

Bur. of Consumer Financial Protection

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period shall be the actuarial life expectancy of the youngest consumer (as of that consumer's most recent birthday).

(C) The actuarial life expectancy specified by paragraph (c)(6)(i)(B) of this section, multiplied by a factor of 1.4 and rounded to the nearest full year.

(ii) At the creditor's option, the actuarial life expectancy specified by paragraph (c)(6)(i)(B) of this section, multiplied by a factor of .5 and rounded to the nearest full year.

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

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

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

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

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

(3) *Refinancings within one-year period.* Within one year of having extended a high-cost mortgage, a creditor shall not refinance any high-cost mortgage to the same consumer into another high-cost mortgage, unless the refinancing is in the consumer's interest. An assignee holding or servicing a high-cost mortgage shall not, for the remainder of the one-year period following the date of origination of the credit, refinance any high-cost mortgage to the same consumer into another high-cost mortgage, unless the

refinancing is in the consumer's interest. A creditor (or assignee) is prohibited from engaging in acts or practices to evade this provision, including a pattern or practice of arranging for the refinancing of its own loans by affiliated or unaffiliated creditors.

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

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

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

(A) A creditor must verify amounts of income or assets that it relies on to determine repayment ability, including expected income or assets, by the consumer's Internal Revenue Service

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Form W–2, tax returns, payroll receipts, financial institution records, or other third-party documents that provide reasonably reliable evidence of the consumer’s income or assets.

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

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

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

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

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

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

(3) If the annual percentage rate may increase during the plan, the maximum annual percentage rate that is included in the contract, as required by §1026.30, applies to the plan at account opening and will apply during the draw period and any repayment period.

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

(iv) *Exclusions from presumption of compliance.* Notwithstanding the previous paragraph, no presumption of compliance is available for an open-

end, high-cost mortgage transaction for which the regular periodic payments when aggregated do not fully amortize the outstanding principal balance except as otherwise provided by §1026.32(d)(1)(ii).

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

(ii) *Timing of counseling.* The counseling required under this paragraph (a)(5) must occur after:

(A) The consumer receives either the disclosure required by section 5(c) of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2604(c)) or the disclosures required by §1026.40; or

(B) The consumer receives the disclosures required by §1026.32(c), for transactions in which neither of the disclosures listed in paragraph (a)(5)(ii)(A) of this section are provided.

(iii) *Affiliation prohibited.* The counseling required under this paragraph (a)(5) shall not be provided by a counselor who is employed by or affiliated with the creditor.

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

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

(B) The date(s) of counseling;

(C) The name and address of the counselor;

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

(E) For transactions for which neither of the disclosures listed in paragraph (a)(5)(ii)(A) of this section are provided, a statement that the consumer(s) received counseling on the advisability of the high-cost mortgage

based on the terms provided in the disclosures required by § 1026.32(c); and

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

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

(vi) *Steering prohibited.* A creditor that extends a high-cost mortgage shall not steer or otherwise direct a consumer to choose a particular counselor or counseling organization for the counseling required under this paragraph (a)(5).

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

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

(8) *Late fees.* (i) *General.* Any late payment charge imposed in connection with a high-cost mortgage must be specifically permitted by the terms of the loan contract or open-end credit agreement and may not exceed 4 percent of the amount of the payment past due.

No such charge may be imposed more than once for a single late payment.

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

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

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

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

(ii) *Processing fee.* A creditor or servicer may charge a processing fee to cover the cost of providing a payoff statement, as described in paragraph (a)(9)(i) of this section, by fax or courier, provided that such fee may not exceed an amount that is comparable to fees imposed for similar services provided in connection with consumer credit transactions that are secured by the consumer's principal dwelling and are not high-cost mortgages. A creditor

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or servicer shall make a payoff statement available to a consumer, or a person authorized by the consumer to obtain such information, by a method other than by fax or courier and without charge pursuant to paragraph (a)(9)(i) of this section.

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

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

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

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

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considered financed by the creditor when they are calculated and paid in full on a monthly basis.

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

[78 FR 6964, Jan. 31, 2013, as amended at 78 FR 30745, May 23, 2013; 78 FR 63005, Oct. 23, 2013]

§ 1026.35 Requirements for higher-priced mortgage loans.

(a) *Definitions.* For purposes of this section:

(1) “Higher-priced mortgage loan” means a closed-end consumer credit transaction secured by the consumer's principal dwelling with an annual percentage rate that exceeds the average prime offer rate for a comparable transaction as of the date the interest rate is set:

(i) By 1.5 or more percentage points for loans secured by a first lien with a principal obligation at consummation that does not exceed the limit in effect as of the date the transaction's interest rate is set for the maximum principal obligation eligible for purchase by Freddie Mac;

(ii) By 2.5 or more percentage points for loans secured by a first lien with a principal obligation at consummation that exceeds the limit in effect as of the date the transaction's interest rate is set for the maximum principal obligation eligible for purchase by Freddie Mac; or

(iii) By 3.5 or more percentage points for loans secured by a subordinate lien.

(2) “Average prime offer rate” means an annual percentage rate that is derived from average interest rates, points, and other loan pricing terms currently offered to consumers by a representative sample of creditors for mortgage transactions that have low-risk pricing characteristics. The Bureau publishes average prime offer rates for a broad range of types of transactions in a table updated at least