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(6) of this section do not apply to the following types of transactions:

(i) A loan that satisfies the criteria of a qualified mortgage as defined pursuant to 15 U.S.C. 1639c;

(ii) An extension of credit for which the amount of credit extended is equal to or less than the applicable threshold amount, which is adjusted every year to reflect increases in the Consumer Price Index for Urban Wage Earners and Clerical Workers, as applicable, and published in the official staff commentary to this paragraph (c)(2)(ii);

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

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(vii) An extension of credit that is a refinancing secured by a first lien, with refinancing defined as in § 1026.20(a) (except that the creditor need not be the original creditor or a holder or servicer of the original obligation), provided that the refinancing meets the following criteria:

(A) Either—

(1) The credit risk of the refinancing is retained by the person that held the credit risk of the existing obligation and there is no commitment, at consummation, to transfer the credit risk to another person; or

(2) The refinancing is insured or guaranteed by the same Federal government agency that insured or guaranteed the existing obligation;

(B) The regular periodic payments under the refinance loan do not—

(1) Cause the principal balance to increase;

(2) Allow the consumer to defer repayment of principal; or

(3) Result in a balloon payment, as defined in § 1026.18(s)(5)(i); and

(C) The proceeds from the refinancing are used solely to satisfy the existing obligation and amounts attributed solely to the costs of the refinancing; and

(viii) A transaction secured in whole or in part by a manufactured home.

6. At 78 FR 78586, Dec. 26, 2013, § 1026.35 was amended by revising (c)(2)(viii), effective July 18, 2015. For the convenience of the user, the revised text is set forth as follows:

§ 1026.35 Requirements for higher-priced mortgage loans.

* * * * *

(c) * * *

(2) * * *

(viii) A transaction secured by:

(A) A new manufactured home and land, but the exemption shall only apply to the requirement in paragraph (c)(3)(i) of this section that the appraiser conduct a physical visit of the interior of the new manufactured home; or

(B) A manufactured home and not land, for which the creditor obtains one of the following and provides a copy to the consumer no later than three business days prior to consummation of the transaction—

(1) For a new manufactured home, the manufacturer’s invoice for the manufactured home securing the transaction, provided that the date of manufacture is no earlier than 18 months prior to the creditor’s receipt of the consumer’s application for credit;

(2) A cost estimate of the value of the manufactured home securing the transaction obtained from an independent cost service provider; or

(3) A valuation, as defined in § 1026.42(b)(3), of the manufactured home performed by a person who has no direct or indirect interest, financial or otherwise, in the property or transaction for which the valuation is performed and has training in valuing manufactured homes.

* * * * *

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

(a) Definitions. (1) Loan originator. (i) For purposes of this section, the term “loan originator” means a person who, in expectation of direct or indirect compensation or other monetary gain or for direct or indirect compensation or other monetary gain, performs any of the following activities: takes an application, offers, arranges, assists a consumer in obtaining or applying to obtain, negotiates, or otherwise obtains or makes an extension of consumer credit for another person; or through advertising or other means of communication represents to the public that such person can or will perform any of these activities. The term “loan originator” includes an employee, agent, or contractor of the creditor or loan originator organization if the employee, agent, or contractor meets this definition. The term “loan originator” includes a creditor that engages in loan origination activities if the creditor does not finance the transaction at consummation out of the creditor’s own resources, including by drawing on a bona fide warehouse line of credit or

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out of deposits held by the creditor. All creditors that engage in any of the foregoing loan origination activities are loan originators for purposes of paragraphs (f) and (g) of this section. The term does not include:

(A) A person who does not take a consumer credit application or offer or negotiate credit terms available from a creditor, but who performs purely administrative or clerical tasks on behalf of a person who does engage in such activities.

(B) An employee of a manufactured home retailer who does not take a consumer credit application, offer or negotiate credit terms available from a creditor, or advise a consumer on credit terms (including rates, fees, and other costs) available from a creditor.

(C) A person that performs only real estate brokerage activities and is licensed or registered in accordance with applicable State law, unless such person is compensated by a creditor or loan originator or by any agent of such creditor or loan originator for a particular consumer credit transaction subject to this section.

(D) A seller financier that meets the criteria in paragraph (a)(4) or (a)(5) of this section, as applicable.

(E) A servicer or servicer's employees, agents, and contractors who offer or negotiate terms for purposes of renegotiating, modifying, replacing, or subordinating principal of existing mortgages where consumers are behind in their payments, in default, or have a reasonable likelihood of defaulting or falling behind. This exception does not apply, however, to a servicer or servicer's employees, agents, and contractors who offer or negotiate a transaction that constitutes a refinancing under §1026.20(a) or obligates a different consumer on the existing debt.

(ii) An "individual loan originator" is a natural person who meets the definition of "loan originator" in paragraph (a)(1)(i) of this section.

(iii) A "loan originator organization" is any loan originator, as defined in paragraph (a)(1)(i) of this section, that is not an individual loan originator.

(2) *Mortgage broker.* For purposes of this section, a mortgage broker with respect to a particular transaction is

any loan originator that is not an employee of the creditor.

(3) *Compensation.* The term "compensation" includes salaries, commissions, and any financial or similar incentive.

(4) *Seller financiers; 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:

(i) The person provides seller financing for the sale of three or fewer properties in any 12-month period to purchasers of such properties, each of which is owned by the person and serves as security for the financing.

(ii) The person has not constructed, or acted as a contractor for the construction of, a residence on the property in the ordinary course of business of the person.

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

(A) The financing is fully amortizing.

(B) The financing is one that the person determines in good faith the consumer has a reasonable ability to repay.

(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 LIBOR.

(5) *Seller financiers; 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:

(i) The natural person, estate, or trust provides seller financing for the sale of only one property in any 12-month period to purchasers of such property, which is owned by the natural person, estate, or trust and serves as security for the financing.

(ii) The natural person, estate, or trust has not constructed, or acted as a contractor for the construction of, a

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residence on the property in the ordinary course of business of the person.

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

(A) The financing has a repayment schedule that does not result in negative amortization.

(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 LIBOR.

(b) *Scope.* Paragraph (c) of this section applies to closed-end consumer credit transactions secured by a consumer's principal dwelling. Paragraphs (d), (e), (f), (g), (h), and (i) of this section apply to closed-end consumer credit transactions secured by a dwelling. This section does not apply to a home equity line of credit subject to §1026.40, except that paragraphs (h) and (i) of this section apply to such credit when secured by the consumer's principal dwelling. Paragraphs (d), (e), (f), (g), (h), and (i) of this section do not apply to a loan that is secured by a consumer's interest in a timeshare plan described in 11 U.S.C. 101(53D).

(c) *Servicing practices.* (1) In connection with a consumer credit transaction secured by a consumer's principal dwelling, no servicer shall:

(i) Fail to credit a payment to the consumer's loan account as of the date of receipt, except when a delay in crediting does not result in any charge to the consumer or in the reporting of negative information to a consumer reporting agency, or except as provided in paragraph (c)(2) of this section;

(ii) Impose on the consumer any late fee or delinquency charge in connection with a payment, when the only delinquency is attributable to late fees or delinquency charges assessed on an earlier payment, and the payment is otherwise a full payment for the applicable period and is paid on its due date

or within any applicable grace period; or

(iii) Fail to provide, within a reasonable time after receiving a request from the consumer or any person acting on behalf of the consumer, an accurate statement of the total outstanding balance that would be required to satisfy the consumer's obligation in full as of a specified date.

(2) If a servicer specifies in writing requirements for the consumer to follow in making payments, but accepts a payment that does not conform to the requirements, the servicer shall credit the payment as of 5 days after receipt.

(3) For purposes of this paragraph (c), the terms "servicer" and "servicing" have the same meanings as provided in 12 CFR 1024.2(b), as amended.

(d) *Prohibited payments to loan originators—*(1) *Payments based on a term of a transaction.* (i) Except as provided in paragraph (d)(1)(iii) or (iv) of this section, in connection with a consumer credit transaction secured by a dwelling, no loan originator shall receive and no person shall pay to a loan originator, directly or indirectly, compensation in an amount that is based on a term of a transaction, the terms of multiple transactions by an individual loan originator, or the terms of multiple transactions by multiple individual loan originators. If a loan originator's compensation is based in whole or in part on a factor that is a proxy for a term of a transaction, the loan originator's compensation is based on a term of a transaction. A factor that is not itself a term of a transaction is a proxy for a term of the transaction if the factor consistently varies with that term over a significant number of transactions, and the loan originator has the ability, directly or indirectly, to add, drop, or change the factor in originating the transaction.

(ii) For purposes of this paragraph (d)(1) only, a "term of a transaction" is any right or obligation of the parties to a credit transaction. The amount of credit extended is not a term of a transaction or a proxy for a term of a transaction, provided that compensation received by or paid to a loan originator, directly or indirectly, is based on a fixed percentage of the amount of

credit extended; however, such compensation may be subject to a minimum or maximum dollar amount.

(iii) An individual loan originator may receive, and a person may pay to an individual loan originator, compensation in the form of a contribution to a defined contribution plan that is a designated tax-advantaged plan or a benefit under a defined benefit plan that is a designated tax-advantaged plan. In the case of a contribution to a defined contribution plan, the contribution shall not be directly or indirectly based on the terms of that individual loan originator's transactions. As used in this paragraph (d)(1)(iii), "designated tax-advantaged plan" means any plan that meets the requirements of Internal Revenue Code section 401(a), 26 U.S.C. 401(a); employee annuity plan described in Internal Revenue Code section 403(a), 26 U.S.C. 403(a); simple retirement account, as defined in Internal Revenue Code section 408(p), 26 U.S.C. 408(p); simplified employee pension described in Internal Revenue Code section 408(k), 26 U.S.C. 408(k); annuity contract described in Internal Revenue Code section 403(b), 26 U.S.C. 403(b); or eligible deferred compensation plan, as defined in Internal Revenue Code section 457(b), 26 U.S.C. 457(b).

(iv) An individual loan originator may receive, and a person may pay to an individual loan originator, compensation under a non-deferred profits-based compensation plan (*i.e.*, any arrangement for the payment of non-deferred compensation that is determined with reference to the profits of the person from mortgage-related business), provided that:

(A) The compensation paid to an individual loan originator pursuant to this paragraph (d)(1)(iv) is not directly or indirectly based on the terms of that individual loan originator's transactions that are subject to this paragraph (d); and

(B) At least one of the following conditions is satisfied:

(1) The compensation paid to an individual loan originator pursuant to this paragraph (d)(1)(iv) does not, in the aggregate, exceed 10 percent of the individual loan originator's total compensation corresponding to the time

period for which the compensation under the non-deferred profits-based compensation plan is paid; or

(2) The individual loan originator was a loan originator for ten or fewer transactions subject to this paragraph (d) consummated during the 12-month period preceding the date of the compensation determination.

(2) *Payments by persons other than consumer.* (1) *Dual compensation.* (A) Except as provided in paragraph (d)(2)(i)(C) of this section, if any loan originator receives compensation directly from a consumer in a consumer credit transaction secured by a dwelling:

(1) No loan originator shall receive compensation, directly or indirectly, from any person other than the consumer in connection with the transaction; and

(2) No person who knows or has reason to know of the consumer-paid compensation to the loan originator (other than the consumer) shall pay any compensation to a loan originator, directly or indirectly, in connection with the transaction.

(B) Compensation received directly from a consumer includes payments to a loan originator made pursuant to an agreement between the consumer and a person other than the creditor or its affiliates, under which such other person agrees to provide funds toward the consumer's costs of the transaction (including loan originator compensation).

(C) If a loan originator organization receives compensation directly from a consumer in connection with a transaction, the loan originator organization may pay compensation to an individual loan originator, and the individual loan originator may receive compensation from the loan originator organization, subject to paragraph (d)(1) of this section.

(ii) *Exemption.* A payment to a loan originator that is otherwise prohibited by section 129B(c)(2)(A) of the Truth in Lending Act is nevertheless permitted pursuant to section 129B(c)(2)(B) of the Act, regardless of whether the consumer makes any upfront payment of discount points, origination points, or fees, as described in section 129B(c)(2)(B)(ii) of the Act, as long as the loan originator does not receive any compensation directly from the

consumer as described in section 129B(c)(2)(B)(i) of the Act.

(3) *Affiliates.* For purposes of this paragraph (d), affiliates shall be treated as a single “person.”

(e) *Prohibition on steering—(1) General.* In connection with a consumer credit transaction secured by a dwelling, a loan originator shall not direct or “steer” a consumer to consummate a transaction based on the fact that the originator will receive greater compensation from the creditor in that transaction than in other transactions the originator offered or could have offered to the consumer, unless the consummated transaction is in the consumer’s interest.

(2) *Permissible transactions.* A transaction does not violate paragraph (e)(1) of this section if the consumer is presented with loan options that meet the conditions in paragraph (e)(3) of this section for each type of transaction in which the consumer expressed an interest. For purposes of paragraph (e) of this section, the term “type of transaction” refers to whether:

(i) A loan has an annual percentage rate that cannot increase after consummation;

(ii) A loan has an annual percentage rate that may increase after consummation; or

(iii) A loan is a reverse mortgage.

(3) *Loan options presented.* A transaction satisfies paragraph (e)(2) of this section only if the loan originator presents the loan options required by that paragraph and all of the following conditions are met:

(i) The loan originator must obtain loan options from a significant number of the creditors with which the originator regularly does business and, for each type of transaction in which the consumer expressed an interest, must present the consumer with loan options that include:

(A) The loan with the lowest interest rate;

(B) The loan with the lowest interest rate without negative amortization, a prepayment penalty, interest-only payments, a balloon payment in the first 7 years of the life of the loan, a demand feature, shared equity, or shared appreciation; or, in the case of a reverse mortgage, a loan without a prepay-

ment penalty, or shared equity or shared appreciation; and

(C) The loan with the lowest total dollar amount of discount points, origination points or origination fees (or, if two or more loans have the same total dollar amount of discount points, origination points or origination fees, the loan with the lowest interest rate that has the lowest total dollar amount of discount points, origination points or origination fees).

(iii) For each type of transaction, if the originator presents to the consumer more than three loans, the originator must highlight the loans that satisfy the criteria specified in paragraph (e)(3)(i) of this section.

(4) *Number of loan options presented.* The loan originator can present fewer than three loans and satisfy paragraphs (e)(2) and (e)(3)(i) of this section if the loan(s) presented to the consumer satisfy the criteria of the options in paragraph (e)(3)(i) of this section and the provisions of paragraph (e)(3) of this section are otherwise met.

(f) *Loan originator qualification requirements.* A loan originator for a consumer credit transaction secured by a dwelling must, when required by applicable State or Federal law, be registered and licensed in accordance with those laws, including the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (SAFE Act, 12 U.S.C. 5102 *et seq.*), its implementing regulations (12 CFR part 1007 or part 1008), and State SAFE Act implementing law. To comply with this paragraph (f), a loan originator organization that is not a government agency or State housing finance agency must:

(1) Comply with all applicable State law requirements for legal existence and foreign qualification;

(2) Ensure that each individual loan originator who works for the loan originator organization is licensed or registered to the extent the individual is required to be licensed or registered under the SAFE Act, its implementing regulations, and State SAFE Act implementing law before the individual acts as a loan originator in a consumer credit transaction secured by a dwelling; and

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(3) For each of its individual loan originator employees who is not required to be licensed and is not licensed as a loan originator pursuant to §1008.103 of this chapter or State SAFE Act implementing law:

(i) Obtain for any individual whom the loan originator organization hired on or after January 10, 2014 (or whom the loan originator organization hired before this date but for whom there were no applicable statutory or regulatory background standards in effect at the time of hire or before January 10, 2014, used to screen the individual) and for any individual regardless of when hired who, based on reliable information known to the loan originator organization, likely does not meet the standards under §1026.36(f)(3)(ii), before the individual acts as a loan originator in a consumer credit transaction secured by a dwelling:

(A) A criminal background check through the Nationwide Mortgage Licensing System and Registry (NMLSR) or, in the case of an individual loan originator who is not a registered loan originator under the NMLSR, a criminal background check from a law enforcement agency or commercial service;

(B) A credit report from a consumer reporting agency described in section 603(p) of the Fair Credit Reporting Act (15 U.S.C. 1681a(p)) secured, where applicable, in compliance with the requirements of section 604(b) of the Fair Credit Reporting Act, 15 U.S.C. 1681b(b); and

(C) Information from the NMLSR about any administrative, civil, or criminal findings by any government jurisdiction or, in the case of an individual loan originator who is not a registered loan originator under the NMLSR, such information from the individual loan originator;

(ii) Determine on the basis of the information obtained pursuant to paragraph (f)(3)(i) of this section and any other information reasonably available to the loan originator organization, for any individual whom the loan originator organization hired on or after January 10, 2014 (or whom the loan originator organization hired before this date but for whom there were no

applicable statutory or regulatory background standards in effect at the time of hire or before January 10, 2014, used to screen the individual) and for any individual regardless of when hired who, based on reliable information known to the loan originator organization, likely does not meet the standards under this §1026.36(f)(3)(ii), before the individual acts as a loan originator in a consumer credit transaction secured by a dwelling, that the individual loan originator:

(A)(I) Has not been convicted of, or pleaded guilty or *nolo contendere* to, a felony in a domestic or military court during the preceding seven-year period or, in the case of a felony involving an act of fraud, dishonesty, a breach of trust, or money laundering, at any time;

(2) For purposes of this paragraph (f)(3)(ii)(A):

(i) A crime is a felony only if at the time of conviction it was classified as a felony under the law of the jurisdiction under which the individual was convicted;

(ii) Expunged convictions and pardoned convictions do not render an individual unqualified; and

(iii) A conviction or plea of guilty or *nolo contendere* does not render an individual unqualified under this §1026.36(f) if the loan originator organization has obtained consent to employ the individual from the Federal Deposit Insurance Corporation (or the Board of Governors of the Federal Reserve System, as applicable) pursuant to section 19 of the Federal Deposit Insurance Act (FDIA), 12 U.S.C. 1829, the National Credit Union Administration pursuant to section 205 of the Federal Credit Union Act (FCUA), 12 U.S.C. 1785(d), or the Farm Credit Administration pursuant to section 5.65(d) of the Farm Credit Act of 1971 (FCA), 12 U.S.C. 227a-14(d), notwithstanding the bars posed with respect to that conviction or plea by the FDIA, FCUA, and FCA, as applicable; and

(B) Has demonstrated financial responsibility, character, and general fitness such as to warrant a determination that the individual loan originator will operate honestly, fairly, and efficiently; and

(iii) Provide periodic training covering Federal and State law requirements that apply to the individual loan originator's loan origination activities.

(g) *Name and NMLSR ID on loan documents.* (1) For a consumer credit transaction secured by a dwelling, a loan originator organization must include on the loan documents described in paragraph (g)(2) of this section, whenever each such loan document is provided to a consumer or presented to a consumer for signature, as applicable:

(i) Its name and NMLSR ID, if the NMLSR has provided it an NMLSR ID; and

(ii) The name of the individual loan originator (as the name appears in the NMLSR) with primary responsibility for the origination and, if the NMLSR has provided such person an NMLSR ID, that NMLSR ID.

(2) The loan documents that must include the names and NMLSR IDs pursuant to paragraph (g)(1) of this section are:

(i) The credit application;

(ii) [Reserved]

(iii) The note or loan contract; and

(iv) The security instrument.

(3) For purposes of this section, NMLSR ID means a number assigned by the Nationwide Mortgage Licensing System and Registry to facilitate electronic tracking and uniform identification of loan originators and public access to the employment history of, and the publicly adjudicated disciplinary and enforcement actions against, loan originators.

(h) *Prohibition on mandatory arbitration clauses and waivers of certain consumer rights.* (1) *Arbitration.* A contract or other agreement for a consumer credit transaction secured by a dwelling (including a home equity line of credit secured by the consumer's principal dwelling) may not include terms that require arbitration or any other non-judicial procedure to resolve any controversy or settle any claims arising out of the transaction. This prohibition does not limit a consumer and creditor or any assignee from agreeing, after a dispute or claim under the transaction arises, to settle or use arbitration or other non-judicial procedure to resolve that dispute or claim.

(2) *No waivers of Federal statutory causes of action.* A contract or other agreement relating to a consumer credit transaction secured by a dwelling (including a home equity line of credit secured by the consumer's principal dwelling) may not be applied or interpreted to bar a consumer from bringing a claim in court pursuant to any provision of law for damages or other relief in connection with any alleged violation of any Federal law. This prohibition does not limit a consumer and creditor or any assignee from agreeing, after a dispute or claim under the transaction arises, to settle or use arbitration or other non-judicial procedure to resolve that dispute or claim.

(i) [Reserved]

(i) *Prohibition on financing single-premium credit insurance.* (1) A creditor may not finance, directly or indirectly, any premiums or fees for credit insurance in connection with a consumer credit transaction secured by a dwelling (including a home equity line of credit secured by the consumer's principal dwelling). This prohibition does not apply to credit insurance for which premiums or fees are calculated and paid in full on a monthly basis.

(2) For purposes of this paragraph (i), "credit insurance":

(i) Means credit life, credit disability, credit unemployment, or credit property insurance, or any other accident, loss-of-income, life, or health insurance, or any payments directly or indirectly for any debt cancellation or suspension agreement or contract, but

(ii) Excludes credit unemployment insurance for which the unemployment insurance premiums are reasonable, the creditor receives no direct or indirect compensation in connection with the unemployment insurance premiums, and the unemployment insurance premiums are paid pursuant to a separate insurance contract and are not paid to an affiliate of the creditor.

(j) *Policies and procedures to ensure and monitor compliance.* (1) A depository institution must establish and maintain written policies and procedures reasonably designed to ensure and

monitor the compliance of the depository institution, its employees, its subsidiaries, and its subsidiaries' employees with the requirements of paragraphs (d), (e), (f), and (g) of this section. These written policies and procedures must be appropriate to the nature, size, complexity, and scope of the mortgage lending activities of the depository institution and its subsidiaries.

(2) For purposes of this paragraph (j), "depository institution" has the meaning in section 1503(2) of the SAFE Act, 12 U.S.C. 5102(2). For purposes of this paragraph (j), "subsidiary" has the meaning in section 3 of the Federal Deposit Insurance Act, 12 U.S.C. 1813.

(j) *Policies and procedures to ensure and monitor compliance.* (1) A depository institution must establish and maintain written policies and procedures reasonably designed to ensure and monitor the compliance of the depository institution, its employees, its subsidiaries, and its subsidiaries' employees with the requirements of paragraphs (d), (e), (f), and (g) of this section. These written policies and procedures must be appropriate to the nature, size, complexity, and scope of the mortgage lending activities of the depository institution and its subsidiaries.

(2) For purposes of this paragraph (j), "depository institution" has the meaning in section 1503(2) of the SAFE Act, 12 U.S.C. 5102(2). For purposes of this paragraph (j), "subsidiary" has the meaning in section 3 of the Federal Deposit Insurance Act, 12 U.S.C. 1813.

[76 FR 79772, Dec. 22, 2011, as amended at 78 FR 11410, Feb. 15, 2013; 78 FR 60441, Oct. 1, 2013]

EFFECTIVE DATE NOTES: At 78 FR 6966, Jan. 31, 2013, §1026.36 was amended by adding and reserving paragraphs (g) and (j) and adding paragraph (k), effective Jan. 10, 2014. For the convenience of the user, the added text is set forth as follows:

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

* * * * *

(g) [Reserved]

* * * * *

(j) [Reserved]

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

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

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

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

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

2. At 78 FR 11006, Feb. 14, 2013, §1026.36 was amended by revising paragraph (c), effective Jan. 10, 2014. For the convenience of the user, the revised text is set forth as follows:

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(c) *Servicing practices.* For purposes of this paragraph (c), the terms "servicer" and "servicing" have the same meanings as provided in 12 CFR 1024.2(b).

(1) *Payment processing.* In connection with a consumer credit transaction secured by a consumer's principal dwelling:

(i) *Periodic payments.* No servicer shall fail to credit a periodic payment to the consumer's loan account as of the date of receipt, except when a delay in crediting does not result in any charge to the consumer or in the reporting of negative information to a consumer reporting agency, or except as provided in paragraph (c)(1)(iii) of this section.

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A periodic payment, as used in this paragraph (c), is an amount sufficient to cover principal, interest, and escrow (if applicable) for a given billing cycle. A payment qualifies as a periodic payment even if it does not include amounts required to cover late fees, other fees, or non-escrow payments a servicer has advanced on a consumer's behalf.

(i) *Partial payments.* Any servicer that retains a partial payment, meaning any payment less than a periodic payment, in a suspense or unapplied funds account shall:

(A) Disclose to the consumer the total amount of funds held in such suspense or unapplied funds account on the periodic statement as required by §1026.41(d)(3), if a periodic statement is required; and

(B) On accumulation of sufficient funds to cover a periodic payment in any suspense or unapplied funds account, treat such funds as a periodic payment received in accordance with paragraph (c)(1)(i) of this section.

(iii) *Non-conforming payments.* If a servicer specifies in writing requirements for the consumer to follow in making payments, but accepts a payment that does not conform to the requirements, the servicer shall credit the payment as of five days after receipt.

(2) *No pyramiding of late fees.* In connection with a consumer credit transaction secured by a consumer's principal dwelling, a servicer shall not impose any late fee or delinquency charge for a payment if:

(i) Such a fee or charge is attributable solely to failure of the consumer to pay a late fee or delinquency charge on an earlier payment; and

(ii) The payment is otherwise a periodic payment received on the due date, or within any applicable courtesy period.

(3) *Payoff statements.* In connection with a consumer credit transaction secured by a consumer's dwelling, a creditor, assignee or servicer, as applicable, must provide an accurate statement of the total outstanding balance that would be required to pay the consumer's obligation in full as of a specified date. The statement shall be sent within a reasonable time, but in no case more than seven business days, after receiving a written request from the consumer or any person acting on behalf of the consumer. When a creditor, assignee, or servicer, as applicable, is not able to provide the statement within seven business days of such a request because a loan is in bankruptcy or foreclosure, because the loan is a reverse mortgage or shared appreciation mortgage, or because of natural disasters or other similar circumstances, the payoff statement must be provided within a reasonable time. A creditor or assignee that does not currently own the mortgage loan or the mortgage servicing rights is not subject to the requirement in

this paragraph (c)(3) to provide a payoff statement.

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3. At 78 FR 11410, Feb. 15, 2013, §1026.36 was amended by revising the section heading, the heading of paragraph (a), and paragraph (a)(1); adding paragraphs (a)(3), (a)(4), (a)(5), and (b); revising paragraphs (d)(1), (d)(2), (e)(3)(i)(C), and (f); and adding paragraphs (g) through (j), effective Jan. 10, 2014, with the exception of paragraphs (h) and (i) which were to become effective June 1, 2013. A subsequent May 31, 2013 rule delayed the effective date of 1026.36(i) to January 10, 2014. An Oct. 1, 2013 rule advanced the effective date from Jan. 10, 2014 to Jan. 1, 2014 for the amendments to paragraphs 1026.36(a), (b), (d), (e), (f) and (j) that published in the issue of February 15, 2013, at 78 FR 11280. For the convenience of the user, the added to be effective Jan. 10, 2014 is set forth as follows:

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

* * * * *

(i) *Prohibition on financing single-premium credit insurance.* (1) A creditor may not finance, directly or indirectly, any premiums or fees for credit insurance in connection with a consumer credit transaction secured by a dwelling (including a home equity line of credit secured by the consumer's principal dwelling). This prohibition does not apply to credit insurance for which premiums or fees are calculated and paid in full on a monthly basis.

(2) For purposes of this paragraph (i), "credit insurance":

(i) Means credit life, credit disability, credit unemployment, or credit property insurance, or any other accident, loss-of-income, life, or health insurance, or any payments directly or indirectly for any debt cancellation or suspension agreement or contract, but

(ii) Excludes credit unemployment insurance for which the unemployment insurance premiums are reasonable, the creditor receives no direct or indirect compensation in connection with the unemployment insurance premiums, and the unemployment insurance premiums are paid pursuant to a separate insurance contract and are not paid to an affiliate of the creditor.

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