

RESOLUTION 09-01-2021

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to add Financial Code sections 1049, 1049.1, and 1049.3 to read as follows:

1 § 1049:

2 No corporation subject to the Banking Law, as defined by California Corporations Code
3 section 163 and California Financial Code sections 1000 *et seq.*, shall provide financing for or
4 invest in the stocks, securities, debentures, or other obligations of any institution, company, or
5 subsidiary that owns or contracts with the government to manage or run a prison, jail, or
6 detention facility.

7
8 § 1049.1: This act shall apply to:

9 (a) All corporations engaging in commercial banking, industrial banking, or the trust
10 business.

11 (b) All national banking associations authorized to transact business in this state to the
12 extent that the provisions of this division are not inconsistent with and do not infringe paramount
13 federal laws governing national banking associations.

14 (c) All other corporations that subject themselves to the special provisions and sections of
15 this division.

16 (d) All other persons, associations, copartnerships, or corporations who, by violating any
17 of its provisions, become subject to the penalties provided for in this division.

18
19 § 1049.3 This act shall take effect immediately and shall apply to all contracts entered into,
20 renewed, modified or amended on or after such effective date.

(Proposed new language underlined; language to be deleted stricken.)

PROPOSERS: Joachim Steinberg, David Bigeleisen, Jim Brosnahan, Gerry Richardson, Mary Vail, Frank Leidman, James Lamping, Melissa Alain, Ciarán O’Sullivan, and Tulasi Hosain

STATEMENT OF REASONS

The Problem (including Existing Law): Private prisons and the private management of prisons are abominations that corrode our society and should be abolished entirely. In the meantime, restricting their financing will have to do. California has already banned for-profit prisons and detention facilities but has not restricted financial institutions operating within the state from financing or investing in those facilities. Preventing locally chartered financial institutions is the logical next step to ridding our state of these horrible institutions.

The Solution: California should restrict banks that operate under its laws from investing in for-profit prisons.

IMPACT STATEMENT

This resolution does not affect any other law, statute, or rule.

CURRENT OR PRIOR RELATED LEGISLATION

None.

AUTHOR AND/OR PERMANENT CONTACT:

Joachim B. Steinberg, Browne George Ross O'Brien Annaguey & Ellis, 44 Montgomery Street, San Francisco, California 94104, 415.391.7100, jsteinberg@bgrfirm.com

RESPONSIBLE FLOOR DELEGATE: Joachim B. Steinberg

RESOLUTION 09-02-2021

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend the Truth in Lending Act, (Regulation Z) under 12 Code of Federal Regulations (CFR) Section 1026.43, to read as follows:

1 § 1026.43

2 (a) Scope. This section applies to any consumer credit transaction that is secured by a
3 dwelling, as defined in § 1026.2(a)(19), including any real property attached to a dwelling, other
4 than:

5 (1) A home equity line of credit subject to § 1026.40; (2) A mortgage transaction secured
6 by a consumer's interest in a timeshare plan, as defined in 11 U.S.C. 101(53(D)); or (3) For
7 purposes of paragraphs (c) through (f) of this section: (i) A reverse mortgage subject to §
8 1026.33;

9 (ii) A temporary or "bridge" loan with a term of 12 months or less, such as a loan to
10 finance the purchase of a new dwelling where the consumer plans to sell a current dwelling
11 within 12 months or a loan to finance the initial construction of a dwelling; (iii) A construction
12 phase of 12 months or less of a construction-to-permanent loan; (iv) An extension of credit made
13 pursuant to a program administered by a Housing Finance Agency, as defined under 24 CFR
14 266.5;

15 (v) An extension of credit made by: (A) A creditor designated as a Community
16 Development Financial Institution, as defined under 12 CFR 1805.104(h); (B) A creditor
17 designated as a Downpayment Assistance through Secondary Financing Provider, pursuant to 24
18 CFR 200.194(a), operating in accordance with regulations prescribed by the U.S. Department of
19 Housing and Urban Development applicable to such persons; (C) A creditor designated as a
20 Community Housing Development Organization provided that the creditor has entered into a
21 commitment with a participating jurisdiction and is undertaking a project under the HOME
22 program, pursuant to the provisions of 24 CFR 92.300(a), and as the terms community housing
23 development organization, commitment, participating jurisdiction, and project are defined under
24 24 CFR 92.2; or (D) A creditor with a tax exemption ruling or determination letter from the
25 Internal Revenue Service under section 501(c)(3) of the Internal Revenue Code of 1986 (26
26 U.S.C. 501(c)(3); 26 CFR 1.501(c)(3)-1), provided that: (1) During the calendar year preceding
27 receipt of the consumer's application, the creditor extended credit secured by a dwelling no more
28 than 200 times, except as provided in paragraph (a)(3)(vii) of this section; (2) During the
29 calendar year preceding receipt of the consumer's application, the creditor extended credit
30 secured by a dwelling only to consumers with income that did not exceed the low- and moderate-
31 income household limit as established pursuant to section 102 of the Housing and Community
32 Development Act of 1974 (42 U.S.C. 5302(a)(20)) and amended from time to time by the U.S.
33 Department of Housing and Urban Development, pursuant to 24 CFR 570.3; (3) The extension
34 of credit is to a consumer with income that does not exceed the household limit specified in
35 paragraph (a)(3)(v)(D)(2) of this section; and (4) The creditor determines, in accordance with
36 written procedures, that the consumer has a reasonable ability to repay the extension of credit.

37 (vi) An extension of credit made pursuant to a program authorized by sections 101 and
38 109 of the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5211; 5219); (vii)

39 Consumer credit transactions that meet the following criteria are not considered in determining
40 whether a creditor exceeds the credit extension limitation in paragraph (a)(3)(v)(D)(1) of this
41 section:

42 (A) The transaction is secured by a subordinate lien; (B) The transaction is for the
43 purpose of:

44 (1) Downpayment, closing costs, or other similar home buyer assistance, such as
45 principal or interest subsidies; (2) Property rehabilitation assistance; (3) Energy efficiency
46 assistance; or (4) Foreclosure avoidance or prevention; (C) The credit contract does not require
47 payment of interest; (D) The credit contract provides that repayment of the amount of the credit
48 extended is:

49 (1) Forgiven either incrementally or in whole, at a date certain, and subject only to
50 specified ownership and occupancy conditions, such as a requirement that the consumer maintain
51 the property as the consumer's principal dwelling for five years; (2) Deferred for a minimum of
52 20 years after consummation of the transaction; (3) Deferred until sale of the property securing
53 the transaction; or (4) Deferred until the property securing the transaction is no longer the
54 principal dwelling of the consumer; (E) The total of costs payable by the consumer in connection
55 with the transaction at consummation is less than 1 percent of the amount of credit extended and
56 includes no charges other than: (1) Fees for recordation of security instruments, deeds, and
57 similar documents; (2) A bona fide and reasonable application fee; and (3) A bona fide and
58 reasonable fee for housing counseling services; and (F) The creditor complies with all other
59 applicable requirements of this part in connection with the transaction.

60 (b) Definitions. For purposes of this section:

61 (1) Covered transaction means a consumer credit transaction that is secured by a
62 dwelling, as defined in § 1026.2(a)(19), including any real property attached to a dwelling, other
63 than a transaction exempt from coverage under paragraph (a) of this section.

64 (2) Fully amortizing payment means a periodic payment of principal and interest that will
65 fully repay the loan amount over the loan term. (3) Fully indexed rate means the interest rate
66 calculated using the index or formula that will apply after recast, as determined at the time of
67 consummation, and the maximum margin that can apply at any time during the loan term.

68 (4) Higher-priced covered transaction means a covered transaction with an annual
69 percentage rate that exceeds the average prime offer rate for a comparable transaction as of the
70 date the interest rate is set by 1.5 or more percentage points for a first-lien covered transaction,
71 other than a qualified mortgage under paragraph (e)(5), (e)(6), or (f) of this section; by 3.5 or
72 more percentage points for a first-lien covered transaction that is a qualified mortgage under
73 paragraph (e)(5), (e)(6), or (f) of this section; or by 3.5 or more percentage points for a
74 subordinate-lien covered transaction. For purposes of a qualified mortgage under paragraph
75 (e)(2) of this section, for a loan for which the interest rate may or will change within the first five
76 years after the date on which the first regular periodic payment will be due, the creditor must
77 determine the annual percentage rate for purposes of this paragraph (b)(4) by treating the
78 maximum interest rate that may apply during that five-year period as the interest rate for the full
79 term of the loan.

80 (5) Loan amount means the principal amount the consumer will borrow as reflected in the
81 promissory note or loan contract.

82 (6) Loan term means the period of time to repay the obligation in full.

83 (7) Maximum loan amount means the loan amount plus any increase in principal balance
84 that results from negative amortization, as defined in § 1026.18(s)(7)(v), based on the terms of

85 the legal obligation assuming: (i) The consumer makes only the minimum periodic payments for
86 the maximum possible time, until the consumer must begin making fully amortizing payments;
87 and (ii) The maximum interest rate is reached at the earliest possible time.

88 (8) Mortgage-related obligations mean property taxes; premiums and similar charges
89 identified in § 1026.4(b)(5), (7), (8), and (10) that are required by the creditor; fees and special
90 assessments imposed by a condominium, cooperative, or homeowners association; ground rent;
91 and leasehold payments.

92 (9) Points and fees has the same meaning as in § 1026.32(b)(1).

93 (10) Prepayment penalty has the same meaning as in § 1026.32(b)(6). (11) Recast means:
94 (i) For an adjustable-rate mortgage, as defined in § 1026.18(s)(7)(i), the expiration of the period
95 during which payments based on the introductory fixed interest rate are permitted under the
96 terms of the legal obligation; (ii) For an interest-only loan, as defined in § 1026.18(s)(7)(iv), the
97 expiration of the period during which interest-only payments are permitted under the terms of the
98 legal obligation; and (iii) For a negative amortization loan, as defined in § 1026.18(s)(7)(v), the
99 expiration of the period during which negatively amortizing payments are permitted under the
100 terms of the legal obligation. (12) Simultaneous loan means another covered transaction or home
101 equity line of credit subject to § 1026.40 that will be secured by the same dwelling and made to
102 the same consumer at or before consummation of the covered transaction or, if to be made after
103 consummation, will cover closing costs of the first covered transaction.

104 (13) Third-party record means: (i) A document or other record prepared or reviewed by
105 an appropriate person other than the consumer, the creditor, or the mortgage broker, as defined in
106 § 1026.36(a)(2), or an agent of the creditor or mortgage broker; (ii) A copy of a tax return filed
107 with the Internal Revenue Service or a State taxing authority; (iii) A record the creditor
108 maintains for an account of the consumer held by the creditor; or (iv) If the consumer is an
109 employee of the creditor or the mortgage broker, a document or other record maintained by the
110 creditor or mortgage broker regarding the consumer's employment status or employment income.

111 (c) Repayment ability — (1) General requirement. A creditor shall not make a loan that is
112 a covered transaction unless the creditor makes a reasonable and good faith determination at or
113 before consummation that the consumer will have a reasonable ability to repay the loan
114 according to its terms. (2) Basis for determination. Except as provided otherwise in paragraphs
115 (d), (e), and (f) of this section, in making the repayment ability determination required under
116 paragraph (c)(1) of this section, a creditor must consider the following: (i) The consumer's
117 current or reasonably expected income or assets, other than the value of the dwelling, including
118 any real property attached to the dwelling, that secures the loan; (ii) If the creditor relies on
119 income from the consumer's employment in determining repayment ability, the consumer's
120 current employment status; (iii) The consumer's monthly payment on the covered transaction,
121 calculated in accordance with paragraph (c)(5) of this section; (iv) The consumer's monthly
122 payment on any simultaneous loan that the creditor knows or has reason to know will be made,
123 calculated in accordance with paragraph (c)(6) of this section; (v) The consumer's monthly
124 payment for mortgage-related obligations; (vi) The consumer's current debt obligations, alimony,
125 and child support; (vii) The consumer's monthly debt-to-income ratio or residual income in
126 accordance with paragraph (c)(7) of this section; and (viii) The consumer's credit history.

127 (3) Verification using third-party records. A creditor must verify the information that the
128 creditor relies on in determining a consumer's repayment ability under § 1026.43(c)(2) using
129 reasonably reliable third-party records, except that: (i) For purposes of paragraph (c)(2)(i) of this
130 section, a creditor must verify a consumer's income or assets that the creditor relies on in

131 accordance with §1026.43(c)(4); (ii) For purposes of paragraph (c)(2)(ii) of this section, a
132 creditor may verify a consumer's employment status orally if the creditor prepares a record of the
133 information obtained orally; and (iii) For purposes of paragraph (c)(2)(vi) of this section, if a
134 creditor relies on a consumer's credit report to verify a consumer's current debt obligations and a
135 consumer's application states a current debt obligation not shown in the consumer's credit report,
136 the creditor need not independently verify such an obligation. (4) Verification of income or
137 assets. A creditor must verify the amounts of income or assets that the creditor relies on under
138 §1026.43(c)(2)(i) to determine a consumer's ability to repay a covered transaction using third-
139 party records that provide reasonably reliable evidence of the consumer's income or assets. A
140 creditor may verify the consumer's income using a tax-return transcript issued by the Internal
141 Revenue Service (IRS). Examples of other records the creditor may use to verify the consumer's
142 income or assets include: (i) Copies of tax returns the consumer filed with the IRS or a State
143 taxing authority; (ii) IRS Form W-2s or similar IRS forms used for reporting wages or tax
144 withholding; (iii) Payroll statements, including military Leave and Earnings Statements; (iv)
145 Financial institution records; (v) Records from the consumer's employer or a third party that
146 obtained information from the employer; (vi) Records from a Federal, State, or local government
147 agency stating the consumer's income from benefits or entitlements; (vii) Receipts from the
148 consumer's use of check cashing services; and (viii) Receipts from the consumer's use of a funds
149 transfer service.

150 (5) Payment calculation—(i) General rule. Except as provided in paragraph (c)(5)(ii) of
151 this section, a creditor must make the consideration required under paragraph (c)(2)(iii) of this
152 section using: (A) The fully indexed rate or any introductory interest rate, whichever is greater;
153 and (B) Monthly, fully amortizing payments that are substantially equal, except for monthly
154 student loan obligations as determined under paragraph (c)(6) of this section. (ii) Special rules
155 for loans with a balloon payment, interest-only loans, and negative amortization loans. A creditor
156 must make the consideration required under paragraph (c)(2)(iii) of this section for: (A) A loan
157 with a balloon payment, as defined in §1026.18(s)(5)(i), using:(1) The maximum payment
158 scheduled during the first five years after the date on which the first regular periodic payment
159 will be due for a loan that is not a higher-priced covered transaction; or (2) The maximum
160 payment in the payment schedule, including any balloon payment, for a higher-priced covered
161 transaction; (B) An interest-only loan, as defined in §1026.18(s)(7)(iv), using: (1) The fully
162 indexed rate or any introductory interest rate, whichever is greater; and (2) Substantially equal,
163 monthly payments of principal and interest that will repay the loan amount over the term of the
164 loan remaining as of the date the loan is recast. (C) A negative amortization loan, as defined in
165 §1026.18(s)(7)(v), using:(1) The fully indexed rate or any introductory interest rate, whichever is
166 greater; and (2) Substantially equal, monthly payments of principal and interest that will repay
167 the maximum loan amount over the term of the loan remaining as of the date the loan is recast.

168 (6) Payment calculation for simultaneous loans. For purposes of making the evaluation
169 required under paragraph (c)(2)(iv) of this section, a creditor must consider, taking into account
170 any mortgage-related obligations, a consumer's payment on a simultaneous loan that is: (i) A
171 covered transaction, by following paragraph (c)(5) of this section except for federal education
172 student loan obligations the payment considered in the calculation shall be the actual monthly
173 payment rather than the fully amortized payment of the student loan, provided the consumer
174 provides documentation that the consumer is enrolled in a federal income contingent repayment
175 plan (ICR) or income based repayment (IBR) plan, or other federal Public Service Loan
176 Forgiveness (PSLF) program, and has demonstrated satisfactory payment history on the IBR,

177 ICP plans, or PSLF program for a minimum of three years (36 calendar months) prior to
178 consummation of the covered transaction; or (ii) A home equity line of credit subject to
179 §1026.40, by using the periodic payment required under the terms of the plan and the amount of
180 credit to be drawn at or before consummation of the covered transaction.

181 (7) Monthly debt-to-income ratio or residual income—(i) Definitions. For purposes of
182 this paragraph (c)(7), the following definitions apply: (A) Total monthly debt obligations. The
183 term total monthly debt obligations means the sum of: the payment on the covered transaction, as
184 required to be calculated by paragraphs (c)(2)(iii) and (c)(5) of this section; simultaneous loans,
185 as required by paragraphs (c)(2)(iv) and (c)(6) of this section; mortgage-related obligations, as
186 required by paragraph (c)(2)(v) of this section; and current debt obligations, alimony, and child
187 support, as required by paragraph (c)(2)(vi) of this section. (B) Total monthly income. The
188 term total monthly income means the sum of the consumer's current or reasonably expected
189 income, including any income from assets, as required by paragraphs (c)(2)(i) and (c)(4) of this
190 section. (ii) Calculations—(A) Monthly debt-to-income ratio. If a creditor considers the
191 consumer's monthly debt-to-income ratio under paragraph (c)(2)(vii) of this section, the creditor
192 must consider the ratio of the consumer's total monthly debt obligations to the consumer's total
193 monthly income. (B) Monthly residual income. If a creditor considers the consumer's monthly
194 residual income under paragraph (c)(2)(vii) of this section, the creditor must consider the
195 consumer's remaining income after subtracting the consumer's total monthly debt obligations
196 from the consumer's total monthly income.

197 (d) Refinancing of non-standard mortgages - (1) Definitions. For purposes of this
198 paragraph (d), the following definitions apply:

199 (i) Non-standard mortgage. The term non-standard mortgage means a covered transaction
200 that is: (A) An adjustable-rate mortgage, as defined in § 1026.18(s)(7)(i), with an introductory
201 fixed interest rate for a period of one year or longer; (B) An interest-only loan, as defined in §
202 1026.18(s)(7)(iv); or (C) A negative amortization loan, as defined in § 1026.18(s)(7)(v).

203 (ii) Standard mortgage. The term standard mortgage means a covered transaction: (A)
204 That provides for regular periodic payments that do not: (1) Cause the principal balance to
205 increase; (2) Allow the consumer to defer repayment of principal; or (3) Result in a balloon
206 payment, as defined in § 1026.18(s)(5)(i); (B) For which the total points and fees payable in
207 connection with the transaction do not exceed the amounts specified in paragraph (e)(3) of this
208 section;

209 (C) For which the term does not exceed 40 years; (D) For which the interest rate is fixed
210 for at least the first five years after consummation; and (E) For which the proceeds from the loan
211 are used solely for the following purposes: (1) To pay off the outstanding principal balance on
212 the non-standard mortgage; and (2) To pay closing or settlement charges required to be disclosed
213 under the Real Estate Settlement Procedures Act, 12 U.S.C. 2601 et seq.

214 (iii) Refinancing. The term refinancing has the same meaning as in § 1026.20(a).

215 (2) Scope. The provisions of this paragraph (d) apply to the refinancing of a non-standard
216 mortgage into a standard mortgage when the following conditions are met:

217 (i) The creditor for the standard mortgage is the current holder of the existing non-
218 standard mortgage or the servicer acting on behalf of the current holder;

219 (ii) The monthly payment for the standard mortgage is materially lower than the monthly
220 payment for the non-standard mortgage, as calculated under paragraph (d)(5) of this section.

221 (iii) The creditor receives the consumer's written application for the standard mortgage no
222 later than two months after the non-standard mortgage has recast.

223 (iv) The consumer has made no more than one payment more than 30 days late on the
224 non-standard mortgage during the 12 months immediately preceding the creditor's receipt of the
225 consumer's written application for the standard mortgage.

226 (v) The consumer has made no payments more than 30 days late during the six months
227 immediately preceding the creditor's receipt of the consumer's written application for the
228 standard mortgage; and

229 (vi) If the non-standard mortgage was consummated on or after January 10, 2014, the
230 non-standard mortgage was made in accordance with paragraph (c) or (e) of this section, as
231 applicable.

232 (3) Exemption from repayment ability requirements. A creditor is not required to comply
233 with the requirements of paragraph (c) of this section if:

234 (i) The conditions in paragraph (d)(2) of this section are met; and

235 (ii) The creditor has considered whether the standard mortgage likely will prevent a
236 default by the consumer on the non-standard mortgage once the loan is recast.

237 (4) Offer of rate discounts and other favorable terms. A creditor making a covered
238 transaction under this paragraph (d) may offer to the consumer rate discounts and terms that are
239 the same as, or better than, the rate discounts and terms that the creditor offers to new consumers,
240 consistent with the creditor's documented underwriting practices and to the extent not prohibited
241 by applicable State or Federal law.

242 (5) Payment calculations. For purposes of determining whether the consumer's monthly
243 payment for a standard mortgage will be materially lower than the monthly payment for the non-
244 standard mortgage, the following provisions shall be used:

245 (i) Non-standard mortgage. For purposes of the comparison conducted pursuant to
246 paragraph (d)(2)(ii) of this section, the creditor must calculate the monthly payment for a non-
247 standard mortgage based on substantially equal, monthly, fully amortizing payments of principal
248 and interest using: (A) The fully indexed rate as of a reasonable period of time before or after the
249 date on which the creditor receives the consumer's written application for the standard mortgage;

250 (B) The term of the loan remaining as of the date on which the recast occurs, assuming all
251 scheduled payments have been made up to the recast date and the payment due on the recast date
252 is made and credited as of that date; and (C) A remaining loan amount that is: (1) For an
253 adjustable-rate mortgage under paragraph (d)(1)(i)(A) of this section, the outstanding principal
254 balance as of the date of the recast, assuming all scheduled payments have been made up to the
255 recast date and the payment due on the recast date is made and credited as of that date; (2) For an
256 interest-only loan under paragraph (d)(1)(i)(B) of this section, the outstanding principal balance
257 as of the date of the recast, assuming all scheduled payments have been made up to the recast
258 date and the payment due on the recast date is made and credited as of that date; or (3) For a
259 negative amortization loan under paragraph (d)(1)(i)(C) of this section, the maximum loan
260 amount, determined after adjusting for the outstanding principal balance.

261 (ii) Standard mortgage. For purposes of the comparison conducted pursuant to paragraph
262 (d)(2)(ii) of this section, the monthly payment for a standard mortgage must be based on
263 substantially equal, monthly, fully amortizing payments based on the maximum interest rate that
264 may apply during the first five years after consummation.

265 (e) Qualified mortgages - (1) Safe harbor and presumption of compliance -

266 (i) Safe harbor for loans that are not higher-priced covered transactions and for seasoned
267 loans. A creditor or assignee of a qualified mortgage complies with the repayment ability
268 requirements of paragraph (c) of this section if: (A) The loan is a qualified mortgage as defined

269 in paragraph (e)(2), (4), (5), (6), or (f) of this section that is not a higher-priced covered
270 transaction, as defined in paragraph (b)(4) of this section; or (B) The loan is a qualified mortgage
271 as defined in paragraph (e)(7) of this section, regardless of whether the loan is a higher-priced
272 covered transaction.

273 (ii) Presumption of compliance for higher-priced covered transactions.

274 (A) A creditor or assignee of a qualified mortgage, as defined in paragraph (e)(2), (e)(4),
275 (e)(5), (e)(6), or (f) of this section, that is a higher-priced covered transaction, as defined in
276 paragraph (b)(4) of this section, is presumed to comply with the repayment ability requirements
277 of paragraph (c) of this section. (B) To rebut the presumption of compliance described in
278 paragraph (e)(1)(ii)(A) of this section, it must be proven that, despite meeting the prerequisites of
279 paragraph (e)(2), (e)(4), (e)(5), (e)(6), or (f) of this section, the creditor did not make a
280 reasonable and good faith determination of the consumer's repayment ability at the time of
281 consummation, by showing that the consumer's income, debt obligations, alimony, child support,
282 and the consumer's monthly payment (including mortgage-related obligations) on the covered
283 transaction and on any simultaneous loans of which the creditor was aware at consummation
284 would leave the consumer with insufficient residual income or assets other than the value of the
285 dwelling (including any real property attached to the dwelling) that secures the loan with which
286 to meet living expenses, including any recurring and material non-debt obligations of which the
287 creditor was aware at the time of consummation.

288 (2) Qualified mortgage defined - general. Except as provided in paragraph (e)(4), (5), (6),
289 (7), or (f) of this section, a qualified mortgage is a covered transaction:

290 (i) That provides for regular periodic payments that are substantially equal, except for the
291 effect that any interest rate change after consummation has on the payment in the case of an
292 adjustable-rate or step-rate mortgage, that do not: (A) Result in an increase of the principal
293 balance;

294 (B) Allow the consumer to defer repayment of principal, except as provided in paragraph
295 (f) of this section; or (C) Result in a balloon payment, as defined in § 1026.18(s)(5)(i), except as
296 provided in paragraph (f) of this section;

297 (ii) For which the loan term does not exceed 30 years;

298 (iii) For which the total points and fees payable in connection with the loan do not exceed
299 the amounts specified in paragraph (e)(3) of this section;

300 (iv) For which the creditor underwrites the loan, taking into account the monthly payment
301 for mortgage-related obligations, using: (A) The maximum interest rate that may apply during
302 the first five years after the date on which the first regular periodic payment will be due; and

303 (B) Periodic payments of principal and interest that will repay either: (1) The outstanding
304 principal balance over the remaining term of the loan as of the date the interest rate adjusts to the
305 maximum interest rate set forth in paragraph (e)(2)(iv)(A) of this section, assuming the consumer
306 will have made all required payments as due prior to that date; or (2) The loan amount over the
307 loan term; (v) For which the creditor, at or before consummation:

308 (A) Considers the consumer's current or reasonably expected income or assets other than
309 the value of the dwelling (including any real property attached to the dwelling) that secures the
310 loan, debt obligations, alimony, child support, and monthly debt-to-income ratio or residual
311 income, using the amounts determined from paragraph (e)(2)(v)(B) of this section. For purposes
312 of this paragraph (e)(2)(v)(A), the consumer's monthly debt-to-income ratio or residual income is
313 determined in accordance with paragraph (c)(7) of this section, except that the consumer's

314 monthly payment on the covered transaction, including the monthly payment for mortgage-
315 related obligations, is calculated in accordance with paragraph (e)(2)(iv) of this section.

316 (B)(1) Verifies the consumer's current or reasonably expected income or assets other than
317 the value of the dwelling (including any real property attached to the dwelling) that secures the
318 loan using third-party records that provide reasonably reliable evidence of the consumer's income
319 or assets, in accordance with paragraph (c)(4) of this section; and (2) Verifies the consumer's
320 current debt obligations, alimony, and child support using reasonably reliable third-party records
321 in accordance with paragraph (c)(3) of this section. (vi) For which the annual percentage rate
322 does not exceed the average prime offer rate for a comparable transaction as of the date the
323 interest rate is set by the amounts specified in paragraphs (e)(2)(vi)(A) through (F) of this
324 section. The amounts specified here shall be adjusted annually on January 1 by the annual
325 percentage change in the Consumer Price Index for All Urban Consumers (CPI-U) that was
326 reported on the preceding June 1. For purposes of this paragraph (e)(2)(vi), the creditor must
327 determine the annual percentage rate for a loan for which the interest rate may or will change
328 within the first five years after the date on which the first regular periodic payment will be due
329 by treating the maximum interest rate that may apply during that five-year period as the interest
330 rate for the full term of the loan.

331 (A) For a first-lien covered transaction with a loan amount greater than or equal to
332 \$110,260 (indexed for inflation), 2.25 or more percentage points; (B) For a first-lien covered
333 transaction with a loan amount greater than or equal to \$66,156 (indexed for inflation) but less
334 than \$110,260 (indexed for inflation), 3.5 or more percentage points;(C) For a first-lien covered
335 transaction with a loan amount less than \$66,156 (indexed for inflation), 6.5 or more percentage
336 points;(D) For a first-lien covered transaction secured by a manufactured home with a loan
337 amount less than \$110,260 (indexed for inflation), 6.5 or more percentage points; (E) For a
338 subordinate-lien covered transaction with a loan amount greater than or equal to \$66,156
339 (indexed for inflation), 3.5 or more percentage points; (F) For a subordinate-lien covered
340 transaction with a loan amount less than \$66,156 (indexed for inflation), 6.5 or more percentage
341 points.

342 (3) Limits on points and fees for qualified mortgages.

343 (i) Except as provided in paragraph (e)(3)(iii) of this section, a covered transaction is not
344 a qualified mortgage unless the transaction's total points and fees, as defined in § 1026.32(b)(1),
345 do not exceed: (A) For a loan amount greater than or equal to \$100,000 (indexed for inflation): 3
346 percent of the total loan amount; (B) For a loan amount greater than or equal to \$60,000 (indexed
347 for inflation) but less than \$100,000 (indexed for inflation): \$3,000 (indexed for inflation); (C)
348 For a loan amount greater than or equal to \$20,000 (indexed for inflation) but less than \$60,000
349 (indexed for inflation): 5 percent of the total loan amount; (D) For a loan amount greater than or
350 equal to \$12,500 (indexed for inflation) but less than \$20,000 (indexed for inflation): \$1,000
351 (indexed for inflation); (E) For a loan amount less than \$12,500 (indexed for inflation): 8 percent
352 of the total loan amount.

353 (ii) The dollar amounts, including the loan amounts, in paragraph (e)(3)(i) of this section
354 shall be adjusted annually on January 1 by the annual percentage change in the Consumer Price
355 Index for All Urban Consumers (CPI-U) that was reported on the preceding June 1. See the
356 official commentary to this paragraph (e)(3)(ii) for the current dollar amounts.

357 (iii) For covered transactions consummated on or before January 10, 2021, if the creditor
358 or assignee determines after consummation that the transaction's total points and fees exceed the
359 applicable limit under paragraph (e)(3)(i) of this section, the loan is not precluded from being a

360 qualified mortgage, provided: (A) The loan otherwise meets the requirements of paragraphs
361 (e)(2), (e)(4), (e)(5), (e)(6), or (f) of this section, as applicable; (B) The creditor or assignee pays
362 to the consumer the amount described in paragraph (e)(3)(iv) of this section within 210 days
363 after consummation and prior to the occurrence of any of the following events: (1) The
364 institution of any action by the consumer in connection with the loan; (2) The receipt by the
365 creditor, assignee, or servicer of written notice from the consumer that the transaction's total
366 points and fees exceed the applicable limit under paragraph (e)(3)(i) of this section; or (3) The
367 consumer becoming 60 days past due on the legal obligation; and (C) The creditor or assignee, as
368 applicable, maintains and follows policies and procedures for post-consummation review of
369 points and fees and for making payments to consumers in accordance with paragraphs
370 (e)(3)(iii)(B) and (e)(3)(iv) of this section.

371 (iv) For purposes of paragraph (e)(3)(iii) of this section, the creditor or assignee must pay
372 to the consumer an amount that is not less than the sum of the following:

373 (A) The dollar amount by which the transaction's total points and fees exceeds the
374 applicable limit under paragraph (e)(3)(i) of this section; and (B) Interest on the dollar amount
375 described in paragraph (e)(3)(iv)(A) of this section, calculated using the contract interest rate
376 applicable during the period from consummation until the payment described in this paragraph
377 (e)(3)(iv) is made to the consumer.

378 (4) Qualified mortgage defined - other agencies. Notwithstanding paragraph (e)(2) of this
379 section, a qualified mortgage is a covered transaction that is defined as a qualified mortgage by
380 the U.S. Department of Housing and Urban Development under 24 CFR 201.7 and 24 CFR
381 203.19, the U.S. Department of Veterans Affairs under 38 CFR 36.4300 and 38 CFR 36.4500, or
382 the U.S. Department of Agriculture under 7 CFR 3555.109.

383 (5) Qualified mortgage defined - small creditor portfolio loans. (i) Notwithstanding
384 paragraph (e)(2) of this section, a qualified mortgage is a covered transaction: (A) That satisfies
385 the requirements of paragraph (e)(2) of this section other than the requirements of paragraphs
386 (e)(2)(v) and (vi) of this section; (B) For which the creditor: (1) Considers and verifies at or
387 before consummation the consumer's current or reasonably expected income or assets other than
388 the value of the dwelling (including any real property attached to the dwelling) that secures the
389 loan, in accordance with paragraphs (c)(2)(i) and (c)(4) of this section; (2) Considers and verifies
390 at or before consummation the consumer's current debt obligations, alimony, and child support in
391 accordance with paragraphs (c)(2)(vi) and (c)(3) of this section; (3) Considers at or before
392 consummation the consumer's monthly debt-to-income ratio or residual income and verifies the
393 debt obligations and income used to determine that ratio in accordance with paragraph (c)(7) of
394 this section, except that the calculation of the payment on the covered transaction for purposes of
395 determining the consumer's total monthly debt obligations in paragraph (c)(7)(i)(A) shall be
396 determined in accordance with paragraph (e)(2)(iv) of this section instead of paragraph (c)(5) of
397 this section; (C) That is not subject, at consummation, to a commitment to be acquired by
398 another person, other than a person that satisfies the requirements of paragraph (e)(5)(i)(D) of
399 this section; and (D) For which the creditor satisfies the requirements stated in §
400 1026.35(b)(2)(iii)(B) and (C).

401 (ii) A qualified mortgage extended pursuant to paragraph (e)(5)(i) of this section
402 immediately loses its status as a qualified mortgage under paragraph (e)(5)(i) if legal title to the
403 qualified mortgage is sold, assigned, or otherwise transferred to another person except when: (A)
404 The qualified mortgage is sold, assigned, or otherwise transferred to another person three years
405 or more after consummation of the qualified mortgage; (B) The qualified mortgage is sold,

406 assigned, or otherwise transferred to a creditor that satisfies the requirements of paragraph
407 (e)(5)(i)(D) of this section; (C) The qualified mortgage is sold, assigned, or otherwise transferred
408 to another person pursuant to a capital restoration plan or other action under 12 U.S.C. 1831o,
409 actions or instructions of any person acting as conservator, receiver, or bankruptcy trustee, an
410 order of a State or Federal government agency with jurisdiction to examine the creditor pursuant
411 to State or Federal law, or an agreement between the creditor and such an agency; or (D) The
412 qualified mortgage is sold, assigned, or otherwise transferred pursuant to a merger of the creditor
413 with another person or acquisition of the creditor by another person or of another person by the
414 creditor.

415 (6) Qualified mortgage defined - temporary balloon-payment qualified mortgage rules.

416 (i) Notwithstanding paragraph (e)(2) of this section, a qualified mortgage is a covered
417 transaction: (A) That satisfies the requirements of paragraph (f) of this section other than the
418 requirements of paragraph (f)(1)(vi); and (B) For which the creditor satisfies the requirements
419 stated in § 1026.35(b)(2)(iii)(B) and (C).

420 (ii) The provisions of this paragraph (e)(6) apply only to covered transactions for which
421 the application was received before April 1, 2016.

422 (7) Qualified mortgage defined - seasoned loans -

423 (i) General. Notwithstanding paragraph (e)(2) of this section, and except as provided in
424 paragraph (e)(7)(iv) of this section, a qualified mortgage is a first-lien covered transaction that:

425 (A) Is a fixed-rate mortgage as defined in § 1026.18(s)(7)(iii) with fully amortizing
426 payments as defined in paragraph (b)(2) of this section;

427 (B) Satisfies the requirements in paragraphs (e)(2)(i) through (v) of this section;

428 (C) Has met the requirements in paragraph (e)(7)(ii) of this section at the end of the
429 seasoning period as defined in paragraph (e)(7)(iv)(C) of this section;

430 (D) Satisfies the requirements in paragraph (e)(7)(iii) of this section; and

431 (E) Is not a high-cost mortgage as defined in § 1026.32(a).

432 (ii) Performance requirements. To be a qualified mortgage under this paragraph (e)(7) of
433 this section, the covered transaction must have no more than two delinquencies of 30 or more
434 days and no delinquencies of 60 or more days at the end of the seasoning period.

435 (iii) Portfolio requirements. To be a qualified mortgage under this paragraph (e)(7) of this
436 section, the covered transaction must satisfy the following requirements: (A) The covered
437 transaction is not subject, at consummation, to a commitment to be acquired by another person,
438 except for a sale, assignment, or transfer permitted by paragraph (e)(7)(iii)(B)(3) of this section;
439 and (B) Legal title to the covered transaction is not sold, assigned, or otherwise transferred to
440 another person before the end of the seasoning period, except that:

441 (1) The covered transaction may be sold, assigned, or otherwise transferred to another
442 person pursuant to a capital restoration plan or other action under 12 U.S.C. 1831o, actions or
443 instructions of any person acting as conservator, receiver, or bankruptcy trustee, an order of a
444 State or Federal government agency with jurisdiction to examine the creditor pursuant to State or
445 Federal law, or an agreement between the creditor and such an agency;

446 (2) The covered transaction may be sold, assigned, or otherwise transferred pursuant to a
447 merger of the creditor with another person or acquisition of the creditor by another person or of
448 another person by the creditor; or (3) The covered transaction may be sold, assigned, or
449 otherwise transferred once before the end of the seasoning period, provided that the covered
450 transaction is not securitized as part of the sale, assignment, or transfer or at any other time
451 before the end of the seasoning period as defined in § 1026.43(e)(7)(iv)(C).

452 (iv) Definitions. For purposes of paragraph (e)(7) of this section:
453 (A) Delinquency means the failure to make a periodic payment (in one full payment or in
454 two or more partial payments) sufficient to cover principal, interest, and escrow (if applicable)
455 for a given billing cycle by the date the periodic payment is due under the terms of the legal
456 obligation. Other amounts, such as any late fees, are not considered for this purpose.

457 (1) A periodic payment is 30 days delinquent when it is not paid before the due date of
458 the following scheduled periodic payment.

459 (2) A periodic payment is 60 days delinquent if the consumer is more than 30 days
460 delinquent on the first of two sequential scheduled periodic payments and does not make both
461 sequential scheduled periodic payments before the due date of the next scheduled periodic
462 payment after the two sequential scheduled periodic payments.

463 (3) For any given billing cycle for which a consumer's payment is less than the periodic
464 payment due, a consumer is not delinquent as defined in this paragraph (e)(7) if:

465 (i) The servicer chooses not to treat the payment as delinquent for purposes of any section
466 of subpart C of Regulation X, 12 CFR part 1024, if applicable;

467 (ii) The payment is deficient by \$50 or less; and

468 (iii) There are no more than three such deficient payments treated as not delinquent
469 during the seasoning period.

470 (4) The principal and interest used in determining the date a periodic payment sufficient
471 to cover principal, interest, and escrow (if applicable) for a given billing cycle becomes due and
472 unpaid are the principal and interest payment amounts established by the terms and payment
473 schedule of the loan obligation at consummation, except:

474 (i) If a qualifying change as defined in paragraph (e)(7)(iv)(B) of this section is made to
475 the loan obligation, the principal and interest used in determining the date a periodic payment
476 sufficient to cover principal, interest, and escrow (if applicable) for a given billing cycle becomes
477 due and unpaid are the principal and interest payment amounts established by the terms and
478 payment schedule of the loan obligation at consummation as modified by the qualifying change.

479 (ii) If, due to reasons related to the timing of delivery, set up, or availability for
480 occupancy of the dwelling securing the obligation, the first payment due date is modified before
481 the first payment due date in the legal obligation at consummation, the modified first payment
482 due date shall be considered in lieu of the first payment due date in the legal obligation at
483 consummation in determining the date a periodic payment sufficient to cover principal, interest,
484 and escrow (if applicable) for a given billing cycle becomes due and unpaid.

485 (5) Except for purposes of making up the deficiency amount set forth in paragraph
486 (e)(7)(iv)(A)(3)(ii) of this section, payments from the following sources are not considered in
487 assessing delinquency under paragraph (e)(7)(iv)(A) of this section:

488 (i) Funds in escrow in connection with the covered transaction; or

489 (ii) Funds paid on behalf of the consumer by the creditor, servicer, or assignee of the
490 covered transaction, or any other person acting on behalf of such creditor, servicer, or assignee.

491 (B) Qualifying change means an agreement that meets the following conditions:

492 (1) The agreement is entered into during or after a temporary payment accommodation in
493 connection with a disaster or pandemic-related national emergency as defined in paragraph
494 (e)(7)(iv)(D) of this section and ends any pre-existing delinquency on the loan obligation upon
495 taking effect; (2) The amount of interest charged over the full term of the loan does not increase
496 as a result of the agreement;

497 (3) The servicer does not charge any fee in connection with the agreement; and

498 (4) Promptly upon the consumer's acceptance of the agreement, the servicer waives all
499 late charges, penalties, stop payment fees, or similar charges incurred during a temporary
500 payment accommodation in connection with a disaster or pandemic-related national emergency,
501 as well as all late charges, penalties, stop payment fees, or similar charges incurred during the
502 delinquency that led to a temporary payment accommodation in connection with a disaster or
503 pandemic-related national emergency. (C) Seasoning period means a period of 36 months
504 beginning on the date on which the first periodic payment is due after consummation of the
505 covered transaction, except that: (1) Notwithstanding any other provision of this section, if there
506 is a delinquency of 30 days or more at the end of the 36th month of the seasoning period, the
507 seasoning period does not end until there is no delinquency; and (2) The seasoning period does
508 not include any period during which the consumer is in a temporary payment accommodation
509 extended in connection with a disaster or pandemic-related national emergency, provided that
510 during or at the end of the temporary payment accommodation there is a qualifying change as
511 defined in paragraph (e)(7)(iv)(B) of this section or the consumer cures the loan's delinquency
512 under its original terms. If during or at the end of the temporary payment accommodation in
513 connection with a disaster or pandemic-related national emergency there is a qualifying change
514 or the consumer cures the loan's delinquency under its original terms, the seasoning period
515 consists of the period from the date on which the first periodic payment was due after
516 consummation of the covered transaction to the beginning of the temporary payment
517 accommodation and an additional period immediately after the temporary payment
518 accommodation ends, which together must equal at least 36 months. (D) Temporary payment
519 accommodation in connection with a disaster or pandemic-related national emergency means
520 temporary payment relief granted to a consumer due to financial hardship caused directly or
521 indirectly by a presidentially declared emergency or major disaster under the Robert T. Stafford
522 Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.) or a presidentially
523 declared pandemic-related national emergency under the National Emergencies Act (50 U.S.C.
524 1601 et seq.).

525 (f) Balloon-payment qualified mortgages made by certain creditors -

526 (1) Exemption. Notwithstanding paragraph (e)(2) of this section, a qualified mortgage
527 may provide for a balloon payment, provided:

528 (i) The loan satisfies the requirements for a qualified mortgage in paragraphs (e)(2)(i)(A)
529 and (e)(2)(ii) and (iii) of this section;

530 (ii) The creditor determines at or before consummation that the consumer can make all of
531 the scheduled payments under the terms of the legal obligation, as described in paragraph
532 (f)(1)(iv) of this section, together with the consumer's monthly payments for all mortgage-related
533 obligations and excluding the balloon payment, from the consumer's current or reasonably
534 expected income or assets other than the dwelling that secures the loan;

535 (iii) The creditor: (A) Considers and verifies at or before consummation the consumer's
536 current or reasonably expected income or assets other than the value of the dwelling (including
537 any real property attached to the dwelling) that secures the loan, in accordance with paragraphs
538 (c)(2)(i) and (c)(4) of this section; (B) Considers and verifies at or before consummation the
539 consumer's current debt obligations, alimony, and child support in accordance with paragraphs
540 (c)(2)(vi) and (c)(3) of this section; (C) Considers at or before consummation the consumer's
541 monthly debt-to-income ratio or residual income and verifies the debt obligations and income
542 used to determine that ratio in accordance with paragraph (c)(7) of this section, except that the
543 calculation of the payment on the covered transaction for purposes of determining the consumer's

544 total monthly debt obligations in (c)(7)(i)(A) shall be determined in accordance with paragraph
545 (f)(1)(iv)(A) of this section, together with the consumer's monthly payments for all mortgage-
546 related obligations and excluding the balloon payment;

547 (iv) The legal obligation provides for: (A) Scheduled payments that are substantially
548 equal, calculated using an amortization period that does not exceed 30 years; (B) An interest rate
549 that does not increase over the term of the loan; and (C) A loan term of five years or longer.

550 (v) The loan is not subject, at consummation, to a commitment to be acquired by another
551 person, other than a person that satisfies the requirements of paragraph (f)(1)(vi) of this section;
552 and (vi) The creditor satisfies the requirements stated in § 1026.35(b)(2)(iii)(A), (B), and (C).

553 (2) Post-consummation transfer of balloon-payment qualified mortgage. A balloon-
554 payment qualified mortgage, extended pursuant to paragraph (f)(1), immediately loses its status
555 as a qualified mortgage under paragraph (f)(1) if legal title to the balloon-payment qualified
556 mortgage is sold, assigned, or otherwise transferred to another person except when:

557 (i) The balloon-payment qualified mortgage is sold, assigned, or otherwise transferred to
558 another person three years or more after consummation of the balloon-payment qualified
559 mortgage; (ii) The balloon-payment qualified mortgage is sold, assigned, or otherwise
560 transferred to a creditor that satisfies the requirements of paragraph (f)(1)(vi) of this section;

561 (iii) The balloon-payment qualified mortgage is sold, assigned, or otherwise transferred
562 to another person pursuant to a capital restoration plan or other action under 12 U.S.C. 1831o,
563 actions or instructions of any person acting as conservator, receiver or bankruptcy trustee, an
564 order of a State or Federal governmental agency with jurisdiction to examine the creditor
565 pursuant to State or Federal law, or an agreement between the creditor and such an agency; or

566 (iv) The balloon-payment qualified mortgage is sold, assigned, or otherwise transferred
567 pursuant to a merger of the creditor with another person or acquisition of the creditor by another
568 person or of another person by the creditor.

569 (g) Prepayment penalties - (1) When permitted. A covered transaction must not include a
570 prepayment penalty unless:

571 (i) The prepayment penalty is otherwise permitted by law; and

572 (ii) The transaction: (A) Has an annual percentage rate that cannot increase after
573 consummation; (B) Is a qualified mortgage under paragraph (e)(2), (e)(4), (e)(5), (e)(6), or (f) of
574 this section; and (C) Is not a higher-priced mortgage loan, as defined in § 1026.35(a).

575 (2) Limits on prepayment penalties. A prepayment penalty:

576 (i) Must not apply after the three-year period following consummation; and

577 (ii) Must not exceed the following percentages of the amount of the outstanding loan
578 balance prepaid: (A) 2 percent, if incurred during the first two years following consummation;
579 and (B) 1 percent, if incurred during the third year following consummation.

580 (3) Alternative offer required. A creditor must not offer a consumer a covered transaction
581 with a prepayment penalty unless the creditor also offers the consumer an alternative covered
582 transaction without a prepayment penalty and the alternative covered transaction:

583 (i) Has an annual percentage rate that cannot increase after consummation and has the
584 same type of interest rate as the covered transaction with a prepayment penalty; for purposes of
585 this paragraph (g), the term "type of interest rate" refers to whether a transaction:

586 (A) Is a fixed-rate mortgage, as defined in § 1026.18(s)(7)(iii); or (B) Is a step-rate
587 mortgage, as defined in § 1026.18(s)(7)(ii); (ii) Has the same loan term as the loan term for the
588 covered transaction with a prepayment penalty; (iii) Satisfies the periodic payment conditions
589 under paragraph (e)(2)(i) of this section; (iv) Satisfies the points and fees conditions under

590 paragraph (e)(2)(iii) of this section, based on the information known to the creditor at the time
591 the transaction is offered; and (v) Is a transaction for which the creditor has a good faith belief
592 that the consumer likely qualifies, based on the information known to the creditor at the time the
593 creditor offers the covered transaction without a prepayment penalty.

594 (4) Offer through a mortgage broker. If the creditor offers a covered transaction with a
595 prepayment penalty to the consumer through a mortgage broker, as defined in § 1026.36(a)(2),
596 the creditor must:

597 (i) Present the mortgage broker an alternative covered transaction without a prepayment
598 penalty that satisfies the requirements of paragraph (g)(3) of this section; and

599 (ii) Establish by agreement that the mortgage broker must present the consumer an
600 alternative covered transaction without a prepayment penalty that satisfies the requirements of
601 paragraph (g)(3) of this section, offered by: (A) The creditor; or (B) Another creditor, if the
602 transaction offered by the other creditor has a lower interest rate or a lower total dollar amount of
603 discount points and origination points or fees. (5) Creditor that is a loan originator. If the creditor
604 is a loan originator, as defined in § 1026.36(a)(1), and the creditor presents the consumer a
605 covered transaction offered by a person to which the creditor would assign the covered
606 transaction after consummation, the creditor must present the consumer an alternative covered
607 transaction without a prepayment penalty that satisfies the requirements of paragraph (g)(3) of
608 this section, offered by: (i) The assignee; or(ii) Another person, if the transaction offered by the
609 other person has a lower interest rate or a lower total dollar amount of origination discount points
610 and points or fees. (6) Applicability. This paragraph (g) applies only if a covered transaction is
611 consummated with a prepayment penalty and is not violated if: (i) A covered transaction is
612 consummated without a prepayment penalty; or (ii) The creditor and consumer do not
613 consummate a covered transaction.

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

(language to be added underlined, language to be deleted stricken)

PROPONENT: San Mateo County Bar Association

STATEMENT OF REASONS

The Problem (including Existing Law): Studies show many student loan borrowers are financially responsible, yet current federal law prevents them from home ownership. For example, the 2019 US Federal Reserve (Fed) “Report on the Economic Well Being of US Households” showed 77% of student loan borrowers owing more than \$75,000 had never defaulted on their loans. However, the 2017 National Association of Realtors (NAR) report, “Student Loan Debt and Housing Report, 2017, When Debt Holds You Back,” showed 83% of student loan borrowers surveyed could not buy a home because of student debt, and 52% surveyed cited the Debt to Income (DTI) underwriting rules as the main reason for not attempting to buy a home. The Ability to Repay (ATR) rule, in 12 CFR Section 1026.43 (c), subsections (c) (1), (5), (6) and (7), requires mortgage applicants to include the fully amortized student loan payment in their DTI ratio calculation, even if the applicant is enrolled in federal repayment programs with lower actual payments. As a result, many mortgage applicants with

student loans cannot obtain Federal Housing Authority mortgage loans because their overall debt is automatically determined to be too high.

The Solution: Inclusion of the fully amortized payment for many applicants who are participating in federal repayment programs such as Income Contingent Repayment (ICR), Public Service Loan Forgiveness (PSLF), or Income Based Repayment (IBR), excludes them from home ownership because the fully amortized payment is often much higher than the borrower's actual payments in those programs. As a result, the overly inflated DTI calculation does not accurately reflect the borrower's actual financial condition while under ICR, IBR or PSLF. Therefore, this resolution recommends that Regulation Z be modified to revise the DTI calculation for home mortgage applicant qualifications to rely on the borrower's actual student loan payment amount, in place of the fully amortized student loan payment. This more accurately reflects each applicant's eligibility for a mortgage loan based on the actual total monthly debt obligations required in 12 CFR Section 1026.43 (c) (2) (vii). Based on the 2017 NAR study and the 2019 Fed report, relying on the actual student loan payment amount would solve the problem by making these excluded applicants eligible for home ownership. Note: this resolution is directed to the federal government because federal law precludes California law about home mortgages. See, for example, the California Financial Code sections 22000-22780.1, "California Financing Law."

IMPACT STATEMENT

The impact of this resolution is uncertain. Complimentary modifications to California Finance Law and private lending guidelines may result.

CURRENT OR PRIOR RELATED LEGISLATION

SB482 (Hueso, Reg. Sess. 2019-2020) introduced to amend California Finance Code to incorporate the ATR requirement of Regulation Z for consumer loans. The legislation would have amended Sections 22329 and 22337, and added Section 22320.3 to the California Financial Code, relating to lending for consumer loans, but not mortgage lending. Although the bill was withdrawn by the author on April 23, 2019 prior to the first Senate Judiciary hearing, this bill demonstrates that California Finance Code could be amended to incorporate the proposed changes for mortgage lending following a change at the federal level. (source: https://leginfo.legislature.ca.gov/faces/billStatusClient.xhtml?bill_id=201920200SB482, accessed 2/25/21).

AUTHOR AND/OR PERMANENT CONTACT:

Marna Paintsil Anning; P.O. Box 559, Pinole, CA, 94564; m_anning@u.pacific.edu, (916) 346-5928.

RESPONSIBLE FLOOR DELEGATE: Marna Paintsil Anning.