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4810-AM-P

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1026

[Docket No. CFPB-2020-0014]

RIN 3170-AB01

Facilitating the LIBOR Transition (Regulation Z)

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Final rule; official interpretation.

SUMMARY: The Bureau of Consumer Financial Protection (Bureau) is amending Regulation Z, which implements the Truth in Lending Act (TILA), generally to address the anticipated sunset of LIBOR, which is expected to be discontinued for most U.S. Dollar (USD) tenors in June 2023. Some creditors currently use USD LIBOR as an index for calculating rates for open-end and closed-end products. The Bureau is amending the open-end and closed-end provisions to provide examples of replacement indices for LIBOR indices that meet certain Regulation Z standards. The Bureau also is amending Regulation Z to permit creditors for home equity lines of credit (HELOCs) and card issuers for credit card accounts to transition existing accounts that use a LIBOR index to a replacement index on or after April 1, 2022, if certain conditions are met. This final rule also addresses change-in-terms notice provisions for HELOCs and credit card accounts and how they apply to accounts transitioning away from using a LIBOR index. Lastly, the Bureau is amending Regulation Z to address how the rate reevaluation provisions applicable to credit card accounts apply to the transition from using a LIBOR index to a replacement index. The Bureau is reserving judgment about whether to include references to a 1-year USD LIBOR index and its replacement index in various comments; the Bureau will consider whether to finalize comments proposed on that issue in a supplemental final rule once it obtains additional information.

DATES: *Effective dates:* This final rule is effective on April 1, 2022, except the amendment to

appendix H to part 1026 in amendatory instruction 8, which is effective on October 1, 2023.

Compliance dates: The mandatory compliance date for revisions to the change-in-terms notice requirements in § 1026.9(c)(1)(ii) and (c)(2)(v)(A) is October 1, 2022. The mandatory compliance date for all other provisions of the final rule is April 1, 2022.

FOR FURTHER INFORMATION CONTACT: Krista Ayoub, Kristen Phinnessee, or Lanique Eubanks, Senior Counsels, 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:

I. Summary of the Final Rule

The Bureau is adopting amendments to Regulation Z, which implements TILA, for both open-end and closed-end credit to address the anticipated sunset of LIBOR.[1] The effective date of this final rule is April 1, 2022. For HELOCs and credit card accounts, the updated requirements in this final rule related to disclosing a reduction in a margin in the change-in-terms notices are effective on April 1, 2022, with a mandatory compliance date of October 1, 2022. For the revisions related to the post-consummation disclosure form for certain adjustable rate mortgages (ARMs), specifically sample form H-4(D)(4) in appendix H (that can be used for complying with § 1026.20(d)), this final rule provides creditors, assignees, and servicers with additional time to add the date at the top of the form if they are not already including the date. Specifically, from April 1, 2022, through September 30, 2023, creditors, assignees, and servicers have the option of either using the version of the form in effect prior to April 1, 2022, that does not include the date at the top of the form (denoted as "Legacy Form" in appendix H), or using the revised form put into effect on April 1, 2022, (denoted as "Revised Form" in appendix H)

[1] When amending commentary, the Office of the Federal Register requires reprinting of certain subsections being amended in their entirety rather than providing more targeted amendatory instructions. The sections of regulatory text and commentary included in this document show the language of those sections. In addition, the Bureau is releasing an unofficial, informal redline to assist industry and other stakeholders in reviewing the changes made in this final rule to the regulatory text and commentary of Regulation Z. This redline can be found on the Bureau's website, at [placeholder]. If any conflicts exist between the redline and the text of Regulation Z, its commentary, or this final rule, the documents published in the *Federal Register* are the controlling documents.

that includes the date at the top of the form. Creditors, assignees, and servicers are not required to use the revised form that includes the date at the top of the form that will be put into effect on April 1, 2022, until October 1, 2023. Also, this final rule adds a new sample form H-4(D)(2) in appendix H effective April 1, 2022, that references a Secured Overnight Financing Rate (SOFR) index (denoted as "Revised Form" in appendix H) that can be used for complying with § 1026.20(c). This final rule also retains through September 30, 2023, the sample form H-4(D)(2) that was in effect prior to April 1, 2022, that references a LIBOR index (denoted as "Legacy Form" in appendix H). This is discussed in this section and the effective date discussion in part VI, below.

A. *Open-End Credit*

The Bureau is adopting several amendments to the open-end credit provisions in Regulation Z to address the anticipated sunset of LIBOR. First, this final rule sets forth a detailed roadmap for HELOC creditors and card issuers to choose a compliant replacement index for the LIBOR index.[2] Regulation Z already permits HELOC creditors and card issuers to change an index and margin they use to set the annual percentage rate (APR) on a variable-rate account under certain conditions, when the original index becomes unavailable or is no longer available. The Bureau determined, however, that consumers, HELOC creditors, and card issuers would benefit substantially if HELOC creditors and card issuers could transition away from a LIBOR index before LIBOR is expected to become unavailable.

Under this final rule, HELOC creditors and card issuers can transition away from using the LIBOR index to a replacement index on or after April 1, 2022, before LIBOR is expected to become unavailable. To accomplish this, this final rule imposes certain requirements on selecting a replacement index. HELOC creditors and card issuers must ensure that the APR calculated using the replacement index is substantially similar to the rate calculated using the

[2] Reverse mortgages structured as open-end credit are HELOCs subject to the provisions in §§ 1026.40 and 1026.9(c)(1).

LIBOR index, based generally on the values of these indices on October 18, 2021.[3] HELOC creditors and card issuers may select a replacement index that is newly established and has no history or an index that is not newly established and has historical fluctuations substantially similar to those of the LIBOR index. This final rule provides details on how to determine whether a replacement index has historical fluctuations that are substantially similar to those of a particular LIBOR index for HELOCs and credit card accounts. Specifically, this final rule provides examples of the type of factors to be considered in whether a replacement index meets the Regulation Z "historical fluctuations are substantially similar" standard. The Bureau also has determined that the prime rate published in the Wall Street Journal (Prime) has historical fluctuations substantially similar to those of the 1-month and 3-month USD LIBOR indices. In addition, the Bureau has determined that spread-adjusted[4] indices based on SOFR recommended by the Alternative Reference Rates Committee (ARRC) for consumer products to the replace 1-month, 3-month, or 6-month USD LIBOR index have historical fluctuations that are substantially similar to those of the applicable USD LIBOR index they are intended to replace. These new provisions that detail specifically how HELOC creditors and card issuers may replace a LIBOR index with a replacement index for accounts on or after April 1, 2022, are set forth in § 1026.40(f)(3)(ii)(B) for HELOCs and § 1026.55(b)(7)(ii) for credit card accounts. The ARRC has indicated that the SOFR-based spread-adjusted indices recommended by ARRC for

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[3] If the replacement index is not published on October 18, 2021, the creditor or card issuer generally must use the next calendar day for which both the LIBOR index and the replacement index are published as the date for selecting indices values in determining whether the APR based on the replacement index is substantially similar to the rate based on the LIBOR index. The one exception is that if the replacement index is the SOFR-based spread-adjusted index recommended by the Alternative Reference Rates Committee (ARRC) for consumer products to replace the 1-month, 3-month, 6-month, or 1-year USD LIBOR index, the creditor or card issuer must use the index value on June 30, 2023, for the LIBOR index and, for the SOFR-based spread-adjusted index for consumer products, must use the index value on the first date that index is published, in determining whether the APR based on the replacement index is substantially similar to the rate based on the LIBOR index.

[4] The spread between two indices is the difference between the levels of those indices, which may vary from day to day. For example, if today, index X is 5 percent and index Y is 4 percent, then the X-Y spread today is 1 percentage point (or, equivalently, 100 basis points). A spread adjustment is a term that is added to one index to make it more similar to another index. For example, if the X-Y spread is typically around 100 basis points, then one reasonable spread adjustment may be to add 100 basis points to Y every day. Then the spread-adjusted value of Y will typically be much closer to the value of X than Y is, although there may still be differences between X and the spread-adjusted Y from day to day.

consumer products to the replace 1-month, 3-month, 6-month, or 1-year USD LIBOR index will not be published until Monday, July 3, 2023, which is the first weekday after Friday, June 30, 2023, when LIBOR is currently anticipated to sunset for these USD LIBOR tenors.[5] However, the Bureau wishes to facilitate an earlier transition for those HELOC creditors or card issuers that may want to transition to an index other than the SOFR-based spread-adjusted indices recommended by ARRC for consumer products. Accordingly, the Bureau is making these provisions effective on April 1, 2022.

Second, this final rule makes clarifying changes to existing Regulation Z provisions on the replacement of an index when the index becomes unavailable. These changes are set forth in § 1026.40(f)(3)(ii)(A) for HELOCs and in § 1026.55(b)(7)(i) for credit card accounts.

Third, this final rule revises change-in-terms notice requirements for HELOCs and credit card accounts to notify consumers how the variable rates on their accounts will be determined going forward after the LIBOR index is replaced. This final rule ensures that the change-in-terms notices for these accounts will disclose the index that is replacing the LIBOR index and any adjusted margin that will be used to calculate a consumer's rate, regardless of whether the margin is being reduced or increased. These changes will become effective April 1, 2022. From April 1, 2022, through September 30, 2022, creditors will have the option of complying with these revised change-in-terms notice requirements. On or after October 1, 2022, creditors will be required to comply with these revised change-in-terms notice requirements. These changes are set forth in § 1026.9(c)(1)(ii) for HELOCs and in § 1026.9(c)(2)(v)(A) for credit card accounts.

Fourth, this final rule also provides additional details on how a creditor may disclose information about the periodic rate and APR in a change-in-terms notice for HELOCs and credit card accounts when the creditor is replacing a LIBOR index with the SOFR-based spread-adjusted index recommended by ARRC for consumer products to replace 1-month, 3-month, or

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[5] Alt. Reference Rates Comm,, *Summary of the ARRC's Fallback Recommendations*, at 11 (Oct. 6, 2021), https://www.newyorkfed.org/medialibrary/Microsites/arrc/files/2021/spread-adjustments-narrative-oct-6-2021 (Summary of Fallback Recommendations).

6-month USD LIBOR index in certain circumstances. These details are set forth in comment 9(c)(1)-4 for HELOCs and in comment 9(c)(2)(iv)-2.ii for credit card accounts.

Fifth, this final rule adds an exception from the rate reevaluation provisions applicable to credit card accounts. Currently, when a card issuer increases a rate on a credit card account, the card issuer generally must complete an analysis reevaluating the rate increase every six months until the rate is reduced to a certain degree. To facilitate compliance, this final rule adds an exception from these requirements for increases that occur as a result of replacing a LIBOR index using the specific provisions described above for transitioning from a LIBOR index or as a result of the LIBOR index becoming unavailable. This exception is set forth in § 1026.59(h)(3). This exception would not apply to rate increases that are already subject to the rate reevaluation requirements prior to the transition from the LIBOR index. This final rule also would address cases where the card issuer was already required to perform a rate reevaluation review prior to transitioning away from LIBOR and LIBOR was used as the benchmark for comparison for purposes of determining whether the card issuer can terminate the six-month reviews. To facilitate compliance, these changes will address how a card issuer can terminate the obligation to review where the rate applicable immediately prior to the increase was a variable rate calculated using a LIBOR index. These changes are set forth in § 1026.59(f)(3).

Sixth, in relation to the open-end credit provisions, this final rule adopts technical edits to comment 59(d)-2 to replace the LIBOR reference with a reference to a SOFR index and to make related changes and corrections.

B. *Closed-End Credit*

The Bureau is adopting amendments to the closed-end credit provisions in Regulation Z to address the anticipated sunset of LIBOR. First, this final rule provides details on how to determine whether a replacement index is a comparable index to a particular LIBOR index for purposes of the closed-end refinancing provisions. Currently, under Regulation Z, if the creditor changes the index of a variable-rate closed-end loan to an index that is not a comparable index,

the index change may constitute a refinancing for purposes of Regulation Z, triggering certain requirements. Specifically, this final rule provides examples of the type of factors to be considered in whether a replacement index meets the Regulation Z "comparable" standard with respect to a particular LIBOR index for closed-end transactions. This change is set forth in comment 20(a)-3.iv. This final rule also adds an illustrative example to identify the SOFR-based spread-adjusted indices recommended by the ARRC for consumer products to replace the 1-month, 3-month, or 6 month USD LIBOR index as an example of a comparable index for the LIBOR indices that they are intended to replace. This change is set forth in comment 20(a)(3)-ii.B.

Second, in relation to the closed-end credit provisions, this final rule adopts technical edits to § 1026.36(a)(4)(iii)(C) and (a)(5)(iii)(B), comment 37(j)(1)-1, and sample forms H-4(D)(2) and H-4(D)(4) in appendix H pursuant to § 1026.20(c) and (d). These technical edits would replace LIBOR references with references to a SOFR index and make related changes and corrections. This final rule also adds a date at the top of the sample form H-4(D)(4) that can be used for complying with § 1026.20(d) concerning ARMs. The effective date of the revised sample forms in H-4(D)(2) and H-4(D)(4) in appendix H is April 1, 2022. With respect to sample form H-4(D)(4) in appendix H, from April 1, 2022, through September 30, 2023, creditors, assignees, or servicers will have the option of using a format substantially similar to form H-4(D)(4) either in effect prior to April 1, 2022 (that does not include the date at the top of the form and is denoted as "Legacy Form" in appendix H), or the form that becomes effective on April 1, 2022 (that includes the date at the top of the form and is denoted as "Revised Form" in appendix H). Both versions of the forms will be available in appendix H through September 30, 2023. Starting on or after October 1, 2023, only creditors, assignees, or servicers using a format substantially similar to the form that becomes effective on April 1, 2022, that includes a date at the top of the form, will be deemed to be in compliance. Accordingly, the version of form H-4(D)(4) in effect prior to April 1, 2022, will be removed from appendix H and cannot be used to

demonstrate compliance with § 1026.20(d). In addition, the revised form of H-4(D)(4) that will become effective on April 1, 2022, also provides an example of the form using a SOFR index. Because most tenors of USD LIBOR are not expected to be discontinued until June 2023, this final rule retains through September 30, 2023, the sample form H-4(D)(4) that was in effect prior to April 1, 2022, that references a LIBOR index. New sample form H-4(D)(2) in appendix H effective April 1, 2022, (denoted as "Revised Form" in appendix H) can be used for complying with § 1026.20(c) relating to ARMs and provides an example using a SOFR index. This final rule also retains through September 30, 2023, the sample form H-4(D)(2) that was in effect prior to April 1, 2022, (denoted as "Legacy Form" in appendix H) that provides an example using a LIBOR index.

II. Background

A. LIBOR

Introduced in the 1980s, LIBOR (originally an acronym for London Interbank Offered Rate) was intended to measure the average rate at which a bank could obtain unsecured funding in the London interbank market for a given period, in a given currency. LIBOR is calculated based on submissions from a panel of contributing banks and published every London business day for five currencies (USD, British pound sterling (GBP), euro (EUR), Swiss franc (CHF), and Japanese yen (JPY)) and for seven tenors[6] for each currency (overnight, 1-week, 1-month, 2-month, 3-month, 6-month, and 1-year), resulting in 35 individual rates (collectively, LIBOR). As of September 2021, the panel for USD LIBOR is comprised of sixteen banks, and each bank contributes data for all seven tenors.[7]

In 2017, the chief executive of the U.K. Financial Conduct Authority (FCA), which regulates LIBOR, announced that it did not intend to persuade or compel banks to submit information for LIBOR past the end of 2021 (subsequently extended to June 30, 2023, for certain

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[6] The tenor refers to the to the length of time remaining until a loan matures.

[7] The Intercontinental Exch. LIBOR, *Panel Composition,* https://www.theice.com/iba/libor.

USD LIBOR tenors only) and that the panel banks had agreed to voluntarily sustain LIBOR until then in order to provide sufficient time for the market to transition from using LIBOR indices to alternative indices.[8] In March 2021, the FCA announced cessation dates for all LIBOR indices. The bank panels are scheduled to end immediately after December 31, 2021, for the 1-week and 2-month USD LIBOR indices and immediately after June 30, 2023, for the remaining USD LIBOR indices. After these dates, representative LIBOR indices will no longer be available.[9]

B. Consumer Products Using LIBOR

In the United States, financial institutions have used USD LIBOR as a common benchmark rate for a variety of adjustable-rate consumer financial products, including mortgages, credit cards, HELOCs, and student loans. Typically, the consumer pays an interest rate that is calculated as the sum of a benchmark index and a margin. For example, a consumer may pay an interest rate equal to the 1-year USD LIBOR plus two percentage points.

Financial institutions have been developing plans and procedures to transition from the use of LIBOR indices to replacement indices for products that are being newly issued and existing accounts that were originally benchmarked to a LIBOR index. In some markets, such as for HELOCs and credit cards, the vast majority of newly originated lines of credit are already based on indices other than a LIBOR index.

III. Summary of Rulemaking Process

A. *2020 Proposal*

On June 4, 2020, the Bureau issued a notice of proposed rulemaking containing several proposed amendments to Regulation Z, which implements TILA, for both open-end and closed-

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[8] Andrew Bailey, Fin. Conduct Auth., *The Future of LIBOR* (2017), https://www.fca.org.uk/news/speeches/the-future-of-libor; Fin. Conduct Auth., *FCA Statement on LIBOR Panels* (2017), https://www.fca.org.uk/news/statements/fca-statement-libor-panels.

[9] Fin. Conduct Auth., *Announcements on the End of LIBOR* (2021), https://www.fca.org.uk/news/press-releases/announcements-end-libor (last updated May 3, 2021); Fin. Conduct Auth., *About LIBOR Transition* (2021), https://www.fca.org.uk/markets/libor-transition (last updated May 7, 2021).

end credit to address the anticipated sunset of LIBOR.[10] This notice of proposed rulemaking was published in the *Federal Register* on June 18, 2020 (2020 Proposal).[11] The Bureau generally proposed that the final rule would take effect on March 15, 2021, except for the updated change-in-term disclosure requirements for HELOCs and credit card accounts that would apply as of October 1, 2021.

The Bureau proposed several amendments to the open-end credit provisions in Regulation Z to address the anticipated sunset of LIBOR. Specifically, the Bureau proposed to add new provisions that detail specifically how HELOC creditors and card issuers may replace a LIBOR index with a replacement index for accounts on or after March 15, 2021. In the 2020 Proposal, the Bureau set forth certain proposed conditions that HELOC creditors and card issuers would be required to meet in order to use these newly proposed provisions. Under the 2020 Proposal, HELOC creditors and card issuers would have been required to ensure that the APR calculated using the replacement index is substantially similar to the rate calculated using the LIBOR index, based generally on the values of these indices on December 31, 2020. The 2020 Proposal also would have imposed other requirements on a replacement index. Under the 2020 Proposal, HELOC creditors and card issuers could select a replacement index that is newly established and has no history, or an index that is not newly established and has a history. As proposed, HELOC creditors and card issuers would have been permitted to replace a LIBOR index with an index that has a history only if the index has historical fluctuations substantially similar to those of the LIBOR index. The Bureau proposed to determine that Prime has historical fluctuations substantially similar to those of the 1-month and 3-month USD LIBOR

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[10] At the same time as issuing the proposal, the Bureau issued separate written guidance in the form of Frequently Asked Questions (FAQs) for creditors and card issuers to use as they transition away from using LIBOR indices. These FAQs addressed regulatory questions where the existing rule was clear on the requirements and already provides necessary alternatives for the LIBOR transition. The FAQs, as well as additional written guidance materials including an executive summary of this final rule, are available here: Bureau of Consumer Fin. Prot., [Title] https://www.consumerfinance.gov/policy-compliance/guidance/other-applicable-requirements/libor-transition/.

[11] 85 FR 36938 (June 18, 2020).

indices. The Bureau also proposed to determine that the SOFR-based spread-adjusted indices recommended by the ARRC for consumer products to replace the 1-month, 3-month, 6-month, or 1-year USD LIBOR indices have historical fluctuations that are substantially similar to those of the LIBOR indices that they are intended to replace.

The Bureau also proposed amendments to the open-end credit provisions to: (1) make clarifying changes to the existing provisions on the replacement of an index when the index becomes unavailable; (2) revise change-in-terms notice requirements for HELOCs and credit card accounts to ensure that consumers are notified of how the variable rates on their accounts will be determined going forward after the LIBOR index is replaced; (3) add an exception from the rate reevaluation provisions applicable to credit card accounts for increases that occur as a result of replacing a LIBOR index using the specific proposed provisions described above for transitioning from a LIBOR index or as a result of the LIBOR index becoming unavailable; (4) address cases where the card issuer was already required to perform a rate reevaluation review prior to transitioning away from LIBOR and LIBOR was used as the benchmark for comparison for purposes of determining whether the card issuer can terminate the six-month reviews; and (5) make several technical edits to certain commentary to replace LIBOR references with references to a SOFR index.

The Bureau also proposed amendments to the closed-end credit provisions in Regulation Z to address the anticipated sunset of LIBOR, including proposed amendments to: (1) add an illustrative example to identify the SOFR-based spread-adjusted indices recommended by the ARRC for consumer products as an example of a comparable index for the LIBOR indices that they are intended to replace for purposes of the closed-end refinancing provisions; and (2) make technical edits to certain commentary and sample forms to replace LIBOR references with references to a SOFR index and make related changes and corrections.

The comment period for the 2020 Proposal closed on August 4, 2020. The Bureau received around 30 comment letters. Approximately half of the comment letters were submitted

by industry commenters, specifically banks and credit unions and their trade associations. Commenters also included several consumer groups, a financial services education and consulting firm, and several individuals.

Commenters generally supported the proposed provisions that would allow HELOC creditors and card issuers to replace a LIBOR index with a replacement index for accounts on or after March 15, 2021, if certain conditions are met. Nonetheless, several industry commenters encouraged the Bureau to allow HELOC creditors and card issuers to replace a LIBOR index sooner than March 15, 2021. Commenters also generally supported the proposed conditions that must be met for HELOC creditors and card issuers to use the newly proposed provisions described above. Also, several industry commenters and several consumer group commenters supported the Bureau's proposal determining that Prime and certain SOFR-based spread-adjusted indices recommended by ARRC for consumer products have historical fluctuations substantially similar to those of certain LIBOR indices. Nonetheless, a few consumer group commenters indicated that the Bureau should not adopt its proposal that Prime has historical fluctuations that are substantially similar to those of certain LIBOR indices.

Several commenters requested additional guidance on the proposed conditions that must be met by HELOC creditors and card issuers to use the proposed provisions discussed above, including: (1) many industry commenters and one individual commenter requested that the Bureau identify additional indices that meet the Regulation Z standards that the historical fluctuations of those indices are substantially similar to those of certain tenors of LIBOR; (2) several industry commenters requested that the Bureau provide a principles-based standard for determining when the historical fluctuations of an index are substantially similar to those of a particular LIBOR index; (3) a few consumer group commenters and a financial services education and consulting firm indicated that the Bureau should limit when a newly established index can be used to replace a LIBOR index; and (4) several industry commenters and several consumer group commenters indicated that the Bureau should provide greater detail on the

proposed condition that HELOC creditors and card issuers must ensure that the APR calculated using the replacement index is substantially similar to the rate calculated using the LIBOR index.

Several industry commenters and several consumer group commenters also indicated that the Bureau should provide further guidance to HELOC creditors and card issuers to assist them in determining whether LIBOR (or another index) is unavailable for purposes of Regulation Z.

Commenters generally supported the Bureau's proposed revisions to the notice requirements for HELOCs and credit card accounts. Several industry commenters and an individual commenter also requested that the Bureau provide comprehensive sample disclosures for change-in-terms notices for HELOC accounts and for credit card accounts that can be provided to borrowers to help them understand the change in the index. Commenters also generally supported the proposed changes to the rate reevaluation provisions applicable to credit card accounts.

With respect to the proposed amendments related to closed-end credit, commenters generally supported the proposed new illustrative example to identify the SOFR-based spread-adjusted indices recommended by the ARRC for consumer products as an example of a comparable index for the LIBOR indices that they are intended to replace for purposes of the closed-end refinancing provisions. Nonetheless, commenters also requested other changes to the closed-end provisions, including: (1) many industry commenters generally urged the Bureau to provide additional examples of comparable indices to the LIBOR indices; (2) many industry commenters urged the Bureau to provide additional guidance on how to determine if an index is a comparable index for purposes of Regulation Z; (3) several commenters, including a few consumer groups, a financial services education and consulting firm, and a few individuals, urged the Bureau to require disclosures to consumers with closed-end loans notifying consumers of the index change; (4) a few industry commenters urged the Bureau to include the same provisions for closed-end loans that it proposed for HELOCs and credit card accounts which would allow HELOC creditors and card issuers to transition from using a LIBOR index on or

after March 15, 2021, if certain conditions are met; and (5) several industry commenters urged the Bureau to include the proposed example for the SOFR-based spread-adjusted indices recommended by ARRC for consumer products in the text of the rule, rather than the commentary.

The Bureau responds to the above comments in the section-by-section discussion below.

The Bureau notes that some of the comments the Bureau received raised issues that are beyond the scope of the 2020 Proposal. Specifically, several industry commenters requested that the Bureau provide guidance that the use of certain replacement indices would not raise Unfair, Deceptive, or Abusive Acts or Practices (UDAAP) concerns. The Bureau is not addressing these comments requesting guidance on UDAAP in this final rule because they are outside the scope of the 2020 Proposal.

B. *Outreach*

Prior to the 2020 Proposal, the Bureau received feedback through both formal and informal channels, regarding ways in which the Bureau could use rulemaking to facilitate the market's orderly transition from using LIBOR indices to alternate indices. The following is a brief summary of some of the Bureau's engagement with industry, consumer groups, regulators, and other stakeholders regarding the transition away from the use of LIBOR indices prior to the 2020 Proposal. The Bureau discusses feedback received through these various channels that is relevant to this final rule throughout the document.

The Bureau is an *ex officio* member of the ARRC, a group of private-market participants convened by the Board of Governors of the Federal Reserve System (Board) and the Federal Reserve Bank of New York (New York Fed) to ensure a successful transition from the use of LIBOR as an index. The group is comprised of a diverse set of private-sector entities that have an important presence in markets affected by USD LIBOR and a wide array of official-sector entities, including banking and financial sector regulators, as ex-officio members. As an *ex officio* member, the Bureau does not have voting rights and may only offer views and analysis to

support the ARRC's objectives. Through its interaction with other ARRC members, the Bureau has received questions and requests for clarification regarding certain provisions in the Bureau's rules that could affect the industry's LIBOR transition plans. For example, the Bureau has received informal requests from members of the ARRC for clarification that the SOFR-based spread-adjusted index recommended by ARRC for consumer products is a comparable index to the LIBOR index. The Bureau has also, in coordination with the ARRC, actively sought feedback regarding a potential rulemaking related to the LIBOR transition. For example, the Bureau convened multiple meetings for members of the ARRC to hear consumer groups' views on potential issues consumers may face during the anticipated sunset of LIBOR and solicited suggestions for potential actions the regulators could take to facilitate a smooth transition.

The Bureau has engaged in ongoing market monitoring with individual institutions, trade associations, regulators, and other stakeholders to understand their plans for the LIBOR transition, their concerns, and potential impacts on consumers. Institutions and trade associations have met informally with the Bureau and sent letters outlining their concerns related to the anticipated sunset of LIBOR. The Bureau also has received feedback regarding the LIBOR transition through other formal channels that were related to general Bureau activities. For example, in January 2019, the Bureau solicited information from the public about several aspects of the consumer credit card market.[12] The Bureau received comments submitted from a banking trade group regarding changes to Regulation Z that could support the transition away from using LIBOR indices.

Through these various channels, industry trade associations, consumer groups, and other organizations provided information about provisions in Bureau regulations that could be modified to reduce market confusion, enable institutions and consumers to transition away from using LIBOR indices in a timely manner, and lower risks related to the LIBOR transition. A

[12] 84 FR 647 (Jan. 31, 2019).

number of financial institutions raised concerns that LIBOR may continue for some time after December 2021 but become less representative or reliable if, as expected, some panel banks stop submitting information before LIBOR finally is discontinued. Stakeholders noted that FCA could declare LIBOR to be unrepresentative at some point after 2021 and wanted clarity from U.S. Federal regulators about how U.S. firms should interpret such a declaration. Some industry participants asked that the Bureau declare LIBOR to be unavailable for the purposes of Regulation Z. They also requested that the Bureau facilitate a transition timeline that would provide sufficient time for financial institutions to notify consumers of the change and make the necessary changes to their systems.

Credit card issuers and related trade associations stated that Prime should be permitted to replace a LIBOR index, noting that while a SOFR-based index is expected to replace a LIBOR index in many commercial contexts, Prime is the industry standard rate index for credit cards. They also requested that the Bureau permit card issuers to replace the LIBOR index used in setting the variable rates on existing accounts before LIBOR becomes unavailable to facilitate compliance. They also requested guidance on how the rate reevaluation provisions applicable to credit card accounts apply to accounts that are transitioning away from using LIBOR indices.

Consumer groups emphasized the need for transparency as institutions sunset their use of LIBOR indices and indicated a preference for replacement indices that are publicly available. They recommended regulators protect consumers by preventing institutions from changing the index or margin in a manner that would raise the interest rate paid by the consumer. They also shared industry's concerns that LIBOR may continue for some time after December 2021 but become less representative or reliable until LIBOR finally is discontinued. Consumer advocates noted that existing contract language may limit how and when institutions can transition away from LIBOR. They also discussed issues specific to particular consumer products, expressing concern, for example, that the contract language in the private student loan market is ambiguous

and gives lenders wide leeway in determining a comparable replacement index for LIBOR indices.

IV. Legal Authority

A. Section 1022 of the Dodd-Frank Act

Section 1022(b)(1) of the Dodd-Frank Act authorizes the Bureau to prescribe rules "as may be necessary or appropriate to enable the Bureau to administer and carry out the purposes and objectives of the Federal consumer financial laws, and to prevent evasions thereof." Among other statutes, title X of the Dodd-Frank Act and TILA are Federal consumer financial laws.[13] Accordingly, in issuing this final rule, the Bureau is exercising its authority under Dodd-Frank Act section 1022(b) to prescribe rules under TILA and title X that carry out the purposes and objectives and prevent evasion of those laws.

B. The Truth in Lending Act

TILA is a Federal consumer financial law. In adopting TILA, Congress explained that: (1) economic stabilization would be enhanced and the competition among the various financial institutions and other firms engaged in the extension of consumer credit would be strengthened by the informed use of credit; (2) the informed use of credit results from an awareness of the cost thereof by consumers; and (3) it is the purpose of TILA to assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available to them and avoid the uninformed use of credit, and to protect the consumer against inaccurate and unfair credit billing and credit card practices.[14]

TILA and Regulation Z define credit broadly as the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment.[15] TILA and Regulation Z set

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[13] Dodd-Frank Act section 1002(14); codified at 12 U.S.C. 5481(14) (defining "Federal consumer financial law" to include the "enumerated consumer laws" and the provisions of title X of the Dodd-Frank Act); Dodd-Frank Act section 1002(12); codified at 12 U.S.C. 5481(12) (defining "enumerated consumer laws" to include TILA).

[14] TILA section 102(a), codified at 15 U.S.C. 1601(a).

[15] TILA section 103(f), codified at 15 U.S.C. 1602(f); 12 CFR 1026.2(a)(14).

forth disclosure and other requirements that apply to creditors. Different rules apply to creditors depending on whether they are extending "open-end credit" or "closed-end credit." Under the statute and Regulation Z, open-end credit exists where there is a plan in which the creditor reasonably contemplates repeated transactions; the creditor may impose a finance charge from time to time on an outstanding unpaid balance; and the amount of credit that may be extended to the consumer during the term of the plan (up to any limit set by the creditor) is generally made available to the extent that any outstanding balance is repaid.[16] Typically, closed-end credit is credit that does not meet the definition of open-end credit.[17]

The term "creditor" generally means a person who regularly extends consumer credit that is subject to a finance charge or is payable by written agreement in more than four installments (not including a down payment), and to whom the obligation is initially payable, either on the face of the note or contract or by agreement when there is no note or contract.[18] TILA defines "finance charge" generally as the sum of all charges, payable directly or indirectly by the person to whom the credit is extended, and imposed directly or indirectly by the creditor as an incident to the extension of credit.[19]

The term "creditor" also includes a card issuer, which is a person or its agent that issues credit cards, when that person extends credit accessed by the credit card.[20] Regulation Z defines the term "credit card" to mean any card, plate, or other single credit device that may be used from time to time to obtain credit.[21] A charge card is a credit card on an account for which no periodic rate is used to compute a finance charge.[22] In addition to being creditors under TILA and Regulation Z, card issuers also generally must comply with the credit card rules set forth in

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[16] 12 CFR 1026.2(a)(20).

[17] 12 CFR 1026.2(a)(10); comment 2(a)(10)-1.

[18] *See* TILA section 103(g), codified at 15 U.S.C. 1602(g); 12 CFR 1026.2(a)(17)(i).

[19] TILA section 106(a), codified at 15 U.S.C. 1605(a); *see* 12 CFR 1026.4.

[20] *See* TILA section 103(g), codified at 15 U.S.C. 1602(g); 12 CFR 1026.2(a)(17)(iii) and (iv).

[21] *See* 12 CFR 1026.2(a)(15)(i).

[22] *See* 12 CFR 1026.2(a)(15)(iii).

the Fair Credit Billing Act[23] and in the Credit Card Accountability Responsibility and Disclosure Act of 2009 (Credit CARD Act)[24] (if the card accesses an open-end credit plan), as implemented in Regulation Z subparts B and G.[25]

TILA section 105(a). As amended by the Dodd-Frank Act, TILA section 105(a)[26] directs the Bureau to prescribe regulations to carry out the purposes of TILA, and provides that such regulations may contain additional requirements, classifications, differentiations, or other provisions, and may provide for such adjustments and exceptions for all or any class of transactions, that, in the judgment of the Bureau, are necessary or proper to effectuate the purposes of TILA, to prevent circumvention or evasion thereof, or to facilitate compliance. Pursuant to TILA section 102(a), a purpose of TILA is to assure a meaningful disclosure of credit terms to enable the consumer to avoid the uninformed use of credit and compare more readily the various credit terms available to the consumer. This stated purpose is tied to Congress's finding that economic stabilization would be enhanced and competition among the various financial institutions and other firms engaged in the extension of consumer credit would be strengthened by the informed use of credit.[27] Thus, strengthened competition among financial institutions is a goal of TILA, achieved through the effectuation of TILA's purposes.

Historically, TILA section 105(a) has served as a broad source of authority for rules that promote the informed use of credit through required disclosures and substantive regulation of certain practices. Dodd-Frank Act section 1100A clarified the Bureau's section 105(a) authority by amending that section to provide express authority to prescribe regulations that contain "additional requirements" that the Bureau finds are necessary or proper to effectuate the purposes of TILA, to prevent circumvention or evasion thereof, or to facilitate compliance. This

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[23] Fair Credit Billing Act, Pub. L. No. 93-495, 88 Stat. 1511 (1974).

[24] Credit Card Accountability Responsibility and Disclosure Act of 2009, Pub. L. No. 111-24, 123 Stat. 1734 (2009).

[25] *See generally* 12 CFR 1026.5(b)(2)(ii), 1026.7(b)(11), 1026.12, 1026.51-.60.

[26] 15 U.S.C. 1604(a).

[27] TILA section 102(a), codified at 15 U.S.C. 1601(a).

amendment clarified the authority to exercise TILA section 105(a) to prescribe requirements beyond those specifically listed in the statute that meet the standards outlined in section 105(a). As amended by the Dodd-Frank Act, TILA section 105(a) authority to make adjustments and exceptions to the requirements of TILA applies to all transactions subject to TILA, except with respect to the provisions of TILA section 129 that apply to the high-cost mortgages referred to in TILA section 103(bb).[28]

For the reasons discussed in this document, the Bureau is amending certain provisions in Regulation Z that impact the transition from LIBOR indices to other indices to carry out TILA's purposes and is finalizing such additional requirements, adjustments, and exceptions as, in the Bureau's judgment, are necessary and proper to carry out the purposes of TILA, prevent circumvention or evasion thereof, or to facilitate compliance. In developing these aspects of this final rule pursuant to its authority under TILA section 105(a), the Bureau has considered the purposes of TILA, including ensuring meaningful disclosures, facilitating consumers' ability to compare credit terms, and helping consumers avoid the uninformed use of credit, and the findings of TILA, including strengthening competition among financial institutions and promoting economic stabilization.

TILA section 105(d). As amended by the Dodd-Frank Act, TILA section 105(d)[29] states that any Bureau regulations requiring any disclosure which differs from the disclosures previously required in certain sections shall have an effective date of October 1 which follows by at least six months the date of promulgation. The section also states that the Bureau may in its discretion lengthen or shorten the amount of time for compliance when it makes a specific finding that such action is necessary to comply with the findings of a court or to prevent unfair or deceptive disclosure practices. The section further states that any creditor or lessor may comply with any such newly promulgated disclosures requirements prior to the effective date of the

[28] 15 U.S.C. 1602(bb).

[29] 15 U.S.C. 1604(d).

requirements.

V. Section-by-Section Analysis

Section 1026.9 Subsequent Disclosure Requirements

9(c) Change in Terms

9(c)(1) Rules Affecting Home-Equity Plans

Section 1026.9(c)(1)(i) provides that for HELOCs subject to § 1026.40 whenever any term required to be disclosed in the account-opening disclosures under § 1026.6(a) is changed or the required minimum periodic payment is increased, the creditor must mail or deliver written notice of the change to each consumer who may be affected. The notice must be mailed or delivered at least 15 days prior to the effective date of the change. The 15-day timing requirement does not apply if the change has been agreed to by the consumer; the notice must be given, however, before the effective date of the change. Section 1026.9(c)(1)(ii) provides that for HELOCs subject to § 1026.40, a creditor is not required to provide a change-in-terms notice under § 1026.9(c)(1) when the change involves a reduction of any component of a finance or other charge or when the change results from an agreement involving a court proceeding.

A creditor for a HELOC subject to § 1026.40 is required under current § 1026.9(c)(1) to provide a change-in-terms notice disclosing the index that is replacing the LIBOR index. The index is a term that is required to be disclosed in the account-opening disclosures under § 1026.6(a) and thus, a creditor must provide a change-in-terms notice disclosing the index that is replacing the LIBOR index.[30] The exception in § 1026.9(c)(1)(ii) that provides that a change-in-terms notice is not required when a change involves a reduction in the finance or other charge does not apply to the index change. The change in the index used in making rate adjustments is a change in a term required to be disclosed in a change-in-terms notice under § 1026.9(c)(1)

[30] *See* 12 CFR 1026.6(a)(1)(ii) and (iv) and comment 6(a)(1)(ii)-5.

regardless of whether there is also a change in the index value or margin that involves a reduction in a finance or other charge.

Under current § 1026.9(c)(1), a creditor generally is required to provide a change-in-terms notice of a margin change if the margin is increasing. In disclosing the variable rate in the account-opening disclosures under § 1026.6(a), the creditor must disclose the margin as part of an explanation of how the amount of any finance charge will be determined.[31] Thus, a creditor must provide a change-in-terms notice under current § 1026.9(c)(1) disclosing the changed margin, unless § 1026.9(c)(1)(ii) applies. Current § 1026.9(c)(1)(ii) applies to a decrease in the margin because that change would involve a reduction in a component of a finance or other charge. Thus, under current § 1026.9(c)(1), a creditor would only be required to provide a change-in-terms notice of a change in the margin under § 1026.9(c)(1) if the margin is increasing.

A creditor also is required to disclose in the change-in-terms notice any increased periodic rate or APR as calculated using the replacement index at the time the change-in-terms notice is provided. The periodic rate and APR are terms that are required to be disclosed in the account-opening disclosures under § 1026.6(a) and thus, a creditor must provide a change-in-terms notice disclosing the new periodic rate and APR calculated using the replacement index if the periodic rate or APR is increasing from the rate calculated using the LIBOR index at the time the change-in-terms notice is provided.[32] Comment 9(c)(1)-1 provides that no notice of a change in terms need be given if the specific change is set forth initially, such as rate increases under a properly disclosed variable-rate plan. Nonetheless, the Bureau determines that this comment does not apply when a periodic rate or APR is increasing because the index is being replaced (as

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[31] *See* 12 CFR 1026.6(a)(1)(iv).

[32] *See* 12 CFR 1026.6(a)(1)(ii). Comment 6(a)(1)(ii)-3 provides that in disclosing the rate(s) in effect for a variable-rate plan at the time of the account-opening disclosures (as is required by § 1026.6(a)(1)(ii)), the creditor may use an insert showing the current rate; may give the rate as of a specified date and then update the disclosure from time to time, for example, each calendar month; or may disclose an estimated rate under § 1026.5(c).

opposed to the periodic rate or APR is increasing because the value of the original index is increasing).

As discussed more in the section-by-section analysis of § 1026.9(c)(1)(ii), the Bureau proposed to revise § 1026.9(c)(1)(ii) which provides an exception under which a creditor is not required to provide a change-in-terms notice under § 1026.9(c)(1) when the change involves a reduction of any component of a finance or other charge. The Bureau proposed to revise § 1026.9(c)(1)(ii) to provide that the exception does not apply on or after October 1, 2021, to situations where the creditor is reducing the margin when a LIBOR index is replaced as permitted by proposed § 1026.40(f)(3)(ii)(A) or § 1026.40(f)(3)(ii)(B). The Bureau also proposed comment 9(c)(1)(ii)-3 to provide detail on this proposed revision to § 1026.9(c)(1)(ii). This final rule adopts § 1026.9(c)(1)(ii) and comment 9(c)(1)(ii)-3 as proposed except to provide that the revisions to § 1026.9(c)(1)(ii) are effective April 1, 2022, with a mandatory compliance date of October 1, 2022, consistent with the effective date of this final rule and consistent with TILA section 105(d).

This final rule also provides additional details on how a creditor may disclose information about the periodic rate and APR in a change-in-terms notice for HELOCs when the creditor is replacing a LIBOR index with the SOFR-based spread-adjusted index recommended by the ARRC for consumer products in certain circumstances. Specifically, this final rule provides additional details for situations where a creditor is replacing a LIBOR index with the SOFR-based spread-adjusted index recommended by the ARRC for consumer products to replace the 1-month, 3-month, or 6-month USD LIBOR index, the creditor is not changing the margin used to calculate the variable rate as a result of the replacement, and a periodic rate or the corresponding APR based on the replacement index is unknown to the creditor at the time the change-in-terms notice is provided because the SOFR index has not been published at the time the creditor provides the change-in-terms notice but will be published by the time the replacement of the index takes effect on the account. In this case, new comment 9(c)(1)-4

provides that a creditor may comply with any requirement to disclose in the change-in-terms notice the amount of the periodic rate or APR (or changes in these amounts) as calculated using the replacement index based on the best information reasonably available, clearly stating that the disclosure is an estimate. For example, in this situation, comment 9(c)(1)-4 provides that the creditor may state that: (1) information about the rate is not yet available but that the creditor estimates that, at the time the index is replaced, the rate will be substantially similar to what it would be if the index did not have to be replaced; and (2) the rate will vary with the market based on a SOFR index.

In this unique circumstance, the Bureau interprets § 1026.5(c) to be consistent with new comment 9(c)(1)-4. Section 1026.5(c) provides, in relevant part, that if any information necessary for accurate disclosure is unknown to the creditor, it must make the disclosure based on the best information reasonably available and must state clearly that the disclosure is an estimate. New comment 9(c)(1)-4 also is consistent with this final rule provisions that provide that if a creditor uses the SOFR-based spread-adjusted index recommended by the ARRC for consumer products to replace the 1-month, 3-month, or 6-month USD LIBOR index as the replacement index and uses as the replacement margin the same margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan, the creditor will be deemed to be in compliance with the conditions in § 1026.40(f)(3)(ii)(A) and (B) that the replacement index and replacement margin would have resulted in an APR substantially similar to the rate calculated using the LIBOR index.[33]

As described above, under § 1026.9(c)(1)(i), the change-in-terms notice for HELOC accounts subject to § 1026.40 generally must be mailed or delivered at least 15 days prior to the effective date of the change. Also, as discussed above, the ARRC has indicated that the SOFR-based spread-adjusted indices recommended by ARRC for consumer products to replace the 1-

[33] *See* comments 40(f)(3)(ii)(A)-3 and 40(f)(3)(ii)(B)-3; *see also* the section-by-section analysis of § 1026.40(f)(3)(ii)(A) for a discussion of the rationale for the Bureau making this determination.

month, 3-month, 6-month, or 1-year USD LIBOR will not be published until Monday, July 3, 2023, which is the first weekday after Friday, June 30, 2023, when LIBOR is currently anticipated to sunset for these USD LIBOR tenors. This final rule provision is intended to facilitate compliance with the 15-day advance notice requirement for change-in-terms notices by allowing creditors in the situation described above to provide change-in-terms notices prior to the SOFR-based spread-adjusted index being published, so that creditors are not left without an index to use on the account after the SOFR-based spread-adjusted index is published but before it becomes effective on the account. The Bureau has determined that the information described in new comment 9(c)(1)-4 sufficiently notifies consumers of the estimated periodic rate and APR as calculated using the SOFR-based spread-adjusted index, even though the SOFR-based spread-adjusted index is not being published at the time the notice is sent, as long as the SOFR-based spread-adjusted index is published by the time the replacement of the index takes effect on the account.

The Bureau is reserving judgment about whether to include a reference to the 1-year USD LIBOR index in comment 9(c)(1)-4 until it obtains additional information. Once the Bureau knows which SOFR-based spread-adjusted index the ARRC will recommend to replace the 1-year USD LIBOR index for consumer products, the Bureau may determine whether the replacement index and replacement margin would have resulted in an APR substantially similar to the rate calculated using the LIBOR index. Assuming the Bureau determines that the index meets that standard, the Bureau will then consider whether to codify that determination in a supplemental final rule, or otherwise announce that determination.

9(c)(1)(ii) Notice Not Required

The Bureau's Proposal

The Bureau proposed to revise § 1026.9(c)(1)(ii) which provides an exception under which a creditor is not required to provide a change-in-terms notice under § 1026.9(c)(1) when the change involves a reduction of any component of a finance or other charge. The Bureau

proposed to revise § 1026.9(c)(1)(ii) to provide that the exception does not apply on or after October 1, 2021, to situations where the creditor is reducing the margin when a LIBOR index is replaced as permitted by proposed § 1026.40(f)(3)(ii)(A) or § 1026.40(f)(3)(ii)(B).[34]

The Bureau also proposed to add comment 9(c)(1)(ii)-3 to provide additional detail. Proposed comment 9(c)(1)(ii)-3 provided that for change-in-terms notices provided under § 1026.9(c)(1) on or after October 1, 2021, covering changes permitted by proposed § 1026.40(f)(3)(ii)(A) or § 1026.40(f)(3)(ii)(B), a creditor must provide a change-in-terms notice under § 1026.9(c)(1) disclosing the replacement index for a LIBOR index and any adjusted margin that is permitted under proposed § 1026.40(f)(3)(ii)(A) or § 1026.40(f)(3)(ii)(B), even if the margin is reduced. Proposed comment 9(c)(1)(ii)-3 also provided that prior to October 1, 2021, a creditor has the option of disclosing a reduced margin in the change-in-terms notice that discloses the replacement index for a LIBOR index as permitted by proposed § 1026.40(f)(3)(ii)(A) or § 1026.40(f)(3)(ii)(B).

As discussed below, this final rule adopts § 1026.9(c)(1)(ii) and comment 9(c)(1)(ii)-3 generally as proposed except to provide that the revisions to § 1026.9(c)(1)(ii) are effective April 1, 2022, with a mandatory compliance date of October 1, 2022, consistent with the effective date of this final rule and consistent with TILA section 105(d).

Comments Received

Revisions to change-in-terms notice requirements. In response to the 2020 Proposal, the Bureau received comments from trade associations, consumer groups, and individual commenters on the proposed change-in-terms notice requirements. Several trade associations provided the same comments for both the proposed changes to the change-in-terms notice

[34] As discussed in more detail in the section-by-section analysis of § 1026.40(f)(3)(ii)(A), the Bureau proposed to move the provisions in current § 1026.40(f)(3)(ii) that allow a creditor for HELOC plans subject to § 1026.40 to replace an index and adjust the margin if the index is no longer available in certain circumstances to proposed § 1026.40(f)(3)(ii)(A) and to revise the proposed moved provisions for clarity and consistency. Also, as discussed in more detail in the section-by-section analysis of § 1026.40(f)(3)(ii)(B), to facilitate compliance, the Bureau proposed to add new LIBOR-specific provisions to proposed § 1026.40(f)(3)(ii)(B) that would permit creditors for HELOC plans subject to § 1026.40 that use a LIBOR index for calculating a variable rate to replace the LIBOR index and change the margin for calculating the variable rate on or after March 15, 2021, in certain circumstances.

requirements in proposed § 1026.9(c)(1)(ii) for HELOCs and § 1026.9(c)(2)(v)(A) for credit card accounts under an open-end (not home-secured) consumer credit plan. These trade associations supported the Bureau's proposed revisions to the notice requirements, stating that the proposed amendments will help consumers understand changes they may see as a result of the move away from LIBOR.

A few industry commenters specifically addressed the proposed amendments in § 1026.9(c)(1)(ii) for HELOCs. A trade association commented that the proposed revisions to § 1026.9(c)(1)(ii) are appropriate to inform consumers of the index that is replacing LIBOR and any adjustment to the margin, regardless of whether the margin is increasing or decreasing, and should reduce confusion for consumers during the transition. Another trade association representing credit unions supported the proposed changes to § 1026.9(c)(1)(ii) because it believed that the proposed amendments would help inform borrowers of the changes that could affect their loans.

Several consumer group commenters supported the proposed amendments to the change-in-terms notice requirements under proposed § 1026.9(c)(1)(ii) for HELOCs but indicated that these proposed amendments should not be limited just to the LIBOR transition, but should apply to any future index transitions as well.

An individual commenter stated that the proposed revisions to the change-in-terms notice requirements under proposed § 1026.9(c)(1)(ii) for HELOCs and § 1026.9(c)(2)(v)(A) for credit card accounts are important in ensuring that the change is properly disclosed to the borrower. A few individual commenters specifically supported the proposed revisions to the change-in-terms notice requirements under proposed § 1026.9(c)(1)(ii) for HELOCs. Another individual commenter requested that the Bureau require creditors to show in dollar terms the current rate changes for the previous five years and what these changes would have been under the new index. The commenter stated that this additional information would enable borrowers to understand exactly how the change in the index would affect them.

Sample or model notices. Several industry commenters requested that the Bureau provide comprehensive sample disclosures for change-in-terms notices required under § 1026.9(c)(1) for HELOC accounts and § 1026.9(c)(2) for credit card accounts that can be provided to borrowers to help them understand the change in the index. An individual commenter indicated that the Bureau should provide model disclosures for the proposed amendments under proposed § 1026.9(c)(1)(ii).

Timing of notice. An individual commenter indicated that the Bureau should require banks to identify and communicate the replacement index well in advance of the transition date.

The Final Rule

For the reasons discussed below, this final rule adopts § 1026.9(c)(1)(ii) and comment 9(c)(1)(ii)-3 as proposed except to provide that the revisions to § 1026.9(c)(1)(ii) are effective April 1, 2022, with a mandatory compliance date of October 1, 2022, consistent with the effective date of this final rule and consistent with TILA section 105(d). To effectuate the purposes of TILA, the Bureau is using its TILA section 105(a) authority to amend § 1026.9(c)(1)(ii) and adopt comment 9(c)(1)(ii)-3. TILA section 105(a)[35] directs the Bureau to prescribe regulations to carry out the purposes of TILA, and provides that such regulations may contain additional requirements, classifications, differentiations, or other provisions, and may provide for such adjustments and exceptions for all or any class of transactions, that, in the judgment of the Bureau, are necessary or proper to effectuate the purposes of TILA, to prevent circumvention or evasion thereof, or to facilitate compliance. The Bureau believes that when a creditor for a HELOC plan that is subject to § 1026.40 is replacing the LIBOR index and adjusting the margin as permitted by § 1026.40(f)(3)(ii)(A) or § 1026.40(f)(3)(ii)(B), it is beneficial for consumers to receive notice not just of the replacement index, but also any adjustments to the margin, even if the margin is decreased. This information will help ensure

[35] 15 U.S.C. 1604(a).

that consumers are notified of the replacement index and any adjusted margin (even a reduction in the margin) so that consumers will know how the variable rates on their accounts will be determined going forward after the LIBOR index is replaced. Otherwise, a consumer that is only notified that the LIBOR index is being replaced with a replacement index that has a higher index value but is not notified that the margin is decreasing could reasonably but mistakenly believe that the APR on the plan is increasing.

The revisions to § 1026.9(c)(1)(ii) are effective April 1, 2022, with a mandatory compliance date of October 1, 2022. TILA section 105(d) generally requires that changes in disclosures required by TILA or Regulation Z have an effective date of October 1 that is at least six months after the date the final rule is adopted.[36] TILA section 105(d) also provides that a creditor may comply with newly promulgated disclosure requirements prior to the effective date of the requirement. Consistent with TILA section 105(d), comment 9(c)(1)(ii)-3 clarifies that from April 1, 2022, through September 30, 2022, a creditor has the option of disclosing a reduced margin in the change-in-terms notice that discloses the replacement index for a LIBOR index as permitted by § 1026.40(f)(3)(ii)(A) or § 1026.40(f)(3)(ii)(B). Creditors for HELOC plans subject to § 1026.40 may want to provide the information about the decreased margin in the change-in-terms notice even if they replace the LIBOR index and adjust the margin pursuant to § 1026.40(f)(3)(ii)(A) or § 1026.40(f)(3)(ii)(B) earlier than October 1, 2022, starting on or after April 1, 2022. These creditors may want to provide this information to avoid confusion by consumers and because this reduced margin is beneficial to consumers. Thus, comment 9(c)(1)(ii)-3 permits creditors for HELOC plans subject to § 1026.40 to provide the information about the decreased margin in the change-in-terms notice even if they replace the LIBOR index and adjust the margin pursuant to § 1026.40(f)(3)(ii)(A) or § 1026.40(f)(3)(ii)(B) earlier than October 1, 2022, starting on or after April 1, 2022. The Bureau encourages creditors to include

[36] 15 U.S.C. 1604(d).

this information in change-in-terms notices provided earlier than October 1, 2022, starting on or after April 1, 2022, even though they are not required to do so, to ensure that consumers are notified of how the variable rates on their accounts will be determined going forward after the LIBOR index is replaced.

This final rule does not provide sample or model forms for the change-in-terms notices required under § 1026.9(c)(1) when a creditor for HELOC plans subject to § 1026.40 transitions away from a LIBOR index under § 1026.40(f)(3)(ii)(A) or § 1026.40(f)(3)(ii)(B). The Bureau believes that sample or model forms for such a notice are not necessary or warranted. The change-in-terms notice is not a new requirement. The Bureau believes that § 1026.9(c)(1) and the related commentary provide sufficient information for creditors to understand change-in-terms notice requirements without the need for sample or model forms.

This final rule also does not change the timing in which change-in-terms notices under § 1026.9(c)(1) must be provided to the consumer when a creditor replaces a LIBOR index for HELOC plans subject to § 1026.40. Section 1026.9(c)(1) provides that change-in-terms notices generally must be mailed or delivered at least 15 days prior to the effective date of the change, and the Bureau did not propose changes to the timing of the notices when a creditor replaces a LIBOR index. The Bureau concludes that a 15-day period is appropriate for change-in-terms notices given when a creditor replaces a LIBOR index for HELOC plans subject to § 1026.40; this is the period generally applicable to change-in-terms notices for HELOCs under § 1026.9(c)(1).

9(c)(2) Rules Affecting Open-End (Not Home-Secured) Plans

TILA section 127(i)(1), which was added by the Credit CARD Act, provides that in the case of a credit card account under an open-end consumer credit plan, a creditor generally must provide written notice of an increase in an APR not later than 45 days prior to the effective date

of the increase.[37] In addition, TILA section 127(i)(2) provides that in the case of a credit card account under an open-end consumer credit plan, a creditor must provide written notice of any significant change, as determined by a rule of the Bureau, in terms (other than APRs) of the cardholder agreement not later than 45 days prior to the effective date of the change.[38]

Section 1026.9(c)(2)(i)(A) provides that for plans other than HELOCs subject to § 1026.40, a creditor generally must provide written notice of a "significant change in account terms" at least 45 days prior to the effective date of the change to each consumer who may be affected. Section 1026.9(c)(2)(ii) defines "significant change in account terms" to mean a change in the terms required to be disclosed under § 1026.6(b)(1) and (b)(2), an increase in the required minimum periodic payment, a change to a term required to be disclosed under § 1026.6(b)(4), or the acquisition of a security interest. Among other things, § 1026.9(c)(2)(v)(A) provides that a change-in-terms notice is not required when a change involves a reduction of any component of a finance or other charge. The change-in-terms provisions in § 1026.9(c)(2) generally apply to a credit card account under an open-end (not home-secured) consumer credit plan, and to other open-end plans that are not subject to § 1026.40.

The creditor is required to provide a change-in-terms notice under § 1026.9(c)(2) disclosing the index that is replacing the LIBOR index pursuant to § 1026.55(b)(7)(i) or § 1026.55(b)(7)(ii). A creditor is required to disclose the index under § 1026.6(b)(2)(i)(A) and (4)(ii)(B) and thus, the index is a term that meets the definition of a "significant change in account terms," as discussed above.[39] As a result, a creditor must provide a change-in-terms notice disclosing the index that is replacing the LIBOR index. The exception in § 1026.9(c)(2)(v)(A) that provides that a change-in-terms notice is not required when a change

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[37] 15 U.S.C. 1637(i)(1).

[38] 15 U.S.C. 1637(i)(2).

[39] *See also*12 CFR 1026.9(c)(2)(iv)(D)(*1*) and comment 9(c)(2)(iv)-2.

involves a reduction in the finance or other charge does not apply to the index change. The change in the index used in making rate adjustments is a change in a term required to be disclosed in a change-in-terms notice under § 1026.9(c)(2) regardless of whether there is also a change in the index value or margin that involves a reduction in a finance or other charge.

Under current § 1026.9(c)(2), for plans other than HELOCs subject to § 1026.40, a creditor generally is required to provide a change-in-terms notice of a margin change if the margin is increasing. In disclosing the variable rate in the account-opening disclosures, the creditor must disclose the margin as part of an explanation of how the rate is determined.[40] Thus, a creditor must provide a change-in-terms notice under § 1026.9(c)(2) disclosing the changed margin, unless § 1026.9(c)(2)(v)(A) applies. Current § 1026.9(c)(2)(v)(A) applies to a decrease in the margin because that change would involve a reduction in a component of a finance or other charge. Thus, under current § 1026.9(c)(2), a creditor would only be required to provide a change-in-terms notice of a change in the margin under § 1026.9(c)(2) if the margin is increasing.

When an index is being replaced, a creditor is required to disclose the replacement index as well as information relevant to the change, if that relevant information is required by § 1026.6(b)(1) and (b)(2).[41] Comment 9(c)(2)(iv)-2 explains that, if a creditor is changing the index used to calculate a variable rate, the creditor must disclose the following information in a tabular format in the change-in-terms notice: the amount of the new rate (as calculated using the new index) and indicate that the rate varies and how the rate is determined, as explained in § 1026.6(b)(2)(i)(A). The comment provides an example, which indicates that, if a creditor is changing from using a prime rate to using LIBOR in calculating a variable rate, the creditor would disclose in the table required by § 1026.9(c)(2)(iv)(D)(*1*) the new rate (using the new index) and indicate that the rate varies with the market based on LIBOR.

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[40] 12 CFR 1026.6(b)(4)(ii)(B).

[41] *See* 12 CFR 1026.9(c)(2)(iv)(A)(*1*) and (D)(*1*).

A creditor also is required to disclose in the change-in-terms notice any increased periodic rate or APR calculated using the replacement index at the time the change-in-terms notice is provided. The periodic rate and APR are terms that are required to be disclosed in the account-opening disclosures under § 1026.6(b) and thus, a creditor must provide a change-in-terms notice disclosing the new periodic rate and APR calculated using the replacement index if the periodic rate or APR is increasing from the rate calculated using the LIBOR index at the time the change-in-terms notice is provided.[42] Section 1026.9(c)(2)(v)(C) provides that a change-in-terms notice is not required when the change is an increase in a variable APR in accordance with a credit card or other account agreement that provides for changes in the rate according to the operation of an index that is not under the control of the creditor and is available to the general public. Nonetheless, the Bureau determines that § 1026.9(c)(2)(v)(C) does not apply when a periodic rate or APR is increasing because the index is being replaced (as opposed to the periodic rate or APR is increasing because the value of the original index is increasing).

The Bureau proposed two changes to the provisions in § 1026.9(c)(2) and its accompanying commentary. First, the Bureau proposed technical edits to comment 9(c)(2)(iv)-2 to replace LIBOR references with references to SOFR. Second, the Bureau proposed changes to § 1026.9(c)(2)(v)(A) which provides an exception under which a creditor is not required to provide a change-in-terms notice under § 1026.9(c)(2) when the change involves a reduction of any component of a finance or other charge. The Bureau proposed to revise § 1026.9(c)(2)(v)(A) to provide that the exception does not apply on or after October 1, 2021, to situations where the creditor is reducing the margin when a LIBOR index is replaced as permitted by proposed § 1026.55(b)(7)(i) or § 1026.55(b)(7)(ii). For the reasons discussed below, this final rule adopts the amendments to § 1026.9(c)(2)(v)(A) and its accompanying commentary generally as proposed except to provide that the revisions to § 1026.9(c)(2)(v)(A) and accompanying

[42] *See* 12 CFR 1026.6(b)(4)(i)(A). Section 1026.6(b)(4)(ii)(G) provides that for purposes of disclosing variable rates in the account-opening disclosures, a rate generally is accurate if it is a rate as of a specified date and this rate was in effect within the last 30 days before the disclosures are provided.

commentary are effective April 1, 2022, with a mandatory compliance date of October 1, 2022, consistent with the effective date of this final rule and consistent with TILA section 105(d). This final rule also adds new comment 9(c)(2)(iv)-2.ii to provide additional details on how a creditor may disclose information about the periodic rate and APR in a change-in-terms notice for credit card accounts when the creditor is replacing a LIBOR index with the SOFR-based spread-adjusted index recommended by ARRC for consumer products in certain circumstances. This final rule also makes other revisions to current comment 9(c)(2)(iv)-2 to be consistent with the revision described above.

9(c)(2)(iv) Disclosure Requirements

For plans other than HELOCs subject to § 1026.40, comment 9(c)(2)(iv)-2 explains that, if a creditor is changing the index used to calculate a variable rate, the creditor must disclose the following information in a tabular format in the change-in-terms notice: the amount of the new rate (as calculated using the new index) and indicate that the rate varies and how the rate is determined, as explained in § 1026.6(b)(2)(i)(A). The comment provides an example, which indicates that, if a creditor is changing from using a prime rate to using LIBOR in calculating a variable rate, the creditor would disclose in the table required by § 1026.9(c)(2)(iv)(D)(*1*) the new rate (using the new index) and indicate that the rate varies with the market based on LIBOR. In light of the anticipated discontinuation of LIBOR, the Bureau proposed to amend the example in comment 9(c)(2)(iv)-2 to substitute SOFR for the LIBOR index. The Bureau also proposed to make technical changes for clarity by changing "prime rate" to "prime index." The Bureau did not receive any comments on the proposed amendments.

This final rule revises comment 9(c)(2)(iv)-2 from the proposal in several ways. First, this final rule moves the proposed language in comment 9(c)(2)(iv)-2 to comment 9(c)(2)(iv)-2.i and makes revisions to the example. New comment 9(c)(2)(iv)-2.i provides that if a creditor is changing the index used to calculate a variable rate, the creditor must disclose the amount of the new rate (as calculated using the new index) and indicate that the rate varies and how the rate is

determined, as explained in § 1026.6(b)(2)(i)(A). For example, if a creditor is changing from using a LIBOR index to using a Prime index in calculating a variable rate, the creditor would disclose in the table the new rate (using the new index) and indicate that the rate varies with the market based on a Prime index.

This final rule also adds new comment 9(c)(2)(iv)-2.ii to provide additional details on how a creditor may disclose information about the periodic rate and APR in a change-in-terms notice for credit card accounts when the creditor is replacing a LIBOR index with the SOFR-based spread-adjusted index recommended by the ARRC for consumer products in certain circumstances. Specifically, this final rule provides additional details for situations where a creditor is replacing a LIBOR index with the SOFR-based spread-adjusted index recommended by the ARRC for consumer products to replace the 1-month, 3-month, or 6-month USD LIBOR index, the creditor is not changing the margin used to calculate the variable rate as a result of the replacement, and a periodic rate or the corresponding APR based on the replacement index is unknown to the creditor at the time the change-in-terms notice is provided because the SOFR index has not been published at the time the creditor provides the change-in-terms notice but will be published by the time the replacement of the index takes effect on the account. In this case, new comment 9(c)(2)(iv)-2.ii provides that a creditor may comply with any requirement to disclose in the change-in-terms notice the amount of the periodic rate or APR (or changes in these amounts) as calculated using the replacement index based on the best information reasonably available, clearly stating that the disclosure is an estimate. For example, in this situation, comment 9(c)(2)(iv)-2.ii provides that the creditor may state that: (1) information about the rate is not yet available but that the creditor estimates that, at the time the index is replaced, the rate will be substantially similar to what it would be if the index did not have to be replaced; and (2) the rate will vary with the market based on a SOFR index.

In this unique circumstance, the Bureau interprets § 1026.5(c) to be consistent with new comment 9(c)(2)(iv)-2.ii. Section 1026.5(c) provides in relevant part, that if any information

necessary for accurate disclosure is unknown to the creditor, it must make the disclosure based on the best information reasonably available and must state clearly that the disclosure is an estimate. New comment 9(c)(2)(iv)-2.ii also is consistent with this final rule provisions that provide that if a creditor uses the SOFR-based spread-adjusted index recommended by the ARRC for consumer products to replace the 1-month, 3-month, or 6-month USD LIBOR index as the replacement index and uses as the replacement margin the same margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan, the creditor will be deemed to be in compliance with the conditions in § 1026.55(b)(7)(i) and (ii) that the replacement index and replacement margin would have resulted in an APR substantially similar to the rate calculated using the LIBOR index.[43]

As described above, under § 1026.9(c)(2), the change-in-terms notice for open-end credit that is not subject to § 1026.40 (including credit card accounts) generally must be mailed or delivered at least 45 days prior to the effective date of the change. Also, as discussed above, the ARRC has indicated that the SOFR-based spread-adjusted indices recommended by ARRC for consumer products to replace the 1-month, 3-month, 6-month, or 1-year USD LIBOR index will not be published until Monday, July 3, 2023, which is the first weekday after Friday, June 30, 2023, when LIBOR is currently anticipated to sunset for these USD LIBOR tenors. This final rule provision is intended to facilitate compliance with the 45-day advance notice requirement for change-in-terms notices by allowing creditors in the situation described above to provide change-in-terms notices prior to the SOFR-based spread-adjusted index being published, so that creditors are not left without an index to use on the account after the SOFR-based spread-adjusted index is published but before it becomes effective on the account. The Bureau has determined that the information described in new comment 9(c)(2)(iv)-2.ii sufficiently notifies consumers of the estimated rate calculated using the SOFR-based spread-adjusted index, even

[43] *See* comments 55(b)(7)(i)-2 and 55(b)(7)(ii)-3; *see also* the section-by-section analysis of § 1026.40(f)(3)(ii)(A) for a discussion of the rationale for the Bureau making this determination.

though the SOFR-based spread-adjusted index is not being published at the time the notice is sent, as long as the SOFR-based spread-adjusted index is published by the time the replacement of the index takes effect on the account.

The Bureau is reserving judgment about whether to include a reference to the 1-year USD LIBOR index in comment 9(c)(2)(iv)-2.ii until it obtains additional information. Once the Bureau knows which SOFR-based spread-adjusted index the ARRC will recommend to replace the 1-year USD LIBOR index for consumer products, the Bureau may determine whether the replacement index and replacement margin would have resulted in an APR substantially similar to the rate calculated using the LIBOR index. Assuming the Bureau determines that the index meets that standard, the Bureau will then consider whether to codify that determination in a supplemental final rule, or otherwise announce that determination.

9(c)(2)(v) Notice Not Required

The Bureau's Proposal

The Bureau proposed to revise § 1026.9(c)(2)(v)(A) to provide that for plans other than HELOCs subject to § 1026.40, the exception in § 1026.9(c)(2)(v)(A) to change-in-terms notice requirements under § 1026.9(c)(2) does not apply on or after October 1, 2021, to margin reductions when a LIBOR index is replaced as permitted by proposed § 1026.55(b)(7)(i) or § 1026.55(b)(7)(ii).[44]

The Bureau also proposed to add comment 9(c)(2)(v)-14 to provide additional detail. Proposed comment 9(c)(2)(v)-14 provided that for change-in-terms notices provided under § 1026.9(c)(2) on or after October 1, 2021, covering changes permitted by proposed

[44] As discussed in more detail in the section-by-section analysis of § 1026.55(b)(7)(i), the Bureau proposed to move the provisions in current comment 55(b)(2)-6 that allow a card issuer to replace an index and adjust the margin if the index becomes unavailable in certain circumstances to proposed § 1026.55(b)(7)(i) and to revise the proposed moved provisions for clarity and consistency. Also, as discussed in more detail in the section-by-section analysis of § 1026.55(b)(7)(ii), to facilitate compliance, the Bureau proposed to add new LIBOR-specific provisions to proposed § 1026.55(b)(7)(ii) that would permit card issuers for a credit card account under an open-end (not home-secured) consumer credit plan that use a LIBOR index under the plan to replace the LIBOR index and change the margin on such plans on or after March 15, 2021, in certain circumstances.

§ 1026.55(b)(7)(i) or § 1026.55(b)(7)(ii), a creditor must provide a change-in-terms notice under § 1026.9(c)(2) disclosing the replacement index for a LIBOR index and any adjusted margin that is permitted under proposed § 1026.55(b)(7)(i) or § 1026.55(b)(7)(ii), even if the margin is reduced. Proposed comment 9(c)(2)(v)-14 also provided that prior to October 1, 2021, a creditor has the option of disclosing a reduced margin in the change-in-terms notice that discloses the replacement index for a LIBOR index as permitted by proposed § 1026.55(b)(7)(i) or § 1026.55(b)(7)(ii).

Comments Received

As discussed in the section-by-section analysis of § 1026.9(c)(1)(ii), in response to the 2020 Proposal, several industry commenters and several individual commenters provided the same comments for both the proposed changes to the change-in-terms notice requirements in proposed § 1026.9(c)(1)(ii) for HELOCs and § 1026.9(c)(2)(v)(A) for credit card accounts under an open-end (not home-secured) consumer credit plan. With respect to these comments, (1) several trade associations and an individual commenter supported the Bureau's proposed revisions to the notice requirements; (2) another individual commenter requested that the Bureau require lenders to show in dollar terms the current rate changes for the previous five years and what these changes would have been under the new index; (3) several industry commenters requested that the Bureau provide comprehensive sample disclosures for change-in-terms notices that can be provided to borrowers to help them understand the change in the index; and (4) an individual commenter indicated that the Bureau should require banks to identify and communicate the replacement index well in advance of the transition date.

The Final Rule

For the reasons discussed below, this final rule adopts § 1026.9(c)(2)(v)(A) and comment 9(c)(2)(v)-14 generally as proposed except to provide that the revisions to § 1026.9(c)(2)(v)(A) and comment 9(c)(2)(v)-14 are effective April 1, 2022, with a mandatory compliance date of October 1, 2022, consistent with the effective date of this final rule and consistent with TILA

section 105(d). For the same reasons that the Bureau is adopting the revisions to § 1026.9(c)(1)(ii) for HELOC accounts, the Bureau believes that when a creditor for plans other than HELOCs subject to § 1026.40 is replacing the LIBOR index and adjusting the margin as permitted by § 1026.55(b)(7)(i) or § 1026.55(b)(7)(ii), it is beneficial for consumers to receive notice not just of the replacement index but also any adjustments to the margin, even if the margin is decreased. Informing consumers of the replacement index and any adjusted margin (even a reduction in the margin) tells consumers how the variable rates on their accounts will be determined going forward after the LIBOR index is replaced. Otherwise, a consumer that is only notified that the LIBOR index is being replaced with a replacement index that has a higher index value but is not notified that the margin is decreasing could reasonably but mistakenly believe that the APR on the plan is increasing.

The revisions to § 1026.9(c)(2)(v)(A) are effective April 1, 2022, with a mandatory compliance date of October 1, 2022. TILA section 105(d) generally requires that changes in disclosures required by TILA or Regulation Z have an effective date of the October 1 that is at least six months after the date the final rule is adopted.[45] TILA section 105(d) also provides that a creditor may comply with newly promulgated disclosure requirements prior to the effective date of the requirement. Consistent with TILA section 105(d), comment 9(c)(2)(v)-14 clarifies that from April 1, 2022, through September 30, 2022, a creditor has the option of disclosing a reduced margin in the change-in-terms notice that discloses the replacement index for a LIBOR index as permitted by § 1026.55(b)(7)(i) or § 1026.55(b)(7)(ii). Creditors for plans other than HELOCs subject to § 1026.40 may want to provide the information about the decreased margin in the change-in-terms notice, even if they replace the LIBOR index and adjust the margin pursuant to § 1026.55(b)(7)(i) or § 1026.55(b)(7)(ii) earlier than October 1, 2022, starting on or after April 1, 2022. These creditors may want to provide this information to avoid confusion by

[45] 15 U.S.C. 1604(d).

consumers and because this reduced margin is beneficial to consumers. Thus, comment 9(c)(2)(v)-14 permits creditors for plans other than HELOCs subject to § 1026.40 to provide the information about the decreased margin in the change-in-terms notice even if they replace the LIBOR index and adjust the margin pursuant to § 1026.55(b)(7)(i) or § 1026.55(b)(7)(ii) earlier than October 1, 2022, starting on or after April 1, 2022. The Bureau encourages creditors to include this information in change-in-terms notices provided earlier than October 1, 2022, starting on or after April 1, 2022, even though they are not required to do so, to ensure that consumers are notified of how the variable rates on their accounts will be determined going forward after the LIBOR index is replaced.

For the similar reasons discussed in the section-by-section analysis of § 1026.9(c)(1)(ii) for HELOC accounts, this final rule does not provide sample or model forms for the change-in-terms notices required under § 1026.9(c)(2) when a creditor transitions away from a LIBOR index under § 1026.55(b)(7)(i) or § 1026.55(b)(7)(ii) for plans that are not subject to § 1026.40. The Bureau believes that sample or model forms for such a notice are not necessary or warranted. The change-in-terms notice is not a new requirement. The Bureau believes that § 1026.9(c)(2) and the related commentary provide sufficient information for creditors to understand change-in-terms notice requirements without the need for a model form.

For similar reasons discussed in the section-by-section analysis of § 1026.9(c)(1)(ii) for HELOC accounts, this final rule also does not change the timing in which change-in-terms notices under § 1026.9(c)(2) must be provided to the consumer when a creditor replaces a LIBOR index for plans that are not subject to § 1026.40. Section 1026.9(c)(2) provides that change-in-terms notices generally must be mailed or delivered at least 45 days prior to the effective date of the change, and the Bureau did not propose changes to the timing of the notices when a creditor replaces a LIBOR index. The Bureau concludes that a 45-day period is appropriate for change-in-terms notices given when a creditor replaces a LIBOR index for plans

other than HELOCs subject to § 1026.40; this is the period generally applicable to change-in-terms notices for open-end (not home-secured) plans under § 1026.9(c)(2).

Section 1026.20 Disclosure Requirements Regarding Post-Consummation Events

20(a) Refinancings

The Bureau's Proposal

Section 1026.20 includes disclosure requirements regarding post-consummation events for closed-end credit. Section 1026.20(a) and its commentary define when a refinancing occurs for closed-end credit and provide that a refinancing is a new transaction requiring new disclosures to the consumer. Comment 20(a)-3.ii.B explains that a new transaction subject to new disclosures results if the creditor adds a variable-rate feature to the obligation, even if it is not accomplished by the cancellation of the old obligation and substitution of a new one. The comment also states that a creditor does not add a variable-rate feature by changing the index of a variable-rate transaction to a comparable index, whether the change replaces the existing index or substitutes an index for one that no longer exists. To clarify comment 20(a)-3.ii.B, the Bureau proposed to add to the comment an illustrative example, which would indicate that a creditor does not add a variable-rate feature by changing the index of a variable-rate transaction from the 1-month, 3-month, 6-month, or 1-year USD LIBOR index to the SOFR-based spread-adjusted index recommended by the ARRC for consumer products to replace the 1-month, 3-month, 6-month, or 1-year USD LIBOR index respectively because the replacement index is a comparable index to the corresponding USD LIBOR index.[46] The Bureau requested comment on whether it was appropriate to add the proposed example to comment 20(a)-3.ii.B and whether the Bureau should make any other amendments to § 1026.20(a) or its commentary in connection with the

[46] By "corresponding USD LIBOR index," the Bureau means the specific USD LIBOR index for which the ARRC is recommending the replacement index as a replacement for consumer products. Thus, because the ARRC has recommended, for consumer products, a specific spread-adjusted 6-month term rate SOFR index for consumer products as a replacement for the 6-month USD LIBOR index, the 6-month USD LIBOR index would be the "corresponding USD LIBOR index" for that specific spread-adjusted 6-month term rate SOFR index for consumer products.

LIBOR transition. The Bureau also requested comment on whether there were any other replacement indices that it should identify as an example of a comparable index in comment 20(a)-3.ii.B, and if so, which indices and on what bases. For the reasons discussed below, the Bureau is finalizing the amendments to comment 20(a)-3.ii.B generally as proposed with a revision to cross-reference new comment 20(a)(3)-iv and with a revision not to include 1-year USD LIBOR in the comment at this time pending the Bureau's receipt of additional information and further consideration by the Bureau. This final rule also adds new comment 20(a)(3)-iv to provide examples of the type of factors to be considered in whether a replacement index meets the Regulation Z "comparable" standard with respect to a particular LIBOR index for closed-end transactions.

Comments Received

SOFR spread-adjusted index. Several industry commenters, several consumer group commenters, and a financial services education and consulting firm expressed support for the proposed new illustrative example in comment 20(a)-3.ii.B, which indicated that a creditor does not add a variable-rate feature by changing the index of a variable-rate transaction from the 1-month, 3-month, 6-month, or 1-year USD LIBOR index to the SOFR-based spread-adjusted index recommended by the ARRC for consumer products to replace the 1-month, 3-month, 6-month, or 1-year USD LIBOR index respectively because the replacement index is a comparable index to the corresponding USD LIBOR index. A few industry commenters and an individual commenter expressed concern about SOFR's lack of history.

Additional examples of indices that are comparable to the LIBOR. Many industry commenters generally urged the Bureau to provide additional examples of comparable indices to the LIBOR indices. Some commenters mentioned specific indices that the Bureau should clarify are comparable to LIBOR, such as Prime, AMERIBOR® rates,[47] the effective Federal funds rate

[47] According to its website, "AMERIBOR® is a new interest rate benchmark created by the American Financial Exchange [that] reflects the actual borrowing costs of thousands of small, medium and regional banks across

(EFFR),[48] and the Constant Maturity Treasury (CMT) rates.[49] An industry commenter urged the Bureau to designate other replacement indices as compliant if recommended by the Board.

In addition, several industry commenters expressed support for the Bureau's statement that the example provided in comment 20(a)-3.ii.B is not the only index that is comparable to LIBOR. In addition, an industry commenter urged the Bureau to avoid mandating the use of any particular replacement index.

Additional guidance on what constitutes a comparable index. Many industry commenters urged the Bureau to provide additional guidance on how to determine if an index is a comparable index for purposes of Regulation Z. Some of these commenters shared views on what types of index the Bureau should consider as comparable for purposes of Regulation Z. Several industry commenters urged that any guidance that the Bureau provides on how to determine if an index is comparable should provide alternatives to reliance on historical fluctuations because such historical evidence would not be available for new indices. Several consumer group commenters and a financial services education and consulting firm commenter cautioned the Bureau against recognizing newly established indices as suitable replacement indices for LIBOR indices, unless they satisfy the criteria reviewed by the ARRC in selecting SOFR. Several commenters asserted that any guidance on what constitutes a comparable index should clarify that the index change should be "value neutral," meaning that the change should not raise or lower the interest rate on the loan. A few industry commenters urged the Bureau to

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America [and] is also useful for larger banks and financial institutions that do business with these banks." Am. Fin. Exch., *AMERIBOR® Brochure*, https://ameribor.net/background.

[48] The EFFR is a rate produced by the New York Fed which is calculated as a volume-weighted median of overnight Federal funds transactions reported in the FR 2420 Report of Selected Money Market Rates. Fed. Rsrv. Bank of N.Y., *Effective Federal Funds Rate*, https://www.newyorkfed.org/markets/reference-rates/effr.

[49] The CMT rates are Treasury Yield Curve Rates where the "[y]ields are interpolated by the Treasury from the daily yield curve. This curve, which relates the yield on a security to its time to maturity is based on the closing market bid yields on actively traded Treasury securities in the over-the-counter market. These market yields are calculated from composites of indicative, bid-side market quotations (not actual transactions) obtained by the Federal Reserve Bank of New York at or near 3:30 PM each trading day." U.S. Dep't of the Treasury, *Daily Treasury Yield Curve Rates*, https://www.treasury.gov/resource-center/data-chart-center/interest-rates/pages/textview.aspx?data=yield (last updated Sept. 24, 2021).

clarify that a creditor may use any "reasonable method" to determine if a replacement index is comparable. Several industry commenters urged the Bureau to clarify that an index is comparable if the index and the margin achieve a substantially similar interest rate.

Disclosures concerning index changes. Several commenters, including several consumer groups, a financial services education and consulting firm, and a few individuals, urged the Bureau to require disclosures to consumers with closed-end loans informing consumers of the index change. Several industry commenters stated that if the Bureau requires a disclosure for closed-end products, the Bureau should require it to be provided 45 days before the index change. Another industry commenter urged the Bureau to provide guidance on how to complete a Loan Estimate or Closing Disclosure for a SOFR product.

Timing of transition. A few industry commenters urged the Bureau to include the same provisions for closed-end loans that it proposed for HELOCs and credit card accounts which would allow creditors for HELOCs and card issuers to transition from using a LIBOR index on or after March 15, 2021, if certain conditions are met.

Placement of example in Regulation Z. Several industry commenters urged the Bureau to include the proposed example in the text of the rule, rather than the commentary, and explained their perception that including the example in the commentary would not provide sufficient legal protection.

The Final Rule

The Bureau is finalizing the amendments to comment 20(a)-3.ii.B generally as proposed with a revision to cross-reference comment 20(a)-3.iv and with a revision not to include 1-year USD LIBOR in the comment at this time pending the Bureau's receipt of additional information and further consideration by the Bureau. This final rule also adds new comment 20(a)-3.iv to provide examples of the type of factors to be considered in whether a replacement index meets the Regulation Z "comparable" standard with respect to a particular LIBOR index for closed-end transactions.

SOFR spread-adjusted index. The Bureau agrees with the commenters that expressed support for the new illustrative example in comment 20(a)-3.ii.B.

The Bureau has reviewed the SOFR indices upon which the ARRC has indicated it will base its recommended replacement indices and the spread adjustment methodology that the ARRC is recommending using to develop the replacement indices. Based on this review, the Bureau has determined that the spread-adjusted replacement indices that the ARRC is recommending for consumer products to replace the 1-month, 3-month, or 6-month USD LIBOR index will provide a good example of a comparable index to the tenors of LIBOR that they are designated to replace.

On June 22, 2017, the ARRC identified SOFR as its recommended alternative to LIBOR after considering various potential alternatives, including other term unsecured rates, overnight unsecured rates, other secured repurchase agreements (repo) rates, U.S. Treasury bill and bond rates, and overnight index swap rates linked to the EFFR.[50] The ARRC made its final recommendation of SOFR after evaluating and incorporating feedback from a 2016 consultation and end-users on its advisory group.[51]

As the ARRC has explained, SOFR is a broad measure of the cost of borrowing cash overnight collateralized by U.S. Treasury securities.[52] SOFR is determined based on transaction data composed of: (i) tri-party repo, (ii) General Collateral Finance repo, and (iii) bilateral Treasury repo transactions cleared through Fixed Income Clearing Corporation. SOFR is representative of general funding conditions in the overnight Treasury repo market. As such, it reflects an economic cost of lending and borrowing relevant to the wide array of market participants active in financial markets. In terms of the transaction volume underpinning it,

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[50] The Fed. Rsrv. Bank of N.Y., *ARRC Consultation on Spread Adjustment Methodologies for Fallbacks in Cash Products Referencing USD LIBOR* at 3 (Jan. 21, 2020), https://www.newyorkfed.org/medialibrary/Microsites/arrc/files/2020/ARRC_Spread_Adjustment_Consultation.pdf (ARRC Consultation on Spread Adjustment Methodologies).

[51] *Id.*

[52] *Id.*

SOFR has the widest coverage of any Treasury repo rate available. Averaging over $1 trillion of daily trading, transaction volumes underlying SOFR are far larger than the transactions in any other U.S. money market.[53]

On April 21, 2021, CME Group Benchmark Administration Ltd (CME Group) started producing term rates for 1-month SOFR, 3-month SOFR, and 6-month SOFR, which now go back as far as January 3, 2019.[54] Prior to that, the Board produced data on 1-month, 3-month, and 6-month "indicative" term SOFR rates that likely provide a good indication of how term SOFR rates would have performed starting from June 11, 2018.[55] On July 29, 2021, the ARRC formally recommended the 1-month, 3-month, and 6-month term SOFR rates produced by the CME Group as the underlying SOFR rates for use in replacing the 1-month, 3-month, and 6-month USD LIBOR tenors respectively for existing accounts.[56] On October 6, 2021, the ARRC published a summary of the decisions that the ARRC has made to that date concerning its recommended SOFR-based spread-adjusted indices for contracts referencing USD LIBOR.[57] In that summary, for consumer products, the ARRC indicated that for 1-year USD LIBOR, the ARRC's recommended replacement index will be to a spread-adjusted index based on a 1-year term SOFR rate or to a spread-adjusted index based on the 6-month term SOFR rate. The replacement index will use the spread adjustment for 1-year USD LIBOR mentioned in Table 1 below for arriving at the recommended replacement index for replacing 1-year USD LIBOR in

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[53] Fed. Rsrv. Bank of N.Y., *Additional Information About SOFR and Other Treasury Repo Reference Rates*, https://www.newyorkfed.org/markets/treasury-repo-reference-rates-information (last updated Apr. 16, 2021).

[54] Press Release, The Chi. Mercantile Exch., *CME Group Announces Launch of CME Term SOFR Reference Rates* (Apr. 21, 2021), https://www.cmegroup.com/media-room/press-releases/2021/4/21/cme_group_announceslaunchofcmetermsofrreferencerates.html#; The Chi. Mercantile Exch, *CME Term SOFR Reference Rates Benchmarks* (Sept. 21, 2021), https://www.cmegroup.com/market-data/files/cme-term-sofr-reference-rates-benchmarks.pdf.

[55] June 11, 2018, is the first date for which indicative term SOFR rate data are available. Erik Heitfield & Yang-Ho-Park, *Indicative Forward-Looking SOFR Term Rates* (Apr. 19, 2019), The Fed. Rsrv. Bank, *FEDS Notes*, https://www.federalreserve.gov/econres/notes/feds-notes/indicative-forward-looking-sofr-term-rates-20190419.htm (last updated May 26, 2021).

[56] Press Release, Alt. Reference Rates Comm., *ARRC Formally Recommends Term SOFR* (July 29, 2021), https://www.newyorkfed.org/medialibrary/Microsites/arrc/files/2021/ARRC_Press_Release_Term_SOFR.pdf.

[57] Summary of Fallback Recommendations, *supra* note 5, at 1.

consumer products.[58] The ARRC indicated that it will make a recommendation on the SOFR-based spread-adjusted index to replace 1-year USD LIBOR and all other remaining details of its recommended replacement indices for consumer products no later than one year before the date when 1-year USD LIBOR is expected to cease (*i.e.*, by June 30, 2022).[59] In March 2021, the ARRC announced that it has selected Refinitiv, a London Stock Exchange Group (LSEG) business, to publish the ARRC's recommended spread adjustments and SOFR-based spread-adjusted indices for cash products.[60] Refinitiv will publicly make available, for free, the SOFR-based spread-adjusted indices for consumer products so that consumers can see the actual indices that are used by industry in the pricing of their adjustable-rate consumer loan contracts that will be transitioning to the SOFR-based spread-adjusted indices for consumer products.[61]

The Bureau is reserving judgment about whether to include a reference to the 1-year USD LIBOR index in comment 20(a)-3.ii.B until it obtains additional information. Once the Bureau knows which SOFR-based spread-adjusted index the ARRC will recommend to replace the 1-year USD LIBOR index for consumer products, the Bureau may determine whether that index meets the "comparable" standard based on information available at that time. Assuming the Bureau determines that the index meets that standard, the Bureau will then consider whether to codify that determination by finalizing the proposed comment related to the 1-year USD LIBOR index in a supplemental final rule, or otherwise announce that determination.

The Bureau has reviewed the historical data on the 1-month, 3-month, and 6-month term SOFR rates produced by CME Group and the indicative term SOFR rates produced by the Board and on 1-month, 3-month, and 6-month USD LIBOR from June 11, 2018, to October 18, 2021. The Bureau calculated the spread-adjusted term SOFR rates by adding the long-term values of

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[58] *Id.* at 10.

[59] *Id*.

[60] Fed. Rsrv. Bank of N.Y., *ARRC Announces Refinitiv as Publisher of its Spread Adjustment Rates for Cash Products* (Mar. 17, 2021), https://www.newyorkfed.org/medialibrary/Microsites/arrc/files/2021/20210317-press-release-Spread-Adjustment-Vendor-Refinitiv.pdf.

[61] *Id*.

the spread-adjustments set forth in Table 1 described below to the historical data on the 1-month, 3-month, and 6-month term SOFR rates described above.

As discussed in more detail in the section-by-section analysis of § 1026.40(f)(3)(ii)(A), the Bureau has determined that: (1) the historical fluctuations of 6-month USD LIBOR are substantially similar to those of the 6-month spread-adjusted term SOFR rates; (2) the historical fluctuations of 3-month USD LIBOR are substantially similar to those of 3-month spread-adjusted term SOFR rates; and (3) the historical fluctuations of 1-month USD LIBOR are substantially similar to those of the 1-month spread-adjusted term SOFR rate.

The ARRC and the Bureau also have compared the rate history that is available for SOFR (to calculate compounded averages) with the rate history for the applicable LIBOR indices.[62] The New York Fed publishes three compounded averages of SOFR on a daily basis, including a 30-day compounded average of SOFR (30-day SOFR), and a daily index that allows for the calculation of compounded average rates over custom time periods.[63] Prior to the start of the official publication of SOFR in 2018, the New York Fed released data from August 2014 to March 2018 representing modeled, pre-production estimates of SOFR that are based on the same basic underlying transaction data and methodology that now underlie the official publication.[64] The Bureau analyzed the spread-adjusted indices based on the 30-day SOFR. The Bureau calculated the spread-adjusted 30-day SOFR rates by adding the long-term values of the spread-adjustments set forth in Table 1 described below to the historical data on 30-day SOFR. For the reasons discussed in the section-by-section analysis of § 1026.40(f)(3)(ii)(A), the Bureau finds

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[62] *See, e.g.,* ARRC Consultation on Spread Adjustment Methodologies, *supra* note 50, at 4 (comparing 3-month compounded SOFR relative to the 3-month USD LIBOR since 2014). The ARRC and the Bureau have also considered the history of other indices that could be viewed as historical proxies for SOFR. *See, e.g.,* David Bowman, *Historical Proxies for the Secured Overnight Financing Rate* (July 15, 2019), *https://www.federalreserve.gov/econres/notes/feds-notes/historical-proxies-for-the-secured-overnight-financing-rate-20190715.htm* (Historical SOFR).

[63] Fed. Rsrv. Bank of N.Y., *SOFR Averages and Index Data,* https://apps.newyorkfed.org/markets/autorates/sofr-avg-ind.

[64] *See* Historical SOFR, *supra* note 62.

that the historical fluctuations in the spread-adjusted index based on 30-day SOFR are substantially similar to those of 1-month, 3-month, and 6-month USD LIBOR.

Term SOFR rates will have fewer differences with LIBOR term rates than 30-day SOFR does.[65] Since they are also term rates, they also include term premia, and these should usually be similar to the term premia embedded in LIBOR. Since term SOFR rates will also be forward-looking, they should adjust quickly to changing expectations about future funding conditions as LIBOR term rates do, rather than following them with a lag as 30-day SOFR does. However, term SOFR rates will still have differences from the LIBOR indices. SOFR is a secured rate while the LIBOR indices are unsecured and therefore include an element of bank credit risk. The LIBOR indices also may reflect supply and demand conditions in wholesale unsecured funding markets that also could lead to differences with SOFR.

Forward-looking term SOFR rates will without adjustments differ in levels from the LIBOR indices. The ARRC intends to account for these differences from the historical levels of LIBOR term rates through spread adjustments in the replacement indices that it recommends. On January 21, 2020, the ARRC released a consultation on spread adjustment methodologies that provided historical analyses of a number of potential spread adjustment methodologies and that showed that the proposed methodology performed well relative to other options, including potential dynamic spread adjustments.[66] On April 8, 2020, the ARRC announced that it had agreed on a recommended spread adjustment methodology for cash products referencing USD LIBOR.[67] In response to the January 2020 consultation, the ARRC received over 70 responses

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[65] 30-day SOFR is a historical, backward-looking 30-day average of overnight rates, while the LIBOR indices are forward-looking term rates published with several different tenors (overnight, 1-week, 1-month, 2-month, 3-month, 6-month, and 1-year). The LIBOR indices, therefore, reflect funding conditions for a different length of time than 30-day SOFR does, and they reflect those funding conditions in advance rather than with a lag as 30-day SOFR does. The LIBOR indices may also include term premia missing from 30-day SOFR. (The "term premium" is the excess yield that investors require to buy a long-term bond instead of a series of shorter-term bonds.)

[66] ARRC Consultation on Spread Adjustment Methodologies, *supra* note 50.

[67] Press Release, Alt. Reference Rates Comm., *ARRC Announces Recommendation of a Spread Adjustment Methodology* (Apr. 8, 2020), https://www.newyorkfed.org/medialibrary/Microsites/arrc/files/2020/ARRC_Spread_Adjustment_Methodology.pdf (ARRC Announces Recommendation of a Spread Adjustment Methodology).

from consumer advocacy groups, asset managers, corporations, banks, industry associations, GSEs, and others.[68] In May 2020, the ARRC released a follow-up consultation on the spread adjustment methodologies with respect to two technical issues.[69] In June 2020, the ARRC announced recommendations on these two technical issues.[70] Following its consideration of feedback received on its public consultations, the ARRC is recommending a long-term spread adjustment equal to the historical median of the five-year spread between USD LIBOR and SOFR. On March 8, 2021, the ARRC issued an announcement[71] recognizing a set of values as the long-term spread adjustment for the SOFR-based spread-adjusted indices,[72] as shown in Table 1 below, based on the March 5, 2021, announcements by the ICE Benchmarks Administration and the FCA.

Table 1: Values of the Long-Term Spread-Adjustment for the SOFR-Based Spread-Adjusted Indices

USD LIBOR tenor being replaced	Spread applied to SOFR based rate (bps)
1-month LIBOR	11.448
3-month LIBOR	26.161
6-month LIBOR	42.826
1-year LIBOR	71.513

[68] Alt. Reference Rates Comm., *Summary of Feedback Received in the ARRC Spread-Adjustment Consultation and Follow-Up Consultation on Technical Details* 2 (May 6, 2020), https://www.newyorkfed.org/medialibrary/Microsites/arrc/files/2020/ARRC_Spread_Adjustment_Consultation_Follow_Up.pdf (ARRC Supplemental Spread-Adjustment Consultation).

[69] *Id*.

[70] Press Release, Alt. Reference Rates Comm., *ARRC Announces Further Details Regarding Its Recommendation of Spread Adjustments for Cash Products* (June 30, 2020), https://www.newyorkfed.org/medialibrary/Microsites/arrc/files/2020/ARRC_Recommendation_Spread_Adjustments_Cash_Products_Press_Release.pdf.

[71] Press Release, Alt. Reference Rates Comm., *ARRC Confirms a "Benchmark Transition Event" has occurred under ARRC Fallback Language* (Mar. 8, 2021), https://www.newyorkfed.org/medialibrary/Microsites/arrc/files/2021/ARRC_Benchmark_Transition_Event_Statement.pdf.

[72] Press Release, Bloomberg, *Bloomberg Notice on IBOR Fallbacks* (Mar. 5, 2021), https://www.bloomberg.com/company/press/bloomberg-notice-on-ibor-fallbacks/; Summary of Fallback Recommendations, *supra* note 5, at 4.

For consumer products, the ARRC is additionally recommending a 1-year transition period to this five-year median spread adjustment methodology.[73] Thus, the transition will be gradual. Specifically, the ARRC has recommended, for a period of one year, a short-term spread adjustment for SOFR-based spread-adjusted indices in order to ensure that consumers do not encounter a sudden change in their monthly payments when the LIBOR index is replaced. The short-term spread adjustment initially will be the 2-week average of the LIBOR-SOFR spread up to July 3, 2023, for the SOFR-based spread-adjusted indices for consumer products to replace 1-month, 3-month, 6-month, or 1-year USD LIBOR.[74] For these indices, over the first "transition" year following July 3, 2023, the daily published short-term spread adjustment will move linearly toward the longer-term fixed spread adjustment.[75] After the initial transition year, the spread adjustment will be permanently set at the longer-term fixed rate spread.[76] The ARRC also stated that it was not aware of any consumer products using 1-week and 2-month LIBOR, which will cease publication immediately after December 31, 2021.[77] The inclusion of a transition period for consumer products was endorsed by many respondents, including consumer advocacy groups.[78]

The ARRC intends for the spread adjustment to reflect and adjust for the historical differences between LIBOR and SOFR in order to make the spread-adjusted rate comparable to LIBOR in a fair and reasonable way, thereby minimizing the impact to borrowers and lenders.[79]

The Bureau finds that the SOFR-based spread-adjusted indices recommended by the ARRC for consumer products as a replacement for the 1-month, 3-month, or 6-month USD LIBOR index are comparable indices to the 1-month, 3-month, or 6-month USD LIBOR index

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[73] ARRC Announces Recommendation of a Spread Adjustment Methodology, *supra* note 67; Summary of Fallback Recommendations, *supra* note 5, at 11.

[74] Summary of Fallback Recommendations, *supra* note 5, at 11.

[75] *Id*.

[76] *Id*.

[77] *Id*.

[78] ARRC Supplemental Spread-Adjustment Consultation, *supra* note 68, at 1.

[79] *Id.* at 2, 3.

respectively. The SOFR-based spread-adjusted indices that the ARRC recommends for consumer products will be published and made publicly available on Refinitiv's website. The Bureau has concluded that using them as a replacement for the corresponding tenors of LIBOR does not seem likely to significantly change the economic position of the parties to the contract, given that SOFR and the LIBOR indices have generally moved together and the replacement index will be spread adjusted based on a methodology derived through public consultation.

For the reasons discussed above, the Bureau is finalizing the amendment to comment 20(a)-3.ii.B to add an illustrative example, which indicates that a creditor does not add a variable-rate feature by changing the index of a variable-rate transaction from the 1-month, 3-month, or 6-month USD LIBOR index to the SOFR-based spread-adjusted index recommended by the ARRC for consumer products to replace the 1-month, 3-month, or 6-month USD LIBOR index respectively because the replacement index is a comparable index to the corresponding USD LIBOR index.

Additional examples of indices that are comparable to the LIBOR. As discussed in more detail above, the Bureau received comments from industry requesting additional safe harbors, meaning additional examples of indices that are comparable to the LIBOR indices for closed-end transactions such as Prime, AMERIBOR® rates, EFFR, and CMT rates.

This final rule does not set forth safe harbors indicating that Prime, AMERIBOR® rates, EFFR, or the CMT rates satisfy the Regulation Z "comparable" standard for appropriate replacement indices for a particular LIBOR index in a closed-end transaction. First, for Prime, AMERIBOR® rates, EFFR, or CMT rates, with respect to the Regulation Z "comparable" standard for closed-end credit, all of these rates may need to be "spread-adjusted" to account for the differences in rate levels from the LIBOR rates in order to potentially comply with the standard. This step is important for comparability because unlike for HELOC and credit card contracts, some closed-end contracts, especially mortgages, typically do not allow for margin adjustments to account for any spread adjustment needed when changing the index. The Bureau

is not aware of market participants having developed a methodology to spread adjust the rates. Without spread adjustments to the indices, the indices do not appear to be able to meet the "comparable" standard. Second, as discussed in more detail below, the Bureau notes that the determinations of whether an index is comparable to a LIBOR index are fact-specific, and they depend on the replacement index being considered and the LIBOR tenor being replaced. The commenters did not specify which AMERIBOR® rates, EFFR, or CMT rates should be used as the replacement tenor and which LIBOR tenor the rate would replace.

In addition, the Bureau understands that the vast majority of the impacted industry participants will use the indices for which this final rule provides a safe harbor (*i.e.*, certain SOFR-based spread-adjusted indices recommended by the ARRC for consumer products) as replacement indices for closed-end transactions. The Bureau notes that this final rule does not disallow the use of other replacement indices if they comply with Regulation Z.

An industry commenter urged the Bureau to designate other replacement indices as compliant if recommended by the Board. The Bureau notes in response that the Board has not recommended other replacement indices.

The Bureau appreciates commenters' suggestion to reiterate that the example included in comment 20(a)-3.ii.B is not intended to provide an exhaustive list of indices that are comparable to LIBOR. The example included in comment 20(a)-3.ii.B is illustrative only, and the Bureau does not intend to suggest that the SOFR-based spread-adjusted indices recommended by the ARRC for consumer products to replace the 1-month, 3-month, or 6-month USD LIBOR index are the only indices that would be comparable to the LIBOR indices. The Bureau recognizes that there may be other comparable indices that creditors may use as replacements for the various tenors of LIBOR.

Additional guidance on what constitutes a comparable index. As discussed in more detail above, numerous industry commenters asked the Bureau to provide additional guidance on how to determine if an index is comparable for purposes of Regulation Z.

To facilitate compliance with Regulation Z, this final rule adds new comment 20(a)-3.iv to provide a non-exhaustive list of factors to be considered in whether a replacement index meets the Regulation Z "comparable" standard with respect to a particular LIBOR index for closed-end transactions. Specifically, new comment 20(a)-3.iv provides that the relevant factors to be considered in determining whether a replacement index is comparable to a particular LIBOR index depend on the replacement index being considered and the LIBOR index being replaced. New comment 20(a)-3.iv also provides that the types of relevant factors to establish if a replacement index could meet the "comparable" standard with respect to a particular LIBOR index using historical data or future expectations, include but are not limited to, whether: (1) the movements over time are comparable; (2) the consumers' payments using the replacement index compared to payments using the LIBOR index are comparable if there is sufficient data for this analysis; (3) the index levels are comparable; (4) the replacement index is publicly available; and (5) the replacement index is outside the control of the creditor. The first three factors are important to help minimize the financial impact on consumers, including the payments they must make, when LIBOR is replaced with another index. The last two factors would promote transparency for consumers and help reduce potential manipulation of the replacement rate by the creditor in the future. As discussed above, the Bureau has considered these factors in determining that the SOFR-based spread-adjusted indices recommended by the ARRC for consumer products to replace the 1-month, 3-month, or 6-month USD LIBOR indices have historical fluctuations that are comparable to those of the 1-month, 3-month, or 6-month USD LIBOR indices respectively. There is sufficient historical data to analyze, which shows that the consumers' payments using the SOFR index are comparable to payments using the LIBOR index and the index levels are comparable. Further, the SOFR-based spread-adjusted indices recommended by the ARRC for consumer products will be publicly available and are outside of the creditor's control.

The Bureau notes that this final rule does not set forth a principles-based standard for determining whether a replacement index is comparable to a particular LIBOR tenor for closed-end credit. These determinations are fact-specific and depend on the replacement index being considered and the LIBOR tenor being replaced, as well as prevailing market conditions. For example, these determinations may need to consider certain aspects of the historical data itself for a particular replacement index, such as (1) the length of time the data has been available and how much of the available data to consider in the analysis of whether the Regulation Z standards have been satisfied; (2) the quality of the historical data, including the methodology of how the rate is determined and whether it sufficiently represents a market rate; and (3) whether the replacement index is a backward-looking rate (*e.g.*, historical average of rates) such that timing aspects of the data may need to be adjusted to match up with the particular forward-looking LIBOR term-rate being replaced. These considerations will vary depending on the replacement index being considered and the LIBOR tenor that is being replaced. Therefore, this final rule does not provide a principles-based standard for determining whether a replacement index for closed-end credit is comparable to those of a particular LIBOR index.

Disclosures concerning index changes. This final rule does not adopt commenters' suggestion to require a new disclosure informing consumers about a change in an index. The Bureau did not propose to require a new disclosure and lacks sufficient information about the potential benefits and costs of such a new disclosure.

The Bureau anticipates, however, that industry practices and existing legal requirements will provide consumers with information about changes to their interest rate that affect their loan payments. The Bureau understands that industry is developing best practices and model communications that creditors can use to inform consumers about the LIBOR transition.[80] In

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[80] *See, e.g.,* The Fed. Nat'l Mortg. Ass'n, *LIBOR Transition Playbook*, https://capitalmarkets.fanniemae.com/media/5206/display; The Fed. Home Loan Mortg. Corp., *LIBOR Transition Playbook* (Apr. 2021), http://www.freddiemac.com/about/pdf/LIBOR_transition_playbook.pdf; Mortg. Bankers Ass'n*, Adjustable-Rate Mortgage Disclosure: Possible Discontinuation of LIBOR* (Apr. 2021), https://www.mba.org/Documents/Policy/Issue%20Briefs/20305_MBA_LIBOR_Consumer_Disclosure.pdf; Alt.

addition, other provisions in Regulation Z require disclosures to consumers with adjustable-rate mortgages if the interest rate or payment amount will change. For example, initial interest rate adjustment notices required by § 1026.20(d) alert consumers to the initial reset of an adjustable-rate mortgage, and subsequent interest rate adjustment notices required by § 1026.20(c) alert consumers to interest rate adjustments and provide the consumer with information about the new interest rate and new periodic payment prior to each adjustment that results in a payment change. In addition, required periodic statements for closed-end consumer credit transactions secured by a dwelling provide consumers with mortgage loan account information, including alerting the consumer to upcoming interest rate changes for each billing cycle.[81]

The Bureau appreciates commenters' suggestion to provide guidance on completing a Loan Estimate or Closing Disclosure for a SOFR product and will consider providing that guidance in the future through implementation materials.

Timing of transition. The Bureau declines to adopt the commenter's suggestion to include the same provisions for closed-end loans that it proposed for HELOCs and credit card accounts which would allow creditors for HELOCs and card issuers to transition from using a LIBOR index on or after March 15, 2021, if certain conditions are met. It is not necessary or warranted for Regulation Z to address the timing of the transition from using the LIBOR indices for closed-end loans because Regulation Z does not address when a creditor may transition a closed-end loan to a new index. Instead, Regulation Z provides guidance on the circumstances when an index change requires creditors to treat the transaction as a refinancing and, accordingly, to provide the disclosures required at origination.

Placement of example in Regulation Z. The Bureau declines to adopt commenters' suggestion to include the proposed example in the text of the rule rather than the commentary

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Reference Rates Comm., *LIBOR ARM Transition Resource Guide* (Aug. 18, 2020), https://www.newyorkfed.org/medialibrary/Microsites/arrc/files/2020/LIBOR_ARM_Transition_Resource_Guide.pdf.

[81] 12 CFR 1026.41.

because it is not necessary or warranted to protect creditors from liability. Good faith compliance with the commentary affords protection from liability under TILA section 130(f), which protects entities from civil liability for any act done or omitted in good faith in conformity with any interpretation issued by the Bureau.[82]

Section 1026.36 Prohibited Acts or Practices and Certain Requirements for Credit Secured by a Dwelling

36(a) Definitions

36(a)(4) Seller Financiers; Three Properties

36(a)(4)(iii)

36(a)(4)(iii)(C)

Section 1026.36(a)(1) defines the term "loan originator" for purposes of the prohibited acts or practices and requirements for credit secured by a dwelling in § 1026.36. Section 1026.36(a)(4) addresses the three-property exclusion for seller financers and provides that a person (as defined in § 1026.2(a)(22)) that meets all of the criteria specified in § 1026.36(a)(4)(i) to (iii) is not a loan originator under § 1026.36(a)(1). Pursuant to § 1026.36(a)(4)(iii)(C), one such criterion requires that, if the financing agreement has an adjustable rate, the index the adjustable rate is based on is a widely available index such as indices for U.S. Treasury securities or LIBOR. In light of the anticipated discontinuation of LIBOR, the Bureau proposed to amend the examples of indices provided in § 1026.36(a)(4)(iii)(C) to substitute SOFR for LIBOR. The Bureau received no comments on the proposed amendments to § 1026.36(a)(4)(iii)(C) and is finalizing the amendments as proposed.

[82] 15 U.S.C. 1640; comment 1 to 12 CFR part 1026.

36(a)(5) Seller Financiers; One Property

36(a)(5)(iii)

36(a)(5)(iii)(B)

Section 1026.36(a)(1) defines the term "loan originator" for purposes of the prohibited acts or practices and requirements for credit secured by a dwelling in § 1026.36. Section 1026.36(a)(5) addresses the one-property exclusion for seller financers and provides that a natural person, estate, or trust that meets all of the criteria specified in § 1026.36(a)(5)(i) to (iii) is not a loan originator under § 1026.36(a)(1). Pursuant to § 1026.36(a)(5)(iii)(B), one such criterion currently requires that, if the financing agreement has an adjustable rate, the index the adjustable rate is based on is a widely available index such as indices for U.S. Treasury securities or LIBOR. In light of the anticipated discontinuation of LIBOR, the Bureau proposed to amend the examples of indices provided in § 1026.36(a)(5)(iii)(B) to substitute SOFR for LIBOR. The Bureau received no comments on the proposed amendments to § 1026.36(a)(5)(iii)(B) and is finalizing the amendments as proposed.

Section 1026.37 Content of Disclosures for Certain Mortgage Transactions (Loan Estimate)

37(j) Adjustable Interest Rate Table

37(j)(1) Index and Margin

Section 1026.37 governs the content of the Loan Estimate disclosure for certain mortgage transactions. If the interest rate may adjust and increase after consummation and the product type is not a step rate, § 1026.37(j)(1) requires disclosure in the Loan Estimate of, *inter alia*, the index upon which the adjustments to the interest rate are based. Comment 37(j)(1)-1 explains that the index disclosed pursuant to § 1026.37(j)(1) must be stated such that a consumer reasonably can identify it. The comment further explains that a common abbreviation or acronym of the name of the index may be disclosed in place of the proper name of the index, if it is a commonly used public method of identifying the index. The comment provides, as an example, that "LIBOR" may be disclosed instead of London Interbank Offered Rate. In light of

the anticipated discontinuation of LIBOR, the Bureau proposed to amend this example in comment 37(j)(1)-1 to provide that "SOFR" may be disclosed instead of Secured Overnight Financing Rate. The Bureau did not receive any comments on the proposed amendments to comment 37(j)(1)-1 and is finalizing the amendments as proposed.

Section 1026.40 Requirements for Home Equity Plans

40(f) Limitations on Home Equity Plans

40(f)(3)

40(f)(3)(ii)

TILA section 137(c)(1) provides that no open-end consumer credit plan under which extensions of credit are secured by a consumer's principal dwelling may contain a provision that permits a creditor to change unilaterally any term except in enumerated circumstances set forth in TILA section 137(c).[83] TILA section 137(c)(2)(A) provides that a creditor may change the index and margin applicable to extensions of credit under such a plan if the index used by the creditor is no longer available and the substitute index and margin will result in a substantially similar interest rate.[84] In implementing TILA section 137(c), § 1026.40(f)(3) prohibits a creditor from changing the terms of a HELOC subject to § 1026.40 except in enumerated circumstances set forth in § 1026.40(f)(3). Section 1026.40(f)(3)(ii) provides that a creditor may change the index and margin used under the HELOC plan if the original index is no longer available, the new index has a historical movement substantially similar to that of the original index, and the new index and margin would have resulted in an APR substantially similar to the rate in effect at the time the original index became unavailable.

Current comment 40(f)(3)(ii)-1 provides that a creditor may change the index and margin used under the HELOC plan if the original index becomes unavailable, as long as historical fluctuations in the original and replacement indices were substantially similar, and as long as the

[83] 15 U.S.C. 1647(c).

[84] 15 U.S.C. 1647(c)(2)(A).

replacement index and margin will produce a rate similar to the rate that was in effect at the time the original index became unavailable. Current comment 40(f)(3)(ii)-1 also provides that if the replacement index is newly established and therefore does not have any rate history, it may be used if it produces a rate substantially similar to the rate in effect when the original index became unavailable. As discussed in the section-by-section analysis of § 1026.55(b)(7), card issuers for a credit card account under an open-end (not home-secured) consumer credit plan are subject to current comment 55(b)(2)-6, which provides a similar provision on the unavailability of an index as current comment 40(f)(3)(ii)-1.

The Bureau's Proposal

As discussed in part III, the industry has requested that the Bureau permit card issuers to replace the LIBOR index used in setting the variable rates on existing accounts before LIBOR becomes unavailable to facilitate compliance. Among other things, the industry is concerned that if card issuers must wait until LIBOR become unavailable to replace the LIBOR indices used on existing accounts, these card issuers would not have sufficient time to inform consumers of the replacement index and update their systems to implement the change. To reduce uncertainty with respect to selecting a replacement index, the industry has also requested that the Bureau determine that Prime has historical fluctuations that are substantially similar to those of the LIBOR indices. The Bureau believes that similar issues may arise with respect to the transition of existing HELOC accounts away from using a LIBOR index.

To address these concerns, as discussed in more detail in the section-by-section analysis of § 1026.40(f)(3)(ii)(B), the Bureau proposed to add new LIBOR-specific provisions to proposed § 1026.40(f)(3)(ii)(B). These proposed provisions would have permitted creditors for HELOC plans subject to § 1026.40 that use a LIBOR index under the plan to replace the LIBOR index and change the margins for calculating the variable rates on or after March 15, 2021, in certain circumstances without needing to wait for LIBOR to become unavailable.

Specifically, proposed § 1026.40(f)(3)(ii)(B) provided that if a variable rate on a HELOC subject to § 1026.40 is calculated using a LIBOR index, a creditor may replace the LIBOR index and change the margin for calculating the variable rate on or after March 15, 2021, as long as: (1) the historical fluctuations in the LIBOR index and replacement index were substantially similar; and (2) the replacement index value in effect on December 31, 2020, and replacement margin will produce an APR substantially similar to the rate calculated using the LIBOR index value in effect on December 31, 2020, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. Proposed § 1026.40(f)(3)(ii)(B) also provided that if the replacement index is newly established and therefore does not have any rate history, it may be used if the replacement index value in effect on December 31, 2020, and replacement margin will produce an APR substantially similar to the rate calculated using the LIBOR index value in effect on December 31, 2020, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan.

Also, as discussed in more detail in the section-by-section analysis of § 1026.40(f)(3)(ii)(B), to reduce uncertainty with respect to selecting a replacement index that meets the standards in proposed § 1026.40(f)(3)(ii)(B), the Bureau proposed to determine that Prime is an example of an index that has historical fluctuations that are substantially similar to those of the 1-month and 3-month USD LIBOR indices. The Bureau also proposed to determine that the SOFR-based spread-adjusted indices recommended by the ARRC for consumer products to replace the 1-month, 3-month, 6-month, or 1-year USD LIBOR have historical fluctuations that are substantially similar to those of the LIBOR indices that they are intended to replace. The Bureau also proposed additional detail in comments 40(f)(3)(ii)(B)-1 through -3 with respect to proposed § 1026.40(f)(3)(ii)(B).

In addition, as discussed in more detail in the section-by-section analysis of § 1026.40(f)(3)(ii)(A), the Bureau proposed to move the unavailability provisions in current

§ 1026.40(f)(3)(ii) and current comment 40(f)(3)(ii)-1 to proposed § 1026.40(f)(3)(ii)(A) and proposed comment 40(f)(3)(ii)(A)-1 respectively and to revise the proposed moved provisions for clarity and consistency. The Bureau also proposed additional detail in comments 40(f)(3)(ii)(A)-2 and -3 with respect to proposed § 1026.40(f)(3)(ii)(A). For example, to reduce uncertainty with respect to selecting a replacement index that meets the standards for selecting a replacement index under proposed § 1026.40(f)(3)(ii)(A), the Bureau proposed the same determinations described above related to Prime and the SOFR-based spread-adjusted indices recommended by the ARRC for consumer products in relation to proposed § 1026.40(f)(3)(ii)(A). The Bureau proposed to make these revisions and provide additional detail because the Bureau understands that some HELOC creditors may use the unavailability provision in proposed § 1026.40(f)(3)(ii)(A) to replace a LIBOR index used under a HELOC plan, depending on the contractual provisions applicable to their HELOC plans, as discussed in more detail below.

Proposed comment 40(f)(3)(ii)-1 would have addressed the interaction among the unavailability provisions in proposed § 1026.40(f)(3)(ii)(A), the LIBOR-specific provisions in proposed § 1026.40(f)(3)(ii)(B), and the contractual provisions that apply to the HELOC plan. Proposed comment 40(f)(3)(ii)-1 provided that a creditor may use either the provision in proposed § 1026.40(f)(3)(ii)(A) or proposed § 1026.40(f)(3)(ii)(B) to replace a LIBOR index used under a HELOC plan subject to § 1026.40 so long as the applicable conditions are met for the provision used. This proposed comment made clear, however, that neither provision excuses the creditor from noncompliance with contractual provisions.

To facilitate compliance, proposed comment 40(f)(3)(ii)-1 also provided examples on the interaction among the unavailability provisions in proposed § 1026.40(f)(3)(ii)(A), the LIBOR-specific provisions in proposed § 1026.40(f)(3)(ii)(B), and three types of contractual provisions for HELOCs because the Bureau understands that HELOC contracts may be written in a variety of ways. For example, the Bureau recognizes that some existing contracts for HELOCs that use

LIBOR as an index for a variable rate may provide that: (1) a creditor can replace the LIBOR index and the margin for calculating the variable rate unilaterally only if the LIBOR index is no longer available or becomes unavailable; and (2) the replacement index and replacement margin will result in an APR substantially similar to a rate that is in effect when the LIBOR index becomes unavailable. Other HELOC contracts may provide that a creditor can replace the LIBOR index and the margin for calculating the variable rate unilaterally only if the LIBOR index is no longer available or becomes unavailable but does not require that the replacement index and replacement margin will result in an APR substantially similar to a rate that is in effect when the LIBOR index becomes unavailable. In addition, other HELOC contracts may allow a creditor to change the terms of the contract (including the LIBOR index used under the plan) as permitted by law.

As discussed in the section-by-section analysis of § 1026.40(f)(3)(ii)(A), this final rule adopts § 1026.40(f)(3)(ii)(A) as proposed. As discussed in the section-by-section analysis of § 1026.40(f)(3)(ii)(B), this final rule adopts § 1026.40(f)(3)(ii)(B) generally as proposed with revisions to: (1) set April 1, 2022, as the date on or after which HELOC creditors are permitted to replace the LIBOR index used under the plan pursuant to § 1026.40(f)(3)(ii)(B) prior to LIBOR becoming unavailable; (2) set October 18, 2021, as the date creditors generally must use under § 1026.40(f)(3)(ii)(B) for selecting indices values in determining whether the APRs using the LIBOR index and the replacement index are substantially similar; and (3) provide that if the replacement index is not published on October 18, 2021, the creditor generally must use the next calendar day for which both the LIBOR index and the replacement index are published as the date for selecting indices values in determining whether the APR based on the replacement index is substantially similar to the rate based on the LIBOR index.[85]

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[85] See the section-by-section analysis of § 1026.40(f)(3)(ii)(B) for the rationale for why the Bureau selected the October 18, 2021, date. The one exception is that if the replacement index is the SOFR-based spread-adjusted index recommended by the ARRC for consumer products to replace the 1-month, 3-month, 6-month, or 1-year USD LIBOR index, the creditor must use the index value on June 30, 2023, for the LIBOR index and, for the SOFR-based spread-adjusted index for consumer products, must use the index value on the first date that index is

Comments Received

The Bureau received a significant number of comments on proposed § 1026.40(f)(3)(ii)(A) and (B) from industry, including banks, credit unions, and their trade associations. The Bureau also received several comment letters from consumer groups and individual consumers. In response to the 2020 Proposal, most commenters generally provided the same comments for both proposed § 1026.40(f)(ii)(A) and (B) for HELOC accounts and § 1026.55(b)(7)(i) and (ii) for credit card accounts under an open-end (not home-secured) consumer credit plan.

Allow transition from a LIBOR index prior to LIBOR becoming unavailable. The Bureau received comments from industry, consumer groups, and individuals on proposed § 1026.40(f)(3)(ii)(B) and proposed § 1026.55(b)(7)(ii) that would permit creditors for HELOC plans subject to § 1026.40 and card issuers that use a LIBOR index under the plan to replace the LIBOR index and change the margins for calculating the variable rates on or after March 15, 2021, in certain circumstances without needing to wait for LIBOR to become unavailable. Several industry commenters encouraged the Bureau to adopt these proposed provisions. A trade association indicated that these proposed provisions, if adopted, would allow HELOC creditors and card issuers to undertake the transition on a timeline that is more manageable and less likely to cause disruption for both HELOC creditors and consumers. A few other trade associations indicated that these proposed provisions allowing transition to a replacement index prior to LIBOR becoming unavailable, if adopted, would address concerns that LIBOR may continue to be available but may become less representative or reliable.

Several consumer group commenters and an individual commenter generally supported proposed § 1026.40(f)(3)(ii)(B) for HELOC accounts and § 1026.55(b)(7)(ii) for credit card accounts, indicating that the Bureau should allow HELOC creditors and card issuers to replace a

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published, in determining whether the APR based on the replacement index is substantially similar to the rate based on the LIBOR index.

LIBOR index used under a plan before LIBOR becomes unavailable. The individual commenter indicated that these provisions would allow HELOC creditors and card issuers enough lead time to communicate with borrowers regarding the changes to the index.

A few credit union trade association commenters supported the Bureau's proposal to allow creditors for HELOCs and card issuers to make the transition away from a LIBOR index as soon as March 15, 2021, but requested that the Bureau consider moving this date up even earlier. Several trade association commenters requested that HELOC creditors and card issuers be allowed to transition away from a LIBOR index as early as December 31, 2020.

A trade association commenter representing reverse mortgage creditors requested that the Bureau coordinate with both the U.S. Department of Housing and Urban Development (HUD) and the Government National Mortgage Association (Ginnie Mae) with respect to the March 15, 2021, date in proposed § 1026.40(f)(3)(ii)(B). This commenter was concerned that if HUD decides to switch the HECM index to a SOFR index as of January 1, 2021, creditors would need to comply with that in order to make HECM loans insured by the Federal Housing Administration (FHA). This commenter indicated that it was not clear how such a required change by HUD would interact with proposed § 1026.40(f)(3)(ii)(B), if adopted.

Determination that Prime and certain SOFR-based spread-adjusted indices recommended by the ARRC for consumer products have historical fluctuations that are substantially similar to those of certain USD LIBOR indices. The Bureau received comments from several trade associations and consumer groups on the Bureau's proposed determination that Prime and certain SOFR-based spread-adjusted indices recommended by the ARRC have historical fluctuations that are substantially similar to those of certain USD LIBOR indices. Several trade association commenters, including trade association commenters that represent credit unions, supported the Bureau's proposal determining that Prime has historical fluctuations substantially similar to those of certain LIBOR indices for purposes of proposed §§ 1026.40(f)(3)(ii)(A) and (B) and 1026.55(b)(7)(i) and (ii). A few of these trade association

commenters that represent credit unions indicated that many credit unions already use Prime for new open-end plans in lieu of LIBOR or plan to transition away from LIBOR to Prime for existing open-end plans. Several trade association commenters supported the Bureau's proposal determining that certain SOFR-based spread-adjusted indices recommended by the ARRC have historical fluctuations substantially similar to those of certain LIBOR indices for purposes of proposed §§ 1026.40(f)(3)(ii)(A) and (B) and 1026.55(b)(7)(i) and (ii).

A few consumer group commenters indicated that the Bureau should not adopt its proposal that Prime has historical fluctuations that are substantially similar to those of certain LIBOR indices for purposes of proposed §§ 1026.40(f)(3)(ii)(A) and (B) and 1026.55(b)(7)(i) and (ii). These consumer group commenters instead indicated that the Bureau should signal its expectation that industry participants will select the SOFR-based spread-adjusted indices recommended by ARRC for consumer products as the replacement index and that failure to do so will invite increased scrutiny of compliance with Regulation Z. Several other consumer group commenters indicated that they support the Bureau's proposal that both Prime and the SOFR-based spread-adjusted indices recommended by the ARRC have historical fluctuations that are substantially similar to certain LIBOR indices. These consumer group commenters believed the SOFR-based spread-adjusted indices recommended by the ARRC are the best replacement for consumers and the only appropriate replacement in contracts where the margin cannot be adjusted. However, these consumer group commenters supported the Bureau's proposal under proposed §§ 1026.40(f)(3)(ii)(A) and (B) and 1026.55(b)(7)(i) and (ii) that: (1) Prime has substantially similar historic fluctuations to those of certain LIBOR indices; and (2) a creditor or card issuer using Prime must comply with the condition that the replacement index and replacement margin result in an APR substantially similar to the rate at the time the LIBOR became unavailable.

Additional examples of indices that have historical fluctuations that are substantially similar to those of certain USD LIBOR indices. Many industry commenters and one individual

commenter requested that the Bureau identify additional indices which meet the Regulation Z standards in proposed §§ 1026.40(f)(3)(ii)(A) and (B) and 1026.55(b)(7)(i) and (ii) that the historical fluctuations of those indices are substantially similar to those of certain tenors of LIBOR. A few trade associations and several banks requested that the Bureau consider providing a safe harbor for AMERIBOR® rates that the historical fluctuations of those indices would be considered substantially similar to those of certain LIBOR indices for purposes of Regulation Z's standards. A few trade associations representing credit unions requested that the Bureau consider providing a safe harbor for EFFR that the historical fluctuations of that rate would be considered substantially similar to those of certain LIBOR indices for purposes of Regulation Z's standards. A few trade associations requested that the Bureau consider providing a safe harbor for CMT rates that the historical fluctuations of those rates would be considered substantially similar to those of certain LIBOR indices for purposes of Regulation Z's standards. A trade association commenter representing reverse mortgage creditors requested that the Bureau expressly provide a safe harbor for the index prescribed by the HUD Secretary for replacement of the LIBOR index for HECMs, if that index is different from the SOFR-spread adjusted indices recommended by ARRC for consumer products, that the historical fluctuations of that index would be considered substantially similar to those of certain LIBOR indices for purposes of Regulation Z's standards. This trade group encouraged the Bureau, HUD, and Ginnie Mae to conduct statistical analyses to determine what the effect of such a replacement index will be on, for example, existing pools of securitized HECMs to ensure that such replacement index is truly substantially similar.

An individual commenter indicated that the difference among LIBOR and SOFR rates would trigger issues around the pricing of loans linked to SOFR and that the Bureau needs to study this issue. This commenter noted that various lenders have already started looking at other indices like AMERIBOR®.

Additional guidance on determining whether historical fluctuations are substantially similar to those of certain USD LIBOR indices. Several industry commenters requested that the Bureau provide guidance by defining when the historical fluctuations of an index are substantially similar to those of a particular LIBOR index for purposes of proposed §§ 1026.40(f)(3)(ii)(A) and (B) and 1026.55(b)(7)(i) and (ii). A few trade associations requested that the Bureau provide guidance on the meaning of "substantially similar" and also adopt a flexible principles-based standard in order to avoid effectively "mandating" any specific index as the replacement for LIBOR. A credit union trade association commenter indicated that although the proposal allows the use of an established index with historical fluctuations substantially similar to those of a LIBOR index, the proposal does not define what it means for a rate to be substantially similar. This commenter indicated that credit unions would benefit from the Bureau clarifying when historical fluctuations are considered substantially similar to those of a LIBOR index.

Newly established index as replacement for a LIBOR index. The Bureau received comments from industry, consumer groups, and a financial services education and consulting firm in relation to the use of a newly established index for purposes of proposed §§ 1026.40(f)(3)(ii)(A) and (B) and 1026.55(b)(7)(i) and (ii). An industry trade association indicated that in order to enhance compliance certainty, the Bureau should provide greater detail to HELOC creditors and card issuers regarding the factors or considerations that should be taken into account to determine that an index is newly established for purposes of proposed §§ 1026.40(f)(3)(ii)(A) and (B) and 1026.55(b)(7)(i) and (ii). This commenter suggested that such factors could include the length of time in which an index has been published or made available, as well as the period of time since the index has gained broad acceptance or use in financial markets. A financial services education and consulting firm indicated that the Bureau should only recognize newly established indices as being appropriate replacements for LIBOR if they are developed with the same high standards as SOFR. This commenter indicated its belief

that all efforts should be made to minimize any value transfer in relation to replacing a LIBOR index.

A few consumer group commenters indicated that the Bureau should limit its recognition of a newly established index as an appropriate replacement for LIBOR for purposes of proposed §§ 1026.40(f)(3)(ii)(A) and (B) and 1026.55(b)(7)(i) and (ii). These consumer group commenters indicated their belief that without any historical track record, the appropriateness of a newly established index cannot be determined based only on the fact of it reflecting LIBOR on a single day.

Several consumer group commenters indicated that the Bureau should restrict the use of new indices that lack historical data. These consumer group commenters indicated that if the Bureau allows newly established indices, the Bureau should require HELOC creditors or card issuers to demonstrate in advance, with a verifiable methodology, that the newly established index would have had substantially similar historical fluctuations as the original index. These consumer group commenters indicated that the Bureau should base this requirement on the steps the New York Fed used to evaluate the SOFR and prove that it was sufficiently similar to the LIBOR index.

Substantially similar rates. The Bureau received several comments from industry, consumer groups, and individuals in relation to whether an APR calculated using a replacement index is substantially similar to the APR using the LIBOR index for purposes of proposed §§ 1026.40(f)(3)(ii)(A) and (B) and 1026.55(b)(7)(i) and (ii).

A trade association commenter indicated that the Bureau should provide greater detail as to the process HELOC creditors and card issuers must use to determine whether an APR calculated using a replacement index is substantially similar to the APR using the LIBOR index for purposes of proposed §§ 1026.40(f)(3)(ii)(A) and (B) and 1026.55(b)(7)(i) and (ii). Several consumer group commenters indicated that the Bureau should interpret "substantially similar" to require HELOC creditors or card issuers to minimize any value transfer when selecting a

replacement index and setting a new margin for purposes of proposed §§ 1026.40(f)(3)(ii)(A) and (B) and 1026.55(b)(7)(i) and (ii).

An individual commenter indicated that consumers should be allowed to refinance their existing debt at no cost into existing market rate products at their discretion and banks should be forced to not artificially inflate rates ahead of the anticipated sunset date of LIBOR.

In determining whether the APRs are substantially similar, the Bureau received comments from industry and consumer groups on the Bureau's proposal to use a single date for the index values for purposes of proposed §§ 1026.40(f)(3)(ii)(A) and (B) and 1026.55(b)(7)(i) and (ii), rather than using a historical median or average of the index values. A trade association commenter indicated that: (1) the Bureau should give HELOC creditors and card issuers the option to either use a single date for purposes of the index values or use the median value of the difference between the two indices over a slightly longer period of time; and (2) such an approach would preserve flexibility and recognize that different indices will present different challenges with respect to evaluation on a single date.

A trade association commenter representing reverse mortgage creditors indicated that the Bureau should require the use of the historical spread rather than the spread on a specific day in comparing rates to help ensure such rates are substantially similar to each other. This commenter: (1) indicated that a historical median or average of the spread between the replacement index and LIBOR over the time period the historical data is available, or 5 years, whichever is shorter, should be used for purposes of determining whether a rate using the replacement index is substantially similar to the rate using the LIBOR index; and (2) raised concerns that the use of a single day to compare the rates of LIBOR and its replacement could be problematic if such dates happen to occur during a period of extreme volatility.

Several consumer group commenters indicated that the Bureau should require HELOC creditors and card issuers to use a historical median value rather than the value from a single day when comparing the APR using a replacement index to the APR using the LIBOR index to

determine if the two rates are substantially similar for purposes of proposed § 1026.40(f)(3)(ii)(A) and (B) and § 1026.55(b)(7)(i) and (ii). These commenters noted that the ARRC and the International Swaps and Derivatives Association (ISDA) have endorsed using a historical median to calculate the spread-adjustment between the LIBOR and SOFR (the historical median over a five-year lookback period). These commenters indicated that the Bureau should require HELOC creditors and card issuers to make a similar calculation for other replacement indices rather than comparing the original and replacement indices on a single day.

With respect to the SOFR-based spread-adjusted indices recommended by the ARRC, a trade association commenter indicated that the Bureau should clarify that the APR calculated using a spread-adjusted SOFR index is substantially similar to the APR calculated using a corresponding LIBOR index, provided the HELOC creditor or card issuer uses the same margin in effect immediately prior to the transition.

Determination that LIBOR index is no longer available. The Bureau received comments from industry and consumer groups in relation to determining when a LIBOR index is no longer available. Several trade associations commenters indicated that the Bureau should provide further guidance to HELOC creditors and card issuers to assist them in making the determination of whether LIBOR (or another index) is unavailable for purposes of Regulation Z. These commenters indicated that the Bureau should, for example, provide the triggers used in the ARRC's recommended contractual fallback language for new closed-end, residential ARMs as examples of when an index is unavailable, such as when an index administrator permanently or indefinitely stops providing the index to the general public, or when an index administrator or its regulator issues an official public statement that the index is no longer reliable or representative.[86] These commenters stated their belief that such guidance would be beneficial to

[86] Alt. Reference Rates Comm., *ARRC Recommendations Regarding More Robust LlBOR Fallback Contract Language for New Closed-End, Residential Adjustable Rate Mortgages* (Nov. 15, 2019), https://www.newyorkfed.org/medialibrary/Microsites/arrc/files/2019/ARM_Fallback_Language.pdf (LIBOR Fallback).

financial institutions and consumers and would help provide further certainty, not only for the upcoming LIBOR transition but for any transitions in the future as well.

Another trade association commenter that represents reverse mortgage creditors indicated that the Bureau should include language in the final rule clarifying when LIBOR is deemed to be no longer available. This commenter indicated that the Bureau should permit lenders to make the determination that a LIBOR index is no longer available when LIBOR is no longer widely used or supported in the industry at large (or is becoming less available as time goes on) as opposed to LIBOR being unavailable (since it is likely that it will take some time before LIBOR disappears completely), and that if creditors make this assessment in good faith and switch the index accordingly, the Bureau will not subject them to sanctions or other punitive measures.

Another trade association commenter indicated that the Bureau should clarify the extent to which LIBOR would become unavailable in the event that it continued to be reported but became unreliable or that there was uncertainty about its ongoing status. Another trade association commenter indicated that the Bureau should make a determination that after year-end 2021, LIBOR is unavailable.

Several trade associations commenters indicated that the Bureau should provide, applicable to all variable rate loan products, that a creditor may replace the LIBOR index before the publication of LIBOR is discontinued, even when the contract only provides for replacement upon the unavailability of LIBOR. In addition, these trade associations indicated that the Bureau should make clear that a creditor can replace both the index and the margin even in cases where the consumer credit agreement does not explicitly contemplate the replacement of the pre-existing LIBOR index and margin.

Several consumer group commenters indicated that the Bureau should either define "unavailable" or ban the use of LIBOR indices after December 2021 in any consumer credit product, including credit cards, student loans, and mortgages. These consumer group commenters stated their belief that defining "unavailable" would help avoid future ambiguity for

index transitions. Nonetheless, these consumer group commenters indicated that their preferred approach is for the Bureau to ban the use of LIBOR indices after December 2021.

The Final Rule

As discussed in the section-by-section analysis of § 1026.40(f)(3)(ii)(A), this final rule adopts § 1026.40(f)(3)(ii)(A) as proposed. As discussed in the section-by-section analysis of § 1026.40(f)(3)(ii)(B), this final rule adopts § 1026.40(f)(3)(ii)(B) generally as proposed with revisions to: (1) set April 1, 2022, as the date on or after which HELOC creditors are permitted to replace the LIBOR index used under the plan pursuant to § 1026.40(f)(3)(ii)(B) prior to LIBOR becoming unavailable; (2) set October 18, 2021, as the date creditors generally must use under § 1026.40(f)(3)(ii)(B) for selecting indices values in determining whether the APRs using the LIBOR index and the replacement index are substantially similar;[87] and (3) provide that if the replacement index is not published on October 18, 2021, the creditor generally must use the next calendar day for which both the LIBOR index and the replacement index are published as the date for selecting indices values in determining whether the APR based on the replacement index is substantially similar to the rate based on the LIBOR index.[88] Revisions to comment 40(f)(3)(ii)-1 as proposed are discussed in more detail below.[89]

This final rule adopts new LIBOR-specific provisions rather than interpreting when the LIBOR indices are unavailable. The Bureau declines to adopt the industry commenters' suggestions to provide further guidance to creditors to assist them in making the determination of whether LIBOR (or another index) is unavailable for purposes of Regulation Z. The Bureau also

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[87] See the section-by-section analysis of § 1026.40(f)(3)(ii)(B) for the rationale for why the Bureau selected the October 18, 2021, date.

[88] As set forth in § 1026.40(f)(3)(ii)(B), one exception is that if the replacement index is the SOFR-based spread-adjusted index recommended by the ARRC for consumer products to replace the 1-month, 3-month, 6-month, or 1-year USD LIBOR index, the creditor must use the index value on June 30, 2023, for the LIBOR index and, for the SOFR-based spread-adjusted index for consumer products, must use the index value on the first date that index is published, in determining whether the APR based on the replacement index is substantially similar to the rate based on the LIBOR index.

[89] Revisions to comments 40(f)(3)(ii)(A)-1 through -3 as proposed are discussed in the section-by-section analysis of § 1026.40(f)(3)(ii)(A). Revisions to comments 40(f)(3)(ii)(B)-1 through -3 as proposed are discussed in the section-by-section analysis of § 1026.40(f)(3)(ii)(B).

declines the consumer group commenters' suggestion to either define "unavailable" or ban the use of LIBOR indices after December 2021 in any consumer credit product, including credit cards, student loans, and mortgages. For several reasons discussed below, the Bureau determines that it is appropriate for this final rule to adopt new LIBOR-specific provisions under § 1026.40(f)(3)(ii)(B), rather than interpreting the LIBOR indices to be unavailable as of a certain date prior to LIBOR being discontinued under current § 1026.40(f)(3)(ii) (as moved to § 1026.40(f)(3)(ii)(A)).

The Bureau recognizes that the ARRC's recommended contractual fallback language for new closed-end, residential ARMs provides triggers for when an index is unavailable under the contract, including when an index administrator or its regulator issues an official public statement that the index is no longer reliable or representative.[90] In March 2021, the FCA (the regulator of LIBOR) issued an official public statement that all USD LIBOR tenors (other than 1-week and 2-month USD LIBOR) will either cease to be provided by any administrator or no longer be representative after June 30, 2023.[91] The FCA also indicated that the FCA does not expect that USD LIBOR tenors (other than 1-week and 2-month USD LIBOR) will become unrepresentative before June 30, 2023.[92] The June 30, 2023 date generally will be applicable to most USD LIBOR tenors used in existing HELOC contracts because the Bureau understands that HELOCs contracts generally do not use the 1-week or 2-month USD LIBOR tenors. Given the June 30, 2023 date for when the FCA will consider most USD LIBOR tenors to be unrepresentative, the Bureau has concluded that it is not advisable to make a determination in this final rule that the LIBOR indices are unavailable or unrepresentative as of the effective date of this final rule (*i.e.*, April 1, 2022) for Regulation Z purposes under current § 1026.40(f)(3)(ii)

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[90] *See* LIBOR Fallback, *supra* note 86.

[91] The FCA stated that the 1-week and 2-month USD LIBOR will either cease to be provided by any administrator or no longer be representative after December 31, 2021. Press Release, Fin. Conduct Auth., *FCA announcement on future cessation and loss of representativeness of the LIBOR benchmarks* (Mar. 05, 2021), https://www.fca.org.uk/publication/documents/future-cessation-loss-representativeness-libor-benchmarks.pdf.

[92] Press Release, Fin. Conduct Auth., *Announcements on the end of LIBOR* (May 03, 2021), https://www.fca.org.uk/news/press-releases/announcements-end-libor.

(as moved to § 1026.40(f)(3)(ii)(A)). For similar reasons, the Bureau is not banning in this final rule use of a LIBOR index after December 2021 under Regulation Z.

The Bureau also is concerned that a determination in this final rule that the LIBOR indices are unavailable as of the effective date of this final rule (*i.e.*, April 1, 2022) for purposes of current § 1026.40(f)(3)(ii) (as moved to § 1026.40(f)(3)(ii)(A)) could have unintended consequences on other products or markets. For example, such a determination could unintentionally cause confusion for creditors for other products (*e.g.*, ARMs) about whether the LIBOR indices are unavailable at this time for those products too and could possibly put pressure on those creditors to replace the LIBOR index used for those products before those creditors are ready for the change.

Moreover, even if the Bureau interpreted unavailability under current § 1026.40(f)(3)(ii) (as moved to § 1026.40(f)(3)(ii)(A)) in this final rule to indicate that the LIBOR indices are unavailable as of the effective date of this final rule (*i.e.*, April 1, 2022) or as of June 30, 2023, (the date after which the FCA will consider most USD LIBOR tenors to be unrepresentative even if the rates are still being published), this interpretation would not completely solve the contractual issues for creditors whose contracts require them to wait until the LIBOR indices become unavailable before replacing the LIBOR index. As discussed below, this final rule does not override contractual provisions that require creditors to wait until LIBOR indices become unavailable for replacing the LIBOR index. Creditors still would need to decide for their specific contracts whether the LIBOR indices are unavailable. Thus, even if the Bureau decided that the LIBOR indices are unavailable under Regulation Z as described above, creditors whose contracts require them to wait until the LIBOR indices become unavailable before replacing the LIBOR index essentially would remain in the same position of interpreting their contracts as they would have been under the current rule.

Thus, this final rule does not interpret when the LIBOR indices are unavailable for purposes of current § 1026.40(f)(3)(ii) (as moved to § 1026.40(f)(3)(ii)(A)).

Interaction among § 1026.40(f)(3)(ii)(A) and (B) and contractual provisions. Comment 40(f)(3)(ii)-1 provides detail on the interaction among the unavailability provisions in § 1026.40(f)(3)(ii)(A), the LIBOR-specific provisions in § 1026.40(f)(3)(ii)(B), and the contractual provisions that apply to a HELOC plan. This final rule adopts comment 40(f)(3)(ii)-1 generally as proposed, with several revisions consistent with the changes this final rule makes to proposed § 1026.40(f)(3)(ii)(B). Specifically, this final rule revises comment 40(f)(3)(ii)-1 from the proposal to reflect that: (1) April 1, 2022, is the date on or after which a creditor may replace a LIBOR index under § 1026.40(f)(3)(ii)(B) if certain conditions are met; (2) October 18, 2021, is the date that creditors generally must use for selecting indices values in determining whether the APRs using the LIBOR index and the replacement index are substantially similar under § 1026.40(f)(3)(ii)(B);[93] and (3) if the replacement index is not published on October 18, 2021, the creditor generally must use the next calendar day for which both the LIBOR index and the replacement index are published as the date for selecting indices values in determining whether the APR based on the replacement index is substantially similar to the rate based on the LIBOR index.[94]

Specifically, comment 40(f)(3)(ii)-1 provides that a creditor may use either the provision in § 1026.40(f)(3)(ii)(A) or § 1026.40(f)(3)(ii)(B) to replace a LIBOR index used under a HELOC plan subject to § 1026.40 so long as the applicable conditions are met for the provision used. This comment makes clear, however, that neither provision excuses the creditor from noncompliance with contractual provisions. The Bureau does not find it appropriate for the provisions in the LIBOR-specific provisions in § 1026.40(f)(3)(ii)(B) to override the consumer's contract with the creditor. TILA section 111(d) provides that, subject to certain exceptions,

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[93] See the section-by-section analysis of § 1026.40(f)(3)(ii)(B) for the rationale for why the Bureau selected the October 18, 2021, date.

[94] The one exception is that if the replacement index is the SOFR-based spread-adjusted index recommended by the ARRC for consumer products to replace the 1-month, 3-month, 6-month, or 1-year USD LIBOR index, the creditor must use the index value on June 30, 2023, for the LIBOR index and, for the SOFR-based spread-adjusted index for consumer products, must use the index value on the first date that index is published, in determining whether the APR based on the replacement index is substantially similar to the rate based on the LIBOR index.

TILA and Regulation Z do not affect the validity or enforceability of any contract or obligation under State or Federal law.[95] Further, § 1026.28(a) generally provides that provisions of State law that are inconsistent with certain TILA provisions and the implementing Regulation Z provisions are preempted to the extent of the inconsistency.[96] A State law is inconsistent if it requires a creditor to make disclosures or take actions that contradict the requirements of the Federal law. The Bureau believes that contractual provisions that require a creditor to wait to replace a LIBOR index used under the plan until LIBOR is unavailable are not inconsistent with § 1026.40(f)(3)(ii)(B) and do not require a creditor to take action that contradicts Regulation Z. Section 1026.40(f)(3)(ii)(B) permits a creditor to replace a LIBOR index used under a HELOC plan and adjust the margin on or after April 1, 2022, if certain conditions are met but does not require the creditor to do so. If a creditor's contract with the consumer requires the creditor to wait until the LIBOR index is unavailable before replacing the index, the creditor can still comply with the contract without violating Regulation Z. Thus, the Bureau believes that these contractual provisions are not inconsistent with, and should not be preempted by, § 1026.40(f)(3)(ii)(B).

To facilitate compliance, comment 40(f)(3)(ii)-1 also provides examples of the interaction among the unavailability provisions in § 1026.40(f)(3)(ii)(A), the LIBOR-specific provisions in § 1026.40(f)(3)(ii)(B), and three types of contractual provisions for HELOCs. Each of these examples assumes that the LIBOR index used under the plan becomes unavailable after June 30, 2023. Specifically, comment 40(f)(3)(ii)-1.i provides an example where a HELOC contract provides that a creditor may not replace an index unilaterally under a plan unless the original index becomes unavailable and provides that the replacement index and replacement margin will result in an APR substantially similar to a rate that is in effect when the original

[95] 15 U.S.C. 1610(d).

[96] Section 1026.28 generally provides that State law requirements that are inconsistent with the requirements contained in chapter 1 (General Provisions), chapter 2 (Credit Transactions), or chapter 3 (Credit Advertising) of TILA and the implementing Regulation Z provisions are preempted to the extent of the inconsistency.

index becomes unavailable. In this case, comment 40(f)(3)(ii)-1.i explains that the creditor may use the unavailability provisions in § 1026.40(f)(3)(ii)(A) to replace the LIBOR index used under the plan so long as the conditions of that provision are met. Comment 40(f)(3)(ii)-1.i also explains that the LIBOR-specific provisions in § 1026.40(f)(3)(ii)(B) generally provide that a creditor may replace the LIBOR index if the replacement index value in effect on October 18, 2021, and the replacement margin will produce an APR substantially similar to the rate calculated using the LIBOR index value in effect on October 18, 2021, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. If the replacement index is not published on October 18, 2021, the creditor generally must use the next calendar day for which both the LIBOR index and the replacement index are published as the date for selecting indices values in determining whether the APR based on the replacement index is substantially similar to the rate based on the LIBOR index. The one exception is that if the replacement index is the SOFR-based spread-adjusted index recommended by the ARRC for consumer products to replace the 1-month, 3-month, 6-month, or 1-year USD LIBOR index, the creditor must use the index value on June 30, 2023, for the LIBOR index and, for the SOFR-based spread-adjusted index for consumer products, must use the index value on the first date that index is published, in determining whether the APR based on the replacement index is substantially similar to the rate based on the LIBOR index. Comment 40(f)(3)(ii)-1.i notes, however, that the creditor in this example would be contractually prohibited from replacing the LIBOR index used under the plan unless the replacement index and replacement margin also will produce an APR substantially similar to a rate that is in effect when the LIBOR index becomes unavailable.

Comment 40(f)(3)(ii)-1.ii provides an example of a HELOC contract under which a creditor may not replace an index unilaterally under a plan unless the original index becomes unavailable but does not require that the replacement index and replacement margin will result in an APR substantially similar to a rate that is in effect when the original index becomes

unavailable. In this case, the creditor would be contractually prohibited from unilaterally replacing a LIBOR index used under the plan until it becomes unavailable. At that time, the creditor has the option of using § 1026.40(f)(3)(ii)(A) or § 1026.40(f)(3)(ii)(B) to replace the LIBOR index if the conditions of the applicable provision are met.

This final rule allows the creditor in this case to use either the unavailability provisions in § 1026.40(f)(3)(ii)(A) or the LIBOR-specific provisions in § 1026.40(f)(3)(ii)(B). If the creditor uses the unavailability provisions in § 1026.40(f)(3)(ii)(A), the creditor must use a replacement index and replacement margin that will produce an APR substantially similar to the rate in effect when the LIBOR index became unavailable. If the creditor uses the LIBOR-specific provisions in § 1026.40(f)(3)(ii)(B), the creditor generally must use the replacement index value in effect on October 18, 2021, and the replacement margin that will produce an APR substantially similar to the rate calculated using the LIBOR index value in effect on October 18, 2021, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. If the replacement index is not published on October 18, 2021, the creditor generally must use the next calendar day for which both the LIBOR index and the replacement index are published as the date for selecting indices values in determining whether the APR based on the replacement index is substantially similar to the rate based on the LIBOR index.[97]

Provided that the replacement index is published on October 18, 2021, this final rule allows a creditor in this case to use the index values of the LIBOR index and replacement index on October 18, 2021, under § 1026.40(f)(3)(ii)(B) to meet the "substantially similar" standard with respect to the comparison of the rates even if the creditor is contractually prohibited from unilaterally replacing the LIBOR index used under the plan until it becomes unavailable. The Bureau recognizes that LIBOR may not be discontinued until June 30, 2023, which is more than

[97] The one exception is that if the replacement index is the SOFR-based spread-adjusted index recommended by the ARRC for consumer products to replace the 1-month, 3-month, 6-month, or 1-year USD LIBOR index, the creditor must use the index value on June 30, 2023, for the LIBOR index and, for the SOFR-based spread-adjusted index for consumer products, must use the index value on the first date that index is published, in determining whether the APR based on the replacement index is substantially similar to the rate based on the LIBOR index.

a year and a half later than the October 18, 2021, date.[98] Nonetheless, this final rule allows creditors that are restricted by their contracts to replace the LIBOR index used under the HELOC plans until the LIBOR index becomes unavailable to use generally the LIBOR index values and the replacement index values in effect on October 18, 2021, (provided the replacement index is published on that day), under § 1026.40(f)(3)(ii)(B), rather than the index values on the day that LIBOR becomes unavailable under § 1026.40(f)(3)(ii)(A). This final rule allows those creditors to use consistent index values to those creditors that are not restricted by their contracts in replacing the LIBOR index prior to LIBOR becoming unavailable. This final rule promotes consistency for consumers in that these HELOC creditors would be permitted to use the same LIBOR values in comparing the rates.

Thus, this final rule provides creditors in the situation described in comment 40(f)(3)(ii)-1.ii with the flexibility to choose to compare the rates using the index values for the LIBOR index and the replacement index on October 18, 2021, (provided the replacement index is published on that day), by using the proposed LIBOR-specific provisions under § 1026.40(f)(3)(ii)(B), rather than using the unavailability provisions in § 1026.40(f)(3)(ii)(A).

Comment 40(f)(3)(ii)-1.iii provides an example of a HELOC contract under which a creditor may change the terms of the contract (including the index) as permitted by law. Comment 40(f)(3)(ii)-1.iii explains in this case, if the creditor replaces a LIBOR index under a plan on or after April 1, 2022, but does not wait until the LIBOR index becomes unavailable to do so, the creditor may only use § 1026.40(f)(3)(ii)(B) to replace the LIBOR index if the conditions of that provision are met. In this case, the creditor may not use § 1026.40(f)(3)(ii)(A). Comment 40(f)(3)(ii)-1.iii also explains that if the creditor waits until the LIBOR index used under the plan becomes unavailable to replace the LIBOR index, the creditor has the option of

[98] See the section-by-section analysis of § 1026.40(f)(3)(ii)(B) for the rationale for why the Bureau selected the October 18, 2021, date.

using § 1026.40(f)(3)(ii)(A) or § 1026.40(f)(3)(ii)(B) to replace the LIBOR index if the conditions of the applicable provision are met.

This final rule allows the creditor in this case to use either the unavailability provisions in § 1026.40(f)(3)(ii)(A) or the LIBOR-specific provisions in § 1026.40(f)(3)(ii)(B) if the creditor waits until the LIBOR index used under the plan becomes unavailable to replace the LIBOR index. For the reasons explained above in the discussion of the example in comment 40(f)(3)(ii)-1.ii, this final rule in the situation described in comment 40(f)(3)(ii)-1.iii provides creditors with the flexibility to choose to use the index values of the LIBOR index and the replacement index on October 18, 2021 (provided the replacement index is published on that day), by using the LIBOR-specific provisions under § 1026.40(f)(3)(ii)(B), rather than using the unavailability provisions in § 1026.40(f)(3)(ii)(A).

40(f)(3)(ii)(A)

Current § 1026.40(f)(3)(ii) provides that a creditor may change the index and margin used under a HELOC plan subject to § 1026.40 if the original index is no longer available, the new index has a historical movement substantially similar to that of the original index, and the new index and margin would have resulted in an APR substantially similar to the rate in effect at the time the original index became unavailable. Current comment 40(f)(3)(ii)-1 provides that a creditor may change the index and margin used under the plan if the original index becomes unavailable, as long as historical fluctuations in the original and replacement indices were substantially similar, and as long as the replacement index and margin will produce a rate similar to the rate that was in effect at the time the original index became unavailable. Current comment 40(f)(3)(ii)-1 also provides that if the replacement index is newly established and therefore does not have any rate history, it may be used if it produces a rate substantially similar to the rate in effect when the original index became unavailable.

The Bureau's Proposal

The Bureau proposed to move the unavailability provisions in current § 1026.40(f)(3)(ii) and current comment 40(f)(3)(ii)-1 to proposed § 1026.40(f)(3)(ii)(A) and proposed comment 40(f)(3)(ii)(A)-1 respectively and revise the moved provisions for clarity and consistency. In addition, the Bureau proposed to add detail in proposed comments 40(f)(3)(ii)(A)-2 and -3 on the conditions set forth in proposed § 1026.40(f)(3)(ii)(A).

Specifically, proposed § 1026.40(f)(3)(ii)(A) provided that a creditor for a HELOC plan subject to § 1026.40 may change the index and margin used under the plan if the original index is no longer available, the replacement index has historical fluctuations substantially similar to that of the original index, and the replacement index and replacement margin would have resulted in an APR substantially similar to the rate in effect at the time the original index became unavailable. Proposed § 1020.40(f)(3)(ii)(A) also provided that if the replacement index is newly established and therefore does not have any rate history, it may be used if it and the replacement margin will produce an APR substantially similar to the rate in effect when the original index became unavailable.

Proposed § 1026.40(f)(3)(ii)(A) differed from current § 1026.40(f)(3)(ii) in three ways. First, proposed § 1026.40(f)(3)(ii)(A) differed from current § 1040(f)(3)(ii) by using the term "historical fluctuations" rather than the term "historical movement" to refer to the original index and the replacement index. For clarity and consistency, the Bureau proposed to use "historical fluctuations" in both proposed § 1026.40(f)(3)(ii)(A) and proposed comment 40(f)(3)(ii)(A)-1, so that the proposed regulatory text and related commentary use the same term.

Second, proposed § 1026.40(f)(3)(ii)(A) differed from current § 1026.40(f)(3)(ii) by including a provision regarding newly established indices that is not contained in current § 1026.40(f)(3)(ii). This proposed provision would have been similar to the sentence in current comment 40(f)(3)(ii)-1 on newly established indices except that the proposed provision in proposed § 1026.40(f)(3)(ii)(A) made clear that a creditor that is using a newly established index

also may adjust the margin so that the newly established index and replacement margin will produce an APR substantially similar to the rate in effect when the original index became unavailable. The newly established index may not have the same index value as the original index, and the creditor may need to adjust the margin to meet the condition that the newly established index and replacement margin will produce an APR substantially similar to the rate in effect when the original index became unavailable.

Third, proposed § 1026.40(f)(3)(ii)(A) differed from current § 1026.40(f)(3)(ii) by using the terms "replacement index" and "replacement index and replacement margin" instead of using "new index" and "new index and margin," respectively as contained in current § 1026.40(f)(3)(ii). These proposed changes were designed to avoid any confusion as to when the provision in proposed § 1026.40(f)(3)(ii)(A) is referring to a replacement index and replacement margin as opposed to a newly established index.

The Bureau proposed to move current comment 40(f)(3)(ii)-1 to proposed comment 40(f)(3)(ii)(A)-1. The Bureau also proposed to revise this proposed moved comment in three ways for clarity and consistency with proposed § 1026.40(f)(3)(ii)(A). First, proposed comment 40(f)(3)(ii)(A)-1 differed from current comment 40(f)(3)(ii)-1 by providing that if an index that is not newly established is used to replace the original index, the replacement index and replacement margin will produce a rate "substantially similar" to the rate that was in effect at the time the original index became unavailable. Current comment 40(f)(3)(ii)-1 uses the term "similar" instead of "substantially similar" for the comparison of these rates. Nonetheless, this use of the term "similar" in current comment 40(f)(3)(ii)-1 is inconsistent with the use of "substantially similar" in current § 1026.40(f)(3)(ii) for the comparison of these rates. To correct this inconsistency between the regulation text and the commentary provision that interprets it, the Bureau proposed to use "substantially similar" consistently in proposed § 1026.40(f)(3)(ii)(A) and proposed comment 40(f)(3)(ii)(A)-1 for the comparison of these rates.

Second, consistent with the proposed new sentence in proposed § 1026.40(f)(3)(ii)(A) related to newly established indices, proposed comment 40(f)(3)(ii)(A)-1 differed from current comment 40(f)(3)(ii)-1 by clarifying that a creditor that is using a newly established index may also adjust the margin so that the newly established index and replacement margin will produce an APR substantially similar to the rate in effect when the original index became unavailable.

Third, proposed comment 40(f)(3)(ii)(A)-1 differed from current comment 40(f)(3)(ii)-1 by using the term "the replacement index and replacement margin" instead of "the replacement index and margin" to make clear when the proposed comment is referring to a replacement margin and not the original margin.

Proposed comment 40(f)(3)(ii)(A)-2 provided detail on determining whether a replacement index that is not newly established has historical fluctuations that are substantially similar to those of the LIBOR index used under the plan for purposes of proposed § 1026.40(f)(3)(ii)(A). Specifically, proposed comment 40(f)(3)(ii)(A)-2 provided that for purposes of replacing a LIBOR index used under a plan pursuant to proposed § 1026.40(f)(3)(ii)(A), a replacement index that is not newly established must have historical fluctuations that are substantially similar to those of the LIBOR index used under the plan, considering the historical fluctuations up through when the LIBOR index becomes unavailable or up through the date indicated in a Bureau determination that the replacement index and the LIBOR index have historical fluctuations that are substantially similar, whichever is earlier. To reduce uncertainty with respect to selecting a replacement index that meets the standards under proposed § 1026.40(f)(3)(ii)(A), the Bureau proposed in proposed comment 40(f)(3)(ii)(A)-2.i to determine that Prime is an example of an index that has historical fluctuations that are substantially similar to those of the 1-month and 3-month USD LIBOR indices. Proposed comment 40(f)(3)(ii)(A)-2.i also provided that in order to use Prime as the replacement index for the 1-month or 3-month USD LIBOR index, the creditor also must comply with the condition in § 1026.40(f)(3)(ii)(A) that Prime and the replacement margin would have resulted in an APR

substantially similar to the rate in effect at the time the LIBOR index became unavailable. The Bureau also proposed in proposed comment 40(f)(3)(ii)(A)-2.ii to determine that the SOFR-based spread-adjusted indices recommended by the ARRC for consumer products to replace the 1-month, 3-month, 6-month, or 1-year USD LIBOR indices have historical fluctuations that are substantially similar to those of the LIBOR indices that they are intended to replace. Proposed comment 40(f)(3)(ii)(A)-2.ii also provided that in order to use a SOFR-based spread-adjusted index for consumer products described above as the replacement index for the applicable LIBOR index, the creditor also must comply with the condition in § 1026.40(f)(3)(ii)(A) that the SOFR-based spread-adjusted index recommended by the ARRC for consumer products and replacement margin would have resulted in an APR substantially similar to the rate in effect at the time the LIBOR index became unavailable.

As discussed above, proposed § 1026.40(f)(3)(ii)(A) provided that the replacement index and replacement margin must produce an APR substantially similar to the rate that was in effect based on the LIBOR index used under the plan when the LIBOR index became unavailable. Proposed comment 40(f)(3)(ii)(A)-3 also provided that for the comparison of the rates, a creditor must use the value of the replacement index and the LIBOR index on the day that the LIBOR index becomes unavailable. Proposed comment 40(f)(3)(ii)(A)-3 also provided that the replacement index and replacement margin are not required to produce an APR that is substantially similar on the day that the replacement index and replacement margin become effective on the plan. Proposed comment 40(f)(3)(ii)(A)-3.i provided an example to illustrate this comment.

Comments Received

In response to the proposal, the industry commenters generally provided the same comments for both proposed § 1026.40(f)(3)(ii) for HELOCs and § 1026.55(b)(7) for credit card accounts under an open-end (not home-secured) consumer credit plan. Similarly, the consumer group commenters also provided the same comments for both proposed § 1026.40(f)(3)(ii) for

HELOCs and § 1026.55(b)(7) for credit card accounts under an open-end (not home-secured) consumer credit plan. These comments from industry and consumer groups are described in the section-by-section analysis of § 1026.40(f)(3)(ii).

The Final Rule

This final rule adopts § 1026.40(f)(3)(ii)(A) and comment 40(f)(3)(ii)(A)-1 as proposed. This final rule adopts comments 40(f)(3)(ii)(A)-2 and -3 generally as proposed with several revisions to provide additional detail on the § 1026.40(f)(3)(ii)(A) provision, including providing (1) examples of the type of factors to be considered in whether a replacement index meets the Regulation Z "historical fluctuations are substantially similar" standard with respect to a particular LIBOR index for HELOCs; and (2) if a creditor uses the SOFR-based spread-adjusted index recommended by ARRC for consumer products to replace the 1-month, 3-month, or 6-month USD LIBOR index as the replacement index and uses as the replacement margin the same margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan, the creditor will be deemed to be in compliance with the condition in § 1026.40(f)(3)(ii)(A) that the replacement index and replacement margin would have resulted in an APR substantially similar to the rate in effect at the time the LIBOR index became unavailable. This final rule provides additional detail with respect to the unavailability provisions in § 1026.40(f)(3)(ii)(A) because the Bureau understands that some HELOC creditors may use these unavailability provisions to replace a LIBOR index used under a HELOC plan, depending on the contractual provisions applicable to their HELOC plans, as discussed above in more detail in the section-by-section analysis of § 1026.40(f)(3)(ii).

Historical fluctuations substantially similar for the LIBOR index and replacement index. This final rule adopts comment 40(f)(3)(ii)(A)-2 generally as proposed with several revisions as described below. Comment 40(f)(3)(ii)(A)-2 provides detail on determining whether a replacement index that is not newly established has historical fluctuations that are substantially similar to those of the LIBOR index used under the plan for purposes of § 1026.40(f)(3)(ii)(A).

Comment 40(f)(3)(ii)(A)-2 provides that for purposes of replacing a LIBOR index used under a plan pursuant to § 1026.40(f)(3)(ii)(A), a replacement index that is not newly established must have historical fluctuations that are substantially similar to those of the LIBOR index used under the plan, considering the historical fluctuations up through when the LIBOR index becomes unavailable or up through the date indicated in a Bureau determination that the replacement index and the LIBOR index have historical fluctuations that are substantially similar, whichever is earlier.

Prime has historical fluctuations that are substantially similar to those of certain USD LIBOR indices. To facilitate compliance, this final rule adopts comment 40(f)(3)(ii)(A)-2.i generally as proposed with one revision described below. Comment 40(f)(3)(ii)(A)-2.i provides a determination that Prime has historical fluctuations that are substantially similar to those of the 1-month and 3-month USD LIBOR indices. This final rule revises comment 40(f)(3)(ii)(A)-2.i from the proposal to provide that this determination is effective as of April 1, 2022, which is when this final rule becomes effective as discussed in more detail in part VI.

The Bureau made this determination after reviewing historical data from January 1986 through October 18, 2021, on 1-month USD LIBOR, 3-month USD LIBOR, and Prime. The spread between 1-month USD LIBOR and Prime increased from roughly 142 basis points in 1986 to 281 basis points in 1993. The spread between 3-month USD LIBOR increased from roughly 151 basis points in 1986 to 270 basis points in 1993. Both spreads were fairly steady after 1993. Given that for the last 28 years of history the spreads have remained relatively stable, the data, analysis, and conclusion discussed below are restricted to the period beginning in 1993.

While Prime has not always moved in tandem with 1-month USD LIBOR and 3-month USD LIBOR after 1993, the Bureau has determined that since 1993 the historical fluctuations in

1-month USD LIBOR and Prime have been substantially similar and that the historical fluctuations in 3-month USD LIBOR and Prime have been substantially similar.[99]

The historical correlation between 1-month USD LIBOR and Prime is .9957. The historical correlation between 3-month USD LIBOR and Prime is .9918. While the correlation between these rates is quite high, correlation is not the only statistical measure of similarity that may be relevant for comparing the historical fluctuations of these rates.[100] The Bureau has reviewed other statistical characteristics of these rates, such as the variance, skewness, and kurtosis,[101] and these characteristics imply that on average both the 1-month USD LIBOR and 3-month USD LIBOR tend to move closely with Prime and that the 1-month USD LIBOR and 3-month USD LIBOR tend to present consumers and creditors with payment changes that are similar to that presented by Prime.[102]

Theoretically, these statistical measures could mask important long-term differences in movements. However, as mentioned above, the spread between 1-month USD LIBOR and Prime and the spread between 3-month USD LIBOR and Prime have remained fairly steady from January 1993 to October 18, 2021. For example, the average spread between 1-month USD LIBOR and Prime was 281 basis points in 1993, and 303 basis points in 2020. The average spread between 3-month USD LIBOR and Prime was 270 basis points in 1993, and 289 basis points in 2020.

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[99] There was a temporary but large difference in the movements of LIBOR rates and Prime for roughly a month after Lehman Brothers filed for bankruptcy on September 15, 2008, reflecting the effects this event had on the perception of risk in the interbank lending market. For example, 1-month USD LIBOR increased over 200 basis points in the month after September 15, 2008, even as Prime and many other interest rates fell. The numbers presented in this analysis include this time period.

[100] For example, consider two wagers on a series of coin flips. The first wins one cent for every heads and loses one cent for every tails. The second wins a million dollars for every heads and loses a million dollars for every tails. These wagers are perfectly correlated (*i.e.,* they have a correlation of 1) but have very different statistical properties.

[101] Roughly, variance is a statistical measure of how much a random number tends to deviate from its average value. Skewness is a statistical measure of whether particularly large deviations in a random number from its average value tend to be below or above that average value. Kurtosis is a statistical measure of whether deviations of a random number from its average value tend to be small and frequent or rare and large.

[102] The variance, skewness, and kurtosis of Prime are 4.592, .4037, and 1.587 respectively. The variance, skewness, and kurtosis of 1-month USD LIBOR are 4.9567, .3622, and 1.5617 respectively. The variance, skewness, and kurtosis of 3-month USD LIBOR are 4.8725, .3487, and 1.5674, respectively.

Finally, in performing its analysis, the Bureau also considered the impact different indices would have on consumer payments. To that end, the Bureau considered a specific example of a debt with a variable rate that resets monthly, and a balance that accumulates over time with interest but without further charges, payments, or fees. The Bureau used this example for HELOCs and credit card accounts because the Bureau understands that the rates for many of those accounts reset monthly. The example considers debt that accumulates interest over a period of ten years. The Bureau considered the consumer payments incurred by such debt over 17 distinct time periods; each time period begins in January of each year from 1994 to 2009 and then lasts for ten years, so the 17 time periods end between 2004 and 2020. For this example, the Bureau found that since 1994 historical fluctuations in 1-month USD LIBOR and Prime, and 3-month USD LIBOR and Prime, produced substantially similar payment outcomes for consumers with debt similar to that considered.[103] For example, if the initial balance in this example is $10,000, after ten years the debt outstanding under Prime is on average only about $102 greater than the debt outstanding under adjusted 1-month USD LIBOR. The Bureau also found similar results for Prime versus the adjusted 3-month USD LIBOR.

This final rule adopts comment 40(f)(3)(ii)(A)-2.i as proposed to clarify that in order to use Prime as the replacement index for the 1-month or 3-month USD LIBOR index, the creditor also must comply with the condition in § 1026.40(f)(3)(ii)(A) that Prime and the replacement

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[103] In this example, for each starting year, three versions of debt are considered: (1) one with an interest rate equal to Prime; (2) one with an interest rate equal to the 1-month USD LIBOR plus the average spread between 1-month USD LIBOR and Prime for the 12 months preceding the start date; and (3) one with an interest rate equal to 3-month USD LIBOR plus the average spread between 3-month USD LIBOR and Prime for the 12 months preceding the start date. For the 17 initial starting years considered, the average difference between the debt outstanding under Prime and the debt outstanding under the adjusted 1-month USD LIBOR after ten years is only around 1.02 percent of the initial balance. The average absolute value of the difference in debt outstanding is around 1.6 percent of the initial balance. For the adjusted 3-month USD LIBOR, the average of the difference is around .99 percent of the initial balance, and the average of the absolute value of the difference is around 2.7 percent of the initial balance.

The average difference can be small if the difference is often far from zero, as long as it is sometimes well above zero and it is sometimes well below zero. The absolute value of the difference will be small only if the difference is usually close to zero. For example, suppose the difference is $1 million one year and -$1 million the next year. The average difference these two years is zero, indicating that the difference is close to zero on average. But the average of the absolute value of the difference is $1 million, indicating that the difference is typically far from zero. Consumers and creditors should care more about the average difference, and less about the average of the absolute value of the difference, if they have more liquidity and risk tolerance.

margin would have resulted in an APR substantially similar to the rate in effect at the time the LIBOR index became unavailable. This condition for comparing the rates under § 1026.40(f)(3)(ii)(A) is discussed in more detail below.

Certain SOFR-based spread-adjusted indices recommended by the ARRC for consumer products have historical fluctuations that are substantially similar to those of certain USD LIBOR indices. To facilitate compliance, this final rule adopts comment 40(f)(3)(ii)(A)-2.ii generally as proposed with two revisions as discussed below. Comment 40(f)(3)(ii)(A)-2.ii provides a determination that the SOFR-based spread-adjusted indices recommended by the ARRC for consumer products to replace the 1-month, 3-month, or 6-month USD LIBOR indices have historical fluctuations that are substantially similar to those of the 1-month, 3-month, or 6-month USD LIBOR indices respectively. This final rule revises comment 40(f)(3)(ii)(A)-2.ii from the proposal to provide that this determination is effective as of April 1, 2022, when this final rule becomes effective as discussed in more detail in part VI. As discussed in more detail below, this final rule also revises comment 40(f)(3)(ii)(A)-2.ii from the proposal to not include 1-year USD LIBOR in the comment at this time pending the Bureau's receipt of additional information and further consideration by the Bureau.

As discussed in the section-by-section analysis of § 1026.20(a), on July 29, 2021, the ARRC formally recommended the 1-month, 3-month, and 6-month term spread-adjusted SOFR rates produced by the CME Group as the underlying SOFR rates for use in replacing the 1-month, 3-month, and 6-month USD LIBOR tenors respectively for existing accounts. On October 6, 2021, with regards to consumer products, the ARRC indicated that for 1-year USD LIBOR, the ARRC's recommended replacement index will be to a spread-adjusted index based on the 1-year term SOFR rate or to a spread-adjusted index based on the 6-month term SOFR rate using the same spread adjustment it would have for arriving at the replacement index based on the 1-

year term SOFR rate.[104] The ARRC indicated that it will make a recommendation on the spread-adjusted index to replace 1-year USD LIBOR and all other remaining details of its recommended replacement indices for consumer products no later than one year before the date when 1-year USD LIBOR is expected to cease (*i.e.*, by June 30, 2022).[105] The Bureau is reserving judgment about whether to include a reference to the 1-year USD LIBOR index in comment 40(f)(3)(ii)(A)-2.ii. until it obtains additional information. Once the Bureau knows which SOFR-based spread-adjusted index the ARRC will recommend for consumer products to replace the 1-year USD LIBOR index, the Bureau may determine whether that index meets the "historical fluctuations are substantially similar" standard based on information available at that time. Assuming the Bureau determines that the index meets that standard, the Bureau will then consider whether to codify that determination by finalizing the proposed comment related to the 1-year USD LIBOR index in a supplemental final rule, or otherwise announce that determination.

With respect to this final rule, while the spread-adjusted term SOFR rates have not always moved in tandem with LIBOR, the Bureau has determined that: (1) the historical fluctuations of 6-month USD LIBOR are substantially similar to those of the 6-month spread-adjusted term SOFR rates; (2) the historical fluctuations of 3-month USD LIBOR are substantially similar to those of 3-month spread-adjusted term SOFR rates; and (3) the historical fluctuations of 1-month USD LIBOR are substantially similar to those of the 1-month spread-adjusted term SOFR rates.[106]

Statistics that have led the Bureau to make these determinations are in Tables 2 and 3.

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[104] Summary of Fallback Recommendations, *supra* note 5, at 10.

[105] *Id*.

[106] Because the spread adjustments are static (except for the one-year transition period), they do not affect the historical fluctuations in the spread-adjusted term SOFR rates, nor do they affect any of the statistics studied in Tables 2 or 3.

Table 2: Correlations Between LIBOR and Spread-Adjusted Term SOFR Rates[107]

USD LIBOR tenor	1-month SOFR	3-month-SOFR	6-month SOFR
1-month	.9917	N/A	N/A
3-month	N/A	.9826	N/A
6-month	N/A	N/A	.9861

The historical correlations presented in Table 2 are high, suggesting that the given spread-adjusted term SOFR rates tend to move closely with the given LIBOR tenors.

Table 3: Statistics on USD LIBOR and Spread-Adjusted Term SOFR Rates[108]

Rate	Variance	Skewness	Kurtosis
1-month LIBOR	1.0349	-0.0023	1.1702
3-month LIBOR	1.11	-0.0146	1.2074
6-month LIBOR	1.147	0.0403	1.2548
1-month SOFR	1.0788	0.0605	1.1596
3-month SOFR	1.0696	0.0706	1.1645
6-month SOFR	1.0723	0.1042	1.1939

The Bureau has reviewed other statistical characteristics of the LIBOR rates and the spread-adjusted term SOFR rates, such as the variance, skewness, and kurtosis, as shown in Table 3 and these imply that the spread-adjusted term SOFR rates tend to present consumers and creditors with payment changes that are similar to that presented by the LIBOR rates.

As discussed in the section-by-section analysis of § 1026.20(a), the ARRC and the Bureau also have compared the rate history that is available for SOFR (to calculate compounded

[107] These correlations are for the period beginning June 11, 2018, the first date for which indicative term SOFR rate data are available. These correlations are not directly comparable to those in Table 4, which uses data beginning August 22, 2014, the first date for which data for 30-day SOFR are available.

[108] Table 3 does not report a balance difference as Table 4 does because data on the term SOFR rates are not available for a sufficiently long period.

averages) with the rate history for the applicable LIBOR indices.[109] In particular, the Bureau analyzed the spread-adjusted indices based on the 30-day SOFR. In determining whether the SOFR-based spread-adjusted indices have historical fluctuations substantially similar to those of the applicable LIBOR indices, the Bureau has reviewed the historical data on SOFR and historical data on 1-month, 3-month, and 6-month USD LIBOR from August 22, 2014, to October 18, 2021.[110] The Bureau calculated the spread-adjusted 30-day SOFR rates by adding the long-term values of the spread-adjustments set forth in Table 1 contained in the section-by-section analysis of § 1026.20(a) to the historical data on 30-day SOFR.

As discussed in more detail below, the Bureau also has determined that the historical fluctuations in the spread-adjusted 30-day SOFR are substantially similar to those of 1-month, 3-month, and 6-month USD LIBOR. The Bureau has reviewed the correlation and other statistical characteristics of these rates, such as the variance, skewness, and kurtosis (all reported in Table 4), and these imply that spread-adjusted 30-day SOFR tends to present consumers and creditors with payment changes that are similar to 1-month, 3-month, and 6-month USD LIBOR.[111]

Finally, in performing this analysis, the Bureau also considered the impact different indices would have on consumer payments. To that end, the Bureau considered a specific example of a debt with a variable rate that resets monthly, and a balance that accumulates over time with interest but without further charges, payments, or fees. The Bureau used this example for HELOCs and credit card accounts because the Bureau understands that the rates for many of

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[109] *See* Historical SOFR, *supra* note 62.

[110] Prior to the start of official publication of SOFR in 2018, the New York Fed released data from August 2014 to March 2018 representing modeled, pre-production estimates of SOFR that are based on the same basic underlying transaction data and methodology that now underlie the official publication. The New York Fed has published indicative SOFR averages going back only to May 2, 2018. *See* Fed. Rsrv. Bank of N.Y., *SOFR Averages and Index Data*, https://apps.newyorkfed.org/markets/autorates/sofr-avg-ind. Therefore, the Bureau has used the estimated SOFR data going back to 2014 to estimate its own 30-day compound average of SOFR since 2014. The methodology to calculate compound averages of SOFR from daily data is described in Fed. Rsrv. Bank of N.Y., *Statement Regarding Publication of SOFR Averages and a SOFR Index*, (Feb. 12, 2020) https://www.newyorkfed.org/markets/opolicy/operating_policy_200212.

[111] Although generally spread-adjusted 30-day SOFR tends to move quite closely with 1-month, 3-month, and 6-month LIBOR, it does so with a lag because 30-day SOFR is backwards looking whereas the LIBOR rates are forward-looking. *See supra* note 65.

those accounts reset monthly. The example considers debt that accumulates interest over the period of five years, beginning in January of 2016 and ending in January 2021. In this analysis, the Bureau used 30-day SOFR instead of the spread-adjusted 30-day SOFR.[112] For this example, the Bureau found historical fluctuations in 30-day SOFR and 1-month, 3-month, and 6-month USD LIBOR produced substantially similar payment outcomes for consumers with debt similar to that considered. For example, if the initial balance in this example is $10,000, the debt outstanding after five years under 30-day SOFR is $48 less than the debt outstanding under 6-month USD LIBOR.

Table 4: Comparison of Historical Fluctuations in Different Tenors of USD LIBOR and 30-day SOFR[113]

Rate	Correlation with 30-day SOFR	Variance	Skewness	Kurtosis	5-Year Balance Difference
30-day SOFR	N/A	0.7154	0.7218	2.0014	N/A
1-month LIBOR	.9868	0.7112	0.5843	1.7971	$26
3-month LIBOR	.9709	0.7638	0.5152	1.7902	$62
6-month LIBOR	.9412	0.7566	0.386	1.8155	$48

The Bureau notes that the SOFR-based spread-adjusted indices recommended by the ARRC for consumer products are not yet being published and will not be published by April 1, 2022, the effective date of this final rule. Nonetheless, the Bureau believes that it is appropriate to consider the underlying SOFR data that is available in the determinations that the SOFR-based

[112] The goal of this exercise is to try to determine if spread-adjusted 30-day SOFR and 1-month, 3-month, and 6-month USD LIBOR are likely to produce similar payments for consumers in the future. The spread adjustment for SOFR will not precisely align spread-adjusted SOFR and 1-month, 3-month, and 6-month USD LIBOR in the future, but it was calculated by the ARRC specifically to align spread-adjusted SOFR and 1-month, 3-month, and 6-month USD LIBOR in the past which is clearly when our data is from. Thus, using the spread adjustment calculated by the ARRC in this exercise could artificially minimize differences between 30-day SOFR and 1-month, 3-month, and 6-month USD LIBOR. Therefore, we calculate our own spread adjustment for this exercise as the average spread between 30-day SOFR and each of the LIBOR tenors for the 12 months preceding January 2016.

[113] The data in Table 4 generally are calculated using the spread-adjusted 30-day SOFR, except that the 5-year balance differences are calculated using 30-day SOFR rather than the spread-adjusted 30-day SOFR. *See id.*

spread-adjusted indices recommended by the ARRC for consumer products to replace the 1-month, 3-month, or 6-month USD LIBOR indices have historical fluctuations that are substantially similar to those of the 1-month, 3-month, or 6-month USD LIBOR indices respectively.

Comment 40(f)(3)(ii)(A)-2.ii clarifies that in order to use a SOFR-based spread-adjusted index recommended by the ARRC for consumer products described above as the replacement index for the applicable LIBOR index, the creditor also must comply with the condition in § 1026.40(f)(3)(ii)(A) that the SOFR-based spread-adjusted index recommended by the ARRC for consumer products and replacement margin would have resulted in an APR substantially similar to the rate in effect at the time the LIBOR index became unavailable. Nonetheless, for the reasons discussed below, this final rule revises comment 40(f)(3)(ii)(A)-3 from the proposal to provide that for purposes of § 1026.40(f)(3)(ii)(A), if a creditor uses the SOFR-based spread-adjusted index recommended by the ARRC for consumer products to replace the 1-month, 3-month, or 6-month USD LIBOR index as the replacement index and uses as the replacement margin the same margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan, the creditor will be deemed to be in compliance with the condition in § 1026.40(f)(3)(ii)(A) that the replacement index and replacement margin would have resulted in an APR substantially similar to the rate in effect at the time the LIBOR index became unavailable. Thus, a creditor that uses the SOFR-based spread-adjusted index recommended by the ARRC for consumer products to replace the 1-month, 3-month, or 6-month USD LIBOR index as the replacement index still must comply with the condition in § 1026.40(f)(3)(ii)(A) that the replacement index and replacement margin would have resulted in an APR substantially similar to the rate in effect at the time the LIBOR index became unavailable, but the creditor will be deemed to be in compliance with this condition if the creditor uses as the replacement margin the same margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. This condition

under § 1026.40(f)(3)(ii)(A) and the related comment 40(f)(3)(ii)(A)-3 are discussed in more detail below.

Additional examples of indices that have historical fluctuations that are substantially similar to those of certain USD LIBOR indices. As discussed in the section-by-section analysis of § 1026.40(f)(3)(ii), many industry commenters generally urged the Bureau to provide additional examples of indices that have historical fluctuations that are substantially similar to those of particular LIBOR indices. Specifically, the Bureau received comments from industry requesting that the Bureau provide safe harbors for the following indices specifying that these indices have historical fluctuations that are substantially similar to those of certain LIBOR indices: (1) AMERIBOR® rates; (2) the EFFR; and (3) the CMT rates.

This final rule does not set forth safe harbors indicating that the AMERIBOR® rates, the EFFR, or the CMT rates meet the Regulation Z "historical fluctuations are substantially similar" standard for appropriate replacement indices for a particular LIBOR index. As discussed in more detail below, the Bureau notes that the determinations of whether replacement indices have historical fluctuations that are substantially similar to those of a particular LIBOR index are fact-specific, and they depend on the replacement index being considered and the LIBOR tenor being replaced. Industry commenters did not identify which tenor of LIBOR they use or which version of AMERIBOR®, EFFR, and CMT rates they would use to replace the tenor of LIBOR they use.

Second, the Bureau understands that the vast majority of the impacted industry participants will use the indices for which this final rule already provides a safe harbor (*i.e.*, Prime and certain SOFR-based spread-adjusted indices recommended by the ARRC for consumer products) as replacement indices for HELOCs. The Bureau notes that this final rule does not disallow the use of other replacement indices if they comply with Regulation Z.

Additional guidance on determining whether a replacement index has historical fluctuations that are substantially similar to those of certain USD LIBOR indices. As discussed in more detail in the section-by-section analysis of § 1026.40(f)(3)(ii), several industry

commenters asked the Bureau to provide additional guidance on how to determine whether a replacement index has historical fluctuations that are substantially similar to those of a particular LIBOR index, including providing a principles-based standard for determining when a replacement index has historical fluctuations that are substantially similar to those of LIBOR.

To facilitate compliance with Regulation Z, this final rule adds new comment 40(f)(3)(ii)(A)-2.iii to provide a non-exhaustive list of factors to be considered in whether a replacement index meets the Regulation Z "historical fluctuations are substantially similar" standard with respect to a particular LIBOR index. Specifically, new comment 40(f)(3)(ii)(A)-2.iii provides that the relevant factors to be considered in determining whether a replacement index has historical fluctuations substantially similar to those of a particular LIBOR index depends on the replacement index being considered and the LIBOR index being replaced. New comment 40(f)(3)(ii)(A)-2.iii also provides that the types of relevant factors to establish if a replacement index would meet the "historical fluctuations are substantially similar" standard with respect to a particular LIBOR index using historical data, include but are not limited to, whether: (1) the movements over time are substantially similar; and (2) the consumers' payments using the replacement index compared to payments using the LIBOR index are substantially similar if there is sufficient historical data for this analysis. These factors are important to help minimize the financial impact on consumers, including the payments they must make, when a LIBOR index is replaced with another index. As discussed above, the Bureau has considered these factors in determining that (1) Prime has historical fluctuations that are substantially similar to those of the 1-month and 3-month USD LIBOR; and (2) the SOFR-based spread-adjusted indices recommended by the ARRC for consumer products to replace the 1-month, 3-month, or 6-month USD LIBOR indices have historical fluctuations that are substantially similar to those of the 1-month, 3-month, or 6-month USD LIBOR indices respectively.

The Bureau notes that this final rule does not set forth a principles-based standard for determining whether a replacement index has historical fluctuations that are substantially similar to those of a particular LIBOR tenor. The Bureau notes that these determinations are fact-specific, and they depend on the replacement index being considered and the LIBOR tenor being replaced. For example, these determinations may need to consider certain aspects of the historical data itself for a particular replacement index, such as (1) the length of time the data has been available and how much of the available data to consider in the analysis of whether the Regulation Z standards have been satisfied; (2) the quality of the historical data, including the methodology of how the rate is determined and whether it sufficiently represents a market rate; and (3) whether the replacement index is a backward-looking rate (*e.g.*, historical average of rates) such that timing aspects of the data may need to be adjusted to match up with the particular forward-looking LIBOR term-rate being replaced. These considerations will vary depending on the replacement index being considered and the LIBOR tenor that is being replaced. Thus, this final rule does not provide a principles-based standard for determining whether a replacement index has historical fluctuations that are substantially similar to those of a particular LIBOR index.

Newly established index as replacement for a LIBOR index. Section 1026.40(f)(3)(ii)(A) provides that if the replacement index is newly established and therefore does not have any rate history, it may be used if it and the replacement margin will produce an APR substantially similar to the rate in effect when the original index became unavailable.

This final rule adopts § 1026.40(f)(3)(ii)(A) as proposed to provide the flexibility for creditors to use newly established indices if certain conditions are met. This flexibility is consistent with existing comment 40(f)(3)(ii)-1.

The Bureau declines to adopt industry commenters' suggestions that the Bureau should provide greater detail to creditors regarding the factors or considerations that should be taken into account to determine that an index is newly established. Current comment 40(f)(3)(ii)-1

uses the term newly established without additional details on the factors or considerations that should be taken into account to determine that an index is newly established. The Bureau finds that whether a replacement index is newly established and does not have any rate history is fact-specific and depends on the replacement index being considered. For example, although the SOFR-based spread-adjusted indices recommended by the ARRC for consumer products to replace the 1-month, 3-month, 6-month, or 1-year USD LIBOR index have not yet been published, these indices will be based on an underlying SOFR rate and the Bureau believes that it is appropriate not to consider the SOFR-based spread-adjusted indices recommended by the ARRC for consumer products to replace the 1-month, 3-month, 6-month, or 1-year USD LIBOR index as newly established because of the SOFR rate history. Also, commenters did not provide any specific indices that they believed are newly established with respect to the replacement of LIBOR and thus, the Bureau does not believe that additional details in this final rule are needed with respect to whether a particular index is newly established in relation to the LIBOR replacement.

The Bureau also declines to adopt consumer groups' suggestion that the Bureau should restrict the use of new indices that lack historical data. The Bureau finds that it is appropriate to maintain in § 1026.40(f)(3)(ii)(A) the flexibility for creditors generally to use newly established indices as a replacement index if certain conditions are met, given that it is not known what indices will be available in the future when an index needs to be replaced.

Substantially similar rate when LIBOR becomes unavailable. Under § 1026.40(f)(3)(ii)(A), the replacement index and replacement margin must produce an APR substantially similar to the rate that was in effect based on the LIBOR index used under the plan when the LIBOR index became unavailable. Comment 40(f)(3)(ii)(A)-3 generally provides detail on this condition. This final rule adopts comment 40(f)(3)(ii)(A)-3 generally as proposed with several revisions as described below to provide more clarity on this condition. Comment 40(f)(3)(ii)(A)-3 provides that a creditor generally must use the value of the replacement index

and the LIBOR index on the day that the LIBOR index becomes unavailable. To facilitate compliance, this final rule revises comment 40(f)(3)(ii)(A)-3 from the proposal to address the situation where the replacement index is not published on the day that LIBOR becomes unavailable. Specifically, comment 40(f)(3)(ii)(A)-3 provides that if the replacement index is not published on the day that the LIBOR index becomes unavailable, the creditor generally must use the previous calendar day that both indices are published as the date for selecting indices values in determining whether the APR based on the replacement index is substantially similar to the rate based on the LIBOR index. The one exception is that if the replacement index is the SOFR-based spread-adjusted index recommended by the ARRC for consumer products to replace the 1-month, 3-month, 6-month, or 1-year USD LIBOR index, the creditor must use the index value on June 30, 2023, for the LIBOR index and, for the SOFR-based spread-adjusted index for consumer products, must use the index value on the first date that index is published, in determining whether the APR based on the replacement index is substantially similar to the rate based on the LIBOR index.

This final rule adopts § 1026.40(f)(3)(ii)(A) as proposed to use a single day to compare the rates. The Bureau declines to adopt industry commenters' suggestions that the Bureau should (1) give creditors the option to either use a single date for purposes of the index values or use the median value of the difference between the two indices over a slightly longer period of time; or (2) require the use of the historical spread rather than the spread on a specific day in comparing rates to help ensure such rates are substantially similar to each other. The Bureau also declines to adopt consumer group commenters' suggestion that the Bureau should require creditors to use a historical median value rather than the value from a single day when comparing a potential replacement to the original index rate.

This final rule is consistent with the condition in the unavailability provision in current § 1026.40(f)(3)(ii), in the sense that it provides that the new index and margin must result in an APR that is substantially similar to the rate in effect on a single day. Nonetheless, the Bureau

recognizes that there is a possibility that the spread between the replacement index and the original index could differ significantly on a particular day from the historical spread in certain unusual circumstances. To mitigate this concern, this final rule generally provides creditors with the flexibility to choose to compare the rates using the index values for the LIBOR index and the replacement index on October 18, 2021, (provided the replacement index is published on that day), by using the proposed LIBOR-specific provisions under § 1026.40(f)(3)(ii)(B), rather than using the unavailability provisions in § 1026.40(f)(3)(ii)(A).[114]

Nonetheless, the Bureau recognizes that it is possible that in some instances the contract may require that the creditor use the index values of LIBOR and the replacement index on the day that the LIBOR index becomes unavailable. As discussed above in relation to comment 40(f)(3)(ii)-1, in this case, the Bureau does not intend to override that contractual provision. Thus, in those cases, the creditor would be required to use the index values of the replacement index and the LIBOR index on the day that the LIBOR index becomes unavailable. The Bureau recognizes that in those cases, the spread between the LIBOR rates and potential replacement rates may differ significantly from the historical spreads on the day that LIBOR becomes unavailable. Nonetheless, the Bureau does not believe it is appropriate to add complexity to this final rule to address this possibility. Thus, the Bureau determines that the approach set forth in this final rule properly minimizes the concerns that the replacement index and the original index could differ significantly on a particular day from the historical spread in certain circumstances discussed above without adding additional complexity to the rule.

Comment 40(f)(3)(ii)(A)-3 clarifies that the replacement index and replacement margin are not required to produce an APR that is substantially similar on the day that the replacement index and replacement margin become effective on the plan. Comment 40(f)(3)(ii)(A)-3.i provides an example to illustrate this comment. This final rule adopts these details in comment

[114] See below for a more detailed rationale for why the Bureau selected the October 18, 2021, date.

40(f)(3)(ii)(A)-3 generally as proposed with revisions to clarify the references to the prime rate and the LIBOR index used in the example and to revise the dates used in the example to be consistent with the June 30, 2023, date that most USD LIBOR tenors are expected to be discontinued. The Bureau believes that it would raise compliance issues if the rate calculated using the replacement index and replacement margin at the time the replacement index and replacement margin became effective had to be substantially similar to the rate in effect calculated using the LIBOR index on the date that the LIBOR index became unavailable. Specifically, under § 1026.9(c)(1), the creditor must provide a change-in-terms notice of the replacement index and replacement margin (including disclosing any reduced margin in change-in-terms notices provided on or after October 1, 2022, as would be required by § 1026.9(c)(1)(ii)) at least 15 days prior to the effective date of the changes. The Bureau believes that this advance notice is important to consumers to inform them of how variable rates will be determined going forward after the LIBOR index is replaced. Because advance notice of the changes must be given prior to the changes becoming effective, a creditor would not be able to ensure that the rate based on the replacement index and margin at the time the change-in-terms notice becomes effective will be substantially similar to the rate in effect calculated using the LIBOR index at the time the LIBOR index becomes unavailable. The value of the replacement index may change after the LIBOR index becomes unavailable and before the change-in-terms notice becomes effective.

This final rule does not provide additional details on the "substantially similar" standard in comparing the rates for purposes of § 1026.40(f)(3)(ii)(A). The Bureau declines to adopt industry commenters' suggestions that the Bureau should provide greater detail as to the process creditors must use to determine whether an APR calculated using a replacement index is substantially similar to the APR using the LIBOR index for purposes of §§ 1026.40(f)(3)(ii)(A) and (B) and 1026.55(b)(7)(i) and (ii). The Bureau also declines to adopt consumer group commenters' suggestion that the Bureau should interpret substantially similar to require creditors

to minimize any value transfer when selecting a replacement index and setting a new margin for purposes of §§ 1026.40(f)(3)(ii)(A) and (B) and 1026.55(b)(7)(i) and (ii).

The Bureau finds that it is not appropriate to provide a definitive list of factors that a creditor must meet for the two APRs to be considered substantially similar. The Bureau finds that whether an APR calculated using the replacement index is substantially similar to the APR calculated using the LIBOR index when LIBOR becomes unavailable is fact-specific and will depend on the two indices used for the calculations and the two rates being compared. The Bureau determines that it is appropriate to provide flexibility with respect to the factors that may be considered in determining whether the two APRs are substantially similar.

As discussed above, comment 40(f)(3)(ii)(A)-2.ii clarifies that in order to use the SOFR-based spread-adjusted index recommended by the ARRC for consumer products as the replacement index for the applicable LIBOR index, the creditor must comply with the condition in § 1026.40(f)(3)(ii)(A) that the SOFR-based spread-adjusted index for consumer products and replacement margin would have resulted in an APR substantially similar to the rate in effect at the time the LIBOR index became unavailable. A trade association commenter indicated that the Bureau should clarify that the APR calculated using a SOFR-based spread-adjusted index recommended by ARRC for consumer products is substantially similar to the APR calculated using a corresponding LIBOR index, provided the creditor uses the same margin in effect immediately prior to the transition.

This final rule revises comment 40(f)(3)(ii)(A)-3 from the proposal to provide that for purposes of § 1026.40(f)(3)(ii)(A), if a creditor uses the SOFR-based spread-adjusted index recommended by the ARRC for consumer products to replace the 1-month, 3-month, or 6-month USD LIBOR index as the replacement index and uses as the replacement margin the same margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan, the creditor will be deemed to be in compliance with the condition in § 1026.40(f)(3)(ii)(A) that the replacement index and replacement margin would have resulted in

an APR substantially similar to the rate in effect at the time the LIBOR index became unavailable. Thus, a creditor that uses the SOFR-based spread-adjusted index recommended by the ARRC for consumer products to replace the 1-month, 3-month, or 6-month USD LIBOR index as the replacement index still must comply with the condition in § 1026.40(f)(3)(ii)(A) that the replacement index and replacement margin would have resulted in an APR substantially similar to the rate in effect at the time the LIBOR index became unavailable, but the creditor will be deemed to be in compliance with this condition if the creditor uses as the replacement margin the same margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan.

The Bureau has reviewed the methodology to compute the spread adjustments that the ARRC will use, and based on this review, the Bureau has determined that the SOFR-based spread adjusted indices that have been recommended by the ARRC for consumer products to replace the 1-month, 3-month, or 6-month USD LIBOR index will produce rates that are substantially similar to those of the LIBOR indices they are designed to replace. Thus, to facilitate compliance, the Bureau finds that it is appropriate to provide for purposes of § 1026.40(f)(3)(ii)(A) that a creditor complies with the "substantially similar" standard for comparing the rates when the creditor replaces the LIBOR index used under the plan with the applicable SOFR-based spread-adjusted index recommended by the ARRC for consumer products to replace the 1-month, 3-month, or 6-month USD LIBOR index and uses as the replacement margin the same margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan.

The Bureau is reserving judgment about whether to include a reference to the 1-year USD LIBOR index in comment 40(f)(3)(ii)(A)-3 until it obtains additional information. Once the Bureau knows which SOFR-based spread-adjusted index the ARRC will recommend to replace the 1-year USD LIBOR index for consumer products, the Bureau may determine whether the replacement index and replacement margin would have resulted in an APR substantially similar

to the rate calculated using the LIBOR index. Assuming the Bureau determines that the index meets that standard, the Bureau will then consider whether to codify that determination in a supplemental final rule, or otherwise announce that determination.

40(f)(3)(ii)(B)

The Bureau's Proposal

For the reasons discussed below and in the section-by-section analysis of § 1026.40(f)(3)(ii), the Bureau proposed to add new LIBOR-specific provisions to § 1026.40(f)(3)(ii)(B) that would permit creditors for HELOC plans subject to § 1026.40 that use a LIBOR index for calculating variable rates to replace the LIBOR index and change the margins for calculating the variable rates on or after March 15, 2021, in certain circumstances. The Bureau also proposed to add detail in proposed comments 40(f)(3)(ii)(B)-1 through -3 on the conditions set forth in proposed § 1026.40(f)(3)(ii)(B).

Specifically, proposed § 1026.40(f)(3)(ii)(B) provided that if a variable rate on a HELOC subject to § 1026.40 is calculated using a LIBOR index, a creditor may replace the LIBOR index and change the margin for calculating the variable rate on or after March 15, 2021, as long as: (1) the historical fluctuations in the LIBOR index and replacement index were substantially similar; and (2) the replacement index value in effect on December 31, 2020, and replacement margin will produce an APR substantially similar to the rate calculated using the LIBOR index value in effect on December 31, 2020, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. Proposed § 1026.40(f)(3)(ii)(B) also provided that if the replacement index is newly established and therefore does not have any rate history, it may be used if the replacement index value in effect on December 31, 2020, and replacement margin will produce an APR substantially similar to the rate calculated using the LIBOR index value in effect on December 31, 2020, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan.

In addition, proposed § 1026.40(f)(3)(ii)(B) provided that if either the LIBOR index or the replacement index is not published on December 31, 2020, the creditor must use the next calendar day that both indices are published as the date on which the APR based on the replacement index must be substantially similar to the rate based on the LIBOR index.

Proposed comment 40(f)(3)(ii)(B)-1 provided detail on determining whether a replacement index that is not newly established has historical fluctuations that are substantially similar to those of the LIBOR index used under the plan for purposes of proposed § 1026.40(f)(3)(ii)(B). Specifically, proposed comment 40(f)(3)(ii)(B)-1 provided that for purposes of replacing a LIBOR index used under a plan pursuant to proposed § 1026.40(f)(3)(ii)(B), a replacement index that is not newly established must have historical fluctuations that are substantially similar to those of the LIBOR index used under the plan, considering the historical fluctuations up through December 31, 2020, or up through the date indicated in a Bureau determination that the replacement index and the LIBOR index have historical fluctuations that are substantially similar, whichever is earlier. The Bureau proposed the December 31, 2020, date to be consistent with the date that creditors generally would have been required to use for selecting the index values in comparing the rates under proposed § 1026.40(f)(3)(ii)(B). In addition, to reduce uncertainty with respect to selecting a replacement index that meets the standards in proposed § 1026.40(f)(3)(ii)(B), the Bureau proposed in proposed comment 40(f)(3)(ii)(B)-1.i to determine that Prime is an example of an index that has historical fluctuations that are substantially similar to those of the 1-month and 3-month USD LIBOR indices. Proposed comment 40(f)(3)(ii)(B)-1.i also provided that in order to use Prime as the replacement index for the 1-month or 3-month USD LIBOR index, the creditor also must comply with the condition in proposed § 1026.40(f)(3)(ii)(B) that the Prime index value in effect on December 31, 2020, and replacement margin will produce an APR substantially similar to the rate calculated using the LIBOR index value in effect on December 31, 2020, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under

the plan. Proposed comment 40(f)(3)(ii)(B)-1 provided that if either the LIBOR index or the Prime index is not published on December 31, 2020, the creditor must use the next calendar day that both indices are published as the date on which the APR based on the Prime index must be substantially similar to the rate based on the LIBOR index.

The Bureau also proposed in proposed comment 40(f)(3)(ii)(B)-1.ii to determine that the SOFR-based spread-adjusted indices recommended by the ARRC for consumer products to replace the 1-month, 3-month, 6-month, or 1-year USD LIBOR indices have historical fluctuations that are substantially similar to those of the LIBOR indices that they are intended to replace. Proposed comment 40(f)(3)(ii)(B)-1.ii also provided that in order to use this SOFR-based spread-adjusted index recommended by the ARRC for consumer products as the replacement index for the applicable LIBOR index, the creditor also must comply with the condition in § 1026.40(f)(3)(ii)(B) that the SOFR-based spread-adjusted index recommended by the ARRC for consumer products' value in effect on December 31, 2020, and replacement margin will produce an APR substantially similar to the rate calculated using the LIBOR index value in effect on December 31, 2020, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. Proposed comment 40(f)(3)(ii)(B)-1.ii provided that if either the LIBOR index or the SOFR-based spread-adjusted index recommended by the ARRC for consumer products is not published on December 31, 2020, the creditor must use the next calendar day that both indices are published as the date on which the APR based on the SOFR-based spread-adjusted index must be substantially similar to the rate based on the LIBOR index.

As discussed above, proposed § 1026.40(f)(3)(ii)(B) provided that if both the replacement index and LIBOR index used under the plan are published on December 31, 2020, the replacement index value in effect on December 31, 2020, and the replacement margin must produce an APR substantially similar to the rate calculated using the LIBOR index value in effect on December 31, 2020, and the margin that applied to the variable rate immediately prior

to the replacement of the LIBOR index used under the plan. Proposed comment 40(f)(3)(ii)(B)-2 provided that the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan is the margin that applied to the variable rate immediately prior to when the creditor provides the change-in-terms notice disclosing the replacement index for the variable rate. Proposed comment 40(f)(3)(ii)(B)-2.i provided an example to illustrate this comment, when the margin used to calculate the variable rate is increased pursuant to a written agreement under § 1026.40(f)(3)(iii), and this change in the margin occurs after December 31, 2020, but prior to the date that the creditor provides a change-in-term notice under § 1026.9(c)(1) disclosing the replacement index for the variable rate.

Proposed comment 40(f)(3)(ii)(B)-3 provided that the replacement index and replacement margin are not required to produce an APR that is substantially similar on the day that the replacement index and replacement margin become effective on the plan. Proposed comment 40(f)(3)(ii)(B)-3.i provided an example to illustrate this comment.

Comments Received

In response to the proposal, industry commenters generally provided the same comments for both proposed § 1026.40(f)(3)(ii) for HELOCs and § 1026.55(b)(7) for credit card accounts under an open-end (not home-secured) consumer credit plan. Similarly, consumer group commenters also provided the same comments for both proposed § 1026.40(f)(3)(ii) for HELOCs and § 1026.55(b)(7) for credit card accounts under an open-end (not home-secured) consumer credit plan. These comments from industry and consumer groups are described in the section-by-section analysis of § 1026.40(f)(3)(ii).

The Final Rule

This final rule adopts § 1026.40(f)(3)(ii)(B) generally as proposed with the following three revisions: (1) sets April 1, 2022, as the date on or after which HELOC creditors are permitted to replace the LIBOR index used under the plan pursuant to § 1026.40(f)(3)(ii)(B) prior to LIBOR becoming unavailable; (2) sets October 18, 2021, as the date creditors generally

must use for selecting indices values in determining whether the APRs using the LIBOR index and the replacement index are substantially similar; and (3) provides that if the replacement index is not published on October 18, 2021, the creditor generally must use the next calendar day for which both the LIBOR index and the replacement index are published as the date for selecting indices values in determining whether the APR based on the replacement index is substantially similar to the rate based on the LIBOR index.[115] This final rule adopts comments 40(f)(3)(ii)(B)-1 through -3 generally as proposed with several revisions to provide additional detail on the § 1026.40(f)(3)(ii)(B) provision, including providing (1) examples of the type of factors to be considered in whether a replacement index meets the Regulation Z "historical fluctuations are substantially similar" standard with respect to a particular LIBOR index for HELOCs; and (2) if a creditor uses the SOFR-based spread-adjusted index recommended by the ARRC for consumer products to replace the 1-month, 3-month, or 6-month USD LIBOR index as the replacement index and uses as the replacement margin the same margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan, the creditor will be deemed to be in compliance with the condition in § 1026.40(f)(3)(ii)(B) that the replacement index and replacement margin would have resulted in an APR substantially similar to the rate calculated using the LIBOR index.

To effectuate the purposes of TILA and to facilitate compliance, the Bureau is using its TILA section 105(a) authority to provide the new LIBOR-specific provisions under § 1026.40(f)(3)(ii)(B). TILA section 105(a)[116] directs the Bureau to prescribe regulations to carry out the purposes of TILA, and provides that such regulations may contain additional requirements, classifications, differentiations, or other provisions, and may provide for such

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[115] As set forth in § 1026.40(f)(3)(ii)(B), one exception is that if the replacement index is the SOFR-based spread-adjusted index recommended by the ARRC for consumer products to replace the 1-month, 3-month, 6-month, or 1-year USD LIBOR index, the creditor must use the index value on June 30, 2023, for the LIBOR index and, for the SOFR-based spread-adjusted index for consumer products, must use the index value on the first date that index is published, in determining whether the APR based on the replacement index is substantially similar to the rate based on the LIBOR index.

[116] 15 U.S.C. 1604(a).

adjustments and exceptions for all or any class of transactions, that, in the judgment of the Bureau, are necessary or proper to effectuate the purposes of TILA, to prevent circumvention or evasion thereof, or to facilitate compliance. In this final rule, the Bureau is adopting these LIBOR-specific provisions to facilitate compliance with TILA and effectuate its purposes. Specifically, the Bureau interprets "facilitate compliance" to include enabling or fostering continued operation of variable-rate accounts in conformity with the law.

As a practical matter, § 1026.40(f)(3)(ii)(B) will allow creditors for HELOCs to provide the 15-day change-in-terms notices required under § 1026.9(c)(1) prior to the LIBOR indices becoming unavailable, and thus will allow those creditors to avoid being left without a LIBOR index to use in calculating the variable rate before the replacement index and margin become effective. Also, § 1026.40(f)(3)(ii)(B) will allow HELOC creditors to provide the change-in-terms notices, and replace the LIBOR index used under the plans, on accounts on a rolling basis, rather than having to provide the change-in-terms notices, and replace the LIBOR index, for all its accounts at the same time as the LIBOR index used under the plan becomes unavailable.

The ARRC has indicated that the SOFR-based spread-adjusted indices recommended by the ARRC for consumer products to replace the 1-month, 3-month, 6-month, or 1-year USD LIBOR index will not be published until Monday, July 3, 2023, which is the first weekday after Friday, June 30, 2023, when LIBOR is currently anticipated to sunset for these USD LIBOR tenors. However, the Bureau wishes to facilitate an earlier transition for those creditors who may want to transition to an index other than the SOFR-based spread-adjusted indices recommended by the ARRC for consumer products. Accordingly, the Bureau is making this rule effective on April 1, 2022.

Without the LIBOR-specific provisions in § 1026.40(f)(3)(ii)(B), as a practical matter, HELOC creditors would need to wait until the LIBOR index becomes unavailable to provide the 15-day change-in-terms notice under § 1026.9(c)(1), disclosing the replacement index, the replacement margin if the margin is changing (including disclosing any reduced margin in

change-in-terms notices provided on or after October 1, 2022, as required by revised § 1026.9(c)(1)(ii)), and any increase in the periodic rate or APR as calculated using the replacement index.[117] The Bureau believes that this advance notice of the replacement index and any change in the margin is important to consumers to inform them of how variable rates will be determined going forward after the LIBOR index is replaced.

HELOC creditors generally would not be able to send out change-in-terms notices disclosing the replacement index, and any change in the replacement margin prior to LIBOR becoming unavailable.[118] HELOC creditors generally would need to know the index values of the LIBOR index and the replacement index prior to sending out the change-in-terms notice so that they could disclose the replacement margin in the change-in-terms notice. HELOC creditors will not know these index values until the day that LIBOR becomes unavailable. Thus, HELOC creditors generally would need to wait until LIBOR becomes unavailable before the creditors could send the 15-day change-in-terms notices under § 1026.9(c)(1) to replace the LIBOR index with a replacement index. Some creditors could be left without a LIBOR index value to use during the 15-day period before the replacement index and replacement margin become effective, depending on their existing contractual terms. The Bureau believes this could cause compliance and systems issues.

A trade association commenter representing reverse mortgage creditors requested that the Bureau coordinate with both HUD and Ginnie Mae with respect to the March 15, 2021, date in proposed § 1026.40(f)(3)(ii)(B). This commenter was concerned that if HUD decides to switch the HECM index to a SOFR index as of January 1, 2021, creditors would need to comply with that in order to make FHA-insured HECM loans. On October 5, 2021, HUD published in the

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[117] See new comment 9(c)(1)-4 for additional details on how a creditor may disclose information about the periodic rate and APR in a change-in-terms notice for HELOCs when the creditor is replacing a LIBOR index with the SOFR-based spread-adjusted index recommended by the ARRC for consumer products in certain circumstances.

[118] One exception is when a creditor is replacing the LIBOR index with the SOFR-based spread-adjusted index recommended by ARRC for consumer products as described in new comment 9(c)(1)-4. See the section-by-section analysis of § 1026.9(c)(1) for a discussion of this comment.

Federal Register an Advance Notice of Proposed Rulemaking (ANPR) on a rule it is considering that would address a HUD-approved replacement index for existing FHA-insured loans that use LIBOR as an index and provide for a transition date consistent with the cessation of the LIBOR index.[119] HUD is also considering replacing the LIBOR index with the SOFR interest rate index, with a compatible spread adjustment to minimize the impact of the replacement index for legacy ARMs. Based on this ANPR and outreach with HUD, the Bureau understands that there is not likely to be a conflict between the April 1, 2022, date set forth in § 1026.40(f)(3)(ii)(B) on or after which creditors are permitted to transition away from a LIBOR index in certain conditions, and any HUD actions with respect to the replacement of a LIBOR index in relation to HECMs. Further, the ARRC has indicated that the SOFR-based spread-adjusted indices recommended by the ARRC for consumer products to replace the 1-month, 3-month, 6-month, or 1-year USD LIBOR index will not be published until Monday, July 3, 2023.

Consistent conditions with § 1026.40(f)(3)(ii)(A). This final rule adopts conditions in the LIBOR-specific provisions in § 1026.40(f)(3)(ii)(B) for how a creditor must select a replacement index and compare rates that are consistent with the conditions set forth in the unavailability provisions set forth in § 1026.40(f)(3)(ii)(A). For example, the availability provisions in § 1026.40(f)(3)(ii)(A) and the LIBOR-specific provisions in § 1026.40(f)(3)(ii)(B) contain a consistent requirement that the APR calculated using the replacement index must be substantially similar to the rate calculated using the LIBOR index.[120] In addition, both § 1026.40(f)(3)(ii)(A) and (B) contain consistent conditions for how a creditor must select a replacement index.

For several reasons, this final rule adopts consistent conditions for these two provisions. First, as discussed above in the section-by-section analysis of § 1026.40(f)(3)(ii), some HELOC

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[119] 86 FR 54876 (Oct. 5, 2021).

[120] The conditions in § 1026.40(f)(3)(ii)(A) and (B) are consistent, but they are not the same. For example, although both provisions use the "substantially similar" standard to compare the rates, they use different dates for selecting the index values in calculating the rates. The provisions in § 1026.40(f)(3)(ii)(A) and (B) differ in the timing of when creditors are permitted to transition away from LIBOR, which creates some differences in how the conditions apply.

creditors may need to wait until LIBOR becomes unavailable to transition to a replacement index because of contractual reasons. The Bureau believes that keeping the conditions consistent in the unavailability provisions in § 1026.40(f)(3)(ii)(A) and the LIBOR-specific provisions in § 1026.40(f)(3)(ii)(B) will help ensure that creditors must meet consistent conditions in selecting a replacement index and setting the rates, regardless of whether they are using the unavailability provisions in § 1026.40(f)(3)(ii)(A), or the LIBOR-specific provisions in § 1026.40(f)(3)(ii)(B).

Second, some creditors may have the ability to choose between the unavailability provisions and LIBOR-specific provisions to switch away from using a LIBOR index, and if the conditions between those two provisions are inconsistent, these differences could undercut the purpose of the LIBOR-specific provisions to allow creditors to switch out earlier. For example, if the conditions for selecting a replacement index or setting the rates were stricter in the LIBOR-specific provisions than in the unavailability provisions, this may cause a creditor to wait until LIBOR becomes unavailable to switch to a replacement index, which would undercut the purpose of the LIBOR-specific provisions to allow creditors to switch out earlier and prevent these creditors from having the time to transition from using a LIBOR index.

Historical fluctuations substantially similar for the LIBOR index and replacement index. This final rule adopts comment 40(f)(3)(ii)(B)-1 generally as proposed with several revisions as described below. Comment 40(f)(3)(ii)(B)-1 provides detail on determining whether a replacement index that is not newly established has historical fluctuations that are substantially similar to those of the LIBOR index used under the plan for purposes of § 1026.40(f)(3)(ii)(B).

Proposed comment 40(f)(3)(ii)(B)-1 provided that for purposes of replacing a LIBOR index used under a plan pursuant to proposed § 1026.40(f)(3)(ii)(B), a replacement index that is not newly established must have historical fluctuations that are substantially similar to those of the LIBOR index used under the plan, considering the historical fluctuations up through December 31, 2020, or up through the date indicated in a Bureau determination that the

replacement index and the LIBOR index have historical fluctuations that are substantially similar, whichever is earlier.

Comment 40(f)(3)(ii)(B)-1 is revised from the proposal to provide that for purposes of replacing a LIBOR index used under a plan pursuant to § 1026.40(f)(3)(ii)(B), a replacement index that is not newly established must have historical fluctuations that are substantially similar to those of the LIBOR index used under the plan, considering the historical fluctuations up through the relevant date. If the Bureau has made a determination that the replacement index and the LIBOR index have historical fluctuations that are substantially similar, the relevant date is the date indicated in that determination by the Bureau. If the Bureau has not made a determination that the replacement index and the LIBOR index have historical fluctuations that are substantially similar, the relevant date is the later of April 1, 2022, or the date no more than 30 days before the creditor makes a determination that the replacement index and the LIBOR index have historical fluctuations that are substantially similar.

For the determinations discussed below related to Prime and certain SOFR-based spread-adjusted indices recommended by the ARRC for consumer products, the Bureau has considered data through October 18, 2021, and indicates that October 18, 2021, is the relevant date for those determinations. Nonetheless, for any future determinations that the Bureau might make with respect to replacement indices other than Prime or certain SOFR-based spread-adjusted indices recommended by the ARRC for consumer products, this revised comment would ensure that the Bureau could consider data after October 18, 2021, for those determinations.

Likewise, this revised comment also would ensure that a creditor must consider data after October 18, 2021, for any determination it makes for a replacement index that the replacement index has historical fluctuations that are substantially similar to those of a LIBOR index (if the Bureau has not made such a determination). Specifically, revised comment 40(f)(3)(ii)(B)-1 requires a creditor to consider the data for the two indices up through April 1, 2022, (the effective date of this final rule) or 30 days prior to when the determination is made, whichever is

later. To facilitate compliance, this revised comment does not require that creditors consider data for the replacement index and the LIBOR index up to when the determination is made because the Bureau recognizes that rates may be changing up to the date of the determination and there may be some time needed after the data analysis is completed for the creditor to make the determination. The Bureau arrived at a 30-day period for selecting the end date for which creditors must consider rate data related to the determination in part because a 30-day period is used in a somewhat analogous circumstance addressed in § 1026.6(b)(4)(ii)(G) for when variable rates will be considered accurate in account-opening disclosures for open-end (not home-secured) credit. Specifically, variable rates in account-opening disclosures for open-end (not home-secured) credit generally will be considered accurate if the rate disclosed was in effect within the last 30 days before the disclosures are provided. The Bureau concludes that the 30-day period for selecting the end date for which creditors must consider rate data related to the determination that the historical fluctuations are substantially similar to those of the LIBOR index will ensure that creditors are considering recent data as part of the determination, while providing a reasonable cut-off time period for the data that creditors must consider to facilitate compliance for creditors.

Prime has historical fluctuations that are substantially similar to those of certain USD LIBOR indices. To facilitate compliance, comment 40(f)(3)(ii)(B)-1.i includes a determination that Prime has historical fluctuations that are substantially similar to those of the 1-month and 3-month USD LIBOR indices. This final rule revises comment 40(f)(3)(ii)(B)-1.i from the proposal to provide that this determination is effective as of April 1, 2022, the date on which this final rule becomes effective.[121] Comment 40(f)(3)(ii)(B)-1.i also clarifies that in order to use Prime as the replacement index for the 1-month or 3-month USD LIBOR index, the creditor also must comply with the condition in § 1026.40(f)(3)(ii)(B) that the Prime index value in effect on

[121] See the section-by-section analysis of § 1026.40(f)(3)(ii)(A) for a discussion of the rationale for the Bureau making this determination.

October 18, 2021, and replacement margin will produce an APR substantially similar to the rate calculated using the LIBOR index value in effect on October 18, 2021, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. This final rule revises comment 40(f)(3)(ii)(B)-1.i from the proposal to delete the reference to the exception in § 1026.40(f)(3)(ii)(B) from using the index values on October 18, 2021. This exception is inapplicable because Prime and the LIBOR indices were both published on October 18, 2021. This condition for comparing the rates under § 1026.40(f)(3)(ii)(B) is discussed in more detail below.

Certain SOFR-based spread-adjusted indices recommended by the ARRC for consumer products have historical fluctuations that are substantially similar to those of certain USD LIBOR indices. To facilitate compliance, comment 40(f)(3)(ii)(B)-1.ii provides a determination that the SOFR-based spread-adjusted indices recommended by the ARRC for consumer products to replace the 1-month, 3-month, or 6-month USD LIBOR indices have historical fluctuations that are substantially similar to those of the 1-month, 3-month, or 6-month USD LIBOR indices respectively. The Bureau is making the determination now to facilitate compliance with the rule. The determination provides greater certainty to creditors to enable them to plan sooner about which replacement index to use and how and when to transition to the replacement index.

This final rule revises comment 40(f)(3)(ii)(B)-1.ii from the proposal to provide that this determination is effective as of April 1, 2022, when this final rule becomes effective as discussed in more detail in part VI.[122] For the same reasons as discussed in the section-by-section analysis of § 1026.40(f)(3)(ii)(A) with respect to comment 40(f)(3)(ii)(A)-2.ii, this final rule also revises comment 40(f)(3)(ii)(B)-1.ii from the proposal to not include 1-year USD LIBOR in the comment at this time pending the Bureau's receipt of additional information and further consideration by the Bureau.

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[122] *Id.*

Comment 40(f)(3)(ii)(B)-1.ii also clarifies that in order to use the SOFR-based spread-adjusted index recommended by the ARRC for consumer products discussed above as the replacement index for the applicable LIBOR index, the creditor also must comply with the condition in § 1026.40(f)(3)(ii)(B) that the SOFR-based spread-adjusted index for consumer products and replacement margin will produce an APR substantially similar to the rate calculated using the LIBOR index and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. This final rule revises comment 40(f)(3)(ii)(B)-1.ii from the proposal to clarify that, because of the exception in § 1026.40(f)(3)(ii)(B), the creditor must use the index value on June 30, 2023, for the LIBOR index and, for the SOFR-based spread-adjusted index for consumer products, must use the index value on the first date that index is published, in determining whether the APR based on the replacement index is substantially similar to the rate based on the LIBOR index.

Nonetheless, for the reasons discussed below, this final rule revises comment 40(f)(3)(ii)(B)-3 from the proposal to provide that for purposes of § 1026.40(f)(3)(ii)(B), if a creditor uses the SOFR-based spread-adjusted index recommended by the ARRC for consumer products to replace the 1-month, 3-month, or 6-month USD LIBOR index as the replacement index and uses as the replacement margin the margin it applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan, the creditor will be deemed to be in compliance with the condition in § 1026.40(f)(3)(ii)(B) that the replacement index and replacement margin would have resulted in an APR substantially similar to the rate calculated using the LIBOR index. Thus, a creditor that uses the SOFR-based spread-adjusted index recommended by the ARRC for consumer products to replace the 1-month, 3-month, or 6-month USD LIBOR index as the replacement index still must comply with the condition in § 1026.40(f)(3)(ii)(B) that the replacement index and replacement margin would have resulted in an APR substantially similar to the rate calculated using the LIBOR index, but the creditor will be deemed to be in compliance with this condition if the creditor uses as the replacement margin,

the same margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. This condition under § 1026.40(f)(3)(ii)(B) and the related comment 40(f)(3)(ii)(B)-3 are discussed in more detail below.

Additional examples of indices that have historical fluctuations that are substantially similar to those of certain USD LIBOR indices. As discussed in the section-by-section analysis of § 1026.40(f)(3)(ii), many industry commenters generally urged the Bureau to provide additional examples of indices that have historical fluctuations that are substantially similar to those of particular LIBOR indices. Specifically, the Bureau received comments from industry requesting that the Bureau provide safe harbors for the following indices specifying that these indices have historical fluctuations that are substantially similar to those of certain LIBOR indices: (1) AMERIBOR® rates; (2) the EFFR; and (3) the CMT rates. For the reasons discussed above in the section-by-section analysis of § 1026.40(f)(3)(ii)(A), this final rule does not provide safe harbors indicating that the AMERIBOR® rates, the EFFR, or the CMT rates meet the Regulation Z "historical fluctuations are substantially similar" standard for appropriate replacement indices for a particular LIBOR index.

Additional guidance on determining whether a replacement index has historical fluctuations that are substantially similar to those of certain USD LIBOR indices. As discussed in more detail in the section-by-section analysis of § 1026.40(f)(3)(ii), several industry commenters asked the Bureau to provide additional guidance on how to determine whether a replacement index has historical fluctuations that are substantially similar to those of a particular LIBOR index, including providing a principles-based standard for determining when a replacement index has historical fluctuations that are substantially similar to those of LIBOR. For the same reasons discussed above in the section-by-section analysis of § 1026.40(f)(3)(ii)(A) for adopting new comment 40(f)(3)(ii)(A)-2.iii, this final rule adopts new comment 40(f)(3)(ii)(B)-1.iii to provide a non-exhaustive list of factors to be considered in whether a replacement index meets the Regulation Z "historical fluctuations are substantially similar"

standard with respect to a particular LIBOR index. For the same reasons discussed above in the section-by-section analysis of § 1026.40(f)(3)(ii)(A), this final rule does not set forth a principles-based standard for determining whether a replacement index has historical fluctuations that are substantially similar to those of the LIBOR index that is being replaced.

Newly established index as replacement for the LIBOR index. Section 1026.40(f)(3)(ii)(B) provides if the replacement index is newly established and therefore does not have any rate history, it may be used if the replacement index value in effect on October 18, 2021, and the replacement margin will produce an APR substantially similar to the rate calculated using the LIBOR index value in effect on October 18, 2021, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. If the replacement index is not published on October 18, 2021, the creditor generally must use the next calendar day for which both the LIBOR index and the replacement index are published as the date for selecting indices values in determining whether the APR based on the replacement index is substantially similar to the rate based on the LIBOR index.[123]

This final rule adopts § 1026.40(f)(3)(ii)(B) as proposed to provide the flexibility for creditors to use newly established indices if certain conditions are met. The Bureau declines to adopt industry commenters' suggestions that the Bureau should provide greater detail to creditors regarding the factors or considerations that should be taken into account to determine that an index is newly established. The Bureau also declines to adopt consumer groups' suggestion that the Bureau should restrict the use of new indices that lack historical data. For the reasons discussed in the section-by-section analysis of § 1026.40(f)(3)(ii)(A), the Bureau: (1) determines it is appropriate to provide flexibility in § 1026.40(f)(3)(ii)(B) for creditors to use a newly established index to replace a LIBOR index if certain conditions are met, and (2) is not providing

[123] The one exception is that if the replacement index is the SOFR-based spread-adjusted index recommended by the ARRC for consumer products to replace the 1-month, 3-month, 6-month, or 1-year USD LIBOR index, the creditor must use the index value on June 30, 2023, for the LIBOR index and, for the SOFR-based spread-adjusted index for consumer products, must use the index value on the first date that index is published, in determining whether the APR based on the replacement index is substantially similar to the rate based on the LIBOR index.

additional details in this final rule on the factors or considerations that must be taken into account to determine that an index is newly established.

Substantially similar rate using index values in effect on October 18, 2021, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. Section 1026.40(f)(3)(ii)(B) provides that, if the replacement index under the plan is published on October 18, 2021, the replacement index value in effect on October 18, 2021, and the replacement margin must produce an APR substantially similar to the rate calculated using the LIBOR index value in effect on October 18, 2021, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. If the replacement index is not published on October 18, 2021, the creditor generally must use the next calendar day for which both the LIBOR index and the replacement index are published as the date for selecting indices values in determining whether the APR based on the replacement index is substantially similar to the rate based on the LIBOR index.[124]

Comment 40(f)(3)(ii)(B)-2 provides details on this condition. This final rule adopts comment 40(f)(3)(ii)(B)-2 as proposed with several revisions consistent with the revisions to § 1026.40(f)(3)(ii)(B) to: (1) set April 1, 2022, as the date on or after which HELOC creditors are permitted to replace the LIBOR index used under the plan pursuant to § 1026.40(f)(3)(ii)(B) prior to LIBOR becoming unavailable; (2) set October 18, 2021, as the date creditors generally must use for selecting indices values in determining whether the APRs using the LIBOR index and the replacement index are substantially similar; and (3) provide that if the replacement index is not published on October 18, 2021, the creditor generally must use the next calendar day for which both the LIBOR index and the replacement index are published as the date for selecting indices values in determining whether the APR based on the replacement index is substantially similar to the rate based on the LIBOR index.[125]

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[124] *Id.*

[125] *Id.*

In calculating the comparison rates using the replacement index and the LIBOR index used under the HELOC plan, § 1026.40(f)(3)(ii)(B) generally requires creditors to use the index values for the replacement index and the LIBOR index in effect on October 18, 2021. To replace a LIBOR index under § 1026.40(f)(3)(ii)(B), a creditor is to use these index values to promote consistency for creditors and consumers in which index values are used to compare the two rates. Under § 1026.40(f)(3)(ii)(B), HELOC creditors are permitted to replace the LIBOR index used under the plan and adjust the margin used in calculating the variable rate used under the plan on or after April 1, 2022, but creditors may vary in the timing of when they provide change-in-terms notices to replace the LIBOR index used on their HELOC accounts and when these replacements become effective.

For example, one HELOC creditor may replace the LIBOR index used under its HELOC plans in April 2022, while another HELOC creditor may replace the LIBOR index used under its HELOC plans in October 2022. In addition, a HELOC creditor may not replace the LIBOR index used under all of its HELOC plans at the same time. For example, a HELOC creditor may replace the LIBOR index used under some of its HELOC plans in April 2022 but replace the LIBOR index used under other of its HELOC plans in May 2022.

Nonetheless, regardless of when a particular creditor replaces the LIBOR index used under its HELOC plans, § 1026.40(f)(3)(ii)(B) generally requires that all creditors for HELOCs use October 18, 2021, (provided the replacement index is published on that day), as the day for determining the index values for the replacement index and the LIBOR index, to promote consistency for creditors and consumers with respect to which index values are used to compare the two rates.

Section 1026.40(f)(3)(ii)(B) provides exceptions to the general requirement to use the index values for the replacement index and the LIBOR index used under the plan in effect on October 18, 2021. Section 1026.40(f)(3)(ii)(B) provides that if the replacement index is not published on October 18, 2021, the creditor generally must use the next calendar day that both

the LIBOR index and the replacement index are published as the date for selecting indices values in determining whether the APR based on the replacement index is substantially similar to the rate based on the LIBOR index. However, if the replacement index is the SOFR-based spread-adjusted index recommended by the ARRC for consumer products to replace the 1-month, 3-month, or 6-month USD LIBOR index, the creditor must use the index value on June 30, 2023, for the LIBOR index and, for the SOFR-based spread-adjusted index for consumer products, must use the index value on the first date that index is published, in determining whether the APR based on the replacement index is substantially similar to the rate based on the LIBOR index.

This final rule adopts § 1026.40(f)(3)(ii)(B) as proposed to use a single day to compare the rates. The Bureau declines to adopt industry commenters' suggestions that the Bureau should (1) give creditors the option to either use a single date for purposes of the index values or use the median value of the difference between the two indices over a slightly longer period of time; or (2) require the use of the historical spread rather than the spread on a specific day in comparing rates to help ensure such rates are substantially similar to each other. The Bureau also declines to adopt consumer group commenters' suggestion that the Bureau should require creditors to use a historical median value rather than the value from a single day when comparing a potential replacement to the original index rate.

This final rule is consistent with the condition in the unavailability provision in current § 1026.40(f)(3)(ii), in the sense that it provides that the new index and margin must result in an APR that is substantially similar to the rate in effect on a single day. Nonetheless, the Bureau recognizes that there is a possibility that the spread between the replacement index and the original index could differ significantly on a particular day from the historical spread in certain unusual circumstances.

Nonetheless, generally using the October 18, 2021 date allowed the Bureau sufficient time before issuing this final rule to analyze the LIBOR indices on that date with the publicly

available data for potential replacement rates that existed as of October 18, 2021, to ensure that the spreads on that day were not outliers to the historical spreads between the rates. The Bureau believes that the spread between the LIBOR rates and potential replacement rates that were published on October 18, 2021, generally do not differ significantly from the 5-year median historical spreads on October 18, 2021. For example, between October 17, 2017, and October 17, 2021, the median spread between Prime and 1-month LIBOR was 306 basis points. On October 18, 2021, the spread between Prime and 1-month LIBOR was 316 basis points.

The Bureau notes that the SOFR-based spread-adjusted indices recommended by the ARRC for consumer products to replace 1-month, 3-month, 6-month, or 1-year USD LIBOR were not being published as of October 18, 2021, and the ARRC has indicated that these SOFR-based spread-adjusted indices for consumer products will not be published until Monday, July 3, 2023. Accordingly, the Bureau has included an exception in § 1026.40(f)(3)(ii)(B), which provides that the creditor must use the index value on June 30, 2023, for the LIBOR index and, for the SOFR-based spread-adjusted index recommended by the ARRC for consumer products to replace 1-month, 3-month, 6-month, or 1-year USD LIBOR, must use the index value on the first date that index is published, in determining whether the APR based on the replacement index is substantially similar to the rate based on the LIBOR index. As discussed in the section-by-section analysis of § 1026.20(a), for consumer products, the ARRC is recommending a 1-year transition period to the five-year median spread adjustment methodology used to develop the long-term spread-adjustment values as shown in Table 1, contained in the section-by-section analysis of § 1026.20(a). The initial short-term spread adjustment will be the 2-week average of the LIBOR-SOFR spread up to July 3, 2023. For these indices, over the first "transition" year following July 3, 2023, the daily published short-term spread adjustment will move linearly toward

the longer-term fixed spread adjustment.[126] After the initial transition year, the spread adjustment will be permanently set at the longer-term fixed rate spread.[127]

The Bureau believes that the approach in this final rule properly minimizes the concerns the replacement index and the LIBOR index could differ significantly on a particular day from the historical spread in certain unusual circumstances discussed above without adding additional complexity to the rule.

Under § 1026.40(f)(3)(ii)(B), in calculating the comparison rates using the replacement index and the LIBOR index used under the HELOC plan, the creditor must use the margin that applied to the variable rate immediately prior to when the creditor provides the change-in-terms notice disclosing the replacement index for the variable rate. This final rule adopts § 1026.40(f)(3)(ii)(B) as proposed to require that creditors must use this margin.

Comment 40(f)(3)(ii)(B)-2 explains that the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan is the margin that applied to the variable rate immediately prior to when the creditor provides the change-in-terms notice disclosing the replacement index for the variable rate. Comment 40(f)(3)(ii)(B)-2.i provides an example to illustrate this comment, when the margin used to calculate the variable rate is increased pursuant to a written agreement under § 1026.40(f)(3)(iii), and this change in the margin occurs after October 18, 2021, but prior to the date that the creditor provides a change-in-terms notice under § 1026.9(c)(1) disclosing the replacement index for the variable rate. This final rule adopts this example in comment 40(f)(3)(ii)(B)-2.i generally as proposed with revisions consistent with the revisions to § 1026.40(f)(3)(ii)(B) and to clarify the references to the prime rate and the LIBOR index used in the example.

The Bureau recognizes that creditors for HELOCs in certain instances may change the margin that is used to calculate the LIBOR variable rate after October 18, 2021, but prior to

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[126] Summary of Fallback Recommendations, *supra* note 5, at 11.

[127] *Id*.

when the creditor provides a change-in-terms notice to replace the LIBOR index used under the plan. If the Bureau were to require that the creditor use the margin in effect on October 18, 2021, this would undo any margin changes that occurred after October 18, 2021, but prior to the creditor providing a change-in-terms notice of the replacement of the LIBOR index used under the plan, which would be inconsistent with the purpose of the comparisons of the rates under § 1026.40(f)(3)(ii)(B).

Comment 40(f)(3)(ii)(B)-3 clarifies that the replacement index and replacement margin are not required to produce an APR that is substantially similar on the day that the replacement index and replacement margin become effective on the plan. Comment 40(f)(3)(ii)(B)-3.i also provides an example to illustrate this comment. This final rule adopts comment 40(f)(3)(ii)(B)-3 generally as proposed with several revisions consistent with the revisions to § 1026.40(f)(3)(ii)(B) to: (1) set April 1, 2022, as the date on or after which HELOC creditors are permitted to replace the LIBOR index used under the plan pursuant to § 1026.40(f)(3)(ii)(B) prior to LIBOR becoming unavailable; (2) set October 18, 2021, as the date creditors generally must use for selecting indices values in determining whether the APRs using the LIBOR index and the replacement index are substantially similar; and (3) provide that if the replacement index is not published on October 18, 2021, the creditor generally must use the next calendar day for which both the LIBOR index and the replacement index are published as the date for selecting indices values in determining whether the APR based on the replacement index is substantially similar to the rate based on the LIBOR index.[128] This final rule also revises the example set forth in proposed comment 40(f)(3)(ii)(B)-3 to clarify the prime index and LIBOR index used in the example. As discussed in more detail below, this final rule also revises proposed comment 40(f)(3)(ii)(B)-3 to provide additional detail on how the condition in § 1026.40(f)(3)(ii)(B) that

[128] The one exception is that if the replacement index is the SOFR-based spread-adjusted index recommended by the ARRC for consumer products to replace the 1-month, 3-month, 6-month, or 1-year USD LIBOR index, the creditor must use the index value on June 30, 2023, for the LIBOR index and, for the SOFR-based spread-adjusted index for consumer products, must use the index value on the first date that index is published, in determining whether the APR based on the replacement index is substantially similar to the rate based on the LIBOR index.

the replacement index and replacement margin would have resulted in an APR substantially similar to the rate calculated using the LIBOR index applies to the SOFR-based spread-adjusted indices recommended by the ARRC for consumer products to replace the 1-month, 3-month, or 6-month USD LIBOR index.

The Bureau believes that it would raise compliance issues if the rate calculated using the replacement index and replacement margin at the time the replacement index and replacement margin became effective had to be substantially similar to the rate calculated using the LIBOR index in effect on October 18, 2021. Under § 1026.9(c)(1), the creditor must provide a change-in-terms notice of the replacement index and replacement margin (including a reduced margin in a change-in-terms notice provided on or after October 1, 2022, as required by revised § 1026.9(c)(1)(ii)) at least 15 days prior to the effective date of the changes. The Bureau believes that this advance notice is important to consumers to inform them of how variable rates will be determined going forward after the LIBOR index is replaced. Because advance notice of the changes must be given prior to the changes becoming effective, a creditor would not be able to ensure that the rate based on the replacement index and replacement margin at the time the change-in-terms notice becomes effective will be substantially similar to the rate calculated using the LIBOR index in effect on October 18, 2021. The value of the replacement index may change after October 18, 2021, and before the change-in-terms notice becomes effective.

This final rule does not provide additional details on the "substantially similar" standard in comparing the rates for purposes of § 1026.40(f)(3)(ii)(B). For the reasons discussed in the section-by-section analysis of § 1026.40(f)(3)(ii)(A), the Bureau declines to adopt industry commenters' suggestions that the Bureau should provide greater detail as to the process creditors must use to determine whether an APR calculated using a replacement index is substantially similar to the APR using the LIBOR index for purposes of §§ 1026.40(f)(3)(ii)(A) and (B) and 1026.55(b)(7)(i) and (ii). The Bureau also declines to adopt consumer group commenters' suggestion that the Bureau should interpret "substantially similar" to require creditors to

minimize any value transfer when selecting a replacement index and setting a new margin for purposes of §§ 1026.40(f)(3)(ii)(A) and (B) and 1026.55(b)(7)(i) and (ii).

As discussed above, comment 40(f)(3)(ii)(B)-1.ii clarifies that in order to use the SOFR-based spread-adjusted index recommended by the ARRC for consumer products as the replacement index for the applicable LIBOR index, the creditor must comply with the condition in § 1026.40(f)(3)(ii)(B) that the SOFR-based spread-adjusted index for consumer products and replacement margin will produce an APR substantially similar to the rate calculated using the LIBOR and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. This final rule revises comment 40(f)(3)(ii)(B)-1.ii from the proposal to provide that because of the exception in § 1026.40(f)(3)(ii)(B), the creditor must use the index value on June 30, 2023, for the LIBOR index and, for the SOFR-based spread-adjusted index for consumer products, must use the index value on the first date that index is published, in determining whether the APR based on the replacement index is substantially similar to the rate based on the LIBOR index.

For the same reasons discussed in the section-by-section analysis of § 1026.40(f)(3)(ii)(A) for adopting comment 40(f)(3)(ii)(A)-3, this final rule revises comment 40(f)(3)(ii)(B)-3 from the proposal to provide that for purposes of § 1026.40(f)(3)(ii)(B), if a creditor uses the SOFR-based spread-adjusted index recommended by the ARRC for consumer products to replace the 1-month, 3-month, or 6-month USD LIBOR index as the replacement index and uses as the replacement margin the same margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan, the creditor will be deemed to be in compliance with the condition in § 1026.40(f)(3)(ii)(B) that the replacement index and replacement margin would have resulted in an APR substantially similar to the rate calculated using the LIBOR index. Thus, a creditor that uses the SOFR-based spread-adjusted index recommended by the ARRC for consumer products to replace the 1-month, 3-month, or 6-month USD LIBOR index as the replacement index still must comply with the condition in

§ 1026.40(f)(3)(ii)(B) that the replacement index and replacement margin would have resulted in an APR substantially similar to the rate calculated using the LIBOR index, but the creditor will be deemed to be in compliance with this condition if the creditor uses as the replacement margin the same margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. For the same reasons discussed in the section-by-section analysis of § 1026.40(f)(3)(ii)(A) in relation to comment 40(f)(3)(ii)(A)-3, the Bureau is reserving judgment about whether to include a reference to the 1-year USD LIBOR index in comment 40(f)(3)(ii)(B)-3 until it obtains additional information.

Section 1026.55 Limitations on Increasing Annual Percentage Rates, Fees, and Charges

55(b) Exceptions

55(b)(7) Index Replacement and Margin Change Exception

TILA section 171(a), which was added by the Credit CARD Act, provides that in the case of a credit card account under an open-end consumer credit plan, no creditor may increase any APR, fee, or finance charge applicable to any outstanding balance, except as permitted under TILA section 171(b).[129] TILA section 171(b)(2) provides that the prohibition under TILA section 171(a) does not apply to an increase in a variable APR in accordance with a credit card agreement that provides for changes in the rate according to the operation of an index that is not under the control of the creditor and is available to the general public.[130]

In implementing these provisions of TILA section 171, § 1026.55(a) prohibits a card issuer from increasing an APR or certain enumerated fees or charges set forth in § 1026.55(a) on a credit card account under an open-end (not home-secured) consumer credit plan, except as provided in § 1026.55(b). Section 1026.55(b)(2) provides that a card issuer may increase an APR when: (1) the APR varies according to an index that is not under the card issuer's control

[129] 15 U.S.C. 1666i-1(a).

[130] 15 U.S.C. 1666i-1(b)(2).

and is available to the general public; and (2) the increase in the APR is due to an increase in the index.

Comment 55(b)(2)-6 provides that a card issuer may change the index and margin used to determine the APR under § 1026.55(b)(2) if the original index becomes unavailable, as long as historical fluctuations in the original and replacement indices were substantially similar, and as long as the replacement index and margin will produce a rate similar to the rate that was in effect at the time the original index became unavailable. If the replacement index is newly established and therefore does not have any rate history, it may be used if it produces a rate substantially similar to the rate in effect when the original index became unavailable.

The Bureau's Proposal

As discussed in part III, the industry has requested that the Bureau permit card issuers to replace the LIBOR index used in setting the variable rates on existing accounts prior to when the LIBOR indices become unavailable to facilitate compliance. Among other things, the industry is concerned that if card issuers must wait until LIBOR becomes unavailable to replace the LIBOR index used on existing accounts, card issuers would not have sufficient time to inform consumers of the replacement index and update their systems to implement the change. To reduce uncertainty with respect to selecting a replacement index, the industry also has requested that the Bureau determine that Prime has historical fluctuations that are substantially similar to those of the LIBOR indices.

To address these concerns, as discussed in more detail in the section-by-section analysis of § 1026.55(b)(7)(ii), the Bureau proposed to add new LIBOR-specific provisions to proposed § 1026.55(b)(7)(ii) that would permit card issuers for a credit card account under an open-end (not home-secured) consumer credit plan that uses a LIBOR index under the plan to replace LIBOR and change the margin on such plans on or after March 15, 2021, in certain circumstances.

Specifically, proposed § 1026.55(b)(7)(ii) provided that if a variable rate on a credit card account under an open-end (not home-secured) consumer credit plan is calculated using a LIBOR index, a card issuer may replace the LIBOR index and change the margin for calculating the variable rate on or after March 15, 2021, as long as: (1) the historical fluctuations in the LIBOR index and replacement index were substantially similar; and (2) the replacement index value in effect on December 31, 2020, and replacement margin will produce an APR substantially similar to the rate calculated using the LIBOR index value in effect on December 31, 2020, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. The proposed rule also provided that if the replacement index is newly established and therefore does not have any rate history, it may be used if the replacement index value in effect on December 31, 2020, and the replacement margin will produce an APR substantially similar to the rate calculated using the LIBOR index value in effect on December 31, 2020, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan.

Also, as discussed in more detail in the section-by-section analysis of § 1026.55(b)(7)(ii), to reduce uncertainty with respect to selecting a replacement index that meets the standards in proposed § 1026.55(b)(7)(ii), the Bureau proposed to determine that Prime is an example of an index that has historical fluctuations that are substantially similar to those of the 1-month and 3-month USD LIBOR indices. The Bureau also proposed to determine that the SOFR-based spread-adjusted indices recommended by the ARRC for consumer products to replace the 1-month, 3-month, 6-month, or 1-year USD LIBOR indices have historical fluctuations that are substantially similar to those of the LIBOR indices that they are intended to replace. The Bureau also proposed additional detail in comments 55(b)(7)(ii)-1 through -3 with respect to proposed § 1026.55(b)(7)(ii).

In addition, as discussed in more detail in the section-by-section analysis of § 1026.55(b)(7)(i), the Bureau proposed to move the unavailability provisions in current

comment 55(b)(2)-6 to proposed § 1026.55(b)(7)(i) and to revise the proposed moved provisions for clarity and consistency. The Bureau also proposed additional detail in comments 55(b)(7)(i)-1 and -2 with respect to proposed § 1026.55(b)(7)(i). For example, to reduce uncertainty with respect to selecting a replacement index that meets the standards under proposed § 1026.55(b)(7)(i), the Bureau proposed to make the same determinations discussed above related to Prime and the SOFR-based spread-adjusted indices recommended by the ARRC for consumer products in relation to proposed § 1026.55(b)(7)(i). The Bureau proposed to make these revisions and provide additional detail in case card issuers use the unavailability provision in proposed § 1026.55(b)(7)(i) to replace a LIBOR index used for their credit card accounts, as discussed in more detail below.

Proposed comment 55(b)(7)-1 addressed the interaction among the unavailability provisions in proposed § 1026.55(b)(7)(i), the LIBOR-specific provisions in proposed § 1026.55(b)(7)(ii), and the contractual provisions applicable to the credit card account. Specifically, proposed comment 55(b)(7)-1 provided that a card issuer may use either the provision in proposed § 1026.55(b)(7)(i) or § 1026.55(b)(7)(ii) to replace a LIBOR index used under a credit card account under an open-end (not home-secured) consumer credit plan so long as the applicable conditions are met for the provision used. This proposed comment made clear, however, that neither proposed provision excuses the card issuer from noncompliance with contractual provisions.

To facilitate compliance, proposed comment 55(b)(7)-1 also provided examples of the interaction among the unavailability provisions in proposed § 1026.55(b)(7)(i), the LIBOR-specific provisions in proposed § 1026.55(b)(7)(ii), and three types of contractual provisions for credit card accounts. The Bureau understands that credit card contracts generally allow a card issuer to change the terms of the contract (including the index) as permitted by law. Proposed comment 55(b)(7)-1 provided detail where this contract language applies. In addition, consistent with the detail proposed in relation to HELOCs subject to § 1026.40 in proposed comment

40(f)(3)(ii)-1, proposed comment 55(b)(7)-1 also provided detail on two other types of contract language, in case any credit card contracts include such language. Specifically, proposed comment 55(b)(7)-1 also provided detail for credit card contracts that contain language providing that: (1) a card issuer can replace the LIBOR index and the margin for calculating the variable rate unilaterally only if the original index is no longer available or becomes unavailable; and (2) the replacement index and replacement margin will result in an APR substantially similar to a rate that is in effect when the original index becomes unavailable. Proposed comment 55(b)(7)-1 also provided details for credit card contracts that include language providing that the card issuer can replace the original index and the margin for calculating the variable rate unilaterally only if the original index is no longer available or becomes unavailable, but does not require that the replacement index and replacement margin will result in an APR substantially similar to a rate that is in effect when the original index becomes unavailable.

Comments Received

In response to the proposal, the industry commenters generally provided the same comments for both proposed §§ 1026.40(f)(3)(ii) for HELOCs and 1026.55(b)(7) for credit card accounts under an open-end (not home-secured) consumer credit plan. Similarly, the consumer group commenters also provided the same comments for both proposed §§ 1026.40(f)(3)(ii) for HELOCs and 1026.55(b)(7) for credit card accounts under an open-end (not home-secured) consumer credit plan. These comments from industry and consumer groups are described in the section-by-section analysis of § 1026.40(f)(3)(ii).

The Final Rule

As discussed in the section-by-section analysis of § 1026.55(b)(7)(i), this final rule adopts § 1026.55(b)(7)(i) as proposed. As discussed in the section-by-section analysis of § 1026.55(b)(7)(ii), this final rule adopts § 1026.55(b)(7)(ii) generally as proposed with revisions to: (1) set April 1, 2022, as the date on or after which card issuers are permitted to replace the LIBOR index used under the plan pursuant to § 1026.55(b)(7)(ii) prior to LIBOR becoming

unavailable; (2) set October 18, 2021, as the date card issuers generally must use for selecting indices values in determining whether the APRs using the LIBOR index and the replacement index are substantially similar; and (3) provide that if the replacement index is not published on October 18, 2021, the card issuer generally must use the next calendar day for which both the LIBOR index and the replacement index are published as the date for selecting indices values in determining whether the APR based on the replacement index is substantially similar to the rate based on the LIBOR index.[131] Revisions to comment 55(b)(7)-1 as proposed are discussed in more detail below.[132]

This final rule adopts new LIBOR-specific provisions rather than interpreting when LIBOR is unavailable. For the same reasons that the Bureau is adopting LIBOR-specific provisions for HELOCs under § 1026.40(f)(3)(ii)(B), this final rule adopts new LIBOR-specific provisions under § 1026.55(b)(7)(ii), rather than interpreting LIBOR indices to be unavailable as of a certain date prior to LIBOR being discontinued under current comment 55(b)(2)-6 (as moved to § 1026.55(b)(7)(i)).

Interaction among § 1026.55(b)(7)(i) and (ii) and contractual provisions. Comment 55(b)(7)-1 addresses the interaction among the unavailability provisions in § 1026.55(b)(7)(i), the LIBOR-specific provisions in § 1026.55(b)(7)(ii), and the contractual provisions applicable to the credit card account. This final rule adopts comment 55(b)(7)-1 generally as proposed, with several revisions consistent with the changes this final rule makes to proposed § 1026.55(b)(7)(ii). Specifically, this final rule revises comment 55(b)(7)-1 from the proposal to reflect that: (1) April 1, 2022, is the date on or after which card issuers may replace a LIBOR

[131] As set forth in § 1026.55(b)(7)(ii), one exception is that if the replacement index is the SOFR-based spread-adjusted index recommended by the ARRC for consumer products to replace the 1-month, 3-month, 6-month, or 1-year USD LIBOR index, the card issuer must use the index value on June 30, 2023, for the LIBOR index and, for the SOFR-based spread-adjusted index for consumer products, must use the index value on the first date that index is published, in determining whether the APR based on the replacement index is substantially similar to the rate based on the LIBOR index.

[132] Revisions to comments 55(b)(7)(i)-1 through -2 as proposed are discussed in the section-by-section analysis of § 1026.55(b)(7)(i). Revisions to comments 55(b)(7)(ii)-1 through -3 as proposed are discussed in the section-by-section analysis of § 1026.55(b)(7)(ii).

index under § 1026.55(b)(7)(ii) if certain conditions are met; (2) October 18, 2021, is the date that card issuers generally must use for selecting indices values in determining whether the APRs using the LIBOR index and the replacement index are substantially similar under § 1026.55(b)(7)(ii);[133] and (3) if the replacement index is not published on October 18, 2021, the card issuer generally must use the next calendar day for which both the LIBOR index and the replacement index are published as the date for selecting indices values in determining whether the APR based on the replacement index is substantially similar to the rate based on the LIBOR index.[134]

Specifically, comment 55(b)(7)-1 provides that a card issuer may use either the provision in § 1026.55(b)(7)(i) or § 1026.55(b)(7)(ii) to replace a LIBOR index used under a credit card account under an open-end (not home-secured) consumer credit plan so long as the applicable conditions are met for the provision used. This comment makes clear, however, that neither provision excuses the card issuer from noncompliance with contractual provisions. For the same reasons discussed in § 1026.40(f)(3)(ii) for HELOC accounts, the Bureau does not believe that it is appropriate for the LIBOR-specific provisions in § 1026.55(b)(7)(ii) to override the consumer's contract with the card issuer.

To facilitate compliance, comment 55(b)(7)-1 also provides examples of the interaction among the unavailability provisions in § 1026.55(b)(7)(i), the LIBOR-specific provisions in § 1026.55(b)(7)(ii), and three types of contractual provisions for credit card accounts. Each of these examples assumes that the LIBOR index used under the plan becomes unavailable after June 30, 2023.

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[133] See the section-by-section analysis of § 1026.40(f)(3)(ii)(B) for the rationale for why the Bureau selected the October 18, 2021, date.

[134] The one exception is that if the replacement index is the SOFR-based spread-adjusted index recommended by the ARRC for consumer products to replace the 1-month, 3-month, 6-month, or 1-year USD LIBOR index, the card issuer must use the index value on June 30, 2023, for the LIBOR index and, for the SOFR-based spread-adjusted index for consumer products, must use the index value on the first date that index is published, in determining whether the APR based on the replacement index is substantially similar to the rate based on the LIBOR index.

Specifically, comment 55(b)(7)-1.i provides an example where a contract for a credit card account under an open-end (not home-secured) consumer credit plan provides that a card issuer may not unilaterally replace an index under a plan unless the original index becomes unavailable and provides that the replacement index and replacement margin will result in an APR substantially similar to a rate that is in effect when the original index becomes unavailable. In this case, comment 55(b)(7)-1.i explains that the card issuer may use the unavailability provisions in § 1026.55(b)(7)(i) to replace the LIBOR index used under the plan so long as the conditions of that provision are met. Comment 55(b)(7)-1.i also explains that the LIBOR-specific provisions in § 1026.55(b)(7)(ii) provide that a card issuer may replace the LIBOR index if the replacement index value in effect on October 18, 2021, and replacement margin will produce an APR substantially similar to the rate calculated using the LIBOR index value in effect on October 18, 2021, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. If the replacement index is not published on October 18, 2021, the card issuer generally must use the next calendar day for which both the LIBOR index and the replacement index are published as the date for selecting indices values in determining whether the APR based on the replacement index is substantially similar to the rate based on the LIBOR index. The one exception is that if the replacement index is the SOFR-based spread-adjusted index recommended by the ARRC for consumer products to replace the 1-month, 3-month, 6-month, or 1-year USD LIBOR index, the card issuer must use the index value on June 30, 2023, for the LIBOR index and, for the SOFR-based spread-adjusted index for consumer products, must use the index value on the first date that index is published, in determining whether the APR based on the replacement index is substantially similar to the rate based on the LIBOR index. Comment 55(b)(7)-1.i notes, however, that the card issuer in this example would be contractually prohibited from replacing the LIBOR index used under the plan unless the replacement index and replacement margin also will produce an APR substantially similar to a rate that is in effect when the LIBOR index becomes unavailable.

Comment 55(b)(7)-1.ii provides an example of a contract for a credit card account under an open-end (not home-secured) consumer credit plan under which a card issuer may not replace an index unilaterally under a plan unless the original index becomes unavailable but does not require that the replacement index and replacement margin will result in an APR substantially similar to a rate that is in effect when the original index becomes unavailable. In this case, the card issuer would be contractually prohibited from unilaterally replacing a LIBOR index used under the plan until it becomes unavailable. At that time, the card issuer has the option of using § 1026.55(b)(7)(i) or § 1026.55(b)(7)(ii) to replace the LIBOR index if the conditions of the applicable provision are met. For the same reasons discussed in the section-by-section analysis of § 1026.40(f)(3)(ii) for HELOC accounts, this final rule allows the card issuer in this case to use either the unavailability provisions in § 1026.55(b)(7)(i) or the LIBOR-specific provisions in § 1026.55(b)(7)(ii).

Comment 55(b)(7)-1.iii provides an example of a contract for a credit card account under an open-end (not home-secured) consumer credit plan under which a card issuer may change the terms of the contract (including the index) as permitted by law. Comment 55(b)(7)-1.iii explains in this case, if the card issuer replaces a LIBOR index under a plan on or after April 1, 2022, but does not wait until LIBOR becomes unavailable to do so, the card issuer may only use § 1026.55(b)(7)(ii) to replace the LIBOR index if the conditions of that provision are met. In this case, the card issuer may not use § 1026.55(b)(7)(i). Comment 55(b)(7)-1.iii also explains that if the card issuer waits until the LIBOR index used under the plan becomes unavailable to replace the LIBOR index, the card issuer has the option of using § 1026.55(b)(7)(i) or § 1026.55(b)(7)(ii) to replace the LIBOR index if the conditions of the applicable provision are met. For the same reasons discussed in the section-by-section analysis of § 1026.40(f)(3)(ii) for HELOC accounts, this final rule allows the card issuer, in this case, to use either the unavailability provisions in § 1026.55(b)(7)(i) or the LIBOR-specific provisions in

§ 1026.55(b)(7)(ii) if the card issuer waits until the LIBOR index used under the plan becomes unavailable to replace the LIBOR index.

55(b)(7)(i)

Section 1026.55(a) prohibits a card issuer from increasing an APR or certain enumerated fees or charges set forth in § 1026.55(a) on a credit card account under an open-end (not home-secured) consumer credit plan, except as provided in § 1026.55(b). Section 1026.55(b)(2) provides that a card issuer may increase an APR when: (1) the APR varies according to an index that is not under the card issuer's control and is available to the general public; and (2) the increase in the APR is due to an increase in the index. Comment 55(b)(2)-6 provides that a card issuer may change the index and margin used to determine the APR under § 1026.55(b)(2) if the original index becomes unavailable, as long as historical fluctuations in the original and replacement indices were substantially similar, and as long as the replacement index and margin will produce a rate similar to the rate that was in effect at the time the original index became unavailable. If the replacement index is newly established and therefore does not have any rate history, it may be used if it produces a rate substantially similar to the rate in effect when the original index became unavailable.

The Bureau's Proposal

The Bureau proposed to move the unavailability provisions in current comment 55(b)(2)-6 to proposed § 1026.55(b)(7)(i) and to revise the proposed moved provisions for clarity and consistency. The Bureau also proposed comments 55(b)(7)(i)-1 through -2 with respect to proposed § 1026.55(b)(7)(i).

Specifically, proposed § 1026.55(b)(7)(i) provided that a card issuer may increase an APR when the card issuer changes the index and margin used to determine the APR if the original index becomes unavailable, as long as: (1) the historical fluctuations in the original and replacement indices were substantially similar; and (2) the replacement index and replacement margin will produce a rate substantially similar to the rate that was in effect at the time the

original index became unavailable. Proposed § 1026.55(b)(7)(i) provided that if the replacement index is newly established and therefore does not have any rate history, it may be used if it and the replacement margin will produce a rate substantially similar to the rate in effect when the original index became unavailable.

Proposed § 1026.55(b)(7)(i) differed from current comment 55(b)(2)-6 in three ways. First, proposed § 1026.55(b)(7)(i) provided that if an index that is not newly established is used to replace the original index, the replacement index and replacement margin will produce a rate "substantially similar" to the rate that was in effect at the time the original index became unavailable. Currently, comment 55(b)(2)-6 uses the term "similar" instead of "substantially similar" for the comparison of these rates. Nonetheless, comment 55(b)(2)-6 provides that if the replacement index is newly established and therefore does not have any rate history, it may be used if it produces a rate "substantially similar" to the rate in effect when the original index became unavailable. To correct this inconsistency between the comparison of rates when an existing replacement index is used and when a newly established index is used, the Bureau proposed to use "substantially similar" consistently in proposed § 1026.55(b)(7)(i) for the comparison of rates. As discussed in the section-by-section analysis of § 1026.40(f)(3)(ii)(A), the Bureau also proposed to use "substantially similar" as the standard for the comparison of rates for HELOC plans when the LIBOR index used under the plan becomes unavailable.

Second, proposed § 1026.55(b)(7)(i) differed from current comment 55(b)(2)-6 in that the proposed provision would have made clear that a card issuer that is using a newly established index may also adjust the margin so that the newly established index and replacement margin will produce an APR substantially similar to the rate in effect when the original index became unavailable. The newly established index may not have the same index value as the original index, and the card issuer may need to adjust the margin to meet the condition that the newly established index and replacement margin will produce an APR substantially similar to the rate in effect when the original index became unavailable.

Third, proposed § 1026.55(b)(7)(i) differed from current comment 55(b)(2)-6 in that the proposed provision used the term "the replacement index and replacement margin" instead of "the replacement index and margin" to make clear when proposed § 1026.55(b)(7)(i) is referring to a replacement margin and not the original margin.

Proposed comment 55(b)(7)(i)-1 provided detail on determining whether a replacement index that is not newly established has historical fluctuations that are substantially similar to those of the LIBOR index used under the plan for purposes of proposed § 1026.55(b)(7)(i). Specifically, proposed comment 55(b)(7)(i)-1 provided that for purposes of replacing a LIBOR index used under a plan pursuant to § 1026.55(b)(7)(i), a replacement index that is not newly established must have historical fluctuations that are substantially similar to those of the LIBOR index used under the plan, considering the historical fluctuations up through when the LIBOR index becomes unavailable or up through the date indicated in a Bureau determination that the replacement index and the LIBOR index have historical fluctuations that are substantially similar, whichever is earlier. To facilitate compliance, proposed comment 55(b)(7)(i)-1.i included a proposed determination that Prime has historical fluctuations that are substantially similar to those of the 1-month and 3-month USD LIBOR indices and includes a placeholder for the date when this proposed determination would be effective, if adopted in the final rule. The Bureau understands that some card issuers may choose to replace a LIBOR index with Prime. Proposed comment 55(b)(7)(i)-1.i also provided that in order to use Prime as the replacement index for the 1-month or 3-month USD LIBOR index, the card issuer also must comply with the condition in § 1026.55(b)(7)(i) that Prime and the replacement margin will produce a rate substantially similar to the rate that was in effect at the time the LIBOR index became unavailable. This condition for comparing the rates under proposed § 1026.55(b)(7)(i) is discussed in more detail below.

To facilitate compliance, proposed comment 55(b)(7)(i)-1.ii provided a proposed determination that the SOFR-based spread-adjusted indices recommended by the ARRC for

consumer products to replace the 1-month, 3-month, 6-month, or 1-year USD LIBOR indices have historical fluctuations that are substantially similar to those of the 1-month, 3-month, 6-month, or 1-year USD LIBOR indices respectively. The proposed comment provided a placeholder for the date when this proposed determination would be effective, if adopted in the final rule. The Bureau proposed this determination in case some card issuers choose to replace a LIBOR index with the SOFR-based spread-adjusted index recommended by the ARRC for consumer products.

Proposed comment 55(b)(7)(i)-1.ii also provided that in order to use this SOFR-based spread-adjusted index recommended by the ARRC for consumer products as the replacement index for the applicable LIBOR index, the card issuer also must comply with the condition in § 1026.55(b)(7)(i) that the SOFR-based spread-adjusted index for consumer products and replacement margin would have resulted in an APR substantially similar to the rate in effect at the time the LIBOR index became unavailable. This condition under proposed § 1026.55(b)(7)(i) is discussed in more detail below.

As discussed above, proposed § 1026.55(b)(7)(i) provided that the replacement index and replacement margin must produce an APR substantially similar to the rate that was in effect based on the LIBOR index used under the plan when the LIBOR index became unavailable. Proposed comment 55(b)(7)(i)-2 provided that for the comparison of the rates, a card issuer must use the value of the replacement index and the LIBOR index on the day that LIBOR becomes unavailable. Proposed comment 55(b)(7)(i)-2 also provided that the replacement index and replacement margin are not required to produce an APR that is substantially similar on the day that the replacement index and replacement margin become effective on the plan. Proposed comment 55(b)(7)(i)-2.i provided an example to illustrate this comment.

Comments Received

In response to the proposal, the industry commenters generally provided the same comments for both proposed § 1026.40(f)(3)(ii) for HELOCs and § 1026.55(b)(7) for credit card

accounts under an open-end (not home-secured) consumer credit plan. Similarly, the consumer group commenters also provided the same comments for both proposed § 1026.40(f)(3)(ii) for HELOCs and § 1026.55(b)(7) for credit card accounts under an open-end (not home-secured) consumer credit plan. These comments from industry and consumer groups are described in the section-by-section analysis of § 1026.40(f)(3)(ii).

The Final Rule

This final rule adopts § 1026.55(b)(7)(i) as proposed. This final rule adopts comments 55(b)(7)(i)-1 through -2 generally as proposed with several revisions to provide additional detail on the § 1026.55(b)(7)(i) provision, including providing (1) examples of the type of factors to be considered in whether a replacement index meets the Regulation Z "historical fluctuations are substantially similar" standard with respect to a particular LIBOR index for credit card accounts; and (2) if a card issuer uses the SOFR-based spread-adjusted index recommended by the ARRC for consumer products to replace the 1-month, 3-month, or 6-month USD LIBOR index as the replacement index and uses as the replacement margin the same margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan, the card issuer will be deemed to be in compliance with the condition in § 1026.55(b)(7)(i) that the replacement index and replacement margin would have resulted in an APR substantially similar to the rate in effect at the time the LIBOR index became unavailable.

To effectuate the purposes of TILA and to facilitate compliance, the Bureau is using its TILA section 105(a) authority to adopt § 1026.55(b)(7)(i). TILA section 105(a)[135] directs the Bureau to prescribe regulations to carry out the purposes of TILA, and provides that such regulations may contain additional requirements, classifications, differentiations, or other provisions, and may provide for such adjustments and exceptions for all or any class of transactions, that, in the judgment of the Bureau, are necessary or proper to effectuate the

[135] 15 U.S.C. 1604(a).

purposes of TILA, to prevent circumvention or evasion thereof, or to facilitate compliance. The Bureau is adopting this exception to facilitate compliance with TILA and effectuate its purposes. Specifically, the Bureau interprets "facilitate compliance" to include enabling or fostering continued operation of variable-rate accounts in conformity with the law.

This final rule moves comment 55(b)(2)-6 to § 1026.55(b)(7)(i) as an exception to the general rule in current § 1026.55(a) restricting rate increases. The Bureau believes that an index change could produce a rate increase at the time of the replacement or in the future. The Bureau provides this exception to the general rule in § 1026.55(a) in the circumstances in which an index becomes unavailable in the limited conditions set forth in § 1026.55(b)(7)(i) to enable or foster continued operation in conformity with the law. If the index that is used under a credit card account under an open-end (not home-secured) consumer credit plan becomes unavailable, the card issuer would need to replace the index with another index, so the rate remains a variable rate under the plan. The Bureau is adopting this exception to facilitate compliance with the rule by allowing the card issuer to maintain the rate as a variable rate, which is also likely to be consistent with the consumer's expectation that the rate on the account will be a variable rate. As noted in the preamble to the 2020 Proposal, the Bureau is not aware of legislative history suggesting that Congress intended card issuers, in this case, to be required to convert variable-rate plans to a non-variable-rate plans when the index becomes unavailable; commenters did not identify any such legislative history.

Historical fluctuations substantially similar for the LIBOR index and replacement index. This final rule adopts comment 55(b)(7)(i)-1 generally as proposed with several revisions as discussed below. Comment 55(b)(7)(i)-1 provides detail on determining whether a replacement index that is not newly established has historical fluctuations that are substantially similar to those of the LIBOR index used under the plan for purposes of § 1026.55(b)(7)(i). Specifically, comment 55(b)(7)(i)-1 provides that for purposes of replacing a LIBOR index used under a plan pursuant to § 1026.55(b)(7)(i), a replacement index that is not newly established must have

historical fluctuations that are substantially similar to those of the LIBOR index used under the plan, considering the historical fluctuations up through when the LIBOR index becomes unavailable or up through the date indicated in a Bureau determination that the replacement index and the LIBOR index have historical fluctuations that are substantially similar, whichever is earlier.

Prime has historical fluctuations that are substantially similar to those of certain USD LIBOR indices. To facilitate compliance, comment 55(b)(7)(i)-1.i includes a determination that Prime has historical fluctuations that are substantially similar to those of the 1-month and 3-month USD LIBOR indices.[136] This final rule revises comment 55(b)(7)(i)-1.i from the proposal to provide that this determination is effective as of April 1, 2022, the date on which this final rule becomes effective. The Bureau understands that some card issuers may choose to replace a LIBOR index with Prime. Comment 55(b)(7)(i)-1.i also clarifies that in order to use Prime as the replacement index for the 1-month or 3-month USD LIBOR index, the card issuer also must comply with the condition in § 1026.55(b)(7)(i) that Prime and the replacement margin will produce a rate substantially similar to the rate that was in effect at the time the LIBOR index became unavailable. This condition for comparing the rates under § 1026.55(b)(7)(i) is discussed in more detail below.

Certain SOFR-based spread-adjusted indices recommended by the ARRC for consumer products have historical fluctuations that are substantially similar to those of certain USD LIBOR indices. To facilitate compliance, comment 55(b)(7)(i)-1.ii provides a determination that the SOFR-based spread-adjusted indices recommended by the ARRC for consumer products to replace the 1-month, 3-month, or 6-month USD LIBOR indices have historical fluctuations that are substantially similar to those of the 1-month, 3-month, or 6-month USD LIBOR indices

[136] See the section-by-section analysis of § 1026.40(f)(3)(ii)(A) for a discussion of the rationale for the Bureau making this determination.

respectively.[137] The Bureau makes this determination in case some card issuers choose to replace a LIBOR index with the SOFR-based spread-adjusted index recommended by the ARRC for consumer products. This final rule revises comment 55(b)(7)(i)-1.ii from the proposal to provide that this determination is effective as of April 1, 2022, when this final rule becomes effective as discussed in more detail in part VI.[138] For the same reasons as discussed in the section-by-section analysis of § 1026.40(f)(3)(ii)(A) with respect to comment 40(f)(3)(ii)(A)-2.ii, this final rule also revises comment 55(b)(7)(i)-1.ii from the proposal to not include 1-year USD LIBOR in the comment at this time pending the Bureau's receipt of additional information and further consideration by the Bureau.

Comment 55(b)(7)(i)-1.ii also clarifies that in order to use the SOFR-based spread-adjusted index recommended by the ARRC for consumer products discussed above as the replacement index for the applicable LIBOR index, the card issuer also must comply with the condition in § 1026.55(b)(7)(i) that the SOFR-based spread-adjusted index for consumer products and replacement margin would have resulted in an APR substantially similar to the rate in effect at the time the LIBOR index became unavailable. Nonetheless, for the same reasons discussed in the section-by-section analysis of § 1026.40(f)(3)(ii)(A), this final rule revises comment 55(b)(7)(i)-2 from the proposal to provide that for purposes of § 1026.55(b)(7)(i), if a card issuer uses the SOFR-based spread-adjusted index recommended by the ARRC for consumer products to replace the 1-month, 3-month, or 6-month USD LIBOR index as the replacement index and uses as the replacement margin the same margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan, the card issuer will be deemed to be in compliance with the condition in § 1026.55(b)(7)(i) that the replacement index and replacement margin would have resulted in an APR substantially similar to the rate in effect at the time the LIBOR index became unavailable. Thus, a card issuer that

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[137] *Id.*

[138] *Id.*

uses the SOFR-based spread-adjusted index recommended by the ARRC for consumer products to replace the 1-month, 3-month, or 6-month USD LIBOR index as the replacement index still must comply with the condition in § 1026.55(b)(7)(i) that the replacement index and replacement margin would have resulted in an APR substantially similar to the rate in effect at the time the LIBOR index became unavailable, but the card issuer will be deemed to be in compliance with this condition if the card issuer uses as the replacement margin the same margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. This condition under § 1026.55(b)(7)(i) and the related comment 55(b)(7)(i)-2 are discussed in more detail below.

Additional examples of indices that have historical fluctuations that are substantially similar to those of certain USD LIBOR indices. As discussed in the section-by-section analysis of § 1026.40(f)(3)(ii), many industry commenters generally urged the Bureau to provide additional examples of indices that have historical fluctuations that are substantially similar to those of particular LIBOR indices. Specifically, the Bureau received comments from industry requesting that the Bureau provide safe harbors for the following indices specifying that these indices have historical fluctuations that are substantially similar to those of certain LIBOR indices: (1) AMERIBOR® rates; (2) the EFFR; and (3) the CMT rates. For the reasons discussed above in the section-by-section analysis of § 1026.40(f)(3)(ii)(A), this final rule does not provide safe harbors indicating that the AMERIBOR® rates, the EFFR, or the CMT rates meet the Regulation Z "historical fluctuations are substantially similar" standard for appropriate replacement indices for a particular LIBOR index.

Additional guidance on determining whether a replacement index has historical fluctuations that are substantially similar to those of certain USD LIBOR indices. As discussed in more detail in the section-by-section analysis of § 1026.40(f)(3)(ii), several industry commenters asked the Bureau to provide additional guidance on how to determine whether a replacement index has historical fluctuations that are substantially similar to those of a particular

LIBOR index, including providing a principles-based standard for determining when a replacement index has historical fluctuations that are substantially similar to those of LIBOR. For the same reasons discussed above in the section-by-section analysis of § 1026.40(f)(3)(ii)(A) for adopting new comment 40(f)(3)(ii)(A)-2.iii, this final rule adopts new comment 55(b)(7)(i)-1.iii to provide a non-exhaustive list of factors to be considered in whether a replacement index meets the Regulation Z "historical fluctuations are substantially similar" standard with respect to a particular LIBOR index. For the same reasons discussed above in the section-by-section analysis of § 1026.40(f)(3)(ii)(A), this final rule does not set forth a principles-based standard for determining whether a replacement index has historical fluctuations that are substantially similar to those of the LIBOR index that is being replaced.

Newly established index as replacement for a LIBOR index. Section 1026.55(b)(7)(i) provides that if the replacement index is newly established and therefore does not have any rate history, it may be used if it and the replacement margin will produce an APR substantially similar to the rate in effect when the original index became unavailable. This final rule adopts § 1026.55(b)(7)(i) as proposed to provide the flexibility for card issuers to use newly established indices if certain conditions are met. The Bureau declines to adopt industry commenters' suggestions that the Bureau should provide greater detail to card issuers regarding the factors or considerations that should be taken into account to determine that an index is newly established. The Bureau also declines to adopt consumer groups' suggestion that the Bureau should restrict the use of new indices that lack historical data. For the reasons discussed in the section-by-section analysis of § 1026.40(f)(3)(ii)(A), the Bureau: (1) believes it is appropriate to provide flexibility in § 1026.55(b)(7)(i) for card issuers to use a newly established index to replace a LIBOR index if certain conditions are met; and (2) is not providing additional details in this final rule on the factors or considerations that must be taken into account to determine that an index is newly established.

Substantially similar rate when LIBOR becomes unavailable. Under § 1026.55(b)(7)(i), the replacement index and replacement margin must produce an APR substantially similar to the rate that was in effect based on the LIBOR index used under the plan when the LIBOR index became unavailable. Comment 55(b)(7)(i)-2 generally provides detail on this condition. This final rule adopts comment 55(b)(7)(i)-2 generally as proposed with several revisions to provide more clarity on this condition. Comment 55(b)(7)(i)-2 provides that a card issuer generally must use the value of the replacement index and the LIBOR index on the day that the LIBOR index becomes unavailable. To facilitate compliance, this final rule revises comment 55(b)(7)(i)-2 from the proposal to address the situation where the replacement index is not published on the day that LIBOR becomes unavailable. Specifically, comment 55(b)(7)(i)-2 provides that if the replacement index is not published on the day that the LIBOR index becomes unavailable, the card issuer generally must use the previous calendar day that both indices are published as the date for selecting indices values in determining whether the APR based on the replacement index is substantially similar to the rate based on the LIBOR. The one exception is that if the replacement index is the SOFR-based spread-adjusted index recommended by the ARRC for consumer products to replace the 1-month, 3-month, 6-month, or 1-year USD LIBOR index, the card issuer must use the index value on June 30, 2023, for the LIBOR index and, for the SOFR-based spread-adjusted index for consumer products, must use the index value on the first date that index is published, in determining whether the APR based on the replacement index is substantially similar to the rate based on the LIBOR index.

This final rule adopts § 1026.55(b)(7)(i) as proposed to use a single day to compare the rates. The Bureau declines to adopt industry commenters' suggestions that the Bureau should (1) give card issuers the option to either use a single date for purposes of the index values or use the median value of the difference between the two indices over a slightly longer period of time; or (2) require the use of the historical spread rather than the spread on a specific day in comparing rates to help ensure such rates are substantially similar to each other. The Bureau also declines

to adopt consumer group commenters' suggestion that the Bureau should require card issuers to use a historical median value rather than the value from a single day when comparing a potential replacement to the original index rate.

This final rule is consistent with the condition in the unavailability provision in current comment 55(b)(2)-6, in the sense that it provides that the new index and margin must result in an APR that is substantially similar to the rate in effect on a single day. Nonetheless, the Bureau recognizes that there is a possibility that the spread between the replacement index and the original index could differ significantly on a particular day from the historical spread in certain unusual circumstances. For the same reasons set forth in the section-by-section analysis of § 1026.40(f)(3)(ii)(A) for HELOC accounts, to mitigate this concern, this final rule provides card issuers with the flexibility generally to choose to compare the rates using the index values for the LIBOR index and the replacement index on October 18, 2021, (provided the replacement index is published on that day), by using the LIBOR-specific provisions under § 1026.55(b)(7)(ii), rather than using the unavailability provisions in § 1026.55(b)(7)(i).

Comment 55(b)(7)(i)-2 also clarifies that the replacement index and replacement margin are not required to produce an APR that is substantially similar on the day that the replacement index and replacement margin become effective on the plan. Comment 55(b)(7)(i)-2.i provides an example to illustrate this comment. This final rule adopts these details in comment 55(b)(7)(i)-2 generally as proposed with revisions to clarify the references to the prime rate and the LIBOR index used in the example and to revise the dates used in the example to be consistent with the June 30, 2023 date that most USD LIBOR tenors are expected to be discontinued. The Bureau believes that it would raise compliance issues if the rate calculated using the replacement index and replacement margin at the time the replacement index and replacement margin became effective had to be substantially similar to the rate in effect calculated using the LIBOR index on the date that the LIBOR index became unavailable. Specifically, under § 1026.9(c)(2), the creditor must provide a change-in-terms notice of the replacement index and replacement margin

(including disclosing any reduced margin in change-in-terms notices provided on or after October 1, 2022, as required by § 1026.9(c)(2)(v)(A)) at least 45 days prior to the effective date of the changes. The Bureau believes that this advance notice is important to consumers to inform them of how variable rates will be determined going forward after the LIBOR index is replaced. Because advance notice of the changes must be given prior to the changes becoming effective, a creditor would not be able to ensure that the rate based on the replacement index and margin at the time the change-in-terms notice becomes effective will be substantially similar to the rate in effect calculated using the LIBOR index at the time the LIBOR index becomes unavailable. The value of the replacement index may change after the LIBOR index becomes unavailable and before the change-in-terms notice becomes effective.

This final rule does not provide additional details on the "substantially similar" standard in comparing the rates for purposes of § 1026.55(b)(7)(i). For the reasons discussed in the section-by-section analysis of § 1026.40(f)(3)(ii)(A) for HELOC accounts, the Bureau declines to adopt industry commenters' suggestions that the Bureau should provide greater detail as to the process card issuers must use to determine whether an APR calculated using a replacement index is substantially similar to the APR using the LIBOR index for purposes of §§ 1026.40(f)(3)(ii)(A) and (B) and 1026.55(b)(7)(i) and (ii). The Bureau also declines to adopt consumer group commenters' suggestion that the Bureau should interpret substantially similar to require card issuers to minimize any value transfer when selecting a replacement index and setting a new margin for purposes of proposed §§ 1026.40(f)(3)(ii)(A) and (B) and 1026.55(b)(7)(i) and (ii).

As discussed above, comment 55(b)(7)(i)-1.ii clarifies that in order to use the SOFR-based spread-adjusted index recommended by the ARRC for consumer products as the replacement index for the applicable LIBOR index, the card issuer must comply with the condition in § 1026.55(b)(7)(i) that the SOFR-based spread-adjusted index for consumer

products and replacement margin would have resulted in an APR substantially similar to the rate in effect at the time the LIBOR index became unavailable.

For the same reasons discussed in the section-by-section analysis of § 1026.40(f)(3)(ii)(A) for adopting comment 40(f)(3)(ii)(A)-3, this final rule revises comment 55(b)(7)(i)-2 from the proposal to provide that for purposes of § 1026.55(b)(7)(i), if a card issuer uses the SOFR-based spread-adjusted index recommended by the ARRC for consumer products to replace the 1-month, 3-month, or 6-month USD LIBOR index as the replacement index and uses as the replacement margin the same margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan, the card issuer will be deemed to be in compliance with the condition in § 1026.55(b)(7)(i) that the replacement index and replacement margin would have resulted in an APR substantially similar to the rate in effect at the time the LIBOR index became unavailable.[139] Thus, a card issuer that uses the SOFR-based spread-adjusted index recommended by the ARRC for consumer products to replace the 1-month, 3-month, or 6-month USD LIBOR index as the replacement index still must comply with the condition in § 1026.55(b)(7)(i) that the replacement index and replacement margin would have resulted in an APR substantially similar to the rate in effect at the time the LIBOR index became unavailable, but the card issuer will be deemed to be in compliance with this condition if the card issuer uses as the replacement margin the same margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. For the same reasons discussed in the section-by-section analysis of § 1026.40(f)(3)(ii)(A) in relation to comment 40(f)(3)(ii)(A)-3, the Bureau is reserving judgment about whether to include a reference to the 1-year USD LIBOR index in comment 55(b)(7)(i)-2 until it obtains additional information.

[139] See the section-by-section analysis of § 1026.40(f)(3)(ii)(A) for a discussion of the rationale for the Bureau making this determination.

55(b)(7)(ii)

The Bureau's Proposal

For the reasons discussed below and in the section-by-section analysis of § 1026.55(b)(7), the Bureau proposed to add new LIBOR-specific provisions to proposed § 1026.55(b)(7)(ii) that would permit card issuers for a credit card account under an open-end (not home-secured) consumer credit plan that uses a LIBOR index under the plan for calculating variable rates to replace the LIBOR index and change the margins for calculating the variable rates on or after March 15, 2021, in certain circumstances. In addition, the Bureau proposed to add detail in proposed comments 55(b)(7)(ii)-1 through -3 on the conditions set forth in proposed § 1026.55(b)(7)(ii).

Specifically, proposed § 1026.55(b)(7)(ii) provided that if a variable rate on a credit card account under an open-end (not home-secured) consumer credit plan is calculated using a LIBOR index, a card issuer may replace the LIBOR index and change the margin for calculating the variable rate on or after March 15, 2021, as long as: (1) the historical fluctuations in the LIBOR index and replacement index were substantially similar; and (2) the replacement index value in effect on December 31, 2020, and replacement margin will produce an APR substantially similar to the rate calculated using the LIBOR index value in effect on December 31, 2020, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. Proposed § 1026.55(b)(7)(ii) also provided that if the replacement index is newly established and therefore does not have any rate history, it may be used if the replacement index value in effect on December 31, 2020, and replacement margin will produce an APR substantially similar to the rate calculated using the LIBOR index value in effect on December 31, 2020, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. In addition, proposed § 1026.55(b)(7)(ii) provided that if either the LIBOR index or the replacement index is not published on December 31, 2020, the card issuer must use the next calendar day that both indices

are published as the date on which the APR based on the replacement index must be substantially similar to the rate based on the LIBOR index.

Proposed comment 55(b)(7)(ii)-1 provided detail on determining whether a replacement index that is not newly established has historical fluctuations that are substantially similar to those of the LIBOR index used under the plan for purposes of proposed § 1026.55(b)(7)(ii). Specifically, proposed comment 55(b)(7)(ii)-1 provided that for purposes of replacing a LIBOR index used under a plan pursuant to proposed § 1026.55(b)(7)(ii), a replacement index that is not newly established must have historical fluctuations that are substantially similar to those of the LIBOR index used under the plan, considering the historical fluctuations up through December 31, 2020, or up through the date indicated in a Bureau determination that the replacement index and the LIBOR index have historical fluctuations that are substantially similar, whichever is earlier. The Bureau proposed the December 31, 2020, date to be consistent with the date that card issuers generally would have been required to use for selecting the index values in comparing the rates under proposed § 1026.55(b)(7)(ii).

To facilitate compliance, proposed comment 55(b)(7)(ii)-1.i included a proposed determination that Prime has historical fluctuations that are substantially similar to those of the 1-month and 3-month USD LIBOR indices and included a placeholder for the date when this proposed determination would be effective, if adopted in the final rule. The Bureau understands some card issuers may choose to replace a LIBOR index with Prime. Proposed comment 55(b)(7)(ii)-1.i also provided that in order to use Prime as the replacement index for the 1-month or 3-month USD LIBOR index, the card issuer also must comply with the condition in § 1026.55(b)(7)(ii) that the Prime index value in effect on December 31, 2020, and replacement margin will produce an APR substantially similar to the rate calculated using the LIBOR index value in effect on December 31, 2020, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. Proposed comment 55(b)(7)(ii)-1 provided that if either the LIBOR index or Prime is not published on

December 31, 2020, the card issuer must use the next calendar day that both indices are published as the date on which the APR based on Prime must be substantially similar to the rate based on the LIBOR index. This condition for comparing the rates under proposed § 1026.55(b)(7)(ii) is discussed in more detail below.

To facilitate compliance, proposed comment 55(b)(7)(ii)-1.ii provided a proposed determination that the SOFR-based spread-adjusted indices recommended by the ARRC for consumer products to replace the 1-month, 3-month, 6-month, or 1-year USD LIBOR indices have historical fluctuations that are substantially similar to those of the 1-month, 3-month, 6-month, or 1-year USD LIBOR indices respectively. The proposed comment provided a placeholder for the date when this proposed determination would be effective, if adopted in the final rule. The Bureau made this proposed determination in case some card issuers choose to replace a LIBOR index with the SOFR-based spread-adjusted index recommended by the ARRC for consumer products. Proposed comment 55(b)(7)(ii)-1.ii also provided that in order to use this SOFR-based spread-adjusted index recommended by the ARRC for consumer products as the replacement index for the applicable LIBOR index, the card issuer also must comply with the condition in § 1026.55(b)(7)(ii) that the SOFR-based spread-adjusted index for consumer products' value in effect on December 31, 2020, and replacement margin will produce an APR substantially similar to the rate calculated using the LIBOR index value in effect on December 31, 2020, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. Proposed comment 55(b)(7)(ii)-1.ii also provided that if either the LIBOR index or the SOFR-based spread-adjusted index recommended by the ARRC for consumer products is not published on December 31, 2020, the card issuer must use the next calendar day that both indices are published as the date on which the APR based on the SOFR-based spread-adjusted index for consumer products must be substantially similar to the rate based on the LIBOR index. This condition for comparing the rates under proposed § 1026.55(b)(7)(ii) is discussed in more detail below.

As discussed above, proposed § 1026.55(b)(7)(ii) provided that if both the replacement index and LIBOR index used under the plan are published on December 31, 2020, the replacement index value in effect on December 31, 2020, and replacement margin must produce an APR substantially similar to the rate calculated using the LIBOR index value in effect on December 31, 2020, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. Proposed comment 55(b)(7)(ii)-2 provided that the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan is the margin that applied to the variable rate immediately prior to when the card issuer provides the change-in-terms notice disclosing the replacement index for the variable rate. Proposed comment 55(b)(7)(ii)-2.i and ii provided examples to illustrate this comment for the following two different scenarios: (1) when the margin used to calculate the variable rate is increased pursuant to § 1026.55(b)(3) for new transactions; and (2) when the margin used to calculate the variable rate is increased for the outstanding balances and new transactions pursuant to § 1026.55(b)(4) because the consumer pays the minimum payment more than 60 days late. In both these proposed examples, the change in the margin occurs after December 31, 2020, but prior to the date that the card issuer provides a change-in-terms notice under § 1026.9(c)(2), disclosing the replacement index for the variable rates.

Proposed comment 55(b)(7)(ii)-3 provided that the replacement index and replacement margin are not required to produce an APR that is substantially similar on the day that the replacement index and replacement margin become effective on the plan. Proposed comment 55(b)(7)(ii)-3.i provided an example to illustrate this comment.

Comments Received

In response to the proposal, the industry commenters generally provided the same comments for both proposed §§ 1026.40(f)(3)(ii) for HELOCs and 1026.55(b)(7) for credit card accounts under an open-end (not home-secured) consumer credit plan. Similarly, the consumer group commenters also provided the same comments for both proposed §§ 1026.40(f)(3)(ii) for

HELOCs and 1026.55(b)(7) for credit card accounts under an open-end (not home-secured) consumer credit plan. These comments from industry and consumer groups are described in the section-by-section analysis of § 1026.40(f)(3)(ii).

The Final Rule

This final rule adopts § 1026.55(b)(7)(ii) generally as proposed with the following three revisions: (1) sets April 1, 2022, as the date on or after which card issuers are permitted to replace the LIBOR index used under the plan pursuant to § 1026.55(b)(7)(ii) prior to LIBOR becoming unavailable; (2) sets October 18, 2021, as the date card issuers generally must use for selecting indices values in determining whether the APRs using the LIBOR index and the replacement index are substantially similar; and (3) provides that if the replacement index is not published on October 18, 2021, the card issuer generally must use the next calendar day for which both the LIBOR index and the replacement index are published as the date for selecting indices values in determining whether the APR based on the replacement index is substantially similar to the rate based on the LIBOR index.[140] This final rule adopts comments 55(b)(7)(ii)-1 through -3 generally as proposed with several revisions to provide additional detail on the § 1026.55(b)(7)(ii) provision, including providing (1) examples of the type of factors to be considered in whether a replacement index meets the Regulation Z "historical fluctuations are substantially similar" standard with respect to a particular LIBOR index for credit card accounts; and (2) if a card issuer uses the SOFR-based spread-adjusted index recommended by the ARRC for consumer products to replace the 1-month, 3-month, or 6-month USD LIBOR index as the replacement index and uses as the replacement margin the same margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan, the

[140] As set forth in § 1026.55(b)(7)(ii), one exception is that if the replacement index is the SOFR-based spread-adjusted index recommended by the ARRC for consumer products to replace the1-month, 3-month, 6-month, or 1-year USD LIBOR index, the card issuer must use the index value on June 30, 2023, for the LIBOR index and, for the SOFR-based spread-adjusted index for consumer products, must use the index value on the first date that index is published, in determining whether the APR based on the replacement index is substantially similar to the rate based on the LIBOR index.

card issuer will be deemed to be in compliance with the condition in § 1026.55(b)(7)(ii) that the replacement index and replacement margin would have resulted in an APR substantially similar to the rate calculated using the LIBOR index.

To effectuate the purposes of TILA and to facilitate compliance, the Bureau is using its TILA section 105(a) authority to adopt new LIBOR-specific provisions under § 1026.55(b)(7)(ii). TILA section 105(a)[141] directs the Bureau to prescribe regulations to carry out the purposes of TILA, and provides that such regulations may contain additional requirements, classifications, differentiations, or other provisions, and may provide for such adjustments and exceptions for all or any class of transactions, that, in the judgment of the Bureau, are necessary or proper to effectuate the purposes of TILA, to prevent circumvention or evasion thereof, or to facilitate compliance. In this final rule, the Bureau is adopting these LIBOR-specific provisions to facilitate compliance with TILA and effectuate its purposes. Specifically, the Bureau interprets "facilitate compliance" to include enabling or fostering continued operation of variable-rate accounts in conformity with the law.

As a practical matter, § 1026.55(b)(7)(ii) will allow card issuers to provide the 45-day change-in-terms notices required under § 1026.9(c)(2) prior to the LIBOR indices becoming unavailable, and thus will allow those card issuers to avoid being left without a LIBOR index to use in calculating the variable rate before the replacement index and margin become effective. Also, § 1026.55(b)(7)(ii) will allow card issuers to provide the change-in-terms notices, and replace the LIBOR index used under the plans, on accounts on a rolling basis, rather than having to provide the change-in-terms notices, and replace the LIBOR index, for all its accounts at the same time as the LIBOR index used under the plan becomes unavailable.

The ARRC has indicated that the SOFR-based spread-adjusted indices recommended by the ARRC for consumer products to replace 1-month, 3-month, 6-month, or1-year USD LIBOR

[141] 15 U.S.C. 1604(a).

index will not be published until Monday, July 3, 2023, which is the first weekday after Friday, June 30, 2023, when LIBOR is currently anticipated to sunset for those USD LIBOR tenors. However, the Bureau wishes to facilitate an earlier transition for those card issuers who may want to transition to an index other than the SOFR-based spread-adjusted indices recommended by the ARRC for consumer products. Accordingly, the Bureau is making this rule effective on April 1, 2022.

Without the LIBOR-specific provisions in § 1026.55(b)(7)(ii), as a practical matter, card issuers would need to wait until the LIBOR index becomes unavailable to provide the 45-day change-in-terms notice under § 1026.9(c)(2), disclosing the replacement index and replacement margin if the margin is changing (including disclosing any reduced margin in change-in-terms notices provided on or after October 1, 2022, as required by revised § 1026.9(c)(2)(v)(A)), and any increase in the periodic rate or APR as calculated using the replacement index[142] The Bureau believes that this advance notice of the replacement index and any change in the margin is important to consumers to inform them of how variable rates will be determined going forward after the LIBOR index is replaced.

Card issuers generally would not be able to send out change-in-terms notices disclosing the replacement index and replacement margin prior to LIBOR becoming unavailable.[143] Card issuers generally would need to know the index values of the LIBOR index and the replacement index prior to sending out the change-in-terms notice so that they could disclose the replacement margin in the change-in-terms notice. Card issuers generally will not know these index values until the day that LIBOR becomes unavailable. Thus, card issuers generally would need to wait until LIBOR becomes unavailable before they could send the 45-day change-in-terms notices

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[142] See new comment 9(c)(2)(iv)-2.ii for additional details on how a card issuer may disclose information about the periodic rate and APR in a change-in-terms notice for credit card accounts when the card issuer is replacing a LIBOR index with the SOFR-based spread-adjusted index recommended by the ARRC for consumer products in certain circumstances.

[143] One exception is when a card issuer is replacing the LIBOR index with the SOFR-based spread-adjusted index recommended by ARRC for consumer products as described in new comment 9(c)(2)(iv)-2.ii. See the section-by-section analysis of § 1026.9(c)(2)(iv) for a discussion of this comment.

under § 1026.9(c)(2) to replace the LIBOR index with a replacement index. Some card issuers could be left without a LIBOR index value to use during the 45-day period before the replacement index and replacement margin become effective, depending on their existing contractual terms. The Bureau believes this could cause compliance and systems issues.

Consistent conditions with § 1026.55(b)(7)(i). For the same reasons discussed above in the section-by-section analysis of § 1026.40(f)(3)(ii)(B) for HELOC accounts, this final rule adopts conditions in the LIBOR-specific provisions in § 1026.55(b)(7)(ii) for how a card issuer must select a replacement index and compare rates that are consistent with the conditions set forth in the unavailability provisions in § 1026.55(b)(7)(i). For example, the availability provisions in § 1026.55(b)(7)(i) and the LIBOR-specific provisions in § 1026.55(b)(7)(ii) contain a consistent requirement that the APR calculated using the replacement index must be substantially similar to the rate calculated using the LIBOR index.[144] In addition, both § 1026.55(b)(7)(i) and (ii) contain consistent conditions for how a card issuer must select a replacement index.

Historical fluctuations substantially similar for the LIBOR index and replacement index. This final rule adopts comment 55(b)(7)(ii)-1 generally as proposed with several revisions as described below. Comment 55(b)(7)(ii)-1 provides detail on determining whether a replacement index that is not newly established has historical fluctuations that are substantially similar to those of the LIBOR index used under the plan for purposes of § 1026.55(b)(7)(ii).

Proposed comment 55(b)(7)(ii)-1 provided that for purposes of replacing a LIBOR index used under a plan pursuant to proposed § 1026.55(b)(7)(ii), a replacement index that is not newly established must have historical fluctuations that are substantially similar to those of the LIBOR index used under the plan, considering the historical fluctuations up through December 31, 2020,

[144] The conditions in § 1026.55(b)(7)(i) and (ii) are consistent, but they are not the same. For example, although both provisions use the "substantially similar" standard to compare the rates, they use different dates for selecting the index values in calculating the rates. The provisions in § 1026.55(b)(7)(i) and (ii) differ in the timing of when card issuers are permitted to transition away from LIBOR, which creates some differences in how the conditions apply.

or up through the date indicated in a Bureau determination that the replacement index and the LIBOR index have historical fluctuations that are substantially similar, whichever is earlier.

For the same reasons discussed in the section-by-section analysis of § 1026.40(f)(3)(ii)(B) for HELOC accounts, this final rule revised comment 55(b)(7)(ii)-1 from the proposal to provide that for purposes of replacing a LIBOR index used under a plan pursuant to § 1026.55(b)(7)(ii), a replacement index that is not newly established must have historical fluctuations that are substantially similar to those of the LIBOR index used under the plan, considering the historical fluctuations up through the relevant date. If the Bureau has made a determination that the replacement index and the LIBOR index have historical fluctuations that are substantially similar, the relevant date is the date indicated in that determination by the Bureau. If the Bureau has not made a determination that the replacement index and the LIBOR index have historical fluctuations that are substantially similar, the relevant date is the later of April 1, 2022, or the date no more than 30 days before the card issuer makes a determination that the replacement index and the LIBOR index have historical fluctuations that are substantially similar.

Prime has historical fluctuations that are substantially similar to those of certain USD LIBOR indices. To facilitate compliance, comment 55(b)(7)(ii)-1.i includes a determination that Prime has historical fluctuations that are substantially similar to those of the 1-month and 3-month USD LIBOR indices.[145] This final rule revises comment 55(b)(7)(ii)-1.i from the proposal to provide that this determination is effective as of April 1, 2022, the date on which this final rule becomes effective. The Bureau understands that some card issuers may choose to replace a LIBOR index with Prime. Comment 55(b)(7)(ii)-1.i also clarifies that in order to use Prime as the replacement index for the 1-month or 3-month USD LIBOR index, the card issuer also must comply with the condition in § 1026.55(b)(7)(ii) that the Prime index value in effect on

[145] See the section-by-section analysis of § 1026.40(f)(3)(ii)(A) for a discussion of the rationale for the Bureau making this determination.

October 18, 2021, and replacement margin will produce an APR substantially similar to the rate calculated using the LIBOR index value in effect on October 18, 2021, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. This final rule revises 55(b)(7)(ii)-1 from the proposal to delete the reference to the exception in § 1026.55(b)(7)(ii) from using the index values on October 18, 2021. This exception is inapplicable because Prime and the LIBOR indices were published on October 18, 2021. This condition for comparing the rates under § 1026.55(b)(7)(ii) is discussed in more detail below.

Certain SOFR-based spread-adjusted indices recommended by the ARRC for consumer products have historical fluctuations that are substantially similar to those of certain USD LIBOR indices. To facilitate compliance, comment 55(b)(7)(ii)-1.ii provides a determination that the SOFR-based spread-adjusted indices recommended by the ARRC for consumer products to replace the 1-month, 3-month, or 6-month USD LIBOR indices have historical fluctuations that are substantially similar to those of the 1-month, 3-month, or 6-month USD LIBOR indices respectively.[146] The Bureau makes this determination in case some card issuers choose to replace a LIBOR index with the SOFR-based spread-adjusted index recommended by the ARRC for consumer products.

This final rule revises comment 55(b)(7)(ii)-1.ii from the proposal to provide that this determination is effective as of April 1, 2022, when this final rule becomes effective as discussed in more detail in part VI. For the same reasons as discussed in the section-by-section analysis of § 1026.40(f)(3)(ii)(A) with respect to comment 40(f)(3)(ii)(A)-2.ii, this final rule also revises comment 55(b)(7)(ii)-1.ii from the proposal to not include 1-year USD LIBOR in the comment at this time pending the Bureau's receipt of additional information and further consideration by the Bureau.

[146] See the section-by-section analysis of § 1026.40(f)(3)(ii)(A) for a discussion of the rationale for the Bureau making this determination.

Comment 55(b)(7)(ii)-1.ii also clarifies that in order to use the SOFR-based spread-adjusted index recommended by the ARRC for consumer products discussed above as the replacement index for the applicable LIBOR index, the card issuer also must comply with the condition in § 1026.55(b)(7)(ii) that the SOFR-based spread-adjusted index for consumer products and replacement margin will produce an APR substantially similar to the rate calculated using the LIBOR index and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. This final rule revises comment 55(b)(7)(ii)-1.ii from the proposal to clarify that because of the exception in § 1026.55(b)(7)(ii), the card issuer must use the index value on June 30, 2023, for the LIBOR index and, for the SOFR-based spread-adjusted index recommended by the ARRC for consumer products to replace the 1-month, 3-month, 6-month, or 1-year USD LIBOR index, must use the index value on the first date that index is published, in determining whether the APR based on the replacement index is substantially similar to the rate based on the LIBOR index. Nonetheless, for the reasons discussed in the section-by-section analysis of § 1026.40(f)(3)(ii)(B), this final rule revises comment 55(b)(7)(ii)-3 from the proposal to provide that for purposes of § 1026.55(b)(7)(ii), if a card issuer uses the SOFR-based spread-adjusted index recommended by the ARRC for consumer products to replace the 1-month, 3-month, or 6-month USD index as the replacement index and uses as the replacement margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan, the card issuer will be deemed to be in compliance with the condition in § 1026.55(b)(7)(ii) that the replacement index and replacement margin would have resulted in an APR substantially similar to the rate calculated using the LIBOR index. Thus, a card issuer that uses the SOFR-based spread-adjusted index recommended by the ARRC for consumer products to replace the 1-month, 3-month, or 6-month USD LIBOR index as the replacement index still must comply with the condition in § 1026.55(b)(7)(ii) that the replacement index and replacement margin would have resulted in an APR substantially similar to the rate calculated using the LIBOR index, but the card issuer will

be deemed to be in compliance with this condition if it uses as the replacement margin the same margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. This condition under § 1026.55(b)(7)(ii) and the related comment 55(b)(7)(ii)-3 are discussed in more detail below.

Additional examples of indices that have historical fluctuations that are substantially similar to those of certain USD LIBOR indices. As discussed in the section-by-section analysis of § 1026.40(f)(3)(ii), many industry commenters generally urged the Bureau to provide additional examples of indices that have historical fluctuations that are substantially similar to those of particular LIBOR indices. Specifically, the Bureau received comments from industry requesting that the Bureau provide safe harbors for the following indices specifying that these indices have historical fluctuations that are substantially similar to those of certain LIBOR indices: (1) AMERIBOR® rates; (2) the EFFR; and (3) the CMT rates. For the reasons discussed above in the section-by-section analysis of § 1026.40(f)(3)(ii)(A), this final rule does not provide safe harbors indicating that the AMERIBOR® rates, the EFFR, or the CMT rates meet the Regulation Z "historical fluctuations are substantially similar" standard for appropriate replacement indices for a particular LIBOR index.

Additional guidance on determining whether a replacement index has historical fluctuations that are substantially similar to those of certain USD LIBOR indices. As discussed in more detail in the section-by-section analysis of § 1026.40(f)(3)(ii), several industry commenters asked the Bureau to provide additional guidance on how to determine whether a replacement index has historical fluctuations that are substantially similar to those of a particular LIBOR index, including providing a principles-based standard for determining when a replacement index has historical fluctuations that are substantially similar to those of LIBOR. For the same reasons discussed above in the section-by-section analysis of § 1026.40(f)(3)(ii)(A) for adopting new comment 40(f)(3)(ii)(A)-2.iii, this final rule adopts new comment 55(b)(7)(ii)-1.iii to provide a non-exhaustive list of factors to be considered in whether a replacement index

meets the Regulation Z "historical fluctuations are substantially similar" standard with respect to a particular LIBOR index. For the same reasons discussed above in the section-by-section analysis of § 1026.40(f)(3)(ii)(A), this final rule does not set forth a principles-based standard for determining whether a replacement index has historical fluctuations that are substantially similar to those of the LIBOR index that is being replaced.

Newly established index as replacement for the LIBOR index. Section 1026.55(b)(7)(ii) generally provides if the replacement index is newly established and therefore does not have any rate history, it may be used if the replacement index value in effect on October 18, 2021, and the replacement margin will produce an APR substantially similar to the rate calculated using the LIBOR index value in effect on October 18, 2021, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. If the replacement index is not published on October 18, 2021, the card issuer generally must use the next calendar day for which both the LIBOR index and the replacement index are published as the date for selecting indices values in determining whether the APR based on the replacement index is substantially similar to the rate based on the LIBOR index.[147]

This final rule adopts § 1026.55(b)(7)(ii) as proposed to provide the flexibility for card issuers to use newly established indices if certain conditions are met. The Bureau declines to adopt industry commenters' suggestions that the Bureau should provide greater detail to card issuers regarding the factors or considerations that should be taken into account to determine that an index is newly established. The Bureau also declines to adopt consumer groups' suggestion that the Bureau should restrict the use of new indices that lack historical data. For the reasons discussed in the section-by-section analysis of § 1026.40(f)(3)(ii)(A), the Bureau: (1) believes it is appropriate to provide flexibility in § 1026.55(b)(7)(ii) for card issuers to use a newly

[147] The one exception is that if the replacement index is the SOFR-based spread-adjusted index recommended by the ARRC for consumer products to replace the 1-month, 3-month, 6-month, or 1-year USD LIBOR index, the card issuer must use the index value on June 30, 2023, for the LIBOR index and, for the SOFR-based spread-adjusted index for consumer products, must use the index value on the first date that index is published, in determining whether the APR based on the replacement index is substantially similar to the rate based on the LIBOR index.

established index to replace a LIBOR index if certain conditions are met; and (2) is not providing additional details in this final rule on the factors or considerations that must be taken into account to determine that an index is newly established.

Substantially similar rate using index values in effect on October 18, 2021, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. Section 1026.55(b)(7)(ii) provides that, if the replacement index used under the plan is published on October 18, 2021, the replacement index value in effect on October 18, 2021, and the replacement margin must produce an APR substantially similar to the rate calculated using the LIBOR index value in effect on October 18, 2021, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. If the replacement index is not published on October 18, 2021, the card issuer generally must use the next calendar day for which both the LIBOR index and the replacement index are published as the date for selecting indices values in determining whether the APR based on the replacement index is substantially similar to the rate based on the LIBOR index.[148] Comment 55(b)(7)(ii)-2 provides details on this condition. This final rule adopts comment 55(b)(7)(ii)-2 as proposed with several revisions consistent with the revisions to § 1026.55(b)(7)(ii) to: (1) set April 1, 2022, as the date on or after which card issuers are permitted to replace the LIBOR index used under the plan pursuant to § 1026.55(b)(7)(ii) prior to LIBOR becoming unavailable; (2) set October 18, 2021, as the date card issuers generally must use for selecting indices values in determining whether the APRs using the LIBOR index and the replacement index are substantially similar; and (3) provide that if the replacement index is not published on October 18, 2021, the card issuer generally must use the next calendar day for which both the LIBOR index and the replacement index are published as the date for selecting indices values in

[148] The one exception is that if the replacement index is the SOFR-based spread-adjusted index recommended by the ARRC for consumer products to replace the 1-month, 3-month, 6-month, or 1-year USD LIBOR index, the card issuer must use the index value on June 30, 2023, for the LIBOR index and, for the SOFR-based spread-adjusted index for consumer products, must use the index value on the first date that index is published, in determining whether the APR based on the replacement index is substantially similar to the rate based on the LIBOR index.

determining whether the APR based on the replacement index is substantially similar to the rate based on the LIBOR index.[149]

In calculating the comparison rates using the replacement index and the LIBOR index used under the credit card account, § 1026.55(b)(7)(ii) generally require card issuers to use the index values for the replacement index and the LIBOR index in effect on October 18, 2021, (if the replacement index is published on that day).[150] Section 1026.55(b)(7)(ii) provides exceptions to the general requirement to use the index values for the replacement index and the LIBOR index used under the plan in effect on October 18, 2021. Section 1026.55(b)(7)(ii) provides that if the replacement index is not published on October 18, 2021, the card issuer generally must use the next calendar day that both the LIBOR index and the replacement index are published as the date for selecting indices values in determining whether the APR based on the replacement index is substantially similar to the rate based on the LIBOR index. If the replacement index is the SOFR-based spread-adjusted index recommended by the ARRC for consumer products to replace the 1-month, 3-month, 6-month, or 1-year USD LIBOR index, the card issuer must use the index value on June 30, 2023, for the LIBOR index and, for the SOFR-based spread-adjusted index for consumer products, must use the index value on the first date that index is published, in determining whether the APR based on the replacement index is substantially similar to the rate based on the LIBOR index.

This final rule adopts § 1026.55(b)(7)(ii) as proposed to use a single day to compare the rates. For the same reasons discussed in the section-by-section analysis of § 1026.40(f)(3)(ii)(B) for HELOCs, the Bureau declines to adopt industry commenters' suggestions that the Bureau should (1) give card issuers the option to either use a single date for purposes of the index values or use the median value of the difference between the two indices over a slightly longer period of

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[149] *Id*.

[150] See the section-by-section analysis of § 1026.40(f)(3)(ii)(B) for a discussion of why the Bureau adopted the October 18, 2021, date.

time; or (2) require the use of the historical spread rather than the spread on a specific day in comparing rates to help ensure such rates are substantially similar to each other. The Bureau also declines to adopt consumer group commenters' suggestion that the Bureau should require card issuers to use a historical median value rather than the value from a single day when comparing a potential replacement to the original index rate.

Under § 1026.55(b)(7)(ii), in calculating the comparison rates using the replacement index and the LIBOR index used under the credit card plan, the card issuer must use the margin that applied to the variable rate immediately prior to when the card issuer provides the change-in-terms notice disclosing the replacement index for the variable rate. For the same reasons as discussed in the section-by-section analysis of § 1026.40(f)(3)(ii)(B) for HELOCs, this final rule adopts § 1026.55(b)(7)(ii) as proposed to require that card issuers must use this margin.

Comment 55(b)(7)(ii)-2 also explains that the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan is the margin that applied to the variable rate immediately prior to when the card issuer provides the change-in-terms notice disclosing the replacement index for the variable rate. Comment 55(b)(7)(ii)-2.i provided examples to illustrate this comment for the following two different scenarios: (1) when the margin used to calculate the variable rate is increased pursuant to § 1026.55(b)(3) for new transactions; and (2) when the margin used to calculate the variable rate is increased for the outstanding balances and new transactions pursuant to § 1026.55(b)(4) because the consumer pays the minimum payment more than 60 days late. This final rule adopts these examples in comment 55(b)(7)(ii)-2.i as proposed with revisions consistent with the revisions to § 1026.55(b)(7)(ii) and to clarify the references to the prime rate and the LIBOR index used in the examples.

Comment 55(b)(7)(ii)-3 clarifies that the replacement index and replacement margin are not required to produce an APR that is substantially similar on the day that the replacement index and replacement margin become effective on the plan. Comment 55(b)(7)(ii)-3.i also provides

an example to illustrate this comment. This final rule adopts comment 55(b)(7)(ii)-3 generally as proposed with several revisions consistent with the revisions to § 1026.55(b)(7)(ii) to: (1) set April 1, 2022, as the date on or after which card issuers are permitted to replace the LIBOR index used under the plan pursuant to § 1026.55(b)(7)(ii) prior to LIBOR becoming unavailable; (2) set October 18, 2021, as the date card issuers generally must use for selecting indices values in determining whether the APRs using the LIBOR index and the replacement index are substantially similar; and (3) provide that if the replacement index is not published on October 18, 2021, the card issuer generally must use the next calendar day for which both the LIBOR index and the replacement index are published as the date for selecting indices values in determining whether the APR based on the replacement index is substantially similar to the rate based on the LIBOR index.[151] This final rule also revises the example set forth in comment 55(b)(7)(ii)-3 from the proposal to clarify the prime index and LIBOR index used in the example. As discussed in more detail below, this final rule also revises comment 55(b)(7)(ii)-3 from the proposal to provide additional detail on how the condition in § 1026.55(b)(7)(ii) that the replacement index and replacement margin would have resulted in an APR substantially similar to the rate calculated using the LIBOR index applies to the SOFR-based spread-adjusted indices recommended by the ARRC for consumer products to replace the 1-month, 3-month, or 6-month, USD LIBOR index.

The Bureau believes that it would raise compliance issues if the rate calculated using the replacement index and replacement margin at the time the replacement index and replacement margin became effective had to be substantially similar to the rate calculated using the LIBOR index in effect on October 18, 2021. Under § 1026.9(c)(2), the card issuer must provide a change-in-terms notice of the replacement index and replacement margin (including a reduced margin in a change-in-terms notice provided on or after October 1, 2022, as required by revised

[151] *Id.*

§ 1026.9(c)(2)(v)(A)) at least 45 days prior to the effective date of the changes. The Bureau believes that this advance notice is important to consumers to inform them of how variable rates will be determined going forward after the LIBOR index is replaced. Because advance notice of the changes must be given prior to the changes becoming effective, a card issuer would not be able to ensure that the rate based on the replacement index and replacement margin at the time the change-in-terms notice becomes effective will be substantially similar to the rate calculated using the LIBOR index in effect on October 18, 2021. The value of the replacement index may change after October 18, 2021, and before the change-in-terms notice becomes effective.

This final rule does not provide additional details on the "substantially similar" standard in comparing the rates for purposes of § 1026.55(b)(7)(ii). For the reasons discussed in the section-by-section analysis of § 1026.40(f)(3)(ii)(A), the Bureau declines to adopt industry commenters' suggestions that the Bureau should provide greater detail as to the process card issuers must use to determine whether an APR calculated using a replacement index is substantially similar to the APR using the LIBOR index for purposes of §§ 1026.40(f)(3)(ii)(A) and (B) and 1026.55(b)(7)(i) and (ii). The Bureau also declines to adopt consumer group commenters' suggestion that the Bureau should interpret "substantially similar" to require card issuers to minimize any value transfer when selecting a replacement index and setting a new margin for purposes of §§ 1026.40(f)(3)(ii)(A) and (B) and 1026.55(b)(7)(i) and (ii).

As discussed above, comment 55(b)(7)(ii)-1.ii clarifies that in order to use the SOFR-based spread-adjusted index recommended by the ARRC for consumer products as the replacement index for the applicable LIBOR index, the card issuer must comply with the condition in § 1026.55(b)(7)(ii) that the SOFR-based spread-adjusted index for consumer products and replacement margin would have resulted in an APR substantially similar to the rate calculated using the LIBOR index. This final rule revises comment 55(b)(7)(ii)-1.ii from the proposal to provide that because of the exception in § 1026.55(b)(7)(ii), the card issuer must use the index value on June 30, 2023, for the LIBOR index and, for the SOFR-based spread-adjusted

index for consumer products, must use the index value on the first date that index is published, in determining whether the APR based on the replacement index is substantially similar to the rate based on the LIBOR index.

For the same reasons discussed in the section-by-section analysis of § 1026.40(f)(3)(ii)(A) for adopting comment 40(f)(3)(ii)(A)-3, this final rule revises comment 55(b)(7)(ii)-3 from the proposal to provide that for purposes of § 1026.55(b)(7)(ii), if a card issuer uses the SOFR-based spread-adjusted index recommended by the ARRC for consumer products to replace the 1-month, 3-month, or 6-month USD LIBOR index as the replacement index and uses as the replacement margin the same margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan, the card issuer will be deemed to be in compliance with the condition in § 1026.55(b)(7)(ii) that the replacement index and replacement margin would have resulted in an APR substantially similar to the rate calculated using the LIBOR index.[152] Thus, a card issuer that uses the SOFR-based spread-adjusted index recommended by the ARRC for consumer products to replace the 1-month, 3-month, or 6-month USD LIBOR index as the replacement index still must comply with the condition in § 1026.55(b)(7)(ii) that the replacement index and replacement margin would have resulted in an APR substantially similar to the rate calculated using the LIBOR index, but the card issuer will be deemed to be in compliance with this condition if the card issuer uses as the replacement margin the same margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. For the same reasons discussed in the section-by-section analysis of § 1026.40(f)(3)(ii)(A) in relation to comment 40(f)(3)(ii)(A)-3, the Bureau is reserving judgment about whether to include a reference to the 1-year USD LIBOR index in comment 55(b)(7)(ii)-3 until it obtains additional information.

[152] See the section-by-section analysis of § 1026.40(f)(3)(ii)(A) for a discussion of the rationale for the Bureau making this determination.

Section 1026.59 Reevaluation of Rate Increases

TILA section 148, which was added by the Credit CARD Act, provides that if a creditor increases the APR applicable to a credit card account under an open-end consumer credit plan, based on factors including the credit risk of the obligor, market conditions, or other factors, the creditor shall consider changes in such factors in subsequently determining whether to reduce the APR for such obligor.[153] Section 1026.59 implements this provision. The provisions in § 1026.59 generally apply to card issuers that increase an APR applicable to a credit card account, based on the credit risk of the consumer, market conditions, or other factors. For any rate increase imposed on or after January 1, 2009, card issuers generally are required to review the account no less frequently than once each six months and, if appropriate based on that review, reduce the APR. The requirement to reevaluate rate increases applies both to increases in APRs based on consumer-specific factors, such as changes in the consumer's creditworthiness, and to increases in APRs imposed based on factors that are not specific to the consumer, such as changes in market conditions or the card issuer's cost of funds. If based on its review a card issuer is required to reduce the rate applicable to an account, the rule requires that the rate be reduced within 45 days after completion of the evaluation. Section 1026.59(f) requires that a card issuer continue to review a consumer's account each six months unless the rate is reduced to the rate in effect prior to the increase.

As discussed in part III, the industry has raised concerns about how the requirements in § 1026.59 would apply to accounts that are transitioning away from using LIBOR indices. The Bureau believes that the anticipated sunset of the LIBOR indices and transition to a new index for credit card accounts presents two interrelated issues with respect to compliance with § 1026.59 generally. First, the transition from a LIBOR index to a different index on an account under § 1026.55(b)(7)(i) or § 1026.55(b)(7)(ii) may constitute a rate increase for purposes of

[153] 15 U.S.C. 1665c.

whether an account is subject to § 1026.59. Under current § 1026.59, a potential rate increase could occur at the time of transition from the LIBOR index to a different index, or it could occur at a later time. Second, § 1026.59(f) states that, once an account is subject to the general provisions of § 1026.59, the obligation to review factors under § 1026.59(a) ceases to apply if the card issuer reduces the APR to a rate equal to or less than the rate applicable immediately prior to the increase, or if the rate immediately prior to the increase was a variable rate, to a rate equal to or less than a variable rate determined by the same index and margin that applied prior to the increase. In the case where the LIBOR index is no longer available to serve as the "same index" that applied prior to the increase, the current regulation does not provide a mechanism by which a card issuer can determine the rate at which it can discontinue the obligation to review factors.

The Bureau proposed revisions and additions to the regulation and commentary of § 1026.59 to address these two issues. With respect to the first issue, the addition of proposed § 1026.59(h) would have excepted rate increases that occur as a result of the transition from the LIBOR index to another index under proposed § 1026.55(b)(7)(i) or § 1026.55(b)(7)(ii) from triggering the requirements of § 1026.59. The proposed provision would not have excepted rate increases already subject to the requirements of § 1026.59 prior to the transition from the LIBOR index from the requirements of § 1026.59. With respect to the second issue, proposed § 1026.59(f)(3) provided a mechanism by which card issuers can determine the rate at which they can discontinue the obligations under § 1026.59 where the rate applicable immediately prior to the increase was a variable rate with a formula based on a LIBOR index.

As discussed in more detail below, the Bureau also proposed technical edits to comment 59(d)-2 to replace references to LIBOR with references to the SOFR index.

This final rule adopts § 1026.59(f)(3) generally as proposed with several revisions to be consistent with revisions to § 1026.55(b)(7)(ii) as proposed. The final rule adopts § 1026.59(h) and comment 59(d)-2 as proposed.

59(d) Factors

Section 1026.59(d) identifies the factors that card issuers must review if they increase an APR that applies to a credit card account under an open-end (not home-secured) consumer credit plan. Under § 1026.59(a), if a card issuer evaluates an existing account using the same factors that it considers in determining the rates applicable to similar new accounts, the review of factors need not result in existing accounts being subject to exactly the same rates and rate structure as a creditor imposes on similar new accounts. Comment 59(d)-2 provides an illustrative example in which a creditor may offer variable rates on similar new accounts that are computed by adding a margin that depends on various factors to the value of the LIBOR index. In light of the anticipated discontinuation of LIBOR, the Bureau proposed to amend the example in comment 59(d)-2 to substitute a SOFR index for the LIBOR index. The Bureau also proposed to make technical changes for clarity by changing "prime rate" to "prime index." In addition, the Bureau proposed to change "creditor" to "card issuer" in the comment to be consistent with the terminology used in § 1026.59. No commenters addressed the proposed amendments to comment 59(d)-2. The Bureau is finalizing the amendments to comment 59(d)-2 as proposed.

59(f) Termination of the Obligation to Review Factors

59(f)(3)

The Bureau's Proposal

Section 1026.59(f) provides that the obligation to review factors under § 1026.59(a) ceases to apply if the card issuer reduces the APR to a rate equal to or less than the rate applicable immediately prior to the increase, or if the rate applicable immediately prior to the increase was a variable rate, to a rate determined by the same index and margin (previous formula) that applied prior to the increase. Once LIBOR is discontinued, it will not be possible for card issuers to use the "same index." Thus, the existing methods to terminate the obligation to review would not apply when LIBOR discontinues to accounts in which the comparison rate is derived using a LIBOR index.

Accordingly, the Bureau proposed to add § 1026.59(f)(3) to provide a replacement formula that the card issuers could use, effective March 15, 2021, to terminate the obligation to review factors under § 1026.59(a) when the rate applicable immediately prior to the increase was a variable rate with a formula based on a LIBOR index. Under proposed § 1026.59(f)(3), the replacement formula, which included the replacement index[154] on December 31, 2020, plus replacement margin, would have been required to equal the LIBOR index value on December 31, 2020, plus the margin used to calculate the rate immediately prior to the increase. Proposed § 1026.59(f)(3) also provided that a card issuer must satisfy the conditions set forth in proposed § 1026.55(b)(7)(ii) for selecting a replacement index.

In addition, the Bureau proposed comment 59(f)-3 to set forth two examples of how to calculate the replacement formula: one to illustrate how to calculate the replacement formula if the account is subject to § 1026.59 as of March 15, 2021, and one to illustrate how to calculate the replacement formula where the account is not subject to § 1026.59 at that time, but would have become subject prior to the account transitioning from LIBOR in accordance with § 1026.55(b)(7)(i) or § 1026.55(b)(7)(ii). The Bureau also proposed comment 59(f)-4 to provide further clarification on how the replacement index must be selected and to refer to the requirements described in proposed § 1026.55(b)(7)(ii) and proposed comment 55(b)(7)(ii)-1.

Proposed § 1026.59(f)(3) was intended to apply to situations in which a LIBOR index was used as the index in the formula used to determine the rate at which the obligation to review factors ceases,[155] and as a result would be impacted by the LIBOR discontinuation.

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[154] While other parts of the rule use "replacement index" to refer to the index used in the general variable rate that prices the account and in determining the account's interest rate, for purposes of § 1026.59(f)(3) "replacement index," as defined in final comment 59(f)-4, refers to the index used in the replacement formula, which identifies the value for benchmark comparison to determine if the obligation to conduct rate reevaluations terminates.

[155] As noted below in the discussion regarding the Bureau's proposed § 1026.59(h)(3), proposed § 1026.59(f)(3) was not intended to apply to rate increases that may result from the switch from a LIBOR index to another index under proposed § 1026.55(b)(7)(i) or § 1026.55(b)(7)(ii) as those potential rate increases would be excepted from the provisions of § 1026.59 under those provisions. Proposed § 1026.59(f)(3) was, however, intended to cover rate increases that were already subject to the provisions of § 1026.59 and use a formula under § 1026.59(f) based on a LIBOR index to determine whether to terminate the review obligations under § 1026.59.

Proposed § 1026.59(f)(3) used December 31, 2020, as the value of both indices to provide a static and consistent reference point by which to determine the formula and was consistent with the index values used in proposed § 1026.55(b)(7)(ii). If either the replacement index or the LIBOR index were not published on December 31, 2020, under the proposed rule, the card issuer would have been required to use the next available date that both indices are published as the index values to use to determine the replacement formula. Proposed § 1026.59(f)(3) also provided that in calculating the replacement formula, the card issuer must use the margin used to calculate the rate immediately prior to the rate increase.

In essence, the proposed replacement formula would have been calculated as: (replacement index on December 31, 2020) plus (replacement margin) equals (LIBOR index on December 31, 2020) plus (margin immediately prior to the rate increase). If the replacement index on December 31, 2020, the LIBOR index on December 31, 2020, and the margin immediately prior to the rate increase were known, the replacement margin would have been calculated. Once the replacement margin was calculated, the replacement formula was the replacement index value plus the replacement margin value.

Proposed § 1026.59(f)(3) provided that the replacement formula must *equal* the previous formula, within the context of the timing constraints (namely the value of the replacement and LIBOR indices as of December 31, 2020). The Bureau recognized that the requirement for the replacement formula to equate to the previous formula would potentially create inconsistency in rate identification for accounts that were subject to § 1026.59 prior to the transition from LIBOR and those that were excepted from coverage due to the LIBOR transition under proposed § 1026.55(b)(7)(i) or § 1026.55(b)(7)(ii), in that the latter only required the new rate be substantially similar to the account's pre-transition rate. The Bureau solicited comment on whether the standard for proposed § 1026.59(f)(3) should be that the replacement formula should be substantially similar to the previous formula (rather than equal to as in the proposal) to provide consistency with the language in proposed § 1026.55(b)(7)(ii).

As discussed in part VI, the Bureau proposed § 1026.59(f)(3) to be effective as of March 15, 2021, for accounts that are subject to § 1026.59 and use a LIBOR index as the index in the formula to determine the rate at which a card issuer can cease the obligation to review factors under § 1026.59(a).

Comments Received and the Final Rule

While the Bureau received general support for the provisions in § 1026.59, as discussed in § 1026.59(h)(3), it did not receive comments specific to its proposal in § 1026.59(f)(3). For the reasons discussed in the proposal and having received no comments on proposed § 1026.59(f)(3), the Bureau is finalizing it as proposed except to (1) adjust the effective date to April 1, 2022 and to adjust the date of comparison in the formula from December 31, 2020, to October 18, 2021, as discussed in the section-by-section of § 1026.55(b)(7)(ii); and (2) provide that if the replacement index is not published on October 18, 2021, the card issuer generally must use the next calendar day for which both the LIBOR index and the replacement index are published as the date for selecting the index values to use to determine the replacement formula.[156]

Specifically, the Bureau is finalizing the addition of § 1026.59(f)(3), which provides a replacement formula that card issuers can use to terminate the obligation to review factors under § 1026.59(a) in the LIBOR transition for accounts where a LIBOR index was used as the index of comparison in the formula for determining cessation. Assuming the replacement index is published on October 18, 2021, in the formula, the replacement index on October 18, 2021, plus replacement margin, must equal the LIBOR index value on October 18, 2021, plus the margin used to calculate the rate immediately prior to the increase.

[156] The one exception is that if the replacement index is the SOFR-based spread-adjusted index recommended by the ARRC for consumer products to replace the 1-month, 3-month, 6-month, or 1-year USD LIBOR index, the card issuer must use the index value on June 30, 2023, for the LIBOR index and, for the SOFR-based spread-adjusted index, must use the index value on the first date that index is published, as the index values to use to determine the replacement formula.

The Bureau is also finalizing comment 59(f)-3 and comment 59(f)-4, which provide examples and methods for identifying the replacement index to be used in the formula, generally as proposed, except to (1) adjust the effective date and date of comparison as discussed above for comment 59(f)-3; (2) clarify which prime index and LIBOR index are used in the examples in comment 59(f)-3; and (3) make revisions to comment 59(f)-4 consistent with changes to § 1026.55(b)(7)(ii) and accompanying commentary as proposed, as described in more detail in the section-by-section analysis of § 1026.55(b)(7)(ii).

As discussed below in part VI, the effective date for this provision is April 1, 2022.

59(h) Exceptions

59(h)(3) Transition from LIBOR Exception

The Bureau's Proposal

Section 1026.59(h) provides two situations that are excepted from the requirements of § 1026.59. Proposed § 1026.59(h)(3) would have added a third exception based upon the transition from a LIBOR index to a replacement index used in setting a variable rate. Specifically, proposed § 1026.59(h)(3) would have excepted from the requirements of § 1026.59 increases in an APR that occurred as the result of the transition from the use of a LIBOR index as the index in setting a variable rate to the use of a replacement index in setting a variable rate if the change from the use of the LIBOR index to a replacement index occurred in accordance with proposed § 1026.55(b)(7)(i) or § 1026.55(b)(7)(ii).

Proposed comment 59(h)-1 provided that the proposed exception to the requirements of § 1026.59 did not apply to rate increases *already* subject to § 1026.59 prior to the transition from the use of a LIBOR index as the index in setting a variable rate to the use of a different index in setting a variable rate, where the change from the use of a LIBOR index to a different index occurred in accordance with proposed § 1026.55(b)(7)(i) or § 1026.55(b)(7)(ii). In these circumstances, the Bureau proposed that the accounts should continue to be subject to the requirements of § 1026.59 and consumers should not have to forego reviews on their accounts

that could potentially result in rate reductions. In particular, proposed § 1026.55(b)(7)(i) and (ii) provided that the replacement index plus replacement margin must produce a rate that was substantially similar to the rate that was in effect at the time the original index became unavailable or the rate that was in effect based on the LIBOR index on December 31, 2020, depending on the provision. These provisions provided safeguards that the consumer will not be unduly harmed after the transition away from a LIBOR index with a rate that is not substantially similar to the rate prior to the transition. No similar safeguard exists for accounts on which a rate increase occurred prior to the transition away from LIBOR that subjected the account to the requirements of § 1026.59. Absent the requirements of § 1026.59, issuers would not have to continue to review these accounts for possible rate reductions that could potentially bring the rate on the account in line with the rate prior to the increase, as the requirements of § 1026.59 (and proposed § 1026.59(f)(3)) ensure that the account continues to be reviewed for a rate reduction that could potentially return the rate on the account to a rate that is the same as the rate before the increase.

The Bureau sought comment on issuers' understanding as to whether, and to what extent, the accounts in their portfolios would become subject to § 1026.59 in the transition away from a LIBOR index under proposed § 1026.55(b)(7)(i) or § 1026.55(b)(7)(ii), absent the proposed § 1026.59(h)(3) exception. The Bureau also sought comment on potential compliance issues in transitioning away from a LIBOR index if they became subject to the requirements of § 1026.59.

Comments Received

The Bureau received comments from a few trade associations discussing the proposed changes. The commenters generally supported the proposed provisions in § 1026.59, and specifically supported the Bureau's proposed changes for credit card issuers that would except them from requirements in § 1026.59 should a LIBOR transition completed in accordance with final rule § 1026.55(b)(7)(i) or § 1026.55(b)(7)(ii) result in an APR increase. Commenters encouraged the Bureau to finalize as proposed.

The Final Rule

For the reasons discussed in the proposal and given the support from the comments received, the Bureau is finalizing the amendments to § 1026.59(h)(3) as proposed.

Specifically, § 1026.59(h)(3) as finalized adds a third exception from the requirements of § 1026.59 for increases in an APR that occur as the result of the transition from the use of a LIBOR index as the index in setting a variable rate to the use of a replacement index in setting a variable rate if the change from the use of the LIBOR index to a replacement index occurs in accordance with § 1026.55(b)(7)(i) or § 1026.55(b)(7)(ii).

The Bureau is also finalizing comment 59(h)-1 as proposed, which clarifies that the exception to the requirements of § 1026.59 does not apply to rate increases already subject to § 1026.59 prior to the transition from the use of a LIBOR index as the index in setting a variable rate to the use of a different index in setting a variable rate, where the change from the use of a LIBOR index to a different index occurred in accordance with § 1026.55(b)(7)(i) or § 1026.55(b)(7)(ii).

Appendix H to Part 1026— Closed-End Model Forms and Clauses

Appendix H to part 1026 provides a sample form for ARMs for complying with the requirements of § 1026.20(c) in form H-4(D)(2) and a sample form for ARMs for complying with the requirements of § 1026.20(d) in form H-4(D)(4).[157] Both of these sample forms refer to the 1-year LIBOR. In light of the anticipated discontinuation of LIBOR, the Bureau proposed to substitute the 30-day average SOFR index for the 1-year LIBOR index in the explanation of how the interest rate is determined in sample forms H-4(D)(2) and H-4(D)(4) in appendix H to provide more relevant samples. The Bureau also proposed to make related changes to other information listed on these sample forms, such as the effective date of the interest rate adjustment, the dates when future interest rate adjustments are scheduled to occur, the date the

[157] The Bureau notes that these are not required forms and that forms that meet the requirements of § 1026.20(c) or (d) would be considered in compliance with those subsections, respectively.

first new payment is due, the source of information about the index, the margin added in determining the new payment, and the limits on interest rate increases at each interest rate adjustment. To conform to the requirements in § 1026.20(d)(2)(i) and (d)(3)(ii) and to make form H-4(D)(4) consistent with form H-4(D)(3), the Bureau also proposed to add the date of the disclosure at the top of form H-4(D)(4), which was inadvertently omitted from the original form H-4(D)(4) as published in the *Federal Register* on February 14, 2013.[158]

The Bureau requested comment on whether the proposed revisions to sample forms H-4(D)(2) and H-4(D)(4) were appropriate and whether the Bureau should make any other changes to the forms in appendix H in connection with the LIBOR transition. The Bureau also requested comment on whether some creditors, assignees, or servicers might still wish to use the original forms H-4(D)(2) and H-4(D)(4) as published on February 14, 2013, after this final rule's effective date if the Bureau finalized the proposed changes to forms H-4(D)(2) and H-4(D)(4). The Bureau explained that this might include, for example, creditors, assignees, or servicers who might wish to rely on the original sample forms for notices sent out for LIBOR loans after the proposed March 15, 2021, effective date but before the LIBOR index is replaced or, alternatively, for non-LIBOR loans after the proposed effective date. The Bureau requested comment on whether it would be helpful for the Bureau to indicate in the final rule that the Bureau will deem creditors, assignees, or servicers properly using the original forms H-4(D)(2) and H-4(D)(4) to be in compliance with the regulation with regard to the disclosures required by § 1026.20(c) and (d) respectively, even after the final rule's effective date.

The Bureau did not receive any comments on the proposed amendments to H-4(D)(2) and H-4(D)(4) in appendix H or on the issues on which the Bureau solicited comment. The Bureau is finalizing the amendments as proposed, with certain exceptions. The Bureau understands that the inadvertent omission of the date from the top sample form H-4(D)(4) may have caused some

[158] 78 FR 10902, 11012 (Feb. 14, 2013).

confusion. The Bureau also understands that some creditors, assignees, and servicers may find an example using a LIBOR index useful beyond the April 1, 2022, effective date.

Accordingly, with respect to H-4(D)(4), from April 1, 2022, through September 30, 2023, the Bureau will consider creditors, assignees, or servicers to be in compliance with the requirements in § 1026.20(d) if they use a format substantially similar to form H-4(D)(4) by either using the version of the form in effect prior to April 1, 2022 (denoted as "Legacy Form" in appendix H) that does not include the date at the top of the form, or by using the revised form put into effect on April 1, 2022 (denoted as "Revised Form" in appendix H) that includes the date at the top of the form. Both versions of this form will be available for use in appendix H to demonstrate compliance with § 1026.20(d) from April 1, 2022, through September 30, 2023. On October 1, 2023, the version of the form in effect prior to April 1, 2022, (denoted as "Legacy Form" in appendix H) will be removed and will no longer be available for use to demonstrate compliance with § 1026.20(d). In addition, the revised form of H-4(D)(4) that will become effective on April 1, 2022, (denoted as "Revised Form" in appendix H) provides an example of the form using a SOFR index. Because most tenors of USD LIBOR are not expected to be discontinued until June 30, 2023, this final rule retains through September 30, 2023, the sample form H-4(D)(4) that was in effect prior to April 1, 2022, (denoted as "Legacy Form" in appendix H) that references a LIBOR index.

New sample form H-4(D)(2) in appendix H effective April 1, 2022, (denoted as "Revised Form" in appendix H) that can be used for complying with § 1026.20(c) provides an example using a SOFR index. This final rule also retains through September 30, 2023, the sample form H-4(D)(2) that was in effect prior to April 1, 2022, (denoted as "Legacy Form" in appendix H) that provides an example using a LIBOR index.

VI. Effective Date

In the 2020 Proposed Rule, the Bureau proposed to set the effective date for this final rule as March 15, 2021, with the exception of the updated change-in-term disclosure requirements for

HELOCs and credit-card accounts which would go into effect on October 1, 2021, consistent with TILA section 105(d).

The Bureau received comments from industry and individual commenters on the proposed effective date. A trade association commenter and an individual commenter supported the March 15, 2021, proposed effective date, stating that it provided sufficient time for industry participants and consumers to prepare for the shift from LIBOR to an alternative index. Several trade associations that represented credit unions, student loan servicers, student loan lenders, collection agencies, and institutes of higher education requested that the Bureau consider setting an earlier effective date. These trade associations each individually cited the risk that the LIBOR index could become unrepresentative or unreliable before it became unavailable as the reason for setting an earlier date. A trade association commenter representing reverse mortgage creditors also requested that the Bureau set an earlier effective date for the final rule. This trade association was concerned that HUD may require reverse mortgage creditors for existing HECM products to begin using a replacement index identified by the Secretary of HUD earlier than March 15, 2021, which would conflict with the proposed provision allowing creditors for HELOCs to replace the LIBOR index on or after March 15, 2021.

The Bureau is finalizing an effective date of April 1, 2022, for this final rule. The Bureau believes that the April 1, 2022, effective date will provide sufficient time for HELOC creditors and card issuers to transition away from a LIBOR index prior to LIBOR becoming unavailable, unreliable, or unrepresentative. This effective date generally would mean that the changes to the regulation and commentary would be effective for a long period of time prior to the expected discontinuation of LIBOR, which is projected to occur for most USD LIBOR tenors in June 2023. As discussed above in the section-by-section analysis of § 1026.40(f)(3)(ii)(B), with respect to HECM reverse mortgages, the Bureau does not believe that the April 1, 2022, date will create conflicts with any rules issued by HUD related to the transition of existing HECMs to a replacement index.

This final rule provides creditors, assignees, and servicers with flexibility and options regarding the requirements for the change-in-terms notice and the post-consummation disclosure forms that may be used to demonstrate compliance. The Bureau notes that the updated change-in-terms disclosure requirements for HELOCs and credit card accounts in this final rule related to disclosing a reduction in a margin in the change-in-terms notices are effective on April 1, 2022, with a mandatory compliance date of October 1, 2022. This October 1, 2022 date is consistent with TILA section 105(d), which generally requires that changes in disclosures required by TILA or Regulation Z have an effective date of the October 1 that is at least six months after the date the final rule is promulgated.[159] Also, permitting optional compliance with the updated change-in-terms notice requirements from April 1, 2022, through September 30, 2022, is consistent with TILA section 105(d) which provides that a creditor may comply with newly promulgated disclosure requirements prior to the effective date of the requirement.

The updated post-consummation disclosure forms in this final rule are effective on April 1, 2022, but are not the only forms available for use until October 1, 2023. This will provide creditors, assignees, or servicers with ample time to include a date at the top of the form that can be used for complying with § 1026.20(d), if they are not doing so already, by providing time to transition away from relying on the currently-used sample form H-4(D)(4). Creditors, assignees, or servicers will have an 18-month interim period between April 1, 2022, through September 30, 2023, to make revisions to their forms. As stated above, from April 1, 2022, through September 30, 2023, the Bureau will consider creditors, assignees, or servicers to be in compliance with the requirements in § 1026.20(d) if they use a format substantially similar to form H-4(D)(4), by either using the version of the form in effect prior to April 1, 2022 (denoted as "Legacy Form" in appendix H), or by using the revised form put into effect on April 1, 2022 (denoted as "Revised Form" in appendix H). Both versions of form H-4(D)(4) will be available for use in appendix H

[159] 15 U.S.C. 1604(d).

to demonstrate compliance with § 1026.20(d) from April 1, 2022, through September 30, 2023. On October 1, 2023, the version of the form in effect prior to April 1, 2022, (denoted as the "Legacy Form" in appendix H) will be removed and will no longer be available for use to demonstrate compliance with § 1026.20(d) because it omitted the date at the top of the form. Also, a sample form using a LIBOR index will no longer be a relevant example. This final rule also adds a new sample form H-4(D)(2) in appendix H effective April 1, 2022, (denoted as "Revised Form" in appendix H) that can be used for complying with § 1026.20(c) and provides an example using a SOFR index. This final rule also retains through September 30, 2023, the sample form H-4(D)(2) that was in effect prior to April 1, 2022, (denoted as "Legacy Form" in appendix H) that provides an example using a LIBOR index. On October 1, 2023, the Legacy Form will be removed because a sample form using a LIBOR index will no longer be a relevant example.

The Bureau recognizes that the use of forms H-4(D)(2) and H-4(D)(4) of appendix H to this part is not required. However, creditors, assignees, or servicers using them properly will be deemed to be in compliance with § 1026.20(c) and (d).

VII. Dodd-Frank Act Section 1022(b) Analysis

A. Overview

In developing this final rule, the Bureau has considered this final rule's potential benefits, costs, and impacts.[160] In developing this final rule, the Bureau has consulted, or offered to consult with, the appropriate prudential regulators and other Federal agencies, including regarding consistency with any prudential, market, or systemic objectives administered by such agencies. The Bureau did not receive specific comments on its proposed section 1022(b) analysis.

[160] Specifically, section 1022(b)(2)(A) of the Dodd-Frank Act (12 U.S.C. 5512(b)(2)(A)) requires the Bureau to consider the potential benefits and costs of the regulation to consumers and covered persons, including the potential reduction of access by consumers to consumer financial products and services; the impact of rules on insured depository institutions and insured credit unions with $10 billion or less in total assets as described in section 1026 of the Dodd-Frank Act (12 U.S.C. 5516); and the impact on consumers in rural areas.

This final rule is primarily designed to address potential compliance issues for creditors affected by the anticipated sunset of LIBOR. At this time, most tenors of USD LIBOR are expected to be discontinued in June 2023.

This final rule amends and adds several provisions for open-end credit. First, this final rule adds LIBOR-specific provisions that permit creditors for HELOCs and card issuers for credit card accounts to replace the LIBOR index and adjust the margin used to set a variable rate on or after April 1, 2022, if certain conditions are met. Specifically, under this final rule, the APR calculated using the replacement index must be substantially similar to the rate calculated using the LIBOR index, based generally on the values of these indices on October 18, 2021.[161] In addition, creditors for HELOCs and card issuers will be required to meet certain requirements in selecting a replacement index. Under this final rule, creditors for HELOCs and card issuers can select an index that is not newly established as a replacement index only if the index has historical fluctuations that are substantially similar to those of the LIBOR index. Creditors for HELOCs or card issuers can also use a replacement index that is newly established in certain circumstances. To reduce uncertainty with respect to selecting a replacement index that meets these standards, the Bureau is providing a non-exhaustive list of examples of the types of factors used to determine whether a replacement index has historical fluctuations that are substantially similar to those of the LIBOR index. Further, the Bureau is determining that Prime is an example of an index that has historical fluctuations that are substantially similar to those of certain USD LIBOR indices.[162] The Bureau is also determining that certain spread-adjusted

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[161] If the replacement index is not published on October 18, 2021, the creditor or card issuer generally must use the next calendar day for which both the LIBOR index and the replacement index are published as the date for selecting indices values in determining whether the APR based on the replacement index is substantially similar to the rate based on the LIBOR index. The one exception is that if the replacement index is the SOFR-based spread-adjusted index recommended by the ARRC for consumer products to replace the 1-month, 3-month, 6-month, or 1-year USD LIBOR index, the creditor or card issuer must use the index value on June 30, 2023, for the LIBOR index and, for the SOFR-based spread-adjusted index, must use the index value on the first date that index is published, in determining whether the APR based on the replacement index is substantially similar to the rate based on the LIBOR index.

[162] Specifically, the Bureau is adding to the commentary a determination that Prime has historical fluctuations that are substantially similar to those of the 1-month and 3-month USD LIBOR.

indices based on the SOFR recommended by the ARRC for consumer products are indices that have historical fluctuations that are substantially similar to those of certain USD LIBOR indices.[163] Finally, the Bureau is determining that if a HELOC creditor or card issuer replaces LIBOR indices with the SOFR-based spread-adjusted indices recommended by the ARRC for consumer products to replace the 1-month, 3-month, or 6-month USD LIBOR index, the APR that is calculated using those rates is substantially similar to the rate calculated using the LIBOR index so long as the creditor or card issuer uses as the replacement margin the same margin that was used prior to the index change.

Second, the Bureau is providing additional details on how a creditor may disclose information about the periodic rate and APR in a change-in-terms notice for HELOCs and credit card accounts when the creditor is replacing a LIBOR index with the SOFR-based spread-adjusted index recommended by ARRC for consumer products to replace the 1-month, 3-month, or 6-month USD LIBOR index in certain circumstances. Specifically, the Bureau is providing new commentary applicable to HELOCs and credit card accounts, providing that a creditor may comply with any requirement to disclose in the change-in-terms notice the amount of the periodic rate or APR (or changes in these amounts) as calculated using the replacement index based on the best information reasonably available, clearly stating that the disclosure is an estimate. For example, in this situation, this new commentary provides the creditor may state that: (1) information about the rate is not yet available but that the creditor estimates that, at the time the index is replaced, the rate will be substantially similar to what it would be if the index did not have to be replaced; and (2) the rate will vary with the market based on a SOFR index.

[163] Specifically, the Bureau is adding to the commentary a determination that the SOFR-based spread-adjusted indices recommended by the ARRC for consumer products to replace the 1-month, 3-month, or 6-month USD LIBOR indices have historical fluctuations that are substantially similar to those of the 1-month, 3-month, or 6-month USD LIBOR indices respectively.

Third, this final rule revises existing language in Regulation Z to allow creditors for HELOCs and card issuers to replace an index and adjust the margin on an account if the index becomes unavailable, if certain conditions are met.

Fourth, this final rule revises change-in-terms notice requirements, effective April 1, 2022, with a mandatory compliance date of October 1, 2022, for HELOCs and credit card accounts to provide that if a creditor is replacing a LIBOR index on an account pursuant to the LIBOR-specific provisions or because the LIBOR index becomes unavailable as discussed above, the creditor must provide a change-in-terms notice of any reduced margin that will be used to calculate the consumer's variable rate. This will help ensure that consumers are notified of how their variable rates will be determined after the LIBOR index is replaced.

Fifth, this final rule adds a LIBOR-specific exception from the rate reevaluation requirements of § 1026.59 applicable to credit card accounts for increases that occur as a result of replacing a LIBOR index with another index in accordance with the LIBOR-specific provisions or as a result of the LIBOR indices becoming unavailable as discussed above.

Sixth, this final rule adds provisions to address how a card issuer, where an account was subject to the requirements of the reevaluation reviews in § 1026.59 prior to the switch from a LIBOR index, can terminate the obligation to review where the rate applicable immediately prior to the increase was a variable rate calculated using a LIBOR index.

Seventh, this final rule makes technical edits to existing commentary to replace LIBOR references with references to a SOFR index and to make related changes.

The Bureau is also making several amendments to the closed-end provisions to address the anticipated sunset of LIBOR. First, the Bureau is providing a non-exhaustive list of examples of the types of factors used to determine whether a replacement index is comparable to a LIBOR index, and is amending existing commentary to identify specific indices as an example

of a comparable index for purposes of the closed-end refinancing provisions.[164] Second, the Bureau is making technical edits to various closed-end provisions to replace LIBOR references with references to a SOFR index and to make related changes and corrections.

B. Provisions to be Analyzed

The analysis below considers the potential benefits, costs, and impacts to consumers and covered persons of significant provisions of this final rule (final provisions), which include the first, second, fourth, and fifth open-end provisions described above. The analysis also includes the first closed-end provision described above.[165] Therefore, the Bureau has analyzed in more detail the following five final provisions:

1. LIBOR-specific provisions for index changes for HELOCs and credit card accounts;
2. Commentary providing details on how a creditor may disclose information about the periodic rate and APR in a change-in-terms notice for HELOCs and credit card accounts when the creditor is replacing a LIBOR index with the SOFR-based spread-adjusted index recommended by the ARRC for consumer products in certain circumstances;
3. Revisions to change-in-terms notices requirements for HELOCs and credit card accounts to disclose margin decreases, if any;
4. LIBOR-specific exception from the rate reevaluation provisions applicable to credit card accounts; and
5. Commentary providing a non-exhaustive list of examples of the types of factors used to determine whether a replacement index is comparable to a LIBOR index and

[164] Specifically, the Bureau is adding to the commentary an illustrative example indicating that a creditor does not add a variable-rate feature by changing the index of a variable-rate transaction from the 1-month, 3-month, or 6-month USD LIBOR index to the spread-adjusted index based on the SOFR recommended by the ARRC for consumer products as replacements for these indices, because the replacement index is a comparable index to the corresponding USD LIBOR index.

[165] The Bureau does not believe that the other provisions described above would have any significant costs, benefits, or impacts for consumers or covered persons.

stating that specific indices are comparable to certain LIBOR tenors for purposes of the closed-end refinancing provisions.

Because this final rule addresses the transition of credit products from LIBOR to other indices, which should be complete within the next several years under both the baseline and this final rule, the analysis below is limited to considering the benefits, costs, and impacts of the final provisions over the next several years.

C. Data Limitations and Quantification of Benefits, Costs, and Impacts

The discussion below relies on information that the Bureau has obtained from industry, other regulatory agencies, and publicly available sources. The Bureau has performed outreach on many of the issues addressed by this final rule, as described in part III. However, as discussed further below, the data are generally limited with which to quantify the potential costs, benefits, and impacts of the final provisions.

In light of these data limitations, the analysis below generally provides a qualitative discussion of the benefits, costs, and impacts of the final provisions. General economic principles and the Bureau's expertise in consumer financial markets, together with the limited data that are available, provide insight into these benefits, costs, and impacts.

D. Baseline for Analysis

In evaluating the potential benefits, costs, and impacts of this final rule, the Bureau takes as a baseline the current legal framework governing changes in indices used for variable-rate open-end and closed-end credit products, as applicable. The FCA has announced that it cannot guarantee the publication of certain USD LIBOR tenors beyond June 30, 2023, and has urged relevant parties to prepare for the transition to alternative reference rates. Therefore, it is likely that even under current regulations, existing contracts for HELOCs, credit card accounts, and closed-end credit that used those USD LIBOR tenors as an index will have transitioned to other indices soon after June 30, 2023. Furthermore, for HELOCs, credit card accounts, and closed-end credit, this final rule will not significantly alter the requirements that replacement indices for

a LIBOR index must satisfy, nor will it alter how these requirements must be evaluated. Hence, the analysis below assumes this final rule will not substantially alter the number of HELOCs, credit card accounts, and closed-end credit accounts switched from a LIBOR index to other indices nor is it likely to significantly alter the indices that HELOC creditors, card issuers, and closed-end creditors use to replace a LIBOR index (although, as discussed below, it is possible the final rule may cause some HELOC creditors or card issuers to replace a LIBOR index with a SOFR-based spread-adjusted index, when under the baseline they would switch to a non SOFR-based index). This final rule will enable HELOC creditors, card issuers, and closed-end creditors under Regulation Z to transfer existing contracts away from a LIBOR index with more certainty about what is required by and permitted under Regulation Z. This final rule may also enable HELOC creditors and card issuers to transfer existing contracts away from a LIBOR index earlier than they could under the baseline, if they choose to do so.

This final rule, however, does not excuse creditors or card issuers from noncompliance with contractual provisions. For example, a contract for a HELOC or a credit card account may provide that the creditor or card issuer respectively may not replace an index unilaterally under a plan unless the original index becomes unavailable. This final rule does not grant the creditor or card issuer authority to unilaterally replace a LIBOR index used under the plan before LIBOR becomes unavailable.

E. Potential Benefits and Costs of the Rule for Consumers and Covered Persons

Reliable data on the indices credit products are linked to is not generally available, so the Bureau cannot estimate the dollar value of debt tied to LIBOR in the distinct credit markets that will be impacted by this final rule. However, the ARRC has estimated that in 2021 there was $1.3 trillion of mortgage debt (including ARMs and HELOCs) and $100 billion of non-mortgage debt tied to LIBOR.[166]

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[166] Alt. Reference Rates Comm., *Progress Report: The Transition from U.S. Dollar LIBOR* (Mar. 2021), https://www.newyorkfed.org/medialibrary/Microsites/arrc/files/2021/USD-LIBOR-transition-progress-report-mar-21.pdf.

1. LIBOR-Specific Provisions for Index Changes for HELOCs and Credit Card Accounts

For consumers with HELOCs and credit card accounts with APRs tied to a LIBOR index, and for creditors of HELOCs and card issuers with APRs tied to a LIBOR index, the main effect of the LIBOR-specific provisions that allow HELOC creditors or card issuers under Regulation Z to replace a LIBOR index before it becomes unavailable will be that some creditors and card issuers for HELOCs and credit card accounts respectively will switch those contracts from a LIBOR index to other indices earlier than they would have without the final provision.[167] Since the LIBOR indices are likely to become unavailable after June 30, 2023, and the final provision will allow creditors and card issuers under Regulation Z to switch on or after April 1, 2022, creditors and card issuers may be able to switch contracts from a LIBOR index to other indices roughly 15 months earlier than they would without the final provision (if permitted by the contractual provisions as discussed above). However, the ARRC has indicated that the SOFR-based spread-adjusted indices recommended by the ARRC for consumer products to replace the 1-month, 3-month, 6-month, or 1-year USD LIBOR index will not be published until Monday, July 3, 2023, and creditors switching contracts from a LIBOR index to a SOFR-based spread-adjusted index for consumer products will not be able to switch those contracts until the SOFR-based spread-adjusted index for consumer products is published. Since the LIBOR indices are likely to become unavailable after June 30, 2023, this provision is unlikely to allow creditors switching contracts from a LIBOR index to a SOFR-based spread-adjusted index for consumer products to switch earlier than they otherwise would. The Bureau cannot estimate how many accounts will be switched early because of this final provision, and it cannot estimate when these accounts will be switched from a LIBOR index under the final provision. The Bureau also cannot estimate the number of accounts that contractually cannot be switched from a LIBOR

[167] The LIBOR-specific provisions are set forth in § 1026.40(f)(3)(ii)(B) and related commentary for HELOC accounts, and in § 1026.55(b)(7)(ii) and related commentary for credit card accounts.

index until that LIBOR index becomes unavailable, although the Bureau believes that a larger proportion of HELOC contracts than credit card contracts are affected by this issue.[168]

The final provision also includes revisions to commentary to Regulation Z to (1) provide a non-exhaustive list of examples of the types of factors used to determine whether a replacement index has historical fluctuations that are substantially similar to those of the LIBOR index, (2) state that SOFR-based spread-adjusted indices recommended by the ARRC for consumer products to replace the 1-month, 3-month, or 6-month USD LIBOR index have historical fluctuations that are substantially similar to the applicable tenor of LIBOR, (3) state that Prime has historical fluctuations that are substantially similar to those of the 1-month and 3-month USD LIBOR, and (4) state that if a HELOC creditor or card issuer replaces LIBOR indices with the SOFR-based spread-adjusted indices recommended by the ARRC for consumer products to replace the 1-month, 3-month, or 6-month USD LIBOR index, the APR that is calculated using those rates is substantially similar to the rate calculated using the LIBOR index so long as the creditor or card issuer uses as the replacement margin the same margin that was used prior to the index change. The Bureau believes that market participants, using analysis similar to that the Bureau has performed, would come to these conclusions even without this final commentary. Therefore, the Bureau estimates that this final commentary will not significantly change the indices that HELOC creditors or card issuers switch to, the dates on which indices are switched, or the manner in which those switches are made.

Potential Benefits and Costs to Consumers

The Bureau believes that this final provision will benefit consumers primarily by making their experience transitioning from a LIBOR index more informed and less disruptive than it

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[168] Furthermore, some HELOC creditors and card issuers may be able to switch indices from LIBOR to replacement indices even before LIBOR becomes unavailable (under the baseline) or April 1, 2022 (under this final rule). For HELOCs, some creditors may be able to switch earlier if the consumer specifically agrees to the change in writing under § 1026.40(f)(3)(iii). For credit card accounts that have been open for at least a year, card issuers may be able to switch indices earlier for new transactions under § 1026.55(b)(3). The Bureau cannot estimate the number of such accounts that could be switched early.

otherwise could be, although the Bureau does not have the data to quantify the value of this benefit. The Bureau expects this consumer benefit to arise because creditors for HELOCs and card issuers will have more time to transition contracts from LIBOR indices to replacement indices, giving them more time to plan for the transition, communicate with consumers about the transition, and avoid technical or system issues that could affect consumers' accounts during the transition. However, as discussed above, because the ARRC has indicated that the SOFR-based spread-adjusted indices recommended by the ARRC for consumer products to replace the 1-month, 3-month, 6-month, or 1-year USD LIBOR index will not be published until Monday, July 3, 2023, the Bureau expects that this final provision is unlikely to allow creditors to switch to SOFR-based spread-adjusted indices for consumer products earlier than they would under the baseline. This will limit the benefits of this final provision to consumers.

The Bureau does not anticipate that the final provision will impose any significant costs on consumers on average. Under the final provision, creditors for HELOCs and card issuers will generally have to adjust margins used to calculate the variable rates on the accounts so that consumers' APRs are calculated using the value of the replacement index in effect on October 18, 2021, and the replacement margin will produce a rate that is substantially similar to their rates calculated using the value of the LIBOR index in effect on October 18, 2021, and the margins that applied to the variable rates immediately prior to the replacement of the LIBOR index. After the transition, consumers' APRs will be tied to the replacement indices and not to the LIBOR indices. Because the replacement indices creditors for HELOCs and card issuers will switch to are not identical to the LIBOR indices, they will not move identically to the LIBOR indices, and so for the roughly 15 months affected by this final provision (for contracts being switched to an index other than a SOFR-based spread-adjusted index recommended by the ARRC for consumer products), affected consumers' payments will be different under the final provision than they would be under the baseline. On some dates in which indexed rates reset, some replacement indices may have increased relative to the LIBOR index. Consumers with

these indices will then pay a cost due to this final provision until the next rate reset. On some dates in which indexed rates reset, some replacement indices may have decreased relative to the LIBOR index. Consumers with these indices will then benefit from this final provision until the next rate reset. Consumers vary in their constraints and preferences, the credit products they have, the dates those credit products reset, the replacement indices their creditors or card issuers will choose, and the transition dates their creditors or card issuers will choose. The benefits and costs that will accrue to consumers from this final provision and that arise because of differences in index movements will vary across consumers and over time. However, the Bureau expects ex-ante for these benefits and costs to be small on average, because the rates creditors or card issuers switch to must be substantially similar to existing LIBOR-based rates generally using index values in effect on October 18, 2021, and because replacement indices that are not newly established must have historical fluctuations that are substantially similar to those of the LIBOR index.

Potential Benefits and Costs to Covered Persons

The Bureau believes this final provision will have three primary benefits for creditors for HELOCs and card issuers. First, under this final provision, these creditors and card issuers will have more certainty about the transition date and more time to make the transition away from the LIBOR indices. This should increase the ability of HELOC creditors and card issuers to plan for the transition, improving their communication with consumers about the transition, and decreasing the likelihood of technical or system issues that affect consumers' accounts during the transition. Both of these effects should lower the cost of the transition to creditors. However, as discussed above, because the ARRC has indicated that the SOFR-based spread-adjusted indices recommended by the ARRC for consumer products to replace the 1-month, 3-month, 6-month, or 1-year USD LIBOR index will not be published until Monday, July 3, 2023, this final provision is unlikely to allow creditors to switch to SOFR-based spread-adjusted indices for consumer

products earlier than they would under the baseline. This will limit the benefits of this final provision to creditors.

Second, this final provision will provide creditors for HELOCs and card issuers with additional detail for how to comply with their legal obligations under Regulation Z with respect to the LIBOR transition. This should decrease the cost of legal and compliance staff time preparing for the transition beforehand and dealing with litigation after.

Third, this final provision will also include revisions to commentary on Regulation Z (1) providing a non-exhaustive list of examples of the types of factors used to determine whether a replacement index has historical fluctuations that are substantially similar to those of the LIBOR index, (2) stating that SOFR-based spread-adjusted indices recommended by the ARRC for consumer products to replace the 1-month, 3-month, or 6-month USD LIBOR index have historical fluctuations that are substantially similar to the applicable tenor of LIBOR, (3) stating that Prime has historical fluctuations that are substantially similar to those of the 1-month and 3-month USD LIBOR index, and (4) stating that if a HELOC creditor or card issuer replaces LIBOR indices with the SOFR-based spread-adjusted indices recommended by the ARRC for consumer products to replace the 1-month, 3-month, or 6-month USD LIBOR index, the APR that is calculated using those rates is substantially similar to the rate calculated using the LIBOR index so long as the creditor or card issuer uses as the replacement margin the same margin that was used prior to the index change. This should decrease the cost of compliance staff time coming to the same conclusions as the commentary before the transition from LIBOR, and it should decrease the cost of litigation after.

As discussed under "Potential Benefits and Costs to Consumers" above, because the replacement indices that creditors for HELOCs and card issuers will switch to are not identical to the LIBOR indices, they will not move identically to the LIBOR indices, and so for the roughly 15 months affected by this final provision (for contracts being switched to an index other than a SOFR-based spread-adjusted index recommended by the ARRC for consumer products),

affected consumers' payments will be different under this final provision than they would be under the baseline. On some dates in which indexed rates reset, some replacement indices will have increased relative to the LIBOR index. HELOC creditors and card issuers with rates linked to these indices will then benefit from this final provision until the next rate reset. On some dates on which indexed rates reset, some replacement indices will have decreased relative to the LIBOR index. HELOC creditors and card issuers with rates linked to these indices will then pay a cost due to this final provision until the next rate reset. Creditors and card issuers vary in their constraints and preferences, the credit products they issue, the dates those credit products reset, the replacement indices they will choose under this final provision, and the transition dates they will choose under this final provision. The benefits and costs that will accrue to HELOC creditors and card issuers from this final provision and that arise because of differences in index movements will vary across creditors and card issuers and over time. However, the Bureau expects ex-ante for these benefits and costs to be small on average, because the rates creditors or card issuers switch to must be substantially similar to existing LIBOR-based rates generally using index values in effect on October 18, 2021, and replacement indices that are not newly established must have historical fluctuations that are substantially similar to those of the LIBOR index.

This final provision will allow creditors for HELOCs and card issuers under Regulation Z to switch contracts from a LIBOR index earlier than they otherwise would have, but it does not require them to do so. Therefore, this aspect of this final provision does not impose any significant costs on HELOC creditors and card issuers. The final commentary does not determine that any specific indices have historical fluctuations that are not substantially similar to those of LIBOR, so the final revisions will not prevent creditors or card issuers from switching to other indices as long as those indices still satisfy regulatory requirements. Therefore, the final commentary also does not impose any significant costs on HELOC creditors and card issuers.

However, as noted above, the replacement indices HELOC creditors and card issuers choose may move less favorably for them than the LIBOR indices would have.

2. Commentary providing details on how a creditor may disclose information about the periodic rate and APR in a change-in-terms notice for HELOCs and credit card accounts when the creditor is replacing a LIBOR index with the SOFR-based spread-adjusted index recommended by the ARRC for consumer products in certain circumstances

The Bureau is providing comment 9(c)(1)-4 for HELOCs and comment 9(c)(2)(iv)-2.ii for credit card accounts to provide additional details for situations where (1) a creditor is replacing a LIBOR index with the SOFR-based spread-adjusted index recommended by the ARRC for consumer products to replace the 1-month, 3-month, or 6-month USD LIBOR index, (2) the creditor is not changing the margin used to calculate the variable rate as a result of the replacement, and (3) a periodic rate or the corresponding annual percentage rate based on the replacement index is unknown to the creditor at the time the change-in-terms notice is provided because the SOFR index has not been published at the time the creditor provides the change-in-terms notice but will be published by the time the replacement of the index takes effect on the account. In this case, new comments 9(c)(1)-4 and 9(c)(2)(iv)-2.ii provide that a creditor may comply with any requirement to disclose the amount of the periodic rate or APR (or changes in these amounts) as calculated using the replacement index based on the best information reasonably available, clearly stating that the disclosure is an estimate. For example, in this situation, comments 9(c)(1)-4 and 9(c)(2)(iv)-2.ii provide the creditor may state that: (1) information about the rate is not yet available but that the creditor estimates that, at the time the index is replaced, the rate will be substantially similar to what it would be if the index did not have to be replaced; and (2) the rate will vary with the market based on a SOFR index.

In these unique circumstances, the Bureau interprets § 1026.5(c) to be consistent with new comments 9(c)(1)-4 and 9(c)(2)(iv)-2.ii. Section 1026.5(c) provides, in relevant part, that if any information necessary for accurate disclosure is unknown to the creditor, it must make the

disclosure based on the best information reasonably available and must state clearly that the disclosure is an estimate. The Bureau believes that the main effect of this final commentary will be to facilitate compliance with change-in-terms notice requirements for creditors who wish to switch existing accounts from a LIBOR index to the SOFR-based spread-adjusted index recommended by the ARRC for consumer products to replace the 1-month, 3-month, or 6-month USD LIBOR index in certain circumstances.

Without this final commentary, it is not clear how creditors could provide required change-in-terms notices to switch consumers from a LIBOR index to a SOFR-based spread-adjusted index recommended by the ARRC for consumer products to replace the 1-month, 3-month, or 6-month USD LIBOR index, prior to the SOFR-based spread-adjusted index for consumer products being published. Therefore, it is not clear what creditors would do under the baseline absent this final commentary.

Some creditors may be legally required to switch consumers to a SOFR-based spread-adjusted index for consumer products. Presumably, they would still do so even absent this final commentary, although they might face significant legal uncertainty and experience significant legal costs by doing so. They might face this legal uncertainty if they decide to send out the change-in-terms notice prior to the SOFR-based spread-adjusted index for consumer products being published. Alternatively, if they decide not to send out the change-in-terms notice until after the SOFR-based spread-adjusted index for consumer products is published, they might face legal uncertainty in how to calculate the rate after the LIBOR index is discontinued but prior to the SOFR-based spread-adjusted rate becoming effective on the account.

Other creditors could choose under the baseline to switch to a SOFR-based spread-adjusted index for consumer products even if not required to do so. For these creditors, these final provisions will decrease costs by providing additional clarity and certainty about the required change-in-terms notices. These final provisions may also decrease litigation costs for

these creditors after the transition from certain LIBOR indices to certain SOFR-based spread-adjusted indices for consumer products.

Consumers with loans from these creditors would have their loans switched from LIBOR indices to SOFR-spread adjusted indices for consumer products both under this final rule and under the baseline. The Bureau expects that, under this final rule and under the baseline, these consumers would receive similar change-in-terms notices with only minimal adjustments to the content of those notices. Hence, the Bureau estimates that these final revisions will have no significant benefits, costs, or impacts for these consumers.

However, other creditors that will switch to SOFR-based spread-adjusted indices for consumer products under this final rule might be deterred by existing change-in-terms notice requirements from switching consumers to SOFR-based spread-adjusted indices for consumer products without this final provision. These creditors would choose different indices to replace LIBOR indices. Because these creditors would prefer to switch to SOFR-based spread-adjusted indices for consumer products and this final commentary will allow them to do so, the Bureau expects that this final commentary will generate substantial benefits for these creditors. However, the Bureau cannot estimate how many such creditors exist or the size of these benefits to them.

Consumers with loans from these creditors would have their loans switched to a SOFR-based index for consumer products under this final rule but would have their loans switched to some other index under the baseline. After the transition, consumers' APRs will be tied to these other indices rather than to the SOFR-based indices. Because these other replacement indices creditors would switch to are not identical to the SOFR-based indices, they will not move identically to the SOFR-based indices, so affected consumers' payments will be different under the final commentary than they would be under the baseline. On some dates in which indexed rates reset, some replacement indices may have increased relative to a SOFR-based spread-adjusted index for consumer products. Consumers with these indices will then pay a cost due to

this final provision until the next rate reset. On some dates in which indexed rates reset, some replacement indices may have decreased relative to a SOFR-based spread-adjusted index for consumer products. Consumers with these indices will then benefit from this final provision until the next rate reset. Consumers vary in their constraints and preferences, the credit products they have, the dates those credit products reset, the replacement indices their creditors would choose, and the transition dates their creditors will choose. The benefits and costs that will accrue to consumers from this final provision and that arise because of differences in index movements will vary across consumers and over time. However, the Bureau expects ex-ante for these benefits and costs to be small on average, because the rates creditors switch to must be substantially similar to existing LIBOR-based rates generally using index values in effect on October 18, 2021, and because replacement indices that are not newly established must have historical fluctuations that are substantially similar to those of the LIBOR index.

While the final commentary provisions make minimal adjustments to the content of change-in-terms notices, they do not impose extra change-in-term requirements on creditors. Therefore, these final provisions will impose no significant costs on creditors.

3. Revisions to Change-in-Terms Notices Requirements for HELOCs and Credit Card Accounts to Disclose Margin Decreases, if Any

The amendments to § 1026.9(c)(1)(ii) and (c)(2)(v)(A) will, effective April 1, 2022, with a mandatory compliance date of October 1, 2022, require creditors for HELOCs and card issuers to disclose margin reductions to consumers when they switch contracts from using LIBOR indices to other indices. Under both the existing regulation and this final provision, creditors for HELOCs and card issuers are required to send consumers change-in-terms notices when indices change, disclosing the replacement index and any increase in the margin. Therefore, this final provision will not affect the number of consumers who receive change-in-terms notices nor the number of change-in-terms notices creditors for HELOCs or card issuers must provide.

The benefits, costs, and impacts of this final provision depend on whether HELOC creditors or card issuers would choose to disclose margin decreases even if not required to do so, as under the existing regulation. Creditors for HELOCs or card issuers that would not otherwise disclose margin decreases in their change-in-terms notices will bear the cost of having to provide slightly longer notices. They may also have to develop distinct notices for different groups of consumers with different initial margins. Consumers with HELOC or credit card accounts from those creditors or card issuers will benefit by having an improved understanding of how and why their APRs would change. However, the Bureau believes it is likely that most creditors for HELOCs and card issuers would choose to disclose margin decreases in their change-in-terms notices even if not required to do so, because margin decreases are beneficial for consumers, and because in these situations the creditors or card issuers likely benefit from improved consumer understanding. Further, compliance with this final provision will be mandatory only beginning October 1, 2022. HELOC creditors and card issuers that would prefer not to disclose margin decreases can choose to change indices before compliance with this final provision becomes mandatory (if the change in indices is permitted by the contractual provisions at that time). Therefore, the Bureau expects that both the benefits and costs of this final provision for consumers and HELOC creditors and card issuers will be small.

4. LIBOR-Specific Exception from the Rate Reevaluation Provisions Applicable to Credit Card Accounts

Rate increases may occur due to the LIBOR transition either at the time of transition from the LIBOR index to a different index or at a later time. Under current § 1026.59, in these scenarios card issuers would need to reevaluate the APRs until they equal or fall below what they would have been had they remained tied to LIBOR. This final provision set forth in new § 1026.59(h)(3) and related commentary will except card issuers from these rate reevaluation requirements for rate increases that occur as a result of the transition from the LIBOR index to another index under the LIBOR-specific provisions discussed above or under the existing

regulation that allows card issuers to replace an index when the index becomes unavailable. This final provision will not except rate increases already subject to the rate reevaluation requirements prior to the transition from the LIBOR index to another index as discussed above. Because relative rate movements are hard to anticipate ex-ante, it is unlikely that this final provision will affect the indices that card issuers use as replacements. Because card issuers can only switch from LIBOR-based rates to rates that are substantially similar generally using index values in effect on October 18, 2021, and use a replacement index (if the replacement index is not newly established) that has historical fluctuations that are substantially similar to those of the LIBOR index, it is unlikely such rate reevaluations will result in significant rate reductions for consumers before LIBOR is discontinued. Therefore, before LIBOR is discontinued, the impact of this final provision on consumers is likely to be small. After LIBOR is discontinued, it will not be possible to compute what consumer rates would have been under the LIBOR indices, and so it is not clear how card issuers would conduct such rate reevaluations after that time. Therefore, after LIBOR is discontinued, the impact of this final provision on consumers is not clear. This final provision will benefit affected card issuers by saving them the cost of reevaluating rates until LIBOR is discontinued. This final provision will impose no costs on affected card issuers because they can still perform rate reevaluations if they choose to do so prior to LIBOR being discontinued.

5. Commentary providing a non-exhaustive list of examples of the types of factors used to determine whether a replacement index is comparable to a LIBOR index and stating that specific indices are comparable to certain LIBOR tenors for purposes of the closed-end refinancing provisions

The Bureau is adding comment 20(a)-3.iv to provide a non-exhaustive list of examples of the types of factors used to determine whether a replacement index is comparable to a LIBOR index and is amending comment 20(a)-3.ii.B to state that the SOFR-based spread-adjusted indices recommended by the ARRC for consumer products to replace the 1-month, 3-month,

or6-month USD LIBOR index are comparable to the applicable tenor of LIBOR. The Bureau believes that market participants, using analysis similar to that the Bureau has performed, would come to this conclusion even without this final commentary. Therefore, the Bureau believes that this final commentary will not significantly change the indices that creditors switch to, the dates on which indices are switched, or the manner in which those switches are made. Hence, the Bureau estimates that these final revisions will have no significant benefits, costs, or impacts for consumers.

For creditors, this final provision will decrease costs by providing additional clarity and certainty about whether indices are comparable for purposes of Regulation Z. For creditors that will switch from certain LIBOR indices to certain SOFR-based spread-adjusted indices for consumer products, this final provision will decrease the compliance staff time required to come to the conclusion that the SOFR index is comparable to the LIBOR index. This final provision will also decrease litigation costs for creditors after the transition from certain LIBOR indices to certain SOFR-based spread-adjusted indices for consumer products.

The final commentary does not determine that any specific indices are not comparable to LIBOR. Therefore, this final provision will not prevent creditors from switching to other indices as long as those indices still satisfy regulatory requirements. Therefore, this final provision will impose no significant costs on creditors.

F. Alternative Provisions Considered

As discussed above in the section-by-section analyses of §§ 1026.40(f)(3)(ii) and 1026.55(b)(7), the Bureau considered interpreting the LIBOR indices to be unavailable as of a certain date prior to LIBOR being discontinued. The Bureau briefly discusses the costs, benefits, and impacts of the considered interpretation below.

If the Bureau were to interpret the LIBOR indices to be unavailable as of the effective date of this final rule (*i.e.*, April 1, 2022) under the existing Regulation Z rules prior to LIBOR being discontinued, it could provide benefits similar to those of this final rule by allowing

creditors and card issuers to switch away from LIBOR indices before LIBOR is discontinued. It might also potentially provide some benefit to consumers and covered persons whose contracts require them to wait until the LIBOR indices become unavailable before replacing the LIBOR index, by providing some additional clarity in interpreting that provision of their contracts.

However, a determination by the Bureau that the LIBOR indices are unavailable as of the effective date of this final rule (*i.e.*, April 1, 2022) could have unintended consequences on other products or markets. For example, the Bureau believes that such a determination could unintentionally cause confusion for creditors for other products (*e.g.*, ARMs) about whether the LIBOR indices are also unavailable for those products and could possibly put pressure on those creditors to replace the LIBOR index used for those products before those creditors are ready for the change. This could impose significant costs on affected consumers and creditors in the markets for these other products.

In addition, even if the Bureau interpreted unavailability to indicate that the LIBOR indices are unavailable as of the effective date of this final rule (*i.e.*, April 1, 2022) or as of June 30, 2023, (the date after which the FCA will consider most USD LIBOR tenors to be unrepresentative even if the rates are still being published), this interpretation would not completely solve the contractual issues for creditors and card issuers whose contracts require them to wait until the LIBOR indices become unavailable before replacing the LIBOR index. Creditors and card issuers still would need to decide for their contracts whether the LIBOR indices are unavailable, and that decision could result in litigation or arbitration under the contracts. Thus, even if the Bureau decided that the LIBOR indices are unavailable under Regulation Z as described above, creditors and card issuers whose contracts require them to wait until the LIBOR indices become unavailable before replacing the LIBOR index essentially would be in the same position under this considered interpretation as they would be under the current rule. Therefore, the benefits of the considered interpretation would be small even for the main intended beneficiaries of such an interpretation, specifically the consumers, creditors, and

card issuers under contracts that require creditors and card issuers to wait until the LIBOR indices become unavailable before replacing the LIBOR index.

G. Potential Specific Impacts of this Final Rule

*1. Depository Institutions and Credit Union*s *with $10 Billion or Less in Total Assets, As Described in section 1026*

The Bureau believes that the consideration of benefits and costs of covered persons presented above provides a largely accurate analysis of the impacts of these final provisions on depository institutions and credit unions with $10 billion or less in total assets that issue credit products that are tied to LIBOR and are covered by these final provisions.

2. Impact of this Final Rule on Consumer Access to Credit and on Consumers in Rural Areas

Because this final rule will affect only existing accounts that are tied to LIBOR and will generally not affect new loans, this final rule will not directly impact consumer access to credit. While this final rule will provide some benefits and costs to creditors and card issuers in connection to the transition away from LIBOR, it is unlikely to affect the costs of providing new credit and therefore the Bureau believes that any impact on creditors and card issuers from this final rule is not likely to have a significant impact on consumer access to credit.

Consumers in rural areas may experience benefits or costs from this final rule that are larger or smaller than the benefits and costs experienced by consumers in general if credit products in rural areas are more or less likely to be linked to LIBOR than credit products in other areas. The Bureau does not have any data or other information to understand whether this is the case.

VIII. Regulatory Flexibility Act Analysis

A. Overview

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct an initial regulatory flexibility analysis and a final regulatory flexibility analysis (FRFA) of any rule subject to notice-and-comment rulemaking requirements, unless the agency certifies that the rule

will not have a significant economic impact on a substantial number of small entities.[169] The Bureau also is subject to certain additional procedures under the RFA involving the convening of a panel to consult with small business representatives before proposing a rule for which an IRFA is required.[170]

A final regulatory flexibility analysis is not required for this final rule because it will not have a significant economic impact on a substantial number of small entities.

B. Impact of Provisions on Small Entities

The analysis below evaluates the potential economic impact of the final provisions on small entities as defined by the RFA.[171] A card issuer or depository institution is considered "small" if it has $600 million or less in assets.[172] Except for card issuers, non-depository creditors are considered "small" if their average annual receipts are less than $41.5 million.[173]

Based on its market intelligence, the Bureau believes that there are few, if any, small card issuers with LIBOR-based cards. Based on its market intelligence, the Bureau estimates that there are approximately 200 to 300 small institutional lenders with variable-rate student loans tied to LIBOR. There are also a few state-sponsored nonbank lenders that offer variable-rate student loans based on LIBOR.

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[169] 5 U.S.C. 601 *et seq*.

[170] 5 U.S.C. 609.

[171] For purposes of assessing the impacts of this final rule on small entities, "small entities" is defined in the RFA to include small businesses, small not-for-profit organizations, and small government jurisdictions. 5 U.S.C. 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. 5 U.S.C. 601(3). A "small organization" is any "not-for-profit enterprise which is independently owned and operated and is not dominant in its field." 5 U.S.C. 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. 5 U.S.C. 601(5).

[172] U.S. Small Bus. Admin., *Table of Small Business Size Standards Matched to North American Industry Classification System Codes* (Aug. 19, 2019), https://www.sba.gov/sites/default/files/2019-08/SBA%20Table%20of%20Size%20Standards_Effective%20Aug%2019%2C%202019_Rev.pdf (current SBA size standards).

[173] *Id.*

To estimate the number of small mortgage lenders that will be impacted by this final rule, the Bureau has analyzed the 2019 Home Mortgage Disclosure Act (HMDA) data.[174] The HMDA data cover mortgage originations, while entities may be impacted by the rule if they hold debt tied to LIBOR. The HMDA data will not include entities that originated LIBOR-linked debt before 2019 but not during 2019, even if those entities still hold that debt. The data will include entities that originated LIBOR-linked debt in 2019 but will have sold it before this final rule comes into effect, and so will not be impacted by this final rule. Other limitations of the data are discussed below. Despite these limitations, the HMDA data are the best data source currently available to the Bureau to quantify the number of small mortgage lenders that will be impacted by this final rule.

The HMDA data include entities that originate ARMs and HELOCs. The data include information on whether mortgages are open-end or closed-end, although some entities are exempt from reporting this information.[175] The data do not include information on whether or not mortgages have rates that are tied to LIBOR. The data do indicate whether or not mortgages have rates that may change. This measure is used as a proxy for potential exposure to the rule. Mortgages may have rates that are linked to indices besides LIBOR. They may also have "step rates" that switch from one pre-determined rate to another pre-determined rate that is not linked

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[174] *See* Bureau of Consumer Fin. Prot., *Data Point: 2019 Mortgage Market Activity and Trends* (June 2020), https://files.consumerfinance.gov/f/documents/cfpb_2019-mortgage-market-activity-trends_report.pdf. (2019 Mortgage Market Activity) The Bureau has analyzed 2019 HMDA data rather than 2020 HMDA data for the purposes of the RFA because in 2020 the HMDA reporting threshold for closed-end transactions increased from 25 to 100. Thus, the 2020 HMDA data will not include information on many lenders that originated between 25 and 100 closed-end loans, while the 2019 HMDA data will. These lenders are likely to be small as defined by the RFA, so in order to avoid understating the number of small lenders affected by the rule we use the 2019 HMDA data.

[175] In May 2017, Congress passed the Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA) that granted certain HMDA reporters partial exemptions from HMDA reporting. The closed-end partial exemption applies to HMDA reporters that are insured depository institutions or insured credit unions and that originated fewer than 500 closed-end mortgages in each of the two preceding years. HMDA reporters that are insured depository institutions or insured credit unions that originated fewer than 500 open-end lines of credit in each of the two preceding years also qualify for a partial exemption with respect to reporting their open-end transactions. The insured depository institutions must also not have received certain less than satisfactory examination ratings under the Community Reinvestment Act of 1977 to qualify for the partial exemptions.

to any index. Therefore, the proxy for potential exposure to this final rule likely overstates the number of entities with rates tied to LIBOR.

Based on these data, the Bureau estimates that there are 131 small depositories that originated at least one closed-end adjustable-rate mortgage product in 2019 and so may be affected by the closed-end provisions of this final rule, and there are 710 small depositories that originated at least one open-end adjustable-rate mortgage product and so may be affected by the open-end provisions of this final rule. Of these, 92 small depositories originated at least one closed-end adjustable-rate mortgage product and one open-end adjustable-rate mortgage product, and so may be affected by both the open-end and closed-end provisions of this final rule.

The definition of "small" for purposes of the RFA for non-depository institutions that originate mortgages depends on average annual receipts. The HMDA data do not include this information, and so the Bureau cannot estimate the number of small non-depository mortgage lenders that may be affected by this final rule. The Bureau estimates that there are 50 non-depository mortgage lenders that originated at least one closed-end adjustable-rate mortgage product and 564 non-depository mortgage lenders that originated at least one open-end adjustable-rate mortgage product. Of these, 42 originated at least one closed-end and one open-end adjustable-rate mortgage product.

The numbers above do not include entities that reported originating mortgages but under the EGRRCPA were exempt from reporting whether or not those mortgages had adjustable rates. There are 2,047 such small depositories in the 2019 HMDA data. There are two such non-depository institutions in the 2019 HMDA data. These entities may have originated adjustable-rate mortgage products that were not explicitly reported as such.

Finally, the numbers above also do not include entities that may have originated adjustable-rate mortgages in 2019 that were exempt entirely from reporting any 2019 HMDA data. The Bureau has estimated that approximately 11,200 institutions originated at least one

closed-end mortgage loan in 2019, and 5,496 institutions reported HMDA data in 2019.[176] This implies that approximately 5,704 institutions originated at least one closed-end mortgage in 2019 but are not in the HMDA data. Because these institutions are not in the HMDA data, the Bureau cannot estimate the number that may have originated adjustable-rate mortgages. Furthermore, the Bureau cannot confirm that they are small for purposes of the RFA, although it is likely they are because HMDA reporting thresholds are based in part on origination volume. Finally, the Bureau cannot estimate the number of institutions that did not report HMDA data in 2019 but did originate at least one open-end mortgage loan in 2019, or at least one closed-end and one open-end mortgage loan in 2019.

As discussed above in part VII, there are five main final provisions:

1. LIBOR-specific provisions for index changes for HELOCs and credit card accounts;
2. Commentary providing details on how a creditor may disclose information about the periodic rate and APR in a change-in-terms notice for HELOCs and credit card accounts when the creditor is replacing a LIBOR index with the SOFR-based spread-adjusted index recommended by the ARRC for consumer products in certain circumstances;
3. Revisions to change-in-terms notices requirements for HELOCs and credit card accounts to disclose margin decreases, if any;
4. LIBOR-specific exception from the rate reevaluation provisions applicable to credit card accounts; and
5. Commentary providing a non-exhaustive list of examples of the types of factors used to determine whether a replacement index is comparable to a LIBOR index and stating that specific indices are comparable to certain LIBOR tenors for purposes of the closed-end refinancing provisions.

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[176] *See* 2019 Mortgage Market Activity, *supra* note 174.

The final LIBOR-specific provisions for index change requirements for open-end credit will allow HELOC creditors and card issuers, including small entities, under Regulation Z to switch away from LIBOR earlier than they would under the baseline, but it will not require them to do so.[177] This additional flexibility will benefit small entities with these outstanding credit products tied to LIBOR, by reducing uncertainty and allowing them to implement the switch in a more orderly way. This additional flexibility will not impose any significant costs on HELOC creditors and card issuers, including small entities.

The final LIBOR-specific provisions for index change requirements for open-end credit also include revisions to commentary to Regulation Z (1) providing a non-exhaustive list of examples of the types of factors used to determine whether a replacement index has historical fluctuations that are substantially similar to those of the LIBOR index, (2) stating that SOFR-based spread-adjusted indices recommended by the ARRC for consumer products to replace the 1-month, 3-month, or 6-month USD LIBOR index have historical fluctuations that are substantially similar to the applicable tenor of LIBOR, (3) stating that Prime has historical fluctuations that are substantially similar to those of the 1-month and 3-month USD LIBOR, and (4) stating that if a HELOC creditor or card issuer replaces LIBOR indices with the SOFR-based spread-adjusted indices recommended by the ARRC for consumer products to replace the 1-month, 3-month, or 6-month USD LIBOR index, the APR that is calculated using those rates is substantially similar to the rate calculated using LIBOR so long as the creditor or card issuer uses as the replacement margin the same margin that was used prior to the index change. The final commentary does not determine that any specific indices have historical fluctuations that are not substantially similar to those of LIBOR, so the final revisions will not prevent creditors or card

[177] As discussed in the section-by-section analyses of §§ 1026.40(f)(3)(ii) and1026.55(b)(7) above, this final rule, however, will not excuse creditors or card issuers from noncompliance with contractual provisions. For example, a contract for a HELOC or a credit card account may provide that the creditor or card issuer respectively may not replace an index unilaterally under a plan unless the original index becomes unavailable. This final rule does not grant the creditor or card issuer authority to unilaterally replace a LIBOR index used under the plan before LIBOR becomes unavailable.

issuers from switching to other indices as long as those indices still satisfy regulatory requirements. Therefore, the final commentary does not impose any significant costs on HELOC creditors and card issuers, including small entities. Therefore, the final LIBOR-specific provisions for index change requirements for open-end credit impose no significant burden on small entities.

The commentary provisions providing details on how a creditor may disclose information about the periodic rate and APR in a change-in-terms notice for HELOCs and credit card accounts when the creditor is replacing a LIBOR index with the SOFR-based spread-adjusted index recommended by the ARRC for consumer products to replace the 1-month, 3-month or 6-month USD LIBOR indices in certain circumstances make minimal adjustments to the content of change-in-terms notices, they do not impose extra disclosure requirements on creditors. Therefore, the final commentary provisions will impose no significant costs on creditors, including small entities.

The final revisions to change-in-terms notices requirements to disclose margin decreases, if any, expand regulatory requirements for creditors for HELOCs and card issuers, including small entities, and therefore may increase their compliance costs. The final provision will on or after October 1, 2022, require creditors for HELOCs and card issuers, including small entities, to disclose margin reductions to consumers when they switch contracts from using LIBOR indices to other indices. Under both the existing regulation and the final provision, creditors for HELOCs and card issuers, including small entities, are required to send consumers change-in-terms notices when indices change, disclosing the replacement index and any increase in the margin. Therefore, this final provision will not affect the number of consumers who receive change-in-terms notices nor the number of change-in-terms notices creditors for HELOCs or card issuers, including small entities, must provide.

The benefits, costs, and impacts of this final provision depend on whether HELOC creditors or card issuers, including small entities, would choose to disclose margin decreases

even if not required to do so under the existing regulation. Creditors for HELOCs or card issuers, including small entities, that would not otherwise disclose margin decreases in their change-in-terms notices will bear the cost of having to provide slightly longer notices. They may also have to develop distinct notices for different groups of consumers with different initial margins. However, the Bureau believes it is likely that most creditors for HELOCs and card issuers, including small entities, would choose to disclose margin decreases in their change-in-terms notices even if not required to, because margin decreases are beneficial for consumers, and because in these situations the creditors or card issuers likely benefit from improved consumer understanding. Further, compliance with this final provision will be mandatory only beginning October 1, 2022. HELOC creditors and card issuers, including small entities, that would prefer not to disclose margin decreases could choose to change indices before this proposed provision becomes effective (if the change in indices is permitted by the contractual provisions at that time). Therefore, the Bureau expects that both the benefits and costs of this final provision for HELOC creditors and card issuers, including small entities, will be small. Therefore, this final provision will not impose significant costs on a significant number of small entities.

The LIBOR-specific exception from the rate reevaluation provisions applicable to credit card accounts will benefit affected card issuers, including small entities, by saving them the cost of reevaluating rate increases that occur as a result of the transition from the LIBOR index to another index under the LIBOR-specific provisions discussed above or under the existing regulation that allows card issuers to replace an index when the index becomes unavailable. This final provision will impose no costs on affected card issuers, including small entities, because they could still perform rate reevaluations if they choose to do so until LIBOR is discontinued. Therefore, this final provision will impose no significant burden on small entities.

The Bureau is adding commentary to provide a non-exhaustive list of examples of the types of factors used to determine whether a replacement index is comparable to a LIBOR index and is amending commentary to state that SOFR-based spread-adjusted indices recommended by

the ARRC for consumer products to replace the 1-month, 3-month, or 6-month USD LIBOR indices are comparable to the applicable tenor of LIBOR. This final commentary does not determine that any specific indices are not comparable to LIBOR. Therefore, this final provision will not prevent creditors from switching to other indices as long as those indices still satisfy regulatory requirements. Therefore, this final provision will impose no significant costs on creditors, including small entities.

Accordingly, the Director certifies that this final rule will not have a significant economic impact on a substantial number of small entities. Thus, a FRFA is not required for this final rule.

IX. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA),[178] Federal agencies are generally required to seek the Office of Management and Budget's (OMB's) approval for information collection requirements prior to implementation. The collections of information related to Regulation Z have been previously reviewed and approved by OMB and assigned OMB Control number 3170–0015. Under the PRA, the Bureau may not conduct or sponsor and, notwithstanding any other provision of law, a person is not required to respond to an information collection unless the information collection displays a valid control number assigned by OMB.

The Bureau has determined that this final rule does not impose any new or revise any existing recordkeeping, reporting, or disclosure requirements on covered entities or members of the public that would be collections of information requiring approval by the Office of Management and Budget under the Paperwork Reduction Act.

List of Subjects in 12 CFR Part 1026

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

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[178] 44 U.S.C. 3501 *et seq*.

Authority and Issuance

For the reasons set forth in the preamble, the Bureau revises 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 B—Open-End Credit

2. Effective April 1, 2022, § 1026.9 is amended by revising paragraphs (c)(1)(ii) and (c)(2)(v)(A) to read as follows:

§ 1026.9 Subsequent disclosure requirements.

* * * * *

(c) * * *

(1) * * *

(ii) *Notice not required.* For home-equity plans subject to the requirements of § 1026.40, a creditor is not required to provide notice under this section when the change involves a reduction of any component of a finance or other charge (except that on or after October 1, 2022, this provision on when the change involves a reduction of any component of a finance or other charge does not apply to any change in the margin when a LIBOR index is replaced, as permitted by § 1026.40(f)(3)(ii)(A) or (B)) or when the change results from an agreement involving a court proceeding.

* * * * *

(2) * * *

(v) * * *

(A) When the change involves charges for documentary evidence; a reduction of any component of a finance or other charge (except that on or after October 1, 2022, this provision on when the change involves a reduction of any component of a finance or other charge does not

apply to any change in the margin when a LIBOR index is replaced, as permitted by § 1026.55(b)(7)(i) or (ii)); suspension of future credit privileges (except as provided in paragraph (c)(2)(vi) of this section) or termination of an account or plan; when the change results from an agreement involving a court proceeding; when the change is an extension of the grace period; or if the change is applicable only to checks that access a credit card account and the changed terms are disclosed on or with the checks in accordance with paragraph (b)(3) of this section;

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Subpart E—Special Rules for Certain Home Mortgage Transactions

§ 1026.36 [Amended]

3. Effective April 1, 2022, § 1026.36 is amended by removing "LIBOR" and adding in its place "SOFR" in paragraphs (a)(4)(iii)(C) and (a)(5)(iii)(B).

4. Effective April 1, 2022, § 1026.40 is amended by revising paragraph (f)(3)(ii) to read as follows:

§ 1026.40 Requirements for home equity plans.

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(f) * * *

(3) * * *

(ii)(A) Change the index and margin used under the plan if the original index is no longer available, the replacement index has historical fluctuations substantially similar to that of the original index, and the replacement index and replacement margin would have resulted in an annual percentage rate substantially similar to the rate in effect at the time the original index became unavailable. If the replacement index is newly established and therefore does not have any rate history, it may be used if it and the replacement margin will produce an annual percentage rate substantially similar to the rate in effect when the original index became unavailable; or

(B) If a variable rate on the plan is calculated using a LIBOR index, change the LIBOR

index and the margin for calculating the variable rate on or after April 1, 2022, to a replacement index and a replacement margin, as long as historical fluctuations in the LIBOR index and replacement index were substantially similar, and as long as the replacement index value in effect on October 18, 2021, and replacement margin will produce an annual percentage rate substantially similar to the rate calculated using the LIBOR index value in effect on October 18, 2021, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. If the replacement index is newly established and therefore does not have any rate history, it may be used if the replacement index value in effect on October 18, 2021, and the replacement margin will produce an annual percentage rate substantially similar to the rate calculated using the LIBOR index value in effect on October 18, 2021, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. If the replacement index is not published on October 18, 2021, the creditor generally must use the next calendar day for which both the LIBOR index and the replacement index are published as the date for selecting indices values in determining whether the annual percentage rate based on the replacement index is substantially similar to the rate based on the LIBOR index. The one exception is that if the replacement index is the spread-adjusted index based on SOFR recommended by the Alternative Reference Rates Committee for consumer products to replace the 1-month, 3-month, 6-month, or 1-year U.S. Dollar LIBOR index, the creditor must use the index value on June 30, 2023, for the LIBOR index and, for the SOFR-based spread-adjusted index for consumer products, must use the index value on the first date that index is published, in determining whether the annual percentage rate based on the replacement index is substantially similar to the rate based on the LIBOR index.

* * * * *

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

5. Effective April 1, 2022, § 1026.55 is amended by adding paragraph (b)(7) to read as follows:

§ 1026.55 Limitations on increasing annual percentage rates, fees, and charges.

* * * * *

(b) * * *

(7) *Index replacement and margin change exception*. A card issuer may increase an annual percentage rate when:

(i) The card issuer changes the index and margin used to determine the annual percentage rate if the original index becomes unavailable, as long as historical fluctuations in the original and replacement indices were substantially similar, and as long as the replacement index and replacement margin will produce a rate substantially similar to the rate that was in effect at the time the original index became unavailable. If the replacement index is newly established and therefore does not have any rate history, it may be used if it and the replacement margin will produce a rate substantially similar to the rate in effect when the original index became unavailable; or

(ii) If a variable rate on the plan is calculated using a LIBOR index, the card issuer changes the LIBOR index and the margin for calculating the variable rate on or after April 1, 2022, to a replacement index and a replacement margin, as long as historical fluctuations in the LIBOR index and replacement index were substantially similar, and as long as the replacement index value in effect on October 18, 2021, and replacement margin will produce an annual percentage rate substantially similar to the rate calculated using the LIBOR index value in effect on October 18, 2021, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. If the replacement index is newly established and therefore does not have any rate history, it may be used if the replacement index value in effect on October 18, 2021, and the replacement margin will produce an annual percentage rate substantially similar to the rate calculated using the LIBOR index value in effect

on October 18, 2021, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. If the replacement index is not published on October 18, 2021, the card issuer generally must use the next calendar day for which both the LIBOR index and the replacement index are published as the date for selecting indices values in determining whether the annual percentage rate based on the replacement index is substantially similar to the rate based on the LIBOR index. The one exception is that if the replacement index is the spread-adjusted index based on SOFR recommended by the Alternative Reference Rates Committee for consumer products to replace the 1-month, 3-month, 6-month, or 1-year U.S. Dollar LIBOR index, the card issuer must use the index value on June 30, 2023, for the LIBOR index and, for the SOFR-based spread-adjusted index for consumer products, must use the index value on the first date that index is published, in determining whether the annual percentage rate based on the replacement index is substantially similar to the rate based on the LIBOR index.

* * * * *

6. Effective April 1, 2022, § 1026.59 is amended by adding paragraphs (f)(3) and (h)(3) to read as follows:

§ 1026.59 Reevaluation of rate increases.

* * * * *

(f) * * *

(3) Effective April 1, 2022, in the case where the rate applicable immediately prior to the increase was a variable rate with a formula based on a LIBOR index, the card issuer reduces the annual percentage rate to a rate determined by a replacement formula that is derived from a replacement index value on October 18, 2021, plus replacement margin that is equal to the LIBOR index value on October 18, 2021, plus the margin used to calculate the rate immediately prior to the increase (previous formula). A card issuer must satisfy the conditions set forth in § 1026.55(b)(7)(ii) for selecting a replacement index. If the replacement index is not published on October 18, 2021, the card issuer generally must use the values of the indices on the next

calendar day for which both the LIBOR index and the replacement index are published as the index values to use to determine the replacement formula. The one exception is that if the replacement index is the spread-adjusted index based on SOFR recommended by the Alternative Reference Rates Committee for consumer products to replace the 1-month, 3-month, 6-month, or 1-year U.S. Dollar LIBOR index, the card issuer must use the index value on June 30, 2023, for the LIBOR index and, for the SOFR-based spread-adjusted index for consumer products, must use the index value on the first date that index is published, as the index values to use to determine the replacement formula.

* * * * *

(h) * * *

(3) *Transition from LIBOR*. The requirements of this section do not apply to increases in an annual percentage rate that occur as a result of the transition from the use of a LIBOR index as the index in setting a variable rate to the use of a replacement index in setting a variable rate if the change from the use of the LIBOR index to a replacement index occurs in accordance with § 1026.55(b)(7)(i) or (ii).

7. Effective April 1, 2022, appendix H to part 1026 is amended by revising the entries for H-4(D)(2) and H-4(D)(4) to read as follows:

Appendix H to Part 1026—Closed-End Model Forms and Clauses

* * * * *

H-4(D)(2) SAMPLE FORM FOR § 1026.20(C)

LEGACY FORM – CAN ONLY BE USED THROUGH SEPTEMBER 30, 2023

July 20, 2012

Jordan and Dana Smith
4700 Jones Drive
Memphis, TN 38109

Springside Mortgage
1234 Main St
Memphis, TN 31801

Changes to Your Mortgage Interest Rate and Payments on September 1, 2012

Under the terms of your Adjustable-Rate Mortgage (ARM), you had a three-year period during which your interest rate stayed the same. That period ends on September 1, 2012, so on that date your interest rate and mortgage payment change. After that, your interest rate may change annually for the rest of your loan term.

	Current Rate and Monthly Payment	**New** Rate and Monthly Payment
Interest Rate	4.25%	6.25%
Total Monthly Payment	**$983.88**	**$1,211.81 (due October 1, 2012)**

Interest Rate: We calculated your interest rate by taking a published "index rate" and adding a certain number of percentage points, called the "margin." Under your loan agreement, your index rate is the 1-year LIBOR and your margin is 2.25%. The LIBOR index is published daily in the Wall Street Journal.

Rate Limits: Your rate cannot go higher than 11.625% over the life of the loan. Your rate can change each year by no more than 2.00%.

New Interest Rate and Monthly Payment: The table above shows your new interest rate and new monthly payment. Your new payment is based on the LIBOR index, your margin, your loan balance of $189,440, and your remaining loan term of 324 months.

Prepayment Penalty: Keep in mind that if you pay off your loan, refinance or sell your home before September 1, 2012, you could be charged a penalty. Contact Springside Mortgage at (800) 765-4321 for more information, such as the maximum amount of the penalty you could be charged.

REVISED FORM – CAN BE USED ON OR AFTER APRIL 1, 2022

July 20, 2022

Jordan and Dana Smith
4700 Jones Drive
Memphis, TN 38109

Springside Mortgage
1234 Main St
Memphis, TN 31801

Changes to Your Mortgage Interest Rate and Payments on September 1, 2022

Under the terms of your Adjustable-Rate Mortgage (ARM), you had a three-year period during which your interest rate stayed the same. That period ends on September 1, 2022, so on that date your interest rate and mortgage payment change. After that, your interest rate may change every six months for the rest of your loan term.

	Current Rate and Monthly Payment	**New** Rate and Monthly Payment
Interest Rate	4.25%	6.25%
Total Monthly Payment	**$983.88**	**$1,211.81 (due October 1, 2022)**

Interest Rate: We calculated your interest rate by taking a published "index rate" and adding a certain number of percentage points, called the "margin." Under your loan agreement, your index rate is the 30-day Average SOFR (SOFR) and your margin is 2.75%. The SOFR index is published daily on the website of the Federal Reserve Bank of New York.

Rate Limits: Your rate cannot go higher than 11.625% over the life of the loan. Your rate can change every six months by no more than 1.00%.

New Interest Rate and Monthly Payment: The table above shows your new interest rate and new monthly payment. Your new payment is based on the SOFR index, your margin, your loan balance of $189,440, and your remaining loan term of 324 months.

Prepayment Penalty: Keep in mind that if you pay off your loan, refinance or sell your home before September 1, 2022, you could be charged a penalty. Contact Springside Mortgage at (800) 765-4321 for more information, such as the maximum amount of the penalty you could be charged.

* * * * *

H-4(D)(4) SAMPLE FORM FOR § 1026.20(D)

LEGACY FORM – CAN ONLY BE USED THROUGH SEPTEMBER 30, 2023

Jordan and Dana Smith
4700 Jones Drive
Memphis, TN 38109

Springside Mortgage
1234 Main St
Memphis, TN 31801

Changes to Your Mortgage Interest Rate and Payments on September 1, 2012

Under the terms of your Adjustable-Rate Mortgage (ARM), you had a three-year period during which your interest rate stayed the same. That period ends on September 1, 2012, so on that date your interest rate may change. After that, your interest rate may change annually for the rest of your loan term. Any change in your interest rate may also change your mortgage payment. Also, as of September 1, 2012 your mortgage payment will include principal as well as interest.

	Current Rate and Monthly Payment	**Estimated New** Rate and Monthly Payment
Interest Rate	4.25%	6.25%
Principal	- **none** -	$237.70
Interest	$708.33	$1,041.66
Escrow (Taxes and Insurance)	$450.00	$450.00
Total Monthly Payment	**$1,158.33**	**$1,729.36 (due October 1, 2012)**

Interest Rate: We calculated your interest rate by taking a published "index rate" and adding a certain number of percentage points, called the "margin." Under your loan agreement, your index rate is the 1-year LIBOR and your margin is 2.25%. The LIBOR index is published daily in the Wall Street Journal.

Rate Limits: Your rate cannot go higher than 11.625% over the life of the loan. Your rate can change each year by no more than 2.00%. We did not include an additional 1.00% interest rate increase to your new rate because a rate limit applied. This additional increase may be applied to your interest rate when it adjusts again on September 1, 2013.

New Interest Rate and Monthly Payment: The table above shows our estimate of your new interest rate and new monthly payment. These amounts are based on the LIBOR index as of now, your margin, your loan balance of $200,000, and your remaining loan term of 324 months. **However, if the LIBOR index has changed when we calculate the exact amount of your new interest rate and payment, your new interest rate and payment may be different from the estimate above. We will send you another notice with the exact amount of your new interest rate and payment 2 to 4 months before the first new payment is due, if your new payment will be different from your current payment.**

Prepayment Penalty: None

If You Anticipate Problems Making Your Payments:

- Contact Springside Mortgage at 1-800-555-4567 as soon as possible.
- If you seek an alternative to the upcoming changes to your interest rate and payment, the following options **may** be possible (most are subject to lender approval):
  - Refinance your loan with us or another lender;
  - Sell your home and use the proceeds to pay off your current loan;
  - Modify your loan terms with us;
  - Payment forbearance temporarily gives you more time to pay your monthly payment.
- If you would like contact information for counseling agencies or programs in your area, call the U.S. Department of Housing and Urban Development (HUD) at 800-569-4287 or visit www.hud.gov/offices/hsg/sfh/hcc/hcs.cfm. If you would like contact information for a State housing finance agency, visit the U.S. Consumer Financial Protection Bureau (CFPB) at http://www.consumerfinance.gov.

REVISED FORM – CAN BE USED ON OR AFTER APRIL 1, 2022

April 15, 2022

Jordan and Dana Smith
4700 Jones Drive
Memphis, TN 38109

Springside Mortgage
1234 Main St
Memphis, TN 31801

Changes to Your Mortgage Interest Rate and Payments on November 1, 2022

Under the terms of your Adjustable-Rate Mortgage (ARM), you had a three-year period during which your interest rate stayed the same. That period ends on November 1, 2022, so on that date your interest rate may change. After that, your interest rate may change every six months for the rest of your loan term. Any change in your interest rate may also change your mortgage payment. Also, as of November 1, 2022 your mortgage payment will include principal as well as interest.

	Current Rate and Monthly Payment	**Estimated New** Rate and Monthly Payment
Interest Rate	4.25%	6.25%
Principal	**- none -**	$237.70
Interest	$708.33	$1,041.66
Escrow (Taxes and Insurance)	$450.00	$450.00
Total Monthly Payment	**$1,158.33**	**$1,729.36 (due December 1, 2022)**

Interest Rate: We calculated your interest rate by taking a published "index rate" and adding a certain number of percentage points, called the "margin." Under your loan agreement, your index rate is the 30-day Average SOFR (SOFR) and your margin is 2.75%. The SOFR index is published daily on the website of the Federal Reserve Bank of New York.

Rate Limits: Your rate cannot go higher than 11.625% over the life of the loan. Your rate can change every six months by no more than 1.00%. We did not include an additional 1.00% interest rate increase to your new rate because a rate limit applied. This additional increase may be applied to your interest rate when it adjusts again on May 1, 2023.

New Interest Rate and Monthly Payment: The table above shows our estimate of your new interest rate and new monthly payment. These amounts are based on the SOFR index as of now, your margin, your loan balance of $200,000, and your remaining loan term of 324 months. **However, if the SOFR index has changed when we calculate the exact amount of your new interest rate and payment, your new interest rate and payment may be different from the estimate above. We will send you another notice with the exact amount of your new interest rate and payment 2 to 4 months before the first new payment is due, if your new payment will be different from your current payment.**

Prepayment Penalty: None

If You Anticipate Problems Making Your Payments:

- Contact Springside Mortgage at 1-800-555-4567 as soon as possible.
- If you seek an alternative to the upcoming changes to your interest rate and payment, the following options **may** be possible (most are subject to lender approval):
  - Refinance your loan with us or another lender;
  - Sell your home and use the proceeds to pay off your current loan;
  - Modify your loan terms with us;
  - Payment forbearance temporarily gives you more time to pay your monthly payment.
- If you would like contact information for counseling agencies or programs in your area, call the U.S. Department of Housing and Urban Development (HUD) at 800-569-4287 or visit www.hud.gov/offices/hsg/sfh/hcc/hcs.cfm. If you would like contact information for a State housing finance agency, visit the U.S. Consumer Financial Protection Bureau (CFPB) at http://www.consumerfinance.gov.

* * * * *

8. Effective October 1, 2023, appendix H to part 1026 is further amended by revising the entries for H-4(D)(2) and H-4(D)(4) to read as follows:

Appendix H to Part 1026—Closed-End Model Forms and Clauses

* * * * *

H-4(D)(2) SAMPLE FORM FOR § 1026.20(C)

July 20, 2022

Jordan and Dana Smith
4700 Jones Drive
Memphis, TN 38109

Springside Mortgage
1234 Main St
Memphis, TN 31801

Changes to Your Mortgage Interest Rate and Payments on September 1, 2022

Under the terms of your Adjustable-Rate Mortgage (ARM), you had a three-year period during which your interest rate stayed the same. That period ends on September 1, 2022, so on that date your interest rate and mortgage payment change. After that, your interest rate may change every six months for the rest of your loan term.

	Current Rate and Monthly Payment	**New** Rate and Monthly Payment
Interest Rate	4.25%	6.25%
Total Monthly Payment	**$983.88**	**$1,211.81 (due October 1, 2022)**

Interest Rate: We calculated your interest rate by taking a published "index rate" and adding a certain number of percentage points, called the "margin." Under your loan agreement, your index rate is the 30-day Average SOFR (SOFR) and your margin is 2.75%. The SOFR index is published daily on the website of the Federal Reserve Bank of New York.

Rate Limits: Your rate cannot go higher than 11.625% over the life of the loan. Your rate can change every six months by no more than 1.00%.

New Interest Rate and Monthly Payment: The table above shows your new interest rate and new monthly payment. Your new payment is based on the SOFR index, your margin, your loan balance of $189,440, and your remaining loan term of 324 months.

Prepayment Penalty: Keep in mind that if you pay off your loan, refinance or sell your home before September 1, 2022, you could be charged a penalty. Contact Springside Mortgage at (800) 765-4321 for more information, such as the maximum amount of the penalty you could be charged.

* * * * *

H-4(D)(4) SAMPLE FORM FOR § 1026.20(D)

April 15, 2022

Jordan and Dana Smith
4700 Jones Drive
Memphis, TN 38109

Springside Mortgage
1234 Main St
Memphis, TN 31801

Changes to Your Mortgage Interest Rate and Payments on November 1, 2022

Under the terms of your Adjustable-Rate Mortgage (ARM), you had a three-year period during which your interest rate stayed the same. That period ends on November 1, 2022, so on that date your interest rate may change. After that, your interest rate may change every six months for the rest of your loan term. Any change in your interest rate may also change your mortgage payment. Also, as of November 1, 2022 your mortgage payment will include principal as well as interest.

	Current Rate and Monthly Payment	**Estimated New** Rate and Monthly Payment
Interest Rate	4.25%	6.25%
Principal	**- none -**	$237.70
Interest	$708.33	$1,041.66
Escrow (Taxes and Insurance)	$450.00	$450.00
Total Monthly Payment	**$1,158.33**	**$1,729.36 (due December 1, 2022)**

Interest Rate: We calculated your interest rate by taking a published "index rate" and adding a certain number of percentage points, called the "margin." Under your loan agreement, your index rate is the 30-day Average SOFR (SOFR) and your margin is 2.75%. The SOFR index is published daily on the website of the Federal Reserve Bank of New York.

Rate Limits: Your rate cannot go higher than 11.625% over the life of the loan. Your rate can change every six months by no more than 1.00%. We did not include an additional 1.00% interest rate increase to your new rate because a rate limit applied. This additional increase may be applied to your interest rate when it adjusts again on May 1, 2023.

New Interest Rate and Monthly Payment: The table above shows our estimate of your new interest rate and new monthly payment. These amounts are based on the SOFR index as of now, your margin, your loan balance of $200,000, and your remaining loan term of 324 months. **However, if the SOFR index has changed when we calculate the exact amount of your new interest rate and payment, your new interest rate and payment may be different from the estimate above. We will send you another notice with the exact amount of your new interest rate and payment 2 to 4 months before the first new payment is due, if your new payment will be different from your current payment.**

Prepayment Penalty: None

If You Anticipate Problems Making Your Payments:

- Contact Springside Mortgage at 1-800-555-4567 as soon as possible.
- If you seek an alternative to the upcoming changes to your interest rate and payment, the following options **may** be possible (most are subject to lender approval):
  - Refinance your loan with us or another lender;
  - Sell your home and use the proceeds to pay off your current loan;
  - Modify your loan terms with us;
  - Payment forbearance temporarily gives you more time to pay your monthly payment.
- If you would like contact information for counseling agencies or programs in your area, call the U.S. Department of Housing and Urban Development (HUD) at 800-569-4287 or visit www.hud.gov/offices/hsg/sfh/hcc/hcs.cfm. If you would like contact information for a State housing finance agency, visit the U.S. Consumer Financial Protection Bureau (CFPB) at http://www.consumerfinance.gov.

* * * * *

9. In supplement I to part 1026:

a. Under *Section 1026.9—Subsequent Disclosure Requirements*, revise *9(c)(1) Rules Affecting Home-Equity Plans*, *9(c)(1)(ii) Notice not Required*, *9(c)(2)(iv) Disclosure Requirements*, and *9(c)(2)(v) Notice not Required*.

b. Under *Section 1026.20—Disclosure Requirements Regarding Post-Consummation Events*, revise *20(a) Refinancings*.

c. Under *Section 1026.37—Content of Disclosures for Certain Mortgage Transactions (Loan Estimate)*, revise *37(j)(1) Index and margin*.

d. Under *Section 1026.40—Requirements for Home-Equity Plans*, revise *Paragraph 40(f)(3)(ii)* and add *Paragraph 40(f)(3)(ii)(A)* and *Paragraph 40(f)(3)(ii)(B)*.

e. Under *Section 1026.55—Limitations on Increasing Annual Percentage Rates, Fees, and Charges*, revise *55(b)(2) Variable rate exception* and add *55(b)(7) Index replacement and margin change exception*.

f. Under *Section 1026.59—Reevaluation of Rate Increases*, revise *59(d) Factors* and *59(f) Termination of Obligation to Review Factors* and add *59(h) Exceptions*.

The revisions and additions read as follows:

Supplement I to Part 1026—Official Interpretations

* * * * *

Section 1026.9—Subsequent Disclosure Requirements

* * * * *

9(c)(1) Rules Affecting Home-Equity Plans

1. *Changes initially disclosed.* No notice of a change in terms need be given if the specific change is set forth initially, such as: rate increases under a properly disclosed variable-rate plan, a rate increase that occurs when an employee has been under a preferential rate agreement and terminates employment, or an increase that occurs when the consumer has been under an agreement to maintain a certain balance in a savings account in order to keep a particular rate and the account balance falls below the specified minimum. The rules in § 1026.40(f) relating to home-equity plans limit the ability of a creditor to change the terms of such plans.

2. *State law issues.* Examples of issues not addressed by § 1026.9(c) because they are controlled by state or other applicable law include:

i. The types of changes a creditor may make. (*But see* § 1026.40(f).)

ii. How changed terms affect existing balances, such as when a periodic rate is changed and the consumer does not pay off the entire existing balance before the new rate takes effect.

3. *Change in billing cycle.* Whenever the creditor changes the consumer's billing cycle, it must give a change-in-terms notice if the change either affects any of the terms required to be disclosed under § 1026.6(a) or increases the minimum payment, unless an exception under § 1026.9(c)(1)(ii) applies; for example, the creditor must give advance notice if the creditor initially disclosed a 25-day grace period on purchases and the consumer will have fewer days during the billing cycle change.

4. *Changing index for calculating a variable rate from LIBOR to SOFR in specified circumstances.* If a creditor is replacing a LIBOR index with the index based on SOFR recommended by the Alternative Reference Rates Committee for consumer products to replace the 1-month, 3-month, or 6-month U.S. Dollar LIBOR index, the creditor is not changing the margin used to calculate the variable rate as a result of the replacement, and a periodic rate or the corresponding annual percentage rate based on the replacement index is unknown to the creditor at the time the change-in-terms notice is provided because the SOFR index has not been published at the time the creditor provides the change-in-terms notice but will be published by the time the replacement of the index takes effect on the account, the creditor may comply with any requirement to disclose the amount of the new rate (as calculated using the new index), or a change in the periodic rate or the corresponding annual percentage rate (as calculated using the replacement index), based on the best information reasonably available, clearly stating that the disclosure is an estimate. For example, in this situation, the creditor may state that: {1} information about the rate is not yet available but that the creditor estimates that, at the time the

index is replaced, the rate will be substantially similar to what it would be if the index did not have to be replaced; and {2} the rate will vary with the market based on a SOFR index.

* * * * *

9(c)(1)(ii) Notice not Required

1. *Changes not requiring notice.* The following are examples of changes that do not require a change-in-terms notice:

i. A change in the consumer's credit limit.

ii. A change in the name of the credit card or credit card plan.

iii. The substitution of one insurer for another.

iv. A termination or suspension of credit privileges. (*But see* § 1026.40(f).)

v. Changes arising merely by operation of law; for example, if the creditor's security interest in a consumer's car automatically extends to the proceeds when the consumer sells the car.

2. *Skip features.* If a credit program allows consumers to skip or reduce one or more payments during the year, or involves temporary reductions in finance charges, no notice of the change in terms is required either prior to the reduction or upon resumption of the higher rates or payments if these features are explained on the initial disclosure statement (including an explanation of the terms upon resumption). For example, a merchant may allow consumers to skip the December payment to encourage holiday shopping, or a teachers' credit union may not require payments during summer vacation. Otherwise, the creditor must give notice prior to resuming the original schedule or rate, even though no notice is required prior to the reduction. The change-in-terms notice may be combined with the notice offering the reduction. For example, the periodic statement reflecting the reduction or skip feature may also be used to notify the consumer of the resumption of the original schedule or rate, either by stating explicitly when the higher payment or charges resume, or by indicating the duration of the skip option.

Language such as "You may skip your October payment," or "We will waive your finance charges for January," may serve as the change-in-terms notice.

3. *Replacing LIBOR*. The exception in § 1026.9(c)(1)(ii) under which a creditor is not required to provide a change-in-terms notice under § 1026.9(c)(1) when the change involves a reduction of any component of a finance or other charge does not apply on or after October 1, 2022, to margin reductions when a LIBOR index is replaced, as permitted by § 1026.40(f)(3)(ii)(A) or (B). For change-in-terms notices provided under § 1026.9(c)(1) on or after October 1, 2022, covering changes permitted by § 1026.40(f)(3)(ii)(A) or (B), a creditor must provide a change-in-terms notice under § 1026.9(c)(1) disclosing the replacement index for a LIBOR index and any adjusted margin that is permitted under § 1026.40(f)(3)(ii)(A) or (B), even if the margin is reduced. From April 1, 2022, through September 30, 2022, a creditor has the option of disclosing a reduced margin in the change-in-terms notice that discloses the replacement index for a LIBOR index as permitted by § 1026.40(f)(3)(ii)(A) or (B).

* * * * *

9(c)(2)(iv) Disclosure Requirements

1. *Changing margin for calculating a variable rate.* If a creditor is changing a margin used to calculate a variable rate, the creditor must disclose the amount of the new rate (as calculated using the new margin) in the table described in § 1026.9(c)(2)(iv), and include a reminder that the rate is a variable rate. For example, if a creditor is changing the margin for a variable rate that uses the prime rate as an index, the creditor must disclose in the table the new rate (as calculated using the new margin) and indicate that the rate varies with the market based on the prime rate.

2. *Changing index for calculating a variable rate.* i. *In general.* If a creditor is changing the index used to calculate a variable rate, the creditor must disclose the amount of the new rate (as calculated using the new index) and indicate that the rate varies and how the rate is determined, as explained in § 1026.6(b)(2)(i)(A). For example, if a creditor is changing from

using a LIBOR index to using a prime index in calculating a variable rate, the creditor would disclose in the table the new rate (using the new index) and indicate that the rate varies with the market based on a prime index.

ii. *Changing index for calculating a variable rate from LIBOR to SOFR in specified circumstances.* If a creditor is replacing a LIBOR index with an index based on SOFR recommended by the Alternative Reference Rates Committee for consumer products to replace the 1-month, 3-month, or 6-month U.S. Dollar LIBOR index, the creditor is not changing the margin used to calculate the variable rate as a result of the replacement, and a periodic rate or the corresponding annual percentage rate based on the replacement index is unknown to the creditor at the time the change-in-terms notice is provided because the SOFR index has not been published at the time the creditor provides the change-in-terms notice, but will be published by the time the replacement of the index takes effect on the account, the creditor may comply with any requirement to disclose the amount of the new rate (as calculated using the new index), or a change in the periodic rate or the corresponding annual percentage rate (as calculated using the replacement index), based on the best information reasonably available, clearly stating that the disclosure is an estimate. For example, in this situation, the creditor may state that: {1} information about the rate is not yet available but that the creditor estimates that, at the time the index is replaced, the rate will be substantially similar to what it would be if the index did not have to be replaced; and {2} the rate will vary with the market based on a SOFR index.

3. *Changing from a variable rate to a non-variable rate.* If a creditor is changing a rate applicable to a consumer's account from a variable rate to a non-variable rate, the creditor generally must provide a notice as otherwise required under § 1026.9(c) even if the variable rate at the time of the change is higher than the non-variable rate. However, a creditor is not required to provide a notice under § 1026.9(c) if the creditor provides the disclosures required by § 1026.9(c)(2)(v)(B) or (D) in connection with changing a variable rate to a lower non-variable rate. Similarly, a creditor is not required to provide a notice under § 1026.9(c) when changing a

variable rate to a lower non-variable rate in order to comply with 50 U.S.C. app. 527 or a similar Federal or state statute or regulation. Finally, a creditor is not required to provide a notice under § 1026.9(c) when changing a variable rate to a lower non-variable rate in order to comply with § 1026.55(b)(4).

4. *Changing from a non-variable rate to a variable rate.* If a creditor is changing a rate applicable to a consumer's account from a non-variable rate to a variable rate, the creditor generally must provide a notice as otherwise required under § 1026.9(c) even if the non-variable rate is higher than the variable rate at the time of the change. However, a creditor is not required to provide a notice under § 1026.9(c) if the creditor provides the disclosures required by § 1026.9(c)(2)(v)(B) or (D) in connection with changing a non-variable rate to a lower variable rate. Similarly, a creditor is not required to provide a notice under § 1026.9(c) when changing a non-variable rate to a lower variable rate in order to comply with 50 U.S.C. app. 527 or a similar Federal or state statute or regulation. Finally, a creditor is not required to provide a notice under § 1026.9(c) when changing a non-variable rate to a lower variable rate in order to comply with § 1026.55(b)(4). *See* comment 55(b)(2)-4 regarding the limitations in § 1026.55(b)(2) on changing the rate that applies to a protected balance from a non-variable rate to a variable rate.

5. *Changes in the penalty rate, the triggers for the penalty rate, or how long the penalty rate applies.* If a creditor is changing the amount of the penalty rate, the creditor must also redisclose the triggers for the penalty rate and the information about how long the penalty rate applies even if those terms are not changing. Likewise, if a creditor is changing the triggers for the penalty rate, the creditor must redisclose the amount of the penalty rate and information about how long the penalty rate applies. If a creditor is changing how long the penalty rate applies, the creditor must redisclose the amount of the penalty rate and the triggers for the penalty rate, even if they are not changing.

6. *Changes in fees.* If a creditor is changing part of how a fee that is disclosed in a tabular format under § 1026.6(b)(1) and (2) is determined, the creditor must redisclose all

relevant information related to that fee regardless of whether this other information is changing. For example, if a creditor currently charges a cash advance fee of "Either $5 or 3% of the transaction amount, whichever is greater (Max: $100)," and the creditor is only changing the minimum dollar amount from $5 to $10, the issuer must redisclose the other information related to how the fee is determined. For example, the creditor in this example would disclose the following: "Either $10 or 3% of the transaction amount, whichever is greater (Max: $100)."

7. *Combining a notice described in § 1026.9(c)(2)(iv) with a notice described in § 1026.9(g)(3).* If a creditor is required to provide a notice described in § 1026.9(c)(2)(iv) and a notice described in § 1026.9(g)(3) to a consumer, the creditor may combine the two notices. This would occur if penalty pricing has been triggered, and other terms are changing on the consumer's account at the same time.

8. *Content.* Sample G-20 contains an example of how to comply with the requirements in § 1026.9(c)(2)(iv) when a variable rate is being changed to a non-variable rate on a credit card account. The sample explains when the new rate will apply to new transactions and to which balances the current rate will continue to apply. Sample G-21 contains an example of how to comply with the requirements in § 1026.9(c)(2)(iv) when the late payment fee on a credit card account is being increased, and the returned payment fee is also being increased. The sample discloses the consumer's right to reject the changes in accordance with § 1026.9(h).

9. *Clear and conspicuous standard. See* comment 5(a)(1)-1 for the clear and conspicuous standard applicable to disclosures required under § 1026.9(c)(2)(iv)(A)(*1*).

10. *Terminology. See* § 1026.5(a)(2) for terminology requirements applicable to disclosures required under § 1026.9(c)(2)(iv)(A)(*1*).

11. *Reasons for increase.* i. *In general.* Section 1026.9(c)(2)(iv)(A)(*8*) requires card issuers to disclose the principal reason(s) for increasing an annual percentage rate applicable to a credit card account under an open-end (not home-secured) consumer credit plan. The regulation does not mandate a minimum number of reasons that must be disclosed. However, the specific

reasons disclosed under § 1026.9(c)(2)(iv)(A)(*8*) are required to relate to and accurately describe the principal factors actually considered by the card issuer in increasing the rate. A card issuer may describe the reasons for the increase in general terms. For example, the notice of a rate increase triggered by a decrease of 100 points in a consumer's credit score may state that the increase is due to "a decline in your creditworthiness" or "a decline in your credit score." Similarly, a notice of a rate increase triggered by a 10% increase in the card issuer's cost of funds may be disclosed as "a change in market conditions." In some circumstances, it may be appropriate for a card issuer to combine the disclosure of several reasons in one statement. However, § 1026.9(c)(2)(iv)(A)(*8*) requires that the notice specifically disclose any violation of the terms of the account on which the rate is being increased, such as a late payment or a returned payment, if such violation of the account terms is one of the four principal reasons for the rate increase.

ii. *Example.* Assume that a consumer made a late payment on the credit card account on which the rate increase is being imposed, made a late payment on a credit card account with another card issuer, and the consumer's credit score decreased, in part due to such late payments. The card issuer may disclose the reasons for the rate increase as a decline in the consumer's credit score and the consumer's late payment on the account subject to the increase. Because the late payment on the credit card account with the other issuer also likely contributed to the decline in the consumer's credit score, it is not required to be separately disclosed. However, the late payment on the credit card account on which the rate increase is being imposed must be specifically disclosed even if that late payment also contributed to the decline in the consumer's credit score.

9(c)(2)(v) Notice not Required

1. *Changes not requiring notice.* The following are examples of changes that do not require a change-in-terms notice:

i. A change in the consumer's credit limit except as otherwise required by § 1026.9(c)(2)(vi).

ii. A change in the name of the credit card or credit card plan.

iii. The substitution of one insurer for another.

iv. A termination or suspension of credit privileges.

v. Changes arising merely by operation of law; for example, if the creditor's security interest in a consumer's car automatically extends to the proceeds when the consumer sells the car.

2. *Skip features.* i. *Skipped or reduced payments.* If a credit program allows consumers to skip or reduce one or more payments during the year, no notice of the change in terms is required either prior to the reduction in payments or upon resumption of the higher payments if these features are explained on the account-opening disclosure statement (including an explanation of the terms upon resumption). For example, a merchant may allow consumers to skip the December payment to encourage holiday shopping, or a teacher's credit union may not require payments during summer vacation. Otherwise, the creditor must give notice prior to resuming the original payment schedule, even though no notice is required prior to the reduction. The change-in-terms notice may be combined with the notice offering the reduction. For example, the periodic statement reflecting the skip feature may also be used to notify the consumer of the resumption of the original payment schedule, either by stating explicitly when the higher resumes or by indicating the duration of the skip option. Language such as "You may skip your October payment" may serve as the change-in-terms notice.

ii. *Temporary reductions in interest rates or fees.* If a credit program involves temporary reductions in an interest rate or fee, no notice of the change in terms is required either prior to the reduction or upon resumption of the original rate or fee if these features are disclosed in advance in accordance with the requirements of § 1026.9(c)(2)(v)(B). Otherwise, the creditor must give notice prior to resuming the original rate or fee, even though no notice is required prior to the

reduction. The notice provided prior to resuming the original rate or fee must comply with the timing requirements of § 1026.9(c)(2)(i) and the content and format requirements of § 1026.9(c)(2)(iv)(A), (B) (if applicable), (C) (if applicable), and (D). *See* comment 55(b)-3 for guidance regarding the application of § 1026.55 in these circumstances.

3. *Changing from a variable rate to a non-variable rate*. *See* comment 9(c)(2)(iv)-3.

4. *Changing from a non-variable rate to a variable rate*. *See* comment 9(c)(2)(iv)-4.

5. *Temporary rate or fee reductions offered by telephone.* The timing requirements of § 1026.9(c)(2)(v)(B) are deemed to have been met, and written disclosures required by § 1026.9(c)(2)(v)(B) may be provided as soon as reasonably practicable after the first transaction subject to a rate that will be in effect for a specified period of time (a temporary rate) or the imposition of a fee that will be in effect for a specified period of time (a temporary fee) if:

i. The consumer accepts the offer of the temporary rate or temporary fee by telephone;

ii. The creditor permits the consumer to reject the temporary rate or temporary fee offer and have the rate or rates or fee that previously applied to the consumer's balances reinstated for 45 days after the creditor mails or delivers the written disclosures required by § 1026.9(c)(2)(v)(B), except that the creditor need not permit the consumer to reject a temporary rate or temporary fee offer if the rate or rates or fee that will apply following expiration of the temporary rate do not exceed the rate or rates or fee that applied immediately prior to commencement of the temporary rate or temporary fee; and

iii. The disclosures required by § 1026.9(c)(2)(v)(B) and the consumer's right to reject the temporary rate or temporary fee offer and have the rate or rates or fee that previously applied to the consumer's account reinstated, if applicable, are disclosed to the consumer as part of the temporary rate or temporary fee offer.

6. *First listing.* The disclosures required by § 1026.9(c)(2)(v)(B)(*1*) are only required to be provided in close proximity and in equal prominence to the first listing of the temporary rate or fee in the disclosure provided to the consumer. For purposes of § 1026.9(c)(2)(v)(B), the first

statement of the temporary rate or fee is the most prominent listing on the front side of the first page of the disclosure. If the temporary rate or fee does not appear on the front side of the first page of the disclosure, then the first listing of the temporary rate or fee is the most prominent listing of the temporary rate on the subsequent pages of the disclosure. For advertising requirements for promotional rates, see § 1026.16(g).

7. *Close proximity—point of sale.* Creditors providing the disclosures required by § 1026.9(c)(2)(v)(B) of this section in person in connection with financing the purchase of goods or services may, at the creditor's option, disclose the annual percentage rate or fee that would apply after expiration of the period on a separate page or document from the temporary rate or fee and the length of the period, provided that the disclosure of the annual percentage rate or fee that would apply after the expiration of the period is equally prominent to, and is provided at the same time as, the disclosure of the temporary rate or fee and length of the period.

8. *Disclosure of annual percentage rates.* If a rate disclosed pursuant to § 1026.9(c)(2)(v)(B) or (D) is a variable rate, the creditor must disclose the fact that the rate may vary and how the rate is determined. For example, a creditor could state "After October 1, 2009, your APR will be 14.99%. This APR will vary with the market based on the Prime Rate."

9. *Deferred interest or similar programs.* If the applicable conditions are met, the exception in § 1026.9(c)(2)(v)(B) applies to deferred interest or similar promotional programs under which the consumer is not obligated to pay interest that accrues on a balance if that balance is paid in full prior to the expiration of a specified period of time. For purposes of this comment and § 1026.9(c)(2)(v)(B), "deferred interest" has the same meaning as in § 1026.16(h)(2) and associated commentary. For such programs, a creditor must disclose pursuant to § 1026.9(c)(2)(v)(B)(*1*) the length of the deferred interest period and the rate that will apply to the balance subject to the deferred interest program if that balance is not paid in full prior to expiration of the deferred interest period. Examples of language that a creditor may use to make the required disclosures under § 1026.9(c)(2)(v)(B)(*1*) include:

i. "No interest if paid in full in 6 months. If the balance is not paid in full in 6 months, interest will be imposed from the date of purchase at a rate of 15.99%."

ii. "No interest if paid in full by December 31, 2010. If the balance is not paid in full by that date, interest will be imposed from the transaction date at a rate of 15%."

10. *Relationship between §§ 1026.9(c)(2)(v)(B) and 1026.6(b)*. A disclosure of the information described in § 1026.9(c)(2)(v)(B)(*1*) provided in the account-opening table in accordance with § 1026.6(b) complies with the requirements of § 1026.9(c)(2)(v)(B)(*2*), if the listing of the introductory rate in such tabular disclosure also is the first listing as described in comment 9(c)(2)(v)-6.

11. *Disclosure of the terms of a workout or temporary hardship arrangement.* In order for the exception in § 1026.9(c)(2)(v)(D) to apply, the disclosure provided to the consumer pursuant to § 1026.9(c)(2)(v)(D)(*2*) must set forth:

i. The annual percentage rate that will apply to balances subject to the workout or temporary hardship arrangement;

ii. The annual percentage rate that will apply to such balances if the consumer completes or fails to comply with the terms of, the workout or temporary hardship arrangement;

iii. Any reduced fee or charge of a type required to be disclosed under § 1026.6(b)(2)(ii), (iii), (viii), (ix), (xi), or (xii) that will apply to balances subject to the workout or temporary hardship arrangement, as well as the fee or charge that will apply if the consumer completes or fails to comply with the terms of the workout or temporary hardship arrangement;

iv. Any reduced minimum periodic payment that will apply to balances subject to the workout or temporary hardship arrangement, as well as the minimum periodic payment that will apply if the consumer completes or fails to comply with the terms of the workout or temporary hardship arrangement; and

v. If applicable, that the consumer must make timely minimum payments in order to remain eligible for the workout or temporary hardship arrangement.

12. *Index not under creditor's control.* *See* comment 55(b)(2)-2 for guidance on when an index is deemed to be under a creditor's control.

13. *Temporary rates—relationship to § 1026.59.* i. *General.* Section 1026.59 requires a card issuer to review rate increases imposed due to the revocation of a temporary rate. In some circumstances, § 1026.59 may require an issuer to reinstate a reduced temporary rate based on that review. If, based on a review required by § 1026.59, a creditor reinstates a temporary rate that had been revoked, the card issuer is not required to provide an additional notice to the consumer when the reinstated temporary rate expires, if the card issuer provided the disclosures required by § 1026.9(c)(2)(v)(B) prior to the original commencement of the temporary rate. *See* § 1026.55 and the associated commentary for guidance on the permissibility and applicability of rate increases.

i. *Example.* A consumer opens a new credit card account under an open-end (not home-secured) consumer credit plan on January 1, 2011. The annual percentage rate applicable to purchases is 18%. The card issuer offers the consumer a 15% rate on purchases made between January 1, 2012 and January 1, 2014. Prior to January 1, 2012, the card issuer discloses, in accordance with § 1026.9(c)(2)(v)(B), that the rate on purchases made during that period will increase to the standard 18% rate on January 1, 2014. In March 2012, the consumer makes a payment that is ten days late. The card issuer, upon providing 45 days' advance notice of the change under § 1026.9(g), increases the rate on new purchases to 18% effective as of June 1, 2012. On December 1, 2012, the issuer performs a review of the consumer's account in accordance with § 1026.59. Based on that review, the card issuer is required to reduce the rate to the original 15% temporary rate as of January 15, 2013. On January 1, 2014, the card issuer may increase the rate on purchases to 18%, as previously disclosed prior to January 1, 2012, without providing an additional notice to the consumer.

14. *Replacing LIBOR*. The exception in § 1026.9(c)(2)(v)(A) under which a creditor is not required to provide a change-in-terms notice under § 1026.9(c)(2) when the change involves

a reduction of any component of a finance or other charge does not apply on or after October 1, 2022, to margin reductions when a LIBOR index is replaced as permitted by § 1026.55(b)(7)(i) or (ii). For change-in-terms notices provided under § 1026.9(c)(2) on or after October 1, 2022, covering changes permitted by § 1026.55(b)(7)(i) or (ii), a creditor must provide a change-in-terms notice under § 1026.9(c)(2) disclosing the replacement index for a LIBOR index and any adjusted margin that is permitted under § 1026.55(b)(7)(i) or (ii), even if the margin is reduced. From April 1, 2022, through September 30, 2022, a creditor has the option of disclosing a reduced margin in the change-in-terms notice that discloses the replacement index for a LIBOR index as permitted by § 1026.55(b)(7)(i) or (ii).

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Section 1026.20—Disclosure Requirements Regarding Post-Consummation Events

20(a) Refinancings

1. *Definition.* A refinancing is a new transaction requiring a complete new set of disclosures. Whether a refinancing has occurred is determined by reference to whether the original obligation has been satisfied or extinguished and replaced by a new obligation, based on the parties' contract and applicable law. The refinancing may involve the consolidation of several existing obligations, disbursement of new money to the consumer or on the consumer's behalf, or the rescheduling of payments under an existing obligation. In any form, the new obligation must completely replace the prior one.

i. Changes in the terms of an existing obligation, such as the deferral of individual installments, will not constitute a refinancing unless accomplished by the cancellation of that obligation and the substitution of a new obligation.

ii. A substitution of agreements that meets the refinancing definition will require new disclosures, even if the substitution does not substantially alter the prior credit terms.

2. *Exceptions.* A transaction is subject to § 1026.20(a) only if it meets the general definition of a refinancing. Section 1026.20(a)(1) through (5) lists 5 events that are not treated as

refinancings, even if they are accomplished by cancellation of the old obligation and substitution of a new one.

3. *Variable-rate.* i. If a variable-rate feature was properly disclosed under the regulation, a rate change in accord with those disclosures is not a refinancing. For example, no new disclosures are required when the variable-rate feature is invoked on a renewable balloon-payment mortgage that was previously disclosed as a variable-rate transaction.

ii. Even if it is not accomplished by the cancellation of the old obligation and substitution of a new one, a new transaction subject to new disclosures results if the creditor either:

A. Increases the rate based on a variable-rate feature that was not previously disclosed; or

B. Adds a variable-rate feature to the obligation. A creditor does not add a variable-rate feature by changing the index of a variable-rate transaction to a comparable index, whether the change replaces the existing index or substitutes an index for one that no longer exists. For example, a creditor does not add a variable-rate feature by changing the index of a variable-rate transaction from the 1-month, 3-month, or 6-month U.S. Dollar LIBOR index to the spread-adjusted index based on SOFR recommended by the Alternative Reference Rates Committee for consumer products to replace the 1-month, 3-month, or 6-month U.S. Dollar LIBOR index respectively because the replacement index is a comparable index to the corresponding U.S. Dollar LIBOR index. *See* comment 20(a)-3.iv for factors to be used in determining whether a replacement index is comparable to a particular LIBOR index.

iii. If either of the events in paragraph 20(a)-3.ii.A or ii.B occurs in a transaction secured by a principal dwelling with a term longer than one year, the disclosures required under § 1026.19(b) also must be given at that time.

iv. The relevant factors to be considered in determining whether a replacement index is comparable to a particular LIBOR index depend on the replacement index being considered and the LIBOR index being replaced. For example, these determinations may need to consider certain aspects of the historical data itself for a particular replacement index, such as whether the

replacement index is a backward-looking rate (*e.g.*, historical average of rates) such that timing aspects of the data may need to be adjusted to match up with the particular forward-looking LIBOR term-rate being replaced. The types of relevant factors to establish if a replacement index could meet the "comparable" standard with respect to a particular LIBOR index using historical data or future expectations, include but are not limited to, whether: {1} the movements over time are comparable; {2} the consumers' payments using the replacement index compared to payments using the LIBOR index are comparable if there is sufficient data for this analysis; {3} the index levels are comparable; {4} the replacement index is publicly available; and {5} the replacement index is outside the control of the creditor.

4. *Unearned finance charge.* In a transaction involving precomputed finance charges, the creditor must include in the finance charge on the refinanced obligation any unearned portion of the original finance charge that is not rebated to the consumer or credited against the underlying obligation. For example, in a transaction with an add-on finance charge, a creditor advances new money to a consumer in a fashion that extinguishes the original obligation and replaces it with a new one. The creditor neither refunds the unearned finance charge on the original obligation to the consumer nor credits it to the remaining balance on the old obligation. Under these circumstances, the unearned finance charge must be included in the finance charge on the new obligation and reflected in the annual percentage rate disclosed on refinancing. Accrued but unpaid finance charges are included in the amount financed in the new obligation.

5. *Coverage.* Section 1026.20(a) applies only to refinancings undertaken by the original creditor or a holder or servicer of the original obligation. A "refinancing" by any other person is a new transaction under the regulation, not a refinancing under this section.

Paragraph 20(a)(1)

1. *Renewal.* This exception applies both to obligations with a single payment of principal and interest and to obligations with periodic payments of interest and a final payment of

principal. In determining whether a new obligation replacing an old one is a renewal of the original terms or a refinancing, the creditor may consider it a renewal even if:

i. Accrued unpaid interest is added to the principal balance.

ii. Changes are made in the terms of renewal resulting from the factors listed in § 1026.17(c)(3).

iii. The principal at renewal is reduced by a curtailment of the obligation.

Paragraph 20(a)(2)

1. Annual *percentage rate reduction.* A reduction in the annual percentage rate with a corresponding change in the payment schedule is not a refinancing. If the annual percentage rate is subsequently increased (even though it remains below its original level) and the increase is effected in such a way that the old obligation is satisfied and replaced, new disclosures must then be made.

2. *Corresponding change.* A corresponding change in the payment schedule to implement a lower annual percentage rate would be a shortening of the maturity, or a reduction in the payment amount or the number of payments of an obligation. The exception in § 1026.20(a)(2) does not apply if the maturity is lengthened, or if the payment amount or number of payments is increased beyond that remaining on the existing transaction.

Paragraph 20(a)(3)

1. *Court agreements.* This exception includes, for example, agreements such as reaffirmations of debts discharged in bankruptcy, settlement agreements, and post-judgment agreements. (See the commentary to § 1026.2(a)(14) for a discussion of court-approved agreements that are not considered "credit.")

Paragraph 20(a)(4)

1. *Workout agreements.* A workout agreement is not a refinancing unless the annual percentage rate is increased or additional credit is advanced beyond amounts already accrued plus insurance premiums.

Paragraph 20(a)(5)

1. *Insurance renewal.* The renewal of optional insurance added to an existing credit transaction is not a refinancing, assuming that appropriate Truth in Lending disclosures were provided for the initial purchase of the insurance.

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Section 1026.37—Content of Disclosures for Certain Mortgage Transactions (Loan Estimate)

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37(j)(1) Index and margin.

1. *Index and margin.* The index disclosed pursuant to § 1026.37(j)(1) must be stated such that a consumer reasonably can identify it. A common abbreviation or acronym of the name of the index may be disclosed in place of the proper name of the index, if it is a commonly used public method of identifying the index. For example, "SOFR" may be disclosed instead of Secured Overnight Financing Rate. The margin should be disclosed as a percentage. For example, if the contract determines the interest rate by adding 4.25 percentage points to the index, the margin should be disclosed as "4.25%."

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Section 1026.40—Requirements for Home-Equity Plans

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Paragraph 40(f)(3)(ii)

1. Replacing LIBOR. A creditor may use either the provision in § 1026.40(f)(3)(ii)(A) or (f)(3)(ii)(B) to replace a LIBOR index used under a plan so long as the applicable conditions are met for the provision used. Neither provision, however, excuses the creditor from noncompliance with contractual provisions. The following examples illustrate when a creditor may use the provisions in § 1026.40(f)(3)(ii)(A) or (B) to replace the LIBOR index used under a plan.

i. Assume that LIBOR becomes unavailable after June 30, 2023, and assume a contract provides that a creditor may not replace an index unilaterally under a plan unless the original index becomes unavailable and provides that the replacement index and replacement margin will result in an annual percentage rate substantially similar to a rate that is in effect when the original index becomes unavailable. In this case, the creditor may use § 1026.40(f)(3)(ii)(A) to replace the LIBOR index used under the plan so long as the conditions of that provision are met. Section 1026.40(f)(3)(ii)(B) provides that a creditor may replace the LIBOR index if, among other conditions, the replacement index value in effect on October 18, 2021, and replacement margin will produce an annual percentage rate substantially similar to the rate calculated using the LIBOR index value in effect on October 18, 2021, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. If the replacement index is not published on October 18, 2021, the creditor generally must use the next calendar day for which both the LIBOR index and the replacement index are published as the date for selecting indices values in determining whether the annual percentage rate based on the replacement index is substantially similar to the rate based on the LIBOR index. The one exception is that if the replacement index is the spread-adjusted index based on SOFR recommended by the Alternative Reference Rates Committee for consumer products to replace the 1-month, 3-month, 6-month, or 1-year U.S. Dollar LIBOR index, the creditor must use the index value on June 30, 2023, for the LIBOR index and, for the SOFR-based spread-adjusted index for consumer products, must use the index value on the first date that index is published, in determining whether the annual percentage rate based on the replacement index is substantially similar to the rate based on the LIBOR index. In this example, however, the creditor would be contractually prohibited from replacing the LIBOR index used under the plan unless the replacement index and replacement margin also will produce an annual percentage rate substantially similar to a rate that is in effect when the LIBOR index becomes unavailable.

ii. Assume that LIBOR becomes unavailable after June 30, 2023, and assume a contract provides that a creditor may not replace an index unilaterally under a plan unless the original index becomes unavailable but does not require that the replacement index and replacement margin will result in an annual percentage rate substantially similar to a rate that is in effect when the original index becomes unavailable. In this case, the creditor would be contractually prohibited from unilaterally replacing a LIBOR index used under the plan until it becomes unavailable. At that time, the creditor has the option of using § 1026.40(f)(3)(ii)(A) or (B) to replace the LIBOR index if the conditions of the applicable provision are met.

iii. Assume that LIBOR becomes unavailable after June 30, 2023, and assume a contract provides that a creditor may change the terms of the contract (including the index) as permitted by law. In this case, if the creditor replaces a LIBOR index under a plan on or after April 1, 2022, but does not wait until the LIBOR index becomes unavailable to do so, the creditor may only use § 1026.40(f)(3)(ii)(B) to replace the LIBOR index if the conditions of that provision are met. In this case, the creditor may not use § 1026.40(f)(3)(ii)(A). If the creditor waits until the LIBOR index used under the plan becomes unavailable to replace the LIBOR index, the creditor has the option of using § 1026.40(f)(3)(ii)(A) or (B) to replace the LIBOR index if the conditions of the applicable provision are met.

Paragraph 40(f)(3)(ii)(A)

1. *Substitution of index.* A creditor may change the index and margin used under the plan if the original index becomes unavailable, as long as historical fluctuations in the original and replacement indices were substantially similar, and as long as the replacement index and replacement margin will produce a rate substantially similar to the rate that was in effect at the time the original index became unavailable. If the replacement index is newly established and therefore does not have any rate history, it may be used if it and the replacement margin will produce a rate substantially similar to the rate in effect when the original index became unavailable.

2. *Replacing LIBOR*. For purposes of replacing a LIBOR index used under a plan, a replacement index that is not newly established must have historical fluctuations that are substantially similar to those of the LIBOR index used under the plan, considering the historical fluctuations up through when the LIBOR index becomes unavailable or up through the date indicated in a Bureau determination that the replacement index and the LIBOR index have historical fluctuations that are substantially similar, whichever is earlier.

i. The Bureau has determined that effective April 1, 2022, the prime rate published in the Wall Street Journal has historical fluctuations that are substantially similar to those of the 1-month and 3-month U.S. Dollar LIBOR indices. In order to use this prime rate as the replacement index for the 1-month or 3-month U.S. Dollar LIBOR index, the creditor also must comply with the condition in § 1026.40(f)(3)(ii)(A) that the prime rate and replacement margin would have resulted in an annual percentage rate substantially similar to the rate in effect at the time the LIBOR index became unavailable. *See also* comment 40(f)(3)(ii)(A)-3.

ii. The Bureau has determined that effective April 1, 2022, the spread-adjusted indices based on SOFR recommended by the Alternative Reference Rates Committee for consumer products to replace the 1-month, 3-month, or 6-month U.S. Dollar LIBOR indices have historical fluctuations that are substantially similar to those of the 1-month, 3-month, or 6-month U.S. Dollar LIBOR indices respectively. In order to use this SOFR-based spread-adjusted index for consumer products as the replacement index for the applicable LIBOR index, the creditor also must comply with the condition in § 1026.40(f)(3)(ii)(A) that the SOFR-based spread-adjusted index for consumer products and replacement margin would have resulted in an annual percentage rate substantially similar to the rate in effect at the time the LIBOR index became unavailable. *See also* comment 40(f)(3)(ii)(A)-3.

iii. The relevant factors to be considered in determining whether a replacement index has historical fluctuations substantially similar to those of a particular LIBOR index depend on the replacement index being considered and the LIBOR index being replaced. For example, these

determinations may need to consider certain aspects of the historical data itself for a particular replacement index, such as whether the replacement index is a backward-looking rate (*e.g.*, historical average of rates) such that timing aspects of the data may need to be adjusted to match up with the particular forward-looking LIBOR term-rate being replaced. The types of relevant factors to establish if a replacement index would meet the "historical fluctuations are substantially similar" standard with respect to a particular LIBOR index using historical data, include but are not limited to, whether: {1} the movements over time are substantially similar; and {2} the consumers' payments using the replacement index compared to payments using the LIBOR index are substantially similar if there is sufficient historical data for this analysis.

3. *Substantially similar rate when LIBOR becomes unavailable*. Under § 1026.40(f)(3)(ii)(A), the replacement index and replacement margin must produce an annual percentage rate substantially similar to the rate that was in effect based on the LIBOR index used under the plan when the LIBOR index became unavailable. For this comparison of the rates, a creditor generally must use the value of the replacement index and the LIBOR index on the day that LIBOR becomes unavailable. If the replacement index is not published on the day that the LIBOR index becomes unavailable, the creditor generally must use the previous calendar day that both indices are published as the date for selecting indices values in determining whether the annual percentage rate based on the replacement index is substantially similar to the rate based on the LIBOR index. The one exception is that if the replacement index is the spread-adjusted index based on SOFR recommended by the Alternative Reference Rates Committee for consumer products to replace the 1-month, 3-month, 6-month, or 1-year U.S. Dollar LIBOR index, the creditor must use the index value on June 30, 2023, for the LIBOR index and, for the SOFR-based spread-adjusted index for consumer products, must use the index value on the first date that index is published, in determining whether the annual percentage rate based on the replacement index is substantially similar to the rate based on the LIBOR index. The replacement index and replacement margin are not required to produce an annual percentage rate

that is substantially similar on the day that the replacement index and replacement margin become effective on the plan. For purposes of § 1026.40(f)(3)(ii)(A), if a creditor uses the SOFR-based spread-adjusted index recommended by the Alternative Reference Rates Committee for consumer products to replace the 1-month, 3-month, or 6-month U.S. Dollar LIBOR index as the replacement index and uses as the replacement margin the same margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan, the creditor will be deemed to be in compliance with the condition in § 1026.40(f)(3)(ii)(A) that the replacement index and replacement margin would have resulted in an annual percentage rate substantially similar to the rate in effect at the time the LIBOR index became unavailable. The following example illustrates this comment.

i. Assume that the 1-month U.S. Dollar LIBOR index used under a plan becomes unavailable on June 30, 2023, and on that day the LIBOR index value is 2%, the margin is 10%, and the annual percentage rate is 12%. Also, assume that a creditor has selected the prime index published in the Wall Street Journal as the replacement index, and the value of the prime index is 5% on June 30, 2023. The creditor would satisfy the requirement to use a replacement index and replacement margin that will produce an annual percentage rate substantially similar to the rate that was in effect when the LIBOR index used under the plan became unavailable by selecting a 7% replacement margin. (The prime index value of 5% and the replacement margin of 7% would produce a rate of 12% on June 30, 2023.) Thus, if the creditor provides a change-in-terms notice under § 1026.9(c)(1) on July 1, 2023, disclosing the prime index as the replacement index and a replacement margin of 7%, where these changes will become effective on July 17, 2023, the creditor satisfies the requirement to use a replacement index and replacement margin that will produce an annual percentage rate substantially similar to the rate that was in effect when the LIBOR index used under the plan became unavailable. This is true even if the prime index value changes after June 30, 2023, and the annual percentage rate calculated using the prime index

value and 7% margin on July 17, 2022, is not substantially similar to the rate calculated using the LIBOR index value on June 30, 2023.

Paragraph 40(f)(3)(ii)(B)

1. *Replacing LIBOR*. For purposes of replacing a LIBOR index used under a plan, a replacement index that is not newly established must have historical fluctuations that are substantially similar to those of the LIBOR index used under the plan, considering the historical fluctuations up through the relevant date. If the Bureau has made a determination that the replacement index and the LIBOR index have historical fluctuations that are substantially similar, the relevant date is the date indicated in that determination. If the Bureau has not made a determination that the replacement index and the LIBOR index have historical fluctuations that are substantially similar, the relevant date is the later of April 1, 2022, or the date no more than 30 days before the creditor makes a determination that the replacement index and the LIBOR index have historical fluctuations that are substantially similar.

i. The Bureau has determined that effective April 1, 2022, the prime rate published in the Wall Street Journal has historical fluctuations that are substantially similar to those of the 1-month and 3-month U.S. Dollar LIBOR indices. In order to use this prime rate as the replacement index for the 1-month or 3-month U.S. Dollar LIBOR index, the creditor also must comply with the condition in § 1026.40(f)(3)(ii)(B) that the prime rate index value in effect on October 18, 2021, and replacement margin will produce an annual percentage rate substantially similar to the rate calculated using the LIBOR index value in effect on October 18, 2021, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. *See also* comments 40(f)(3)(ii)(B)-2 and -3.

ii. The Bureau has determined that effective April 1, 2022, the spread-adjusted indices based on SOFR recommended by the Alternative Reference Rates Committee for consumer products to replace the 1-month, 3-month, or 6-month U.S. Dollar LIBOR indices have historical fluctuations that are substantially similar to those of the 1-month, 3-month, or 6-month U.S.

Dollar LIBOR indices respectively. In order to use this SOFR-based spread-adjusted index for consumer products as the replacement index for the applicable LIBOR index, the creditor also must comply with the condition in § 1026.40(f)(3)(ii)(B) that the SOFR-based spread-adjusted index for consumer products and replacement margin will produce an annual percentage rate substantially similar to the rate calculated using the LIBOR index and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. Because of the exception in § 1026.40(f)(3)(ii)(B), the creditor must use the index value on June 30, 2023, for the LIBOR index and, for the SOFR-based spread-adjusted index for consumer products, must use the index value on the first date that index is published, in determining whether the annual percentage rate based on the replacement index is substantially similar to the rate based on the LIBOR index. *See also* comments 40(f)(3)(ii)(B)-2 and -3.

iii. The relevant factors to be considered in determining whether a replacement index has historical fluctuations substantial similar to those of a particular LIBOR index depend on the replacement index being considered and the LIBOR index being replaced. For example, these determinations may need to consider certain aspects of the historical data itself for a particular replacement index, such as whether the replacement index is a backward-looking rate (*e.g.*, historical average of rates) such that timing aspects of the data may need to be adjusted to match up with the particular forward-looking LIBOR term-rate being replaced. The types of relevant factors to establish if a replacement index would meet the "historical fluctuations are substantially similar" standard with respect to a particular LIBOR index using historical data, include but are not limited to, whether: {1} the movements over time are substantially similar; and {2} the consumers' payments using the replacement index compared to payments using the LIBOR index are substantially similar if there is sufficient historical data for this analysis.

2. *Using index values on October 18, 2021, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan*. Under § 1026.40(f)(3)(ii)(B), if the replacement index was published on October 18, 2021, the

replacement index value in effect on October 18, 2021, and replacement margin must produce an annual percentage rate substantially similar to the rate calculated using the LIBOR index value in effect on October 18, 2021, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. The margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan is the margin that applied to the variable rate immediately prior to when the creditor provides the change-in-terms notice disclosing the replacement index for the variable rate. The following example illustrates this comment.

i. Assume a variable rate used under the plan that is based on the 1-month U.S. Dollar LIBOR index and assume that LIBOR becomes unavailable after June 30, 2023. On October 18, 2021, the LIBOR index value is 2%, the margin on that day is 10% and the annual percentage rate using that index value and margin is 12%. Assume on January 1, 2022, a creditor provides a change-in-terms notice under § 1026.9(c)(1) disclosing a new margin of 12% for the variable rate pursuant to a written agreement under § 1026.40(f)(3)(iii), and this change in the margin becomes effective on January 1, 2022, pursuant to § 1026.9(c)(1). Assume that there are no more changes in the margin that is used in calculating the variable rate prior to April 1, 2022, the date on which the creditor provides a change-in-terms notice under § 1026.9(c)(1), disclosing the replacement index and replacement margin for the variable rate that will be effective on April 17, 2022. In this case, the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan is 12%. Assume that the creditor has selected the prime index published in the Wall Street Journal as the replacement index, and the value of the prime index is 5% on October 18, 2021. A replacement margin of 9% is permissible under § 1026.40(f)(3)(ii)(B) because that replacement margin combined with the prime index value of 5% on October 18, 2021, will produce an annual percentage rate of 14%, which is substantially similar to the 14% annual percentage rate calculated using the LIBOR index value

in effect on October 18, 2021, (which is 2%) and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan (which is 12%).

3. *Substantially similar rates using index values on October 18, 2021*. Under § 1026.40(f)(3)(ii)(B), if the replacement index was published on October 18, 2021, the replacement index value in effect on October 18, 2021, and replacement margin must produce an annual percentage rate substantially similar to the rate calculated using the LIBOR index value in effect on October 18, 2021, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. The replacement index and replacement margin are not required to produce an annual percentage rate that is substantially similar on the day that the replacement index and replacement margin become effective on the plan. For purposes of § 1026.40(f)(3)(ii)(B), if a creditor uses the SOFR-based spread-adjusted index recommended by the Alternative Reference Rates Committee for consumer products to replace the 1-month, 3-month, or 6-month U.S. Dollar LIBOR index as the replacement index and uses as the replacement margin the same margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan, the creditor will be deemed to be in compliance with the condition in § 1026.40(f)(3)(ii)(B) that the replacement index and replacement margin would have resulted in an annual percentage rate substantially similar to the rate calculated using the LIBOR index. The following example illustrates this comment.

i. Assume that the 1-month U.S. Dollar LIBOR index used under the plan has a value of 2% on October 18, 2021, the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan is 10%, and the annual percentage rate based on that LIBOR index value and that margin is 12%. Also, assume that the creditor has selected the prime index published in the Wall Street Journal as the replacement index, and the value of the prime index is 5% on October 18, 2021. A creditor would satisfy the requirement to use a replacement index value in effect on October 18, 2021, and replacement margin that will produce an annual percentage rate substantially similar to the rate calculated using the LIBOR

index value in effect on October 18, 2021, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan, by selecting a 7% replacement margin. (The prime index value of 5% and the replacement margin of 7% would produce a rate of 12%.) Thus, if the creditor provides a change-in-terms notice under § 1026.9(c)(1) on April 1, 2022, disclosing the prime index as the replacement index and a replacement margin of 7%, where these changes will become effective on April 17, 2022, the creditor satisfies the requirement to use a replacement index value in effect on October 18, 2021, and replacement margin that will produce an annual percentage rate substantially similar to the rate calculated using the LIBOR value in effect on October 18, 2021, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. This is true even if the prime index value or the LIBOR index value changes after October 18, 2021, and the annual percentage rate calculated using the prime index value and 7% margin on April 17, 2022, is not substantially similar to the rate calculated using the LIBOR index value on October 18, 2021, or substantially similar to the rate calculated using the LIBOR index value on April 17, 2022.

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Section 1026.55—Limitations on Increasing Annual Percentage Rates, Fees, and Charges

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55(b)(2) Variable rate exception

1. *Increases due to increase in index.* Section 1026.55(b)(2) provides that an annual percentage rate that varies according to an index that is not under the card issuer's control and is available to the general public may be increased due to an increase in the index. This section does not permit a card issuer to increase the rate by changing the method used to determine a rate that varies with an index (such as by increasing the margin), even if that change will not result in an immediate increase. However, from time to time, a card issuer may change the day on which index values are measured to determine changes to the rate.

2. *Index not under card issuer's control.* A card issuer may increase a variable annual percentage rate pursuant to § 1026.55(b)(2) only if the increase is based on an index or indices outside the card issuer's control. For purposes of § 1026.55(b)(2), an index is under the card issuer's control if:

i. The index is the card issuer's own prime rate or cost of funds. A card issuer is permitted, however, to use a published prime rate, such as that in the Wall Street Journal, even if the card issuer's own prime rate is one of several rates used to establish the published rate.

ii. The variable rate is subject to a fixed minimum rate or similar requirement that does not permit the variable rate to decrease consistent with reductions in the index. A card issuer is permitted, however, to establish a fixed maximum rate that does not permit the variable rate to increase consistent with increases in an index. For example, assume that, under the terms of an account, a variable rate will be adjusted monthly by adding a margin of 5 percentage points to a publicly-available index. When the account is opened, the index is 10% and therefore the variable rate is 15%. If the terms of the account provide that the variable rate will not decrease below 15% even if the index decreases below 10%, the card issuer cannot increase that rate pursuant to § 1026.55(b)(2). However, § 1026.55(b)(2) does not prohibit the card issuer from providing in the terms of the account that the variable rate will not increase above a certain amount (such as 20%).

iii. The variable rate can be calculated based on any index value during a period of time (such as the 90 days preceding the last day of a billing cycle). A card issuer is permitted, however, to provide in the terms of the account that the variable rate will be calculated based on the average index value during a specified period. In the alternative, the card issuer is permitted to provide in the terms of the account that the variable rate will be calculated based on the index value on a specific day (such as the last day of a billing cycle). For example, assume that the terms of an account provide that a variable rate will be adjusted at the beginning of each quarter by adding a margin of 7 percentage points to a publicly-available index. At account opening at

the beginning of the first quarter, the variable rate is 17% (based on an index value of 10%). During the first quarter, the index varies between 9.8% and 10.5% with an average value of 10.1%. On the last day of the first quarter, the index value is 10.2%. At the beginning of the second quarter, § 1026.55(b)(2) does not permit the card issuer to increase the variable rate to 17.5% based on the first quarter's maximum index value of 10.5%. However, if the terms of the account provide that the variable rate will be calculated based on the average index value during the prior quarter, § 1026.55(b)(2) permits the card issuer to increase the variable rate to 17.1% (based on the average index value of 10.1% during the first quarter). In the alternative, if the terms of the account provide that the variable rate will be calculated based on the index value on the last day of the prior quarter, § 1026.55(b)(2) permits the card issuer to increase the variable rate to 17.2% (based on the index value of 10.2% on the last day of the first quarter).

3. *Publicly available.* The index or indices must be available to the public. A publicly-available index need not be published in a newspaper, but it must be one the consumer can independently obtain (by telephone, for example) and use to verify the annual percentage rate applied to the account.

4. *Changing a non-variable rate to a variable rate.* Section 1026.55 generally prohibits a card issuer from changing a non-variable annual percentage rate to a variable annual percentage rate because such a change can result in an increase. However, a card issuer may change a non-variable rate to a variable rate to the extent permitted by one of the exceptions in § 1026.55(b). For example, § 1026.55(b)(1) permits a card issuer to change a non-variable rate to a variable rate upon expiration of a specified period of time. Similarly, following the first year after the account is opened, § 1026.55(b)(3) permits a card issuer to change a non-variable rate to a variable rate with respect to new transactions (after complying with the notice requirements in § 1026.9(b), (c), or (g)).

5. *Changing a variable rate to a non-variable rate.* Nothing in § 1026.55 prohibits a card issuer from changing a variable annual percentage rate to an equal or lower non-variable rate.

Whether the non-variable rate is equal to or lower than the variable rate is determined at the time the card issuer provides the notice required by § 1026.9(c). For example, assume that on March 1 a variable annual percentage rate that is currently 15% applies to a balance of $2,000 and the card issuer sends a notice pursuant to § 1026.9(c) informing the consumer that the variable rate will be converted to a non-variable rate of 14% effective April 15. On April 15, the card issuer may apply the 14% non-variable rate to the $2,000 balance and to new transactions even if the variable rate on March 2 or a later date was less than 14%.

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55(b)(7) Index replacement and margin change exception

1. Replacing LIBOR. A card issuer may use either the provision in § 1026.55(b)(7)(i) or (ii) to replace a LIBOR index used under the plan so long as the applicable conditions are met for the provision used. Neither provision, however, excuses the card issuer from noncompliance with contractual provisions. The following examples illustrate when a card issuer may use the provisions in § 1026.55(b)(7)(i) or (ii) to replace a LIBOR index on the plan.

i. Assume that LIBOR becomes unavailable after June 30, 2023, and assume a contract provides that a card issuer may not replace an index unilaterally under a plan unless the original index becomes unavailable and provides that the replacement index and replacement margin will result in an annual percentage rate substantially similar to a rate that is in effect when the original index becomes unavailable. The card issuer may use § 1026.55(b)(7)(i) to replace the LIBOR index used under the plan so long as the conditions of that provision are met. Section 1026.55(b)(7)(ii) provides that a card issuer may replace the LIBOR index if, among other conditions, the replacement index value in effect on October 18, 2021, and replacement margin will produce an annual percentage rate substantially similar to the rate calculated using the LIBOR index value in effect on October 18, 2021, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. If the replacement index is not published on October 18, 2021, the card issuer generally must use the next calendar

day for which both the LIBOR index and the replacement index are published as the date for selecting indices values in determining whether the annual percentage rate based on the replacement index is substantially similar to the rate based on the LIBOR index. The one exception is that if the replacement index is the spread-adjusted index based on SOFR recommended by the Alternative Reference Rates Committee for consumer products to replace the 1-month, 3-month, 6-month, or 1-year U.S. Dollar LIBOR index, the card issuer must use the index value on June 30, 2023, for the LIBOR index and, for the SOFR-based spread-adjusted index for consumer products, must use the index value on the first date that index is published, in determining whether the annual percentage rate based on the replacement index is substantially similar to the rate based on the LIBOR index. In this example, however, the card issuer would be contractually prohibited from replacing the LIBOR index used under the plan unless the replacement index and replacement margin also will produce an annual percentage rate substantially similar to a rate that is in effect when the LIBOR index becomes unavailable.

ii. Assume that LIBOR becomes unavailable after June 30, 2023, and assume a contract provides that a card issuer may not replace an index unilaterally under a plan unless the original index becomes unavailable but does not require that the replacement index and replacement margin will result in an annual percentage rate substantially similar to a rate that is in effect when the original index becomes unavailable. In this case, the card issuer would be contractually prohibited from unilaterally replacing the LIBOR index used under the plan until it becomes unavailable. At that time, the card issuer has the option of using § 1026.55(b)(7)(i) or (ii) to replace the LIBOR index used under the plan if the conditions of the applicable provision are met.

iii. Assume that LIBOR becomes unavailable after June 30, 2023, and assume a contract provides that a card issuer may change the terms of the contract (including the index) as permitted by law. In this case, if the card issuer replaces the LIBOR index used under the plan on or after April 1, 2022, but does not wait until the LIBOR index becomes unavailable to do so,

the card issuer may only use § 1026.55(b)(7)(ii) to replace the LIBOR index if the conditions of that provision are met. In that case, the card issuer may not use § 1026.55(b)(7)(i). If the card issuer waits until the LIBOR index used under the plan becomes unavailable to replace LIBOR, the card issuer has the option of using § 1026.55(b)(7)(i) or (ii) to replace the LIBOR index if the conditions of the applicable provisions are met.

Paragraph 55(b)(7)(i)

1. *Replacing LIBOR*. For purposes of replacing a LIBOR index used under a plan, a replacement index that is not newly established must have historical fluctuations that are substantially similar to those of the LIBOR index used under the plan, considering the historical fluctuations up through when the LIBOR index becomes unavailable or up through the date indicated in a Bureau determination that the replacement index and the LIBOR index have historical fluctuations that are substantially similar, whichever is earlier.

i. The Bureau has determined that effective April 1, 2022, the prime rate published in the Wall Street Journal has historical fluctuations that are substantially similar to those of the 1-month and 3-month U.S. Dollar LIBOR indices. In order to use this prime rate as the replacement index for the 1-month or 3-month U.S. Dollar LIBOR index, the card issuer also must comply with the condition in § 1026.55(b)(7)(i) that the prime rate and replacement margin will produce a rate substantially similar to the rate that was in effect at the time the LIBOR index became unavailable. *See also* comment 55(b)(7)(i)-2.

ii. The Bureau has determined that effective April 1, 2022, the spread-adjusted indices based on SOFR recommended by the Alternative Reference Rates Committee for consumer products to replace the 1-month, 3-month, or 6-month U.S. Dollar LIBOR indices have historical fluctuations that are substantially similar to those of the 1-month, 3-month, or 6-month U.S. Dollar LIBOR indices respectively. In order to use this SOFR-based spread-adjusted index for consumer products as the replacement index for the applicable LIBOR index, the card issuer also must comply with the condition in § 1026.55(b)(7)(i) that the SOFR-based spread-adjusted index

for consumer products replacement margin will produce a rate substantially similar to the rate that was in effect at the time the LIBOR index became unavailable. *See also* comment 55(b)(7)(i)-2.

iii. The relevant factors to be considered in determining whether a replacement index has historical fluctuations substantial similar to those of a particular LIBOR index depend on the replacement index being considered and the LIBOR index being replaced. For example, these determinations may need to consider certain aspects of the historical data itself for a particular replacement index, such as whether the replacement index is a backward-looking rate (*e.g.*, historical average of rates) such that timing aspects of the data may need to be adjusted to match up with the particular forward-looking LIBOR term-rate being replaced. The types of relevant factors to establish if a replacement index would meet the "historical fluctuations are substantially similar" standard with respect to a particular LIBOR index using historical data, include but are not limited to, whether: {1} the movements over time are substantially similar; and {2} the consumers' payments using the replacement index compared to payments using the LIBOR index are substantially similar if there is sufficient historical data for this analysis.

2. *Substantially similar rate when LIBOR becomes unavailable*. Under § 1026.55(b)(7)(i), the replacement index and replacement margin must produce an annual percentage rate substantially similar to the rate that was in effect at the time the LIBOR index used under the plan became unavailable. For this comparison of the rates, a card issuer generally must use the value of the replacement index and the LIBOR index on the day that LIBOR becomes unavailable. If the replacement index is not published on the day that the LIBOR index becomes unavailable, the card issuer generally must use the previous calendar day that both indices are published as the date for selecting indices values in determining whether the annual percentage rate based on the replacement index is substantially similar to the rate based on the LIBOR index. The one exception is that, if the replacement index is the SOFR-based spread-adjusted index recommended by the Alternative Reference Rates Committee for consumer

products to replace the 1-month, 3-month, 6-month, or 1-year U.S. Dollar LIBOR index, the card issuer must use the index value on June 30, 2023, for the LIBOR index and, for the SOFR-based spread-adjusted index for consumer products, must use the index value on the first date that index is published, in determining whether the annual percentage rate based on the replacement index is substantially similar to the rate based on the LIBOR index. The replacement index and replacement margin are not required to produce an annual percentage rate that is substantially similar on the day that the replacement index and replacement margin become effective on the plan. For purposes of § 1026.55(b)(7)(i), if a card issuer uses the SOFR-based spread-adjusted index recommended by the Alternative Reference Rates Committee for consumer products to replace the 1-month, 3-month, or 6-month U.S. Dollar LIBOR index as the replacement index and uses as the replacement margin the same margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan the card issuer will be deemed to be in compliance with the condition in § 1026.55(b)(7)(i) that the replacement index and replacement margin would have resulted in an annual percentage rate substantially similar to the rate in effect at the time the LIBOR index became unavailable. The following example illustrates this comment.

i. Assume that the 1-month U.S. Dollar LIBOR index used under the plan becomes unavailable on June 30, 2023, and on that day the LIBOR value is 2%, the margin is 10%, and the annual percentage rate is 12%. Also, assume that a card issuer has selected the prime index published in the Wall Street Journal as the replacement index, and the value of the prime index is 5% on June 30, 2023. The card issuer would satisfy the requirement to use a replacement index and replacement margin that will produce an annual percentage rate substantially similar to the rate that was in effect when the LIBOR index used under the plan became unavailable by selecting a 7% replacement margin. (The prime index value of 5% and the replacement margin of 7% would produce a rate of 12% on June 30, 2023.) Thus, if the card issuer provides a change-in-terms notice under § 1026.9(c)(2) on July 1, 2023, disclosing the prime index as the

replacement index and a replacement margin of 7%, where these changes will become effective on August 16, 2023, the card issuer satisfies the requirement to use a replacement index and replacement margin that will produce an annual percentage rate substantially similar to the rate that was in effect when the LIBOR index used under the plan became unavailable. This is true even if the prime index value changes after June 30, 2023, and the annual percentage rate calculated using the prime index value and 7% margin on August 16, 2023, is not substantially similar to the rate calculated using the LIBOR index value on June 30, 2023.

Paragraph 55(b)(7)(ii)

1. *Replacing LIBOR*. For purposes of replacing a LIBOR index used under a plan, a replacement index that is not newly established must have historical fluctuations that are substantially similar to those of the LIBOR index used under the plan, considering the historical fluctuations up through the relevant date. If the Bureau has made a determination that the replacement index and the LIBOR index have historical fluctuations that are substantially similar, the relevant date is the date indicated in that determination. If the Bureau has not made a determination that the replacement index and the LIBOR index have historical fluctuations that are substantially similar, the relevant date is the later of April 1, 2022, or the date no more than 30 days before the card issuer makes a determination that the replacement index and the LIBOR index have historical fluctuations that are substantially similar.

i. The Bureau has determined that effective April 1, 2022, the prime rate published in the Wall Street Journal has historical fluctuations that are substantially similar to those of the 1-month and 3-month U.S. Dollar LIBOR indices. In order to use this prime rate as the replacement index for the 1-month or 3-month U.S. Dollar LIBOR index, the card issuer also must comply with the condition in § 1026.55(b)(7)(ii) that the prime rate index value in effect on October 18, 2021, and replacement margin will produce an annual percentage rate substantially similar to the rate calculated using the LIBOR index value in effect on October 18, 2021, and the

margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. *See also* comments 55(b)(7)(ii)-2 and -3.

ii. The Bureau has determined that effective April 1, 2022, the spread-adjusted indices based on SOFR recommended by the Alternative Reference Rates Committee for consumer products to replace the 1-month, 3-month, or 6-month U.S. Dollar LIBOR indices have historical fluctuations that are substantially similar to those of the 1-month, 3-month, or 6-month U.S. Dollar LIBOR indices respectively. In order to use this SOFR-based spread-adjusted index for consumer products as the replacement index for the applicable LIBOR index, the card issuer also must comply with the condition in § 1026.55(b)(7)(ii) that the SOFR-based spread-adjusted index for consumer products and replacement margin will produce an annual percentage rate substantially similar to the rate calculated using the LIBOR index, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. Because of the exception in § 1026.55(b)(7)(ii), the card issuer must use the index value on June 30, 2023, for the LIBOR index and, for the SOFR-based spread-adjusted index for consumer products, must use the index value on the first date that index is published, in determining whether the annual percentage rate based on the replacement index is substantially similar to the rate based on the LIBOR index. *See also* comments 55(b)(7)(ii)-2 and -3.

iii. The relevant factors to be considered in determining whether a replacement index has historical fluctuations substantial similar to those of a particular LIBOR index depend on the replacement index being considered and the LIBOR index being replaced. For example, these determinations may need to consider certain aspects of the historical data itself for a particular replacement index, such as whether the replacement index is a backward-looking rate (*e.g.*, historical average of rates) such that timing aspects of the data may need to be adjusted to match up with the particular forward-looking LIBOR term-rate being replaced. The types of relevant factors to establish if a replacement index would meet the "historical fluctuations are substantially similar" standard with respect to a particular LIBOR index using historical data,

include but are not limited to, whether: {1} the movements over time are substantially similar; and {2} the consumers' payments using the replacement index compared to payments using the LIBOR index are substantially similar if there is sufficient historical data for this analysis.

2. *Using index values on October 18, 2021, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan*. Under § 1026.55(b)(7)(ii), if the replacement index was published on October 18, 2021, the replacement index value in effect on October 18, 2021, and replacement margin must produce an annual percentage rate substantially similar to the rate calculated using the LIBOR index value in effect on October 18, 2021, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. The margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan is the margin that applied to the variable rate immediately prior to when the card issuer provides the change-in-terms notice disclosing the replacement index for the variable rate. The following examples illustrate how to determine the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan.

i. Assume a variable rate used under the plan that is based on the 1-month U.S. Dollar LIBOR index, and assume that LIBOR becomes unavailable after June 30, 2023. On October 18, 2021, the LIBOR index value is 2%, the margin on that day is 10% and the annual percentage rate using that index value and margin is 12%. Assume that on November 16, 2021, pursuant to § 1026.55(b)(3), a card issuer provides a change-in-terms notice under § 1026.9(c)(2) disclosing a new margin of 12% for the variable rate that will apply to new transactions after November 30, 2021, and this change in the margin becomes effective on January 1, 2022. The margin for the variable rate applicable to the transactions that occurred on or prior to November 30, 2021, remains at 10%. Assume that there are no more changes in the margin used on the variable rate that applied to transactions that occurred after November 30, 2021, or to the margin used on the variable rate that applied to transactions that occurred on or prior to November 30,

2021, prior to when the card issuer provides a change-in-terms notice on April 1, 2022, disclosing the replacement index and replacement margins for both variable rates that will be effective on May 17, 2022. In this case, the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan for transactions that occurred on or prior to November 30, 2021, is 10%. The margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan for transactions that occurred after November 30, 2021, is 12%. Assume that the card issuer has selected the prime index published in the Wall Street Journal as the replacement index, and the value of the prime index is 5% on October 18, 2021. A replacement margin of 7% is permissible under § 1026.55(b)(7)(ii) for transactions that occurred on or prior to November 30, 2021, because that replacement margin combined with the prime index value of 5% on October 18, 2021, will produce an annual percentage rate of 12%, which is substantially similar to the 12% annual percentage rate calculated using the LIBOR index value in effect on October 18, 2021, (which is 2%) and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan for that balance (which is 10%). A replacement margin of 9% is permissible under § 1026.55(b)(7)(ii) for transactions that occurred after November 30, 2021, because that replacement margin combined with the prime index value of 5% on October 18, 2021, will produce an annual percentage rate of 14%, which is substantially similar to the 14% annual percentage rate calculated using the LIBOR index value in effect on October 18, 2021, (which is 2%) and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan for transactions that occurred after November 30, 2021, (which is 12%).

ii. Assume a variable rate used under the plan that is based on the 1-month U.S. Dollar LIBOR index, and assume that LIBOR becomes unavailable after June 30, 2023. On October 18, 2021, the LIBOR index value is 2%, the margin on that day is 10% and the annual percentage rate using that index value and margin is 12%. Assume that on November 16, 2021,

pursuant to § 1026.55(b)(4), a card issuer provides a penalty rate notice under § 1026.9(g) increasing the margin for the variable rate to 20% that will apply to both outstanding balances and new transactions effective January 1, 2022, because the consumer was more than 60 days late in making a minimum payment. Assume that there are no more changes in the margin used on the variable rate for either the outstanding balance or new transactions prior to April 1, 2022, the date on which the card issuer provides a change-in-terms notice under § 1026.9(c)(2) disclosing the replacement index and replacement margin for the variable rate that will be effective on May 17, 2022. The margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan for the outstanding balance and new transactions is 12%. Assume that the card issuer has selected the prime index published in the Wall Street Journal as the replacement index, and the value of the prime index is 5% on October 18, 2021. A replacement margin of 17% is permissible under § 1026.55(b)(7)(ii) for the outstanding balance and new transactions because that replacement margin combined with the prime index value of 5% on October 18, 2021, will produce an annual percentage rate of 22%, which is substantially similar to the 22% annual percentage rate calculated using the LIBOR index value in effect on October 18, 2021, (which is 2%) and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan for the outstanding balance and new transactions (which is 20%).

3. *Substantially similar rate using index values on October 18, 2021*. Under § 1026.55(b)(7)(ii), if the replacement index was published on October 18, 2021, the replacement index value in effect on October 18, 2021, and replacement margin must produce an annual percentage rate substantially similar to the rate calculated using the LIBOR index value in effect on October 18, 2021, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. A card issuer is not required to produce an annual percentage rate that is substantially similar on the day that the replacement index and replacement margin become effective on the plan. For purposes of

§ 1026.55(b)(7)(ii), if a card issuer uses the SOFR-based spread-adjusted index recommended by the Alternative Reference Rates Committee for consumer products to replace the 1-month, 3-month, or 6-month U.S. Dollar LIBOR index as the replacement index and uses as the replacement margin the same margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan, the card issuer will be deemed to be in compliance with the condition in § 1026.55(b)(7)(ii) that the replacement index and replacement margin would have resulted in an annual percentage rate substantially similar to the rate calculated using the LIBOR index. The following example illustrates this comment.

i. Assume that the 1-month U.S. Dollar LIBOR index used under the plan has a value of 2% on October 18, 2021, the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan is 10%, and the annual percentage rate based on that LIBOR index value and that margin is 12%. Also, assume that the card issuer has selected the prime index published in the Wall Street Journal as the replacement index, and the value of the prime index is 5% on October 18, 2021. A card issuer would satisfy the requirement to use a replacement index value in effect on October 18, 2021, and replacement margin that will produce an annual percentage rate substantially similar to the rate calculated using the LIBOR index value in effect on October 18, 2021, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan, by selecting a 7% replacement margin. (The prime index value of 5% and the replacement margin of 7% would produce a rate of 12%.) Thus, if the card issuer provides a change-in-terms notice under § 1026.9(c)(2) on April 1, 2022, disclosing the prime index as the replacement index and a replacement margin of 7%, where these changes will become effective on May 17, 2022, the card issuer satisfies the requirement to use a replacement index value in effect on October 18, 2021, and replacement margin that will produce an annual percentage rate substantially similar to the rate calculated using the LIBOR value in effect on October 18, 2021, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under

the plan. This is true even if the prime index value or the LIBOR value change after October 18, 2021, and the annual percentage rate calculated using the prime index value and 7% margin on May 17, 2022, is not substantially similar to the rate calculated using the LIBOR index value on October 18, 2021, or substantially similar to the rate calculated using the LIBOR index value on May 17, 2022.

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Section 1026.59—Reevaluation of Rate Increases

* * * * *

59(d) Factors

1. *Change in factors.* A creditor that complies with § 1026.59(a) by reviewing the factors it currently considers in determining the annual percentage rates applicable to similar new credit card accounts may change those factors from time to time. When a creditor changes the factors it considers in determining the annual percentage rates applicable to similar new credit card accounts from time to time, it may comply with § 1026.59(a) by reviewing the set of factors it considered immediately prior to the change in factors for a brief transition period, or may consider the new factors. For example, a creditor changes the factors it uses to determine the rates applicable to similar new credit card accounts on January 1, 2012. The creditor reviews the rates applicable to its existing accounts that have been subject to a rate increase pursuant to § 1026.59(a) on January 25, 2012. The creditor complies with § 1026.59(a) by reviewing, at its option, either the factors that it considered on December 31, 2011 when determining the rates applicable to similar new credit card accounts or the factors that it considers as of January 25, 2012. For purposes of compliance with § 1026.59(d), a transition period of 60 days from the change of factors constitutes a brief transition period.

2. *Comparison of existing account to factors used for similar new accounts.* Under § 1026.59(a), if a card issuer evaluates an existing account using the same factors that it considers in determining the rates applicable to similar new accounts, the review of factors need

not result in existing accounts being subject to exactly the same rates and rate structure as a card issuer imposes on similar new accounts. For example, a card issuer may offer variable rates on similar new accounts that are computed by adding a margin that depends on various factors to the value of a SOFR index. The account that the card issuer is required to review pursuant to § 1026.59(a) may have variable rates that were determined by adding a different margin, depending on different factors, to a published prime index. In performing the review required by § 1026.59(a), the card issuer may review the factors it uses to determine the rates applicable to similar new accounts. If a rate reduction is required, however, the card issuer need not base the variable rate for the existing account on the SOFR index but may continue to use the published prime index. Section 1026.59(a) requires, however, that the rate on the existing account after the reduction, as determined by adding the published prime index and margin, be comparable to the rate, as determined by adding the margin and the SOFR index, charged on a new account for which the factors are comparable.

3. *Similar new credit card accounts.* A card issuer complying with § 1026.59(d)(1)(ii) is required to consider the factors that the card issuer currently considers when determining the annual percentage rates applicable to similar new credit card accounts under an open-end (not home-secured) consumer credit plan. For example, a card issuer may review different factors in determining the annual percentage rate that applies to credit card plans for which the consumer pays an annual fee and receives rewards points than it reviews in determining the rates for credit card plans with no annual fee and no rewards points. Similarly, a card issuer may review different factors in determining the annual percentage rate that applies to private label credit cards than it reviews in determining the rates applicable to credit cards that can be used at a wider variety of merchants. In addition, a card issuer may review different factors in determining the annual percentage rate that applies to private label credit cards usable only at Merchant A than it may review for private label credit cards usable only at Merchant B. However, § 1026.59(d)(1)(ii) requires a card issuer to review the factors it considers when

determining the rates for new credit card accounts with similar features that are offered for similar purposes.

4. *No similar new credit card accounts.* In some circumstances, a card issuer that complies with § 1026.59(a) by reviewing the factors that it currently considers in determining the annual percentage rates applicable to similar new accounts may not be able to identify a class of new accounts that are similar to the existing accounts on which a rate increase has been imposed. For example, consumers may have existing credit card accounts under an open-end (not home-secured) consumer credit plan but the card issuer may no longer offer a product to new consumers with similar characteristics, such as the availability of rewards, size of credit line, or other features. Similarly, some consumers' accounts may have been closed and therefore cannot be used for new transactions, while all new accounts can be used for new transactions. In those circumstances, § 1026.59 requires that the card issuer nonetheless perform a review of the rate increase on the existing customers' accounts. A card issuer does not comply with § 1026.59 by maintaining an increased rate without performing such an evaluation. In such circumstances, § 1026.59(d)(1)(ii) requires that the card issuer compare the existing accounts to the most closely comparable new accounts that it offers.

5. *Consideration of consumer's conduct on existing account.* A card issuer that complies with § 1026.59(a) by reviewing the factors that it currently considers in determining the annual percentage rates applicable to similar new accounts may consider the consumer's payment or other account behavior on the existing account only to the same extent and in the same manner that the issuer considers such information when one of its current cardholders applies for a new account with the card issuer. For example, a card issuer might obtain consumer reports for all of its applicants. The consumer reports contain certain information regarding the applicant's past performance on existing credit card accounts. However, the card issuer may have additional information about an existing cardholder's payment history or account usage that does not appear in the consumer report and that, accordingly, it would not generally have for all new

applicants. For example, a consumer may have made a payment that is five days late on his or her account with the card issuer, but this information does not appear on the consumer report. The card issuer may consider this additional information in performing its review under § 1026.59(a), but only to the extent and in the manner that it considers such information if a current cardholder applies for a new account with the issuer.

6. *Multiple rate increases between January 1, 2009 and February 21, 2010*. i. *General*. Section 1026.59(d)(2) applies if an issuer increased the rate applicable to a credit card account under an open-end (not home-secured) consumer credit plan between January 1, 2009 and February 21, 2010, and the increase was not based solely upon factors specific to the consumer. In some cases, a credit card account may have been subject to multiple rate increases during the period from January 1, 2009 to February 21, 2010. Some such rate increases may have been based solely upon factors specific to the consumer, while others may have been based on factors not specific to the consumer, such as the issuer's cost of funds or market conditions. In such circumstances, when conducting the first two reviews required under § 1026.59, the card issuer may separately review: {i} Rate increases imposed based on factors not specific to the consumer, using the factors described in § 1026.59(d)(1)(ii) (as required by § 1026.59(d)(2)); and {ii} rate increases imposed based on consumer-specific factors, using the factors described in § 1026.59(d)(1)(i). If the review of factors described in § 1026.59(d)(1)(i) indicates that it is appropriate to continue to apply a penalty or other increased rate to the account as a result of the consumer's payment history or other factors specific to the consumer, § 1026.59 permits the card issuer to continue to impose the penalty or other increased rate, even if the review of the factors described in § 1026.59(d)(1)(ii) would otherwise require a rate decrease.

i. Example. Assume a credit card account was subject to a rate of 15% on all transactions as of January 1, 2009. On May 1, 2009, the issuer increased the rate on existing balances and new transactions to 18%, based upon market conditions or other factors not specific to the consumer or the consumer's account. Subsequently, on September 1, 2009, based on a payment

that was received five days after the due date, the issuer increased the applicable rate on existing balances and new transactions from 18% to a penalty rate of 25%. When conducting the first review required under § 1026.59, the card issuer reviews the rate increase from 15% to 18% using the factors described in § 1026.59(d)(1)(ii) (as required by § 1026.59(d)(2)), and separately but concurrently reviews the rate increase from 18% to 25% using the factors described in paragraph § 1026.59(d)(1)(i). The review of the rate increase from 15% to 18% based upon the factors described in § 1026.59(d)(1)(ii) indicates that a similarly situated new consumer would receive a rate of 17%. The review of the rate increase from 18% to 25% based upon the factors described in § 1026.59(d)(1)(i) indicates that it is appropriate to continue to apply the 25% penalty rate based upon the consumer's late payment. Section 1026.59 permits the rate on the account to remain at 25%.

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59(f) Termination of Obligation to Review Factors

1. *Revocation of temporary rates.* i. *In general.* If an annual percentage rate is increased due to revocation of a temporary rate, § 1026.59(a) requires that the card issuer periodically review the increased rate. In contrast, if the rate increase results from the expiration of a temporary rate previously disclosed in accordance with § 1026.9(c)(2)(v)(B), the review requirements in § 1026.59(a) do not apply. If a temporary rate is revoked such that the requirements of § 1026.59(a) apply, § 1026.59(f) permits an issuer to terminate the review of the rate increase if and when the applicable rate is the same as the rate that would have applied if the increase had not occurred.

ii. *Examples.* Assume that on January 1, 2011, a consumer opens a new credit card account under an open-end (not home-secured) consumer credit plan. The annual percentage rate applicable to purchases is 15%. The card issuer offers the consumer a 10% rate on purchases made between February 1, 2012, and August 1, 2013, and discloses pursuant to

§ 1026.9(c)(2)(v)(B) that on August 1, 2013, the rate on purchases will revert to the original 15% rate. The consumer makes a payment that is five days late in July 2012.

A. Upon providing 45 days' advance notice and to the extent permitted under § 1026.55, the card issuer increases the rate applicable to new purchases to 15%, effective on September 1, 2012. The card issuer must review that rate increase under § 1026.59(a) at least once each six months during the period from September 1, 2012, to August 1, 2013, unless and until the card issuer reduces the rate to 10%. The card issuer performs reviews of the rate increase on January 1, 2013, and July 1, 2013. Based on those reviews, the rate applicable to purchases remains at 15%. Beginning on August 1, 2013, the card issuer is not required to continue periodically reviewing the rate increase, because if the temporary rate had expired in accordance with its previously disclosed terms, the 15% rate would have applied to purchase balances as of August 1, 2013, even if the rate increase had not occurred on September 1, 2012.

B. Same facts as above except that the review conducted on July 1, 2013, indicates that a reduction to the original temporary rate of 10% is appropriate. Section 1026.59(a)(2)(i) requires that the rate be reduced no later than 45 days after completion of the review, or no later than August 15, 2013. Because the temporary rate would have expired prior to the date on which the rate decrease is required to take effect, the card issuer may, at its option, reduce the rate to 10% for any portion of the period from July 1, 2013, to August 1, 2013, or may continue to impose the 15% rate for that entire period. The card issuer is not required to conduct further reviews of the 15% rate on purchases.

C. Same facts as above except that on September 1, 2012, the card issuer increases the rate applicable to new purchases to the penalty rate on the consumer's account, which is 25%. The card issuer conducts reviews of the increased rate in accordance with § 1026.59 on January 1, 2013, and July 1, 2013. Based on those reviews, the rate applicable to purchases remains at 25%. The card issuer's obligation to review the rate increase continues to apply after August 1, 2013, because the 25% penalty rate exceeds the 15% rate that would have applied if the

temporary rate expired in accordance with its previously disclosed terms. The card issuer's obligation to review the rate terminates if and when the annual percentage rate applicable to purchases is reduced to the 15% rate.

2. *Example—relationship to § 1026.59(a).* Assume that on January 1, 2011, a consumer opens a new credit card account under an open-end (not home-secured) consumer credit plan. The annual percentage rate applicable to purchases is 15%. Upon providing 45 days' advance notice and to the extent permitted under § 1026.55, the card issuer increases the rate applicable to new purchases to 18%, effective on September 1, 2012. The card issuer conducts reviews of the increased rate in accordance with § 1026.59 on January 1, 2013, and July 1, 2013, based on the factors described in § 1026.59(d)(1)(ii). Based on the January 1, 2013, review, the rate applicable to purchases remains at 18%. In the review conducted on July 1, 2013, the card issuer determines that, based on the relevant factors, the rate it would offer on a comparable new account would be 14%. Consistent with § 1026.59(f), § 1026.59(a) requires that the card issuer reduce the rate on the existing account to the 15% rate that was in effect prior to the September 1, 2012 rate increase.

3. *Transition from LIBOR.* i. *General*. Effective April 1, 2022, in the case where the rate applicable immediately prior to the increase was a variable rate with a formula based on a LIBOR index, a card issuer may terminate the obligation to review if the card issuer reduces the annual percentage rate to a rate determined by a replacement formula that is derived from a replacement index value on October 18, 2021, plus replacement margin that is equal to the annual percentage rate of the LIBOR index value on October 18, 2021, plus the margin used to calculate the rate immediately prior to the increase (previous formula).

ii. *Examples.* A. Assume that on April 1, 2022, the previous formula is the 1-month U.S. Dollar LIBOR index plus a margin of 10% equal to a 12% annual percentage rate. In this case, the LIBOR index value is 2%. The card issuer selects the prime index published in the Wall Street Journal as the replacement index. The replacement formula used to derive the rate at

which the card issuer may terminate its obligation to review factors must be set at a replacement index plus replacement margin that equals 12%. If the prime index is 4% on October 18, 2021, the replacement margin must be 8% in the replacement formula. The replacement formula for purposes of determining when the card issuer can terminate the obligation to review factors is the prime index plus 8%.

B. Assume that on April 1, 2022, the account was not subject to § 1026.59 and the annual percentage rate was the 1-month U.S. Dollar LIBOR index plus a margin of 10% equal to 12%. On May 1, 2022, the card issuer raises the annual percentage rate to the 1-month U.S. Dollar LIBOR index plus a margin of 12% equal to 14%. On June 1, 2022, the card issuer transitions the account from the LIBOR index in accordance with § 1026.55(b)(7)(ii). The card issuer selects the prime index published in the Wall Street Journal as the replacement index with a value on October 18, 2021, of 4%. The replacement formula used to derive the rate at which the card issuer may terminate its obligation to review factors must be set at the value of a replacement index on October 18, 2021, plus replacement margin that equals 12%. In this example, the replacement formula is the prime index plus 8%.

4. *Selecting a replacement index*. In selecting a replacement index for purposes of § 1026.59(f)(3), the card issuer must meet the conditions for selecting a replacement index that are described in § 1026.55(b)(7)(ii) and comment 55(b)(7)(ii)-1. For example, a card issuer may select a replacement index that is not newly established for purposes of § 1026.59(f)(3), so long as the replacement index has historical fluctuations that are substantially similar to those of the LIBOR index used in the previous formula, considering the historical fluctuations up through the relevant date. If the Bureau has made a determination that the replacement index and the LIBOR index have historical fluctuations that are substantially similar, the relevant date is the date indicated in that determination. If the Bureau has not made a determination that the replacement index and the LIBOR index have historical fluctuations that are substantially similar, the relevant date is the later of April 1, 2022, or the date no more than 30 days before the card issuer makes a

determination that the replacement index and the LIBOR index have historical fluctuations that are substantially similar. The Bureau has determined that effective April 1, 2022, the prime rate published in the Wall Street Journal has historical fluctuations that are substantially similar to those of the 1-month and 3-month U.S. Dollar LIBOR indices. The Bureau also has determined that effective April 1, 2022, the spread-adjusted indices based on SOFR recommended by the Alternative Reference Rates Committee for consumer products to replace the 1-month, 3-month, or 6-month U.S. Dollar LIBOR indices have historical fluctuations that are substantially similar to those of the 1-month, 3-month, or 6-month U.S. Dollar LIBOR indices respectively. *See* comment 55(b)(7)(ii)-1. Also, for purposes of § 1026.59(f)(3), a card issuer may select a replacement index that is newly established as described in § 1026.55(b)(7)(ii).

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59(h) Exceptions

1. *Transition from LIBOR.* The exception to the requirements of this section does not apply to rate increases already subject to § 1026.59 prior to the transition from the use of a LIBOR index as the index in setting a variable rate to the use of a different index in setting a variable rate where the change from the use of a LIBOR index to a different index occurred in accordance with § 1026.55(b)(7)(i) or (ii).

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