

Regulation Z

Advertising

Indiana Bankers Association

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Open End - Advertising

Section 1: Introductory Commentary

12 C.F.R. § 1026.16

Introductory Commentary - 12 CFR § 1026.16

Regulatory Discussion

The introductory commentary for open-end advertising includes information on two topics: clear and conspicuous standards and expressing the APR in abbreviated form.

Regulatory Text

None.

Regulatory Commentary

Section 1026.16 - Advertising

1. ***Clear and conspicuous standard - general.*** *Section 1026.16 is subject to the general “clear and conspicuous” standard for subpart B (see §1026.5(a)(1)) but prescribes no specific rules for the format of the necessary disclosures, other than the format requirements related to the disclosure of a promotional rate or payment under §1026.16(d)(6), a promotional rate or promotional fee under §1026.16(g), or a deferred interest or similar offer under §1026.16(h). Other than the disclosure of certain terms described in §§1026.16(d)(6), (g), or (h), the credit terms need not be printed in a certain type size nor need they appear in any particular place in the advertisement.*
2. ***Clear and conspicuous standard - promotional rates or payments; deferred interest or similar offers.***
 - i. *For purposes of §1026.16(d)(6), a clear and conspicuous disclosure means that the required information in §1026.16(d)(6)(ii)(A)-(C) is disclosed with equal prominence and in close proximity to the promotional rate or payment to which it applies. If the information in §1026.16(d)(6)(ii)(A)-(C) is the same type size and is located immediately next to or directly above or below the promotional rate or payment to which it applies, without any intervening text or graphical displays, the disclosures would be deemed to be equally prominent and in close proximity. Notwithstanding the above, for electronic advertisements that disclose promotional rates or payments, compliance with the requirements of §1026.16(c) is deemed to satisfy the clear and conspicuous standard.*
 - ii. *For purposes of §1026.16(g)(4) as it applies to written or electronic advertisements only, a clear and conspicuous disclosure means the required information in §1026.16(g)(4)(i)*

and, as applicable, (g)(4)(ii) and (g)(4)(iii) must be equally prominent to the promotional rate or promotional fee to which it applies. If the information in §1026.16(g)(4)(i) and, as applicable, (g)(4)(ii) and (g)(4)(iii) is the same type size as the promotional rate or promotional fee to which it applies, the disclosures would be deemed to be equally prominent. For purposes of §1026.16(h)(3) as it applies to written or electronic advertisements only, a clear and conspicuous disclosure means the required information in §1026.16(h)(3) must be equally prominent to each statement of “no interest,” “no payments,” “deferred interest,” “same as cash,” or similar term regarding interest or payments during the deferred interest period. If the information required to be disclosed under §1026.16(h)(3) is the same type size as the statement of “no interest,” “no payments,” “deferred interest,” “same as cash,” or similar term regarding interest or payments during the deferred interest period, the disclosure would be deemed to be equally prominent.

3. Clear and conspicuous standard - Internet advertisements for home-equity plans.

For purposes of this section, a clear and conspicuous disclosure for visual text advertisements on the Internet for home-equity plans subject to the requirements of §1026.40 means that the required disclosures are not obscured by techniques such as graphical displays, shading, coloration, or other devices and comply with all other requirements for clear and conspicuous disclosures under §1026.16(d). (See also comment 16(c)(1)-2.)

4. Clear and conspicuous standard - televised advertisements for home-equity plans.

For purposes of this section, including alternative disclosures as provided for by §1026.16(e), a clear and conspicuous disclosure in the context of visual text advertisements on television for home-equity plans subject to the requirements of §1026.40 means that the required disclosures are not obscured by techniques such as graphical displays, shading, coloration, or other devices, are displayed in a manner that allows for a consumer to read the information required to be disclosed, and comply with all other requirements for clear and conspicuous disclosures under §1026.16(d). For example, very fine print in a television advertisement would not meet the clear and conspicuous standard if consumers cannot see and read the information required to be disclosed.

5. Clear and conspicuous standard - oral advertisements for home-equity plans.

For purposes of this section, including alternative disclosures as provided for by §1026.16(e), a clear and conspicuous disclosure in the context of an oral advertisement for home-equity plans subject to the requirements of §1026.40, whether by radio, television, the Internet, or other medium, means that the required disclosures are given at a speed and volume sufficient for a consumer to hear and comprehend them. For example, information stated very rapidly at a low volume in a radio or television advertisement would not meet the clear and conspicuous standard if consumers cannot hear and comprehend the information required to be disclosed.

6. Expressing the annual percentage rate in abbreviated form. Whenever the annual percentage rate is used in an advertisement for open-end credit, it may be expressed using a readily understandable abbreviation such as APR.

Section 2: Actually Available Terms

12 C.F.R. § 1026.16(a)

Actually Available Terms - 12 CFR § 1026.16(a)

Regulatory Discussion

Advertisements may state only those terms that the creditor is actually prepared to offer. A bank cannot advertise terms that will not be available.

Regulatory Text

(a) **Actually available terms.** If an advertisement for credit states specific credit terms, it shall state only those terms that actually are or will be arranged or offered by the creditor.

Regulatory Commentary

16(a) Actually Available Terms

- 1. General rule.*** *To the extent that an advertisement mentions specific credit terms, it may state only those terms that the creditor is actually prepared to offer. For example, a creditor may not advertise a very low annual percentage rate that will not in fact be available at any time. Section 1026.16(a) is not intended to inhibit the promotion of new credit programs, but to bar the advertising of terms that are not and will not be available. For example, a creditor may advertise terms that will be offered for only a limited period, or terms that will become available at a future date.*
- 2. Specific credit terms.*** *Specific credit terms is not limited to the disclosures required by the regulation but would include any specific components of a credit plan, such as the minimum periodic payment amount or seller's points in a plan secured by real estate.*

Section 3: Terms that Require Additional Disclosures

12 C.F.R. § 1026.16(b)

Terms that Require Additional Disclosures - 12 CFR § 1026.16(b)

Regulatory Discussion

This section requires additional disclosures when:

1. Any term required to be disclosed under §1026.6(b)(3) is included in an advertisement for an open-end (not home-secured) credit plan

For reference: §1026.6(b)(3) – Disclosure of charges imposed as part of open-end (not home-secured) plans – includes the following items:

- Finance charges identified under §1026.4(a) and §1026.4(b).
- Charges resulting from the consumer's failure to use the plan as agreed, except amounts payable for collection activity after default, attorney's fees whether or not automatically imposed, and post-judgment interest rates permitted by law.
- Taxes imposed on the credit transaction by a state or other governmental body, such as documentary stamp taxes on cash advances.
- Charges for which the payment, or nonpayment, affect the consumer's access to the plan, the duration of the plan, the amount of credit extended, the period for which credit is extended, or the timing or method of billing or payment.
- Charges imposed for terminating a plan.
- Charges for voluntary credit insurance, debt cancellation or debt suspension.

2. Any term required to be disclosed under §1026.6(a)(1) or (a)(2) is included in an advertisement for a home-equity (HELOC) plan

For reference: §1026.6(a)(1) – Finance Charge, or (a)(2) – Other Charges – includes the following items:

- The circumstances under which a finance charge will be imposed and an explanation of how it will be determined
- The amount of any charge other than a finance charge that may be imposed as part of the plan, or an explanation of how the charge will be determined

If either of the two events described above occur, the advertisement must then also include the following three items:

- Any minimum, fixed, transaction, activity or similar charge that is a finance charge under §1026.4 that could be imposed.
- Any periodic rate that may be applied expressed as an annual percentage rate as determined under §1026.14(b). If the plan provides for a variable periodic rate, that fact shall be disclosed.
- Any membership or participation fee that could be imposed.

Finally, additional requirements exist if, *in an advertisement to finance the purchase of goods or services*, a periodic payment amount is stated.

Regulatory Text

(b) Advertisement of terms that require additional disclosures.

- (1) Any term required to be disclosed under §1026.6(b)(3) set forth affirmatively or negatively in an advertisement for an open-end (not home-secured) credit plan triggers additional disclosures under this section. Any term required to be disclosed under §1026.6(a)(1) or (a)(2) set forth affirmatively or negatively in an advertisement for a home-equity plan subject to the requirements of §1026.40 triggers additional disclosures under this section. If any of the terms that trigger additional disclosures under this paragraph is set forth in an advertisement, the advertisement shall also clearly and conspicuously set forth the following:
 - (i) Any minimum, fixed, transaction, activity or similar charge that is a finance charge under §1026.4 that could be imposed.
 - (ii) Any periodic rate that may be applied expressed as an annual percentage rate as determined under §1026.14(b). If the plan provides for a variable periodic rate, that fact shall be disclosed.
 - (iii) Any membership or participation fee that could be imposed.
- (2) If an advertisement for credit to finance the purchase of goods or services specified in the advertisement states a periodic payment amount, the advertisement shall also state the total of payments and the time period to repay the obligation, assuming that the consumer pays only the periodic payment amount advertised. The disclosure of the total of payments and the time period to repay the obligation must be equally prominent to the statement of the periodic payment amount.

Regulatory Commentary

16(b) Advertisement of Terms That Require Additional Disclosures

Paragraph 16(b)(1)

1. **Triggering terms.** Negative as well as affirmative references trigger the requirement for additional information. For example, if a creditor states no interest or no annual membership fee in an advertisement, additional information must be provided. Other examples of terms that trigger additional disclosures are:
 - i. Small monthly service charge on the remaining balance, which describes how the amount of a finance charge will be determined.
 - ii. 12 percent Annual Percentage Rate or A \$15 annual membership fee buys you \$2,000 in credit, which describe required disclosures under §1026.6.
2. **Implicit terms.** Section 1026.16(b) applies even if the triggering term is not stated explicitly, but may be readily determined from the advertisement.
3. **Membership fees.** A membership fee is not a triggering term nor need it be disclosed under §1026.16(b)(1)(iii) if it is required for participation in the plan whether or not an open-end credit feature is attached. (See comment 6(a)(2)-1 and §1026.6(b)(3)(iii)(B).)
4. **Deferred billing and deferred payment programs.** Statements such as “Charge it—you won't be billed until May” or “You may skip your January payment” are not in themselves triggering terms, since the timing for initial billing or for monthly payments are not terms required to be disclosed under §1026.6. However, a statement such as “No interest charges until May” or any other statement regarding when interest or finance charges begin to accrue is a triggering term, whether appearing alone or in conjunction with a description of a deferred billing or deferred payment program such as the examples above.
5. **Variable-rate plans.** In disclosing the annual percentage rate in an advertisement for a variable-rate plan, as required by §1026.16(b)(1)(ii), the creditor may use an insert showing the current rate; or may give the rate as of a specified recent date. The additional requirement in §1026.16(b)(1)(ii) to disclose the variable-rate feature may be satisfied by disclosing that the annual percentage rate may vary or a similar statement, but the advertisement need not include the information required by §1026.6(a)(1)(ii) or (b)(4)(ii).
6. **Membership fees for open-end (not home-secured) plans.** For purposes of §1026.16(b)(1)(iii), membership fees that may be imposed on open-end (not home-secured) plans shall have the same meaning as in §1026.60(b)(2).

Paragraph 16(b)(2)

1. **Assumptions.** In stating the total of payments and the time period to repay the obligation, assuming that the consumer pays only the periodic payment amounts advertised, as required under §1026.16(b)(2), the following additional assumptions may be made:
 - i. Payments are made timely so as not to be considered late by the creditor;
 - ii. Payments are made each period, and no debt cancellation or suspension agreement, or skip payment feature applies to the account;
 - iii. No interest rate changes will affect the account;
 - iv. No other balances are currently carried or will be carried on the account;

v. No taxes or ancillary charges are or will be added to the obligation;

vi. Goods or services are delivered on a single date; and

vii. The consumer is not currently and will not become delinquent on the account.

2. **Positive periodic payment amounts.** Only positive periodic payment amounts trigger the additional disclosures under §1026.16(b)(2). Therefore, if the periodic payment amount advertised is not a positive amount (e.g., “No payments”), the advertisement need not state the total of payments and the time period to repay the obligation.

Section 4: Catalogs and Electronic Advertisements

12 C.F.R. § 1026.16(c)

Catalogs or Other Multiple-Page Advertisements; Electronic Advertisements - 12 CFR § 1026.16(c)

Regulatory Discussion

This section refers to advertisements consisting of a series of sequentially numbered pages.

- The regulation permits creditors to put credit information together in one place in a catalog or other multiple-page advertisement or in an electronic advertisement (such as an advertisement appearing on an Internet Web site).
- Any table or schedule must state all the necessary information for a representative sampling of amounts of credit. The range of transactions shown in the table or schedule in a particular catalog or multiple-page advertisement need not exceed the range of transactions actually offered in that advertisement.
- If an electronic advertisement, such as an advertisement on an Internet Web site contains the table or schedule permitted, any statement of terms appearing anywhere else in the advertisement must clearly direct the consumer to the location where the table or schedule begins.

Regulatory Text

(c) Catalogs or other multiple-page advertisements; electronic advertisements.

- (1) If a catalog or other multiple-page advertisement, or an electronic advertisement (such as an advertisement appearing on an Internet Web site), gives information in a table or schedule in sufficient detail to permit determination of the disclosures required by paragraph (b) of this section, it shall be considered a single advertisement if:
 - (i) The table or schedule is clearly and conspicuously set forth; and
 - (ii) Any statement of terms set forth in §1026.6 appearing anywhere else in the catalog or advertisement clearly refers to the page or location where the table or schedule begins.
- (2) A catalog or other multiple-page advertisement or an electronic advertisement (such as an advertisement appearing on an Internet Web site) complies with this paragraph if the table or schedule of terms includes all appropriate disclosures for a

representative scale of amounts up to the level of the more commonly sold higher-priced property or services offered.

Regulatory Commentary

16(c) Catalogs or Other Multiple-Page Advertisements; Electronic Advertisements

1. **Definition.** *The multiple-page advertisements to which §1026.16(c) refers are advertisements consisting of a series of sequentially numbered pages—for example, a supplement to a newspaper. A mailing consisting of several separate flyers or pieces of promotional material in a single envelope does not constitute a single multiple-page advertisement for purposes of §1026.16(c).*

Paragraph 16(c)(1)

1. **General.** *Section 1026.16(c)(1) permits creditors to put credit information together in one place in a catalog or other multiple-page advertisement or an electronic advertisement (such as an advertisement appearing on an Internet Web site). The rule applies only if the advertisement contains one or more of the triggering terms from §1026.16(b).*
2. **Electronic advertisement.** *If an electronic advertisement (such as an advertisement appearing on an Internet Web site) contains the table or schedule permitted under §1026.16(c)(1), any statement of terms set forth in §1026.6 appearing anywhere else in the advertisement must clearly direct the consumer to the location where the table or schedule begins. For example, a term triggering additional disclosures may be accompanied by a link that directly takes the consumer to the additional information.*

Paragraph 16(c)(2)

1. **Table or schedule if credit terms depend on outstanding balance.** *If the credit terms of a plan vary depending on the amount of the balance outstanding, rather than the amount of any property purchased, a table or schedule complies with §1026.16(c)(2) if it includes the required disclosures for representative balances. For example, a creditor would disclose that a periodic rate of 1.5% is applied to balances of \$500 or less, and a 1% rate is applied to balances greater than \$500.*

Section 5: Advertisements for Home Equity Plans

12 C.F.R. § 1026.16(d)

Additional Requirements for Advertisements for Home Equity Plans - 12 CFR § 1026.16(d)

Regulatory Discussion

Specifically for home-equity (HELOC) plans, and depending on the content of the advertisement, additional information may be required to be included. There are six items to consider, as follows:

- 1) Advertisement of terms required to be disclosed under §1026.6(a)(1) or (a)(2) or the payment terms of the plan requires three additional items
- 2) Advertisement of discounted and premium rates requires two additional items
- 3) Advertisements containing a statement of any minimum periodic payment and a balloon payment may result requires additional information
- 4) Advertisements stating that any interest expense incurred under the home-equity plan is or may be tax deductible may not be misleading.

NOTE: Advertisements distributed in paper form or through the Internet (rather than by radio or television) *for a home-equity plan secured by the consumer's principal dwelling* stating that the extension of credit may exceed the fair market value of the dwelling requires additional information.

- 5) Advertisements may not be misleading
- 6) Advertisements (other than television or radio) stating a promotional period and post-promotional rate or payments requires additional information.

Regulatory Text

(d) Additional requirements for home-equity plans

- (1) **Advertisement of terms that require additional disclosures.** If any of the terms required to be disclosed under §1026.6(a)(1) or (a)(2) or the payment terms of the plan are set forth, affirmatively or negatively, in an advertisement for a home-equity plan subject to the requirements of §1026.40, the advertisement also shall clearly and conspicuously set forth the following:

- (i) Any loan fee that is a percentage of the credit limit under the plan and an estimate of any other fees imposed for opening the plan, stated as a single dollar amount or a reasonable range.
 - (ii) Any periodic rate used to compute the finance charge, expressed as an annual percentage rate as determined under §1026.14(b).
 - (iii) The maximum annual percentage rate that may be imposed in a variable-rate plan.
- (2) **Discounted and premium rates.** If an advertisement states an initial annual percentage rate that is not based on the index and margin used to make later rate adjustments in a variable-rate plan, the advertisement also shall state with equal prominence and in close proximity to the initial rate:
- (i) The period of time such initial rate will be in effect; and
 - (ii) A reasonably current annual percentage rate that would have been in effect using the index and margin.
- (3) **Balloon payment.** If an advertisement contains a statement of any minimum periodic payment and a balloon payment may result if only the minimum periodic payments are made, even if such a payment is uncertain or unlikely, the advertisement also shall state with equal prominence and in close proximity to the minimum periodic payment statement that a balloon payment may result, if applicable. A balloon payment results if paying the minimum periodic payments does not fully amortize the outstanding balance by a specified date or time, and the consumer is required to repay the entire outstanding balance at such time. If a balloon payment will occur when the consumer makes only the minimum payments required under the plan, an advertisement for such a program which contains any statement of any minimum periodic payment shall also state with equal prominence and in close proximity to the minimum periodic payment statement:
- (i) That a balloon payment will result; and
 - (ii) The amount and timing of the balloon payment that will result if the consumer makes only the minimum payments for the maximum period of time that the consumer is permitted to make such payments.
- (4) **Tax implications.** An advertisement that states that any interest expense incurred under the home-equity plan is or may be tax deductible may not be misleading in this regard. If an advertisement distributed in paper form or through the Internet (rather than by radio or television) is for a home-equity plan secured by the consumer's principal dwelling, and the advertisement states that the advertised extension of credit may exceed the fair market value of the dwelling, the advertisement shall clearly and conspicuously state that:
- (i) The interest on the portion of the credit extension that is greater than the fair market value of the dwelling is not tax deductible for Federal income tax purposes; and
 - (ii) The consumer should consult a tax adviser for further information regarding the deductibility of interest and charges.

(5) **Misleading terms.** An advertisement may not refer to a home-equity plan as “free money” or contain a similarly misleading term.

(6) **Promotional rates and payments.**

(i) **Definitions.** The following definitions apply for purposes of paragraph (d)(6) of this section:

(A) **Promotional rate.** The term “promotional rate” means, in a variable-rate plan, any annual percentage rate that is not based on the index and margin that will be used to make rate adjustments under the plan, if that rate is less than a reasonably current annual percentage rate that would be in effect under the index and margin that will be used to make rate adjustments under the plan.

(B) **Promotional payment.** The term “promotional payment” means:

(1) For a variable-rate plan, any minimum payment applicable for a promotional period that:

(i) Is not derived by applying the index and margin to the outstanding balance when such index and margin will be used to determine other minimum payments under the plan; and

(ii) Is less than other minimum payments under the plan derived by applying a reasonably current index and margin that will be used to determine the amount of such payments, given an assumed balance.

(2) For a plan other than a variable-rate plan, any minimum payment applicable for a promotional period if that payment is less than other payments required under the plan given an assumed balance.

(C) **Promotional period.** A “promotional period” means a period of time, less than the full term of the loan, that the promotional rate or promotional payment may be applicable.

(ii) **Stating the promotional period and post-promotional rate or payments.** If any annual percentage rate that may be applied to a plan is a promotional rate, or if any payment applicable to a plan is a promotional payment, the following must be disclosed in any advertisement, other than television or radio advertisements, in a clear and conspicuous manner with equal prominence and in close proximity to each listing of the promotional rate or payment:

(A) The period of time during which the promotional rate or promotional payment will apply;

(B) In the case of a promotional rate, any annual percentage rate that will apply under the plan. If such rate is variable, the annual percentage rate must be disclosed in accordance with the accuracy standards in §§1026.40 or 1026.16(b)(1)(ii) as applicable; and

(C) In the case of a promotional payment, the amounts and time periods of any payments that will apply under the plan. In variable-rate transactions, payments that will be determined based on application of an index and margin shall be disclosed based on a reasonably current index and margin.

- (iii) **Envelope excluded.** The requirements in paragraph (d)(6)(ii) of this section do not apply to an envelope in which an application or solicitation is mailed, or to a banner advertisement or pop-up advertisement linked to an application or solicitation provided electronically.

Regulatory Commentary

16(d) Additional Requirements for Home-Equity Plans

1. **Trigger terms.** *Negative as well as affirmative references trigger the requirement for additional information. For example, if a creditor states no annual fee, no points, or we waive closing costs in an advertisement, additional information must be provided. (See comment 16(d)-4 regarding the use of a phrase such as no closing costs.) Inclusion of a statement such as low fees, however, would not trigger the need to state additional information. References to payment terms include references to the draw period or any repayment period, to the length of the plan, to how the minimum payments are determined and to the timing of such payments.*
2. **Fees to open the plan.** *Section 1026.16(d)(1)(i) requires a disclosure of any fees imposed by the creditor or a third party to open the plan. In providing the fee information required under this paragraph, the corresponding rules for disclosure of this information apply. For example, fees to open the plan may be stated as a range. Similarly, if property insurance is required to open the plan, a creditor either may estimate the cost of the insurance or provide a statement that such insurance is required. (See the commentary to §1026.40(d)(7) and (d)(8).)*
3. **Statements of tax deductibility.** *An advertisement that refers to deductibility for tax purposes is not misleading if it includes a statement such as “consult a tax advisor regarding the deductibility of interest.” An advertisement distributed in paper form or through the Internet (rather than by radio or television) that states that the advertised extension of credit may exceed the fair market value of the consumer's dwelling is not misleading if it clearly and conspicuously states the required information in §§1026.16(d)(4)(i) and (d)(4)(ii).*
4. **Misleading terms prohibited.** *Under §1026.16(d)(5), advertisements may not refer to home-equity plans as free money or use other misleading terms. For example, an advertisement could not state “no closing costs” or “we waive closing costs” if consumers may be required to pay any closing costs, such as recordation fees. In the case of property insurance, however, a creditor may state, for example, “no closing costs” even if property insurance may be required, as long as the creditor also provides a statement that such insurance may be required. (See the commentary to this section regarding fees to open a plan.)*
5. **Promotional rates and payments in advertisements for home-equity plans.** *Section 1026.16(d)(6) requires additional disclosures for promotional rates or payments.*
 - i. **Variable-rate plans.** *In advertisements for variable-rate plans, if the advertised annual percentage rate is based on (or the advertised payment is derived from) the index and margin that will be used to make rate (or payment) adjustments over the term of the loan, then there is no promotional rate or promotional payment. If, however,*

the advertised annual percentage rate is not based on (or the advertised payment is not derived from) the index and margin that will be used to make rate (or payment) adjustments, and a reasonably current application of the index and margin would result in a higher annual percentage rate (or, given an assumed balance, a higher payment) then there is a promotional rate or promotional payment.

- ii. **Equal prominence, close proximity.** Information required to be disclosed in §1026.16(d)(6)(ii) that is immediately next to or directly above or below the promotional rate or payment (but not in a footnote) is deemed to be closely proximate to the listing. Information required to be disclosed in §1026.16(d)(6)(ii) that is in the same type size as the promotional rate or payment is deemed to be equally prominent.*
- iii. **Amounts and time periods of payments.** Section 1026.16(d)(6)(ii)(C) requires disclosure of the amount and time periods of any payments that will apply under the plan. This section may require disclosure of several payment amounts, including any balloon payment. For example, if an advertisement for a home-equity plan offers a \$100,000 five-year line of credit and assumes that the entire line is drawn resulting in a minimum payment of \$800 per month for the first six months, increasing to \$1,000 per month after month six, followed by a \$50,000 balloon payment after five years, the advertisement must disclose the amount and time period of each of the two monthly payment streams, as well as the amount and timing of the balloon payment, with equal prominence and in close proximity to the promotional payment. However, if the final payment could not be more than twice the amount of other minimum payments, the final payment need not be disclosed.*
- iv. **Plans other than variable-rate plans.** For a plan other than a variable-rate plan, if an advertised payment is calculated in the same way as other payments based on an assumed balance, the fact that the minimum payment could increase solely if the consumer made an additional draw does not make the payment a promotional payment. For example, if a payment of \$500 results from an assumed \$10,000 draw, and the payment would increase to \$1,000 if the consumer made an additional \$10,000 draw, the payment is not a promotional payment.*
- v. **Conversion option.** Some home-equity plans permit the consumer to repay all or part of the balance during the draw period at a fixed rate (rather than a variable rate) and over a specified time period. The fixed-rate conversion option does not, by itself, make the rate or payment that would apply if the consumer exercised the fixed-rate conversion option a promotional rate or payment.*
- vi. **Preferred-rate provisions.** Some home-equity plans contain a preferred-rate provision, where the rate will increase upon the occurrence of some event, such as the consumer-employee leaving the creditor's employ, the consumer closing an existing deposit account with the creditor, or the consumer revoking an election to make automated payments. A preferred-rate provision does not, by itself, make the rate or payment under the preferred-rate provision a promotional rate or payment.*

6. Reasonably current index and margin. For the purposes of this section, an index and margin is considered reasonably current if:

- i. For direct mail advertisements, it was in effect within 60 days before mailing;*

- ii. For advertisements in electronic form it was in effect within 30 days before the advertisement is sent to a consumer's email address, or in the case of an advertisement made on an Internet Web site, when viewed by the public; or
- iii. For printed advertisements made available to the general public, including ones contained in a catalog, magazine, or other generally available publication, it was in effect within 30 days before printing.

7. **Relation to other sections.** Advertisements for home-equity plans must comply with all provisions in §1026.16, not solely the rules in §1026.16(d). If an advertisement contains information (such as the payment terms) that triggers the duty under §1026.16(d) to state the annual percentage rate, the additional disclosures in §1026.16(b) must be provided in the advertisement. While §1026.16(d) does not require a statement of fees to use or maintain the plan (such as membership fees and transaction charges), such fees must be disclosed under §1026.16(b)(1)(i) and (b)(1)(iii).
8. **Inapplicability of closed-end rules.** Advertisements for home-equity plans are governed solely by the requirements in §1026.16, except §1026.16(g), and not by the closed-end advertising rules in §1026.24. Thus, if a creditor states payment information about the repayment phase, this will trigger the duty to provide additional information under §1026.16, but not under §1026.24.
9. **Balloon payment.** See comment 40(d)(5)(ii)-3 for information not required to be stated in advertisements, and on situations in which the balloon payment requirement does not apply.

Section 6: Alternative Disclosures – Television or Radio

12 C.F.R. § 1026.16(e)

Alternative Disclosures - Television or Radio - 12 CFR § 1026.16(e)

Regulatory Discussion

When an advertised telephone number provides a recording, disclosures should be provided early in the sequence to ensure that the consumer receives the required disclosures. The regulation offers an example.

Use language such as “call 1-(800) 000-0000 for details about credit costs and terms.”

Regulatory Text

(e) **Alternative disclosures - television or radio advertisements.** An advertisement made through television or radio stating any of the terms requiring additional disclosures under paragraphs (b)(1) or (d)(1) of this section may alternatively comply with paragraphs (b)(1) or (d)(1) of this section by stating the information required by paragraphs (b)(1)(ii) or (d)(1)(ii) of this section, as applicable, and listing a toll-free telephone number, or any telephone number that allows a consumer to reverse the phone charges when calling for information, along with a reference that such number may be used by consumers to obtain the additional cost information.

Regulatory Commentary

16(e) Alternative Disclosures - Television or Radio Advertisements

- 1. Multi-purpose telephone number.*** *When an advertised telephone number provides a recording, disclosures must be provided early in the sequence to ensure that the consumer receives the required disclosures. For example, in providing several options—such as providing directions to the advertiser's place of business—the option allowing the consumer to request disclosures should be provided early in the telephone message to ensure that the option to request disclosures is not obscured by other information.*
- 2. Statement accompanying toll free number.*** *Language must accompany a telephone number indicating that disclosures are available by calling the telephone number, such as “call 1-(800) 000-0000 for details about credit costs and terms.”*

Section 7: Misleading Terms

12 C.F.R. § 1026.16(f)

Misleading Terms - 12 CFR § 1026.16(f)

Regulatory Discussion

This section simply states an advertisement for open-end credit may not refer to the APR as “fixed” unless:

- a time period is specified for which the rate will be fixed and the rate will not increase during that period; or
- if no such time period is provided, the rate will not increase while the plan is open.

Regulatory Text

(f) **Misleading terms.** An advertisement may not refer to an annual percentage rate as “fixed,” or use a similar term, unless the advertisement also specifies a time period that the rate will be fixed and the rate will not increase during that period, or if no such time period is provided, the rate will not increase while the plan is open.

Regulatory Commentary

None.

Section 8: Promotional Rates and Fees

12 C.F.R. § 1026.16(g)

Promotional Rates and Fees - 12 CFR § 1026.16(g)

Regulatory Discussion

NOTE: this section *only applies to open-end (not home-secured) plans.*

- There are definitions of six terms which must be applied to the requirements.
- Use of the term “*introductory*,” or “*intro*,” must be in immediate proximity to each listing of the introductory rate or introductory fee in a written or electronic advertisement.
- Use of the terms “*promotional period*” and “*post-promotional rate*” or “*fee*” requires certain information to be stated in a clear and conspicuous manner. In addition, if the rate or fee is stated in a written or electronic advertisement, certain other information must also be stated in a prominent location.
- NOTE: The requirements for use of the terms “*promotional period*” and “*post-promotional rate*” or “*fee*” *do not apply to an envelope or other enclosure* in which an application or solicitation is mailed, *or to a banner advertisement or pop-up advertisement*, linked to an application or solicitation provided electronically.

Regulatory Text

(g) Promotional rates and fees

- (1) **Scope.** The requirements of this paragraph apply to any advertisement of an open-end (not home-secured) plan, including promotional materials accompanying applications or solicitations subject to §1026.60(c) or accompanying applications or solicitations subject to §1026.60(e).
- (2) **Definitions.**
 - (i) **Promotional rate** means any annual percentage rate applicable to one or more balances or transactions on an open-end (not home-secured) plan for a specified period of time that is lower than the annual percentage rate that will be in effect at the end of that period on such balances or transactions.
 - (ii) **Introductory rate** means a promotional rate offered in connection with the opening of an account.

- (iii) **Promotional period** means the maximum time period for which a promotional rate or promotional fee may be applicable.
 - (iv) **Promotional fee** means a fee required to be disclosed under §1026.6(b)(1) and (2) applicable to an open-end (not home-secured) plan, or to one or more balances or transactions on an open-end (not home-secured) plan, for a specified period of time that is lower than the fee that will be in effect at the end of that period for such plan or types of balances or transactions.
 - (v) **Introductory fee** means a promotional fee offered in connection with the opening of an account.
- (3) **Stating the term “introductory”.** If any annual percentage rate or fee that may be applied to the account is an introductory rate or introductory fee, the term *introductory* or *intro* must be in immediate proximity to each listing of the introductory rate or introductory fee in a written or electronic advertisement.
- (4) **Stating the promotional period and post-promotional rate or fee.** If any annual percentage rate that may be applied to the account is a promotional rate under paragraph (g)(2)(i) of this section or any fee that may be applied to the account is a promotional fee under paragraph (g)(2)(iv) of this section, the information in paragraphs (g)(4)(i) and, as applicable, (g)(4)(ii) or (iii) of this section must be stated in a clear and conspicuous manner in the advertisement. If the rate or fee is stated in a written or electronic advertisement, the information in paragraphs (g)(4)(i) and, as applicable, (g)(4)(ii) or (iii) of this section must also be stated in a prominent location closely proximate to the first listing of the promotional rate or promotional fee.
- (i) When the promotional rate or promotional fee will end;
 - (ii) The annual percentage rate that will apply after the end of the promotional period. If such rate is variable, the annual percentage rate must comply with the accuracy standards in §§1026.60(c)(2), 1026.60(d)(3), 1026.60(e)(4), or 1026.16(b)(1)(ii), as applicable. If such rate cannot be determined at the time disclosures are given because the rate depends at least in part on a later determination of the consumer's creditworthiness, the advertisement must disclose the specific rates or the range of rates that might apply; and
 - (iii) The fee that will apply after the end of the promotional period.
- (5) **Envelope excluded.** The requirements in paragraph (g)(4) of this section do not apply to an envelope or other enclosure in which an application or solicitation is mailed, or to a banner advertisement or pop-up advertisement, linked to an application or solicitation provided electronically.

Regulatory Commentary

16(g) Promotional Rates and Fees

- 1. Rate in effect at the end of the promotional period.*** *If the annual percentage rate that will be in effect at the end of the promotional period (i.e., the post-promotional rate) is a variable rate, the post-promotional rate for purposes of §1026.16(g)(2)(i) is the rate that*

would have applied at the time the promotional rate was advertised if the promotional rate was not offered, consistent with the accuracy requirements in §1026.60(c)(2) and (e)(4), as applicable.

2. **Immediate proximity.** For written or electronic advertisements, including the term “introductory” or “intro” in the same phrase as the listing of the introductory rate or introductory fee is deemed to be in immediate proximity of the listing.
3. **Prominent location closely proximate.** For written or electronic advertisements, information required to be disclosed in §1026.16(g)(4)(i) and, as applicable, (g)(4)(ii) and (g)(4)(iii) that is in the same paragraph as the first listing of the promotional rate or promotional fee is deemed to be in a prominent location closely proximate to the listing. Information disclosed in a footnote will not be considered in a prominent location closely proximate to the listing.
4. **First listing.** For purposes of §1026.16(g)(4) as it applies to written or electronic advertisements, the first listing of the promotional rate or promotional fee is the most prominent listing of the rate or fee on the front side of the first page of the principal promotional document. The principal promotional document is the document designed to be seen first by the consumer in a mailing, such as a cover letter or solicitation letter. If the promotional rate or promotional fee does not appear on the front side of the first page of the principal promotional document, then the first listing of the promotional rate or promotional fee is the most prominent listing of the rate or fee on the subsequent pages of the principal promotional document. If the promotional rate or promotional fee is not listed on the principal promotional document or there is no principal promotional document, the first listing is the most prominent listing of the rate or fee on the front side of the first page of each document listing the promotional rate or promotional fee. If the promotional rate or promotional fee does not appear on the front side of the first page of a document, then the first listing of the promotional rate or promotional fee is the most prominent listing of the rate or fee on the subsequent pages of the document. If the listing of the promotional rate or promotional fee with the largest type size on the front side of the first page (or subsequent pages if the promotional rate or promotional fee is not listed on the front side of the first page) of the principal promotional document (or each document listing the promotional rate or promotional fee if the promotional rate or promotional fee is not listed on the principal promotional document or there is no principal promotional document) is used as the most prominent listing, it will be deemed to be the first listing. Consistent with comment 16(c)-1, a catalog or multiple-page advertisement is considered one document for purposes of §1026.16(g)(4).
5. **Post-promotional rate depends on consumer's creditworthiness.** For purposes of disclosing the rate that may apply after the end of the promotional rate period, at the advertiser's option, the advertisement may disclose the rates that may apply as either specific rates, or a range of rates. For example, if there are three rates that may apply (9.99%, 12.99% or 17.99%), an issuer may disclose these three rates as specific rates (9.99%, 12.99% or 17.99%) or as a range of rates (9.99%-17.99%).

Section 9: Deferred Interest

12 C.F.R. § 1026.16(h)

Deferred Interest - 12 CFR § 1026.16(h)

Regulatory Discussion

NOTE: the requirements of this section apply only to:

- any advertisement of an open-end credit plan *not subject to* §1026.40 (home-equity plans); including
- promotional materials accompanying applications or solicitations subject to §1026.60(c) (Credit and Charge Cards – required disclosures); or
- accompanying applications or solicitations subject to §1026.60(e) (Credit and Charge Cards – applications and solicitations made available to general public).

Item (2), below, defines the terms “*deferred interest*” and “*deferred interest period*.”

Item (3), below, discusses the requirements when stating “*deferred interest period*,” “*no interest*” or similar term, or “*if paid in full*.” NOTE: additional requirements if the deferred interest offer is included in a written or electronic advertisement.

Item (4), below, discusses the requirements when stating the terms of the deferred interest (or similar) offer.

NOTE: The requirements for stating the terms of the deferred interest (or similar) offer in Item (4) *do not apply to an envelope or other enclosure* in which an application or solicitation is mailed, *or to a banner advertisement or pop-up advertisement*, linked to an application or solicitation provided electronically.

Regulatory Text

(h) Deferred interest or similar offers

- (1) **Scope.** The requirements of this paragraph apply to any advertisement of an open-end credit plan not subject to §1026.40, including promotional materials accompanying applications or solicitations subject to §1026.60(c) or accompanying applications or solicitations subject to §1026.60(e).
- (2) **Definitions.** “Deferred interest” means finance charges, accrued on balances or transactions, that a consumer is not obligated to pay or that will be waived or refunded to a consumer if those balances or transactions are paid in full by a specified date. The maximum period from the date the consumer becomes obligated for the balance or transaction until the specified date by which the consumer must pay the balance or transaction in full in order to avoid finance charges, or receive a waiver or refund of finance

charges, is the “deferred interest period.” “Deferred interest” does not include any finance charges the consumer avoids paying in connection with any recurring grace period.

- (3) **Stating the deferred interest period.** If a deferred interest offer is advertised, the deferred interest period must be stated in a clear and conspicuous manner in the advertisement. If the phrase “no interest” or similar term regarding the possible avoidance of interest obligations under the deferred interest program is stated, the term “if paid in full” must also be stated in a clear and conspicuous manner preceding the disclosure of the deferred interest period in the advertisement. If the deferred interest offer is included in a written or electronic advertisement, the deferred interest period and, if applicable, the term “if paid in full” must also be stated in immediate proximity to each statement of “no interest,” “no payments,” “deferred interest,” “same as cash,” or similar term regarding interest or payments during the deferred interest period.
- (4) **Stating the terms of the deferred interest or similar offer.** If any deferred interest offer is advertised, the information in paragraphs (h)(4)(i) and (h)(4)(ii) of this section must be stated in the advertisement, in language similar to Sample G-24 in appendix G to this part. If the deferred interest offer is included in a written or electronic advertisement, the information in paragraphs (h)(4)(i) and (h)(4)(ii) of this section must also be stated in a prominent location closely proximate to the first statement of “no interest,” “no payments,” “deferred interest,” “same as cash,” or similar term regarding interest or payments during the deferred interest period.
 - (i) A statement that interest will be charged from the date the consumer becomes obligated for the balance or transaction subject to the deferred interest offer if the balance or transaction is not paid in full within the deferred interest period; and
 - (ii) A statement, if applicable, that interest will be charged from the date the consumer incurs the balance or transaction subject to the deferred interest offer if the account is in default before the end of the deferred interest period.
- (5) **Envelope excluded.** The requirements in paragraph (h)(4) of this section do not apply to an envelope or other enclosure in which an application or solicitation is mailed, or to a banner advertisement or pop-up advertisement linked to an application or solicitation provided electronically.

Regulatory Commentary

16(h) Deferred Interest or Similar Offers

1. ***Deferred interest or similar offers clarified.*** *Deferred interest or similar offers do not include offers that allow a consumer to skip payments during a specified period of time, and under which the consumer is not obligated under any circumstances for any interest or other finance charges that could be attributable to that period. Deferred interest or similar offers also do not include 0% annual percentage rate offers where a consumer is not obligated under any circumstances for interest attributable to the time period the 0% annual percentage rate was in effect, though such offers may be considered promotional rates under §1026.16(g)(2)(i). Deferred interest or similar offers also do not include skip payment programs that have no required minimum payment for one or more billing cycles but where interest continues to accrue and is imposed during that period.*

- 2. Deferred interest period clarified.** *Although the terms of an advertised deferred interest or similar offer may provide that a creditor may charge the accrued interest if the balance is not paid in full by a certain date, creditors sometimes have an informal policy or practice that delays charging the accrued interest for payment received a brief period of time after the date upon which a creditor has the contractual right to charge the accrued interest. The advertisement need not include the end of an informal “courtesy period” in disclosing the deferred interest period under §1026.16(h)(3).*
- 3. Immediate proximity.** *For written or electronic advertisements, including the deferred interest period in the same phrase as the statement of “no interest,” “no payments,” “deferred interest,” or “same as cash” or similar term regarding interest or payments during the deferred interest period is deemed to be in immediate proximity of the statement.*
- 4. Prominent location closely proximate.** *For written or electronic advertisements, information required to be disclosed in §1026.16(h)(4)(i) and (ii) that is in the same paragraph as the first statement of “no interest,” “no payments,” “deferred interest,” or “same as cash” or similar term regarding interest or payments during the deferred interest period is deemed to be in a prominent location closely proximate to the statement. Information disclosed in a footnote is not considered in a prominent location closely proximate to the statement.*
- 5. First listing.** *For purposes of §1026.16(h)(4) as it applies to written or electronic advertisements, the first statement of “no interest,” “no payments,” “deferred interest,” “same as cash,” or similar term regarding interest or payments during the deferred interest period is the most prominent listing of one of these statements on the front side of the first page of the principal promotional document. The principal promotional document is the document designed to be seen first by the consumer in a mailing, such as a cover letter or solicitation letter. If one of the statements does not appear on the front side of the first page of the principal promotional document, then the first listing of one of these statements is the most prominent listing of a statement on the subsequent pages of the principal promotional document. If one of the statements is not listed on the principal promotional document or there is no principal promotional document, the first listing of one of these statements is the most prominent listing of the statement on the front side of the first page of each document containing one of these statements. If one of the statements does not appear on the front side of the first page of a document, then the first listing of one of these statements is the most prominent listing of a statement on the subsequent pages of the document. If the listing of one of these statements with the largest type size on the front side of the first page (or subsequent pages if one of these statements is not listed on the front side of the first page) of the principal promotional document (or each document listing one of these statements if a statement is not listed on the principal promotional document or there is no principal promotional document) is used as the most prominent listing, it will be deemed to be the first listing. Consistent with comment 16(c)-1, a catalog or multiple-page advertisement is considered one document for purposes of §1026.16(h)(4).*
- 6. Additional information.** *Consistent with comment 5(a)-2, the information required under §1026.16(h)(4) need not be segregated from other information regarding the deferred interest or similar offer. Advertisements may also be required to provide additional information pursuant to §1026.16(b) though such information need not be integrated with the information required under §1026.16(h)(4).*

7. **Examples.** *Examples of disclosures that could be used to comply with the requirements of §1026.16(h)(3) include: “no interest if paid in full within 6 months” and “no interest if paid in full by December 31, 2010.”*

Advertising – Closed- End Credit

Section 1: Actually Available Terms

12 C.F.R. § 1026.24(a)

Actually Available Terms - 12 C.F.R. §1026.24(a)

Regulatory Discussion

Advertisements may state only those terms that the creditor is actually prepared to offer. A bank cannot advertise terms that will not be available.

Regulatory Text

(a) **Actually available terms.** If an advertisement for credit states specific credit terms, it shall state only those terms that actually are or will be arranged or offered by the creditor.

Regulatory Commentary

24(a) Actually Available Terms

1. **General rule.** *To the extent that an advertisement mentions specific credit terms, it may state only those terms that the creditor is actually prepared to offer. For example, a creditor may not advertise a very low annual percentage rate that will not in fact be available at any time. This provision is not intended to inhibit the promotion of new credit programs, but to bar the advertising of terms that are not and will not be available. For example, a creditor may advertise terms that will be offered for only a limited period, or terms that will become available at a future date.*

Section 2: Clear and Conspicuous Standard

12 C.F.R. § 1026.24(b)

Clear and Conspicuous Standard - 12 C.F.R. §1026.24(b)

Regulatory Discussion

There generally are not any specific format requirements, the credit terms need not be printed in a certain type size nor need they appear in any particular place in the advertisement.

- For dwelling related advertising, APRs and simple interest rates must be disclosed with equal prominence and in close proximity to the advertised rates or payments triggering the required disclosures. There is an exception for electronic advertisements.
- For internet advertisements for credit secured by a dwelling, a bank cannot use graphical displays, shading, coloration, or other devices and still comply with all other requirements for clear and conspicuous disclosures.
- For televised advertisements for credit secured by a dwelling, a clear and conspicuous disclosure in the context of visual text advertisements for credit secured by a dwelling means that the required disclosures are not obscured by techniques such as graphical displays, shading, coloration, or other devices, are displayed in a manner that allows a consumer to read the information required to be disclosed, and comply with all other requirements for clear and conspicuous disclosures.
- For oral advertisements for credit secured by a dwelling, a clear and conspicuous disclosure for credit secured by a dwelling, means that the required disclosures are given at a speed and volume sufficient for a consumer to hear and comprehend them.

Regulatory Text

(b) **Clear and conspicuous standard.** Disclosures required by this section shall be made clearly and conspicuously.

Regulatory Commentary

24(b) Clear and Conspicuous Standard

1. **Clear and conspicuous standard - general.** *This section is subject to the general “clear and conspicuous” standard for this subpart, see §1026.17(a)(1), but prescribes no specific rules for the format of the necessary disclosures, other than the format requirements related to the advertisement of rates and payments as described in comment 24(b)-2 below. The credit terms need not be printed in a certain type size nor need they appear in any particular place in the advertisement. For example, a merchandise tag that is an advertisement under the regulation complies with this section if the necessary credit terms are on both sides of the tag, so long as each side is accessible.*

- 2. Clear and conspicuous standard - rates and payments in advertisements for credit secured by a dwelling.** For purposes of §1026.24(f), a clear and conspicuous disclosure means that the required information in §§1026.24(f)(2)(i) and 1026.24(f)(3)(i)(A) and (B) is disclosed with equal prominence and in close proximity to the advertised rates or payments triggering the required disclosures, and that the required information in §1026.24(f)(3)(i)(C) is disclosed prominently and in close proximity to the advertised rates or payments triggering the required disclosures. If the required information in §§1026.24(f)(2)(i) and 1026.24(f)(3)(i)(A) and (B) is the same type size as the advertised rates or payments triggering the required disclosures, the disclosures are deemed to be equally prominent. The information in §1026.24(f)(3)(i)(C) must be disclosed prominently, but need not be disclosed with equal prominence or be the same type size as the payments triggering the required disclosures. If the required information in §§1026.24(f)(2)(i) and 1026.24(f)(3)(i) is located immediately next to or directly above or below the advertised rates or payments triggering the required disclosures, without any intervening text or graphical displays, the disclosures are deemed to be in close proximity. Notwithstanding the above, for electronic advertisements that disclose rates or payments, compliance with the requirements of §1026.24(e) is deemed to satisfy the clear and conspicuous standard.
- 3. Clear and conspicuous standard - Internet advertisements for credit secured by a dwelling.** For purposes of this section, a clear and conspicuous disclosure for visual text advertisements on the Internet for credit secured by a dwelling means that the required disclosures are not obscured by techniques such as graphical displays, shading, coloration, or other devices and comply with all other requirements for clear and conspicuous disclosures under §1026.24. See also comment 24(e)-4.
- 4. Clear and conspicuous standard - televised advertisements for credit secured by a dwelling.** For purposes of this section, including alternative disclosures as provided for by §1026.24(g), a clear and conspicuous disclosure in the context of visual text advertisements on television for credit secured by a dwelling means that the required disclosures are not obscured by techniques such as graphical displays, shading, coloration, or other devices, are displayed in a manner that allows a consumer to read the information required to be disclosed, and comply with all other requirements for clear and conspicuous disclosures under §1026.24. For example, very fine print in a television advertisement would not meet the clear and conspicuous standard if consumers cannot see and read the information required to be disclosed.
- 5. Clear and conspicuous standard - oral advertisements for credit secured by a dwelling.** For purposes of this section, including alternative disclosures as provided for by §1026.24(g), a clear and conspicuous disclosure in the context of an oral advertisement for credit secured by a dwelling, whether by radio, television, or other medium, means that the required disclosures are given at a speed and volume sufficient for a consumer to hear and comprehend them. For example, information stated very rapidly at a low volume in a radio or television advertisement would not meet the clear and conspicuous standard if consumers cannot hear and comprehend the information required to be disclosed.

Section 3: Advertisement of Rate of Finance Charge

12 C.F.R. § 1026.24(c)

Advertisement of Rate of Finance Charge - 12 C.F.R. §1026.24(c)

Regulatory Discussion

Advertised rates must be stated in terms of an annual percentage rate, using that term or APR. The advertisement must state that the rate is subject to increase after consummation if that is the case, but need not state any additional terms.

- The advertisement may also state a simple annual rate or periodic rate applicable to an unpaid balance. It may not appear more conspicuously than the APR.
- If a consumer may buy down the rate by paying points, the advertisement must be based on the actual terms that are available. The creditor may advertise the reduced simple interest rate, provided the advertisement shows the limited term to which the reduced rate applies and states the simple interest rate applicable to the balance of the term.
- The advertised APR for discounted variable-rate transactions must be determined in accordance with the regulation. There are additional restrictions in the regulation related to equal prominence and in close proximity, limits or caps on periodic rate or payment adjustments need not be stated, and showing the effect of the discount on the payment schedule. A complete understanding of the regulatory text is required for this type of advertising.

Regulatory Text

(c) **Advertisement of rate of finance charge.** If an advertisement states a rate of finance charge, it shall state the rate as an “annual percentage rate,” using that term. If the annual percentage rate may be increased after consummation, the advertisement shall state that fact. If an advertisement is for credit not secured by a dwelling, the advertisement shall not state any other rate, except that a simple annual rate or periodic rate that is applied to an unpaid balance may be stated in conjunction with, but not more conspicuously than, the annual percentage rate. If an advertisement is for credit secured by a dwelling, the advertisement shall not state any other rate, except that a simple annual rate that is applied to an unpaid balance may be stated in conjunction with, but not more conspicuously than, the annual percentage rate.

Regulatory Commentary

24(c) Advertisement of Rate of Finance Charge

1. Annual percentage rate. Advertised rates must be stated in terms of an annual percentage

rate, as defined in §1026.22. Even though state or local law permits the use of add-on, discount, time-price differential, or other methods of stating rates, advertisements must state them as annual percentage rates. Unlike the transactional disclosure of an annual percentage rate under §1026.18(e), the advertised annual percentage rate need not include a descriptive explanation of the term and may be expressed using the abbreviation APR. The advertisement must state that the rate is subject to increase after consummation if that is the case, but the advertisement need not describe the rate increase, its limits, or how it would affect the payment schedule. As under §1026.18(f), relating to disclosure of a variable rate, the rate increase disclosure requirement in this provision does not apply to any rate increase due to delinquency (including late payment), default, acceleration, assumption, or transfer of collateral.

2. **Simple or periodic rates.** The advertisement may not simultaneously state any other rate, except that a simple annual rate or periodic rate applicable to an unpaid balance may appear along with (but not more conspicuously than) the annual percentage rate. An advertisement for credit secured by a dwelling may not state a periodic rate, other than a simple annual rate, that is applied to an unpaid balance. For example, in an advertisement for credit secured by a dwelling, a simple annual interest rate may be shown in the same type size as the annual percentage rate for the advertised credit, subject to the requirements of §1026.24(f). A simple annual rate or periodic rate that is applied to an unpaid balance is the rate at which interest is accruing; those terms do not include a rate lower than the rate at which interest is accruing, such as an effective rate, payment rate, or qualifying rate.
3. **Buydowns.** When a third party (such as a seller) or a creditor wishes to promote the availability of reduced interest rates (consumer or seller buydowns), the advertised annual percentage rate must be determined in accordance with the commentary to §1026.17(c) regarding the basis of transactional disclosures for buydowns. The seller or creditor may advertise the reduced simple interest rate, provided the advertisement shows the limited term to which the reduced rate applies and states the simple interest rate applicable to the balance of the term. The advertisement may also show the effect of the buydown agreement on the payment schedule for the buydown period, but this will trigger the additional disclosures under §1026.24(d)(2).
4. **Discounted variable-rate transactions.** The advertised annual percentage rate for discounted variable-rate transactions must be determined in accordance with comment 17(c)(1)-10 regarding the basis of transactional disclosures for such financing.
 - i. A creditor or seller may promote the availability of the initial rate reduction in such transactions by advertising the reduced simple annual rate, provided the advertisement shows with equal prominence and in close proximity the limited term to which the reduced rate applies and the annual percentage rate that will apply after the term of the initial rate reduction expires. See §1026.24(f).
 - ii. Limits or caps on periodic rate or payment adjustments need not be stated. To illustrate using the second example in comment 17(c)(1)-10, the fact that the rate is presumed to be 11 percent in the second year and 12 percent for the remaining 28 years need not be included in the advertisement.
 - iii. The advertisement may also show the effect of the discount on the payment schedule for the discount period, but this will trigger the additional disclosures under §1026.24(d).

Section 4: Advertisement of Terms that Require Additional Disclosures

12 C.F.R. § 1026.24(d)

Advertisement of Terms That Require Additional Disclosures - 12 C.F.R. § 1026.24(d)

Regulatory Discussion

Whenever certain triggering terms appear in credit advertisements, additional credit terms must also appear. These provisions apply even if the triggering term is not stated explicitly in the advertisement.

- The following are the triggering terms:
 - Downpayment.
 - Payment period.
 - Payment amount.
 - Finance charge.
- If any triggering term is in an advertisement, the bank must disclose:
 - The total downpayment as a dollar amount or percentage.
 - The terms of repayment, although the regulation offers an array of methods for this.
- If a balloon payment will occur when the consumer only makes the minimum payments specified in an advertisement, the advertisement must state with equal prominence and in close proximity to the minimum payment statement the amount and timing of the balloon payment that will result.
- The advertised annual percentage rate may be expressed using the abbreviation “APR.” The advertisement must also state, if applicable, that the annual percentage rate is subject to increase after consummation.
- A creditor may use illustrative credit transactions to make the necessary disclosures.

Regulatory Text

(d) Advertisement of terms that require additional disclosures

- (1) Triggering terms. If any of the following terms is set forth in an advertisement, the advertisement shall meet the requirements of paragraph (d)(2) of this section:

- (i) The amount or percentage of any downpayment.
 - (ii) The number of payments or period of repayment.
 - (iii) The amount of any payment.
 - (iv) The amount of any finance charge.
- (2) Additional terms. An advertisement stating any of the terms in paragraph (d)(1) of this section shall state the following terms, as applicable (an example of one or more typical extensions of credit with a statement of all the terms applicable to each may be used):
- (i) The amount or percentage of the downpayment.
 - (ii) The terms of repayment, which reflect the repayment obligations over the full term of the loan, including any balloon payment.
 - (iii) The “annual percentage rate,” using that term, and, if the rate may be increased after consummation, that fact.

Regulatory Commentary

24(d) Advertisement of Terms That Require Additional Disclosures

1. **General rule.** Under §1026.24(d)(1), whenever certain triggering terms appear in credit advertisements, the additional credit terms enumerated in §1026.24(d)(2) must also appear. These provisions apply even if the triggering term is not stated explicitly but may be readily determined from the advertisement. For example, an advertisement may state “80 percent financing available,” which is in fact indicating that a 20 percent downpayment is required.

24(d)(1) Triggering Terms

1. Downpayment.

- i. The dollar amount of a downpayment or a statement of the downpayment as a percentage of the price requires further information. By virtue of the definition of downpayment in §1026.2, this triggering term is limited to credit sale transactions. It includes such statements as:
 - A. Only 5% down.
 - B. As low as \$100 down.
 - C. Total move-in costs of \$800.
- ii. This provision applies only if a downpayment is actually required; statements such as no downpayment or no trade-in required do not trigger the additional disclosures under this paragraph.

2. Payment period.

- i. The number of payments required or the total period of repayment includes such statements as:

A. 48-month payment terms.

B. 30-year mortgage.

C. Repayment in as many as 36 monthly installments.

ii. But it does not include such statements as “pay weekly,” “monthly payment terms arranged,” or “take years to repay,” since these statements do not indicate a time period over which a loan may be financed.

3. **Payment amount.**

i. The dollar amount of any payment includes statements such as:

A. “Payable in installments of \$103.”

B. “\$25 weekly.”

C. “\$500,000 loan for just \$1,650 per month.”

D. “\$1,200 balance payable in 10 equal installments.”

ii. In the last example, the amount of each payment is readily determinable, even though not explicitly stated. But statements such as “monthly payments to suit your needs” or “regular monthly payments” are not deemed to be statements of the amount of any payment.

4. **Finance charge.**

i. The dollar amount of the finance charge or any portion of it includes statements such as:

A. “\$500 total cost of credit.”

B. “\$2 monthly carrying charge.”

C. “\$50,000 mortgages, 2 points to the borrower.”

ii. In the last example, the \$1,000 prepaid finance charge can be readily determined from the information given. Statements of the annual percentage rate or statements that there is no particular charge for credit (such as “no closing costs”) are not triggering terms under this paragraph.

24(d)(2) Additional Terms

1. **Disclosure of downpayment.** The total downpayment as a dollar amount or percentage must be shown, but the word “downpayment” need not be used in making this disclosure. For example, “10% cash required from buyer” or “credit terms require minimum \$100 trade-in” would suffice.

2. **Disclosure of repayment terms.** The phrase “terms of repayment” generally has the same meaning as the “payment schedule” required to be disclosed under §1026.18(g), the interest rate and payment summary table required to be disclosed pursuant to §1026.18(s), or the projected payments table required to be disclosed pursuant to §§1026.37(c) and 1026.38(c), as applicable. Section 1026.24(d)(2)(ii) provides flexibility to creditors in making this disclosure for advertising purposes. Repayment terms may be expressed in a variety of ways in addition to an

exact repayment schedule; this is particularly true for advertisements that do not contemplate a single specific transaction. Repayment terms, however, must reflect the consumer's repayment obligations over the full term of the loan, including any balloon payment, see comment 24(d)(2)-3, not just the repayment terms that will apply for a limited period of time. For example:

- i. A creditor may use a unit-cost approach in making the required disclosure, such as “48 monthly payments of \$27.83 per \$1,000 borrowed.”*
- ii. In an advertisement for credit secured by a dwelling, when any series of payments varies because of the inclusion of mortgage insurance premiums, a creditor may state the number and timing of payments, the fact that payments do not include amounts for mortgage insurance premiums, and that the actual payment obligation will be higher.*
- iii. In an advertisement for credit secured by a dwelling, when one series of monthly payments will apply for a limited period of time followed by a series of higher monthly payments for the remaining term of the loan, the advertisement must state the number and time period of each series of payments, and the amounts of each of those payments. For this purpose, the creditor must assume that the consumer makes the lower series of payments for the maximum allowable period of time.*

3. Balloon payment; disclosure of repayment terms. *In some transactions, a balloon payment will occur when the consumer only makes the minimum payments specified in an advertisement. A balloon payment results if paying the minimum payments does not fully amortize the outstanding balance by a specified date or time, usually the end of the term of the loan, and the consumer must repay the entire outstanding balance at such time. If a balloon payment will occur when the consumer only makes the minimum payments specified in an advertisement, the advertisement must state with equal prominence and in close proximity to the minimum payment statement the amount and timing of the balloon payment that will result if the consumer makes only the minimum payments for the maximum period of time that the consumer is permitted to make such payments.*

4. Annual percentage rate. *The advertised annual percentage rate may be expressed using the abbreviation “APR.” The advertisement must also state, if applicable, that the annual percentage rate is subject to increase after consummation.*

5. Use of examples. *A creditor may use illustrative credit transactions to make the necessary disclosures under §1026.24(d)(2). That is, where a range of possible combinations of credit terms is offered, the advertisement may use examples of typical transactions, so long as each example contains all of the applicable terms required by §1026.24(d). The examples must be labeled as such and must reflect representative credit terms made available by the creditor to present and prospective customers.*

Section 5: Catalogs or Other Multiple-Page Advertisements; Electronic Advertisements

12 C.F.R. § 1026.24(e)

Catalogs or Other Multiple-Page Advertisements; Electronic Advertisements - 12 C.F.R. §1026.24(e)

Regulatory Discussion

This section refers to advertisements consisting of a series of sequentially numbered pages.

- The regulation permits creditors to put credit information together in one place in a catalog or other multiple-page advertisement or in an electronic advertisement (such as an advertisement appearing on an Internet Web site).
- Any table or schedule must state all the necessary information for a representative sampling of amounts of credit. The range of transactions shown in the table or schedule in a particular catalog or multiple-page advertisement need not exceed the range of transactions actually offered in that advertisement.
- If an electronic advertisement, such as an advertisement on an Internet Web site contains the table or schedule permitted, any statement of terms appearing anywhere else in the advertisement must clearly direct the consumer to the location where the table or schedule begins.

Regulatory Text

(e) Catalogs or other multiple-page advertisements; electronic advertisements.

- (1) If a catalog or other multiple-page advertisement, or an electronic advertisement (such as an advertisement appearing on an Internet Web site), gives information in a table or schedule in sufficient detail to permit determination of the disclosures required by paragraph (d)(2) of this section, it shall be considered a single advertisement if:
 - (i) The table or schedule is clearly and conspicuously set forth; and
 - (ii) Any statement of the credit terms in paragraph (d)(1) of this section appearing anywhere else in the catalog or advertisement clearly refers to the page or location where the table or schedule begins.
- (2) A catalog or other multiple-page advertisement or an electronic advertisement (such as an advertisement appearing on an Internet Web site) complies with paragraph (d)(2) of this section if the table or schedule of terms includes all appropriate disclosures for a representative scale of amounts up to the level of the more commonly sold higher-priced property or services offered.

Regulatory Commentary

24(e) Catalogs or Other Multiple-Page Advertisements; Electronic Advertisements

1. **Definition.** *The multiple-page advertisements to which this section refers are advertisements consisting of a series of sequentially numbered pages—for example, a supplement to a newspaper. A mailing consisting of several separate flyers or pieces of promotional material in a single envelope does not constitute a single multiple-page advertisement for purposes of §1026.24(e).*
2. **General.** *Section 1026.24(e) permits creditors to put credit information together in one place in a catalog or other multiple-page advertisement or in an electronic advertisement (such as an advertisement appearing on an Internet Web site). The rule applies only if the advertisement contains one or more of the triggering terms from §1026.24(d)(1). A list of different annual percentage rates applicable to different balances, for example, does not trigger further disclosures under §1026.24(d)(2) and so is not covered by §1026.24(e).*
3. **Representative examples.** *The table or schedule must state all the necessary information for a representative sampling of amounts of credit. This must reflect amounts of credit the creditor actually offers, up to and including the higher-priced items. This does not mean that the chart must make the disclosures for the single most expensive item the seller offers, but only that the chart cannot be limited to information about less expensive sales when the seller commonly offers a distinct level of more expensive goods or services. The range of transactions shown in the table or schedule in a particular catalog or multiple-page advertisement need not exceed the range of transactions actually offered in that advertisement.*
4. **Electronic advertisement.** *If an electronic advertisement (such as an advertisement appearing on an Internet Web site) contains the table or schedule permitted under §1026.24(e)(1), any statement of terms set forth in §1026.24(d)(1) appearing anywhere else in the advertisement must clearly direct the consumer to the location where the table or schedule begins. For example, a term triggering additional disclosures may be accompanied by a link that directly takes the consumer to the additional information.*

Section 6: Dwelling Related Advertisements

12 C.F.R. § 1026.24(f)

Disclosure of Rates and Payments in Advertisements for Credit Secured by a Dwelling - 12 C.F.R. §1026.24(f)

Regulatory Discussion

- In determining whether a payment will apply when the consumer may choose to make a series of lower monthly payments that will apply for a limited period of time, the creditor must assume that the consumer makes the series of lower payments for the maximum allowable period of time. There are specific examples for the following loan types:
 - Fixed-rate conversion loans
 - Preferred-rate loans
 - Rate reductions
- The equal prominence and close proximity rules discussed elsewhere apply here as well.
- The clear and conspicuous standard rule discussed elsewhere applies here as well.
- When making any comparison in an advertisement between actual or hypothetical credit payments or rates and the payments or rates available under the advertised product, the advertisement must state all applicable payments or rates for the advertised product and the time periods for which those payments or rates will apply.
- In advertisements for variable-rate transactions, if a simple annual rate that applies at consummation is not based on the index and margin that will be used to make subsequent rate adjustments over the term of the loan, the clear and conspicuous standard applies.
 - An index and margin must be reasonably current. The regulation offers specific guidance.
- Amounts and time periods of payments.
 - You must disclose the amounts and time periods of all payments that will apply over the term of the loan, even if that means disclosure of several payment amounts, including any balloon payment. The regulation offers an example of a balloon payment. Remember that the advertisement must show amounts, timing for the payments and the balloon.

- Variable-rate transactions. If the payment that applies at consummation is not based on the index and margin that will be used to make subsequent payment adjustments over the term of the loan, these requirements apply.

Regulatory Text

(f) Disclosure of rates and payments in advertisements for credit secured by a dwelling

(1) **Scope.** The requirements of this paragraph apply to any advertisement for credit secured by a dwelling, other than television or radio advertisements, including promotional materials accompanying applications.

(2) Disclosure of rates

(i) **In general.** If an advertisement for credit secured by a dwelling states a simple annual rate of interest and more than one simple annual rate of interest will apply over the term of the advertised loan, the advertisement shall disclose in a clear and conspicuous manner:

(A) Each simple annual rate of interest that will apply. In variable-rate transactions, a rate determined by adding an index and margin shall be disclosed based on a reasonably current index and margin;

(B) The period of time during which each simple annual rate of interest will apply; and

(C) The annual percentage rate for the loan. If such rate is variable, the annual percentage rate shall comply with the accuracy standards in §§1026.17(c) and 1026.22.

(ii) **Clear and conspicuous requirement.** For purposes of paragraph (f)(2)(i) of this section, clearly and conspicuously disclosed means that the required information in paragraphs (f)(2)(i)(A) through (C) shall be disclosed with equal prominence and in close proximity to any advertised rate that triggered the required disclosures. The required information in paragraph (f)(2)(i)(C) may be disclosed with greater prominence than the other information.

(3) Disclosure of payments

(i) **In general.** In addition to the requirements of paragraph (c) of this section, if an advertisement for credit secured by a dwelling states the amount of any payment, the advertisement shall disclose in a clear and conspicuous manner:

(A) The amount of each payment that will apply over the term of the loan, including any balloon payment. In variable-rate transactions, payments that will be determined based on the application of the sum of an index and margin shall be disclosed based on a reasonably current index and margin;

(B) The period of time during which each payment will apply; and

(C) In an advertisement for credit secured by a first lien on a dwelling, the fact that the payments do not include amounts for taxes and insurance premiums, if applicable, and that the actual payment obligation will be greater.

- (ii) **Clear and conspicuous requirement.** For purposes of paragraph (f)(3)(i) of this section, a clear and conspicuous disclosure means that the required information in paragraphs (f)(3)(i)(A) and (B) shall be disclosed with equal prominence and in close proximity to any advertised payment that triggered the required disclosures, and that the required information in paragraph (f)(3)(i)(C) shall be disclosed with prominence and in close proximity to the advertised payments.
- (4) **Envelope excluded.** The requirements in paragraphs (f)(2) and (f)(3) of this section do not apply to an envelope in which an application or solicitation is mailed, or to a banner advertisement or pop-up advertisement linked to an application or solicitation provided electronically.

Regulatory Commentary

24(f) Disclosure of Rates and Payments in Advertisements for Credit Secured by a Dwelling

1. **Applicability.** *The requirements of §1026.24(f)(2) apply to advertisements for loans where more than one simple annual rate of interest will apply. The requirements of §1026.24(f)(3)(i)(A) require a clear and conspicuous disclosure of each payment that will apply over the term of the loan. In determining whether a payment will apply when the consumer may choose to make a series of lower monthly payments that will apply for a limited period of time, the creditor must assume that the consumer makes the series of lower payments for the maximum allowable period of time. See comment 24(d)(2)-2.iii. However, for purposes of §1026.24(f), the creditor may, but need not, assume that specific events which trigger changes to the simple annual rate of interest or to the applicable payments will occur. For example:*

- i. **Fixed-rate conversion loans.** If a loan program permits consumers to convert their variable-rate loans to fixed rate loans, the creditor need not assume that the fixed-rate conversion option, by itself, means that more than one simple annual rate of interest will apply to the loan under §1026.24(f)(2) and need not disclose as a separate payment under §1026.24(f)(3)(i)(A) the payment that would apply if the consumer exercised the fixed-rate conversion option.*
- ii. **Preferred-rate loans.** Some loans contain a preferred-rate provision, where the rate will increase upon the occurrence of some event, such as the consumer-employee leaving the creditor's employ or the consumer closing an existing deposit account with the creditor or the consumer revoking an election to make automated payments. A creditor need not assume that the preferred-rate provision, by itself, means that more than one simple annual rate of interest will apply to the loan under §1026.24(f)(2) and the payments that would apply upon occurrence of the event that triggers the rate increase need not be disclosed as a separate payment under §1026.24(f)(3)(i)(A).*
- iii. **Rate reductions.** Some loans contain a provision where the rate will decrease upon the occurrence of some event, such as if the consumer makes a series of payments on time. A creditor need not assume that the rate reduction provision, by itself, means that more than one simple annual rate of interest will apply to the loan under §1026.24(f)(2) and need not disclose the payments that would apply upon occurrence of the event that triggers the rate reduction as a separate payment under §1026.24(f)(3)(i)(A).*

2. **Equal prominence, close proximity.** *Information required to be disclosed under §§1026.24(f)(2)(i)*

and 1026.24(f)(3)(i) that is immediately next to or directly above or below the simple annual rate or payment amount (but not in a footnote) is deemed to be closely proximate to the listing. Information required to be disclosed under §§1026.24(f)(2)(i) and 1026.24(f)(3)(i)(A) and (B) that is in the same type size as the simple annual rate or payment amount is deemed to be equally prominent.

3. **Clear and conspicuous standard.** For more information about the applicable clear and conspicuous standard, see comment 24(b)-2.
4. **Comparisons in advertisements.** When making any comparison in an advertisement between actual or hypothetical credit payments or rates and the payments or rates available under the advertised product, the advertisement must state all applicable payments or rates for the advertised product and the time periods for which those payments or rates will apply, as required by this section.
5. **Application to variable-rate transactions - disclosure of rates.** In advertisements for variable-rate transactions, if a simple annual rate that applies at consummation is not based on the index and margin that will be used to make subsequent rate adjustments over the term of the loan, the requirements of §1026.24(f)(2)(i) apply.
6. **Reasonably current index and margin.** For the purposes of this section, an index and margin is considered reasonably current if:
 - i. For direct mail advertisements, it was in effect within 60 days before mailing;
 - ii. For advertisements in electronic form it was in effect within 30 days before the advertisement is sent to a consumer's email address, or in the case of an advertisement made on an Internet Web site, when viewed by the public; or
 - iii. For printed advertisements made available to the general public, including ones contained in a catalog, magazine, or other generally available publication, it was in effect within 30 days before printing.

24(f)(3) Disclosure of Payments

1. **Amounts and time periods of payments.** Section 1026.24(f)(3)(i) requires disclosure of the amounts and time periods of all payments that will apply over the term of the loan. This section may require disclosure of several payment amounts, including any balloon payment. For example, if an advertisement for credit secured by a dwelling offers \$300,000 of credit with a 30-year loan term for a payment of \$600 per month for the first six months, increasing to \$1,500 per month after month six, followed by a balloon payment of \$30,000 at the end of the loan term, the advertisement must disclose the amount and time periods of each of the two monthly payment streams, as well as the amount and timing of the balloon payment, with equal prominence and in close proximity to each other. However, if the final scheduled payment of a fully amortizing loan is not greater than two times the amount of any other regularly scheduled payment, the final payment need not be disclosed.
2. **Application to variable-rate transactions - disclosure of payments.** In advertisements for variable-rate transactions, if the payment that applies at consummation is not based on the index and margin that will be used to make subsequent payment adjustments over the term of the loan, the requirements of §1026.24(f)(3)(i) apply.

Section 7: Alternative Disclosures – Television or Radio Advertisements

12 C.F.R. § 1026.24(g)

Alternative Disclosures - Television or Radio Advertisements- 12 C.F.R. §1026.24(g)

Regulatory Discussion

When an advertised telephone number provides a recording, disclosures should be provided early in the sequence to ensure that the consumer receives the required disclosures. The regulation offers an example.

- Use language such as “call 1-(800) 000-0000 for details about credit costs and terms.”

Regulatory Text

(g) **Alternative disclosures – television or radio advertisements.** An advertisement made through television or radio stating any of the terms requiring additional disclosures under paragraph (d)(2) of this section may comply with paragraph (d)(2) of this section either by:

- (1) Stating clearly and conspicuously each of the additional disclosures required under paragraph (d)(2) of this section; or
- (2) Stating clearly and conspicuously the information required by paragraph (d)(2)(iii) of this section and listing a toll-free telephone number, or any telephone number that allows a consumer to reverse the phone charges when calling for information, along with a reference that such number may be used by consumers to obtain additional cost information.

Regulatory Commentary

24(g) Alternative Disclosures—Television or Radio Advertisements

- 1. Multi-purpose telephone number.*** *When an advertised telephone number provides a recording, disclosures should be provided early in the sequence to ensure that the consumer receives the required disclosures. For example, in providing several options—such as providing directions to the advertiser's place of business—the option allowing the consumer to request disclosures should be provided early in the telephone message to ensure that the option to request disclosures is not obscured by other information.*
- 2. Statement accompanying telephone number.*** *Language must accompany a telephone number indicating that disclosures are available by calling the telephone number, such as “call 1-(800) 000-0000 for details about credit costs and terms.”*

Section 8: Tax Implications

12 C.F.R. § 1026.24(h)

Tax Implications - 12 C.F.R. §1026.24(h)

Regulatory Discussion

This section requires a special message if an advertisement states an extension of credit may exceed the fair market value of the dwelling when:

- the advertisement is in either paper form or through the Internet and
- is for a loan secured by the consumer's principal dwelling

The special message includes two components:

- The interest on the portion of the credit extension that is greater than the fair market value of the dwelling is not tax deductible for Federal income tax purposes; and
- The consumer should consult a tax adviser for further information regarding the deductibility of interest and charges

Regulatory Text

(h) **Tax implications.** If an advertisement distributed in paper form or through the Internet (rather than by radio or television) is for a loan secured by the consumer's principal dwelling, and the advertisement states that the advertised extension of credit may exceed the fair market value of the dwelling, the advertisement shall clearly and conspicuously state that:

- (1) The interest on the portion of the credit extension that is greater than the fair market value of the dwelling is not tax deductible for Federal income tax purposes; and
- (2) The consumer should consult a tax adviser for further information regarding the deductibility of interest and charges.

Regulatory Commentary

None.

Section 9: Prohibited Acts or Practices in Advertisements for Credit Secured by a Dwelling

12 C.F.R. § 1026.24(i)

Prohibited Acts or Practices in Advertisements for Credit Secured by a Dwelling - 12 C.F.R. §1026.24(i)

Regulatory Discussion

- You cannot offer comparisons/ All advertisements for credit secured by a dwelling, including radio and television advertisements are covered. A comparison includes a claim about the amount a consumer may save under the advertised product. The regulation offers an example.
- You may not misrepresentat government endorsement. A statement that the Federal Community Reinvestment Act entitles the consumer to refinance his or her mortgage at the low rate offered in the advertisement is prohibited because it conveys a misleading impression that the advertised product is endorsed or sponsored by the Federal government.
- You mat not have “catch phrases” that would mislead a consumer with claims of debt elimination. The regulation offers several examples.

Regulatory Text

- (i) **Prohibited acts or practices in advertisements for credit secured by a dwelling.** The following acts or practices are prohibited in advertisements for credit secured by a dwelling:
- (1) **Misleading advertising of “fixed” rates and payments.** Using the word “fixed” to refer to rates, payments, or the credit transaction in an advertisement for variable-rate transactions or other transactions where the payment will increase, unless:
- (i) In the case of an advertisement solely for one or more variable-rate transactions,
- (A) The phrase “Adjustable-Rate Mortgage,” “Variable-Rate Mortgage,” or “ARM” appears in the advertisement before the first use of the word “fixed” and is at least as conspicuous as any use of the word “fixed” in the advertisement; and
- (B) Each use of the word “fixed” to refer to a rate or payment is accompanied by an equally prominent and closely proximate statement of the time period for which the rate or payment is fixed, and the fact that the rate may vary or the payment may increase after that period;
- (ii) In the case of an advertisement solely for non-variable-rate transactions where the payment will increase (e.g., a stepped-rate mortgage transaction with an initial lower payment), each use of the word “fixed” to refer to the payment is accompanied by an

equally prominent and closely proximate statement of the time period for which the payment is fixed, and the fact that the payment will increase after that period; or

- (iii) In the case of an advertisement for both variable-rate transactions and non-variable-rate transactions,
 - (A) The phrase “Adjustable-Rate Mortgage,” “Variable-Rate Mortgage,” or “ARM” appears in the advertisement with equal prominence as any use of the term “fixed,” “Fixed-Rate Mortgage,” or similar terms; and
 - (B) Each use of the word “fixed” to refer to a rate, payment, or the credit transaction either refers solely to the transactions for which rates are fixed and complies with paragraph (i)(1)(ii) of this section, if applicable, or, if it refers to the variable-rate transactions, is accompanied by an equally prominent and closely proximate statement of the time period for which the rate or payment is fixed, and the fact that the rate may vary or the payment may increase after that period.
- (2) **Misleading comparisons in advertisements.** Making any comparison in an advertisement between actual or hypothetical credit payments or rates and any payment or simple annual rate that will be available under the advertised product for a period less than the full term of the loan, unless:
 - (i) **In general.** The advertisement includes a clear and conspicuous comparison to the information required to be disclosed under §1026.24(f)(2) and (3); and
 - (ii) **Application to variable-rate transactions.** If the advertisement is for a variable-rate transaction, and the advertised payment or simple annual rate is based on the index and margin that will be used to make subsequent rate or payment adjustments over the term of the loan, the advertisement includes an equally prominent statement in close proximity to the payment or rate that the payment or rate is subject to adjustment and the time period when the first adjustment will occur.
- (3) **Misrepresentations about government endorsement.** Making any statement in an advertisement that the product offered is a “government loan program”, “government-supported loan”, or is otherwise endorsed or sponsored by any Federal, state, or local government entity, unless the advertisement is for an FHA loan, VA loan, or similar loan program that is, in fact, endorsed or sponsored by a Federal, state, or local government entity.
- (4) **Misleading use of the current lender's name.** Using the name of the consumer's current lender in an advertisement that is not sent by or on behalf of the consumer's current lender, unless the advertisement:
 - (i) Discloses with equal prominence the name of the person or creditor making the advertisement; and
 - (ii) Includes a clear and conspicuous statement that the person making the advertisement is not associated with, or acting on behalf of, the consumer's current lender.
- (5) **Misleading claims of debt elimination.** Making any misleading claim in an advertisement that the mortgage product offered will eliminate debt or result in a waiver or forgiveness of a consumer's existing loan terms with, or obligations to, another creditor.

- (6) **Misleading use of the term “counselor”.** Using the term “counselor” in an advertisement to refer to a for-profit mortgage broker or mortgage creditor, its employees, or persons working for the broker or creditor that are involved in offering, originating or selling mortgages.
- (7) **Misleading foreign-language advertisements.** Providing information about some trigger terms or required disclosures, such as an initial rate or payment, only in a foreign language in an advertisement, but providing information about other trigger terms or required disclosures, such as information about the fully-indexed rate or fully amortizing payment, only in English in the same advertisement.

Regulatory Commentary

24(i) Prohibited Acts or Practices in Advertisements for Credit Secured by a Dwelling

1. **Comparisons in advertisements.** *The requirements of §1026.24(i)(2) apply to all advertisements for credit secured by a dwelling, including radio and television advertisements. A comparison includes a claim about the amount a consumer may save under the advertised product. For example, a statement such as “save \$300 per month on a \$300,000 loan” constitutes an implied comparison between the advertised product's payment and a consumer's current payment.*
2. **Misrepresentations about government endorsement.** *A statement that the Federal Community Reinvestment Act entitles the consumer to refinance his or her mortgage at the low rate offered in the advertisement is prohibited because it conveys a misleading impression that the advertised product is endorsed or sponsored by the Federal government.*
3. **Misleading claims of debt elimination.** *The prohibition against misleading claims of debt elimination or waiver or forgiveness does not apply to legitimate statements that the advertised product may reduce debt payments, consolidate debts, or shorten the term of the debt. Examples of misleading claims of debt elimination or waiver or forgiveness of loan terms with, or obligations to, another creditor of debt include: “Wipe-Out Personal Debts!”, “New DEBT-FREE Payment”, “Set yourself free; get out of debt today”, “Refinance today and wipe your debt clean!”, “Get yourself out of debt * * * Forever!”, and “Pre-payment Penalty Waiver.”*