

# Rules and Regulations

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## DEPARTMENT OF ENERGY

### 10 CFR Part 611

#### Advanced Technology Vehicles Manufacturer Assistance Program

**AGENCY:** Loan Programs Office, Department of Energy.

**ACTION:** Interpretive rule.

**SUMMARY:** The Department of Energy (“DOE”) is adopting an interpretive rule to clarify its interpretation of Section 136 of the Energy Independence and Security Act of 2007, as amended (“EISA”) and its implementing regulations for the Advanced Technology Vehicle Manufacturing Loan Program (the “ATVM Loan Program”) authorized by Section 136. Section 136(f), which establishes requirements for the administrative costs associated with loans under the ATVM Loan Program, was implemented by DOE pursuant to a 2008 interim final rule governing the operation of the ATVM Program. The implementing regulation in part provided that the borrower would be required to pay at the time of the closing of the loan, an “Administrative Fee” equal to 10 basis points of the principal amount of the loan. DOE is adopting this interpretive rule to explain its view that the administrative costs imposed by Congress under Section 136(f) is separate from the cost of the outside advisors engaged by DOE in connection with the review and processing of their respective loan applications, negotiation of conditional commitments, and closing of loans.

**DATES:** This interpretive rule is effective on August 30, 2017.

**FOR FURTHER INFORMATION CONTACT:** Herbert A. Glaser, Chief Counsel, Loan Programs Office, U.S. Department of Energy, 1000 Independence Ave. SW., Washington, DC 20585–0121, email: [lgprogram@hq.doe.gov](mailto:lgprogram@hq.doe.gov).

**SUPPLEMENTARY INFORMATION:**  
I. Introduction and Background

## II. Approval of the Office of the Secretary

### I. Introduction and Background

Section 136 of EISA authorizes the Secretary of Energy (the “Secretary”) to issue grants and direct loans to applicants for the costs of reequipping, expanding, or establishing manufacturing facilities in the United States to produce qualified advanced technology vehicles, or qualifying components. Section 136 also authorizes the Secretary to issue grants and direct loans for the costs of engineering integration performed in the United States of qualifying advanced technology vehicles and qualifying components. DOE promulgated regulations implementing Section 136 at 10 CFR part 611, 73 FR 66721 (November 12, 2008). The regulations included implementation of Section 136(f), “Fees,” which specifies that administrative costs shall be no more than \$100,000 or 10 basis points of the loan. This statutory requirement is implemented at 10 CFR 611.107(e), which states that “[t]he Borrower will be required to pay at the time of the closing of the loan a fee equal to 10 basis points of the principal amount of the loan.” This payment is referred to as the “Administrative Fee.”

Although the Administrative Fee has been the sole fee imposed by DOE under the ATVM Loan Program to date, DOE does not interpret Section 136(f) as restricting its ability to assess other fees and charges on borrowers or other applicants, as defined in the implementing regulation at 10 CFR 611.2. Moreover, DOE does not interpret Section 136(f) as limiting the Secretary’s discretion to impose on borrowers or other applicants the cost of outside advisors engaged by DOE in connection with the processing and review of their respective loan applications or the negotiation and closing of their respective loan commitments and closings (collectively, “Transaction Advisory Costs”). In the 2008 rulemaking, DOE discussed its interpretation of Section 136(f), explaining that DOE interprets the statute as authorizing DOE to charge borrowers an administrative fee and as providing DOE with the flexibility to choose either monetary option set forth in the statute. DOE decided in the 2008 rulemaking that administrative costs imposed on each borrower will be 10

basis points of the loan, to be paid by the borrower on the closing date of the loan. DOE based its decision on the need for fairness among borrowers and the belief that administrative costs for a loan would be in excess of 10 basis points, and by selecting 10 basis points as the fee for all loans, DOE ensured that borrowers of smaller loans would pay smaller Administrative Fees. Nothing in the rulemaking sought to define “administrative costs,” nor did it suggest that Section 136(f) limited DOE’s authority to recover costs not considered “administrative costs.” In this regard, the preamble to the 2008 interim final rule refers to a “fee”, but does not suggest that the fee is exclusive. Moreover, both Section 136(f) and the implementing regulations are silent as to the allocation, between DOE and applicants, of Transaction Advisory Costs or other costs that fall outside of the scope of administrative costs.

Generally, the costs incurred by DOE to date to carry out the ATVM Loan Program can be divided into two categories: Those costs attributable generally to the overall administration of the ATVM Program, including payroll and other overhead costs of the Loan Programs Office ATVM Division, which are incurred irrespective of the volume or complexity of loan applications (“Category I Costs”), and those costs attributable directly to the review, processing, closing and management of specific loan transactions, including Transaction Advisory Costs (“Category II Costs”). Transaction Advisory Costs and other Category II Costs vary significantly in relation to the maturity and organization of the applicant and the complexity of the proposed project, among other factors.

In this rulemaking, DOE interprets “administrative costs” as used in Section 136(f) not to include Category II Costs, including Transactional Advisory Costs. DOE interprets Section 136(f) to instead establish a limit on the Category I Costs of the ATVM Loan Program that can be recovered through the imposition of the Administrative Fee. Allocating to the applicant the responsibility for Transaction Advisory Costs associated with the applicant’s transaction is consistent with the prevailing practices of similar federal financing programs and commercial lenders in similar transactions. Accordingly, DOE does not interpret either Section 136(f) or the

implementing regulations to restrict DOE's ability to allocate the Transaction Advisory Costs or other Category II Costs associated with a particular application to the relevant applicant.

Based on its interpretation of the statute as explained in this rule, applicants for ATVM loans can bear all Transaction Advisory Costs associated with their respective applications. Applicants would pay Transaction Advisory Costs pursuant to direct agreements executed by and between the applicant and each relevant outside transaction advisor, in a form acceptable to DOE and each such transaction advisor, no later than the date determined by DOE in its discretion with respect to such pending application.

## II. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this interpretive rule.

### List of Subjects in 10 CFR Part 611

Administrative practice and procedure, Loan programs—energy, Reporting and recordkeeping requirements.

Issued in Washington, DC, on August 24, 2017.

**John Sneed,**

*Executive Director, Loan Programs Office.*

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## BUREAU OF CONSUMER FINANCIAL PROTECTION

### 12 CFR Part 1026

#### Truth in Lending (Regulation Z) Annual Threshold Adjustments (Credit Cards, HOEPA, and ATR/QM)

**AGENCY:** Bureau of Consumer Financial Protection.

**ACTION:** Final rule; official interpretation.

**SUMMARY:** The Bureau of Consumer Financial Protection (Bureau) is issuing this final rule amending the official interpretations for Regulation Z, which implements the Truth in Lending Act (TILA). The Bureau is required to calculate annually the dollar amounts for several provisions in Regulation Z; this final rule revises, as applicable, the dollar amounts for provisions implementing TILA and amendments to TILA, including under the Credit Card Accountability Responsibility and Disclosure Act of 2009 (CARD Act), the Home Ownership and Equity Protection Act of 1994 (HOEPA), and the Dodd-

Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). The Bureau is adjusting these amounts, where appropriate, based on the annual percentage change reflected in the Consumer Price Index (CPI) in effect on June 1, 2017.

**DATES:** This final rule is effective January 1, 2018.

**FOR FURTHER INFORMATION CONTACT:**

Jaclyn Maier, Counsel, Office of Regulations, Consumer Financial Protection Bureau, 1700 G Street NW., Washington, DC 20552 at (202) 435-7700.

**SUPPLEMENTARY INFORMATION:** The Bureau is amending the official interpretations for Regulation Z, which implements TILA, to update the dollar amounts of various thresholds that are adjusted annually based on the annual percentage change in the CPI as published by the Bureau of Labor Statistics (BLS). Specifically, for open-end consumer credit plans under TILA, the threshold that triggers requirements to disclose minimum interest charges will remain unchanged at \$1.00 in 2018. For open-end consumer credit plans under the CARD Act amendments to TILA, the adjusted dollar amount for the safe harbor for a first violation penalty fee will remain unchanged at \$27 in 2018 and the adjusted dollar amount for the safe harbor for a subsequent violation penalty fee will remain unchanged at \$38 in 2018. For HOEPA loans, the adjusted total loan amount threshold for high-cost mortgages in 2018 will be \$21,032. The adjusted points and fees dollar trigger for high-cost mortgages in 2018 will be \$1,052. For the general rule to determine consumers' ability to repay mortgage loans, the maximum thresholds for total points and fees for qualified mortgages in 2018 will be 3 percent of the total loan amount for a loan greater than or equal to \$105,158; \$3,155 for a loan amount greater than or equal to \$63,095 but less than \$105,158; 5 percent of the total loan amount for a loan greater than or equal to \$21,032 but less than \$63,095; \$1,052 for a loan amount greater than or equal to \$13,145 but less than \$21,032; and 8 percent of the total loan amount for a loan amount less than \$13,145.

### I. Background

#### A. Credit Card Annual Adjustments

Minimum Interest Charge Disclosure Thresholds

Sections 1026.6(b)(2)(iii) and 1026.60(b)(3) of the Bureau's Regulation Z implement sections 127(a)(3) and 127(c)(1)(A)(ii)(II) of TILA. Sections

1026.6(b)(2)(iii) and 1026.60(b)(3) require the disclosure of any minimum interest charge exceeding \$1.00 that could be imposed during a billing cycle and provide that, for open-end consumer credit plans, the minimum interest charge thresholds will be re-calculated annually using the CPI that was in effect on the preceding June 1; the Bureau uses the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) for this adjustment. When the cumulative change in the adjusted minimum value derived from applying the annual CPI-W level to the current amounts in §§ 1026.6(b)(2)(iii) and 1026.60(b)(3) has risen by a whole dollar, the minimum interest charge amounts set forth in the regulation will be increased by \$1.00. The BLS publishes consumer-based indices monthly but does not report a CPI change on June 1; adjustments are reported in the middle of the month. This adjustment analysis is based on the CPI-W index in effect on June 1, 2017, which was reported by BLS on May 12, 2017, and reflects the percentage change from April 2016 to April 2017. The CPI-W is a subset of the Consumer Price Index for All Urban Consumers (CPI-U) index and represents approximately 28 percent of the U.S. population. The adjustment analysis accounts for a 2.1 percent increase in the CPI-W from April 2016 to April 2017. This increase in the CPI-W when applied to the current amounts in §§ 1026.6(b)(2)(iii) and 1026.60(b)(3) did not trigger an increase in the minimum interest charge threshold of at least \$1.00, and the Bureau is therefore not amending §§ 1026.6(b)(2)(iii) and 1026.60(b)(3).

#### Safe Harbor Penalty Fees

Section 1026.52(b)(1)(ii)(A) and (B) of the Bureau's Regulation Z implements section 149(e) of TILA, established by the CARD Act.<sup>1</sup> Section 1026.52(b)(1)(ii)(D) provides that the safe harbor provision, which establishes the permissible penalty fee thresholds in § 1026.52(b)(1)(ii)(A) and (B), will be re-calculated annually using the CPI that was in effect on the preceding June 1; the Bureau uses the CPI-W for this adjustment. The BLS publishes consumer-based indices monthly but does not report a CPI change on June 1; adjustments are reported in the middle of the month. The CPI-W is a subset of the CPI-U index and represents approximately 28 percent of the U.S. population. When the cumulative change in the adjusted value derived

<sup>1</sup> Credit Card Accountability Responsibility and Disclosure Act of 2009, Public Law 111-24, 123 Stat. 1734 (2009).