



BILLING CODE: 4810-AM-P

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1026

Truth in Lending (Regulation Z) Annual Threshold Adjustments (Credit Cards, 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 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 TILA and amendments to TILA, including 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). The Bureau is adjusting these amounts, where appropriate, based on the annual percentage change reflected in the Consumer Price Index (CPI) in effect on June 1, 2017.

DATES: This final rule is effective January 1, 2018.

FOR FURTHER INFORMATION CONTACT: Jaclyn Maier, 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 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 CPI as published by the Bureau of Labor Statistics (BLS). Specifically, for open-end consumer credit plans under TILA, the threshold that triggers requirements to disclose minimum interest charges will remain unchanged at \$1.00 in 2018. For open-end consumer credit plans under the CARD Act amendments to TILA, the adjusted dollar amount for the safe harbor for a first violation penalty fee will remain unchanged at \$27 in 2018 and the adjusted dollar amount for the safe harbor for a subsequent violation penalty fee will remain unchanged at \$38 in 2018. For HOEPA loans, the adjusted total loan amount threshold for high-cost mortgages in 2018 will be \$21,032. The adjusted points and fees dollar trigger for high-cost mortgages in 2018 will be \$1,052. For the general rule to determine consumers' ability to repay mortgage loans, the maximum thresholds for total points and fees for qualified mortgages in 2018 will be 3 percent of the total loan amount for a loan greater than or equal to \$105,158; \$3,155 for a loan amount greater than or equal to \$63,095 but less than \$105,158; 5 percent of the total loan amount for a loan greater than or equal to \$21,032 but less than \$63,095; \$1,052 for a loan amount greater than or equal to \$13,145 but less than \$21,032; and 8 percent of the total loan amount for a loan amount less than \$13,145.

I. Background

A. Credit Card Annual Adjustments

Minimum Interest Charge Disclosure Thresholds

Sections 1026.6(b)(2)(iii) and 1026.60(b)(3) of the Bureau's Regulation Z implement sections 127(a)(3) and 127(c)(1)(A)(ii)(II) of TILA. Sections 1026.6(b)(2)(iii) and 1026.60(b)(3) require the disclosure of any minimum interest charge exceeding \$1.00 that could be imposed during a billing cycle and provide that, for open-end consumer credit plans, the

minimum interest charge thresholds will be re-calculated annually using the CPI that was in effect on the preceding June 1; the Bureau uses the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) for this adjustment. 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 analysis is based on the CPI-W index in effect on June 1, 2017, which was reported by BLS on May 12, 2017, and reflects the percentage change from April 2016 to April 2017. The CPI-W is a subset of the Consumer Price Index for All Urban Consumers (CPI-U) index and represents approximately 28 percent of the U.S. population. The adjustment analysis accounts for a 2.1 percent increase in the CPI-W from April 2016 to April 2017. 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 the Bureau is therefore not amending §§ 1026.6(b)(2)(iii) and 1026.60(b)(3).

Safe Harbor Penalty Fees

Section 1026.52(b)(1)(ii)(A) and (B) of the Bureau's Regulation Z implements section 149(e) of TILA, established by the CARD Act.¹ Section 1026.52(b)(1)(ii)(D) provides that the safe harbor provision, which establishes the permissible penalty fee thresholds in § 1026.52(b)(1)(ii)(A) and (B), will be re-calculated annually using the CPI that was in effect on the preceding June 1; the Bureau uses the CPI-W for this adjustment. The BLS publishes consumer-based indices monthly but does not report a CPI change on June 1; adjustments are

¹ Credit Card Accountability Responsibility and Disclosure Act of 2009, Public Law 111-24, 123 Stat. 1734 (2009).

reported in the middle of the month. The CPI-W is a subset of the CPI-U index 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. The 2018 adjustment analysis is based on the CPI-W index in effect on June 1, 2017, which was reported by BLS on May 12, 2017, and reflects the percentage change from April 2016 to April 2017. The 2.1 percent increase in the CPI-W from April 2016 to April 2017 did not trigger an increase in the first violation safe harbor penalty fee of \$27 or the subsequent violation safe harbor penalty fee of \$38, and the Bureau is therefore not amending § 1026.52(b)(1)(ii)(A) and (B) for the 2018 calendar year.

B. HOEPA Annual Threshold Adjustments

Section 1026.32(a)(1)(ii) of the Bureau's Regulation Z implements section 1431 of the Dodd-Frank Act,² which amended the HOEPA points and fees coverage test. 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 for less than \$20,000. Section 1026.32(a)(1)(ii) provides that this threshold amount be recalculated annually using the CPI index in effect on June 1; the Bureau uses the CPI-U for this adjustment. The CPI-U is based on all urban consumers and represents approximately 88 percent of the U.S. population. The BLS publishes consumer-based

² Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203, 124 Stat. 1376 (2010).

indices monthly but does not report a CPI change on June 1; adjustments are reported in the middle of each month. The 2018 adjustment is based on the CPI-U index in effect on June 1, which was reported by BLS on May 12, 2017, and reflects the percentage change from April 2016 to April 2017. The adjustment to the \$20,000 figure being adopted here reflects a 2.2 percent increase in the CPI-U index for this period and is rounded to whole dollars for ease of compliance.

Under § 1026.32(a)(1)(ii)(B) the HOEPA points and fees dollar trigger is \$1,000. Section 1026.32(a)(1)(ii)(B) provides that this threshold amount will be recalculated annually using the CPI index in effect on June 1; the Bureau uses the CPI-U for this adjustment. The 2018 adjustment is based on the CPI-U index in effect on June 1, which was reported by BLS on May 12, 2017, and reflects the percentage change from April 2016 to April 2017. The adjustment to the \$1,000 figure being adopted here reflects a 2.2 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

The Bureau's Regulation Z implements sections 1411 and 1412 of the Dodd-Frank Act, which generally require creditors to make a reasonable, good faith determination of a consumer's ability to repay any consumer credit transaction secured by a dwelling, and establishes certain protections from liability under this requirement for qualified mortgages. Under § 1026.43(e)(3)(i), 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; or 8 percent of

the total loan amount for loans less than \$12,500. Section 1026.43(e)(3)(ii) provides that the limits and loan amounts in § 1026.43(e)(3)(i) are recalculated annually for inflation using the CPI-U index in effect on June 1. 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 2018 adjustment is based on the CPI-U index in effect on June 1, which was reported by BLS on May 12, 2017, and reflects the percentage change from April 2016 to April 2017. The adjustment to the 2017 figures being adopted here reflects a 2.2 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. Credit Card 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 at \$1.00 for the year 2018. Accordingly, the Bureau is not amending these sections of Regulation Z.

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

The safe harbor penalty fee amounts remain unchanged at \$27 for § 1026.52(b)(1)(ii)(A) (first violation safe harbor penalty fee) and \$38 for § 1026.52(b)(1)(ii)(B) (subsequent violation safe harbor penalty fee) for the year 2018. Accordingly, the Bureau is not amending these sections of Regulation Z. 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, 2018, 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 \$21,032, and the adjusted points and fees dollar trigger under § 1026.32(a)(1)(ii)(B) is \$1,052. When the total loan amount for a transaction is \$21,032 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 \$21,032, and the points and fees amount exceeds the lesser of the adjusted points and fees dollar trigger of \$1,052 or 8 percent of the total loan amount, the transaction is a high-cost mortgage. The Bureau is amending comments 32(a)(1)(ii)-1 and -3, which list the adjustments for each year, to reflect for 2018 the new loan amount dollar threshold and the new points and fees dollar trigger, respectively.

C. Ability to Repay and Qualified Mortgages Annual Threshold Adjustments

Effective January 1, 2018, 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 \$105,158; \$3,155 for a loan amount greater than or equal to \$63,095 but less than \$105,158; 5 percent of the total loan amount for loans greater than or equal to \$21,032 but less than \$63,095; \$1,052 for a loan amount greater than or equal to \$13,145 but less than \$21,032; or 8 percent of the total loan amount for loans less than \$13,145. The Bureau is amending comment 43(e)(3)(ii)-1, which lists the adjustments for each year, to reflect the new dollar threshold amounts for 2018.

III. Procedural Requirements

A. Administrative Procedure Act

Under the Administrative Procedure Act, 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, comments 32(a)(1)(ii)-1.iv and -3.iv, 43(e)(3)(ii)-1.iv, and 52(b)(1)(ii)-2.i.E in supplement I are added to update the exemption thresholds. The amendments in this final rule are technical and non-discretionary, as 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. The amendments therefore 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 part 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.*

2. 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.iv and 3.iv 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.iv 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.E is added.

The additions read as follows:

SUPPLEMENT I TO PART 1026—OFFICIAL INTERPRETATIONS

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Subpart E—Special Rules for Certain Home Mortgage Transactions

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Section 1026.32—Requirements for Certain Closed-End Home Mortgages

32(a) Coverage

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

1. * * *

iv. For 2018, \$1,052, reflecting a 2.2 percent increase in the CPI-U from June 2016 to June 2017, rounded to the nearest whole dollar.

* * * * *

3. * * *

iv. For 2018, \$21,032, reflecting a 2.2 percent increase in the CPI-U from June 2016 to June 2017, rounded to the nearest whole dollar.

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Section 1026.43—Minimum Standards for Transactions Secured by a Dwelling

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43(e) Qualified mortgages.

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

1. * * *

iv. For 2018, reflecting a 2.2 percent increase in the CPI-U that was reported on the preceding June 1, a covered transaction is not a qualified mortgage unless the transaction's total points and fees do not exceed:

A. For a loan amount greater than or equal to \$105,158: 3 percent of the total loan amount;

B. For a loan amount greater than or equal to \$63,095 but less than \$105,158: \$3,155;

C. For a loan amount greater than or equal to \$21,032 but less than \$63,095: 5 percent of the total loan amount;

D. For a loan amount greater than or equal to \$13,145 but less than \$21,032: \$1,052;

E. For a loan amount less than \$13,145: 8 percent of the total loan amount.

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Subpart G—Special Rules Applicable to Credit Card Accounts and Open-End Credit

Offered to College Students

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Section 1026.52—Limitations on Fees

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52(b) Limitations on Penalty Fees

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

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2. * * *

i. * * *

E. 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, 2017.

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Dated: July 25, 2017.

Richard Cordray,

Director, Bureau of Consumer Financial Protection.

[FR Doc. 2017-18003 Filed: 8/29/2017 8:45 am; Publication Date: 8/30/2017]