

Bur. of Consumer Financial Protection

§ 1041.5

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.

[82 FR 54871, Nov. 17, 2017, as amended at 84 FR 27929, June 17, 2019]

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 con-

sumer 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 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 obligations*—(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 obligations other than rental housing expense, as follows:

(A) For the consumer's net income:

(I) The lender must obtain a reliable record (or records) of an income pay-

ment (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

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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 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