

# Reviewing Closed-End Loan Advertising

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**First Quarter 2022**

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# Closed End Loan Advertising Checklist

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# **Introduction, General Regulation Z Information**

## **Section 1: Introduction (Commentary)**

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### ***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*.

## Section 2: Purpose, Coverage

### 12 C.F.R. § 1026.1

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#### *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 requires 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, which are outside the scope of this course.

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, as they all must use the same “mythical number” approach.

#### **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.*

## Section 3: Selected Definitions

### 12 C.F.R § 1026.2(a)

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#### ***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.

We have only included those definitions that we deem relevant for today's discussion.

#### ***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.*

## **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).)*

## **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.

## **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).*

## ***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.*

## **Section 4: Exempt Transactions**

### **12 C.F.R § 1026.3(a)**

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#### ***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.*

# **Advertising – Closed End Credit**

# Section 1: Actually Available Terms

## 12 C.F.R. § 1026.24(a)

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

#### **Regulatory Discussion**

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

#### **Regulatory Text**

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

#### **Regulatory Commentary**

##### ***24(a) Actually Available Terms***

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

## Section 2: Clear and Conspicuous Standard

### 12 C.F.R. § 1026.24(b)

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

##### **Regulatory Discussion**

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

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

##### **Regulatory Text**

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

##### **Regulatory Commentary**

#### ***24(b) Clear and Conspicuous Standard***

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

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

## Section 3: Advertisement of Rate of Finance Charge

### 12 C.F.R. § 1026.24(c)

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

##### **Regulatory Discussion**

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

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

##### **Regulatory Text**

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

##### **Regulatory Commentary**

#### ***24(c) Advertisement of Rate of Finance Charge***

1. ***Annual percentage rate.*** *Advertised rates must be stated in terms of an annual percentage rate, as defined in §1026.22. Even though state or local law permits the use of add-on, discount, time-price differential, or other methods of stating rates, advertisements must state them as annual percentage rates. Unlike the transactional disclosure of an annual percentage rate*

under §1026.18(e), the advertised annual percentage rate need not include a descriptive explanation of the term and may be expressed using the abbreviation APR. The advertisement must state that the rate is subject to increase after consummation if that is the case, but the advertisement need not describe the rate increase, its limits, or how it would affect the payment schedule. As under §1026.18(f), relating to disclosure of a variable rate, the rate increase disclosure requirement in this provision does not apply to any rate increase due to delinquency (including late payment), default, acceleration, assumption, or transfer of collateral.

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

## **Section 4: Advertisement of Terms that Require Additional Disclosures 12 C.F.R. § 1026.24(d)**

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

#### **Regulatory Discussion**

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

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

#### **Regulatory Text**

##### **(d) Advertisement of terms that require additional disclosures**

- (1) Triggering terms. If any of the following terms is set forth in an advertisement, the advertisement shall meet the requirements of paragraph (d)(2) of this section:
  - (i) The amount or percentage of any downpayment.
  - (ii) The number of payments or period of repayment.

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

## Regulatory Commentary

### **24(d) Advertisement of Terms That Require Additional Disclosures**

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

#### **24(d)(1) Triggering Terms**

##### **1. Downpayment.**

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

##### **2. Payment period.**

- i. The number of payments required, or the total period of repayment includes such statements as:*
  - A. 48-month payment terms.*
  - B. 30-year mortgage.*
  - C. Repayment in as many as 36 monthly installments.*

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

### **3. Payment amount.**

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

- A. *“Payable in installments of \$103.”*
- B. *“\$25 weekly.”*
- C. *“\$500,000 loan for just \$1,650 per month.”*
- D. *“\$1,200 balance payable in 10 equal installments.”*

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

### **4. Finance charge.**

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

- A. *“\$500 total cost of credit.”*
- B. *“\$2 monthly carrying charge.”*
- C. *“\$50,000 mortgages, 2 points to the borrower.”*

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

### **24(d)(2) Additional Terms**

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

2. **Disclosure of repayment terms.** *The phrase “terms of repayment” generally has the same meaning as the “payment schedule” required to be disclosed under §1026.18(g), the interest rate and payment summary table required to be disclosed pursuant to §1026.18(s), or the projected payments table required to be disclosed pursuant to §§1026.37(c) and 1026.38(c), as applicable. Section 1026.24(d)(2)(ii) provides flexibility to creditors in making this disclosure for advertising purposes. Repayment terms may be expressed in a variety of ways in addition to an exact repayment schedule; this is particularly true for advertisements that do not contemplate a single specific transaction. Repayment terms, however, must reflect the consumer’s repayment obligations over the full term of the loan, including any balloon payment, see comment 24(d)(2)-3, not just the repayment terms that will apply for a limited period of time. For example:*

- i. *A creditor may use a unit-cost approach in making the required disclosure, such as “48 monthly payments of \$27.83 per \$1,000 borrowed.”*

ii. *In an advertisement for credit secured by a dwelling, when any series of payments varies because of the inclusion of mortgage insurance premiums, a creditor may state the number and timing of payments, the fact that payments do not include amounts for mortgage insurance premiums, and that the actual payment obligation will be higher.*

iii. *In an advertisement for credit secured by a dwelling, when one series of monthly payments will apply for a limited period of time followed by a series of higher monthly payments for the remaining term of the loan, the advertisement must state the number and time period of each series of payments, and the amounts of each of those payments. For this purpose, the creditor must assume that the consumer makes the lower series of payments for the maximum allowable period of time.*

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

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

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

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

## **12 C.F.R. § 1026.24(e)**

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

#### **Regulatory Discussion**

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

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

#### **Regulatory Text**

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

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

## Regulatory Commentary

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

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

## Section 6: Dwelling Related Advertisements

### 12 C.F.R. § 1026.24(f)

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

##### **Regulatory Discussion**

- In determining whether a payment will apply when the consumer may choose to make a series of lower monthly payments that will apply for a limited period of time, the creditor must assume that the consumer makes the series of lower payments for the maximum allowable period of time. There are specific examples for the following loan types:
  - Fixed-rate conversion loans
  - Preferred-rate loans
  - Rate reductions
- The equal prominence and close proximity rules discussed elsewhere apply here as well.
- The clear and conspicuous standard rule discussed elsewhere applies here as well.
- When making any comparison in an advertisement between actual or hypothetical credit payments or rates and the payments or rates available under the advertised product, the advertisement must state all applicable payments or rates for the advertised product and the time periods for which those payments or rates will apply.
- In advertisements for variable-rate transactions, if a simple annual rate that applies at consummation is not based on the index and margin that will be used to make subsequent rate adjustments over the term of the loan, the clear and conspicuous standard applies.
  - An index and margin must be reasonably current. The regulation offers specific guidance. printed advertisements made available to the general public, including ones contained in a catalog, magazine, or other generally available publication, it was in effect within 30 days before printing.
- Amounts and time periods of payments.
  - You must disclose the amounts and time periods of all payments that will apply over the term of the loan, even if that means disclosure of several payment amounts, including any balloon payment. The regulation offers an example of a balloon payment. Remember that the advertisement must show amounts, timing for the payments and the balloon.
  - Variable-rate transactions. If the payment that applies at consummation is not based on the index and margin that will be used to make subsequent payment adjustments over the term of the loan, these requirements apply.

## Regulatory Text

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

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

#### (2) Disclosure of rates

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

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

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

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

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

#### (3) Disclosure of payments

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

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

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

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

(ii) **Clear and conspicuous requirement.** For purposes of paragraph (f)(3)(i) of this section, a clear and conspicuous disclosure means that the required information in paragraphs (f)(3)(i)(A) and (B) shall be disclosed with equal prominence and in close proximity to any advertised payment that triggered the required disclosures, and that the required information in paragraph (f)(3)(i)(C) shall be disclosed with prominence and in close proximity to the advertised payments.

- (4) **Envelope excluded.** The requirements in paragraphs (f)(2) and (f)(3) of this section do not apply to an envelope in which an application or solicitation is mailed, or to a banner advertisement or pop-up advertisement linked to an application or solicitation provided electronically.

## Regulatory Commentary

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

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

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

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

3. **Clear and conspicuous standard.** *For more information about the applicable clear and conspicuous standard, see comment 24(b)-2.*

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

#### **24(f)(3) Disclosure of Payments**

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

# Section 7: Alternative Disclosures – Television or Radio Advertisements 12 C.F.R. § 1026.24(g)

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

### **Regulatory Discussion**

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

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

### **Regulatory Text**

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

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

### **Regulatory Commentary**

#### **24(g) Alternative Disclosures—Television or Radio Advertisements**

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

## Section 8: Tax Implications

### 12 C.F.R. § 1026.24(h)

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

##### **Regulatory Discussion**

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

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

The special message includes two components:

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

##### **Regulatory Text**

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

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

##### **Regulatory Commentary**

*None.*

# Section 9: Prohibited Acts or Practices in Advertisements for Credit Secured by a Dwelling 12 C.F.R. § 1026.24(i)

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

### **Regulatory Discussion**

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

### **Regulatory Text**

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

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

- advertisement is not associated with, or acting on behalf of, the consumer's current lender.
- (5) **Misleading claims of debt elimination.** Making any misleading claim in an advertisement that the mortgage product offered will eliminate debt or result in a waiver or forgiveness of a consumer's existing loan terms with, or obligations to, another creditor.
  - (6) **Misleading use of the term “counselor”.** Using the term “counselor” in an advertisement to refer to a for-profit mortgage broker or mortgage creditor, its employees, or persons working for the broker or creditor that are involved in offering, originating, or selling mortgages.
  - (7) **Misleading foreign-language advertisements.** Providing information about some trigger terms or required disclosures, such as an initial rate or payment, only in a foreign language in an advertisement, but providing information about other trigger terms or required disclosures, such as information about the fully indexed rate or fully amortizing payment, only in English in the same advertisement.

## Regulatory Commentary

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

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