

## Bur. of Consumer Financial Protection

## § 1026.3

in a dwelling securing a closed-end consumer credit transaction is transferred from a consumer, provided that the transfer is:

(A) A transfer by devise, descent, or operation of law on the death of a joint tenant or tenant by the entirety;

(B) A transfer to a relative resulting from the death of the consumer;

(C) A transfer where the spouse or children of the consumer become an owner of the property;

(D) A transfer resulting from a decree of a dissolution of marriage, legal separation agreement, or from an incidental property settlement agreement, by which the spouse of the consumer becomes an owner of the property; or

(E) A transfer into an *inter vivos* trust in which the consumer is and remains a beneficiary and which does not relate to a transfer of rights of occupancy in the property.

(ii) *Confirmed successor in interest* means a successor in interest once a servicer has confirmed the successor in interest's identity and ownership interest in the dwelling.

(b) *Rules of construction.* For purposes of this part, the following rules of construction apply:

(1) Where appropriate, the singular form of a word includes the plural form and plural includes singular.

(2) Where the words *obligation* and *transaction* are used in the regulation, they refer to a consumer credit obligation or transaction, depending upon the context. Where the word *credit* is used in the regulation, it means *consumer credit* unless the context clearly indicates otherwise.

(3) Unless defined in this part, the words used have the meanings given to them by state law or contract.

(4) Where the word *amount* is used in this part to describe disclosure requirements, it refers to a numerical amount.

[76 FR 79772, Dec. 22, 2011, as amended at 78 FR 80106, Dec. 31, 2013; 81 FR 72388, Oct. 19, 2016; 81 FR 84369, Nov. 22, 2016]

### § 1026.3 Exempt transactions.

The following transactions are not subject to this part or, if the exemption is limited to specified provisions of this part, are not subject to those provisions:

(a) *Business, commercial, agricultural, or organizational credit.* (1) An extension of credit primarily for a business, commercial or agricultural purpose.

(2) An extension of credit to other than a natural person, including credit to government agencies or instrumentalities.

(b) *Credit over applicable threshold amount*—(1) *Exemption*—(i) *Requirements.* An extension of credit in which the amount of credit extended exceeds the applicable threshold amount or in which there is an express written commitment to extend credit in excess of the applicable threshold amount, unless the extension of credit is:

(A) Secured by any real property, or by personal property used or expected to be used as the principal dwelling of the consumer; or

(B) A private education loan as defined in § 1026.46(b)(5).

(ii) *Annual adjustments.* The threshold amount in paragraph (b)(1)(i) of this section is adjusted annually to reflect increases in the Consumer Price Index for Urban Wage Earners and Clerical Workers, as applicable. See the official commentary to this paragraph (b) for the threshold amount applicable to a specific extension of credit or express written commitment to extend credit.

(2) *Transition rule for open-end accounts exempt prior to July 21, 2011.* An open-end account that is exempt on July 20, 2011 based on an express written commitment to extend credit in excess of \$25,000 remains exempt until December 31, 2011 unless:

(i) The creditor takes a security interest in any real property, or in personal property used or expected to be used as the principal dwelling of the consumer; or

(ii) The creditor reduces the express written commitment to extend credit to \$25,000 or less.

(c) *Public utility credit.* An extension of credit that involves public utility services provided through pipe, wire, other connected facilities, or radio or similar transmission (including extensions of such facilities), if the charges for service, delayed payment, or any discounts for prompt payment are filed with or regulated by any government unit. The financing of durable goods or

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home improvements by a public utility is not exempt.

(d) *Securities or commodities accounts.* Transactions in securities or commodities accounts in which credit is extended by a broker-dealer registered with the Securities and Exchange Commission or the Commodity Futures Trading Commission.

(e) *Home fuel budget plans.* An installment agreement for the purchase of home fuels in which no finance charge is imposed.

(f) *Student loan programs.* Loans made, insured, or guaranteed pursuant to a program authorized by title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 *et seq.*).

(g) *Employer-sponsored retirement plans.* An extension of credit to a participant in an employer-sponsored retirement plan qualified under section 401(a) of the Internal Revenue Code, a tax-sheltered annuity under section 403(b) of the Internal Revenue Code, or an eligible governmental deferred compensation plan under section 457(b) of the Internal Revenue Code (26 U.S.C. 401(a); 26 U.S.C. 403(b); 26 U.S.C. 457(b)), provided that the extension of credit is comprised of fully vested funds from such participant's account and is made in compliance with the Internal Revenue Code (26 U.S.C. 1 *et seq.*).

(h) *Partial exemption for certain mortgage loans.* The special disclosure requirements in §1026.19(g) and, unless the creditor chooses to provide the disclosures described in §1026.19(e) and (f), in §1026.19(e) and (f) do not apply to a transaction that satisfies all of the following criteria:

(1) The transaction is secured by a subordinate lien;

(2) The transaction is for the purpose of:

(i) Downpayment, closing costs, or other similar home buyer assistance, such as principal or interest subsidies;

(ii) Property rehabilitation assistance;

(iii) Energy efficiency assistance; or

(iv) Foreclosure avoidance or prevention;

(3) The credit contract does not require the payment of interest;

(4) The credit contract provides that repayment of the amount of credit extended is:

(i) Forgiven either incrementally or in whole, at a date certain, and subject only to specified ownership and occupancy conditions, such as a requirement that the consumer maintain the property as the consumer's principal dwelling for five years;

(ii) Deferred for a minimum of 20 years after consummation of the transaction;

(iii) Deferred until sale of the property securing the transaction; or

(iv) Deferred until the property securing the transaction is no longer the principal dwelling of the consumer;

(5)(i) The costs payable by the consumer in connection with the transaction at consummation are limited to:

(A) Recording fees;

(B) Transfer taxes;

(C) A bona fide and reasonable application fee; and

(D) A bona fide and reasonable fee for housing counseling services; and

(ii) The total of costs payable by the consumer under paragraph (h)(5)(i)(C) and (D) of this section is less than 1 percent of the amount of credit extended; and

(6) The following disclosures are provided:

(i) Disclosures described in §1026.18 that comply with this part; or

(ii) Alternatively, disclosures described in §1026.19(e) and (f) that comply with this part.

[76 FR 79772, Dec. 22, 2011, as amended at 78 FR 80107, Dec. 31, 2013; 82 FR 37768, Aug. 11, 2017]

### § 1026.4 Finance charge.

(a) *Definition.* The finance charge is the cost of consumer credit as a dollar amount. It includes any charge payable directly or indirectly by the consumer and imposed directly or indirectly by the creditor as an incident to or a condition of the extension of credit. It does not include any charge of a type payable in a comparable cash transaction.

(1) *Charges by third parties.* The finance charge includes fees and amounts charged by someone other than the creditor, unless otherwise excluded under this section, if the creditor:

(i) Requires the use of a third party as a condition of or an incident to the