

Regulation Z: Higher Priced Mortgage Loans (HPML)

Community Bankers for Compliance

2nd Quarter 2022

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Section 1: Definitions

12 C.F.R. § 1026.35(a)

Higher Priced Mortgage Loan - 12 C.F.R. § 1026.35(a)(1)

Regulatory Discussion

This section defines the term “*higher-priced mortgage loan*.” There are three types; all must be secured by the consumer’s principal dwelling:

- Conventional, first lien;
- Jumbo, first lien;
- Either conventional or jumbo, subordinate lien

Regulatory Text

(a) **Definitions.** For purposes of this section:

- (1) “**Higher-priced mortgage loan**” means a closed-end consumer credit transaction secured by the consumer's principal dwelling with an annual percentage rate that exceeds the average prime offer rate for a comparable transaction as of the date the interest rate is set:
 - (i) By **1.5 or more percentage points** for loans secured by a first lien with a principal obligation at consummation that does not exceed the limit in effect as of the date the transaction's interest rate is set for the maximum principal obligation eligible for purchase by Freddie Mac;
 - (ii) By **2.5 or more percentage points** for loans secured by a first lien with a principal obligation at consummation that exceeds the limit in effect as of the date the transaction's interest rate is set for the maximum principal obligation eligible for purchase by Freddie Mac; or
 - (iii) By **3.5 or more percentage points** for loans secured by a subordinate lien.

Regulatory Commentary

Paragraph 35(a)(1)

1. **Comparable transaction.** *A higher-priced mortgage loan is a consumer credit transaction secured by the consumer's principal dwelling with an annual percentage rate that exceeds the average prime offer rate for a comparable transaction as of the date the interest rate is set by the specified margin. The table of average prime offer rates published by the Bureau indicates how to identify the comparable transaction.*
2. **Rate set.** *A transaction's annual percentage rate is compared to the average prime offer rate as of the date the transaction's interest rate is set (or “locked”) before consummation. Sometimes a*

creditor sets the interest rate initially and then re-sets it at a different level before consummation. The creditor should use the last date the interest rate is set before consummation.

3. **Threshold for “jumbo” loans.** Section 1026.35(a)(1)(ii) provides a separate threshold for determining whether a transaction is a higher-priced mortgage loan subject to §1026.35 when the principal balance exceeds the limit in effect as of the date the transaction's rate is set for the maximum principal obligation eligible for purchase by Freddie Mac (a “jumbo” loan). The Federal Housing Finance Agency (FHFA) establishes and adjusts the maximum principal obligation pursuant to rules under 12 U.S.C. 1454(a)(2) and other provisions of federal law. Adjustments to the maximum principal obligation made by FHFA apply in determining whether a mortgage loan is a “jumbo” loan to which the separate coverage threshold in §1026.35(a)(1)(ii) applies.

Average Prime Offer Rate - 12 C.F.R. § 1026.35(a)(2)

Regulatory Discussion

This section defines the term “**average prime offer rate**,” (“APOR”). The CFPB publishes the APOR on the Internet and is updated at least weekly.

Regulatory Text

(a) **Definitions.** For purposes of this section:

- (2) “**Average prime offer rate**” means an annual percentage rate that is derived from average interest rates, points, and other loan pricing terms currently offered to consumers by a representative sample of creditors for mortgage transactions that have low-risk pricing characteristics. The Bureau publishes average prime offer rates for a broad range of types of transactions in a table updated at least weekly as well as the methodology the Bureau uses to derive these rates.

Regulatory Commentary

Paragraph 35(a)(2)

1. **Average prime offer rate.** Average prime offer rates are annual percentage rates derived from average interest rates, points, and other loan pricing terms currently offered to consumers by a representative sample of creditors for mortgage transactions that have low-risk pricing characteristics. Other pricing terms include commonly used indices, margins, and initial fixed-rate periods for variable-rate transactions. Relevant pricing characteristics include a consumer's credit history and transaction characteristics such as the loan-to-value ratio, owner-occupant status, and purpose of the transaction. To obtain average prime offer rates, the Bureau uses a survey of creditors that both meets the criteria of §1026.35(a)(2) and provides pricing terms for at least two types of variable-rate transactions and at least two types of non-variable-rate transactions. An example of such a survey is the Freddie Mac Primary Mortgage Market Survey®.

- 2. Bureau table.** *The Bureau publishes on the Internet, in table form, average prime offer rates for a wide variety of transaction types. The Bureau calculates an annual percentage rate, consistent with Regulation Z (see §1026.22 and appendix J), for each transaction type for which pricing terms are available from a survey. The Bureau estimates annual percentage rates for other types of transactions for which direct survey data are not available based on the loan pricing terms available in the survey and other information. The Bureau publishes on the Internet the methodology it uses to arrive at these estimates.*
- 3. Additional guidance on determination of average prime offer rates.** *The average prime offer rate has the same meaning in §1026.35 as in Regulation C, 12 C.F.R. part 1003. See 12 C.F.R. 1003.4(a)(12)(ii). Guidance on the average prime offer rate under §1026.35(a)(2), such as when a transaction's rate is set and determination of the comparable transaction, is provided in the official commentary under Regulation C, the publication entitled "A Guide to HMDA Reporting: Getting it Right!", and the relevant "Frequently Asked Questions" on Home Mortgage Disclosure Act (HMDA) compliance posted on the FFIEC's Web site at <http://www.ffiec.gov/hmda>.*

Section 2: Escrow Accounts

12 C.F.R. § 1026.35(b)

Escrow Accounts - 12 C.F.R. § 1026.35(b)(1)

Regulatory Discussion

Generally, a *first-lien* higher-priced mortgage requires an escrow account for payment of property taxes and mortgage-related insurance premiums. The escrow account must be established before consummation.

Regulatory Text

(b) Escrow accounts

- (1) **Requirement to escrow for property taxes and insurance.** Except as provided in paragraph (b)(2) of this section, a creditor may not extend a higher-priced mortgage loan secured by a first lien on a consumer's principal dwelling unless an escrow account is established before consummation for payment of property taxes and premiums for mortgage-related insurance required by the creditor, such as insurance against loss of or damage to property, or against liability arising out of the ownership or use of the property, or insurance protecting the creditor against the consumer's default or other credit loss. For purposes of this paragraph (b), the term “escrow account” has the same meaning as under Regulation X (12 C.F.R. 1024.17(b)), as amended.

Regulatory Commentary

35(b) Escrow Accounts

1. ***Principal dwelling.*** Section 1026.35(b)(1) applies to principal dwellings, including structures that are classified as personal property under State law. For example, an escrow account must be established on a higher-priced mortgage loan secured by a first lien on a manufactured home, boat, or trailer used as the consumer's principal dwelling. See the commentary under §§1026.2(a)(19) and (24), 1026.15, and 1026.23. Section 1026.35(b)(1) also applies to a higher-priced mortgage loan secured by a first lien on a condominium if it is in fact used as the consumer's principal dwelling. But see §1026.35(b)(2) for exemptions from the escrow requirement that may apply to such transactions.

35(b)(1) Requirement to escrow for property taxes and insurance

1. ***Administration of escrow accounts.*** Section 1026.35(b)(1) requires creditors to establish an escrow account for payment of property taxes and premiums for mortgage-related insurance required by the creditor before the consummation of a higher-priced mortgage loan secured by a first lien on a principal dwelling. Section 6 of RESPA, 12 U.S.C. 2605, and Regulation X, 12

C.F.R. 1024.17, address how escrow accounts must be administered.

- 2. *Optional insurance items.*** *Section 1026.35(b)(1) does not require that an escrow account be established for premiums for mortgage-related insurance that the creditor does not require in connection with the credit transaction, such as earthquake insurance or credit life insurance, even if the consumer voluntarily obtains such insurance.*
- 3. *Transactions not subject to §1026.35(b)(1).*** *Section 1026.35(b)(1) requires a creditor to establish an escrow account before consummation of a first-lien higher-priced mortgage loan. This requirement does not affect a creditor's ability, right, or obligation, pursuant to the terms of the legal obligation or applicable law, to offer or require an escrow account for a transaction that is not subject to §1026.35(b)(1).*

Section 3: HPML Escrow Account Exemptions

12 C.F.R. § 1026.35(b)(2)

HPML Escrow Account Exemptions - 12 C.F.R. § 1026.35(b)(2)

Regulatory Discussion

There are four categories of escrow account exemptions, as follows:

An escrow account is not required for the following four transaction types:

- Secured by shares in a cooperative
- Initial construction of a dwelling
- Temporary, or “bridge,” loan with a term of twelve months or less
- Reverse mortgage transaction

An escrow account is not required for the following insurance premiums:

- For dwellings in condominiums, planned unit developments (PUDs), or other common interest communities in which dwelling ownership requires participation in a governing association and where the governing association maintains a master policy insuring all dwellings

An escrow account is not required if, at the time of consummation:

- A higher-priced mortgage transaction secured by a first lien on a property is located in either a “*rural*” or “*underserved*” area;
- Note the time period:
 - during the preceding calendar year; or
 - if the application was received before April 1 of the current calendar year, during either of the two preceding calendar years

The creditor (and its affiliates together) extended no more than 2,000 mortgage transactions secured by first liens that were sold, assigned, or otherwise transferred to another person, or were subject at consummation to a commitment to be acquired by another person;

- Note the time period:
 - during the preceding calendar year; or
 - if the application was received before April 1 of the current calendar year, during either of the two preceding calendar years

The creditor (and its affiliates together) that regularly extended higher-priced mortgages secured by first liens had total assets of less than \$2 billion (adjusted annually); and

- Note the time period:
 - during the preceding December 31st; or
 - if the application was received before April 1 of the current calendar year, during either of the two preceding December 31sts

Neither the creditor nor its affiliates maintains an escrow account for any extension of consumer credit secured by real property or a dwelling that the creditor (or its affiliate) currently services, except for:

- Escrow accounts established first-lien higher-priced mortgage applications received on or after April 1, 2010, and before May 1, 2016; or
- Escrow accounts established after consummation as an accommodation to distressed consumers to avoid default or foreclosure.

NOTE: An escrow account *must be established*, for any first-lien higher-priced mortgage loan that, at the time of consummation, is subject to a commitment to be acquired by a person that does not satisfy the conditions in (b)(2)(iii), unless otherwise exempted by (b)(2) (as described in (b)(2)(v)).

The commentary provides additional substantial information relative to these exemptions.

Cooperatives Exemption- 12 C.F.R. § 1026.35(b)(2)(i)(A)

Regulatory Text

(b) Escrow accounts

(2) **Exemptions.** Notwithstanding paragraph (b)(1) of this section:

(i) An escrow account need not be established for:

(A) A transaction secured by shares in a cooperative;

Regulatory Commentary

None.

Construction Exemption - 12 C.F.R. § 1026.35(b)(2)(i)(B)

Regulatory Text

(b) Escrow accounts

(2) **Exemptions.** Notwithstanding paragraph (b)(1) of this section:

(i) An escrow account need not be established for:

(B) A transaction to finance the initial construction of a dwelling;

Regulatory Commentary**35(b)(2) Exemptions.****Paragraph 35(b)(2)(i).**

1. **Construction-permanent loans.** Under §1026.35(b)(2)(ii)(B), §1026.35 does not apply to a transaction to finance the initial construction of a dwelling. Section 1026.35 may apply, however, to permanent financing that replaces a construction loan, whether the permanent financing is extended by the same or a different creditor. When a construction loan may be permanently financed by the same creditor, §1026.17(c)(6)(ii) permits the creditor to give either one combined disclosure for both the construction financing and the permanent financing, or a separate set of disclosures for each of the two phases as though they were two separate transactions. See also comment 17(c)(6)-2. Section 1026.17(c)(6)(ii) addresses only how a creditor may elect to disclose a construction-permanent transaction. Which disclosure option a creditor elects under §1026.17(c)(6)(ii) does not affect the determination of whether the permanent phase of the transaction is subject to §1026.35. When the creditor discloses the two phases as separate transactions, the annual percentage rate for the permanent phase must be compared to the average prime offer rate for a transaction that is comparable to the permanent financing to determine whether the transaction is a higher-priced mortgage loan under §1026.35(a). When the creditor discloses the two phases as a single transaction, a single annual percentage rate, reflecting the appropriate charges from both phases, must be calculated for the transaction in accordance with §1026.22(a)(1) and appendix D to part 1026. This annual percentage rate must be compared to the average prime offer rate for a transaction that is comparable to the permanent financing to determine the transaction is a higher-priced mortgage loan under §1026.35(a). If the transaction is determined to be a higher-priced mortgage loan, only the permanent phase is subject to the requirement of §1026.35(b)(1) to establish and maintain an escrow account, and the period for which the escrow account must remain in place under §1026.35(b)(3) is measured from the time the conversion to the permanent phase financing occurs.

Temporary or “Bridge Loan Exemption - 12 C.F.R. § 1026.35(b)(2)(i)(C)**Regulatory Text****(b) Escrow accounts**

- (2) **Exemptions.** Notwithstanding paragraph (b)(1) of this section:

- (i) An escrow account need not be established for:

- (C) A temporary or “bridge” loan with a loan term of twelve months or less, such as a loan to purchase a new dwelling where the consumer plans to sell a current dwelling

within twelve months; or

Regulatory Commentary

None.

Reverse Mortgage Exemption - 12 C.F.R. § 1026.35(b)(2)(i)(D)

Regulatory Text

(b) Escrow accounts

(2) **Exemptions.** Notwithstanding paragraph (b)(1) of this section:

(D) A reverse mortgage transaction subject to §1026.33.

Regulatory Commentary

None.

Property Insurance, Common Interest Communities Exemption - 12 C.F.R. § 1026.35(b)(2)(ii)

Regulatory Text

(b) Escrow accounts

(2) **Exemptions.** Notwithstanding paragraph (b)(1) of this section:

(ii) Insurance premiums described in paragraph (b)(1) of this section need not be included in escrow accounts for loans secured by dwellings in condominiums, planned unit developments, or other common interest communities in which dwelling ownership requires participation in a governing association, where the governing association has an obligation to the dwelling owners to maintain a master policy insuring all dwellings.

Regulatory Commentary

35(b)(2) Exemptions.

Paragraph 35(b)(2)(ii).

1. **Limited exemption.** *A creditor is required to escrow for payment of property taxes for all first-lien higher-priced mortgage loans secured by condominium, planned unit development, or similar dwellings or units regardless of whether the creditor escrows for insurance premiums for such dwellings or units.*
2. **Planned unit developments.** *Planned unit developments (PUDs) are a form of property ownership often used in retirement communities, golf communities, and similar communities made up of homes located within a defined geographical area. PUDs usually have a homeowners' association or some other governing association, analogous to a condominium association and with similar authority and obligations. Thus, as with condominiums, PUDs often have master insurance policies that cover all units in the PUD. Under §1026.35(b)(2)(ii), if a PUD's governing association is obligated to maintain such a master insurance policy, an escrow account required by §1026.35(b)(1) for a transaction secured by a unit in the PUD need not include escrows for insurance. This exemption applies not only to condominiums and PUDs but also to any other type of property ownership arrangement that has a governing association with an obligation to maintain a master insurance policy.*
3. **More than one governing association associated with a dwelling.** *The limited exemption provided pursuant to §1026.35(b)(2)(ii) applies to each master insurance policy for properties with multiple governing associations, to the extent each governing association has an obligation to maintain a master insurance policy.*

Rural and Underserved County Exemption - 12 C.F.R. §§ 1026.35(b)(2)(iii) and 1026.35(b)(2)(iv)

Regulatory Text

(b) Escrow accounts

(2) **Exemptions.** Notwithstanding paragraph (b)(1) of this section:

(iii) Except as provided in paragraph (b)(2)(v) of this section, an escrow account need not be established for a transaction if, at the time of consummation:

- (A) During the preceding calendar year, or, if the application for the transaction was received before April 1 of the current calendar year, during either of the two preceding calendar years, the creditor extended a covered transaction, as defined by §1026.43(b)(1), secured by a first lien on a property that is located in an area that is either “rural” or “underserved,” as set forth in paragraph (b)(2)(iv) of this section;
- (B) During the preceding calendar year, or, if the application for the transaction was

received before April 1 of the current calendar year, during either of the two preceding calendar years, the creditor and its affiliates together extended no more than 2,000 covered transactions, as defined by §1026.43(b)(1), secured by first liens, that were sold, assigned, or otherwise transferred to another person, or that were subject at the time of consummation to a commitment to be acquired by another person;

- (C) As of the preceding December 31st, or, if the application for the transaction was received before April 1 of the current calendar year, as of either of the two preceding December 31sts, the creditor and its affiliates that regularly extended covered transactions, as defined by §1026.43(b)(1), secured by first liens, together, had total assets of less than \$2,000,000,000; this asset threshold shall adjust automatically each year, based on the year-to-year change in the average of the Consumer Price Index for Urban Wage Earners and Clerical Workers, not seasonally adjusted, for each 12-month period ending in November, with rounding to the nearest million dollars (see comment 35(b)(2)(iii)-1.iii for the applicable threshold); and
- (D) Neither the creditor nor its affiliate maintains an escrow account of the type described in paragraph (b)(1) of this section for any extension of consumer credit secured by real property or a dwelling that the creditor or its affiliate currently services, other than:
- (1) Escrow accounts established for first-lien higher-priced mortgage loans for which applications were received on or after April 1, 2010, and before May 1, 2016; or
 - (2) Escrow accounts established after consummation as an accommodation to distressed consumers to assist such consumers in avoiding default or foreclosure.

Regulatory Commentary

Paragraph 35(b)(2)(iii).

1. Requirements for exemption. Under §1026.35(b)(2)(iii), except as provided in §1026.35(b)(2)(v), a creditor need not establish an escrow account for taxes and insurance for a higher-priced mortgage loan, provided the following four conditions are satisfied when the higher-priced mortgage loan is consummated:

i. During the preceding calendar year, or during either of the two preceding calendar years if the application for the loan was received before April 1 of the current calendar year, a creditor extended a first-lien covered transaction, as defined in §1026.43(b)(1), secured by a property located in an area that is either “rural” or “underserved,” as set forth in §1026.35(b)(2)(iv).

A. In general, whether the rural-or-underserved test is satisfied depends on the creditor's activity during the preceding calendar year. However, if the application for the loan in question was received before April 1 of the current calendar year, the creditor may instead meet the rural-or-underserved test based on its activity during the next-to-last calendar year. This provides creditors with a grace period if their activity meets the rural-or-underserved test (in §1026.35(b)(2)(iii)(A)) in one calendar year but fails to meet it in the

next calendar year.

- B. A creditor meets the rural-or-underserved test for any higher-priced mortgage loan consummated during a calendar year if it extended a first lien covered transaction in the preceding calendar year secured by a property located in a rural-or-underserved area. If the creditor does not meet the rural-or-underserved test in the preceding calendar year, the creditor meets this condition for a higher-priced mortgage loan consummated during the current calendar year only if the application for the loan was received before April 1 of the current calendar year and the creditor extended a first-lien covered transaction during the next-to-last calendar year that is secured by a property located in a rural or underserved area. The following examples are illustrative:*
- 1. Assume that a creditor extended during 2016 a first lien covered transaction that is secured by a property located in a rural or underserved area. Because the creditor extended a first lien covered transaction during 2016 that is secured by a property located in a rural or underserved area, the creditor can meet this condition for exemption for any higher-priced mortgage loan consummated during 2017.*
 - 2. Assume that a creditor did not extend during 2016 a first lien covered transaction secured by a property that is located in a rural or underserved area. Assume further that the same creditor extended during 2015 a first lien covered transaction that is located in a rural or underserved area. Assume further that the creditor consummates a higher-priced mortgage loan in 2017 for which the application was received in November 2017. Because the creditor did not extend during 2016 a first lien covered transaction secured by a property that is located in a rural or underserved area, and the application was received on or after April 1, 2017, the creditor does not meet this condition for exemption. However, assume instead that the creditor consummates a higher-priced mortgage loan in 2017 based on an application received in February 2017. The creditor meets this condition for exemption for this loan because the application was received before April 1, 2017, and the creditor extended during 2015 a first lien covered transaction that is located in a rural or underserved area.*
- ii. The creditor and its affiliates together extended no more than 2,000 covered transactions, as defined in § 1026.43(b)(1), secured by first liens, that were sold, assigned, or otherwise transferred by the creditor or its affiliates to another person, or that were subject at the time of consummation to a commitment to be acquired by another person, during the preceding calendar year or during either of the two preceding calendar years if the application for the loan was received before April 1 of the current calendar year. For purposes of § 1026.35(b)(2)(iii)(B), a transfer of a first lien covered transaction to “another person” includes a transfer by a creditor to its affiliate.*
- A. In general, whether this condition is satisfied depends on the creditor's activity during the preceding calendar year. However, if the application for the loan in question is received before April 1 of the current calendar year, the creditor may instead meet this condition based on activity during the next-to-last calendar year. This provides creditors with a grace period if their activity falls at or below the threshold in one calendar year but exceeds it in the next calendar year.*
 - B. For example, assume that in 2015 a creditor and its affiliates together extended 1,500 loans that were sold, assigned, or otherwise transferred by the creditor or its affiliates to another person, or that were subject at the time of consummation to a commitment to be acquired by another person, and 2,500 such loans in 2016. Because the 2016 transaction activity exceeds the threshold but the 2015 transaction activity does not, the creditor*

satisfies this condition for exemption for a higher-priced mortgage loan consummated during 2017 if the creditor received the application for the loan before April 1, 2017, but does not satisfy this condition for a higher-priced mortgage loan consummated during 2017 if the application for the loan was received on or after April 1, 2017.

- C. For purposes of § 1026.35(b)(2)(iii)(B), extensions of first lien covered transactions, during the applicable time period, by all of a creditor's affiliates, as “affiliate” is defined in § 1026.32(b)(5), are counted toward the threshold in this section. “Affiliate” is defined in § 1026.32(b)(5) as “any company that controls, is controlled by, or is under common control with another company, as set forth in the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.).” Under the Bank Holding Company Act, a company has control over a bank or another company if it directly or indirectly or acting through one or more persons owns, controls, or has power to vote 25 per centum or more of any class of voting securities of the bank or company; it controls in any manner the election of a majority of the directors or trustees of the bank or company; or the Federal Reserve Board determines, after notice and opportunity for hearing, that the company directly or indirectly exercises a controlling influence over the management or policies of the bank or company. 12 U.S.C. 1841(a)(2).
- iii. As of the end of the preceding calendar year, or as of the end of either of the two preceding calendar years if the application for the loan was received before April 1 of the current calendar year, the creditor and its affiliates that regularly extended covered transactions secured by first liens, together, had total assets that are less than the applicable annual asset threshold.
- A. For purposes of § 1026.35(b)(2)(iii)(C), in addition to the creditor's assets, only the assets of a creditor's “affiliate” (as defined by § 1026.32(b)(5)) that regularly extended covered transactions (as defined by § 1026.43(b)(1)) secured by first liens, are counted toward the applicable annual asset threshold. See comment 35(b)(2)(iii)-1.ii.C for discussion of definition of “affiliate.”
- B. Only the assets of a creditor's affiliate that regularly extended first-lien covered transactions during the applicable period are included in calculating the creditor's assets. The meaning of “regularly extended” is based on the number of times a person extends consumer credit for purposes of the definition of “creditor” in § 1026.2(a)(17). Because covered transactions are “transactions secured by a dwelling,” consistent with § 1026.2(a)(17)(v), an affiliate regularly extended covered transactions if it extended more than five covered transactions in a calendar year. Also consistent with § 1026.2(a)(17)(v), because a covered transaction may be a high-cost mortgage subject to § 1026.32, an affiliate regularly extends covered transactions if, in any 12-month period, it extends more than one covered transaction that is subject to the requirements of § 1026.32 or one or more such transactions through a mortgage broker. Thus, if a creditor's affiliate regularly extended first-lien covered transactions during the preceding calendar year, the creditor's assets as of the end of the preceding calendar year, for purposes of the asset limit, take into account the assets of that affiliate. If the creditor, together with its affiliates that regularly extended first-lien covered transactions, exceeded the asset limit in the preceding calendar year—to be eligible to operate as a small creditor for transactions with applications received before April 1 of the current calendar year—the assets of the creditor's affiliates that regularly extended covered transactions in the year before the preceding calendar year are included in calculating the creditor's assets.

- C. *If multiple creditors share ownership of a company that regularly extended first-lien covered transactions, the assets of the company count toward the asset limit for a co-owner creditor if the company is an “affiliate,” as defined in § 1026.32(b)(5), of the co-owner creditor. Assuming the company is not an affiliate of the co-owner creditor by virtue of any other aspect of the definition (such as by the company and co-owner creditor being under common control), the company's assets are included toward the asset limit of the co-owner creditor only if the company is controlled by the co-owner creditor, “as set forth in the Bank Holding Company Act.” If the co-owner creditor and the company are affiliates (by virtue of any aspect of the definition), the co-owner creditor counts all of the company's assets toward the asset limit, regardless of the co-owner creditor's ownership share. Further, because the co-owner and the company are mutual affiliates the company also would count all of the co-owner's assets towards its own asset limit. See comment 35(b)(2)(iii)-1.ii.C for discussion of the definition of “affiliate.”*
- D. *A creditor satisfies the criterion in § 1026.35(b)(2)(iii)(C) for purposes of any higher-priced mortgage loan consummated during 2016, for example, if the creditor (together with its affiliates that regularly extended first-lien covered transactions) had total assets of less than the applicable asset threshold on December 31, 2015. A creditor that (together with its affiliates that regularly extended first-lien covered transactions) did not meet the applicable asset threshold on December 31, 2015, satisfies this criterion for a higher-priced mortgage loan consummated during 2016 if the application for the loan was received before April 1, 2016, and the creditor (together with its affiliates that regularly extended first-lien covered transactions) had total assets of less than the applicable asset threshold on December 31, 2014.*
- E. *Under § 1026.35(b)(2)(iii)(C), the \$2,000,000,000 asset threshold adjusts automatically each year based on the year-to-year change in the average of the Consumer Price Index for Urban Wage Earners and Clerical Workers, not seasonally adjusted, for each 12-month period ending in November, with rounding to the nearest million dollars. The Bureau will publish notice of the asset threshold each year by amending this comment. For calendar year 2022, the asset threshold is \$2,336,000,000. A creditor that together with the assets of its affiliates that regularly extended first-lien covered transactions during calendar year 2021 has total assets of less than \$2,336,000,000 on December 31, 2021, satisfies this criterion for purposes of any loan consummated in 2022 and for purposes of any loan consummated in 2023 for which the application was received before April 1, 2023. For historical purposes:*
- 1. For calendar year 2013, [omitted].*
 - 2. For calendar year 2014, [omitted].*
 - 3. For calendar year 2015, [omitted].*
 - 4. For calendar year 2016, [omitted].*
 - 5. For calendar year 2017, [omitted].*
 - 6. For calendar year 2018, [omitted].*
 - 7. For calendar year 2019, [omitted].*
 - 8. For calendar year 2020, the asset threshold was \$2,202,000,000. A creditor that together with the assets of its affiliates that regularly extended first-lien covered transactions during calendar year 2019 had total assets of less than \$2,202,000,000*

on December 31, 2019, satisfied this criterion for purposes of any loan consummated in 2020 and for purposes of any loan consummated in 2021 for which the application was received before April 1, 2021.

9. For calendar year 2021, the asset threshold was \$2,230,000,000. A creditor that together with the assets of its affiliates that regularly extended first-lien covered transactions during calendar year 2020 had total assets of less than \$2,230,000,000 on December 31, 2020, satisfied this criterion for purposes of any loan consummated in 2021 and for purposes of any loan consummated in 2022 for which the application was received before April 1, 2022^{iv}. The creditor and its affiliates do not maintain an escrow account for any mortgage transaction being serviced by the creditor or its affiliate at the time the transaction is consummated, except as provided in § 1026.35(b)(2)(iii)(D)(1) and (2). Thus, the exemption applies, provided the other conditions of § 1026.35(b)(2)(iii) (or, if applicable, the conditions for the exemption in § 1026.35(b)(2)(vi)) are satisfied, even if the creditor previously maintained escrow accounts for mortgage loans, provided it no longer maintains any such accounts except as provided in § 1026.35(b)(2)(iii)(D)(1) and (2). Once a creditor or its affiliate begins escrowing for loans currently serviced other than those addressed in § 1026.35(b)(2)(iii)(D)(1) and (2), however, the creditor and its affiliate become ineligible for the exemption in § 1026.35(b)(2)(iii) and (vi) on higher-priced mortgage loans they make while such escrowing continues. Thus, as long as a creditor (or its affiliate) services and maintains escrow accounts for any mortgage loans, other than as provided in § 1026.35(b)(2)(iii)(D)(1) and (2), the creditor will not be eligible for the exemption for any higher-priced mortgage loan it may make. For purposes of § 1026.35(b)(2)(iii) and (vi), a creditor or its affiliate “maintains” an escrow account only if it services a mortgage loan for which an escrow account has been established at least through the due date of the second periodic payment under the terms of the legal obligation.
 8. For calendar year 2020, the asset threshold was \$2,202,000,000. A creditor that together with the assets of its affiliates that regularly extended first-lien covered transactions during calendar year 2019 had total assets of less than \$2,202,000,000 on December 31, 2019, satisfied this criterion for purposes of any loan consummated in 2020 and for purposes of any loan consummated in 2010 [Sic; should be 2021] for which the application was received before April 1, 2021.
- iv. The creditor and its affiliates do not maintain an escrow account for any mortgage transaction being serviced by the creditor or its affiliate at the time the transaction is consummated, except as provided in §1026.35(b)(2)(iii)(D)(1) and (2). Thus, the exemption applies, provided the other conditions of §1026.35(b)(2)(iii) are satisfied, even if the creditor previously maintained escrow accounts for mortgage loans, provided it no longer maintains any such accounts except as provided in §1026.35(b)(2)(iii)(D)(1) and (2). Once a creditor or its affiliate begins escrowing for loans currently serviced other than those addressed in §1026.35(b)(2)(iii)(D)(1) and (2), however, the creditor and its affiliate become ineligible for the exemption in §1026.35(b)(2)(iii) on higher-priced mortgage loans they make while such escrowing continues. Thus, as long as a creditor (or its affiliate) services and maintains escrow accounts for any mortgage loans, other than as provided in §1026.35(b)(2)(iii)(D)(1) and (2), the creditor will not be eligible for the exemption for any higher-priced mortgage loan it may make. For purposes of §1026.35(b)(2)(iii), a creditor or its affiliate “maintains” an escrow account only if it services a mortgage loan for which an escrow account has been established at least through the due date of the second periodic payment under the terms of the legal obligation.

Paragraph 35(b)(2)(iii)(D)(1).

1. **Exception for certain accounts.** *Escrow accounts established for first-lien higher-priced mortgage loans for which applications were received on or after April 1, 2010, and before May 1, 2016, are not counted for purposes of §1026.35(b)(2)(iii)(D). For applications received on and after May 1, 2016, creditors, together with their affiliates, that establish new escrow accounts, other than those described in §1026.35(b)(2)(iii)(D)(2), do not qualify for the exemption provided under §1026.35(b)(2)(iii). Creditors, together with their affiliates, that continue to maintain escrow accounts established for first-lien higher-priced mortgage loans for which applications were received on or after April 1, 2010, and before May 1, 2016, still qualify for the exemption provided under §1026.35(b)(2)(iii) so long as they do not establish new escrow accounts for transactions for which they received applications on or after May 1, 2016, other than those described in §1026.35(b)(2)(iii)(D)(2), and they otherwise qualify under §1026.35(b)(2)(iii).*

Paragraph 35(b)(2)(iii)(D)(2).

1. **Exception for post-consummation escrow accounts for distressed consumers.** *An escrow account established after consummation for a distressed consumer does not count for purposes of §1026.35(b)(2)(iii)(D). Distressed consumers are consumers who are working with the creditor or servicer to attempt to bring the loan into a current status through a modification, deferral, or other accommodation to the consumer. A creditor, together with its affiliates, that establishes escrow accounts after consummation as a regular business practice, regardless of whether consumers are in distress, does not qualify for the exception described in §1026.35(b)(2)(iii)(D)(2).*

Regulatory Text**(b) Escrow accounts**

- (2) **Exemptions.** Notwithstanding paragraph (b)(1) of this section:

- (iv) For purposes of paragraph (b)(2)(iii)(A) of this section:

- (A) An area is “rural” during a calendar year if it is:

- (1) A county that is neither in a metropolitan statistical area nor in a micropolitan statistical area that is adjacent to a metropolitan statistical area, as those terms are defined by the U.S. Office of Management and Budget and as they are applied under currently applicable Urban Influence Codes (UICs), established by the United States Department of Agriculture's Economic Research Service (USDA-ERS);
- (2) A census block that is not in an urban area, as defined by the U.S. Census Bureau using the latest decennial census of the United States; or
- (3) A county or a census block that has been designated as rural by the Bureau pursuant to the application process established under section 89002 of the Helping Expand Lending Practices in Rural Communities Act, Public Law 114-94, title LXXXIX (2015). The provisions of this paragraph (b)(2)(iv)(A)(3) shall cease to have any force or effect on December 4, 2017.

- (B) An area is “underserved” during a calendar year if, according to Home Mortgage Disclosure Act (HMDA) data for the preceding calendar year, it is a county in which no more than two creditors extended covered transactions, as defined in §1026.43(b)(1), secured by first liens on properties in the county five or more times.
- (C) A property shall be deemed to be in an area that is rural or underserved in a particular calendar year if the property is:
- (1) Located in a county that appears on the lists published by the Bureau of counties that are rural or underserved, as defined by §1026.35(b)(2)(iv)(A)(1) or §1026.35(b)(2)(iv)(B), for that calendar year,
 - (2) Designated as rural or underserved for that calendar year by any automated tool that the Bureau provides on its public Web site, or
 - (3) Not designated as located in an urban area, as defined by the most recent delineation of urban areas announced by the Census Bureau, by any automated address search tool that the U.S. Census Bureau provides on its public Web site for that purpose and that specifically indicates the urban or rural designations of properties.

Regulatory Commentary

Paragraph 35(b)(2)(iv).

1. Requirements for “rural” or “underserved” status. *An area is considered to be “rural” or “underserved” during a calendar year for purposes of §1026.35(b)(2)(iii)(A) if it satisfies either the definition for “rural” or the definition for “underserved” in §1026.35(b)(2)(iv). A creditor’s extensions of covered transactions, as defined by §1026.43(b)(1), secured by first liens on properties located in such areas are considered in determining whether the creditor satisfies the condition in §1026.35(b)(2)(iii)(A). See comment 35(b)(2)(iii)-1.*

i. Under §1026.35(b)(2)(iv)(A), an area is rural during a calendar year if it is: A county that is neither in a metropolitan statistical area nor in a micropolitan statistical area that is adjacent to a metropolitan statistical area; a census block that is not in an urban area, as defined by the U.S. Census Bureau using the latest decennial census of the United States; or a county or a census block that has been designated as “rural” by the Bureau pursuant to the application process established in 2016. See Application Process for Designation of Rural Area under Federal Consumer Financial Law; Procedural Rule, 81 FR 11099 (Mar. 3, 2016). Metropolitan statistical areas and micropolitan statistical areas are defined by the Office of Management and Budget and applied under currently applicable Urban Influence Codes (UICs), established by the United States Department of Agriculture’s Economic Research Service (USDA-ERS). For purposes of §1026.35(b)(2)(iv)(A)(1), “adjacent” has the meaning applied by the USDA-ERS in determining a county’s UIC; as so applied, “adjacent” entails a county not only being physically contiguous with a metropolitan statistical area but also meeting certain minimum population commuting patterns. A county is a “rural” area under §1026.35(b)(2)(iv)(A)(1) if the USDA-ERS categorizes the county under UIC 4, 6, 7, 8, 9, 10, 11, or 12. Descriptions of UICs are available on the USDA-ERS Web site at <http://www.ers.usda.gov/data-products/urban-influence-codes/documentation.aspx>. A county for which there is no currently applicable UIC (because the county has been created since the USDA-ERS last categorized counties) is a rural area

only if all counties from which the new county's land was taken are themselves rural under currently applicable UICs.

ii. Under §1026.35(b)(2)(iv)(B), an area is underserved during a calendar year if, according to Home Mortgage Disclosure Act (HMDA) data for the preceding calendar year, it is a county in which no more than two creditors extended covered transactions, as defined in §1026.43(b)(1), secured by first liens, five or more times on properties in the county. Specifically, a county is an “underserved” area if, in the applicable calendar year's public HMDA aggregate dataset, no more than two creditors have reported five or more first-lien covered transactions, with HMDA geocoding that places the properties in that county. For purposes of this determination, because only covered transactions are counted, all first-lien originations (and only first-lien originations) reported in the HMDA data are counted except those for which the owner-occupancy status is reported as “Not owner-occupied” (HMDA code 2), the property type is reported as “Multifamily” (HMDA code 3), the applicant's or co-applicant's race is reported as “Not applicable” (HMDA code 7), or the applicant's or co-applicant's sex is reported as “Not applicable” (HMDA code 4). The most recent HMDA data are available at <http://www.ffiec.gov/hmda>.

iii.

A. Each calendar year, the Bureau applies the “underserved” area test and the “rural” area test to each county in the United States. If a county satisfies either test, the Bureau will include the county on a published list of counties that are rural or underserved as defined by §1026.35(b)(2)(iv)(A)(1) or §1026.35(b)(2)(iv)(B) for a particular calendar year, even if the county contains census blocks that are designated by the Census Bureau as urban. To facilitate compliance with appraisal requirements in §1026.35(c), the Bureau also creates a list of those counties that are rural under the Bureau's definition without regard to whether the counties are underserved. To the extent that U.S. territories are treated by the Census Bureau as counties and are neither metropolitan statistical areas nor micropolitan statistical areas adjacent to metropolitan statistical areas, such territories will be included on these lists as rural areas in their entireties. The Bureau will post on its public Web site the applicable lists for each calendar year by the end of that year and publish such lists in the FEDERAL REGISTER, to assist creditors in ascertaining the availability to them of the exemption during the following year. Any county that the Bureau includes on its published lists of counties that are rural or underserved under the Bureau's definitions for a particular year is deemed to qualify as a rural or underserved area for that calendar year for purposes of §1026.35(b)(2)(iv), even if the county contains census blocks that are designated by the Census Bureau as urban. A property located in such a listed county is deemed to be located in a rural or underserved area, even if the census block in which the property is located is designated as urban.

B. A property is deemed to be in a rural or underserved area according to the definitions in §1026.35(b)(2)(iv) during a particular calendar year if it is identified as such by an automated tool provided on the Bureau's public Web site. A printout or electronic copy from the automated tool provided on the Bureau's public Web site designating a particular property as being in a rural or underserved area may be used as “evidence of compliance” that a property is in a rural or underserved area, as defined in §1026.35(b)(2)(iv)(A) and (B), for purposes of the record retention requirements in §1026.25.

C. The U.S. Census Bureau may provide on its public Web site an automated address search tool that specifically indicates if a property is located in an urban area for purposes of the Census Bureau's most recent delineation of urban areas. For any calendar year that

began after the date on which the Census Bureau announced its most recent delineation of urban areas, a property is deemed to be in a rural area if the search results provided for the property by any such automated address search tool available on the Census Bureau's public Web site do not designate the property as being in an urban area. A printout or electronic copy from such an automated address search tool available on the Census Bureau's public Web site designating a particular property as not being in an urban area may be used as "evidence of compliance" that the property is in a rural area, as defined in §1026.35(b)(2)(iv)(A), for purposes of the record retention requirements in §1026.25.

D. For a given calendar year, a property qualifies for a safe harbor if any of the enumerated safe harbors affirms that the property is in a rural or underserved area or not in an urban area. For example, the Census Bureau's automated address search tool may indicate a property is in an urban area, but the Bureau's rural or underserved counties list indicates the property is in a rural or underserved county. The property in this example is in a rural or underserved area because it qualifies under the safe harbor for the rural or underserved counties list. The lists of counties published by the Bureau, the automated tool on its public Web site, and the automated address search tool available on the Census Bureau's public Web site, are not the exclusive means by which a creditor can demonstrate that a property is in a rural or underserved area as defined in §1026.35(b)(2)(iv)(A) and (B). However, creditors are required to retain "evidence of compliance" in accordance with §1026.25, including determinations of whether a property is in a rural or underserved area as defined in §1026.35(b)(2)(iv)(A) and (B).

2. Examples.

- i. An area is considered "rural" for a given calendar year based on the most recent available UIC designations by the USDA-ERS and the most recent available delineations of urban areas by the U.S. Census Bureau that are available at the beginning of the calendar year. These designations and delineations are updated by the USDA-ERS and the U.S. Census Bureau respectively once every ten years. As an example, assume a creditor makes first lien covered transactions in Census Block X that is located in County Y during calendar year 2017. As of January 1, 2017, the most recent UIC designations were published in the second quarter of 2013, and the most recent delineation of urban areas was announced in the FEDERAL REGISTER in 2012, see U.S. Census Bureau, *Qualifying Urban Areas for the 2010 Census*, 77 FR 18652 (Mar. 27, 2012). To determine whether County Y is rural under the Bureau's definition during calendar year 2017, the creditor can use USDA-ERS's 2013 UIC designations. If County Y is not rural, the creditor can use the U.S. Census Bureau's 2012 delineation of urban areas to determine whether Census Block X is rural and is therefore a "rural" area for purposes of §1026.35(b)(2)(iv)(A). In addition, an area is considered "rural" if it is a county or a census block that has been designated as rural by the Bureau using the application process established in 2016. See *Application Process for Designation of Rural Area under Federal Consumer Financial Law; Procedural Rule*, 81 FR 11099 (Mar. 3, 2016). Designations under this process are time-limited and expire on December 4, 2017.
- ii. A county is considered an "underserved" area for a given calendar year based on the most recent available HMDA data. For example, assume a creditor makes first lien covered transactions in County Y during calendar year 2016, and the most recent HMDA data are for calendar year 2015, published in the third quarter of 2016. The creditor will use the 2015 HMDA data to determine "underserved" area status for County Y in calendar year 2016 for the purposes of qualifying for the "rural or underserved" exemption for any higher-priced mortgage loans consummated in calendar year 2017 or for any higher-priced

mortgage loan consummated during 2018 for which the application was received before April 1, 2018.

FIPS Code	County Name	State
17001	Adams County	IL
17003	Alexander County	IL
17009	Brown County	IL
17011	Bureau County	IL
17015	Carroll County	IL
17017	Cass County	IL
17023	Clark County	IL
17025	Clay County	IL
17029	Coles County	IL
17033	Crawford County	IL
17035	Cumberland County	IL
17041	Douglas County	IL
17045	Edgar County	IL
17047	Edwards County	IL
17049	Effingham County	IL
17051	Fayette County	IL
17055	Franklin County	IL
17059	Gallatin County	IL
17061	Greene County	IL
17065	Hamilton County	IL
17067	Hancock County	IL
17069	Hardin County	IL
17071	Henderson County	IL
17075	Iroquois County	IL
17079	Jasper County	IL
17081	Jefferson County	IL
17085	Jo Daviess County	IL

17087	Johnson County	IL
17101	Lawrence County	IL
17109	McDonough County	IL
17125	Mason County	IL
17127	Massac County	IL
17135	Montgomery County	IL
17139	Moultrie County	IL
17145	Perry County	IL
17149	Pike County	IL
17151	Pope County	IL
17153	Pulaski County	IL
17157	Randolph County	IL
17159	Richland County	IL
17165	Saline County	IL
17169	Schuyler County	IL
17171	Scott County	IL
17173	Shelby County	IL
17181	Union County	IL
17185	Wabash County	IL
17187	Warren County	IL
17189	Washington County	IL
17191	Wayne County	IL
17193	White County	IL

FIPS Code	County Name	State
18009	Blackford County	IN
18025	Crawford County	IN
18027	Daviess County	IN
18037	Dubois County	IN
18045	Fountain County	IN

18047	Franklin County	IN
18049	Fulton County	IN
18051	Gibson County	IN
18055	Greene County	IN
18075	Jay County	IN
18083	Knox County	IN
18087	LaGrange County	IN
18101	Martin County	IN
18117	Orange County	IN
18121	Parke County	IN
18123	Perry County	IN
18131	Pulaski County	IN
18135	Randolph County	IN
18137	Ripley County	IN
18139	Rush County	IN
18147	Spencer County	IN
18149	Starke County	IN
18151	Steuben County	IN
18155	Switzerland County	IN
18159	Tipton County	IN
18171	Warren County	IN
18177	Wayne County	IN
18181	White County	IN

FIPS Code	County Name	State
20001	Allen County	KS
20003	Anderson County	KS
20007	Barber County	KS
20009	Barton County	KS
20011	Bourbon County	KS

20013	Brown County	KS
20017	Chase County	KS
20019	Chautauqua County	KS
20021	Cherokee County	KS
20023	Cheyenne County	KS
20025	Clark County	KS
20027	Clay County	KS
20029	Cloud County	KS
20031	Coffey County	KS
20033	Comanche County	KS
20039	Decatur County	KS
20041	Dickinson County	KS
20047	Edwards County	KS
20049	Elk County	KS
20051	Ellis County	KS
20053	Ellsworth County	KS
20055	Finney County	KS
20057	Ford County	KS
20063	Gove County	KS
20065	Graham County	KS
20067	Grant County	KS
20069	Gray County	KS
20071	Greeley County	KS
20073	Greenwood County	KS
20075	Hamilton County	KS
20077	Harper County	KS
20081	Haskell County	KS
20083	Hodgeman County	KS
20089	Jewell County	KS
20093	Kearny County	KS
20097	Kiowa County	KS

20099	Labette County	KS
20101	Lane County	KS
20105	Lincoln County	KS
20109	Logan County	KS
20113	McPherson County	KS
20115	Marion County	KS
20117	Marshall County	KS
20119	Meade County	KS
20123	Mitchell County	KS
20125	Montgomery County	KS
20127	Morris County	KS
20129	Morton County	KS
20131	Nemaha County	KS
20133	Neosho County	KS
20135	Ness County	KS
20137	Norton County	KS
20141	Osborne County	KS
20143	Ottawa County	KS
20145	Pawnee County	KS
20147	Phillips County	KS
20151	Pratt County	KS
20153	Rawlins County	KS
20157	Republic County	KS
20159	Rice County	KS
20163	Rooks County	KS
20165	Rush County	KS
20167	Russell County	KS
20169	Saline County	KS
20171	Scott County	KS
20175	Seward County	KS
20179	Sheridan County	KS

20181	Sherman County	KS
20183	Smith County	KS
20185	Stafford County	KS
20187	Stanton County	KS
20189	Stevens County	KS
20193	Thomas County	KS
20195	Trego County	KS
20199	Wallace County	KS
20201	Washington County	KS
20203	Wichita County	KS
20205	Wilson County	KS
20207	Woodson County	KS

FIPS Code	County Name	State
26001	Alcona County	MI
26003	Alger County	MI
26007	Alpena County	MI
26009	Antrim County	MI
26011	Arenac County	MI
26013	Baraga County	MI
26019	Benzie County	MI
26029	Charlevoix County	MI
26031	Cheboygan County	MI
26033	Chippewa County	MI
26035	Clare County	MI
26039	Crawford County	MI
26041	Delta County	MI
26043	Dickinson County	MI
26047	Emmet County	MI
26051	Gladwin County	MI

26053	Gogebic County	MI
26055	Grand Traverse County	MI
26061	Houghton County	MI
26063	Huron County	MI
26069	Iosco County	MI
26071	Iron County	MI
26079	Kalkaska County	MI
26083	Keweenaw County	MI
26085	Lake County	MI
26089	Leelanau County	MI
26095	Luce County	MI
26097	Mackinac County	MI
26101	Manistee County	MI
26103	Marquette County	MI
26105	Mason County	MI
26109	Menominee County	MI
26113	Missaukee County	MI
26119	Montmorency County	MI
26123	Newaygo County	MI
26127	Oceana County	MI
26129	Ogemaw County	MI
26131	Ontonagon County	MI
26133	Osceola County	MI
26135	Oscoda County	MI
26137	Otsego County	MI
26141	Presque Isle County	MI
26143	Roscommon County	MI
26151	Sanilac County	MI
26153	Schoolcraft County	MI
26157	Tuscola County	MI
26165	Wexford County	MI

FIPS Code	County Name	State
29001	Adair County	MO
29005	Atchison County	MO
29009	Barry County	MO
29011	Barton County	MO
29015	Benton County	MO
29023	Butler County	MO
29029	Camden County	MO
29033	Carroll County	MO
29035	Carter County	MO
29039	Cedar County	MO
29041	Chariton County	MO
29045	Clark County	MO
29053	Cooper County	MO
29055	Crawford County	MO
29057	Dade County	MO
29061	Daviess County	MO
29065	Dent County	MO
29067	Douglas County	MO
29069	Dunklin County	MO
29073	Gasconade County	MO
29075	Gentry County	MO
29079	Grundy County	MO
29081	Harrison County	MO
29083	Henry County	MO
29085	Hickory County	MO
29087	Holt County	MO
29089	Howard County	MO
29091	Howell County	MO

29093	Iron County	MO
29103	Knox County	MO
29109	Lawrence County	MO
29111	Lewis County	MO
29115	Linn County	MO
29117	Livingston County	MO
29121	Macon County	MO
29123	Madison County	MO
29125	Maries County	MO
29127	Marion County	MO
29129	Mercer County	MO
29131	Miller County	MO
29133	Mississippi County	MO
29137	Monroe County	MO
29139	Montgomery County	MO
29141	Morgan County	MO
29143	New Madrid County	MO
29149	Oregon County	MO
29153	Ozark County	MO
29155	Pemiscot County	MO
29157	Perry County	MO
29161	Phelps County	MO
29163	Pike County	MO
29169	Pulaski County	MO
29171	Putnam County	MO
29173	Ralls County	MO
29179	Reynolds County	MO
29181	Ripley County	MO
29185	St. Clair County	MO
29186	Ste. Genevieve County	MO
29197	Schuyler County	MO

29199	Scotland County	MO
29203	Shannon County	MO
29205	Shelby County	MO
29207	Stoddard County	MO
29211	Sullivan County	MO
29215	Texas County	MO
29217	Vernon County	MO
29221	Washington County	MO
29223	Wayne County	MO
29227	Worth County	MO
29229	Wright County	MO

FIPS Code	County Name	State
30001	Beaverhead County	MT
30003	Big Horn County	MT
30005	Blaine County	MT
30007	Broadwater County	MT
30011	Carter County	MT
30015	Chouteau County	MT
30017	Custer County	MT
30019	Daniels County	MT
30021	Dawson County	MT
30023	Deer Lodge County	MT
30025	Fallon County	MT
30027	Fergus County	MT
30029	Flathead County	MT
30031	Gallatin County	MT
30033	Garfield County	MT
30035	Glacier County	MT
30037	Golden Valley County	MT

30039	Granite County	MT
30041	Hill County	MT
30043	Jefferson County	MT
30045	Judith Basin County	MT
30047	Lake County	MT
30049	Lewis and Clark County	MT
30051	Liberty County	MT
30053	Lincoln County	MT
30055	McCone County	MT
30057	Madison County	MT
30059	Meagher County	MT
30061	Mineral County	MT
30065	Musselshell County	MT
30067	Park County	MT
30069	Petroleum County	MT
30071	Phillips County	MT
30073	Pondera County	MT
30075	Powder River County	MT
30077	Powell County	MT
30079	Prairie County	MT
30081	Ravalli County	MT
30083	Richland County	MT
30085	Roosevelt County	MT
30087	Rosebud County	MT
30089	Sanders County	MT
30091	Sheridan County	MT
30093	Silver Bow County	MT
30095	Stillwater County	MT
30097	Sweet Grass County	MT
30099	Teton County	MT
30101	Toole County	MT

30103	Treasure County	MT
30105	Valley County	MT
30107	Wheatland County	MT
30109	Wibaux County	MT

FIPS Code	County Name	State
38001	Adams County	ND
38003	Barnes County	ND
38005	Benson County	ND
38007	Billings County	ND
38009	Bottineau County	ND
38011	Bowman County	ND
38013	Burke County	ND
38019	Cavalier County	ND
38021	Dickey County	ND
38023	Divide County	ND
38025	Dunn County	ND
38027	Eddy County	ND
38029	Emmons County	ND
38031	Foster County	ND
38033	Golden Valley County	ND
38037	Grant County	ND
38039	Griggs County	ND
38041	Hettinger County	ND
38043	Kidder County	ND
38045	LaMoure County	ND
38047	Logan County	ND
38049	McHenry County	ND
38051	McIntosh County	ND
38053	McKenzie County	ND

38055	McLean County	ND
38057	Mercer County	ND
38061	Mountrail County	ND
38063	Nelson County	ND
38067	Pembina County	ND
38069	Pierce County	ND
38071	Ramsey County	ND
38073	Ransom County	ND
38075	Renville County	ND
38079	Rolette County	ND
38081	Sargent County	ND
38083	Sheridan County	ND
38085	Sioux County	ND
38087	Slope County	ND
38089	Stark County	ND
38091	Steele County	ND
38093	Stutsman County	ND
38095	Towner County	ND
38097	Traill County	ND
38099	Walsh County	ND
38101	Ward County	ND
38103	Wells County	ND
38105	Williams County	ND

FIPS Code	County Name	State
39001	Adams County	OH
39065	Hardin County	OH
39067	Harrison County	OH
39069	Henry County	OH
39071	Highland County	OH

39075	Holmes County	OH
39079	Jackson County	OH
39105	Meigs County	OH
39107	Mercer County	OH
39111	Monroe County	OH
39115	Morgan County	OH
39121	Noble County	OH
39125	Paulding County	OH
39131	Pike County	OH
39135	Preble County	OH
39137	Putnam County	OH
39163	Vinton County	OH
39171	Williams County	OH
39175	Wyandot County	OH

FIPS Code	County Name	State
55001	Adams County	WI
55003	Ashland County	WI
55005	Barron County	WI
55007	Bayfield County	WI
55011	Buffalo County	WI
55013	Burnett County	WI
55019	Clark County	WI
55023	Crawford County	WI
55029	Door County	WI
55037	Florence County	WI
55041	Forest County	WI
55047	Green Lake County	WI
55051	Iron County	WI

55053	Jackson County	WI
55057	Juneau County	WI
55065	Lafayette County	WI
55067	Langlade County	WI
55077	Marquette County	WI
55081	Monroe County	WI
55085	Oneida County	WI
55091	Pepin County	WI
55095	Polk County	WI
55099	Price County	WI
55103	Richland County	WI
55107	Rusk County	WI
55113	Sawyer County	WI
55119	Taylor County	WI
55121	Trempealeau County	WI
55123	Vernon County	WI
55125	Vilas County	WI
55129	Washburn County	WI
55135	Waupaca County	WI
55137	Waushara County	WI

No Exemptions for Sales to Some Third Parties - 12 C.F.R. § 1026.35(b)(2)(v)

Regulatory Text

(b) Escrow accounts

(2) **Exemptions.** Notwithstanding paragraph (b)(1) of this section:

(v) Notwithstanding paragraph (b)(2)(iii) of this section, an escrow account must be established pursuant to paragraph (b)(1) of this section for any first-lien higher-priced

mortgage loan that, at consummation, is subject to a commitment to be acquired by a person that does not satisfy the conditions in paragraph (b)(2)(iii) of this section, unless otherwise exempted by this paragraph (b)(2).

Regulatory Commentary

Paragraph 35(b)(2)(v).

1. **Forward commitments.** *A creditor may make a mortgage loan that will be transferred or sold to a purchaser pursuant to an agreement that has been entered into at or before the time the loan is consummated. Such an agreement is sometimes known as a “forward commitment.” Even if a creditor is otherwise eligible for the exemption in §1026.35(b)(2)(iii), a first-lien higher-priced mortgage loan that will be acquired by a purchaser pursuant to a forward commitment is subject to the requirement to establish an escrow account under §1026.35(b)(1) unless the purchaser is also eligible for the exemption in §1026.35(b)(2)(iii) or the transaction is otherwise exempt under §1026.35(b)(2). The escrow requirement applies to any such transaction, whether the forward commitment provides for the purchase and sale of the specific transaction or for the purchase and sale of mortgage obligations with certain prescribed criteria that the transaction meets. For example, assume a creditor that qualifies for the exemption in §1026.35(b)(2)(iii) makes a higher-priced mortgage loan that meets the purchase criteria of an investor with which the creditor has an agreement to sell such mortgage obligations after consummation. If the investor is ineligible for the exemption in §1026.35(b)(2)(iii), an escrow account must be established for the transaction before consummation in accordance with §1026.35(b)(1) unless the transaction is otherwise exempt (such as a reverse mortgage or home equity line of credit).*

Escrow Requirement Limited to Insured Institution - 12 C.F.R. § 1026.35(b)(2)(vi)

Regulatory Text

(b) Escrow accounts

- (2) **Exemptions.** Notwithstanding paragraph (b)(1) of this section:

vi) Except as provided in paragraph (b)(2)(v) of this section, an escrow account need not be established for a transaction made by a creditor that is an insured depository institution or insured credit union, if at the time of consummation:

- (A)** As of the preceding December 31st, or, if the application for the transaction was received before April 1 of the current calendar year, as of either of the two preceding December 31sts, the insured depository institution or insured credit union had assets of \$10,000,000,000 or less, adjusted annually for inflation using the Consumer Price Index for Urban Wage Earners and Clerical Workers, not seasonally adjusted, for each 12-month period ending in November (see comment

35(b)(2)(vi)(A)-1 for the applicable threshold);

- (B) During the preceding calendar year, or, if the application for the transaction was received before April 1 of the current calendar year, during either of the two preceding calendar years, the creditor, and its affiliates, as defined in § 1026.32(b)(5), together extended no more than 1,000 covered transactions secured by a first lien on a principal dwelling; and
- (C) The transaction satisfies the criteria in paragraphs (b)(2)(iii)(A) and (b)(2)(iii)(D) of this section.

Regulatory Commentary

Paragraph 35(b)(2)(vi)(A).

1. *The asset threshold in § 1026.35(b)(2)(vi)(A) will adjust automatically each year, based on the year-to-year change in the average of the Consumer Price Index for Urban Wage Earners and Clerical Workers, not seasonally adjusted, for each 12-month period ending in November, with rounding to the nearest million dollars. Unlike the asset threshold in § 1026.35(b)(2)(iii) and the other thresholds in § 1026.35(b)(2)(vi), affiliates are not considered in calculating compliance with this threshold. The Bureau will publish notice of the asset threshold each year by amending this comment. For calendar year 2022, the asset threshold is \$10,473,000,000. A creditor that is an insured depository institution or insured credit union that during calendar year 2021 had assets of \$10,473,000,000 or less on December 31, 2021, satisfies this criterion for purposes of any loan consummated in 2022 and for purposes of any loan secured by a first lien on a principal dwelling of a consumer consummated in 2023 for which the application was received before April 1, 2023. For historical purposes:*
 1. *For calendar year 2021, the asset threshold was \$10,000,000,000. Creditors that had total assets of 10,000,000,000 or less on December 31, 2020, satisfied this criterion for purposes of any loan consummated in 2021 and for purposes of any loan secured by a first lien on a principal dwelling of a consumer consummated in 2022 for which the application was received before April 1, 2022.*

Section 4: Escrow Accounts – Cancellation

12 C.F.R. § 1026.35(b)(3)

Escrow Accounts - Cancellation - 12 C.F.R. § 1026.35(b)(3)

Regulatory Discussion

The section describes the conditions which must be satisfied in order for the creditor to cancel an escrow account. Generally, an escrow account may be cancelled upon the earlier of:

- Termination of the debt; or
- Receipt of a consumer's request to cancel (no earlier than five years after consummation of the debt).

Except: an escrow account shall not be cancelled pursuant to a consumer's request unless:

- The unpaid principal balance is less than 80% of the “*original value*” (see commentary for definition) of the property securing the debt; and
- The consumer currently is not delinquent or in default on the debt.

Regulatory Text

(b) Escrow accounts

(3) Cancellation

(i) **General.** Except as provided in paragraph (b)(3)(ii) of this section, a creditor or servicer may cancel an escrow account required in paragraph (b)(1) of this section only upon the earlier of:

(A) Termination of the underlying debt obligation; or

(B) Receipt no earlier than five years after consummation of a consumer's request to cancel the escrow account.

(ii) **Delayed cancellation.** Notwithstanding paragraph (b)(3)(i) of this section, a creditor or servicer shall not cancel an escrow account pursuant to a consumer's request described in paragraph (b)(3)(i)(B) of this section unless the following conditions are satisfied:

(A) The unpaid principal balance is less than 80 percent of the original value of the property securing the underlying debt obligation; and

(B) The consumer currently is not delinquent or in default on the underlying debt obligation.

Regulatory Commentary

35(b)(3) Cancellation.

- 1. Termination of underlying debt obligation.** Section 1026.35(b)(3)(i) provides that, in general, an escrow account required by §1026.35(b)(1) may not be cancelled until the underlying debt obligation is terminated or the consumer requests cancellation at least five years after consummation. Methods by which an underlying debt obligation may be terminated include, among other things, repayment, refinancing, rescission, and foreclosure.
- 2. Minimum durations.** Section 1026.35(b)(3) establishes minimum durations for which escrow accounts established pursuant to §1026.35(b)(1) must be maintained. This requirement does not affect a creditor's right or obligation, pursuant to the terms of the legal obligation or applicable law, to offer or require an escrow account thereafter.
- 3. Less than eighty percent unpaid principal balance.** The term "original value" in §1026.35(b)(3)(ii)(A) means the lesser of the sales price reflected in the sales contract for the property, if any, or the appraised value of the property at the time the transaction was consummated. In determining whether the unpaid principal balance has reached less than 80 percent of the original value of the property securing the underlying debt, the creditor or servicer shall count any subordinate lien of which it has reason to know. If the consumer certifies in writing that the equity in the property securing the underlying debt obligation is unencumbered by a subordinate lien, the creditor or servicer may rely upon the certification in making its determination unless it has actual knowledge to the contrary.

Section 5: Definitions for HPML Appraisals

12 C.F.R. § 1026.35(c)

Appraisals - Definitions - 12 C.F.R. § 1026.35(c)(1)

Regulatory Discussion

This section defines seven specific terms associated with appraisals with respect to higher-priced mortgage transactions. They are bolded in the regulatory text below.

Regulatory Text

(c) Appraisals.

(1) **Definitions.** For purposes of this section:

- (i) **Certified or licensed appraiser** means a person who is certified or licensed by the State agency in the State in which the property that secures the transaction is located, and who performs the appraisal in conformity with the Uniform Standards of Professional Appraisal Practice and the requirements applicable to appraisers in title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended (12 U.S.C. 3331 *et seq.*), and any implementing regulations in effect at the time the appraiser signs the appraiser's certification.
- (ii) **Credit risk** means the financial risk that a consumer will default on a loan.
- (iii) **Manufactured home** has the same meaning as in 24 C.F.R. 3280.2.
- (iv) **Manufacturer's invoice** means a document issued by a manufacturer and provided with a manufactured home to a retail dealer that separately details the wholesale (base) prices at the factory for specific models or series of manufactured homes and itemized options (large appliances, built-in items and equipment), plus actual itemized charges for freight from the factory to the dealer's lot or the homesite (including any rental of wheels and axles) and for any sales taxes to be paid by the dealer. The invoice may recite such prices and charges on an itemized basis or by stating an aggregate price or charge, as appropriate, for each category.
- (v) **National Registry** means the database of information about State certified and licensed appraisers maintained by the Appraisal Subcommittee of the Federal Financial Institutions Examination Council.
- (vi) **New manufactured home** means a manufactured home that has not been previously occupied.
- (vii) **State agency** means a "State appraiser certifying and licensing agency" recognized in accordance with section 1118(b) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3347(b)) and any implementing regulations.

Regulatory Commentary

35(c)(1)(i) Certified or Licensed Appraiser

1. **USPAP.** *The Uniform Standards of Professional Appraisal Practice (USPAP) are established by the Appraisal Standards Board of the Appraisal Foundation (as defined in 12 U.S.C. 3350(9)). Under §1026.35(c)(1)(i), the relevant USPAP standards are those found in the edition of USPAP and that are in effect at the time the appraiser signs the appraiser's certification.*
2. **Appraiser's certification.** *The appraiser's certification refers to the certification that must be signed by the appraiser for each appraisal assignment. This requirement is specified in USPAP Standards Rule 2-3.*
3. **FIRREA title XI and implementing regulations.** *The relevant regulations are those prescribed under section 1110 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), as amended (12 U.S.C. 3339), that relate to an appraiser's development and reporting of the appraisal in effect at the time the appraiser signs the appraiser's certification. Paragraph (3) of FIRREA section 1110 (12 U.S.C. 3339(3)), which relates to the review of appraisals, is not relevant for determining whether an appraiser is a certified or licensed appraiser under §1026.35(c)(1)(i).*

Section 6: HPML Appraisal Exemptions

12 C.F.R. § 1026.35 (c)(2)

Introduction – Exemptions - 12 C.F.R. § 1026.35(c)(2)

Regulatory Discussion

This section describes eight specific transactions that are exempt from the appraisal requirements for higher-priced mortgage transactions.

The exemptions in items (i) through (vi) are relatively straightforward; the exemptions in items (vii) and (viii) are more complex.

The commentary provides important additional information for the exemptions in items (i), (ii), (iii), (iv), (vii), and (viii).

Regulatory Commentary

35(c)(2) Exemptions

1. ***Compliance with title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA).*** Section 1026.35(c)(2) provides exemptions solely from the requirements of section 1026.35(c)(3) through (6). Institutions subject to the requirements of FIRREA and its implementing regulations that make a loan qualifying for an exemption under section 1026.35(c)(2) must still comply with appraisal and evaluation requirements under FIRREA and its implementing regulations.

Qualified Mortgage Exemption - 12 C.F.R. § 1026.35(c)(2)(i)

Regulatory Text

(c) Appraisals.

- (2) **Exemptions.** Unless otherwise specified, the requirements in paragraph (c)(3) through (6) of this section do not apply to the following types of transactions:

- (i) A loan that satisfies the criteria of a qualified mortgage as defined pursuant to 15 U.S.C. 1639c;

Regulatory Commentary

Paragraph 35(c)(2)(i)

1. **Qualified mortgage criteria.** Under §1026.35(c)(2)(i), a loan is exempt from the appraisal requirements of §1026.35(c) if either:

i. The loan is

(1) subject to the Bureau's ability-to-repay requirements in §1026.43 as a “covered transaction” (defined in §1026.43(b)(1)) and (2) a qualified mortgage pursuant to the Bureau's rules or, for loans insured, guaranteed, or administered by the U.S. Department of Housing and Urban Development (HUD), U.S. Department of Veterans Affairs (VA), U.S. Department of Agriculture (USDA), or Rural Housing Service (RHS), a qualified mortgage pursuant to applicable rules prescribed by those agencies (but only once such rules are in effect; otherwise, the Bureau's definition of a qualified mortgage applies to those loans); or

ii. The loan is

(1) not subject to the Bureau's ability-to-repay requirements in §1026.43 as a “covered transaction” (defined in §1026.43(b)(1)), but (2) meets the criteria for a qualified mortgage in the Bureau's rules or, for loans insured, guaranteed, or administered by HUD, VA, USDA, or RHS, meets the criteria for a qualified mortgage in the applicable rules prescribed by those agencies (but only once such rules are in effect; otherwise, the Bureau's criteria for a qualified mortgage applies to those loans). To explain further, loans enumerated in §1026.43(a) are not “covered transactions” under the Bureau's ability-to-repay requirements in §1026.43, and thus cannot be qualified mortgages (entitled to a rebuttable presumption or safe harbor of compliance with the ability-to-repay requirements of §1026.43, see, e.g., §1026.43(e)(1)). These include an extension of credit made pursuant to a program administered by a Housing Finance Agency, as defined under 24 C.F.R. 266.5, or pursuant to a program authorized by sections 101 and 109 of the Emergency Economic Stabilization Act of 2008. See §1026.43(a)(3)(iv) and (vi). They also include extensions of credit made by a creditor identified in §1026.43(a)(3)(v). However, these loans are eligible for the exemption in §1026.35(c)(2)(i) if they meet the Bureau's qualified mortgage criteria in §1026.43(e)(2), (4), (5), or (6) or §1026.43(f) (including limits on when loans must be consummated) or, for loans that are insured, guaranteed, or administered by HUD, VA, USDA, or RHS, in applicable rules prescribed by those agencies (but only once such rules are in effect; otherwise, the Bureau's criteria for a qualified mortgage applies to those loans). For example, assume that HUD has prescribed rules to define loans insured under its programs that are qualified mortgages and those rules are in effect. Assume further that a creditor designated as a Community Development Financial Institution, as defined under 12 C.F.R. 1805.104(h), originates a loan insured by the Federal Housing Administration, which is a part of HUD. The loan is not a “covered transaction” and thus is not a qualified mortgage. See §1026.43(a)(3)(v)(A) and (b)(1). Nonetheless, the transaction is eligible for an exemption from the appraisal requirements of §1026.35(c) if it meets the qualified mortgage criteria in HUD's rules. Nothing in §1026.35(c)(2)(i) alters the definition of a qualified mortgage under regulations of the Bureau, HUD, VA, USDA, or RHS.

Under the Threshold Amount Exemption - 12 C.F.R. § 1026.35(c)(2)(ii)

Regulatory Text

(c) Appraisals.

- (2) **Exemptions.** Unless otherwise specified, the requirements in paragraph (c)(3) through (6) of this section do not apply to the following types of transactions:

- (ii) An extension of credit for which the amount of credit extended is equal to or less than the applicable threshold amount, which is adjusted every year to reflect increases in the Consumer Price Index for Urban Wage Earners and Clerical Workers, as applicable, and published in the official staff commentary to this paragraph (c)(2)(ii);

Regulatory Commentary

Paragraph 35(c)(2)(ii)

- Threshold amount.*** For purposes of §1026.35(c)(2)(ii), the threshold amount in effect during a particular one-year period is the amount stated below for that period. The threshold amount is adjusted effective January 1 of every year by the 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. Every year, this comment will be amended to provide the threshold amount for the upcoming one-year period 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 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 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. through vii. Omitted.

viii. From January 1, 20229, through December 31, 2022, the threshold amount is \$28,500.

- Qualifying for exemption - in general.*** A transaction is exempt under §1026.35(c)(2)(ii) if the creditor makes an extension of credit at consummation that is equal to or below the threshold amount in effect at the time of consummation.
- Qualifying for exemption - subsequent changes.*** A transaction does not meet the condition for an exemption under §1026.35(c)(2)(ii) merely because it is used to satisfy and replace an existing exempt loan unless the amount of the new extension of credit is equal to or less than the applicable threshold amount. For example, assume a closed-end loan that qualified for a §1026.35(c)(2)(ii) exemption at consummation in year one is refinanced in year ten and that the new loan amount is greater than the threshold amount in effect in year ten. In these circumstances, the creditor must comply with all of the applicable requirements of §1026.35(c) with respect to the year ten transaction if the original loan is satisfied and replaced by the new loan, unless another exemption from the requirements of §1026.35(c) applies. See §1026.35(c)(2)

and §1026.35(c)(4)(vii).

Mobile Home, Boat, Trailer Exemption - 12 C.F.R. § 1026.35(c)(2)(iii)

Regulatory Text

(c) Appraisals.

(2) **Exemptions.** Unless otherwise specified, the requirements in paragraph (c)(3) through (6) of this section do not apply to the following types of transactions:

(iii) A transaction secured by a mobile home, boat, or trailer.

Regulatory Commentary

Paragraph 35(c)(2)(iii)

1. ***Secured by a mobile home.*** For purposes of the exemption in §1026.35(c)(2)(iii), a mobile home does not include a manufactured home, as defined in §1026.35(c)(1)(ii).

Construction Exemption - 12 C.F.R. § 1026.35(c)(2)(iv)

Regulatory Text

(c) Appraisals.

(2) **Exemptions.** Unless otherwise specified, the requirements in paragraph (c)(3) through (6) of this section do not apply to the following types of transactions:

(iv) A transaction to finance the initial construction of a dwelling.

Regulatory Commentary

Paragraph 35(c)(2)(iv)

1. ***Construction-to-permanent loans.*** Section 1026.35(c) does not apply to a transaction to finance the initial construction of a dwelling. This exclusion applies to a construction-only loan

as well as to the construction phase of a construction-to-permanent loan. Section 1026.35(c) does apply, however, to permanent financing that replaces a construction loan, whether the permanent financing is extended by the same or a different creditor, unless the permanent financing is otherwise exempt from the requirements of §1026.35(c). See §1026.35(c)(2). When a construction loan may be permanently financed by the same creditor, the general disclosure requirements for closed-end credit (§1026.17) provide that the creditor may give either one combined disclosure for both the construction financing and the permanent financing, or a separate set of disclosures for each of the two phases as though they were two separate transactions. See §1026.17(c)(6)(ii) and comment 17(c)(6)-2. Section 1026.17(c)(6)(ii) addresses only how a creditor may elect to disclose a construction-to-permanent transaction. Which disclosure option a creditor elects under §1026.17(c)(6)(ii) does not affect the determination of whether the permanent phase of the transaction is subject to §1026.35(c). When the creditor discloses the two phases as separate transactions, the annual percentage rate for the permanent phase must be compared to the average prime offer rate for a transaction that is comparable to the permanent financing to determine coverage under §1026.35(c). When the creditor discloses the two phases as a single transaction, a single annual percentage rate, reflecting the appropriate charges from both phases, must be calculated for the transaction in accordance with §1026.35 and appendix D to part 1026. The annual percentage rate must be compared to the average prime offer rate for a transaction that is comparable to the permanent financing to determine coverage under §1026.35(c). If the transaction is determined to be a higher-priced mortgage loan not otherwise exempt under §1026.35(c)(2), only the permanent phase is subject to the requirements of §1026.35(c).

2. **Financing initial construction.** The exemption for construction loans in §1026.35(c)(2)(iv) applies to temporary financing of the construction of a dwelling that will be replaced by permanent financing once construction is complete. The exemption does not apply, for example, to loans to finance the purchase of manufactured homes that have not been or are in the process of being built when the financing obtained by the consumer at that time is permanent. See §1026.35(c)(2)(viii).

12 Month or less Bridge Loan Exemption - 12 C.F.R. § 1026.35(c)(2)(v)

Regulatory Text

(c) Appraisals.

- (2) **Exemptions.** Unless otherwise specified, the requirements in paragraph (c)(3) through (6) of this section do not apply to the following types of transactions:

- (v) A loan with a maturity of 12 months or less, if the purpose of the loan is a “bridge” loan connected with the acquisition of a dwelling intended to become the consumer's principal dwelling.

Regulatory Commentary

None.

Reverse Mortgage Exemption - 12 C.F.R. § 1026.35(c)(2)(vi)

Regulatory Text

(c) Appraisals.

(2) **Exemptions.** Unless otherwise specified, the requirements in paragraph (c)(3) through (6) of this section do not apply to the following types of transactions:

(vi) A reverse-mortgage transaction subject to 12 C.F.R. 1026.33(a).

Regulatory Commentary

None.

Limited Refinancing Exemption - 12 C.F.R. § 1026.35(c)(2)(vii)

Regulatory Text

(c) Appraisals.

(2) **Exemptions.** Unless otherwise specified, the requirements in paragraph (c)(3) through (6) of this section do not apply to the following types of transactions:

(vii) An extension of credit that is a refinancing secured by a first lien, with refinancing defined as in §1026.20(a) (except that the creditor need not be the original creditor or a holder or servicer of the original obligation), provided that the refinancing meets the following criteria:

(A) Either

- (1) The credit risk of the refinancing is retained by the person that held the credit risk of the existing obligation and there is no commitment, at consummation, to transfer the credit risk to another person; or
- (2) The refinancing is insured or guaranteed by the same Federal government agency that insured or guaranteed the existing obligation;

- (B) The regular periodic payments under the refinance loan do not
- (1) Cause the principal balance to increase;
 - (2) Allow the consumer to defer repayment of principal; or
 - (3) Result in a balloon payment, as defined in §1026.18(s)(5)(i); and
- (C) The proceeds from the refinancing are used solely to satisfy the existing obligation and amounts attributed solely to the costs of the refinancing; and

Regulatory Commentary

Paragraph 35(c)(2)(vii)(A)(1)

1. **Same credit risk holder.** *The requirement that the holder of the credit risk on the existing obligation and the refinancing be the same applies to situations in which an entity bears the financial responsibility for the default of a loan by either holding the loan in its portfolio or guaranteeing payments of principal and any interest to investors in a mortgage-backed security in which the loan is pooled. See §1026.35(c)(1)(ii) (defining “credit risk”). For example, a credit risk holder could be a bank that bears the credit risk on the existing obligation by holding the loan in the bank's portfolio. Another example of a credit risk holder would be a government-sponsored enterprise that bears the risk of default on a loan by guaranteeing the payment of principal and any interest on a loan to investors in a mortgage-backed security. The holder of credit risk under §1026.35(c)(2)(vii)(A)(1) does not mean individual investors in a mortgage-backed security or providers of private mortgage insurance.*
2. **Same credit risk holder - illustrations.** *Illustrations of the credit risk holder of the existing obligation continuing to be the credit risk holder of the refinancing include, but are not limited to, the following:*
 - i. *The existing obligation is held in the portfolio of a bank, thus the bank holds the credit risk. The bank arranges to refinance the loan and also will hold the refinancing in its portfolio. If the refinancing otherwise meets the requirements for an exemption under §1026.35(c)(2)(vii), the transaction will qualify for the exemption because the credit risk holder is the same for the existing obligation and the refinance transaction. In this case, the exemption would apply regardless of whether the bank arranged to refinance the loan directly or indirectly, such as through the servicer or subservicer on the existing obligation.*
 - ii. *The existing obligation is held in the portfolio of a government-sponsored enterprise (GSE), thus the GSE holds the credit risk. The existing obligation is then refinanced by the servicer of the loan and immediately transferred to the GSE. The GSE pools the refinancing in a mortgage-backed security guaranteed by the GSE, thus the GSE holds the credit risk on the refinance loan. If the refinance transaction otherwise meets the requirements for an exemption under §1026.35(c)(2)(vii), the transaction will qualify for the exemption because the credit risk holder is the same for the existing obligation and the refinance transaction. In this case, the exemption would apply regardless of whether the existing obligation was refinanced by the servicer or subservicer on the existing obligation (acting as a “creditor” under §1026.2(a)(17)) or by a different creditor.*

3. **Forward commitments.** *A creditor may make a mortgage loan that will be sold or otherwise transferred pursuant to an agreement that has been entered into at or before the time the transaction is consummated. Such an agreement is sometimes known as a “forward commitment.” A refinance loan does not satisfy the requirement of §1026.35(c)(2)(vii)(A)(1) if the loan will be acquired pursuant to a forward commitment, such that the credit risk on the refinance loan will transfer to a person who did not hold the credit risk on the existing obligation.*

Paragraph 35(c)(2)(vii)(B)

1. **Regular periodic payments.** *Under §1026.35(c)(2)(vii)(B), the regular periodic payments on the refinance loan must not: result in an increase of the principal balance (negative amortization); allow the consumer to defer repayment of principal (see comment 43(e)(2)(i)-2); or result in a balloon payment. Thus, the terms of the legal obligation must require the consumer to make payments of principal and interest on a monthly or other periodic basis that will repay the loan amount over the loan term. Except for payments resulting from any interest rate changes after consummation in an adjustable-rate or step-rate mortgage, the periodic payments must be substantially equal. For an explanation of the term “substantially equal,” see comment 43(c)(5)(i)-4. In addition, a single-payment transaction is not a refinancing meeting the requirements of §1026.35(c)(2)(vii) because it does not require “regular periodic payments.”*

Paragraph 35(c)(2)(vii)(C)

1. **Permissible use of proceeds.** *The exemption for a refinancing under §1026.35(c)(2)(vii) is available only if the proceeds from the refinancing are used exclusively for the existing obligation and amounts attributed solely to the costs of the refinancing. The existing obligation includes the unpaid principal balance of the existing first lien loan, any earned unpaid finance charges, and any other lawful charges related to the existing loan. For guidance on the meaning of refinancing costs, see comment 23(f)-4. If the proceeds of a refinancing are used for other purposes, such as to pay off other liens or to provide additional cash to the consumer for discretionary spending, the transaction does not qualify for the exemption for a refinancing under §1026.35(c)(2)(vii) from the appraisal requirements in §1026.35(c)*

Manufactured Homes Exemption - 12 C.F.R. § 1026.35(c)(2)(viii)

Regulatory Text

(c) Appraisals.

(2) **Exemptions.** Unless otherwise specified, the requirements in paragraph (c)(3) through (6) of this section do not apply to the following types of transactions:

(viii) A transaction secured by:

(A) A new manufactured home and land, but the exemption shall only apply to the requirement in paragraph (c)(3)(i) of this section that the appraiser conduct a

physical visit of the interior of the new manufactured home; or

- (B) A manufactured home and not land, for which the creditor obtains one of the following and provides a copy to the consumer no later than three business days prior to consummation of the transaction—
- (1) For a new manufactured home, the manufacturer's invoice for the manufactured home securing the transaction, provided that the date of manufacture is no earlier than 18 months prior to the creditor's receipt of the consumer's application for credit;
 - (2) A cost estimate of the value of the manufactured home securing the transaction obtained from an independent cost service provider; or
 - (3) A valuation, as defined in §1026.42(b)(3), of the manufactured home performed by a person who has no direct or indirect interest, financial or otherwise, in the property or transaction for which the valuation is performed and has training in valuing manufactured homes.

Regulatory Commentary

Paragraph 35(c)(2)(viii)(A)

1. **Secured by new manufactured home and land - physical visit of the interior.** *A transaction secured by a new manufactured home and land is subject to the requirements of §1026.35(c)(3) through (6) except for the requirement in §1026.35(c)(3)(i) that the appraiser conduct a physical inspection of the interior of the property. Thus, for example, a creditor of a loan secured by a new manufactured home and land could comply with §1026.35(c)(3)(i) by obtaining an appraisal conducted by a state-certified or -licensed appraiser based on plans and specifications for the new manufactured home and an inspection of the land on which the property will be sited, as well as any other information necessary for the appraiser to complete the appraisal assignment in conformity with the Uniform Standards of Professional Appraisal Practice and the requirements of FIRREA and any implementing regulations.*

Paragraph 35(c)(2)(viii)(B)

1. **Secured by a manufactured home and not land.** *Section 1026.35(c)(2)(viii)(B) applies to a higher-priced mortgage loan secured by a manufactured home and not land, regardless of whether the home is titled as realty by operation of state law.*

Paragraph 35(c)(2)(viii)(B)(2)

1. **Independent.** *A cost service provider from which the creditor obtains a manufactured home unit cost estimate under §1026.35(c)(2)(viii)(B)(2) is “independent” if that person is not affiliated with the creditor in the transaction, such as by common corporate ownership, and receives no direct or indirect financial benefits based on whether the transaction is consummated.*
2. **Adjustments.** *The requirement that the cost estimate be from an independent cost service provider does not prohibit a creditor from providing a cost estimate that reflects adjustments to account for factors such as special features, condition, or location. However, the requirement*

that the estimate be obtained from an independent cost service provider means that any adjustments to the estimate must be based on adjustment factors available as part of the independent cost service used, with associated values that are determined by the independent cost service.

Paragraph 35(c)(2)(viii)(C)(3)

1. **Interest in the property.** *A person has a direct or indirect interest in the property if, for example, the person has any ownership or reasonably foreseeable ownership interest in the manufactured home. To illustrate, a person who seeks a loan to purchase the manufactured home to be valued has a reasonably foreseeable ownership interest in the property.*
2. **Interest in the transaction.** *A person has a direct or indirect interest in the transaction if, for example, the person or an affiliate of that person also serves as a loan officer of the creditor or otherwise arranges the credit transaction, or is the retail dealer of the manufactured home. A person also has a prohibited interest in the transaction if the person is compensated or otherwise receives financial or other benefits based on whether the transaction is consummated.*
3. **Training in valuing manufactured homes.** *Training in valuing manufactured homes includes, for example, successfully completing a course in valuing manufactured homes offered by a state or national appraiser association or receiving job training from an employer in the business of valuing manufactured homes.*
4. **Manufactured home valuation - example.** *A valuation in compliance with §1026.35(c)(2)(viii)(B)(3) would include, for example, an appraisal of the manufactured home in accordance with the appraisal requirements for a manufactured home classified as personal property under the Title I Manufactured Home Loan Insurance Program of the U.S. Department of Housing and Urban Development, pursuant to section 2(b)(10) of the National Housing Act, 12 U.S.C. 1703(b)(10).*

Section 7: HPML Appraisals Required

12 C.F.R. § 1026.35(c)(3)

HPML Appraisals Required – 12 C.F.R. § 1026.35(c)(3)(i)

Regulatory Discussion

This section states, in general, a creditor shall not extend a higher-priced mortgage loan without obtaining (prior to consummation) a written appraisal of the property to be mortgaged. Subject, of course, to the eight specific exemptions discussed in the previous section.

In addition, the appraisal must be performed by a certified or licensed appraiser as defined in the regulation who conducts a physical visit of the interior of the collateral property.

Regulatory Text

(c) Appraisals.

(3) Appraisals required

- (i) **In general.** Except as provided in paragraph (c)(2) of this section, a creditor shall not extend a higher-priced mortgage loan to a consumer without obtaining, prior to consummation, a written appraisal of the property to be mortgaged. The appraisal must be performed by a certified or licensed appraiser who conducts a physical visit of the interior of the property that will secure the transaction.

Regulatory Commentary

35(c)(3)(i) In General

1. ***Written appraisal - electronic transmission.*** *To satisfy the requirement that the appraisal be “written,” a creditor may obtain the appraisal in paper form or via electronic transmission.*

Appraisal Safe Harbor – 12 C.F.R. § 1026.35(c)(3)(ii)

Regulatory Discussion

This section discusses the necessary steps that need to be taken to assure that the appraisal is adequate under the rule.

Regulatory Text

(c) Appraisals.

(3) Appraisals required

- (ii) **Safe harbor.** A creditor obtains a written appraisal that meets the requirements for an appraisal required under paragraph (c)(3)(i) of this section if the creditor:
- (A) Orders that the appraiser perform the appraisal in conformity with the Uniform Standards of Professional Appraisal Practice and title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended (12 U.S.C. 3331 *et seq.*), and any implementing regulations in effect at the time the appraiser signs the appraiser's certification;
 - (B) Verifies through the National Registry that the appraiser who signed the appraiser's certification was a certified or licensed appraiser in the State in which the appraised property is located as of the date the appraiser signed the appraiser's certification;
 - (C) Confirms that the elements set forth in appendix N to this part are addressed in the written appraisal; and
 - (D) Has no actual knowledge contrary to the facts or certifications contained in the written appraisal.

Regulatory Commentary

35(c)(3)(ii) Safe Harbor.

1. **Safe harbor.** *A creditor that satisfies the safe harbor conditions in §1026.35(c)(3)(ii)(A) through (D) complies with the appraisal requirements of §1026.35(c)(3)(i). A creditor that does not satisfy the safe harbor conditions in §1026.35(c)(3)(ii)(A) through (D) does not necessarily violate the appraisal requirements of §1026.35(c)(3)(i).*
2. **Appraiser's certification.** *For purposes of §1026.35(c)(3)(ii), the appraiser's certification refers to the certification specified in item 9 of appendix N. See also comment 35(c)(1)(i)-2.*

Paragraph 35(c)(3)(ii)(C)

1. **Confirming elements in the appraisal.** *To confirm that the elements in appendix N to this part are included in the written appraisal, a creditor need not look beyond the face of the written appraisal and the appraiser's certification.*

Section 8: Additional Appraisal for Certain HPMLs

12 C.F.R. § 1026.35(c)(4)

Introduction

Regulatory Discussion

In the event either of the two circumstances described below (generally a “flip” within 180 days of purchase, two written appraisals are required. This section includes the additional requirements relative to the two appraisals.

The regulation discusses a *potential exemption* if the creditor can *demonstrate by exercising reasonable diligence* that the requirement to obtain two appraisals does not apply. The regulation only applies to a primary residence.

There are also *eight actual exemptions* from the two-appraisal requirement.

Regulatory Commentary

35(c)(4) Additional Appraisal for Certain Higher-Priced Mortgage Loans

1. **Acquisition.** For purposes of §1026.35(c)(4), the terms “acquisition” and “acquire” refer to the acquisition of legal title to the property pursuant to applicable State law, including by purchase.

General Requirement for a Second Appraisal - 12 C.F.R. § 1026.35(c)(4)(i)

Regulatory Text

(c) Appraisals.

(4) Additional appraisal for certain higher-priced mortgage loans

(i) **In general.** Except as provided in paragraphs (c)(2) and (c)(4)(vii) of this section, a creditor shall not extend a higher-priced mortgage loan to a consumer to finance the acquisition of the consumer's principal dwelling without obtaining, prior to consummation, two written appraisals, if:

(A) The seller acquired the property 90 or fewer days prior to the date of the consumer's agreement to acquire the property and the price in the consumer's agreement to acquire the property exceeds the seller's acquisition price by more than 10 percent;
or

(B) The seller acquired the property 91 to 180 days prior to the date of the consumer's

agreement to acquire the property and the price in the consumer's agreement to acquire the property exceeds the seller's acquisition price by more than 20 percent.

Regulatory Commentary

35(c)(4)(i) In General

1. **Appraisal from a previous transaction.** *An appraisal that was previously obtained in connection with the seller's acquisition or the financing of the seller's acquisition of the property does not satisfy the requirements to obtain two written appraisals under §1026.35(c)(4)(i).*
2. **90-day, 180-day calculation.** *The time periods described in §1026.35(c)(4)(i)(A) and (B) are calculated by counting the day after the date on which the seller acquired the property, up to and including the date of the consumer's agreement to acquire the property that secures the transaction. For example, assume that the creditor determines that date of the consumer's acquisition agreement is October 15, 2012, and that the seller acquired the property on April 17, 2012. The first day to be counted in the 180-day calculation would be April 18, 2012, and the last day would be October 15, 2012. In this case, the number of days from April 17 would be 181, so an additional appraisal is not required.*
3. **Date seller acquired the property.** *For purposes of §1026.35(c)(4)(i)(A) and (B), the date on which the seller acquired the property is the date on which the seller became the legal owner of the property pursuant to applicable State law.*
4. **Date of the consumer's agreement to acquire the property.** *For the date of the consumer's agreement to acquire the property under §1026.35(c)(4)(i)(A) and (B), the creditor should use the date on which the consumer and the seller signed the agreement provided to the creditor by the consumer. The date on which the consumer and the seller signed the agreement might not be the date on which the consumer became contractually obligated under State law to acquire the property. For purposes of §1026.35(c)(4)(i)(A) and (B), a creditor is not obligated to determine whether and to what extent the agreement is legally binding on both parties. If the dates on which the consumer and the seller signed the agreement differ, the creditor should use the later of the two dates.*
5. **Price at which the seller acquired the property.** *The price at which the seller acquired the property refers to the amount paid by the seller to acquire the property. The price at which the seller acquired the property does not include the cost of financing the property.*
6. **Price the consumer is obligated to pay to acquire the property.** *The price the consumer is obligated to pay to acquire the property is the price indicated on the consumer's agreement with the seller to acquire the property. The price the consumer is obligated to pay to acquire the property from the seller does not include the cost of financing the property. For purposes of §1026.35(c)(4)(i)(A) and (B), a creditor is not obligated to determine whether and to what extent the agreement is legally binding on both parties. See also comment 35(c)(4)(i)-4.*

Different Appraisers Required - 12 C.F.R. § 1026.35(c)(4)(ii)

Regulatory Text

(c) Appraisals.

(4) Additional appraisal for certain higher-priced mortgage loans

(ii) **Different certified or licensed appraisers.** The two appraisals required under paragraph (c)(4)(i) of this section may not be performed by the same certified or licensed appraiser.

Regulatory Commentary

35(c)(4)(ii) Different Certified or Licensed Appraisers

1. **Independent appraisers.** *The requirements that a creditor obtain two separate appraisals under §1026.35(c)(4)(i), and that each appraisal be conducted by a different licensed or certified appraiser under §1026.35(c)(4)(ii), indicate that the two appraisals must be conducted independently of each other. If the two certified or licensed appraisers are affiliated, such as by being employed by the same appraisal firm, then whether they have conducted the appraisal independently of each other must be determined based on the facts and circumstances of the particular case known to the creditor.*

Relationship to General Appraisal Requirements - 12 C.F.R. § 1026.35(c)(4)(iii)

Regulatory Text

(c) Appraisals.

(4) Additional appraisal for certain higher-priced mortgage loans

(iii) **Relationship to general appraisal requirements.** If two appraisals must be obtained under paragraph (c)(4)(i) of this section, each appraisal shall meet the requirements of paragraph (c)(3)(i) of this section.

Regulatory Commentary

35(c)(4)(iii) Relationship to General Appraisal Requirements

1. **Safe harbor.** *When a creditor is required to obtain an additional appraisal under §1026(c)(4)(i), the creditor must comply with the requirements of both §1026.35(c)(3)(i) and §1026.35(c)(4)(ii) through (v) for that appraisal. The creditor complies with the requirements of §1026.35(c)(3)(i) for the additional appraisal if the creditor meets the safe harbor conditions in §1026.35(c)(3)(ii) for that appraisal.*

Required Analysis for the Additional Appraisal - 12 C.F.R. § 1026.35(c)(4)(iv)

Regulatory Text

(c) Appraisals.

(4) Additional appraisal for certain higher-priced mortgage loans

- (iv) **Required analysis in the additional appraisal.** One of the two required appraisals must include an analysis of:
- (A) The difference between the price at which the seller acquired the property and the price that the consumer is obligated to pay to acquire the property, as specified in the consumer's agreement to acquire the property from the seller;
 - (B) Changes in market conditions between the date the seller acquired the property and the date of the consumer's agreement to acquire the property; and
 - (C) Any improvements made to the property between the date the seller acquired the property and the date of the consumer's agreement to acquire the property.

Regulatory Commentary

35(c)(4)(iv) Required Analysis in the Additional Appraisal

1. **Determining acquisition dates and prices used in the analysis of the additional appraisal.** *For guidance on identifying the date on which the seller acquired the property, see comment 35(c)(4)(i)-3. For guidance on identifying the date of the consumer's agreement to acquire the property, see comment 35(c)(4)(i)-4. For guidance on identifying the price at which the seller acquired the property, see comment 35(c)(4)(i)-5. For guidance on identifying the price the consumer is obligated to pay to acquire the property, see comment 35(c)(4)(i)-6.*

No Charge for Additional Appraisal - 12 C.F.R. § 1026.35(c)(4)(v)

Regulatory Text

(c) Appraisals.

(4) Additional appraisal for certain higher-priced mortgage loans

(v) **No charge for the additional appraisal.** If the creditor must obtain two appraisals under paragraph (c)(4)(i) of this section, the creditor may charge the consumer for only one of the appraisals.

Regulatory Commentary

35(c)(4)(v) No Charge for Additional Appraisal

1. **Fees and mark-ups.** *The creditor is prohibited from charging the consumer for the performance of one of the two appraisals required under §1026.35(c)(4)(i), including by imposing a fee specifically for that appraisal or by marking up the interest rate or any other fees payable by the consumer in connection with the higher-priced mortgage loan.*

Creditor's Determination of Sale Date - 12 C.F.R. § 1026.35(c)(4)(vi)

Regulatory Text

(c) Appraisals.

(4) Additional appraisal for certain higher-priced mortgage loans

(vi) Creditor's determination of prior sale date and price

(A) **Reasonable diligence.** A creditor must obtain two written appraisals under paragraph (c)(4)(i) of this section unless the creditor can demonstrate by exercising reasonable diligence that the requirement to obtain two appraisals does not apply. A creditor acts with reasonable diligence if the creditor bases its determination on information contained in written source documents, such as the documents listed in Appendix O to this part.

(B) **Inability to determine prior sale date or price - modified requirements for additional appraisal.** If, after exercising reasonable diligence, a creditor cannot determine whether the conditions in paragraphs (c)(4)(i)(A) and (c)(4)(i)(B) are present and therefore must obtain two written appraisals in accordance with paragraphs (c)(4)(i) through (v) of this section, one of the two appraisals shall include an analysis

of the factors in paragraph (c)(4)(iv) of this section only to the extent that the information necessary for the appraiser to perform the analysis can be determined.

Regulatory Commentary

35(c)(4)(vi) Creditor's Determination of Prior Sale Date and Price

35(c)(4)(vi)(A) In General

1. **Estimated sales price.** *If a written source document describes the seller's acquisition price in a manner that indicates that the price described is an estimated or assumed amount and not the actual price, the creditor should look at an alternative document to satisfy the reasonable diligence standard in determining the price at which the seller acquired the property.*
2. **Reasonable diligence - oral statements insufficient.** *Reliance on oral statements of interested parties, such as the consumer, seller, or mortgage broker, does not constitute reasonable diligence under §1026.35(c)(4)(vi)(A).*
3. **Lack of information and conflicting information - two appraisals required.** *If a creditor is unable to demonstrate that the requirement to obtain two appraisals under §1026.35(c)(4)(i) does not apply, the creditor must obtain two written appraisals before extending a higher-priced mortgage loan subject to the requirements of §1026.35(c). See also comment 35(c)(4)(vi)(B)-1. For example:*
 - i. *Assume a creditor orders and reviews the results of a title search, which shows that a prior sale occurred between 91 and 180 days ago, but not the price paid in that sale. Thus, based on the title search, the creditor would not be able to determine whether the price the consumer is obligated to pay under the consumer's acquisition agreement is more than 20 percent higher than the seller's acquisition price, pursuant to §1026.35(c)(4)(i)(B). Before extending a higher-priced mortgage loan subject to the appraisal requirements of §1026.35(c), the creditor must either: (1) Perform additional diligence to ascertain the seller's acquisition price and, based on this information, determine whether two written appraisals are required; or (2) obtain two written appraisals in compliance with §1026.35(c)(4). See also comment 35(c)(4)(vi)(B)-1.*
 - ii. *Assume a creditor reviews the results of a title search indicating that the last recorded purchase was more than 180 days before the consumer's agreement to acquire the property. Assume also that the creditor subsequently receives a written appraisal indicating that the seller acquired the property between 91 and 180 days before the consumer's agreement to acquire the property. In this case, unless one of these sources is clearly wrong on its face, the creditor would not be able to determine whether the seller acquired the property within 180 days of the date of the consumer's agreement to acquire the property from the seller, pursuant to §1026.35(c)(4)(i)(B). Before extending a higher-priced mortgage loan subject to the appraisal requirements of §1026.35(c), the creditor must either: perform additional diligence to ascertain the seller's acquisition date and, based on this information, determine whether two written appraisals are required; or obtain two written appraisals in compliance with §1026.35(c)(4). See also comment 35(c)(4)(vi)(B)-1.*

35(c)(4)(vi)(B) Inability To Determine Prior Sales Date or Price - Modified Requirements for Additional Appraisal

1. **Required analysis.** *In general, the additional appraisal required under §1026.35(c)(4)(i) should include an analysis of the factors listed in §1026.35(c)(4)(iv)(A) through (C). However, if, following reasonable diligence, a creditor cannot determine whether the conditions in §1026.35(c)(4)(i)(A) or (B) are present due to a lack of information or conflicting information, the required additional appraisal must include the analyses required under §1026.35(c)(4)(iv)(A) through (C) only to the extent that the information necessary to perform the analyses is known. For example, assume that a creditor is able, following reasonable diligence, to determine that the date on which the seller acquired the property occurred between 91 and 180 days prior to the date of the consumer's agreement to acquire the property. However, the creditor is unable, following reasonable diligence, to determine the price at which the seller acquired the property. In this case, the creditor is required to obtain an additional written appraisal that includes an analysis under §1026.35(c)(4)(iv)(B) and (c)(4)(iv)(C) of the changes in market conditions and any improvements made to the property between the date the seller acquired the property and the date of the consumer's agreement to acquire the property. However, the creditor is not required to obtain an additional written appraisal that includes analysis under §1026.35(c)(4)(iv)(A) of the difference between the price at which the seller acquired the property and the price that the consumer is obligated to pay to acquire the property.*

Exemptions from Additional Appraisal Requirement - 12 C.F.R. § 1026.35(c)(4)(vii)

Regulatory Text

(c) Appraisals.

(4) Additional appraisal for certain higher-priced mortgage loans

- (vii) **Exemptions from the additional appraisal requirement.** The additional appraisal required under paragraph (c)(4)(i) of this section shall not apply to extensions of credit that finance a consumer's acquisition of property:
- (A) From a local, State or Federal government agency;
 - (B) From a person who acquired title to the property through foreclosure, deed-in-lieu of foreclosure, or other similar judicial or non-judicial procedure as a result of the person's exercise of rights as the holder of a defaulted mortgage loan;
 - (C) From a non-profit entity as part of a local, State, or Federal government program under which the non-profit entity is permitted to acquire title to single-family properties for resale from a seller who acquired title to the property through the process of foreclosure, deed-in-lieu of foreclosure, or other similar judicial or non-judicial procedure;
 - (D) From a person who acquired title to the property by inheritance or pursuant to a court order of dissolution of marriage, civil union, or domestic partnership, or of

partition of joint or marital assets to which the seller was a party;

- (E) From an employer or relocation agency in connection with the relocation of an employee;
- (F) From a servicemember, as defined in 50 U.S.C. App. 511(1), who received a deployment or permanent change of station order after the servicemember purchased the property;
- (G) Located in an area designated by the President as a federal disaster area, if and for as long as the Federal financial institutions regulatory agencies, as defined in 12 U.S.C. 3350(6), waive the requirements in title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended (12 U.S.C. 3331 *et seq.*), and any implementing regulations in that area; or
- (H) Located in a rural county, as defined in 12 C.F.R. 1026.35(b)(2)(iv)(A). Regulatory Text

Regulatory Commentary

35(c)(4)(vii) Exemptions From the Additional Appraisal Requirement

Paragraph 35(c)(4)(vii)(C)

1. ***Non-profit entity.*** For purposes of §1026.35(c)(4)(vii)(C), a “non-profit entity” is a person with a tax exemption ruling or determination letter from the Internal Revenue Service under section 501(c)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 501(c)(3)).

Paragraph 35(c)(4)(vii)(H)

1. ***Bureau table of rural counties.*** The Bureau publishes on its Web site a table of rural counties under §1026.35(c)(4)(vii)(H) for each calendar year by the end of that calendar year. See comment 35(b)(2)(iv)-1. A property securing an HPML subject to §1026.35(c) is in a rural county under §1026.35(c)(4)(vii)(H) if the county in which the property is located is on the table of rural counties most recently published by the Bureau. For example, for a transaction occurring in 2015, assume that the Bureau most recently published a table of rural counties at the end of 2014. The property securing the transaction would be located in a rural county for purposes of §1026.35(c)(4)(vii)(H) if the county is on the table of rural counties published by the Bureau at the end of 2014.

Section 9: HPML Appraisals - Required Disclosure

12 C.F.R. § 1026.35(c)(5)

Required Disclosure - 12 C.F.R. § 1026.35(c)(5)

Regulatory Discussion

In general, a specific disclosure must be provided, in writing, to a consumer who applies for a higher-priced mortgage loan.

The disclosure must be delivered or placed in the mail no later than the third business day after the creditor receives the consumer's application (or is thereafter determined to be) for a higher-priced mortgage loan.

NOTE: Compliance with the disclosure requirements in Regulation B will also satisfy the requirements of this section.

Regulatory Text

(c) Appraisals.

(5) Required disclosure

- (i) **In general.** Except as provided in paragraph (c)(2) of this section, a creditor shall disclose the following statement, in writing, to a consumer who applies for a higher-priced mortgage loan: "We may order an appraisal to determine the property's value and charge you for this appraisal. We will give you a copy of any appraisal, even if your loan does not close. You can pay for an additional appraisal for your own use at your own cost." Compliance with the disclosure requirement in Regulation B, 12 C.F.R. 1002.14(a)(2), satisfies the requirements of this paragraph.
- (ii) **Timing of disclosure.** The disclosure required by paragraph (c)(5)(i) of this section shall be delivered or placed in the mail no later than the third business day after the creditor receives the consumer's application for a higher-priced mortgage loan subject to paragraph (c) of this section. In the case of a loan that is not a higher-priced mortgage loan subject to paragraph (c) of this section at the time of application, but becomes a higher-priced mortgage loan subject to paragraph (c) of this section after application, the disclosure shall be delivered or placed in the mail not later than the third business day after the creditor determines that the loan is a higher-priced mortgage loan subject to paragraph (c) of this section.

Regulatory Commentary

35(c)(5) Required Disclosure

35(c)(5)(i) In General

1. **Multiple applicants.** *When two or more consumers apply for a loan subject to this section, the creditor is required to give the disclosure to only one of the consumers.*
2. **Appraisal independence requirements not affected.** *Nothing in the text of the consumer notice required by §1026.35(c)(5)(i) should be construed to affect, modify, limit, or supersede the operation of any legal, regulatory, or other requirements or standards relating to independence in the conduct of appraisers or restrictions on the use of borrower-ordered appraisals by creditors.*

Section 10: Copy of HPML Appraisals / State Law 12 C.F.R. §§ 1026.35(c)(6) 1026.35(c)(7)

Copy of HPML Appraisals - 12 C.F.R. § 1026.35(c)(6)

Regulatory Discussion

This section requires the creditor to provide (at no cost) the consumer a copy (in electronic form subject to E-Sign Act) of any written appraisal associated with a higher-priced mortgage loan. The appraisal(s) must be provided no later than three business days prior to consummation; or in the event the loan is not consummated, no later than 30 days after it is known the loan will not be consummated.

In General - 12 C.F.R. § 1026.35(c)(6)(i)

Regulatory Text

(c) Appraisals.

(6) Copy of appraisals

- (i) **In general.** Except as provided in paragraph (c)(2) of this section, a creditor shall provide to the consumer a copy of any written appraisal performed in connection with a higher-priced mortgage loan pursuant to paragraphs (c)(3) and (c)(4) of this section.

Regulatory Commentary

35(c)(6)(i) In General

- 1. Multiple applicants.*** When two or more consumers apply for a loan subject to this section, the creditor is required to give the copy of each required appraisal to only one of the consumers.

Appraisal Copy Timing - 12 C.F.R. § 1026.35(c)(6)(ii)

Regulatory Text

(c) Appraisals.

(6) Copy of appraisals

(ii) **Timing.** A creditor shall provide to the consumer a copy of each written appraisal pursuant to paragraph (c)(6)(i) of this section:

(A) No later than three business days prior to consummation of the loan; or

(B) In the case of a loan that is not consummated, no later than 30 days after the creditor determines that the loan will not be consummated.

Regulatory Commentary**35(c)(6)(ii) Timing**

1. **“Provide.”** For purposes of the requirement to provide a copy of the appraisal within a specified time under §1026.35(c)(6)(ii), “provide” means “deliver.” Delivery occurs three business days after mailing or delivering the copies to the last-known address of the applicant, or when evidence indicates actual receipt by the applicant (which, in the case of electronic receipt, must be based upon consent that complies with the E-Sign Act), whichever is earlier.
2. **No waiver.** Regulation B, 12 C.F.R. 1002.14(a)(1), allowing the consumer to waive the requirement that the appraisal copy be provided three business days before consummation, does not apply to higher-priced mortgage loans subject to §1026.35(c). A consumer of a higher-priced mortgage loan subject to §1026.35(c) may not waive the timing requirement to receive a copy of the appraisal under §1026.35(c)(6)(i).

Form of Appraisal Copy - 12 C.F.R. § 1026.35(c)(6)(iii)**Regulatory Text****(c) Appraisals.****(6) Copy of appraisals**

(iii) **Form of copy.** Any copy of a written appraisal required by paragraph (c)(6)(i) of this section may be provided to the applicant in electronic form, subject to compliance with the consumer consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. 7001 *et seq.*).

Regulatory Commentary

None.

No Charge for Appraisal Copy - 12 C.F.R. § 1026.35(c)(6)(iv)

Regulatory Text

(c) Appraisals.

(6) Copy of appraisals

- (iv) **No charge for copy of appraisal.** A creditor shall not charge the consumer for a copy of a written appraisal required to be provided to the consumer pursuant to paragraph (c)(6)(i) of this section.

Regulatory Commentary

35(c)(6)(iv) No Charge for Copy Of Appraisal

1. **Fees and mark-ups.** *The creditor is prohibited from charging the consumer for any copy of an appraisal required to be provided under §1026.35(c)(6)(i), including by imposing a fee specifically for a required copy of an appraisal or by marking up the interest rate or any other fees payable by the consumer in connection with the higher-priced mortgage loan.*

Appraisals - Relation to Other Rules - 12 C.F.R. § 1026.35(c)(7)

Regulatory Discussion

This section simply states the appraisal rules are consistent among the various supervisory agencies.

Regulatory Text

(c) Appraisals.

- (7) **Relation to other rules.** The rules in this paragraph (c) were adopted jointly by the Federal Reserve Board (Board), the Office of the Comptroller of the Currency (OCC), the Federal Deposit Insurance Corporation, the National Credit Union Administration, the Federal Housing Finance Agency, and the Bureau. These rules are substantively identical to the Board's and the OCC's higher-priced mortgage loan appraisal rules published separately in 12 C.F.R. 226.43 (for the Board) and in 12 C.F.R. part 34, subpart G and 12 C.F.R. part 164, subpart B (for the OCC).

Regulatory Commentary

None.

Section 11: Evasion; Open End Credit 12 C.F.R. § 1026.35(d)

Evasion; Open End Credit - 12 C.F.R. § 1026.35(d)

Regulatory Discussion

This section simply states a creditor shall not structure a home-secured loan as an open-end plan to evade the higher-priced mortgage transaction requirements of this section.

Regulatory Text

(d) **Evasion; open-end credit.** In connection with credit secured by a consumer's principal dwelling that does not meet the definition of open-end credit in §1026.2(a)(20), a creditor shall not structure a home-secured loan as an open-end plan to evade the requirements of this section.

Regulatory Commentary

None.