

(4) *Offer through a mortgage broker.* If the creditor offers a covered transaction with a prepayment penalty to the consumer through a mortgage broker, as defined in §1026.36(a)(2), the creditor must:

(i) Present the mortgage broker an alternative covered transaction without a prepayment penalty that satisfies the requirements of paragraph (g)(3) of this section; and

(ii) Establish by agreement that the mortgage broker must present the consumer an alternative covered transaction without a prepayment penalty that satisfies the requirements of paragraph (g)(3) of this section, offered by:

(A) The creditor; or

(B) Another creditor, if the transaction offered by the other creditor has a lower interest rate or a lower total dollar amount of discount points and origination points or fees.

(5) *Creditor that is a loan originator.* If the creditor is a loan originator, as defined in §1026.36(a)(1), and the creditor presents the consumer a covered transaction offered by a person to which the creditor would assign the covered transaction after consummation, the creditor must present the consumer an alternative covered transaction without a prepayment penalty that satisfies the requirements of paragraph (g)(3) of this section, offered by:

(i) The assignee; or

(ii) Another person, if the transaction offered by the other person has a lower interest rate or a lower total dollar amount of origination discount points and points or fees.

(6) *Applicability.* This paragraph (g) applies only if a covered transaction is consummated with a prepayment penalty and is not violated if:

(i) A covered transaction is consummated without a prepayment penalty; or

(ii) The creditor and consumer do not consummate a covered transaction.

(h) *Evasion; open-end credit.* In connection with credit secured by a consumer's dwelling that does not meet the definition of open-end credit in §1026.2(a)(20), a creditor shall not struc-

ture the loan as an open-end plan to evade the requirements of this section.

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§§ 1026.44–1026.45 [Reserved]

Subpart F—Special Rules for Private Education Loans

§ 1026.46 Special disclosure requirements for private education loans.

(a) *Coverage.* The requirements of this subpart apply to private education loans as defined in §1026.46(b)(5). A creditor may, at its option, comply with the requirements of this subpart for an extension of credit subject to §§1026.17 and 1026.18 that is extended to a consumer for expenses incurred after graduation from a law, medical, dental, veterinary, or other graduate school and related to relocation, study for a bar or other examination, participation in an internship or residency program, or similar purposes.

(1) *Relation to other subparts in this part.* Except as otherwise specifically provided, the requirements and limitations of this subpart are in addition to and not in lieu of those contained in other subparts of this part.

(2) [Reserved]

(b) *Definitions.* For purposes of this subpart, the following definitions apply:

(1) *Covered educational institution* means:

(i) An educational institution that meets the definition of an institution of higher education, as defined in paragraph (b)(2) of this section, without regard to the institution's accreditation status; and

(ii) Includes an agent, officer, or employee of the institution of higher education. An agent means an institution-affiliated organization as defined by section 151 of the Higher Education Act of 1965 (20 U.S.C. 1019) or an officer or employee of an institution-affiliated organization.

(2) *Institution of higher education* has the same meaning as in sections 101 and 102 of the Higher Education Act of

1965 (20 U.S.C. 1001–1002) and the implementing regulations published by the U.S. Department of Education.

(3) *Postsecondary educational expenses* means any of the expenses that are listed as part of the cost of attendance, as defined under section 472 of the Higher Education Act of 1965 (20 U.S.C. 108711), of a student at a covered educational institution. These expenses include tuition and fees, books, supplies, miscellaneous personal expenses, room and board, and an allowance for any loan fee, origination fee, or insurance premium charged to a student or parent for a loan incurred to cover the cost of the student's attendance.

(4) *Preferred lender arrangement* has the same meaning as in section 151 of the Higher Education Act of 1965 (20 U.S.C. 1019).

(5) *Private education loan* means an extension of credit that:

(i) Is not made, insured, or guaranteed under title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 *et seq.*);

(ii) Is extended to a consumer expressly, in whole or in part, for postsecondary educational expenses, regardless of whether the loan is provided by the educational institution that the student attends;

(iii) Does not include open-end credit or any loan that is secured by real property or a dwelling; and

(iv) Does not include an extension of credit in which the covered educational institution is the creditor if:

(A) The term of the extension of credit is 90 days or less; or

(B) an interest rate will not be applied to the credit balance and the term of the extension of credit is one year or less, even if the credit is payable in more than four installments.

(c) *Form of disclosures*—(1) *Clear and conspicuous*. The disclosures required by this subpart shall be made clearly and conspicuously.

(2) *Transaction disclosures*. (i) The disclosures required under §§ 1026.47(b) and (c) shall be made in writing, in a form that the consumer may keep. The disclosures shall be grouped together, shall be segregated from everything else, and shall not contain any information not directly related to the disclosures required under §§ 1026.47(b) and

(c), which include the disclosures required under § 1026.18.

(ii) The disclosures may include an acknowledgement of receipt, the date of the transaction, and the consumer's name, address, and account number. The following disclosures may be made together with or separately from other required disclosures: the creditor's identity under § 1026.18(a), insurance or debt cancellation under § 1026.18(n), and certain security interest charges under § 1026.18(o).

(iii) The term “finance charge” and corresponding amount, when required to be disclosed under § 1026.18(d), and the interest rate required to be disclosed under §§ 1026.47(b)(1)(i) and (c)(1), shall be more conspicuous than any other disclosure, except the creditor's identity under § 1026.18(a).

(3) *Electronic disclosures*. The disclosures required under §§ 1026.47(b) and (c) may be provided to the consumer in electronic form, subject to compliance with the consumer consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. 7001 *et seq.*). The disclosures required by § 1026.47(a) may be provided to the consumer in electronic form on or with an application or solicitation that is accessed by the consumer in electronic form without regard to the consumer consent or other provisions of the E-Sign Act. The form required to be received under § 1026.48(e) may be accepted by the creditor in electronic form as provided for in that section.

(d) *Timing of disclosures*—(1) *Application or solicitation disclosures*. (i) The disclosures required by § 1026.47(a) shall be provided on or with any application or solicitation. For purposes of this subpart, the term solicitation means an offer of credit that does not require the consumer to complete an application. A “firm offer of credit” as defined in section 603(1) of the Fair Credit Reporting Act (15 U.S.C. 1681a(1)) is a solicitation for purposes of this section.

(ii) The creditor may, at its option, disclose orally the information in § 1026.47(a) in a telephone application or solicitation. Alternatively, if the creditor does not disclose orally the information in § 1026.47(a), the creditor must provide the disclosures or place them

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in the mail no later than three business days after the consumer has applied for the credit, except that, if the creditor either denies the consumer's application or provides or places in the mail the disclosures in §1026.47(b) no later than three business days after the consumer requests the credit, the creditor need not also provide the §1026.47(a) disclosures.

(iii) Notwithstanding paragraph (d)(1)(i) of this section, for a loan that the consumer may use for multiple purposes including, but not limited to, postsecondary educational expenses, the creditor need not provide the disclosures required by §1026.47(a).

(2) *Approval disclosures.* The creditor shall provide the disclosures required by §1026.47(b) before consummation on or with any notice of approval provided to the consumer. If the creditor mails notice of approval, the disclosures must be mailed with the notice. If the creditor communicates notice of approval by telephone, the creditor must mail the disclosures within three business days of providing the notice of approval. If the creditor communicates notice of approval electronically, the creditor may provide the disclosures in electronic form in accordance with §1026.46(d)(3); otherwise the creditor must mail the disclosures within three business days of communicating the notice of approval. If the creditor communicates approval in person, the creditor must provide the disclosures to the consumer at that time.

(3) *Final disclosures.* The disclosures required by §1026.47(c) shall be provided after the consumer accepts the loan in accordance with §1026.48(c)(1).

(4) *Receipt of mailed disclosures.* If the disclosures under paragraphs (d)(1), (d)(2) or (d)(3) of this section are mailed to the consumer, the consumer is considered to have received them three business days after they are mailed.

(e) *Basis of disclosures and use of estimates*—(1) *Legal obligation.* Disclosures shall reflect the terms of the legal obligation between the parties.

(2) *Estimates.* If any information necessary for an accurate disclosure is unknown to the creditor, the creditor shall make the disclosure based on the best information reasonably available at the time the disclosure is provided,

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and shall state clearly that the disclosure is an estimate.

(f) *Multiple creditors; multiple consumers.* If a transaction involves more than one creditor, only one set of disclosures shall be given and the creditors shall agree among themselves which creditor will comply with the requirements that this part imposes on any or all of them. If there is more than one consumer, the disclosures may be made to any consumer who is primarily liable on the obligation.

(g) *Effect of subsequent events*—(1) *Approval disclosures.* If a disclosure under §1026.47(b) becomes inaccurate because of an event that occurs after the creditor delivers the required disclosures, the inaccuracy is not a violation of Regulation Z (12 CFR part 1026), although new disclosures may be required under §1026.48(c).

(2) *Final disclosures.* If a disclosure under §1026.47(c) becomes inaccurate because of an event that occurs after the creditor delivers the required disclosures, the inaccuracy is not a violation of Regulation Z (12 CFR part 1026).

§ 1026.47 Content of disclosures.

(a) *Application or solicitation disclosures.* A creditor shall provide the disclosures required under paragraph (a) of this section on or with a solicitation or an application for a private education loan.

(1) *Interest Rates.* (i) The interest rate or range of interest rates applicable to the loan and actually offered by the creditor at the time of application or solicitation. If the rate will depend, in part, on a later determination of the consumer's creditworthiness or other factors, a statement that the rate for which the consumer may qualify will depend on the consumer's creditworthiness and other factors, if applicable.

(ii) Whether the interest rates applicable to the loan are fixed or variable.

(iii) If the interest rate may increase after consummation of the transaction, any limitations on the interest rate adjustments, or lack thereof; a statement that the consumer's actual rate could be higher or lower than the rates disclosed under paragraph (a)(1)(i) of this section, if applicable; and, if the limitation is determined by applicable law, that fact.

(iv) Whether the applicable interest rates typically will be higher if the loan is not co-signed or guaranteed.

(2) *Fees and default or late payment costs.* (i) An itemization of the fees or range of fees required to obtain the private education loan.

(ii) Any fees, changes to the interest rate, and adjustments to principal based on the consumer's defaults or late payments.

(3) *Repayment terms.* (i) The term of the loan, which is the period during which regularly scheduled payments of principal and interest will be due.

(ii) A description of any payment deferral options, or, if the consumer does not have the option to defer payments, that fact.

(iii) For each payment deferral option applicable while the student is enrolled at a covered educational institution:

(A) Whether interest will accrue during the deferral period; and

(B) If interest accrues, whether payment of interest may be deferred and added to the principal balance.

(iv) A statement that if the consumer files for bankruptcy, the consumer may still be required to pay back the loan.

(4) *Cost estimates.* An example of the total cost of the loan calculated as the total of payments over the term of the loan:

(i) Using the highest rate of interest disclosed under paragraph (a)(1) of this section and including all finance charges applicable to loans at that rate;

(ii) Using an amount financed of \$10,000, or \$5000 if the creditor only offers loans of this type for less than \$10,000; and

(iii) Calculated for each payment option.

(5) *Eligibility.* Any age or school enrollment eligibility requirements relating to the consumer or cosigner.

(6) *Alternatives to private education loans.* (i) A statement that the consumer may qualify for Federal student financial assistance through a program under title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 *et seq.*).

(ii) The interest rates available under each program under title IV of the Higher Education Act of 1965 (20 U.S.C.

1070 *et seq.*) and whether the rates are fixed or variable.

(iii) A statement that the consumer may obtain additional information concerning Federal student financial assistance from the institution of higher education that the student attends, or at the Web site of the U.S. Department of Education, including an appropriate Web site address.

(iv) A statement that a covered educational institution may have school-specific education loan benefits and terms not detailed on the disclosure form.

(7) *Rights of the consumer.* A statement that if the loan is approved, the terms of the loan will be available and will not change for 30 days except as a result of adjustments to the interest rate and other changes permitted by law.

(8) *Self-certification information.* A statement that, before the loan may be consummated, the consumer must complete the self-certification form and that the form may be obtained from the institution of higher education that the student attends.

(b) *Approval disclosures.* On or with any notice of approval provided to the consumer, the creditor shall disclose the information required under § 1026.18 and the following information:

(1) *Interest rate.* (i) The interest rate applicable to the loan.

(ii) Whether the interest rate is fixed or variable.

(iii) If the interest rate may increase after consummation of the transaction, any limitations on the rate adjustments, or lack thereof.

(2) *Fees and default or late payment costs.* (i) An itemization of the fees or range of fees required to obtain the private education loan.

(ii) Any fees, changes to the interest rate, and adjustments to principal based on the consumer's defaults or late payments.

(3) *Repayment terms.* (i) The principal amount of the loan for which the consumer has been approved.

(ii) The term of the loan, which is the period during which regularly scheduled payments of principal and interest will be due.

(iii) A description of the payment deferral option chosen by the consumer,

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if applicable, and any other payment deferral options that the consumer may elect at a later time.

(iv) Any payments required while the student is enrolled at a covered educational institution, based on the deferral option chosen by the consumer.

(v) The amount of any unpaid interest that will accrue while the student is enrolled at a covered educational institution, based on the deferral option chosen by the consumer.

(vi) A statement that if the consumer files for bankruptcy, the consumer may still be required to pay back the loan.

(vii) An estimate of the total amount of payments calculated based on:

(A) The interest rate applicable to the loan. Compliance with §1026.18(h) constitutes compliance with this requirement.

(B) The maximum possible rate of interest for the loan or, if a maximum rate cannot be determined, a rate of 25%.

(C) If a maximum rate cannot be determined, the estimate of the total amount for repayment must include a statement that there is no maximum rate and that the total amount for repayment disclosed under paragraph (b)(3)(vii)(B) of this section is an estimate and will be higher if the applicable interest rate increases.

(viii) The maximum monthly payment based on the maximum rate of interest for the loan or, if a maximum rate cannot be determined, a rate of 25%. If a maximum cannot be determined, a statement that there is no maximum rate and that the monthly payment amount disclosed is an estimate and will be higher if the applicable interest rate increases.

(4) *Alternatives to private education loans.* (i) A statement that the consumer may qualify for Federal student financial assistance through a program under title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 *et seq.*).

(ii) The interest rates available under each program under title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 *et seq.*), and whether the rates are fixed or variable.

(iii) A statement that the consumer may obtain additional information concerning Federal student financial assistance from the institution of high-

er education that the student attends, or at the Web site of the U.S. Department of Education, including an appropriate Web site address.

(5) *Rights of the consumer.* (i) A statement that the consumer may accept the terms of the loan until the acceptance period under §1026.48(c)(1) has expired. The statement must include the specific date on which the acceptance period expires, based on the date upon which the consumer receives the disclosures required under this subsection for the loan. The disclosure must also specify the method or methods by which the consumer may communicate acceptance.

(ii) A statement that, except for changes to the interest rate and other changes permitted by law, the rates and terms of the loan may not be changed by the creditor during the period described in paragraph (b)(5)(i) of this section.

(c) *Final disclosures.* After the consumer has accepted the loan in accordance with §1026.48(c)(1), the creditor shall disclose to the consumer the information required by §1026.18 and the following information:

(1) *Interest rate.* Information required to be disclosed under §1026.47(b)(1).

(2) *Fees and default or late payment costs.* Information required to be disclosed under §1026.47(b)(2).

(3) *Repayment terms.* Information required to be disclosed under §1026.47(b)(3).

(4) *Cancellation right.* A statement that:

(i) The consumer has the right to cancel the loan, without penalty, at any time before the cancellation period under §1026.48(d) expires, and

(ii) Loan proceeds will not be disbursed until after the cancellation period under §1026.48(d) expires. The statement must include the specific date on which the cancellation period expires and state that the consumer may cancel by that date. The statement must also specify the method or methods by which the consumer may cancel. If the creditor permits cancellation by mail, the statement must specify that the consumer's mailed request will be deemed timely if placed in the mail not later than the cancellation date specified on the disclosure.

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The disclosures required by this paragraph (c)(4) must be made more conspicuous than any other disclosure required under this section, except for the finance charge, the interest rate, and the creditor's identity, which must be disclosed in accordance with the requirements of § 1026.46(c)(2)(iii).

§ 1026.48 Limitations on private education loans.

(a) *Co-branding prohibited.* (1) Except as provided in paragraph (b) of this section, a creditor, other than the covered educational institution itself, shall not use the name, emblem, mascot, or logo of a covered educational institution, or other words, pictures, or symbols identified with a covered educational institution, in the marketing of private education loans in a way that implies that the covered education institution endorses the creditor's loans.

(2) A creditor's marketing of private education loans does not imply that the covered education institution endorses the creditor's loans if the marketing includes a clear and conspicuous disclosure that is equally prominent and closely proximate to the reference to the covered educational institution that the covered educational institution does not endorse the creditor's loans and that the creditor is not affiliated with the covered educational institution.

(b) *Endorsed lender arrangements.* If a creditor and a covered educational institution have entered into an arrangement where the covered educational institution agrees to endorse the creditor's private education loans, and such arrangement is not prohibited by other applicable law or regulation, paragraph (a)(1) of this section does not apply if the private education loan marketing includes a clear and conspicuous disclosure that is equally prominent and closely proximate to the reference to the covered educational institution that the creditor's loans are not offered or made by the covered educational institution, but are made by the creditor.

(c) *Consumer's right to accept.* (1) The consumer has the right to accept the terms of a private education loan at any time within 30 calendar days following the date on which the consumer

receives the disclosures required under § 1026.47(b).

(2) Except for changes permitted under paragraphs (c)(3) and (c)(4), the rate and terms of the private education loan that are required to be disclosed under §§ 1026.47(b) and (c) may not be changed by the creditor prior to the earlier of:

(i) The date of disbursement of the loan; or

(ii) The expiration of the 30 calendar day period described in paragraph (c)(1) of this section if the consumer has not accepted the loan within that time.

(3) *Exceptions not requiring re-disclosure.* (i) Notwithstanding paragraph (c)(2) of this section, nothing in this section prevents the creditor from:

(A) Withdrawing an offer before consummation of the transaction if the extension of credit would be prohibited by law or if the creditor has reason to believe that the consumer has committed fraud in connection with the loan application;

(B) Changing the interest rate based on adjustments to the index used for a loan;

(C) Changing the interest rate and terms if the change will unequivocally benefit the consumer; or

(D) Reducing the loan amount based upon a certification or other information received from the covered educational institution, or from the consumer, indicating that the student's cost of attendance has decreased or the consumer's other financial aid has increased. A creditor may make corresponding changes to the rate and other terms only to the extent that the consumer would have received the terms if the consumer had applied for the reduced loan amount.

(ii) If the creditor changes the rate or terms of the loan under this paragraph (c)(3), the creditor need not provide the disclosures required under § 1026.47(b) for the new loan terms, nor need the creditor provide an additional 30-day period to the consumer to accept the new terms of the loan under paragraph (c)(1) of this section.

(4) *Exceptions requiring re-disclosure.* (i) Notwithstanding paragraphs (c)(2) or (c)(3) of this section, nothing in this section prevents the creditor, at its option, from changing the rate or terms

of the loan to accommodate a specific request by the consumer. For example, if the consumer requests a different repayment option, the creditor may, but need not, offer to provide the requested repayment option and make any other changes to the rate and terms.

(ii) If the creditor changes the rate or terms of the loan under this paragraph (c)(4), the creditor shall provide the disclosures required under §1026.47(b) and shall provide the consumer the 30-day period to accept the loan under paragraph (c)(1) of this section. The creditor shall not make further changes to the rates and terms of the loan, except as specified in paragraphs (c)(3) and (4) of this section. Except as permitted under §1026.48(c)(3), unless the consumer accepts the loan offered by the creditor in response to the consumer's request, the creditor may not withdraw or change the rates or terms of the loan for which the consumer was approved prior to the consumer's request for a change in loan terms.

(d) *Consumer's right to cancel.* The consumer may cancel a private education loan, without penalty, until midnight of the third business day following the date on which the consumer receives the disclosures required by §1026.47(c). No funds may be disbursed for a private education loan until the three-business day period has expired.

(e) *Self-certification form.* For a private education loan intended to be used for the postsecondary educational expenses of a student while the student is attending an institution of higher education, the creditor shall obtain from the consumer or the institution of higher education the form developed by the Secretary of Education under section 155 of the Higher Education Act of 1965, signed by the consumer, in written or electronic form, before consummating the private education loan.

(f) *Provision of information by preferred lenders.* A creditor that has a preferred lender arrangement with a covered educational institution shall provide to the covered educational institution the information required under §§1026.47(a)(1) through (5), for each type of private education loan that the lender plans to offer to consumers for students attending the covered educational institution for the period be-

ginning July 1 of the current year and ending June 30 of the following year. The creditor shall provide the information annually by the later of the 1st day of April, or within 30 days after entering into, or learning the creditor is a party to, a preferred lender arrangement.

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

§ 1026.51 Ability to Pay.

(a) *General rule—(1)(i) Consideration of ability to pay.* A card issuer must not open a credit card account for a consumer under an open-end (not home-secured) consumer credit plan, or increase any credit limit applicable to such account, unless the card issuer considers the consumer's ability to make the required minimum periodic payments under the terms of the account based on the consumer's income or assets and the consumer's current obligations.

(ii) *Reasonable policies and procedures.* Card issuers must establish and maintain reasonable written policies and procedures to consider the consumer's ability to make the required minimum payments under the terms of the account based on a consumer's income or assets and a consumer's current obligations. Reasonable policies and procedures include treating any income and assets to which the consumer has a reasonable expectation of access as the consumer's income or assets, or limiting consideration of the consumer's income or assets to the consumer's independent income and assets. Reasonable policies and procedures also include consideration of at least one of the following: The ratio of debt obligations to income; the ratio of debt obligations to assets; or the income the consumer will have after paying debt obligations. It would be unreasonable for a card issuer not to review any information about a consumer's income or assets and current obligations, or to issue a credit card to a consumer who does not have any income or assets.

(2) *Minimum periodic payments—(i) Reasonable method.* For purposes of paragraph (a)(1) of this section, a card