

Bur. of Consumer Financial Protection

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(ii) State law requirements are inconsistent with the requirements contained in chapter 4 (Credit billing) of the Act (other than section 161 or 162) and the implementing provisions of this part and are preempted if the creditor cannot comply with state law without violating Federal law.

(iii) A state may request the Bureau to determine whether its law is inconsistent with chapter 4 of the Act and its implementing provisions.

(b) *Equivalent disclosure requirements.* If the Bureau determines that a disclosure required by state law (other than a requirement relating to the finance charge, annual percentage rate, or the disclosures required under §1026.32) is substantially the same in meaning as a disclosure required under the Act or this part, creditors in that state may make the state disclosure in lieu of the Federal disclosure. A creditor, state, or other interested party may request the Bureau to determine whether a state disclosure is substantially the same in meaning as a Federal disclosure.

(c) *Request for determination.* The procedures under which a request for a determination may be made under this section are set forth in appendix A.

(d) *Special rule for credit and charge cards.* State law requirements relating to the disclosure of credit information in any credit or charge card application or solicitation that is subject to the requirements of section 127(c) of chapter 2 of the Act (§1026.60 of the regulation) or in any renewal notice for a credit or charge card that is subject to the requirements of section 127(d) of chapter 2 of the Act (§1026.9(e) of the regulation) are preempted. State laws relating to the enforcement of section 127(c) and (d) of the Act are not preempted.

[76 FR 79772, Dec. 22, 2011, as amended at 78 FR 80112, Dec. 31, 2013]

§ 1026.29 State exemptions.

(a) *General rule.* Any state may apply to the Bureau to exempt a class of transactions within the state from the requirements of chapter 2 (Credit transactions) or chapter 4 (Credit billing) of the Act and the corresponding provisions of this part. The Bureau shall grant an exemption if it determines that:

(1) The state law is substantially similar to the Federal law or, in the case of chapter 4, affords the consumer greater protection than the Federal law; and

(2) There is adequate provision for enforcement.

(b) *Civil liability.* (1) No exemptions granted under this section shall extend to the civil liability provisions of sections 130 and 131 of the Act.

(2) If an exemption has been granted, the disclosures required by the applicable state law (except any additional requirements not imposed by Federal law) shall constitute the disclosures required by the Act.

(c) *Applications.* The procedures under which a state may apply for an exemption under this section are set forth in appendix B to this part.

§ 1026.30 Limitation on rates.

A creditor shall include in any consumer credit contract secured by a dwelling and subject to the Act and this part the maximum interest rate that may be imposed during the term of the obligation when:

(a) In the case of closed-end credit, the annual percentage rate may increase after consummation, or

(b) In the case of open-end credit, the annual percentage rate may increase during the plan.

Subpart E—Special Rules for Certain Home Mortgage Transactions

§ 1026.31 General rules.

(a) *Relation to other subparts in this part.* The requirements and limitations of this subpart are in addition to and not in lieu of those contained in other subparts of this part.

(b) *Form of disclosures.* The creditor shall make the disclosures required by this subpart clearly and conspicuously in writing, in a form that the consumer may keep. The disclosures required by this subpart 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.*).

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(c) *Timing of disclosure*—(1) *Disclosures for high-cost mortgages.* The creditor shall furnish the disclosures required by § 1026.32 at least three business days prior to consummation or account opening of a high-cost mortgage as defined in § 1026.32(a).

(i) *Change in terms.* After complying with this paragraph (c)(1) and prior to consummation or account opening, if the creditor changes any term that makes the disclosures inaccurate, new disclosures shall be provided in accordance with the requirements of this subpart.

(ii) *Telephone disclosures.* A creditor may provide new disclosures required by paragraph (c)(1)(i) of this section by telephone if the consumer initiates the change and if, prior to or at consummation or account opening:

(A) The creditor provides new written disclosures; and

(B) The consumer and creditor sign a statement that the new disclosures were provided by telephone at least three days prior to consummation or account opening, as applicable.

(iii) *Consumer's waiver of waiting period before consummation or account opening.* The consumer may, after receiving the disclosures required by this paragraph (c)(1), modify or waive the three-day waiting period between delivery of those disclosures and consummation or account opening if the consumer determines that the extension of credit is needed to meet a bona fide personal financial emergency. To modify or waive the right, the consumer shall give the creditor a dated written statement that describes the emergency, specifically modifies or waives the waiting period, and bears the signature of all the consumers entitled to the waiting period. Printed forms for this purpose are prohibited, except when creditors are permitted to use printed forms pursuant to § 1026.23(e)(2).

(2) *Disclosures for reverse mortgages.* The creditor shall furnish the disclosures required by § 1026.33 at least three business days prior to:

(i) Consummation of a closed-end credit transaction; or

(ii) The first transaction under an open-end credit plan.

(d) *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, and shall state clearly that the disclosure is an estimate.

(3) *Per-diem interest.* For a transaction in which a portion of the interest is determined on a per-diem basis and collected at consummation, any disclosure affected by the per-diem interest shall be considered accurate if the disclosure is based on the information known to the creditor at the time that the disclosure documents are prepared.

(e) *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 must 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. If the transaction is rescindable under § 1026.15 or § 1026.23, however, the disclosures shall be made to each consumer who has the right to rescind.

(f) *Effect of subsequent events.* If a disclosure 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 for mortgages covered by § 1026.32 under paragraph (c) of this section, § 1026.9(c), § 1026.19, or § 1026.20.

(g) *Accuracy of annual percentage rate.* For purposes of section 1026.32, the annual percentage rate shall be considered accurate, and may be used in determining whether a transaction is covered by section 1026.32, if it is accurate according to the requirements and within the tolerances under section 1026.22 for closed-end credit transactions or 1026.6(a) for open-end credit plans. The finance charge tolerances for rescission under section 1026.23(g) or (h) shall not apply for this purpose.

(h) *Corrections and unintentional violations.* A creditor or assignee in a high-cost mortgage, as defined in §1026.32(a), who, when acting in good faith, failed to comply with any requirement under section 129 of the Act will not be deemed to have violated such requirement if the creditor or assignee satisfies either of the following sets of conditions:

- (1)(i) Within 30 days of consummation or account opening and prior to the institution of any action, the consumer is notified of or discovers the violation;
- (ii) Appropriate restitution is made within a reasonable time; and
- (iii) Within a reasonable time, whatever adjustments are necessary are made to the loan or credit plan to either, at the choice of the consumer:

(A) Make the loan or credit plan satisfy the requirements of 15 U.S.C. 1631–1651; or

(B) Change the terms of the loan or credit plan in a manner beneficial to the consumer so that the loan or credit plan will no longer be a high-cost mortgage.

(2)(i) Within 60 days of the creditor's discovery or receipt of notification of an unintentional violation or bona fide error and prior to the institution of any action, the consumer is notified of the compliance failure;

- (ii) Appropriate restitution is made within a reasonable time; and
- (iii) Within a reasonable time, whatever adjustments are necessary are made to the loan or credit plan to either, at the choice of the consumer:

(A) Make the loan or credit plan satisfy the requirements of 15 U.S.C. 1631–1651; or

(B) Change the terms of the loan or credit plan in a manner beneficial to the consumer so that the loan or credit plan will no longer be a high-cost mortgage.

[76 FR 79772, Dec. 22, 2011, as amended at 78 FR 6962, Jan. 31, 2013; 78 FR 60440, Oct. 1, 2013]

§ 1026.32 Requirements for high-cost mortgages.

(a) *Coverage.* (1) The requirements of this section apply to a *high-cost mortgage*, which is any consumer credit transaction that is secured by the consumer's principal dwelling, other than

as provided in paragraph (a)(2) of this section, and in which:

(i) The annual percentage rate applicable to the transaction, as determined in accordance with paragraph (a)(3) of this section, will exceed the average prime offer rate, as defined in §1026.35(a)(2), for a comparable transaction by more than:

(A) 6.5 percentage points for a first-lien transaction, other than as described in paragraph (a)(1)(i)(B) of this section;

(B) 8.5 percentage points for a first-lien transaction if the dwelling is personal property and the loan amount is less than \$50,000; or

(C) 8.5 percentage points for a subordinate-lien transaction; or

(ii) The transaction's total points and fees, as defined in paragraphs (b)(1) and (2) of this section, will exceed:

(A) 5 percent of the total loan amount for a transaction with a loan amount of \$20,000 or more; the \$20,000 figure shall be adjusted annually on January 1 by the annual percentage change in the Consumer Price Index that was reported on the preceding June 1; or

(B) The lesser of 8 percent of the total loan amount or \$1,000 for a transaction with a loan amount of less than \$20,000; the \$1,000 and \$20,000 figures shall be adjusted annually on January 1 by the annual percentage change in the Consumer Price Index that was reported on the preceding June 1; or

(iii) Under the terms of the loan contract or open-end credit agreement, the creditor can charge a prepayment penalty, as defined in paragraph (b)(6) of this section, more than 36 months after consummation or account opening, or prepayment penalties that can exceed, in total, more than 2 percent of the amount prepaid.

(2) *Exemptions.* This section does not apply to the following:

(i) A reverse mortgage transaction subject to §1026.33;

(ii) A transaction to finance the initial construction of a dwelling;

(iii) A transaction originated by a Housing Finance Agency, where the Housing Finance Agency is the creditor for the transaction; or

(iv) A transaction originated pursuant to the United States Department of