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BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1026

Truth in Lending (Regulation Z) Annual Threshold Adjustments (Credit Cards, HOEPA, and Qualified Mortgages)

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 regulation 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 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, 2018.

DATES: This final rule is effective January 1, 2019.

FOR FURTHER INFORMATION CONTACT: Monique Chenault, Paralegal, and Shelley Thompson, Counsel, Office of Regulations, at (202) 435-7700. If you require this document in an alternative electronic format, please contact CFPB_Accessibility@cfpb.gov.

SUPPLEMENTARY INFORMATION: The Bureau is amending the regulation 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 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 2019. For open-end consumer credit plans under the CARD Act amendments to TILA, the adjusted dollar amount in 2019 for the safe harbor for a first violation penalty fee will increase by \$1 to \$28 and the adjusted dollar amount for the safe harbor for a subsequent violation penalty fee will increase by \$1 to \$39. For HOEPA loans, the adjusted total loan amount threshold for high-cost mortgages in 2019 will be \$21,549. The adjusted points-and-fees dollar trigger for high-cost mortgages in 2019 will be \$1,077. For qualified mortgages, which receive certain protections from liability under the ability-to-repay rule, the maximum thresholds for total points and fees in 2019 will be 3 percent of the total loan amount for a loan greater than or equal to \$107,747; \$3,232 for a loan amount greater than or equal to \$64,648 but less than \$107,747; 5 percent of the total loan amount for a loan greater than or equal to \$21,549 but less than \$64,648; \$1,077 for a loan amount greater than or equal to \$13,468 but less than \$21,549; and 8 percent of the total loan amount for a loan amount less than \$13,468.

I. Background

A. Credit Card Annual Adjustments

Minimum Interest Charge Disclosure Thresholds

Sections 1026.6(b)(2)(iii) and 1026.60(b)(3) of 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, 2018, which was reported by BLS on May 10, 2018, and reflects the percentage change from April 2017 to April 2018. The CPI-W is a subset of the Consumer Price Index for All Urban Consumers (CPI-U) index and represents approximately 29 percent of the U.S. population. The adjustment analysis accounts for a 2.6 percent increase in the CPI-W from April 2017 to April 2018. 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 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. 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)

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

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 2019 adjustment analysis is based on the CPI-W index in effect on June 1, 2018, which was reported by BLS on May 10, 2018, and reflects the percentage change from April 2017 to April 2018. The adjustment to the permissible fee thresholds being adopted here reflects a 2.6 percent increase in the CPI-W from April 2017 to April 2018 and is rounded to the nearest \$1 increment.

B. HOEPA Annual Threshold Adjustments

Section 1026.32(a)(1)(ii) of 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 depends on 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 93 percent of the U.S. population. The 2019 adjustment is based on the CPI-U index in effect on June 1, which was reported by BLS on May 10, 2018, and reflects the percentage change from April 2017 to April 2018. The adjustment to the \$20,000 figure being adopted here reflects a 2.5 percent increase in the CPI-U index for this period and is rounded to whole dollars for ease of compliance.

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

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 2019 adjustment is based on the CPI-U index in effect on June 1, 2018, which was reported by BLS on May 10, 2018, and reflects the percentage change from April 2017 to April 2018. The adjustment to the \$1,000 figure being adopted here reflects a 2.5 percent increase in the CPI-U index for this period and is rounded to whole dollars for ease of compliance.

C. 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 total 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 2019 adjustment is based on the CPI-U index in effect on June 1, 2018, which was reported by BLS on May 10, 2018, and reflects the percentage change from April 2017 to April 2018. The adjustment to the 2018 figures being adopted here

reflects a 2.5 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 2019. Accordingly, the Bureau is not amending these sections of Regulation Z.

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

Effective January 1, 2019, the permissible fee threshold amounts increased by \$1 and are \$28 for § 1026.52(b)(1)(ii)(A) and \$39 for § 1026.52(b)(1)(ii)(B). Accordingly, the Bureau is revising § 1026.52(b)(1)(ii)(A) and (B) to state that the fee imposed for violating the terms or other requirements of an account shall not exceed \$28 and \$39 respectively. The Bureau is also amending comment 52(b)(1)(ii)-2.i to preserve a list of the historical thresholds for this provision.

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

Effective January 1, 2019, 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 \$21,549, and the adjusted points-and-fees dollar trigger under § 1026.32(a)(1)(ii)(B) is \$1,077. When the total loan amount for a transaction is \$21,549 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 \$21,549, and the points-and-fees amount exceeds the lesser of the adjusted points-and-fees dollar trigger of

\$1,077 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 2019 the new loan amount dollar threshold and the new points-and-fees dollar trigger, respectively.

C. Qualified Mortgages Annual Threshold Adjustments

Effective January 1, 2019, 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 \$107,747; \$3,232 for a loan amount greater than or equal to \$64,648 but less than \$107,747; 5 percent of the total loan amount for loans greater than or equal to \$21,549 but less than \$64,648; \$1,077 for a loan amount greater than or equal to \$13,468 but less than \$21,549; or 8 percent of the total loan amount for loans less than \$13,468. 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 2019.

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, § 1026.52(b)(1)(ii)(A) and (B) in subpart G is amended and comments 32(a)(1)(ii)-1.v and -3.v, 43(e)(3)(ii)-1.v, and 52(b)(1)(ii)-2.i.F 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.

D. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 et seq.), the Bureau will submit a report containing this rule and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the United States prior to the rule taking effect. The Office of Information and Regulatory Affairs (OIRA) has designated this rule as not a “major rule” as defined by 5 U.S.C. 804(2).

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. Amend § 1026.52 by revising paragraphs (b)(1)(ii)(A) and (B) to read as follows:

§ 1026.52 Limitations on fees.

* * * * *

(b) * * *

(1) * * *

(ii) * * *

(A) \$28

(B) \$39 if the card issuer previously imposed a fee pursuant to paragraph (b)(1)(ii)(A) of this section for a violation of the same type that occurred during the same billing cycle or one of the next six billing cycles; or

* * * * *

3. In Supplement I to Part 1026:

a. Under *Section 1026.32—Requirements for High-Cost Mortgages, Paragraph*

32(a)(1)(ii) is revised.

b. Under *Section 1026.43—Minimum Standards for Transactions Secured by a Dwelling, Paragraph 43(e)(3)(ii)* is revised.

c. Under *Section 1026.52—Limitations on Fees, 52(b)(1)(ii) Safe harbors* is revised.

The revisions read as follows:

SUPPLEMENT I TO PART 1026—OFFICIAL INTERPRETATIONS

* * * * *

Section 1026.32—Requirements for High-Cost Mortgages

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

1. *Annual adjustment of \$1,000 amount.* The \$1,000 figure in §1026.32(a)(1)(ii)(B) is adjusted annually on January 1 by the annual percentage change in the CPI that was in effect on the preceding June 1. The Bureau will publish adjustments after the June figures become available each year.

i. For 2015, \$1,020, reflecting a 2 percent increase in the CPI-U from June 2013 to June 2014, rounded to the nearest whole dollar.

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

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.

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.

v. For 2019, \$1,077, reflecting a 2.5 percent increase in the CPI-U from June 2017 to June 2018, rounded to the nearest whole dollar.

2. *Historical adjustment of \$400 amount.* Prior to January 10, 2014, a mortgage loan was covered by §1026.32 if the total points and fees payable by the consumer at or before loan consummation exceeded the greater of \$400 or 8 percent of the total loan amount. The \$400

figure was adjusted annually on January 1 by the annual percentage change in the CPI that was in effect on the preceding June 1, as follows:

i. For 1996, \$412, reflecting a 3.00 percent increase in the CPI-U from June 1994 to June 1995, rounded to the nearest whole dollar.

ii. For 1997, \$424, reflecting a 2.9 percent increase in the CPI-U from June 1995 to June 1996, rounded to the nearest whole dollar.

iii. For 1998, \$435, reflecting a 2.5 percent increase in the CPI-U from June 1996 to June 1997, rounded to the nearest whole dollar.

iv. For 1999, \$441, reflecting a 1.4 percent increase in the CPI-U from June 1997 to June 1998, rounded to the nearest whole dollar.

v. For 2000, \$451, reflecting a 2.3 percent increase in the CPI-U from June 1998 to June 1999, rounded to the nearest whole dollar.

vi. For 2001, \$465, reflecting a 3.1 percent increase in the CPI-U from June 1999 to June 2000, rounded to the nearest whole dollar.

vii. For 2002, \$480, reflecting a 3.27 percent increase in the CPI-U from June 2000 to June 2001, rounded to the nearest whole dollar.

viii. For 2003, \$488, reflecting a 1.64 percent increase in the CPI-U from June 2001 to June 2002, rounded to the nearest whole dollar.

ix. For 2004, \$499, reflecting a 2.22 percent increase in the CPI-U from June 2002 to June 2003, rounded to the nearest whole dollar.

x. For 2005, \$510, reflecting a 2.29 percent increase in the CPI-U from June 2003 to June 2004, rounded to the nearest whole dollar.

xi. For 2006, \$528, reflecting a 3.51 percent increase in the CPI-U from June 2004 to June 2005, rounded to the nearest whole dollar.

xii. For 2007, \$547, reflecting a 3.55 percent increase in the CPI-U from June 2005 to June 2006, rounded to the nearest whole dollar.

xiii. For 2008, \$561, reflecting a 2.56 percent increase in the CPI-U from June 2006 to June 2007, rounded to the nearest whole dollar.

xiv. For 2009, \$583, reflecting a 3.94 percent increase in the CPI-U from June 2007 to June 2008, rounded to the nearest whole dollar.

xv. For 2010, \$579, reflecting a 0.74 percent decrease in the CPI-U from June 2008 to June 2009, rounded to the nearest whole dollar.

xvi. For 2011, \$592, reflecting a 2.2 percent increase in the CPI-U from June 2009 to June 2010, rounded to the nearest whole dollar.

xvii. For 2012, \$611, reflecting a 3.2 percent increase in the CPI-U from June 2010 to June 2011, rounded to the nearest whole dollar.

xviii. For 2013, \$625, reflecting a 2.3 percent increase in the CPI-U from June 2011 to June 2012, rounded to the nearest whole dollar.

xix. For 2014, \$632, reflecting a 1.1 percent increase in the CPI-U from June 2012 to June 2013, rounded to the nearest whole dollar.

3. *Applicable threshold.* For purposes of §1026.32(a)(1)(ii), a creditor must determine the applicable points and fees threshold based on the face amount of the note (or, in the case of an open-end credit plan, the credit limit for the plan when the account is opened). However, the creditor must apply the allowable points and fees percentage to the “total loan amount,” as defined in §1026.32(b)(4). For closed-end credit transactions, the total loan amount may be

different than the face amount of the note. The \$20,000 amount in §1026.32(a)(1)(ii)(A) and (B) is adjusted annually on January 1 by the annual percentage change in the CPI that was in effect on the preceding June 1.

i. For 2015, \$20,391, reflecting a 2 percent increase in the CPI-U from June 2013 to June 2014, rounded to the nearest whole dollar.

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

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.

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.

v. For 2019, \$21,549, reflecting a 2.5 percent increase in the CPI-U from June 2017 to June 2018, 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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Paragraph 43(e)(3)(ii).

1. *Annual adjustment for inflation.* The dollar amounts, including the loan amounts, in §1026.43(e)(3)(i) will be adjusted annually on January 1 by the annual percentage change in the CPI-U that was in effect on the preceding June 1. The Bureau will publish adjustments after the June figures become available each year.

i. For 2015, reflecting a 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 transactions total points and fees do not exceed;

A. For a loan amount greater than or equal to \$101,953: 3 percent of the total loan amount;

B. For a loan amount greater than or equal to \$61,172 but less than \$101,953: \$3,059;

C. For a loan amount greater than or equal to \$20,391 but less than \$61,172: 5 percent of the total loan amount;

D. For a loan amount greater than or equal to \$12,744 but less than \$20,391: \$1,020;

E. For a loan amount less than \$12,744: 8 percent of the total loan amount.

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

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

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

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

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

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

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.

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.

v. For 2019, reflecting a 2.5 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 \$107,747: 3 percent of the total loan amount;
- B. For a loan amount greater than or equal to \$64,648 but less than \$107,747: \$3,232;

C. For a loan amount greater than or equal to \$21,549 but less than \$64,648: 5 percent of the total loan amount;

D. For a loan amount greater than or equal to \$13,468 but less than \$21,549: \$1,077;

E. For a loan amount less than \$13,468: 8 percent of the total loan amount.

* * * * *

Section 1026.52—Limitations on Fees

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

1. Multiple violations of same type. i. Same billing cycle or next six billing cycles. A card issuer cannot impose a fee for a violation pursuant to §1026.52(b)(1)(ii)(B) unless a fee has previously been imposed for the same type of violation pursuant to §1026.52(b)(1)(ii)(A). Once a fee has been imposed for a violation pursuant to §1026.52(b)(1)(ii)(A), the card issuer may impose a fee pursuant to §1026.52(b)(1)(ii)(B) for any subsequent violation of the same type until that type of violation has not occurred for a period of six consecutive complete billing cycles. A fee has been imposed for purposes of §1026.52(b)(1)(ii) even if the card issuer waives or rebates all or part of the fee.

A. Late payments. For purposes of §1026.52(b)(1)(ii), a late payment occurs during the billing cycle in which the payment may first be treated as late consistent with the requirements of this part and the terms or other requirements of the account.

B. Returned payments. For purposes of §1026.52(b)(1)(ii), a returned payment occurs during the billing cycle in which the payment is returned to the card issuer.

C. Transactions that exceed the credit limit. For purposes of §1026.52(b)(1)(ii), a transaction that exceeds the credit limit for an account occurs during the billing cycle in which the transaction occurs or is authorized by the card issuer.

D. Declined access checks. For purposes of §1026.52(b)(1)(ii), a check that accesses a credit card account is declined during the billing cycle in which the card issuer declines payment on the check.

ii. Relationship to §§1026.52(b)(2)(ii) and 1026.56(j)(1). If multiple violations are based on the same event or transaction such that §1026.52(b)(2)(ii) prohibits the card issuer from imposing more than one fee, the event or transaction constitutes a single violation for purposes of §1026.52(b)(1)(ii). Furthermore, consistent with §1026.56(j)(1)(i), no more than one violation for exceeding an account's credit limit can occur during a single billing cycle for purposes of §1026.52(b)(1)(ii). However, §1026.52(b)(2)(ii) does not prohibit a card issuer from imposing fees for exceeding the credit limit in consecutive billing cycles based on the same over-the-limit transaction to the extent permitted by §1026.56(j)(1). In these circumstances, the second and third over-the-limit fees permitted by §1026.56(j)(1) may be imposed pursuant to §1026.52(b)(1)(ii)(B). See comment 52(b)(2)(ii)-1.

iii. Examples. The following examples illustrate the application of §1026.52(b)(1)(ii)(A) and (b)(1)(ii)(B) with respect to credit card accounts under an open-end (not home-secured) consumer credit plan that are not charge card accounts. For purposes of these examples, assume that the billing cycles for the account begin on the first day of the month and end on the last day of the month and that the payment due date for the account is the twenty-fifth day of the month.

A. Violations of same type (late payments). A required minimum periodic payment of \$50 is due on March 25. On March 26, a late payment has occurred because no payment has been

received. Accordingly, consistent with §1026.52(b)(1)(ii)(A), the card issuer imposes a \$25 late payment fee on March 26. In order for the card issuer to impose a \$35 late payment fee pursuant to §1026.52(b)(1)(ii)(B), a second late payment must occur during the April, May, June, July, August, or September billing cycles.

1. The card issuer does not receive any payment during the March billing cycle. A required minimum periodic payment of \$100 is due on April 25. On April 20, the card issuer receives a \$50 payment. No further payment is received during the April billing cycle. Accordingly, consistent with §1026.52(b)(1)(ii)(B), the card issuer may impose a \$35 late payment fee on April 26. Furthermore, the card issuer may impose a \$35 late payment fee for any late payment that occurs during the May, June, July, August, September, or October billing cycles.

2. Same facts as in paragraph A above. On March 30, the card issuer receives a \$50 payment and the required minimum periodic payments for the April, May, June, July, August, and September billing cycles are received on or before the payment due date. A required minimum periodic payment of \$60 is due on October 25. On October 26, a late payment has occurred because the required minimum periodic payment due on October 25 has not been received. However, because this late payment did not occur during the six billing cycles following the March billing cycle, §1026.52(b)(1)(ii) only permits the card issuer to impose a late payment fee of \$25.

B. *Violations of different types (late payment and over the credit limit).* The credit limit for an account is \$1,000. Consistent with §1026.56, the consumer has affirmatively consented to the payment of transactions that exceed the credit limit. A required minimum periodic payment of \$30 is due on August 25. On August 26, a late payment has occurred because no payment has

been received. Accordingly, consistent with §1026.52(b)(1)(ii)(A), the card issuer imposes a \$25 late payment fee on August 26. On August 30, the card issuer receives a \$30 payment. On September 10, a transaction causes the account balance to increase to \$1,150, which exceeds the account's \$1,000 credit limit. On September 11, a second transaction increases the account balance to \$1,350. On September 23, the card issuer receives the \$50 required minimum periodic payment due on September 25, which reduces the account balance to \$1,300. On September 30, the card issuer imposes a \$25 over-the-limit fee, consistent with §1026.52(b)(1)(ii)(A). On October 26, a late payment has occurred because the \$60 required minimum periodic payment due on October 25 has not been received. Accordingly, consistent with §1026.52(b)(1)(ii)(B), the card issuer imposes a \$35 late payment fee on October 26.

C. Violations of different types (late payment and returned payment). A required minimum periodic payment of \$50 is due on July 25. On July 26, a late payment has occurred because no payment has been received. Accordingly, consistent with §1026.52(b)(1)(ii)(A), the card issuer imposes a \$25 late payment fee on July 26. On July 30, the card issuer receives a \$50 payment. A required minimum periodic payment of \$50 is due on August 25. On August 24, a \$50 payment is received. On August 27, the \$50 payment is returned to the card issuer for insufficient funds. In these circumstances, §1026.52(b)(2)(ii) permits the card issuer to impose either a late payment fee or a returned payment fee but not both because the late payment and the returned payment result from the same event or transaction. Accordingly, for purposes of §1026.52(b)(1)(ii), the event or transaction constitutes a single violation. However, if the card issuer imposes a late payment fee, §1026.52(b)(1)(ii)(B) permits the issuer to impose a fee of \$35 because the late payment occurred during the six billing cycles following the July billing

cycle. In contrast, if the card issuer imposes a returned payment fee, the amount of the fee may be no more than \$25 pursuant to §1026.52(b)(1)(ii)(A).

2. *Adjustments based on Consumer Price Index.* For purposes of §1026.52(b)(1)(ii)(A) and (b)(1)(ii)(B), the Bureau shall calculate each year price level adjusted amounts using the Consumer Price Index in effect on June 1 of that year. When the cumulative change in the adjusted minimum value derived from applying the annual Consumer Price level to the current amounts in §1026.52(b)(1)(ii)(A) and (b)(1)(ii)(B) has risen by a whole dollar, those amounts will be increased by \$1.00. Similarly, when the cumulative change in the adjusted minimum value derived from applying the annual Consumer Price level to the current amounts in §1026.52(b)(1)(ii)(A) and (b)(1)(ii)(B) has decreased by a whole dollar, those amounts will be decreased by \$1.00. The Bureau will publish adjustments to the amounts in §1026.52(b)(1)(ii)(A) and (b)(1)(ii)(B).

i. *Historical thresholds.*

A. Card issuers were permitted to impose a fee for violating the terms of an agreement if the fee did not exceed \$25 under §1026.52(b)(1)(ii)(A) and \$35 under §1026.52(b)(1)(ii)(B), through December 31, 2013.

B. Card issuers were permitted to impose a fee for violating the terms of an agreement if the fee did not exceed \$26 under §1026.52(b)(1)(ii)(A) and \$37 under §1026.52(b)(1)(ii)(B), through December 31, 2014.

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

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 June 27, 2016 through December 31, 2016.

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.

F. 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, 2018.

3. *Delinquent balance for charge card accounts.* Section 1026.52(b)(1)(ii)(C) provides that, when a charge card issuer that requires payment of outstanding balances in full at the end of each billing cycle has not received the required payment for two or more consecutive billing cycles, the card issuer may impose a late payment fee that does not exceed three percent of the delinquent balance. For purposes of §1026.52(b)(1)(ii)(C), the delinquent balance is any previously billed amount that remains unpaid at the time the late payment fee is imposed pursuant to §1026.52(b)(1)(ii)(C). Consistent with §1026.52(b)(2)(ii), a charge card issuer that imposes a fee pursuant to §1026.52(b)(1)(ii)(C) with respect to a late payment may not impose a fee pursuant to §1026.52(b)(1)(ii)(B) with respect to the same late payment. The following examples illustrate the application of §1026.52(b)(1)(ii)(C):

i. Assume that a charge card issuer requires payment of outstanding balances in full at the end of each billing cycle and that the billing cycles for the account begin on the first day of the

month and end on the last day of the month. At the end of the June billing cycle, the account has a balance of \$1,000. On July 5, the card issuer provides a periodic statement disclosing the \$1,000 balance consistent with §1026.7. During the July billing cycle, the account is used for \$300 in transactions, increasing the balance to \$1,300. At the end of the July billing cycle, no payment has been received and the card issuer imposes a \$25 late payment fee consistent with §1026.52(b)(1)(ii)(A). On August 5, the card issuer provides a periodic statement disclosing the \$1,325 balance consistent with §1026.7. During the August billing cycle, the account is used for \$200 in transactions, increasing the balance to \$1,525. At the end of the August billing cycle, no payment has been received. Consistent with §1026.52(b)(1)(ii)(C), the card issuer may impose a late payment fee of \$40, which is 3% of the \$1,325 balance that was due at the end of the August billing cycle. Section 1026.52(b)(1)(ii)(C) does not permit the card issuer to include the \$200 in transactions that occurred during the August billing cycle.

ii. Same facts as above except that, on August 25, a \$100 payment is received. Consistent with §1026.52(b)(1)(ii)(C), the card issuer may impose a late payment fee of \$37, which is 3% of the unpaid portion of the \$1,325 balance that was due at the end of the August billing cycle (\$1,225).

iii. Same facts as in paragraph A above except that, on August 25, a \$200 payment is received. Consistent with §1026.52(b)(1)(ii)(C), the card issuer may impose a late payment fee of \$34, which is 3% of the unpaid portion of the \$1,325 balance that was due at the end of the August billing cycle (\$1,125). In the alternative, the card issuer may impose a late payment fee of \$35 consistent with §1026.52(b)(1)(ii)(B). However, §1026.52(b)(2)(ii) prohibits the card issuer from imposing both fees.

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Dated: August 16, 2018.

Mick Mulvaney,

Acting Director, Bureau of Consumer Financial Protection.

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