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FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Docket No. R-1546]

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BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1026

[Docket No. CFPB-2016-0037]

RIN 3170-AA67

Truth in Lending (Regulation Z)

AGENCIES: Board of Governors of the Federal Reserve System (Board); and Bureau of Consumer Financial Protection (Bureau).

ACTION: Final rules, official interpretations and commentary.

SUMMARY: The Board and the Bureau are finalizing amendments to the official interpretations and commentary for the agencies' regulations that implement the Truth in Lending Act (TILA). The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) amended TILA by requiring that the dollar threshold for exempt consumer credit transactions be adjusted annually by the annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W). If there is no annual percentage increase in the CPI-W, the Board and Bureau will not adjust this exemption threshold from the prior year. The final rule memorializes this as well as the agencies' calculation method for determining the adjustment in years following a year in which there is no annual percentage increase in the CPI-W. Based on the CPI-W in effect as of June 1, 2016, the exemption threshold will remain at \$54,600 through 2017.

The Dodd-Frank Act also requires similar adjustments in the Consumer Leasing Act's threshold for exempt consumer leases. Accordingly, the Board and the Bureau are adopting similar amendments to the commentaries to each of their respective regulations implementing the Consumer Leasing Act elsewhere in this issue of the *Federal Register*.

DATES: This final rule is effective January 1, 2017.

FOR FURTHER INFORMATION CONTACT: *Board:* Vivian W. Wong, Senior Counsel, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452-3667; for users of Telecommunications Device for the Deaf (TDD) only, contact (202) 263-4869.

Bureau: Jaclyn Maier, Counsel, Office of Regulations, Consumer Financial Protection Bureau, at (202) 435-7700.

SUPPLEMENTARY INFORMATION:

I. Background

The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act) increased the threshold in the Truth in Lending Act (TILA) for exempt consumer credit transactions,¹ and the threshold in the Consumer Leasing Act (CLA) for exempt consumer leases, from \$25,000 to \$50,000, effective July 21, 2011.² In addition, the Dodd-Frank Act requires that, on and after December 31, 2011, these thresholds be adjusted annually for inflation by the annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W), as published by the Bureau of Labor Statistics. In April 2011, the

¹ Although consumer credit transactions above the threshold are generally exempt, loans secured by real property or by personal property used or expected to be used as the principal dwelling of a consumer and private education loans are covered by TILA regardless of the loan amount. *See* 12 CFR 226.3(b)(1)(i) (Board) and 12 CFR 1026.3(b)(1)(i) (Bureau).

² Public Law 111-203, section 1100E, 124 Stat. 1376 (2010).

Board issued a final rule amending Regulation Z (which implements TILA) consistent with these provisions of the Dodd-Frank Act, along with a similar final rule amending Regulation M (which implements the CLA) (collectively, the Board Final Threshold Rules).³

Title X of the Dodd-Frank Act transferred rulemaking authority for a number of consumer financial protection laws from the Board to the Bureau, effective July 21, 2011. In connection with this transfer of rulemaking authority, the Bureau issued its own Regulation Z implementing TILA in an interim final rule, 12 CFR part 1026 (Bureau Interim Final Rule).⁴ The Bureau Interim Final Rule substantially duplicated the Board's Regulation Z, including the revisions to the threshold for exempt transactions made by the Board in April 2011. In April 2016, the Bureau adopted the Bureau Interim Final Rule as final, subject to intervening final rules published by the Bureau.⁵ Although the Bureau has the authority to issue rules to implement TILA for most entities, the Board retains authority to issue rules under TILA for certain motor vehicle dealers covered by section 1029(a) of the Dodd-Frank Act, and the Board's Regulation Z continues to apply to those entities.⁶

Section 226.3(b)(1)(ii) of the Board's Regulation Z and § 1026.3(b)(1)(ii) of the Bureau's Regulation Z, and their accompanying commentaries, provide that the exemption threshold will

³ 76 FR 18354 (Apr. 4, 2011); 76 FR 18349 (Apr. 4, 2011).

⁴ 76 FR 79768 (Dec. 22, 2011).

⁵ 81 FR 25323 (April 28, 2016).

⁶ Section 1029(a) of the Dodd-Frank Act states: "Except as permitted in subsection (b), the Bureau may not exercise any rulemaking, supervisory, enforcement, or any other 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." 12 U.S.C. 5519(a). Section 1029(b) of the Dodd-Frank Act states: "Subsection (a) shall not apply to any person, to the extent that such person (1) provides consumers with any services related to residential or commercial mortgages or self-financing transactions involving real property; (2) operates a line of business (A) that involves the extension of retail credit or retail leases involving motor vehicles; and (B) in which (i) the extension of retail credit or retail leases are provided directly to consumers; and (ii) the contract governing such extension of retail credit or retail leases is not routinely assigned to an unaffiliated third party finance or leasing source; or (3) offers or provides a consumer financial product or service not involving or related to the sale, financing, leasing, rental, repair, refurbishment, maintenance, or other servicing of motor vehicles, motor vehicle parts, or any related or ancillary product or service." 12 U.S.C. 5519(b).

be adjusted annually effective January 1 of each year based on any annual percentage increase in the CPI-W that was in effect on the preceding June 1. They further provide that any increase in the threshold amount will be rounded to the nearest \$100 increment. For example, if the annual percentage increase in the CPI-W would result in a \$950 increase in the threshold amount, the threshold amount will be increased by \$1,000. However, if the annual percentage increase in the CPI-W would result in a \$949 increase in the threshold amount, the threshold amount will be increased by \$900.⁷ If there is no annual percentage increase in the CPI-W, the Board and Bureau will not adjust the exemption threshold from the prior year. Since 2011, the Board and the Bureau have adjusted the Regulation Z exemption threshold annually, in accordance with these rules.

II. Commentary Revision

On August 4, 2016, the Board and the Bureau published a proposed rule in the *Federal Register* to memorialize the calculation method used by the agencies each year to adjust the exemption threshold. *See* 81 FR 51404 (Aug. 4, 2016). The proposed commentary stated that if there is no annual percentage increase in the CPI-W, the Board and Bureau will not adjust the exemption threshold from the prior year. The proposed commentary further set forth the calculation method the agencies would use in years following a year in which the exemption threshold was not adjusted because there was no increase in the CPI-W from the previous year. As the Board and the Bureau discussed in the proposal, the proposed calculation method would ensure that the values for the exemption threshold keep pace with the CPI-W as contemplated by section 1100E(b) of the Dodd-Frank Act.

⁷ *See* comments 3(b)-1 in supplements I of 12 CFR parts 226 and 1026.

The comment period closed on September 6, 2016. In response to the proposal, the Board and the Bureau received one comment from a consumer, supporting the proposal. The Board and the Bureau are adopting the commentary revisions as proposed, with some minor clarifying amendments. These changes will be effective on January 1, 2017.

Specifically, the Board and the Bureau are adopting comment 3(b)-1 as proposed to move the text regarding the threshold amount that is in effect during a particular period to a new comment 3(b)-3. The discussion of how the agencies round the threshold calculation will remain in comment 3(b)-1. Current comments 3(b)-2, 3(b)-3, 3(b)-4, 3(b)-5, and 3(b)-6 are renumbered as comments 3(b)-4, 3(b)-5, 3(b)-6, 3(b)-7, and 3(b)-8, respectively, and cross-references to these comments are also renumbered accordingly, as proposed.

Furthermore, the Board and the Bureau are adopting new comment 3(b)-2 as proposed to provide that if the CPI-W in effect on June 1 does not increase from the CPI-W in effect on June 1 of the previous year (*i.e.*, the CPI-W in effect on June 1 is either equal to or less than the CPI-W in effect on June 1 of the previous year), the threshold amount effective the following January 1 through December 31 will not change from the previous year. As the Board and the Bureau discussed in the proposal, this position is consistent with section 1100E(b) of the Dodd-Frank Act, which states that the threshold must be adjusted by the “annual percentage *increase*” in the CPI-W (emphasis added), and the position the agencies have previously taken.⁸ Thus, if the threshold in effect from January 1, 2019, through December 31, 2019, is \$55,500 and the CPI-W in effect on June 1 of 2019 indicates a 1.1 percent decrease from the CPI-W in effect on June 1, 2018, the threshold in effect for January 1, 2020, through December 31, 2020, will remain \$55,500.

⁸ See, e.g., 76 FR 18354, 18355 n.1 (Apr. 4, 2011) (“[A]n annual period of deflation or no inflation would not require a change in the threshold amount.”).

Comment 3(b)-2 also provides that, for the years after a year in which the threshold did not change because the CPI-W in effect on June 1 decreased from the CPI-W in effect on June 1 of the previous year, the threshold is calculated by applying the annual percentage change in the CPI-W to the dollar amount that would have resulted, after rounding, if the decreases and any subsequent increases in the CPI-W had been taken into account. Comment 3(b)-2.i further states that, if the resulting amount, after rounding, is greater than the current threshold, then the threshold effective January 1 the following year will increase accordingly.

For example, assume that the threshold in effect from January 1, 2019, through December 31, 2019, is \$55,500 and that, due to a 1.1 percent decrease from the CPI-W in effect on June 1, 2018, to the CPI-W in effect on June 1, 2019, the threshold in effect from January 1, 2020, through December 31, 2020, remains at \$55,500. If, however, the threshold had been adjusted downward to reflect the decrease in the CPI-W over that time period, the threshold in effect from January 1, 2020, through December 31, 2020, would have been \$54,900, after rounding. Further assume that the CPI-W in effect on June 1, 2020, increased by 1.6 percent from the CPI-W in effect on June 1, 2019. The calculation for the threshold that will be in effect from January 1, 2021, through December 31, 2021, is based on the impact of a 1.6 percent increase in the CPI-W on \$54,900, rather than \$55,500, resulting in a 2021 threshold of \$55,800.

Furthermore, comment 3(b)-2.ii states that, if the resulting amount calculated, after rounding, is equal to or less than the current threshold, then the threshold effective January 1 the following year will not change, but future increases will be calculated based on the amount that would have resulted, after rounding. To illustrate, assume in the example above that the CPI-W in effect on June 1, 2020, increased by only 0.6 percent from the CPI-W in effect on June 1, 2019. The calculation for the threshold that will be in effect from January 1, 2021, through

December 31, 2021, is based on the impact of a 0.6 percent increase in the CPI-W on \$54,900. The resulting amount, after rounding, is \$55,200, which is lower than \$55,500, the threshold in effect from January 1, 2020, through December 31, 2020. Therefore, the threshold in effect from January 1, 2021, through December 31, 2021, will remain \$55,500. However, the calculation for the threshold that will be in effect from January 1, 2022, through December 31, 2022, will apply the percentage change in the CPI-W to \$55,200, the amount that would have resulted based on the 0.6 percent change from the CPI-W in effect on June 1, 2019, after rounding, to the CPI-W in effect on June 1, 2020.

III. 2017 Threshold

Based on the calculation method detailed above, the exemption threshold amount for 2017 remains at \$54,600. This is based on the CPI-W in effect on June 1, 2016, which was reported on May 17, 2016. The Bureau of Labor Statistics 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 (based on all urban consumers) and represents approximately 28 percent of the U.S. population. The CPI-W reported on May 17, 2016 reflects a 0.8 percent increase in the CPI-W from April 2015 to April 2016. Because the CPI-W decreased from April 2014 to April 2015, the Board and the Bureau are calculating the threshold based on the amount that would have resulted had this decrease been taken into account, which is \$54,200. A 0.8 percent increase in the CPI-W applied to \$54,200 results in \$54,600, which is the same threshold amount for 2016. Thus, the exemption threshold amount that will be in effect for 2017 remains at \$54,600. The Board and the Bureau are revising the commentaries to their respective regulations to add new comment 3(b)-3.viii to state that, from

January 1, 2017, through December 31, 2017, the threshold amount is \$54,600. These revisions are effective January 1, 2017.

IV. Regulatory Analysis

Administrative Procedure Act

Under the Administrative Procedure Act, notice and opportunity for public comment are not required if the Board and the Bureau find that notice and public comment are impracticable, unnecessary, or contrary to the public interest.⁹ The 2017 threshold amount for exempt consumer credit transactions announced in this rule, \$54,600, is technical and applies the calculation method set forth elsewhere in this final rule, for which notice and public comment were provided.¹⁰ For these reasons, the Board and the Bureau have determined that publishing a notice of proposed rulemaking and providing opportunity for public comment for purposes of the 2017 threshold adjustment are unnecessary. Therefore, the amendments regarding the 2017 threshold amount for exempt consumer credit transactions are adopted in final form.

Bureau's Dodd-Frank Act Section 1022(b)(2) Analysis

In developing the final rule, the Bureau has considered potential benefits, costs, and impacts.¹¹ In addition, the Bureau has consulted, or offered to consult with, the prudential regulators, the Securities and Exchange Commission, the Department of Housing and Urban Development, the Federal Housing Finance Agency, the Federal Trade Commission, and the Department of the Treasury, including regarding consistency with any prudential, market, or systemic objectives administered by such agencies.

⁹ 5 U.S.C. 553(b)(B).

¹⁰ See 81 FR 51404 (Aug. 4, 2016).

¹¹ Specifically, section 1022(b)(2)(A) calls for the Bureau to consider the potential benefits and costs of a regulation to consumers and covered persons, including the potential reduction of access by consumers to consumer financial products or services; the impact on depository institutions and credit unions with \$10 billion or less in total assets as described in section 1026 of the Act; and the impact on consumers in rural areas.

The Bureau has chosen to evaluate the benefits, costs and impacts of the final rule against the current state of the world, which takes into account the current regulatory regime. The Bureau is not aware of any significant benefits or costs to consumers or covered persons associated with the final rule relative to the baseline. The Board previously stated that if there is no annual percentage increase in the CPI-W, then the Board (and now the Bureau) will not adjust the exemption threshold from the prior year.¹² The final rule memorializes this in official commentary. The final rule also clarifies how the threshold is calculated for years after a year in which the threshold did not change. The Bureau believes that this clarification memorializes the method that the Bureau would be expected to use: This method holds the threshold fixed until a notional threshold calculated using the Bureau's methodology, taking into account both decreases and increases in the CPI-W, exceeds the actual threshold. The Bureau requested, but did not receive, comment on this point. Thus, the Bureau concludes that the final rule will not change the regulatory regime relative to the baseline and will create no significant benefits, costs, or impacts.

The final rule will have no unique impact on depository institutions or credit unions with \$10 billion or less in assets as described in section 1026(a) of the Dodd-Frank Act or on rural consumers. The Bureau does not expect this final rule to affect consumers' access to credit.

Regulatory Flexibility Act

Board: An initial regulatory flexibility analysis (IRFA) was included in the proposal in accordance with section 3(a) of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* (RFA). In the IRFA, the Board requested comments on any approaches, other than the proposed alternatives, that would reduce the burden on small entities. The RFA requires an agency to

¹² 76 FR 18354, 18355 n.1 (Apr. 4, 2011) (“[A]n annual period of deflation or no inflation would not require a change in the threshold amount.”).

prepare a final regulatory flexibility analysis (FRFA) unless the agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. In accordance with section 3(a) of the RFA, the Board has reviewed the final regulation. Based on its analysis, and for the reasons stated below, the Board believes that the rule will not have a significant economic impact on a substantial number of small entities.

1. Statement of the need for, and objectives of, the final rule. The final rule memorializes the calculation method used by the Board each year to adjust the exemption threshold in accordance with section 1100E of the Dodd-Frank Act. The final rule also adopts the exemption threshold that will apply from January 1, 2017, through December 31, 2017, based on the calculation method memorialized in this final rule.

2. Summary of issues raised by comments in response to the initial regulatory flexibility analysis. The Board did not receive any comments on the initial regulatory flexibility analysis.

3. Small entities affected by the final rule. This rule would affect motor vehicle dealers that are subject to the Board's Regulation Z and offer closed-end or open-end credit that may be exempt from Regulation Z under 12 CFR 226.3(b). While the total number of small entities likely to be affected by the final rule is unknown, the Board does not believe the final rule will have a significant economic impact on the entities that it affects.

4. Recordkeeping, reporting, and compliance requirements. The final rule would not impose any recordkeeping, reporting, or compliance requirements.

5. Significant alternatives to the final revisions. The Board has not identified any significant alternatives that would reduce the regulatory burden on small entities associated with this final rule.

Bureau: The RFA generally requires an agency to conduct an initial regulatory flexibility analysis (IRFA) and a final regulatory flexibility analysis (FRFA) of any rule subject to notice-and-comment rulemaking requirements.¹³ These analyses must describe the impact of the proposed and final rules on small entities.¹⁴ An IRFA or FRFA is not required if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.¹⁵ The Bureau also is subject to certain additional procedures under the RFA involving the convening of a panel to consult with small business representatives prior to proposing a rule for which an IRFA is required.¹⁶

A FRFA is not required for this final rule because it will not have a significant economic impact on a substantial number of small entities. As discussed in the Bureau’s Section 1022(b)(2) Analysis above, this final rule does not introduce costs or benefits to covered persons because it seeks only to clarify the method of threshold adjustment which has already been established in previous Agency rules. Therefore this final rule will not have a significant impact on small entities.

Certification

Accordingly, the Bureau Director, by signing below, certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

¹³ 5 U.S.C. 601 *et seq.*

¹⁴ *Id.* at 603(a) and 604(a). For purposes of assessing the impacts of the rule on small entities, “small entities” is defined in the RFA to include small businesses, small not-for-profit organizations, and small government jurisdictions. *Id.* at 601(6). A “small business” is determined by application of Small Business Administration regulations and reference to the North American Industry Classification System (NAICS) classifications and size standards. *Id.* at 601(3). A “small organization” is any “not-for-profit enterprise which is independently owned and operated and is not dominant in its field.” *Id.* at 601(4). A “small governmental jurisdiction” is the government of a city, county, town, township, village, school district, or special district with a population of less than 50,000. *Id.* at 601(5).

¹⁵ *Id.* at 605(b).

¹⁶ *Id.* at 609.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995,¹⁷ the agencies reviewed this final rule. No collections of information pursuant to the Paperwork Reduction Act are contained in the final rule.

List of Subjects

12 CFR Part 226

Advertising, Consumer protection, Federal Reserve System, Reporting and recordkeeping requirements, Truth in lending.

12 CFR Part 1026

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

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

Authority and Issuance

For the reasons set forth in the preamble, the Board amends Regulation Z, 12 CFR part 226, as set forth below:

PART 226—TRUTH IN LENDING (REGULATION Z)

1. The authority citation for part 226 continues to read as follows:

Authority: 12 U.S.C. 3806; 15 U.S.C. 1604, 1637(c)(5), and 1639(l); Pub. L. No. 111-24, section 2, 123 Stat. 1734; Pub. L. No. 111-203, 124 Stat. 1376.

Subpart A—General

¹⁷ 44 U.S.C. 3506; 5 CFR 1320.

2. In supplement I to part 226, under *Section 226.3—Exempt Transactions*, the entry for *3(b) Credit over applicable threshold amount* is revised to read as follows:

Supplement I to Part 226—Official Staff Interpretations

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SUBPART A—GENERAL

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Section 226.3—Exempt Transactions

* * * * *

3(b) Credit over applicable threshold amount.

1. *Threshold amount.* For purposes of § 226.3(b), the threshold amount in effect during a particular period is the amount stated in comment 3(b)-3 for that period. The threshold amount is adjusted effective January 1 of each year by any annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) that was in effect on the preceding June 1. Comment 3(b)-3 will be amended to provide the threshold amount for the upcoming year after the annual percentage change in the CPI-W that was in effect on June 1 becomes available. Any increase in the threshold amount will be rounded to the nearest \$100 increment. For example, if the annual percentage increase in the CPI-W would result in a \$950 increase in the threshold amount, the threshold amount will be increased by \$1,000. However, if the annual percentage increase in the CPI-W would result in a \$949 increase in the threshold amount, the threshold amount will be increased by \$900.

2. *No increase in the CPI-W.* If the CPI-W in effect on June 1 does not increase from the CPI-W in effect on June 1 of the previous year, the threshold amount effective the following January 1 through December 31 will not change from the previous year. When this occurs, for

the years that follow, the threshold is calculated based on the annual percentage change in the CPI-W applied to the dollar amount that would have resulted, after rounding, if decreases and any subsequent increases in the CPI-W had been taken into account.

i. *Net increases.* If the resulting amount calculated, after rounding, is greater than the current threshold, then the threshold effective January 1 the following year will increase accordingly.

ii. *Net decreases.* If the resulting amount calculated, after rounding, is equal to or less than the current threshold, then the threshold effective January 1 the following year will not change, but future increases will be calculated based on the amount that would have resulted.

3. *Threshold.* For purposes of § 226.3(b), the threshold amount in effect during a particular period is the amount stated below for that period.

i. Prior to July 21, 2011, the threshold amount is \$25,000.

ii. From July 21, 2011 through December 31, 2011, the threshold amount is \$50,000.

iii. From January 1, 2012 through December 31, 2012, the threshold amount is \$51,800.

iv. From January 1, 2013 through December 31, 2013, the threshold amount is \$53,000.

v. From January 1, 2014 through December 31, 2014, the threshold amount is \$53,500.

vi. From January 1, 2015 through December 31, 2015, the threshold amount is \$54,600.

vii. From January 1, 2016 through December 31, 2016, the threshold amount is \$54,600.

viii. From January 1, 2017 through December 31, 2017, the threshold amount is \$54,600.

4. *Open-end credit.*

i. *Qualifying for exemption.* An open-end account is exempt under §226.3(b) (unless secured by any real property, or by personal property used or expected to be used as the consumer's principal dwelling) if either of the following conditions is met:

A. The creditor makes an initial extension of credit at or after account opening that exceeds the threshold amount in effect at the time the initial extension is made. If a creditor makes an initial extension of credit after account opening that does not exceed the threshold amount in effect at the time the extension is made, the creditor must have satisfied all of the applicable requirements of this part from the date the account was opened (or earlier, if applicable), including but not limited to the requirements of § 226.6 (account-opening disclosures), § 226.7 (periodic statements), § 226.52 (limitations on fees), and § 226.55 (limitations on increasing annual percentages rates, fees, and charges). For example:

(1) Assume that the threshold amount in effect on January 1 is \$50,000. On February 1, an account is opened but the creditor does not make an initial extension of credit at that time. On July 1, the creditor makes an initial extension of credit of \$60,000. In this circumstance, no requirements of this part apply to the account.

(2) Assume that the threshold amount in effect on January 1 is \$50,000. On February 1, an account is opened but the creditor does not make an initial extension of credit at that time. On July 1, the creditor makes an initial extension of credit of \$50,000 or less. In this circumstance, the account is not exempt and the creditor must have satisfied all of the applicable requirements of this part from the date the account was opened (or earlier, if applicable).

B. The creditor makes a firm written commitment at account opening to extend a total amount of credit in excess of the threshold amount in effect at the time the account is opened with no requirement of additional credit information for any advances on the account (except as permitted from time to time with respect to open-end accounts pursuant to § 226.2(a)(20)).

ii. *Subsequent changes generally.* Subsequent changes to an open-end account or the threshold amount may result in the account no longer qualifying for the exemption in § 226.3(b).

In these circumstances, the creditor must begin to comply with all of the applicable requirements of this part within a reasonable period of time after the account ceases to be exempt. Once an account ceases to be exempt, the requirements of this part apply to any balances on the account. The creditor, however, is not required to comply with the requirements of this part with respect to the period of time during which the account was exempt. For example, if an open-end credit account ceases to be exempt, the creditor must within a reasonable period of time provide the disclosures required by § 226.6 reflecting the current terms of the account and begin to provide periodic statements consistent with § 226.7. However, the creditor is not required to disclose fees or charges imposed while the account was exempt. Furthermore, if the creditor provided disclosures consistent with the requirements of this part while the account was exempt, it is not required to provide disclosures required by § 226.6 reflecting the current terms of the account. See also comment 3(b)-6.

iii. *Subsequent changes when exemption is based on initial extension of credit.* If a creditor makes an initial extension of credit that exceeds the threshold amount in effect at that time, the open-end account remains exempt under § 226.3(b) regardless of a subsequent increase in the threshold amount, including an increase pursuant to § 226.3(b)(1)(ii) as a result of an increase in the CPI-W. Furthermore, in these circumstances, the account remains exempt even if there are no further extensions of credit, subsequent extensions of credit do not exceed the threshold amount, the account balance is subsequently reduced below the threshold amount (such as through repayment of the extension), or the credit limit for the account is subsequently reduced below the threshold amount. However, if the initial extension of credit on an account does not exceed the threshold amount in effect at the time of the extension, the account is not exempt under § 226.3(b) even if a subsequent extension exceeds the threshold amount or if the

account balance later exceeds the threshold amount (for example, due to the subsequent accrual of interest).

iv. Subsequent changes when exemption is based on firm commitment.

A. General. If a creditor makes a firm written commitment at account opening to extend a total amount of credit that exceeds the threshold amount in effect at that time, the open-end account remains exempt under § 226.3(b) regardless of a subsequent increase in the threshold amount pursuant to § 226.3(b)(1)(ii) as a result of an increase in the CPI-W. However, see comment 3(b)-8 with respect to the increase in the threshold amount from \$25,000 to \$50,000. If an open-end account is exempt under § 226.3(b) based on a firm commitment to extend credit, the account remains exempt even if the amount of credit actually extended does not exceed the threshold amount. In contrast, if the firm commitment does not exceed the threshold amount at account opening, the account is not exempt under § 226.3(b) even if the account balance later exceeds the threshold amount. In addition, if a creditor reduces a firm commitment, the account ceases to be exempt unless the reduced firm commitment exceeds the threshold amount in effect at the time of the reduction. For example:

(1) Assume that, at account opening in year one, the threshold amount in effect is \$50,000 and the account is exempt under § 226.3(b) based on the creditor's firm commitment to extend \$55,000 in credit. If during year one the creditor reduces its firm commitment to \$53,000, the account remains exempt under § 226.3(b). However, if during year one the creditor reduces its firm commitment to \$40,000, the account is no longer exempt under § 226.3(b).

(2) Assume that, at account opening in year one, the threshold amount in effect is \$50,000 and the account is exempt under § 226.3(b) based on the creditor's firm commitment to extend \$55,000 in credit. If the threshold amount is \$56,000 on January 1 of year six as a result

of increases in the CPI-W, the account remains exempt. However, if the creditor reduces its firm commitment to \$54,000 on July 1 of year six, the account ceases to be exempt under § 226.3(b).

B. Initial extension of credit. If an open-end account qualifies for a § 226.3(b) exemption at account opening based on a firm commitment, that account may also subsequently qualify for a § 226.3(b) exemption based on an initial extension of credit. However, that initial extension must be a single advance in excess of the threshold amount in effect at the time the extension is made. In addition, the account must continue to qualify for an exemption based on the firm commitment until the initial extension of credit is made. For example:

(1) Assume that, at account opening in year one, the threshold amount in effect is \$50,000 and the account is exempt under § 226.3(b) based on the creditor's firm commitment to extend \$55,000 in credit. The account is not used for an extension of credit during year one. On January 1 of year two, the threshold amount is increased to \$51,000 pursuant to § 226.3(b)(1)(ii) as a result of an increase in the CPI-W. On July 1 of year two, the consumer uses the account for an initial extension of \$52,000. As a result of this extension of credit, the account remains exempt under § 226.3(b) even if, after July 1 of year two, the creditor reduces the firm commitment to \$51,000 or less.

(2) Same facts as in paragraph iv.B(1) above except that the consumer uses the account for an initial extension of \$30,000 on July 1 of year two and for an extension of \$22,000 on July 15 of year two. In these circumstances, the account is not exempt under § 226.3(b) based on the \$30,000 initial extension of credit because that extension did not exceed the applicable threshold amount (\$51,000), although the account remains exempt based on the firm commitment to extend \$55,000 in credit.

(3) Same facts as in paragraph iv.B(1) above except that, on April 1 of year two, the creditor reduces the firm commitment to \$50,000, which is below the \$51,000 threshold then in effect. Because the account ceases to qualify for a § 226.3(b) exemption on April 1 of year two, the account does not qualify for a § 226.3(b) exemption based on a \$52,000 initial extension of credit on July 1 of year two.

5. *Closed-end credit.*

i. *Qualifying for exemption.* A closed-end loan is exempt under § 226.3(b) (unless the extension of credit is secured by any real property, or by personal property used or expected to be used as the consumer's principal dwelling; or is a private education loan as defined in § 226.46(b)(5)), if either of the following conditions is met.

A. The creditor makes an extension of credit at consummation that exceeds the threshold amount in effect at the time of consummation. In these circumstances, the loan remains exempt under § 226.3(b) even if the amount owed is subsequently reduced below the threshold amount (such as through repayment of the loan).

B. The creditor makes a commitment at consummation to extend a total amount of credit in excess of the threshold amount in effect at the time of consummation. In these circumstances, the loan remains exempt under § 226.3(b) even if the total amount of credit extended does not exceed the threshold amount.

ii. *Subsequent changes.* If a creditor makes a closed-end extension of credit or commitment to extend closed-end credit that exceeds the threshold amount in effect at the time of consummation, the closed-end loan remains exempt under § 226.3(b) regardless of a subsequent increase in the threshold amount. However, a closed-end loan is not exempt under § 226.3(b) merely because it is used to satisfy and replace an existing exempt loan, unless the

new extension of credit is itself exempt under the applicable threshold amount. For example, assume a closed-end loan that qualified for a § 226.3(b) exemption at consummation in year one is refinanced in year ten and that the new loan amount is less than the threshold amount in effect in year ten. In these circumstances, the creditor must comply with all of the applicable requirements of this part with respect to the year ten transaction if the original loan is satisfied and replaced by the new loan, which is not exempt under § 226.3(b). See also comment 3(b)-6.

6. Addition of a security interest in real property or a dwelling after account opening or consummation.

i. *Open-end credit.* For open-end accounts, if, after account opening, a security interest is taken in real property, or in personal property used or expected to be used as the consumer's principal dwelling, a previously exempt account ceases to be exempt under § 226.3(b) and the creditor must begin to comply with all of the applicable requirements of this part within a reasonable period of time. See comment 3(b)-4.ii. If a security interest is taken in the consumer's principal dwelling, the creditor must also give the consumer the right to rescind the security interest consistent with § 226.15.

ii. *Closed-end credit.* For closed-end loans, if, after consummation, a security interest is taken in any real property, or in personal property used or expected to be used as the consumer's principal dwelling, an exempt loan remains exempt under § 226.3(b). However, the addition of a security interest in the consumer's principal dwelling is a transaction for purposes of § 226.23, and the creditor must give the consumer the right to rescind the security interest consistent with that section. See § 226.23(a)(1) and the accompanying commentary. In contrast, if a closed-end loan that is exempt under § 226.3(b) is satisfied and replaced by a loan that is secured by any real property, or by personal property used or expected to be used as the consumer's principal

dwelling, the new loan is not exempt under § 226.3(b) and the creditor must comply with all of the applicable requirements of this part. See comment 3(b)-5.

7. Application to extensions secured by mobile homes. Because a mobile home can be a dwelling under § 226.2(a)(19), the exemption in § 226.3(b) does not apply to a credit extension secured by a mobile home that is used or expected to be used as the principal dwelling of the consumer. See comment 3(b)-6.

8. Transition rule for open-end accounts exempt prior to July 21, 2011. Section 226.3(b)(2) applies only to open-end accounts opened prior to July 21, 2011. Section 226.3(b)(2) does not apply if a security interest is taken by the creditor in any real property, or in personal property used or expected to be used as the consumer's principal dwelling. If, on July 20, 2011, an open-end account is exempt under § 226.3(b) based on a firm commitment to extend credit in excess of \$25,000, the account remains exempt under § 226.3(b)(2) until December 31, 2011 (unless the firm commitment is reduced to \$25,000 or less). If the firm commitment is increased on or before December 31, 2011 to an amount in excess of \$50,000, the account remains exempt under § 226.3(b)(1) regardless of subsequent increases in the threshold amount as a result of increases in the CPI-W. If the firm commitment is not increased on or before December 31, 2011 to an amount in excess of \$50,000, the account ceases to be exempt under § 226.3(b) based on a firm commitment to extend credit. For example

i. Assume that, on July 20, 2011, the account is exempt under § 226.3(b) based on the creditor's firm commitment to extend \$30,000 in credit. On November 1, 2011, the creditor increases the firm commitment on the account to \$55,000. In these circumstances, the account remains exempt under § 226.3(b)(1) regardless of subsequent increases in the threshold amount as a result of increases in the CPI-W.

ii. Same facts as paragraph i. above except, on November 1, 2011, the creditor increases the firm commitment on the account to \$40,000. In these circumstances, the account ceases to be exempt under § 226.3(b)(2) after December 31, 2011, and the creditor must begin to comply with the applicable requirements of this part.

* * * * *

BUREAU OF CONSUMER FINANCIAL PROTECTION

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)

3. 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.*

4. In supplement I to part 1026, under *Section 1026.3—Exempt Transactions*, the entry for 3(b)—*Credit Over Applicable Threshold Amount* is revised to read as follows:

Supplement I to Part 1026—Official Interpretations

* * * * *

Subpart A—General

* * * * *

Section 1026.3—Exempt Transactions

* * * * *

3(b) Credit Over Applicable Threshold Amount

1. *Threshold amount.* For purposes of § 1026.3(b), the threshold amount in effect during a particular period is the amount stated in comment 3(b)-3 below for that period. The threshold

amount is adjusted effective January 1 of each year by any annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) that was in effect on the preceding June 1. Comment 3(b)-3 will be amended to provide the threshold amount for the upcoming year after the annual percentage change in the CPI-W that was in effect on June 1 becomes available. Any increase in the threshold amount will be rounded to the nearest \$100 increment. For example, if the annual percentage increase in the CPI-W would result in a \$950 increase in the threshold amount, the threshold amount will be increased by \$1,000. However, if the annual percentage increase in the CPI-W would result in a \$949 increase in the threshold amount, the threshold amount will be increased by \$900.

2. *No increase in the CPI-W.* If the CPI-W in effect on June 1 does not increase from the CPI-W in effect on June 1 of the previous year, the threshold amount effective the following January 1 through December 31 will not change from the previous year. When this occurs, for the years that follow, the threshold is calculated based on the annual percentage change in the CPI-W applied to the dollar amount that would have resulted, after rounding, if decreases and any subsequent increases in the CPI-W had been taken into account.

i. *Net increases.* If the resulting amount calculated, after rounding, is greater than the current threshold, then the threshold effective January 1 the following year will increase accordingly.

ii. *Net decreases.* If the resulting amount calculated, after rounding, is equal to or less than the current threshold, then the threshold effective January 1 the following year will not change, but future increases will be calculated based on the amount that would have resulted.

3. *Threshold.* For purposes of § 1026.3(b), the threshold amount in effect during a particular period is the amount stated below for that period.

- i. Prior to July 21, 2011, the threshold amount is \$25,000.
- ii. From July 21, 2011 through December 31, 2011, the threshold amount is \$50,000.
- iii. From January 1, 2012 through December 31, 2012, the threshold amount is \$51,800.
- iv. From January 1, 2013 through December 31, 2013, the threshold amount is \$53,000.
- v. From January 1, 2014 through December 31, 2014, the threshold amount is \$53,500.
- vi. From January 1, 2015 through December 31, 2015, the threshold amount is \$54,600.
- vii. From January 1, 2016 through December 31, 2016, the threshold amount is \$54,600.
- viii. From January 1, 2017 through December 31, 2017, the threshold amount is \$54,600.

4. *Open-end credit.* i. *Qualifying for exemption.* An open-end account is exempt under § 1026.3(b) (unless secured by real property, or by personal property used or expected to be used as the consumer's principal dwelling) if either of the following conditions is met:

A. The creditor makes an initial extension of credit at or after account opening that exceeds the threshold amount in effect at the time the initial extension is made. If a creditor makes an initial extension of credit after account opening that does not exceed the threshold amount in effect at the time the extension is made, the creditor must have satisfied all of the applicable requirements of this part from the date the account was opened (or earlier, if applicable), including but not limited to the requirements of § 1026.6 (account-opening disclosures), § 1026.7 (periodic statements), § 1026.52 (limitations on fees), and § 1026.55 (limitations on increasing annual percentage rates, fees, and charges). For example:

1. Assume that the threshold amount in effect on January 1 is \$50,000. On February 1, an account is opened but the creditor does not make an initial extension of credit at that time. On July 1, the creditor makes an initial extension of credit of \$60,000. In this circumstance, no requirements of this part apply to the account.

2. Assume that the threshold amount in effect on January 1 is \$50,000. On February 1, an account is opened but the creditor does not make an initial extension of credit at that time. On July 1, the creditor makes an initial extension of credit of \$50,000 or less. In this circumstance, the account is not exempt and the creditor must have satisfied all of the applicable requirements of this part from the date the account was opened (or earlier, if applicable).

B. The creditor makes a firm written commitment at account opening to extend a total amount of credit in excess of the threshold amount in effect at the time the account is opened with no requirement of additional credit information for any advances on the account (except as permitted from time to time with respect to open-end accounts pursuant to § 1026.2(a)(20)).

ii. *Subsequent changes generally.* Subsequent changes to an open-end account or the threshold amount may result in the account no longer qualifying for the exemption in § 1026.3(b). In these circumstances, the creditor must begin to comply with all of the applicable requirements of this part within a reasonable period of time after the account ceases to be exempt. Once an account ceases to be exempt, the requirements of this part apply to any balances on the account. The creditor, however, is not required to comply with the requirements of this part with respect to the period of time during which the account was exempt. For example, if an open-end credit account ceases to be exempt, the creditor must within a reasonable period of time provide the disclosures required by § 1026.6 reflecting the current terms of the account and begin to provide periodic statements consistent with § 1026.7. However, the creditor is not required to disclose fees or charges imposed while the account was exempt. Furthermore, if the creditor provided disclosures consistent with the requirements of this part while the account was exempt, it is not required to provide disclosures required by § 1026.6 reflecting the current terms of the account. *See also* comment 3(b)-6.

iii. *Subsequent changes when exemption is based on initial extension of credit.* If a creditor makes an initial extension of credit that exceeds the threshold amount in effect at that time, the open-end account remains exempt under § 1026.3(b) regardless of a subsequent increase in the threshold amount, including an increase pursuant to § 1026.3(b)(1)(ii) as a result of an increase in the CPI-W. Furthermore, in these circumstances, the account remains exempt even if there are no further extensions of credit, subsequent extensions of credit do not exceed the threshold amount, the account balance is subsequently reduced below the threshold amount (such as through repayment of the extension), or the credit limit for the account is subsequently reduced below the threshold amount. However, if the initial extension of credit on an account does not exceed the threshold amount in effect at the time of the extension, the account is not exempt under § 1026.3(b) even if a subsequent extension exceeds the threshold amount or if the account balance later exceeds the threshold amount (for example, due to the subsequent accrual of interest).

iv. *Subsequent changes when exemption is based on firm commitment.* A. *General.* If a creditor makes a firm written commitment at account opening to extend a total amount of credit that exceeds the threshold amount in effect at that time, the open-end account remains exempt under § 1026.3(b) regardless of a subsequent increase in the threshold amount pursuant to § 1026.3(b)(1)(ii) as a result of an increase in the CPI-W. However, see comment 3(b)-8 with respect to the increase in the threshold amount from \$25,000 to \$50,000. If an open-end account is exempt under § 1026.3(b) based on a firm commitment to extend credit, the account remains exempt even if the amount of credit actually extended does not exceed the threshold amount. In contrast, if the firm commitment does not exceed the threshold amount at account opening, the account is not exempt under § 1026.3(b) even if the account balance later exceeds the threshold

amount. In addition, if a creditor reduces a firm commitment, the account ceases to be exempt unless the reduced firm commitment exceeds the threshold amount in effect at the time of the reduction. For example:

1. Assume that, at account opening in year one, the threshold amount in effect is \$50,000 and the account is exempt under § 1026.3(b) based on the creditor's firm commitment to extend \$55,000 in credit. If during year one the creditor reduces its firm commitment to \$53,000, the account remains exempt under § 1026.3(b). However, if during year one the creditor reduces its firm commitment to \$40,000, the account is no longer exempt under § 1026.3(b).

2. Assume that, at account opening in year one, the threshold amount in effect is \$50,000 and the account is exempt under § 1026.3(b) based on the creditor's firm commitment to extend \$55,000 in credit. If the threshold amount is \$56,000 on January 1 of year six as a result of increases in the CPI-W, the account remains exempt. However, if the creditor reduces its firm commitment to \$54,000 on July 1 of year six, the account ceases to be exempt under § 1026.3(b).

B. Initial extension of credit. If an open-end account qualifies for a § 1026.3(b) exemption at account opening based on a firm commitment, that account may also subsequently qualify for a § 1026.3(b) exemption based on an initial extension of credit. However, that initial extension must be a single advance in excess of the threshold amount in effect at the time the extension is made. In addition, the account must continue to qualify for an exemption based on the firm commitment until the initial extension of credit is made. For example:

1. Assume that, at account opening in year one, the threshold amount in effect is \$50,000 and the account is exempt under § 1026.3(b) based on the creditor's firm commitment to extend \$55,000 in credit. The account is not used for an extension of credit during year one. On January 1 of year two, the threshold amount is increased to \$51,000 pursuant to §1026.3(b)(1)(ii)

as a result of an increase in the CPI-W. On July 1 of year two, the consumer uses the account for an initial extension of \$52,000. As a result of this extension of credit, the account remains exempt under § 1026.3(b) even if, after July 1 of year two, the creditor reduces the firm commitment to \$51,000 or less.

2. Same facts as in paragraph iv.B.1 above except that the consumer uses the account for an initial extension of \$30,000 on July 1 of year two and for an extension of \$22,000 on July 15 of year two. In these circumstances, the account is not exempt under § 1026.3(b) based on the \$30,000 initial extension of credit because that extension did not exceed the applicable threshold amount (\$51,000), although the account remains exempt based on the firm commitment to extend \$55,000 in credit.

3. Same facts as in paragraph iv.B.1 above except that, on April 1 of year two, the creditor reduces the firm commitment to \$50,000, which is below the \$51,000 threshold then in effect. Because the account ceases to qualify for a § 1026.3(b) exemption on April 1 of year two, the account does not qualify for a § 1026.3(b) exemption based on a \$52,000 initial extension of credit on July 1 of year two.

5. *Closed-end credit.* i. *Qualifying for exemption.* A closed-end loan is exempt under § 1026.3(b) (unless the extension of credit is secured by real property, or by personal property used or expected to be used as the consumer's principal dwelling; or is a private education loan as defined in § 1026.46(b)(5)), if either of the following conditions is met:

A. The creditor makes an extension of credit at consummation that exceeds the threshold amount in effect at the time of consummation. In these circumstances, the loan remains exempt under § 1026.3(b) even if the amount owed is subsequently reduced below the threshold amount (such as through repayment of the loan).

B. The creditor makes a commitment at consummation to extend a total amount of credit in excess of the threshold amount in effect at the time of consummation. In these circumstances, the loan remains exempt under § 1026.3(b) even if the total amount of credit extended does not exceed the threshold amount.

ii. *Subsequent changes.* If a creditor makes a closed-end extension of credit or commitment to extend closed-end credit that exceeds the threshold amount in effect at the time of consummation, the closed-end loan remains exempt under § 1026.3(b) regardless of a subsequent increase in the threshold amount. However, a closed-end loan is not exempt under § 1026.3(b) merely because it is used to satisfy and replace an existing exempt loan, unless the new extension of credit is itself exempt under the applicable threshold amount. For example, assume a closed-end loan that qualified for a § 1026.3(b) exemption at consummation in year one is refinanced in year ten and that the new loan amount is less than the threshold amount in effect in year ten. In these circumstances, the creditor must comply with all of the applicable requirements of this part with respect to the year ten transaction if the original loan is satisfied and replaced by the new loan, which is not exempt under § 1026.3(b). *See also* comment 3(b)-6.

6. *Addition of a security interest in real property or a dwelling after account opening or consummation.* i. *Open-end credit.* For open-end accounts, if after account opening a security interest is taken in real property, or in personal property used or expected to be used as the consumer's principal dwelling, a previously exempt account ceases to be exempt under § 1026.3(b) and the creditor must begin to comply with all of the applicable requirements of this part within a reasonable period of time. *See* comment 3(b)-4.ii. If a security interest is taken in the consumer's principal dwelling, the creditor must also give the consumer the right to rescind the security interest consistent with § 1026.15.

ii. *Closed-end credit.* For closed-end loans, if after consummation a security interest is taken in real property, or in personal property used or expected to be used as the consumer's principal dwelling, an exempt loan remains exempt under § 1026.3(b). However, the addition of a security interest in the consumer's principal dwelling is a transaction for purposes of § 1026.23, and the creditor must give the consumer the right to rescind the security interest consistent with that section. *See* § 1026.23(a)(1) and its commentary. In contrast, if a closed-end loan that is exempt under § 1026.3(b) is satisfied and replaced by a loan that is secured by real property, or by personal property used or expected to be used as the consumer's principal dwelling, the new loan is not exempt under § 1026.3(b), and the creditor must comply with all of the applicable requirements of this part. *See* comment 3(b)-5.

7. *Application to extensions secured by mobile homes.* Because a mobile home can be a dwelling under § 1026.2(a)(19), the exemption in § 1026.3(b) does not apply to a credit extension secured by a mobile home that is used or expected to be used as the principal dwelling of the consumer. *See* comment 3(b)-6.

8. *Transition rule for open-end accounts exempt prior to July 21, 2011.* Section 1026.3(b)(2) applies only to open-end accounts opened prior to July 21, 2011. Section 1026.3(b)(2) does not apply if a security interest is taken by the creditor in real property, or in personal property used or expected to be used as the consumer's principal dwelling. If, on July 20, 2011, an open-end account is exempt under § 1026.3(b) based on a firm commitment to extend credit in excess of \$25,000, the account remains exempt under § 1026.3(b)(2) until December 31, 2011 (unless the firm commitment is reduced to \$25,000 or less). If the firm commitment is increased on or before December 31, 2011 to an amount in excess of \$50,000, the account remains exempt under § 1026.3(b)(1) regardless of subsequent increases in the threshold

amount as a result of increases in the CPI-W. If the firm commitment is not increased on or before December 31, 2011 to an amount in excess of \$50,000, the account ceases to be exempt under § 1026.3(b) based on a firm commitment to extend credit. For example:

i. Assume that, on July 20, 2011, the account is exempt under § 1026.3(b) based on the creditor's firm commitment to extend \$30,000 in credit. On November 1, 2011, the creditor increases the firm commitment on the account to \$55,000. In these circumstances, the account remains exempt under § 1026.3(b)(1) regardless of subsequent increases in the threshold amount as a result of increases in the CPI-W.

ii. Same facts as paragraph i above except, on November 1, 2011, the creditor increases the firm commitment on the account to \$40,000. In these circumstances, the account ceases to be exempt under § 1026.3(b)(2) after December 31, 2011, and the creditor must begin to comply with the applicable requirements of this part.

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By order of the Board of Governors of the Federal Reserve System, November 17, 2016.

Robert deV. Frierson,
Secretary of the Board.

Dated: November 7, 2016.

Richard Cordray,
Director, Bureau of Consumer Financial Protection.

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