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from the lender within a period of 180 days. The lender must also make no more than one alternative loan under this paragraph (e) at a time to a consumer.

(3) *Income documentation condition.* In making an alternative loan under this paragraph (e), the lender must maintain and comply with policies and procedures for documenting proof of recurring income.

(4) *Safe harbor.* Loans made by Federal credit unions in compliance with the conditions set forth by the National Credit Union Administration at 12 CFR 701.21(c)(7)(iii) for a Payday Alternative Loan are deemed to be in compliance with the requirements and conditions of paragraphs (e)(1), (2), and (3) of this section.

(f) *Accommodation loans.* Accommodation loans are conditionally exempt from the requirements of this part. *Accommodation loan* means a covered loan if at the time that the loan is consummated:

(1) The lender and its affiliates collectively have made 2,500 or fewer covered loans in the current calendar year, and made 2,500 or fewer such covered loans in the preceding calendar year; and

(2)(i) During the most recent completed tax year in which the lender was in operation, if applicable, the lender and any affiliates that were in operation and used the same tax year derived no more than 10 percent of their receipts from covered loans; or

(ii) If the lender was not in operation in a prior tax year, the lender reasonably anticipates that the lender and any of its affiliates that use the same tax year will derive no more than 10 percent of their receipts from covered loans during the current tax year.

(3) Provided, however, that covered longer-term loans for which all transfers meet the conditions in § 1041.8(a)(1)(ii), and receipts from such loans, are not included for the purpose of determining whether the conditions of paragraphs (f)(1) and (2) of this section have been satisfied.

(g) *Receipts.* For purposes of paragraph (f) of this section, receipts means “total income” (or in the case of a sole proprietorship “gross income”) plus “cost of goods sold” as these terms are

defined and reported on Internal Revenue Service (IRS) tax return forms (such as Form 1120 for corporations; Form 1120S and Schedule K for S corporations; Form 1120, Form 1065 or Form 1040 for LLCs; Form 1065 and Schedule K for partnerships; and Form 1040, Schedule C for sole proprietorships). Receipts do not include net capital gains or losses; taxes collected for and remitted to a taxing authority if included in gross or total income, such as sales or other taxes collected from customers but excluding taxes levied on the entity or its employees; or amounts collected for another (but fees earned in connection with such collections are receipts). Items such as subcontractor costs, reimbursements for purchases a contractor makes at a customer’s request, and employee-based costs such as payroll taxes are included in receipts.

(h) *Tax year.* For purposes of paragraph (f) of this section, “tax year” has the meaning attributed to it by the IRS as set forth in IRS Publication 538, which provides that a “tax year” is an annual accounting period for keeping records and reporting income and expenses.

Subpart B—Underwriting

§ 1041.4 Identification of unfair and abusive practice.

It is an unfair and abusive practice for a lender to make covered short-term loans or covered longer-term balloon-payment loans without reasonably determining that the consumers will have the ability to repay the loans according to their terms.

§ 1041.5 Ability-to-repay determination required.

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

(1) *Basic living expenses* means expenditures, other than payments for major financial obligations, that a consumer makes for goods and services that are necessary to maintain the consumer’s health, welfare, and ability to produce income, and the health and welfare of the members of the consumer’s household who are financially dependent on the consumer.

(2) *Debt-to-income ratio* means the ratio, expressed as a percentage, of the sum of the amounts that the lender projects will be payable by the consumer for major financial obligations during the relevant monthly period and the payments under the covered short-term loan or covered longer-term balloon-payment loan during the relevant monthly period, to the net income that the lender projects the consumer will receive during the relevant monthly period, all of which projected amounts are determined in accordance with paragraph (c) of this section.

(3) *Major financial obligations* means a consumer's housing expense, required payments under debt obligations (including, without limitation, outstanding covered loans), child support obligations, and alimony obligations.

(4) *National consumer report* means a consumer report, as defined in section 603(d) of the Fair Credit Reporting Act, 15 U.S.C. 1681a(d), obtained from a consumer reporting agency that compiles and maintains files on consumers on a nationwide basis, as defined in section 603(p) of the Fair Credit Reporting Act, 15 U.S.C. 1681a(p).

(5) *Net income* means the total amount that a consumer receives after the payer deducts amounts for taxes, other obligations, and voluntary contributions (but before deductions of any amounts for payments under a prospective covered short-term loan or covered longer-term balloon-payment loan or for any major financial obligation); provided that, the lender may include in the consumer's net income the amount of any income of another person to which the consumer has a reasonable expectation of access.

(6) *Payment under the covered short-term loan or covered longer-term balloon-payment loan.* (i) Means the combined dollar amount payable by the consumer at a particular time following consummation in connection with the covered short-term loan or covered longer-term balloon-payment loan, assuming that the consumer has made preceding required payments and in the absence of any affirmative act by the consumer to extend or restructure the repayment schedule or to suspend, cancel, or delay payment for any product,

service, or membership provided in connection with the loan;

(ii) Includes all principal, interest, charges, and fees; and

(iii) For a line of credit is calculated assuming that:

(A) The consumer will utilize the full amount of credit under the covered short-term loan or covered longer-term balloon-payment loan as soon as the credit is available to the consumer; and

(B) The consumer will make only minimum required payments under the covered short-term loan or covered longer-term balloon-payment loan for as long as permitted under the loan agreement.

(7) *Relevant monthly period* means the calendar month in which the highest sum of payments is due under the covered short-term or covered longer-term balloon-payment loan.

(8) *Residual income* means the sum of net income that the lender projects the consumer will receive during the relevant monthly period, minus the sum of the amounts that the lender projects will be payable by the consumer for major financial obligations during the relevant monthly period and payments under the covered short-term loan or covered longer-term balloon-payment loan during the relevant monthly period, all of which projected amounts are determined in accordance with paragraph (c) of this section.

(b) *Reasonable determination required.*

(1)(i) Except as provided in §1041.6, a lender must not make a covered short-term loan or covered longer-term balloon-payment loan or increase the credit available under a covered short-term loan or covered longer-term balloon-payment loan, unless the lender first makes a reasonable determination that the consumer will have the ability to repay the loan according to its terms.

(ii) For a covered short-term loan or covered longer-term balloon-payment loan that is a line of credit, a lender must not permit a consumer to obtain an advance under the line of credit more than 90 days after the date of a required determination under this paragraph (b), unless the lender first makes a new determination that the consumer will have the ability to repay the covered short-term loan or covered

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longer-term balloon-payment loan according to its terms.

(2) A lender's determination of a consumer's ability to repay a covered short-term loan or covered longer-term balloon-payment loan is reasonable only if either:

(i) Based on the calculation of the consumer's debt-to-income ratio for the relevant monthly period and the estimates of the consumer's basic living expenses for the relevant monthly period, the lender reasonably concludes that:

(A) For a covered short-term loan, the consumer can make payments for major financial obligations, make all payments under the loan, and meet basic living expenses during the shorter of the term of the loan or the period ending 45 days after consummation of the loan, and for 30 days after having made the highest payment under the loan; and

(B) For a covered longer-term balloon-payment loan, the consumer can make payments for major financial obligations, make all payments under the loan, and meet basic living expenses during the relevant monthly period, and for 30 days after having made the highest payment under the loan; or

(ii) Based on the calculation of the consumer's residual income for the relevant monthly period and the estimates of the consumer's basic living expenses for the relevant monthly period, the lender reasonably concludes that:

(A) For a covered short-term loan, the consumer can make payments for major financial obligations, make all payments under the loan, and meet basic living expenses during the shorter of the term of the loan or the period ending 45 days after consummation of the loan, and for 30 days after having made the highest payment under the loan; and

(B) For a covered longer-term balloon-payment loan, the consumer can make payments for major financial obligations, make all payments under the loan, and meet basic living expenses during the relevant monthly period, and for 30 days after having made the highest payment under the loan.

(c) *Projecting consumer net income and payments for major financial obliga-*

tions—(1) *General*. To make a reasonable determination required under paragraph (b) of this section, a lender must obtain the consumer's written statement in accordance with paragraph (c)(2)(i) of this section, obtain verification evidence to the extent required by paragraph (c)(2)(ii) of this section, assess information about rental housing expense as required by paragraph (c)(2)(iii) of this section, and use those sources of information to make a reasonable projection of the amount of a consumer's net income and payments for major financial obligations during the relevant monthly period. The lender must consider major financial obligations that are listed in a consumer's written statement described in paragraph (c)(2)(i)(B) of this section even if they cannot be verified by the sources listed in paragraph (c)(2)(ii)(B) of this section. To be reasonable, a projection of the amount of net income or payments for major financial obligations may be based on a consumer's written statement of amounts under paragraph (c)(2)(i) of this section only as specifically permitted by paragraph (c)(2)(ii) or (iii) or to the extent the stated amounts are consistent with the verification evidence that is obtained in accordance with paragraph (c)(2)(ii) of this section. In determining whether the stated amounts are consistent with the verification evidence, the lender may reasonably consider other reliable evidence the lender obtains from or about the consumer, including any explanations the lender obtains from the consumer.

(2) *Evidence of net income and payments for major financial obligations*—(i) *Consumer statements*. A lender must obtain a consumer's written statement of:

(A) The amount of the consumer's net income, which may include the amount of any income of another person to which the consumer has a reasonable expectation of access; and

(B) The amount of payments required for the consumer's major financial obligations.

(ii) *Verification evidence*. A lender must obtain verification evidence for the amounts of the consumer's net income and payments for major financial

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obligations other than rental housing expense, as follows:

(A) For the consumer's net income:

(1) The lender must obtain a reliable record (or records) of an income payment (or payments) directly to the consumer covering sufficient history to support the lender's projection under paragraph (c)(1) of this section if a reliable record (or records) is reasonably available. If a lender determines that a reliable record (or records) of some or all of the consumer's net income is not reasonably available, then, the lender may reasonably rely on the consumer's written statement described in paragraph (c)(2)(i)(A) of this section for that portion of the consumer's net income.

(2) If the lender elects to include in the consumer's net income for the relevant monthly period any income of another person to which the consumer has a reasonable expectation of access, the lender must obtain verification evidence to support the lender's projection under paragraph (c)(1) of this section.

(B) For the consumer's required payments under debt obligations, the lender must obtain a national consumer report, the records of the lender and its affiliates, and a consumer report obtained from an information system that has been registered for 180 days or more pursuant to §1041.11(c)(2) or is registered pursuant to §1041.11(d)(2), if available. If the reports and records do not include a debt obligation listed in the consumer's written statement described in paragraph (c)(2)(i)(B) of this section, the lender may reasonably rely on the written statement in determining the amount of the required payment.

(C) For a consumer's required payments under child support obligations or alimony obligations, the lender must obtain a national consumer report. If the report does not include a child support or alimony obligation listed in the consumer's written statement described in paragraph (c)(2)(i)(B) of this section, the lender may reasonably rely on the written statement in determining the amount of the required payment.

(D) Notwithstanding paragraphs (c)(2)(ii)(B) and (C) of this section, the

lender is not required to obtain a national consumer report as verification evidence for the consumer's debt obligations, alimony obligations, and child support obligations if during the preceding 90 days:

(1) The lender or an affiliate obtained a national consumer report for the consumer, retained the report under §1041.12(b)(1)(ii), and checked it again in connection with the new loan; and

(2) The consumer did not complete a loan sequence of three loans made under this section and trigger the prohibition under paragraph (d)(2) of this section since the previous report was obtained.

(iii) *Rental housing expense.* For a consumer's housing expense other than a payment for a debt obligation that appears on a national consumer report obtained pursuant to paragraph (c)(2)(ii)(B) of this section, the lender may reasonably rely on the consumer's written statement described in paragraph (c)(2)(i)(B) of this section.

(d) *Additional limitations on lending—covered short-term loans and covered longer-term balloon-payment loans—(1) Borrowing history review.* Prior to making a covered short-term loan or covered longer-term balloon-payment loan under this section, in order to determine whether any of the prohibitions in this paragraph (d) are applicable, a lender must obtain and review information about the consumer's borrowing history from the records of the lender and its affiliates, and from a consumer report obtained from an information system that has been registered for 180 days or more pursuant to §1041.11(c)(2) or is registered with the Bureau pursuant to §1041.11(d)(2), if available.

(2) *Prohibition on loan sequences of more than three covered short-term loans or covered longer-term balloon-payment loans made under this section.* A lender must not make a covered short-term loan or covered longer-term balloon-payment loan under this section during the period in which the consumer has a covered short-term loan or covered longer-term balloon-payment loan made under this section outstanding and for 30 days thereafter if the new covered short-term loan or covered longer-term balloon-payment loan would be the fourth loan in a sequence

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of covered short-term loans, covered longer-term balloon-payment loans, or a combination of covered short-term loans and covered longer-term balloon-payment loans made under this section.

(3) *Prohibition on making a covered short-term loan or covered longer-term balloon-payment loan under this section following a covered short-term loan made under §1041.6.* A lender must not make a covered short-term loan or covered longer-term balloon-payment loan under this section during the period in which the consumer has a covered short-term loan made under §1041.6 outstanding and for 30 days thereafter.

(e) *Prohibition against evasion.* A lender must not take any action with the intent of evading the requirements of this section.

§ 1041.6 Conditional exemption for certain covered short-term loans.

(a) *Conditional exemption for certain covered short-term loans.* Sections 1041.4 and 1041.5 do not apply to a covered short-term loan that satisfies the requirements set forth in paragraphs (b) through (e) of this section. Prior to making a covered short-term loan under this section, a lender must review the consumer's borrowing history in its own records, the records of the lender's affiliates, and a consumer report from an information system that has been registered for 180 days or more pursuant to §1041.11(c)(2) or is registered with the Bureau pursuant to §1041.11(d)(2). The lender must use this borrowing history information to determine a potential loan's compliance with the requirements in paragraphs (b) and (c) of this section.

(b) *Loan term requirements.* A covered short-term loan that is made under this section must satisfy the following requirements:

(1) The loan satisfies the following principal amount limitations, as applicable:

(i) For the first loan in a loan sequence of covered short-term loans made under this section, the principal amount is no greater than \$500.

(ii) For the second loan in a loan sequence of covered short-term loans made under this section, the principal amount is no greater than two-thirds

of the principal amount of the first loan in the loan sequence.

(iii) For the third loan in a loan sequence of covered short-term loans made under this section, the principal amount is no greater than one-third of the principal amount of the first loan in the loan sequence.

(2) The loan amortizes completely during the term of the loan and the payment schedule provides for the lender allocating a consumer's payments to the outstanding principal and interest and fees as they accrue only by applying a fixed periodic rate of interest to the outstanding balance of the unpaid loan principal during every scheduled repayment period for the term of the loan.

(3) The lender and any service provider do not take vehicle security as a condition of the loan, as defined in §1041.2(a)(19).

(4) The loan is not structured as open-end credit, as defined in §1041.2(a)(16).

(c) *Borrowing history requirements.* Prior to making a covered short-term loan under this section, the lender must determine that the following requirements are satisfied:

(1) The consumer has not had in the past 30 days an outstanding covered short-term loan under §1041.5 or covered longer-term balloon-payment loan under §1041.5;

(2) The loan would not result in the consumer having a loan sequence of more than three covered short-term loans under this section; and

(3) The loan would not result in the consumer having during any consecutive 12-month period:

(i) More than six covered short-term loans outstanding; or

(ii) Covered short-term loans outstanding for an aggregate period of more than 90 days.

(d) *Restrictions on making certain covered loans and non-covered loans following a covered short-term loan made under the conditional exemption.* If a lender makes a covered short-term loan under this section to a consumer, the lender or its affiliate must not subsequently make a covered loan, except a covered short-term loan made in accordance with the requirements in this section, or a non-covered loan to the

consumer while the covered short-term loan made under this section is outstanding and for 30 days thereafter.

(e) *Disclosures*—(1) *General form of disclosures*—(i) *Clear and conspicuous*. Disclosures required by this paragraph (e) must be clear and conspicuous. Disclosures required by this section may contain commonly accepted or readily understandable abbreviations.

(ii) *In writing or electronic delivery*. Disclosures required by this paragraph (e) must be provided in writing or through electronic delivery. The disclosures must be provided in a form that can be viewed on paper or a screen, as applicable. This paragraph (e)(1)(ii) is not satisfied by a disclosure provided orally or through a recorded message.

(iii) *Retainable*. Disclosures required by this paragraph (e) must be provided in a retainable form.

(iv) *Segregation requirements for notices*. Notices required by this paragraph (e) must be segregated from all other written or provided materials and contain only the information required by this section, other than information necessary for product identification, branding, and navigation. Segregated additional content that is not required by this paragraph (e) must not be displayed above, below, or around the required content.

(v) *Machine readable text in notices provided through electronic delivery*. If provided through electronic delivery, the notices required by paragraphs (e)(2)(i) and (ii) of this section must use machine readable text that is accessible via both web browsers and screen readers.

(vi) *Model forms*—(A) *First loan notice*. The content, order, and format of the notice required by paragraph (e)(2)(i) of this section must be substantially similar to Model Form A-1 in appendix A to this part.

(B) *Third loan notice*. The content, order, and format of the notice required by paragraph (e)(2)(ii) of this section must be substantially similar to Model Form A-2 in appendix A to this part.

(vii) *Foreign language disclosures*. Disclosures required under this paragraph (e) may be made in a language other than English, provided that the disclo-

tures are made available in English upon the consumer's request.

(2) *Notice requirements*—(i) *First loan notice*. A lender that makes a first loan in a sequence of loans made under this section must provide to a consumer a notice that includes, as applicable, the following information and statements, using language substantially similar to the language set forth in Model Form A-1 in appendix A to this part:

(A) *Identifying statement*. The statement “Notice of restrictions on future loans,” using that phrase.

(B) *Warning for loan made under this section*—(1) *Possible inability to repay*. A statement that warns the consumer not to take out the loan if the consumer is unsure of being able to repay the total amount of principal and finance charges on the loan by the contractual due date.

(2) *Contractual due date*. Contractual due date of the loan made under this section.

(3) *Total amount due*. Total amount due on the contractual due date.

(C) *Restriction on a subsequent loan required by Federal law*. A statement that informs a consumer that Federal law requires a similar loan taken out within the next 30 days to be smaller.

(D) *Borrowing limits*. In a tabular form:

(1) Maximum principal amount on loan 1 in a sequence of loans made under this section.

(2) Maximum principal amount on loan 2 in a sequence of loans made under this section.

(3) Maximum principal amount on loan 3 in a sequence of loans made under this section.

(4) Loan 4 in a sequence of loans made under this section is not allowed.

(E) *Lender name and contact information*. Name of the lender and a telephone number for the lender and, if applicable, a URL of the Web site for the lender.

(ii) *Third loan notice*. A lender that makes a third loan in a sequence of loans made under this section must provide to a consumer a notice that includes the following information and statements, using language substantially similar to the language set forth in Model Form A-2 in appendix A to this part:

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(A) *Identifying statement.* The statement “Notice of borrowing limits on this loan and future loans,” using that phrase.

(B) *Two similar loans without 30-day break.* A statement that informs a consumer that the lender’s records show that the consumer has had two similar loans without taking at least a 30-day break between them.

(C) *Restriction on loan amount required by Federal law.* A statement that informs a consumer that Federal law requires the third loan to be smaller than previous loans in the loan sequence.

(D) *Prohibition on subsequent loan.* A statement that informs a consumer that the consumer cannot take out a similar loan for at least 30 days after repaying the loan.

(E) *Lender name and contact information.* Name of the lender and a telephone number for the lender and, if applicable, a URL of the Web site for the lender.

(3) *Timing.* A lender must provide the notices required in paragraphs (e)(2)(i) and (ii) of this section to the consumer before the applicable loan under this section is consummated.

Subpart C—Payments

§ 1041.7 Identification of unfair and abusive practice.

It is an unfair and abusive practice for a lender to make attempts to withdraw payment from consumers’ accounts in connection with a covered loan after the lender’s second consecutive attempts to withdraw payments from the accounts from which the prior attempts were made have failed due to a lack of sufficient funds, unless the lender obtains the consumers’ new and specific authorization to make further withdrawals from the accounts.

§ 1041.8 Prohibited payment transfer attempts.

(a) *Definitions.* For purposes of this section and § 1041.9:

(1) *Payment transfer* means any lender-initiated debit or withdrawal of funds from a consumer’s account for the purpose of collecting any amount due or purported to be due in connection with a covered loan.

(i) *Means of transfer.* A debit or withdrawal meeting the description in paragraph (a)(1) of this section is a payment transfer regardless of the means through which the lender initiates it, including but not limited to a debit or withdrawal initiated through any of the following means:

(A) Electronic fund transfer, including a preauthorized electronic fund transfer as defined in Regulation E, 12 CFR 1005.2(k).

(B) Signature check, regardless of whether the transaction is processed through the check network or another network, such as the automated clearing house (ACH) network.

(C) Remotely created check as defined in Regulation CC, 12 CFR 229.2(ff).

(D) Remotely created payment order as defined in 16 CFR 310.2(cc).

(E) When the lender is also the account-holder, an account-holding institution’s transfer of funds from a consumer’s account held at the same institution, other than such a transfer meeting the description in paragraph (a)(1)(ii) of this section.

(ii) *Conditional exclusion for certain transfers by account-holding institutions.* When the lender is also the account-holder, an account-holding institution’s transfer of funds from a consumer’s account held at the same institution is not a payment transfer if all of the conditions in this paragraph (a)(1)(ii) are met, notwithstanding that the transfer otherwise meets the description in paragraph (a)(1) of this section.

(A) The lender, pursuant to the terms of the loan agreement or account agreement, does not charge the consumer any fee, other than a late fee under the loan agreement, in the event that the lender initiates a transfer of funds from the consumer’s account in connection with the covered loan for an amount that the account lacks sufficient funds to cover.

(B) The lender, pursuant to the terms of the loan agreement or account agreement, does not close the consumer’s account in response to a negative balance that results from a transfer of funds initiated in connection with the covered loan.