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BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Parts 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 revises, as applicable, 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). In addition to adjusting these amounts, where appropriate, based on the annual percentage change reflected in the Consumer Price Index in effect on June 1, 2016, the Bureau is correcting a calculation error pertaining to the 2016 subsequent violation penalty safe harbor fee.

DATES: This final rule is effective January 1, 2017, except for the amendment to § 1026.52(b)(1)(ii)(B) which is effective on **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

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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. Specifically, for open-end consumer credit plans under the CARD Act, the threshold that triggers requirements to disclose minimum interest charges will remain unchanged in 2017. The adjusted dollar amount for the safe harbor for a first violation penalty fee will remain unchanged at \$27 in 2017; the adjusted dollar amount for the safe harbor for a subsequent violation penalty fee will remain unchanged in 2017 from the corrected amount of \$38 applicable in 2016, as discussed in this notice. For HOEPA loans, the adjusted total loan amount threshold for high-cost mortgages in 2017 will be \$20,579. The adjusted points and fees dollar trigger for high-cost mortgages will be \$1,029. For the general rule to determine consumers' ability to repay mortgage loans, the maximum threshold for total points and fees for qualified mortgages in 2017 will be 3 percent of the total loan amount for a loan greater than or equal to \$102,894; \$3,087 for a loan amount greater than or equal to \$61,737 but less than \$102,894; 5 percent of the total loan amount for a loan greater than or equal to \$20,579 but less than \$61,737; \$1,029 for a loan amount greater than or equal to \$12,862 but less than \$20,579; and 8 percent of the total loan amount for a loan amount less than \$12,862.

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 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 is based on the CPI-W index in effect on June 1, 2016, which was reported on May 17, 2016, and reflects the percentage change from April 2015 to April 2016. The CPI-W is a subset of the CPI-U index

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 on April 28, 2016, adopted as final the December 22, 2011, notice as subsequently amended. *See* 76 FR 79768 (Dec. 22, 2011) and 81 FR 25323 (April 28, 2016), respectively. The Bureau's Regulation Z is located at 12 CFR part 1026. *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.

(based on all urban consumers) and represents approximately 28 percent of the U.S. population. The adjustment accounts for a 0.8 percent increase in the CPI-W from April 2015 to April 2016. 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 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 re-calculated 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. On September 21, 2015, the Bureau published an adjustment, effective January 1, 2016, 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 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 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.

In the September 21, 2015, notice, 80 FR 56895, the subsequent violation penalty safe harbor fee amount in § 1026.52(b)(1)(ii)(B) was miscalculated, as it did not fully account for situations in which the CPI-W decreased, as occurred in 2015. The published subsequent violation penalty safe harbor fee amount was \$37. Effective immediately, the Bureau is

amending § 1026.52(b)(1)(ii)(B) to reflect the correct subsequent violation penalty safe harbor fee amount of \$38.

The 2017 adjustment is based on the CPI-W index in effect on June 1, 2016, which was reported on May 17, 2016, and reflects the percentage change from April 2015 to April 2016. The 0.8 percent increase in the CPI-W from April 2015 to April 2016 did not trigger an increase in the first violation penalty safe harbor fee of \$27 or the corrected subsequent violation penalty safe harbor fee of \$38, and therefore, the Bureau is not further amending § 1026.52(b)(1)(ii)(A) and (B) for the 2017 calendar year.

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 to \$20,000. 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 \$20,000 or 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 17, 2016, was the CPI-U index in effect on June 1, and reflects the percentage change from April 2015 to April 2016. The adjustment to the \$20,000 figure being

adopted here reflects a 1.1 percent increase 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 points and fees dollar 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 17, 2016, was the CPI-U index in effect on June 1, and reflects the percentage change from April 2015 to April 2016. The adjustment to the \$1,000 figure being adopted here reflects a 1.1 percent increase 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 determine consumers' ability to repay mortgage 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 if the transaction's points and fees exceed 3 percent of the total loan amount for a loan amount greater than or equal to \$100,000; \$3,000 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; \$1,000 for a loan amount 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 17, 2016, was the CPI-U index in effect on June 1, and reflects the percentage change from April 2015 to April 2016. The adjustment to the 2016 figures being adopted here reflects a 1.1 percent increase 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 2017. Accordingly, the Bureau is not amending these sections.

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

As discussed above, effective immediately, the permissible safe harbor fee amount in § 1026.52(b)(1)(ii)(B) is \$38. Accordingly, the Bureau is revising § 1026.52(b)(1)(ii)(B) to reflect the corrected subsequent violation penalty safe harbor fee amount of \$38.

Effective January 1, 2017, the permissible safe harbor fee amounts are \$27 for § 1026.52(b)(1)(ii)(A) and \$38 for § 1026.52(b)(1)(ii)(B). These amounts did not change based on the increase in CPI-W from April 2015 to April 2016. Thus, they remain the same as the 2016 amount for § 1026.52(b)(1)(ii)(A) and the 2016 amount corrected in this notice for

§ 1026.52(b)(1)(ii)(B). The Bureau is 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, 2017, for purposes of determining under § 1026.32(a)(1)(ii) the points and fees coverage test under HOEPA to which a transaction is subject, the total loan amount threshold is \$20,579, and the adjusted points and fees dollar trigger under § 1026.32(a)(1)(ii)(B) is \$1,029. When the total loan amount for a transaction is \$20,579 or more, and the points and fees amount exceeds 5 percent of the total loan amount, the transaction is a high-cost mortgage. When the total loan amount for a transaction is less than \$20,579, and the points and fees amount exceeds the lesser of the adjusted points and fees dollar trigger of \$1,029 or 8 percent of the total loan amount, the transaction is a high-cost mortgage. Comments 32(a)(1)(ii)-1 and -3, which list the adjustments for each year, are amended to reflect for 2017 the new dollar threshold amount and the new points and fees dollar trigger, respectively.

C. Ability to Repay and Qualified Mortgages Annual Threshold Adjustments

Effective January 1, 2017, for purposes of determining whether a covered transaction is a qualified mortgage under § 1026.43(e), a covered transaction is not a qualified mortgage if, pursuant to § 1026.43(e)(3), the transaction's total points and fees exceed 3 percent of the total loan amount for a loan amount greater than or equal to \$102,894; \$3,087 for a loan amount greater than or equal to \$61,737 but less than \$102,894; 5 percent of the total loan amount for loans greater than or equal to \$20,579 but less than \$61,737; \$1,029 for a loan amount greater than or equal to \$12,862 but less than \$20,579; and 8 percent of the total loan amount for loans less than \$12,862. Comment 43(e)(3)(ii)-1, which lists the adjustments for each year, is amended to reflect the new dollar threshold amounts for 2017.

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)-1.iii and -3.iii, 43(e)(3)(ii)-1.iii, and 52(b)(1)(ii)-2.i.D in supplement I are added to update the exemption thresholds. Comments 32(a)(1)(ii)-1.iii and -3.iii, 43(e)(3)(ii)-1.iii, and 52(b)(1)(ii)-2.1.D added by 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. The amendment to § 1026.52(b)(1)(ii)(B) merely applies a necessary correction to address an inadvertent calculation error for the 2016 safe harbor fee. 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. The Bureau also finds that there is good cause for making the technical calculation correction to the safe harbor fee amount in § 1026.52(b)(1)(ii)(B) in this final rule effective immediately upon publication in the Federal Register. 5 U.S.C. 553(d). This portion of the final rule does not establish any new requirements; instead, it corrects an inadvertent error in the September 21, 2015, notice, 80 FR 56895, regarding the subsequent violation penalty safe harbor fee. Making the rule effective immediately will allow the correct amount to be used upon publication.

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. Effective on [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*], § 1026.52(b)(1)(ii)(B) is revised to read as follows:

§ 1026.52 Limitation on fees.

* * * * *

(b) * * *

(1) * * *

(ii) * * *

(B) \$38 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. Effective on January 1, 2017, in Supplement I to Part 1026—Official Interpretations:

a. Under *Section 1026.32—Requirements for High-Cost Mortgages*, under *32(a)—Coverage*, under *Paragraph 32(a)(1)(ii)*, paragraphs 1.iii and 3.iii are added.

b. Under *Section 1026.43—Minimum Standards for Transactions Secured by a Dwelling*, under *43(e)—Qualified mortgages*, under *Paragraph 43(e)(3)(ii)*, paragraph 1.iii is added.

c. Under *Section 1026.52—Limitations on Fees*, under *52(b)—Limitations on penalty fees*, under *52(b)(1)(ii)—Safe harbors*, paragraph 2.i.D 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 (a)(1).

* * * * *

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

1. * * *

iii. For 2017, \$1,029, reflecting a 1.1 percent increase in the CPI-U from June 2015 to June 2016, rounded to the nearest whole dollar.

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3. * * *

iii. For 2017, \$20,579, reflecting a 1.1 percent increase in the CPI-U from June 2015 to June 2016, rounded to the nearest whole dollar.

* * * * *

Section 1026.43—Minimum Standards for Transactions Secured by a Dwelling

* * * * *

43(e) Qualified mortgages.

* * * * *

43(e)(3) Limits on points and fees for qualified mortgages.

* * * * *

Paragraph 43(e)(3)(ii).

1. * * *

iii. For 2017, reflecting a 1.1 percent increase 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 \$102,894: 3 percent of the total loan amount;

B. For a loan amount greater than or equal to \$61,737 but less than \$102,894: \$3,087;

C. For a loan amount greater than or equal to \$20,579 but less than \$61,737: 5 percent of the total loan amount;

- D. For a loan amount greater than or equal to \$12,862 but less than \$20,579: \$1,029;
- E. For a loan amount less than \$12,862: 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

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52(b) Limitations on penalty fees.

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52(b)(1) General rule.

* * * * *

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

* * * * *

2. * * *

i. * * *

D. 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), through December 31, 2016. Card issuers were permitted to impose a fee for violating the terms of an agreement if the fee did not exceed \$37 under § 1026.52(b)(1)(ii)(B), through **June 26, 2016**, and \$38 under § 1026.52(b)(1)(ii)(B) from **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]** through December 31, 2016.

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Dated: June 14, 2016.

Richard Cordray

Director, Bureau of Consumer Financial Protection.

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