this section ceases to apply:

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(3) Effective March 15, 2021, in the case where the rate applicable immediately prior to the increase was a variable rate with a formula based on a LIBOR index, the card issuer reduces the annual percentage rate to a rate determined by a replacement formula that is derived from a replacement index value on December 31, 2020, plus replacement margin that is equal to the LIBOR index value on December 31, 2020, plus the margin used to calculate the rate immediately prior to the increase (previous formula). A card issuer must satisfy the conditions set forth in § 1026.55(b)(7)(ii) for selecting a replacement index. If either the LIBOR index or the replacement index is not published on December 31, 2020, the card issuer must use the values of the indices on the next calendar day that both indices are published as the index values to use to determine the replacement formula.

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(h) *Exceptions*.

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(3) *Transition from LIBOR*. The requirements of this section do not apply to increases in an annual percentage rate that occur as a result of the transition from the use of a LIBOR

index as the index in setting a variable rate to the use of a replacement index in setting a variable rate if the change from the use of the LIBOR index to a replacement index occurs in accordance with § 1026.55(b)(7)(i) or § 1026.55(b)(7)(ii).

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Appendix H to Part 1026— Closed-End Model Forms and Clauses

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H-4(D)(2) Sample Form for § 1026.20(c)

July 20, 2021~~12~~

Jordan and Dana Smith 4700 Jones Drive Memphis, TN 38109	Springside Mortgage 1234 Main St Memphis, TN 31801

Changes to Your Mortgage Interest Rate and Payments on September 1, 2021~~12~~

Under the terms of your Adjustable-Rate Mortgage (ARM), you had a three-year period during which your interest rate stayed the same. That period ends on September 1, 2021~~12~~, so on that date your interest rate and mortgage payment change. After that, your interest rate may change every six months~~annually~~ for the rest of your loan term.

	Current Rate and Monthly Payment	**New** Rate and Monthly Payment
Interest Rate	4.25%	6.25%
Total Monthly Payment	**$983.88**	**$1,211.81 (due October 1, 2021~~12~~)**

Interest Rate: We calculated your interest rate by taking a published “index rate” and adding a certain number of percentage points, called the “margin.” Under your loan agreement, your index rate is the 30-day Average SOFR (SOFR) ~~1-year LIBOR~~ and your margin is 2.~~2~~75%. The SOFR~~LIBOR~~ index is published daily on the website of the Federal Reserve Bank of New York ~~in the Wall Street Journal~~.

Rate Limits: Your rate cannot go higher than 11.625% over the life of the loan. Your rate can change every~~each~~ six months~~year~~ by no more than ~~2~~1.00%.

New Interest Rate and Monthly Payment: The table above shows your new interest rate and new monthly payment. Your new payment is based on the SOFR~~LIBOR~~ index, your margin, your loan balance of $189,440, and your remaining loan term of 324 months.

Prepayment Penalty: Keep in mind that if you pay off your loan, refinance or sell your home before September 1, 2021~~12~~, you could be charged a penalty. Contact Springside Mortgage at (800) 765-4321 for more information, such as the maximum amount of the penalty you could be charged.

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H-4(D)(4) Sample Form for § 1026.20(d)

February 15, 2021

Jordan and Dana Smith
4700 Jones Drive
Memphis, TN 38109

Springside Mortgage
1234 Main St
Memphis, TN 31801

Changes to Your Mortgage Interest Rate and Payments on September 1, 2021~~12~~

Under the terms of your Adjustable-Rate Mortgage (ARM), you had a three-year period during which your interest rate stayed the same. That period ends on September 1, 2021~~12~~, so on that date your interest rate may change. After that, your interest rate may change every six months~~annually~~ for the rest of your loan term. Any change in your interest rate may also change your mortgage payment. Also, as of September 1, 2021~~12~~ your mortgage payment will include principal as well as interest.

	Current Rate and Monthly Payment	**Estimated New** Rate and Monthly Payment
Interest Rate	4.25%	6.25%
Principal	- **none** -	$237.70
Interest	$708.33	$1,041.66
Escrow (Taxes and Insurance)	$450.00	$450.00
Total Monthly Payment	**$1,158.33**	**$1,729.36 (due October 1, 2021~~12~~)**

Interest Rate: We calculated your interest rate by taking a published "index rate" and adding a certain number of percentage points, called the "margin." Under your loan agreement, your index rate is the 30-day Average SOFR (SOFR)~~1-year LIBOR~~ and your margin is 2.~~2~~75%. The SOFR~~LIBOR~~ index is published daily on the website of the Federal Reserve Bank of New York~~in the Wall Street Journal~~.

Rate Limits: Your rate cannot go higher than 11.625% over the life of the loan. Your rate can change every six months~~each year~~ by no more than 1~~2~~.00%. We did not include an additional 1.00% interest rate increase to your new rate because a rate limit applied. This additional increase may be applied to your interest rate when it adjusts again on March~~September~~ 1, 2022~~13~~.

New Interest Rate and Monthly Payment: The table above shows our estimate of your new interest rate and new monthly payment. These amounts are based on the SOFR~~LIBOR~~ index as of now, your margin, your loan balance of $200,000, and your remaining loan term of 324 months. **However, if the SOFR~~LIBOR~~ index has changed when we calculate the exact amount of your new interest rate and payment, your new interest rate and payment may be different from the estimate above. We will send you another notice with the exact amount of your new interest rate and payment 2 to 4 months before the first new payment is due, if your new payment will be different from your current payment.**

Prepayment Penalty: None

If You Anticipate Problems Making Your Payments:

- Contact Springside Mortgage at 1-800-555-4567 as soon as possible.
- If you seek an alternative to the upcoming changes to your interest rate and payment, the following options **may** be possible (most are subject to lender approval):
  - Refinance your loan with us or another lender;
  - Sell your home and use the proceeds to pay off your current loan;
  - Modify your loan terms with us;
  - Payment forbearance temporarily gives you more time to pay your monthly payment.
- If you would like contact information for counseling agencies or programs in your area, call the U.S. Department of Housing and Urban Development (HUD) at 800-569-4287 or visit www.hud.gov/offices/hsg/sfh/hcc/hcs.cfm. If you would like contact information for a State housing finance agency, visit the U.S. Consumer Financial Protection Bureau (CFPB) at http://www.consumerfinance.gov.

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Supplement I to Part 1026—Official Interpretations

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Section 1026.9—Subsequent Disclosure Requirements

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9(c) Change in Terms

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9(c)(1) Rules Affecting Home-Equity Plans

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9(c)(1)(ii) Notice not Required

1. *Changes not requiring notice.* The following are examples of changes that do not require a change-in-terms notice:

i. A change in the consumer's credit limit.

ii. A change in the name of the credit card or credit card plan.

iii. The substitution of one insurer for another.

iv. A termination or suspension of credit privileges. (But see § 1026.40(f).)

v. Changes arising merely by operation of law; for example, if the creditor's security interest in a consumer's car automatically extends to the proceeds when the consumer sells the car.

2. *Skip features.* If a credit program allows consumers to skip or reduce one or more payments during the year, or involves temporary reductions in finance charges, no notice of the change in terms is required either prior to the reduction or upon resumption of the higher rates or payments if these features are explained on the initial disclosure statement (including an explanation of the terms upon resumption). For example, a merchant may allow consumers to skip the December payment to encourage holiday shopping, or a teachers' credit union may not require payments during summer vacation. Otherwise, the creditor must give notice prior to

resuming the original schedule or rate, even though no notice is required prior to the reduction. The change-in-terms notice may be combined with the notice offering the reduction. For example, the periodic statement reflecting the reduction or skip feature may also be used to notify the consumer of the resumption of the original schedule or rate, either by stating explicitly when the higher payment or charges resume, or by indicating the duration of the skip option. Language such as "You may skip your October payment," or "We will waive your finance charges for January," may serve as the change-in-terms notice.

3. *Replacing LIBOR*. The exception in § 1026.9(c)(1)(ii) under which a creditor is not required to provide a change-in-terms notice under § 1026.9(c)(1) when the change involves a reduction of any component of a finance or other charge does not apply on or after October 1, 2021, to margin reductions when a LIBOR index is replaced, as permitted by § 1026.40(f)(3)(ii)(A) or § 1026.40(f)(3)(ii)(B). For change-in-terms notices provided under § 1026.9(c)(1) on or after October 1, 2021 covering changes permitted by § 1026.40(f)(3)(ii)(A) or § 1026.40(f)(3)(ii)(B), a creditor must provide a change-in-terms notice under § 1026.9(c)(1) disclosing the replacement index for a LIBOR index and any adjusted margin that is permitted under § 1026.40(f)(3)(ii)(A) or § 1026.40(f)(3)(ii)(B), even if the margin is reduced. Prior to October 1, 2021, a creditor has the option of disclosing a reduced margin in the change-in-terms notice that discloses the replacement index for a LIBOR index as permitted by § 1026.40(f)(3)(ii)(A) or § 1026.40(f)(3)(ii)(B).

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9(c)(2) Rules Affecting Open-End (Not Home-Secured) Plans

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9(c)(2)(iv) Disclosure Requirements

1. *Changing margin for calculating a variable rate.* If a creditor is changing a margin used to calculate a variable rate, the creditor must disclose the amount of the new rate (as

calculated using the new margin) in the table described in § 1026.9(c)(2)(iv), and include a reminder that the rate is a variable rate. For example, if a creditor is changing the margin for a variable rate that uses the prime rate as an index, the creditor must disclose in the table the new rate (as calculated using the new margin) and indicate that the rate varies with the market based on the prime rate.

2. *Changing index for calculating a variable rate.* If a creditor is changing the index used to calculate a variable rate, the creditor must disclose the amount of the new rate (as calculated using the new index) and indicate that the rate varies and how the rate is determined, as explained in § 1026.6(b)(2)(i)(A). For example, if a creditor is changing from using a prime index~~rate~~ to using a~~the~~ SOFR index~~LIBOR~~ in calculating a variable rate, the creditor would disclose in the table the new rate (using the new index) and indicate that the rate varies with the market based on a~~the~~ SOFR index~~LIBOR~~.

3. *Changing from a variable rate to a non-variable rate.* If a creditor is changing a rate applicable to a consumer's account from a variable rate to a non-variable rate, the creditor generally must provide a notice as otherwise required under § 1026.9(c) even if the variable rate at the time of the change is higher than the non-variable rate. However, a creditor is not required to provide a notice under § 1026.9(c) if the creditor provides the disclosures required by § 1026.9(c)(2)(v)(B) or (c)(2)(v)(D) in connection with changing a variable rate to a lower non-variable rate. Similarly, a creditor is not required to provide a notice under § 1026.9(c) when changing a variable rate to a lower non-variable rate in order to comply with 50 U.S.C. app. 527 or a similar Federal or state statute or regulation. Finally, a creditor is not required to provide a notice under § 1026.9(c) when changing a variable rate to a lower non-variable rate in order to comply with § 1026.55(b)(4).

4. *Changing from a non-variable rate to a variable rate.* If a creditor is changing a rate applicable to a consumer's account from a non-variable rate to a variable rate, the creditor

generally must provide a notice as otherwise required under § 1026.9(c) even if the non-variable rate is higher than the variable rate at the time of the change. However, a creditor is not required to provide a notice under § 1026.9(c) if the creditor provides the disclosures required by § 1026.9(c)(2)(v)(B) or (c)(2)(v)(D) in connection with changing a non-variable rate to a lower variable rate. Similarly, a creditor is not required to provide a notice under § 1026.9(c) when changing a non-variable rate to a lower variable rate in order to comply with 50 U.S.C. app. 527 or a similar Federal or state statute or regulation. Finally, a creditor is not required to provide a notice under § 1026.9(c) when changing a non-variable rate to a lower variable rate in order to comply with § 1026.55(b)(4). *See* comment 55(b)(2)-4 regarding the limitations in § 1026.55(b)(2) on changing the rate that applies to a protected balance from a non-variable rate to a variable rate.

5. *Changes in the penalty rate, the triggers for the penalty rate, or how long the penalty rate applies*. If a creditor is changing the amount of the penalty rate, the creditor must also redisclose the triggers for the penalty rate and the information about how long the penalty rate applies even if those terms are not changing. Likewise, if a creditor is changing the triggers for the penalty rate, the creditor must redisclose the amount of the penalty rate and information about how long the penalty rate applies. If a creditor is changing how long the penalty rate applies, the creditor must redisclose the amount of the penalty rate and the triggers for the penalty rate, even if they are not changing.

6. *Changes in fees*. If a creditor is changing part of how a fee that is disclosed in a tabular format under § 1026.6(b)(1) and (b)(2) is determined, the creditor must redisclose all relevant information related to that fee regardless of whether this other information is changing. For example, if a creditor currently charges a cash advance fee of "Either $5 or 3% of the transaction amount, whichever is greater (Max: $100)," and the creditor is only changing the minimum dollar amount from $5 to $10, the issuer must redisclose the other information

related to how the fee is determined. For example, the creditor in this example would disclose the following: "Either $10 or 3% of the transaction amount, whichever is greater (Max: $100)."

7. *Combining a notice described in § 1026.9(c)(2)(iv) with a notice described in § 1026.9(g)(3).* If a creditor is required to provide a notice described in § 1026.9(c)(2)(iv) and a notice described in § 1026.9(g)(3) to a consumer, the creditor may combine the two notices. This would occur if penalty pricing has been triggered, and other terms are changing on the consumer's account at the same time.

8. *Content.* Sample G-20 contains an example of how to comply with the requirements in § 1026.9(c)(2)(iv) when a variable rate is being changed to a non-variable rate on a credit card account. The sample explains when the new rate will apply to new transactions and to which balances the current rate will continue to apply. Sample G-21 contains an example of how to comply with the requirements in § 1026.9(c)(2)(iv) when the late payment fee on a credit card account is being increased, and the returned payment fee is also being increased. The sample discloses the consumer's right to reject the changes in accordance with § 1026.9(h).

9. *Clear and conspicuous standard. See* comment 5(a)(1)-1 for the clear and conspicuous standard applicable to disclosures required under § 1026.9(c)(2)(iv)(A)(*1*).

10. *Terminology. See* § 1026.5(a)(2) for terminology requirements applicable to disclosures required under § 1026.9(c)(2)(iv)(A)(*1*).

11. *Reasons for increase.* i. *In general.* Section 1026.9(c)(2)(iv)(A)(*8*) requires card issuers to disclose the principal reason(s) for increasing an annual percentage rate applicable to a credit card account under an open-end (not home-secured) consumer credit plan. The regulation does not mandate a minimum number of reasons that must be disclosed. However, the specific reasons disclosed under § 1026.9(c)(2)(iv)(A)(*8*) are required to relate to and accurately describe the principal factors actually considered by the card issuer in increasing the rate. A card issuer may describe the reasons for the increase in general terms. For example, the

notice of a rate increase triggered by a decrease of 100 points in a consumer's credit score may state that the increase is due to "a decline in your creditworthiness" or "a decline in your credit score." Similarly, a notice of a rate increase triggered by a 10% increase in the card issuer's cost of funds may be disclosed as "a change in market conditions." In some circumstances, it may be appropriate for a card issuer to combine the disclosure of several reasons in one statement. However, § 1026.9(c)(2)(iv)(A)(*8*) requires that the notice specifically disclose any violation of the terms of the account on which the rate is being increased, such as a late payment or a returned payment, if such violation of the account terms is one of the four principal reasons for the rate increase.

ii. *Example.* Assume that a consumer made a late payment on the credit card account on which the rate increase is being imposed, made a late payment on a credit card account with another card issuer, and the consumer's credit score decreased, in part due to such late payments. The card issuer may disclose the reasons for the rate increase as a decline in the consumer's credit score and the consumer's late payment on the account subject to the increase. Because the late payment on the credit card account with the other issuer also likely contributed to the decline in the consumer's credit score, it is not required to be separately disclosed. However, the late payment on the credit card account on which the rate increase is being imposed must be specifically disclosed even if that late payment also contributed to the decline in the consumer's credit score.

9(c)(2)(v) Notice not Required

1. *Changes not requiring notice.* The following are examples of changes that do not require a change-in-terms notice:

i. A change in the consumer's credit limit except as otherwise required by §1026.9(c)(2)(vi).

ii. A change in the name of the credit card or credit card plan.

iii. The substitution of one insurer for another.

iv. A termination or suspension of credit privileges.

v. Changes arising merely by operation of law; for example, if the creditor's security interest in a consumer's car automatically extends to the proceeds when the consumer sells the car.

2. *Skip features*. i. *Skipped or reduced payments*. If a credit program allows consumers to skip or reduce one or more payments during the year, no notice of the change in terms is required either prior to the reduction in payments or upon resumption of the higher payments if these features are explained on the account-opening disclosure statement (including an explanation of the terms upon resumption). For example, a merchant may allow consumers to skip the December payment to encourage holiday shopping, or a teacher's credit union may not require payments during summer vacation. Otherwise, the creditor must give notice prior to resuming the original payment schedule, even though no notice is required prior to the reduction. The change-in-terms notice may be combined with the notice offering the reduction. For example, the periodic statement reflecting the skip feature may also be used to notify the consumer of the resumption of the original payment schedule, either by stating explicitly when the higher resumes or by indicating the duration of the skip option. Language such as "You may skip your October payment" may serve as the change-in-terms notice.

ii. *Temporary reductions in interest rates or fees*. If a credit program involves temporary reductions in an interest rate or fee, no notice of the change in terms is required either prior to the reduction or upon resumption of the original rate or fee if these features are disclosed in advance in accordance with the requirements of § 1026.9(c)(2)(v)(B). Otherwise, the creditor must give notice prior to resuming the original rate or fee, even though no notice is required prior to the reduction. The notice provided prior to resuming the original rate or fee must comply with the timing requirements of § 1026.9(c)(2)(i) and the content and format requirements of § 1026.9(c)(2)(iv)(A), (B) (if applicable), (C) (if applicable), and (D). *See* comment 55(b)-3 for guidance regarding the application of § 1026.55 in these circumstances.

3. *Changing from a variable rate to a non-variable rate.* See comment 9(c)(2)(iv)-3.

4. *Changing from a non-variable rate to a variable rate.* See comment 9(c)(2)(iv)-4.

5. *Temporary rate or fee reductions offered by telephone.* The timing requirements of § 1026.9(c)(2)(v)(B) are deemed to have been met, and written disclosures required by § 1026.9(c)(2)(v)(B) may be provided as soon as reasonably practicable after the first transaction subject to a rate that will be in effect for a specified period of time (a temporary rate) or the imposition of a fee that will be in effect for a specified period of time (a temporary fee) if:

i. The consumer accepts the offer of the temporary rate or temporary fee by telephone;

ii. The creditor permits the consumer to reject the temporary rate or temporary fee offer and have the rate or rates or fee that previously applied to the consumer's balances reinstated for 45 days after the creditor mails or delivers the written disclosures required by § 1026.9(c)(2)(v)(B), except that the creditor need not permit the consumer to reject a temporary rate or temporary fee offer if the rate or rates or fee that will apply following expiration of the temporary rate do not exceed the rate or rates or fee that applied immediately prior to commencement of the temporary rate or temporary fee; and

iii. The disclosures required by § 1026.9(c)(2)(v)(B) and the consumer's right to reject the temporary rate or temporary fee offer and have the rate or rates or fee that previously applied to the consumer's account reinstated, if applicable, are disclosed to the consumer as part of the temporary rate or temporary fee offer.

6. *First listing.* The disclosures required by § 1026.9(c)(2)(v)(B)(*1*) are only required to be provided in close proximity and in equal prominence to the first listing of the temporary rate or fee in the disclosure provided to the consumer. For purposes of § 1026.9(c)(2)(v)(B), the first statement of the temporary rate or fee is the most prominent listing on the front side of the first

page of the disclosure. If the temporary rate or fee does not appear on the front side of the first page of the disclosure, then the first listing of the temporary rate or fee is the most prominent listing of the temporary rate on the subsequent pages of the disclosure. For advertising requirements for promotional rates, see § 1026.16(g).

7. *Close proximity—point of sale.* Creditors providing the disclosures required by § 1026.9(c)(2)(v)(B) of this section in person in connection with financing the purchase of goods or services may, at the creditor's option, disclose the annual percentage rate or fee that would apply after expiration of the period on a separate page or document from the temporary rate or fee and the length of the period, provided that the disclosure of the annual percentage rate or fee that would apply after the expiration of the period is equally prominent to, and is provided at the same time as, the disclosure of the temporary rate or fee and length of the period.

8. *Disclosure of annual percentage rates.* If a rate disclosed pursuant to § 1026.9(c)(2)(v)(B) or (c)(2)(v)(D) is a variable rate, the creditor must disclose the fact that the rate may vary and how the rate is determined. For example, a creditor could state "After October 1, 2009, your APR will be 14.99%. This APR will vary with the market based on the Prime Rate."

9. *Deferred interest or similar programs.* If the applicable conditions are met, the exception in § 1026.9(c)(2)(v)(B) applies to deferred interest or similar promotional programs under which the consumer is not obligated to pay interest that accrues on a balance if that balance is paid in full prior to the expiration of a specified period of time. For purposes of this comment and § 1026.9(c)(2)(v)(B), "deferred interest" has the same meaning as in § 1026.16(h)(2) and associated commentary. For such programs, a creditor must disclose pursuant to § 1026.9(c)(2)(v)(B)(*1*) the length of the deferred interest period and the rate that will apply to the balance subject to the deferred interest program if that balance is not paid in

full prior to expiration of the deferred interest period. Examples of language that a creditor may use to make the required disclosures under § 1026.9(c)(2)(v)(B)(*1*) include:

i. "No interest if paid in full in 6 months. If the balance is not paid in full in 6 months, interest will be imposed from the date of purchase at a rate of 15.99%."

ii. "No interest if paid in full by December 31, 2010. If the balance is not paid in full by that date, interest will be imposed from the transaction date at a rate of 15%."

10. *Relationship between §§ 1026.9(c)(2)(v)(B) and 1026.6(b).* A disclosure of the information described in § 1026.9(c)(2)(v)(B)(*1*) provided in the account-opening table in accordance with § 1026.6(b) complies with the requirements of § 1026.9(c)(2)(v)(B)(*2*), if the listing of the introductory rate in such tabular disclosure also is the first listing as described in comment 9(c)(2)(v)-6.

11. *Disclosure of the terms of a workout or temporary hardship arrangement.* In order for the exception in § 1026.9(c)(2)(v)(D) to apply, the disclosure provided to the consumer pursuant to § 1026.9(c)(2)(v)(D)(*2*) must set forth:

i. The annual percentage rate that will apply to balances subject to the workout or temporary hardship arrangement;

ii. The annual percentage rate that will apply to such balances if the consumer completes or fails to comply with the terms of, the workout or temporary hardship arrangement;

iii. Any reduced fee or charge of a type required to be disclosed under § 1026.6(b)(2)(ii), (b)(2)(iii), (b)(2)(viii), (b)(2)(ix), (b)(2)(xi), or (b)(2)(xii) that will apply to balances subject to the workout or temporary hardship arrangement, as well as the fee or charge that will apply if the consumer completes or fails to comply with the terms of the workout or temporary hardship arrangement;

iv. Any reduced minimum periodic payment that will apply to balances subject to the workout or temporary hardship arrangement, as well as the minimum periodic payment that will apply if the consumer completes or fails to comply with the terms of the workout or temporary hardship arrangement; and

v. If applicable, that the consumer must make timely minimum payments in order to remain eligible for the workout or temporary hardship arrangement.

12. *Index not under creditor's control. See* comment 55(b)(2)-2 for guidance on when an index is deemed to be under a creditor's control.

13. *Temporary rates—relationship to § 1026.59.* i. *General.* Section 1026.59 requires a card issuer to review rate increases imposed due to the revocation of a temporary rate. In some circumstances, § 1026.59 may require an issuer to reinstate a reduced temporary rate based on that review. If, based on a review required by § 1026.59, a creditor reinstates a temporary rate that had been revoked, the card issuer is not required to provide an additional notice to the consumer when the reinstated temporary rate expires, if the card issuer provided the disclosures required by § 1026.9(c)(2)(v)(B) prior to the original commencement of the temporary rate. *See* § 1026.55 and the associated commentary for guidance on the permissibility and applicability of rate increases.

i. *Example.* A consumer opens a new credit card account under an open-end (not home-secured) consumer credit plan on January 1, 2011. The annual percentage rate applicable to purchases is 18%. The card issuer offers the consumer a 15% rate on purchases made between January 1, 2012 and January 1, 2014. Prior to January 1, 2012, the card issuer discloses, in accordance with § 1026.9(c)(2)(v)(B), that the rate on purchases made during that period will increase to the standard 18% rate on January 1, 2014. In March 2012, the consumer makes a payment that is ten days late. The card issuer, upon providing 45 days' advance notice of the change under § 1026.9(g), increases the rate on new purchases to 18% effective as of June 1, 2012. On December 1, 2012, the issuer performs a review of the consumer's account in accordance with § 1026.59. Based on that review, the card issuer is required to reduce the rate to the original 15% temporary rate as of January 15, 2013. On January 1, 2014, the card issuer may increase the rate on purchases to 18%, as previously disclosed prior to January 1, 2012, without providing an additional notice to the consumer.

14. *Replacing LIBOR*. The exception in § 1026.9(c)(2)(v)(A) under which a creditor is not required to provide a change-in-terms notice under § 1026.9(c)(2) when the change involves a reduction of any component of a finance or other charge does not apply on or after October 1, 2021, to margin reductions when a LIBOR index is replaced as permitted by § 1026.55(b)(7)(i) or § 1026.55(b)(7)(ii). For change-in-terms notices provided under § 1026.9(c)(2) on or after October 1, 2021, covering changes permitted by § 1026.55(b)(7)(i) or § 1026.55(b)(7)(ii), a creditor must provide a change-in-terms notice under § 1026.9(c)(2) disclosing the replacement index for a LIBOR index and any adjusted margin that is permitted under § 1026.55(b)(7)(i) or § 1026.55(b)(7)(ii), even if the margin is reduced. Prior to October 1, 2021, a creditor has the option of disclosing a reduced margin in the change-in-terms notice that discloses the replacement index for a LIBOR index as permitted by § 1026.55(b)(7)(i) or § 1026.55(b)(7)(ii).

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Section 1026.20— Disclosure Requirements Regarding Post-Consummation Events

20(a) Refinancings

1. *Definition*. A refinancing is a new transaction requiring a complete new set of disclosures. Whether a refinancing has occurred is determined by reference to whether the original obligation has been satisfied or extinguished and replaced by a new obligation, based on the parties' contract and applicable law. The refinancing may involve the consolidation of several existing obligations, disbursement of new money to the consumer or on the consumer's behalf, or the rescheduling of payments under an existing obligation. In any form, the new obligation must completely replace the prior one.

i. Changes in the terms of an existing obligation, such as the deferral of individual installments, will not constitute a refinancing unless accomplished by the cancellation of that obligation and the substitution of a new obligation.

ii. A substitution of agreements that meets the refinancing definition will require new disclosures, even if the substitution does not substantially alter the prior credit terms.

2. *Exceptions*. A transaction is subject to § 1026.20(a) only if it meets the general definition of a refinancing. Section 1026.20(a)(1) through (5) lists 5 events that are not treated as refinancings, even if they are accomplished by cancellation of the old obligation and substitution of a new one.

3. *Variable-rate*. i. If a variable-rate feature was properly disclosed under the regulation, a rate change in accord with those disclosures is not a refinancing. For example, no new disclosures are required when the variable-rate feature is invoked on a renewable balloon-payment mortgage that was previously disclosed as a variable-rate transaction.

ii. Even if it is not accomplished by the cancellation of the old obligation and substitution of a new one, a new transaction subject to new disclosures results if the creditor either:

A. Increases the rate based on a variable-rate feature that was not previously disclosed; or

B. Adds a variable-rate feature to the obligation. A creditor does not add a variable-rate feature by changing the index of a variable-rate transaction to a comparable index, whether the change replaces the existing index or substitutes an index for one that no longer exists. For example, a creditor does not add a variable-rate feature by changing the index of a variable-rate transaction from the 1-month, 3-month, 6-month, or 1-year U.S. Dollar LIBOR index to the spread-adjusted index based on SOFR recommended by the Alternative Reference Rates Committee to replace the 1-month, 3-month, 6-month, or 1-year U.S. Dollar LIBOR index respectively because the replacement index is a comparable index to the corresponding U.S.

Dollar LIBOR index.

iii. If either of the events in paragraph 20(a)-3.ii.A or ii.B occurs in a transaction secured by a principal dwelling with a term longer than one year, the disclosures required under § 1026.19(b) also must be given at that time.

4. *Unearned finance charge*. In a transaction involving precomputed finance charges, the creditor must include in the finance charge on the refinanced obligation any unearned portion of the original finance charge that is not rebated to the consumer or credited against the underlying obligation. For example, in a transaction with an add-on finance charge, a creditor advances new money to a consumer in a fashion that extinguishes the original obligation and replaces it with a new one. The creditor neither refunds the unearned finance charge on the original obligation to the consumer nor credits it to the remaining balance on the old obligation. Under these circumstances, the unearned finance charge must be included in the finance charge on the new obligation and reflected in the annual percentage rate disclosed on refinancing. Accrued but unpaid finance charges are included in the amount financed in the new obligation.

5. *Coverage*. Section 1026.20(a) applies only to refinancings undertaken by the original creditor or a holder or servicer of the original obligation. A "refinancing" by any other person is a new transaction under the regulation, not a refinancing under this section.

Paragraph 20(a)(1)

1. *Renewal*. This exception applies both to obligations with a single payment of principal and interest and to obligations with periodic payments of interest and a final payment of principal. In determining whether a new obligation replacing an old one is a renewal of the original terms or a refinancing, the creditor may consider it a renewal even if:

i. Accrued unpaid interest is added to the principal balance.

ii. Changes are made in the terms of renewal resulting from the factors listed in § 1026.17(c)(3).

iii. The principal at renewal is reduced by a curtailment of the obligation.

Paragraph 20(a)(2)

1. Annual *percentage rate reduction*. A reduction in the annual percentage rate with a corresponding change in the payment schedule is not a refinancing. If the annual percentage rate is subsequently increased (even though it remains below its original level) and the increase is effected in such a way that the old obligation is satisfied and replaced, new disclosures must then be made.

2. *Corresponding change*. A corresponding change in the payment schedule to implement a lower annual percentage rate would be a shortening of the maturity, or a reduction in the payment amount or the number of payments of an obligation. The exception in § 1026.20(a)(2) does not apply if the maturity is lengthened, or if the payment amount or number of payments is increased beyond that remaining on the existing transaction.

Paragraph 20(a)(3)

1. *Court agreements*. This exception includes, for example, agreements such as reaffirmations of debts discharged in bankruptcy, settlement agreements, and post-judgment agreements. (See the commentary to § 1026.2(a)(14) for a discussion of court-approved agreements that are not considered "credit.")

Paragraph 20(a)(4)

1. *Workout agreements*. A workout agreement is not a refinancing unless the annual percentage rate is increased or additional credit is advanced beyond amounts already accrued plus insurance premiums.

Paragraph 20(a)(5)

1. *Insurance renewal*. The renewal of optional insurance added to an existing credit transaction is not a refinancing, assuming that appropriate Truth in Lending disclosures were provided for the initial purchase of the insurance.

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Section 1026.37—Content of Disclosures for Certain Mortgage Transactions (Loan Estimate)

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37(j) Adjustable interest rate table.

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37(j)(1) Index and margin.

1. *Index and margin.* The index disclosed pursuant to § 1026.37(j)(1) must be stated such that a consumer reasonably can identify it. A common abbreviation or acronym of the name of the index may be disclosed in place of the proper name of the index, if it is a commonly used public method of identifying the index. For example, "SOFR~~LIBOR~~" may be disclosed instead of Secured Overnight Financing Rate~~London Interbank Offered Rate~~. The margin should be disclosed as a percentage. For example, if the contract determines the interest rate by adding 4.25 percentage points to the index, the margin should be disclosed as "4.25%."

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Section 1026.40—Requirements for Home-Equity Plans

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40(f) Limitations on Home Equity Plans

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Paragraph 40(f)(3)

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Paragraph 40(f)(3)(ii)

1. Replacing LIBOR. A creditor may use either the provision in § 1026.40(f)(3)(ii)(A) or § 1026.40(f)(3)(ii)(B) to replace a LIBOR index used under a plan so long as the applicable conditions are met for the provision used. Neither provision, however, excuses the creditor from noncompliance with contractual provisions. The following examples illustrate when a creditor may use the provisions in § 1026.40(f)(3)(ii)(A) or § 1026.40(f)(3)(ii)(B) to replace the LIBOR index used under a plan.

i. Assume that LIBOR becomes unavailable after March 15, 2021, and assume a contract provides that a creditor may not replace an index unilaterally under a plan unless the original index becomes unavailable and provides that the replacement index and replacement margin will result in an annual percentage rate substantially similar to a rate that is in effect when the original index becomes unavailable. In this case, the creditor may use § 1026.40(f)(3)(ii)(A) to replace the LIBOR index used under the plan so long as the conditions of that provision are met. Section 1026.40(f)(3)(ii)(B) provides that a creditor may replace the LIBOR index if, among other conditions, the replacement index value in effect on December 31, 2020, and replacement margin will produce an annual percentage rate substantially similar to the rate calculated using the LIBOR index value in effect on December 31, 2020, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. In this case, however, the creditor would be contractually prohibited from replacing the LIBOR index used under the plan unless the replacement index and replacement margin also will produce an annual percentage rate substantially similar to a rate that is in effect when the LIBOR index becomes unavailable.

ii. Assume that LIBOR becomes unavailable after March 15, 2021, and assume a contract provides that a creditor may not replace an index unilaterally under a plan unless the original index becomes unavailable but does not require that the replacement index and replacement margin will result in an annual percentage rate substantially similar to a rate that is in effect when the original index becomes unavailable. In this case, the creditor would be contractually prohibited from unilaterally replacing a LIBOR index used under the plan until it becomes unavailable. At that time, the creditor has the option of using § 1026.40(f)(3)(ii)(A) or

§ 1026.40(f)(3)(ii)(B) to replace the LIBOR index if the conditions of the applicable provision are met.

iii. Assume that LIBOR becomes unavailable after March 15, 2021, and assume a contract provides that a creditor may change the terms of the contract (including the index) as permitted by law. In this case, if the creditor replaces a LIBOR index under a plan on or after March 15, 2021, but does not wait until the LIBOR index becomes unavailable to do so, the creditor may only use § 1026.40(f)(3)(ii)(B) to replace the LIBOR index if the conditions of that provision are met. In this case, the creditor may not use § 1026.40(f)(3)(ii)(A). If the creditor waits until the LIBOR index used under the plan becomes unavailable to replace the LIBOR index, the creditor has the option of using § 1026.40(f)(3)(ii)(A) or § 1026.40(f)(3)(ii)(B) to replace the LIBOR index if the conditions of the applicable provision are met.

Paragraph 40(f)(3)(ii)(A)

1. *Substitution of index.* A creditor may change the index and margin used under the plan if the original index becomes unavailable, as long as historical fluctuations in the original and replacement indices were substantially similar, and as long as the replacement index and replacement margin will produce a rate substantially similar to the rate that was in effect at the time the original index became unavailable. If the replacement index is newly established and therefore does not have any rate history, it may be used if it and the replacement margin will produce~~s~~ a rate substantially similar to the rate in effect when the original index became unavailable.

2. *Replacing LIBOR.* For purposes of replacing a LIBOR index used under a plan, a replacement index that is not newly established must have historical fluctuations that are substantially similar to those of the LIBOR index used under the plan, considering the historical fluctuations up through when the LIBOR index becomes unavailable or up through the date

indicated in a Bureau determination that the replacement index and the LIBOR index have historical fluctuations that are substantially similar, whichever is earlier.

i. The Bureau has determined that effective [applicable date] the prime rate published in the Wall Street Journal has historical fluctuations that are substantially similar to those of the 1-month and 3-month U.S. Dollar LIBOR indices. In order to use this prime rate as the replacement index for the 1-month or 3-month U.S. Dollar LIBOR index, the creditor also must comply with the condition in § 1026.40(f)(3)(ii)(A) that the prime rate and replacement margin would have resulted in an annual percentage rate substantially similar to the rate in effect at the time the LIBOR index became unavailable. See also comment 40(f)(3)(ii)(A)-3.

ii. The Bureau has determined that effective [applicable date] the spread-adjusted indices based on SOFR recommended by the Alternative Reference Rates Committee to replace the 1-month, 3-month, 6-month, and 1-year U.S. Dollar LIBOR indices have historical fluctuations that are substantially similar to those of the 1-month, 3-month, 6-month, and 1-year U.S. Dollar LIBOR indices respectively. In order to use this SOFR-based spread-adjusted index as the replacement index for the applicable LIBOR index, the creditor also must comply with the condition in § 1026.40(f)(3)(ii)(A) that the SOFR-based spread-adjusted index and replacement margin would have resulted in an annual percentage rate substantially similar to the rate in effect at the time the LIBOR index became unavailable. See also comment 40(f)(3)(ii)(A)-3.

3. *Substantially similar rate when LIBOR becomes unavailable.* Under § 1026.40(f)(3)(ii)(A), the replacement index and replacement margin must produce an annual percentage rate substantially similar to the rate that was in effect based on the LIBOR index used under the plan when the LIBOR index became unavailable. For this comparison of the rates, a creditor must use the value of the replacement index and the LIBOR index on the day that LIBOR becomes unavailable. The replacement index and replacement margin are not required to produce an annual percentage rate that is substantially similar on the day that the

replacement index and replacement margin become effective on the plan. The following example illustrates this comment.

i. Assume that the LIBOR index used under a plan becomes unavailable on December 31, 2021, and on that day the LIBOR index value is 2%, the margin is 10%, and the annual percentage rate is 12%. Also, assume that a creditor has selected a prime index as the replacement index, and the value of the prime index is 5% on December 31, 2021. The creditor would satisfy the requirement to use a replacement index and replacement margin that will produce an annual percentage rate substantially similar to the rate that was in effect when the LIBOR index used under the plan became unavailable by selecting a 7% replacement margin. (The prime index value of 5% and the replacement margin of 7% would produce a rate of 12% on December 31, 2021.) Thus, if the creditor provides a change-in-terms notice under § 1026.9(c)(1) on January 2, 2022, disclosing the prime index as the replacement index and a replacement margin of 7%, where these changes will become effective on January 18, 2022, the creditor satisfies the requirement to use a replacement index and replacement margin that will produce an annual percentage rate substantially similar to the rate that was in effect when the LIBOR index used under the plan became unavailable. This is true even if the prime index value changes after December 31, 2021, and the annual percentage rate calculated using the prime index value and 7% margin on January 18, 2022, is not substantially similar to the rate calculated using the LIBOR index value on December 31, 2021.

Paragraph 40(f)(3)(ii)(B)

1. *Replacing LIBOR*. For purposes of replacing a LIBOR index used under a plan, a replacement index that is not newly established must have historical fluctuations that are substantially similar to those of the LIBOR index used under the plan, considering the historical fluctuations up through December 31, 2020, or up through the date indicated in a Bureau

determination that the replacement index and the LIBOR index have historical fluctuations that are substantially similar, whichever is earlier.

i. The Bureau has determined that effective [applicable date] the prime rate published in the Wall Street Journal has historical fluctuations that are substantially similar to those of the 1-month and 3-month U.S. Dollar LIBOR indices. In order to use this prime rate as the replacement index for the 1-month or 3-month U.S. Dollar LIBOR index, the creditor also must comply with the condition in § 1026.40(f)(3)(ii)(B) that the prime rate index value in effect on December 31, 2020, and replacement margin will produce an annual percentage rate substantially similar to the rate calculated using the LIBOR index value in effect on December 31, 2020, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. If either the LIBOR index or the prime rate is not published on December 31, 2020, the creditor must use the next calendar day that both indices are published as the date on which the annual percentage rate based on the prime rate must be substantially similar to the rate based on the LIBOR index. See also comments 40(f)(3)(ii)(B)-2 and -3.

ii. The Bureau has determined that effective [applicable date] the spread-adjusted indices based on SOFR recommended by the Alternative Reference Rates Committee to replace the 1-month, 3-month, 6-month, and 1-year U.S. Dollar LIBOR indices have historical fluctuations that are substantially similar to those of the 1-month, 3-month, 6-month, and 1-year U.S. Dollar LIBOR indices respectively. In order to use this SOFR-based spread-adjusted index as the replacement index for the applicable LIBOR index, the creditor also must comply with the condition in § 1026.40(f)(3)(ii)(B) that the SOFR-based spread-adjusted index value in effect on December 31, 2020, and replacement margin will produce an annual percentage rate substantially similar to the rate calculated using the LIBOR index value in effect on December 31, 2020, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. If either the LIBOR index or the SOFR-based spread-adjusted index is not published on December 31, 2020, the creditor must use the next calendar day that both indices are published as the date on which the annual percentage rate based on the SOFR-based spread-adjusted index must be substantially similar to the rate based on the LIBOR index. See also comments 40(f)(3)(ii)(B)-2 and -3.

2. *Using index values on December 31, 2020, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan.* Under § 1026.40(f)(3)(ii)(B), if both the replacement index and the LIBOR index used under the plan are published on December 31, 2020, the replacement index value in effect on December 31, 2020, and replacement margin must produce an annual percentage rate substantially similar to the rate calculated using the LIBOR index value in effect on December 31, 2020, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. The margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan is the margin that applied to the variable rate immediately prior to when the creditor provides the change-in-terms notice disclosing the replacement index for the variable rate. The following example illustrates this comment.

i. Assume a variable rate used under the plan that is based on a LIBOR index and assume that LIBOR becomes unavailable after March 15, 2021. On December 31, 2020, the LIBOR index value is 2%, the margin on that day is 10% and the annual percentage rate using that index value and margin is 12%. Assume on January 1, 2021, a creditor provides a change-in-terms notice under § 1026.9(c)(1) disclosing a new margin of 12% for the variable rate pursuant to a written agreement under § 1026.40(f)(3)(iii), and this change in the margin becomes effective on January 1, 2021, pursuant to § 1026.9(c)(1). Assume that there are no more changes in the margin that is used in calculating the variable rate prior to February 27, 2021, the date on which the creditor provides a change-in-term notice under § 1026.9(c)(1), disclosing the replacement index and replacement margin for the variable rate that will be effective on March 15, 2021. In this case, the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan is 12%. Assume that the creditor has selected a prime index as the replacement index, and the value of the prime index is 5% on December 31, 2020. A replacement margin of 9% is permissible under § 1026.40(f)(3)(ii)(B) because that replacement margin combined with the prime index value of 5% on December 31, 2020, will produce an annual percentage rate of 14%, which is substantially similar to the 14% annual percentage rate calculated using the LIBOR index value in effect on December 31, 2020, (which is 2%) and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan (which is 12%).

3. *Substantially similar rates using index values on December 31, 2020.* Under § 1026.40(f)(3)(ii)(B), if both the replacement index and the LIBOR index used under the plan are published on December 31, 2020, the replacement index value in effect on December 31, 2020, and replacement margin must produce an annual percentage rate substantially similar to the rate calculated using the LIBOR index value in effect on December 31, 2020, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. The replacement index and replacement margin are not required to produce an annual percentage rate that is substantially similar on the day that the replacement index and replacement margin become effective on the plan. The following example illustrates this comment.

i. Assume that the LIBOR index used under the plan has a value of 2% on December 31, 2020, the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan is 10%, and the annual percentage rate based on that LIBOR index value and that margin is 12%. Also, assume that the creditor has selected a prime index as the replacement index, and the value of the prime index is 5% on December 31, 2020. A creditor would satisfy the requirement to use a replacement index value in effect on December 31, 2020, and replacement margin that will produce an annual percentage rate substantially similar to the rate calculated using the LIBOR index value in effect on December 31, 2020, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan, by selecting a 7% replacement margin. (The prime index value of 5% and the replacement margin of 7% would produce a rate of 12%.) Thus, if the creditor provides a change-in-terms notice under § 1026.9(c)(1) on February 27, 2021, disclosing the prime index as the replacement index and a replacement margin of 7%, where these changes will become effective on March 15, 2021, the creditor satisfies the requirement to use a replacement index value in effect on December 31, 2020, and replacement margin that will produce an annual percentage rate substantially similar to the rate calculated using the LIBOR value in effect on December 31, 2020, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. This is true even if the prime index value or the LIBOR index value changes after December 31, 2020, and the annual percentage rate calculated using the prime index value and 7% margin on March 15, 2021 is not substantially similar to the rate calculated using the LIBOR index value on December 31, 2020, or substantially similar to the rate calculated using the LIBOR index value on March 15, 2021.

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Section 1026.55—Limitations on Increasing Annual Percentage Rates, Fees, and Charges

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55(b) Exceptions

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55(b)(2) Variable rate exception

1. *Increases due to increase in index.* Section 1026.55(b)(2) provides that an annual percentage rate that varies according to an index that is not under the card issuer's control and

is available to the general public may be increased due to an increase in the index. This section does not permit a card issuer to increase the rate by changing the method used to determine a rate that varies with an index (such as by increasing the margin), even if that change will not result in an immediate increase. However, from time to time, a card issuer may change the day on which index values are measured to determine changes to the rate.

2. *Index not under card issuer's control.* A card issuer may increase a variable annual percentage rate pursuant to § 1026.55(b)(2) only if the increase is based on an index or indices outside the card issuer's control. For purposes of § 1026.55(b)(2), an index is under the card issuer's control if:

i. The index is the card issuer's own prime rate or cost of funds. A card issuer is permitted, however, to use a published prime rate, such as that in the *Wall Street Journal,* even if the card issuer's own prime rate is one of several rates used to establish the published rate.

ii. The variable rate is subject to a fixed minimum rate or similar requirement that does not permit the variable rate to decrease consistent with reductions in the index. A card issuer is permitted, however, to establish a fixed maximum rate that does not permit the variable rate to increase consistent with increases in an index. For example, assume that, under the terms of an account, a variable rate will be adjusted monthly by adding a margin of 5 percentage points to a publicly-available index. When the account is opened, the index is 10% and therefore the variable rate is 15%. If the terms of the account provide that the variable rate will not decrease below 15% even if the index decreases below 10%, the card issuer cannot increase that rate pursuant to § 1026.55(b)(2). However, § 1026.55(b)(2) does not prohibit the card issuer from providing in the terms of the account that the variable rate will not increase above a certain amount (such as 20%).

iii. The variable rate can be calculated based on any index value during a period of time (such as the 90 days preceding the last day of a billing cycle). A card issuer is permitted, however, to provide in the terms of the account that the variable rate will be calculated based on the average index value during a specified period. In the alternative, the card issuer is permitted to provide in the terms of the account that the variable rate will be calculated based on the index value on a specific day (such as the last day of a billing cycle). For example, assume that the terms of an account provide that a variable rate will be adjusted at the beginning of each quarter by adding a margin of 7 percentage points to a publicly-available index. At account opening at the beginning of the first quarter, the variable rate is 17% (based on an index value of 10%). During the first quarter, the index varies between 9.8% and 10.5% with an average value of 10.1%. On the last day of the first quarter, the index value is 10.2%. At the beginning of the second quarter, § 1026.55(b)(2) does not permit the card issuer to increase the variable rate to 17.5% based on the first quarter's maximum index value of 10.5%. However, if the terms of the account provide that the variable rate will be calculated based on the average index value during the prior quarter, § 1026.55(b)(2) permits the card issuer to increase the variable rate to 17.1% (based on the average index value of 10.1% during the first quarter). In the alternative, if the terms of the account provide that the variable rate will be calculated based on the index value on the last day of the prior quarter, § 1026.55(b)(2) permits the card issuer to increase the variable rate to 17.2% (based on the index value of 10.2% on the last day of the first quarter).

3. *Publicly available.* The index or indices must be available to the public. A publicly-available index need not be published in a newspaper, but it must be one the consumer can independently obtain (by telephone, for example) and use to verify the annual percentage rate applied to the account.

4. *Changing a non-variable rate to a variable rate.* Section 1026.55 generally prohibits a card issuer from changing a non-variable annual percentage rate to a variable annual percentage rate because such a change can result in an increase. However, a card issuer may change a non-variable rate to a variable rate to the extent permitted by one of the exceptions in §

1026.55(b). For example, § 1026.55(b)(1) permits a card issuer to change a non-variable rate to a variable rate upon expiration of a specified period of time. Similarly, following the first year after the account is opened, § 1026.55(b)(3) permits a card issuer to change a non-variable rate to a variable rate with respect to new transactions (after complying with the notice requirements in § 1026.9(b), (c) or (g)).

5. *Changing a variable rate to a non-variable rate.* Nothing in § 1026.55 prohibits a card issuer from changing a variable annual percentage rate to an equal or lower non-variable rate. Whether the non-variable rate is equal to or lower than the variable rate is determined at the time the card issuer provides the notice required by § 1026.9(c). For example, assume that on March 1 a variable annual percentage rate that is currently 15% applies to a balance of $2,000 and the card issuer sends a notice pursuant to § 1026.9(c) informing the consumer that the variable rate will be converted to a non-variable rate of 14% effective April 15. On April 15, the card issuer may apply the 14% non-variable rate to the $2,000 balance and to new transactions even if the variable rate on March 2 or a later date was less than 14%.

~~6. *Substitution of index*. A card issuer may change the index and margin used to determine the annual percentage rate under § 1026.55(b)(2) if the original index becomes unavailable, as long as historical fluctuations in the original and replacement indices were substantially similar, and as long as the replacement index and margin will produce a rate similar to the rate that was in effect at the time the original index became unavailable. If the replacement index is newly established and therefore does not have any rate history, it may be used if it produces a rate substantially similar to the rate in effect when the original index became unavailable.~~

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55(b)(7) Index replacement and margin change exception

1. *Replacing LIBOR*. A card issuer may use either the provision in § 1026.55(b)(7)(i) or § 1026.55(b)(7)(ii) to replace a LIBOR index used under the plan so long as the applicable conditions are met for the provision used. Neither provision, however, excuses the card issuer from noncompliance with contractual provisions. The following examples illustrate when a card issuer may use the provisions in § 1026.55(b)(7)(i) or § 1026.55(b)(7)(ii) to replace a LIBOR index on the plan.

i. Assume that LIBOR becomes unavailable after March 15, 2021, and assume a contract provides that a card issuer may not replace an index unilaterally under a plan unless the original index becomes unavailable and provides that the replacement index and replacement margin will result in an annual percentage rate substantially similar to a rate that is in effect when the original index becomes unavailable. The card issuer may use § 1026.55(b)(7)(i) to replace the LIBOR index used under the plan so long as the conditions of that provision are met. Section 1026.55(b)(7)(ii) provides that a card issuer may replace the LIBOR index if, among other conditions, the replacement index value in effect on December 31, 2020, and replacement margin will produce an annual percentage rate substantially similar to the rate calculated using the LIBOR index value in effect on December 31, 2020, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. In this case, however, the card issuer would be contractually prohibited from replacing the LIBOR index used under the plan unless the replacement index and replacement margin also will produce an annual percentage rate substantially similar to a rate that is in effect when the LIBOR index becomes unavailable

ii. Assume that LIBOR becomes unavailable after March 15, 2021, and assume a contract provides that a card issuer may not replace an index unilaterally under a plan unless the original index becomes unavailable but does not require that the replacement index and replacement margin will result in an annual percentage rate substantially similar to a rate that is in effect when the original index becomes unavailable. In this case, the card issuer would be contractually prohibited from unilaterally replacing the LIBOR index used under the plan until it becomes unavailable. At that time, the card issuer has the option of using § 1026.55(b)(7)(i) or § 1026.55(b)(7)(ii) to replace the LIBOR index used under the plan if the conditions of the applicable provision are met.

iii. Assume that LIBOR becomes unavailable after March 15, 2021, and assume a contract provides that a card issuer may change the terms of the contract (including the index) as permitted by law. In this case, if the card issuer replaces the LIBOR index used under the plan on or after March 15, 2021, but does not wait until the LIBOR index becomes unavailable to do so, the card issuer may only use § 1026.55(b)(7)(ii) to replace the LIBOR index if the conditions of that provision are met. In that case, the card issuer may not use § 1026.55(b)(7)(i). If the card issuer waits until the LIBOR index used under the plan becomes unavailable to replace LIBOR, the card issuer has the option of using § 1026.55(b)(7)(i) or § 1026.55(b)(7)(ii) to replace the LIBOR index if the conditions of the applicable provisions are met.

Paragraph 55(b)(7)(i)

1. *Replacing LIBOR*. For purposes of replacing a LIBOR index used under a plan, a replacement index that is not newly established must have historical fluctuations that are substantially similar to those of the LIBOR index used under the plan, considering the historical fluctuations up through when the LIBOR index becomes unavailable or up through the date indicated in a Bureau determination that the replacement index and the LIBOR index have historical fluctuations that are substantially similar, whichever is earlier.

i. The Bureau has determined that effective [applicable date] the prime rate published in the Wall Street Journal has historical fluctuations that are substantially similar to those of the 1-month and 3-month U.S Dollar LIBOR indices. In order to use this prime rate as the replacement index for the 1-month or 3-month U.S. Dollar LIBOR index, the card issuer also must comply with the condition in § 1026.55(b)(7)(i) that the prime rate and replacement margin will produce a rate substantially similar to the rate that was in effect at the time the LIBOR index became unavailable. See also comment 55(b)(7)(i)-2.

ii. The Bureau has determined that effective [applicable date] the spread-adjusted indices based on SOFR recommended by the Alternative Reference Rates Committee to replace the 1-month, 3-month, 6-month, and 1-year U.S. Dollar LIBOR indices have historical fluctuations that are substantially similar to those of the 1-month, 3-month, 6-month, and 1-year U.S. Dollar LIBOR indices respectively. In order to use this SOFR-based spread-adjusted index as the replacement index for the applicable LIBOR index, the card issuer also must comply with the condition in § 1026.55(b)(7)(i) that the SOFR-based spread-adjusted index replacement margin will produce a rate substantially similar to the rate that was in effect at the time the LIBOR index became unavailable. See also comment 55(b)(7)(i)-2.

2. *Substantially similar rate when LIBOR becomes unavailable*. Under § 1026.55(b)(7)(i), the replacement index and replacement margin must produce an annual percentage rate substantially similar to the rate that was in effect at the time the LIBOR index used under the plan became unavailable. For this comparison of the rates, a card issuer must use the value of the replacement index and the LIBOR index on the day that LIBOR becomes unavailable. The replacement index and replacement margin are not required to produce an annual percentage rate that is substantially similar on the day that the replacement index and replacement margin become effective on the plan. The following example illustrates this comment.

i. Assume that the LIBOR index used under the plan becomes unavailable on December 31, 2021, and on that day the LIBOR value is 2%, the margin is 10%, and the annual percentage rate is 12%. Also, assume that a card issuer has selected a prime index as the replacement index, and the value of the prime index is 5% on December 31, 2021. The card issuer would satisfy the requirement to use a replacement index and replacement margin that will produce an annual percentage rate substantially similar to the rate that was in effect when the LIBOR index used under the plan became unavailable by selecting a 7% replacement margin. (The prime index value of 5% and the replacement margin of 7% would produce a rate of 12% on December 31, 2021.) Thus, if the card issuer provides a change-in-terms notice under § 1026.9(c)(2) on January 2, 2022, disclosing the prime index as the replacement index and a replacement margin of 7%, where these changes will become effective on February 17, 2022, the card issuer satisfies the requirement to use a replacement index and replacement margin that will produce an annual percentage rate substantially similar to the rate that was in effect when the LIBOR index used under the plan became unavailable. This is true even if the prime index value changes after December 31, 2021, and the annual percentage rate calculated using the prime index value and 7% margin on February 17, 2022, is not substantially similar to the rate calculated using the LIBOR index value on December 31, 2021.

Paragraph 55(b)(7)(ii)

1. *Replacing LIBOR*. For purposes of replacing a LIBOR index used under a plan, a replacement index that is not newly established must have historical fluctuations that are substantially similar to those of the LIBOR index used under the plan, considering the historical fluctuations up through December 31, 2020, or up through the date indicated in a Bureau determination that the replacement index and the LIBOR index have historical fluctuations that are substantially similar, whichever is earlier.

i. The Bureau has determined that effective [applicable date] the prime rate published in the Wall Street Journal has historical fluctuations that are substantially similar to those of the 1-month and 3-month U.S. Dollar LIBOR indices. In order to use this prime rate as the replacement index for the 1-month or 3-month U.S. Dollar LIBOR index, the card issuer also must comply with the condition in § 1026.55(b)(7)(ii) that the prime rate index value in effect on December 31, 2020, and replacement margin will produce an annual percentage rate substantially similar to the rate calculated using the LIBOR index value in effect on December 31, 2020, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. If either the LIBOR index or the prime rate is not published on December 31, 2020, the card issuer must use the next calendar day that both indices are published as the date on which the annual percentage rate based on the prime rate must be substantially similar to the rate based on the LIBOR index. See also comments 55(b)(7)(ii)-2 and -3.

ii. The Bureau has determined that effective [applicable date] the spread-adjusted indices based on SOFR recommended by the Alternative Reference Rates Committee to replace the 1-month, 3-month, 6-month, and 1-year U.S. Dollar LIBOR indices have historical fluctuations that are substantially similar to those of the 1-month, 3-month, 6-month, and 1-year U.S. Dollar LIBOR indices respectively. In order to use this SOFR-based spread-adjusted index as the replacement index for the applicable LIBOR index, the card issuer also must comply with the condition in § 1026.55(b)(7)(ii) that the SOFR-based spread-adjusted index value in effect on December 31, 2020, and replacement margin will produce an annual percentage rate substantially similar to the rate calculated using the LIBOR index value in effect on December 31, 2020, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. If either the LIBOR index or the SOFR-based spread-adjusted index is not published on December 31, 2020, the card issuer must use the next calendar day that both indices are published as the date on which the annual percentage rate based on the SOFR-based spread-adjusted index must be substantially similar to the rate based on the LIBOR index. See also comments 55(b)(7)(ii)-2 and -3.

2. *Using index values on December 31, 2020, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan.* Under § 1026.55(b)(7)(ii), if both the replacement index and the LIBOR index used under the plan are published on December 31, 2020, the replacement index value in effect on December 31, 2020, and replacement margin must produce an annual percentage rate substantially similar to the rate calculated using the LIBOR index value in effect on December 31, 2020, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. The margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan is the margin that applied to the variable rate immediately prior to when the card issuer provides the change-in-terms notice disclosing the replacement index for the variable rate. The following examples illustrate how to determine the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan.

i. Assume a variable rate used under the plan that is based on a LIBOR index, and assume that LIBOR becomes unavailable after March 15, 2021. On December 31, 2020, the LIBOR index value is 2%, the margin on that day is 10% and the annual percentage rate using that index value and margin is 12%. Assume that on November 16, 2020, pursuant to § 1026.55(b)(3), a card issuer provides a change-in-terms notice under § 1026.9(c)(2) disclosing a new margin of 12% for the variable rate that will apply to new transactions after November 30, 2020, and this change in the margin becomes effective on January 1, 2021. The margin for the variable rate applicable to the transactions that occurred on or prior to November 30, 2020, remains at 10%. Assume that there are no more changes in the margin used on the variable rate that applied to transactions that occurred after November 30, 2020, or to the margin used on the variable rate that applied to transactions that occurred on or prior to November 30,2020, prior to when the card issuer provides a change-in-terms notice on January 28, 2021, disclosing the replacement index and replacement margins for both variable rates that will be effective on March 15, 2021. In this case, the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan for transactions that occurred on or prior to November 30, 2020, is 10%. The margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan for transactions that occurred after November 30, 2020 is 12%. Assume that the card issuer has selected a prime index as the replacement index, and the value of the prime index is 5% on December 31, 2020. A replacement margin of 7% is permissible under § 1026.55(b)(7)(ii) for transactions that occurred on or prior to November 30, 2020, because that replacement margin combined with the prime index value of 5% on December 31, 2020, will produce an annual percentage rate of 12%, which is substantially similar to the 12% annual percentage rate calculated using the LIBOR index value in effect on December 31, 2020, (which is 2%) and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan for that balance (which is 10%). A replacement margin of 9% is permissible under § 1026.55(b)(7)(ii) for transactions that occurred after November 30, 2020, because that replacement margin combined with the prime index value of 5% on December 31, 2020, will produce an annual percentage rate of 14%, which is substantially similar to the 14% annual percentage rate calculated using the LIBOR index value in effect on December 31, 2020, (which is 2%) and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan for transactions that occurred after November 30, 2020, (which is 12%).

ii. Assume a variable rate used under the plan that is based on a LIBOR index, and assume that LIBOR becomes unavailable after March 15, 2021. On December 31, 2020, the LIBOR index value is 2%, the margin on that day is 10% and the annual percentage rate using that index value and margin is 12%. Assume that on November 16, 2020, pursuant to

§ 1026.55(b)(4), a card issuer provides a penalty rate notice under § 1026.9(g) increasing the margin for the variable rate to 20% that will apply to both outstanding balances and new transactions effective January 1, 2021, because the consumer was more than 60 days late in making a minimum payment. Assume that there are no more changes in the margin used on the variable rate for either the outstanding balance or new transactions prior to January 28, 2021, the date on which the card issuer provides a change-in-terms notice under § 1026.9(c)(2) disclosing the replacement index and replacement margin for the variable rate that will be effective on March 15, 2021. The margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan for the outstanding balance and new transactions is 12%. Assume that the card issuer has selected a prime index as the replacement index, and the value of the prime index is 5% on December 31, 2020. A replacement margin of 17% is permissible under § 1026.55(b)(7)(ii) for the outstanding balance and new transactions because that replacement margin combined with the prime index value of 5% on December 31, 2020, will produce an annual percentage rate of 22%, which is substantially similar to the 22% annual percentage rate calculated using the LIBOR index value in effect on December 31, 2020, (which is 2%) and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan for the outstanding balance and new transactions (which is 20%).

3. *Substantially similar rate using index values on December 31, 2020.* Under § 1026.55(b)(7)(ii), if both the replacement index and the LIBOR index used under the plan are published on December 31, 2020, the replacement index value in effect on December 31, 2020, and replacement margin must produce an annual percentage rate substantially similar to the rate calculated using the LIBOR index value in effect on December 31, 2020, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. A card issuer is not required to produce an annual percentage rate that is

substantially similar on the day that the replacement index and replacement margin become effective on the plan. The following example illustrates this comment.

i. Assume that the LIBOR index used under the plan has a value of 2% on December 31, 2020, the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan is 10%, and the annual percentage rate based on that LIBOR index value and that margin is 12%. Also, assume that the card issuer has selected a prime index as the replacement index, and the value of the prime index is 5% on December 31, 2020. A card issuer would satisfy the requirement to use a replacement index value in effect on December 31, 2020, and replacement margin that will produce an annual percentage rate substantially similar to the rate calculated using the LIBOR index value in effect on December 31, 2020, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan, by selecting a 7% replacement margin. (The prime index value of 5% and the replacement margin of 7% would produce a rate of 12%.) Thus, if the card issuer provides a change-in-terms notice under § 1026.9(c)(2) on January 28, 2021, disclosing the prime index as the replacement index and a replacement margin of 7%, where these changes will become effective on March 15, 2021, the card issuer satisfies the requirement to use a replacement index value in effect on December 31, 2020, and replacement margin that will produce an annual percentage rate substantially similar to the rate calculated using the LIBOR value in effect on December 31, 2020, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. This is true even if the prime index value or the LIBOR value change after December 31, 2020, and the annual percentage rate calculated using the prime index value and 7% margin on March 15, 2021, is not substantially similar to the rate calculated using the LIBOR index value on December 31, 2020, or substantially similar to the rate calculated using the LIBOR index value on March 15, 2021.

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Section 1026.59—Reevaluation of Rate Increases

* * * * *

59(d) Factors

1. *Change in factors.* A creditor that complies with § 1026.59(a) by reviewing the factors it currently considers in determining the annual percentage rates applicable to similar new credit card accounts may change those factors from time to time. When a creditor changes the factors it considers in determining the annual percentage rates applicable to similar new credit card accounts from time to time, it may comply with § 1026.59(a) by reviewing the set of factors it considered immediately prior to the change in factors for a brief transition period, or may consider the new factors. For example, a creditor changes the factors it uses to determine the rates applicable to similar new credit card accounts on January 1, 2012. The creditor reviews the rates applicable to its existing accounts that have been subject to a rate increase pursuant to § 1026.59(a) on January 25, 2012. The creditor complies with § 1026.59(a) by reviewing, at its option, either the factors that it considered on December 31, 2011 when determining the rates applicable to similar new credit card accounts or the factors that it considers as of January 25, 2012. For purposes of compliance with § 1026.59(d), a transition period of 60 days from the change of factors constitutes a brief transition period.

2. *Comparison of existing account to factors used for similar new accounts.* Under § 1026.59(a), if a card issuer ~~creditor~~ evaluates an existing account using the same factors that it considers in determining the rates applicable to similar new accounts, the review of factors need not result in existing accounts being subject to exactly the same rates and rate structure as a card issuer ~~creditor~~ imposes on similar new accounts. For example, a card issuer ~~creditor~~ may offer variable rates on similar new accounts that are computed by adding a margin that depends on various factors to the value of a~~the~~ SOFR~~LIBOR~~ index. The account that the card issuer ~~creditor~~ is required to review pursuant to § 1026.59(a) may have variable rates that were

determined by adding a different margin, depending on different factors, to a published prime index~~rate~~. In performing the review required by § 1026.59(a), the card issuer ~~creditor~~ may review the factors it uses to determine the rates applicable to similar new accounts. If a rate reduction is required, however, the card issuer ~~creditor~~ need not base the variable rate for the existing account on the SOFR ~~LIBOR~~ index but may continue to use the published prime index~~rate~~. Section 1026.59(a) requires, however, that the rate on the existing account after the reduction, as determined by adding the published prime index~~rate~~ and margin, be comparable to the rate, as determined by adding the margin and the SOFR index~~LIBOR~~, charged on a new account for which the factors are comparable.

3. *Similar new credit card accounts*. A card issuer complying with § 1026.59(d)(1)(ii) is required to consider the factors that the card issuer currently considers when determining the annual percentage rates applicable to similar new credit card accounts under an open-end (not home-secured) consumer credit plan. For example, a card issuer may review different factors in determining the annual percentage rate that applies to credit card plans for which the consumer pays an annual fee and receives rewards points than it reviews in determining the rates for credit card plans with no annual fee and no rewards points. Similarly, a card issuer may review different factors in determining the annual percentage rate that applies to private label credit cards than it reviews in determining the rates applicable to credit cards that can be used at a wider variety of merchants. In addition, a card issuer may review different factors in determining the annual percentage rate that applies to private label credit cards usable only at Merchant A than it may review for private label credit cards usable only at Merchant B. However, § 1026.59(d)(1)(ii) requires a card issuer to review the factors it considers when determining the rates for new credit card accounts with similar features that are offered for similar purposes.

4. *No similar new credit card accounts*. In some circumstances, a card issuer that complies with § 1026.59(a) by reviewing the factors that it currently considers in determining the annual percentage rates applicable to similar new accounts may not be able to identify a class of new accounts that are similar to the existing accounts on which a rate increase has been imposed. For example, consumers may have existing credit card accounts under an open-end (not home-secured) consumer credit plan but the card issuer may no longer offer a product to new consumers with similar characteristics, such as the availability of rewards, size of credit line, or other features. Similarly, some consumers' accounts may have been closed and therefore cannot be used for new transactions, while all new accounts can be used for new transactions. In those circumstances, § 1026.59 requires that the card issuer nonetheless perform a review of the rate increase on the existing customers' accounts. A card issuer does not comply with § 1026.59 by maintaining an increased rate without performing such an evaluation. In such circumstances, § 1026.59(d)(1)(ii) requires that the card issuer compare the existing accounts to the most closely comparable new accounts that it offers.

5. *Consideration of consumer's conduct on existing account*. A card issuer that complies with § 1026.59(a) by reviewing the factors that it currently considers in determining the annual percentage rates applicable to similar new accounts may consider the consumer's payment or other account behavior on the existing account only to the same extent and in the same manner that the issuer considers such information when one of its current cardholders applies for a new account with the card issuer. For example, a card issuer might obtain consumer reports for all of its applicants. The consumer reports contain certain information regarding the applicant's past performance on existing credit card accounts. However, the card issuer may have additional information about an existing cardholder's payment history or account usage that does not appear in the consumer report and that, accordingly, it would not generally have for all new applicants. For example, a consumer may have made a payment that is five days late on his or

her account with the card issuer, but this information does not appear on the consumer report. The card issuer may consider this additional information in performing its review under § 1026.59(a), but only to the extent and in the manner that it considers such information if a current cardholder applies for a new account with the issuer.

6. *Multiple rate increases between January 1, 2009 and February 21, 2010*. i. *General*. Section 1026.59(d)(2) applies if an issuer increased the rate applicable to a credit card account under an open-end (not home- secured) consumer credit plan between January 1, 2009 and February 21, 2010, and the increase was not based solely upon factors specific to the consumer. In some cases, a credit card account may have been subject to multiple rate increases during the period from January 1, 2009 to February 21, 2010. Some such rate increases may have been based solely upon factors specific to the consumer, while others may have been based on factors not specific to the consumer, such as the issuer's cost of funds or market conditions. In such circumstances, when conducting the first two reviews required under § 1026.59, the card issuer may separately review: (i) Rate increases imposed based on factors not specific to the consumer, using the factors described in § 1026.59(d)(1)(ii) (as required by § 1026.59(d)(2)); and (ii) rate increases imposed based on consumer-specific factors, using the factors described in § 1026.59(d)(1)(i). If the review of factors described in § 1026.59(d)(1)(i) indicates that it is appropriate to continue to apply a penalty or other increased rate to the account as a result of the consumer's payment history or other factors specific to the consumer, § 1026.59 permits the card issuer to continue to impose the penalty or other increased rate, even if the review of the factors described in § 1026.59(d)(1)(ii) would otherwise require a rate decrease.

i. Example. Assume a credit card account was subject to a rate of 15% on all transactions as of January 1, 2009. On May 1, 2009, the issuer increased the rate on existing balances and new transactions to 18%, based upon market conditions or other factors not specific to the consumer or the consumer's account. Subsequently, on September 1, 2009, based on a payment that was received five days after the due date, the issuer increased the applicable rate on existing balances and new transactions from 18% to a penalty rate of 25%. When conducting the first review required under § 1026.59, the card issuer reviews the rate increase from 15% to 18% using the factors described in § 1026.59(d)(1)(ii) (as required by § 1026.59(d)(2)), and separately but concurrently reviews the rate increase from 18% to 25% using the factors described in paragraph § 1026.59(d)(1)(i). The review of the rate increase from 15% to 18% based upon the factors described in § 1026.59(d)(1)(ii) indicates that a similarly situated new consumer would receive a rate of 17%. The review of the rate increase from 18% to 25% based upon the factors described in § 1026.59(d)(1)(i) indicates that it is appropriate to continue to apply the 25% penalty rate based upon the consumer's late payment. Section 1026.59 permits the rate on the account to remain at 25%.

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59(f) Termination of Obligation to Review Factors.

1. *Revocation of temporary rates.* i. *In general.* If an annual percentage rate is increased due to revocation of a temporary rate, § 1026.59(a) requires that the card issuer periodically review the increased rate. In contrast, if the rate increase results from the expiration of a temporary rate previously disclosed in accordance with § 1026.9(c)(2)(v)(B), the review requirements in § 1026.59(a) do not apply. If a temporary rate is revoked such that the requirements of § 1026.59(a) apply, § 1026.59(f) permits an issuer to terminate the review of the rate increase if and when the applicable rate is the same as the rate that would have applied if the increase had not occurred.

ii. *Examples.* Assume that on January 1, 2011, a consumer opens a new credit card account under an open-end (not home-secured) consumer credit plan. The annual percentage rate applicable to purchases is 15%. The card issuer offers the consumer a 10% rate on purchases made between February 1, 2012 and August 1, 2013 and discloses pursuant to

§ 1026.9(c)(2)(v)(B) that on August 1, 2013 the rate on purchases will revert to the original 15% rate. The consumer makes a payment that is five days late in July 2012.

A. Upon providing 45 days' advance notice and to the extent permitted under § 1026.55, the card issuer increases the rate applicable to new purchases to 15%, effective on September 1, 2012. The card issuer must review that rate increase under § 1026.59(a) at least once each six months during the period from September 1, 2012 to August 1, 2013, unless and until the card issuer reduces the rate to 10%. The card issuer performs reviews of the rate increase on January 1, 2013 and July 1, 2013. Based on those reviews, the rate applicable to purchases remains at 15%. Beginning on August 1, 2013, the card issuer is not required to continue periodically reviewing the rate increase, because if the temporary rate had expired in accordance with its previously disclosed terms, the 15% rate would have applied to purchase balances as of August 1, 2013 even if the rate increase had not occurred on September 1, 2012.

B. Same facts as above except that the review conducted on July 1, 2013 indicates that a reduction to the original temporary rate of 10% is appropriate. Section 1026.59(a)(2)(i) requires that the rate be reduced no later than 45 days after completion of the review, or no later than August 15, 2013. Because the temporary rate would have expired prior to the date on which the rate decrease is required to take effect, the card issuer may, at its option, reduce the rate to 10% for any portion of the period from July 1, 2013, to August 1, 2013, or may continue to impose the 15% rate for that entire period. The card issuer is not required to conduct further reviews of the 15% rate on purchases.

C. Same facts as above except that on September 1, 2012 the card issuer increases the rate applicable to new purchases to the penalty rate on the consumer's account, which is 25%. The card issuer conducts reviews of the increased rate in accordance with § 1026.59 on January 1, 2013 and July 1, 2013. Based on those reviews, the rate applicable to purchases remains at 25%. The card issuer's obligation to review the rate increase continues to apply after August 1, 2013, because the 25% penalty rate exceeds the 15% rate that would have applied if the temporary rate expired in accordance with its previously disclosed terms. The card issuer's obligation to review the rate terminates if and when the annual percentage rate applicable to purchases is reduced to the 15% rate.

2. *Example—relationship to § 1026.59(a)*. Assume that on January 1, 2011, a consumer opens a new credit card account under an open-end (not home-secured) consumer credit plan. The annual percentage rate applicable to purchases is 15%. Upon providing 45 days' advance notice and to the extent permitted under § 1026.55, the card issuer increases the rate applicable to new purchases to 18%, effective on September 1, 2012. The card issuer conducts reviews of the increased rate in accordance with § 1026.59 on January 1, 2013 and July 1, 2013, based on the factors described in § 1026.59(d)(1)(ii). Based on the January 1, 2013 review, the rate applicable to purchases remains at 18%. In the review conducted on July 1, 2013, the card issuer determines that, based on the relevant factors, the rate it would offer on a comparable new account would be 14%. Consistent with § 1026.59(f), § 1026.59(a) requires that the card issuer reduce the rate on the existing account to the 15% rate that was in effect prior to the September 1, 2012 rate increase.

3. *Transition from LIBOR*. i. *General*. Effective March 15, 2021, in the case where the rate applicable immediately prior to the increase was a variable rate with a formula based on a LIBOR index, a card issuer may terminate the obligation to review if the card issuer reduces the annual percentage rate to a rate determined by a replacement formula that is derived from a replacement index value on December 31, 2020, plus replacement margin that is equal to the annual percentage rate of the LIBOR index value on December 31, 2020, plus the margin used to calculate the rate immediately prior to the increase (previous formula).

ii. *Examples*. A. Assume that on March 15, 2021, the previous formula is a LIBOR index plus a margin of 10% equal to a 12% annual percentage rate. In this case, the LIBOR index value is 2%. The card issuer selects a prime index as the replacement index. The replacement formula used to derive the rate at which the card issuer may terminate its obligation to review factors must be set at a replacement index plus replacement margin that equals 12%. If the prime index is 4% on December 31, 2020, the replacement margin must be 8% in the replacement formula. The replacement formula for purposes of determining when the card issuer can terminate the obligation to review factors is the prime index plus 8%.

B. Assume that on March 15, 2021, the account was not subject to § 1026.59 and the annual percentage rate was a LIBOR index plus a margin of 10% equal to 12%. On April 1, 2021, the card issuer raises the annual percentage rate to a LIBOR index plus a margin of 12% equal to 14%. On May 1, 2021, the card issuer transitions the account from a LIBOR index in accordance with § 1026.55(b)(7)(i) or § 1026.55(b)(7)(ii). The card issuer selects a prime index as the replacement index with a value on December 31, 2020, of 4%. The replacement formula used to derive the rate at which the card issuer may terminate its obligation to review factors must be set at the value of a replacement index on December 31, 2020, plus replacement margin that equals 12%. In this example, the replacement formula is the prime index plus 8%.

4. *Selecting a replacement index*. In selecting a replacement index for purposes of § 1026.59(f)(3), the card issuer must meet the conditions for selecting a replacement index that are described in § 1026.55(b)(7)(ii) and comment 55(b)(7)(ii)-1. For example, a card issuer may select a replacement index that is not newly established for purposes of § 1026.59(f)(3), so long as the replacement index has historical fluctuations that are substantially similar to those of the LIBOR index used in the previous formula, considering the historical fluctuations up through December 31, 2020, or up through the date indicated in a Bureau determination that the replacement index and the LIBOR index have historical fluctuations that are substantially similar, whichever is earlier. The Bureau has determined that effective [applicable date] the prime rate published in the Wall Street Journal has historical fluctuations that are substantially

similar to those of the 1-month and 3-month U.S. Dollar LIBOR indices. The Bureau also has determined that effective [applicable date] the spread-adjusted indices based on SOFR recommended by the Alternative Reference Rates Committee to replace the 1-month, 3-month, 6-month, and 1-year U.S. Dollar LIBOR indices have historical fluctuations that are substantially similar to those of the 1-month, 3-month, 6-month, and 1-year U.S. Dollar LIBOR indices respectively. See comment 55(b)(7)(ii)-1. Also, for purposes of § 1026.59(f)(3), a card issuer may select a replacement index that is newly established as described in § 1026.55(b)(7)(ii).

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59(h) Exceptions

1. *Transition from LIBOR*. The exception to the requirements of this section does not apply to rate increases already subject to § 1026.59 prior to the transition from the use of a LIBOR index as the index in setting a variable rate to the use of a different index in setting a variable rate where the change from the use of a LIBOR index to a different index occurred in accordance with § 1026.55(b)(7)(i) or § 1026.55(b)(7)(ii).