

Regulation Z

Introduction

Reg Z University

October 7 & 8, 2020

Indiana Bankers Association

Ohio Bankers League

This publication is designed to provide information in regard to the subject matter covered. It is provided with the understanding that the publisher is not engaged in rendering legal, accounting, or other professional service. If legal advice or other expert assistance is required, the services of a professional competent in the area of special need should be sought.

© Copyright 2020
Young & Associates, Inc.
All rights reserved

**Additional information related to this
subject can be found at:**

www.younginc.com

Username: regz

Password: regz247



Consultants to the Financial Industry

Young & Associates, Inc.

121 E. Main Street
P.O. Box 711
Kent, OH 44240

Phone: 330.678.0524
Fax: 330.678.6219
www.younginc.com

Bill Elliott, CRCM, Senior Consultant and Director of Compliance Education

Bill Elliott has over 40 years of banking experience. As a senior compliance consultant and director of compliance education with Young & Associates, Inc., Bill works on a variety of compliance-related issues, including leading compliance seminars, conducting compliance reviews for all areas of compliance, conducting in-house training, and writing compliance articles and training materials.

During his career, Bill spent 15 years as a compliance officer and CRA officer in a large community bank, and also worked for a large regional bank. He has been a lender for consumer, commercial, and mortgage loans, and has managed a variety of bank departments, including loan review, consumer/commercial loan processing, mortgage loan processing, loan administration, credit administration, collections, and commercial loan workout.

Table of Contents

Introduction, Authority, Purpose, and Scope	1
Section 1: Introduction (Commentary)	1
Section 2: Authority, Purpose, Coverage, Organization, Enforcement and Liability 12 C.F.R. § 1026.1. 2	
General Definitions and Rules of Construction	7
Section 1: Definitions 12 C.F.R § 1026.2(a).....	8
Section 2: Rules of Construction 12 C.F.R § 1026.2(b)	38
Exemptions	39
Section 1: Exempt Transactions 12 C.F.R § 1026.3(a)	40
Section 2: Threshold Limits 12 C.F.R § 1026.3(b)	45
Section 3: Other Exempt Transactions / Omitted Sections 12 C.F.R § 1026.3(c) through 12 C.F.R § 1026.3(h)	47
Finance Charge	50
Section 1: Definition and Third-Party Charges 12 C.F.R. § 1026.4(a)	51
Section 2: Examples of Finance Charges 12 C.F.R. § 1026.4(b)	57
Section 3: Charges Excluded from Finance Charges 12 C.F.R. § 1026.4(c)	65
Section 4: Insurance, Debt Cancellation, Debt Suspension Coverage 12 C.F.R. § 1026.4(d)	70
Section 5: Certain Security Interest Charges and Prohibited Offsets 12 C.F.R. § 1026.4(e) and 12 C.F.R. § 1026.4(f)	77

Introduction, Authority, Purpose, and Scope

Section 1: Introduction (Commentary)

Manual Notes

In each section, we have included a regulatory discussion, which offers a synopsis of the regulation. Each section also contains the complete regulatory text and regulatory commentary. The commentary is in *italics*.

Introduction

There is some introductory commentary detailing general information.

Regulatory Commentary

1. **Official status.** *This commentary is the vehicle by which the Bureau of Consumer Financial Protection issues official interpretations of Regulation Z. Good faith compliance with this commentary affords protection from liability under section 130(f) of the Truth in Lending Act. Section 130(f) (15 U.S.C. 1640) protects creditors from civil liability for any act done or omitted in good faith in conformity with any interpretation issued by a duly authorized official or employee of the Bureau of Consumer Financial Protection.*
2. **Procedure for requesting interpretations.** *Under appendix C of the regulation, anyone may request an official interpretation. Interpretations that are adopted will be incorporated in this commentary following publication in the FEDERAL REGISTER. No official interpretations are expected to be issued other than by means of this commentary.*
3. **Rules of construction.**
 - (a) *Lists that appear in the commentary may be exhaustive or illustrative; the appropriate construction should be clear from the context. In most cases, illustrative lists are introduced by phrases such as “including, but not limited to,” “among other things,” “for example,” or “such as.”*
 - (b) *Throughout the commentary, reference to “this section” or “this paragraph” means the section or paragraph in the regulation that is the subject of the comment.*
4. **Comment designations.** *Each comment in the commentary is identified by a number and the regulatory section or paragraph which it interprets. The comments are designated with as much specificity as possible according to the particular regulatory provision addressed. For example, some of the comments to §1026.18(b) are further divided by subparagraph, such as comment 18(b)(1)-1 and comment 18(b)(2)-1. In other cases, comments have more general application and are designated, for example, as comment 18-1 or comment 18(b)-1. This introduction may be cited as comments I-1 through I-4. Comments to the appendices may be cited, for example, as comment app. A-1.*

Section 2: Authority, Purpose, Coverage, Organization, Enforcement and Liability

12 C.F.R. § 1026.1

Authority - 12 CFR § 1026.1(a)

Regulatory Discussion

Regulation Z is issued by the Bureau of Consumer Financial Protection to implement the Federal Truth in Lending Act, which is contained in title I of the Consumer Credit Protection Act. Several laws have amended the original law over the years, most recently the Dodd-Frank Act.

Regulatory Text

(a) **Authority.** This part, known as Regulation Z, is issued by the Bureau of Consumer Financial Protection to implement the Federal Truth in Lending Act, which is contained in title I of the Consumer Credit Protection Act, as amended (15 U.S.C. 1601 *et seq.*). This part also implements title XII, section 1204 of the Competitive Equality Banking Act of 1987 (Pub. L. 100-86, 101 Stat. 552). Furthermore, this part implements certain provisions of the Real Estate Settlement Procedures Act of 1974, as amended (12 U.S.C. 2601 *et seq.*). In addition, this part implements certain provisions of the Financial Institutions Reform, Recovery, and Enforcement Act, as amended (12 U.S.C. 3331 *et seq.*). The Bureau's information-collection requirements contained in this part have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. 3501 *et seq.* and have been assigned OMB No. 3170-0015 (Truth in Lending).

Regulatory Commentary

None.

Purpose - 12 CFR § 1026.1(b)

Regulatory Discussion

The purpose of Regulation Z is to promote the informed use of consumer credit by requiring disclosures about its terms and cost. It gives consumers the right to cancel certain credit transactions that involve a lien on a consumer's principal dwelling, and regulates certain credit card practices and disclosures. It creates a format in which all financial institutions use the same disclosure methods.

The regulation also imposes limitations on home-equity plans and certain closed-end home mortgages, prohibits certain acts or practices in connection with credit secured by a dwelling and credit secured by a consumer's principal dwelling. There are also specific requirements for creditors who extend private education loans.

The regulation does not govern charges for consumer credit. However, the regulation requires a maximum interest rate to be stated in variable rate contracts secured by the consumer's dwelling, and special rules addressing certain charges applicable to credit card accounts under an open-end (not home-secured) consumer credit plan.

It is important to understand that the results of some of the calculations used to complete disclosures create "mythical" numbers. However, because Regulation Z requires uniform disclosure methods and calculations, the applicant and/or borrower is in a position to compare different loan offers from a variety of financial institutions.

Regulatory Text

(b) **Purpose.** The purpose of this part is to promote the informed use of consumer credit by requiring disclosures about its terms and cost, to ensure that consumers are provided with greater and more timely information on the nature and costs of the residential real estate settlement process, and to effect certain changes in the settlement process for residential real estate that will result in more effective advance disclosure to home buyers and sellers of settlement costs. The regulation also includes substantive protections. It gives consumers the right to cancel certain credit transactions that involve a lien on a consumer's principal dwelling, regulates certain credit card practices, and provides a means for fair and timely resolution of credit billing disputes. The regulation does not generally govern charges for consumer credit, except that several provisions in subpart G set forth special rules addressing certain charges applicable to credit card accounts under an open-end (not home-secured) consumer credit plan. The regulation requires a maximum interest rate to be stated in variable-rate contracts secured by the consumer's dwelling. It also imposes limitations on home-equity plans that are subject to the requirements of §1026.40 and mortgages that are subject to the requirements of §1026.32. The regulation prohibits certain acts or practices in connection with credit secured by a dwelling in §1026.36, and credit secured by a consumer's principal dwelling in §1026.35. The regulation also regulates certain practices of creditors who extend private education loans as defined in §1026.46(b)(5). In addition, it imposes certain limitations on increases in costs for mortgage transactions subject to §1026.19(e) and (f).

Regulatory Commentary

None.

Coverage - 12 CFR § 1026.1(c)

Regulatory Discussion

Regulation Z coverage is based on whether or not the loan is a consumer loan. Regulation Z disclosures must be made if the bank:

- Extends credit to consumers;
- Offers or extends credit regularly;
- Charges finance charges or credit is repayable by written agreement in four or more installments; and
- Extends the credit primarily for personal, family, or household purposes
- Exempt transactions are more fully described in the following section.

Regulatory Text

(c) Coverage.

- (1) In general, this part applies to each individual or business that offers or extends credit, other than a person excluded from coverage of this part by section 1029 of the Consumer Financial Protection Act of 2010, title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203, 124 Stat. 1376, when four conditions are met:
 - (i) The credit is offered or extended to consumers;
 - (ii) The offering or extension of credit is done regularly;
 - (iii) The credit is subject to a finance charge or is payable by a written agreement in more than four installments; and
 - (iv) The credit is primarily for personal, family, or household purposes.
- (2) If a credit card is involved, however, certain provisions apply even if the credit is not subject to a finance charge, or is not payable by a written agreement in more than four installments, or if the credit card is to be used for business purposes.
- (3) In addition, certain requirements of §1026.40 apply to persons who are not creditors but who provide applications for home-equity plans to consumers.
- (4) Furthermore, certain requirements of §1026.57 apply to institutions of higher education.
- (5) Except in transactions subject to §1026.19(e) and (f), no person is required to provide the disclosures required by sections 128(a)(16) through (19), 128(b)(4), 129C(f)(1), 129C(g)(2) and (3), 129D(h), or 129D(j)(1)(A) of the Truth in Lending Act, section 4(c) of the Real Estate Settlement Procedures Act, or the disclosure required prior to settlement by section 129C(h) of the Truth in Lending Act. Except in transactions subject to §1026.20(e), no person is required to provide the disclosure required by section 129D(j)(1)(B) of the Truth in Lending Act. Except in transactions subject to §1026.39(d)(5), no person becoming a

creditor with respect to an existing residential mortgage loan is required to provide the disclosure required by section 129C(h) of the Truth in Lending Act.

Regulatory Commentary

1(c) Coverage

1. Foreign applicability. [Omitted, as nothing here is relevant.]

Paragraph 1(c)(5)

1. Exemption for certain mortgage transactions. Section 1026.1(c)(5) implements sections 128(a)(16) through (19), 128(b)(4), 129C(f)(1), 129C(g)(2) and (3), 129C(h), 129D(h), 129D(j)(1)(A), and 129D(j)(1)(B) of the Truth in Lending Act and section 4(c) of the Real Estate Settlement Procedures Act, by exempting persons from the disclosure requirements of those sections, except in certain transactions. The exemptions do not apply to certain transactions for which the disclosure requirements are implemented in other parts of Regulation Z. Sections 1026.37 and 1026.38 implement sections 128(a)(16) through (19), 128(b)(4), 129C(f)(1), 129C(g)(2) and (3), 129D(h), and 129D(j)(1)(A) of the Truth in Lending Act and section 4(c) of the Real Estate Settlement Procedures Act for transactions subject to §1026.19(e) and (f). Section 1026.38(l)(5) implements the disclosure requirements of section 129C(h) of the Truth in Lending Act for transactions subject to §1026.19(f). Section 1026.39(d)(5) implements the disclosure requirements of section 129C(h) of the Truth in Lending Act for transactions subject to §1026.39(d)(5). Section 1026.20(e) implements the disclosure requirements of section 129D(j)(1)(B) of the Truth in Lending Act for transactions subject to §1026.20(e). Section 1026.1(c)(5) does not exempt any person from any other requirement of this part, Regulation X (12 CFR part 1024), the Truth in Lending Act, or the Real Estate Settlement Procedures Act.

Organization - 12 CFR § 1026.1(d)

Regulatory Discussion

There is nothing relevant to our discussion in this section.

Regulatory Text

[Omitted, as nothing here is relevant.]

Regulatory Commentary

[Omitted, as nothing here is relevant.]

Enforcement - 12 CFR § 1026.1(e)

Regulatory Discussion

This is a discussion of the enforcement provisions in various laws. It is hoped that you never need this information.

Regulatory Text

- (e) **Enforcement and liability.** Section 108 of the Truth in Lending Act contains the administrative enforcement provisions for that Act. Sections 112, 113, 130, 131, and 134 contain provisions relating to liability for failure to comply with the requirements of the Truth in Lending Act and the regulation. Section 1204(c) of title XII of the Competitive Equality Banking Act of 1987, Public Law 100-86, 101 Stat. 552, incorporates by reference administrative enforcement and civil liability provisions of sections 108 and 130 of the Truth in Lending Act. Section 19 of the Real Estate Settlement Procedures Act contains the administrative enforcement provisions for that Act.

Regulatory Commentary

None.

General Definitions and Rules of Construction

Section 1: Definitions

12 C.F.R § 1026.2(a)

Manual Notes

We have elected not to include Regulatory Discussion in the section, but limit the presentation to the Regulatory Text and Regulatory Commentary. Each definition contains the complete regulatory text and regulatory commentary. The commentary is in *italics*.

Act - 12 CFR § 1026.2(a)(1)

Regulatory Text

(1) Act means the Truth in Lending Act (15 U.S.C. 1601 *et seq.*).

Regulatory Commentary

None.

Advertisement - 12 CFR § 1026.2(a)(2)

Regulatory Text

(2) **Advertisement** means a commercial message in any medium that promotes, directly or indirectly, a credit transaction.

Regulatory Commentary

2(a)(2) Advertisement

1. **Coverage.** *Only commercial messages that promote consumer credit transactions requiring disclosures are advertisements. Messages inviting, offering, or otherwise announcing generally to prospective customers the availability of credit transactions, whether in visual, oral, or print media, are covered by Regulation Z (12 CFR part 1026).*

i. Examples include:

A. Messages in a newspaper, magazine, leaflet, promotional flyer, or catalog.

- B. Announcements on radio, television, or public address system.*
- C. Electronic advertisements, such as on the Internet.*
- D. Direct mail literature or other printed material on any exterior or interior sign.*
- E. Point of sale displays.*
- F. Telephone solicitations.*
- G. Price tags that contain credit information.*
- H. Letters sent to customers or potential customers as part of an organized solicitation of business.*
- I. Messages on checking account statements offering auto loans at a stated annual percentage rate.*
- J. Communications promoting a new open-end plan or closed-end transaction.*

ii. The term does not include:

- A. Direct personal contacts, such as follow-up letters, cost estimates for individual consumers, or oral or written communication relating to the negotiation of a specific transaction.*
- B. Informational material, for example, interest-rate and loan-term memos, distributed only to business entities.*
- C. Notices required by Federal or state law, if the law mandates that specific information be displayed and only the information so mandated is included in the notice.*
- D. News articles the use of which is controlled by the news medium.*
- E. Market-research or educational materials that do not solicit business.*
- F. Communications about an existing credit account (for example, a promotion encouraging additional or different uses of an existing credit card account).*

2. Persons covered. *All persons must comply with the advertising provisions in §§1026.16 and 1026.24, not just those that meet the definition of creditor in §1026.2(a)(17). Thus, home builders, merchants, and others who are not themselves creditors must comply with the advertising provisions of the regulation if they advertise consumer credit transactions. However, under section 145 of the Act, the owner and the personnel of the medium in which an advertisement appears, or through which it is disseminated, are not subject to civil liability for violations.*

Application - 12 CFR § 1026.2(a)(3)

Regulatory Text

(3)

- (i) **Application** means the submission of a consumer's financial information for the purposes of obtaining an extension of credit.
- (ii) For transactions subject to §1026.19(e), (f), or (g) of this part, an application consists of the submission of the consumer's name, the consumer's income, the consumer's social security number to obtain a credit report, the property address, an estimate of the value of the property, and the mortgage loan amount sought.

Regulatory Commentary

2(a)(3) Application

1. **In general.** *An application means the submission of a consumer's financial information for purposes of obtaining an extension of credit. For transactions subject to §1026.19(e), (f), or (g) of this part, the term consists of the consumer's name, the consumer's income, the consumer's social security number to obtain a credit report, the property address, an estimate of the value of the property, and the mortgage loan amount sought. This definition does not prevent a creditor from collecting whatever additional information it deems necessary in connection with the request for the extension of credit. However, once a creditor has received these six pieces of information, it has an application for purposes of the requirements of Regulation Z. A submission may be in written or electronic format and includes a written record of an oral application. The following examples for a transaction subject to §1026.19(e), (f), or (g) are illustrative of this provision:*
 - i. *Assume a creditor provides a consumer with an application form containing 20 questions about the consumer's credit history and the collateral value. The consumer submits answers to nine of the questions and informs the creditor that the consumer will contact the creditor the next day with answers to the other 11 questions. Although the consumer provided nine pieces of information, the consumer did not provide a social security number. The creditor has not yet received an application for purposes of §1026.2(a)(3).*
 - ii. *Assume a creditor requires all applicants to submit 20 pieces of information. The consumer submits only six pieces of information and informs the creditor that the consumer will contact the creditor the next day with answers to the other 14 questions. The six pieces of information provided by the consumer were the consumer's name, income, social security number, property address, estimate of the value of the property, and the mortgage loan amount sought. Even though the creditor requires 14 additional pieces of information to process the consumer's request for a mortgage loan, the creditor has received an application for the purposes of §1026.2(a)(3) and therefore must comply with the relevant requirements under §1026.19.*
2. **Social security number to obtain a credit report.** *If a consumer does not have a social*

security number, the creditor may substitute whatever unique identifier the creditor uses to obtain a credit report on the consumer. For example, a creditor has obtained a social security number to obtain a credit report for purposes of §1026.2(a)(3)(ii) if the creditor collects a Tax Identification Number from a consumer who does not have a social security number, such as a foreign national.

3. **Receipt of credit report fees.** Section 1026.19(a)(1)(iii) permits the imposition of a fee to obtain the consumer's credit history prior to the delivery of the disclosures required under §1026.19(a)(1)(i). Section 1026.19(e)(2)(i)(B) permits the imposition of a fee to obtain the consumer's credit report prior to the delivery of the disclosures required under §1026.19(e)(1)(i). Whether, or when, such fees are received does not affect whether an application has been received for the purposes of the definition in §1026.2(a)(3) and the timing requirements in §1026.19(a)(1)(i) and (e)(1)(iii). For example, if, in a transaction subject to §1026.19(e)(1)(i), a creditor receives the six pieces of information identified under §1026.2(a)(3)(ii) on Monday, June 1, but does not receive a credit report fee from the consumer until Tuesday, June 2, the creditor does not comply with §1026.19(e)(1)(iii) if it provides the disclosures required under §1026.19(e)(1)(i) after Thursday, June 4. The three-business-day period begins on Monday, June 1, the date the creditor received the six pieces of information. The waiting period does not begin on Tuesday, June 2, the date the creditor received the credit report fee.

Billing Cycle or Cycle - 12 CFR § 1026.2(a)(4)

Regulatory Text

- (4) **Billing cycle or cycle** means the interval between the days or dates of regular periodic statements. These intervals shall be equal and no longer than a quarter of a year. An interval will be considered equal if the number of days in the cycle does not vary more than four days from the regular day or date of the periodic statement.

Regulatory Commentary

2(a)(4) Billing Cycle or Cycle

1. **Intervals.** In open-end credit plans, the billing cycle determines the intervals for which periodic disclosure statements are required; these intervals are also used as measuring points for other duties of the creditor. Typically, billing cycles are monthly, but they may be more frequent or less frequent (but not less frequent than quarterly).
2. **Creditors that do not bill.** The term cycle is interchangeable with billing cycle for definitional purposes, since some creditors' cycles do not involve the sending of bills in the traditional sense but only statements of account activity. This is commonly the case with financial institutions when periodic payments are made through payroll deduction or through automatic debit of the consumer's asset account.
3. **Equal cycles.** Although cycles must be equal, there is a permissible variance to account for weekends, holidays, and differences in the number of days in months. If the actual date of each

statement does not vary by more than four days from a fixed “day” (for example, the third Thursday of each month) or “date” (for example, the 15th of each month) that the creditor regularly uses, the intervals between statements are considered equal. The requirement that cycles be equal applies even if the creditor applies a daily periodic rate to determine the finance charge. The requirement that intervals be equal does not apply to the first billing cycle on an open-end account (i.e., the time period between account opening and the generation of the first periodic statement) or to a transitional billing cycle that can occur if the creditor occasionally changes its billing cycles so as to establish a new statement day or date. (See comments 9(c)(1)-3 and 9(c)(2)-3.)

4. **Payment reminder.** *The sending of a regular payment reminder (rather than a late payment notice) establishes a cycle for which the creditor must send periodic statements.*

Bureau - 12 CFR § 1026.2(a)(5)

Regulatory Text

- (5) **Bureau** means the Bureau of Consumer Financial Protection.

Regulatory Commentary

None.

Business Day - 12 CFR § 1026.2(a)(6)

Regulatory Text

- (6) **Business day** means a day on which the creditor's offices are open to the public for carrying on substantially all of its business functions. However, for purposes of rescission under §§1026.15 and 1026.23, and for purposes of §§1026.19(a)(1)(ii), 1026.19(a)(2), 1026.19(e)(1)(iii)(B), 1026.19(e)(1)(iv), 1026.19(e)(2)(i)(A), 1026.19(e)(4)(ii), 1026.19(f)(1)(ii), 1026.19(f)(1)(iii), 1026.20(e)(5), 1026.31, and 1026.46(d)(4), the term means all calendar days except Sundays and the legal public holidays specified in 5 U.S.C. 6103(a), such as 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.

Regulatory Commentary

2(a)(6) Business Day

1. **Business function test.** Activities that indicate that the creditor is open for substantially all of its business functions include the availability of personnel to make loan disbursements, to open new accounts, and to handle credit transaction inquiries. Activities that indicate that the creditor is not open for substantially all of its business functions include a retailer's merely accepting credit cards for purchases or a bank's having its customer-service windows open only for limited purposes such as deposits and withdrawals, bill paying, and related services.
2. **Rule for rescission, disclosures for certain mortgage transactions, and private education loans.** A more precise rule for what is a business day (all calendar days except Sundays and the Federal legal holidays specified in 5 U.S.C. 6103(a)) applies when the right of rescission, the receipt of disclosures for certain dwelling- or real estate-secured mortgage transactions under §§1026.19(a)(1)(ii), 1026.19(a)(2), 1026.19(e)(1)(iii)(B), 1026.19(e)(1)(iv), 1026.19(e)(2)(i)(A), 1026.19(e)(4)(ii), 1026.19(f)(1)(ii), 1026.19(f)(1)(iii), 1026.20(e)(5), 1026.31(c), or the receipt of disclosures for private education loans under §1026.46(d)(4) is involved. Four Federal legal holidays are identified in 5 U.S.C. 6103(a) by a specific date: New Year's Day, January 1; Independence Day, July 4; Veterans Day, November 11; and Christmas Day, December 25. When one of these holidays (July 4, for example) falls on a Saturday, Federal offices and other entities might observe the holiday on the preceding Friday (July 3). In cases where the more precise rule applies, the observed holiday (in the example, July 3) is a business day.

Card Issuer - 12 CFR § 1026.2(a)(7)

Regulatory Text

- (7) **Card issuer** means a person that issues a credit card or that person's agent with respect to the card.

Regulatory Commentary

2(a)(7) Card Issuer

1. Agent.

- i. **An agent of a card issuer is considered a card issuer.** Except as provided in comment 2(a)(7)-1.ii, because agency relationships are traditionally defined by contract and by state or other applicable law, the regulation does not define agent. Merely providing services relating to the production of credit cards or data processing for others, however, does not make one the agent of the card issuer. In contrast, a financial institution may become the agent of the card issuer if an agreement between the institution and the card issuer provides that the cardholder may use a line of credit with the financial institution to pay obligations incurred by use of the credit card.
- ii. Under §1026.2(a)(7), with respect to a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in §1026.61 where that credit feature is offered by an affiliate or business partner of the prepaid account issuer as those terms are defined in §1026.61, the

affiliate or business partner offering the credit feature is an agent of the prepaid account issuer and thus, is itself a card issuer with respect to the hybrid prepaid-credit card.

2. **Prepaid cards that are not hybrid prepaid-credit cards.** See §1026.61(a) and comments 61(a)(2)-5.iii and 61(a)(4)-1.iv for guidance on the applicability of this regulation in connection with credit accessible by prepaid cards that are not hybrid prepaid-credit cards.

Cardholder - 12 CFR § 1026.2(a)(8)

Regulatory Text

- (8) **Cardholder** means a natural person to whom a credit card is issued for consumer credit purposes, or a natural person who has agreed with the card issuer to pay consumer credit obligations arising from the issuance of a credit card to another natural person. For purposes of §1026.12(a) and (b), the term includes any person to whom a credit card is issued for any purpose, including business, commercial or agricultural use, or a person who has agreed with the card issuer to pay obligations arising from the issuance of such a credit card to another person.

Regulatory Commentary

2(a)(8) Cardholder

1. **General rule.** *A cardholder is a natural person at whose request a card is issued for consumer credit purposes or who is a co-obligor or guarantor for such a card issued to another. The second category does not include an employee who is a co-obligor or guarantor on a card issued to the employer for business purposes, nor does it include a person who is merely the authorized user of a card issued to another.*
2. **Limited application of regulation.** *For the limited purposes of the rules on issuance of credit cards and liability for unauthorized use, a cardholder includes any person, including an organization, to whom a card is issued for any purpose—including a business, agricultural, or commercial purpose.*
3. **Issuance.** *See the commentary to §1026.12(a).*
4. **Dual-purpose cards and dual-card systems.** *Some card issuers offer dual-purpose cards that are for business as well as consumer purposes. If a card is issued to an individual for consumer purposes, the fact that an organization has guaranteed to pay the debt does not make it business credit. On the other hand, if a card is issued for business purposes, the fact that an individual sometimes uses it for consumer purchases does not subject the card issuer to the provisions on periodic statements, billing-error resolution, and other protections afforded to consumer credit. Some card issuers offer dual-card systems—that is, they issue two cards to the same individual, one intended for business use, the other for consumer or personal use. With such a system, the same person may be a cardholder for general purposes when using the card issued for consumer use, and a cardholder only for the limited purposes of the restrictions on issuance and liability when using the card issued for business purposes.*

Cash Price - 12 CFR § 1026.2(a)(9)

Regulatory Text

(9) **Cash price** means the price at which a creditor, in the ordinary course of business, offers to sell for cash property or service that is the subject of the transaction. At the creditor's option, the term may include the price of accessories, services related to the sale, service contracts and taxes and fees for license, title, and registration. The term does not include any finance charge.

Regulatory Commentary

2(a)(9) Cash Price

1. **Components.** *This amount is a starting point in computing the amount financed and the total sale price under §1026.18 for credit sales. Any charges imposed equally in cash and credit transactions may be included in the cash price, or they may be treated as other amounts financed under §1026.18(b)(2).*
2. **Service contracts.** *Service contracts include contracts for the repair or the servicing of goods, such as mechanical breakdown coverage, even if such a contract is characterized as insurance under state law.*
3. **Rebates.** *The creditor has complete flexibility in the way it treats rebates for purposes of disclosure and calculation. (See the commentary to §1026.18(b).)*

Closed-End Credit - 12 CFR § 1026.2(a)(10)

Regulatory Text

(10) **Closed-end credit** means consumer credit other than “open-end credit” as defined in this section.

Regulatory Commentary

2(a)(10) Closed-End Credit

1. **General.** *The coverage of this term is defined by exclusion. That is, it includes any credit arrangement that does not fall within the definition of open-end credit. Subpart C contains the disclosure rules for closed-end credit when the obligation is subject to a finance charge or is payable by written agreement in more than four installments.*

Consumer - 12 CFR § 1026.2(a)(11)

Regulatory Text

(11) **Consumer** means a cardholder or natural person to whom consumer credit is offered or extended. However, for purposes of rescission under §§1026.15 and 1026.23, the term also includes a natural person in whose principal dwelling a security interest is or will be retained or acquired, if that person's ownership interest in the dwelling is or will be subject to the security interest. For purposes of §§1026.20(c) through (e), 1026.36(c), 1026.39, and 1026.41, the term includes a confirmed successor in interest.

Regulatory Commentary

2(a)(11) Consumer

1. **Scope.** *Guarantors, endorsers, and sureties are not generally consumers for purposes of the regulation, but they may be entitled to rescind under certain circumstances and they may have certain rights if they are obligated on credit card plans.*
2. **Rescission rules.** *For purposes of rescission under §§1026.15 and 1026.23, a consumer includes any natural person whose ownership interest in his or her principal dwelling is subject to the risk of loss. Thus, if a security interest is taken in A's ownership interest in a house and that house is A's principal dwelling, A is a consumer for purposes of rescission, even if A is not liable, either primarily or secondarily, on the underlying consumer credit transaction. An ownership interest does not include, for example, leaseholds or inchoate rights, such as dower.*
3. **Trusts.** *Credit extended to trusts established for tax or estate planning purposes or to land trusts, as described in comment 3(a)-10, is considered to be extended to a natural person for purposes of the definition of consumer.*
4. **Successors in interest.**
 - i. **Assumption of the mortgage loan obligation.** *A servicer may not require a confirmed successor in interest to assume the mortgage loan obligation to be considered a consumer for purposes of §§1026.20(c) through (e), 1026.36(c), 1026.39, and 1026.41. If a successor in interest assumes a mortgage loan obligation under State law or is otherwise liable on the mortgage loan obligation, the protections the successor in interest enjoys under this part are not limited to §§1026.20(c) through (e), 1026.36(c), 1026.39, and 1026.41.*
 - ii. **Communications with confirmed successors in interest.** *Communications in compliance with this part to a confirmed successor in interest as defined in §1026.2(a)(27)(ii) do not violate section 805(b) of the Fair Debt Collection Practices Act (FDCPA) because consumer for purposes of FDCPA section 805 includes any person who meets the definition in this part of confirmed successor in interest.*
 - iii. **Treatment of transferor consumer.** *Even after a servicer's confirmation of a successor in interest, the servicer is still required to comply with all applicable requirements of §§1026.20(c) through (e), 1026.36(c), 1026.39, and 1026.41 with respect to the consumer who transferred an ownership interest to the successor in interest.*

*iv. **Multiple notices unnecessary.** Except as required by Regulation X, 12 CFR 1024.36, a servicer is not required to provide to a confirmed successor in interest any written disclosure required by §1026.20(c), (d), or (e), §1026.39, or §1026.41 if the servicer is providing the same specific disclosure to another consumer on the account. For example, a servicer is not required to provide a periodic statement required by §1026.41 to a confirmed successor in interest if the servicer is providing the same periodic statement to another consumer; a single statement may be sent in that billing cycle. If a servicer confirms more than one successor in interest, the servicer need not send any disclosure required by §1026.20(c), (d), or (e), §1026.39, or §1026.41 to more than one of the confirmed successors in interest.*

Consumer Credit - 12 CFR § 1026.2(a)(12)

Regulatory Text

(12) **Consumer credit** means credit offered or extended to a consumer primarily for personal, family, or household purposes.

Regulatory Commentary

2(a)(12) Consumer Credit

1. **Primary purpose.** *There is no precise test for what constitutes credit offered or extended for personal, family, or household purposes, nor for what constitutes the primary purpose. (See, however, the discussion of business purposes in the commentary to §1026.3(a).)*

Consummation - 12 CFR § 1026.2(a)(13)

Regulatory Text

(13) **Consummation** means the time that a consumer becomes contractually obligated on a credit transaction.

Regulatory Commentary

2(a)(13) Consummation

1. **State law governs.** *When a contractual obligation on the consumer's part is created is a matter to be determined under applicable law; Regulation Z does not make this determination. A contractual commitment agreement, for example, that under applicable law binds the consumer to the credit terms would be consummation. Consummation, however, does not occur merely*

because the consumer has made some financial investment in the transaction (for example, by paying a nonrefundable fee) unless, of course, applicable law holds otherwise.

2. **Credit v. sale.** *Consummation does not occur when the consumer becomes contractually committed to a sale transaction, unless the consumer also becomes legally obligated to accept a particular credit arrangement. For example, when a consumer pays a nonrefundable deposit to purchase an automobile, a purchase contract may be created, but consummation for purposes of the regulation does not occur unless the consumer also contracts for financing at that time.*

Credit - 12 CFR § 1026.2(a)(14)

Regulatory Text

(14) **Credit** means the right to defer payment of debt or to incur debt and defer its payment.

Regulatory Commentary

2(a)(14) Credit

1. **Exclusions.** *The following situations are not considered credit for purposes of the regulation:*

- i. *Layaway plans, unless the consumer is contractually obligated to continue making payments. Whether the consumer is so obligated is a matter to be determined under applicable law. The fact that the consumer is not entitled to a refund of any amounts paid towards the cash price of the merchandise does not bring layaways within the definition of credit.*
- ii. *Tax liens, tax assessments, court judgments, and court approvals of reaffirmation of debts in bankruptcy. However, third-party financing of such obligations (for example, a bank loan obtained to pay off a tax lien) is credit for purposes of the regulation.*
- iii. *Insurance premium plans that involve payment in installments with each installment representing the payment for insurance coverage for a certain future period of time, unless the consumer is contractually obligated to continue making payments.*
- iv. *Home improvement transactions that involve progress payments, if the consumer pays, as the work progresses, only for work completed and has no contractual obligation to continue making payments.*
- v. *Borrowing against the accrued cash value of an insurance policy or a pension account, if there is no independent obligation to repay.*
- vi. *Letters of credit.*
- vii. *The execution of option contracts. However, there may be an extension of credit when the option is exercised, if there is an agreement at that time to defer payment of a debt.*
- viii. *Investment plans in which the party extending capital to the consumer risks the loss of the*

capital advanced. This includes, for example, an arrangement with a home purchaser in which the investor pays a portion of the downpayment and of the periodic mortgage payments in return for an ownership interest in the property, and shares in any gain or loss of property value.

ix. *Mortgage assistance plans administered by a government agency in which a portion of the consumer's monthly payment amount is paid by the agency. No finance charge is imposed on the subsidy amount, and that amount is due in a lump-sum payment on a set date or upon the occurrence of certain events. (If payment is not made when due, a new note imposing a finance charge may be written, which may then be subject to the regulation.)*

2. **Payday loans; deferred presentment.** *Credit includes a transaction in which a cash advance is made to a consumer in exchange for the consumer's personal check, or in exchange for the consumer's authorization to debit the consumer's deposit account, and where the parties agree either that the check will not be cashed or deposited, or that the consumer's deposit account will not be debited, until a designated future date. This type of transaction is often referred to as a "payday loan" or "payday advance" or "deferred-presentment loan." A fee charged in connection with such a transaction may be a finance charge for purposes of §1026.4, regardless of how the fee is characterized under state law. Where the fee charged constitutes a finance charge under §1026.4 and the person advancing funds regularly extends consumer credit, that person is a creditor and is required to provide disclosures consistent with the requirements of Regulation Z. (See §1026.2(a)(17).)*

3. **Transactions on the asset features of prepaid accounts when there are insufficient or unavailable funds.** *Credit includes authorization of a transaction on the asset feature of a prepaid account as defined in §1026.61 where the consumer has insufficient or unavailable funds in the asset feature of the prepaid account at the time the transaction is authorized to cover the amount of the transaction. It also includes settlement of a transaction on the asset feature of a prepaid account where the consumer has insufficient or unavailable funds in the asset feature of the prepaid account at the time the transaction is settled to cover the amount of the transaction. This includes a transaction where the consumer has sufficient or available funds in the asset feature of a prepaid account to cover the amount of the transaction at the time the transaction is authorized but insufficient or unavailable funds in the asset feature of the prepaid account to cover the transaction amount at the time the transaction is settled. See §1026.61 and related commentary on the applicability of this regulation to credit that is extended in connection with a prepaid account.*

Credit Card, Credit Card Account, Charge Card - 12 CFR § 1026.2(a)(15)

Regulatory Text

(15)

- (i) **Credit card** means any card, plate, or other single credit device that may be used from time to time to obtain credit. The term credit card includes a hybrid prepaid-credit card as defined in §1026.61.
- (ii) **Credit card account under an open-end (not home-secured) consumer credit plan** means any open-end credit account that is accessed by a credit card, except:
 - (A) A home-equity plan subject to the requirements of §1026.40 that is accessed by a credit card;
 - (B) An overdraft line of credit that is accessed by a debit card; or
 - (C) An overdraft line of credit that is accessed by an account number, except if the account number is a hybrid prepaid-credit card that can access a covered separate credit feature as defined in §1026.61.
- (iii) **Charge card** means a credit card on an account for which no periodic rate is used to compute a finance charge.
- (iv) **Debit card** means any card, plate, or other single device that may be used from time to time to access an asset account other than a prepaid account as defined in §1026.61. The term *debit card* does not include a prepaid card as defined in §1026.61.

Regulatory Commentary

Paragraph 2(a)(15)

1. ***Usable from time to time.*** A credit card must be usable from time to time. Since this involves the possibility of repeated use of a single device, checks and similar instruments that can be used only once to obtain a single credit extension are not credit cards.

2. Examples.

i. Examples of credit cards include:

- A. A card that guarantees checks or similar instruments, if the asset account is also tied to an overdraft line or if the instrument directly accesses a line of credit.
- B. A debit card (other than a debit card that is solely an account number) that also accesses a credit account (that is, a debit-credit card). See comment 2(a)(15)-2.ii.C for guidance on whether a debit card that is solely an account number is a credit card.
- C. An identification card that permits the consumer to defer payment on a purchase.

- D. *An identification card indicating loan approval that is presented to a merchant or to a lender, whether or not the consumer signs a separate promissory note for each credit extension.*
- E. *A card or device that can be activated upon receipt to access credit, even if the card has a substantive use other than credit, such as a purchase-price discount card. Such a card or device is a credit card notwithstanding the fact that the recipient must first contact the card issuer to access or activate the credit feature.*
- F. *A prepaid card that is a hybrid prepaid-credit card as defined in §1026.61.*

ii. In contrast, credit card does not include, for example:

- A. *A check-guarantee or debit card with no credit feature or agreement, even if the creditor occasionally honors an inadvertent overdraft.*
- B. *Any card, key, plate, or other device that is used in order to obtain petroleum products for business purposes from a wholesale distribution facility or to gain access to that facility, and that is required to be used without regard to payment terms.*
- C. *An account number that accesses a credit account, unless the account number can access an open-end line of credit to purchase goods or services or as provided in §1026.61 with respect to a hybrid prepaid-credit card. For example, if a creditor provides a consumer with an open-end line of credit that can be accessed by an account number in order to transfer funds into another account (such as an asset account with the same creditor), the account number is not a credit card for purposes of §1026.2(a)(15)(i). However, if the account number can also access the line of credit to purchase goods or services (such as an account number that can be used to purchase goods or services on the Internet), the account number is a credit card for purposes of §1026.2(a)(15)(i), regardless of whether the creditor treats such transactions as purchases, cash advances, or some other type of transaction. Furthermore, if the line of credit can also be accessed by a card (such as a debit card), that card is a credit card for purposes of §1026.2(a)(15)(i).*
- D. *A prepaid card that is not a hybrid prepaid-credit card as defined in §1026.61.*

3. Charge card.

- i. *Charge cards are credit cards where no periodic rate is used to compute the finance charge. Under the regulation, a reference to credit cards generally includes charge cards. In particular, references to credit card accounts under an open-end (not home-secured) consumer credit plan in subparts B and G generally include charge cards. The term charge card is, however, distinguished from credit card or credit card account under an open-end (not home-secured) consumer credit plan in §§1026.6(b)(2)(xiv), 1026.7(b)(11) (except as described in comment 2(a)(15)-3.ii below), 1026.7(b)(12), 1026.9(e), 1026.9(f), 1026.28(d), 1026.52(b)(1)(ii)(C), 1026.60, and appendices G-10 through G-13.*
- ii. *A hybrid prepaid-credit card as defined in §1026.61 is a charge card with respect to a covered separate credit feature if no periodic rate is used to compute the finance charge in connection with the covered separate credit feature. Unlike other charge card accounts, the requirements in §1026.7(b)(11) apply to a covered separate credit feature accessible by a hybrid prepaid-credit card that is a charge card when that covered separate credit feature is a credit card account under an open-end (not home-secured) consumer credit plan. Thus,*

under §1026.5(b)(2)(ii)(A), with respect to a covered separate credit feature that is a credit card account under an open-end (not home-secured) consumer credit plan, a card issuer of a hybrid prepaid-credit card that meets the definition of a charge card because no periodic rate is used to compute a finance charge in connection with the covered separate credit feature must adopt reasonable procedures for the covered separate credit feature designed to ensure that (1) periodic statements are mailed or delivered at least 21 days prior to the payment due date disclosed on the statement pursuant to §1026.7(b)(11)(i)(A); and (2) the card issuer does not treat as late for any purposes a required minimum periodic payment received by the card issuer within 21 days after mailing or delivery of the periodic statement disclosing the due date for that payment.

4. Credit card account under an open-end (not home-secured) consumer credit plan.

- i. An open-end consumer credit account is a credit card account under an open-end (not home-secured) consumer credit plan for purposes of §1026.2(a)(15)(ii) if:

 - A. The account is accessed by a credit card, as defined in §1026.2(a)(15)(i); and*
 - B. The account is not excluded under §1026.2(a)(15)(ii)(A) through (C).**
- ii. As noted in §1026.2(a)(15)(ii)(C), the exclusion from credit card account under an open-end (not home-secured) consumer credit plan provided by that paragraph for an overdraft line of credit that is accessed by an account number does not apply to a covered separate credit feature accessible by a hybrid prepaid-credit card (including a hybrid prepaid-credit card that is solely an account number) as defined in §1026.61.*

Credit Sale - 12 CFR § 1026.2(a)(16)

Regulatory Text

(16) Credit sale means a sale in which the seller is a creditor. The term includes a bailment or lease (unless terminable without penalty at any time by the consumer) under which the consumer:

- (i)** Agrees to pay as compensation for use a sum substantially equivalent to, or in excess of, the total value of the property and service involved; and
- (ii)** Will become (or has the option to become), for no additional consideration or for nominal consideration, the owner of the property upon compliance with the agreement.

Regulatory Commentary

2(a)(16) Credit Sale

- 1. Special disclosure.** *If the seller is a creditor in the transaction, the transaction is a credit sale and the special credit sale disclosures (that is, the disclosures under §1026.18(j)) must be given. This applies even if there is more than one creditor in the transaction and the creditor making the disclosures is not the seller. (See the commentary to §1026.17(d).)*

2. ***Sellers who arrange credit.*** *If the seller of the property or services involved arranged for financing but is not a creditor as to that sale, the transaction is not a credit sale. Thus, if a seller assists the consumer in obtaining a direct loan from a financial institution and the consumer's note is payable to the financial institution, the transaction is a loan and only the financial institution is a creditor.*
3. ***Refinancings.*** *Generally, when a credit sale is refinanced within the meaning of §1026.20(a), loan disclosures should be made. However, if a new sale of goods or services is also involved, the transaction is a credit sale.*
4. ***Incidental sales.*** *Some lenders sell a product or service—such as credit, property, or health insurance—as part of a loan transaction. Section 1026.4 contains the rules on whether the cost of credit life, disability or property insurance is part of the finance charge. If the insurance is financed, it may be disclosed as a separate credit-sale transaction or disclosed as part of the primary transaction; if the latter approach is taken, either loan or credit-sale disclosures may be made. (See the commentary to §1026.17(c)(1) for further discussion of this point.)*
5. ***Credit extensions for educational purposes.*** *A credit extension for educational purposes in which an educational institution is the creditor may be treated as either a credit sale or a loan, regardless of whether the funds are given directly to the student, credited to the student's account, or disbursed to other persons on the student's behalf. The disclosure of the total sale price need not be given if the transaction is treated as a loan.*

Creditor - 12 CFR § 1026.2(a)(17)

Regulatory Text

(17) **Creditor** means:

- (i) A person who regularly extends consumer credit that is subject to a finance charge or is payable by written agreement in more than four installments (not including a down payment), and to whom the obligation is initially payable, either on the face of the note or contract, or by agreement when there is no note or contract.
- (ii) For purposes of §§1026.4(c)(8) (Discounts), 1026.9(d) (Finance charge imposed at time of transaction), and 1026.12(e) (Prompt notification of returns and crediting of refunds), a person that honors a credit card.
- (iii) For purposes of subpart B, any card issuer that extends either open-end credit or credit that is not subject to a finance charge and is not payable by written agreement in more than four installments.
- (iv) For purposes of subpart B (except for the credit and charge card disclosures contained in §§1026.60 and 1026.9(e) and (f), the finance charge disclosures contained in §1026.6(a)(1) and (b)(3)(i) and §1026.7(a)(4) through (7) and (b)(4) through (6) and the right of rescission set forth in §1026.15) and subpart C, any card issuer that extends closed-end credit that is subject to a finance charge or is payable by written agreement in more than four installments.

- (v) A person regularly extends consumer credit only if it extended credit (other than credit subject to the requirements of §1026.32) more than 25 times (or more than 5 times for transactions secured by a dwelling) in the preceding calendar year. If a person did not meet these numerical standards in the preceding calendar year, the numerical standards shall be applied to the current calendar year. A person regularly extends consumer credit if, in any 12-month period, the person originates more than one credit extension that is subject to the requirements of §1026.32 or one or more such credit extensions through a mortgage broker.

Regulatory Commentary

2(a)(17) Creditor

1. **General.** *The definition contains four independent tests. If any one of the tests is met, the person is a creditor for purposes of that particular test.*

Paragraph 2(a)(17)(i)

1. **Prerequisites.** *This test is composed of two requirements, both of which must be met in order for a particular credit extension to be subject to the regulation and for the credit extension to count towards satisfaction of the numerical tests mentioned in §1026.2(a)(17)(v).*

- i. *First, there must be either or both of the following:*

A. *A written (rather than oral) agreement to pay in more than four installments. A letter that merely confirms an oral agreement does not constitute a written agreement for purposes of the definition.*

B. *A finance charge imposed for the credit. The obligation to pay the finance charge need not be in writing.*

- ii. *Second, the obligation must be payable to the person in order for that person to be considered a creditor. If an obligation is made payable to bearer, the creditor is the one who initially accepts the obligation.*

2. **Assignees.** *If an obligation is initially payable to one person, that person is the creditor even if the obligation by its terms is simultaneously assigned to another person. For example:*

- i. *An auto dealer and a bank have a business relationship in which the bank supplies the dealer with credit sale contracts that are initially made payable to the dealer and provide for the immediate assignment of the obligation to the bank. The dealer and purchaser execute the contract only after the bank approves the creditworthiness of the purchaser. Because the obligation is initially payable on its face to the dealer, the dealer is the only creditor in the transaction.*

3. **Numerical tests.** *The examples below illustrate how the numerical tests of §1026.2(a)(17)(v) are applied. The examples assume that consumer credit with a finance charge or written agreement for more than 4 installments was extended in the years in question and that the person did not extend such credit in 2006.*

4. **Counting transactions.** *For purposes of closed-end credit, the creditor counts each credit transaction. For open-end credit, transactions means accounts, so that outstanding accounts are counted instead of individual credit extensions. Normally the number of transactions is measured by the preceding calendar year; if the requisite number is met, then the person is a creditor for all transactions in the current year. However, if the person did not meet the test in the preceding year, the number of transactions is measured by the current calendar year. For example, if the person extends consumer credit 26 times in 2007, it is a creditor for purposes of the regulation for the last extension of credit in 2007 and for all extensions of consumer credit in 2008. On the other hand, if a business begins in 2007 and extends consumer credit 20 times, it is not a creditor for purposes of the regulation in 2007. If it extends consumer credit 75 times in 2008, however, it becomes a creditor for purposes of the regulation (and must begin making disclosures) after the 25th extension of credit in that year and is a creditor for all extensions of consumer credit in 2009.*
5. **Relationship between consumer credit in general and credit secured by a dwelling.** *Extensions of credit secured by a dwelling are counted towards the 25-extensions test. For example, if in 2007 a person extends unsecured consumer credit 23 times and consumer credit secured by a dwelling twice, it becomes a creditor for the succeeding extensions of credit, whether or not they are secured by a dwelling. On the other hand, extensions of consumer credit not secured by a dwelling are not counted towards the number of credit extensions secured by a dwelling. For example, if in 2007 a person extends credit not secured by a dwelling 8 times and credit secured by a dwelling 3 times, it is not a creditor.*
6. **Effect of satisfying one test.** *Once one of the numerical tests is satisfied, the person is also a creditor for the other type of credit. For example, in 2007 a person extends consumer credit secured by a dwelling 5 times. That person is a creditor for all succeeding credit extensions, whether they involve credit secured by a dwelling or not.*
7. **Trusts.** *In the case of credit extended by trusts, each individual trust is considered a separate entity for purposes of applying the criteria. For example:*
 - i. *A bank is the trustee for three trusts. Trust A makes 15 extensions of consumer credit annually; Trust B makes 10 extensions of consumer credit annually; and Trust C makes 30 extensions of consumer credit annually. Only Trust C is a creditor for purposes of the regulation.*
8. **Prepaid cards that are not hybrid prepaid-credit cards.** *See §1026.61(a) and comments 61(a)(2)-5.iii and 61(a)(4)-1.iv for guidance on the applicability of this regulation in connection with credit accessible by prepaid cards that are not hybrid prepaid-credit cards.*

Paragraph 2(a)(17)(ii) [Reserved]

Paragraph 2(a)(17)(iii)

1. **Card issuers subject to Subpart B.** *Section 1026.2(a)(17)(iii) makes certain card issuers creditors for purposes of the open-end credit provisions of the regulation. This includes, for example, the issuers of so-called travel and entertainment cards that expect repayment at the first billing and do not impose a finance charge. Since all disclosures are to be made only as applicable, such card issuers would omit finance charge disclosures. Other provisions of the regulation regarding such areas as scope, definitions, determination of which charges are*

finance charges, Spanish language disclosures, record retention, and use of model forms, also apply to such card issuers.

2. **Prepaid cards that are not hybrid prepaid-credit cards.** See §1026.61(a) and comments 61(a)(2)-5.iii and 61(a)(4)-1.iv for guidance on the applicability of this regulation in connection with credit accessible by prepaid cards that are not hybrid prepaid-credit cards.

Paragraph 2(a)(17)(iv)

1. **Card issuers subject to Subparts B and C.** Section 1026.2(a)(17)(iv) includes as creditors card issuers extending closed-end credit in which there is a finance charge or an agreement to pay in more than four installments. These card issuers are subject to the appropriate provisions of Subparts B and C, as well as to the general provisions.

Paragraph 2(a)(17)(v)

1. **General.** The definition contains four independent tests. If any one of the tests is met, the person is a creditor for purposes of that particular test.

Downpayment - 12 CFR § 1026.2(a)(18)

Regulatory Text

- (18) **Downpayment** means an amount, including the value of property used as a trade-in, paid to a seller to reduce the cash price of goods or services purchased in a credit sale transaction. A deferred portion of a downpayment may be treated as part of the downpayment if it is payable not later than the due date of the second otherwise regularly scheduled payment and is not subject to a finance charge.

Regulatory Commentary

2(a)(18) Downpayment

1. **Allocation.** *If a consumer makes a lump-sum payment, partially to reduce the cash price and partially to pay prepaid finance charges, only the portion attributable to reducing the cash price is part of the downpayment. (See the commentary to §1026.2(a)(23).)*
2. **Pick-up payments.**
 - i. *Creditors may treat the deferred portion of the downpayment, often referred to as pick-up payments, in a number of ways. If the pick-up payment is treated as part of the downpayment:*
 - A. *It is subtracted in arriving at the amount financed under §1026.18(b).*

B. It may, but need not, be reflected in the payment schedule under §1026.18(g).

ii. If the pick-up payment does not meet the definition (for example, if it is payable after the second regularly scheduled payment) or if the creditor chooses not to treat it as part of the downpayment:

A. It must be included in the amount financed.

B. It must be shown in the payment schedule.

iii. Whichever way the pick-up payment is treated, the total of payments under §1026.18(h) must equal the sum of the payments disclosed under §1026.18(g).

3. Effect of existing liens.

*i. **No cash payment.** In a credit sale, the “downpayment” may only be used to reduce the cash price. For example, when a trade-in is used as the downpayment and the existing lien on an automobile to be traded in exceeds the value of the automobile, creditors must disclose a zero on the downpayment line rather than a negative number. To illustrate, assume a consumer owes \$10,000 on an existing automobile loan and that the trade-in value of the automobile is only \$8,000, leaving a \$2,000 deficit. The creditor should disclose a downpayment of \$0, not -\$2,000.*

*ii. **Cash payment.** If the consumer makes a cash payment, creditors may, at their option, disclose the entire cash payment as the downpayment, or apply the cash payment first to any excess lien amount and disclose any remaining cash as the downpayment. In the above example:*

A. If the downpayment disclosed is equal to the cash payment, the \$2,000 deficit must be reflected as an additional amount financed under §1026.18(b)(2).

B. If the consumer provides \$1,500 in cash (which does not extinguish the \$2,000 deficit), the creditor may disclose a downpayment of \$1,500 or of \$0.

C. If the consumer provides \$3,000 in cash, the creditor may disclose a downpayment of \$3,000 or of \$1,000.

Dwelling - 12 CFR § 1026.2(a)(19)

Regulatory Text

(19) **Dwelling** means a residential structure that contains one to four units, whether or not that structure is attached to real property. The term includes an individual condominium unit, cooperative unit, mobile home, and trailer, if it is used as a residence.

Regulatory Commentary

2(a)(19) Dwelling

1. **Scope.** *A dwelling need not be the consumer's principal residence to fit the definition, and thus a vacation or second home could be a dwelling. However, for purposes of the definition of residential mortgage transaction and the right to rescind, a dwelling must be the principal residence of the consumer. (See the commentary to §§1026.2(a)(24), 1026.15, and 1026.23.)*
2. **Use as a residence.** *Mobile homes, boats, and trailers are dwellings if they are in fact used as residences, just as are condominium and cooperative units. Recreational vehicles, campers, and the like not used as residences are not dwellings.*
3. **Relation to exemptions.** *Any transaction involving a security interest in a consumer's principal dwelling (as well as in any real property) remains subject to the regulation despite the general exemption in §1026.3(b).*

Open-End credit - 12 CFR § 1026.2(a)(20)

Regulatory Text

(20) **Open-end credit** means consumer credit extended by a creditor under a plan in which:

- (i) The creditor reasonably contemplates repeated transactions;
- (ii) The creditor may impose a finance charge from time to time on an outstanding unpaid balance; and
- (iii) The amount of credit that may be extended to the consumer during the term of the plan (up to any limit set by the creditor) is generally made available to the extent that any outstanding balance is repaid.

Regulatory Commentary

2(a)(20) Open-End Credit

1. **General.** *This definition describes the characteristics of open-end credit (for which the applicable disclosure and other rules are contained in Subpart B), as distinct from closed-end credit. Open-end credit is consumer credit that is extended under a plan and meets all 3 criteria set forth in the definition.*
2. **Existence of a plan.**
 - i. *The definition requires that there be a plan, which connotes a contractual arrangement between the creditor and the consumer.*
 - ii. *With respect to a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in §1026.61, a plan means a program where the consumer is obligated contractually to repay any credit extended by the creditor. For example, a plan includes a program under which a creditor routinely extends credit from a covered separate credit feature offered by the prepaid account issuer, its affiliate, or its business partner where the*

prepaid card can be used from time to time to draw, transfer, or authorize the draw or transfer of credit from the covered separate credit feature in the course of authorizing, settling, or otherwise completing transactions conducted with the card to obtain goods or services, obtain cash, or conduct person-to-person transfers, and the consumer is obligated contractually to repay those credit transactions. Such a program constitutes a plan notwithstanding that, for example, the creditor has not agreed in writing to extend credit for those transactions, the creditor retains discretion not to extend credit for those transactions, or the creditor does not extend credit for those transactions once the consumer has exceeded a certain amount of credit. See §1026.61(a) and related commentary for guidance on the applicability of this regulation to credit accessible by hybrid prepaid-credit cards.

iii. Some creditors offer programs containing a number of different credit features. The consumer has a single account with the institution that can be accessed repeatedly via a number of sub-accounts established for the different program features and rate structures. Some features of the program might be used repeatedly (for example, an overdraft line) while others might be used infrequently (such as the part of the credit line available for secured credit). If the program as a whole is subject to prescribed terms and otherwise meets the definition of open-end credit, such a program would be considered a single, multifeatured plan.

3. **Repeated transactions.** Under this criterion, the creditor must reasonably contemplate repeated transactions. This means that the credit plan must be usable from time to time and the creditor must legitimately expect that there will be repeat business rather than a one-time credit extension. The creditor must expect repeated dealings with consumers under the credit plan as a whole and need not believe a consumer will reuse a particular feature of the plan. The determination of whether a creditor can reasonably contemplate repeated transactions requires an objective analysis. Information that much of the creditor's customer base with accounts under the plan make repeated transactions over some period of time is relevant to the determination, particularly when the plan is opened primarily for the financing of infrequently purchased products or services. A standard based on reasonable belief by a creditor necessarily includes some margin for judgmental error. The fact that particular consumers do not return for further credit extensions does not prevent a plan from having been properly characterized as open-end. For example, if much of the customer base of a clothing store makes repeat purchases, the fact that some consumers use the plan only once would not affect the characterization of the store's plan as open-end credit. The criterion regarding repeated transactions is a question of fact to be decided in the context of the creditor's type of business and the creditor's relationship with its customers. For example, it would be more reasonable for a bank or depository institution to contemplate repeated transactions with a customer than for a seller of aluminum siding to make the same assumption about its customers.

4. **Finance charge on an outstanding balance.**

i. The requirement that a finance charge may be computed and imposed from time to time on the outstanding balance means that there is no specific amount financed for the plan for which the finance charge, total of payments, and payment schedule can be calculated. A plan may meet the definition of open-end credit even though a finance charge is not normally imposed, provided the creditor has the right, under the plan, to impose a finance charge from time to time on the outstanding balance. For example, in some plans, a finance charge is not imposed if the consumer pays all or a specified portion of the outstanding balance

within a given time period. Such a plan could meet the finance charge criterion, if the creditor has the right to impose a finance charge, even though the consumer actually pays no finance charges during the existence of the plan because the consumer takes advantage of the option to pay the balance (either in full or in installments) within the time necessary to avoid finance charges.

- ii. With regard to a covered separate credit feature and an asset feature on a prepaid account that are both accessible by a hybrid prepaid-credit card as defined in §1026.61, any service, transaction, activity, or carrying charges imposed on the covered separate credit feature, and any such charges imposed on the asset feature of the prepaid account to the extent that the amount of the charge exceeds comparable charges imposed on prepaid accounts in the same prepaid account program that do not have a covered separate credit feature accessible by a hybrid prepaid-credit card, generally is a finance charge. See §1026.4(a) and (b)(11). Such charges include a periodic fee to participate in the covered separate credit feature, regardless of whether this fee is imposed on the credit feature or on the asset feature of the prepaid account. With respect to credit from a covered separate credit feature accessible by a hybrid prepaid-credit card, any service, transaction, activity, or carrying charges that are finance charges under §1026.4 constitute finance charges imposed from time to time on an outstanding unpaid balance as described in §1026.2(a)(20) if there is no specific amount financed for the credit feature for which the finance charge, total of payments, and payment schedule can be calculated.*

5. Reusable line. *The total amount of credit that may be extended during the existence of an open-end plan is unlimited because available credit is generally replenished as earlier advances are repaid. A line of credit is self-replenishing even though the plan itself has a fixed expiration date, as long as during the plan's existence the consumer may use the line, repay, and reuse the credit. The creditor may occasionally or routinely verify credit information such as the consumer's continued income and employment status or information for security purposes but, to meet the definition of open-end credit, such verification of credit information may not be done as a condition of granting a consumer's request for a particular advance under the plan. In general, a credit line is self-replenishing if the consumer can take further advances as outstanding balances are repaid without being required to separately apply for those additional advances. A credit card account where the plan as a whole replenishes meets the self-replenishing criterion, notwithstanding the fact that a credit card issuer may verify credit information from time to time in connection with specific transactions. This criterion of unlimited credit distinguishes open-end credit from a series of advances made pursuant to a closed-end credit loan commitment. For example:*

- i. Under a closed-end commitment, the creditor might agree to lend a total of \$10,000 in a series of advances as needed by the consumer. When a consumer has borrowed the full \$10,000, no more is advanced under that particular agreement, even if there has been repayment of a portion of the debt. (See §1026.2(a)(17)(iv) for disclosure requirements when a credit card is used to obtain the advances.)*
- ii. This criterion does not mean that the creditor must establish a specific credit limit for the line of credit or that the line of credit must always be replenished to its original amount. The creditor may reduce a credit limit or refuse to extend new credit in a particular case due to changes in the creditor's financial condition or the consumer's creditworthiness. (The rules in §1026.40(f), however, limit the ability of a creditor to suspend credit advances for home equity plans.) While consumers should have a reasonable expectation of obtaining*

credit as long as they remain current and within any preset credit limits, further extensions of credit need not be an absolute right in order for the plan to meet the self-replenishing criterion.6. Verifications of collateral value. Creditors that otherwise meet the requirements of §1026.2(a)(20) extend open-end credit notwithstanding the fact that the creditor must verify collateral values to comply with Federal, state, or other applicable law or verifies the value of collateral in connection with a particular advance under the plan.

7. **Open-end real estate mortgages.** Some credit plans call for negotiated advances under so-called open-end real estate mortgages. Each such plan must be independently measured against the definition of open-end credit, regardless of the terminology used in the industry to describe the plan. The fact that a particular plan is called an open-end real estate mortgage, for example, does not, by itself, mean that it is open-end credit under the regulation.

Periodic Rate - 12 CFR § 1026.2(a)(21)

Regulatory Text

- (21) **Periodic rate** means a rate of finance charge that is or may be imposed by a creditor on a balance for a day, week, month, or other subdivision of a year.

Regulatory Commentary

2(a)(21) Periodic Rate

1. **Basis.** The periodic rate may be stated as a percentage (for example, 1 and ½ % per month) or as a decimal equivalent (for example, .015 monthly). It may be based on any portion of a year the creditor chooses. Some creditors use 1/360 of an annual rate as their periodic rate. These creditors:
 - i. May disclose a 1/360 rate as a daily periodic rate, without further explanation, if it is in fact only applied 360 days per year. But if the creditor applies that rate for 365 days, the creditor must note that fact and, of course, disclose the true annual percentage rate.
 - ii. Would have to apply the rate to the balance to disclose the annual percentage rate with the degree of accuracy required in the regulation (that is, within 1/8 th of 1 percentage point of the rate based on the actual 365 days in the year).
2. **Transaction charges.** Periodic rate does not include initial one-time transaction charges, even if the charge is computed as a percentage of the transaction amount.

Person - 12 CFR § 1026.2(a)(22)

Regulatory Text

(22) **Person** means a natural person or an organization, including a corporation, partnership, proprietorship, association, cooperative, estate, trust, or government unit.

Regulatory Commentary

2(a)(22) Person

1. **Joint ventures.** *A joint venture is an organization and is therefore a person.*
2. **Attorneys.** *An attorney and his or her client are considered to be the same person for purposes of this part when the attorney is acting within the scope of the attorney-client relationship with regard to a particular transaction.*
3. **Trusts.** *A trust and its trustee are considered to be the same person for purposes of this part.*

Prepaid Finance Charge - 12 CFR § 1026.2(a)(23)

Regulatory Text

(23) **Prepaid finance charge** means any finance charge paid separately in cash or by check before or at consummation of a transaction, or withheld from the proceeds of the credit at any time.

Regulatory Commentary

2(a)(23) Prepaid Finance Charge

1. **General.** *Prepaid finance charges must be taken into account under §1026.18(b) in computing the disclosed amount financed, and must be disclosed if the creditor provides an itemization of the amount financed under §1026.18(c).*
2. **Examples.**
 - i. *Common examples of prepaid finance charges include:*
 - A. *Buyer's points.*
 - B. *Service fees.*
 - C. *Loan fees.*

D. Finder's fees.

E. Loan-guarantee insurance.

F. Credit-investigation fees.

ii. However, in order for these or any other finance charges to be considered prepaid, they must be either paid separately in cash or check or withheld from the proceeds. Prepaid finance charges include any portion of the finance charge paid prior to or at closing or settlement.

3. Exclusions. *Add-on and discount finance charges are not prepaid finance charges for purposes of this part. Finance charges are not prepaid merely because they are precomputed, whether or not a portion of the charge will be rebated to the consumer upon prepayment. (See the commentary to §1026.18(b).)*

4. Allocation of lump-sum payments. *In a credit sale transaction involving a lump-sum payment by the consumer and a discount or other item that is a finance charge under §1026.4, the discount or other item is a prepaid finance charge to the extent the lump-sum payment is not applied to the cash price. For example, a seller sells property to a consumer for \$10,000, requires the consumer to pay \$3,000 at the time of the purchase, and finances the remainder as a closed-end credit transaction. The cash price of the property is \$9,000. The seller is the creditor in the transaction and therefore the \$1,000 difference between the credit and cash prices (the discount) is a finance charge. (See the commentary to §1026.4(b)(9) and (c)(5).) If the creditor applies the entire \$3,000 to the cash price and adds the \$1,000 finance charge to the interest on the \$6,000 to arrive at the total finance charge, all of the \$3,000 lump-sum payment is a downpayment and the discount is not a prepaid finance charge. However, if the creditor only applies \$2,000 of the lump-sum payment to the cash price, then \$2,000 of the \$3,000 is a downpayment and the \$1,000 discount is a prepaid finance charge.*

Residential Mortgage Transaction - 12 CFR § 1026.2(a)(24)

Regulatory Text

(24) Residential mortgage transaction means a transaction in which a mortgage, deed of trust, purchase money security interest arising under an installment sales contract, or equivalent consensual security interest is created or retained in the consumer's principal dwelling to finance the acquisition or initial construction of that dwelling.

Regulatory Commentary

2(a)(24) Residential Mortgage Transaction

1. Relation to other sections. *This term is important in five provisions in the regulation:*

- i. Section 1026.4(c)(7) - exclusions from the finance charge.*
- ii. Section 1026.15(f) - exemption from the right of rescission.*

iii. Section 1026.18(q) - whether or not the obligation is assumable.

iv. Section 1026.20(b) - disclosure requirements for assumptions.

v. Section 1026.23(f) - exemption from the right of rescission.

2. **Lien status.** The definition is not limited to first lien transactions. For example, a consumer might assume a paid-down first mortgage (or borrow part of the purchase price) and borrow the balance of the purchase price from a creditor who takes a second mortgage. The second mortgage transaction is a residential mortgage transaction if the dwelling purchased is the consumer's principal residence.

3. **Principal dwelling.** A consumer can have only one principal dwelling at a time. Thus, a vacation or other second home would not be a principal dwelling. However, if a consumer buys or builds a new dwelling that will become the consumer's principal dwelling within a year or upon the completion of construction, the new dwelling is considered the principal dwelling for purposes of applying this definition to a particular transaction. (See the commentary to §§1026.15(a) and 1026.23(a).)

4. **Construction financing.** If a transaction meets the definition of a residential mortgage transaction and the creditor chooses to disclose it as several transactions under §1026.17(c)(6), each one is considered to be a residential mortgage transaction, even if different creditors are involved. For example:

i. The creditor makes a construction loan to finance the initial construction of the consumer's principal dwelling, and the loan will be disbursed in five advances. The creditor gives six sets of disclosures (five for the construction phase and one for the permanent phase). Each one is a residential mortgage transaction.

ii. One creditor finances the initial construction of the consumer's principal dwelling and another creditor makes a loan to satisfy the construction loan and provide permanent financing. Both transactions are residential mortgage transactions.

5. Acquisition.

i. A residential mortgage transaction finances the acquisition of a consumer's principal dwelling. The term does not include a transaction involving a consumer's principal dwelling if the consumer had previously purchased and acquired some interest to the dwelling, even though the consumer had not acquired full legal title.

ii. Examples of new transactions involving a previously acquired dwelling include the financing of a balloon payment due under a land sale contract and an extension of credit made to a joint owner of property to buy out the other joint owner's interest. In these instances, disclosures are not required under §1026.18(q) (assumability policies). However, the rescission rules of §§1026.15 and 1026.23 do apply to these new transactions.

iii. In other cases, the disclosure and rescission rules do not apply. For example, where a buyer enters into a written agreement with the creditor holding the seller's mortgage, allowing the buyer to assume the mortgage, if the buyer had previously purchased the property and agreed with the seller to make the mortgage payments, §1026.20(b) does not apply (assumptions involving residential mortgages).

6. **Multiple purpose transactions.** A transaction meets the definition of this section if any part of the loan proceeds will be used to finance the acquisition or initial construction of the

consumer's principal dwelling. For example, a transaction to finance the initial construction of the consumer's principal dwelling is a residential mortgage transaction even if a portion of the funds will be disbursed directly to the consumer or used to satisfy a loan for the purchase of the land on which the dwelling will be built.

7. **Construction on previously acquired vacant land.** A residential mortgage transaction includes a loan to finance the construction of a consumer's principal dwelling on a vacant lot previously acquired by the consumer.

Security Interest - 12 CFR § 1026.2(a)(25)

Regulatory Text

- (25) **Security interest** means an interest in property that secures performance of a consumer credit obligation and that is recognized by State or Federal law. It does not include incidental interests such as interests in proceeds, accessions, additions, fixtures, insurance proceeds (whether or not the creditor is a loss payee or beneficiary), premium rebates, or interests in after-acquired property. For purposes of disclosures under §§1026.6, 1026.18, 1026.19(e) and (f), and 1026.38(l)(6), the term does not include an interest that arises solely by operation of law. However, for purposes of the right of rescission under §§1026.15 and 1026.23, the term does include interests that arise solely by operation of law.

Regulatory Commentary

2(a)(25) Security Interest

1. **Threshold test.** *The threshold test is whether a particular interest in property is recognized as a security interest under applicable law. The regulation does not determine whether a particular interest is a security interest under applicable law. If the creditor is unsure whether a particular interest is a security interest under applicable law (for example, if statutes and case law are either silent or inconclusive on the issue), the creditor may at its option consider such interests as security interests for Truth in Lending purposes. However, the regulation and the commentary do exclude specific interests, such as after-acquired property and accessories, from the scope of the definition regardless of their categorization under applicable law, and these named exclusions may not be disclosed as security interests under the regulation. (But see the discussion of exclusions elsewhere in the commentary to §1026.2(a)(25).)*
2. **Exclusions.** *The general definition of security interest excludes three groups of interests: incidental interests, interests in after-acquired property, and interests that arise solely by operation of law. These interests may not be disclosed with the disclosures required under §§1026.18, 1026.19(e) and (f), and 1026.38(l)(6), but the creditor is not precluded from preserving these rights elsewhere in the contract documents, or invoking and enforcing such rights, if it is otherwise lawful to do so. If the creditor is unsure whether a particular interest is one of the excluded interests, the creditor may, at its option, consider such interests as security interests for purposes of the Truth in Lending Act (15 U.S.C. 1601 et seq.) and Regulation Z.*

3. **Incidental interests.**

i. Incidental interests in property that are not security interests include, among other things:

A. Assignment of rents.

B. Right to condemnation proceeds.

C. Interests in accessories and replacements.

D. Interests in escrow accounts, such as for taxes and insurance.

E. Waiver of homestead or personal property rights.

ii. The notion of an incidental interest does not encompass an explicit security interest in an insurance policy if that policy is the primary collateral for the transaction—for example, in an insurance premium financing transaction.

4. **Operation of law.** *Interests that arise solely by operation of law are excluded from the general definition. Also excluded are interests arising by operation of law that are merely repeated or referred to in the contract. However, if the creditor has an interest that arises by operation of law, such as a vendor's lien, and takes an independent security interest in the same property, such as a UCC security interest, the latter interest is a disclosable security interest unless otherwise provided.*

5. **Rescission rules.** *Security interests that arise solely by operation of law are security interests for purposes of rescission. Examples of such interests are mechanics' and materialmen's liens.*

6. **Specificity of disclosure.** *A creditor need not separately disclose multiple security interests that it may hold in the same collateral. The creditor need only disclose that the transaction is secured by the collateral, even when security interests from prior transactions remain of record and a new security interest is taken in connection with the transaction. In disclosing the fact that the transaction is secured by the collateral, the creditor also need not disclose how the security interest arose. For example, in a closed-end credit transaction, a rescission notice need not specifically state that a new security interest is “acquired” or an existing security interest is “retained” in the transaction. The acquisition or retention of a security interest in the consumer's principal dwelling instead may be disclosed in a rescission notice with a general statement such as the following: “Your home is the security for the new transaction.”*

State - 12 CFR § 1026.2(a)(26)

Regulatory Text

(26) **State** means any state, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

Regulatory Commentary

None.

Successor in Interest - 12 CFR § 1026.2(a)(27)

(27)

- (i) **Successor in interest** means a person to whom an ownership interest in a dwelling securing a closed-end consumer credit transaction is transferred from a consumer, provided that the transfer is:
 - (A) A transfer by devise, descent, or operation of law on the death of a joint tenant or tenant by the entirety;
 - (B) A transfer to a relative resulting from the death of the consumer;
 - (C) A transfer where the spouse or children of the consumer become an owner of the property;
 - (D) A transfer resulting from a decree of a dissolution of marriage, legal separation agreement, or from an incidental property settlement agreement, by which the spouse of the consumer becomes an owner of the property; or
 - (E) A transfer into an *inter vivos* trust in which the consumer is and remains a beneficiary and which does not relate to a transfer of rights of occupancy in the property.
- (ii) **Confirmed successor in interest** means a successor in interest once a servicer has confirmed the successor in interest's identity and ownership interest in the dwelling.

Regulatory Commentary

Paragraph 2(a)(27)

2(a)(27)(i) Successor in interest

1. ***Joint tenants and tenants by the entirety.*** *If a consumer who has an ownership interest as a joint tenant or tenant by the entirety in a dwelling securing a closed-end consumer credit transaction dies, a surviving joint tenant or tenant by the entirety with a right of survivorship in the property is a successor in interest as defined in §1026.2(a)(27)(i).*
2. ***Beneficiaries of inter vivos trusts.*** *In the event of a transfer into an inter vivos trust in which the consumer is and remains a beneficiary and which does not relate to a transfer of rights of occupancy in the property, the beneficiaries of the inter vivos trust rather than the inter vivos trust itself are considered to be the successors in interest for purposes of §1026.2(a)(27)(i). For example, assume Consumer A transfers her home into such an inter vivos trust for the benefit of her spouse and herself. As of the transfer date, Consumer A and her spouse are considered successors in interest and, upon confirmation, are consumers for purposes of certain provisions of this part. If the creditor has not released Consumer A from the loan obligation, Consumer A also remains a consumer more generally for purposes of this part.*

Section 2: Rules of Construction

12 C.F.R § 1026.2(b)

Rules of Construction – 12 C.F.R § 1026.2(b)

Regulatory Text

(b) **Rules of construction.** For purposes of this part, the following rules of construction apply:

- (1) Where appropriate, the singular form of a word includes the plural form and plural includes singular.
- (2) Where the words **obligation** and **transaction** are used in the regulation, they refer to a consumer credit obligation or transaction, depending upon the context. Where the word *credit* is used in the regulation, it means *consumer credit* unless the context clearly indicates otherwise.
- (3) Unless defined in this part, the words used have the meanings given to them by state law or contract.
- (4) Where the word **amount** is used in this part to describe disclosure requirements, it refers to a numerical amount.

Regulatory Commentary

2(b) Rules of Construction

1. *[Reserved]*

2. **Amount.** *The numerical amount must be a dollar amount unless otherwise indicated. For example, in a closed-end transaction (Subpart C), the amount financed and the amount of any payment must be expressed as a dollar amount. In some cases, an amount should be expressed as a percentage. For example, in disclosures provided before the first transaction under an open-end plan (Subpart B), creditors are permitted to explain how the amount of any finance charge will be determined; where a cash-advance fee (which is a finance charge) is a percentage of each cash advance, the amount of the finance charge for that fee is expressed as a percentage.*

Exemptions

Section 1: Exempt Transactions

12 C.F.R § 1026.3(a)

Exempt Transactions (General) - 12 C.F.R § 1026.3

Regulatory Discussion

Regulation Z exempts certain transactions from coverage which are discussed in this section. There is also a dollar threshold for certain types of credit that are exempt transactions. Those thresholds are adjusted annually.

Regulatory Text (Introduction)

The following transactions are not subject to this part or, if the exemption is limited to specified provisions of this part, are not subject to those provisions:

Regulatory Commentary

Section 1026.3 - Exempt Transactions

- 1. Relationship to §1026.12. The provisions in §1026.12(a) and (b) governing the issuance of credit cards and the limitations on liability for their unauthorized use apply to all credit cards, even if the credit cards are issued for use in connection with extensions of credit that otherwise are exempt under this section.*

Business, Commercial, Agricultural, or Organizational Credit - 12 CFR § 1026.3(a)

Regulatory Discussion

This section describes the exemptions for:

- Business or commercial, including specific examples for non-owner-occupied and owner-occupied rental property;

- Agricultural; or
- Organizational, including credit extended to trusts.

Regulatory Text

(a) **Business, commercial, agricultural, or organizational credit.**

- (1) An extension of credit primarily for a business, commercial or agricultural purpose.
- (2) An extension of credit to other than a natural person, including credit to government agencies or instrumentalities.

Regulatory Commentary

3(a) Business, Commercial, Agricultural, or Organizational Credit

1. **Primary purposes.** *A creditor must determine in each case if the transaction is primarily for an exempt purpose. If some question exists as to the primary purpose for a credit extension, the creditor is, of course, free to make the disclosures, and the fact that disclosures are made under such circumstances is not controlling on the question of whether the transaction was exempt. (See comment 3(a)-2, however, with respect to credit cards.)*

2. Business purpose purchases.

i. *Business-purpose credit cards - extensions of credit for consumer purposes. If a business-purpose credit card is issued to a person, the provisions of the regulation do not apply, other than as provided in §§1026.12(a) and 1026.12(b), even if extensions of credit for consumer purposes are occasionally made using that business-purpose credit card. For example, the billing error provisions set forth in §1026.13 do not apply to consumer-purpose extensions of credit using a business-purpose credit card.*

ii. *Consumer-purpose credit cards - extensions of credit for business purposes. If a consumer-purpose credit card is issued to a person, the provisions of the regulation apply, even to occasional extensions of credit for business purposes made using that consumer-purpose credit card. For example, a consumer may assert a billing error with respect to any extension of credit using a consumer-purpose credit card, even if the specific extension of credit on such credit card or open-end credit plan that is the subject of the dispute was made for business purposes.*

3. **Factors.** *In determining whether credit to finance an acquisition—such as securities, antiques, or art—is primarily for business or commercial purposes (as opposed to a consumer purpose), the following factors should be considered:*

i. General.

A. *The relationship of the borrower's primary occupation to the acquisition. The more closely related, the more likely it is to be business purpose.*

- B. The degree to which the borrower will personally manage the acquisition. The more personal involvement there is, the more likely it is to be business purpose.*
- C. The ratio of income from the acquisition to the total income of the borrower. The higher the ratio, the more likely it is to be business purpose.*
- D. The size of the transaction. The larger the transaction, the more likely it is to be business purpose.*
- E. The borrower's statement of purpose for the loan.*

*ii. **Business-purpose examples.** Examples of business-purpose credit include:*

- A. A loan to expand a business, even if it is secured by the borrower's residence or personal property.*
- B. A loan to improve a principal residence by putting in a business office.*
- C. A business account used occasionally for consumer purposes.*

*iii. **Consumer-purpose examples.** Examples of consumer-purpose credit include:*

- A. Credit extensions by a company to its employees or agents if the loans are used for personal purposes.*
- B. A loan secured by a mechanic's tools to pay a child's tuition.*
- C. A personal account used occasionally for business purposes.*

4. Non-owner-occupied rental property. Credit extended to acquire, improve, or maintain rental property (regardless of the number of housing units) that is not owner-occupied is deemed to be for business purposes. This includes, for example, the acquisition of a warehouse that will be leased or a single-family house that will be rented to another person to live in. If the owner expects to occupy the property for more than 14 days during the coming year, the property cannot be considered non-owner-occupied and this special rule will not apply. For example, a beach house that the owner will occupy for a month in the coming summer and rent out the rest of the year is owner occupied and is not governed by this special rule. (See comment 3(a)-5, however, for rules relating to owner-occupied rental property.)

5. Owner-occupied rental property. If credit is extended to acquire, improve, or maintain rental property that is or will be owner-occupied within the coming year, different rules apply:

- i. Credit extended to acquire the rental property is deemed to be for business purposes if it contains more than 2 housing units.*
- ii. Credit extended to improve or maintain the rental property is deemed to be for business purposes if it contains more than 4 housing units. Since the amended statute defines dwelling to include 1 to 4 housing units, this rule preserves the right of rescission for credit extended for purposes other than acquisition. Neither of these rules means that an extension of credit for property containing fewer than the requisite number of units is necessarily consumer credit. In such cases, the determination of whether it is*

business or consumer credit should be made by considering the factors listed in comment 3(a)-3.

- 6. Business credit later refinanced.** *Business-purpose credit that is exempt from the regulation may later be rewritten for consumer purposes. Such a transaction is consumer credit requiring disclosures only if the existing obligation is satisfied and replaced by a new obligation made for consumer purposes undertaken by the same obligor.*
- 7. Credit card renewal.** *A consumer-purpose credit card that is subject to the regulation may be converted into a business-purpose credit card at the time of its renewal, and the resulting business-purpose credit card would be exempt from the regulation. Conversely, a business-purpose credit card that is exempt from the regulation may be converted into a consumer-purpose credit card at the time of its renewal, and the resulting consumer-purpose credit card would be subject to the regulation.*
- 8. Agricultural purpose.** *An agricultural purpose includes the planting, propagating, nurturing, harvesting, catching, storing, exhibiting, marketing, transporting, processing, or manufacturing of food, beverages (including alcoholic beverages), flowers, trees, livestock, poultry, bees, wildlife, fish, or shellfish by a natural person engaged in farming, fishing, or growing crops, flowers, trees, livestock, poultry, bees, or wildlife. The exemption also applies to a transaction involving real property that includes a dwelling (for example, the purchase of a farm with a homestead) if the transaction is primarily for agricultural purposes.*
- 9. Organizational credit.** *The exemption for transactions in which the borrower is not a natural person applies, for example, to loans to corporations, partnerships, associations, churches, unions, and fraternal organizations. The exemption applies regardless of the purpose of the credit extension and regardless of the fact that a natural person may guarantee or provide security for the credit. But see comment 3(a)-10 concerning credit extended to trusts.*
- 10. Trusts.** *Credit extended for consumer purposes to certain trusts is considered to be credit extended to a natural person rather than credit extended to an organization. Specifically:*

 - i. Trusts for tax or estate planning purposes.** *In some instances, a creditor may extend credit for consumer purposes to a trust that a consumer has created for tax or estate planning purposes (or both). Consumers sometimes place their assets in trust, with themselves or themselves and their families or other prospective heirs as beneficiaries, to obtain certain tax benefits and to facilitate the future administration of their estates. During their lifetimes, however, such consumers may continue to use the assets and/or income of such trusts as their property. A creditor extending credit to finance the acquisition of, for example, a consumer's dwelling that is held in such a trust, or to refinance existing debt secured by such a dwelling, may prepare the note, security instrument, and similar loan documents for execution by a trustee, rather than the beneficiaries of the trust. Regardless of the capacity or capacities in which the loan documents are executed, assuming the transaction is primarily for personal, family, or household purposes, the transaction is subject to the regulation because in substance (if not form) consumer credit is being extended.*

ii. **Land trusts.** *In some jurisdictions, a financial institution financing a residential real estate transaction for an individual uses a land trust mechanism. Title to the property is conveyed to the land trust for which the financial institution itself is trustee. The underlying installment note is executed by the financial institution in its capacity as trustee and payment is secured by a trust deed, reflecting title in the financial institution as trustee. In some instances, the consumer executes a personal guaranty of the indebtedness. The note provides that it is payable only out of the property specifically described in the trust deed and that the trustee has no personal liability on the note. Assuming the transactions are primarily for personal, family, or household purposes, these transactions are subject to the regulation because in substance (if not form) consumer credit is being extended.*

Section 2: Threshold Limits

12 C.F.R § 1026.3(b)

Credit over Applicable Threshold Amount - 12 CFR § 1026.3(b)

Regulatory Discussion

Certain types of credit over a dollar threshold are also exempt. The threshold is adjusted annually, effective January 1 of each year. See below for the current threshold.

Regulatory Text

(b) Credit over applicable threshold amount

(1) Exemption

(i) **Requirements.** An extension of credit in which the amount of credit extended exceeds the applicable threshold amount or in which there is an express written commitment to extend credit in excess of the applicable threshold amount, unless the extension of credit is:

(A) Secured by any real property, or by personal property used or expected to be used as the principal dwelling of the consumer; or

(B) A private education loan as defined in §1026.46(b)(5).

(ii) **Annual adjustments.** The threshold amount in paragraph (b)(1)(i) of this section is adjusted annually to reflect increases in the Consumer Price Index for Urban Wage Earners and Clerical Workers, as applicable. See the official commentary to this paragraph (b) for the threshold amount applicable to a specific extension of credit or express written commitment to extend credit.

(2) Transition rule for open-end accounts exempt prior to July 21, 2011. [Omitted]

Regulatory Commentary

3(b) Credit Over Applicable Threshold Amount

1. **Threshold amount.** For purposes of §1026.3(b), the threshold amount in effect during a particular period is the amount stated below for that period. The threshold amount is adjusted effective January 1 of each year by any annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) that was in effect on the preceding June 1. This comment will be amended to provide the threshold amount for the upcoming year after the annual percentage change in the CPI-W that was in effect on June 1 becomes available. Any increase in the threshold amount will be

rounded to the nearest \$100 increment. For example, if the annual percentage increase in the CPI-W would result in a \$950 increase in the threshold amount, the threshold amount will be increased by \$1,000. However, if the annual percentage increase in the CPI-W would result in a \$949 increase in the threshold amount, the threshold amount will be increased by \$900.

[i. throughix. Omitted]

xi.. From January 1, 2020 through December 31, 2020, the threshold amount is \$58,300.

2. Open-end credit.

[Omitted – not relevant at this time.]

Section 3: Other Exempt Transactions / Omitted Sections

12 C.F.R § 1026.3(c) through 12 C.F.R § 1026.3(h)

Public Utility Credit - 12 CFR § 1026.3(c)

Regulatory Discussion

This section describes the exemption for Public Utility credit.

Regulatory Text

- (c) **Public utility credit.** An extension of credit that involves public utility services provided through pipe, wire, other connected facilities, or radio or similar transmission (including extensions of such facilities), if the charges for service, delayed payment, or any discounts for prompt payment are filed with or regulated by any government unit. The financing of durable goods or home improvements by a public utility is not exempt.

Regulatory Commentary

3(c) Public Utility Credit

1. Examples. Examples of public utility services include:

i. General.

A. Gas, water, or electrical services.

B. Cable television services.

C. Installation of new sewer lines, water lines, conduits, telephone poles, or metering equipment in an area not already serviced by the utility.

ii. Extensions of credit not covered. The exemption does not apply to extensions of credit, for example:

A. To purchase appliances such as gas or electric ranges, grills, or telephones.

B. To finance home improvements such as new heating or air conditioning systems.

Securities or Commodities Accounts - 12 CFR § 1026.3(d)

Regulatory Discussion

This section describes the exemption for Securities or Commodities credit.

Regulatory Text

- (d) **Securities or commodities accounts.** Transactions in securities or commodities accounts in which credit is extended by a broker-dealer registered with the Securities and Exchange Commission or the Commodity Futures Trading Commission.

Regulatory Commentary

3(d) Securities or Commodities Accounts

1. **Coverage.** *This exemption does not apply to a transaction with a broker registered solely with the state, or to a separate credit extension in which the proceeds are used to purchase securities.*

Home Fuel Budget Plans - 12 CFR § 1026.3(e)

Regulatory Discussion

This section describes the exemption for Home Fuel Budget Plan credit.

Regulatory Text

- (e) **Home fuel budget plans.** An installment agreement for the purchase of home fuels in which no finance charge is imposed.

Regulatory Commentary

3(e) Home Fuel Budget Plans

1. **Definition.** *Under a typical home fuel budget plan, the fuel dealer estimates the total cost of fuel for the season, bills the customer for an average monthly payment, and makes an adjustment in the final payment for any difference between the estimated and the actual cost of the fuel. Fuel is delivered as needed, no finance charge is assessed, and the customer may withdraw from the plan at any time. Under these circumstances, the arrangement is exempt from the regulation, even if a charge to cover the billing costs is imposed.*

Student Loan Programs - 12 CFR § 1026.3(f)

Regulatory Discussion

This section describes the exemption for Student Loan Program credit.

Regulatory Text

(f) **Student loan programs.** Loans made, insured, or guaranteed pursuant to a program authorized by title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et).

Regulatory Commentary

3(f) Student Loan Programs

1. Coverage. This exemption applies to loans made, insured, or guaranteed under title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.). This exemption does not apply to private education loans as defined by §1026.46(b)(5).

Omitted Sections - 12 CFR § 1026.3(g) and 12 CFR § 1026.3(h)

These sections were omitted, as they are not relevant to banks.

(g) **Employer-sponsored retirement plans.**

(h) **Partial exemption for certain mortgage loans.**

Finance Charge

Section 1: Definition and Third-Party Charges

12 C.F.R. § 1026.4(a)

Basic Definition - 12 CFR § 1026.4(a)

Regulatory Discussion

The finance charge is often a confusing term. This section provides the regulatory definition as well as commentary providing examples of items which are finance charges and items which are not finance charges. The commentary discusses charges in comparable cash transactions, forfeitures of interest, costs of doing business, treatment of transaction fees on credit card plans, and taxes, and explains whether those fees are finance charges.

Regulatory Text

- (a) **Definition.** The finance charge is the cost of consumer credit as a dollar amount. It includes any charge payable directly or indirectly by the consumer and imposed directly or indirectly by the creditor as an incident to or a condition of the extension of credit. It does not include any charge of a type payable in a comparable cash transaction.

Regulatory Commentary

4(a) Definition

1. **Charges in comparable cash transactions.** *Charges imposed uniformly in cash and credit transactions are not finance charges. In determining whether an item is a finance charge, the creditor should compare the credit transaction in question with a similar cash transaction. A creditor financing the sale of property or services may compare charges with those payable in a similar cash transaction by the seller of the property or service.*

i. For example, the following items are not finance charges:

- A. *Taxes, license fees, or registration fees paid by both cash and credit customers.*
- B. *Discounts that are available to cash and credit customers, such as quantity discounts.*
- C. *Discounts available to a particular group of consumers because they meet certain criteria, such as being members of an organization or having accounts at a particular financial institution. This is the case even if an individual must pay cash to obtain the discount, provided that credit customers who are members of the group and do not qualify for the discount pay no more than the nonmember cash customers.*

- D. Charges for a service policy, auto club membership, or policy of insurance against latent defects offered to or required of both cash and credit customers for the same price.*
- ii. In contrast, the following items are finance charges:*
- A. Inspection and handling fees for the staged disbursement of construction-loan proceeds.*
 - B. Fees for preparing a Truth in Lending disclosure statement, if permitted by law (for example, the Real Estate Settlement Procedures Act prohibits such charges in certain transactions secured by real property).*
 - C. Charges for a required maintenance or service contract imposed only in a credit transaction.*
- iii. If the charge in a credit transaction exceeds the charge imposed in a comparable cash transaction, only the difference is a finance charge. For example:*
- A. If an escrow agent is used in both cash and credit sales of real estate and the agent's charge is \$100 in a cash transaction and \$150 in a credit transaction, only \$50 is a finance charge.*
- 2. Costs of doing business.** *Charges absorbed by the creditor as a cost of doing business are not finance charges, even though the creditor may take such costs into consideration in determining the interest rate to be charged or the cash price of the property or service sold. However, if the creditor separately imposes a charge on the consumer to cover certain costs, the charge is a finance charge if it otherwise meets the definition. For example:*
- i. A discount imposed on a credit obligation when it is assigned by a seller-creditor to another party is not a finance charge as long as the discount is not separately imposed on the consumer. (See §1026.4(b)(6).)*
 - ii. A tax imposed by a state or other governmental body on a creditor is not a finance charge if the creditor absorbs the tax as a cost of doing business and does not separately impose the tax on the consumer. (For additional discussion of the treatment of taxes, see other commentary to §1026.4(a).)*
- 3. Forfeitures of interest.** *If the creditor reduces the interest rate it pays or stops paying interest on the consumer's deposit account or any portion of it for the term of a credit transaction (including, for example, an overdraft on a checking account or a loan secured by a certificate of deposit), the interest lost is a finance charge. (See the commentary to §1026.4(c)(6).) For example:*
- i. A consumer borrows \$5,000 for 90 days and secures it with a \$10,000 certificate of deposit paying 15% interest. The creditor charges the consumer an interest rate of 6% on the loan and stops paying interest on \$5,000 of the \$10,000 certificate for the term of the loan. The interest lost is a finance charge and must be reflected in the annual percentage rate on the loan.*

-
- ii. However, the consumer must be entitled to the interest that is not paid in order for the lost interest to be a finance charge. For example:
- A. A consumer wishes to buy from a financial institution a \$10,000 certificate of deposit paying 15% interest but has only \$4,000. The financial institution offers to lend the consumer \$6,000 at an interest rate of 6% but will pay the 15% interest only on the amount of the consumer's deposit, \$4,000. The creditor's failure to pay interest on the \$6,000 does not result in an additional finance charge on the extension of credit, provided the consumer is entitled by the deposit agreement with the financial institution to interest only on the amount of the consumer's deposit.
 - B. A consumer enters into a combined time deposit/credit agreement with a financial institution that establishes a time deposit account and an open-end line of credit. The line of credit may be used to borrow against the funds in the time deposit. The agreement provides for an interest rate on any credit extension of, for example, 1%. In addition, the agreement states that the creditor will pay 0% interest on the amount of the time deposit that corresponds to the amount of the credit extension(s). The interest that is not paid on the time deposit by the financial institution is not a finance charge (and therefore does not affect the annual percentage rate computation).
4. **Treatment of transaction fees on credit card plans.** Except with regard to a covered separate credit feature and an asset feature on a prepaid account that are both accessible by a hybrid prepaid-credit card as defined in §1026.61, which are addressed in more detail in §§1026.4(b)(11) and 1026.61, any transaction charge imposed on a cardholder by a card issuer is a finance charge, regardless of whether the issuer imposes the same, greater, or lesser charge on withdrawals of funds from an asset account such as a checking or savings account. For example:
- i. Any charge imposed on a credit cardholder by a card issuer for the use of an automated teller machine (ATM) to obtain a cash advance (whether in a proprietary, shared, interchange, or other system) is a finance charge regardless of whether the card issuer imposes a charge on its debit cardholders for using the ATM to withdraw cash from a consumer asset account, such as a checking or savings account.
 - ii. Any charge imposed on a credit cardholder for making a purchase or obtaining a cash advance outside the United States, with a foreign merchant, or in a foreign currency is a finance charge, regardless of whether a charge is imposed on debit cardholders for such transactions. The following principles apply in determining what is a foreign transaction fee and the amount of the fee:
 - A. Included are (1) fees imposed when transactions are made in a foreign currency and converted to U.S. dollars; (2) fees imposed when transactions are made in U.S. dollars outside the U.S.; and (3) fees imposed when transactions are made (whether in a foreign currency or in U.S. dollars) with a foreign merchant, such as via a merchant's Web site. For example, a consumer may use a credit card to make a purchase in Bermuda, in U.S. dollars, and the card issuer may impose a fee because the transaction took place outside the United States.

- B. Included are fees imposed by the card issuer and fees imposed by a third party that performs the conversion, such as a credit card network or the card issuer's corporate parent. (For example, in a transaction processed through a credit card network, the network may impose a 1 percent charge and the card-issuing bank may impose an additional 2 percent charge, for a total of a 3 percentage point foreign transaction fee being imposed on the consumer.)*
- C. Fees imposed by a third party are included only if they are directly passed on to the consumer. For example, if a credit card network imposes a 1 percent fee on the card issuer, but the card issuer absorbs the fee as a cost of doing business (and only passes it on to consumers in the general sense that the interest and fees are imposed on all its customers to recover its costs), then the fee is not a foreign transaction fee and need not be disclosed. In another example, if the credit card network imposes a 1 percent fee for a foreign transaction on the card issuer, and the card issuer imposes this same fee on the consumer who engaged in the foreign transaction, then the fee is a foreign transaction fee and a finance charge.*
- D. A card issuer is not required to disclose a fee imposed by a merchant. For example, if the merchant itself performs the currency conversion and adds a fee, this fee need not be disclosed by the card issuer. Under §1026.9(d), a card issuer is not obligated to disclose finance charges imposed by a party honoring a credit card, such as a merchant, although the merchant is required to disclose such a finance charge if the merchant is subject to the Truth in Lending Act and Regulation Z.*
- E. The foreign transaction fee is determined by first calculating the dollar amount of the transaction by using a currency conversion rate outside the card issuer's and third party's control. Any amount in excess of that dollar amount is a foreign transaction fee. Conversion rates outside the card issuer's and third party's control include, for example, a rate selected from the range of rates available in the wholesale currency exchange markets, an average of the highest and lowest rates available in such markets, or a government-mandated or government-managed exchange rate (or a rate selected from a range of such rates).*
- F. The rate used for a particular transaction need not be the same rate that the card issuer (or third party) itself obtains in its currency conversion operations. In addition, the rate used for a particular transaction need not be the rate in effect on the date of the transaction (purchase or cash advance).*

5. Taxes.

- i. Generally, a tax imposed by a state or other governmental body solely on a creditor is a finance charge if the creditor separately imposes the charge on the consumer.*
- ii. In contrast, a tax is not a finance charge (even if it is collected by the creditor) if applicable law imposes the tax:*
- A. Solely on the consumer;*
 - B. On the creditor and the consumer jointly;*
 - C. On the credit transaction, without indicating which party is liable for the tax; or*

D. On the creditor, if applicable law directs or authorizes the creditor to pass the tax on to the consumer. (For purposes of this section, if applicable law is silent as to passing on the tax, the law is deemed not to authorize passing it on.)

- iii. For example, a stamp tax, property tax, intangible tax, or any other state or local tax imposed on the consumer, or on the credit transaction, is not a finance charge even if the tax is collected by the creditor.*
- iv. In addition, a tax is not a finance charge if it is excluded from the finance charge by another provision of the regulation or commentary (for example, if the tax is imposed uniformly in cash and credit transactions).*

Charges by Third Parties - 12 CFR § 1026.4(a)(1) through 12 CFR § 1026.4(a)(3)

Regulatory Discussion

This section further describes third party charges that may or may not be a finance charge and includes special rules for closing agents and mortgage broker fees.

Regulatory Text

- (1) **Charges by third parties.** The finance charge includes fees and amounts charged by someone other than the creditor, unless otherwise excluded under this section, if the creditor:
 - (i) Requires the use of a third party as a condition of or an incident to the extension of credit, even if the consumer can choose the third party; or
 - (ii) Retains a portion of the third-party charge, to the extent of the portion retained.
- (2) **Special rule; closing agent charges.** Fees charged by a third party that conducts the loan closing (such as a settlement agent, attorney, or escrow or title company) are finance charges only if the creditor:
 - (i) Requires the particular services for which the consumer is charged;
 - (ii) Requires the imposition of the charge; or
 - (iii) Retains a portion of the third-party charge, to the extent of the portion retained.
- (3) **Special rule; mortgage broker fees.** Fees charged by a mortgage broker (including fees paid by the consumer directly to the broker or to the creditor for delivery to the broker) are finance charges even if the creditor does not require the consumer to use a mortgage broker and even if the creditor does not retain any portion of the charge.

Regulatory Commentary

4(a)(1) Charges by Third Parties

1. **Choosing the provider of a required service.** *An example of a third-party charge included in the finance charge is the cost of required mortgage insurance, even if the consumer is allowed to choose the insurer.*
2. **Annuities associated with reverse mortgages.** *Some creditors offer annuities in connection with a reverse-mortgage transaction. The amount of the premium is a finance charge if the creditor requires the purchase of the annuity incident to the credit. Examples include the following:*
 - i. *The credit documents reflect the purchase of an annuity from a specific provider or providers.*
 - ii. *The creditor assesses an additional charge on consumers who do not purchase an annuity from a specific provider.*
 - iii. *The annuity is intended to replace in whole or in part the creditor's payments to the consumer either immediately or at some future date.*

4(a)(2) Special Rule; Closing Agent Charges

1. **General.** *This rule applies to charges by a third party serving as the closing agent for the particular loan. An example of a closing agent charge included in the finance charge is a courier fee where the creditor requires the use of a courier.*
2. **Required closing agent.** *If the creditor requires the use of a closing agent, fees charged by the closing agent are included in the finance charge only if the creditor requires the particular service, requires the imposition of the charge, or retains a portion of the charge. Fees charged by a third-party closing agent may be otherwise excluded from the finance charge under §1026.4. For example, a fee that would be paid in a comparable cash transaction may be excluded under §1026.4(a). A charge for conducting or attending a closing is a finance charge and may be excluded only if the charge is included in and is incidental to a lump-sum fee excluded under §1026.4(c)(7).*

4(a)(3) Special Rule; Mortgage Broker Fees

1. **General.** *A fee charged by a mortgage broker is excluded from the finance charge if it is the type of fee that is also excluded when charged by the creditor. For example, to exclude an application fee from the finance charge under §1026.4(c)(1), a mortgage broker must charge the fee to all applicants for credit, whether or not credit is extended.*
2. **Coverage.** *This rule applies to charges paid by consumers to a mortgage broker in connection with a consumer credit transaction secured by real property or a dwelling.*
3. **Compensation by lender.** *The rule requires all mortgage broker fees to be included in the finance charge. Creditors sometimes compensate mortgage brokers under a separate arrangement with those parties. Creditors may draw on amounts paid by the consumer, such as points or closing costs, to fund their payment to the broker. Compensation paid by a creditor to a mortgage broker under an agreement is not included as a separate component of a consumer's total finance charge (although this compensation may be reflected in the finance charge if it comes from amounts paid by the consumer to the creditor that are finance charges, such as points and interest).*

Section 2: Examples of Finance Charges

12 C.F.R. § 1026.4(b)

Examples of Finance Charges - 12 CFR § 1026.4(b)

Regulatory Discussion

The section provides more detailed examples of items that are considered a finance charge. It includes 11 examples. The next section includes how to remove some of these items from finance charge.

Regulatory Text

- (b) **Examples of finance charges.** The finance charge includes the following types of charges, except for charges specifically excluded by paragraphs (c) through (e) of this section:
- (1) Interest, time price differential, and any amount payable under an add-on or discount system of additional charges.
 - (2) Service, transaction, activity, and carrying charges, including any charge imposed on a checking or other transaction account (except a prepaid account as defined in §1026.61) to the extent that the charge exceeds the charge for a similar account without a credit feature.
 - (3) Points, loan fees, assumption fees, finder's fees, and similar charges.
 - (4) Appraisal, investigation, and credit report fees.
 - (5) Premiums or other charges for any guarantee or insurance protecting the creditor against the consumer's default or other credit loss.
 - (6) Charges imposed on a creditor by another person for purchasing or accepting a consumer's obligation, if the consumer is required to pay the charges in cash, as an addition to the obligation, or as a deduction from the proceeds of the obligation.
 - (7) Premiums or other charges for credit life, accident, health, or loss-of-income insurance, written in connection with a credit transaction.
 - (8) Premiums or other charges for insurance against loss of or damage to property, or against liability arising out of the ownership or use of property, written in connection with a credit transaction.
 - (9) Discounts for the purpose of inducing payment by a means other than the use of credit.
 - (10) Charges or premiums paid for debt cancellation or debt suspension coverage written in connection with a credit transaction, whether or not the coverage is insurance under applicable law.

- (11) With regard to a covered separate credit feature and an asset feature on a prepaid account that are both accessible by a hybrid prepaid-credit card as defined in §1026.61:
- (i) Any fee or charge described in paragraphs (b)(1) through (10) of this section imposed on the covered separate credit feature, whether it is structured as a credit subaccount of the prepaid account or a separate credit account.
 - (ii) Any fee or charge imposed on the asset feature of the prepaid account to the extent that the amount of the fee or charge exceeds comparable fees or charges imposed on prepaid accounts in the same prepaid account program that do not have a covered separate credit feature accessible by a hybrid prepaid-credit card.

Regulatory Commentary

4(b) Examples of Finance Charges

- 1. Relationship to other provisions.** *Charges or fees shown as examples of finance charges in §1026.4(b) may be excludable under §1026.4(c), (d), or (e). For example:*
- i. Premiums for credit life insurance, shown as an example of a finance charge under §1026.4(b)(7), may be excluded if the requirements of §1026.4(d)(1) are met.*
 - ii. Appraisal fees mentioned in §1026.4(b)(4) are excluded for real property or residential mortgage transactions under §1026.4(c)(7).*

Paragraph 4(b)(2)

- 1. Checking or transaction account charges.** *A charge imposed in connection with a credit feature on a checking or transaction account (other than a prepaid account as defined in §1026.61) is a finance charge under §1026.4(b)(2) to the extent the charge exceeds the charge for a similar account without a credit feature. If a charge for an account with a credit feature does not exceed the charge for an account without a credit feature, the charge is not a finance charge under §1026.4(b)(2). To illustrate:*
- i. A \$5 service charge is imposed on an account with an overdraft line of credit (where the institution has agreed in writing to pay an overdraft), while a \$3 service charge is imposed on an account without a credit feature; the \$2 difference is a finance charge. (If the difference is not related to account activity, however, it may be excludable as a participation fee. See the commentary to §1026.4(c)(4).)*
 - ii. A \$5 service charge is imposed for each item that results in an overdraft on an account with an overdraft line of credit, while a \$25 service charge is imposed for paying or returning each item on a similar account without a credit feature; the \$5 charge is not a finance charge.*
- 2. Prepaid accounts.** *Fee or charges related to credit offered in connection with prepaid accounts as defined in §1026.61 are discussed in §§1026.4(b)(11) and 1026.61 and related commentary.*

Paragraph 4(b)(3)

1. **Assumption fees.** *The assumption fees mentioned in §1026.4(b)(3) are finance charges only when the assumption occurs and the fee is imposed on the new buyer. The assumption fee is a finance charge in the new buyer's transaction.*

Paragraph 4(b)(5)

1. **Credit loss insurance.** *Common examples of the insurance against credit loss mentioned in §1026.4(b)(5) are mortgage guaranty insurance, holder in due course insurance, and repossession insurance. Such premiums must be included in the finance charge only for the period that the creditor requires the insurance to be maintained.*
2. **Residual value insurance.** *Where a creditor requires a consumer to maintain residual value insurance or where the creditor is a beneficiary of a residual value insurance policy written in connection with an extension of credit (as is the case in some forms of automobile balloon-payment financing, for example), the premiums for the insurance must be included in the finance charge for the period that the insurance is to be maintained. If a creditor pays for residual-value insurance and absorbs the payment as a cost of doing business, such costs are not considered finance charges. (See comment 4(a)-2.)*

Paragraphs 4(b)(7) and (b)(8)

1. **Pre-existing insurance policy.** *The insurance discussed in §1026.4(b)(7) and (b)(8) does not include an insurance policy (such as a life or an automobile collision insurance policy) that is already owned by the consumer, even if the policy is assigned to or otherwise made payable to the creditor to satisfy an insurance requirement. Such a policy is not “written in connection with” the transaction, as long as the insurance was not purchased for use in that credit extension, since it was previously owned by the consumer.*
2. **Insurance written in connection with a transaction.** *Credit insurance sold before or after an open-end (not home-secured) plan is opened is considered “written in connection with a credit transaction.” Insurance sold after consummation in closed-end credit transactions or after the opening of a home-equity plan subject to the requirements of §1026.40 is not considered “written in connection with” the credit transaction if the insurance is written because of the consumer's default (for example, by failing to obtain or maintain required property insurance) or because the consumer requests insurance after consummation or the opening of a home-equity plan subject to the requirements of §1026.40 (although credit-sale disclosures may be required for the insurance sold after consummation if it is financed).*
3. **Substitution of life insurance.** *The premium for a life insurance policy purchased and assigned to satisfy a credit life insurance requirement must be included in the finance charge, but only to the extent of the cost of the credit life insurance if purchased from the creditor or the actual cost of the policy (if that is less than the cost of the insurance available from the creditor). If the creditor does not offer the required insurance, the premium to be included in the finance charge is the cost of a policy of insurance of the type, amount, and term required by the creditor.*

4. **Other insurance.** Fees for required insurance not of the types described in §1026.4(b)(7) and (b)(8) are finance charges and are not excludable. For example, the premium for a hospitalization insurance policy, if it is required to be purchased only in a credit transaction, is a finance charge.

Paragraph 4(b)(9)

1. **Discounts for payment by other than credit.** The discounts to induce payment by other than credit mentioned in §1026.4(b)(9) include, for example, the following situation: The seller of land offers individual tracts for \$10,000 each. If the purchaser pays cash, the price is \$9,000, but if the purchaser finances the tract with the seller the price is \$10,000. The \$1,000 difference is a finance charge for those who buy the tracts on credit.

2. **Exception for cash discounts.**

- i. Creditors may exclude from the finance charge discounts offered to consumers for using cash or another means of payment instead of using a credit card or an open-end plan. The discount may be in whatever amount the seller desires, either as a percentage of the regular price (as defined in section 103(z) of the Act, as amended) or a dollar amount. Pursuant to section 167(b) of the Act, this provision applies only to transactions involving an open-end credit plan or a credit card (whether open-end or closed-end credit is extended on the card). The merchant must offer the discount to prospective buyers whether or not they are cardholders or members of the open-end credit plan. The merchant may, however, make other distinctions. For example:
- A. The merchant may limit the discount to payment by cash and not offer it for payment by check or by use of a debit card.
- B. The merchant may establish a discount plan that allows a 15% discount for payment by cash, a 10% discount for payment by check, and a 5% discount for payment by a particular credit card. None of these discounts is a finance charge.
- ii. Pursuant to section 171(c) of the Act, discounts excluded from the finance charge under this paragraph are also excluded from treatment as a finance charge or other charge for credit under any state usury or disclosure laws.

3. **Determination of the regular price.**

- i. The regular price is critical in determining whether the difference between the price charged to cash customers and credit customers is a discount or a surcharge, as these terms are defined in amended section 103 of the Act. The regular price is defined in section 103 of the Act as - * * * the tag or posted price charged for the property or service if a single price is tagged or posted, or the price charged for the property or service when payment is made by use of an open-end credit account or a credit card if either (1) no price is tagged or posted, or (2) two prices are tagged or posted * * *.
- ii. For example, in the sale of motor vehicle fuel, the tagged or posted price is the price displayed at the pump. As a result, the higher price (the open-end credit or credit card price) must be displayed at the pump, either alone or along with the cash price. Service station operators may designate separate pumps or separate islands as being for either cash or credit purchases and display only the appropriate prices at the various pumps.

If a pump is capable of displaying on its meter either a cash or a credit price depending upon the consumer's means of payment, both the cash price and the credit price must be displayed at the pump. A service station operator may display the cash price of fuel by itself on a curb sign, as long as the sign clearly indicates that the price is limited to cash purchases.

Paragraph 4(b)(10)

1. **Definition.** *Debt cancellation coverage provides for payment or satisfaction of all or part of a debt when a specified event occurs. The term “debt cancellation coverage” includes guaranteed automobile protection, or “GAP,” agreements, which pay or satisfy the remaining debt after property insurance benefits are exhausted. Debt suspension coverage provides for suspension of the obligation to make one or more payments on the date(s) otherwise required by the credit agreement, when a specified event occurs. The term “debt suspension” does not include loan payment deferral arrangements in which the triggering event is the bank's unilateral decision to allow a deferral of payment and the borrower's unilateral election to do so, such as by skipping or reducing one or more payments (“skip payments”).*
2. **Coverage written in connection with a transaction.** *Coverage sold after consummation in closed-end credit transactions or after the opening of a home-equity plan subject to the requirements of §1026.40 is not “written in connection with” the credit transaction if the coverage is written because the consumer requests coverage after consummation or the opening of a home-equity plan subject to the requirements of §1026.40 (although credit-sale disclosures may be required for the coverage sold after consummation if it is financed). Coverage sold before or after an open-end (not home-secured) plan is opened is considered “written in connection with a credit transaction.”*

Paragraph 4(b)(11)

1. **Credit in connection with a prepaid card.** *Section 1026.61 governs credit offered in connection with a prepaid card.*
 - i. *A separate credit feature that meets the conditions of §1026.61(a)(2)(i) is defined as a covered separate credit feature accessible by a hybrid prepaid-credit card. See §1026.61(a)(2)(i) and comment 61(a)(2)-4. In this case, the hybrid prepaid-credit card can access both the covered separate credit feature and the asset feature of the prepaid account. The rules for classification of fees or charges as finance charges in connection with this account structure are specified in §1026.4(b)(11) and related commentary.*
 - ii. *If a prepaid card can access a non-covered separate credit feature as described in §1026.61(a)(2)(ii), the card is not a hybrid prepaid-credit card with respect to that credit feature. In that case:*
 - A. *Section 1026.4(b)(11) and related commentary do not apply to fees or charges imposed on the non-covered separate credit feature; instead, the general rules set forth in §1026.4 determine whether these fees or charges are finance charges; and*

B. Fees or charges on the asset feature of the prepaid account are not finance charges under §1026.4 with respect to the non-covered separate credit feature. See comment 61(a)(2)-5.iii for guidance on the applicability of this regulation in connection with non-covered credit features accessible by prepaid cards.

iii. If the prepaid card is not a hybrid prepaid-credit card because the only credit extended through a negative balance on the asset feature of the prepaid account is pursuant to §1026.61(a)(4), fees charged on the asset feature of the prepaid account in accordance with §1026.61(a)(4)(ii)(B) are not finance charges.

Paragraph 4(b)(11)(i)

1. Transaction fees imposed on the covered separate credit feature. *Consistent with comment 4(a)-4, any transaction charge imposed on a cardholder by a card issuer on a covered separate credit feature accessible by a hybrid prepaid-credit card is a finance charge. Transaction charges that are imposed on the asset feature of a prepaid account are subject to §1026.4(b)(11)(ii) and related commentary, instead of §1026.4(b)(11)(i).*

Paragraph 4(b)(11)(ii)

1. Fees or charges imposed on the asset feature of a prepaid account.

i. Under §1026.4(b)(11)(ii), with regard to a covered separate credit feature and an asset feature of a prepaid account that are both accessible by a hybrid prepaid-credit card as defined §1026.61, any fee or charge imposed on the asset feature of the prepaid account is a finance charge to the extent that the amount of the fee or charge exceeds comparable fees or charges imposed on prepaid accounts in the same prepaid account program that do not have a covered separate credit feature accessible by a hybrid prepaid-credit card. This comment provides guidance with respect to comparable fees under §1026.4(b)(11)(ii) for the two types of credit extensions on a covered separate credit feature. See §1026.61(a)(2)(i)(B) and comment 61(a)(2)-4.ii. Comment 4(b)(11)(ii)-1.ii provides guidance for credit extensions where the hybrid prepaid-credit card accesses credit from the covered separate credit feature in the course of authorizing, settling, or otherwise completing a transaction conducted with the card to obtain goods or services, obtain cash, or conduct person-to-person transfers. Comment 4(b)(11)(ii)-1.iii provides guidance for credit extensions where a consumer draws or transfers credit from the covered separate credit feature outside the course of a transaction conducted with the card to obtain goods or services, obtain cash, or conduct person-to-person transfers.

ii. Where the hybrid prepaid-credit card accesses credit from a covered separate credit feature in the course of authorizing, settling, or otherwise completing a transaction conducted with the card to obtain goods or services, obtain cash, or conduct person-to-person transfers, any per transaction fees imposed on the asset feature of prepaid accounts, including load and transfer fees, for such credit from the credit feature are comparable only to per transaction fees for each transaction to access funds in the asset feature of a prepaid account that are imposed on prepaid accounts in the same prepaid account program that does not have such a credit feature. Per transaction fees for a transaction that is conducted to load or draw funds into a prepaid account from some other source are not comparable for purposes of §1026.4(b)(11)(ii). To illustrate:

- A. Assume a prepaid account issuer charges \$0.50 on prepaid accounts without a covered separate credit feature for each transaction that accesses funds in the asset feature of the prepaid accounts. Also, assume that the prepaid account issuer charges \$0.50 per transaction on the asset feature of prepaid accounts in the same prepaid program where the hybrid prepaid-credit card accesses credit from a covered separate credit feature in the course of a transaction. In this case, the \$0.50 per transaction fee imposed on the asset feature of the prepaid account with a covered separate credit feature is not a finance charge.
- B. Assume same facts as in paragraph A above, except that assume the prepaid account issuer charges \$1.25 on the asset feature of a prepaid account for each transaction where the hybrid prepaid-credit card accesses credit from the covered separate credit feature in the course of the transaction. In this case, the additional \$0.75 is a finance charge.
- C. Assume a prepaid account issuer charges \$0.50 on prepaid accounts without a covered separate credit feature for each transaction that accesses funds in the asset feature of the prepaid accounts. Assume also that the prepaid account issuer charges both a \$0.50 per transaction fee and a \$1.25 transfer fee on the asset feature of prepaid accounts in the same prepaid program where the hybrid prepaid-credit card accesses credit from a covered separate credit feature in the course of a transaction. In this case, both fees charged on a per-transaction basis for the credit transaction (i.e., a combined fee of \$1.75 per transaction) must be compared to the \$0.50 per transaction fee to access funds in the asset feature of the prepaid account without a covered separate credit feature. Accordingly, the \$1.25 excess is a finance charge.
- D. Assume same facts as in paragraph C above, except that assume the prepaid account issuer also charges a load fee of \$1.25 whenever funds are transferred or loaded from a separate asset account, such as from a deposit account via a debit card, in the course of a transaction on prepaid accounts without a covered separate credit feature, in addition to charging a \$0.50 per transaction fee. The \$1.25 excess in paragraph C is still a finance charge because load or transfer fees that are charged on the asset feature of prepaid account for credit from the covered separate credit feature are compared only to per transaction fees imposed for accessing funds in the asset feature of the prepaid account for prepaid accounts without such a credit feature. Per transaction fees for a transaction that is conducted to load or draw funds into a prepaid account from some other source are not comparable for purposes of §1026.4(b)(11)(ii).
- iii. A consumer may choose in a particular circumstance to draw or transfer credit from the covered separate credit feature outside the course of a transaction conducted with the card to obtain goods or services, obtain cash, or conduct person-to-person transfers. For example, a consumer may use the prepaid card at the prepaid account issuer's Web site to load funds from the covered separate credit feature outside the course of a transaction conducted with the card to obtain goods or services, obtain cash, or conduct person-to-person transfers. See §1026.61(a)(2)(i)(B) and comment 61(a)(2)-4.ii. In these situations, load or transfer fees imposed for draws or transfers of credit from the covered separate credit feature outside the course of a transaction are compared only with fees, if any, to load funds as a direct deposit of salary from an employer or a direct

deposit of government benefits that are charged on prepaid accounts without a covered separate credit feature. Fees imposed on prepaid accounts without a covered separate credit feature for a one-time load or transfer of funds from a separate asset account or from a non-covered separate credit feature are not comparable for purposes of §1026.4(b)(11)(ii). To illustrate:

- A. *Assume a prepaid account issuer charges a \$1.25 load fee to transfer funds from a non-covered separate credit feature, such as a non-covered separate credit card account, into prepaid accounts that do not have a covered separate credit feature and does not charge a fee for a direct deposit of salary from an employer or a direct deposit of government benefits on those prepaid accounts. Assume the prepaid account issuer charges \$1.25 on the asset feature of a prepaid account with a covered separate credit feature to load funds from the covered separate credit feature outside the course of a transaction. In this case, the \$1.25 fee imposed on the asset feature of the prepaid account with a covered separate credit feature is a finance charge because no fee is charged for a direct deposit of salary from an employer or a direct deposit of government benefits on prepaid accounts without such a credit feature. Fees imposed on prepaid accounts without a covered separate credit feature for a one-time load or transfer of funds from a non-covered separate credit feature are not comparable for purposes of §1026.4(b)(11)(ii).*
 - B. *Assume that a prepaid account issuer charges a \$1.25 load fee for a one-time transfer of funds from a separate asset account, such as from a deposit account via a debit card, to a prepaid account without a covered separate credit feature and does not charge a fee for a direct deposit of salary from an employer or a direct deposit of government benefits on those prepaid accounts. Assume the prepaid account issuer charges \$1.25 on the asset feature of a prepaid account with a covered separate credit feature to load funds from the covered separate credit feature outside the course of a transaction. In this case, the \$1.25 fee imposed on the asset feature of the prepaid account with a covered separate credit feature is a finance charge because no fee is charged for a direct deposit of salary from an employer or a direct deposit of government benefits on prepaid accounts without a covered separate credit feature. Fees imposed on prepaid accounts without a covered separate credit feature for a one-time load or transfer of funds from a separate asset account are not comparable for purposes of §1026.4(b)(11)(ii).*
2. **Relation to Regulation E.** *See Regulation E, 12 CFR 1005.18(g), which only permits a financial institution to charge the same or higher fees on the asset feature of a prepaid account with a covered separate credit feature accessible by a hybrid prepaid-credit card than the amount of a comparable fee it charges on prepaid accounts in the same prepaid account program without such a credit feature. Under that provision, a financial institution cannot charge a lower fee on the asset feature of a prepaid account with a covered separate credit feature accessible by a hybrid prepaid-credit card than the amount of a comparable fee it charges on prepaid accounts without such a credit feature in the same prepaid account program.*

Section 3: Charges Excluded from Finance Charges

12 C.F.R. § 1026.4(c)

Charges Excluded from Finance Charges - 12 CFR § 1026.4(c)

Regulatory Discussion

The section provides more detailed examples of items that are not considered a finance charge. There are 8 categories. The most significant category is number seven, which specifically discusses mortgage loans.

Regulatory Text

- (c) **Charges excluded from the finance charge.** The following charges are not finance charges:
- (1) Application fees charged to all applicants for credit, whether or not credit is actually extended.
 - (2) Charges for actual unanticipated late payment, for exceeding a credit limit, or for delinquency, default, or a similar occurrence.
 - (3) Charges imposed by a financial institution for paying items that overdraw an account, unless the payment of such items and the imposition of the charge were previously agreed upon in writing. This paragraph does not apply to credit offered in connection with a prepaid account as defined in §1026.61.
 - (4) Fees charged for participation in a credit plan, whether assessed on an annual or other periodic basis. This paragraph does not apply to a fee to participate in a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in §1026.61, regardless of whether this fee is imposed on the credit feature or on the asset feature of the prepaid account.
 - (5) Seller's points.
 - (6) Interest forfeited as a result of an interest reduction required by law on a time deposit used as security for an extension of credit.
 - (7) **Real-estate related fees.** The following fees in a transaction secured by real property or in a residential mortgage transaction, if the fees are bona fide and reasonable in amount:
 - (i) Fees for title examination, abstract of title, title insurance, property survey, and similar purposes.

- (ii) Fees for preparing loan-related documents, such as deeds, mortgages, and reconveyance or settlement documents.
 - (iii) Notary and credit-report fees.
 - (iv) Property appraisal fees or fees for inspections to assess the value or condition of the property if the service is performed prior to closing, including fees related to pest-infestation or flood-hazard determinations.
 - (v) Amounts required to be paid into escrow or trustee accounts if the amounts would not otherwise be included in the finance charge.
- (8) Discounts offered to induce payment for a purchase by cash, check, or other means, as provided in section 167(b) of the Act.

Regulatory Commentary

4(c) Charges Excluded From the Finance Charge

Paragraph 4(c)(1)

1. ***Application fees.*** *An application fee that is excluded from the finance charge is a charge to recover the costs associated with processing applications for credit. The fee may cover the costs of services such as credit reports, credit investigations, and appraisals. The creditor is free to impose the fee in only certain of its loan programs, such as mortgage loans. However, if the fee is to be excluded from the finance charge under §1026.4(c)(1), it must be charged to all applicants, not just to applicants who are approved or who actually receive credit.*

Paragraph 4(c)(2)

1. ***Late payment charges.***

- i. *Late payment charges can be excluded from the finance charge under §1026.4(c)(2) whether or not the person imposing the charge continues to extend credit on the account or continues to provide property or services to the consumer. In determining whether a charge is for actual unanticipated late payment on a 30-day account, for example, factors to be considered include:*
- A. *The terms of the account. For example, is the consumer required by the account terms to pay the account balance in full each month? If not, the charge may be a finance charge.*
 - B. *The practices of the creditor in handling the accounts. For example, regardless of the terms of the account, does the creditor allow consumers to pay the accounts over a period of time without demanding payment in full or taking other action to collect? If no effort is made to collect the full amount due, the charge may be a finance charge.*

ii. section 1026.4(c)(2) applies to late payment charges imposed for failure to make payments as agreed, as well as failure to pay an account in full when due.

2. **Other excluded charges.** Charges for “delinquency, default, or a similar occurrence” include, for example, charges for reinstatement of credit privileges or for submitting as payment a check that is later returned unpaid.

Paragraph 4(c)(3)

1. **Assessing interest on an overdraft balance.** Except with respect to credit offered in connection with a prepaid account as defined in §1026.61, a charge on an overdraft balance computed by applying a rate of interest to the amount of the overdraft is not a finance charge, even though the consumer agrees to the charge in the account agreement, unless the financial institution agrees in writing that it will pay such items.
2. **Credit accessed in connection with a prepaid account.** See comment 4(b)(11)-1 for guidance on when fees imposed with regard to credit accessed in connection with a prepaid account as defined in §1026.61 are finance charges.

Paragraph 4(c)(4)

1. **Participation fees - periodic basis.** The participation fees described in §1026.4(c)(4) do not necessarily have to be formal membership fees, nor are they limited to credit card plans. Except as provided in §1026.4(c)(4) for covered separate credit features accessible by hybrid prepaid-credit cards as defined in §1026.61, the provision applies to any credit plan in which payment of a fee is a condition of access to the plan itself, but it does not apply to fees imposed separately on individual closed-end transactions. The fee may be charged on a monthly, annual, or other periodic basis; a one-time, non-recurring fee imposed at the time an account is opened is not a fee that is charged on a periodic basis, and may not be treated as a participation fee.
2. **Participation fees - exclusions.** Minimum monthly charges, charges for non-use of a credit card, and other charges based on either account activity or the amount of credit available under the plan are not excluded from the finance charge by §1026.4(c)(4). Thus, for example, a fee that is charged and then refunded to the consumer based on the extent to which the consumer uses the credit available would be a finance charge. (See the commentary to §1026.4(b)(2). Also, see comment 14(c)-2 for treatment of certain types of fees excluded in determining the annual percentage rate for the periodic statement.)
3. **Credit accessed in connection with by a prepaid account.** See comment 4(b)(11)-1 for guidance on when fees imposed with regard to credit accessed in connection with a prepaid account as defined in §1026.61 are finance charges.

Paragraph 4(c)(5)

1. **Seller's points.** The seller's points mentioned in §1026.4(c)(5) include any charges imposed by the creditor upon the noncreditor seller of property for providing credit to the buyer or for providing credit on certain terms. These charges are excluded from the finance charge even if they are passed on to the buyer, for example, in the form of a higher sales price. Seller's points are frequently involved in real estate transactions guaranteed or insured by

governmental agencies. A commitment fee paid by a noncreditor seller (such as a real estate developer) to the creditor should be treated as seller's points. Buyer's points (that is, points charged to the buyer by the creditor), however, are finance charges.

2. **Other seller-paid amounts.** Mortgage insurance premiums and other finance charges are sometimes paid at or before consummation or settlement on the borrower's behalf by a noncreditor seller. The creditor should treat the payment made by the seller as seller's points and exclude it from the finance charge if, based on the seller's payment, the consumer is not legally bound to the creditor for the charge. A creditor who gives disclosures before the payment has been made should base them on the best information reasonably available.

Paragraph 4(c)(6)

1. **Lost interest.** Certain Federal and state laws mandate a percentage differential between the interest rate paid on a deposit and the rate charged on a loan secured by that deposit. In some situations, because of usury limits the creditor must reduce the interest rate paid on the deposit and, as a result, the consumer loses some of the interest that would otherwise have been earned. Under §1026.4(c)(6), such "lost interest" need not be included in the finance charge. This rule applies only to an interest reduction imposed because a rate differential is required by law and a usury limit precludes compliance by any other means. If the creditor imposes a differential that exceeds that required, only the lost interest attributable to the excess amount is a finance charge. (See the commentary to §1026.4(a).)

4(c)(7) Real-Estate Related Fees

1. **Real estate or residential mortgage transaction charges.** The list of charges in §1026.4(c)(7) applies both to residential mortgage transactions (which may include, for example, the purchase of a mobile home) and to other transactions secured by real estate. The fees are excluded from the finance charge even if the services for which the fees are imposed are performed by the creditor's employees rather than by a third party. In addition, the cost of verifying or confirming information connected to the item is also excluded. For example, credit-report fees cover not only the cost of the report but also the cost of verifying information in the report. In all cases, charges excluded under §1026.4(c)(7) must be bona fide and reasonable.
2. **Lump-sum charges.** If a lump sum charged for several services includes a charge that is not excludable, a portion of the total should be allocated to that service and included in the finance charge. However, a lump sum charged for conducting or attending a closing (for example, by a lawyer or a title company) is excluded from the finance charge if the charge is primarily for services related to items listed in §1026.4(c)(7) (for example, reviewing or completing documents), even if other incidental services such as explaining various documents or disbursing funds for the parties are performed. The entire charge is excluded even if a fee for the incidental services would be a finance charge if it were imposed separately.
3. **Charges assessed during the loan term.** Real estate or residential mortgage transaction charges excluded under §1026.4(c)(7) are those charges imposed solely in connection with the initial decision to grant credit. This would include, for example, a fee to search for tax liens on the property or to determine if flood insurance is required. The exclusion does not apply to fees for services to be performed periodically during the loan term, regardless of

when the fee is collected. For example, a fee for one or more determinations during the loan term of the current tax-lien status or flood-insurance requirements is a finance charge, regardless of whether the fee is imposed at closing, or when the service is performed. If a creditor is uncertain about what portion of a fee to be paid at consummation or loan closing is related to the initial decision to grant credit, the entire fee may be treated as a finance charge.

Section 4: Insurance, Debt Cancellation, Debt Suspension Coverage

12 C.F.R. § 1026.4(d)

Initial Commentary - Insurance, Debt Cancellation, Debt Suspension Coverage - 12 CFR § 1026.4(d)

Regulatory Discussion

This section defines Insurance, Debt Cancellation, and Debt Suspension Coverage and states when it can be excluded from the finance charge calculation.

Regulatory Text

None.

Regulatory Commentary

4(d) Insurance and Debt Cancellation and Debt Suspension Coverage

- 1. General.*** Section 1026.4(d) permits insurance premiums and charges and debt cancellation and debt suspension charges to be excluded from the finance charge. The required disclosures must be made in writing, except as provided in §1026.4(d)(4). The rules on location of insurance and debt cancellation and debt suspension disclosures for closed-end transactions are in §1026.17(a). For purposes of §1026.4(d), all references to insurance also include debt cancellation and debt suspension coverage unless the context indicates otherwise.
- 2. Timing of disclosures.*** If disclosures are given early, for example under §1026.17(f) or §1026.19(a), the creditor need not redisclose if the actual premium is different at the time of consummation. If insurance disclosures are not given at the time of early disclosure and insurance is in fact written in connection with the transaction, the disclosures under §1026.4(d) must be made in order to exclude the premiums from the finance charge.
- 3. Premium rate increases.*** The creditor should disclose the premium amount based on the rates currently in effect and need not designate it as an estimate even if the premium rates may increase. An increase in insurance rates after consummation of a closed-end credit transaction or during the life of an open-end credit plan does not require redisclosure in order to exclude the additional premium from treatment as a finance charge.
- 4. Unit-cost disclosures.***
 - i. Open-end credit.*** The premium or fee for insurance or debt cancellation or debt

suspension for the initial term of coverage may be disclosed on a unit-cost basis in open-end credit transactions. The cost per unit should be based on the initial term of coverage, unless one of the options under comment 4(d)-12 is available.

- ii. **Closed-end credit.** One of the transactions for which unit-cost disclosures (such as 50 cents per year for each \$100 of the amount financed) may be used in place of the total insurance premium involves a particular kind of insurance plan. For example, a consumer with a current indebtedness of \$8,000 is covered by a plan of credit life insurance coverage with a maximum of \$10,000. The consumer requests an additional \$4,000 loan to be covered by the same insurance plan. Since the \$4,000 loan exceeds, in part, the maximum amount of indebtedness that can be covered by the plan, the creditor may properly give the insurance-cost disclosures on the \$4,000 loan on a unit-cost basis.
5. **Required credit life insurance; debt cancellation or suspension coverage.** Credit life, accident, health, or loss-of-income insurance, and debt cancellation and suspension coverage described in §1026.4(b)(10), must be voluntary in order for the premium or charges to be excluded from the finance charge. Whether the insurance or coverage is in fact required or optional is a factual question. If the insurance or coverage is required, the premiums must be included in the finance charge, whether the insurance or coverage is purchased from the creditor or from a third party. If the consumer is required to elect one of several options—such as to purchase credit life insurance, or to assign an existing life insurance policy, or to pledge security such as a certificate of deposit—and the consumer purchases the credit life insurance policy, the premium must be included in the finance charge. (If the consumer assigns a preexisting policy or pledges security instead, no premium is included in the finance charge. The security interest would be disclosed under §1026.6(a)(4), §1026.6(b)(5)(ii), or §1026.18(m). See the commentary to §1026.4(b)(7) and (b)(8).)
6. **Other types of voluntary insurance.** Insurance is not credit life, accident, health, or loss-of-income insurance if the creditor or the credit account of the consumer is not the beneficiary of the insurance coverage. If the premium for such insurance is not imposed by the creditor as an incident to or a condition of credit, it is not covered by §1026.4.
7. **Signatures.** If the creditor offers a number of insurance options under §1026.4(d), the creditor may provide a means for the consumer to sign or initial for each option, or it may provide for a single authorizing signature or initial with the options selected designated by some other means, such as a check mark. The insurance authorization may be signed or initialed by any consumer, as defined in §1026.2(a)(11), or by an authorized user on a credit card account.
8. **Property insurance.** To exclude property insurance premiums or charges from the finance charge, the creditor must allow the consumer to choose the insurer and disclose that fact. This disclosure must be made whether or not the property insurance is available from or through the creditor. The requirement that an option be given does not require that the insurance be readily available from other sources. The premium or charge must be disclosed only if the consumer elects to purchase the insurance from the creditor; in such a case, the creditor must also disclose the term of the property insurance coverage if it is less than the term of the obligation.

9. **Single-interest insurance.** Blanket and specific single-interest coverage are treated the same for purposes of the regulation. A charge for either type of single-interest insurance may be excluded from the finance charge if:

i. The insurer waives any right of subrogation.

ii. The other requirements of §1026.4(d)(2) are met. This includes, of course, giving the consumer the option of obtaining the insurance from a person of the consumer's choice. The creditor need not ascertain whether the consumer is able to purchase the insurance from someone else.

10. **Single-interest insurance defined.** The term single-interest insurance as used in the regulation refers only to the types of coverage traditionally included in the term vendor's single-interest insurance (or VSI), that is, protection of tangible property against normal property damage, concealment, confiscation, conversion, embezzlement, and skip. Some comprehensive insurance policies may include a variety of additional coverages, such as repossession insurance and holder-in-due-course insurance. These types of coverage do not constitute single-interest insurance for purposes of the regulation, and premiums for them do not qualify for exclusion from the finance charge under §1026.4(d). If a policy that is primarily VSI also provides coverages that are not VSI or other property insurance, a portion of the premiums must be allocated to the nonexcludable coverages and included in the finance charge. However, such allocation is not required if the total premium in fact attributable to all of the non-VSI coverages included in the policy is \$1.00 or less (or \$5.00 or less in the case of a multiyear policy).

11. **Initial term.**

i. The initial term of insurance or debt cancellation or debt suspension coverage determines the period for which a premium amount must be disclosed, unless one of the options discussed under comment 4(d)-12 is available. For purposes of §1026.4(d), the initial term is the period for which the insurer or creditor is obligated to provide coverage, even though the consumer may be allowed to cancel the coverage or coverage may end due to nonpayment before that term expires.

ii. For example:

A. The initial term of a property insurance policy on an automobile that is written for one year is one year even though premiums are paid monthly and the term of the credit transaction is four years.

B. The initial term of an insurance policy is the full term of the credit transaction if the consumer pays or finances a single premium in advance.

12. **Initial term; alternative.**

i. **General.** A creditor has the option of providing cost disclosures on the basis of one year of insurance or debt cancellation or debt suspension coverage instead of a longer initial term (provided the premium or fee is clearly labeled as being for one year) if:

A. The initial term is indefinite or not clear, or

B. The consumer has agreed to pay a premium or fee that is assessed periodically but the consumer is under no obligation to continue the coverage, whether or not the consumer has made an initial payment.

*ii. **Open-end plans.** For open-end plans, a creditor also has the option of providing unit-cost disclosure on the basis of a period that is less than one year if the consumer has agreed to pay a premium or fee that is assessed periodically, for example monthly, but the consumer is under no obligation to continue the coverage.*

*iii. **Examples.** To illustrate:*

A. A credit life insurance policy providing coverage for a 30-year mortgage loan has an initial term of 30 years, even though premiums are paid monthly and the consumer is not required to continue the coverage. Disclosures may be based on the initial term, but the creditor also has the option of making disclosures on the basis of coverage for an assumed initial term of one year.

13. Loss-of-income insurance. *The loss-of-income insurance mentioned in §1026.4(d) includes involuntary unemployment insurance, which provides that some or all of the consumer's payments will be made if the consumer becomes unemployed involuntarily.*

Voluntary Credit Insurance Premiums - 12 CFR § 1026.4(d)(1)

Regulatory Discussion

This section provides specific discussion regarding voluntary credit insurance premiums for credit life, accident, health, or loss-of-income insurance. Provided conditions are met, this type of insurance is not a finance charge.

Regulatory Text

(1) Voluntary credit insurance premiums. Premiums for credit life, accident, health, or loss-of-income insurance may be excluded from the finance charge if the following conditions are met:

(i) The insurance coverage is not required by the creditor, and this fact is disclosed in writing.

(ii) The premium for the initial term of insurance coverage is disclosed in writing. If the term of insurance is less than the term of the transaction, the term of insurance also shall be disclosed. The premium may be disclosed on a unit-cost basis only in open-end credit transactions, closed-end credit transactions by mail or telephone under §1026.17(g), and certain closed-end credit transactions involving an insurance plan that limits the total amount of indebtedness subject to coverage.

(iii) The consumer signs or initials an affirmative written request for the insurance after receiving the disclosures specified in this paragraph, except as provided in paragraph (d)(4) of this section. Any consumer in the transaction may sign or initial the request.

Regulatory Commentary

None.

Property Insurance Premiums - 12 CFR § 1026.4(d)(2)

Regulatory Discussion

This section provides specific discussion regarding premiums for property insurance premiums. If proper steps are taken, this insurance is not a finance charge.

Regulatory Text

- (2) **Property insurance premiums.** Premiums for insurance against loss of or damage to property, or against liability arising out of the ownership or use of property, including single interest insurance if the insurer waives all right of subrogation against the consumer, may be excluded from the finance charge if the following conditions are met:
- (i) The insurance coverage may be obtained from a person of the consumer's choice, and this fact is disclosed. (A creditor may reserve the right to refuse to accept, for reasonable cause, an insurer offered by the consumer.)
 - (ii) If the coverage is obtained from or through the creditor, the premium for the initial term of insurance coverage shall be disclosed. If the term of insurance is less than the term of the transaction, the term of insurance shall also be disclosed. The premium may be disclosed on a unit-cost basis only in open-end credit transactions, closed-end credit transactions by mail or telephone under §1026.17(g), and certain closed-end credit transactions involving an insurance plan that limits the total amount of indebtedness subject to coverage.

Regulatory Commentary

None.

Voluntary Debt Cancellation or Debt Suspension Fees - 12 CFR § 1026.4(d)(3)

Regulatory Discussion

This section provides specific discussion regarding voluntary debt cancellation or debt suspension fees. If proper steps are taken, this insurance is not a finance charge.

Regulatory Text

- (3) **Voluntary debt cancellation or debt suspension fees.** Charges or premiums paid for debt cancellation coverage for amounts exceeding the value of the collateral securing the obligation or for debt cancellation or debt suspension coverage in the event of the loss of life, health, or income or in case of accident may be excluded from the finance charge, whether or not the coverage is insurance, if the following conditions are met:
- (i) The debt cancellation or debt suspension agreement or coverage is not required by the creditor, and this fact is disclosed in writing;
 - (ii) The fee or premium for the initial term of coverage is disclosed in writing. If the term of coverage is less than the term of the credit transaction, the term of coverage also shall be disclosed. The fee or premium may be disclosed on a unit-cost basis only in open-end credit transactions, closed-end credit transactions by mail or telephone under §1026.17(g), and certain closed-end credit transactions involving a debt cancellation agreement that limits the total amount of indebtedness subject to coverage;
 - (iii) The following are disclosed, as applicable, for debt suspension coverage: That the obligation to pay loan principal and interest is only suspended, and that interest will continue to accrue during the period of suspension.
 - (iv) The consumer signs or initials an affirmative written request for coverage after receiving the disclosures specified in this paragraph, except as provided in paragraph (d)(4) of this section. Any consumer in the transaction may sign or initial the request.

Regulatory Commentary

4(d)(3) Voluntary Debt Cancellation or Debt Suspension Fees

1. **General.** Fees charged for the specialized form of debt cancellation agreement known as guaranteed automobile protection (“GAP”) agreements must be disclosed according to §1026.4(d)(3) rather than according to §1026.4(d)(2) for property insurance.
2. **Disclosures.** Creditors can comply with §1026.4(d)(3) by providing a disclosure that refers to debt cancellation or debt suspension coverage whether or not the coverage is considered insurance. Creditors may use the model credit insurance disclosures only if the debt cancellation or debt suspension coverage constitutes insurance under state law. (See Model Clauses and Samples at G-16 and H-17 in appendix G and appendix H to part 1026 for guidance on how to provide the disclosure required by §1026.4(d)(3)(iii) for debt suspension products.)
3. **Multiple events.** If debt cancellation or debt suspension coverage for two or more events is provided at a single charge, the entire charge may be excluded from the finance charge if at least one of the events is accident or loss of life, health, or income and the conditions specified in §1026.4(d)(3) or, as applicable, §1026.4(d)(4), are satisfied.
4. **Disclosures in programs combining debt cancellation and debt suspension features.** If the consumer's debt can be cancelled under certain circumstances, the disclosure may be modified to reflect that fact. The disclosure could, for example, state (in

addition to the language required by §1026.4(d)(3)(iii)) that “In some circumstances, my debt may be cancelled.” However, the disclosure would not be permitted to list the specific events that would result in debt cancellation

Telephone Purchases - 12 CFR § 1026.4(d)(4)

Regulatory Discussion

This section lists the disclosure requirements for a creditor selling credit insurance or debt cancellation or debt suspension coverage for an open-end (not home secured) plan by telephone.

Regulatory Text

- (4) **Telephone purchases.** If a consumer purchases credit insurance or debt cancellation or debt suspension coverage for an open-end (not home-secured) plan by telephone, the creditor must make the disclosures under paragraphs (d)(1)(i) and (ii) or (d)(3)(i) through (iii) of this section, as applicable, orally. In such a case, the creditor shall:
- (i) Maintain evidence that the consumer, after being provided the disclosures orally, affirmatively elected to purchase the insurance or coverage; and
 - (ii) Mail the disclosures under paragraphs (d)(1)(i) and (ii) or (d)(3)(i) through (iii) of this section, as applicable, within three business days after the telephone purchase.

Regulatory Commentary

4(d)(4) Telephone Purchases

1. Affirmative request. *A creditor would not satisfy the requirement to obtain a consumer's affirmative request if the “request” was a response to a script that uses leading questions or negative consent. A question asking whether the consumer wishes to enroll in the credit insurance or debt cancellation or suspension plan and seeking a yes-or-no response (such as “Do you want to enroll in this optional debt cancellation plan?”) would not be considered leading.*

Section 5: Certain Security Interest Charges and Prohibited Offsets

12 C.F.R. § 1026.4(e) and 12 C.F.R. § 1026.4(f)

Certain Security Interest Charges - 12 CFR § 1026.4(e)

Regulatory Discussion

This section of Regulation Z describes the instances where certain security interest charges may be excluded from the finance charge.

Regulatory Text

(e) **Certain security interest charges.** If itemized and disclosed, the following charges may be excluded from the finance charge:

- (1) Taxes and fees prescribed by law that actually are or will be paid to public officials for determining the existence of or for perfecting, releasing, or satisfying a security interest.
- (2) The premium for insurance in lieu of perfecting a security interest to the extent that the premium does not exceed the fees described in paragraph (e)(1) of this section that otherwise would be payable.
- (3) **Taxes on security instruments.** Any tax levied on security instruments or on documents evidencing indebtedness if the payment of such taxes is a requirement for recording the instrument securing the evidence of indebtedness.

Regulatory Commentary

4(e) Certain Security Interest Charges

1. Examples.

- i. **Excludable charges.** Sums must be actually paid to public officials to be excluded from the finance charge under §1026.4(e)(1) and (e)(3). Examples are charges or other fees required for filing or recording security agreements, mortgages, continuation statements, termination statements, and similar documents, as well as intangible property or other taxes even when the charges or fees are imposed by the state solely on the creditor and charged to the consumer (if the tax must be paid to record a security agreement). (See comment 4(a)-5 regarding the treatment of taxes, generally.)*

- ii. **Charges not excludable.** If the obligation is between the creditor and a third party (an assignee, for example), charges or other fees for filing or recording security agreements, mortgages, continuation statements, termination statements, and similar documents relating to that obligation are not excludable from the finance charge under this section.*
- 2. Itemization.** *The various charges described in §1026.4(e)(1) and (e)(3) may be totaled and disclosed as an aggregate sum, or they may be itemized by the specific fees and taxes imposed. If an aggregate sum is disclosed, a general term such as security interest fees or filing fees may be used.*
- 3. Notary fees.** *In order for a notary fee to be excluded under §1026.4(e)(1), all of the following conditions must be met:*
- i. The document to be notarized is one used to perfect, release, or continue a security interest.*
 - ii. The document is required by law to be notarized.*
 - iii. A notary is considered a public official under applicable law.*
 - iv. The amount of the fee is set or authorized by law.*
- 4. Nonfiling insurance.** *The exclusion in §1026.4(e)(2) is available only if nonfiling insurance is purchased. If the creditor collects and simply retains a fee as a sort of “self-insurance” against nonfiling, it may not be excluded from the finance charge. If the nonfiling insurance premium exceeds the amount of the fees excludable from the finance charge under §1026.4(e)(1), only the excess is a finance charge. For example:*
- i. The fee for perfecting a security interest is \$5.00 and the fee for releasing the security interest is \$3.00. The creditor charges \$10.00 for nonfiling insurance. Only \$8.00 of the \$10.00 is excludable from the finance charge.*

Prohibited Offsets - 12 C.F.R. § 1026.4(f)

Regulatory Discussion

Finally, this section describes prohibited offsets to the computed finance charge the consumer may not receive on deposits or investments.

Regulatory Text

- (f) Prohibited offsets.** Interest, dividends, or other income received or to be received by the consumer on deposits or investments shall not be deducted in computing the finance charge.

Regulatory Commentary

4(f) Prohibited Offsets

1. ***Earnings on deposits or investments.*** *The rule that the creditor shall not deduct any earnings by the consumer on deposits or investments applies whether or not the creditor has a security interest in the property.*