Regulation Z
HELOC

Indiana Bankers Association

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Open End Credit - General Disclosure Requirements

Section 1: Form of Disclosures
12 C.F.R. § 1026.5(a)

General - 12 C.F.R § 1026.5(a)(1)

Regulatory Discussion

This section describes the general form of disclosure requirements for open-credit credit (including HELOCs) and includes:

- clear and conspicuous standards;
- written and retainable disclosure requirements; and
- electronic disclosures subject to the E-Sign Act.

Regulatory Text

(a) **Form of disclosures**

(1) **General.**

(i) The creditor shall make the disclosures required by this subpart clearly and conspicuously.

(ii) The creditor shall make the disclosures required by this subpart in writing, in a form that the consumer may keep, except that:

(A) The following disclosures need not be written: Disclosures under §1026.6(b)(3) of charges that are imposed as part of an open-end (not home-secured) plan that are not required to be disclosed under §1026.6(b)(2) and related disclosures of charges under §1026.9(c)(2)(iii)(B); disclosures under §1026.9(c)(2)(vi); disclosures under §1026.9(d) when a finance charge is imposed at the time of the transaction; and disclosures under §1026.56(b)(1)(i).

(B) The following disclosures need not be in a retainable form: Disclosures that need not be written under paragraph (a)(1)(ii)(A) of this section; disclosures for credit and charge card applications and solicitations under §1026.60; home-equity disclosures under §1026.40(d); the alternative summary billing-rights statement under §1026.9(a)(2); the credit and charge card renewal disclosures required under §1026.9(e); and the payment requirements under §1026.10(b), except as provided in §1026.7(b)(13).

(iii) The disclosures required by this subpart may be provided to the consumer in electronic form, subject to compliance with the consumer consent and other applicable provisions of the Electronic Signatures in Global and National

Commerce Act (E-Sign Act) (15 U.S.C. 7001 *et seq*.). The disclosures required by §§1026.60, 1026.40, and 1026.16 may be provided to the consumer in electronic form without regard to the consumer consent or other provisions of the E-Sign Act in the circumstances set forth in those sections.

Regulatory Commentary

5(a)(1) General

*1. **Clear and conspicuous standard.** The "clear and conspicuous" standard generally requires that disclosures be in a reasonably understandable form. Disclosures for credit card applications and solicitations under §1026.60, highlighted account-opening disclosures under §1026.6(b)(1), highlighted disclosure on checks that access a credit card under §1026.9(b)(3), highlighted change-in-terms disclosures under §1026.9(c)(2)(iv)(D), and highlighted disclosures when a rate is increased due to delinquency, default or for a penalty under §1026.9(g)(3)(ii) must also be readily noticeable to the consumer.*

*2. **Clear and conspicuous - reasonably understandable form.** Except where otherwise provided, the reasonably understandable form standard does not require that disclosures be segregated from other material or located in any particular place on the disclosure statement, or that numerical amounts or percentages be in any particular type size. For disclosures that are given orally, the standard requires that they be given at a speed and volume sufficient for a consumer to hear and comprehend them. (See comment 5(b)(1)(ii)-1.) Except where otherwise provided, the standard does not prohibit:*

i. Pluralizing required terminology ("finance charge" and "annual percentage rate").

ii. Adding to the required disclosures such items as contractual provisions, explanations of contract terms, state disclosures, and translations.

iii. Sending promotional material with the required disclosures.

iv. Using commonly accepted or readily understandable abbreviations (such as "mo." for "month" or "TX" for "Texas") in making any required disclosures.

v. Using codes or symbols such as "APR" (for annual percentage rate), "FC" (for finance charge), or "Cr" (for credit balance), so long as a legend or description of the code or symbol is provided on the disclosure statement.

*3. **Clear and conspicuous - readily noticeable standard.** To meet the readily noticeable standard, disclosures for credit card applications and solicitations under §1026.60, highlighted account-opening disclosures under §1026.6(b)(1), highlighted disclosures on checks that access a credit card account under §1026.9(b)(3), highlighted change-in-terms disclosures under §1026.9(c)(2)(iv)(D), and highlighted disclosures when a rate is increased due to delinquency, default or penalty pricing under §1026.9(g)(3)(ii) must be given in a minimum of 10-point font. (See special rule for font size requirements for the annual percentage rate for purchases under §§1026.60(b)(1) and 1026.6(b)(2)(i).)*

*4. **Integrated document.** The creditor may make both the account-opening disclosures (§1026.6) and the periodic-statement disclosures (§1026.7) on more than one page, and use both the front and the reverse sides, except where otherwise indicated, so long as the pages* *constitute an integrated document. An integrated document would not include disclosure pages provided to the consumer at different times or disclosures interspersed on the same page with promotional material. An integrated document would include, for example:*

i. Multiple pages provided in the same envelope that cover related material and are folded together, numbered consecutively, or clearly labeled to show that they relate to one another; or

ii. A brochure that contains disclosures and explanatory material about a range of services the creditor offers, such as credit, checking account, and electronic fund transfer features.

*5. **Disclosures covered.** Disclosures that must meet the "clear and conspicuous" standard include all required communications under this subpart. Therefore, disclosures made by a person other than the card issuer, such as disclosures of finance charges imposed at the time of honoring a consumer's credit card under §1026.9(d), and notices, such as the correction notice required to be sent to the consumer under §1026.13(e), must also be clear and conspicuous.*

Paragraph 5(a)(1)(ii)(A)

*1. **Electronic disclosures.** Disclosures that need not be provided in writing under §1026.5(a)(1)(ii)(A) may be provided in writing, orally, or in electronic form. If the consumer requests the service in electronic form, such as on the creditor's Web site, the specified disclosures may be provided in electronic form without regard to the consumer consent or other provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. 7001 et seq.).*

Paragraph 5(a)(1)(iii)

*1. **Disclosures not subject to E-Sign Act.** See the commentary to §1026.5(a)(1)(ii)(A) regarding disclosures (in addition to those specified under §1026.5(a)(1)(iii)) that may be provided in electronic form without regard to the consumer consent or other provisions of the E-Sign Act.*

Terminology - 12 C.F.R § 1026.5(a)(2)

Regulatory Discussion

This section describes consistent and conspicuous terminology requirements: specifically, use of the terms finance charge and annual percentage rate for home-equity plans; and, the terms penalty APR, required, and fixed when associated with disclosures required to be presented in a tabular format.

Regulatory Text

(2) **Terminology.**

(i) Terminology used in providing the disclosures required by this subpart shall be consistent.

(ii) For home-equity plans subject to §1026.40, the terms *finance charge* and *annual percentage rate,* when required to be disclosed with a corresponding amount or percentage rate, shall be more conspicuous than any other required disclosure. The terms need not be more conspicuous when used for periodic statement disclosures under §1026.7(a)(4) and for advertisements under §1026.16.

(iii) If disclosures are required to be presented in a tabular format pursuant to paragraph (a)(3) of this section, the term *penalty APR* shall be used, as applicable. The term *penalty APR* need not be used in reference to the annual percentage rate that applies with the loss of a promotional rate, assuming the annual percentage rate that applies is not greater than the annual percentage rate that would have applied at the end of the promotional period; or if the annual percentage rate that applies with the loss of a promotional rate is a variable rate, the annual percentage rate is calculated using the same index and margin as would have been used to calculate the annual percentage rate that would have applied at the end of the promotional period. If credit insurance or debt cancellation or debt suspension coverage is required as part of the plan, the term *required* shall be used and the program shall be identified by its name. If an annual percentage rate is required to be presented in a tabular format pursuant to paragraph (a)(3)(i) or (a)(3)(iii) of this section, the term *fixed,* or a similar term, may not be used to describe such rate unless the creditor 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

5(a)(2) Terminology

1. ***When disclosures must be more conspicuous****. For home-equity plans subject to §1026.40, the terms finance charge and annual percentage rate, when required to be used with a number, must be disclosed more conspicuously than other required disclosures, except in the cases provided in §1026.5(a)(2)(ii). At the creditor's option, finance charge and annual percentage rate may also be disclosed more conspicuously than the other required disclosures even when the regulation does not so require. The following examples illustrate these rules:*

i. In disclosing the annual percentage rate as required by §1026.6(a)(1)(ii), the term annual percentage rate is subject to the more conspicuous rule.

ii. In disclosing the amount of the finance charge, required by §1026.7(a)(6)(i), the term finance charge is subject to the more conspicuous rule.

iii. Although neither finance charge nor annual percentage rate need be emphasized when used as part of general informational material or in textual descriptions of other terms, emphasis is permissible in such cases. For example, when the terms appear as part of the explanations required under §1026.6(a)(1)(iii) and (a)(1)(iv), they may be equally conspicuous as the disclosures required under §§1026.6(a)(1)(ii) and 1026.7(a)(7).

2. ***Making disclosures more conspicuous.*** *In disclosing the terms finance charge and annual percentage rate more conspicuously for home-equity plans subject to §1026.40, only the words finance charge and annual percentage rate should be accentuated. For example, if the term total finance charge is used, only finance charge should be emphasized. The disclosures may be made more conspicuous by, for example:*

   i. Capitalizing the words when other disclosures are printed in lower case.

   ii. Putting them in bold print or a contrasting color.

   iii. Underlining them.

   iv. Setting them off with asterisks.

   v. Printing them in larger type.

3. ***Disclosure of figures - exception to more conspicuous rule.*** *For home-equity plans subject to §1026.40, the terms annual percentage rate and finance charge need not be more conspicuous than figures (including, for example, numbers, percentages, and dollar signs).*

4. ***Consistent terminology.*** *Language used in disclosures required in this subpart must be close enough in meaning to enable the consumer to relate the different disclosures; however, the language need not be identical.*

Specific Formats - 12 C.F.R § 1026.5(a)(3)

Regulatory Discussion

This section describes the specific format requirements and includes eight topics. There is no commentary. Further information is provided in the respective sections associated with these eight topics.

Regulatory Text

(3) **Specific formats.**

(i) Omitted - credit and charge cards.

(ii) Certain disclosures for home-equity plans must precede other disclosures and must be given in accordance with the requirements of §1026.40(a).

(iii) Certain account-opening disclosures must be provided in a tabular format in accordance with the requirements of §1026.6(b)(1).

(iv) Certain disclosures provided on periodic statements must be grouped together in accordance with the requirements of §1026.7(b)(6) and (b)(13).

(v) Certain disclosures provided on periodic statements must be given in accordance with the requirements of §1026.7(b)(12).

(vi) Omitted - credit cards.

(vii) Certain disclosures provided in a change-in-terms notice must be provided in a tabular format in accordance with the requirements of §1026.9(c)(2)(iv)(D).

(viii) Certain disclosures provided when a rate is increased due to delinquency, default or as a penalty must be provided in a tabular format in accordance with the requirements of §1026.9(g)(3)(ii).

Regulatory Commentary

None.

Section 2: Time of Disclosures
12 C.F.R. § 1026.5(b)

Account Opening Disclosures - 12 C.F.R § 1026.5(b)(1)

Regulatory Discussion

This section describes the time of disclosure requirements for open-credit credit; beginning with *account-opening disclosures*. There are five categories:

- General rules
- Charges imposed as part of an open-end (not home-secured) plan
- Telephone purchases
- Membership fees
- Application fees

Regulatory Text

(b) **Time of disclosures**

(1) **Account-opening disclosures**

(i) **General rule.** The creditor shall furnish account-opening disclosures required by §1026.6 before the first transaction is made under the plan.

(ii) **Charges imposed as part of an open-end (not home-secured) plan.** Omitted.

(iii) **Telephone purchases.** Disclosures required by §1026.6 may be provided as soon as reasonably practicable after the first transaction if:

(A) The first transaction occurs when a consumer contacts a merchant by telephone to purchase goods and at the same time the consumer accepts an offer to finance the purchase by establishing an open-end plan with the merchant or third-party creditor;

(B) The merchant or third-party creditor permits consumers to return any goods financed under the plan and provides consumers with a sufficient time to reject the plan and return the goods free of cost after the merchant or third-party creditor has provided the written disclosures required by §1026.6; and

(C) The consumer's right to reject the plan and return the goods is disclosed to the consumer as a part of the offer to finance the purchase.

(iv) **Membership fees**

(A) **General.** In general, a creditor may not collect any fee before account-opening disclosures are provided. A creditor may collect, or obtain the consumer's agreement to pay, membership fees, including application fees excludable from the finance charge under §1026.4(c)(1), before providing account-opening disclosures if, after receiving the disclosures, the consumer may reject the plan and have no obligation to pay these fees (including application fees) or any other fee or charge. A membership fee for purposes of this paragraph has the same meaning as a fee for the issuance or availability of credit described in §1026.60(b)(2). If the consumer rejects the plan, the creditor must promptly refund the membership fee if it has been paid, or take other action necessary to ensure the consumer is not obligated to pay that fee or any other fee or charge.

(B) **Home-equity plans.** Creditors offering home-equity plans subject to the requirements of §1026.40 are not subject to the requirements of paragraph (b)(1)(iv)(A) of this section.

(v) **Application fees.** A creditor may collect an application fee excludable from the finance charge under §1026.4(c)(1) before providing account-opening disclosures. However, if a consumer rejects the plan after receiving account-opening disclosures, the consumer must have no obligation to pay such an application fee, or if the fee was paid, it must be refunded. *See* §1026.5(b)(1)(iv)(A).

Regulatory Commentary

5(b) Time of Disclosures

5(b)(1) Account-Opening Disclosures

5(b)(1)(i) General Rule

1. ***Disclosure before the first transaction.*** *When disclosures must be furnished "before the first transaction," account-opening disclosures must be delivered before the consumer becomes obligated on the plan. Examples include:*

i. ***Purchases.*** *The consumer makes the first purchase, such as when a consumer opens a credit plan and makes purchases contemporaneously at a retail store, except when the consumer places a telephone call to make the purchase and opens the plan contemporaneously. (See commentary to §1026.5(b)(1)(iii) below.)*

ii. ***Advances****. The consumer receives the first advance. If the consumer receives a cash advance check at the same time the account-opening disclosures are provided, disclosures are still timely if the consumer can, after receiving the disclosures, return the cash advance check to the creditor without obligation (for example, without paying finance charges).*

2. ***Reactivation of suspended account.*** *If an account is temporarily suspended (for example, because the consumer has exceeded a credit limit, or because a credit card is reported lost or stolen) and then is reactivated, no new account-opening disclosures are required.*

3. ***Reopening closed account.*** *If an account has been closed (for example, due to inactivity, cancellation, or expiration) and then is reopened, new account-opening disclosures are* *required. No new account-opening disclosures are required, however, when the account is closed merely to assign it a new number (for example, when a credit card is reported lost or stolen) and the "new" account then continues on the same terms.*

4. ***Converting closed-end to open-end credit.*** *If a closed-end credit transaction is converted to an open-end credit account under a written agreement with the consumer, account-opening disclosures under §1026.6 must be given before the consumer becomes obligated on the open-end credit plan. (See the commentary to §1026.17 on converting open-end credit to closed-end credit.)*

5. ***Balance transfers.*** *A creditor that solicits the transfer by a consumer of outstanding balances from an existing account to a new open-end plan must furnish the disclosures required by §1026.6 so that the consumer has an opportunity, after receiving the disclosures, to contact the creditor before the balance is transferred and decline the transfer. For example, assume a consumer responds to a card issuer's solicitation for a credit card account subject to §1026.60 that offers a range of balance transfer annual percentage rates, based on the consumer's creditworthiness. If the creditor opens an account for the consumer, the creditor would comply with the timing rules of this section by providing the consumer with the annual percentage rate (along with the fees and other required disclosures) that would apply to the balance transfer in time for the consumer to contact the creditor and withdraw the request. A creditor that permits consumers to withdraw the request by telephone has met this timing standard if the creditor does not effect the balance transfer until 10 days after the creditor has sent account-opening disclosures to the consumer, assuming the consumer has not contacted the creditor to withdraw the request. Card issuers that are subject to the requirements of §1026.60 may establish procedures that comply with both §§1026.60 and 1026.6 in a single disclosure statement.*

6. ***Substitution or replacement of credit card accounts.***

   i. ***Generally.*** *When a card issuer substitutes or replaces an existing credit card account with another credit card account, the card issuer must either provide notice of the terms of the new account consistent with §1026.6(b) or provide notice of the changes in the terms of the existing account consistent with §1026.9(c)(2). Whether a substitution or replacement results in the opening of a new account or a change in the terms of an existing account for purposes of the disclosure requirements in §§1026.6(b) and 1026.9(c)(2) is determined in light of all the relevant facts and circumstances. For additional requirements and limitations related to the substitution or replacement of credit card accounts, see §§1026.12(a) and 1026.55(d) and comments 12(a)(1)-1 through -8, 12(a)(2)-1 through -9, 55(b)(3)-3, and 55(d)-1 through -3.*

   ii. ***Relevant facts and circumstances.*** *Listed below are facts and circumstances that are relevant to whether a substitution or replacement results in the opening of a new account or a change in the terms of an existing account for purposes of the disclosure requirements in §§1026.6(b) and 1026.9(c)(2). When most of the facts and circumstances listed below are present, the substitution or replacement likely constitutes the opening of a new account for which §1026.6(b) disclosures are appropriate. When few of the facts and circumstances listed below are present, the substitution or replacement likely constitutes a change in the terms of an existing account for which §1026.9(c)(2) disclosures are appropriate.*

A. Whether the card issuer provides the consumer with a new credit card;

B. Whether the card issuer provides the consumer with a new account number;

C. Whether the account provides new features or benefits after the substitution or replacement (such as rewards on purchases);

D. Whether the account can be used to conduct transactions at a greater or lesser number of merchants after the substitution or replacement (such as when a retail card is replaced with a cobranded general purpose credit card that can be used at a wider number of merchants);

E. Whether the card issuer implemented the substitution or replacement on an individualized basis (such as in response to a consumer's request); and

F. Whether the account becomes a different type of open-end plan after the substitution or replacement (such as when a charge card is replaced by a credit card).

iii. ***Replacement as a result of theft or unauthorized use.*** *Notwithstanding paragraphs i and ii above, a card issuer that replaces a credit card or provides a new account number because the consumer has reported the card stolen or because the account appears to have been used for unauthorized transactions is not required to provide a notice under §§1026.6(b) or 1026.9(c)(2) unless the card issuer has changed a term of the account that is subject to §§1026.6(b) or 1026.9(c)(2).*

5(b)(1)(ii) Charges Imposed as Part of an Open-End (Not Home-Secured) Plan

1. ***Disclosing charges before the fee is imposed.*** *Creditors may disclose charges imposed as part of an open-end (not home-secured) plan orally or in writing at any time before a consumer agrees to pay the fee or becomes obligated for the charge, unless the charge is specified under §1026.6(b)(2). (Charges imposed as part of an open-end (not home-secured plan) that are not specified under §1026.6(b)(2) may alternatively be disclosed in electronic form; see the commentary to §1026.5(a)(1)(ii)(A).) Creditors must provide such disclosures at a time and in a manner that a consumer would be likely to notice them. For example, if a consumer telephones a card issuer to discuss a particular service, a creditor would meet the standard if the creditor clearly and conspicuously discloses the fee associated with the service that is the topic of the telephone call orally to the consumer. Similarly, a creditor providing marketing materials in writing to a consumer about a particular service would meet the standard if the creditor provided a clear and conspicuous written disclosure of the fee for that service in those same materials. A creditor that provides written materials to a consumer about a particular service but provides a fee disclosure for another service not promoted in such materials would not meet the standard. For example, if a creditor provided marketing materials promoting payment by Internet, but included the fee for a replacement card on such materials with no explanation, the creditor would not be disclosing the fee at a time and in a manner that the consumer would be likely to notice the fee.*

5(b)(1)(iii) Telephone Purchases

1. ***Return policies.*** *In order for creditors to provide disclosures in accordance with the timing* *requirements of this paragraph, consumers must be permitted to return merchandise purchased at the time the plan was established without paying mailing or return-shipment costs. Creditors may impose costs to return subsequent purchases of merchandise under the plan, or to return merchandise purchased by other means such as a credit card issued by another creditor. A reasonable return policy would be of sufficient duration that the consumer is likely to have received the disclosures and had sufficient time to make a decision about the financing plan before his or her right to return the goods expires. Return policies need not provide a right to return goods if the consumer consumes or damages the goods, or for installed appliances or fixtures, provided there is a reasonable repair or replacement policy to cover defective goods or installations. If the consumer chooses to reject the financing plan, creditors comply with the requirements of this paragraph by permitting the consumer to pay for the goods with another reasonable form of payment acceptable to the merchant and keep the goods although the creditor cannot require the consumer to do so.*

5(b)(1)(iv) Membership Fees

1. ***Membership fees.*** *See §1026.60(b)(2) and related commentary for guidance on fees for issuance or availability of a credit or charge card.*

2. ***Rejecting the plan.*** *If a consumer has paid or promised to pay a membership fee including an application fee excludable from the finance charge under §1026.4(c)(1) before receiving account-opening disclosures, the consumer may, after receiving the disclosures, reject the plan and not be obligated for the membership fee, application fee, or any other fee or charge. A consumer who has received the disclosures and uses the account, or makes a payment on the account after receiving a billing statement, is deemed not to have rejected the plan.*

3. ***Using the account.*** *A consumer uses an account by obtaining an extension of credit after receiving the account-opening disclosures, such as by making a purchase or obtaining an advance. A consumer does not "use" the account by activating the account. A consumer also does not "use" the account when the creditor assesses fees on the account (such as start-up fees or fees associated with credit insurance or debt cancellation or suspension programs agreed to as a part of the application and before the consumer receives account-opening disclosures). For example, the consumer does not "use" the account when a creditor sends a billing statement with start-up fees, there is no other activity on the account, the consumer does not pay the fees, and the creditor subsequently assesses a late fee or interest on the unpaid fee balances. A consumer also does not "use" the account by paying an application fee excludable from the finance charge under §1026.4(c)(1) prior to receiving the account-opening disclosures.*

4. ***Home-equity plans.*** *Creditors offering home-equity plans subject to the requirements of §1026.40 are subject to the requirements of §1026.40(h) regarding the collection of fees.*

Periodic Statements - 12 C.F.R § 1026.5(b)(2)

Regulatory Discussion

This section continues to describe the <u>time of disclosure</u> requirements for general <u>open-credit credit;</u> the second item is *periodic statements*. There are two categories:

- Statement required
- Timing requirements, further categorized as:
  - Credit card accounts under an open-end (not home-secured) consumer credit plan
  - Open-end consumer credit plans

Regulatory Text

(2) **Periodic statements**

(i) **Statement required.** The creditor shall mail or deliver a periodic statement as required by §1026.7 for each billing cycle at the end of which an account has a debit or credit balance of more than $1 or on which a finance charge has been imposed. A periodic statement need not be sent for an account if the creditor deems it uncollectible, if delinquency collection proceedings have been instituted, if the creditor has charged off the account in accordance with loan-loss provisions and will not charge any additional fees or interest on the account, or if furnishing the statement would violate Federal law.

(ii) **Timing requirements**

(A) **Credit card accounts under an open-end (not home-secured) consumer credit plan.** Omitted.

(B) **Open-end consumer credit plans.** For accounts under an open-end consumer credit plan, a creditor must adopt reasonable procedures designed to ensure that:

(1) If a grace period applies to the account:

(i) Periodic statements are mailed or delivered at least 21 days prior to the date on which the grace period expires; and

(ii) The creditor does not impose finance charges as a result of the loss of the grace period if a payment that satisfies the terms of the grace period is received by the creditor within 21 days after mailing or delivery of the periodic statement.

(2) Regardless of whether a grace period applies to the account:

(i) Periodic statements are mailed or delivered at least 14 days prior to the date on which the required minimum periodic payment must be received in order to avoid being treated as late for any purpose; and

(ii) The creditor does not treat as late for any purpose a required minimum periodic payment received by the creditor within 14 days after mailing or delivery of the periodic statement.

(3) For purposes of paragraph (b)(2)(ii)(B) of this section, "grace period" means a period within which any credit extended may be repaid without incurring a finance charge due to a periodic interest rate.

Regulatory Commentary

5(b)(2) Periodic Statements

5(b)(2)(i) Statement Required

1. ***Periodic statements not required.*** *Periodic statements need not be sent in the following cases:*

   i. *If the creditor adjusts an account balance so that at the end of the cycle the balance is less than $1 - so long as no finance charge has been imposed on the account for that cycle.*

   ii. *If a statement was returned as undeliverable. If a new address is provided, however, within a reasonable time before the creditor must send a statement, the creditor must resume sending statements. Receiving the address at least 20 days before the end of a cycle would be a reasonable amount of time to prepare the statement for that cycle. For example, if an address is received 22 days before the end of the June cycle, the creditor must send the periodic statement for the June cycle. (See §1026.13(a)(7).)*

2. ***Termination of draw privileges.*** *When a consumer's ability to draw on an open-end account is terminated without being converted to closed-end credit under a written agreement, the creditor must continue to provide periodic statements to those consumers entitled to receive them under §1026.5(b)(2)(i), for example, when the draw period of an open-end credit plan ends and consumers are paying off outstanding balances according to the account agreement or under the terms of a workout agreement that is not converted to a closed-end transaction. In addition, creditors must continue to follow all of the other open-end credit requirements and procedures in subpart B.*

3. ***Uncollectible accounts.*** *An account is deemed uncollectible for purposes of §1026.5(b)(2)(i) when a creditor has ceased collection efforts, either directly or through a third party.*

4. ***Instituting collection proceedings.*** *Creditors institute a delinquency collection proceeding by filing a court action or initiating an adjudicatory process with a third party. Assigning a debt to a debt collector or other third party would not constitute instituting a collection proceeding.*

5(b)(2)(ii) Timing Requirements

1. ***Mailing or delivery of periodic statements.*** *A creditor is not required to determine the specific date on which a periodic statement is mailed or delivered to an individual consumer for purposes of §1026.5(b)(2)(ii). A creditor complies with §1026.5(b)(2)(ii) if it has adopted reasonable procedures designed to ensure that periodic statements are mailed*

or delivered to consumers no later than a certain number of days after the closing date of the billing cycle and adds that number of days to the 21-day or 14-day period required by §1026.5(b)(2)(ii) when determining, as applicable, the payment due date for purposes of §1026.5(b)(2)(ii)(A), the date on which any grace period expires for purposes of §1026.5(b)(2)(ii)(B)(1), or the date after which the payment will be treated as late for purposes of §1026.5(b)(2)(ii)(B)(2). For example:

A. If a creditor has adopted reasonable procedures designed to ensure that periodic statements for a credit card account under an open-end (not home-secured) consumer credit plan or an account under an open-end consumer credit plan that provides a grace period are mailed or delivered to consumers no later than three days after the closing date of the billing cycle, the payment due date for purposes of §1026.5(b)(2)(ii)(A) and the date on which any grace period expires for purposes of §1026.5(b)(2)(ii)(B)(1) must be no less than 24 days after the closing date of the billing cycle. Similarly, in these circumstances, the limitations in §1026.5(b)(2)(ii)(A) and (b)(2)(ii)(B)(1) on treating a payment as late and imposing finance charges apply for 24 days after the closing date of the billing cycle.

B. If a creditor has adopted reasonable procedures designed to ensure that periodic statements for an account under an open-end consumer credit plan that does not provide a grace period are mailed or delivered to consumers no later than five days after the closing date of the billing cycle, the date on which a payment must be received in order to avoid being treated as late for purposes of §1026.5(b)(2)(ii)(B)(2) must be no less than 19 days after the closing date of the billing cycle. Similarly, in these circumstances, the limitation in §1026.5(b)(2)(ii)(B)(2) on treating a payment as late for any purpose applies for 19 days after the closing date of the billing cycle.

*2. **Treating a payment as late for any purpose.** Treating a payment as late for any purpose includes increasing the annual percentage rate as a penalty, reporting the consumer as delinquent to a credit reporting agency, assessing a late fee or any other fee, initiating collection activities, or terminating benefits (such as rewards on purchases) based on the consumer's failure to make a payment within a specified amount of time or by a specified date. The prohibitions in §1026.5(b)(2)(ii)(A)(2) and (b)(2)(B)(2)(ii) on treating a payment as late for any purpose apply only during the 21-day or 14-day period (as applicable) following mailing or delivery of the periodic statement stating the due date for that payment and only if the required minimum periodic payment is received within that period. For example:*

i. Assume that, for a credit card account under an open-end (not home-secured) consumer credit plan, a periodic statement mailed on April 4 states that a required minimum periodic payment of $50 is due on April 25. If the card issuer does not receive any payment on or before April 25, §1026.5(b)(2)(ii)(A)(2) does not prohibit the card issuer from treating the required minimum periodic payment as late.

ii. Same facts as in paragraph i above. On April 20, the card issuer receives a payment of $30 and no additional payment is received on or before April 25. Section 1026.5(b)(2)(ii)(A)(2) does not prohibit the card issuer from treating the required minimum periodic payment as late.

iii. Same facts as in paragraph i above. On May 4, the card issuer has not received the $50 *required minimum periodic payment that was due on April 25. The periodic statement mailed on May 4 states that a required minimum periodic payment of $150 is due on May 25. Section 1026.5(b)(2)(ii)(A)(2) does not permit the card issuer to treat the $150 required minimum periodic payment as late until April 26. However, the card issuer may continue to treat the $50 required minimum periodic payment as late during this period.*

iv. *Assume that, for an account under an open-end consumer credit plan that does not provide a grace period, a periodic statement mailed on September 10 states that a required minimum periodic payment of $100 is due on September 24. If the creditor does not receive any payment on or before September 24, §1026.5(b)(2)(ii)(B)(2)(ii) does not prohibit the creditor from treating the required minimum periodic payment as late.*

3. ***Grace periods.***

i. ***Definition of grace period.*** *For purposes of §1026.5(b)(2)(ii)(B), "grace period" means a period within which any credit extended may be repaid without incurring a finance charge due to a periodic interest rate. A deferred interest or similar promotional program under which the consumer is not obligated to pay interest that accrues on a balance if that balance is paid in full prior to the expiration of a specified period of time is not a grace period for purposes of §1026.5(b)(2)(ii)(B). Similarly, a period following the payment due date during which a late payment fee will not be imposed is not a grace period for purposes of §1026.5(b)(2)(ii)(B). See comments 7(b)(11)-1, 7(b)(11)-2, and 54(a)(1)-2.*

ii. ***Applicability of §1026.5(b)(2)(ii)(B)(1).*** *Section 1026.5(b)(2)(ii)(B)(1) applies if an account is eligible for a grace period when the periodic statement is mailed or delivered. Section 1026.5(b)(2)(ii)(B)(1) does not require the creditor to provide a grace period or prohibit the creditor from placing limitations and conditions on a grace period to the extent consistent with §1026.5(b)(2)(ii)(B) and §1026.54. See comment 54(a)(1)-1. Furthermore, the prohibition in §1026.5(b)(2)(ii)(B)(1)(ii) applies only during the 21-day period following mailing or delivery of the periodic statement and applies only when the creditor receives a payment within that 21-day period that satisfies the terms of the grace period.*

iii. ***Example.*** *Assume that the billing cycles for an account begin on the first day of the month and end on the last day of the month and that the payment due date for the account is the twenty-fifth of the month. Assume also that, under the terms of the account, the balance at the end of a billing cycle must be paid in full by the following payment due date in order for the account to remain eligible for the grace period. At the end of the April billing cycle, the balance on the account is $500. The grace period applies to the $500 balance because the balance for the March billing cycle was paid in full on April 25. Accordingly, §1026.5(b)(2)(ii)(B)(1)(i) requires the creditor to have reasonable procedures designed to ensure that the periodic statement reflecting the $500 balance is mailed or delivered on or before May 4. Furthermore, §1026.5(b)(2)(ii)(B)(1)(ii) requires the creditor to have reasonable procedures designed to ensure that the creditor does not impose finance charges as a result of the loss of the grace period if a $500 payment is received on or before May 25. However, if the creditor receives a payment of $300 on April 25, §1026.5(b)(2)(ii)(B)(1)(ii) would not prohibit the creditor from imposing finance charges as a result of the loss of the grace period (to* *the extent permitted by §1026.54).*

4. ***Application of §1026.5(b)(2)(ii) to charge card and charged-off accounts.***

   i. ***Charge card accounts.*** *Omitted.*

   ii. ***Charged-off accounts.*** *For purposes of §1026.5(b)(2)(ii)(A)(1), the payment due date for a credit card account under an open-end (not home-secured) consumer credit plan is the date the card issuer is required to disclose on the periodic statement pursuant to §1026.7(b)(11)(i)(A). Because §1026.7(b)(11)(ii) provides that §1026.7(b)(11)(i) does not apply to periodic statements provided for charged-off accounts where full payment of the entire account balance is due immediately, §1026.5(b)(2)(ii)(A)(1) also does not apply to the mailing or delivery of periodic statements provided solely for such accounts. Furthermore, although §1026.5(b)(2)(ii)(A)(2) requires the card issuer to have reasonable procedures designed to ensure that a payment is not treated as late for any purpose during the 21-day period following mailing or delivery of the statement, §1026.5(b)(2)(ii)(A)(2) does not prohibit a card issuer from continuing to treat prior payments as late during that period. See comment 5(b)(2)(ii)-2. Similarly, although §1026.5(b)(2)(ii)(B)(2) applies to open-end consumer credit accounts in these circumstances, §1026.5(b)(2)(ii)(B)(2)(ii) does not prohibit a creditor from continuing treating prior payments as late during the 14-day period following mailing or delivery of a periodic statement. Section 1026.5(b)(2)(ii)(B)(1) does not apply to charged-off accounts where full payment of the entire account balance is due immediately because such accounts do not provide a grace period.*

5. ***Consumer request to pick up periodic statements.*** *When a consumer initiates a request, the creditor may permit, but may not require, the consumer to pick up periodic statements. If the consumer wishes to pick up a statement, the statement must be made available in accordance with §1026.5(b)(2)(ii).*

6. ***Deferred interest and similar promotional programs.*** *See comment 7(b)-1.iv.*

Application and Solicitation Disclosures - 12 C.F.R § 1026.5(b)(3)

Regulatory Discussion

This section continues to describe the time of disclosure requirements for open-credit credit; the third item is *credit and charge card application and solicitations*. There is no commentary. It is omitted here.

Home Equity Plans - 12 C.F.R § 1026.5(b)(4)

Regulatory Discussion

This section concludes the description of the time of disclosure requirements for open-end credit; the fourth item is ***home-equity plans.*** There is no commentary. Further information is provided in the respective section.

Regulatory Text

(4) **Home-equity plans.** Disclosures for home-equity plans shall be made in accordance with the timing requirements of §1026.40(b).

Regulatory Commentary

None.

Section 3: Basis of Disclosures and Use of Estimates

12 C.F.R. § 1026.5(c)

Basis of Disclosures and Use of Estimates - 12 C.F.R § 1026.5(c)

Regulatory Discussion

This section describes the <u>basis of disclosures and use of estimates</u> for <u>open-credit credit</u>. The commentary includes discussion of the legal obligation and rules for providing estimates.

Regulatory Text

(c) **Basis of disclosures and use of estimates.** Disclosures shall reflect the terms of the legal obligation between the parties. If any information necessary for accurate disclosure is unknown to the creditor, it shall make the disclosure based on the best information reasonably available and shall state clearly that the disclosure is an estimate.

Regulatory Commentary

5(c) Basis of Disclosures and Use of Estimates

*1. **Legal obligation.** The disclosures should reflect the credit terms to which the parties are legally bound at the time of giving the disclosures.*

i. The legal obligation is determined by applicable state or other law.

ii. The fact that a term or contract may later be deemed unenforceable by a court on the basis of equity or other grounds does not, by itself, mean that disclosures based on that term or contract did not reflect the legal obligation.

iii. The legal obligation normally is presumed to be contained in the contract that evidences the agreement. But this may be rebutted if another agreement between the parties legally modifies that contract.

*2. **Estimates - obtaining information.** Disclosures may be estimated when the exact information is unknown at the time disclosures are made. Information is unknown if it is not reasonably available to the creditor at the time disclosures are made. The reasonably available standard requires that the creditor, acting in good faith, exercise due diligence in obtaining information. In using estimates, the creditor is not required to disclose the basis for the estimated figures, but may include such explanations as additional information. The creditor normally may rely on the representations of other parties in obtaining information. For example, the creditor might look to insurance companies for the cost of insurance.*

3. ***Estimates - redisclosure.*** *If the creditor makes estimated disclosures, redisclosure is not required for that consumer, even though more accurate information becomes available before the first transaction. For example, in an open-end plan to be secured by real estate, the creditor may estimate the appraisal fees to be charged; such an estimate might reasonably be based on the prevailing market rates for similar appraisals. If the exact appraisal fee is determinable after the estimate is furnished but before the consumer receives the first advance under the plan, no new disclosure is necessary.*

Section 4: Multiple Creditors / Multiple Consumers

12 C.F.R. § 1026.5(d)

Multiple Creditors / Multiple Consumers - 12 C.F.R. § 1026.5(d)

Regulatory Discussion

This section describes the disclosure requirements when there may be multiple creditors or multiple consumers for open-credit credit.

Regulatory Text

(d) **Multiple creditors; multiple consumers.** If the credit plan involves more than one creditor, only one set of disclosures shall be given, and the creditors shall agree among themselves which creditor must comply with the requirements that this part imposes on any or all of them. If there is more than one consumer, the disclosures may be made to any consumer who is primarily liable on the account. If the right of rescission under §1026.15 is applicable, however, the disclosures required by §§1026.6 and 1026.15(b) shall be made to each consumer having the right to rescind.

Regulatory Commentary

5(d) Multiple Creditors; Multiple Consumers

*1. **Multiple creditors.** Under §1026.5(d):*

i. Creditors must choose which of them will make the disclosures.

ii. A single, complete set of disclosures must be provided, rather than partial disclosures from several creditors.

iii. All disclosures for the open-end credit plan must be given, even if the disclosing creditor would not otherwise have been obligated to make a particular disclosure.

*2. **Multiple consumers.** Disclosures may be made to either obligor on a joint account. Disclosure responsibilities are not satisfied by giving disclosures to only a surety or guarantor for a principal obligor or to an authorized user. In rescindable transactions, however, separate disclosures must be given to each consumer who has the right to rescind under §1026.15.*

*3. **Card issuer and person extending credit not the same person.** Section 127(c)(4)(D) of the Truth in Lending Act (15 U.S.C. 1637(c)(4)(D)) contains rules pertaining to charge* *card issuers with plans that allow access to an open-end credit plan that is maintained by a person other than the charge card issuer. These rules are not implemented in Regulation Z (although they were formerly implemented in §1026.60(f)). However, the statutory provisions remain in effect and may be used by charge card issuers with plans meeting the specified criteria.*

Section 5: Effect of Subsequent Events
12 C.F.R. § 1026.5(e)

Effect of Subsequent Events - 12 C.F.R. § 1026.5(e)

Regulatory Discussion

This section describes the requirements for re-disclosure for open-credit credit in the event a disclosure becomes inaccurate.

Regulatory Text

(e) **Effect of subsequent events.** If a disclosure becomes inaccurate because of an event that occurs after the creditor mails or delivers the disclosures, the resulting inaccuracy is not a violation of this part, although new disclosures may be required under §1026.9(c).

Regulatory Commentary

5(e) Effect of Subsequent Events

*1. **Events causing inaccuracies**. Inaccuracies in disclosures are not violations if attributable to events occurring after disclosures are made. For example, when the consumer fails to fulfill a prior commitment to keep the collateral insured and the creditor then provides the coverage and charges the consumer for it, such a change does not make the original disclosures inaccurate. The creditor may, however, be required to provide a new disclosure(s) under §1026.9(c).*

*2. **Use of inserts.** When changes in a creditor's plan affect required disclosures, the creditor may use inserts with outdated disclosure forms. Any insert:*

i. Should clearly refer to the disclosure provision it replaces.

ii. Need not be physically attached or affixed to the basic disclosure statement.

iii. May be used only until the supply of outdated forms is exhausted.

HELOC Account Opening Disclosures

Section 1: Rules Affecting Home Equity Plans
12 C.F.R. § 1026.6(a)

Rules Affecting Home Equity Plans - 12 CFR § 1026.6(a)

Regulatory Discussion

The requirements of this document apply only to <u>open-end</u> home-equity plans (i.e., HELOCs).

Regulatory Text

(a) **Rules affecting home-equity plans.** The requirements of this paragraph (a) apply only to home-equity plans subject to the requirements of §1026.40. A creditor shall disclose the items in this section, to the extent applicable:

Regulatory Commentary

None.

Finance Charge - 12 CFR § 1026.6(a)(1)

Regulatory Discussion

This section requires the account-opening disclosures explain the circumstances under which a finance charge will be imposed on a HELOC. The commentary provides the following additional information:

- When finance charges accrue; Grace periods
- Range of balances; Variable-rate disclosures – coverage; Variable-rate plan - rate(s) in effect; Variable-rate plan - additional disclosures required; Variable-rate plan – index; Variable-rate plan - circumstances for increase; Variable-rate plan - limitations on increase; Variable-rate plan - effects of increase; Variable-rate plan - change-in-terms notice not required; Discounted variable-rate plans; Increased penalty rates

In addition, account-opening disclosures must also provide an explanation of how the finance charge, on a HELOC, will be determined. The commentary provides the following additional information:

- Explanation of balance computation method; Allocation of payments
- Finance charges

Regulatory Text

(1) **Finance charge.** The circumstances under which a finance charge will be imposed and an explanation of how it will be determined, as follows:

(i) A statement of when finance charges begin to accrue, including an explanation of whether or not any time period exists within which any credit extended may be repaid without incurring a finance charge. If such a time period is provided, a creditor may, at its option and without disclosure, impose no finance charge when payment is received after the time period's expiration.

(ii) A disclosure of each periodic rate that may be used to compute the finance charge, the range of balances to which it is applicable, and the corresponding annual percentage rate. If a creditor offers a variable-rate plan, the creditor shall also disclose: The circumstances under which the rate(s) may increase; any limitations on the increase; and the effect(s) of an increase. When different periodic rates apply to different types of transactions, the types of transactions to which the periodic rates shall apply shall also be disclosed. A creditor is not required to adjust the range of balances disclosure to reflect the balance below which only a minimum charge applies.

(iii) An explanation of the method used to determine the balance on which the finance charge may be computed.

(iv) An explanation of how the amount of any finance charge will be determined, including a description of how any finance charge other than the periodic rate will be determined.

Regulatory Commentary

6(a)(1) Finance Charge

Paragraph 6(a)(1)(i)

*1. **When finance charges accrue.** Creditors are not required to disclose a specific date when finance charges will begin to accrue. Creditors may provide a general explanation such as that the consumer has 30 days from the closing date to pay the new balance before finance charges will accrue on the account.*

*2. **Grace periods.** In disclosing whether or not a grace period exists, the creditor need not use "free period," "free-ride period," "grace period" or any other particular descriptive phrase or term. For example, a statement that "the finance charge begins on the date the transaction is posted to your account" adequately discloses that no grace period exists. In the same fashion, a statement that "finance charges will be imposed on any new purchases only if they are not paid in full within 25 days after the close of the billing cycle" indicates that a grace period exists in the interim.*

Paragraph 6(a)(1)(ii)

*1. **Range of balances.** The range of balances disclosure is inapplicable:*

i. If only one periodic rate may be applied to the entire account balance.

ii. If only one periodic rate may be applied to the entire balance for a feature (for example, cash advances), even though the balance for another feature (purchases) may be subject to two rates (a 1.5% monthly periodic rate on purchase balances of $0-$500, and a 1% monthly periodic rate for balances above $500). In this example, the creditor must give a range of balances disclosure for the purchase feature.

*2. **Variable-rate disclosures - coverage.***

*i. **Examples.** This section covers open-end credit plans under which rate changes are specifically set forth in the account agreement and are tied to an index or formula. A creditor would use variable-rate disclosures for plans involving rate changes such as the following:*

A. Rate changes that are tied to the rate the creditor pays on its six-month certificates of deposit.

B. Rate changes that are tied to Treasury bill rates.

C. Rate changes that are tied to changes in the creditor's commercial lending rate.

ii. An open-end credit plan in which the employee receives a lower rate contingent upon employment (that is, with the rate to be increased upon termination of employment) is not a variable-rate plan.

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

*4. **Variable-rate plan - additional disclosures required.** In addition to disclosing the rates in effect at the time of the account-opening disclosures, the disclosures under §1026.6(a)(1)(ii) also must be made.*

*5. **Variable-rate plan - index.** The index to be used must be clearly identified; the creditor need not give, however, an explanation of how the index is determined or provide instructions for obtaining it.*

*6. **Variable-rate plan - circumstances for increase**.*

i. Circumstances under which the rate(s) may increase include, for example:

A. An increase in the Treasury bill rate.

B. An increase in the Federal Reserve discount rate.

ii. The creditor must disclose when the increase will take effect; for example:

A. "An increase will take effect on the day that the Treasury bill rate increases," or

B. "An increase in the Federal Reserve discount rate will take effect on the first day of the creditor's billing cycle."

7. ***Variable-rate plan - limitations on increase.*** *In disclosing any limitations on rate increases, limitations such as the maximum increase per year or the maximum increase over the duration of the plan must be disclosed. When there are no limitations, the creditor may, but need not, disclose that fact. (A maximum interest rate must be included in dwelling-secured open-end credit plans under which the interest rate may be changed. See §1026.30 and the commentary to that section.) Legal limits such as usury or rate ceilings under state or Federal statutes or regulations need not be disclosed. Examples of limitations that must be disclosed include:*

   i. "The rate on the plan will not exceed 25% annual percentage rate."

   ii. "Not more than ½ percent increase in the annual percentage rate per year will occur."

8. ***Variable-rate plan - effects of increase.*** *Examples of effects of rate increases that must be disclosed include:*

   i. Any requirement for additional collateral if the annual percentage rate increases beyond a specified rate.

   ii. Any increase in the scheduled minimum periodic payment amount.

9. ***Variable-rate plan - change-in-terms notice not required.*** *No notice of a change in terms is required for a rate increase under a variable-rate plan as defined in comment 6(a)(1)(ii)-2.*

10. ***Discounted variable-rate plans.*** *In some variable-rate plans, creditors may set an initial interest rate that is not determined by the index or formula used to make later interest rate adjustments. Typically, this initial rate is lower than the rate would be if it were calculated using the index or formula.*

   i. For example, a creditor may calculate interest rates according to a formula using the six-month Treasury bill rate plus a 2 percent margin. If the current Treasury bill rate is 10 percent, the creditor may forgo the 2 percent spread and charge only 10 percent for a limited time, instead of setting an initial rate of 12 percent, or the creditor may disregard the index or formula and set the initial rate at 9 percent.

   ii. When creditors use an initial rate that is not calculated using the index or formula for later rate adjustments, the account-opening disclosure statement should reflect:

      A. The initial rate (expressed as a periodic rate and a corresponding annual percentage rate), together with a statement of how long the initial rate will remain in effect;

      B. The current rate that would have been applied using the index or formula (also expressed as a periodic rate and a corresponding annual percentage rate); and

      C. The other variable-rate information required in §1026.6(a)(1)(ii).

   iii. In disclosing the current periodic and annual percentage rates that would be applied *using the index or formula, the creditor may use any of the disclosure options described in comment 6(a)(1)(ii)-3.*

11. ***Increased penalty rates.*** *If the initial rate may increase upon the occurrence of one or more specific events, such as a late payment or an extension of credit that exceeds the credit limit, the creditor must disclose the initial rate and the increased penalty rate that may apply. If the penalty rate is based on an index and an increased margin, the issuer must disclose the index and the margin. The creditor must also disclose the specific event or events that may result in the increased rate, such as "22% APR, if 60 days late." If the penalty rate cannot be determined at the time disclosures are given, the creditor must provide an explanation of the specific event or events that may result in the increased rate. At the creditor's option, the creditor may disclose the period for which the increased rate will remain in effect, such as "until you make three timely payments." The creditor need not disclose an increased rate that is imposed when credit privileges are permanently terminated.*

Paragraph 6(a)(1)(iii)

1. ***Explanation of balance computation method.*** *A shorthand phrase such as "previous balance method" does not suffice in explaining the balance computation method. (See Model Clauses G-1 and G-1(A) to part 1026.)*

2. ***Allocation of payments.*** *Creditors may, but need not, explain how payments and other credits are allocated to outstanding balances. For example, the creditor need not disclose that payments are applied to late charges, overdue balances, and finance charges before being applied to the principal balance; or in a multifeatured plan, that payments are applied first to finance charges, then to purchases, and then to cash advances. (See comment 7-1 for definition of multifeatured plan.)*

Paragraph 6(a)(1)(iv)

1. ***Finance charges.*** *In addition to disclosing the periodic rate(s) under §1026.6(a)(1)(ii), creditors must disclose any other type of finance charge that may be imposed, such as minimum, fixed, transaction, and activity charges; required insurance; or appraisal or credit report fees (unless excluded from the finance charge under §1026.4(c)(7)). Creditors are not required to disclose the fact that no finance charge is imposed when the outstanding balance is less than a certain amount or the balance below which no finance charge will be imposed.*

Other Charges - 12 CFR § 1026.6(a)(2)

Regulatory Discussion

This section requires the account-opening disclosures include an explanation of any charge other than a finance charge that may be imposed on a HELOC, or an explanation of how the charge will be determined. The commentary provides general examples of items considered "other charges" as well as examples of items that are not "other charges."

Regulatory Text

(2) **Other charges.** 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.

Regulatory Commentary

6(a)(2) Other Charges

*1. **General; examples of other charges.** Under §1026.6(a)(2), significant charges related to the plan (that are not finance charges) must also be disclosed. For example:*

i. Late-payment and over-the-credit-limit charges.

ii. Fees for providing documentary evidence of transactions requested under §1026.13 (billing error resolution).

iii. Charges imposed in connection with residential mortgage transactions or real estate transactions such as title, appraisal, and credit-report fees (see §1026.4(c)(7)).

iv. A tax imposed on the credit transaction by a state or other governmental body, such as a documentary stamp tax on cash advances. (See the commentary to §1026.4(a)).

v. A membership or participation fee for a package of services that includes an open-end credit feature, unless the fee is required whether or not the open-end credit feature is included. For example, a membership fee to join a credit union is not an "other charge," even if membership is required to apply for credit. For example, if the primary benefit of membership in an organization is the opportunity to apply for a credit card, and the other benefits offered (such as a newsletter or a member information hotline) are merely incidental to the credit feature, the membership fee would be disclosed as an "other charge."

vi. Charges imposed for the termination of an open-end credit plan.

*2. **Exclusions.** The following are examples of charges that are not "other charges":*

i. Fees charged for documentary evidence of transactions for income tax purposes.

ii. Amounts payable by a consumer for collection activity after default; attorney's fees, whether or not automatically imposed; foreclosure costs; post-judgment interest rates imposed by law; and reinstatement or reissuance fees.

iii. Premiums for voluntary credit life or disability insurance, or for property insurance, that are not part of the finance charge.

iv. Application fees under §1026.4(c)(1).

v. A monthly service charge for a checking account with overdraft protection that is applied to all checking accounts, whether or not a credit feature is attached.

vi. Charges for submitting as payment a check that is later returned unpaid (See commentary to §1026.4(c)(2)).

vii. Charges imposed on a cardholder by an institution other than the card issuer for the use of the other institution's ATM in a shared or interchange system. (See also comment 7(a)(2)-2.)

viii. Taxes and filing or notary fees excluded from the finance charge under §1026.4(e).

ix. A fee to expedite delivery of a credit card, either at account opening or during the life of the account, provided delivery of the card is also available by standard mail service (or other means at least as fast) without paying a fee for delivery.

x. A fee charged for arranging a single payment on the credit account, upon the consumer's request (regardless of how frequently the consumer requests the service), if the credit plan provides that the consumer may make payments on the account by another reasonable means, such as by standard mail service, without paying a fee to the creditor.

Home Equity Plan Information - 12 CFR § 1026.6(a)(3)

Regulatory Discussion

The account-opening disclosures for a HELOC *must include, as applicable*, up to seven specific items. The commentary provides additional information on the following important topics:

- Additional disclosures required
- Form of disclosures – *in a form the consumer can keep*
- Disclosure of payment and variable-rate examples
- Disclosures for the repayment period

Regulatory Text

(3) **Home-equity plan information.** The following disclosures described in §1026.40(d), as applicable:

(i) A statement of the conditions under which the creditor may take certain action, as described in §1026.40(d)(4)(i), such as terminating the plan or changing the terms.

(ii) The payment information described in §1026.40(d)(5)(i) and (ii) for both the draw period and any repayment period.

(iii) A statement that negative amortization may occur as described in §1026.40(d)(9).

(iv) A statement of any transaction requirements as described in §1026.40(d)(10).

(v) A statement regarding the tax implications as described in §1026.40(d)(11).

(vi) A statement that the annual percentage rate imposed under the plan does not include costs other than interest as described in §1026.40(d)(6) and (d)(12)(ii).

(vii) The variable-rate disclosures described in §1026.40(d)(12)(viii), (d)(12)(x), (d)(12)(xi), and (d)(12)(xii), as well as the disclosure described in §1026.40(d)(5)(iii), unless the disclosures provided with the application were in a form the consumer could keep and included a representative payment example for the category of payment option chosen by the consumer.

Regulatory Commentary

6(a)(3) Home-Equity Plan Information

*1. **Additional disclosures required.** For home-equity plans, creditors must provide several of the disclosures set forth in §1026.40(d) along with the disclosures required under §1026.6. Creditors also must disclose a list of the conditions that permit the creditor to terminate the plan, freeze or reduce the credit limit, and implement specified modifications to the original terms. (See comment 40(d)(4)(iii)-1.)*

*2. **Form of disclosures.** The home-equity disclosures provided under this section must be in a form the consumer can keep, and are governed by §1026.5(a)(1). The segregation standard set forth in §1026.40(a) does not apply to home-equity disclosures provided under §1026.6.*

*3. **Disclosure of payment and variable-rate examples.***

i. The payment-example disclosure in §1026.40(d)(5)(iii) and the variable-rate information in §1026.40(d)(12)(viii), (d)(12)(x), (d)(12)(xi), and (d)(12)(xii) need not be provided with the disclosures under §1026.6 if the disclosures under §1026.40(d) were provided in a form the consumer could keep; and the disclosures of the payment example under §1026.40(d)(5)(iii), the maximum-payment example under §1026.40(d)(12)(x) and the historical table under §1026.40(d)(12)(xi) included a representative payment example for the category of payment options the consumer has chosen.

ii. For example, if a creditor offers three payment options (one for each of the categories described in the commentary to §1026.40(d)(5)), describes all three options in its early disclosures, and provides all of the disclosures in a retainable form, that creditor need not provide the §1026.40(d)(5)(iii) or (d)(12) disclosures again when the account is opened. If the creditor showed only one of the three options in the early disclosures (which would be the case with a separate disclosure form rather than a combined form, as discussed under §1026.40(a)), the disclosures under §1026.40(d)(5)(iii), (d)(12)(viii), (d)(12)(x), (d)(12)(xi) and (d)(12)(xii) must be given to any consumer who chooses one of the other two options. If the §1026.40(d)(5)(iii) and (d)(12) disclosures are provided with the second set of disclosures, they need not be transaction-specific, but may be based on a representative example of the category of payment option chosen.

4. ***Disclosures for the repayment period.*** *The creditor must provide disclosures about both the draw and repayment phases when giving the disclosures under §1026.6. Specifically, the creditor must make the disclosures in §1026.6(a)(3), state the corresponding annual percentage rate, and provide the variable-rate information required in §1026.6(a)(1)(ii) for the repayment phase. To the extent the corresponding annual percentage rate, the information in §1026.6(a)(1)(ii), and any other required disclosures are the same for the draw and repayment phase, the creditor need not repeat such information, as long as it is clear that the information applies to both phases.*

Security Interests - 12 CFR § 1026.6(a)(4)

Regulatory Discussion

The account-opening disclosures for a HELOC *must include* the fact that a security interest will be held in the property purchased, or other property identified by item or type. The commentary provides additional information on the following important topics:

- General information
- Identification of property
- Spreader clause
- Additional collateral
- Collateral from third party

Regulatory Text

(4) **Security interests.** The fact that the creditor has or will acquire a security interest in the property purchased under the plan, or in other property identified by item or type.

Regulatory Commentary

6(a)(4) Security Interests

1. ***General.*** *Creditors are not required to use specific terms to describe a security interest, or to explain the type of security or the creditor's rights with respect to the collateral.*

2. ***Identification of property.*** *Creditors sufficiently identify collateral by type by stating, for example, motor vehicle or household appliances. (Creditors should be aware, however, that the Federal credit practices rules, as well as some state laws, prohibit certain security interests in household goods.) The creditor may, at its option, provide a more specific identification (for example, a model and serial number).*

3. ***Spreader clause.*** *If collateral for preexisting credit with the creditor will secure the plan being opened, the creditor must disclose that fact. (Such security interests may be known as "spreader" or "dragnet" clauses, or as "cross-collateralization" clauses.) The creditor need not specifically identify the collateral; a reminder such as "collateral securing other*

loans with us may also secure this loan" is sufficient. At the creditor's option, a more specific description of the property involved may be given.

4. ***Additional collateral.*** *If collateral is required when advances reach a certain amount, the creditor should disclose the information available at the time of the account-opening disclosures. For example, if the creditor knows that a security interest will be taken in household goods if the consumer's balance exceeds $1,000, the creditor should disclose accordingly. If the creditor knows that security will be required if the consumer's balance exceeds $1,000, but the creditor does not know what security will be required, the creditor must disclose on the initial disclosure statement that security will be required if the balance exceeds $1,000, and the creditor must provide a change-in-terms notice under §1026.9(c) at the time the security is taken. (See comment 6(a)(4)-2.)*

5. ***Collateral from third party.*** *Security interests taken in connection with the plan must be disclosed, whether the collateral is owned by the consumer or a third party.*

Statement of Billing Rights - 12 CFR § 1026.6(a)(5)

Regulatory Discussion

Finally, the account-opening disclosures for a HELOC must include information that outlines certain consumer's rights and the creditor's responsibilities.

Regulatory Text

(5) **Statement of billing rights.** A statement that outlines the consumer's rights and the creditor's responsibilities under §§1026.12(c) and 1026.13 and that is substantially similar to the statement found in Model Form G-3 or, at the creditor's option, G-3(A), in appendix G to this part.

Regulatory Commentary

6(a)(5) Statement of Billing Rights

1. See the commentary to Model Forms G-3, G-3(A), G-4, and G-4(A).

Periodic Statements – HELOCs

Section 1: Rules Affecting HELOCs
12 C.F.R. § 1026.7(a)

Rules Affecting HELOCs - Introduction- 12 CFR § 1026.7(a)

Regulatory Discussion

This initial commentary provides information on open-end plans that may have "multi-features;" such as purchases, cash advances, or overdraft checking. For purposes of periodic statement disclosures, groups of transactions subject to different finance charge terms are treated like different features. Subsequent commentary will provide additional information on this topic.

Regulatory Text

None.

Regulatory Commentary

Section 1026.7 - Periodic Statement

1. ***Multi-featured plans.*** *Some plans involve a number of different features, such as purchases, cash advances, or overdraft checking. Groups of transactions subject to different finance charge terms because of the dates on which the transactions took place are treated like different features for purposes of disclosures on the periodic statements. The commentary includes additional guidance for multi-featured plans.*

Rules Affecting HELOCs - Introduction- 12 CFR § 1026.7(a)

Regulatory Discussion

The requirements of this document ***apply only to periodic statement disclosures for <u>open-end</u> home-equity plans (i.e., HELOCs)***. There are 10 items required to be included on the periodic statement for HELOCs; each item will be discussed individually throughout the remainder of this document.

Regulatory Text - 12 CFR § 1026.7(a)

The creditor shall furnish the consumer with a periodic statement that discloses the following items, to the extent applicable:

(a) Rules affecting home-equity plans. The requirements of paragraph (a) of this section apply only to home-equity plans subject to the requirements of §1026.40. Alternatively, a creditor subject to this paragraph may, at its option, comply with any of the requirements of paragraph (b) of this section; however, any creditor that chooses not to provide a disclosure under paragraph (a)(7) of this section must comply with paragraph (b)(6) of this section.

Regulatory Commentary

None.

Previous Balance - 12 CFR § 1026.7(a)(1)

Regulatory Discussion

The first item to be disclosed is the *previous balance* – the outstanding balance at the beginning of the billing cycle.

The commentary provides additional information on: credit balances; multi-featured plans; and accrued finance charges allocated from payments.

Regulatory Text

(1) **Previous balance.** The account balance outstanding at the beginning of the billing cycle.

Regulatory Commentary

7(a)(1) Previous Balance

1. ***Credit balances.*** *If the previous balance is a credit balance, it must be disclosed in such a way so as to inform the consumer that it is a credit balance, rather than a debit balance.*

2. ***Multifeatured plans.*** *In a multifeatured plan, the previous balance may be disclosed either as an aggregate balance for the account or as separate balances for each feature (for example, a previous balance for purchases and a previous balance for cash advances). If separate balances are disclosed, a total previous balance is optional.*

3. ***Accrued finance charges allocated from payments.*** *Some open-end credit plans provide that the amount of the finance charge that has accrued since the consumer's last payment is directly deducted from each new payment, rather than being separately added*

to each statement and reflected as an increase in the obligation. In such a plan, the previous balance need not reflect finance charges accrued since the last payment.

Identification of Transactions - 12 CFR § 1026.7(a)(2)

Regulatory Discussion

The second item to be disclosed is the *identification of each transaction*.

The commentary provides additional information on: multi-featured plans; and ATM charges imposed by other institutions.

Regulatory Text

(2) **Identification of transactions.** An identification of each credit transaction in accordance with §1026.8.

Regulatory Commentary

7(a)(2) Identification of Transactions

1. ***Multifeatured plans.*** *In identifying transactions under §1026.7(a)(2) for multifeatured plans, creditors may, for example, choose to arrange transactions by feature (such as disclosing sale transactions separately from cash advance transactions) or in some other clear manner, such as by arranging the transactions in general chronological order.*

2. ***Automated teller machine (ATM) charges imposed by other institutions in shared or interchange systems.*** *A charge imposed on the cardholder by an institution other than the card issuer for the use of the other institution's ATM in a shared or interchange system and included by the terminal-operating institution in the amount of the transaction need not be separately disclosed on the periodic statement.*

Credits - 12 CFR § 1026.7(a)(3)

Regulatory Discussion

The third item to be disclosed is *any credit (amount and date) to the account during the billing cycle*. Note: special treatment for providing the date.

The commentary provides additional information on: sufficiency of identification; format; date; and totals.

Regulatory Text

(3) **Credits.** Any credit to the account during the billing cycle, including the amount and the date of crediting. The date need not be provided if a delay in accounting does not result in any finance or other charge.

Regulatory Commentary

7(a)(3) Credits

*1. **Identification - sufficiency.** The creditor need not describe each credit by type (returned merchandise, rebate of finance charge, etc.)—"credit" would suffice—except if the creditor is using the periodic statement to satisfy the billing-error correction notice requirement. (See the commentary to §1026.13(e) and (f).)*

*2. **Format.** A creditor may list credits relating to credit extensions (payments, rebates, etc.) together with other types of credits (such as deposits to a checking account), as long as the entries are identified so as to inform the consumer which type of credit each entry represents.*

*3. **Date.** If only one date is disclosed (that is, the crediting date as required by the regulation), no further identification of that date is necessary. More than one date may be disclosed for a single entry, as long as it is clear which date represents the date on which credit was given.*

*4. **Totals.** A total of amounts credited during the billing cycle is not required.*

Periodic Rates - 12 CFR § 1026.7(a)(4)

Regulatory Discussion

The fourth item to be disclosed is <u>each</u> *periodic rate* that may be used to compute the:

- finance charge;
- range of balances to which it is applicable; and
- the corresponding APR

Note: special requirements if:

- no finance charge is imposed if the outstanding balance is less than a certain amount;
- different periodic rates apply to different types of transactions;
- the plan is a variable-rate plan

Note: exception for promotional APRs

The commentary provides additional information on: whether or not periodic rates are actually applied; disclosure required only if imposition of periodic rate is possible; multiple rates – same transaction; corresponding APR; periodic rate is same as actual APR; and range of balances.

Regulatory Text

(4) **Periodic rates.**

(i) Except as provided in paragraph (a)(4)(ii) of this section, each periodic rate that may be used to compute the finance charge, the range of balances to which it is applicable, and the corresponding annual percentage rate. If no finance charge is imposed when the outstanding balance is less than a certain amount, the creditor is not required to disclose that fact, or the balance below which no finance charge will be imposed. If different periodic rates apply to different types of transactions, the types of transactions to which the periodic rates apply shall also be disclosed. For variable-rate plans, the fact that the periodic rate(s) may vary.

(ii) **Exception.** An annual percentage rate that differs from the rate that would otherwise apply and is offered only for a promotional period need not be disclosed except in periods in which the offered rate is actually applied.

Regulatory Commentary

7(a)(4) Periodic Rates

*1. **Disclosure of periodic rates - whether or not actually applied.** Except as provided in §1026.7(a)(4)(ii), any periodic rate that may be used to compute finance charges (and its corresponding annual percentage rate) must be disclosed whether or not it is applied during the billing cycle. For example:*

i. If the consumer's account has both a purchase feature and a cash advance feature, the creditor must disclose the rate for each, even if the consumer only makes purchases on the account during the billing cycle.

ii. If the rate varies (such as when it is tied to a particular index), the creditor must disclose each rate in effect during the cycle for which the statement was issued.

*2. **Disclosure of periodic rates required only if imposition possible.** With regard to the periodic rate disclosure (and its corresponding annual percentage rate), only rates that could have been imposed during the billing cycle reflected on the periodic statement need to be disclosed. For example:*

i. If the creditor is changing rates effective during the next billing cycle (because of a variable-rate plan), the rates required to be disclosed under §1026.7(a)(4) are only those in effect during the billing cycle reflected on the periodic statement. For example, if the monthly rate applied during May was 1.5%, but the creditor will increase the rate to 1.8% effective June 1, 1.5% (and its corresponding annual percentage rate) is the only required disclosure under §1026.7(a)(4) for the periodic statement reflecting the May account activity.

ii. If rates applicable to a particular type of transaction changed after a certain date and the old rate is only being applied to transactions that took place prior to that date, the creditor need not continue to disclose the old rate for those consumers that have no outstanding balances to which that rate could be applied.

*3. **Multiple rates - same transaction.** If two or more periodic rates are applied to the same balance for the same type of transaction (for example, if the finance charge consists of a monthly periodic rate of 1.5% applied to the outstanding balance and a required credit life insurance component calculated at 0.1% per month on the same outstanding balance), the creditor may do either of the following:*

i. Disclose each periodic rate, the range of balances to which it is applicable, and the corresponding annual percentage rate for each. (For example, 1.5% monthly, 18% annual percentage rate; 0.1% monthly, 1.2% annual percentage rate.)

ii. Disclose one composite periodic rate (that is, 1.6% per month) along with the applicable range of balances and the corresponding annual percentage rate.

*4. **Corresponding annual percentage rate.** In disclosing the annual percentage rate that corresponds to each periodic rate, the creditor may use "corresponding annual percentage rate," "nominal annual percentage rate," "corresponding nominal annual percentage rate," or similar phrases.*

*5. **Rate same as actual annual percentage rate.** When the corresponding rate is the same as the annual percentage rate disclosed under §1026.7(a)(7), the creditor need disclose only one annual percentage rate, but must use the phrase "annual percentage rate."*

*6. **Range of balances.** See comment 6(a)(1)(ii)-1. A creditor is not required to adjust the range of balances disclosure to reflect the balance below which only a minimum charge applies*

Balance Used for Finance Charge - 12 CFR § 1026.7(a)(5)

Regulatory Discussion

The fifth item to be disclosed is:

- the amount of the balance to which a periodic rate was applied; and
- an explanation of how that balance was determined.

The commentary provides additional information on: limitation to periodic rates; split rates applied to balance ranges; monthly rate on average daily balance; multi-featured plans; daily rate on daily balances; explanation of balance computation method; information to compute balance; non-deduction of credits; and use of one balance computation method explanation when multiple balances disclosed.

Regulatory Text

(5) **Balance on which finance charge computed.** The amount of the balance to which a periodic rate was applied and an explanation of how that balance was determined. When a balance is determined without first deducting all credits and payments made during the billing cycle, the fact and the amount of the credits and payments shall be disclosed.

Regulatory Commentary

7(a)(5) Balance on Which Finance Charge Computed

1. ***Limitation to periodic rates.*** *Section 1026.7(a)(5) only requires disclosure of the balance(s) to which a periodic rate was applied and does not apply to balances on which other kinds of finance charges (such as transaction charges) were imposed. For example, if a consumer obtains a $1,500 cash advance subject to both a 1% transaction fee and a 1% monthly periodic rate, the creditor need only disclose the balance subject to the monthly rate (which might include portions of earlier cash advances not paid off in previous cycles).*

2. ***Split rates applied to balance ranges.*** *If split rates were applied to a balance because different portions of the balance fall within two or more balance ranges, the creditor need not separately disclose the portions of the balance subject to such different rates since the range of balances to which the rates apply has been separately disclosed. For example, a creditor could disclose a balance of $700 for purchases even though a monthly periodic rate of 1.5% applied to the first $500, and a monthly periodic rate of 1% to the remainder. This option to disclose a combined balance does not apply when the finance charge is computed by applying the split rates to each day's balance (in contrast, for example, to applying the rates to the average daily balance). In that case, the balances must be disclosed using any of the options that are available if two or more daily rates are imposed. (See comment 7(a)(5)-5.)*

3. ***Monthly rate on average daily balance.*** *Creditors may apply a monthly periodic rate to an average daily balance.*

4. ***Multifeatured plans.*** *In a multifeatured plan, the creditor must disclose a separate balance (or balances, as applicable) to which a periodic rate was applied for each feature or group of features subject to different periodic rates or different balance computation methods. Separate balances are not required, however, merely because a grace period is available for some features but not others. A total balance for the entire plan is optional. This does not affect how many balances the creditor must disclose—or may disclose—within each feature. (See, for example, comment 7(a)(5)-5.)*

5. ***Daily rate on daily balances.*** *If the finance charge is computed on the balance each day by application of one or more daily periodic rates, the balance on which the finance charge was computed may be disclosed in any of the following ways for each feature:*

i. If a single daily periodic rate is imposed, the balance to which it is applicable may be stated as:

A. A balance for each day in the billing cycle.

B. A balance for each day in the billing cycle on which the balance in the account changes.

C. The sum of the daily balances during the billing cycle.

D. The average daily balance during the billing cycle, in which case the creditor shall explain that the average daily balance is or can be multiplied by the number of days in the billing cycle and the periodic rate applied to the product to determine the amount of the finance charge.

ii. If two or more daily periodic rates may be imposed, the balances to which the rates are applicable may be stated as:

A. A balance for each day in the billing cycle.

B. A balance for each day in the billing cycle on which the balance in the account changes.

C. Two or more average daily balances, each applicable to the daily periodic rates imposed for the time that those rates were in effect, as long as the creditor explains that the finance charge is or may be determined by (1) multiplying each of the average balances by the number of days in the billing cycle (or if the daily rate varied during the cycle, by multiplying by the number of days the applicable rate was in effect), (2) multiplying each of the results by the applicable daily periodic rate, and (3) adding these products together.

6. ***Explanation of balance computation method.*** *See the commentary to 6(a)(1)(iii).*

7. ***Information to compute balance.*** *In connection with disclosing the finance charge balance, the creditor need not give the consumer all of the information necessary to compute the balance if that information is not otherwise required to be disclosed. For example, if current purchases are included from the date they are posted to the account, the posting date need not be disclosed.*

8. ***Non-deduction of credits.*** *The creditor need not specifically identify the total dollar amount of credits not deducted in computing the finance charge balance. Disclosure of the amount of credits not deducted is accomplished by listing the credits (§1026.7(a)(3)) and indicating which credits will not be deducted in determining the balance (for example, "credits after the 15th of the month are not deducted in computing the finance charge.").*

9. ***Use of one balance computation method explanation when multiple balances disclosed.*** *Sometimes the creditor will disclose more than one balance to which a periodic rate was applied, even though each balance was computed using the same balance computation method. For example, if a plan involves purchases and cash advances that are subject to different rates, more than one balance must be disclosed, even though the same computation method is used for determining the balance for each feature. In these cases, one explanation of the balance computation method is sufficient. Sometimes the creditor separately discloses the portions of the balance that are subject to different rates because different portions of the balance fall within two or more balance ranges, even when a combined balance disclosure would be permitted under comment 7(a)(5)-2. In*

these cases, one explanation of the balance computation method is also sufficient (assuming, of course, that all portions of the balance were computed using the same method).

Amount of FC and Other Charges - 12 CFR § 1026.7(a)(6)

Regulatory Discussion

The sixth item to be disclosed is:

- the *amount of any finance charge* – using the term *finance charge* – individually itemized and identified.
- the *amount of any charge other than a finance charge* – itemized and identified by type.

The commentary provides additional information, with respect to:

Finance charges: total; itemization – types of finance charges; itemization – different periodic rates; multi-featured plans; finance charges not added to account; finance charges other than periodic rates; accrued finance charges allocated from payments; and start-up fees

Other charges: identification; date; total; itemization; types of other charges.

Regulatory Text

(6) **Amount of finance charge and other charges.** Creditors may comply with paragraphs (a)(6) of this section, or with paragraph (b)(6) of this section, at their option.

(i) **Finance charges.** The amount of any finance charge debited or added to the account during the billing cycle, using the term *finance charge.* The components of the finance charge shall be individually itemized and identified to show the amount(s) due to the application of any periodic rates and the amounts(s) of any other type of finance charge. If there is more than one periodic rate, the amount of the finance charge attributable to each rate need not be separately itemized and identified.

(ii) **Other charges.** The amounts, itemized and identified by type, of any charges other than finance charges debited to the account during the billing cycle.

Regulatory Commentary

7(a)(6) Amount of Finance Charge and Other Charges

7(a)(6)(i) Finance Charges

1. ***Total.*** *A total finance charge amount for the plan is not required.*

2. ***Itemization - types of finance charges.*** *Each type of finance charge (such as periodic rates, transaction charges, and minimum charges) imposed during the cycle must be separately itemized; for example, disclosure of only a combined finance charge attributable to both a minimum charge and transaction charges would not be permissible. Finance charges of the same type may be disclosed, however, individually or as a total. For example, five transaction charges of $1 may be listed separately or as $5.*

3. ***Itemization - different periodic rates.*** *Whether different periodic rates are applicable to different types of transactions or to different balance ranges, the creditor may give the finance charge attributable to each rate or may give a total finance charge amount. For example, if a creditor charges 1.5% per month on the first $500 of a balance and 1% per month on amounts over $500, the creditor may itemize the two components ($7.50 and $1.00) of the $8.50 charge, or may disclose $8.50.*

4. ***Multifeatured plans.*** *In a multifeatured plan, in disclosing the amount of the finance charge attributable to the application of periodic rates no total periodic rate disclosure for the entire plan need be given.*

5. ***Finance charges not added to account.*** *A finance charge that is not included in the new balance because it is payable to a third party (such as required life insurance) must still be shown on the periodic statement as a finance charge.*

6. ***Finance charges other than periodic rates.*** *See comment 6(a)(1)(iv)-1 for examples.*

7. ***Accrued finance charges allocated from payments.*** *Some plans provide that the amount of the finance charge that has accrued since the consumer's last payment is directly deducted from each new payment, rather than being separately added to each statement and therefore reflected as an increase in the obligation. In such a plan, no disclosure is required of finance charges that have accrued since the last payment.*

8. ***Start-up fees.*** *Points, loan fees, and similar finance charges relating to the opening of the account that are paid prior to the issuance of the first periodic statement need not be disclosed on the periodic statement. If, however, these charges are financed as part of the plan, including charges that are paid out of the first advance, the charges must be disclosed as part of the finance charge on the first periodic statement. However, they need not be factored into the annual percentage rate. (See §1026.14(c)(3).)*

7(a)(6)(ii) Other Charges

1. ***Identification.*** *In identifying any other charges actually imposed during the billing cycle, the type is adequately described as late charge or membership fee, for example. Similarly, closing costs or settlement costs, for example, may be used to describe charges imposed in connection with real estate transactions that are excluded from the finance charge under §1026.4(c)(7), if the same term (such as closing costs) was used in the initial disclosures and if the creditor chose to itemize and individually disclose the costs included in that term. Even though the taxes and filing or notary fees excluded from the finance charge under §1026.4(e) are not required to be disclosed as other charges under §1026.6(a)(2), these charges may be included in the amount shown as closing costs or settlement costs on the periodic statement, if the charges were itemized and disclosed as part of the closing*

costs or settlement costs on the initial disclosure statement. (See comment 6(a)(2)-1 for examples of other charges.)

*2. **Date.** The date of imposing or debiting other charges need not be disclosed.*

*3. **Total.** Disclosure of the total amount of other charges is optional.*

*4. **Itemization - types of other charges.** Each type of other charge (such as late-payment charges, over-the-credit-limit charges, and membership fees) imposed during the cycle must be separately itemized; for example, disclosure of only a total of other charges attributable to both an over-the-credit-limit charge and a late-payment charge would not be permissible. Other charges of the same type may be disclosed, however, individually or as a total. For example, three fees of $3 for providing copies related to the resolution of a billing error could be listed separately or as $9.*

Annual Percentage Rate - 12 CFR § 1026.7(a)(7)

Regulatory Discussion

The seventh item to be disclosed is the *annual percentage rate* – using that exact term. Note: this is optional when a finance charge is imposed during the billing cycle.

The commentary provides additional information on the optional disclosure of the annual percentage rate.

Regulatory Text

(7) **Annual percentage rate.** At a creditor's option, when a finance charge is imposed during the billing cycle, the annual percentage rate(s) determined under §1026.14(c) using the term *annual percentage rate.*

Regulatory Commentary

7(a)(7) Annual Percentage Rate

*1. **Plans subject to the requirements of §1026.40.** For home-equity plans subject to the requirements of §1026.40, creditors are not required to disclose an effective annual percentage rate. Creditors that state an annualized rate in addition to the corresponding annual percentage rate required by §1026.7(a)(4) must calculate that rate in accordance with §1026.14(c).*

*2. **Labels.** Creditors that choose to disclose an annual percentage rate calculated under §1026.14(c) and label the figure as "annual percentage rate" must label the periodic rate expressed as an annualized rate as the "corresponding APR," "nominal APR," or a similar phrase as provided in comment 7(a)(4)-4. Creditors also comply with the label requirement if the rate calculated under §1026.14(c) is described as the "effective APR" or* *something similar. For those creditors, the periodic rate expressed as an annualized rate could be labeled "annual percentage rate," consistent with the requirement under §1026.7(b)(4). If the two rates represent different values, creditors must label the rates differently to meet the clear and conspicuous standard under §1026.5(a)(1).*

Grace Period - 12 CFR § 1026.7(a)(8)

Regulatory Discussion

The eighth item to be disclosed is the *grace period* – the date by which or the time period within which the new balance (or any portion thereof) must be paid to avoid additional finance charges.

Note: the creditor may, and without disclosure, provide a grace period and impose no finance charge if payment is received after the expiration of the grace period.

The commentary provides additional information on use of terminology to describe the grace period.

Regulatory Text

(8) **Grace period.** The date by which or the time period within which the new balance or any portion of the new balance must be paid to avoid additional finance charges. If such a time period is provided, a creditor may, at its option and without disclosure, impose no finance charge if payment is received after the time period's expiration.

Regulatory Commentary

7(a)(8) Grace Period

1. ***Terminology.*** *Although the creditor is required to indicate any time period the consumer may have to pay the balance outstanding without incurring additional finance charges, no specific wording is required, so long as the language used is consistent with that used on the account-opening disclosure statement. For example, "To avoid additional finance charges, pay the new balance before __" would suffice.*

Billing Error Address - 12 CFR § 1026.7(a)(9)

Regulatory Discussion

The ninth item to be disclosed is the address to be used for notice of billing errors.

The commentary provides additional information on terminology and telephone number requirements.

Regulatory Text

(9) **Address for notice of billing errors.** The address to be used for notice of billing errors. Alternatively, the address may be provided on the billing rights statement permitted by §1026.9(a)(2).

Regulatory Commentary

7(a)(9) Address for Notice of Billing Errors

*1. **Terminology.** The periodic statement should indicate the general purpose for the address for billing-error inquiries, although a detailed explanation or particular wording is not required.*

*2. **Telephone number.** A telephone number, email address, or Web site location may be included, but the mailing address for billing-error inquiries, which is the required disclosure, must be clear and conspicuous. The address is deemed to be clear and conspicuous if a precautionary instruction is included that telephoning or notifying the creditor by email or Web site will not preserve the consumer's billing rights, unless the creditor has agreed to treat billing error notices provided by electronic means as written notices, in which case the precautionary instruction is required only for telephoning.*

Closing Date; New Balance - 12 CFR § 1026.7(a)(10)

Regulatory Discussion

The tenth, and final, item to be disclosed is the closing date of the billing cycle <u>and</u> the account balance outstanding on that date.

The commentary provides additional information on: credit balances; multi-featured plans; and accrued finance charges allocated from payments.

Regulatory Text

(10) **Closing date of billing cycle; new balance.** The closing date of the billing cycle and the account balance outstanding on that date.

Regulatory Commentary

7(a)(10) Closing Date of Billing Cycle; New Balance

*1. **Credit balances.** See comment 7(a)(1)-1.*

*2. **Multifeatured plans.** In a multifeatured plan, the new balance may be disclosed for each feature or for the plan as a whole. If separate new balances are disclosed, a total new balance is optional.*

*3. **Accrued finance charges allocated from payments.** Some plans provide that the amount of the finance charge that has accrued since the consumer's last payment is directly deducted from each new payment, rather than being separately added to each statement and therefore reflected as an increase in the obligation. In such a plan, the new balance need not reflect finance charges accrued since the last payment.*

Open End - Identifying Transactions on Periodic Statements

Section 1: Sale Credit
12 C.F.R. § 1026.8(a)

Sale Credit - 12 C.F.R § 1026.8(a)

Regulatory Discussion

This section describes the requirements for identifying transactions on periodic statements for open-credit credit; beginning with ***sale credit.*** The commentary contains a definition of "sale credit" and greater detail on seven items to be included.

While this section can certainly impact HELOCs, we have omitted it in this manual, as the impact is quite limited. For this to apply, you would have to issue a debit card for the HELOC product.

The full text and commentary can be located in the credit card manual should you need this information.

Section 2: Non Sale Credit
12 C.F.R. § 1026.8(b)

Non Sale Credit - 12 C.F.R § 1026.8(b)

Regulatory Discussion

This section continues the description of the requirements for identifying transactions on periodic statements for open-credit credit; the second is ***nonsale credit***. The commentary contains a definition of "nonsale credit" and greater detail on three items to be included.

While this section can certainly impact HELOCs, we have omitted it in this manual, as the impact is quite limited. For this to apply, you would have to issue a debit card for the HELOC product.

The full text and commentary can be located in the credit card manual should you need this information.

Section 3: Alternative Procedures / Consumer Inquiry
12 C.F.R. § 1026.8(c)

Alternative Procedures / Consumer Inquiry - 12 C.F.R § 1026.8(c)

Regulatory Discussion

This section concludes the description of the requirements for identifying transactions on periodic statements for open-credit credit; the third is ***alternative creditor procedures; consumer inquiries for clarification or documentation.*** There is no commentary.

While this section can certainly impact HELOCs, we have omitted it in this manual, as the impact is quite limited.

The full text and commentary can be located in the credit card manual should you need this information.

Open End Credit - Subsequent Disclosure Requirements

Section 1: Furnishing Statement of Billing Rights 12 C.F.R. § 1026.9(a)

Furnishing Statement of Billing Rights - 12 C.F.R § 1026.9(a)

Regulatory Discussion

This section describes the requirements for <u>subsequent disclosures</u> for <u>open-end credit;</u> beginning with *furnishing the statement of billing rights*. There are two options:

- Annual statement (the long form)
- Alternative summary statement (the short form)

Regulatory Text

(a) **Furnishing statement of billing rights**

(1) **Annual statement.** The creditor shall mail or deliver the billing rights statement required by §1026.6(a)(5) and (b)(5)(iii) at least once per calendar year, at intervals of not less than 6 months nor more than 18 months, either to all consumers or to each consumer entitled to receive a periodic statement under §1026.5(b)(2) for any one billing cycle.

(2) **Alternative summary statement.** As an alternative to paragraph (a)(1) of this section, the creditor may mail or deliver, on or with each periodic statement, a statement substantially similar to Model Form G-4 or Model Form G-4(A) in appendix G to this part, as applicable. Creditors offering home-equity plans subject to the requirements of §1026.40 may use either Model Form, at their option.

Regulatory Commentary

9(a) Furnishing Statement of Billing Rights

9(a)(1) Annual Statement

*1. **General**. The creditor may provide the annual billing rights statement:*

i. By sending it in one billing period per year to each consumer that gets a periodic statement for that period; or

ii. By sending a copy to all of its accountholders sometime during the calendar year but not necessarily all in one billing period (for example, sending the annual notice in connection with renewal cards or when imposing annual membership fees).

*2. **Substantially similar.** See the commentary to Model Forms G-3 and G-3(A) in appendix G to part 1026.*

9(a)(2) Alternative Summary Statement

*1. **Changing from long-form to short form statement and vice versa.** If the creditor has been sending the long-form annual statement, and subsequently decides to use the alternative summary statement, the first summary statement must be sent no later than 12 months after the last long-form statement was sent. Conversely, if the creditor wants to switch to the long-form, the first long-form statement must be sent no later than 12 months after the last summary statement.*

*2. **Substantially similar.** See the commentary to Model Forms G-4 and G-4(A) in appendix G to part 1026.*

Section 2: Disclosures for Access Devices / Additional Features

12 C.F.R. § 1026.9(b)

Disclosures for Supplemental Credit Access Devices and Additional Features - 12 CFR § 1026.9(b)

Regulatory Discussion

This section continues to describe the requirements for subsequent disclosures for open-end credit; the second is *disclosures for supplemental credit access devices and additional features*. There are three components:

- Within 30 days after mailing or delivering the account-opening disclosures.
- After 30 days after mailing or delivering the account-opening disclosures, with exceptions.
- The exceptions; checks that access a credit card account.

The commentary contains considerable explanation of these components.

Regulatory Text

(b) **Disclosures for supplemental credit access devices and additional features.**

(1) If a creditor, within 30 days after mailing or delivering the account-opening disclosures under §1026.6(a)(1) or (b)(3)(ii)(A), as applicable, adds a credit feature to the consumer's account or mails or delivers to the consumer a credit access device, including but not limited to checks that access a credit card account, for which the finance charge terms are the same as those previously disclosed, no additional disclosures are necessary. Except as provided in paragraph (b)(3) of this section, after 30 days, if the creditor adds a credit feature or furnishes a credit access device (other than as a renewal, resupply, or the original issuance of a credit card) on the same finance charge terms, the creditor shall disclose, before the consumer uses the feature or device for the first time, that it is for use in obtaining credit under the terms previously disclosed.

(2) Except as provided in paragraph (b)(3) of this section, whenever a credit feature is added or a credit access device is mailed or delivered to the consumer, and the finance charge terms for the feature or device differ from disclosures previously given, the disclosures required by §1026.6(a)(1) or (b)(3)(ii)(A), as applicable, that are applicable to the added feature or device shall be given before the consumer uses the feature or device for the first time.

(3) **Checks that access a credit card account.**

Omitted.

Regulatory Commentary

9(b) Disclosures for Supplemental Credit Access Devices and Additional Features

*1. **Credit access device - examples.** Credit access device includes, for example, a blank check, payee-designated check, blank draft or order, or authorization form for issuance of a check; it does not include a check issued payable to a consumer representing loan proceeds or the disbursement of a cash advance.*

*2. **Credit account feature - examples.** A new credit account feature would include, for example:*

i. The addition of overdraft checking to an existing account (although the regular checks that could trigger the overdraft feature are not themselves "devices").

ii. The option to use an existing credit card to secure cash advances, when previously the card could only be used for purchases.

Paragraph 9(b)(2)

*1. **Different finance charge terms.** Except as provided in §1026.9(b)(3) for checks that access a credit card account, if the finance charge terms are different from those previously disclosed, the creditor may satisfy the requirement to give the finance charge terms either by giving a complete set of new account-opening disclosures reflecting the terms of the added device or feature or by giving only the finance charge disclosures for the added device or feature.*

9(b)(3)(i) Disclosures

Omitted.

Section 3: Change in Terms
12 C.F.R. § 1026.9(c)

Rules Affecting Home Equity Plans - 12 C.F.R § 1026.9(c)(1)

Regulatory Discussion

This section continues to describe the requirements for subsequent disclosures for open-end credit; the third is ***change in terms.*** There are two categories:

i. Rules affecting home equity plans
ii. Rules affecting open-end (not home-secured) plans (Omitted)

We begin with the rules affecting home-equity plans; for which there are three components:

i. Written notice requirements; with commentary regarding:
   1. Affected customers
   2. Timing – effective date of change
   3. Timing – advance notice not required
   4. Form of change-in-terms notice
   5. Security interest change – form of notice
   6. Changes to home-equity plans entered into on or after November 7, 1989
ii. Notice not required, with commentary regarding:
   1. Changes not requiring notice
   2. Skip features
iii. Notice to restrict credit, with commentary regarding:
   1. Written request for reinstatement
   2. Notice not required

Regulatory Text

(c) **Change in terms**

(1) **Rules affecting home-equity plans**

(i) **Written notice required.** For home-equity plans subject to the requirements of §1026.40, whenever any term required to be disclosed under §1026.6(a) is changed or the required minimum periodic payment is increased, the creditor shall mail or deliver written notice of the change to each consumer who may be affected. The notice shall be mailed or delivered at least 15 days prior to the effective date of the change. The 15-day timing requirement does not apply if the change has been agreed to by the consumer; the notice shall be given, however, before the effective date of the change.

(ii) **Notice not required.** For home-equity plans subject to the requirements of

§1026.40, a creditor is not required to provide notice under this section when the change involves a reduction of any component of a finance or other charge or when the change results from an agreement involving a court proceeding.

(iii) **Notice to restrict credit.** For home-equity plans subject to the requirements of §1026.40, if the creditor prohibits additional extensions of credit or reduces the credit limit pursuant to §1026.40(f)(3)(i) or (f)(3)(vi), the creditor shall mail or deliver written notice of the action to each consumer who will be affected. The notice must be provided not later than three business days after the action is taken and shall contain specific reasons for the action. If the creditor requires the consumer to request reinstatement of credit privileges, the notice also shall state that fact.

Regulatory Commentary

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

*1. **Changes initially disclosed.** No notice of a change in terms need be given if the specific change is set forth initially, such as: rate increases under a properly disclosed variable-rate plan, a rate increase that occurs when an employee has been under a preferential rate agreement and terminates employment, or an increase that occurs when the consumer has been under an agreement to maintain a certain balance in a savings account in order to keep a particular rate and the account balance falls below the specified minimum. The rules in §1026.40(f) relating to home-equity plans limit the ability of a creditor to change the terms of such plans.*

*2. **State law issues.** Examples of issues not addressed by §1026.9(c) because they are controlled by state or other applicable law include:*

i. The types of changes a creditor may make. (But see §1026.40(f))

ii. How changed terms affect existing balances, such as when a periodic rate is changed and the consumer does not pay off the entire existing balance before the new rate takes effect.

*3. **Change in billing cycle.** Whenever the creditor changes the consumer's billing cycle, it must give a change-in-terms notice if the change either affects any of the terms required to be disclosed under §1026.6(a) or increases the minimum payment, unless an exception under §1026.9(c)(1)(ii) applies; for example, the creditor must give advance notice if the creditor initially disclosed a 25-day grace period on purchases and the consumer will have fewer days during the billing cycle change.*

9(c)(1)(i) Written Notice Required

*1. **Affected consumers.** Change-in-terms notices need only go to those consumers who may be affected by the change. For example, a change in the periodic rate for check overdraft credit need not be disclosed to consumers who do not have that feature on their accounts.*

*2. **Timing - effective date of change.** The rule that the notice of the change in terms be provided at least 15 days before the change takes effect permits mid-cycle changes when* *there is clearly no retroactive effect, such as the imposition of a transaction fee. Any change in the balance computation method, in contrast, would need to be disclosed at least 15 days prior to the billing cycle in which the change is to be implemented.*

3. ***Timing - advance notice not required.*** *Advance notice of 15 days is not necessary—that is, a notice of change in terms is required, but it may be mailed or delivered as late as the effective date of the change—in two circumstances:*

   i. *If there is an increased periodic rate or any other finance charge attributable to the consumer's delinquency or default.*

   ii. *If the consumer agrees to the particular change. This provision is intended for use in the unusual instance when a consumer substitutes collateral or when the creditor can advance additional credit only if a change relatively unique to that consumer is made, such as the consumer's providing additional security or paying an increased minimum payment amount. Therefore, the following are not "agreements" between the consumer and the creditor for purposes of §1026.9(c)(1)(i): The consumer's general acceptance of the creditor's contract reservation of the right to change terms; the consumer's use of the account (which might imply acceptance of its terms under state law); and the consumer's acceptance of a unilateral term change that is not particular to that consumer, but rather is of general applicability to consumers with that type of account.*

4. ***Form of change-in-terms notice.*** *A complete new set of the initial disclosures containing the changed term complies with §1026.9(c)(1)(i) if the change is highlighted in some way on the disclosure statement, or if the disclosure statement is accompanied by a letter or some other insert that indicates or draws attention to the term change.*

5. ***Security interest change - form of notice.*** *A copy of the security agreement that describes the collateral securing the consumer's account may be used as the notice, when the term change is the addition of a security interest or the addition or substitution of collateral.*

6. ***Changes to home-equity plans entered into on or after November 7, 1989.*** *Section 1026.9(c)(1) applies when, by written agreement under §1026.40(f)(3)(iii), a creditor changes the terms of a home-equity plan—entered into on or after November 7, 1989—at or before its scheduled expiration, for example, by renewing a plan on terms different from those of the original plan. In disclosing the change:*

   i. *If the index is changed, the maximum annual percentage rate is increased (to the limited extent permitted by §1026.30), or a variable-rate feature is added to a fixed-rate plan, the creditor must include the disclosures required by §1026.40(d)(12)(x) and (d)(12)(xi), unless these disclosures are unchanged from those given earlier.*

   ii. *If the minimum payment requirement is changed, the creditor must include the disclosures required by §1026.40(d)(5)(iii) (and, in variable-rate plans, the disclosures required by §1026.40(d)(12)(x) and (d)(12)(xi)) unless the disclosures given earlier contained representative examples covering the new minimum payment requirement. (See the commentary to §1026.40(d)(5)(iii), (d)(12)(x) and (d)(12)(xi) for a discussion of representative examples.)*

   iii. *When the terms are changed pursuant to a written agreement as described in §1026.40(f)(3)(iii), the advance-notice requirement does not apply.*

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

1. ***Changes not requiring notice.*** *The following are examples of changes that do not require a change-in-terms notice:*

   i. A change in the consumer's credit limit.

   ii. A change in the name of the credit card or credit card plan.

   iii. The substitution of one insurer for another.

   iv. A termination or suspension of credit privileges. (But see §1026.40(f).)

   v. Changes arising merely by operation of law; for example, if the creditor's security interest in a consumer's car automatically extends to the proceeds when the consumer sells the car.

2. ***Skip features.*** *If a credit program allows consumers to skip or reduce one or more payments during the year, or involves temporary reductions in finance charges, no notice of the change in terms is required either prior to the reduction or upon resumption of the higher rates or payments if these features are explained on the initial disclosure statement (including an explanation of the terms upon resumption). For example, a merchant may allow consumers to skip the December payment to encourage holiday shopping, or a teachers' credit union may not require payments during summer vacation. Otherwise, the creditor must give notice prior to resuming the original schedule or rate, even though no notice is required prior to the reduction. The change-in-terms notice may be combined with the notice offering the reduction. For example, the periodic statement reflecting the reduction or skip feature may also be used to notify the consumer of the resumption of the original schedule or rate, either by stating explicitly when the higher payment or charges resume, or by indicating the duration of the skip option. Language such as "You may skip your October payment," or "We will waive your finance charges for January," may serve as the change-in-terms notice.*

9(c)(1)(iii) Notice to Restrict Credit

1. ***Written request for reinstatement.*** *If a creditor requires the request for reinstatement of credit privileges to be in writing, the notice under §1026.9(c)(1)(iii) must state that fact.*

2. ***Notice not required.*** *A creditor need not provide a notice under this paragraph if, pursuant to the commentary to §1026.40(f)(2), a creditor freezes a line or reduces a credit line rather than terminating a plan and accelerating the balance.*

Section 4: Sections not HELOC Related

Rules Affecting Open End (Not Home Secured) Plans - 12 C.F.R § 1026.9(c)(2)

Regulatory Discussion

This section is not related to HELOCs, and is omitted.

Finance Charge Imposed at Time of Transaction - 12 CFR § 1026.9(d)

Regulatory Discussion

This section is related to credit cards, and is omitted.

Disclosures upon Renewal of Credit Card - 12 C.F.R. § 1026.9(e)

Regulatory Discussion

This section is related to credit cards, and is omitted.

Change in Credit Card Account Insurance Provider - 12 CFR § 1026.9(f)

Regulatory Discussion

This section is related to credit cards, and is omitted.

Increase in Rates Due to Delinquency or Default or as a Penalty -

12 C.F.R. § 1026.9(g)

Regulatory Discussion

This section is related to credit cards and other open-end accounts, not HELOCs, and is omitted.

Consumer Rejection of Certain Significant Changes in Terms - 12 CFR § 1026.9(h)

Regulatory Discussion

This section is related to credit cards and other open-end accounts, not HELOCs, and is omitted.

HELOCs – Payments

Section 1: General Rule
12 C.F.R. § 1026.10(a)

General Rule - 12 CFR § 1026.10(a)

Regulatory Discussion

This section generally requires the creditor to credit payment to an account as of the date of receipt. The commentary provides additional information on posting payments as well as the meaning of "date of receipt." Exceptions to this rule are discussed in Section 2.

Regulatory Text

(a) **General rule.** A creditor shall credit a payment to the consumer's account as of the date of receipt, except when a delay in crediting does not result in a finance or other charge or except as provided in paragraph (b) of this section.

Regulatory Commentary

10(a) General Rule.

*1. **Crediting date.** Section 1026.10(a) does not require the creditor to post the payment to the consumer's account on a particular date; the creditor is only required to credit the payment as of the date of receipt.*

*2. **Date of receipt.** The "date of receipt" is the date that the payment instrument or other means of completing the payment reaches the creditor. For example:*

i. Payment by check is received when the creditor gets it, not when the funds are collected.

ii. In a payroll deduction plan in which funds are deposited to an asset account held by the creditor, and from which payments are made periodically to an open-end credit account, payment is received on the date when it is debited to the asset account (rather than on the date of the deposit), provided the payroll deduction method is voluntary and the consumer retains use of the funds until the contractual payment date.

iii. If the consumer elects to have payment made by a third party payor such as a financial institution, through a preauthorized payment or telephone bill-payment arrangement, payment is received when the creditor gets the third party payor's check or other transfer medium, such as an electronic fund transfer, as long as the payment meets the creditor's requirements as specified under §1026.10(b).

iv. Payment made via the creditor's Web site is received on the date on which the consumer authorizes the creditor to effect the payment, even if the consumer gives the instruction *authorizing that payment in advance of the date on which the creditor is authorized to effect the payment. If the consumer authorizes the creditor to effect the payment immediately, but the consumer's instruction is received after 5 p.m. or any later cut-off time specified by the creditor, the date on which the consumer authorizes the creditor to effect the payment is deemed to be the next business day.*

Section 2: Specific Requirements for Payments
12 C.F.R. § 1026.10(b)

Specific Requirements for Payments - 12 CFR § 1026.10(b)

Regulatory Discussion

There are three considerations in this section, as follows:

1. The **general rule** states the creditor may have "reasonable requirements" that enable most consumers to make conforming payments. Item (2), bellows, provides five examples of "reasonable requirements."
2. Item (4), below, addresses **non-conforming payments**. In general, if a creditor specifies, on or with the periodic statement, requirements for the consumer to follow in making payments, but accepts a payment that does not conform to the requirements, the payment shall be credited within five days of receipt.

   NOTE: Item (4)(ii), below, addresses *payment methods promoted by the creditor*. The commentary provides additional discussion and examples.

Regulatory Text

(b) **Specific requirements for payments**

(1) **General rule.** A creditor may specify reasonable requirements for payments that enable most consumers to make conforming payments.

(2) **Examples of reasonable requirements for payments.** Reasonable requirements for making payment may include:

(i) Requiring that payments be accompanied by the account number or payment stub;

(ii) Setting reasonable cut-off times for payments to be received by mail, by electronic means, by telephone, and in person (except as provided in paragraph (b)(3) of this section), provided that such cut-off times shall be no earlier than 5 p.m. on the payment due date at the location specified by the creditor for the receipt of such payments;

(iii) Specifying that only checks or money orders should be sent by mail;

(iv) Specifying that payment is to be made in U.S. dollars; or

(v) Specifying one particular address for receiving payments, such as a post office box.

(3) **In-person payments on credit card accounts**

Omitted.

(4) **Nonconforming payments**

(i) **In general.** Except as provided in paragraph (b)(4)(ii) of this section, if a creditor specifies, on or with the periodic statement, requirements for the consumer to follow in making payments as permitted under this §1026.10, but accepts a payment that does not conform to the requirements, the creditor shall credit the payment within five days of receipt.

(ii) **Payment methods promoted by creditor.** If a creditor promotes a method for making payments, such payments shall be considered conforming payments in accordance with this paragraph (b) and shall be credited to the consumer's account as of the date of receipt, except when a delay in crediting does not result in a finance or other charge.

Regulatory Commentary

10(b) Specific Requirements for Payments

1. ***Payment by electronic fund transfer.*** *A creditor may be prohibited from specifying payment by preauthorized electronic fund transfer. (See Section 913 of the Electronic Fund Transfer Act.)*

2. ***Payment methods promoted by creditor.*** *If a creditor promotes a specific payment method, any payments made via that method (prior to any cut-off time specified by the creditor, to the extent permitted by §1026.10(b)(2)) are generally conforming payments for purposes of §1026.10(b). For example:*

i. If a creditor promotes electronic payment via its Web site (such as by disclosing on the Web site itself that payments may be made via the Web site), any payments made via the creditor's Web site prior to the creditor's specified cut-off time, if any, would generally be conforming payments for purposes of §1026.10(b).

ii. If a creditor promotes payment by telephone (for example, by including the option to pay by telephone in a menu of options provided to consumers at a toll-free number disclosed on its periodic statement), payments made by telephone would generally be conforming payments for purposes of §1026.10(b).

iii. If a creditor promotes in-person payments, for example by stating in an advertisement that payments may be made in person at its branch locations, such in-person payments made at a branch or office of the creditor generally would be conforming payments for purposes of §1026.10(b).

iv. If a creditor promotes that payments may be made through an unaffiliated third party, such as by disclosing the Web site address of that third party on the periodic statement, payments made via that third party's Web site generally would be conforming payments for purposes of §1026.10(b). In contrast, if a customer service representative of the creditor confirms to a consumer that payments may be made via an unaffiliated third party, but the creditor does not otherwise promote that method of payment, §1026.10(b) permits the creditor to treat payments made via such third party as *nonconforming payments in accordance with §1026.10(b)(4).*

3. ***Acceptance of nonconforming payments.*** *If the creditor accepts a nonconforming payment (for example, payment mailed to a branch office, when the creditor had specified that payment be sent to a different location), finance charges may accrue for the period between receipt and crediting of payments.*

4. ***Implied guidelines for payments.*** *In the absence of specified requirements for making payments (see §1026.10(b)):*

   i. Payments may be made at any location where the creditor conducts business.

   ii. Payments may be made any time during the creditor's normal business hours.

   iii. Payment may be by cash, money order, draft, or other similar instrument in properly negotiable form, or by electronic fund transfer if the creditor and consumer have so agreed.

5. ***Payments made at point of sale.*** *Omitted.*

6. ***In-person payments on credit card accounts.*** *Omitted.*

7. ***In-person payments at affiliate of card issuer.*** *Omitted.*

Section 3: Adjustment of Account
12 C.F.R. § 1026.10(c)

Adjustment of Account - 12 CFR § 1026.10(c)

Regulatory Discussion

In the event a creditor fails to credit a payment in time to avoid the imposition of finance or other charges, this section simply requires the creditor to adjust (credit) the account during the next billing cycle.

Regulatory Text

(c) **Adjustment of account.** If a creditor fails to credit a payment, as required by paragraphs (a) or (b) of this section, in time to avoid the imposition of finance or other charges, the creditor shall adjust the consumer's account so that the charges imposed are credited to the consumer's account during the next billing cycle.

Regulatory Commentary

None.

Section 4: Crediting of payments - Creditor Not Accepting Payments on Due Date

12 C.F.R. § 1026.10(d)

Crediting of payments - Creditor Not Accepting Payments on Due Date - 12 CFR § 1026.10(d)

Regulatory Discussion

In general, if a creditor does not *receive or accept payments by mail* on the due date (i.e., because the USPS does not deliver mail on that date), a payment received the next business day may not be treated as late.

NOTE: for payments *accepted or received other than by mail* on the next business day (i.e., electronic or telephone), the creditor is not required to treat that payment as timely – even if the creditor does not receive or accept mailed payments on the due date.

Regulatory Text

(d) **Crediting of payments when creditor does not receive or accept payments on due date**

(1) **General.** Except as provided in paragraph (d)(2) of this section, if a creditor does not receive or accept payments by mail on the due date for payments, the creditor may generally not treat a payment received the next business day as late for any purpose. For purposes of this paragraph (d), the "next business day" means the next day on which the creditor accepts or receives payments by mail.

(2) **Payments accepted or received other than by mail**. If a creditor accepts or receives payments made on the due date by a method other than mail, such as electronic or telephone payments, the creditor is not required to treat a payment made by that method on the next business day as timely, even if it does not accept mailed payments on the due date.

Regulatory Commentary

10(d) Crediting of Payments When Creditor Does Not Receive or Accept Payments on Due Date

*1. **Example.** A day on which the creditor does not receive or accept payments by mail may occur, for example, if the U.S. Postal Service does not deliver mail on that date.*

*2. **Treating a payment as late for any purpose.** See comment 5(b)(2)(ii)-2 for guidance on* *treating a payment as late for any purpose. When an account is not eligible for a grace period, imposing a finance charge due to a periodic interest rate does not constitute treating a payment as late.*

Section 5: Limitations on Fees
12 C.F.R. § 1026.10(e)

Limitations on Fees - 12 CFR § 1026.10(e)

Regulatory Discussion

A creditor is prohibited from imposing a separate fee to allow consumers to make a payment – unless such payment method involves an *expedited service with the assistance of a live representative or agent* of the creditor.

Regulatory Text

(e) **Limitations on fees related to method of payment.** For credit card accounts under an open-end (not home-secured) consumer credit plan, a creditor may not impose a separate fee to allow consumers to make a payment by any method, such as mail, electronic, or telephone payments, unless such payment method involves an expedited service by a customer service representative of the creditor. For purposes of paragraph (e) of this section, the term "creditor" includes a third party that collects, receives, or processes payments on behalf of a creditor.

Regulatory Commentary

10(e) Limitations on Fees Related to Method of Payment

1. ***Separate fee to allow consumers to make a payment.*** *For purposes of §1026.10(e), the term "separate fee" means a fee imposed on a consumer for making a payment to the consumer's account. A fee or other charge imposed if payment is made after the due date, such as a late fee or finance charge, is not a separate fee to allow consumers to make a payment for purposes of §1026.10(e).*

2. ***Expedited.*** *For purposes of §1026.10(e), the term "expedited" means crediting a payment the same day or, if the payment is received after any cut-off time established by the creditor, the next business day.*

3. ***Service by a customer service representative.*** *Service by a customer service representative of a creditor means any payment made to the consumer's account with the assistance of a live representative or agent of the creditor, including those made in person, on the telephone, or by electronic means. A customer service representative does not include automated means of making payment that do not involve a live representative or agent of the creditor, such as a voice response unit or interactive voice response system. Service by a customer service representative includes any payment transaction which involves the assistance of a live representative or agent of the creditor, even if an automated system is*

required for a portion of the transaction.

4. ***Creditor.*** *For purposes of §1026.10(e), the term "creditor" includes a third party that collects, receives, or processes payments on behalf of a creditor. For example:*

   i. *Assume that a creditor uses a service provider to receive, collect, or process on the creditor's behalf payments made through the creditor's Web site or made through an automated telephone payment service. In these circumstances, the service provider would be considered a creditor for purposes of paragraph (e).*

   ii. *Assume that a consumer pays a fee to a money transfer or payment service in order to transmit a payment to the creditor on the consumer's behalf. In these circumstances, the money transfer or payment service would not be considered a creditor for purposes of paragraph (e).*

   iii. *Assume that a consumer has a checking account at a depository institution. The consumer makes a payment to the creditor from the checking account using a bill payment service provided by the depository institution. In these circumstances, the depository institution would not be considered a creditor for purposes of paragraph (e).*

Section 6: Changes by Card Issuer
12 C.F.R. § 1026.10(f)

Changes by Card Issuer - 12 CFR § 1026.10(f)

Regulatory Discussion

As this section deals with credit cards, it is omitted.

HELOCs - Credit Balances

Section 1: Credit Balances
12 C.F.R. § 1026.11(a)

Credit Balances - 12 CFR § 1026.11(a)

Regulatory Discussion

This section describes the three requirements for the treatment of credit balances for open-end credit. Any credit balance over $1 is subject to the regulation. The commentary provides further direction on: the timing and amount of the refund; written requests and standing orders; and, good faith effort.

Regulatory Text

(a) **Credit balances.** When a credit balance in excess of $1 is created on a credit account (through transmittal of funds to a creditor in excess of the total balance due on an account, through rebates of unearned finance charges or insurance premiums, or through amounts otherwise owed to or held for the benefit of the consumer), the creditor shall:

(1) Credit the amount of the credit balance to the consumer's account;

(2) Refund any part of the remaining credit balance within seven business days from receipt of a written request from the consumer;

(3) Make a good faith effort to refund to the consumer by cash, check, or money order, or credit to a deposit account of the consumer, any part of the credit balance remaining in the account for more than six months. No further action is required if the consumer's current location is not known to the creditor and cannot be traced through the consumer's last known address or telephone number.

Regulatory Commentary

11(a) Credit Balances

*1. **Timing of refund.** The creditor may also fulfill its obligations under §1026.11 by:*

i. Refunding any credit balance to the consumer immediately.

ii. Refunding any credit balance prior to receiving a written request (under §1026.11(a)(2)) from the consumer.

iii. Refunding any credit balance upon the consumer's oral or electronic request.

iv. Making a good faith effort to refund any credit balance before 6 months have passed. If that attempt is unsuccessful, the creditor need not try again to refund the credit balance at the end of the 6-month period.

*2. **Amount of refund.** The phrases any part of the remaining credit balance in §1026.11(a)(2) and any part of the credit balance remaining in the account in §1026.11(a)(3) mean the amount of the credit balance at the time the creditor is required to make the refund. The creditor may take into consideration intervening purchases or other debits to the consumer's account (including those that have not yet been reflected on a periodic statement) that decrease or eliminate the credit balance.*

Paragraph 11(a)(2)

*1. **Written requests - standing orders.** The creditor is not required to honor standing orders requesting refunds of any credit balance that may be created on the consumer's account.*

Paragraph 11(a)(3)

*1. **Good faith effort to refund.** The creditor must take positive steps to return any credit balance that has remained in the account for over 6 months. This includes, if necessary, attempts to trace the consumer through the consumer's last known address or telephone number, or both.*

*2. **Good faith effort unsuccessful.** Section 1026.11 imposes no further duties on the creditor if a good faith effort to return the balance is unsuccessful. The ultimate disposition of the credit balance (or any credit balance of $1 or less) is to be determined under other applicable law.*

Section 2: Other Portions of the Open- End Regulation

Account Termination - 12 CFR § 1026.11(b)

Regulatory Discussion

This section generally does not apply to HELOCs, as account termination is a matter of contract. Therefore, it has been omitted from this manual.

Timely Settlement of Estate Debts - 12 CFR § 1026.11(c)

Regulatory Discussion

This section is for credit cards only. Therefore, it is omitted from this manual.

Open End - Billing Error Resolution

Section 1: Introductory Commentary

Introduction

Regulatory Discussion

This introductory commentary provides information on a creditor's failure to comply with the billing error provisions; and prohibition against charges assessed for error resolution.

Regulatory Text

None.

Regulatory Commentary

Section 1026.13—Billing Error Resolution

1. ***Creditor's failure to comply with billing error provisions.*** *Failure to comply with the error resolution procedures may result in the forfeiture of disputed amounts as prescribed in section 161(e) of the Act. (Any failure to comply may also be a violation subject to the liability provisions of section 130 of the Act.)*

2. ***Charges for error resolution.*** *If a billing error occurred, whether as alleged or in a different amount or manner, the creditor may not impose a charge related to any aspect of the error resolution process (including charges for documentation or investigation) and must credit the consumer's account if such a charge was assessed pending resolution. Since the Act grants the consumer error resolution rights, the creditor should avoid any chilling effect on the good faith assertion of errors that might result if charges are assessed when no billing error has occurred.*

Section 2: Definition of Billing Error
12 C.F.R. § 1026.13(a)

Definition of Billing Error - 12 C.F.R. § 1026.13(a)

Regulatory Discussion

This section provides the definition of billing error for open-end credit. There are seven potential categories. The commentary provides expanded information on some of the definitions.

Regulatory Text

(a) **Definition of billing error.** For purposes of this section, the term billing error means:

(1) A reflection on or with a periodic statement of an extension of credit that is not made to the consumer or to a person who has actual, implied, or apparent authority to use the consumer's credit card or open-end credit plan.

(2) A reflection on or with a periodic statement of an extension of credit that is not identified in accordance with the requirements of §§1026.7(a)(2) or (b)(2), as applicable, and 1026.8.

(3) A reflection on or with a periodic statement of an extension of credit for property or services not accepted by the consumer or the consumer's designee, or not delivered to the consumer or the consumer's designee as agreed.

(4) A reflection on a periodic statement of the creditor's failure to credit properly a payment or other credit issued to the consumer's account.

(5) A reflection on a periodic statement of a computational or similar error of an accounting nature that is made by the creditor.

(6) A reflection on a periodic statement of an extension of credit for which the consumer requests additional clarification, including documentary evidence.

(7) The creditor's failure to mail or deliver a periodic statement to the consumer's last known address if that address was received by the creditor, in writing, at least 20 days before the end of the billing cycle for which the statement was required.

Regulatory Commentary

13(a) Definition of Billing Error

Paragraph 13(a)(1)

1. ***Actual, implied, or apparent authority.*** *Whether use of a credit card or open-end credit plan is authorized is determined by state or other applicable law. (See comment 12(b)(1)(ii)-1.)*

Paragraph 13(a)(3)

1. ***Coverage.***

   i. *Section 1026.13(a)(3) covers disputes about goods or services that are "not accepted" or "not delivered * * * as agreed"; for example:*

      A. *The appearance on a periodic statement of a purchase, when the consumer refused to take delivery of goods because they did not comply with the contract.*

      B. *Delivery of property or services different from that agreed upon.*

      C. *Delivery of the wrong quantity.*

      D. *Late delivery.*

      E. *Delivery to the wrong location.*

   ii. *Section 1026.13(a)(3) does not apply to a dispute relating to the quality of property or services that the consumer accepts. Whether acceptance occurred is determined by state or other applicable law.*

2. ***Application to purchases made using a third-party payment intermediary.*** *Section 1026.13(a)(3) generally applies to disputes about goods and services that are purchased using a third-party payment intermediary, such as a person-to-person Internet payment service, funded through use of a consumer's open-end credit plan when the goods or services are not accepted by the consumer or not delivered to the consumer as agreed. However, the extension of credit must be made at the time the consumer purchases the good or service and match the amount of the transaction to purchase the good or service (including ancillary taxes and fees). Under these circumstances, the property or service for which the extension of credit is made is not the payment service, but rather the good or service that the consumer has purchased using the payment service. Thus, for example, §1026.13(a)(3) would not apply to purchases using a third party payment intermediary that is funded through use of an open-end credit plan if:*

   i. *The extension of credit is made to fund the third-party payment intermediary "account," but the consumer does not contemporaneously use those funds to purchase a good or service at that time.*

   ii. *The extension of credit is made to fund only a portion of the purchase amount, and the consumer uses other sources to fund the remaining amount.*

3. ***Notice to merchant not required.*** *A consumer is not required to first notify the merchant or other payee from whom he or she has purchased goods or services and attempt to resolve a dispute regarding the good or service before providing a billing-error notice to the creditor under §1026.13(a)(3) asserting that the goods or services were not accepted or delivered as*

agreed.

Paragraph 13(a)(5)

1. ***Computational errors.*** *In periodic statements that are combined with other information, the error resolution procedures are triggered only if the consumer asserts a computational billing error in the credit-related portion of the periodic statement. For example, if a bank combines a periodic statement reflecting the consumer's credit card transactions with the consumer's monthly checking statement, a computational error in the checking account portion of the combined statement is not a billing error.*

Paragraph 13(a)(6)

1. ***Documentation requests.*** *A request for documentation such as receipts or sales slips, unaccompanied by an allegation of an error under §1026.13(a) or a request for additional clarification under §1026.13(a)(6), does not trigger the error resolution procedures. For example, a request for documentation merely for purposes such as tax preparation or recordkeeping does not trigger the error resolution procedures.*

Section 3: Billing Error Notice
12 C.F.R. § 1026.13(b)

Billing Error Notice - 12 C.F.R. § 1026.13(b)

Regulatory Discussion

This section describes three components of a billing error notice. The commentary provides expanded coverage on:

- Withdrawal of billing error notice by consumer; Form of written notice
- Failure to send periodic statement – timing; Failure to reflect credit – timing; Transmittal
- Identity of the consumer

Regulatory Text

(b) **Billing error notice.** A billing error notice is a written notice from a consumer that:

(1) Is received by a creditor at the address disclosed under §1026.7(a)(9) or (b)(9), as applicable, no later than 60 days after the creditor transmitted the first periodic statement that reflects the alleged billing error;

(2) Enables the creditor to identify the consumer's name and account number; and

(3) To the extent possible, indicates the consumer's belief and the reasons for the belief that a billing error exists, and the type, date, and amount of the error.

Regulatory Commentary

13(b) Billing Error Notice

1. ***Withdrawal of billing error notice by consumer.*** *The creditor need not comply with the requirements of §1026.13(c) through (g) of this section if the consumer concludes that no billing error occurred and voluntarily withdraws the billing error notice. The consumer's withdrawal of a billing error notice may be oral, electronic or written.*

2. ***Form of written notice.*** *The creditor may require that the written notice not be made on the payment medium or other material accompanying the periodic statement if the creditor so stipulates in the billing rights statement required by §§1026.6(a)(5) or (b)(5)(iii), and 1026.9(a). In addition, if the creditor stipulates in the billing rights statement that it accepts billing error notices submitted electronically, and states the means by which a* *consumer may electronically submit a billing error notice, a notice sent in such manner will be deemed to satisfy the written notice requirement for purposes of §1026.13(b).*

Paragraph 13(b)(1)

1. ***Failure to send periodic statement - timing.*** *If the creditor has failed to send a periodic statement, the 60-day period runs from the time the statement should have been sent. Once the statement is provided, the consumer has another 60 days to assert any billing errors reflected on it.*
2. ***Failure to reflect credit - timing.*** *If the periodic statement fails to reflect a credit to the account, the 60-day period runs from transmittal of the statement on which the credit should have appeared.*
3. ***Transmittal.*** *If a consumer has arranged for periodic statements to be held at the financial institution until called for, the statement is "transmitted" when it is first made available to the consumer.*

Paragraph 13(b)(2)

1. ***Identity of the consumer***. *The billing error notice need not specify both the name and the account number if the information supplied enables the creditor to identify the consumer's name and account.*

Section 4: Time for Resolution; General Procedures

12 C.F.R. § 1026.13(c)

Time for Resolution; General Procedures - 12 C.F.R. § 1026.13(c)

Regulatory Discussion

This section describes the general procedures for the time for resolution. The commentary provides expanded coverage on:

- Temporary or provisional corrections; Correction without investigation
- Time for resolution; Finality of error resolution procedure

Regulatory Text

(c) **Time for resolution; general procedures.**

(1) The creditor shall mail or deliver written acknowledgment to the consumer within 30 days of receiving a billing error notice, unless the creditor has complied with the appropriate resolution procedures of paragraphs (e) and (f) of this section, as applicable, within the 30-day period; and

(2) The creditor shall comply with the appropriate resolution procedures of paragraphs (e) and (f) of this section, as applicable, within 2 complete billing cycles (but in no event later than 90 days) after receiving a billing error notice.

Regulatory Commentary

13(c) Time for Resolution; General Procedures

1. ***Temporary or provisional corrections.*** *A creditor may temporarily correct the consumer's account in response to a billing error notice, but is not excused from complying with the remaining error resolution procedures within the time limits for resolution.*

2. ***Correction without investigation.*** *A creditor may correct a billing error in the manner and amount asserted by the consumer without the investigation or the determination normally required. The creditor must comply, however, with all other applicable provisions. If a creditor follows this procedure, no presumption is created that a billing error occurred.*

3. ***Relationship with §1026.12***. *The consumer's rights under the billing error provisions in §1026.13 are independent of the provisions set forth in §1026.12(b) and (c). (See comments 12(b)-4, 12(b)(3)-3, and 12(c)-1.)*

Paragraph 13(c)(2)

1. ***Time for resolution.*** *The phrase two complete billing cycles means two actual billing cycles occurring after receipt of the billing error notice, not a measure of time equal to two billing cycles. For example, if a creditor on a monthly billing cycle receives a billing error notice mid-cycle, it has the remainder of that cycle plus the next two full billing cycles to resolve the error.*

2. ***Finality of error resolution procedure.*** *A creditor must comply with the error resolution procedures and complete its investigation to determine whether an error occurred within two complete billing cycles as set forth in §1026.13(c)(2). Thus, for example, §1026.13(c)(2) prohibits a creditor from reversing amounts previously credited for an alleged billing error even if the creditor obtains evidence after the error resolution time period has passed indicating that the billing error did not occur as asserted by the consumer. Similarly, if a creditor fails to mail or deliver a written explanation setting forth the reason why the billing error did not occur as asserted, or otherwise fails to comply with the error resolution procedures set forth in §1026.13(f), the creditor generally must credit the disputed amount and related finance or other charges, as applicable, to the consumer's account. However, if a consumer receives more than one credit to correct the same billing error, §1026.13 does not prevent a creditor from reversing amounts it has previously credited to correct that error, provided that the total amount of the remaining credits is equal to or more than the amount of the error and that the consumer does not incur any fees or other charges as a result of the timing of the creditor's reversal. For example, assume that a consumer asserts a billing error with respect to a $100 transaction and that the creditor posts a $100 credit to the consumer's account to correct that error during the time period set forth in §1026.13(c)(2). However, following that time period, a merchant or other person honoring the credit card issues a $100 credit to the consumer to correct the same error. In these circumstances, §1026.13(c)(2) does not prohibit the creditor from reversing its $100 credit once the $100 credit from the merchant or other person has posted to the consumer's account.*

Section 5: Rules Pending Resolution
12 C.F.R. § 1026.13(d)

Rules Pending Resolution - 12 C.F.R. § 1026.13(d)

Regulatory Discussion

This section describes four rules to follow with <u>pending resolution</u>. The commentary provides expanded coverage with respect to the following:

- Disputed amount
- Prohibited collection actions;
    - Right to withhold payment;
    - Imposition of additional charges on undisputed amounts;
    - Automatic payment plans – coverage
    - Automatic payment plans - time of notice
- Report of dispute; Person; Creditor's agent
- Other issues

Regulatory Text

(d) **Rules pending resolution.** Until a billing error is resolved under paragraph (e) or (f) of this section, the following rules apply:

(1) **Consumer's right to withhold disputed amount; collection action prohibited.** The consumer need not pay (and the creditor may not try to collect) any portion of any required payment that the consumer believes is related to the disputed amount (including related finance or other charges). If the cardholder has enrolled in an automatic payment plan offered by the card issuer and has agreed to pay the credit card indebtedness by periodic deductions from the cardholder's deposit account, the card issuer shall not deduct any part of the disputed amount or related finance or other charges if a billing error notice is received any time up to 3 business days before the scheduled payment date.

(2) **Adverse credit reports prohibited.** The creditor or its agent shall not (directly or indirectly) make or threaten to make an adverse report to any person about the consumer's credit standing, or report that an amount or account is delinquent, because the consumer failed to pay the disputed amount or related finance or other charges.

(3) **Acceleration of debt and restriction of account prohibited.** A creditor shall not accelerate any part of the consumer's indebtedness or restrict or close a consumer's account solely because the consumer has exercised in good faith rights provided by this section. A creditor may be subject to the forfeiture penalty under 15 U.S.C. 1666(e) for failure to comply with any of the requirements of this section.

(4) **Permitted creditor actions.** A creditor is not prohibited from taking action to collect any undisputed portion of the item or bill; from deducting any disputed amount and related finance or other charges from the consumer's credit limit on the account; or from reflecting a disputed amount and related finance or other charges on a periodic statement, provided that the creditor indicates on or with the periodic statement that payment of any disputed amount and related finance or other charges is not required pending the creditor's compliance with this section.

Regulatory Commentary

13(d) Rules Pending Resolution

1. ***Disputed amount.*** *Disputed amount is the dollar amount alleged by the consumer to be in error. When the allegation concerns the description or identification of the transaction (such as the date or the seller's name) rather than a dollar amount, the disputed amount is the amount of the transaction or charge that corresponds to the disputed transaction identification. If the consumer alleges a failure to send a periodic statement under §1026.13(a)(7), the disputed amount is the entire balance owing.*

13(d)(1) Consumer's Right To Withhold Disputed Amount; Collection Action Prohibited

1. ***Prohibited collection actions****. During the error resolution period, the creditor is prohibited from trying to collect the disputed amount from the consumer. Prohibited collection actions include, for example, instituting court action, taking a lien, or instituting attachment proceedings.*

2. ***Right to withhold payment.*** *If the creditor reflects any disputed amount or related finance or other charges on the periodic statement, and is therefore required to make the disclosure under §1026.13(d)(4), the creditor may comply with that disclosure requirement by indicating that payment of any disputed amount is not required pending resolution. Making a disclosure that only refers to the disputed amount would, of course, in no way affect the consumer's right under §1026.13(d)(1) to withhold related finance and other charges. The disclosure under §1026.13(d)(4) need not appear in any specific place on the periodic statement, need not state the specific amount that the consumer may withhold, and may be preprinted on the periodic statement.*

3. ***Imposition of additional charges on undisputed amounts.*** *The consumer's withholding of a disputed amount from the total bill cannot subject undisputed balances (including new purchases or cash advances made during the present or subsequent cycles) to the imposition of finance or other charges. For example, if on an account with a grace period (that is, an account in which paying the new balance in full allows the consumer to avoid the imposition of additional finance charges), a consumer disputes a $2 item out of a total bill of $300 and pays $298 within the grace period, the consumer would not lose the grace period as to any undisputed amounts, even if the creditor determines later that no billing error occurred. Furthermore, finance or other charges may not be imposed on any new purchases or advances that, absent the unpaid disputed balance, would not have finance or other charges imposed on them. Finance or other charges that would have been incurred even if the consumer had paid the disputed amount would not be affected.*

4. ***Automatic payment plans - coverage.*** *The coverage of this provision is limited to the card issuer's automatic payment plans, whether or not the consumer's asset account is held by the card issuer or by another financial institution. It does not apply to automatic or bill-payment plans offered by financial institutions other than the credit card issuer.*

5. ***Automatic payment plans - time of notice.*** *While the card issuer does not have to restore or prevent the debiting of a disputed amount if the billing error notice arrives after the three-business-day cut-off, the card issuer must, however, prevent the automatic debit of any part of the disputed amount that is still outstanding and unresolved at the time of the next scheduled debit date.*

13(d)(2) Adverse Credit Reports Prohibited

1. ***Report of dispute.*** *Although the creditor must not issue an adverse credit report because the consumer fails to pay the disputed amount or any related charges, the creditor may report that the amount or the account is in dispute. Also, the creditor may report the account as delinquent if undisputed amounts remain unpaid.*

2. ***Person.*** *During the error resolution period, the creditor is prohibited from making an adverse credit report about the disputed amount to any person—including employers, insurance companies, other creditors, and credit bureaus.*

3. ***Creditor's agent.*** *Whether an agency relationship exists between a creditor and an issuer of an adverse credit report is determined by state or other applicable law.*

Section 6: Procedures if Billing Error Occurred as Asserted

12 C.F.R. § 1026.13(e)

Procedures if Billing Error Occurred as Asserted - 12 C.F.R. § 1026.13(e)

Regulatory Discussion

This section describes two procedures to follow if the billing error occurred as asserted. The commentary provides expanded coverage with respect to the following:

- Correction of error;
- Form of correction notice;
- Discovery of information after investigation period

Regulatory Text

(e) **Procedures if billing error occurred as asserted.** If a creditor determines that a billing error occurred as asserted, it shall within the time limits in paragraph (c)(2) of this section:

(1) Correct the billing error and credit the consumer's account with any disputed amount and related finance or other charges, as applicable; and

(2) Mail or deliver a correction notice to the consumer.

Regulatory Commentary

13(e) Procedures If Billing Error Occurred as Asserted

*1. **Correction of error.** The phrase as applicable means that the necessary corrections vary with the type of billing error that occurred. For example, a misidentified transaction (or a transaction that is identified by one of the alternative methods in §1026.8) is cured by properly identifying the transaction and crediting related finance and any other charges imposed. The creditor is not required to cancel the amount of the underlying obligation incurred by the consumer.*

*2. **Form of correction notice.** The written correction notice may take a variety of forms. It may be sent separately, or it may be included on or with a periodic statement that is mailed within the time for resolution. If the periodic statement is used, the amount of the billing* *error must be specifically identified. If a separate billing error correction notice is provided, the accompanying or subsequent periodic statement reflecting the corrected amount may simply identify it as credit.*

*3. **Discovery of information after investigation period.** See comment 13(c)(2)-2.*

Section 7: Procedures if Different Billing Error or No Billing Error Occurred

12 C.F.R. § 1026.13(f)

Procedures if Different Billing Error or No Billing Error Occurred - 12 C.F.R. § 1026.13(f)

Regulatory Discussion

This section describes three procedures to follow if a different billing error occurred or no billing error occurred. The commentary provides expanded coverage with respect to the following:

- General:
- Different billing error;
- Form of creditor's explanation;
- Reasonable investigation.

Regulatory Text

(f) **Procedures if different billing error or no billing error occurred.** If, after conducting a reasonable investigation, a creditor determines that no billing error occurred or that a different billing error occurred from that asserted, the creditor shall within the time limits in paragraph (c)(2) of this section:

(1) Mail or deliver to the consumer an explanation that sets forth the reasons for the creditor's belief that the billing error alleged by the consumer is incorrect in whole or in part;

(2) Furnish copies of documentary evidence of the consumer's indebtedness, if the consumer so requests; and

(3) If a different billing error occurred, correct the billing error and credit the consumer's account with any disputed amount and related finance or other charges, as applicable.

Regulatory Commentary

13(f) Procedures If Different Billing Error or No Billing Error Occurred

*1. **Different billing error.** Examples of a different billing error include:*

i. Differences in the amount of an error (for example, the customer asserts a $55.00 error *but the error was only $53.00).*

ii. Differences in other particulars asserted by the consumer (such as when a consumer asserts that a particular transaction never occurred, but the creditor determines that only the seller's name was disclosed incorrectly).

2. ***Form of creditor's explanation.*** *The written explanation (which also may notify the consumer of corrections to the account) may take a variety of forms. It may be sent separately, or it may be included on or with a periodic statement that is mailed within the time for resolution. If the creditor uses the periodic statement for the explanation and correction(s), the corrections must be specifically identified. If a separate explanation, including the correction notice, is provided, the enclosed or subsequent periodic statement reflecting the corrected amount may simply identify it as a credit. The explanation may be combined with the creditor's notice to the consumer of amounts still owing, which is required under §1026.13(g)(1), provided it is sent within the time limit for resolution. (See commentary to §1026.13(e).)*

3. ***Reasonable investigation.*** *A creditor must conduct a reasonable investigation before it determines that no billing error occurred or that a different billing error occurred from that asserted. In conducting its investigation of an allegation of a billing error, the creditor may reasonably request the consumer's cooperation. The creditor may not automatically deny a claim based solely on the consumer's failure or refusal to comply with a particular request, including providing an affidavit or filing a police report. However, if the creditor otherwise has no knowledge of facts confirming the billing error, the lack of information resulting from the consumer's failure or refusal to comply with a particular request may lead the creditor reasonably to terminate the investigation. The procedures involved in investigating alleged billing errors may differ depending on the billing error type.*

   i. Unauthorized transaction. In conducting an investigation of a notice of billing error alleging an unauthorized transaction under §1026.13(a)(1), actions such as the following represent steps that a creditor may take, as appropriate, in conducting a reasonable investigation:

      A. Reviewing the types or amounts of purchases made in relation to the consumer's previous purchasing pattern.

      B. Reviewing where the purchases were delivered in relation to the consumer's residence or place of business.

      C. Reviewing where the purchases were made in relation to where the consumer resides or has normally shopped.

      D. Comparing any signature on credit slips for the purchases to the signature of the consumer (or an authorized user in the case of a credit card account) in the creditor's records, including other credit slips.

      E. Requesting documentation to assist in the verification of the claim.

      F. Requiring a written, signed statement from the consumer (or authorized user, in the case of a credit card account). For example, the creditor may include a signature line on a billing rights form that the consumer may send in to provide notice of the claim. However, a creditor may not require the consumer to provide an affidavit or *signed statement under penalty of perjury as a part of a reasonable investigation.*

G. Requesting a copy of a police report, if one was filed.

H. Requesting information regarding the consumer's knowledge of the person who allegedly obtained an extension of credit on the account or of that person's authority to do so.

ii. Nondelivery of property or services. In conducting an investigation of a billing error notice alleging the nondelivery of property or services under §1026.13(a)(3), the creditor shall not deny the assertion unless it conducts a reasonable investigation and determines that the property or services were actually delivered, mailed, or sent as agreed.

iii. Incorrect information. In conducting an investigation of a billing error notice alleging that information appearing on a periodic statement is incorrect because a person honoring the consumer's credit card or otherwise accepting an access device for an open-end plan has made an incorrect report to the creditor, the creditor shall not deny the assertion unless it conducts a reasonable investigation and determines that the information was correct.

Section 8: Creditor's Rights and Duties after Resolution

12 C.F.R. § 1026.13(g)

Creditor's Rights and Duties after Resolution - 12 C.F.R. § 1026.13(g)

Regulatory Discussion

This section describes four creditor rights and duties after resolution. The commentary provides expanded coverage with respect to the following:

- Amounts owed by consumer; Time of notice
- Grace period if no error occurred
- Time for payment
- Credit reporting; Adverse report to credit bureau

Regulatory Text

(g) **Creditor's rights and duties after resolution.** If a creditor, after complying with all of the requirements of this section, determines that a consumer owes all or part of the disputed amount and related finance or other charges, the creditor:

(1) Shall promptly notify the consumer in writing of the time when payment is due and the portion of the disputed amount and related finance or other charges that the consumer still owes;

(2) Shall allow any time period disclosed under §1026.6(a)(1) or (b)(2)(v), as applicable, and §1026.7(a)(8) or (b)(8), as applicable, during which the consumer can pay the amount due under paragraph (g)(1) of this section without incurring additional finance or other charges;

(3) May report an account or amount as delinquent because the amount due under paragraph (g)(1) of this section remains unpaid after the creditor has allowed any time period disclosed under §1026.6(a)(1) or (b)(2)(v), as applicable, and §1026.7(a)(8) or (b)(8), as applicable or 10 days (whichever is longer) during which the consumer can pay the amount; but

(4) May not report that an amount or account is delinquent because the amount due under paragraph (g)(1) of the section remains unpaid, if the creditor receives (within the time allowed for payment in paragraph (g)(3) of this section) further written notice from the consumer that any portion of the billing error is still in dispute, unless the creditor also:

(i) Promptly reports that the amount or account is in dispute;

(ii) Mails or delivers to the consumer (at the same time the report is made) a written notice of the name and address of each person to whom the creditor makes a report; and

(iii) Promptly reports any subsequent resolution of the reported delinquency to all persons to whom the creditor has made a report.

Regulatory Commentary

13(g) Creditor's Rights and Duties After Resolution

Paragraph 13(g)(1)

*1. **Amounts owed by consumer.** Amounts the consumer still owes may include both minimum periodic payments and related finance and other charges that accrued during the resolution period. As explained in the commentary to §1026.13(d)(1), even if the creditor later determines that no billing error occurred, the creditor may not include finance or other charges that are imposed on undisputed balances solely as a result of a consumer's withholding payment of a disputed amount.*

*2. **Time of notice.** The creditor need not send the notice of amount owed within the time period for resolution, although it is under a duty to send the notice promptly after resolution of the alleged error. If the creditor combines the notice of the amount owed with the explanation required under §1026.13(f)(1), the combined notice must be provided within the time limit for resolution.*

Paragraph 13(g)(2)

*1. **Grace period if no error occurred.** If the creditor determines, after a reasonable investigation, that a billing error did not occur as asserted, and the consumer was entitled to a grace period at the time the consumer provided the billing error notice, the consumer must be given a period of time equal to the grace period disclosed under §1026.6(a)(1) or (b)(2) and §1026.7(a)(8) or (b)(8) to pay any disputed amounts due without incurring additional finance or other charges. However, the creditor need not allow a grace period disclosed under the above-mentioned sections to pay the amount due under §1026.13(g)(1) if no error occurred and the consumer was not entitled to a grace period at the time the consumer asserted the error. For example, assume that a creditor provides a consumer a grace period of 20 days to pay a new balance to avoid finance charges, and that the consumer did not carry an outstanding balance from the prior month. If the consumer subsequently asserts a billing error for the current statement period within the 20-day grace period, and the creditor determines that no billing error in fact occurred, the consumer must be given at least 20 days (i.e., the full disclosed grace period) to pay the amount due without incurring additional finance charges. Conversely, if the consumer was not entitled to a grace period at the time the consumer asserted the billing error, for example, if the consumer did not pay the previous monthly balance of undisputed charges in full, the creditor may assess finance charges on the disputed balance for the entire period the item was in dispute.*

Paragraph 13(g)(3)

1. ***Time for payment.*** *The consumer has a minimum of 10 days to pay (measured from the time the consumer could reasonably be expected to have received notice of the amount owed) before the creditor may issue an adverse credit report; if an initially disclosed grace period allows the consumer a longer time in which to pay, the consumer has the benefit of that longer period.*

Paragraph 13(g)(4)

1. ***Credit reporting.*** *Under §1026.13(g)(4)(i) and (iii) the creditor's additional credit reporting responsibilities must be accomplished promptly. The creditor need not establish costly procedures to fulfill this requirement. For example, a creditor that reports to a credit bureau on scheduled updates need not transmit corrective information by an unscheduled computer or magnetic tape; it may provide the credit bureau with the correct information by letter or other commercially reasonable means when using the scheduled update would not be "prompt." The creditor is not responsible for ensuring that the credit bureau corrects its information immediately.*

2. ***Adverse report to credit bureau.*** *If a creditor made an adverse report to a credit bureau that disseminated the information to other creditors, the creditor fulfills its §1026.13(g)(4)(ii) obligations by providing the consumer with the name and address of the credit bureau.*

Section 9: Reassertion of Billing Error
12 C.F.R. § 1026.13(h)

Reassertion of Billing Error - 12 C.F.R. § 1026.13(h)

Regulatory Discussion

This section describes the creditor's responsibilities in a reassertion of billing error. There is no commentary.

Regulatory Text

(h) **Reassertion of billing error.** A creditor that has fully complied with the requirements of this section has no further responsibilities under this section (other than as provided in paragraph (g)(4) of this section) if a consumer reasserts substantially the same billing error.

Regulatory Commentary

None.

Section 10: Relation to EFTA and Regulation E
12 C.F.R. § 1026.13(i)

Relation to EFTA and Regulation E - 12 C.F.R. § 1026.13(i)

Regulatory Discussion

This section describes the relation to the Electronic Fund Transfer Act (Regulation E). The commentary provides additional information.

Regulatory Text

(i) ***Relation to Electronic Fund Transfer Act and Regulation E.*** If an extension of credit is incident to an electronic fund transfer, under an agreement between a consumer and a financial institution to extend credit when the consumer's account is overdrawn or to maintain a specified minimum balance in the consumer's account, the creditor shall comply with the requirements of Regulation E, 12 CFR 1005.11 governing error resolution rather than those of paragraphs (a), (b), (c), (e), (f), and (h) of this section.

Regulatory Commentary

13(i) Relation to Electronic Fund Transfer Act and Regulation E

*1. **Coverage.** Credit extended directly from a non-overdraft credit line is governed solely by Regulation Z, even though a combined credit card/access device is used to obtain the extension.*

*2. **Incidental credit under agreement.** Credit extended incident to an electronic fund transfer under an agreement between the consumer and the financial institution is governed by §1026.13(i), which provides that certain error resolution procedures in both this part and Regulation E apply. Incidental credit that is not extended under an agreement between the consumer and the financial institution is governed solely by the error resolution procedures in Regulation E. For example, credit inadvertently extended incident to an electronic fund-transfer, such as under an overdraft service not subject to Regulation Z, is governed solely by the Regulation E error resolution procedures, if the bank and the consumer do not have an agreement to extend credit when the consumer's account is overdrawn.*

*3. **Application to debit/credit transactions-examples.** If a consumer withdraws money at an automated teller machine and activates an overdraft credit feature on the checking account:*

i. An error asserted with respect to the transaction is subject, for error resolution purposes, *to the applicable Regulation E (12 CFR Part 1005) provisions (such as timing and notice) for the entire transaction.*

ii. The creditor need not provisionally credit the consumer's account, under 12 CFR 1005.11(c)(2)(i), for any portion of the unpaid extension of credit.

iii. The creditor must credit the consumer's account under §1005.11(c) with any finance or other charges incurred as a result of the alleged error.

iv. The provisions of §§1026.13(d) and (g) apply only to the credit portion of the transaction.

Open End Credit - Determination of Annual Percentage Rate

Section 1: General Rule
12 C.F.R. § 1026.14(a)

General Rule - 12 C.F.R. § 1026.14(a)

Regulatory Discussion

This section, in general terms, describes the APR as a measure of the cost of credit, expressed as a yearly rate. The commentary provides expanded discussion on the following six topics:

1. Tolerance
2. Rounding
3. Periodic rates
4. Finance charges
5. Good faith reliance on faulty calculation tools
6. Effect of leap year

Regulatory Text

(a) **General rule.** The annual percentage rate is a measure of the cost of credit, expressed as a yearly rate. An annual percentage rate shall be considered accurate if it is not more than ⅛ th of 1 percentage point above or below the annual percentage rate determined in accordance with this section. An error in disclosure of the annual percentage rate or finance charge shall not, in itself, be considered a violation of this part if:

(1) The error resulted from a corresponding error in a calculation tool used in good faith by the creditor; and

(2) Upon discovery of the error, the creditor promptly discontinues use of that calculation tool for disclosure purposes, and notifies the Bureau in writing of the error in the calculation tool.

Regulatory Commentary

14(a) General Rule

1. ***Tolerance.*** *The tolerance of 1/8th of 1 percentage point above or below the annual percentage rate applies to any required disclosure of the annual percentage rate. The disclosure of the annual percentage rate is required in §§1026.60, 1026.40, 1026.6, 1026.7,* *1026.9, 1026.15, 1026.16, 1026.26, 1026.55, and 1026.56.*

2. ***Rounding.*** *The regulation does not require that the annual percentage rate be calculated to any particular number of decimal places; rounding is permissible within the 1/8th of 1 percent tolerance. For example, an exact annual percentage rate of 14.33333% may be stated as 14.33% or as 14.3%, or even as 14¼ %; but it could not be stated as 14.2% or 14%, since each varies by more than the permitted tolerance.*

3. ***Periodic rates.*** *No explicit tolerance exists for any periodic rate as such; a disclosed periodic rate may vary from precise accuracy (for example, due to rounding) only to the extent that its annualized equivalent is within the tolerance permitted by §1026.14(a). Further, a periodic rate need not be calculated to any particular number of decimal places.*

4. ***Finance charges.*** *The regulation does not prohibit creditors from assessing finance charges on balances that include prior, unpaid finance charges; state or other applicable law may do so, however.*

5. ***Good faith reliance on faulty calculation tools.*** *The regulation relieves a creditor of liability for an error in the annual percentage rate or finance charge that resulted from a corresponding error in a calculation tool used in good faith by the creditor. Whether or not the creditor's use of the tool was in good faith must be determined on a case-by-case basis, but the creditor must in any case have taken reasonable steps to verify the accuracy of the tool, including any instructions, before using it. Generally, the safe harbor from liability is available only for errors directly attributable to the calculation tool itself, including software programs; it is not intended to absolve a creditor of liability for its own errors, or for errors arising from improper use of the tool, from incorrect data entry, or from misapplication of the law.*

6. ***Effect of leap year.*** *Any variance in the annual percentage rate that occurs solely by reason of the addition of February 29 in a leap year may be disregarded, and such a rate may be disclosed without regard to such variance.*

Section 2: APR - In General
12 C.F.R. § 1026.14(b)

APR - In General - 12 C.F.R. § 1026.14(b)

Regulatory Discussion

This section, in general terms, describes the corresponding APR is determined by multiplying the periodic rate by the number of periods in the year.

Regulatory Text

(b) Annual percentage rate - in general. Where one or more periodic rates may be used to compute the finance charge, the annual percentage rate(s) to be disclosed for purposes of §§1026.60, 1026.40, 1026.6, 1026.7(a)(4) or (b)(4), 1026.9, 1026.15, 1026.16, 1026.26, 1026.55, and 1026.56 shall be computed by multiplying each periodic rate by the number of periods in a year.

Regulatory Commentary

14(b) Annual Percentage Rate - In General

1. ***Corresponding annual percentage rate computation.*** *For purposes of §§1026.60, 1026.40, 1026.6, 1026.7(a)(4) or (b)(4), 1026.9, 1026.15, 1026.16, 1026.26, 1026.55, and 1026.56, the annual percentage rate is determined by multiplying the periodic rate by the number of periods in the year. This computation reflects the fact that, in such disclosures, the rate (known as the corresponding annual percentage rate) is prospective and does not involve any particular finance charge or periodic balance.*

Section 3: Optional Effective APR for Dwelling Related Periodic Statements

12 C.F.R. § 1026.14(c)

Optional Effective APR for Periodic Statements for Creditors Offering Open-End Credit Plans Secured by a Consumer's Dwelling - 12 C.F.R. § 1026.14(c)

Regulatory Discussion

This section, in detail, describes an optional effective APR that may be disclosed on periodic statements for open-end credit secured by the consumer's dwelling. The commentary provides expanded discussion on the following five topics:

1. General rule
2. Charges related to opening, renewing, or continuing an account
3. Classification of charges
4. Small finance charges
5. Prior-cycle adjustments

In addition, there are four considerations when making the computation:

1. If the finance charge is determined solely by applying one or more periodic rates (with associated commentary)
2. If the finance charge is or includes a minimum, fixed, or other charge not due to the application of a periodic rate (with associated commentary)
3. If the finance charge imposed during the billing cycle is or includes a charge relating to a specific transaction during the billing cycle (with associated commentary)
4. If the finance charge imposed during the billing cycle is or includes a minimum, fixed, or other charge not due to the application of a periodic rate and the total finance charge imposed during the billing cycle does not exceed 50 cents for a monthly or longer billing cycle, or the pro rata part of 50 cents for a billing cycle shorter than monthly (no commentary provided)

Regulatory Text

(c) **Optional effective annual percentage rate for periodic statements for creditors offering open-end credit plans secured by a consumer's dwelling.** A creditor offering an open-end plan subject to the requirements of §1026.40 need not disclose an effective annual percentage rate. Such a creditor may, at its option, disclose an effective annual percentage rate(s) pursuant to §1026.7(a)(7) and compute the effective annual percentage rate as follows:

(1) **Solely periodic rates imposed.** If the finance charge is determined solely by applying one or more periodic rates, at the creditor's option, either:

(i) By multiplying each periodic rate by the number of periods in a year; or

(ii) By dividing the total finance charge for the billing cycle by the sum of the balances to which the periodic rates were applied and multiplying the quotient (expressed as a percentage) by the number of billing cycles in a year.

(2) **Minimum or fixed charge, but not transaction charge, imposed.** If the finance charge imposed during the billing cycle is or includes a minimum, fixed, or other charge not due to the application of a periodic rate, other than a charge with respect to any specific transaction during the billing cycle, by dividing the total finance charge for the billing cycle by the amount of the balance(s) to which it is applicable and multiplying the quotient (expressed as a percentage) by the number of billing cycles in a year. If there is no balance to which the finance charge is applicable, an annual percentage rate cannot be determined under this section. Where the finance charge imposed during the billing cycle is or includes a loan fee, points, or similar charge that relates to opening, renewing, or continuing an account, the amount of such charge shall not be included in the calculation of the annual percentage rate.

(3) **Transaction charge imposed.** If the finance charge imposed during the billing cycle is or includes a charge relating to a specific transaction during the billing cycle (even if the total finance charge also includes any other minimum, fixed, or other charge not due to the application of a periodic rate), by dividing the total finance charge imposed during the billing cycle by the total of all balances and other amounts on which a finance charge was imposed during the billing cycle without duplication, and multiplying the quotient (expressed as a percentage) by the number of billing cycles in a year, except that the annual percentage rate shall not be less than the largest rate determined by multiplying each periodic rate imposed during the billing cycle by the number of periods in a year. Where the finance charge imposed during the billing cycle is or includes a loan fee, points, or similar charge that relates to the opening, renewing, or continuing an account, the amount of such charge shall not be included in the calculation of the annual percentage rate. See appendix F to this part regarding determination of the denominator of the fraction under this paragraph.

(4) If the finance charge imposed during the billing cycle is or includes a minimum, fixed, or other charge not due to the application of a periodic rate and the total finance charge imposed during the billing cycle does not exceed 50 cents for a monthly or longer billing cycle, or the pro rata part of 50 cents for a billing cycle shorter than monthly, at the creditor's option, by multiplying each applicable periodic rate by the number of periods in a year, notwithstanding the provisions of paragraphs (c)(2) and (c)(3) of this section.

Regulatory Commentary

14(c) Optional Effective Annual Percentage Rate for Periodic Statements for Creditors Offering Open-End Credit Plans Secured by a Consumer's Dwelling

1. ***General rule.*** *The periodic statement may reflect (under §1026.7(a)(7)) the annualized equivalent of the rate actually applied during a particular cycle; this rate may differ from the corresponding annual percentage rate because of the inclusion of, for example, fixed, minimum, or transaction charges. Sections 1026.14(c)(1) through (c)(4) state the computation rules for the effective rate.*

2. ***Charges related to opening, renewing, or continuing an account.*** *Sections 1026.14(c)(2) and (c)(3) exclude from the calculation of the effective annual percentage rate finance charges that are imposed during the billing cycle such as a loan fee, points, or similar charge that relates to opening, renewing, or continuing an account. The charges involved here do not relate to a specific transaction or to specific activity on the account, but relate solely to the opening, renewing, or continuing of the account. For example, an annual fee to renew an open-end credit account that is a percentage of the credit limit on the account, or that is charged only to consumers that have not used their credit card for a certain dollar amount in transactions during the preceding year, would not be included in the calculation of the annual percentage rate, even though the fee may not be excluded from the finance charge under §1026.4(c)(4). (See comment 4(c)(4)-2.) This rule applies even if the loan fee, points, or similar charges are billed on a subsequent periodic statement or withheld from the proceeds of the first advance on the account.*

3. ***Classification of charges.*** *If the finance charge includes a charge not due to the application of a periodic rate, the creditor must use the annual percentage rate computation method that corresponds to the type of charge imposed. If the charge is tied to a specific transaction (for example, 3 percent of the amount of each transaction), then the method in §1026.14(c)(3) must be used. If a fixed or minimum charge is applied, that is, one not tied to any specific transaction, then the formula in §1026.14(c)(2) is appropriate.*

4. ***Small finance charges.*** *Section 1026.14(c)(4) gives the creditor an alternative to §1026.14(c)(2) and (c)(3) if small finance charges (50 cents or less) are involved; that is, if the finance charge includes minimum or fixed fees not due to the application of a periodic rate and the total finance charge for the cycle does not exceed 50 cents. For example, while a monthly activity fee of 50 cents on a balance of $20 would produce an annual percentage rate of 30 percent under the rule in §1026.14(c)(2), the creditor may disclose an annual percentage rate of 18 percent if the periodic rate generally applicable to all balances is 1 and ½ percent per month.*

5. ***Prior-cycle adjustments.***

   i. *The annual percentage rate reflects the finance charges imposed during the billing cycle. However, finance charges imposed during the billing cycle may relate to activity in a prior cycle. Examples of circumstances when this may occur are:*

      A. *A cash advance occurs on the last day of a billing cycle on an account that uses the transaction date to figure finance charges, and it is impracticable to post the transaction until the following cycle.*

B. An adjustment to the finance charge is made following the resolution of a billing error dispute.

C. A consumer fails to pay the purchase balance under a deferred payment feature by the payment due date, and finance charges are imposed from the date of purchase.

ii. Finance charges relating to activity in prior cycles should be reflected on the periodic statement as follows:

A. If a finance charge imposed in the current billing cycle is attributable to periodic rates applicable to prior billing cycles (such as when a deferred payment balance was not paid in full by the payment due date and finance charges from the date of purchase are now being debited to the account, or when a cash advance occurs on the last day of a billing cycle on an account that uses the transaction date to figure finance charges and it is impracticable to post the transaction until the following cycle), and the creditor uses the quotient method to calculate the annual percentage rate, the numerator would include the amount of any transaction charges plus any other finance charges posted during the billing cycle. At the creditor's option, balances relating to the finance charge adjustment may be included in the denominator if permitted by the legal obligation, if it was impracticable to post the transaction in the previous cycle because of timing, or if the adjustment is covered by comment 14(c)-5.ii.B.

B. If a finance charge that is posted to the account relates to activity for which a finance charge was debited or credited to the account in a previous billing cycle (for example, if the finance charge relates to an adjustment such as the resolution of a billing error dispute, or an unintentional posting error, or a payment by check that was later returned unpaid for insufficient funds or other reasons), the creditor shall at its option:

1. Calculate the annual percentage rate in accordance with ii.A of this paragraph, or

2. Disclose the finance charge adjustment on the periodic statement and calculate the annual percentage rate for the current billing cycle without including the finance charge adjustment in the numerator and balances associated with the finance charge adjustment in the denominator.

14(c)(1) Solely Periodic Rates Imposed

*1. **Periodic rates.** Section 1026.14(c)(1) applies if the only finance charge imposed is due to the application of a periodic rate to a balance. The creditor may compute the annual percentage rate either:*

i. By multiplying each periodic rate by the number of periods in the year; or

ii. By the "quotient" method. This method refers to a composite annual percentage rate when different periodic rates apply to different balances. For example, a particular plan may involve a periodic rate of ½ percent on balances up to \$500, and 1 percent on balances over \$500. If, in a given cycle, the consumer has a balance of \$800, the finance charge would consist of \$7.50 (500 × .015) plus \$3.00 (300 × .01), for a total finance charge of \$10.50. The annual percentage rate for this period may be disclosed *either as 18% on $500 and 12 percent on $300, or as 15.75 percent on a balance of $800 (the quotient of $10.50 divided by $800, multiplied by 12).*

14(c)(2) Minimum or Fixed Charge, But Not Transaction Charge, Imposed

1. ***Certain charges not based on periodic rates.*** *Section 1026.14(c)(2) specifies use of the quotient method to determine the annual percentage rate if the finance charge imposed includes a certain charge not due to the application of a periodic rate (other than a charge relating to a specific transaction). For example, if the creditor imposes a minimum $1 finance charge on all balances below $50, and the consumer's balance was $40 in a particular cycle, the creditor would disclose an annual percentage rate of 30 percent (1/40 × 12).*

2. ***No balance.*** *If there is no balance to which the finance charge is applicable, an annual percentage rate cannot be determined under §1026.14(c)(2). This could occur not only when minimum charges are imposed on an account with no balance, but also when a periodic rate is applied to advances from the date of the transaction. For example, if on May 19 the consumer pays the new balance in full from a statement dated May 1, and has no further transactions reflected on the June 1 statement, that statement would reflect a finance charge with no account balance.*

14(c)(3) Transaction Charge Imposed

1. ***Transaction charges.***

   i. *Section 1026.14(c)(3) transaction charges include, for example:*

      A. *A loan fee of $10 imposed on a particular advance.*

      B. *A charge of 3 percent of the amount of each transaction.*

   ii. *The reference to avoiding duplication in the computation requires that the amounts of transactions on which transaction charges were imposed not be included both in the amount of total balances and in the "other amounts on which a finance charge was imposed" figure. In a multifeatured plan, creditors may consider each bona fide feature separately in the calculation of the denominator. A creditor has considerable flexibility in defining features for open-end plans, as long as the creditor has a reasonable basis for the distinctions. For further explanation and examples of how to determine the components of this formula, see appendix F to part 1026.*

2. ***Daily rate with specific transaction charge.*** *Section 1026.14(c)(3) sets forth an acceptable method for calculating the annual percentage rate if the finance charge results from a charge relating to a specific transaction and the application of a daily periodic rate. This section includes the requirement that the creditor follow the rules in appendix F to part 1026 in calculating the annual percentage rate, especially the provision in the introductory section of appendix F which addresses the daily rate/transaction charge situation by providing that the "average of daily balances" shall be used instead of the "sum of the balances."*

Section 4: Calculations - Daily Periodic Rate 12 C.F.R. § 1026.14(d)

Calculations Where Daily Periodic Rate Applied - 12 C.F.R. § 1026.14(d)

Regulatory Discussion

This section provides additional requirements for determining the APR if either paragraphs (c)(1)(ii) or (c)(2) of this section apply and all or a portion of the finance charge is determined by the application of one or more daily periodic rates. The commentary provides additional discussion.

Regulatory Text

(d) **Calculations where daily periodic rate applied.** If the provisions of paragraph (c)(1)(ii) or (c)(2) of this section apply and all or a portion of the finance charge is determined by the application of one or more daily periodic rates, the annual percentage rate may be determined either:

(1) By dividing the total finance charge by the average of the daily balances and multiplying the quotient by the number of billing cycles in a year; or

(2) By dividing the total finance charge by the sum of the daily balances and multiplying the quotient by 365.

Regulatory Commentary

14(d) Calculations Where Daily Periodic Rate Applied

*1. **Quotient method.** Section 1026.14(d) addresses use of a daily periodic rate(s) to determine some or all of the finance charge and use of the quotient method to determine the annual percentage rate. Since the quotient formula in §1026.14(c)(1)(ii) and (c)(2) cannot be used when a daily rate is being applied to a series of daily balances, §1026.14(d) provides two alternative ways to calculate the annual percentage rate—either of which satisfies the provisions of §1026.7(a)(7).*

*2. **Daily rate with specific transaction charge.** If the finance charge results from a charge relating to a specific transaction and the application of a daily periodic rate, see comment 14(c)(3)-2 for guidance on an appropriate calculation method.*

Open End - Right of Rescission

Section 1: Consumer's Right to Rescind
12 C.F.R. § 1026.15(a)

Initial Commentary - 12 CFR § 1026.15(a)

Regulatory Discussion

This introductory commentary qualifies transactions that <u>*are not subject*</u> to right-of-rescission.

Regulatory Text

None.

Regulatory Commentary

Section 1026.15 - Right of Rescission

*1. **Transactions not covered.** Credit extensions that are not subject to the regulation are not covered by §1026.15 even if the customer's principal dwelling is the collateral securing the credit. For this purpose, credit extensions also would include the occurrences listed in comment 15(a)(1)-1. For example, the right of rescission does not apply to the opening of a business-purpose credit line, even though the loan is secured by the customer's principal dwelling.*

Consumer's Right to Rescind - 12 CFR § 1026.15(a)(1)

Regulatory Discussion

This section answers the questions:

What transactions are subject to rescission?

- a credit plan in which a security interest is or will be retained or acquired in a consumer's *principal dwelling* (see commentary for additional details).
- Note: there are exemptions that will be discussed in section 6.

Who has the right to rescind?

- Each consumer whose ownership interest is or will be subject to the security interest **shall have the right to rescind:**

When does the right of rescission apply?

- Each credit extension made under the plan (except the consumer does not have the right to rescind each credit extension if such extension is made in accordance with a previously established credit limit);
- The plan when the plan is opened;
- A security interest when added or increased to secure an existing plans; and
- The increase when a credit limit on the plan is increased.

Regulatory Text

(a) **Consumer's right to rescind.**

(1)

(i) Except as provided in paragraph (a)(1)(ii) of this section, in a credit plan in which a security interest is or will be retained or acquired in a consumer's principal dwelling, each consumer whose ownership interest is or will be subject to the security interest shall have the right to rescind: each credit extension made under the plan; the plan when the plan is opened; a security interest when added or increased to secure an existing plan; and the increase when a credit limit on the plan is increased.

(ii) As provided in section 125(e) of the Act, the consumer does not have the right to rescind each credit extension made under the plan if such extension is made in accordance with a previously established credit limit for the plan.

Regulatory Commentary

Paragraph 15(a)(1)

1. ***Occurrences subject to right.*** *Under an open-end credit plan secured by the consumer's principal dwelling, the right of rescission generally arises with each of the following occurrences:*

i. Opening the account.

ii. Each credit extension.

iii. Increasing the credit limit.

iv. Adding to an existing account a security interest in the consumer's principal dwelling.

v. Increasing the dollar amount of the security interest taken in the dwelling to secure the plan. For example, a consumer may open an account with a $10,000 credit limit, $5,000 *of which is initially secured by the consumer's principal dwelling. The consumer has the right to rescind at that time and (except as noted in §1026.15(a)(1)(ii)) with each extension on the account. Later, if the creditor decides that it wants the credit line fully secured, and increases the amount of its interest in the consumer's dwelling, the consumer has the right to rescind the increase.*

2. ***Exceptions**. Although the consumer generally has the right to rescind with each transaction on the account, Section 125(e) of the Act provides an exception: the creditor need not provide the right to rescind at the time of each credit extension made under an open-end credit plan secured by the consumer's principal dwelling to the extent that the credit extended is in accordance with a previously established credit limit for the plan. This limited rescission option is available whether or not the plan existed prior to the effective date of the Act.*

3. ***Security interest arising from transaction.***

   i. In order for the right of rescission to apply, the security interest must be retained as part of the credit transaction. For example:

      A. A security interest that is acquired by a contractor who is also extending the credit in the transaction.

      B. A mechanic's or materialman's lien that is retained by a subcontractor or supplier of a contractor-creditor, even when the latter has waived its own security interest in the consumer's home.

   ii. The security interest is not part of the credit transaction, and therefore the transaction is not subject to the right of rescission when, for example:

      A. A mechanic's or materialman's lien is obtained by a contractor who is not a party to the credit transaction but merely is paid with the proceeds of the consumer's cash advance.

      B. All security interests that may arise in connection with the credit transaction are validly waived.

      C. The creditor obtains a lien and completion bond that in effect satisfies all liens against the consumer's principal dwelling as a result of the credit transaction.

   iii. Although liens arising by operation of law are not considered security interests for purposes of disclosure under §1026.2, that section specifically includes them in the definition for purposes of the right of rescission. Thus, even though an interest in the consumer's principal dwelling is not a required disclosure under §1026.6(c), it may still give rise to the right of rescission.

4. ***Consumer.** To be a consumer within the meaning of §1026.2, that person must at least have an ownership interest in the dwelling that is encumbered by the creditor's security interest, although that person need not be a signatory to the credit agreement. For example, if only one spouse enters into a secured plan, the other spouse is a consumer if the ownership interest of that spouse is subject to the security interest.*

5. ***Principal dwelling.** A consumer can only have one principal dwelling at a time. (But see comment 15(a)(1)-6.) A vacation or other second home would not be a principal dwelling.*

A transaction secured by a second home (such as a vacation home) that is not currently being used as the consumer's principal dwelling is not rescindable, even if the consumer intends to reside there in the future. When a consumer buys or builds a new dwelling that will become the consumer's principal dwelling within one year or upon completion of construction, the new dwelling is considered the principal dwelling if it secures the open-end credit line. In that case, the transaction secured by the new dwelling is a residential mortgage transaction and is not rescindable. For example, if a consumer whose principal dwelling is currently A builds B, to be occupied by the consumer upon completion of construction, an advance on an open-end line to finance B and secured by B is a residential mortgage transaction. Dwelling, as defined in §1026.2, includes structures that are classified as personalty under state law. For example, a transaction secured by a mobile home, trailer, or houseboat used as the consumer's principal dwelling may be rescindable.

*6. **Special rule for principal dwelling**. Notwithstanding the general rule that consumers may have only one principal dwelling, when the consumer is acquiring or constructing a new principal dwelling, a credit plan or extension that is subject to Regulation Z and is secured by the equity in the consumer's current principal dwelling is subject to the right of rescission regardless of the purpose of that loan (for example, an advance to be used as a bridge loan). For example, if a consumer whose principal dwelling is currently A builds B, to be occupied by the consumer upon completion of construction, a loan to finance B and secured by A is subject to the right of rescission. Moreover, a loan secured by both A and B is, likewise, rescindable.*

Consumer's Notification of Right to Rescind - 12 CFR § 1026.15(a)(2)

Regulatory Discussion

This section answers the question:

How to rescind?

- The consumer shall notify the creditor of the rescission by mail, telegram or other means of written communication.

Regulatory Text

(2) To exercise the right to rescind, the consumer shall notify the creditor of the rescission by mail, telegram, or other means of written communication. Notice is considered given when mailed, or when filed for telegraphic transmission, or, if sent by other means, when delivered to the creditor's designated place of business.

Regulatory Commentary

Paragraph 15(a)(2)

1. ***Consumer's exercise of right.*** *The consumer must exercise the right of rescission in writing but not necessarily on the notice supplied under §1026.15(b). Whatever the means of sending the notification of rescission—mail, telegram or other written means—the time period for the creditor's performance under §1026.15(d)(2) does not begin to run until the notification has been received. The creditor may designate an agent to receive the notification so long as the agent's name and address appear on the notice provided to the consumer under §1026.15(b). Where the creditor fails to provide the consumer with a designated address for sending the notification of rescission, delivery of the notification to the person or address to which the consumer has been directed to send payments constitutes delivery to the creditor or assignee. State law determines whether delivery of the notification to a third party other than the person to whom payments are made is delivery to the creditor or assignee, in the case where the creditor fails to designate an address for sending the notification of rescission.*

Timing of Notification of Right to Rescind - 12 CFR § 1026.15(a)(3)

Regulatory Discussion

This section answers the question:

When to rescind?

- The consumer may exercise the right to rescind until midnight of the third *business day* following the occurrence described in paragraph (a)(1), delivery of the notice required by paragraph (b), or delivery of all material disclosures; whichever occurs last.
- *Business day*, for purposes of rescission, *means all calendar days except Sundays and the legal public holidays* (New Year's Day, the Birthday of Martin Luther King, Jr., Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, and Christmas Day). See commentary for examples of counting business days.
- **Exception**: see commentary on *unexpired right of rescission*.

Regulatory Text

(3) The consumer may exercise the right to rescind until midnight of the third business day following the occurrence described in paragraph (a)(1) of this section that gave rise to the right of rescission, delivery of the notice required by paragraph (b) of this section, or delivery of all material disclosures, whichever occurs last. If the required notice and material disclosures are not delivered, the right to rescind shall expire 3 years after the occurrence giving rise to the right of rescission, or upon transfer of all of the consumer's interest in the property, or upon sale of the property, whichever occurs first. In the case of certain administrative proceedings, the rescission period

shall be extended in accordance with section 125(f) of the Act. The term *material disclosures* means the information that must be provided to satisfy the requirements in §1026.6 with regard to the method of determining the finance charge and the balance upon which a finance charge will be imposed, the annual percentage rate, the amount or method of determining the amount of any membership or participation fee that may be imposed as part of the plan, and the payment information described in §1026.40(d)(5)(i) and (ii) that is required under §1026.6(e)(2).

Regulatory Commentary

Paragraph 15(a)(3)

1. ***Rescission period.***

i. The period within which the consumer may exercise the right to rescind runs for 3 business days from the last of 3 events:

A. The occurrence that gives rise to the right of rescission.

B. Delivery of all material disclosures that are relevant to the plan.

C. Delivery to the consumer of the required rescission notice.

ii. For example, an account is opened on Friday, June 1, and the disclosures and notice of the right to rescind were given on Thursday, May 31; the rescission period will expire at midnight of the third business day after June 1—that is, Tuesday June 5. In another example, if the disclosures are given and the account is opened on Friday, June 1, and the rescission notice is given on Monday, June 4, the rescission period expires at midnight of the third business day after June 4—that is Thursday, June 7. The consumer must place the rescission notice in the mail, file it for telegraphic transmission, or deliver it to the creditor's place of business within that period in order to exercise the right.

2. ***Material disclosures.*** *Section 1026.15(a)(3) sets forth the material disclosures that must be provided before the rescission period can begin to run. The creditor must provide sufficient information to satisfy the requirements of §1026.6 for these disclosures. A creditor may satisfy this requirement by giving an initial disclosure statement that complies with the regulation. Failure to give the other required initial disclosures (such as the billing rights statement) or the information required under §1026.40 does not prevent the running of the rescission period, although that failure may result in civil liability or administrative sanctions. The payment terms set forth in §1026.15(a)(3) apply to any repayment phase set forth in the agreement. Thus, the payment terms described in §1026.6(e)(2) for any repayment phase as well as for the draw period are "material disclosures."*

3. ***Material disclosures - variable rate program****. For a variable rate program, the material disclosures also include the disclosures listed in §1026.6(a)(1)(ii): the circumstances under which the rate may increase; the limitations on the increase; and the effect of an increase. The disclosures listed in §1026.6(a)(1)(ii) for any repayment phase also are material disclosures for variable-rate programs.*

*4. **Unexpired right of rescission.***

i. When the creditor has failed to take the action necessary to start the three-day rescission period running the right to rescind automatically lapses on the occurrence of the earliest of the following three events:

A. The expiration of three years after the occurrence giving rise to the right of rescission.

B. Transfer of all the consumer's interest in the property.

C. Sale of the consumer's interest in the property, including a transaction in which the consumer sells the dwelling and takes back a purchase money note and mortgage or retains legal title through a device such as an installment sale contract.

*ii. **Transfer of all the consumer's interest includes such transfers as bequests and gifts.** A sale or transfer of the property need not be voluntary to terminate the right to rescind. For example, a foreclosure sale would terminate an unexpired right to rescind. As provided in section 125 of the Act, the three-year limit may be extended by an administrative proceeding to enforce the provisions of §1026.15. A partial transfer of the consumer's interest, such as a transfer bestowing co-ownership on a spouse, does not terminate the right of rescission.*

Who Can Rescind - 12 CFR § 1026.15(a)(4)

Regulatory Discussion

This section qualifies that when more than one consumer in a transaction has the right to rescind, the exercise of the right by one consumer shall be effective as to all consumers.

Regulatory Text

(4) When more than one consumer has the right to rescind, the exercise of the right by one consumer shall be effective as to all consumers.

Regulatory Commentary

Paragraph 15(a)(4)

*1. **Joint owners.** When more than one consumer has the right to rescind a transaction, any one of them may exercise that right and cancel the transaction on behalf of all. For example, if both a husband and wife have the right to rescind a transaction, either spouse acting alone may exercise the right and both are bound by the rescission.*

Section 2: Notice of Right to Rescind
12 C.F.R. § 1026.15(b)

Notice of Right to Rescind - 12 CFR § 1026.15(b)

Regulatory Discussion

This section answers the questions:

To whom does the creditor provide the notice?

- Each consumer entitled to rescind must be given two copies of the rescission notice and the material disclosures.
- In a transaction involving joint owners, both of whom are entitled to rescind, both must receive the notice of the right to rescind and disclosures. See the commentary for examples.

What are the format and content requirements of the notice?

- The notice may be physically separated from the material disclosures or combined with the material disclosures, so long as the information required to be included on the notice is set forth in a clear and conspicuous manner.
- The notice *must include* five pieces of information (see (b)(1) through (5)).
- The notice *may include additional information* (see commentary).

When must the creditor give the notice?

- The notice need not be given before the occurrence giving rise to the right of rescission.
- The creditor may deliver the notice after the occurrence, but the rescission period will not begin to run until the notice is given. See commentary for example.

Regulatory Text

(b) **Notice of right to rescind.** In any transaction or occurrence subject to rescission, a creditor shall deliver two copies of the notice of the right to rescind to each consumer entitled to rescind (one copy to each if the notice is delivered in electronic form in accordance with the consumer consent and other applicable provisions of the E-Sign Act). The notice shall identify the transaction or occurrence and clearly and conspicuously disclose the following:

(1) The retention or acquisition of a security interest in the consumer's principal dwelling.

(2) The consumer's right to rescind, as described in paragraph (a)(1) of this section.

(3) How to exercise the right to rescind, with a form for that purpose, designating the address of the creditor's place of business.

(4) The effects of rescission, as described in paragraph (d) of this section.

(5) The date the rescission period expires.

Regulatory Commentary

15(b) Notice of Right To Rescind

*1. **Who receives notice.** Each consumer entitled to rescind must be given two copies of the rescission notice and the material disclosures. In a transaction involving joint owners, both of whom are entitled to rescind, both must receive the notice of the right to rescind and disclosures. For example, if both spouses are entitled to rescind a transaction, each must receive two copies of the rescission notice (one copy to each if the notice is provided in electronic form in accordance with the consumer consent and other applicable provisions of the E-Sign Act) and one copy of the disclosures.*

*2. **Format.** The rescission notice may be physically separated from the material disclosures or combined with the material disclosures, so long as the information required to be included on the notice is set forth in a clear and conspicuous manner. See the model notices in appendix G.*

*3. **Content.** The notice must include all of the information outlined in §1026.15(b)(1) through (5). The requirement in §1026.15(b) that the transaction or occurrence be identified may be met by providing the date of the transaction or occurrence. The notice may include additional information related to the required information, such as:*

i. A description of the property subject to the security interest.

ii. A statement that joint owners may have the right to rescind and that a rescission by one is effective for all.

iii. The name and address of an agent of the creditor to receive notice of rescission.

*4. **Time of providing notice.** The notice required by §1026.15(b) need not be given before the occurrence giving rise to the right of rescission. The creditor may deliver the notice after the occurrence, but the rescission period will not begin to run until the notice is given. For example, if the creditor provides the notice on May 15, but disclosures were given and the credit limit was raised on May 10, the 3-business-day rescission period will run from May 15.*

Section 3: Delay of Creditor's Performance
12 C.F.R. § 1026.15(c)

Delay of Creditor's Performance - 12 CFR § 1026.15(c)

Regulatory Discussion

This section describes actions the creditor can and cannot take during the rescission period – unless the consumer has waived their right of rescission. The commentary further describes how a creditor can be "reasonably satisfied" the consumer has not rescinded; as well as reminding the creditor to make certain all consumers eligible to rescind have not exercised the right.

Regulatory Text

(c) **Delay of creditor's performance.** Unless a consumer waives the right to rescind under paragraph (e) of this section, no money shall be disbursed other than in escrow, no services shall be performed, and no materials delivered until after the rescission period has expired and the creditor is reasonably satisfied that the consumer has not rescinded. A creditor does not violate this section if a third party with no knowledge of the event activating the rescission right does not delay in providing materials or services, as long as the debt incurred for those materials or services is not secured by the property subject to rescission.

Regulatory Commentary

15(c) Delay of Creditor's Performance

1. ***General rule.***

i. Until the rescission period has expired and the creditor is reasonably satisfied that the consumer has not rescinded, the creditor must not, either directly or through a third party:

A. Disburse advances to the consumer.

B. Begin performing services for the consumer.

C. Deliver materials to the consumer.

ii. A creditor may, however, continue to allow transactions under an existing open-end credit plan during a rescission period that results solely from the addition of a security interest in the consumer's principal dwelling. (See comment 15(c)-3 for other actions that may be taken during the delay period.)

2. ***Escrow.*** *The creditor may disburse advances during the rescission period in a valid escrow arrangement. The creditor may not, however, appoint the consumer as "trustee" or "escrow agent" and distribute funds to the consumer in that capacity during the delay period.*

3. ***Actions during the delay period.*** *Section 1026.15(c) does not prevent the creditor from taking other steps during the delay, short of beginning actual performance. Unless otherwise prohibited, such as by state law, the creditor may, for example:*

   i. Prepare the cash advance check.

   ii. Perfect the security interest.

   iii. Accrue finance charges during the delay period.

4. ***Performance by third party.*** *The creditor is relieved from liability for failure to delay performance if a third party with no knowledge that the rescission right has been activated provides materials or services, as long as any debt incurred for materials or services obtained by the consumer during the rescission period is not secured by the security interest in the consumer's dwelling. For example, if a consumer uses a bank credit card to purchase materials from a merchant in an amount below the floor limit, the merchant might not contact the card issuer for authorization and therefore would not know that materials should not be provided.*

5. ***Delay beyond rescission period.***

   i. The creditor must wait until it is reasonably satisfied that the consumer has not rescinded. For example, the creditor may satisfy itself by doing one of the following:

      A. Waiting a reasonable time after expiration of the rescission period to allow for delivery of a mailed notice.

      B. Obtaining a written statement from the consumer that the right has not been exercised.

   ii. When more than one consumer has the right to rescind, the creditor cannot reasonably rely on the assurance of only one consumer, because other consumers may exercise the right.

Section 4: Effects of Rescission
12 C.F.R. § 1026.15(d)

Effects of Rescission - 12 CFR § 1026.15(d)(1)

Regulatory Discussion

In the event the consumer rescinds the transaction, the security interest becomes void and the creditor must take action to reflect the fact that the security interest no longer exists.

Regulatory Text

(d) **Effects of rescission.**

(1) When a consumer rescinds a transaction, the security interest giving rise to the right of rescission becomes void, and the consumer shall not be liable for any amount, including any finance charge.

Regulatory Commentary

Paragraph 15(d)(1)

*1. **Termination of security interest.** Any security interest giving rise to the right of rescission becomes void when the consumer exercises the right of rescission. The security interest is automatically negated, regardless of its status and whether or not it was recorded or perfected. Under §1026.15(d)(2), however, the creditor must take any action necessary to reflect the fact that the security interest no longer exists.*

*2. **Extent of termination.** The creditor's security interest is void to the extent that it is related to the occurrence giving rise to the right of rescission. For example, upon rescission:*

i. If the consumer's right to rescind is activated by the opening of a plan, any security interest in the principal dwelling is void.

ii. If the right arises due to an increase in the credit limit, the security interest is void as to the amount of credit extensions over the prior limit, but the security interest in amounts up to the original credit limit is unaffected.

iii. If the right arises with each individual credit extension, then the interest is void as to that extension, and other extensions are unaffected.

Creditor Responsibilities - 12 CFR § 1026.15(d)(2)

Regulatory Discussion

In the event the consumer rescinds the transaction, this section requires the creditor (within 20 calendar days) to return any money or property advanced and take action to reflect the termination of the security interest.

Regulatory Text

(d) **Effects of rescission.**

(2) Within 20 calendar days after receipt of a notice of rescission, the creditor shall return any money or property that has been given to anyone in connection with the transaction and shall take any action necessary to reflect the termination of the security interest.

Regulatory Commentary

Paragraph 15(d)(2)

*1. **Refunds to consumer.** The consumer cannot be required to pay any amount in the form of money or property either to the creditor or to a third party as part of the occurrence subject to the right of rescission. Any amounts of this nature already paid by the consumer must be refunded. "Any amount" includes finance charges already accrued, as well as other charges such as broker fees, application and commitment fees, or fees for a title search or appraisal, whether paid to the creditor, paid by the consumer directly to a third party, or passed on from the creditor to the third party. It is irrelevant that these amounts may not represent profit to the creditor. For example:*

i. If the occurrence is the opening of the plan, the creditor must return any membership or application fee paid.

ii. If the occurrence is the increase in a credit limit or the addition of a security interest, the creditor must return any fee imposed for a new credit report or filing fees.

iii. If the occurrence is a credit extension, the creditors must return fees such as application, title, and appraisal or survey fees, as well as any finance charges related to the credit extension.

*2. **Amounts not refundable to consumer.** Creditors need not return any money given by the consumer to a third party outside of the occurrence, such as costs incurred for a building permit or for a zoning variance. Similarly, the term any amount does not apply to money or property given by the creditor to the consumer; those amounts must be tendered by the consumer to the creditor under §1026.15(d)(3).*

*3. **Reflection of security interest termination.** The creditor must take whatever steps are necessary to indicate that the security interest is terminated. Those steps include the* *cancellation of documents creating the security interest, and the filing of release or termination statements in the public record. In a transaction involving subcontractors or suppliers that also hold security interests related to the occurrence rescinded by the consumer, the creditor must insure that the termination of their security interests is also reflected. The 20-day period for the creditor's action refers to the time within which the creditor must begin the process. It does not require all necessary steps to have been completed within that time, but the creditor is responsible for seeing the process through to completion.*

Consumer Responsibilities - 12 CFR § 1026.15(d)(3)

Regulatory Discussion

In the event the consumer rescinds the transaction, this section permits the consumer to retain possession of any money advanced or property delivered until the creditor has satisfied the requirements of paragraph (d)(2) of this section.

Regulatory Text

(d) **Effects of rescission.**

(3) If the creditor has delivered any money or property, the consumer may retain possession until the creditor has met its obligation under paragraph (d)(2) of this section. When the creditor has complied with that paragraph, the consumer shall tender the money or property to the creditor or, where the latter would be impracticable or inequitable, tender its reasonable value. At the consumer's option, tender of property may be made at the location of the property or at the consumer's residence. Tender of money must be made at the creditor's designated place of business. If the creditor does not take possession of the money or property within 20 calendar days after the consumer's tender, the consumer may keep it without further obligation.

Regulatory Commentary

Paragraph 15(d)(3)

1. ***Property exchange.*** *Once the creditor has fulfilled its obligation under §1026.15(d)(2), the consumer must tender to the creditor any property or money the creditor has already delivered to the consumer. At the consumer's option, property may be tendered at the location of the property. For example, if fixtures or furniture have been delivered to the consumer's home, the consumer may tender them to the creditor by making them available for pick-up at the home, rather than physically returning them to the creditor's premises. Money already given to the consumer must be tendered at the creditor's place of business. For purpose of property exchange, the following additional rules apply:*

i. A cash advance is considered money for purposes of this section even if the creditor knows what the consumer intends to purchase with the money.

ii. In a 3-party open-end credit plan (that is, if the creditor and seller are not the same or related persons), extensions by the creditor that are used by the consumer for purchases from third-party sellers are considered to be the same as cash advances for purposes of tendering value to the creditor, even though the transaction is a purchase for other purposes under the regulation. For example, if a consumer exercises the unexpired right to rescind after using a 3-party credit card for one year, the consumer would tender the amount of the purchase price for the items charged to the account, rather than tendering the items themselves to the creditor.

*2. **Reasonable value.** If returning the property would be extremely burdensome to the consumer, the consumer may offer the creditor its reasonable value rather than returning the property itself. For example, if building materials have already been incorporated into the consumer's dwelling, the consumer may pay their reasonable value.*

Modification by Court - 12 CFR § 1026.15(d)(4)

Regulatory Discussion

In the event of a court order (i.e., due to a bankruptcy), the requirements of paragraphs (d)(2) and (3) of this section may be modified by the court.

Regulatory Text

(d) **Effects of rescission.**

(4) The procedures outlined in paragraphs (d)(2) and (3) of this section may be modified by court order.

Regulatory Commentary

Paragraph 15(d)(4)

*1. **Modifications.** The procedures outlined in §1026.15(d)(2) and (3) may be modified by a court. For example, when a consumer is in bankruptcy proceedings and prohibited from returning anything to the creditor, or when the equities dictate, a modification might be made. The sequence of procedures under §1026.15(d)(2) and (3), or a court's modification of those procedures under §1026.15(d)(4), does not affect a consumer's substantive right to rescind and to have the loan amount adjusted accordingly. Where the consumer's right to rescind is contested by the creditor, a court would normally determine whether the consumer has a right to rescind and determine the amounts owed before establishing the procedures for the parties to tender any money or property.*

Section 5: Consumer’s Waiver of Right to Rescind 12 C.F.R. § 1026.15(e)

Consumer’s Waiver of Right to Rescind - 12 CFR § 1026.15(e)

Regulatory Discussion

Caution: waivers of the right to rescind should not be a frequent occurrence.

In the event of a bona fide personal financial emergency, specific procedures must be followed.

Regulatory Text

(e) **Consumer's waiver of right to rescind.** The consumer may modify or waive the right to rescind if the consumer determines that the extension of credit is needed to meet a bona fide personal financial emergency. To modify or waive the right, the consumer shall give the creditor a dated written statement that describes the emergency, specifically modifies or waives the right to rescind, and bears the signature of all the consumers entitled to rescind. Printed forms for this purpose are prohibited.

Regulatory Commentary

15(e) Consumer's Waiver of Right to Rescind

*1. **Need for waiver.** To waive the right to rescind, the consumer must have a bona fide personal financial emergency that must be met before the end of the rescission period. The existence of the consumer's waiver will not, of itself, automatically insulate the creditor from liability for failing to provide the right of rescission.*

*2. **Procedure.** To waive or modify the right to rescind, the consumer must give a written statement that specifically waives or modifies the right, and also includes a brief description of the emergency. Each consumer entitled to rescind must sign the waiver statement. In a transaction involving multiple consumers, such as a husband and wife using their home as collateral, the waiver must bear the signatures of both spouses.*

Section 6: Exempt Transactions
12 C.F.R. § 1026.15(f)

Exempt Transactions - 12 CFR § 1026.15(f)

Regulatory Discussion

There are two types of transactions that are exempt from the rescission requirements (see the commentary for further detail).

Regulatory Text

(f) **Exempt transactions.** The right to rescind does not apply to the following:

(1) A residential mortgage transaction.

(2) A credit plan in which a state agency is a creditor.

Regulatory Commentary

15(f) Exempt Transactions

*1. **Residential mortgage transaction.** Although residential mortgage transactions would seldom be made on bona fide open-end credit plans (under which repeated transactions must be reasonably contemplated), an advance on an open-end plan could be for a downpayment for the purchase of a dwelling that would then secure the remainder of the line. In such a case, only the particular advance for the downpayment would be exempt from the rescission right.*

*2. **State creditors.** Cities and other political subdivisions of states acting as creditors are not exempt from §1026.15.*

*3. **Spreader clause.** When the creditor holds a mortgage or deed of trust on the consumer's principal dwelling and that mortgage or deed of trust contains a "spreader clause" (also known as a "dragnet" or cross-collateralization clause), subsequent occurrences such as the opening of a plan or individual credit extensions are subject to the right of rescission to the same degree as if the security interest were taken directly to secure the open-end plan, unless the creditor effectively waives its security interest under the spreader clause with respect to the subsequent open-end credit extensions.*

Requirements for Home Equity Plans

Section 1: Form of Disclosures
12 C.F.R. § 1026.40(a)

Introductory Regulatory Text - 12 C.F.R § 1026.40

The requirements of this section apply to open-end credit plans secured by the consumer's dwelling. For purposes of this section, an annual percentage rate is the annual percentage rate corresponding to the periodic rate as determined under §1026.14(b).

Form of Disclosures - 12 C.F.R § 1026.40(a)

Regulatory Discussion

This section describes the disclosures required for an open-end credit plan secured by a consumer's dwelling (i.e., HELOC).

In general, the disclosures required under paragraph (d) (discussed in Section 4, below):

- Must be made clearly and conspicuously and in writing (but need not be in a form the consumer may keep);
- Must be grouped together and segregated from all other unrelated information;
- May be provided on the application form or on a separate form.

Certain other disclosures may be provided separately, i.e.:

- See Section 4, below for information on (d)(4)(iii), (d)(8), and (d)(12).

The commentary provides additional discussion on these items; as well as on the precedence of certain disclosures, and electronic applications and disclosures.

Regulatory Text

(a) **Form of disclosures**

(1) **General.** The disclosures required by paragraph (d) of this section shall be made clearly and conspicuously and shall be grouped together and segregated from all unrelated information. The disclosures may be provided on the application form or on a separate form. The disclosure described in paragraph (d)(4)(iii), the itemization of third-party fees described in paragraph (d)(8), and the variable-rate information described in paragraph (d)(12) of this section may be provided separately from the other required disclosures.

(2) **Precedence of certain disclosures.** The disclosures described in paragraph (d)(1) through (4)(ii) of this section shall precede the other required disclosures.

(3) For an application that is accessed by the consumer in electronic form, the disclosures required under this section may be provided to the consumer in electronic form on or with the application.

Regulatory Commentary

40(a) Form of Disclosures

40(a)(1) General

*1. **Written disclosures.** The disclosures required under this section must be clear and conspicuous and in writing, but need not be in a form the consumer can keep. (See the commentary to §1026.6(a)(3) for special rules when disclosures required under §1026.40(d) are given in a retainable form.)*

*2. **Disclosure of annual percentage rate - more conspicuous requirement.** As provided in §1026.5(a)(2), when the term annual percentage rate is required to be disclosed with a number, it must be more conspicuous than other required disclosures.*

*3. **Segregation of disclosures.***

i. While most of the disclosures must be grouped together and segregated from all unrelated information, the creditor is permitted to include information that explains or expands on the required disclosures, including, for example:

A. Any prepayment penalty.

B. How a substitute index may be chosen.

C. Actions the creditor may take short of terminating and accelerating an outstanding balance.

D. Renewal terms.

E. Rebate of fees.

ii. An example of information that does not explain or expand on the required disclosures and thus cannot be included is the creditor's underwriting criteria, although the creditor could provide such information separately from the required disclosures.

*4. **Method of providing disclosures.** A creditor may provide a single disclosure form for all of its home equity plans, as long as the disclosure describes all aspects of the plans. For example, if the creditor offers several payment options, all such options must be disclosed. (See, however, the commentary to §1026.40(d)(5)(iii) and (d)(12) (x) and (xi) for disclosure requirements relating to these provisions.) If any aspects of a plan are linked together, the creditor must disclose clearly the relationship of the terms to each other. For example, if the consumer can only obtain a particular payment option in conjunction with a certain variable-rate feature, this fact must be disclosed. A creditor has the option of providing separate disclosure forms for multiple options or variations in features. For example, a* *creditor that offers different payment options for the draw period may prepare separate disclosure forms for the two payment options. A creditor using this alternative, however, must include a statement on each disclosure form that the consumer should ask about the creditor's other home equity programs. (This disclosure is required only for those programs available generally to the public. Thus, if the only other programs available are employee preferred-rate plans, for example, the creditor would not have to provide this statement.) A creditor that receives a request for information about other available programs must provide the additional disclosures as soon as reasonably possible.*

5. ***Form of electronic disclosures provided on or with electronic applications.*** *Creditors must provide the disclosures required by this section (including the brochure) on or with a blank application that is made available to the consumer in electronic form, such as on a creditor's Internet Web site. Creditors have flexibility in satisfying this requirement. Methods creditors could use to satisfy the requirement include, but are not limited to, the following examples (whatever method is used, a creditor need not confirm that the consumer has read the disclosures):*

   i. The disclosures could automatically appear on the screen when the application appears;

   ii. The disclosures could be located on the same Web page as the application (whether or not they appear on the initial screen), if the application contains a clear and conspicuous reference to the location of the disclosures and indicates that the disclosures contain rate, fee, and other cost information, as applicable;

   iii. Creditors could provide a link to the electronic disclosures on or with the application as long as consumers cannot bypass the disclosures before submitting the application. The link would take the consumer to the disclosures, but the consumer need not be required to scroll completely through the disclosures; or

   iv. The disclosures could be located on the same Web page as the application without necessarily appearing on the initial screen, immediately preceding the button that the consumer will click to submit the application.

40(a)(2) Precedence of Certain Disclosures

1. ***Precedence rule.*** *The list of conditions provided at the creditor's option under §1026.40(d)(4)(iii) need not precede the other disclosures.*

Paragraph 40(a)(3)

1. ***Form of disclosures.*** *Whether disclosures must be in electronic form depends upon the following:*

   i. If a consumer accesses a home equity credit line application electronically (other than as described under ii. below), such as online at a home computer, the creditor must provide the disclosures in electronic form (such as with the application form on its Web site) in order to meet the requirement to provide disclosures in a timely manner on or with the application. If the creditor instead mailed paper disclosures to the consumer, this requirement would not be met.

   ii. In contrast, if a consumer is physically present in the creditor's office, and accesses a *home equity credit line application electronically, such as via a terminal or kiosk (or if the consumer uses a terminal or kiosk located on the premises of an affiliate or third party that has arranged with the creditor to provide applications to consumers), the creditor may provide disclosures in either electronic or paper form, provided the creditor complies with the timing, delivery, and retainability requirements of the regulation.*

Section 2: Time of Disclosures
12 C.F.R. § 1026.40(b)

Time of Disclosures - 12 CFR § 1026.40(b)

Regulatory Discussion

This section provides the timing requirements for delivery of the disclosures required by paragraph (d) (see Section 4, below) and the brochure required by paragraph (e) (see Section 5, below).

In general, these disclosures must be provided at the time an application if provided to the consumer.

The commentary provides information on the timing requirements for:

- Mail and telephone applications
- General purpose applications
- Publicly-available applications
- Response cards
- Denial or withdrawal of application
- Intermediary agent or broker

Regulatory Text

(b) **Time of disclosures.** The disclosures and brochure required by paragraphs (d) and (e) of this section shall be provided at the time an application is provided to the consumer. The disclosures and the brochure may be delivered or placed in the mail not later than three business days following receipt of a consumer's application in the case of applications contained in magazines or other publications, or when the application is received by telephone or through an intermediary agent or broker.

Regulatory Commentary

40(b) Time of Disclosures

*1. **Mail and telephone applications.** If the creditor sends applications through the mail, the disclosures and a brochure must accompany the application. If an application is taken over the telephone, the disclosures and brochure may be delivered or mailed within three business days of taking the application. If an application is mailed to the consumer following a telephone request, however, the creditor also must send the disclosures and a brochure along with the application.*

2. ***General purpose applications.*** *The disclosures and a brochure need not be provided when a general purpose application is given to a consumer unless (1) the application or materials accompanying it indicate that it can be used to apply for a home equity plan or (2) the application is provided in response to a consumer's specific inquiry about a home equity plan. On the other hand, if a general purpose application is provided in response to a consumer's specific inquiry only about credit other than a home equity plan, the disclosures and brochure need not be provided even if the application indicates it can be used for a home equity plan, unless it is accompanied by promotional information about home equity plans.*

3. ***Publicly-available applications.*** *Some creditors make applications for home equity plans, such as take-ones, available without the need for a consumer to request them. These applications must be accompanied by the disclosures and a brochure, such as by attaching the disclosures and brochure to the application form.*

4. ***Response cards.*** *A creditor may solicit consumers for its home equity plan by mailing a response card which the consumer returns to the creditor to indicate interest in the plan. If the only action taken by the creditor upon receipt of the response card is to send the consumer an application form or to telephone the consumer to discuss the plan, the creditor need not send the disclosures and brochure with the response card.*

5. ***Denial or withdrawal of application.*** *In situations where §1026.40(b) permits the creditor a three-day delay in providing disclosures and the brochure, if the creditor determines within that period that an application will not be approved, the creditor need not provide the consumer with the disclosures or brochure. Similarly, if the consumer withdraws the application within this three-day period, the creditor need not provide the disclosures or brochure.*

6. ***Intermediary agent or broker.*** *In determining whether or not an application involves an intermediary agent or broker as discussed in §1026.40(b), creditors should consult the provisions in comment 19(b)-3.*

Section 3: Duties of Third Parties
12 C.F.R. § 1026.40(c)

Duties of Third Parties - 12 CFR § 1026.40(c)

Regulatory Discussion

This section states the requirements of third parties who provide applications to consumers for HELOCs.

- If the third party has the disclosures required under paragraph (d) (see Section 4, below), they must be given at the time an application is provided.
- The brochure required under paragraph (e) (see Section 5, below), must be given at the time an application is provided.
- For applications contained in magazines or other publications, or when received by telephone or intermediary agent or broker, these disclosures may be delivered or placed in the mail not later than three business days following receipt of the application.

Regulatory Text

(c) **Duties of third parties.** Persons other than the creditor who provide applications to consumers for home equity plans must provide the brochure required under paragraph (e) of this section at the time an application is provided. If such persons have the disclosures required under paragraph (d) of this section for a creditor's home equity plan, they also shall provide the disclosures at such time. The disclosures and the brochure may be delivered or placed in the mail not later than three business days following receipt of a consumer's application in the case of applications contained in magazines or other publications, or when the application is received by telephone or through an intermediary agent or broker.

Regulatory Commentary

40(c) Duties of Third Parties

*1. **Disclosure requirements.** Although third parties who give applications to consumers for home equity plans must provide the brochure required under §1026.40(e) in all cases, such persons need provide the disclosures required under §1026.40(d) only in certain instances. A third party has no duty to obtain disclosures about a creditor's home equity plan or to create a set of disclosures based on what it knows about a creditor's plan. If, however, a creditor provides the third party with disclosures along with its application form, the third* *party must give the disclosures to the consumer with the application form. The duties under this section are those of the third party; the creditor is not responsible for ensuring that a third party complies with those obligations. If an intermediary agent or broker takes an application over the telephone or receives an application contained in a magazine or other publication, §1026.40(c) permits that person to mail the disclosures and brochure within three business days of receipt of the application. (See the commentary to §1026.40(h) about imposition of nonrefundable fees.)*

Section 4: Content of Disclosures
12 C.F.R. § 1026.40(d)

Content of Disclosures - 12 CFR § 1026.40(d)

Regulatory Discussion

The disclosures for a HELOC *may include, as applicable*, twelve items; each item will be discussed individually in this section.

Regulatory Text

(d) **Content of disclosures.** The creditor shall provide the following disclosures, as applicable:

Regulatory Commentary

40(d) Content of Disclosures

1. ***Disclosures given as applicable.*** *The disclosures required under this section need be made only as applicable. Thus, for example, if negative amortization cannot occur in a home equity plan, a reference to it need not be made.*

2. ***Duty to respond to requests for information.*** *If the consumer, prior to the opening of a plan, requests information as suggested in the disclosures (such as the current index value or margin), the creditor must provide this information as soon as reasonably possible after the request.*

Retention - 12 CFR § 1026.40(d)(1)

Regulatory Discussion

The first item requires the creditor to include a statement, *if applicable*, that the consumer should keep a copy of the disclosures; for example, if the disclosures are part of an application that must be returned to the creditor. Otherwise, if the disclosures are not a part of an application that must be returned to the creditor, the retention statement is not required.

Regulatory Text

(1) Retention of information. A statement that the consumer should make or otherwise retain a copy of the disclosures.

Regulatory Commentary

40(d)(1) Retention of Information

1. *When disclosure not required. The creditor need not disclose that the consumer should make or otherwise retain a copy of the disclosures if they are retainable—for example, if the disclosures are not part of an application that must be returned to the creditor to apply for the plan.*

Conditions for Disclosed Terms - 12 CFR § 1026.40(d)(2)

Regulatory Discussion

The second item requires the creditor to include the following two statements:

- The time by which the consumer must submit an application to obtain the disclosed terms; and
- The consumer may receive a refund of all fees paid if a disclosed term changes (other than changes to the index in a variable-rate plan) prior to account opening and the consumer elects not to open the account.

The commentary provides guidance on "guaranteed terms" and disclosing either a specific date or a time period for obtaining the disclosed terms.

Regulatory Text

(2) **Conditions for disclosed terms.**

(i) A statement of the time by which the consumer must submit an application to obtain specific terms disclosed and an identification of any disclosed term that is subject to change prior to opening the plan.

(ii) A statement that, if a disclosed term changes (other than a change due to fluctuations in the index in a variable-rate plan) prior to opening the plan and the consumer therefore elects not to open the plan, the consumer may receive a refund of all fees paid in connection with the application.

Regulatory Commentary

40(d)(2) Conditions for Disclosed Terms

Paragraph 40(d)(2)(i)

*1. **Guaranteed terms.** The requirement that the creditor disclose the time by which an application must be submitted to obtain the disclosed terms does not require the creditor to guarantee any terms. If a creditor chooses not to guarantee any terms, it must disclose that all of the terms are subject to change prior to opening the plan. The creditor also is permitted to guarantee some terms and not others, but must indicate which terms are subject to change.*

*2. **Date for obtaining disclosed terms.** The creditor may disclose either a specific date or a time period for obtaining the disclosed terms. If the creditor discloses a time period, the consumer must be able to determine from the disclosure the specific date by which an application must be submitted to obtain any guaranteed terms. For example, the disclosure might read, "To obtain the following terms, you must submit your application within 60 days after the date appearing on this disclosure," provided the disclosure form also shows the date.*

Paragraph 40(d)(2)(ii)

*1. **Relation to other provisions.** Creditors should consult the rules in §1026.40(g) regarding refund of fees.*

Security Interest and Risk to Home - 12 CFR § 1026.40(d)(3)

Regulatory Discussion

The third item requires the creditor to include a statement that a security interest in the consumer's dwelling will be acquired and that a loss of the dwelling may occur in the event of default.

Regulatory Text

(3) **Security interest and risk to home.** A statement that the creditor will acquire a security interest in the consumer's dwelling and that loss of the dwelling may occur in the event of default.

Regulatory Commentary

None.

Possible Actions by Creditor - 12 CFR § 1026.40(d)(4)

Regulatory Discussion

The fourth item requires the creditor to make the following two statements:

Under certain conditions:

- the plan may be terminated and payment of the outstanding balance in full in a single payment is required;
- additional extensions of credit may be prohibited or the credit limit may be reduced;
- certain changes in the plan may be implemented (*if applicable*) as specified in the initial agreement.

The consumer may receive, upon request, information about the conditions under which the actions above may occur.

Note: the creditor may also include a specific statement of the conditions. See the Commentary on Disclosure of Conditions and Form of Disclosure.

Regulatory Text

(4) **Possible actions by creditor.**

(i) A statement that, under certain conditions, the creditor may terminate the plan and require payment of the outstanding balance in full in a single payment and impose fees upon termination; prohibit additional extensions of credit or reduce the credit limit; and, as specified in the initial agreement, implement certain changes in the plan.

(ii) A statement that the consumer may receive, upon request, information about the conditions under which such actions may occur.

(iii) In lieu of the disclosure required under paragraph (d)(4)(ii) of this section, a statement of such conditions.

Regulatory Commentary

40(d)(4) Possible Actions by Creditor

Paragraph 40(d)(4)(i)

*1. **Fees imposed upon termination.** This disclosure applies only to fees (such as penalty or prepayment fees) that the creditor imposes if it terminates the plan prior to normal expiration. The disclosure does not apply to fees that are imposed either when the plan expires in accordance with the agreement or if the consumer terminates the plan prior to its scheduled maturity. In addition, the disclosure does not apply to fees associated with collection of the debt, such as attorneys fees and court costs, or to increases in the annual* *percentage rate linked to the consumer's failure to make payments. The actual amount of the fee need not be disclosed.*

2. ***Changes specified in the initial agreement.*** *If changes may occur pursuant to §1026.40(f)(3)(i), a creditor must state that certain changes will be implemented as specified in the initial agreement.*

Paragraph 40(d)(4)(iii)

1. ***Disclosure of conditions.*** *In making this disclosure, the creditor may provide a highlighted copy of the document that contains such information, such as the contract or security agreement. The relevant items must be distinguished from the other information contained in the document. For example, the creditor may provide a cover sheet that specifically points out which contract provisions contain the information, or may mark the relevant items on the document itself. As an alternative to disclosing the conditions in this manner, the creditor may simply describe the conditions using the language in §§1026.40(f)(2)(i)-(iii), 1026.40(f)(3)(i) (regarding freezing the line when the maximum annual percentage rate is reached), and 1026.40(f)(3)(vi) or language that is substantially similar. The condition contained in §1026.40(f)(2)(iv) need not be stated. In describing specified changes that may be implemented during the plan, the creditor may provide a disclosure such as "Our agreement permits us to make certain changes to the terms of the line at specified times or upon the occurrence of specified events."*

2. ***Form of disclosure.*** *The list of conditions under §1026.40(d)(4)(iii) may appear with the segregated disclosures or apart from them. If the creditor elects to provide the list of conditions with the segregated disclosures, the list need not comply with the precedence rule in §1026.40(a)(2).*

Payment Terms - 12 CFR § 1026.40(d)(5)

Regulatory Discussion

The fifth item requires disclosure of the payment terms, including the following three items:

- The length of the draw period and any repayment period;
- An explanation of how the minimum periodic payment will be determined and the timing of the payments, including;
    - A statement if paying only the minimum periodic payments may not repay any of the principal or may repay less than the outstanding balance (*if applicable*)
    - A statement that a balloon payment may result (*if applicable*)
- An example based on a $10,000 outstanding balance and a recent APR, etc; including:
    - Fixed-rate plans
    - Variable-rate plans
    - The commentary provides additional information on each of these three items.

Regulatory Text

(5) **Payment terms.** The payment terms of the plan. If different payment terms may apply to the draw and any repayment period, or if different payment terms may apply within either period, the disclosures shall reflect the different payment terms. The payment terms of the plan include:

(i) The length of the draw period and any repayment period.

(ii) An explanation of how the minimum periodic payment will be determined and the timing of the payments. If paying only the minimum periodic payments may not repay any of the principal or may repay less than the outstanding balance, a statement of this fact, as well as a statement that a balloon payment may result. 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 must repay the entire outstanding balance at such time.

(iii) An example, based on a $10,000 outstanding balance and a recent annual percentage rate, showing the minimum periodic payment, any balloon payment, and the time it would take to repay the $10,000 outstanding balance if the consumer made only those payments and obtained no additional extensions of credit. For fixed-rate plans, a recent annual percentage rate is a rate that has been in effect under the plan within the twelve months preceding the date the disclosures are provided to the consumer. For variable-rate plans, a recent annual percentage rate is the most recent rate provided in the historical example described in paragraph (d)(12)(xi) of this section or a rate that has been in effect under the plan since the date of the most recent rate in the table.

Regulatory Commentary

40(d)(5) Payment Terms

Paragraph 40(d)(5)(i)

*1. **Length of the plan.** The combined length of the draw period and any repayment period need not be stated. If the length of the repayment phase cannot be determined because, for example, it depends on the balance outstanding at the beginning of the repayment period, the creditor must state that the length is determined by the size of the balance. If the length of the plan is indefinite (for example, because there is no time limit on the period during which the consumer can take advances), the creditor must state that fact.*

*2. **Renewal provisions.** If, under the credit agreement, a creditor retains the right to review a line at the end of the specified draw period and determine whether to renew or extend the draw period of the plan, the possibility of renewal or extension—regardless of its likelihood—should be ignored for purposes of the disclosures. For example, if an agreement provides that the draw period is five years and that the creditor may renew the draw period for an additional five years, the possibility of renewal should be ignored and the draw period should be considered five years. (See the commentary accompanying §1026.9(c)(1) dealing with change in terms requirements.)*

Paragraph 40(d)(5)(ii)

1. ***Determination of the minimum periodic payment.*** *This disclosure must reflect how the minimum periodic payment is determined, but need only describe the principal and interest components of the payment. Other charges that may be part of the payment (as well as the balance computation method) may, but need not, be described under this provision.*

2. ***Fixed rate and term payment options during draw period.*** *If the home equity plan permits 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, this feature must be disclosed. To illustrate, a variable-rate plan may permit a consumer to elect during a ten-year draw period to repay all or a portion of the balance over a three-year period at a fixed rate. The creditor must disclose the rules relating to this feature including the period during which the option can be selected, the length of time over which repayment can occur, any fees imposed for such a feature, and the specific rate or a description of the index and margin that will apply upon exercise of this choice. For example, the index and margin disclosure might state: "If you choose to convert any portion of your balance to a fixed rate, the rate will be the highest prime rate published in the 'Wall Street Journal' that is in effect at the date of conversion plus a margin." If the fixed rate is to be determined according to an index, it must be one that is outside the creditor's control and is publicly available in accordance with §1026.40(f)(1). The effect of exercising the option should not be reflected elsewhere in the disclosures, such as in the historical example required in §1026.40(d)(12)(xi).*

3. ***Balloon payments.*** *In programs where the occurrence of a balloon payment is possible, the creditor must disclose the possibility of a balloon payment even if such a payment is uncertain or unlikely. In such cases, the disclosure might read, "Your minimum payments may not be sufficient to fully repay the principal that is outstanding on your line. If they are not, you will be required to pay the entire outstanding balance in a single payment." In programs where a balloon payment will occur, such as programs with interest-only payments during the draw period and no repayment period, the disclosures must state that fact. For example, the disclosure might read, "Your minimum payments will not repay the principal that is outstanding on your line. You will be required to pay the entire outstanding balance in a single payment." In making this disclosure, the creditor is not required to use the term "balloon payment." The creditor also is not required to disclose the amount of the balloon payment. (See, however, the requirement under §1026.40(d)(5)(iii).) The balloon payment disclosure does not apply in cases where repayment of the entire outstanding balance would occur only as a result of termination and acceleration. The creditor also need not make a disclosure about balloon payments if the final payment could not be more than twice the amount of other minimum payments under the plan.*

Paragraph 40(d)(5)(iii)

1. ***Minimum periodic payment example.*** *In disclosing the payment example, the creditor may assume that the credit limit as well as the outstanding balance is $10,000 if such an assumption is relevant to calculating payments. (If the creditor only offers lines of credit for less than $10,000, the creditor may assume an outstanding balance of $5,000 instead of $10,000 in making this disclosure.) The example should reflect the payment comprised*

only of principal and interest. Creditors may provide an additional example reflecting other charges that may be included in the payment, such as credit insurance premiums. Creditors may assume that all months have an equal number of days, that payments are collected in whole cents, and that payments will fall on a business day even though they may be due on a non-business day. For variable-rate plans, the example must be based on the last rate in the historical example required in §1026.40(d)(12)(xi), or a more recent rate. In cases where the last rate shown in the historical example is different from the index value and margin (for example, due to a rate cap), creditors should calculate the rate by using the index value and margin. A discounted rate may not be considered a more recent rate in calculating this payment example for either variable- or fixed-rate plans.

2. ***Representative examples.***

   i. *In plans with multiple payment options within the draw period or within any repayment period, the creditor may provide representative examples as an alternative to providing examples for each payment option. The creditor may elect to provide representative payment examples based on three categories of payment options. The first category consists of plans that permit minimum payment of only accrued finance charges (interest only plans). The second category includes plans in which a fixed percentage or a fixed fraction of the outstanding balance or credit limit (for example, 2% of the balance or 1/180th of the balance) is used to determine the minimum payment. The third category includes all other types of minimum payment options, such as a specified dollar amount plus any accrued finance charges. Creditors may classify their minimum payment arrangements within one of these three categories even if other features exist, such as varying lengths of a draw or repayment period, required payment of past due amounts, late charges, and minimum dollar amounts. The creditor may use a single example within each category to represent the payment options in that category. For example, if a creditor permits minimum payments of 1%, 2%, 3% or 4% of the outstanding balance, it may pick one of these four options and provide the example required under §1026.40(d)(5)(iii) for that option alone.*

   ii. *The example used to represent a category must be an option commonly chosen by consumers, or a typical or representative example. (See the commentary to §1026.40(d)(12)(x) and (xi) for a discussion of the use of representative examples for making those disclosures. Creditors using a representative example within each category must use the same example for purposes of the disclosures under §1026.40(d)(5)(iii) and (d)(12)(x) and (xi).) Creditors may use representative examples under §1026.40(d)(5) only with respect to the payment example required under paragraph (d)(5)(iii). Creditors must provide a full narrative description of all payment options under §1026.40(d)(5)(i) and (ii).*

3. ***Examples for draw and repayment periods.*** *Separate examples must be given for the draw and repayment periods unless the payments are determined the same way during both periods. In setting forth payment examples for any repayment period under this section (and the historical example under §1026.40(d)(12)(xi)), creditors should assume a $10,000 advance is taken at the beginning of the draw period and is reduced according to the terms of the plan. Creditors should not assume an additional advance is taken at any time, including at the beginning of any repayment period.*

4. ***Reverse mortgages.*** *Reverse mortgages, also known as reverse annuity or home equity*

conversion mortgages, in addition to permitting the consumer to obtain advances, may involve the disbursement of monthly advances to the consumer for a fixed period or until the occurrence of an event such as the consumer's death. Repayment of the reverse mortgage (generally a single payment of principal and accrued interest) may be required to be made at the end of the disbursements or, for example, upon the death of the consumer. In disclosing these plans, creditors must apply the following rules, as applicable:

i. If the reverse mortgage has a specified period for advances and disbursements but repayment is due only upon occurrence of a future event such as the death of the consumer, the creditor must assume that disbursements will be made until they are scheduled to end. The creditor must assume repayment will occur when disbursements end (or within a period following the final disbursement which is not longer than the regular interval between disbursements). This assumption should be used even though repayment may occur before or after the disbursements are scheduled to end. In such cases, the creditor may include a statement such as "The disclosures assume that you will repay the line at the time the draw period and our payments to you end. As provided in your agreement, your repayment may be required at a different time." The single payment should be considered the "minimum periodic payment" and consequently would not be treated as a balloon payment. The example of the minimum payment under §1026.40(d)(5)(iii) should assume a single $10,000 draw.

ii. If the reverse mortgage has neither a specified period for advances or disbursements nor a specified repayment date and these terms will be determined solely by reference to future events, including the consumer's death, the creditor may assume that the draws and disbursements will end upon the consumer's death (estimated by using actuarial tables, for example) and that repayment will be required at the same time (or within a period following the date of the final disbursement which is not longer than the regular interval for disbursements). Alternatively, the creditor may base the disclosures upon another future event it estimates will be most likely to occur first. (If terms will be determined by reference to future events which do not include the consumer's death, the creditor must base the disclosures upon the occurrence of the event estimated to be most likely to occur first.)

iii. In making the disclosures, the creditor must assume that all draws and disbursements and accrued interest will be paid by the consumer. For example, if the note has a non-recourse provision providing that the consumer is not obligated for an amount greater than the value of the house, the creditor must nonetheless assume that the full amount to be drawn or disbursed will be repaid. In this case, however, the creditor may include a statement such as "The disclosures assume full repayment of the amount advanced plus accrued interest, although the amount you may be required to pay is limited by your agreement."

iv. Some reverse mortgages provide that some or all of the appreciation in the value of the property will be shared between the consumer and the creditor. The creditor must disclose the appreciation feature, including describing how the creditor's share will be determined, any limitations, and when the feature may be exercised.

Annual Percentage Rate - 12 CFR § 1026.40(d)(6)

Regulatory Discussion

For fixed-rate HELOCs, the sixth item requires a statement that the APR imposed under the plan does not include costs other than interest.

Note the commentary on "preferential fixed-rate plans."

Regulatory Text

(6) **Annual percentage rate.** For fixed-rate plans, a recent annual percentage rate imposed under the plan and a statement that the rate does not include costs other than interest. A recent annual percentage rate is a rate that has been in effect under the plan within the twelve months preceding the date the disclosures are provided to the consumer.

Regulatory Commentary

40(d)(6) Annual Percentage Rate

*1. **Preferred-rate plans.** If a creditor offers a preferential fixed-rate plan in which the rate will increase a specified amount upon the occurrence of a specified event, the creditor must disclose the specific amount the rate will increase.*

Fees Imposed by Creditor - 12 CFR § 1026.40(d)(7)

Regulatory Discussion

The seventh item requires an itemization of any fees imposed to open, use, or maintain the HELOC; stated as either a dollar amount or percentage; and when such fees are payable.

The Commentary provides additional information on fees either required ("applicability"), or not required, to be disclosed.

Regulatory Text

(7) **Fees imposed by creditor.** An itemization of any fees imposed by the creditor to open, use, or maintain the plan, stated as a dollar amount or percentage, and when such fees are payable.

Regulatory Commentary

40(d)(7) Fees Imposed by Creditor

*1. **Applicability.** The fees referred to in §1026.40(d)(7) include items such as application fees, points, annual fees, transaction fees, fees to obtain checks to access the plan, and fees imposed for converting to a repayment phase that is provided for in the original agreement. This disclosure includes any fees that are imposed by the creditor to use or maintain the plan, whether the fees are kept by the creditor or a third party. For example, if a creditor requires an annual credit report on the consumer and requires the consumer to pay this fee to the creditor or directly to the third party, the fee must be specifically stated. Third party fees to open the plan that are initially paid by the consumer to the creditor may be included in this disclosure or in the disclosure under §1026.40(d)(8).*

*2. **Manner of describing fees.** Charges may be stated as an estimated dollar amount for each fee, or as a percentage of a typical or representative amount of credit. The creditor may provide a stepped fee schedule in which a fee will increase a specified amount at a specified date. (See the discussion contained in the commentary to §1026.40(f)(3)(i).)*

*3. **Fees not required to be disclosed.** Fees that are not imposed to open, use, or maintain a plan, such as fees for researching an account, photocopying, paying late, stopping payment, having a check returned, exceeding the credit limit, or closing out an account do not have to be disclosed under this section. Credit report and appraisal fees imposed to investigate whether a condition permitting a freeze continues to exist—as discussed in the commentary to §1026.40(f)(3)(vi)—are not required to be disclosed under this section or §1026.40(d)(8).*

*4. **Rebates of closing costs.** If closing costs are imposed they must be disclosed, regardless of whether such costs may be rebated later (for example, rebated to the extent of any interest paid during the first year of the plan).*

*5. **Terms used in disclosure.** Creditors need not use the terms finance charge or other charge in describing the fees imposed by the creditor under this section or those imposed by third parties under §1026.40(d)(8).*

Fees Imposed by Third Parties - 12 CFR § 1026.40(d)(8)

Regulatory Discussion

The eighth item requires a dollar estimate of any fees that may be imposed by persons other than the creditor to open the HELOC. The creditor may either provide a statement informing the consumer they may request an itemization of such fees or the creditor may simply provide the itemization.

The Commentary provides additional information on the "applicability," i.e., which fees are subject to the disclosure; as well as the "method of itemization," i.e., as a single dollar amount or a range.

Regulatory Text

(8) **Fees imposed by third parties to open a plan.** A good faith estimate, stated as a single dollar amount or range, of any fees that may be imposed by persons other than the creditor to open the plan, as well as a statement that the consumer may receive, upon request, a good faith itemization of such fees. In lieu of the statement, the itemization of such fees may be provided.

Regulatory Commentary

40(d)(8) Fees Imposed by Third Parties to Open a Plan

*1. **Applicability.** Section 1026.40(d)(8) applies only to fees imposed by third parties to open the plan. Thus, for example, this section does not require disclosure of a fee imposed by a government agency at the end of a plan to release a security interest. Fees to be disclosed include appraisal, credit report, government agency, and attorneys fees. In cases where property insurance is required by the creditor, the creditor either may disclose the amount of the premium or may state that property insurance is required. For example, the disclosure might state, "You must carry insurance on the property that secures this plan."*

*2. **Itemization of third-party fees.** In all cases creditors must state the total of third-party fees as a single dollar amount or a range except that the total need not include costs for property insurance if the creditor discloses that such insurance is required. A creditor has two options with regard to providing the more detailed information about third party fees. Creditors may provide a statement that the consumer may request more specific cost information about third party fees from the creditor. As an alternative to including this statement, creditors may provide an itemization of such fees (by type and amount) with the early disclosures. Any itemization provided upon the consumer's request need not include a disclosure about property insurance.*

*3. **Manner of describing fees.** A good faith estimate of the amount of fees must be provided. Creditors may provide, based on a typical or representative amount of credit, a range for such fees or state the dollar amount of such fees. Fees may be expressed on a unit cost basis, for example, $5 per $1,000 of credit.*

*4. **Rebates of third party fees**. Even if fees imposed by third parties may be rebated, they must be disclosed. (See the commentary to §1026.40(d)(7).)*

Negative Amortization - 12 CFR § 1026.40(d)(9)

Regulatory Discussion

The ninth item requires a statement (*if applicable*) that negative amortization may occur and the consequences thereof.

Regulatory Text

(9) **Negative amortization.** A statement that negative amortization may occur and that negative amortization increases the principal balance and reduces the consumer's equity in the dwelling.

Regulatory Commentary

40(d)(9) Negative Amortization

1. ***Disclosure required.*** *In transactions where the minimum payment will not or may not be sufficient to cover the interest that accrues on the outstanding balance, the creditor must disclose that negative amortization will or may occur. This disclosure is required whether or not the unpaid interest is added to the outstanding balance upon which interest is computed. A disclosure is not required merely because a loan calls for non-amortizing or partially amortizing payments.*

Transaction Requirements - 12 CFR § 1026.40(d)(10)

Regulatory Discussion

The tenth item requires disclosure (*as applicable*), stated as dollar amounts or percentages, of:

- Any limitations on the number of extensions of credit and the amount of credit that may be obtain during any time period;
- Any minimum outstanding balance and minimum draw requirements

The Commentary provides additional information on limitations on ATM usage to obtain funds.

Regulatory Text

(10) ***Transaction requirements***. Any limitations on the number of extensions of credit and the amount of credit that may be obtained during any time period, as well as any minimum outstanding balance and minimum draw requirements, stated as dollar amounts or percentages.

Regulatory Commentary

40(d)(10) Transaction Requirements

1. ***Applicability.*** *A limitation on automated teller machine usage need not be disclosed under this paragraph unless that is the only means by which the consumer can obtain funds.*

Tax Implications - 12 CFR § 1026.40(d)(11)

Regulatory Discussion

The eleventh item requires a statement that the consumer should consult their tax advisor regarding tax implications of the HELOC.

Regulatory Text

(11) **Tax implications.** A statement that the consumer should consult a tax advisor regarding the deductibility of interest and charges under the plan.

Regulatory Commentary

None.

Disclosures for Variable-Rate Plans - 12 CFR § 1026.40(d)(12)

Regulatory Discussion

For variable-rate HELOCs, the twelfth, and final, item requires twelve disclosures (*as applicable*). Sample form G-14 in the Appendix to Regulation Z provides illustrative guidance for these disclosures.

The Commentary provides additional information on five of the twelve disclosures; the most significant information is provided on (xi), the historical example.

Regulatory Text

(12) **Disclosures for variable-rate plans.** For a plan in which the annual percentage rate is variable, the following disclosures, as applicable:

(i) The fact that the annual percentage rate, payment, or term may change due to the variable-rate feature.

(ii) A statement that the annual percentage rate does not include costs other than interest.

(iii) The index used in making rate adjustments and a source of information about the index.

(iv) An explanation of how the annual percentage rate will be determined, including an explanation of how the index is adjusted, such as by the addition of a margin.

(v) A statement that the consumer should ask about the current index value, margin, discount or premium, and annual percentage rate.

(vi) A statement that the initial annual percentage rate is not based on the index and margin used to make later rate adjustments, and the period of time such initial rate will be in effect.

(vii) The frequency of changes in the annual percentage rate.

(viii) Any rules relating to changes in the index value and the annual percentage rate and resulting changes in the payment amount, including, for example, an explanation of payment limitations and rate carryover.

(ix) A statement of any annual or more frequent periodic limitations on changes in the annual percentage rate (or a statement that no annual limitation exists), as well as a statement of the maximum annual percentage rate that may be imposed under each payment option.

(x) The minimum periodic payment required when the maximum annual percentage rate for each payment option is in effect for a $10,000 outstanding balance, and a statement of the earliest date or time the maximum rate may be imposed.

(xi) An historical example, based on a $10,000 extension of credit, illustrating how annual percentage rates and payments would have been affected by index value changes implemented according to the terms of the plan. The historical example shall be based on the most recent 15 years of index values (selected for the same time period each year) and shall reflect all significant plan terms, such as negative amortization, rate carryover, rate discounts, and rate and payment limitations, that would have been affected by the index movement during the period.

(xii) A statement that rate information will be provided on or with each periodic statement.

Regulatory Commentary

40(d)(12) Disclosures for Variable-Rate Plans

*1. **Variable-rate provisions.** Sample forms in appendix G-14 provide illustrative guidance on the variable-rate rules.*

Paragraph 40(d)(12)(iv)

*1. **Determination of annual percentage rate.** If the creditor adjusts its index through the addition of a margin, the disclosure might read, "Your annual percentage rate is based on the index plus a margin." The creditor is not required to disclose a specific value for the margin.*

Paragraph 40(d)(12)(viii)

*1. **Preferred-rate provisions.** This paragraph requires disclosure of preferred-rate* *provisions, where the rate will increase upon the occurrence of some event, such as the borrower-employee leaving the creditor's employ or the consumer closing an existing deposit account with the creditor.*

2. ***Provisions on conversion to fixed rates.*** *The commentary to §1026.40(d)(5)(ii) discusses the disclosure requirements for options permitting the consumer to convert from a variable rate to a fixed rate.*

Paragraph 40(d)(12)(ix)

1. ***Periodic limitations on increases in rates.*** *The creditor must disclose any annual limitations on increases in the annual percentage rate. If the creditor bases its rate limitation on 12 monthly billing cycles, such a limitation should be treated as an annual cap. Rate limitations imposed on less than an annual basis must be stated in terms of a specific amount of time. For example, if the creditor imposes rate limitations on only a semiannual basis, this must be expressed as a rate limitation for a six-month time period. If the creditor does not impose periodic limitations (annual or shorter) on rate increases, the fact that there are no annual rate limitations must be stated.*

2. ***Maximum limitations on increases in rates.*** *The maximum annual percentage rate that may be imposed under each payment option over the term of the plan (including the draw period and any repayment period provided for in the initial agreement) must be provided. The creditor may disclose this rate as a specific number (for example, 18%) or as a specific amount above the initial rate. For example, this disclosure might read, "The maximum annual percentage rate that can apply to your line will be 5 percentage points above your initial rate." If the creditor states the maximum rate as a specific amount above the initial rate, the creditor must include a statement that the consumer should inquire about the rate limitations that are currently available. If an initial discount is not taken into account in applying maximum rate limitations, that fact must be disclosed. If separate overall limitations apply to rate increases resulting from events such as the exercise of a fixed-rate conversion option or leaving the creditor's employ, those limitations also must be stated. Limitations do not include legal limits in the nature of usury or rate ceilings under state or Federal statutes or regulations.*

3. ***Form of disclosures.*** *The creditor need not disclose each periodic or maximum rate limitation that is currently available. Instead, the creditor may disclose the range of the lowest and highest periodic and maximum rate limitations that may be applicable to the creditor's home equity plans. Creditors using this alternative must include a statement that the consumer should inquire about the rate limitations that are currently available.*

Paragraph 40(d)(12)(x)

1. ***Maximum rate payment example.*** *In calculating the payment creditors should assume the maximum rate is in effect. Any discounted or premium initial rates or periodic rate limitations should be ignored for purposes of this disclosure. If a range is used to disclose the maximum cap under §1026.40(d)(12)(ix), the highest rate in the range must be used for the disclosure under this paragraph. As an alternative to making disclosures based on each payment option, the creditor may choose a representative example within the three categories of payment options upon which to base this disclosure. (See the commentary to*

§1026.40(d)(5).) However, separate examples must be provided for the draw period and for any repayment period unless the payment is determined the same way in both periods. Creditors should calculate the example for the repayment period based on an assumed $10,000 balance. (See the commentary to §1026.40(d)(5) for a discussion of the circumstances in which a creditor may use a lower outstanding balance.)

2. ***Time the maximum rate could be reached.*** *In stating the date or time when the maximum rate could be reached, creditors should assume the rate increases as rapidly as possible under the plan. In calculating the date or time, creditors should factor in any discounted or premium initial rates and periodic rate limitations. This disclosure must be provided for the draw phase and any repayment phase. Creditors should assume the index and margin shown in the last year of the historical example (or a more recent rate) is in effect at the beginning of each phase.*

Paragraph 40(d)(12)(xi)

1. ***Index movement.*** *Index values and annual percentage rates must be shown for the entire 15 years of the historical example and must be based on the most recent 15 years. The example must be updated annually to reflect the most recent 15 years of index values as soon as reasonably possible after the new index value becomes available. If the values for an index have not been available for 15 years, a creditor need only go back as far as the values have been available and may start the historical example at the year for which values are first available.*

2. ***Selection of index values.*** *The historical example must reflect the method of choosing index values for the plan. For example, if an average of index values is used in the plan, averages must be used in the example, but if an index value as of a particular date is used, a single index value must be shown. The creditor is required to assume one date (or one period, if an average is used) within a year on which to base the history of index values. The creditor may choose to use index values as of any date or period as long as the index value as of this date or period is used for each year in the example. Only one index value per year need be shown, even if the plan provides for adjustments to the annual percentage rate or payment more than once in a year. In such cases, the creditor can assume that the index rate remained constant for the full year for the purpose of calculating the annual percentage rate and payment.*

3. ***Selection of margin.*** *A value for the margin must be assumed in order to prepare the example. A creditor may select a representative margin that it has used with the index during the six months preceding preparation of the disclosures and state that the margin is one that it has used recently. The margin selected may be used until the creditor annually updates the disclosure form to reflect the most recent 15 years of index values.*

4. ***Amount of discount or premium.*** *In reflecting any discounted or premium initial rate, the creditor may select a discount or premium that it has used during the six months preceding preparation of the disclosures, and should disclose that the discount or premium is one that the creditor has used recently. The discount or premium should be reflected in the example for as long as it is in effect. The creditor may assume that a discount or premium that would have been in effect for any part of a year was in effect for the full year for purposes of reflecting it in the historical example.*

5. ***Rate limitations.*** *Limitations on both periodic and maximum rates must be reflected in the historical example. If ranges of rate limitations are provided under §1026.40(d)(12)(ix), the highest rates provided in those ranges must be used in the example. Rate limitations that may apply more often than annually should be treated as if they were annual limitations. For example, if a creditor imposes a 1% cap every six months, this should be reflected in the example as if it were a 2% annual cap.*

6. ***Assumed advances.*** *The creditor should assume that the $10,000 balance is an advance taken at the beginning of the first billing cycle and is reduced according to the terms of the plan, and that the consumer takes no subsequent draws. As discussed in the commentary to §1026.40(d)(5), creditors should not assume an additional advance is taken at the beginning of any repayment period. If applicable, the creditor may assume the $10,000 is both the advance and the credit limit. (See the commentary to §1026.40(d)(5) for a discussion of the circumstances in which a creditor may use a lower outstanding balance.)*

7. ***Representative payment options.*** *The creditor need not provide an historical example for all of its various payment options, but may select a representative payment option within each of the three categories of payments upon which to base its disclosure. (See the commentary to §1026.40(d)(5).)*

8. ***Payment information.***

   i. The payment figures in the historical example must reflect all significant program terms. For example, features such as rate and payment caps, a discounted initial rate, negative amortization, and rate carryover must be taken into account in calculating the payment figures if these would have applied to the plan. The historical example should include payments for as much of the length of the plan as would occur during a 15-year period. For example:

   A. If the draw period is 10 years and the repayment period is 15 years, the example should illustrate the entire 10-year draw period and the first 5 years of the repayment period.

   B. If the length of the draw period is 15 years and there is a 15-year repayment phase, the historical example must reflect the payments for the 15-year draw period and would not show any of the repayment period. No additional historical example would be required to reflect payments for the repayment period.

   C. If the length of the plan is less than 15 years, payments in the historical example need only be shown for the number of years in the term. In such cases, however, the creditor must show the index values, margin and annual percentage rates and continue to reflect all significant plan terms such as rate limitations for the entire 15 years.

   ii. A creditor need show only a single payment per year in the example, even though payments may vary during a year. The calculations should be based on the actual payment computation formula, although the creditor may assume that all months have an equal number of days. The creditor may assume that payments are made on the last day of the billing cycle, the billing date or the payment due date, but must be consistent in the manner in which the period used to illustrate payment information is selected. Information about balloon payments and remaining balance may, but need not, be reflected in the example.

9. ***Disclosures for repayment period.*** *The historical example must reflect all features of the repayment period, including the appropriate index values, margin, rate limitations, length of the repayment period, and payments. For example, if different indices are used during the draw and repayment periods, the index values for that portion of the 15 years that reflect the repayment period must be the values for the appropriate index.*

10. ***Reverse mortgages.*** *The historical example for reverse mortgages should reflect 15 years of index values and annual percentage rates, but the payment column should be blank until the year that the single payment will be made, assuming that payment is estimated to occur within 15 years. (See the commentary to §1026.40(d)(5) for a discussion of reverse mortgages.)*

Section 5: Brochure
12 C.F.R. § 1026.40(e)

Brochure - 12 CFR § 1026.40(e)

Regulatory Discussion

This section simply describes the brochure: "What You Should Know About Home Equity Lines of Credit" and it's availability on the CFPB's website. A substitute brochure may be used if it is comparable in substance and comprehensiveness.

Regulatory Text

(e) **Brochure.** The home equity brochure entitled "What You Should Know About Home Equity Lines of Credit" or a suitable substitute shall be provided.

Regulatory Commentary

40(e) Brochure

1. ***Substitutes.*** *A brochure is a suitable substitute for the home equity brochure, "What You Should Know About Home Equity Lines of Credit," (available on the Bureau's Web site) if it is, at a minimum, comparable to that brochure in substance and comprehensiveness. Creditors are permitted to provide more detailed information than is contained in that brochure.*

2. ***Effect of third party delivery of brochure.*** *If a creditor determines that a third party has provided a consumer with the required brochure pursuant to §1026.40(c), the creditor need not give the consumer a second brochure.*

Section 6: Limitations on Home Equity Plans 12 C.F.R. § 1026.40(f)

Limitations on Home Equity Plans - 12 CFR § 1026.40(f)

Regulatory Discussion

This section provides four limitations (or prohibitions) a creditor may impose on a HELOC:

Generally, a creditor may only change the APR if:

- The change is based on an index that is not under the creditor's control; and
- The index is available to the general public.

Generally, a creditor may only terminate a HELOC and demand repayment of the entire outstanding balance if:

- There is fraud or material misrepresentation by the consumer
- The consumer fails to meet the repayment terms
- Any action, or inaction, by the consumer adversely affects the collateral; or
- Federal law requires credit extended to an institution's executive officers requires a condition the credit becomes due and payable on demand

Generally, a creditor <u>*may not change any term,*</u> except:

- The creditor may prohibit additional extensions of credit or reduce the credit limit during any period in which the maximum APR is reached.
- The creditor may change the index and margin if the original index is no longer available (with conditions).
- The creditor may make a change that will "unequivocally benefit" the consumer.
- The creditor may make an "insignificant" change.

The creditor may prohibit additional extensions of credit or reduce the credit limit during any period in which:

- The value of the dwelling securing the plan declines "*significantly*;"
- The creditor believes the consumer will be unable to fulfill the repayment obligations due to a "*material change*" in the consumer's financial circumstances;

- The consumer is in "*default*" of any "*material obligation*;"
- The creditor is precluded by government action from imposing the APR provided for in the agreement;
- The priority of the creditor's security interest is adversely affected by government action (with conditions); or
- The creditor is notified by it regulatory agency that continued advances are unsafe and unsound.

For reverse mortgage transactions, the creditor may not terminate a plan and demand repayment unless and of four conditions are met.

The Commentary provides additional information on three of the four limitations; the most significant information is provided on (3), changing any term. This Commentary should be reviewed to understand many of the terms italicized above.

Regulatory Text

(f) **Limitations on home equity plans.** No creditor may, by contract or otherwise:

(1) Change the annual percentage rate unless:

(i) Such change is based on an index that is not under the creditor's control; and

(ii) Such index is available to the general public.

(2) Terminate a plan and demand repayment of the entire outstanding balance in advance of the original term (except for reverse mortgage transactions that are subject to paragraph (f)(4) of this section) unless:

(i) There is fraud or material misrepresentation by the consumer in connection with the plan;

(ii) The consumer fails to meet the repayment terms of the agreement for any outstanding balance;

(iii) Any action or inaction by the consumer adversely affects the creditor's security for the plan, or any right of the creditor in such security; or

(iv) Federal law dealing with credit extended by a depository institution to its executive officers specifically requires that as a condition of the plan the credit shall become due and payable on demand, provided that the creditor includes such a provision in the initial agreement.

(3) Change any term, except that a creditor may:

(i) Provide in the initial agreement that it may prohibit additional extensions of credit or reduce the credit limit during any period in which the maximum annual percentage rate is reached. A creditor also may provide in the initial agreement that specified changes will occur if a specified event takes place (for example, that the annual percentage rate will increase a specified amount if the consumer leaves the creditor's employment).

(ii) Change the index and margin used under the plan if the original index is no longer available, the new index has an historical movement substantially similar to that of the original index, and the new index and margin would have resulted in an annual percentage rate substantially similar to the rate in effect at the time the original index became unavailable.

(iii) Make a specified change if the consumer specifically agrees to it in writing at that time.

(iv) Make a change that will unequivocally benefit the consumer throughout the remainder of the plan.

(v) Make an insignificant change to terms.

(vi) Prohibit additional extensions of credit or reduce the credit limit applicable to an agreement during any period in which:

(A) The value of the dwelling that secures the plan declines significantly below the dwelling's appraised value for purposes of the plan;

(B) The creditor reasonably believes that the consumer will be unable to fulfill the repayment obligations under the plan because of a material change in the consumer's financial circumstances;

(C) The consumer is in default of any material obligation under the agreement;

(D) The creditor is precluded by government action from imposing the annual percentage rate provided for in the agreement;

(E) The priority of the creditor's security interest is adversely affected by government action to the extent that the value of the security interest is less than 120 percent of the credit line; or

(F) The creditor is notified by its regulatory agency that continued advances constitute an unsafe and unsound practice.

(4) For reverse mortgage transactions that are subject to §1026.33, terminate a plan and demand repayment of the entire outstanding balance in advance of the original term except:

(i) In the case of default;

(ii) If the consumer transfers title to the property securing the note;

(iii) If the consumer ceases using the property securing the note as the primary dwelling; or

(iv) Upon the consumer's death.

Regulatory Commentary

40(f) Limitations on Home Equity Plans

*1. **Coverage.** Section 1026.40(f) limits both actions that may be taken and language that may be included in contracts, and applies to any assignee or holder as well as to the original creditor. The limitations apply to the draw period and any repayment period, and to any renewal or modification of the original agreement.*

Paragraph 40(f)(1)

*1. **External index.** A creditor may change the annual percentage rate for a plan only if the change is based on an index outside the creditor's control. Thus, a creditor may not make rate changes based on its own prime rate or cost of funds and may not reserve a contractual right to change rates at its discretion. A creditor is permitted, however, to use a published prime rate, such as that in the Wall Street Journal, even if the bank's own prime rate is one of several rates used to establish the published rate.*

*2. **Publicly available.** The index must be available to the public. A publicly available index need not be published in a newspaper, but it must be one the consumer can independently obtain (by telephone, for example) and use to verify rates imposed under the plan.*

*3. **Provisions not prohibited.** This paragraph does not prohibit rate changes that are specifically set forth in the agreement. For example, stepped-rate plans, in which specified rates are imposed for specified periods, are permissible. In addition, preferred-rate provisions, in which the rate increases by a specified amount upon the occurrence of a specified event, also are permissible.*

Paragraph 40(f)(2)

*1. **Limitations on termination and acceleration.** In general, creditors are prohibited from terminating and accelerating payment of the outstanding balance before the scheduled expiration of a plan. However, creditors may take these actions in the four circumstances specified in §1026.40(f)(2). Creditors are not permitted to specify in their contracts any other events that allow termination and acceleration beyond those permitted by the regulation. Thus, for example, an agreement may not provide that the balance is payable on demand nor may it provide that the account will be terminated and the balance accelerated if the rate cap is reached.*

*2. **Other actions permitted.** If an event permitting termination and acceleration occurs, a creditor may instead take actions short of terminating and accelerating. For example, a creditor could temporarily or permanently suspend further advances, reduce the credit limit, change the payment terms, or require the consumer to pay a fee. A creditor also may provide in its agreement that a higher rate or higher fees will apply in circumstances under which it would otherwise be permitted to terminate the plan and accelerate the balance. A creditor that does not immediately terminate an account and accelerate payment or take another permitted action may take such action at a later time, provided one of the conditions permitting termination and acceleration exists at that time.*

Paragraph 40(f)(2)(i)

1. ***Fraud or material misrepresentation.*** *A creditor may terminate a plan and accelerate the balance if there has been fraud or material misrepresentation by the consumer in connection with the plan. This exception includes fraud or misrepresentation at any time, either during the application process or during the draw period and any repayment period. What constitutes fraud or misrepresentation is determined by applicable state law and may include acts of omission as well as overt acts, as long as any necessary intent on the part of the consumer exists.*

Paragraph 40(f)(2)(ii)

1. ***Failure to meet repayment terms.*** *A creditor may terminate a plan and accelerate the balance when the consumer fails to meet the repayment terms provided for in the agreement. However, a creditor may terminate and accelerate under this provision only if the consumer actually fails to make payments. For example, a creditor may not terminate and accelerate if the consumer, in error, sends a payment to the wrong location, such as a branch rather than the main office of the creditor. If a consumer files for or is placed in bankruptcy, the creditor may terminate and accelerate under this provision if the consumer fails to meet the repayment terms of the agreement. This section does not override any state or other law that requires a right-to-cure notice, or otherwise places a duty on the creditor before it can terminate a plan and accelerate the balance.*

Paragraph 40(f)(2)(iii)

1. ***Impairment of security.*** *A creditor may terminate a plan and accelerate the balance if the consumer's action or inaction adversely affects the creditor's security for the plan, or any right of the creditor in that security. Action or inaction by third parties does not, in itself, permit the creditor to terminate and accelerate.*

2. ***Examples.***

i. A creditor may terminate and accelerate, for example, if:

A. The consumer transfers title to the property or sells the property without the permission of the creditor.

B. The consumer fails to maintain required insurance on the dwelling.

C. The consumer fails to pay taxes on the property.

D. The consumer permits the filing of a lien senior to that held by the creditor.

E. The sole consumer obligated on the plan dies.

F. The property is taken through eminent domain.

G. A prior lienholder forecloses.

ii. By contrast, the filing of a judgment against the consumer would permit termination and acceleration only if the amount of the judgment and collateral subject to the judgment is such that the creditor's security is adversely affected. If the consumer *commits waste or otherwise destructively uses or fails to maintain the property such that the action adversely affects the security, the plan may be terminated and the balance accelerated. Illegal use of the property by the consumer would permit termination and acceleration if it subjects the property to seizure. If one of two consumers obligated on a plan dies the creditor may terminate the plan and accelerate the balance if the security is adversely affected. If the consumer moves out of the dwelling that secures the plan and that action adversely affects the security, the creditor may terminate a plan and accelerate the balance.*

Paragraph 40(f)(3)

1. ***Scope of provision.*** *In general, a creditor may not change the terms of a plan after it is opened. For example, a creditor may not increase any fee or impose a new fee once the plan has been opened, even if the fee is charged by a third party, such as a credit reporting agency, for a service. The change of terms prohibition applies to all features of a plan, not only those required to be disclosed under this section. For example, this provision applies to charges imposed for late payment, although this fee is not required to be disclosed under §1026.40(d)(7).*

2. ***Charges not covered.*** *There are three charges not covered by this provision. A creditor may pass on increases in taxes since such charges are imposed by a governmental body and are beyond the control of the creditor. In addition, a creditor may pass on increases in premiums for property insurance that are excluded from the finance charge under §1026.4(d)(2), since such insurance provides a benefit to the consumer independent of the use of the line and is often maintained notwithstanding the line. A creditor also may pass on increases in premiums for credit insurance that are excluded from the finance charge under §1026.4(d)(1), since the insurance is voluntary and provides a benefit to the consumer.*

Paragraph 40(f)(3)(i)

1. ***Changes provided for in agreement.*** *A creditor may provide in the initial agreement that further advances will be prohibited or the credit line reduced during any period in which the maximum annual percentage rate is reached. A creditor also may provide for other specific changes to take place upon the occurrence of specific events. Both the triggering event and the resulting modification must be stated with specificity. For example, in home equity plans for employees, the agreement could provide that a specified higher rate or margin will apply if the borrower's employment with the creditor ends. A contract could contain a stepped-rate or stepped-fee schedule providing for specified changes in the rate or the fees on certain dates or after a specified period of time. A creditor also may provide in the initial agreement that it will be entitled to a share of the appreciation in the value of the property as long as the specific appreciation share and the specific circumstances which require the payment of it are set forth. A contract may permit a consumer to switch among minimum payment options during the plan.*

2. ***Prohibited provisions.*** *A creditor may not include a general provision in its agreement permitting changes to any or all of the terms of the plan. For example, creditors may not include "boilerplate" language in the agreement stating that they reserve the right to change the fees imposed under the plan. In addition, a creditor may not include any*

"triggering events" or responses that the regulation expressly addresses in a manner different from that provided in the regulation. For example, an agreement may not provide that the margin in a variable-rate plan will increase if there is a material change in the consumer's financial circumstances, because the regulation specifies that temporarily freezing the line or lowering the credit limit is the permissible response to a material change in the consumer's financial circumstances. Similarly a contract cannot contain a provision allowing the creditor to freeze a line due to an insignificant decline in property value since the regulation allows that response only for a significant decline.

Paragraph 40(f)(3)(ii)

1. ***Substitution of index.*** *A creditor may change the index and margin used under the plan if the original index becomes unavailable, as long as historical fluctuations in the original and replacement indices were substantially similar, and as long as the replacement index and margin will produce a rate similar to the rate that was in effect at the time the original index became unavailable. If the replacement index is newly established and therefore does not have any rate history, it may be used if it produces a rate substantially similar to the rate in effect when the original index became unavailable.*

Paragraph 40(f)(3)(iii)

1. ***Changes by written agreement.*** *A creditor may change the terms of a plan if the consumer expressly agrees in writing to the change at the time it is made. For example, a consumer and a creditor could agree in writing to change the repayment terms from interest-only payments to payments that reduce the principal balance. The provisions of any such agreement are governed by the limitations in §1026.40(f). For example, a mutual agreement could not provide for future annual percentage rate changes based on the movement of an index controlled by the creditor or for termination and acceleration under circumstances other than those specified in the regulation. By contrast, a consumer could agree to a new credit limit for the plan, although the agreement could not permit the creditor to later change the credit limit except by a subsequent written agreement or in the circumstances described in §1026.40(f)(3)(vi).*
2. ***Written agreement.*** *The change must be agreed to in writing by the consumer. Creditors are not permitted to assume consent because the consumer uses an account, even if use of an account would otherwise constitute acceptance of a proposed change under state law.*

Paragraph 40(f)(3)(iv)

1. ***Beneficial changes.*** *After a plan is opened, a creditor may make changes that unequivocally benefit the consumer. Under this provision, a creditor may offer more options to consumers, as long as existing options remain. For example, a creditor may offer the consumer the option of making lower monthly payments or could increase the credit limit. Similarly, a creditor wishing to extend the length of the plan on the same terms may do so. Creditors are permitted to temporarily reduce the rate or fees charged during the plan (though a change in terms notice may be required under §1026.9(c) when the rate or fees are returned to their original level). Creditors also may offer an additional means of access to the line, even if fees are associated with using the device, provided the consumer retains the ability to use prior access devices on the original terms.*

Paragraph 40(f)(3)(v)

1. ***Insignificant changes.*** *A creditor is permitted to make insignificant changes after a plan is opened. This rule accommodates operational and similar problems, such as changing the address of the creditor for purposes of sending payments. It does not permit a creditor to change a term such as a fee charged for late payments.*

2. ***Examples of insignificant changes.*** *Creditors may make minor changes to features such as the billing cycle date, the payment due date (as long as the consumer does not have a diminished grace period if one is provided), and the day of the month on which index values are measured to determine changes to the rate for variable-rate plans. A creditor also may change its rounding practice in accordance with the tolerance rules set forth in §1026.14 (for example, stating an exact APR of 14.3333 percent as 14.3 percent, even if it had previously been stated as 14.33 percent). A creditor may change the balance computation method it uses only if the change produces an insignificant difference in the finance charge paid by the consumer. For example, a creditor may switch from using the average daily balance method (including new transactions) to the daily balance method (including new transactions).*

Paragraph 40(f)(3)(vi)

1. ***Suspension of credit privileges or reduction of credit limit.*** *A creditor may prohibit additional extensions of credit or reduce the credit limit in the circumstances specified in this section of the regulation. In addition, as discussed under §1026.40(f)(3)(i), a creditor may contractually reserve the right to take such actions when the maximum annual percentage rate is reached. A creditor may not take these actions under other circumstances, unless the creditor would be permitted to terminate the line and accelerate the balance as described in §1026.40(f)(2). The creditor's right to reduce the credit limit does not permit reducing the limit below the amount of the outstanding balance if this would require the consumer to make a higher payment.*

2. ***Temporary nature of suspension or reduction.*** *Creditors are permitted to prohibit additional extensions of credit or reduce the credit limit only while one of the designated circumstances exists. When the circumstance justifying the creditor's action ceases to exist, credit privileges must be reinstated, assuming that no other circumstance permitting such action exists at that time.*

3. ***Imposition of fees.*** *If not prohibited by state law, a creditor may collect only bona fide and reasonable appraisal and credit report fees if such fees are actually incurred in investigating whether the condition permitting the freeze continues to exist. A creditor may not, in any circumstances, impose a fee to reinstate a credit line once the condition has been determined not to exist.*

4. ***Reinstatement of credit privileges.*** *Creditors are responsible for ensuring that credit privileges are restored as soon as reasonably possible after the condition that permitted the creditor's action ceases to exist. One way a creditor can meet this responsibility is to monitor the line on an ongoing basis to determine when the condition ceases to exist. The creditor must investigate the condition frequently enough to assure itself that the condition permitting the freeze continues to exist. The frequency with which the creditor must investigate to determine whether a condition continues to exist depends upon the specific*

condition permitting the freeze. As an alternative to such monitoring, the creditor may shift the duty to the consumer to request reinstatement of credit privileges by providing a notice in accordance with §1026.9(c)(1)(iii). A creditor may require a reinstatement request to be in writing if it notifies the consumer of this requirement on the notice provided under §1026.9(c)(1)(iii). Once the consumer requests reinstatement, the creditor must promptly investigate to determine whether the condition allowing the freeze continues to exist. Under this alternative, the creditor has a duty to investigate only upon the consumer's request.

5. ***Suspension of credit privileges following request by consumer.*** *A creditor may honor a specific request by a consumer to suspend credit privileges. If the consumer later requests that the creditor reinstate credit privileges, the creditor must do so provided no other circumstance justifying a suspension exists at that time. If two or more consumers are obligated under a plan and each has the ability to take advances, the agreement may permit any of the consumers to direct the creditor not to make further advances. A creditor may require that all persons obligated under a plan request reinstatement.*

6. ***Significant decline defined.*** *What constitutes a significant decline for purposes of §1026.40(f)(3)(vi)(A) will vary according to individual circumstances. In any event, if the value of the dwelling declines such that the initial difference between the credit limit and the available equity (based on the property's appraised value for purposes of the plan) is reduced by fifty percent, this constitutes a significant decline in the value of the dwelling for purposes of §1026.40(f)(3)(vi)(A). For example, assume that a house with a first mortgage of $50,000 is appraised at $100,000 and the credit limit is $30,000. The difference between the credit limit and the available equity is $20,000, half of which is $10,000. The creditor could prohibit further advances or reduce the credit limit if the value of the property declines from $100,000 to $90,000. This provision does not require a creditor to obtain an appraisal before suspending credit privileges although a significant decline must occur before suspension can occur.*

7. ***Material change*** *in financial circumstances. Two conditions must be met for §1026.40(f)(3)(vi)(B) to apply. First, there must be a "material change" in the consumer's financial circumstances, such as a significant decrease in the consumer's income. Second, as a result of this change, the creditor must have a reasonable belief that the consumer will be unable to fulfill the payment obligations of the plan. A creditor may, but does not have to, rely on specific evidence (such as the failure to pay other debts) in concluding that the second part of the test has been met. A creditor may prohibit further advances or reduce the credit limit under this section if a consumer files for or is placed in bankruptcy.*

8. ***Default of a material obligation.*** *Creditors may specify events that would qualify as a default of a material obligation under §1026.40(f)(3)(vi)(C). For example, a creditor may provide that default of a material obligation will exist if the consumer moves out of the dwelling or permits an intervening lien to be filed that would take priority over future advances made by the creditor.*

9. ***Government limits on the annual percentage rate.*** *Under §1026.40(f)(3)(vi)(D), a creditor may prohibit further advances or reduce the credit limit if, for example, a state usury law is enacted which prohibits a creditor from imposing the agreed-upon annual percentage rate.*

Section 7: Refund of Fees
12 C.F.R. § 1026.40(g)

Refund of Fees - 12 CFR § 1026.40(g)

Regulatory Discussion

Generally, in the event the consumer elects not to open the HELOC due to a change in terms in the disclosures required under paragraph (d) (see Section 4, above), this section requires the creditor to refund all fees paid by the consumer.

Regulatory Text

(g) **Refund of fees.** A creditor shall refund all fees paid by the consumer to anyone in connection with an application if any term required to be disclosed under paragraph (d) of this section changes (other than a change due to fluctuations in the index in a variable-rate plan) before the plan is opened and, as a result, the consumer elects not to open the plan.

Regulatory Commentary

40(g) Refund of Fees

*1. **Refund of fees required.** If any disclosed term, including any term provided upon request pursuant to §1026.40(d), changes between the time the early disclosures are provided to the consumer and the time the plan is opened, and the consumer as a result decides to not enter into the plan, a creditor must refund all fees paid by the consumer in connection with the application. All fees, including credit report fees and appraisal fees, must be refunded whether such fees are paid to the creditor or directly to third parties. A consumer is entitled to a refund of fees under these circumstances whether or not terms are guaranteed by the creditor under §1026.40(d)(2)(i).*

*2. **Variable-rate plans.** The right to a refund of fees does not apply to changes in the annual percentage rate resulting from fluctuations in the index value in a variable-rate plan. Also, if the maximum annual percentage rate is expressed as an amount over the initial rate, the right to refund of fees would not apply to changes in the cap resulting from fluctuations in the index value.*

*3. **Changes in terms.** If a term, such as the maximum rate, is stated as a range in the early disclosures, and the term ultimately applicable to the plan falls within that range, a change does not occur for purposes of this section. If, however, no range is used and the term is changed (for example, a rate cap of 6 rather than 5 percentage points over the initial rate), the change would permit the consumer to obtain a refund of fees. If a fee imposed by* *the creditor is stated in the early disclosures as an estimate and the fee changes, the consumer could elect to not enter into the agreement and would be entitled to a refund of fees. On the other hand, if fees imposed by third parties are disclosed as estimates and those fees change, the consumer is not entitled to a refund of fees paid in connection with the application. Creditors must, however, use the best information reasonably available in providing disclosures about such fees.*

4. ***Timing of refunds and relation to other provisions.*** *The refund of fees must be made as soon as reasonably possible after the creditor is notified that the consumer is not entering into the plan because of the changed term, or that the consumer wants a refund of fees. The fact that an application fee may be refunded to some applicants under this provision does not render such fees finance charges under §1026.4(c)(1) of the regulation.*

Section 8: Nonrefundable Fees
12 C.F.R. § 1026.40(h)

Nonrefundable Fees - 12 CFR § 1026.40(h)

Regulatory Discussion

There is a limitation on fees that is discussed below.

Regulatory Text

(h) **Imposition of nonrefundable fees.** Neither a creditor nor any other person may impose a nonrefundable fee in connection with an application until three business days after the consumer receives the disclosures and brochure required under this section. If the disclosures and brochure are mailed to the consumer, the consumer is considered to have received them three business days after they are mailed.

Regulatory Commentary

40(h) Imposition of Nonrefundable Fees

1. ***Collection of fees after consumer receives disclosures.*** *A fee may be collected after the consumer receives the disclosures and brochure and before the expiration of three days, although the fee must be refunded if, within three days of receiving the required information, the consumer decides to not enter into the agreement. In such a case, the consumer must be notified that the fee is refundable for three days. The notice must be clear and conspicuous and in writing, and may be included with the disclosures required under §1026.40(d) or as an attachment to them. If disclosures and brochure are mailed to the consumer, §1026.40(h) provides that a nonrefundable fee may not be imposed until six business days after the mailing.*

2. ***Collection of fees before consumer receives disclosures.*** *An application fee may be collected before the consumer receives the disclosures and brochure (for example, when an application contained in a magazine is mailed in with an application fee) provided that it remains refundable until three business days after the consumer receives the §1026.40 disclosures. No other fees except a refundable membership fee may be collected until after the consumer receives the disclosures required under §1026.40.*

3. ***Relation to other provisions.*** *A fee collected before disclosures are provided may become nonrefundable except that, under §1026.40(g), it must be refunded if the consumer elects to not enter into the plan because of a change in terms. (Of course, all fees must be refunded if the consumer later rescinds under §1026.15.)*