



This document is scheduled to be published in the Federal Register on 09/21/2015 and available online at <http://federalregister.gov/a/2015-22987>, and on FDsys.gov

Billing Code: 4810-AM-P

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1026

Truth in Lending (Regulation Z) Annual Threshold Adjustments (CARD ACT, 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 regulatory text and 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 reviews the dollar amounts for provisions implementing amendments to TILA 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). These amounts are adjusted, where appropriate, based on the annual percentage change reflected in the Consumer Price Index in effect on June 1, 2015. The minimum interest charge disclosure thresholds will remain unchanged in 2016.

DATES: This final rule is effective January 1, 2016.

FOR FURTHER INFORMATION CONTACT: James Wylie, 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 regulatory text and 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 Consumer Price Index. The adjusted dollar amount for the penalty fees safe harbor in 2016 is \$27 for a first late payment and \$37 for each subsequent violation within the following six months. For HOEPA loans, the adjusted total loan amount threshold is \$20,350, effective January 1, 2016. The adjusted statutory fee trigger for HOEPA loans is \$1,017, effective January 1, 2016. Effective January 1, 2016, for the purpose of a creditor's determination of a consumer's ability to repay a transaction secured by a dwelling, a covered transaction is not a qualified mortgage unless the transaction's total points and fees do not exceed 3 percent of the total loan amount for a loan greater than or equal to \$101,749; \$3,052 for a loan amount greater than or equal to \$61,050 but less than \$101,749; 5 percent of the total loan amount for a loan greater than or equal to \$20,350 but less than \$61,050; \$1,017 for a loan amount greater than or equal to \$12,719 but less than \$20,350; and 8 percent of the total loan amount for a loan amount less than \$12,719.

I. Background

A. CARD Act Annual Adjustments

In 2010, the Board of Governors of the Federal Reserve System (Board) published amendments to Regulation Z implementing the CARD Act, which amended

TILA. Public Law 111-24, 123 Stat. 1734 (2009). Pursuant to the CARD Act, the Board's Regulation Z amendments established new requirements with respect to open-end consumer credit plans, including requirements for the disclosure of minimum interest charge amounts and the establishment of a safe harbor provision allowing card issuers to impose penalty fees for violating account terms without violating the restrictions on penalty fees established by the CARD Act. *See* 75 FR 7658, 7799 (Feb. 22, 2010) and 75 FR 37526, 37527 (June 29, 2010). The final rule issued by the Board required that these thresholds be calculated annually using the Consumer Price Index as published by the Bureau of Labor Statistics (BLS).¹

Minimum Interest Charge Disclosure Thresholds

Sections 1026.6(b)(2)(iii) and 1026.60(b)(3) of the Bureau's Regulation Z provide that the minimum interest charge thresholds will be re-calculated annually using the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) that was in effect on the preceding June 1. 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 decreased by a whole dollar, the minimum interest charge amounts set forth in the regulation will be decreased by \$1.00. This adjustment is based on the CPI-W index in effect on June 1, 2015, which was reported on May 22, 2015. 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-

¹ The responsibility for promulgating rules under TILA was generally transferred from the Board to the Bureau effective July 21, 2011. The Bureau restated Regulation Z on December 22, 2011, and the Bureau's Regulation Z is located at 12 CFR part 1026. 76 FR 79768 (Dec. 22, 2011). *See* sections 1061 and 1100A of the Dodd-Frank Act, Public Law 111-203, 124 Stat. 1376 (2010). Section 1029 of the Dodd-Frank Act excludes from this transfer of authority, subject to certain exceptions, any rulemaking authority over a motor vehicle dealer that is predominantly engaged in the sale and servicing of motor vehicles, the leasing and servicing of motor vehicles, or both.

W is a subset of the CPI-U index (based on all urban consumers) and represents approximately 28 percent of the U.S. population. The adjustment reflects a 0.8 percent decrease in the CPI-W from April 2014 to April 2015 and is rounded to the nearest \$1 increment. This decrease in the CPI-W when applied to the current amounts in §§ 1026.6(b)(2)(iii) and 1026.60(b)(3) did not trigger a decrease in the minimum interest charge threshold of at least \$1.00, and therefore the Bureau is not amending §§ 1026.6(b)(2)(iii) and 1026.60(b)(3).

Penalty Fees Safe Harbor

The Bureau's Regulation Z provides that the safe harbor provision which establishes the permissible fee thresholds in § 1026.52(b)(1)(ii)(A) and (B) will be recalculated annually using the CPI-W that was in effect on the preceding June 1. 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 is based on the CPI-W index in effect on June 1, 2015, which was reported on May 22, 2015. The CPI-W is a subset of the CPI-U index (based on all urban consumers) and represents approximately 28 percent of the U.S. population. When the cumulative change in the adjusted minimum value derived from applying the annual CPI-W level to the current amounts in § 1026.52(b)(1)(ii)(A) and (B) has risen by a whole dollar, those amounts will be increased by \$1.00. Similarly, when the cumulative change in the adjusted minimum value derived from applying the annual CPI-W level to the current amounts in § 1026.52(b)(1)(ii)(A) and (B) has decreased by a whole dollar, those amounts will be decreased by \$1.00. *See* comment 52(b)(1)(ii)-2. The adjustment to the permissible fee

thresholds being adopted here reflects a 0.8 percent decrease in the CPI-W from April 2014 to April 2015 and is rounded to the nearest \$1 increment.

B. HOEPA Annual Threshold Adjustments

On January 10, 2013, the Bureau issued a final rule pursuant to, *inter alia*, section 1431 of the Dodd-Frank Act, which revised the loan amount threshold for HOEPA loans. 78 FR 6856 (Jan. 31, 2013) (2013 HOEPA Final Rule). The 2013 HOEPA Final Rule adjusted the dollar amount threshold used in connection with calculating whether a transaction meets the percentage point thresholds in the points and fees coverage test to \$20,000. Specifically, under § 1026.32(a)(1)(ii)(A) and (B), when determining whether a transaction is a high cost mortgage, the determination of the applicable points and fees coverage test is based upon whether the total loan amount is for more or less than \$20,000. The HOEPA 2013 Final Rule provides that this threshold amount be recalculated annually and the Bureau uses the Consumer Price Index for All Urban Consumers (CPI-U) index, as published by the BLS, as the index for adjusting the \$20,000 figure. The CPI-U is based on all urban consumers and represents approximately 88 percent of the U.S. population. The BLS publishes consumer-based indices monthly, but does not report a CPI change on June 1; adjustments are reported in the middle of each month. The adjustment to the CPI-U index reported by BLS on May 22, 2015, was the CPI-U index in effect on June 1, and reflects the percentage change from April 2014 to April 2015. The adjustment to the \$20,000 figure being adopted here reflects a 0.2 percent decrease in the CPI-U index for this period and is rounded to whole dollars for ease of compliance.

Pursuant to section 1431 of the Dodd Frank Act and § 1026.32(a)(1)(ii)(B) as amended by the 2013 HOEPA Final Rule, implementation of the 2013 HOEPA Final Rule also changed the HOEPA fee trigger to \$1,000. The HOEPA 2013 Final Rule provides that this threshold amount will be recalculated annually and the Bureau uses the CPI-U index, as published by the BLS, as the index for adjusting the \$1,000 figure. The adjustment to the CPI-U index reported by BLS on May 22, 2015, was the CPI-U index in effect on June 1, and reflects the percentage change from April 2014 to April 2015. The adjustment to the \$1,000 figure being adopted here reflects a 0.2 percent decrease in the CPI-U index for this period and is rounded to whole dollars for ease of compliance.

C. Ability to Repay and Qualified Mortgages Annual Threshold Adjustments

On January 10, 2013, the Bureau issued a final rule pursuant to, *inter alia*, sections 1411 and 1412 of the Dodd-Frank Act, which implemented laws requiring mortgage lenders to consider a consumer's ability to repay home loans before extending them credit. 78 FR 6407 (Jan. 31, 2013) (2013 ATR/QM Final Rule). The 2013 ATR/QM Final Rule established the points and fees limits that a loan must not exceed in order to satisfy the requirements for a qualified mortgage. Specifically, a covered transaction is not a qualified mortgage unless the transaction's points and fees do not exceed 3 percent of the total loan amount for a loan amount greater than or equal to \$100,000; 3 percent of the total loan amount for a loan amount greater than or equal to \$60,000 but less than \$100,000; 5 percent of the total loan amount for loans greater than or equal to \$20,000 but less than \$60,000; 5 percent of the total loan amount for loans greater than or equal to \$12,500 but less than \$20,000; and 8 percent of the total loan amount for loans less than \$12,500. The 2013 ATR/QM Final Rule provides that the limits and loan amounts in 1026.43(e)(3)(i)

be recalculated annually for inflation and the Bureau uses the Consumer Price Index for All Urban Consumers (CPI-U) index, as published by the BLS, as the index for adjusting the figures. The CPI-U is based on all urban consumers and represents approximately 88 percent of the U.S. population. The BLS publishes consumer-based indices monthly, but does not report a CPI change on June 1; adjustments are reported in the middle of each month. The adjustment to the CPI-U index reported by BLS on May 22, 2015, was the CPI-U index in effect on June 1, and reflects the percentage change from April 2014 to April 2015. The adjustment to the figures being adopted here reflects a 0.2 percent decrease in the CPI-U index for this period and is rounded to whole dollars for ease of compliance.

II. Adjustment and Commentary Revision

A. CARD Act Annual Adjustments

Minimum Interest Charge Disclosure Thresholds—§§ 1026.6(b)(2)(iii) and 1026.60(b)(3)

The minimum interest charge amounts for §§ 1026.6(b)(2)(iii) and 1026.60(b)(3) will remain unchanged for the year 2016. Accordingly, the Bureau is not amending these sections.

Penalty Fees Safe Harbor—§ 1026.52(b)(1)(ii)(A) and (B)

Effective January 1, 2016, the permissible fee threshold amounts are \$27 for § 1026.52(b)(1)(ii)(A) and \$37 for § 1026.52(b)(1)(ii)(B). The \$27 amount provided for in § 1026.52(b)(1)(ii)(A) did not change based on the decrease in CPI-W, but the amount provided for in § 1026.52(b)(1)(ii)(B) did decrease by one dollar. Accordingly, the Bureau is revising § 1026.52(b)(1)(ii)(B) to state that the fee imposed for violating the terms or other requirements of an account shall not exceed \$37. The Bureau is also

amending comment 52(b)(1)(ii)-2.i to preserve a list of the historical thresholds for this provision.

B. HOEPA Annual Threshold Adjustment—Comments 32(a)(1)(ii)-1 and -3

Effective January 1, 2016, for purposes of determining the total loan amount threshold that determines whether a transaction is a high cost mortgage when the points and fees are either 5 percent or 8 percent² is \$20,350. Comment 32(a)(1)(ii)-3, which lists the adjustments for each year, is amended to reflect the new dollar threshold amount for 2016.

Effective January 1, 2016, for purposes of determining whether a consumer credit transaction that is secured by a consumer's principal dwelling and is not otherwise exempt is covered by § 1026.32 (based on the total points and fees payable by the consumer at consummation), a loan is covered if the points and fees exceed \$1,017 or 8 percent of the total loan amount, whichever is lower. Comment 32(a)(1)(ii)-1, which lists the adjustments for each year, is amended to reflect the new dollar threshold amount for 2016.

C. Ability to Repay and Qualified Mortgages Annual Threshold Adjustments

Effective January 1, 2016, for purposes of determining whether a covered transaction is a qualified mortgage, a covered transaction is not a qualified mortgage unless the transaction's total points and fees do not exceed 3 percent of the total loan amount for a loan amount greater than or equal to \$101,749; \$3,052 for a loan amount greater than or equal to \$61,050 but less than \$101,749; 5 percent of the total loan amount for loans greater than or equal to \$20,350 but less than \$61,050; \$1,017 for a loan amount greater than or equal to \$12,719 but less than \$20,350, and 8 percent of the total

² Or \$1,017, whichever is lesser. See the adjustment of the amount below for additional discussion.

loan amount for loans less than \$12,719. Comment 43(e)(3)(ii)-1, which lists the adjustments for each year, is amended to reflect the new dollar threshold amounts for 2016.

III. Procedural Requirements

A. Administrative Procedure Act

Under the Administrative Procedure Act (APA), notice and opportunity for public comment are not required if the Bureau finds that notice and public comment are impracticable, unnecessary, or contrary to the public interest. 5 U.S.C. 553(b)(B). Pursuant to this final rule in Regulation Z, §1026.52(b)(1)(ii)(B) in subpart E is amended and comments 32(a)(1)(ii)-3.ii, 43(e)(3)(ii)-1.ii, 52(b)(1)(ii)-2.i.C in supplement I are added to update the exemption thresholds. The amendments in this final rule are technical and non-discretionary, and they merely apply the method previously established in Regulation Z for determining adjustments to the thresholds. For these reasons, the Bureau has determined that publishing a notice of proposed rulemaking and providing opportunity for public comment are unnecessary. Therefore, the amendments are adopted in final form.

B. Regulatory Flexibility Act

Because no notice of proposed rulemaking is required, the Regulatory Flexibility Act does not require an initial or final regulatory flexibility analysis. 5 U.S.C. 603(a), 604(a).

C. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR 1320), the Bureau reviewed this final rule. No collections of information pursuant to the Paperwork Reduction Act are contained in the final rule.

List of Subjects in 12 CFR Part 1026

Advertising, Consumer protection, Credit, Credit unions, Mortgages, National banks, Reporting and recordkeeping requirements, Savings associations, Truth in lending.

Authority and Issuance

For the reasons set forth in the preamble, the Bureau amends Regulation Z, 12 CFR part 1026, as set forth below:

PART 1026 — TRUTH IN LENDING (REGULATION Z)

1. The authority citation for part 1026 continues to read as follows:

Authority: 12 U.S.C. 2601, 2603-2605, 2607, 2609, 2617, 3353, 5511, 5512, 5532, 5581; 15 U.S.C. 1601 *et seq.*

Subpart G—Special Rules Applicable to Credit Card Accounts and Open End Credit Offered to College Students

2. Section 1026.52(b)(1)(ii)(B) is revised to read as follows:

§ 1026.52—Limitations on fees.

* * * * *

(b) * * *

(1) * * *

(ii) * * *

(B) \$37 if the card issuer previously imposed a fee pursuant to paragraph (b)(1)(ii)(A) of this section for a violation of the same type that occurred during the same billing cycle or one of the next six billing cycles; or

* * * * *

3. In Supplement I to part 1026—Official Interpretations:

A. Under subpart E, Under *Section 1026.32—Requirements for Certain Closed-End Home Mortgages, 32(a) Coverage, Paragraph 32(a)(1)(ii)*, paragraph 1.ii is added.

B. Under subpart E, Under *Section 1026.32—Requirements for Certain Closed-End Home Mortgages, 32(a) Coverage, Paragraph 32(a)(1)(ii)*, paragraph 3.ii is added.

C. Under subpart E, Under *Section 1026.43—Minimum Standards for Transactions Secured by a Dwelling, 43(e) Qualified Mortgages, Paragraph 43(e)(3)(ii)*, paragraph 1.ii is added.

D. Under subpart G, Under *Section 1026.52—Limitations on Fees, 52(b) Limitations on Penalty Fees, 52(b)(1)(ii) Safe Harbors, subheading i*, paragraph 2.i.C is added.

The additions read as follows:

SUPPLEMENT I TO PART 1026—OFFICIAL INTERPRETATIONS

* * * * *

SUBPART E—SPECIAL RULES FOR CERTAIN HOME MORTGAGE TRANSACTIONS

* * * * *

Section 1026.32—Requirements for Certain Closed-End Home Mortgages

32(a) Coverage.

Paragraph 32(a)(1)(ii).

1. * * *

ii. For 2016, \$1,017, reflecting a .2 percent decrease in the CPI-U from June 2014 to June 2015, rounded to the nearest whole dollar.

* * * * *

3. * * *

ii. For 2016, \$20,350, reflecting a .2 percent decrease in the CPI-U from June 2014 to June 2015, rounded to the nearest whole dollar.

* * * * *

Section 1026.43—Minimum Standards for Transactions Secured by a Dwelling

* * * * *

43(e)(3) Limits on Points and Fees for Qualified Mortgages

* * * * *

Paragraph 43(e)(3)(ii)

1. * * *

ii. For 2016, reflecting a .2 percent decrease in the CPI-U that was reported on the preceding June 1, a covered transaction is not a qualified mortgage unless the transactions total points and fees do not exceed;

A. For a loan amount greater than or equal to \$101,749: 3 percent of the total loan amount;

B. For a loan amount greater than or equal to \$61,050 but less than \$101,749: \$3,052;

C. For a loan amount greater than or equal to \$20,350 but less than \$61,050: 5 percent of the total loan amount;

D. For a loan amount greater than or equal to \$12,719 but less than \$20,350: \$1,017;

E. For a loan amount less than \$12,719: 8 percent of the total loan amount.

* * * * *

SUBPART G—SPECIAL RULES APPLICABLE TO CREDIT CARD ACCOUNTS AND OPEN-END
CREDIT OFFERED TO COLLEGE STUDENTS

Section 1026.52—Limitations on Fees

* * * * *

52(b)(1)(ii) Safe harbors

* * * * *

2. * * *

i. * * *

C. Card issuers were permitted to impose a fee for violating the terms of an agreement if the fee did not exceed \$27 under § 1026.52(b)(1)(ii)(A) and \$38 under § 1026.52(b)(1)(ii)(B), through December 31, 2015.

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Dated: August 17, 2015.

Richard Cordray

Director, Bureau of Consumer Financial Protection.

[FR Doc. 2015-22987 Filed: 9/18/2015 08:45 am; Publication Date: 9/21/2015]