PART 1041—PAYDAY, VEHICLE TITLE, AND CERTAIN HIGH-COST

INSTALLMENT LOANS

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Authority: 12 U.S.C. 5511, 5512, 5514(b), 5531(b), (c), and (d), 5532.

Subpart A—General

**§ 1041.1 Authority and purpose.**

1. *Authority*. The regulation in this part is issued by the Bureau of Consumer Financial Protection (Bureau) pursuant to Title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5481, et seq.).
2. *Purpose*. The purpose of this part is to identify certain unfair and abusive acts or practices in connection with certain consumer credit transactions and to set forth requirements for preventing such acts or practices. This part also prescribes requirements to ensure that the features of those consumer credit transactions are fully, accurately, and effectively disclosed to consumers. This part also prescribes processes and criteria for registration of information systems.

**§ 1041.2 Definitions.**

For the purposes of this part, the following definitions apply:

1. *Account* has the same meaning as in Regulation E, 12 CFR 1005.2(b).

*1. In general.* Institutions may rely on 12 CFR 1005.2(b) and its related commentary in determining the meaning of account.

1. *Affiliate* has the same meaning as in 12 U.S.C. 5481(1).
2. *Closed-end credit* means an extension of credit to a consumer that is not open-end credit under § 1041.2(14).

*1. In general*. Institutions may rely on 12 CFR 1026.2(a)(10) and its related commentary in determining the meaning of closed-end credit, but without regard to whether the credit is consumer credit, as that term is defined in 12 CFR 1026.2(a)(12), or is extended to a consumer, as that term is defined in 12 CFR 1026.2(a)(11).

1. *Consumer* has the same meaning as in 12 U.S.C. 5481(4).
2. *Consummation* means the time that a consumer becomes contractually obligated on a new loan or a modification that increases the amount of an existing loan.

*1. New loan*. When a contractual obligation on the consumer’s part is created is a matter to be determined under applicable law. A contractual commitment agreement, for example, that under applicable law binds the consumer to the loan terms would be consummation. Consummation, however, does not occur merely because the consumer has made some financial investment in the transaction (for example, by paying a non-refundable fee) unless applicable law holds otherwise.

*2. Modification of existing loan*. A modification of an existing loan constitutes a consummation for purposes of this rule in certain circumstances. If the principal amount of an existing loan is increased, or if the total amount available under an open-end credit plan is increased, the modification is consummated as of the time that the consumer becomes contractually obligated on such a modification or increase. In those cases, the modification must comply with the requirements of § 1041.5(b) or § 1041.9(b), as appropriate. A loan modification is not considered consummated under § 1041.2(5) if the modification reduces the principal amount or amount available under an open-end credit plan, or if the modification results only in the consumer receiving additional time in which to repay the loan. Providing a cost-free “offramp” or repayment plan to a consumer who cannot repay a loan during the allotted term of the loan is a modification of an existing loan—not a new loan—that results only in the consumer receiving additional time in which to repay the loan. Thus providing a no-cost repayment plan does not involve a consummation.

1. *Covered short-term loan* means a loan described in § 1041.3(b)(1).
2. *Covered longer-term balloon-payment* loan means a loan described in § 1041.3(b)(2) that requires the consumer to repay the loan in a single payment or repay the loan through at least one payment that is more than twice as large as any other payment(s) under the loan.

*1. Loans repayable in a single payment*. A loan described in § 1041.3(b)(2) is considered to be a covered longer-term balloon-payment loan under § 1041.2(7) if the consumer must repay the entire amount of the loan in a single payment.

*2. Payments more than twice as large as other payments*. A loan described in § 1041.3(b)(2) is considered to be a covered longer-term balloon-payment loan under § 1041.2(7) if any one payment is more than twice as large as any other payment(s) under the loan. All required payments of principal and interest (or interest only, depending on the loan features) due under the loan are used to determine whether a particular payment is more than twice as large as another payment, regardless of whether the payments have changed during the loan term due to rate adjustments or other payment changes permitted or required under the loan.

*3. Charges excluded*. Charges for actual unanticipated late payments, for exceeding a credit limit, or for delinquency, default, or a similar occurrence that may be added to a payment are excluded from the determination of whether the loan is repayable in a single payment or a particular payment is more than twice as large as another payment. Likewise, sums that are accelerated and due upon default are excluded from the determination of whether the loan is repayable in a single payment or a particular payment is more than twice as large as another payment.

1. *Covered longer-term loan* means a loan described in § 1041.3(b)(2).
2. *Credit* has the same meaning as in Regulation Z, 12 CFR 1026.2(a)(14).

*1. In general*. Institutions may rely on 12 CFR 1026.2(a)(14) and its related commentary in determining the meaning of credit.

1. *Electronic fund transfer* has the same meaning as in Regulation E, 12 CFR 1005.3(b).

*1. In general*. Institutions may rely on 12 CFR 1005.3(b) and its related commentary in determining the meaning of electronic fund transfer.

1. *Lender* means a person who regularly extends loans to a consumer primarily for personal, family, or household purposes.

*1. Regularly makes loans*. The test for determining whether a person regularly makes loans for personal, family, or household purposes is explained in Regulation Z, 12 CFR 1026.2(a)(17)(v). Any loan to a consumer for personal, family, or household purposes, whether or not the loan is a covered loan under this part, counts toward the numeric threshold for determining whether a person regularly makes loans.

1. *Loan sequence or sequence* means a series of consecutive or concurrent covered short-term loans in which each of the loans (other than the first loan) is made during the time period in which the consumer has a covered short-term loan outstanding and for 30 days thereafter. For the purpose of determining where a loan is located within a loan sequence:
2. A covered short-term loan is the first loan in a sequence if the loan is extended to a consumer who had no covered short-term loans outstanding within the immediately preceding 30 days;
3. A covered short-term is the second loan in the sequence if the consumer has a currently outstanding covered short-term loan, or if the consummation date of the second loan is within 30 days following the last day on which the consumer’s first loan in the sequence was outstanding;
4. A covered short-term is the third loan in the sequence if the consumer has a currently outstanding covered short-term loan that is the second loan in the sequence, or if the consummation date of the third loan is within 30 days following the last day on which the consumer’s second loan in the sequence was outstanding; and
5. A covered short-term is the fourth loan in the sequence if the consumer has a currently outstanding covered short-term loan that is the third loan in the sequence, or if the consummation date of the fourth loan would be within 30 days following the last day on which the consumer’s third loan in the sequence was outstanding.
6. *Non-covered bridge loan* means a non-recourse pawn loan described in § 1041.3(e)(5) that is made within 30 days of the consumer having an outstanding covered short-term loan or outstanding covered longer-term balloon-payment loan made by the same lender or its affiliate, provided that the consumer is required to repay substantially the entire amount due under the non-recourse pawn loan within 90 days of its consummation.

*1. Applicability*. A non-recourse pawn loan is a non-covered bridge loan only to the extent that it meets the criteria set forth in § 1041.3(e)(5). A pawn loan that does not meet the criteria set forth in § 1041.3(e)(5), either because the consumer retains possession of the pawned item during the loan term or because the lender has recourse in the event the consumer does not redeem the pawned item, is not a non-covered bridge loan. Instead, such a pawn loan is a covered loan to the extent it meets the criteria set forth in § 1041.3(b).

1. *Open-end credit* means an extension of credit to a consumer that is an open-end credit plan as defined in Regulation Z, 12 CFR 1026.2(a)(20), but without regard to whether the credit is consumer credit, as defined in 12 CFR 1026.2(a)(12), is extended by a creditor, as defined in 12 CFR 1026.2(a)(17), or is extended to a consumer, as defined in 12 CFR 1026.2(a)(11).

*1. In general*. Institutions may rely on 12 CFR 1026.2(a)(20) and its related commentary in determining the meaning of open-end credit, but without regard to whether the credit is consumer credit, as that term is defined in 12 CFR 1026.2(a)(12), is extended by a creditor, as that term is defined in 12 CFR 1026.2(a)(17), or is extended to a consumer, as that term is defined in 12 CFR 1026.2(a)(11). For the purposes of defining open-end credit under this part, the term credit, as defined in proposed § 1041.2(9), would be substituted for the term consumer credit in the Regulation Z definition of open-end credit; the term lender, as defined in proposed § 1041.2(11), would be substituted for the term creditor in the Regulation Z definition of open end credit; and the term consumer, as defined in proposed § 1041.2(4), would be substituted for the term consumer in the Regulation Z definition of open-end credit.

1. *Outstanding loan* means a loan that the consumer is legally obligated to repay, regardless of whether the loan is delinquent or is subject to a repayment plan or other workout arrangement, except that a loan ceases to be an outstanding loan if the consumer has not made at least one payment on the loan within the previous 180 days.

*1. Payments owed to third parties*. A loan is an outstanding loan if it meets all the criteria set forth in § 1041.2(15), regardless of whether the consumer is required to pay the lender, an affiliate of the lender, or a service provider. A lender selling the loan or the loan servicing rights to a third party does not affect whether a loan is an outstanding loan under § 1041.2(15).

*2. Stale loans*. A loan is generally an outstanding loan if the consumer has a legal obligation to repay the loan, even if the consumer is delinquent or if the consumer is in a repayment plan or workout arrangement. However, a loan that the consumer otherwise has a legal obligation to repay is not an outstanding loan for purposes of this part if the consumer has not made a payment, regardless of whether the payment is a regularly scheduled payment, on the loan within the previous 180-day period. A loan ceases to be an outstanding loan as of the earliest of the date the consumer repays the loan in full, the date the consumer is released from the legal obligation to repay, the date the loan is otherwise legally discharged, or the date that is 180 days following the last payment that the consumer has made on the loan, even if the payment is not a regularly scheduled payment in a scheduled amount. A loan cannot become an outstanding loan due to any events that occur after the consumer repays the loan in full, the consumer is released from the legal obligation to repay, the loan is otherwise legally discharged, or 180 days following the last payment that the consumer has made on the loan.

1. *Prepayment penalty* means any charge imposed for paying all or part of the loan before the date on which the loan is due in full.

*1. Facts and circumstances*. Whether a charge is a prepayment penalty depends on the circumstances around the assessment of the charge, and specifically whether the charge was assessed in connection with the consumer paying any of the loan before the date on which the loan is due in full. For example, assume a covered longer-term loan is repayable in six monthly installments, but that a consumer pays the entire amount due two months early. If the lender assesses a charge at that point and such charge is not assessed if the consumer makes all six monthly installments, that charge is a prepayment penalty, regardless of how the lender characterizes the charge.

1. *Service provider* has the same meaning as in the Dodd-Frank Wall Street Reform and Consumer Protection Act, 12 U.S.C. 5481(26).

*1. Credit access businesses and credit services organizations*. Persons who provide a material service to lenders in connection with the lenders’ offering or provision of covered loans during the course of obtaining for consumers, or assisting consumers in obtaining, loans from lenders are service providers, subject to the specific limitations in Dodd-Frank Act section 1002(26).

1. *Total cost of credit* means the total amount of charges associated with a loan expressed as a per annum rate and is determined as follows:
2. *Charges included in the total cost of credit*. The total cost of credit includes the following charges to the extent they are imposed in connection with the loan:
3. Any charge that the consumer incurs in connection with credit insurance before, at the same time as, or within 72 hours after the consumer receives the entire amount of funds that the consumer is entitled to receive under the loan, including any charges for application, sign-up, or participation in a credit insurance plan, and any charge for a debt cancellation or debt suspension agreement;
4. Any charge for a credit-related ancillary product, service, or membership sold before, at the same time as, or within 72 hours after the consumer receives the entire amount of funds that the consumer is entitled to receive under the loan and in connection with the credit transaction for closed-end credit or an account for open-end credit;
5. Finance charges associated with the credit as set forth by Regulation Z, 12 CFR 1026.4, but without regard to whether the credit is consumer credit, as that term is defined in 12 CFR 1026.2(a)(12), is extended by a creditor, as that term is defined in 12 CFR 1026.2(a)(17), or is extended to a consumer, as that term is defined in 12 CFR 1026.2(a)(11);
6. Any application fee charged to a consumer who applies for a covered loan; and
7. Any fee imposed for participation in any plan or arrangement for a covered loan.

1. *Finance charges*. Institutions may rely on 12 CFR 1026.4 and its related commentary in determining whether a charge is a finance charge. Fees paid by consumers to credit access businesses or credit services organizations are typically finance charges under 12 CFR 1026.4(a)(1).

2. *Credit insurance premiums*. The total cost of credit calculation must include any charge that the consumer incurs before, at the same time as, or within 72 hours after the consumer receives the entire amount of funds that the consumer is entitled to receive under the loan in connection with credit insurance, including any charges for application, sign-up, or participation in a credit insurance plan, even if those charges are assessed in a single, up-front payment. Charges that the consumer pays in connection with debt cancellation or debt suspension agreements are included in the cost of credit calculation.

3*. Charges for credit-related ancillary products*. The total cost of credit calculation must include any charge that the consumer incurs before, at the same time as, or within 72 hours after the consumer receives the entire amount of funds that the consumer is entitled to receive under the loan for any product, service, or membership sold in connection with the credit transaction, including fees paid to unaffiliated third parties. Examples of such credit-related ancillary products include, but are not limited to:

i. Products marketed to protect consumers from identity theft or to alleviate harms caused by identity theft;

ii. Products marketed to alleviate harms caused by the consumer’s unemployment;

iii. Products marketed to alleviate harms caused by other hardships that the consumer may suffer, such as credit life, credit disability insurance, or debt suspension products;

iv. Products marketed to alleviate harms resulting from the consumer’s wallet or account information being lost or stolen; and

v. Products marketed to keep the consumer informed of information bearing on the consumer’s credit record or score.

1. *Certain exclusions of Regulation Z inapplicable*. A charge described in paragraphs (18)(i)(A) through (E) of this section must be included in the calculation of the total cost of credit even if that charge would be excluded from the finance charge under Regulation Z, 12 CFR 1026.4(c) through (e).
2. *Calculation of the total cost of credit*—
3. *Closed-end credit*. For closed-end credit, the total cost of credit must be calculated according to the requirements of Regulation Z, 12 CFR 1026.22, except that the calculation must include the charges set forth in paragraphs (18)(i)(A) through (E) of this section.

*1. Similar to Regulation Z*. The total cost of credit must be calculated following the rules for calculating the effective annual percentage rate for a billing cycle as set forth in Regulation Z, 12 CFR 1026.14(c) and (d) (as if a creditor must comply with that section) and must include the charges set forth in paragraphs (18)(i)(A) through (E) of this section, including the amount of charges related to opening, renewing, or continuing an account, to the extent those charges are set forth in paragraphs (18)(i)(A) through (E) of this section. Aside from these distinctions, entities may rely on Regulation Z, 12 CFR 1026.14 and its related commentary in calculating the total cost of credit for open-end credit.

*2. Example*. Assume that a lender offers open-end credit to a consumer primarily for personal, family, or household purposes, and permits the consumer to repay on a monthly basis. At consummation, the consumer borrows the full $500 available under the plan and agrees to repay the loan through recurring electronic fund transfers. The lender charges a periodic rate of 0.006875 (which corresponds to an annual rate of 8.25 percent), plus a fee of $25, charged when the account is established and annually thereafter. Under these circumstances, pursuant to § 1026.14(c)(2) of Regulation Z, the lender would calculate the total cost of credit as follows: “dividing the total finance charge for the billing cycle”—which is $3.44 (corresponding to 0.006875 multiplied by $500), plus $25—“by the amount of the balance to which it is applicable”—$500—“and multiplying the quotient (expressed as a percentage) by the number of billing cycles in a year”—12 (since the creditor allows the borrower to repay monthly), which is 68.26 percent. In this example, the line of credit would be a covered loan under proposed § 1041.3(b) because the total cost of credit exceeds a rate of 36 percent per annum and the lender has obtained a leveraged payment mechanism as of consummation.

1. *Open-end credit*. For open-end credit, the total cost of credit must be calculated following the rules for calculating the effective annual percentage rate for a billing cycle as set forth in Regulation Z, 12 CFR 1026.14(c) and (d) (as if a lender must comply with that section) and must include the charges set forth in paragraphs (18)(i)(A) through (E) of this section, including the amount of charges related to opening, renewing, or continuing an account, to the extent those charges are set forth in paragraphs (18)(i)(A) through (E) of this section.

**§ 1041.3 Scope of coverage; exclusions**.

1. *General*. This part applies to a lender that makes covered loans.
2. *Covered loan*. Covered loan means closed-end or open-end credit that is extended to a consumer primarily for personal, family, or household purposes that is not excluded under paragraph (e) of this section; and:
3. For closed-end credit that does not provide for multiple advances to consumers, the consumer is required to repay substantially the entire amount of the loan within 45 days of consummation, or for all other loans, the consumer is required to repay substantially the entire amount of the advance within 45 days of the advance under the loan; or

*1. Closed-end credit that does not provide for multiple advances to consumers*. A loan does not provide for multiple advances to a consumer if the loan provides for full disbursement of the loan proceeds only through disbursement on a single specific date.

*2. Loans that provide for multiple advances to consumers*. Both open-end credit and closed-end credit may provide for multiple advances to consumers. Open-end credit is self-replenishing even though the plan itself has a fixed expiration date, as long as during the plan's existence the consumer may use the line, repay, and reuse the credit. Likewise, closed-end credit may consist of a series of advances. For example:

i. Under a closed-end commitment, the lender might agree to lend a total of $1,000 in a series of advances as needed by the consumer. When a consumer has borrowed the full $1,000, no more is advanced under that particular agreement, even if there has been repayment of a portion of the debt.

*3. Facts and circumstances test for determining whether loan is substantially repayable within 45 days*. Substantially repayable means that the substantial majority of the loan or advance is required to be repaid within 45 days of consummation or advance, as the case may be. Application of the standard depends on the specific facts and circumstances of each loan, including the timing and size of the scheduled payments. A loan or advance is not substantially repayable within 45 days of consummation or advance merely because a consumer chooses to repay within 45 days when the loan terms do not require the consumer to do so.

*4. Loans with alternative, ambiguous, or unusual payment schedules*. If a consumer, under any applicable law, would breach the terms of the agreement between the consumer and the lender by not substantially repaying the entire amount of the loan or advance within 45 days of consummation or advance, as the case may be, the loan is a covered short-term loan under § 1041.3(b)(1). For loans or advances that are not required to be repaid within 45 days of consummation or advance, if the consumer, under applicable law, would not breach the terms of the agreement between the consumer and the lender by not substantially repaying the loan or advance in full within 45 days, the loan is a covered longer-term loan under § 1041.3(b)(2) if the loan otherwise met the criteria specified in proposed § 1041.3(b)(2). For loans that are not required to be repaid within 45 days of consummation or advance, if the consumer would breach the agreement between the consumer and the lender by not repaying the loan in either a single payment or a balloon payment, the loan is a covered longer-term balloon-payment loan under § 1041.2(7).

1. For closed-end credit that does not provide for multiple advances to consumers, the consumer is not required to repay substantially the entire amount of the loan within 45 days of consummation, or for all other loans, the consumer is not required to repay substantially the entire amount of the loan within 45 days of an advance under the loan, and the following conditions are satisfied:

1. Closed-end credit that does not provide for multiple advances to consumers. See comments 3(b)(1)-1 and 3(b)(1)-2.

2. Conditions for coverage of a longer-term loan. A loan that is not required to be substantially repaid within 45 days of consummation or advance is a covered loan only if it satisfies both the total cost of credit requirement of § 1041.3(b)(2)(i) and leveraged payment mechanism or vehicle security requirement of § 1041.3(b)(2)(ii). If the requirements of §§ 1041.3(b)(2)(i) and (ii) are met, and the loan is not otherwise excluded from coverage by proposed § 1041.3(e), the loan is a covered longer-term loan. For example, a 60-day loan is not a covered longer-term loan if the total cost of credit as measured pursuant to § 1041.2(18) is less than or equal to a rate of 36 percent per annum even if the lender or service provider obtains a leveraged payment mechanism or vehicle security.

1. The total cost of credit for the loan exceeds a rate of 36 percent per annum, as measured at the time of consummation or at the time of each subsequent ability-to-repay determination required to be made pursuant to § 1041.5(b); and
2. The lender or service provider obtains either a leveraged payment mechanism as defined in paragraph (c) of this section or vehicle security as defined in paragraph (d) of this section before, at the same time as, or within 72 hours after the consumer receives the entire amount of funds that the consumer is entitled to receive under the loan.

1. *Timing*. The condition in § 1041.3(b)(2)(ii) is satisfied if a lender or service provider obtains a leveraged payment mechanism or vehicle security before, at the same time as, or within 72 hours after the consumer receives the entire amount of funds that the consumer is entitled to receive under the loan, regardless of the means by which the lender or service provider obtains a leveraged payment mechanism or vehicle security. If a lender or service provider obtains a leveraged payment mechanism or vehicle security more than 72 hours after the consumer receives the entire amount of funds that the consumer is entitled to receive under the loan, the credit is not a covered loan under § 1041.3(b)(2). The loan may nevertheless be a covered loan under § 1041.3(b)(1).

If a loan modification provides for the consumer to receive additional funds, the condition in § 1041.3(b)(2)(ii) is satisfied if a lender or service provider obtains a leveraged payment mechanism or vehicle security before, at the same time as, or within 72 hours after the consumer receives the entire amount of funds that the consumer is entitled to receive under the loan modification. If a lender or service provider has obtained a leveraged payment mechanism on a non-covered loan more than 72 hours after the consumer receives the entire amount of funds that the consumer is entitled to receive under the loan, and a modification of such a non-covered loan provides for the consumer to receive additional funds, the loan modification will result in the non-covered loan becoming a covered loan if the conditions in § 1041.3(b)(2)(ii) are otherwise satisfied. Thus, as of the consummation of such a loan modification, the lender would have to comply with the requirements of this part as they would apply to a new covered loan.

2. *Entirety of funds*. A consumer receives the entire amount of funds that the consumer is entitled to receive under the loan when the consumer has:

i. Received the entire sum available under a closed-end credit agreement and can receive no further funds without consummating another loan; or

ii. Fully drawn down the entire sum available under an open-end credit plan and can receive no further funds without replenishing the credit plan or repaying the balance (if replenishment is allowed under the plan), consummating another loan (if replenishment is not allowed under the plan), or increasing the credit line available under the credit plan.

3. *Leveraged payment mechanism or vehicle security in contract*. The condition in § 1041.3(b)(2)(ii) is satisfied if a loan agreement authorizes the lender to elect to obtain a leveraged payment mechanism or vehicle security, regardless of the time at which the lender actually obtains a leveraged payment mechanism or vehicle security. The following are examples of situations in which a lender obtains a leveraged payment mechanism under § 1041.3(b)(2)(ii):

i. *Future authorization*. A loan agreement provides that the consumer, at some future date more than 72 hours after receiving the loan funds, must authorize the lender or service provider to debit the consumer’s account on a recurring basis;

ii. *Delinquency or default provisions*. A loan agreement provides that the consumer must authorize the lender or service provider to debit the consumer’s account on a one-time or a recurring basis if the consumer becomes delinquent or defaults on the loan;

iii. *Wage assignments and similar assignment*. A loan agreement provides that, in the event that the consumer becomes delinquent or defaults on the loan, the consumer automatically authorizes the consumer’s employer to withhold money from the consumer’s paycheck and pay that money to the lender or service provider, or makes a similar assignment of expected future income.

1. *Leveraged payment mechanism*. For purposes of paragraph (b) of this section, a lender or service provider obtains a leveraged payment mechanism if it:
2. Has the right to initiate a transfer of money, through any means, from a consumer’s account to satisfy an obligation on a loan, except that the lender or service provider does not obtain a leveraged payment mechanism by initiating a one-time electronic fund transfer immediately after the consumer authorizes the transfer;

*1. Initiating a transfer of money from a consumer’s account*. A lender or service provider obtains the ability to initiate a transfer of money when that person can collect payment, or otherwise withdraw funds, from a consumer’s account, either on a single occasion or on a recurring basis, without the consumer taking further action. Generally, when a lender or service provider has the ability to “pull” funds or initiate a transfer from the consumer’s account, that person has a leveraged payment mechanism. However, a “push” transaction from the consumer to the lender or service provider does not in itself give the lender or service provider a leveraged payment mechanism unless the consumer is contractually obligated to initiate the transaction.

*2. Lender-initiated transfers*. The following are examples of situations in which a lender or service provider has the ability to initiate a transfer of money from a consumer’s account:

*i. Check*. A lender or service provider obtains a check, draft, or similar paper instrument written by the consumer.

*ii. Electronic fund transfer authorization*. The consumer authorizes a lender or service provider to initiate an electronic fund transfer from the consumer’s account in advance of the transfer, other than an immediate one-time transfer as described in § 1041.3(c)(1) and comment 3(c)(1)-3.

*iii. Remotely created check*. A lender or service provider has authorization to create or present a remotely created check (as defined by Regulation CC, 12 CFR 229.2(fff)), remotely created payment order, or similar instrument drafted on the consumer’s account.

iv. Transfer by account-holding institution. A lender or service provider that is an account-holding institution has a right to initiate a transfer of funds between the consumer’s account and an account of the lender or affiliate, including, but not limited to, an account-holding institution’s right of set-off.

*3. One-time transfers*. If the loan or other agreement between the consumer and the lender or service provider does not otherwise provide for the lender or service provider to initiate a transfer without further consumer action, the consumer may authorize a lender or service provider to immediately initiate a one-time transfer without causing the loan to be a covered loan. “Immediately” means that the lender initiates the one-time transfer with as little delay as possible after the consumer authorizes the transfer. For example, a consumer whose loan payment is due can authorize the lender to use an ACH transfer to make the payment. If the lender uses the authorization to initiate the transfer within minutes of the authorization, and does not use the authorization to initiate future transfers, the lender’s one-time initiation of an electronic fund transfer does not constitute a leveraged payment mechanism for the purposes of this paragraph.

*4. Transfers not initiated by the lender*. A lender or service provider does not initiate a transfer of money from a consumer’s account if the consumer authorizes a third party, such as a bank’s automatic bill pay service, to initiate a transfer of money from the consumer’s account to a lender or service provider as long as the third party does not transfer the money pursuant to an incentive or instruction from, or duty to, a lender or service provider.

1. Has the contractual right to obtain payment directly from the consumer’s employer or other source of income; or
2. Requires the consumer to repay the loan through a payroll deduction or deduction from another source of income.

*1. Payroll deductions*. A lender obtains a leveraged payment mechanism if, pursuant to a requirement in an agreement between the consumer and the lender or service provider, the consumer directs the consumer’s employer or other payor of income to withhold an amount from the consumer’s pay or other income or directs a financial institution to receive an amount from an employer or other payor of income that the financial institution would otherwise credit to a consumer’s account, which the employer (or other payor of income) or financial institution pays to a lender or service provider in partial or full satisfaction of an amount due under the loan. A lender or service provider obtains a leveraged payment mechanism regardless of whether payroll or other income deductions are recurring or whether deduction of payroll or other income will occur only upon delinquency or default.

1. *Vehicle security*. For purposes of paragraph (b) of this section, a lender or service provider obtains vehicle security if it obtains an interest in a consumer’s motor vehicle (as that term is defined in section 1029(f)(1) of the Dodd-Frank Act) as a condition of the credit, regardless of how the transaction is characterized by State law, including:
2. Any security interest in the motor vehicle, motor vehicle title, or motor vehicle registration whether or not the security interest is perfected or recorded; or

*1. An interest in a consumer’s motor vehicle as a condition of credit*. Subject to the exclusion described in § 1041.3(e)(1), a lender’s or service provider’s interest in a consumer’s motor vehicle constitutes vehicle security only to the extent that the security interest is obtained in connection with the credit. If a party obtains such a security interest in a consumer’s motor vehicle for a reason that is unrelated to an extension of credit, the security interest does not constitute vehicle security. For example, if a mechanic performs work on a consumer’s motor vehicle and a mechanic’s lien attaches to the consumer’s motor vehicle by operation of law because the consumer did not timely pay the mechanic’s bill, the mechanic does not obtain vehicle security for the purposes of § 1041.3(d)(2).

1. A pawn transaction in which the consumer’s motor vehicle is the pledged good and the consumer retains use of the motor vehicle during the period of the pawn agreement.
2. *Exclusions*. This part does not apply to the following types of credit:
3. Certain purchase money security interest loans. Credit extended for the sole and express purpose of financing a consumer’s initial purchase of a good when the credit is secured by the property being purchased, whether or not the security interest is perfected or recorded.

*1. “Sole purpose” test*. The requirements of this part do not apply to loans made solely and expressly to finance the consumer’s initial purchase of a good in which the lender takes a security interest as a condition of the credit. For example, the requirements of this part would not apply to a transaction in which a lender makes a loan to a consumer for the express purpose of initially purchasing a motor vehicle, television, household appliance, or furniture in which the lender takes a security interest and the amount financed is approximately equal to, or less than, the cost of acquiring the good, even if the total cost of credit exceeds 36 percent per annum and the lender also obtains a leveraged payment mechanism. If the item that is purchased with the credit is not a good or if the amount financed is greater than the cost of acquiring the good, the credit is not excluded from the requirements of this part under § 1041.3(e)(1). This exclusion does not apply to refinances of credit extended for the purchase of a good.

1. Real estate secured credit. Credit that is secured by any real property, or by personal property used or expected to be used as a dwelling, and the lender records or otherwise perfects the security interest within the term of the loan.

*1. Real estate and dwellings*. The requirements of this part do not apply to credit secured by any real property, or by any personal property, such as a mobile home, used or expected to be used as a dwelling if the lender records or otherwise perfects the security interest within the term of the loan, even if the total cost of credit exceeds 36 percent per annum and the lender or servicer provider also obtains a leveraged payment mechanism. If the lender does not record or perfect the security interest during the term of the loan, however, the credit is not excluded from the requirements of this part under § 1041.3(e)(2).

1. Credit cards. Any credit card account under an open-end (not home-secured) consumer credit plan as defined in Regulation Z, 12 CFR 1026.2(a)(15)(ii).
2. Student loans. Credit made, insured, or guaranteed pursuant to a program authorized by subchapter IV of the Higher Education Act of 1965, 20 U.S.C. 1070 through 1099d, or a private education loan as defined in Regulation Z, 12 CFR 1026.46(b)(5).
3. Non-recourse pawn loans. Credit in which the lender has sole physical possession and use of the property securing the credit for the entire term of the loan and for which the lender’s sole recourse if the consumer does not elect to redeem the pawned item and repay the loan is the retention of the property securing the credit.

*1. Lender possession required and no recourse permitted*. A pawn loan must satisfy two conditions to be excluded from the requirements of this part under § 1041.3(e)(5). First, the lender must have sole physical possession and use of the property securing the pawned property at all times during the entire term of the loan. If the consumer retains either possession or use of the property, however limited the consumer’s possession or use of the property might be, the loan is not excluded from the requirements of this part under § 1041.3(e)(5). Second, the lender must have no recourse if the consumer does not elect to redeem the pawned item and repay the loan other than retaining the pawned property to dispose of according to State or local law. If any consumer, or if any co-signor, guarantor, or similar person, is personally liable for the difference between the outstanding balance on the loan and the value of the pawned property, the loan is not excluded from the requirements of this part under § 1041.3(e)(5).

1. Overdraft services and lines of credit. Overdraft services as defined in 12 CFR 1005.17(a), and overdraft lines of credit otherwise excluded from the definition of overdraft services under 12 CFR 1005.17(a)(1).

*1. Definitions*. Institutions may rely on 12 CFR 1005.17(a) and its related commentary in determining whether credit is an overdraft service or an overdraft line of credit that is excluded from the requirements of this part under § 1041.3(e)(6).

Subpart B—Short-Term Loans

**§ 1041.4 Identification of abusive and unfair practice.**

1. Identification. It is an abusive and unfair practice for a lender to make a covered short-term loan without reasonably determining that the consumer will have the ability to repay the loan.

**§ 1041.5 Ability-to-repay determination required.**

1. Definitions. For purposes of this section and § 1041.6:
2. Basic living expenses means expenditures, other than payments for major financial obligations, that a consumer makes for goods and services necessary to maintain the consumer’s health, welfare, and ability to produce income, and the health and welfare of members of the consumer’s household who are financially dependent on the consumer.

*1. General*. For purposes of the ability-to-repay determination required under § 1041.5(b), a lender must make a reasonable determination that the consumer’s residual income is sufficient for the consumer to make all payments under the covered short-term loan and to meet basic living expenses during the shorter of the term of the covered short-term loan or the period ending 45 days after consummation. In addition, the lender must determine that the consumer, after making the highest payment under the covered short-term loan, is able to make payments required for major financial obligations as they fall due, to make any remaining payments under the loan, and to meet basic living expenses for 30 days following the date of the highest payment under the loan. Section 1041.5(a)(1) defines basic living expenses as expenditures, other than payments for major financial obligations, that the consumer must make for goods and services that are necessary to maintain the consumer’s health, welfare, and ability to produce income, and the health and welfare of members of the consumer’s household who are financially dependent on the consumer. Examples of goods and services that are necessary for maintaining health and welfare include food and utilities. Examples of goods and services that are necessary for maintaining the ability to produce income include transportation to and from a place of employment and daycare for dependent children. See comment 5(b)-4.

1. Major financial obligations means a consumer’s housing expense, minimum payments and any delinquent amounts due under debt obligations (including outstanding covered loans), and court-or government agency-ordered child support obligations.

*1. General*. Section 1041.5(a)(2) defines major financial obligations as a consumer’s housing expense, minimum payments and any delinquent amounts due under debt obligations (including outstanding covered loans), and court-or government agency-ordered child support obligations. Housing expense includes the total periodic amount that the consumer applying for the loan is responsible for paying, such as the amount the consumer owes to a landlord for rent or to a creditor for a mortgage. Minimum payments and any delinquent amounts due under debt obligations include periodic payments for automobile loan payments, student loan payments, other covered and non-covered loan payments, and minimum required credit card payments due during the underwriting period, as well as and any delinquent periodic payments.

1. National consumer report means a consumer report, as defined in section 603(d) of the Fair Credit Reporting Act, 15 U.S.C. 1681a(d) obtained from a consumer reporting agency that compiles and maintains files on consumers on a nationwide basis, as defined in section 603(p) of the Fair Credit Reporting Act, 15 U.S.C. 1681a(p).
2. Net income means the total amount that a consumer receives after the payer deducts amounts for taxes, other obligations, and voluntary contributions (but before deductions of any amounts for payments under a prospective covered loan or for any major financial obligation);
3. Payment under the covered short-term loan:
4. Means the combined dollar amount payable by the consumer at a particular time following consummation in connection with the covered short-term loan, assuming that the consumer has made preceding required payments and in the absence of any affirmative act by the consumer to extend or restructure the repayment schedule or to suspend, cancel, or delay payment for any product, service, or membership provided in connection with the loan;
5. Includes all principal, interest, charges, and fees; and

*1. General*. Section 1041.5(a)(5)(i) defines payment under a covered short-term loan as the combined dollar amount payable by the consumer at a particular time following consummation in connection with the loan, assuming that the consumer has made preceding required payments and in the absence of any affirmative act by the consumer to extend or restructure the repayment schedule or to suspend, cancel, or delay payment for any product, service, or membership provided in connection with the covered loan. Section 1041.5(a)(5)(ii) clarifies that it includes all principal, interest, charges, and fees. A lender may not exclude a portion of the payment simply because a consumer could avoid or delay paying a portion of the payment, such as by requesting forbearance for that portion or by cancelling a service provided in exchange for that portion. For example:

i. Assume that in connection with a covered short-term loan, a consumer would owe on a particular date $100 to the lender, which consists of $15 in finance charges, $80 in principal, and a $5 service fee, and the consumer also owes $10 as a credit insurance premium to a separate insurance company. Assume further that under the terms of the loan or other agreements entered into in connection with the loan, the consumer has the right to cancel the credit insurance at any time and avoid paying the $10 credit insurance premium and also has the option to pay the $80 in principal at a later date. The payment under the loan is $110.

ii. Assume that in connection with a covered short-term loan, a consumer would owe on a particular date $25 in finance charges to the lender. Under the terms of the loan, the consumer has the option of paying $50 in principal on that date, in which case the lender would charge $20 in finance charges instead. The payment under the loan is $25.

iii. Assume that in connection with a covered short-term loan, a consumer would owe on a particular date $25 in finance charges to the lender and $70 in principal. Under the terms of the loan, the consumer has the option of logging into her account on the lender’s website and selecting an option to defer the due date of the $70 payment toward principal. The payment under the covered loan is $95.

1. For a line of credit is calculated assuming that:
2. The consumer will utilize the full amount of credit under the covered short-term loan as soon as the credit is available to the consumer; and
3. The consumer will make only minimum required payments under the covered short-term loan.

*1. General*. Section 1041.5(a)(5)(iii) provides assumptions that a lender must make in calculating the payment under § 1041.5(a)(5) for a covered short-term loan with a line of credit (regardless of the extent to which available credit will be replenished as the consumer repays earlier advances). For a line of credit, the amount and timing of the consumer’s actual payments after consummation may depend on the consumer’s utilization of the credit or on amounts that the consumer has repaid prior to the payments in question. Section 1041.5(a)(5)(iii) requires the lender to calculate the total loan payment assuming that the consumer will utilize the full amount of credit under the loan as soon as the credit is available and that the consumer will make only minimum required payments.

1. Residual income means the sum of net income that the lender projects the consumer obligated under the loan will receive during a period, minus the sum of amounts that the lender projects will be payable by the consumer for major financial obligations during the period, all of which projected amounts are determined in accordance with paragraph (c).

(b) Reasonable determination required.

*1. Overview*. Section 1041.5(b) prohibits a lender from making a covered short-term loan (other than a covered short-term loan described in § 1041.7) unless it first makes a reasonable determination that the consumer will have the ability to repay the loan according to its terms.

Section 1041.5(b) provides minimum standards that the lender’s determination must meet to constitute a reasonable determination. The minimum standards provide that the reasonable determination includes three components. Section 1041.5(b)(2)(i) requires that as part of the ability-to-repay determination for any covered short-term loan, a lender must determine that the consumer’s residual income projected in accordance with § 1041.5(c) is sufficient for the consumer to make all payments under the loan and to meet basic living expenses during the term of the loan. Section 1041.5(b)(2)(ii) requires that the ability-to-repay determination for a covered short-term loan must also include a determination that the consumer, after making the highest payment under the loan, is able to make payments for major financial obligations, to make any remaining payments under the loan, and to meet basic living expenses for 30 days following the date of the highest payment under the loan. Section 1041.5(b)(2)(iii) requires that for a covered short-term loan for which a presumption of unaffordability applies under § 1041.6, the applicable requirements of § 1041.6 are satisfied. Section 1041.5(b)(2) provides that a determination of a consumer’s ability to repay is reasonable only if it is based on projections of consumer net income and major financial obligations that comply with § 1041.5(c).

2. Reasonable determination. To comply with the requirements of § 1041.5(b), a lender’s determination that a consumer will have the ability to repay a covered short-term loan must be reasonable in all respects.

i. To be reasonable, a lender’s determination of a consumer’s ability to repay a covered short-term loan must:

A. Include the determinations required in § 1041.5(b)(2)(i), (ii), and (iii), as applicable;

B. Be based on reasonable projections of a consumer’s net income and major financial obligations in accordance with § 1041.5(c);

C. Be based on reasonable estimates of a consumer’s basic living expenses (see comment 5(b)-4);

D. Be consistent with a lender’s written policies and procedures required under § 1041.18 and grounded in reasonable inferences and conclusions as to a consumer’s ability to repay a covered short-term loan according to its terms in light of information the lender is required to obtain or consider as part of its determination under § 1041.5(b); and

E. Appropriately account for information known by the lender, whether or not the lender is required to obtain the information under this part, that indicates that the consumer may not have the ability to repay a covered short-term loan according to its terms.

ii. A determination of ability to repay is not reasonable if it:

A. Relies on an implicit assumption that the consumer will obtain additional consumer credit to be able to make payments under the covered short-term loan, to make payments under major financial obligations, or to meet basic living expenses.

iii. Evidence of whether a lender’s determinations of ability to repay are reasonable may include the extent to which the lender’s determinations subject to § 1041.5 result in rates of delinquency, default, and reborrowing for covered short-term loans that are low, equal to, or high, including in comparison to the rates of other lenders making covered short-term loans to similarly situated consumers.

3. Payments under the covered short-term loan. Under the ability-to-repay requirements in § 1041.5(b)(2)(i), (ii), and (iii), a lender must determine the amount and timing of the payments due in connection with the covered short-term loan. The lender is responsible for calculating, for purposes of the determination and as of consummation, the timing and amount for all payments under the loan based on the terms of the loan. See § 1041.5(a)(5) for the definition of payment under a covered short-term loan, including assumptions that the lender must make in calculating the amount and timing of payments under a loan that is a line of credit.

4. Basic living expenses. To comply with § 1041.5(b), a lender must account for a consumer’s need to meet basic living expenses for the applicable period. Section 1041.5(a)(1) defines basic living expenses as expenditures, other than payments for major financial obligations, that the consumer must make for goods and services that are necessary to maintain the consumer’s health, welfare, and ability to produce income, and the health and welfare of members of the consumer’s household who are financially dependent on the consumer. Sections 1041.5(a)(1) and (b) do not specify a particular method that a lender must use to determine an amount of funds that a consumer requires to meet basic living expenses for an applicable period. For example, a lender is not required to itemize the basic living expenses of each consumer. Nor is a lender required to assume that a consumer’s basic living expenses during the term of a prospective covered loan must be equal to the consumer’s expenditures for goods and services other than major financial obligations during a recent period preceding consummation of the prospective loan. Whether a particular method complies with the requirements of § 1041.5(b) depends on whether it is reasonably designed to determine whether a consumer would likely be able to make the loan payments and meet basic living expenses without defaulting on major financial obligations or having to rely on new consumer credit during the applicable period.

i. Reasonable methods of estimating basic living expenses may include, but are not necessarily limited to, the following:

A. Setting minimum percentages of income or dollar amounts based on a statistically valid survey of expenses of similarly situated consumers, taking into consideration the consumer’s income, location, and household size;

B. Obtaining additional reliable information about a consumer’s expenses other than the information required to be obtained under § 1041.5(c), to develop a reasonably accurate estimate of a consumer’s basic living expenses; or

C. Any method that reliably predicts basic living expenses.

ii. Unreasonable methods of estimating basic living expenses may include, but are not necessarily limited to, the following:

A. Assuming that a consumer needs no or implausibly low amounts of funds to meet basic living expenses during the applicable period and that, accordingly, substantially all of a consumer’s net income that is not required for payments for major financial obligations is available for loan payments; or

B. Setting minimum percentages of income or dollar amounts that, when used in ability-to-repay determinations for covered short-term loans, have yielded high rates of default and reborrowing relative to rates of default and reborrowing of other lenders making covered loans to similarly situated consumers.

(1)

1. Except as provided in § 1041.7, a lender must not make a covered short-term loan or increase the credit available under a covered short-term loan, unless the lender first makes a reasonable determination that the consumer will have the ability to repay the loan according to its terms.
2. For a covered short-term loan that is a line of credit, a lender must not permit a consumer to obtain an advance under the line of credit more than 180 days after the date of a required determination under this paragraph (b), unless the lender first makes a new determination that the consumer will have the ability to repay the covered short-term loan according to its terms.
3. A lender’s determination of a consumer’s ability to repay a covered short-term loan is reasonable only if, based on projections in accordance with paragraph (c) of this section, the lender reasonably concludes that:
4. The consumer’s residual income will be sufficient for the consumer to make all payments under the loan and to meet basic living expenses during the shorter of the term of the loan or the period ending 45 days after consummation of the loan;

*1. Applicable period for residual income*. Section 1041.5(b)(2)(i) requires the lender to make a reasonable determination that the consumer’s residual income will be sufficient for the consumer to make all payments under the covered short-term loan and to meet basic living expenses during the term of the loan. A lender complies with the requirement in § 1041.5(b)(2)(i) if it reasonably determines that the consumer’s projected residual income during the shorter of the term of the loan or the period ending 45 days after consummation of the loan will be greater than the sum of all payments under the loan plus an amount the lender reasonably estimates will be needed for basic living expenses during the term of the loan. For example:

A. Assume a lender considers making a covered loan to a consumer on March 1. The prospective loan would be repayable in a single payment of $385 on March 17. The lender determines that, based on its projections of net income that the consumer will receive and payments for major financial obligations that will fall due from March 1 through March 17, the consumer will have $800 in residual income. The lender complies with the requirement in § 1041.5(b)(1) if it reasonably determines that $800 will be greater than the sum of the $385 loan payment plus an amount the lender reasonably estimates will be needed for basic living expenses from March 1 through March 17. (Note that in this example the lender also would have to comply with the requirement of § 1041.5(b)(2)(ii). See comment 5(b)(2)(ii)-1.)

*2. Sufficiency of residual income*. For any covered short-term loan, the lender must make a reasonable determination that the consumer’s residual income will be sufficient for the consumer to make all payments under the loan and to meet basic living expenses during the shorter of the term of the loan or for 45 days after consummation of the loan. For a covered short-term loan, residual income is sufficient if it is greater than the sum of payments that would be due under the loan plus an amount the lender reasonably estimates will be needed for basic living expenses. (See comment 5(b)(2)(i)-1 for applicable periods for the determination.)

1. The consumer will be able to make payments required for major financial obligations as they fall due, to make any remaining payments under the loan, and to meet basic living expenses for 30 days after having made the highest payment under the loan on its due date; and

1. *General*. Section 1041.5(b)(2)(ii) requires that for a covered short-term loan, the lender must make a reasonable determination that the consumer, after making the highest loan payment that will be due under the loan, will be able to make payments required for major financial obligations as they fall due, to make any remaining payments under the loan as they fall due, and to meet basic living expenses for 30 days following the date of the highest payment under the loan. (This determination is in addition to the required determination regarding residual income under § 1041.5(b)(2)(i).) Section 1041.5(b) provides that a determination of a consumer’s ability to repay is reasonable only if it is based on projections of consumer net income and payments for major financial obligations determined in accordance with paragraph (c) of this section. Accordingly, a lender must include in its determination under § 1041.5(b)(2)(ii) the amount and timing of payments for major financial obligations that it projects the consumer must make during the 30-day period following the highest loan payment, in accordance with § 1041.5(c). A lender must include in its determination under § 1041.5(b)(2)(ii) the amount and timing of net income that it projects the consumer will receive during the 30-day period following the highest payment, in accordance with § 1041.5(c). For a loan with two or more payments that are equal to each other in amount and higher than all other payments, a lender complies by making the required determination for the 30-day period following the later in time of the two or more higher payments. See comment 5(b)-4, regarding methods for estimating amounts for basic living expenses. For example:

i. Assume that a lender considers making a covered loan to a consumer on April 23 and that the loan would be repayable in a single payment of $550 (i.e., that payment is also the highest loan payment) on April 29. Assume further that the lender reasonably determines in accordance with § 1041.5(b)(2)(i) that the consumer’s residual income for the period from April 23 through April 29 will be sufficiently greater than the sum of the $550 loan payment plus an adequate amount for basic living expenses for the same period. Assume further that payment of the $550 loan payment, however, will consume all but $1,000 of the consumer’s last paycheck preceding or coinciding with the date of the loan payment. The lender projects that the consumer’s next receipt of income will not occur until May 13, and the consumer must make a rent payment of $950 on May 1 and a student loan payment of $200 on May 5. The consumer, having made the $550 covered loan payment, would not be able make payments under two major financial obligations (i.e., rent payment and the student loan payment), that fall due before May

30. Accordingly, the lender cannot reasonably determine that the consumer has the ability to repay the loan under § 1041.5(b)(2)(ii).

1. For a loan for which a presumption of unaffordability applies under § 1041.6, the applicable requirements of § 1041.6 are satisfied.
2. Projecting consumer net income and payments for major financial obligations—
3. General. To make a reasonable determination required under paragraph (b) of this section, a lender must obtain the consumer’s written statement in accordance with paragraph (c)(3)(i), obtain verification evidence as required by paragraph (c)(3)(ii), and make a reasonable projection of the amount and timing of a consumer’s net income and payments for major financial obligations. To be reasonable, a projection of the amount and timing of net income or payments for major financial obligations may be based on a consumer’s written statement of amounts and timing under paragraph (c)(3)(i) of this section only to the extent the stated amounts and timing are consistent with verification evidence obtained in accordance with paragraph (c)(3)(ii) of this section. In determining whether and the extent to which such stated amounts and timing are consistent with verification evidence, a lender may reasonably consider other reliable evidence the lender obtains from or about the consumer, including any explanations the lender obtains from the consumer.

1. *General*. Section 1041.5(c)(1) provides that to be reasonable, a projection of the amount and timing of net income or payments for major financial obligations may be based on amounts and timing stated by the consumer under § 1041.5(c)(3)(i) only to the extent the stated amounts and timing are consistent with verification evidence obtained in accordance with § 1041.5(c)(3)(ii). It further provides that in determining whether and the extent to which such stated amounts and timing are consistent with verification evidence, a lender may reasonably consider other reliable evidence the lender obtains from or about the consumer, including any explanations the lender obtains from the consumer. For example:

A. Assume that a consumer states that her net income is $1,000 every two weeks, pursuant to § 1041.5(c)(3)(i). The deposit account transaction records the lender obtains as verification evidence pursuant to § 1041.5(c)(3)(ii) show that the consumer receives $900 every two weeks. The lender complies with § 1041.5(c)(1) if it makes the determination required under § 1041.5(b) based on a projection of $900 in income every two weeks because it relies on the stated amount and timing only to the extent they are consistent with the verification evidence.

B. Assume that a consumer states that her net income is $900 every two weeks, pursuant to § 1041.5(c)(3)(i). For verification evidence, the lender uses an online income verification service that verifies gross income based on employer-reported payroll information, pursuant to § 1041.5(c)(3)(ii)(A) and comment 5(c)(3)(ii)(A)-1. The verification evidence the lender obtains pursuant to § 1041.5(c)(3)(ii) shows that the consumer receives $1,200 every two weeks. The lender reasonably determines that for a typical consumer, gross income of $1,200 is consistent with net income of $900. The lender complies with § 1041.5(c)(1) if it makes the determination required under § 1041.5(b) based on a projection of $900 in income every two weeks because it relies on the stated amount and timing only to the extent they are consistent with the verification evidence.

C. Assume that a consumer states that her minimum required credit card payment is $150 on the fifth day of each month, pursuant to § 1041.5(c)(3)(i). The national consumer report that the lender obtains as verification evidence pursuant to § 1041.5(c)(3)(ii) shows that the consumer’s minimum monthly payment is $160. The lender complies with § 1041.5(c)(1) if it makes the determination required under § 1041.5(b) based on a projection of a $160 credit card payment on the fifth day of each month because it relies on the stated amount and timing only to the extent they are consistent with the verification evidence.

D. Assume that a consumer states that her net income is $1,000 every two weeks, pursuant to § 1041.5(c)(3)(i). The lender obtains electronic records of the consumer’s deposit account transactions as verification evidence pursuant to § 1041.5(c)(3)(ii) showing biweekly direct deposits of $750, $850, and $995, respectively, during the preceding six-week period. The lender does not comply with § 1041.5(c)(1) if it makes the determination required under § 1041.5(b) based on a projection of a $1,000 in net income every two weeks.

E. Assume that a consumer states that her net income is $1,000 every two weeks, pursuant to § 1041.5(c)(3)(i). The lender obtains electronic records of the consumer’s deposit account transactions as verification evidence pursuant to § 1041.5(c)(3)(ii) showing biweekly direct deposits of $1,000, $1,000, and $800, respectively, during the preceding six-week period. The consumer explains that the most recent income was lower than her usual income because she missed two days of work due to illness. The lender complies with § 1041.5(c)(1) if it makes the determination required under § 1041.5(b) based on a projection of $1,000 in income every two weeks because it reasonably considers the consumer’s explanation in determining whether the stated amount and timing is consistent with the verification evidence.

F. Assume that a consumer states that her net income is $2,000 every two weeks, pursuant to § 1041.5(c)(3)(i). The lender obtains electronic records of the consumer’s deposit account transactions as verification evidence pursuant to § 1041.5(c)(3)(ii) showing no income transactions in the preceding month but showing consistent biweekly direct deposits of $2,000 from ABC Manufacturing prior to that month. The consumer explains that she was temporarily laid off for one month while ABC Manufacturing retooled the plant where she works but that she recently resumed work there. The lender complies with § 1041.5(c)(1) if it makes the determination required under § 1041.5(b) based on a projection of $2,000 in income every two weeks because it reasonably considers the consumer’s explanation in determining whether the stated amount and timing is consistent with the verification evidence.

G. Assume that a consumer states that she owes a child support payment of $200 on the first day of each month, pursuant to § 1041.5(c)(3)(i). The national consumer report that the lender obtains as verification evidence pursuant to § 1041.5(c)(3)(ii) does not include any child support payment. The lender complies with § 1041.5(c)(1) if it makes the determination required under § 1041.5(b) based on a projection of a $200 child support payment on the first day of each month because it relies on the stated amount and timing and nothing in the verification evidence is inconsistent with the stated amount and timing.

1. Changes not supported by verification evidence. A lender may project a net income amount that is higher than an amount that would otherwise be supported under paragraph (c)(1) of this section or a payment amount under a major financial obligation that is lower than an amount that would otherwise be supported under paragraph (c)(1) of this section only to the extent and for such portion of the term of the loan that the lender obtains a written statement from the payer of the income or the payee of the consumer’s major financial obligation of the amount and timing of the new or changed net income or payment.
2. Evidence of net income and payments for major financial obligations—
3. Consumer statements. A lender must obtain a consumer’s written statement of:
4. The amount and timing of the consumer’s net income receipts; and
5. The amount and timing of payments required for categories of the consumer’s major financial obligations.

1. *Consumer statements*. Section 1041.5(c)(3)(i) requires a lender to obtain a consumer’s written statement of the amounts and timing of consumer’s net income receipts and payments for categories (e.g., credit card payments, automobile loan payments, housing expense payments, child support payments, etc.) of the consumer’s major financial obligations. A consumer’s written statement includes a statement the consumer writes on a paper application or enters into an electronic record, or an oral consumer statement that the lender records and retains or memorializes in writing and retains. A lender complies with a requirement to obtain the consumer’s statement by obtaining information sufficient for the lender to project the dates on which a payment will be received or paid through the period required under § 1041.5(b)(2). For example, a lender’s receipt of a consumer’s statement that the consumer is required to pay rent every month on the first day of the month is sufficient for the lender to project when the consumer’s rent payments are due.

1. Verification evidence. A lender must obtain verification evidence for the amounts and timing of the consumer’s net income and payments for major financial obligations, as follows:

1. *Verification requirement*. Section 1041.5(c)(3)(ii) establishes requirements for a lender to obtain verification evidence for the amounts and timing of a consumer’s net income and required payments for major financial obligations.

1. For the consumer’s net income, a reliable record (or records) of an income payment (or payments) covering sufficient history to support the lender’s projection under paragraph (c)(1);

1. *Income*. Section 1041.5(c)(3)(ii)(A) requires a lender to obtain a reliable record (or records) of income payment (or payments) covering sufficient history to reasonably support the lender’s projection under § 1041.5(c)(1). For purposes of verifying net income, a reliable transaction record includes a facially genuine original, photocopy, or image of a document produced by or on behalf of the payer of income, or an electronic or paper compilation of data included in such a document, stating the amount and date of the income paid to the consumer. A reliable transaction record also includes a facially genuine original, photocopy, or image of an electronic or paper record of depository account transactions, prepaid account transactions (including transactions on a general purpose reloadable prepaid card account, a payroll card account, or a government benefits card account) or money services business check-cashing transactions showing the amount and date of a consumer’s receipt of income.

1. For the consumer’s required payments under debt obligations, a national consumer report, the records of the lender and its affiliates, and a consumer report obtained from an information system currently registered pursuant to § 1041.17(c)(2) or § 1041.17(d)(2), if available;

1. *Payments under debt obligations*. To verify a consumer’s required payments under debt obligations, § 1041.5(c)(3)(ii)(B) requires a lender to obtain a national consumer report, the records of the lender and its affiliates, and a consumer report obtained from an information system currently registered pursuant to § 1041.17(c)(2) or § 1041.17(d)(2), if available. A lender satisfies its obligation under § 1041.6(a)(2) to obtain a consumer report from an information system currently registered pursuant to § 1041.17(c)(2) or (d)(2), if available, when it complies with the requirement in § 1041.5(c)(3)(ii)(B) to obtain this same consumer report. The amount and timing of a payment required under a debt obligation or the amount the consumer must pay and the time by which the consumer must pay it to avoid delinquency under the debt obligation in the absence of any affirmative act by the consumer to extend, delay, or restructure the repayment schedule.

1. For a consumer’s required payments under court-or government agency-ordered child support obligations, a national consumer report;
2. For a consumer’s housing expense (other than a payment for a debt obligation that appears on a national consumer report obtained pursuant to paragraph (c)(3)(ii)(B) of this section):

1. *Housing expense*. Section 1041.5(c)(3)(ii)(D) requires a lender to obtain verification evidence for the consumer’s housing expense. It provides three methods for complying with this obligation.

i. For a housing expense under a debt obligation (i.e., a mortgage), § 1041.5(c)(3)(ii)(D) provides that a lender may satisfy the requirement by obtaining a national consumer report that includes the housing expense under a debt obligation pursuant to § 1041.5(c)(3)(ii)(B).

ii. Under § 1041.5(c)(1)(ii)(D)(1), a lender may satisfy the obligation to obtain verification evidence of housing expense by obtaining a reliable transaction record (or records) of recent housing expense payments or a rental or lease agreement. For purposes of this alternative, reliable transaction records include a facially genuine original, photocopy or image of a receipt, cancelled check, or money order, or an electronic or paper record of depository account transactions or prepaid account transactions (including transactions on a general purpose reloadable prepaid card account, a payroll card account, or a government benefits card account), from which the lender can reasonably determine that a payment was for housing expense as well as the date and amount paid by the consumer.

iii. Under § 1041.5(c)(1)(ii)(D)(2), a lender may satisfy its obligation to obtain verification evidence of housing expense using an amount determined under a reliable method of estimating a consumer’s housing expense based on the housing expenses of consumers with households in the locality of the consumer. The lender may estimate a consumer’s share of housing expense based on the individual or household housing expenses of similarly situated consumers with households in the locality of the consumer seeking a covered loan. For example, a lender may use data from a statistical survey, such as the American Community Survey of the United States Census Bureau, to estimate individual or household housing expense in the locality (e.g., in the same census tract) where the consumer resides. Alternatively, a lender may estimate individual or household housing expense based on housing expense and other data reported by applicants to the lender, provided that it periodically reviews the reasonableness of the estimates that it relies on using this method by comparing the estimates to statistical survey data or by another method reasonably designed to avoid systematic underestimation of consumers’ shares of housing expense. A lender may estimate a consumer’s share of household housing expense based on estimated household housing expense by reasonably apportioning the estimated household housing expense by the number of persons sharing housing expense as stated by the consumer, or by another reasonable method.

1. A reliable transaction record (or records) of recent housing expense payments or a lease; or
2. An amount determined under a reliable method of estimating a consumer’s housing expense based on the housing expenses of consumers with households in the locality of the consumer.

**1041.6 Additional limitations on lending—covered short-term loans.**

1. Additional limitations on making a covered short-term loan under § 1041.5.
2. General. When a consumer is presumed under paragraphs (b), (c), and (d) of this section not to have the ability to repay a covered short-term loan, a lender’s determination that the consumer will have the ability to repay the loan is not reasonable unless the requirements set forth in paragraph (e) of this section are satisfied. A lender must not make a covered short-term loan under § 1041.5 during the mandatory cooling-off periods set forth in paragraphs (f) and (g) of this section.

1. General. Section 1041.6 specifies circumstances in which a consumer is presumed to not have the ability to repay a covered short-term loan under § 1041.5 and circumstances in which making a new covered short-term loan under § 1041.5 is prohibited during a mandatory cooling-off period. The presumptions and prohibitions apply to making a covered short-term loan under § 1041.5.

2. Application to rollovers. The presumptions and prohibitions in § 1041.6 apply to new covered short-term loans under § 1041.5, as well as to loans that are a rollover of a prior loan (or what is termed a “renewal” in some States). In the event that a lender is permitted under State law to roll over a loan, the rollover would be treated as a new covered short-term loan subject to the presumptions and prohibitions in § 1041.6. For example, assume a lender is permitted under applicable State law to roll over a covered short-term loan; the lender makes a covered short-term loan with $500 in principal and a 14-day contractual duration; the consumer returns to the lender on day 14 and is offered the opportunity to roll over the first loan for an additional 14 days for a $75 fee. The rollover would be the second loan in a loan sequence, as defined under § 1041.2(12), because fewer than 30 days would have elapsed between consummation of the new covered short-term loan (the rollover) and the consumer having had a covered short-term loan made under § 1041.5 outstanding. Therefore, the rollover would be subject to the presumption of unaffordability in § 1041.6(b).

3. Relationship to § 1041.5. A lender’s determination that a consumer will have the ability to repay a covered short-term loan is not reasonable within the meaning of § 1041.5 if under § 1041.6(b), (c), or (d) the consumer is presumed to not have the ability to repay the loan and the lender is not able to overcome the presumption in the manner set forth in § 1041.6(e).

1. Borrowing history review. Prior to making a covered short-term loan under § 1041.5, in order to determine whether any of the presumptions or prohibitions in this subsection are applicable, a lender must obtain and review information about the consumer’s borrowing history from the records of the lender and its affiliates, and from a consumer report obtained from an information system currently registered pursuant to § 1041.17(c)(2) or (d)(2), if available.

1. *Relationship to § 1041.5(c)(3)(ii)(B).* A lender satisfies its obligation under § 1041.6(a)(2) to obtain a consumer report from an information system currently registered pursuant to § 1041.17(c)(2) or (d)(2), if available, when it complies with the requirement in § 1041.5(c)(3)(ii)(B) to obtain this same consumer report.

2. *Availability of information systems currently registered pursuant to § 1041.17(c)(2) or (d)(2).* If no information systems currently registered pursuant to § 1041.17(c)(2) or (d)(2) are available at the time that the lender is required to obtain the information about the consumer’s borrowing history, the lender is nonetheless required to obtain information about the consumer’s borrowing history from the records of the lender and its affiliates. A lender may be unable to obtain a consumer report from an information system currently registered pursuant to § 1041.17(c)(2) or (d)(2) if, for example, all registered information systems are temporarily unavailable.

1. Presumption of unaffordability for sequence of covered short-term loans made under § 1041.5.
2. Presumption. A consumer is presumed not to have the ability to repay a covered short-term loan under § 1041.5 during the time period in which the consumer has a covered short-term loan made under § 1041.5 outstanding and for 30 days thereafter.

1. *General*. Section 1041.6(b)(1) means that a lender cannot make a covered short-term loan under § 1041.5 during the time period in which the consumer has a covered short-term loan made under § 1041.5 outstanding and for 30 days thereafter unless either the exception to the presumption in § 1041.6(b)(2) applies or the lender determines in the manner set forth in § 1041.6(e) that there is sufficient improvement in the consumer’s financial capacity such that the consumer would have the ability to repay the new loan according to its terms despite the unaffordability of the prior loan. If the loan is the fourth loan in a sequence of covered short-term loans, however, the loan is subject to the prohibition under § 1041.6(f). See § 1041.6(f) and accompanying commentary.

1. Exception. The presumption of unaffordability in paragraph (b)(1) of this section does not apply if:

1. Exception to the presumption. Section 1041.6(b)(2) provides a limited exception to the presumption in § 1041.6(b)(1) in certain circumstances. Under § 1041.6(b)(2), the presumption of unaffordability does not apply if the circumstances in either § 1041.6(b)(2)(i)(A) or (B) are present and the condition in § 1041.6(b)(2)(ii) is satisfied.

1. Either:
2. The consumer paid in full the prior covered short-term loan (including the amount financed, charges included in the total cost of credit, and charges excluded from the total cost of credit), and the consumer would not owe, in connection with the new covered short-term loan, more than 50 percent of the amount that the consumer paid on the prior covered short-term loan (including the amount financed and charges included in the total cost of credit, but excluding any charges excluded from the total cost of credit); or

1. *General*. The exception in § 1041.6(b)(2)(i)(A) to the presumption in § 1041.6(b)(1) applies if the consumer has: (1) paid in full the prior covered short-term loan; and (2) would not owe more than 50 percent of the amount paid on the prior loan in connection with the new covered short-term loan. The prior covered short-term loan is paid in full if the consumer has satisfied all payment obligations on the loan, including repayment of the amount financed and all charges included in the total cost of credit, as well as any other fees and charges that are excluded from the total cost of credit (e.g., late fees). See § 1041.2(18) for the definition of total cost of credit. The loan is considered paid in full for purposes of § 1041.6(b)(2)(i)(A) whether or not the consumer’s obligations were satisfied timely under the loan contract. For the exception under § 1041.6(b)(2)(i)(A) to apply, furthermore, the consumer would not owe, in connection with the new covered short-term loan, more than 50 percent of the amount that the consumer paid on the prior covered short-term loan. The amounts paid and amounts owed include the amount financed and charges included in the total cost of credit, but exclude any charges excluded from the total cost of credit. This means, for example, that payment of late fees is required for the loan to be “paid in full,” but the amount of the late fees is not included toward calculating whether the consumer would owe, in connection with the new loan, more than 50 percent of the amount the consumer paid on the prior loan.

2. Example. Assume a consumer receives a $400 loan with $100 in finance charges and a 14-day contractual duration, pays the $500 principal and finance charges on the contractual due date, and then returns 20 days later to borrow a $160 loan with $40 in finance charges and a 14-day contractual duration. The presumption of unaffordability under § 1041.6(b) does not apply because the prior covered short-term loan was paid in full and the $200 that would be owed on the second loan is less than 50 percent of the $500 paid on the first loan. In contrast, in the example above, such presumption of unaffordability applies if the consumer returned to borrow a $320 loan with an $80 finance charge and a 14-day contractual duration because $400 is more than 50 percent of the $500 paid on the first loan.

1. The consumer is seeking to roll over the remaining balance on a covered short-term loan and would not owe more on the new covered short-term loan than the consumer paid on the prior covered short-term loan that is being rolled over (including the amount financed and charges included in the total cost of credit, but excluding any charges that are excluded from the total cost of credit); and

1. *General*. If a lender is permitted under applicable State law to roll over a covered short-term loan (or what is termed a renewal in some States), the exception to the presumption of unaffordability under § 1041.6(b)(2) applies to a rollover of a prior covered short-term loan in which the consumer provides partial repayment of the prior loan. For purposes of the presumptions and prohibitions under § 1041.6, a rollover of a covered short-term loan is considered a new covered short-term loan (see also comment 6(a)(1)-2). Thus, the reference in § 1041.6(b)(2)(i)(B) to the prior covered short-term loan is to the outstanding loan that is being rolled over and the reference to the new covered short-term loan is to the rollover. For the conditions of § 1041.6(b)(2)(i)(B) to be satisfied, the consumer would not owe more on the new covered short-term loan (i.e., the rollover) than the consumer paid in connection with the prior covered short-term loan (i.e., the outstanding loan being rolled over). This means that the consumer will repay at least 50 percent of the amount owed on the loan being rolled over, including the amount financed and charges included in the total cost of credit but excluding any fees that are excluded from the total cost of credit (e.g., late fees).

2. *Example*. Assume a lender makes a covered short-term loan for $400 with a 14-day contractual duration (Loan A) to a consumer and the lender is permitted by applicable State law to roll over covered short-term loans. The consumer returns on day 14 with $250 in cash and seeks to roll over the remaining $150 due on Loan A into a second covered short-term loan with a 14-day duration (Loan B). Assume that the principal for Loan B would be $150 and the rollover fee would be $30, so that the consumer would owe $180 on Loan B. The exception in § 1041.6(b)(2)(ii) would apply because the consumer would not owe more on the new loan ($180) than the consumer paid on the prior loan ($250).

1. The new covered short-term loan would be repayable over a period that is at least as long as the period over which the consumer made payment or payments on the prior covered short-term loan.
2. Presumption of unaffordability for a covered short-term loan following a covered longer-term balloon-payment loan made under § 1041.9. A consumer is presumed not to have the ability to repay a covered short-term loan under § 1041.5 during the time period in which the consumer has a covered longer-term balloon-payment loan made under § 1041.9 outstanding and for 30 days thereafter.

1. *General*. Section 1041.6(c) means that a lender cannot make a covered short-term loan under § 1041.5 during the time period in which the consumer has a covered longer-term balloon-payment loan made under § 1041.9 outstanding and for 30 days thereafter unless the lender determines in the manner set forth in § 1041.6(e) that there is sufficient improvement in the consumer’s financial capacity such that the consumer would have the ability to repay the new loan according to its terms despite the unaffordability of the prior loan.

1. Presumption of unaffordability for a covered short-term loan during an unaffordable outstanding loan. Except for loans subject to the presumptions or prohibitions under paragraphs (b), (c), (f), or (g) of this section, a consumer is presumed not to have the ability to repay a covered short-term loan under § 1041.5 if, at the time of the lender’s determination under § 1041.5, the consumer currently has a covered or non-covered loan outstanding that was made or is being serviced by the same lender or its affiliate and one or more of the following conditions are present:

1. *General*. Section 1041.6(d) provides that, except for loans subject to the presumptions or prohibitions under § 1041.6(b), (c), (f), or (g), a consumer is presumed not to have the ability to repay a covered short-term loan under § 1041.5 if, at the time of the lender’s determination under § 1041.5, the consumer currently has a covered or non-covered loan outstanding that was made or is being serviced by the same lender or its affiliate and one or more of the conditions in § 1041.6(d)(1) through (4) is present. Section 1041.6(d) means that a lender cannot make a covered short-term loan under § 1041.5 if any of the conditions in § 1041.6(d)(1) through (4) is present unless the lender determines in the manner set forth in § 1041.6(e) that there is sufficient improvement in the consumer’s financial capacity such that the consumer will have the ability to repay the new loan according to its terms despite the unaffordability of the prior loan.

2. *Applicability*. Section 1041.6(d) applies any time a consumer has a loan outstanding that was made or is being serviced by the same lender or its affiliate and one or more of the other conditions are present except if a presumption or prohibition under § 1041.6(b), (c), (f), or (g) would otherwise apply. For example, if a consumer has outstanding with the same lender a non-covered installment loan with scheduled biweekly payments of $100 and the lender is determining whether the consumer will have the ability to repay a new covered short-term loan that would have a payment of $200, § 1041.6(d) would apply if the consumer has, within the prior 30 days, expressed an inability to make a payment on the outstanding loan as provided for in § 1041.6(d)(2). If a consumer instead has a non-covered installment loan outstanding with a different and unaffiliated lender, § 1041.6(d) does not apply.

3. *Indicia of distress*. Section 1041.6(d) applies only if at least one of the four circumstances in § 1041.6(d)(1) through (4) is present at the time that the lender is making the determination of ability to repay for the new covered short-term loan made under § 1041.5.

1. The consumer is or has been delinquent by more than seven days within the past 30 days on a scheduled payment on the outstanding loan;

1. *Significant delinquency*. Under § 1041.6(d)(1), a delinquency is relevant to the presumption if the consumer is more than seven days delinquent at the time that the lender is making the determination under § 1041.5 for the new covered short-term loan or has been more than seven days delinquent at any point in the 30 days prior to the ability-to-repay determination. Delinquencies that have been cured and are older than 30 days do not cause the application of the presumption in § 1041.6(d). For example, if a consumer has a non-covered installment loan outstanding with the lender, was 10 days delinquent on a payment three months prior, and is current on payments at the time of the ability-to-repay determination for the new covered short-term loan, the prior delinquency would not cause the application of the presumption of unaffordability.

1. The consumer expresses or has expressed within the past 30 days an inability to make one or more payments on the outstanding loan;

1. *Expression of inability to make one or more payments*. Under § 1041.6(d)(2), a consumer’s expression of inability to make one or more payments on the outstanding loan causes the application of the presumption in § 1041.6(d) only if such an expression was made within the 30 days prior to the ability-to-repay determination under § 1041.5 for the new covered short-term loan. Consumers may express inability to make a payment on the outstanding loan in a number of ways. For example, a consumer may make a statement to the lender or its affiliate that the consumer is unable to or needs help to make a payment or a consumer may request or accept an offer of additional time to make a payment.

1. The period of time between consummation of the new covered short-term loan and the first scheduled payment on that loan would be longer than the period of time between consummation of the new covered short-term loan and the next regularly scheduled payment on the outstanding loan; or

1*. Skipped payment*. Under § 1041.6(d)(3), the presumption in § 1041.6(d) applies if the period of time between consummation of the new covered short-term loan and the first scheduled payment on that loan would be longer than the period of time between consummation of the new covered short-term loan and the next regularly scheduled payment on the outstanding loan. Such a transaction would have the effect of permitting the consumer to skip a payment that would otherwise have been due on the outstanding loan. For example, if a consumer has a non-covered installment loan outstanding from the lender and the loan has a regularly scheduled payment due on March 1 and another due on April 1, the circumstance in § 1041.6(d)(3) would be present if the new covered short-term loan would be consummated on February 28 and would not require payment until April 1.

1. The new covered short-term loan would result in the consumer receiving no disbursement of loan proceeds or an amount of funds as disbursement of the loan proceeds that would not substantially exceed the amount of the payment or payments that would be due on the outstanding loan within 30 days of consummation of the new covered short-term loan.

1. Cash to cover payments on existing loan. Under § 1041.6(d)(4), the presumption in § 1041.6(d) applies if the new covered short-term loan would result in the consumer receiving no disbursement of loan proceeds or an amount of funds as disbursement of the loan proceeds that is not substantially more than the amount due in payments on the outstanding loan within 30 days of consummation of the new covered short-term loan. For example, assume a consumer has a non-covered installment loan outstanding that is being serviced by the same lender, the loan has regularly scheduled payments of $100 due every two weeks, and the new covered short-term loan would result in the consumer receiving a disbursement of $200. Since $200 in payments on the outstanding loan would be due within 30 days of consummation, the circumstance in § 1041.6(d)(4) would be present and under § 1041.6(d) the consumer would be presumed to not have the ability to repay the new covered short-term loan. In contrast, if, in the same scenario, the new covered short-term loan would result in the consumer receiving a disbursement of $1,000, then the disbursement of loan proceeds would be substantially more than the amount due in payments on the outstanding loan within 30 days of consummation of the new covered short-term loan and the circumstance in § 1041.6(d)(4) would not be present.

1. Overcoming the presumption of unaffordability. When a presumption under paragraphs (b), (c), or (d) of this section applies to a covered short-term loan, a lender’s determination under § 1041.5 that the consumer will have the ability to repay the loan is not reasonable unless the lender reasonably determines, based on reliable evidence, that the consumer will have sufficient improvement in financial capacity such that the consumer will have the ability to repay the new loan according to its terms despite the unaffordability of the prior loan. To assess whether there is such sufficient improvement in financial capacity, the lender must compare the consumer’s financial capacity during the period for which the lender is required to make an ability-to-repay determination for the new loan pursuant to § 1041.5(b)(2) to the consumer’s financial capacity since obtaining the prior loan or, if the prior loan was not a covered short-term loan or covered longer-term balloon-payment loan, during the 30 days prior to the lender’s determination.

1. *General*. When a consumer seeks to roll over a covered short-term loan or to borrow another covered short-term loan during the term of or within a short period after repaying a prior loan, § 1041.6(b) through (d) create a presumption that the consumer would not be able to afford a new covered short-term loan. Section 1041.6(e) permits the lender to overcome the presumption in limited circumstances evidencing a projected improvement in the consumer’s financial capacity for the new loan relative to the prior loan or, in some circumstances, during the prior 30 days. See comments 6(e)-2 and -3 for examples of such circumstances. To overcome the presumption of unaffordability, § 1041.6(e) requires a lender to reasonably determine, based on reliable evidence, that that the consumer will have sufficient improvement in financial capacity such that the new loan would not exceed the consumer’s ability to repay despite the unaffordability of the prior loan. Section 1041.6(e) requires lenders to assess a sufficient improvement in financial capacity by comparing the consumer’s financial capacity during the period for which the lender is required to make an ability-to-repay determination for the new loan pursuant to § 1041.5(b)(2) to the consumer’s financial capacity since obtaining the prior loan or, if the prior loan was not a covered short-term loan or a covered longer-term balloon-payment loan, during the 30 days prior to the lender’s determination.

2. *Example*. Under § 1041.6(e), a lender may reasonably determine that a consumer will have the ability to repay a new loan despite the unaffordability of the prior loan where there is reliable evidence that the need to reborrow is prompted by a decline in income since obtaining the prior loan (or, if the prior loan was not a covered short-term loan or covered longer-term balloon-payment loan, during the 30 days prior to the lender’s determination) that is not reasonably expected to recur for the period during which the lender is required to make an ability-to-repay determination for the new covered short-term loan. For instance, assume a consumer obtained a covered short-term loan for $500 with a 14-day contractual duration, repaid that loan in full when due, and then 21 days later sought to take out a new covered short-term loan for $500 with a 14-day contractual duration. The presumption of unaffordability in § 1041.6(b) applies to the new covered short-term loan. However, suppose that the consumer presents evidence showing that the consumer normally works 40 hours per week but was unable to work during the first week after repaying the prior covered short-term loan, and thus earned half of the consumer’s usual pay during that pay period. If the lender reasonably determines that the consumer’s residual income projected under § 1041.5(b)(2)(i) for the new covered short-term loan will return to normal levels and would be sufficient to enable the consumer to make payments on the new loan and still have sufficient income to meet basic living expenses, the lender may determine that the presumption of unaffordability in § 1041.6(b) has been overcome.

3. *Example*. Under § 1041.6(e), a lender also may reasonably determine that a consumer will have the ability to repay a new loan despite the unaffordability of the prior loan where there is reliable evidence that the consumer’s financial capacity will be sufficiently improved since obtaining the prior loan (or if the prior loan was not a covered short-term loan or a covered longer-term balloon-payment loan, during the 30 days prior to the lender’s determination) because of a projected increase in net income or a decrease in major financial obligations for the period during which the lender is required to make an ability-to-repay determination for the new covered short-term loan. For instance, assume a consumer obtains a $300 covered short-term loan with a 30-day contractual duration. When the loan comes due, the consumer seeks a new $200 covered short-term loan with a 30-day contractual duration. The presumption of unaffordability in § 1041.6(b) applies to the new covered short-term loan. However, suppose that the consumer presents reliable evidence indicating that during the prior 30 days the consumer moved to a new apartment and reduced housing expenses by more than $100. If the lender reasonably determines that the amount of the consumer’s residual income projected under § 1041.5(b)(2)(i) for the new covered short-term loan will exceed the amount of the consumer’s residual income previously projected under § 1041.5(b)(2)(i) for the prior loan by an amount that will be sufficient to enable the consumer to make payments on the new loan and still have sufficient income to meet basic living expenses, the lender may determine that the presumption of unaffordability in § 1041.6(b) has been overcome.

4. *Reliable evidence for the determination under § 1041.6(e).* In order to make a reasonable determination under § 1041.6(e) of whether the consumer’s financial capacity has sufficiently improved since the prior loan (or if the prior loan was not a covered short-term loan or a covered longer-term balloon-payment loan, during the 30 days prior to the lender’s determination) such that the new loan would not exceed the consumer’s ability to repay the new loan according to its terms despite the unaffordability of the prior loan, the lender must use reliable evidence. Reliable evidence consists of verification evidence regarding the consumer’s net income and major financial obligations sufficient to make the comparison required under § 1041.6(e). For example, bank statements indicating direct deposit of net income from the consumer’s employer during the periods of time for which the consumer’s residual income must be compared to determine whether sufficient improvement in the consumer’s financial capacity has taken place would constitute reliable evidence. In contrast, a self-certification by the consumer that his or her financial capacity has sufficiently improved since obtaining the prior loan or, if the prior loan was not a covered short-term loan or covered longer-term balloon-payment loan, during the 30 days prior to the lender’s determination would not constitute reliable evidence unless the lender verifies the facts certified by the consumer through other reliable means.

1. Prohibition on loan sequences of more than three covered short-term loans made under § 1041.5. Notwithstanding the requirements of paragraph (b) of this section, a lender must not make a covered short-term loan under § 1041.5 during the time period in which the consumer has a covered short-term loan made under § 1041.5 outstanding and for 30 days thereafter if the new covered short-term loan would be the fourth loan in a sequence of covered short-term loans made under § 1041.5.

1. *Prohibition*. Section 1041.6(f) prohibits a lender from making a fourth covered short-term loan under § 1041.5 in a loan sequence of covered short-term loans made under § 1041.5. Nothing in § 1041.6(f) limits a lender’s ability to make a covered longer-term loan under § 1041.9, § 1041.11, or § 1041.12. See § 1041.2(12) for the definition of a loan sequence.

1. *Prohibition on making a covered short-term loan under § 1041.5 following a covered short-term loan made under § 1041.7*. A lender must not make a covered short-term loan under § 1041.5 during the time period in which the consumer has a covered short-term loan made under § 1041.7 outstanding and for 30 days thereafter.
2. *Determining period between consecutive covered loans*. If a lender or its affiliate makes a non-covered bridge loan during the time period in which any covered short-term loan made by the lender or its affiliate under § 1041.5 or § 1041.7 or a covered longer-term balloon-payment loan made by the lender or its affiliate under § 1041.9 is outstanding and for 30 days thereafter, the days during which the non-covered bridge loan is outstanding do not count toward the determination of time periods specified by paragraphs (b), (c), (f), and (g) of this section.

1. *General*. Section 1041.6(h) specifies the manner in which the time periods specified in § 1041.6(b), (c), (f), and (g) must be determined. Under § 1041.6(h), during the time period in which any covered short-term loan made by a lender or its affiliate under § 1041.5, any covered short-term loan made by a lender or its affiliate under § 1041.7, or any covered longer-term balloon-payment loan made by the lender or its affiliate under § 1041.9 is outstanding, and for 30 days thereafter, if the lender or its affiliate makes a non-covered bridge loan, then the days during which the non-covered bridge loan is outstanding do not count toward the determination of the applicable time periods. See § 1041.2(13) for the definition of non-covered bridge loan.

2. *Example*. For example, assume that a lender makes a covered short-term loan under § 1041.5 with a contractual duration of 14 days (Loan X), the loan is the first loan in a sequence, and the consumer repays Loan X on the contractual due date. Assume that 10 days later the lender then makes to the consumer a non-recourse pawn loan (Loan Y), which under § 1041.2(13) is a non-covered bridge loan, that Loan Y has a contractual duration of 60 days, and that the consumer repays Loan Y on the contractual due date. Assume that the consumer returns to the lender 10 days after repayment of Loan Y seeking another covered short-term loan (Loan Z). The consummation of Loan Z would be 80 calendar days after the date on which Loan X was repaid. Because greater than 30 calendar days had elapsed since Loan X was repaid, the lender generally would not need to consider Loan X as the prior covered short-term loan when determining whether Loan Z is permissible under § 1041.6(b). However, because Loan Y was a non-covered bridge loan, the 60 days during which Loan Y was outstanding are not counted toward the determination of whether 30 days has elapsed since the prior covered short-term loan was outstanding. Not including the 60 days during which Loan Y was outstanding, only 20 days had elapsed between the date on which the consumer repaid Loan X and the consummation date for Loan Z. Therefore, the consummation of Loan Z is deemed to be within 30 days of Loan X being outstanding. As a result, under § 1041.6(b), there would be a presumption of unaffordability for Loan Z.

**§ 1041.7 Conditional exemption for certain covered short-term loans.**

1. Conditional exemption for certain covered short-term loans. Sections 1041.4, 1041.5, and 1041.6, do not apply to a covered short-term loan that satisfies the requirements set forth in paragraphs (b) through (e) of this section. Prior to making a covered short-term loan under this section, the lender must review the consumer’s borrowing history in the records of the lender, the records of the lender’s affiliates, and a consumer report from an information system currently registered pursuant to § 1041.17(c)(2) or § 1041.17(d)(2). The lender must use this borrowing history information to determine a potential loan’s compliance with the requirements in paragraphs (b), (c), and (d) of this section.

1. *General*. Under § 1041.7(a), a lender that complies with paragraphs (b) through (e) can make a covered short-term loan, without complying with the otherwise applicable requirements under §§ 1041.5 and 1041.6. Section 1041.7(a) provides an exemption to the requirements of §§ 1041.5 and 1041.6 only; nothing in § 1041.7 provides lenders with an exemption to the requirements of other applicable laws, including State laws.

2. *Obtaining consumer borrowing history information*. Under § 1041.7(a), the lender must determine prior to making a covered short-term loan under § 1041.7 that certain requirements are satisfied. In particular, paragraphs (b), (c), and (d) would require the lender to obtain information about the consumer’s borrowing history from the records of the lender and the records of the lender’s affiliates. Furthermore, paragraphs (b) and (c) require the lender to obtain a consumer report from an information system registered under § 1041.17(c)(2) or (d)(2). If no information systems are registered under § 1041.17(c)(2) or (d)(2) and available as of the time the lender is required to obtain the report, the lender cannot comply with the requirements in paragraphs (b) and (c). A lender may be unable to obtain a consumer report if, for example, information systems have been registered under § 1041.17(c)(2) or (d)(2) but all registered information systems are temporarily unavailable. Under these circumstances, a lender cannot make a covered short-term loan under § 1041.7.

1. Loan term requirements. A covered short-term loan that is made under this section must satisfy the following requirements:
2. The loan satisfies the following principal amount limitations, as applicable:

1. Loan sequence. Section 1041.2(11) defines a loan sequence. For further clarification and examples regarding the definition of loan sequence, see § 1041.2(11).

2. Principal amount limitations—general. For a covered short-term loan made under § 1041.7, different principal amount limitations apply under § 1041.7(b)(1) depending on whether the loan is the first, second, or third loan in a loan sequence. The principal amount limitations apply regardless of whether any or all of the loans are made by the same lender, an affiliate, or unaffiliated lenders. Under § 1041.7(b)(1)(i), for the first loan in a loan sequence, the principal amount must be no greater than $500. Under § 1041.7(b)(1)(ii), for the second loan in a loan sequence, the principal amount must be no greater than two-thirds of the principal amount of the first loan in the loan sequence. Under § 1041.7(b)(1)(iii), for the third loan in a loan sequence, the principal amount must be no greater than one-third of the principal amount of the first loan in the loan sequence.

3. Application to rollovers. The principal amount limitations under § 1041.7 apply to rollovers of the first or second loan in a loan sequence as well as new loans that are counted as part of the same loan sequence. Rollovers are defined as a matter of State law but typically involve deferral of repayment of the principal amount of a covered short-term loan for a period of time in exchange for a fee. In the event the lender is permitted under State law to make rollovers, the lender may, in a manner otherwise consistent with applicable State law, roll over a covered short-term loan made under § 1041.7, but the rollover would be treated as the second loan or third loan in the loan sequence, as applicable, and would therefore be subject to the principal amount limitations set forth in § 1041.7(b)(1). For example, assume a lender is permitted under applicable State law to make a rollover. If the consumer is made a first loan in a loan sequence under § 1041.7 with a $300 principal amount, under § 1041.7(b)(1)(ii), the lender may allow the consumer to roll over that loan so long as the consumer repays at least $100, so that the principal of the rolled over loan would be no greater than $200. Similarly, under § 1041.7(b)(1)(iii), the lender may allow the consumer to roll over the second loan in the loan sequence as permitted by State law, so long as the consumer repays at least an additional $100, so that the principal of the rolled over loan would be no greater than $100.

4. Example. Assume that a consumer who otherwise complies with the requirements of this section seeks a covered short-term loan and that the lender chooses to make the loan without assessing the consumer’s ability to repay. Under § 1041.7(b)(1)(i), the principal amount of the loan must not exceed $500. Assume that the consumer is made a covered short-term loan under § 1041.7 with a principal amount of $450, the loan is contractually due in 14 days, and the consumer repays the loan on the contractual due date. Assume that the consumer returns to the lender 10 days after the repayment of the first loan to take out a second covered short-term loan under § 1041.7. Under § 1041.7(b)(1)(ii), the principal amount of the second loan may not exceed $300. Assume, further, that the consumer is then made a covered short-term loan under § 1041.7 with a principal amount of $300, the loan is contractually due in 14 days, and the consumer repays the loan on the contractual due date. If the consumer returns to the lender 25 days after the repayment of the second loan to take out a third covered short-term loan under § 1041.7, under § 1041.7(b)(1)(iii), the principal amount of the third loan may not exceed $150. These same limitations would apply if the consumer went to a different, unaffiliated lender for the second or third loan. If, however, the consumer does not return to the lender until 32 days after the date on which the second loan in the loan sequence was repaid, the subsequent loan would not be part of the prior loan sequence and instead would be the first loan in a new loan sequence. Therefore, that loan would be subject to the $500 principal amount limitation under § 1041.7(b)(1)(i).

1. For the first loan in a loan sequence of covered short-term loans made under this section, the principal amount is no greater than $500.
2. For the second loan in a loan sequence of covered short-term loans made under this section, the principal amount is no greater than two-thirds of the principal amount of the first loan in the loan sequence.
3. For the third loan in a loan sequence of covered short-term loans made under this section, the principal amount is no greater than one-third of the principal amount of the first loan in the loan sequence.
4. The loan amortizes completely during the term of the loan and the payment schedule provides for the lender allocating a consumer’s payments to the outstanding principal and interest and fees as they accrue only by applying a fixed periodic rate of interest to the outstanding balance of the unpaid loan principal every scheduled repayment period for the term of the loan.

1. *Equal payments and amortization for loans with multiple payments*. Section 1041.7(b)(2) provides that for a loan with multiple payments, the loan must amortize completely during the term of the loan and the payment schedule must allocate a consumer’s payments to the outstanding principal and interest and fees as they accrue only by applying a fixed periodic rate of interest to the outstanding balance of the unpaid loan principal during every repayment period for the term of the loan. For example, if the loan has a contractual duration of 30 days with two scheduled biweekly payments, under § 1041.7(b)(2) the lender cannot require the consumer to pay interest only for the first scheduled biweekly payment and the remaining principal balance at the second scheduled biweekly payment. Rather, the two scheduled payments must be equal in amount and amortize over the course of the loan term in the manner required under § 1041.7(b)(2).

1. The lender does not take an interest in a consumer’s motor vehicle as a condition of the loan, as described in § 1041.3(d).

1. *Inapplicability of conditional exemption to a loan with vehicle security*. Section 1041.7(b)(3) prohibits a lender from making a covered-short-term loan under § 1041.7 with vehicle security. If a covered short-term loan has vehicle security, the lender must comply with all of the requirements under §§ 1041.5 and 1041.6, including the ability-to-repay determination.

1. The loan is not structured as open-end credit, as defined in § 1041.2(14).

1. *Inapplicability of conditional exemption to an open-end loan*. Section 1041.7(b)(4) prohibits a lender from making a covered short-term loan under § 1041.7 structured as an open end loan under § 1041.7. If a covered short-term loan is structured as an open-end loan, the lender must comply with all of the requirements under §§ 1041.5 and 1041.6, including the ability-to-repay determination.

1. Borrowing history requirements. Prior to making a covered short-term loan under this section, the lender must determine that the following requirements are satisfied:
2. The consumer does not have a covered loan outstanding made under § 1041.5, § 1041.7, or § 1041.9, not including a loan made by the same lender or its affiliate under § 1041.7 that the lender is rolling over;

1. *Outstanding loan*. Section 1041.7(c)(1) provides that a lender cannot make a covered short-term loan under the requirements of § 1041.7 if the consumer has a covered loan outstanding made under § 1041.5, § 1041.7, or § 1041.9 with any lender, not including a loan made by the same lender or an affiliate under § 1041.7 that the lender is rolling over. This requirement does not apply to covered longer-term loans made under §§ 1041.11 and 1041.12. Outstanding loan is defined in § 1041.2(15); see § 1041.2(15) and accompanying commentary for further clarification on the definition.

2. *Application to rollovers*. For purposes of the borrowing history requirement under § 1041.7(c)(1), an outstanding loan does not include a loan made by the same lender or an affiliate under § 1041.7 that the lender is rolling over. For further clarification on how the requirements under § 1041.7 apply to rollovers, see comment 7(b)(1)-3.

1. The consumer has not had in the past 30 days an outstanding loan that was either a covered short-term loan made under § 1041.5 or a covered longer-term balloon-payment loan made under § 1041.9;

1. *Preceding loans*. Section 1041.7(c)(2) provides that prior to making a covered short-term loan under § 1041.7, the lender must determine that more than 30 days has elapsed since the consumer had an outstanding loan that was either a covered short-term loan (as defined in § 1041.2(6)) made under § 1041.5 or a covered longer-term balloon-payment loan (as defined in § 1041.2(7)) made under § 1041.9. This requirement applies regardless of whether this prior loan was made by the same lender, an affiliate, or an unaffiliated lender. For example, assume a lender makes a covered short-term loan to a consumer under § 1041.5, the loan has a contractual duration of 14 days, and the consumer repays the loan on the contractual due date. If the consumer returns for a second loan 20 days later, the lender cannot make a covered short-term loan under § 1041.7. However, the lender could make a covered short-term loan under § 1041.5 or a covered longer-term loan under § 1041.9, § 1041.11, or § 1041.12.

1. The loan would not result in the consumer having a loan sequence of more than three covered short-term loans made by any lender under this section; and

1. *Loan sequence limitation*. Section 1041.7(c)(3) provides that a lender cannot make a covered short-term loan under § 1041.7 if the loan would result in the consumer having a loan sequence of more than three covered short-term loans under § 1041.7 made by any lender. This requirement applies regardless of whether any or all of the loans in the loan sequence are made by the same lender, an affiliate, or unaffiliated lenders. See comments 7(b)(1)-1 and -2 for further clarification on the definition of loan sequence, as well as § 1041.2(11) and accompanying commentary. For example, assume a consumer is made a covered short-term loan under the requirements of § 1041.7 on February 1 that has a contractual due date of February 15; the consumer repays the loan on February 15 and the consumer returns to the lender on March 1 for another loan. The second loan would be part of the same loan sequence because 30 or less days have elapsed since repayment of the first loan. Assume the lender makes the second loan, which has a contractual due date of March 15; the consumer repays the loan on March 15 and the consumer returns to the lender on April 1 for another loan. The third loan would be part of the same loan sequence as the first and second loans because 30 or less days have elapsed since repayment of the second loan. Assume the lender makes the third loan, which has a contractual due date of April 15, and the consumer repays the loan on April 15. The consumer would not be permitted to receive another covered short-term loan under §1041.7 until a 30-day period following April 15 has elapsed, that is until after May 15, assuming the other requirements under § 1041.7 are satisfied. Loans that are rollovers count toward the sequence limitation under § 1041.7(c)(3). For further clarification on how the requirements under § 1041.7 apply to rollovers, see comment 7(b)(1)-3.

1. The loan would not result in the consumer having during any consecutive 12-month period:

1. *Consecutive 12-month period*. Section 1041.7(c)(4) requires that a covered short-term loan made under § 1041.7 not result in the consumer receiving more than six covered short-term loans during a consecutive 12-month period or having covered short-term loans outstanding for an aggregate period of more than 90 days during a consecutive 12-month period. The consecutive 12-month period begins on the date that is 12 months prior to the proposed contractual due date of the new covered short-term loan to be made under § 1041.7 and ends on the proposed contractual due date. The lender must review the consumer’s borrowing history on covered short-term loans for the 12 months preceding the consummation date of the new covered short-term loan less the period of proposed contractual indebtedness on that loan. For example, for a new covered short-term loan to be made under § 1041.7 with a proposed contractual term of 14 days, the lender must review the consumer’s borrowing history during the 351 days preceding the consummation date of the new loan. The lender also must consider the making of the new loan and the days of proposed contractual indebtedness on that loan to determine whether the requirement under § 1041.7(c)(4) regarding the total number of covered short-term loans and total time of indebtedness on covered short-term loans during a consecutive 12-month period is satisfied.

1. More than six covered short-term loans outstanding; or

1. *Total number of covered short-term loans*. Section 1041.7(c)(4)(i) provides that a lender cannot make a covered-short term loan under § 1041.7 if the loan would result in the consumer having more than six covered short-term loans outstanding in any consecutive 12month period. In addition to the new loan, all covered short-term loans made to the consumer during the consecutive 12-month period under either § 1041.5 or § 1041.7 are counted toward the limit. This requirement applies regardless of whether any or all of the loans subject to the limitations are made by the same lender, an affiliate, or an unaffiliated lender. Under § 1041.7(c)(4)(i), the lender must use the consumer’s borrowing history to determine whether the loan would result in the consumer having more than six covered short-term loans outstanding during a consecutive 12-month period. A lender may make a loan that would satisfy the requirement under § 1041.7(c)(4)(i) even if the six-loan limit would prohibit the consumer from taking out one or two subsequent loans in the sequence.

2. *Example*. Assume that a lender seeks to make a covered short-term loan to a consumer under § 1041.7 with a contractual duration of 14 days. Assume, further, that the lender determines that during the 351 days preceding the consummation date of the new loan, the consumer had outstanding a total of three covered short-term loans. The new loan would be the fourth covered short-term loan that was outstanding during a consecutive 12-month period and, therefore, would satisfy the requirement. Alternatively, if the lender determined that the consumer had outstanding a total of six covered short-term loans during the 351 days preceding the consummation date of the new loan, the new loan would be the seventh covered short-term loan outstanding during a consecutive 12-month period. In this instance, the requirement would not be satisfied, and the lender would be prohibited from making a new covered short-term loan under § 1041.7.

1. Covered short-term loans outstanding for an aggregate period of more than 90 days.

1. *Aggregate period of indebtedness*. Section 1041.7(c)(4)(ii) provides that a lender cannot make a covered short-term loan under § 1041.7 if the loan would result in the consumer having covered short-term loans outstanding for an aggregate period of more than 90 days in any consecutive 12-month period. In addition to the proposed contractual duration of the new loan, the aggregate period in which all covered short-term loans made to the consumer during the consecutive 12-month period under either § 1041.5 or § 1041.7 were outstanding is counted toward the limit. This requirement applies regardless of whether any or all of the loans subject to the limitations are made by the same lender, an affiliate, or an unaffiliated lender. Under § 1041.7(c)(4)(ii), the lender must use the information it has obtained about the consumer’s borrowing history to determine whether the loan would result in the consumer having covered short-term loans outstanding for an aggregate period of more than 90 days during a consecutive 12-month period. A lender may make a loan that would satisfy the requirement under § 1041.7(c)(4)(ii) even if the 90-day limit would prohibit the consumer from taking out one or two subsequent loans in the sequence.

2. *Example*. Assume that Lender A seeks to make a covered short-term loan under § 1041.7 with a contractual duration of 14 days. Assume, further, that Lender A determines that during the 351 days preceding the consummation date of the new loan, the consumer had outstanding three covered short-term loans made by Lender A and a fourth covered short-term loan made by Lender B. Assume that each of the three loans made by Lender A had a contractual duration of 14 days and the loan made by Lender B had a contractual duration of 30 days, for an aggregate total of 72 days of contractual indebtedness. Assume, further, that the consumer repaid each loan on its contractual due date. The new loan, if made, would result in the consumer having covered short-term loans outstanding for an aggregate period of 86 days during the consecutive 12-month period. Therefore, the requirement regarding aggregate time of indebtedness would be satisfied. Alternatively, if Lender A determined that during the 351 days preceding the consummation date of the new loan, the consumer had obtained three 14-day loans from Lender A, a 14-day loan from Lender B, and a 30-day loan from Lender C and repaid all five loans on their contractual due dates, the consumer would have had a total of 86 days of contractual indebtedness. The new loan would result in the consumer having covered short-term loans outstanding for an aggregate period of 100 days during the consecutive 12-month period. In this instance, the requirement would not be satisfied, and the lender would be prohibited from making a new covered short-term loan under § 1041.7.

1. Determining period between consecutive covered short-term loans made under the conditional exemption. If the lender or an affiliate makes a non-covered bridge loan during the time period in which any covered short-term loan made by a lender or its affiliate under this section is outstanding and for 30 days thereafter, the days during which the non-covered bridge loan is outstanding do not count toward the determination of time periods when making a subsequent loan under this section.

1. Non-covered bridge loan. See § 1041.2(13) for the definition of non-covered bridge loan.

2. Counting of loan sequence when making non-covered bridge loan. Section 1041.7(d)(1) specifies certain rules for determining whether a loan is part of a loan sequence when a lender or an affiliate makes both covered short-term loans under § 1041.7 and a non-covered bridge loan in close succession in time. If the lender or an affiliate makes a non-covered bridge loan during the time period in which any covered short-term loan made by the lender or an affiliate under § 1041.7 is outstanding and for 30 days thereafter, the days during which the non-covered bridge loan is outstanding must not be counted toward the determination of whether a subsequent loan made by the lender or an affiliate under § 1041.7 is part of the same loan sequence as the prior covered short-term loan under § 1041.7.

3. Example. Assume a lender makes a covered short-term loan (Loan X) to a consumer under § 1041.7 with a contractual duration of 14 days, Loan X is the first loan in a loan sequence, and the consumer repays Loan X on the contractual due date. Assume, further, that 10 days later the lender makes a non-recourse pawn loan (Loan Y) to the consumer, which under § 1041.2(13) is defined as a non-covered bridge loan; Loan Y has a contractual duration of 30 days; and the consumer repays Loan Y on the contractual due date. Assume, further, that the consumer returns to the lender 10 days later and requests another covered short-term loan under § 1041.7 (Loan Z). The consummation date of Loan Z would be 50 days after the date on which Loan X was repaid. Because more than 30 days has elapsed since Loan X was repaid, Loan Z normally would not be considered part of the same loan sequence as Loan X. However, in this instance, the 30 days during which Loan Y was outstanding are not counted toward the determination of whether Loan X and Loan Z are part of the same loan sequence. If those 30 days are not counted, only 20 days have elapsed between repayment of Loan X and the consummation date of Loan Z. Therefore, Loan X and Loan Z are part of the same loan sequence, and Loan Z would be counted as the second loan in the loan sequence. Thus, Loan Z would be subject, among other requirements, to the requirement under § 1041.7(b)(3)(ii) that its principal amount be no greater than two-thirds of the principal amount of Loan X.

1. Disclosures.

1. General. Section 1041.7(e) sets forth two main disclosure requirements related to a loan made under the requirements in § 1041.7. The first, set forth in § 1041.7(e)(2)(i), is a notice of the restriction on the principal amount on the loan and restrictions on the number of future loans and the principal amounts of such loans required to be provided to a consumer when the consumer seeks the first loan in a sequence of covered short-term loans made under § 1041.7. The second, set forth in § 1041.7(e)(2)(ii), is a notice of the restriction on the principal amount on the loan and the prohibition on another similar loan for at least 30 days after the loan is repaid required to be provided to a consumer when the consumer seeks the third loan in a sequence of covered short-term loans made under § 1041.7.

1. General form of disclosures.
2. Clear and conspicuous. Disclosures required by this paragraph (e) must be clear and conspicuous. Disclosures required by this section may contain commonly accepted or readily understandable abbreviations.

1. *Clear and conspicuous standard*. Disclosures are clear and conspicuous for purposes of § 1041.7(e) if they are readily understandable by the consumer and their location and type size are readily noticeable to the consumer.

1. In writing or electronic delivery. Disclosures required by this paragraph (e) must be provided in writing or through electronic delivery. The disclosures must be provided in a form that can be viewed on paper or a screen, as applicable. This provision is not satisfied by a disclosure provided orally or through a recorded message.

1. *General*. Section 1041.7(e)(1)(ii) requires that disclosures required by § 1041.7 be provided to the consumer in writing or through electronic delivery.

2. *E-Sign Act requirements*. The notices required by §§ 1041.7(e)(2)(i) and 1041.7(e)(2)(ii) may be provided to the consumer in electronic form without regard to the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. 7001 et seq.).

1. Retainable. Disclosures required by this paragraph (e) must be provided in a retainable form.

1. *General*. Electronic disclosures are retainable for purposes of § 1041.7(e) if they are in a format that is capable of being printed, saved, or emailed by the consumer.

1. Segregation requirements for notices. Notices required by this paragraph (e) must be segregated from all other written or provided materials and contain only the information required by this section, other than information necessary for product identification, branding, and navigation. Segregated additional content that is not required by this paragraph (e) must not be displayed above, below, or around the required content.

1. *Segregated additional content*. Although segregated additional content that is not required by this section may not appear above, below, or around the required content, this additional content may be delivered through a separate form, such as a separate piece of paper or web page.

1. Machine readable text in notices provided through electronic delivery. If provided through electronic delivery, the notices required by paragraphs (e)(2)(i) and (ii) of this section must use machine readable text that is accessible via both web browsers and screen readers.
2. Model Forms—

1. Safe harbor provided by use of model forms. Although the use of the model forms and clauses is not required, lenders using them will be deemed to be in compliance with the disclosure requirement with respect to such model forms.

1. First loan notice. The content, order, and format of the notice required by paragraph (e)(2)(i) of this section must be substantially similar to Model Form A-1 in appendix A to this part.

1. *As applicable standard*. Due to the requirements in § 1041.7(c)(4), a consumer may not be eligible for a sequence of two or three covered short-term loans under § 1041.7. This consumer may be permitted to obtain only one or two loans in a sequence of covered short-term loans under § 1041.7. Under these circumstances, § 1041.7(e)(2)(i) would require the lender to modify the notice in § 1041.7(e)(2)(i) to reflect these limitations on subsequent loans. For example, if a consumer can receive only a sequence of two covered short-term loans under § 1041.7 because of the requirements in § 1041.7(c)(4), the lender would have to modify the notice to list the maximum principal amount on loans 1 and 2 and to indicate that loan 3 would not be permitted.

1. Third loan notice. The content, order, and format of the notice required by paragraph (e)(2)(ii) of this section must be substantially similar to Model Form A-2 in appendix A to this part.
2. Foreign language disclosures. Disclosures required under this paragraph may be made in a language other than English, provided that the disclosures are made available in English upon the consumer’s request.
3. Notice requirements—
4. First loan notice. A lender that makes a first loan in a sequence of loans made under this section must provide to a consumer a notice that includes, as applicable, the following information and statements, using language substantially similar to the language set forth in Model Form A-1 in appendix A to this part:
5. Identifying statement. The statement “Notice of restrictions on future loans,” using that phrase.
6. Warning for loan made under this section.
7. Possible inability to repay. A statement that warns the consumer not to take out the loan if the consumer is unsure of being able to repay the total amount of principal and finance charges on the loan by the contractual due date.
8. Contractual due date. Contractual due date of the loan made under this section.
9. Total amount due. Total amount due on the contractual due date.
10. Restriction on a subsequent loan required by Federal law. A statement that informs a consumer that Federal law requires a similar loan taken out within the next 30 days to be smaller.
11. Borrowing limits. In a tabular form:
12. Maximum principal amount on loan 1 in a sequence of loans made under this section.
13. Maximum principal amount on loan 2 in a sequence of loans made under this section.
14. Maximum principal amount on loan 3 in a sequence of loans made under this section.
15. Loan 4 in a sequence of loans made under this section is not allowed.
16. Lender name and contact information. Name of the lender and a telephone number for the lender and, if applicable, a URL of the website for the lender.
17. Third loan notice. A lender that makes a third loan in a sequence of loans made under this section must provide to a consumer a notice that includes the following information and statements, using language substantially similar to the language set forth in Model Form A-2 in appendix A to this part:
18. Identifying statement. The statement “Notice of borrowing limits on this loan and future loans,” using that phrase.
19. Two similar loans without 30-day break. A statement that informs a consumer that the lender’s records show that the consumer has had two similar loans without taking at least a 30-day break between them.
20. Restriction on loan amount required by Federal law. A statement that informs a consumer that Federal law requires the loan to be smaller than previous loans in the loan sequence.
21. Prohibition on subsequent loan. A statement that informs a consumer that the consumer cannot take out a similar loan for at least 30 days after repaying the loan.
22. Lender name and contact information. Name of the lender and a telephone number for the lender and, if applicable, a URL of the website for the lender.
23. Timing. A lender must provide the notices required in paragraphs (e)(2)(i) and (e)(2)(ii) of this section to the consumer before a loan under § 1041.7 is consummated.

1. *General*. Section 1041.7(e)(3) requires a lender to provide the notices required in paragraphs (e)(2)(i) and (ii) of this section to the consumer before a covered short-term loan under § 1041.7 is consummated. For example, a lender can provide the notice after a consumer has completed a loan application but before the consumer has signed the loan agreement. A lender would not have to provide the notices to a consumer who inquires about a covered short-term loan under § 1041.7 but does not fill out an application to obtain this type of loan.

2. *Electronic notices*. If a lender delivers a notice required by this section electronically in accordance with § 1041.7(e)(1)(ii), § 1041.7(e)(3) requires a lender to provide the electronic notice to the consumer before a covered short-term loan under § 1041.7 is consummated. Specifically, § 1041.7(e)(3) requires a lender to present the retainable notice to the consumer before the consumer is contractually obligated on the loan. To comply with § 1041.7(e)(3), a lender could, for example, display a screen on a web browser with the notices required paragraphs (e)(2)(i) and (ii) of this section, provided the screen can be emailed, printed, or saved, before a covered short-term loan under § 1041.7 has been consummated.

Subpart C—Longer-Term Loans

**§ 1041.8 Identification of abusive and unfair practice.**

* 1. Identification. It is an abusive and unfair practice for a lender to make a covered longer-term loan without reasonably determining that the consumer will have the ability to repay the loan.

**§ 1041.9 Ability-to-repay determination required.**

1. Definitions. For purposes of this section and § 1041.10:
2. Basic living expenses means expenditures, other than payments for major financial obligations, that a consumer makes for goods and services necessary to maintain the consumer’s health, welfare, and ability to produce income, and the health and welfare of members of the consumer’s household who are financially dependent on the consumer.

1. *General*. For purposes of the ability-to-repay determination required under § 1041.9(b), a lender must make a reasonable determination that the consumer’s residual income is sufficient for the consumer to make all payments under the covered longer-term loan and to meet basic living expenses during the term of the loan. In addition, for a covered longer-term balloon-payment loan the lender must determine that the consumer, after making the highest payment under a covered longer-term balloon-payment loan, will be able to make payments required for major financial obligations as they fall due, to make any remaining payments under the loan, and to meet basic living expenses for 30 days following the date of the highest payment under the loan. Section 1041.9(a)(1) defines basic living expenses as expenditures, other than payments for major financial obligations, that the consumer must make for goods and services that are necessary to maintain the consumer’s health, welfare, and ability to produce income, and the health and welfare of members of the consumer’s household who are financially dependent on the consumer. Examples of goods and services that are necessary for maintaining health and welfare include food and utilities. Examples of goods and services that are necessary for maintaining the ability to produce income include transportation to and from a place of employment and daycare for dependent children. See comment 9(b)-4.

1. Major financial obligations means a consumer’s housing expense, minimum payments and any delinquent amounts due under debt obligations (including outstanding covered loans), and court-or government agency-ordered child support obligations.

1. *General*. Section 1041.9(a)(2) defines major financial obligations as a consumer’s housing expense, minimum payments and any delinquent amounts due under debt obligations (including outstanding covered loans), and court-or government agency-ordered child support obligations. Housing expense includes the total periodic amount that the consumer applying for the loan is responsible for paying, such as the amount the consumer owes to a landlord for rent or to a creditor for a mortgage. Minimum payments and any delinquent amounts due under debt obligations include periodic payments for automobile loan payments, student loan payments, other covered and non-covered loan payments, and minimum required credit card payments due during the underwriting period, as well as and any delinquent periodic payments.

1. National consumer report means a consumer report, as defined in section 603(d) of the Fair Credit Reporting Act, 15 U.S.C. 1681a(d) obtained from a consumer reporting agency that compiles and maintains files on consumers on a nationwide basis, as defined in section 603(p) of the Fair Credit Reporting Act, 15 U.S.C. 1681a(p).
2. Net income means the total amount that a consumer receives after the payer deducts amounts for taxes, other obligations, and voluntary contributions (but before deductions of any amounts for payments under a prospective covered loan or for any major financial obligation);
3. Payment under the covered longer-term loan:
4. Means the combined dollar amount payable by the consumer at a particular time following consummation in connection with the covered longer-term loan, assuming that the consumer has made preceding required payments and in the absence of any affirmative act by the consumer to extend or restructure the repayment schedule or to suspend, cancel, or delay payment for any product, service, or membership provided in connection with the loan;
5. Includes all principal, interest, charges, and fees; and

1. *General*. Section 1041.9(a)(5)(i) defines payment under a covered longer-term loan as the combined dollar amount payable by the consumer at a particular time following consummation in connection with the loan, assuming that the consumer has made preceding required payments and in the absence of any affirmative act by the consumer to extend or restructure the repayment schedule or to suspend, cancel, or delay payment for any product, service, or membership provided in connection with the covered loan. Section 1041.9(a)(5)(ii) clarifies that it includes all principal, interest, charges, and fees. A lender may not exclude a portion of the payment simply because a consumer could avoid or delay paying a portion of the payment, such as by requesting forbearance for that portion or by cancelling a service provided in exchange for that portion. For example:

i. Assume that in connection with a covered longer-term loan, a consumer would owe on a particular date $100 to the lender, which consists of $25 in finance charges, $70 in principal, and a $5 service fee, and the consumer also owes $10 as a credit insurance premium to a separate insurance company. Assume further that under the terms of the loan or other agreements entered into in connection with the loan, the consumer has the right to cancel the credit insurance at any time and avoid paying the $10 credit insurance premium and also has the option to pay the $70 in principal at a later date. The payment under the loan is $110.

ii. Assume that in connection with a covered longer-term loan, a consumer would owe on a particular date $25 in finance charges to the lender. Under the terms of the loan, the consumer has the option of paying $50 in principal on that date, in which case the lender would charge $20 in finance charges instead. The payment under the loan is $25.

iii. Assume that in connection with a covered longer-term loan, a consumer would owe on a particular date $25 in finance charges to the lender and $70 in principal. Under the terms of the loan, the consumer has the option of logging into her account on the lender’s website and selecting an option to defer the due date of the $70 payment toward principal. The payment under the covered loan is $95.

1. For a line of credit is calculated assuming that:

1. *General*. Section 1041.9(a)(5)(iii) provides assumptions that a lender must make in calculating the payment under § 1041.9(a)(5) for a covered longer-term loan that is a line of credit (regardless of the extent to which available credit will be replenished as the consumer repays earlier advances). For a line of credit, the amount and timing of the consumer’s actual payments after consummation may depend on the consumer’s utilization of the credit or on amounts that the consumer has repaid prior to the payments in question. Section 1041.9(a)(5)(iii) requires the lender to calculate the total loan payment assuming that the consumer will utilize the full amount of credit under the loan as soon as the credit is available, that the consumer will make only minimum required payments, and, if the terms of the covered loan would not provide for termination of access to the line of credit by a date certain and for full repayment of all amounts due by a subsequent date certain, that the consumer must repay any remaining balance in one payment on the date that is 180 days following the consummation date.

1. The consumer will utilize the full amount of credit under the covered loan as soon as the credit is available to the consumer;
2. The consumer will make only minimum required payments under the covered loan; and
3. If the terms of the covered longer-term loan would not provide for termination of access to the line of credit by a date certain and for full repayment of all amounts due by a subsequent date certain, that the consumer must repay any remaining balance in one payment on the date that is 180 days following the consummation date.
4. Residual income means the sum of net income that the lender projects the consumer obligated under the loan will receive during a period, minus the sum of amounts that the lender projects will be payable by the consumer for major financial obligations during the period, all of which projected amounts are determined in accordance with paragraph (c).
5. Reasonable determination required.

1. *Overview*. Section 1041.9(b) prohibits a lender from making a covered longer-term loan (other than a covered longer-term loan described in § 1041.11 or § 1041.12) unless it first makes a reasonable determination that the consumer will have the ability to repay the loan according to its terms. Section 1041.9(b) provides minimum standards that the lender’s determination must meet to constitute a reasonable determination. The minimum standards provide that the reasonable determination includes three components. Section 1041.9(b)(2)(i) requires that as part of the ability-to-repay determination for any covered longer-term loan, a lender must determine that the consumer’s residual income projected in accordance with § 1041.9(c) is sufficient for the consumer to make all payments under the loan and to meet basic living expenses during the term of the loan. Section 1041.9(b)(2)(ii) requires that the ability-torepay determination for a covered longer-term balloon-payment loan must also include a determination that the consumer, after making the highest payment under the loan, is able to make payments for major financial obligations, to make any remaining payments under the loan, and to meet basic living expenses for 30 days following the date of the highest payment under the loan. Section 1041.9(b)(2)(iii) requires that for a covered longer-term loan for which a presumption of unaffordability applies under § 1041.10, the applicable requirements of § 1041.10 are satisfied. Section 1041.9(b)(2) provides that a determination of a consumer’s ability to repay is reasonable only if it is based on projections of consumer net income and major financial obligations that comply with § 1041.9(c).

2. *Reasonable determination*. To comply with the requirements of § 1041.9(b), a lender’s determination that a consumer will have the ability to repay a covered longer-term loan must be reasonable in all respects.

i. To be reasonable, a lender’s determination of a consumer’s ability to repay a covered longer-term loan must:

A. Include the determinations required in § 1041.9(b)(2)(i), (ii), and (iii), as applicable;

B. Be based on reasonable projections of a consumer’s net income and major financial obligations in accordance with § 1041.9(c);

C. Be based on reasonable estimates of a consumer’s basic living expenses (see comment 9(b)-4);

D. Be consistent with a lender’s written policies and procedures required under § 1041.18 and grounded in reasonable inferences and conclusions as to a consumer’s ability to repay a covered longer-term loan according to its terms in light of information the lender is required to obtain or consider as part of its determination under § 1041.9(b).

E. Appropriately account for information known by the lender, whether or not the lender is required to obtain the information under this part, that indicates that the consumer may not have the ability to repay a covered longer-term loan according to its terms; and

F. Appropriately account for the possibility of volatility in a consumer’s income and basic living expenses during the term of the loan. See comment 9(b)(2)(i)-2.

ii. A determination of ability to repay is not reasonable if it:

A. Relies on an implicit assumption that the consumer will obtain additional consumer credit to be able to make payments under the covered longer-term loan, to make payments under major financial obligations, or to meet basic living expenses; or

B. Relies on an assumption that a consumer will accumulate savings while making one or more payments under a covered longer-term loan and that, because of such assumed savings, the consumer will be able to make a subsequent loan payment under the loan.

iii. Evidence of whether a lender’s determinations of ability to repay are reasonable may include the extent to which the lender’s determinations subject to § 1041.9 result in rates of delinquency, default, and reborrowing for covered longer-term loans that are low, equal to, or high, including in comparison to the rates of other lenders making similar covered longer-term loans to similarly situated consumers.

3. Payments under the covered longer-term loan. Under the ability-to-repay requirements in § 1041.9(b)(2)(i) and (iii), a lender must determine the amount and timing of the payments due in connection with the covered longer-term loan. The lender is responsible for calculating, for purposes of the determination and as of consummation, the timing and amount for all payments under the loan based on the terms of the loan. See § 1041.9(a)(5) for the definition of payment under a covered longer-term loan, including assumptions that the lender must make in calculating the amount and timing of payments under a loan that is a line of credit.

4. Basic living expenses. To comply with § 1041.9(b), a lender must account for a consumer’s need to meet basic living expenses for the applicable period. Section 1041.9(a)(1) defines basic living expenses as expenditures, other than payments for major financial obligations, that the consumer must make for goods and services that are necessary to maintain the consumer’s health, welfare, and ability to produce income, and the health and welfare of members of the consumer’s household who are financially dependent on the consumer. Sections 9(a)(1) and (b) do not specify a particular method that a lender must use to determine an amount of funds that a consumer requires to meet basic living expenses for an applicable period. For example, a lender is not required to itemize the basic living expenses of each consumer. Nor is a lender required to assume that a consumer’s basic living expenses during the term of a prospective covered loan must be equal to the consumer’s expenditures for goods and services other than major financial obligations during a recent period preceding consummation of the prospective loan. Whether a particular method complies with the requirements of § 1041.9(b) depends on whether it is reasonably designed to determine whether a consumer would likely be able to make the loan payments and meet basic living expenses without defaulting on major financial obligations or having to rely on new consumer credit during the applicable period.

i. Reasonable methods of estimating basic living expenses may include, but are not necessarily limited to, the following:

A. Setting minimum percentages of income or dollar amounts based on a statistically valid survey of expenses of similarly situated consumers, taking into consideration the consumer’s income, location, and household size;

B. Obtaining additional reliable information about a consumer’s expenses other than the information required to be obtained under § 1041.9(c), to develop a reasonably accurate estimate of a consumer’s basic living expenses; or

C. Any method that reliably predicts basic living expenses.

ii. Unreasonable methods of estimating basic living expenses may include, but are not necessarily limited to, the following:

A. Assuming that a consumer needs no or implausibly low amounts of funds to meet basic living expenses during the applicable period and that, accordingly, substantially all of a consumer’s net income that is not required for payments for major financial obligations is available for loan payments; or

B. Setting minimum percentages of income or dollar amounts that, when used in ability-to-repay determinations for covered loans, have yielded high rates of default and reborrowing relative to rates of default and reborrowing of other lenders making covered loans to similarly situated consumers.

(1)

1. Except as provided in § 1041.11 or § 1041.12, a lender must not make a covered longer-term loan or increase the credit available under a covered longer-term loan, unless the lender first makes a reasonable determination that the consumer will have the ability to repay the loan according to its terms.
2. For a covered longer-term loan that is a line of credit, a lender must not permit a consumer to obtain an advance under the line of credit more than 180 days after the date of a required determination under this paragraph (b), unless the lender first makes a new determination that the consumer will have the ability to repay the covered loan according to its terms.
3. A lender’s determination of a consumer’s ability to repay a covered longer-term loan is reasonable only if, based on projections in accordance with paragraph (c) of this section, the lender reasonably concludes that:
4. The consumer’s residual income will be sufficient for the consumer to make all payments under the loan and to meet basic living expenses during the term of the loan;

1. *Applicable period for residual income*. Section 1041.9(b)(2)(i) requires the lender to make a reasonable determination that the consumer’s residual income will be sufficient for the consumer to make all payments under the covered longer-term loan and to meet basic living expenses during the term of the loan.

i. A lender complies with the requirement in § 1041.9(b)(2)(i) if it reasonably determines that for the month with the highest sum of payments (if applicable) under the loan, the consumer’s residual income will be sufficient for the consumer to make the payments and to meet basic living expenses during that month, provided that the lender’s determination does not rely on a projected increase in the consumer’s residual income during the term of the loan. If the same sum of payments would be due in each month, or if the highest sum of payments applies to more than one month, the lender may make the determination for any such month. (See comment 9(b)(2)(i)-2 regarding the requirement to account for the possibility of volatility in a consumer’s income and basic living expenses.) For example:

A. Assume a lender considers making a covered longer-term loan to a consumer on March 1. The prospective loan would be repayable in six biweekly payments, the first five of which payments would be for $100, and the last of which payments would be for $275. The lender determines that highest sum of these payments that would be due within a monthly period would be $375. The lender further determines that, based on its projections of net income per month and of payments for major financial obligations per month, the consumer will have $1,200 in monthly residual income, and the lender has no reason to believe this amount of residual income will change during the term of the loan. The lender complies with the requirement in § 1041.9(b)(1) if it reasonably determines that $1,200 will be sufficiently compared to the sum of the $375 in loan payments plus an amount the lender reasonably estimates is adequate for basic living expenses during a monthly period.

2. Sufficiency of residual income; accounting for volatility in net income and basic living expenses. The lender must make a reasonable determination that the consumer’s residual income will be sufficient for the consumer to make all payments under the loan and to meet basic living expenses during the term of the loan. For a covered longer-term loan, determination of whether residual income will be sufficient for the consumer to make all payments and to meet basic living expenses during the term of the loan requires a lender to reasonably account for the possibility of volatility in the consumer’s residual income and basic living expenses over the term of the loan. Reasonably accounting for volatility requires considering the length of the loan term because the longer the term of the loan, the greater the possibility that residual income could decrease or basic living expenses could increase at some point during the term of the loan. For example, if illness or a reduction in work hours could reduce a consumer’s net income below levels of net income reasonably projected in accordance with § 1041.9(c), then the likelihood of such events resulting in insufficiency of the consumer’s residual income at some point during the term of the loan increases with the length of the term. A lender reasonably accounts for the possibility of volatility in income and basic living expenses by reasonably determining an amount (i.e., a “cushion”) by which the consumer’s residual income must exceed the sum of the loan payments under the loan and of the amount needed for basic living expenses. A cushion is reasonably determined if it is large enough so that a consumer would have sufficient residual income to make payments under the loan despite volatility in net income or basic living expenses experienced by similarly situated consumers during a similar period of time. Alternatively, a lender reasonably accounts for the possibility of volatility in consumer income by reasonably determining that a particular consumer is unlikely to experience such volatility notwithstanding the experience of otherwise similarly situated consumers during a similar period of time, such as if a consumer has stable employment and receives a salary and sick leave.

1. For a covered longer-term balloon-payment loan, the consumer will be able to make payments required for major financial obligations as they fall due, to make any remaining payments under the loan, and to meet basic living expenses for 30 days after having made the highest payment under the loan on its due date; and

1. *General*. Section 1041.9(b)(2)(ii) requires that for a covered longer-term balloon-payment loan, the lender must make a reasonable determination that the consumer, after making the highest loan payment that will be due under the loan, will be able to make payments required for major financial obligations as they fall due, to make any remaining payments under the loan as they fall due, and to meet basic living expenses for 30 days following the date of the highest payment under the loan. (This determination is in addition to the required determination regarding residual income under § 1041.9(b)(2)(i).) Section 1041.9(b) provides that a determination of a consumer’s ability to repay is reasonable only if it is based on projections of consumer net income and payments for major financial obligations determined in accordance with § 1041.9(c). Accordingly, a lender must include in its determination under § 1041.9(b)(2)(ii) the amount and timing of payments for major financial obligations that it projects the consumer must make during the 30-day period following the highest loan payment, in accordance with § 1041.9(c). A lender must include in its determination under § 1041.9(b)(2)(ii) the amount and timing of net income that it projects the consumer will receive during the 30-day period following the highest payment, in accordance with § 1041.4(c). For a loan with two or more payments that are equal to each other in amount and higher than all other payments, a lender complies by making the required determination for the 30-day period following the later in time of the two or more higher payments. See comment 9(b)-4, regarding methods for estimating amounts for basic living expenses. For example:

i. Assume a lender considers making a covered longer-term loan to a consumer on March

1. The prospective loan would be repayable in six biweekly payments, the first five of which payments would be for $100, and the last of which payments would be for $275, on May 20. The loan would be a covered longer-term balloon-payment loan as defined in § 1041.2(7), so the requirement in § 1041.9(b)(2)(ii) applies. Assume further that the lender reasonably determines in accordance with § 1041.9(b)(2)(i) that the consumer’s residual income for the month with the highest sum of payments, (i.e., $375), the consumer’s residual income will be sufficient for the consumer to make the payments and to meet basic living expenses during that month. Assume further that payment of the $275 loan payment, however, will consume all but $1,000 of the consumer’s last paycheck preceding or coinciding with the date of the loan payment. The lender projects that the consumer’s next receipt of income will not occur until June 3, and the consumer must make a student loan payment of $200 on May 25 and a rent payment of $950 on June 1. The consumer, having made the $275 loan payment, would not be able make payments under two major financial obligations (i.e., the student loan payment and the rent payment), that fall due before June 3. Accordingly, the lender cannot reasonably determine that the consumer has the ability to repay the loan under § 1041.9(b)(2)(ii).

1. For a loan for which a presumption of unaffordability applies under § 1041.10, the applicable requirements of § 1041.10 are satisfied.
2. Projecting consumer net income and payments for major financial obligations—
3. *General*. To make a reasonable determination required under paragraph (b) of this section, a lender must obtain the consumer’s written statement in accordance with paragraph (c)(3)(i) of this section, obtain verification evidence as required by paragraph (c)(3)(ii) of this section, and make a reasonable projection of the amount and timing of a consumer’s net income and payments for major financial obligations. To be reasonable, a projection of the amount and timing of net income or payments for major financial obligations may be based on a consumer’s written statement of amounts and timing under paragraph (c)(3)(i) of this section only to the extent the stated amounts and timing are consistent with verification evidence obtained in accordance with paragraph (c)(3)(ii) of this section. In determining whether and the extent to which such stated amounts and timing are consistent with verification evidence, a lender may reasonably consider other reliable evidence the lender obtains from or about the consumer, including any explanations the lender obtains from the consumer.

1. *General*. Section 1041.9(c)(1) provides that to be reasonable, a projection of the amount and timing of net income or payments for major financial obligations may be based on amounts and timing stated by the consumer under § 1041.9(c)(3)(i) only to the extent the stated amounts and timing are consistent with verification evidence obtained in accordance with § 1041.9(c)(3)(ii). It further provides that in determining whether and the extent to which such stated amounts and timing are consistent with verification evidence, a lender may reasonably consider other reliable evidence the lender obtains from or about the consumer, including any explanations the lender obtains from the consumer. For example:

A. Assume that a consumer states that her net income is $1,000 every two weeks, pursuant to § 1041.9(c)(3)(i). The deposit account transaction records the lender obtains as verification evidence pursuant to § 1041.9(c)(3)(ii) show that the consumer receives $900 every two weeks. The lender complies with § 1041.9(c)(1) if it makes the determination required under § 1041.9(b) based on a projection of $900 in income every two weeks because it relies on the stated amount and timing only to the extent they are consistent with the verification evidence.

B. Assume that a consumer states that her net income is $900 every two weeks, pursuant to § 1041.9(c)(3)(i). For verification evidence, the lender uses an online income verification service that verifies gross income based on employer-reported payroll information, pursuant to § 1041.9(c)(3)(ii)(A) and comment 9(c)(3)(ii)(A)-1. The verification evidence the lender obtains pursuant to § 1041.9(c)(3)(ii) shows that the consumer receives $1,200 every two weeks. The lender reasonably determines that for a typical consumer, gross income of $1,200 is consistent with net income of $900. The lender complies with § 1041.9(c)(1) if it makes the determination required under § 1041.9(b) based on a projection of $900 in income every two weeks because it relies on the stated amount and timing only to the extent they are consistent with the verification evidence.

C. Assume that a consumer states that her minimum required credit card payment is $150 on the fifth day of each month, pursuant to § 1041.9(c)(3)(i). The national consumer report that the lender obtains as verification evidence pursuant to § 1041.9(c)(3)(ii) shows that the consumer’s minimum monthly payment is $160. The lender complies with § 1041.9(c)(1) if it makes the determination required under § 1041.9(b) based on a projection of a $160 credit card payment on the fifth day of each month because it relies on the stated amount and timing only to the extent they are consistent with the verification evidence.

D. Assume that a consumer states that her net income is $1,000 every two weeks, pursuant to § 1041.9(c)(3)(i). The lender obtains electronic records of the consumer’s deposit account transactions as verification evidence pursuant to § 1041.9(c)(3)(ii) showing biweekly direct deposits of $750, $850, and $995, respectively, during the preceding six-week period. The lender does not comply with § 1041.9(c)(1) if it makes the determination required under § 1041.9(b) based on a projection of a $1,000 in net income every two weeks.

E. Assume that a consumer states that her net income is $1,000 every two weeks, pursuant to § 1041.9(c)(3)(i). The lender obtains electronic records of the consumer’s deposit account transactions as verification evidence pursuant to § 1041.9(c)(3)(ii) showing biweekly direct deposits of $1,000, $1,000, and $800, respectively, during the preceding six-week period. The consumer explains that the most recent income was lower than her usual income because she missed two days of work due to illness. The lender complies with § 1041.9(c)(1) if it makes the determination required under § 1041.9(b) based on a projection of $1,000 in income every two weeks because it reasonably considers the consumer’s explanation in determining whether the stated amount and timing is consistent with the verification evidence.

F. Assume that a consumer states that her net income is $2,000 every two weeks, pursuant to § 1041.9(c)(3)(i). The lender obtains electronic records of the consumer’s deposit account transactions as verification evidence pursuant to § 1041.9(c)(3)(ii) showing no income transactions in the preceding month but showing consistent biweekly direct deposits of $2,000 from ABC Manufacturing prior to that month. The consumer explains that she was temporarily laid off for one month while ABC Manufacturing retooled the plant where she works but that she recently resumed work there. The lender complies with § 1041.9(c)(1) if it makes the determination required under § 1041.9(b) based on a projection of $2,000 in income every two weeks because it reasonably considers the consumer’s explanation in determining whether the stated amount and timing is consistent with the verification evidence.

G. Assume that a consumer states that she owes a child support payment of $200 on the first day of each month, pursuant to § 1041.9(c)(3)(i). The national consumer report that the lender obtains as verification evidence pursuant to § 1041.9(c)(3)(ii) does not include any child support payment. The lender complies with § 1041.9(c)(1) if it makes the determination required under § 1041.9(b) based on a projection of a $200 child support payment on the first day of each month because it relies on the stated amount and timing and nothing in the verification evidence is inconsistent with the stated amount and timing.

1. Changes not supported by verification evidence. A lender may project a net income amount that is higher than an amount that would otherwise be supported under paragraph (c)(1) of this section or a payment amount under a major financial obligation that is lower than an amount that would otherwise be supported under paragraph (c)(1) of this section only to the extent and for such portion of the term of the loan that the lender obtains a written statement from the payer of the income or the payee of the consumer’s major financial obligation of the amount and timing of the new or changed net income or payment.
2. Evidence of net income and payments for major financial obligations—
3. Consumer statements. A lender must obtain a consumer’s written statement of:
4. The amount and timing of the consumer’s net income receipts; and
5. The amount and timing of payments required for categories of the consumer’s major financial obligations.

1. *Consumer statements*. Section 1041.9(c)(3)(i) requires a lender to obtain a consumer’s written statement of the amounts and timing of consumer’s net income receipts and payments for categories (e.g., credit card payments, automobile loan payments, housing expense payments, child support payments, etc.) of the consumer’s major financial obligations. A consumer’s written statement includes a statement the consumer writes on a paper application or enters into an electronic record, or an oral consumer statement that the lender records and retains or memorializes in writing and retains. A lender complies with a requirement to obtain the consumer’s statement by obtaining information sufficient for the lender to project the dates on which a payment will be received or paid through the period required under § 1041.9(b)(2). For example, a lender’s receipt of a consumer’s statement that the consumer is required to pay rent every month on the first day of the month is sufficient for the lender to project when the consumer’s rent payments are due.

1. *Verification evidence*. A lender must obtain verification evidence for the amounts and timing of the consumer’s net income and payments for major financial obligations, as follows:

1. *Verification requirement*. Section 1041.9(c)(3)(ii) establishes requirements for a lender to obtain verification evidence for the amounts and timing of a consumer’s net income and required payments for major financial obligations.

1. For the consumer’s net income, a reliable record (or records) of an income payment (or payments) covering sufficient history to support the lender’s projection under paragraph (c)(1) of this section;

1. *Income*. Section 1041.9(c)(3)(ii)(A) requires a lender to obtain a reliable record (or records) of income payment (or payments) covering sufficient history to reasonably support the lender’s projection under § 1041.9(c)(1). For purposes of verifying net income, a reliable transaction record includes a facially genuine original, photocopy, or image of a document produced by or on behalf of the payer of income, or an electronic or paper compilation of data included in such a document, stating the amount and date of the income paid to the consumer. A reliable transaction record also includes a facially genuine original, photocopy, or image of an electronic or paper record of depository account transactions, prepaid account transactions (including transactions on a general purpose reloadable prepaid card account, a payroll card account, or a government benefits card account) or money services business check-cashing transactions showing the amount and date of a consumer’s receipt of income.

1. For the consumer’s required payments under debt obligations, a national consumer report, the records of the lender and its affiliates, and a consumer report obtained from an information system currently registered pursuant to § 1041.17(c)(2) or § 1041.17(d)(2), if available;

1. *Payments under debt obligations*. To verify a consumer’s required payments under debt obligations, § 1041.9(c)(3)(ii)(B) requires a lender to obtain a national consumer report, the records of the lender and its affiliates, and a consumer report obtained from an information system currently registered pursuant to § 1041.17(c)(2) or (d)(2), if available. A lender satisfies its obligation under § 1041.10(a)(2) to obtain a consumer report from an information system currently registered pursuant to § 1041.17(c)(2) or (d)(2), if available, when it complies with the requirement in § 1041.9(c)(3)(ii)(B) to obtain this same consumer report. The amount and timing of a payment required under a debt obligation are the amount the consumer must pay and the time by which the consumer must pay it to avoid delinquency under the debt obligation in the absence of any affirmative act by the consumer to extend, delay, or restructure the repayment schedule.

1. For a consumer’s required payments under court-or government agency-ordered child support obligations, a national consumer report;
2. For a consumer’s housing expense (other than a payment for a debt obligation that appears on a national consumer report obtained pursuant to paragraph (c)(3)(ii)(B) of this section):
3. A reliable transaction record (or records) of recent housing expense payments or a lease; or
4. An amount determined under a reliable method of estimating a consumer’s housing expense based on the housing expenses of consumers with households in the locality of the consumer.

1. *Housing expense*. Section 1041.9(c)(3)(ii)(D) requires a lender to obtain verification evidence for the consumer’s housing expense. It provides three methods for complying with this obligation.

i. For a housing expense under a debt obligation (i.e., a mortgage), § 1041.9(c)(3)(ii)(D) provides that a lender may satisfy the requirement by obtaining a national consumer report that includes the housing expense under a debt obligation pursuant to § 1041.9(c)(3)(ii)(B).

ii. Under § 1041.9(c)(1)(ii)(D)(1), a lender may satisfy the obligation to obtain verification evidence of housing expense by obtaining a reliable transaction record (or records) of recent housing expense payments or a rental or lease agreement. For purposes of this alternative, reliable transaction records include a facially genuine original, photocopy or image of a receipt, cancelled check, or money order, or an electronic or paper record of depository account transactions or prepaid account transactions (including transactions on a general purpose reloadable prepaid card account, a payroll card account, or a government benefits card account), from which the lender can reasonably determine that a payment was for housing expense as well as the date and amount paid by the consumer.

iii. Under § 1041.9(c)(1)(ii)(D)(2), a lender may satisfy its obligation to obtain verification evidence of housing expense using an amount determined under a reliable method of estimating a consumer’s housing expense based on the housing expenses of consumers with households in the locality of the consumer. The lender may estimate a consumer’s share of housing expense based on the individual or household housing expenses of similarly situated consumers with households in the locality of the consumer seeking a covered loan. For example, a lender may use data from a statistical survey, such as the American Community Survey of the United States Census Bureau, to estimate individual or household housing expense in the locality (e.g., in the same census tract) where the consumer resides. Alternatively, a lender may estimate individual or household housing expense based on housing expense and other data reported by applicants to the lender, provided that it periodically reviews the reasonableness of the estimates that it relies on using this method by comparing the estimates to statistical survey data or by another method reasonably designed to avoid systematic underestimation of consumers’ shares of housing expense. A lender may estimate a consumer’s share of household housing expense based on estimated household housing expense by reasonably apportioning the estimated household housing expense by the number of persons sharing housing expense as stated by the consumer, or by another reasonable method.

**§ 1041.10 Additional limitations on lending—covered longer-term loans.**

1. Additional limitations on making a covered longer-term loan under § 1041.9.
2. General. When a consumer is presumed under paragraphs (b) or (c) of this section not to have the ability to repay a covered longer-term loan, a lender’s determination that the consumer will have the ability to repay the loan is not reasonable unless the requirements set forth in paragraph (d) of this section are satisfied. A lender must not make a covered longer-term loan under § 1041.9 during the period set forth in paragraph (e) of this section.

1. *General*. Section 1041.10 specifies circumstances in which a consumer is presumed to not have the ability to repay a covered longer-term loan under § 1041.9 and circumstances in which a covered longer-term loan under § 1041.9 is prohibited. The presumptions and prohibition apply to making a covered longer-term loan under § 1041.9.

2*. Application to rollovers*. The presumptions in § 1041.10 apply to new covered longer-term loans under § 1041.9, as well as to loans that are a rollover of a prior loan (or what is termed a “renewal” in some States), as applicable. In the event that a lender is permitted under State law to roll over a loan, the rollover would be treated as a new covered longer-term loan subject to the presumptions in § 1041.10. For example, assume a lender is permitted under applicable State law to roll over a covered short-term loan into a covered longer-term balloon-payment loan; the lender makes a covered short-term loan with $500 in principal and a 14-day contractual duration; the consumer returns to the lender on day 14 and is offered the opportunity to roll over the loan for 46 days for a $75 fee. Fewer than 30 days would have elapsed between consummation of the new covered longer-term balloon-payment loan (the rollover) and the consumer having had a covered short-term loan made under § 1041.5 outstanding. Therefore the rollover would be subject to the presumption of unaffordability in § 1041.10(b).

3. *Relationship to § 1041.9*. A lender’s determination that a consumer will have the ability to repay a covered longer-term loan is not reasonable within the meaning of § 1041.9 if under § 1041.10(b) or (c) the consumer is presumed to not have the ability to repay the loan and the lender is not able to overcome the presumption in the manner set forth in § 1041.10(d).

1. Borrowing history review. Prior to making a covered longer-term loan under § 1041.9, in order to determine whether either of the presumptions or the prohibition in this section is applicable, a lender must obtain and review information about the consumer’s borrowing history from the records of the lender and its affiliates, and from a consumer report obtained from an information system currently registered pursuant to § 1041.17(c)(2) or (d)(2), if available.

1. *Relationship to § 1041.9(c)(3)(ii)(B).* A lender satisfies its obligation under § 1041.10(a)(2) to obtain a consumer report from an information system currently registered pursuant to § 1041.17(c)(2) or (d)(2), if available, when it complies with the requirement in § 1041.9(c)(3)(ii)(B) to obtain this same consumer report.

2. *Availability of information systems currently registered pursuant to § 1041.17(c)(2) or (d)(2).* If no information systems currently registered pursuant to § 1041.17(c)(2) or (d)(2) are available at the time that the lender is required to obtain the information about the consumer’s borrowing history, the lender is nonetheless required to obtain information about the consumer’s borrowing history from the records of the lender and its affiliates. A lender may be unable to obtain a consumer report from an information system currently registered pursuant to § 1041.17(c)(2) or (d)(2) if, for example, all registered information systems are temporarily unavailable.

1. Presumption of unaffordability for certain covered longer-term loans following a covered short-term loan or covered longer-term balloon-payment loan.
2. Presumption. A consumer is presumed not to have the ability to repay a covered longer-term loan under § 1041.9 during the time period in which the consumer has a covered short-term loan made under § 1041.5 or a covered longer-term balloon-payment loan made under § 1041.9 outstanding and for 30 days thereafter.

1. *General*. Section 1041.10(b)(1) means that a lender cannot make a covered longer-term loan under § 1041.9 during the time period in which the consumer has a covered short-term loan made under § 1041.5 or a covered longer-term balloon-payment loan made under § 1041.9 outstanding and for 30 days thereafter unless either the exception to the presumption in § 1041.10(b)(2) applies or the lender determines in the manner set forth in § 1041.10(d) that there is sufficient improvement in the consumer’s financial capacity such that the consumer will have the ability to repay the new loan according to its terms despite the unaffordability of the prior loan. The presumption would not apply, however, if the loan is subject to the prohibition in § 1041.10(e). See § 1041.10(e) and accompanying commentary.

1. *Exception*. The presumption of unaffordability in paragraph (b)(1) of this section does not apply if every payment on the new covered longer-term loan would be substantially smaller than the largest required payment on the prior covered short-term loan or covered longer-term balloon-payment loan.

1. *Exception to the presumption*. Under § 1041.10(b)(2), the presumption in § 1041.10(b)(1) does not apply if every payment on the new covered longer-term loan would be substantially smaller than the largest required payment on the prior loan. For a loan that has a single payment, that single payment is the largest payment for the purposes of § 1041.10(b)(2). For a loan that has multiple, equal-sized payments, the largest payment for purposes of § 1041.10(b)(2) is the amount of each of those payments. For the purposes of § 1041.10(b)(2), the specific timing of payments on the prior loan and the new covered longer-term loan is not relevant to the determination about whether the exception applies.

2. *Example*. The presumption in § 1041.10(b) would cover the situation in which, for example, a consumer had a 30-day covered short-term loan featuring two biweekly payments of $250 each (Loan A) and then sought to reborrow on a covered longer-term loan (Loan B) within 30 days of making the final payment on Loan A. If Loan B was a 90-day covered longer-term loan featuring six biweekly payments of $250 each, the exception to the presumption in § 1041.10(b)(2) would not apply and the consumer would be presumed to not have the ability to repay Loan B. The presumption in § 1041.10(b) would also apply if, in the example above, Loan A was a 42-day loan repayable in two biweekly payments of $100 each and a third biweekly payment of $300 and the biweekly payments on Loan B were still $250, because the payments on Loan B would not be substantially smaller than the largest payment on Loan A. In contrast, if Loan A was repayable in three biweekly payments of $167 and Loan B was repayable in six biweekly payments of $75, then every payment on Loan B would be substantially smaller than the highest payment on Loan A and the exception to the presumption § 1041.10(b)(2) would apply.

1. Presumption of unaffordability for a covered longer-term loan during an unaffordable outstanding loan.
2. Presumption. Except for loans subject to the presumption under paragraph (b) or the prohibition under paragraph (e) of this section, a consumer is presumed not to have the ability to repay a covered longer-term loan under § 1041.9 if, at the time of the lender’s determination under § 1041.9, the consumer currently has a covered or non-covered loan outstanding that was made or is being serviced by the same lender or its affiliate and one or more of the following conditions are present:

1. General. Section 1041.10(c)(1) provides that, except for loans subject to the presumption under § 1041.10(b) or the prohibition under § 1041.10(e), a consumer is presumed not to have the ability to repay a covered longer-term loan under § 1041.9 if, at the time of the lender’s determination under § 1041.9, the consumer currently has a covered or non-covered loan outstanding that was made or is being serviced by the same lender or its affiliate and one or more of the conditions in § 1041.10(c)(1)(i) through (iv) are present. Section 1041.10(c) means that a lender cannot make a covered longer-term loan under § 1041.10 if any of the conditions in § 1041.10(c)(1)(i) through (iv) is present unless either one of the exceptions to the presumption in § 1041.10(c)(2) applies or the lender determines in the manner set forth in § 1041.10(d) that there is sufficient improvement in the consumer’s financial capacity such that the consumer will have the ability to repay the new loan according to its terms despite the unaffordability of the prior loan.

2. Applicability. Section 1041.10(c) applies any time a consumer has a loan outstanding that was made or is being serviced by the same lender or its affiliate and one or more of the other conditions are present, except if the presumption under § 1041.10(b) or the prohibition under § 1041.10(e) would otherwise apply. For example, if a consumer has outstanding with the same lender a non-covered installment loan with scheduled biweekly payments of $100 and the lender is determining whether the consumer will have the ability to repay a new covered longer-term loan that would have scheduled monthly payments of $200, § 1041.10(c) would apply if the consumer has, within the prior 30 days, expressed an inability to make a payment on the outstanding loan as provided for in § 1041.10(c)(1)(ii). If a consumer instead has a non-covered installment loan outstanding with a different and unaffiliated lender, § 1041.10(c) does not apply.

3. Indicia of distress. Section 1041.10(c)(1) applies only if at least one of the four circumstances in § 1041.10(c)(1)(i) through (iv) is present at the time that the lender is making the determination of ability to repay for the new covered longer-term loan under § 1041.9.

1. The consumer is or has been delinquent by more than seven days within the past 30 days on a scheduled payment on the outstanding loan;

1. Significant delinquency. Under § 1041.10(c)(1)(i), a delinquency is relevant to the presumption if the consumer is more than seven days delinquent at the time that the lender is making the determination under § 1041.9 for the new covered longer-term loan or has been more

than seven days delinquent at any point in the 30 days prior to the ability-to-repay determination. Delinquencies that have been cured and are older than 30 days do not trigger the presumption in § 1041.10(c)(1). For example, if a consumer has a non-covered installment loan outstanding with the lender, was 10 days delinquent on a payment three months prior, and is current on payments at the time of the ability-to-repay determination for the new covered longer-term loan, the prior delinquency would not cause the application of the presumption of unaffordability.

1. The consumer expresses or has expressed within the past 30 days an inability to make one or more payments on the outstanding loan;

1. Expression of inability to make one or more payments. Under § 1041.10(c)(1)(ii), a consumer’s expression of inability to make one or more payments on the outstanding loan causes the application of the presumption in § 1041.10(c)(1) only if such an expression was made within the 30 days prior to the ability-to-repay determination under § 1041.9 for the new covered longer-term loan. Consumers may express inability to make a payment on the outstanding loan in a number of ways. For example, a consumer may make a statement to the lender or its affiliate that the consumer is unable to or needs help to make a payment or a consumer may request or accept an offer of additional time to make a payment.

1. The period of time between consummation of the new covered longer-term loan and the first scheduled payment on that loan would be longer than the period of time between consummation of the new covered longer-term loan and the next regularly scheduled payment on the outstanding loan; or

1. Skipped payment. Under § 1041.10(c)(1)(iii), the presumption in § 1041.10(c)(1) applies if the period of time between consummation of the new covered longer-term loan and the first scheduled payment on that loan would be longer than the period of time between consummation of the new covered longer-term loan and the next regularly scheduled payment on the outstanding loan. Such a transaction would have the effect of permitting the consumer to skip a payment that would otherwise have been due on the outstanding loan. For example, if a consumer has a non-covered installment loan outstanding from the lender and the loan has a regularly scheduled payment due on March 1 and another due on April 1, the circumstance in § 1041.10(c)(1)(iii) would be present if the new covered longer-term loan would be consummated on February 28 and would not require payment until April 1.

1. The new covered longer-term loan would result in the consumer receiving no disbursement of loan proceeds or an amount of funds as disbursement of the loan proceeds that would not substantially exceed the amount of payment or payments that would be due on the outstanding loan within 30 days of consummation of the new covered longer-term loan.

1. *Cash to cover payments on existing loan*. Under § 1041.10(c)(1)(iv), the presumption in § 1041.10(c)(1) applies if the new covered longer-term loan would result in the consumer receiving no disbursement of loan proceeds or an amount of funds as disbursement of the loan proceeds that is not substantially more than the amount due in payments on the outstanding loan within 30 days of consummation of the new covered longer-term loan. For example, assume a consumer has a non-covered installment loan outstanding that is being serviced by the same lender, the loan has regularly scheduled payments of $100 due every two weeks, and the new covered longer-term loan would result in the consumer receiving a disbursement of $200. Since $200 in payments on the outstanding loan would be due within 30 days of consummation, the circumstance in § 1041.10(c)(1)(iv) would be present and under § 1041.10(c)(1) the consumer would be presumed to not have the ability to repay the loan. In contrast, if, in the same scenario, the new covered longer-term loan would result in the consumer receiving a disbursement of $1,000, then the disbursement of loan proceeds would be substantially more than the amount due in payments on the outstanding loan within 30 days of consummation of the new covered longer-term loan and the circumstance in § 1041.10(d)(1)(iv) would not be present.

1. Exception. The presumption of unaffordability in paragraph (c)(1) of this section does not apply if either:

1. Exception. Under § 1041.10(c)(2), the presumption in § 1041.10(c)(1) does not apply if either the circumstance in § 1041.10(c)(2)(i) or the circumstance in § 1041.10(c)(2)(ii) is present at the time of the ability-to-repay determination under § 1041.9 for the new covered longer-term loan.

1. The size of every payment on the new covered longer-term loan would be substantially smaller than the size of every payment on the outstanding loan; or

1. *Size of payments*. Under § 1041.10(c)(2)(i), the presumption in § 1041.10(c)(1) does not apply if the size of every payment on the new covered longer-term loan would be substantially smaller than the size of every payment on the outstanding loan. For example, if a consumer has a non-covered installment loan outstanding from the lender with monthly payments of $300 and the consumer has indicated within the preceding 30 days an inability to make those payments, the consumer generally would be presumed under § 1041.10(c)(1) to not have the ability to repay a new covered longer-term loan under § 1041.9 from the same lender. However, if the new covered longer-term loan would be repayable in monthly payments of $100, then the exception in § 1041.10(c)(2)(i) applies and the new loan would not be subject to the presumption of unaffordability. In contrast, if the new covered longer-term loan would be repayable in monthly payments of $250, then the payments would not be substantially smaller than payments on the outstanding loan and the presumption of unaffordability would still apply.

1. The new covered longer-term loan would result in a substantial reduction in the total cost of credit for the consumer relative to the outstanding loan.

1. *Cost of credit*. Under § 1041.10(c)(2)(ii), the presumption in § 1041.10(c)(1) does not apply if the new covered longer-term loan would result in a substantial reduction in the total cost of credit for the consumer relative to the outstanding loan. See § 1041.2(18) for the definition of total cost of credit. For example, if a consumer is more than seven days delinquent on payments due on an outstanding covered longer-term loan with a lender and the outstanding loan carries a total cost of credit of 100 percent, the presumption of unaffordability for a new covered longer-term loan with the same lender would generally apply. However, if the new covered longer-term loan would carry a total cost of credit of 45 percent, then the new covered longer-term loan would result in a substantial reduction in the total cost of credit for the consumer. The exception in § 1041.10(c)(2)(ii) would apply and the new loan would not be subject to the presumption of unaffordability. In contrast, if the new covered longer-term loan would carry a total cost of credit of 90 percent, then the new covered longer-term loan would not result in a substantial reduction in the total cost of credit relative to the outstanding loan and the presumption in § 1041.10(c)(1) would apply.

1. Overcoming the presumption of unaffordability. When a presumption under paragraphs (b) or (c) of this section applies to a covered longer-term loan, a lender’s determination under § 1041.9 that the consumer will have the ability to repay the loan is not reasonable unless the lender reasonably determines, based on reliable evidence, that the consumer will have sufficient improvement in financial capacity such that the consumer will have the ability to repay the new loan according to its terms despite the unaffordability of the prior loan. To assess whether there is such sufficient improvement in financial capacity, the lender must compare the consumer’s financial capacity during the period for which the lender is required to make an ability-to-repay determination for the new loan pursuant to § 1041.9(b)(2) to the consumer’s financial capacity since obtaining the prior loan or, if the prior loan was not a covered short-term loan or covered longer-term balloon-payment loan, during the 30 days prior to the lender’s determination.

1. General. When a consumer seeks to borrow a covered longer-term loan in certain circumstances, § 1041.10(b) and (c) create a presumption that the consumer would not be able to afford a new covered longer-term loan. Section 1041.10(d) permits the lender to overcome the presumption in limited circumstances evidencing a projected improvement in the consumer’s financial capacity for the new loan relative to the consumer’s financial capacity since obtaining the prior loan or, in some circumstances, during the prior 30 days. See comments 10(d)-2 and -3 for examples of such circumstances. To overcome the presumption of unaffordability, § 1041.6(d) requires a lender to reasonably determine, based on reliable evidence, that the consumer will have sufficient improvement in financial capacity such that the new loan would not exceed the consumer’s ability to repay despite the unaffordability of the prior loan. Section 1041.10(d) requires lenders to measure a sufficient improvement in financial capacity by comparing the consumer’s financial capacity during the period for which the lender is required to make an ability-to-repay determination for the new loan pursuant to § 1041.9(b)(2) to the consumer’s financial capacity since obtaining the prior loan or, if the prior loan was not a covered short-term loan or a covered longer-term balloon-payment loan, during the 30 days prior to the lender’s determination.

2. Example. Under § 1041.10(d), a lender may reasonably determine that a consumer will have the ability to repay a new loan despite the unaffordability of the prior loan where there is reliable evidence that the need to reborrow is prompted by a decline in income during the prior 30 days (or, if the prior loan was a covered short-term loan or covered longer-term balloon-payment loan, since obtaining the prior loan) that is not reasonably expected to recur for the period during which the lender is required to make an ability-to-repay determination for the new covered longer-term loan. For instance, assume a consumer obtained a covered longer-term loan with required bi-weekly payments of $100, made the first six payments on that loan, but missed the next two payments and sought to refinance the loan to re-amortize the unpaid balance while keeping the bi-weekly payment constant at $100. The presumption of unaffordability in § 1041.10(c) applies to the new covered longer-term loan. However, suppose that the consumer presents evidence showing that the consumer normally works 40 hours per week but that during the second week preceding the first missed payment and the first week preceding the second missed payment the consumer was unable to work, and thus the consumer earned half of the consumer’s usual pay during that pay period. If the lender reasonably determines that the consumer’s residual income projected under § 1041.9(b)(2)(i) for the new covered longer-term loan will return to normal levels and would be sufficient to enable the consumer to make payments on the new loan and still have sufficient income to meet basic living expenses, the lender may determine that the presumption of unaffordability in § 1041.10(c) has been overcome.

3. Example. Under § 1041.10(d), a lender also may reasonably determine that a consumer will have the ability to repay a new loan despite the unaffordability of the prior loan where there is reliable evidence that the consumer’s financial capacity will be sufficiently improved relative to the consumer’s financial capacity during the prior 30 days (or, if the prior loan was a covered short-term loan or covered longer-term balloon-payment loan, since obtaining the prior loan) because of a projected increase in net income or a decrease in major financial obligations for the period during which the lender is required to make an ability-torepay determination for the new covered longer-term loan. For instance, assume a consumer obtains a covered longer-term loan with monthly payments of $300. During repayment of the loan, the consumer becomes more than seven days delinquent on the outstanding loan and seeks to refinance into a new covered longer-term loan with the same total cost of credit and monthly payments of $250. The presumption of unaffordability in § 1041.10(c)(1) applies to the new covered longer-term loan and the new monthly payment is not sufficiently smaller than the prior payment to fall within the exception in § 1041.10(c)(2). However, suppose that the consumer presents reliable evidence indicating that during the prior 30 days the consumer moved to a new apartment and reduced housing expenses going forward by more than $100. If the lender reasonably determines that the amount of the consumer’s residual income projected under § 1041.9(b)(2)(i) for the new covered longer-term loan will exceed the amount of the consumer’s residual income during the prior 30 days by an amount that indicates a sufficient improvement in financial capacity for the new covered longer-term loan, and will be sufficient to enable the consumer to make payments on the new loan and still have sufficient income to meet basic living expenses, the lender may determine that the presumption of unaffordability in § 1041.10(c) has been overcome.

4. Reliable evidence for the determination under § 1041.10(d). In order to make a reasonable determination under § 1041.10(d) of whether the consumer’s financial capacity will have sufficiently improved relative to the consumer’s financial capacity during the prior 30 days (or, if the prior loan was a covered short-term loan or covered longer-term balloon-payment loan, since obtaining the prior loan) such that the new loan would not exceed the consumer’s ability to repay the new loan according to its terms despite the unaffordability of the prior loan, the lender must use reliable evidence. Reliable evidence consists of verification evidence regarding the consumer’s net income and major financial obligations sufficient to make the comparison required under § 1041.10(d). For example, bank statements indicating direct deposit of net income from the consumer’s employer during the periods of time for which the consumer’s residual income must be compared to determine whether sufficient improvement in the consumer’s financial capacity has taken place would constitute reliable evidence. In contrast, a self-certification by the consumer that his or her financial capacity has sufficiently improved as compared to his or her financial capacity during the prior 30 days (or, if the prior loan was a covered short-term loan or covered longer-term balloon-payment loan, since obtaining the prior loan) would not constitute reliable evidence unless the lender verifies the facts certified by the consumer through other reliable means.

1. Prohibition on making a covered longer-term loan under § 1041.9 following a covered short-term loan made under § 1041.7. Notwithstanding the requirements of paragraph (b) of this section, a lender must not make a covered longer-term loan under § 1041.9 during the time period in which the consumer has a covered short-term loan made by the lender or its affiliate under § 1041.7 outstanding and for 30 days thereafter.

1. *Prohibition*. Section 1041.10(e) provides that, during the time period in which a covered short-term loan made by a lender or its affiliate under § 1041.7 is outstanding and for 30 days thereafter, the lender or its affiliate must not make a covered longer-term loan under § 1041.9 to a consumer. During the time period in which a covered short-term loan made by a lender or its affiliate under § 1041.7 is outstanding and for 30 days thereafter, a lender or its affiliate may make a covered longer-term loan under § 1041.11 or § 1041.12 to a consumer.

1. Determining period between consecutive covered loans. If the lender or its affiliate makes a non-covered bridge loan during the time period in which a covered short-term loan made by the lender or its affiliate under § 1041.5 or § 1041.7 or a covered longer-term balloon-payment loan made by the lender or its affiliate under § 1041.9 is outstanding and for 30 days thereafter, the days during which the non-covered bridge loan is outstanding do not count toward the determination of time periods specified by paragraphs (b) and (e) of this section.

1. General. To determine whether 30 days has elapsed between covered loans for the purposes of § 1041.10(b) and (e), the lender must not count the days during which a non-covered bridge loan is outstanding. See comments 1041.6(h)-1 and -2.

**§ 1041.11 Conditional exemption for certain covered longer-term loans of up to six months’ duration.**

1. Conditional exemption for certain covered longer-term loans. Sections 1041.8, 1041.9, 1041.10, and 1041.15(b) do not apply to a covered longer-term loan that satisfies the conditions and requirements set forth in paragraphs (b) through (e) of this section.

1. General. Section 1041.11(a) provides a conditional exemption from certain provisions of part 1041 for certain covered longer-term loans that satisfy the conditions and requirements set forth in § 1041.11(b) through (e). Section 1041.11(a) provides a conditional exemption from certain provisions of part 1041 only; nothing in § 1041.11 provides lenders with an exemption from the requirements of other applicable laws, including State laws. The conditions for a loan made under § 1041.11 largely track the conditions set forth by the National Credit Union Administration at 12 CFR 701.21(c)(7)(iii) for a Payday Alternative Loan made by a Federal credit union. All lenders, including Federal credit unions and persons that are not Federal credit unions, are permitted to make loans under § 1041.11, provided that such loans are permissible under other applicable laws, including State laws. Under § 1041.11(a), if the loan term conditions set forth in § 1041.11(b) are satisfied, the lender determines that the consumer’s borrowing history on covered loans satisfies the conditions set forth in § 1041.11(c), and the lender satisfies the income documentation condition in § 1041.11(d), then the covered longer-term loan is not subject to § 1041.8, § 1041.9, § 1041.10, or § 1041.15(b). Section 1041.11(e) specifies certain actions that a lender must not take with respect to a loan made under § 1041.11 and requires a lender to furnish information concerning the loan in either of two ways. A lender may use § 1041.11(a) only to make covered longer-term loans; therefore, all loans made under § 1041.11 must have a duration of more than 45 days.

1. Loan term conditions. A covered longer-term loan that is made under this section must satisfy the following conditions:
2. The loan is not structured as open-end credit, as defined in § 1041.2(14);
3. The loan has a term of not more than six months;
4. The principal of the loan is not less than $200 and not more than $1,000;
5. The loan is repayable in two or more payments due no less frequently than monthly, all of which payments are substantially equal in amount and fall due in substantially equal intervals;

1. Payments due no less frequently than monthly. Under § 1041.11(b)(4), a lender may make a covered longer-term loan under § 1041.11 only if the scheduled payments fall due no less frequently than monthly, and each of those payments is substantially equal in amount and due in substantially equal intervals. Payments may also be due more frequently, such as biweekly.

2. Substantially equal payments. Payments are substantially equal in amount if the amount of each scheduled payment on the loan is equal to or within a small variation of the others. For example, if a loan is repayable in six biweekly payments and the amount of each scheduled payment is within 1 percent of the amount of the other payments, the loan is repayable in substantially equal payments. In determining whether a loan is repayable in substantially equal payments, a lender may disregard the effects of collecting the payments in whole cents.

3. Substantially equal intervals. The intervals for scheduled payments are substantially equal if the payment schedule requires repayment on the same date each month or in the same number of days of each scheduled payment. For example, a loan for which payment is due every 15 days has payments due in substantially equal intervals. A loan for which payment is due on the 15th day of each month also has payments due in substantially equal intervals. In determining whether payments fall due in substantially equal intervals, a lender may disregard that dates of scheduled payments may be slightly changed because the scheduled date is not a business day, that months have different numbers of days, and the occurrence of leap year. Section 1041.11(b)(4) does not prevent a lender from accepting prepayment on a loan made under § 1041.11.

1. The loan amortizes completely during the term of the loan and the payment schedule provides for the lender allocating a consumer’s payments to the outstanding principal and interest and fees as they accrue only by applying a fixed periodic rate of interest to the outstanding balance of the unpaid loan principal every repayment period for the term of the loan; and

1. Amortization. Section 1041.11(b)(5) requires that the scheduled payments fully amortize the loan over the contractual period and prohibits lenders from making loans under § 1041.11 with interest-only payments or with a payment schedule that front-loads payments of interest and fees. Under § 1041.11(b)(5), the interest portion of each payment must be computed by applying a periodic interest rate to the outstanding balance due. While under § 1041.11(b)(5) the payment amount must be substantially equal for each scheduled payment, the amount of the payment that goes to principal and to interest will vary. The amount of payment applied to interest will be greater for earlier payments when there is a larger principal outstanding; however, that interest must reflect only the periodic rate applied to the outstanding balance.

1. The loan carries a total cost of credit of not more than the cost permissible for Federal credit unions to charge under regulations issued by the National Credit Union Administration at 12 CFR 701.21(c)(7)(iii).

1. Cost of credit. Under § 1041.11(b)(6), the conditional exemption is limited to loans that carry a total cost of credit of not more than the cost permissible for Federal credit unions to charge under 12 CFR 701.21(c)(7)(iii), meaning that the consumer must not be required to pay any fees or interest other than those permitted under 12 CFR 701.21(c)(7)(iii).

1. Borrowing history condition. Prior to making a covered longer-term loan under this section, the lender must determine from its records and the records of its affiliates that the loan would not result in the consumer being indebted on more than three outstanding loans made under this section from the lender or its affiliates within a period of 180 days.

1. Relevant records. Under § 1041.11(c), a lender may make a covered longer-term loan under § 1041.11 only if the lender determines from its records and the records of its affiliates that the consumer’s borrowing history on covered longer-term loans made under § 1041.11 meets the criteria set forth in § 1041.11(c). The lender is not required to obtain information about a consumer’s borrowing history from persons that are not affiliates of the lender, as defined in § 1041.2(2), and is not required to obtain a consumer report from an information system currently registered pursuant to § 1041.17(c)(2) or (d)(2).

2. Determining 180-day period. For purposes of counting the number of loans made under § 1041.11, the 180-day period begins on the date that is 180 days prior to the consummation date of the loan to be made under § 1041.11 and ends on the consummation date of such loan.

3. Total number of loans made under § 1041.11. Section 1041.11(c) prohibits a lender from making a loan under § 1041.11 if the loan would result in the consumer being indebted on more than three outstanding loans made under § 1041.11 from the lender or its affiliates in any consecutive 180-day period. See § 1041.2(15) for the definition of outstanding loan. Under § 1041.11(c), the lender is required to determine from its records and the records of its affiliates the consumer’s borrowing history on covered longer-term loans made under § 1041.11 by the lender and its affiliates. The lender must use this information about borrowing history to determine whether the loan would result in the consumer being indebted on more than three outstanding loans made under § 1041.11 from the lender or its affiliates in a consecutive 180-day period, determined in the manner described in comment 11(c)-2. Section 1041.11(c) does not prevent lenders from making a covered short-term loan subject to the requirements of §§ 1041.5 and 1041.6 or § 1041.7 or a covered longer-term loan subject to the requirements of §§ 1041.9 and 1041.10 or § 1041.12.

4. Example. For example, assume that a lender seeks to make a loan under § 1041.11 to a consumer. The lender checks its own records and the records of its affiliates and determines that during the 180 days preceding the consummation date of the prospective loan, the consumer was indebted on two outstanding loans made under § 1041.11 from the lender or its affiliates. The loan, if made, would be the third loan made under § 1041.11 on which the consumer would be indebted during the 180-day period and, therefore, would not be prohibited under § 1041.11(c). If, however, the lender determined that the consumer was indebted on three outstanding loans under § 1041.11 from the lender or its affiliates during the 180 days preceding the consummation date of the prospective loan, the condition in § 1041.11(c) would not be satisfied and the loan could not be extended under § 1041.11.

1. Income documentation condition. The lender must maintain and comply with policies and procedures for documenting proof of recurring income.

1. General. Section 1041.11(d) requires lenders to maintain policies and procedures for documenting proof of recurring income and to comply with those policies and procedures when making loans under § 1041.11. Section 1041.11(d) does not require lenders to undertake the same income documentation procedures required by § 1041.9(c)(3). For the purposes of § 1041.11(d), lenders may establish any procedure for documenting recurring income that satisfies the lender’s own underwriting obligations. For example, lenders may choose to use the procedure contained in the National Credit Union Administration’s guidance at 12 CFR 701.21(c)(7)(iii) on Payday Alternative Loan programs recommending that Federal credit unions document consumer income by obtaining two recent paycheck stubs.

1. Additional requirements. The lender must comply with the following requirements in connection with a covered longer-term loan made under this section:
2. In connection with a covered longer-term loan made under this section, the lender must not:
3. Impose a prepayment penalty; or
4. If the lender holds funds on deposit in the consumer’s name, in response to an actual or expected delinquency or default on the loan: sweep the account to a negative balance, exercise a right of set-off to collect on the loan, including placing a hold on funds in the consumer’s account, or close the account.

1. Restriction on collection methods. Section 1041.11(e)(1)(ii) prohibits a lender that holds funds on deposit in a consumer’s name from taking certain actions in the event that the consumer becomes delinquent or defaults on a loan made under § 1041.11 or the lender anticipates such delinquency or default. The prohibition in § 1041.11(e)(1)(ii) applies regardless of the type of account in which the consumer’s funds are held. The prohibition in § 1041.11(e)(1)(ii) does not apply to transactions in which the lender does not hold any funds on deposit for the consumer. For example, if a credit union makes a covered longer-term loan under § 1041.11 to a consumer who also has a checking account with the credit union and the consumer becomes delinquent on payments on the loan, § 1041.11(e)(1)(ii) prohibits the credit union from sweeping the consumer’s checking account to a negative balance in order to cover the delinquency. The credit union would not, however, be prohibited from drawing from the consumer’s checking account, up to the amount of available funds, to cover the delinquency, if otherwise permitted to do so.

2. Preservation of other legal recourse. The prohibition in § 1041.11(e)(1)(ii) does not alter or affect the right of a lender acting under State or Federal law to do any of the following with regard to funds of a consumer held on deposit by the lender if the same procedure is constitutionally available to lenders generally: obtain or enforce a consensual security interest in the funds; attach or otherwise levy upon the funds; or obtain or enforce a court order relating to the funds.

1. For each covered longer-term loan made under this section, the lender must either:
2. Furnish the information concerning the loan as described in § 1041.16(c) to each information system described in § 1041.16(b); or
3. Furnish information concerning the loan at the time of the lender’s next regularly-scheduled furnishing of information to a consumer reporting agency that compiles and maintains files on consumers on a nationwide basis or within 30 days of consummation of the loan, whichever is earlier. For the purposes of this paragraph (e)(2)(ii), “consumer reporting agency that compiles and maintains files on consumers on a nationwide basis” has the same meaning as in section 603(p) of the Fair Credit Reporting Act, 15 U.S.C. 1681a(p).

**§ 1041.12 Conditional exemption for certain covered longer-term loans of up to 24 months’ duration.**

1. Conditional exemption for certain covered longer-term loans. Sections 1041.8, 1041.9, 1041.10, and 1041.15(b) do not apply to a covered longer-term loan that satisfies the conditions and requirements set forth in paragraphs (b) through (f) of this section.

1. *General*. Section 1041.12(a) provides a conditional exemption from certain provisions of part 1041 for certain covered longer-term loans that satisfy the conditions and requirements set forth in § 1041.12(b) through (f). Section 1041.12(a) provides a conditional exemption from certain provisions of part 1041 only; nothing in § 1041.12 provides lenders with an exemption from the requirements of other applicable laws, including State laws. Under § 1041.12(a), if the loan term conditions set forth in § 1041.12(b) are satisfied, the lender determines that the consumer’s borrowing history on covered loans satisfies the condition set forth in § 1041.12(c), and the lender complies with the underwriting method requirement set forth in § 1041.12(d), then the covered longer-term loan is not subject to § 1041.8, § 1041.9, § 1041.10, or § 1041.15(b). Section 1041.12(e) defines the manner in which a lender must calculate the portfolio default rate. Section 1041.12(f) specifies certain actions that a lender must not take with respect to a loan made under § 1041.12 and requires a lender to furnish information concerning the loan in either of two ways. A lender may use § 1041.12(a) only to make covered longer-term loans; therefore, all loans made under § 1041.12 must have a duration of more than 45 days.

1. Loan term conditions. A covered longer-term loan that is made under this section must satisfy the following conditions:
2. The loan is not structured as open-end credit, as defined in § 1041.2(14);
3. The loan has a term of not more than 24 months;
4. The loan is repayable in two or more payments due no less frequently than monthly, all of which payments are substantially equal in amount and fall due in substantially equal intervals;

1. Payments due no less frequently than monthly. Under § 1041.12(b)(3), a lender may make a covered longer-term loan under § 1041.12 only if the scheduled payments fall due no less frequently than monthly, and each of those payments is substantially equal in amount and due in substantially equal intervals. Payments may also be due more frequently, such as biweekly.

2. Substantially equal payments. Payments are substantially equal in amount if the amount of each scheduled payment on the loan is equal to or within a small variation of the others. See comment 11(b)(4)-2.

3. Substantially equal intervals. The intervals for scheduled payments are substantially equal if the payment schedule requires repayment on the same date each month or in the same number of days of each scheduled payment. See comment 11(b)(4)-3.

1. The loan amortizes completely during the term of the loan and the payment schedule provides for the lender allocating a consumer’s payments to the outstanding principal and interest and fees as they accrue only by applying a fixed periodic rate of interest to the outstanding balance of the unpaid loan principal every repayment period for the term of the loan; and

1. *Amortization*. Section 1041.12(b)(4) requires that the scheduled payments fully amortize the loan over the contractual period and prohibits lenders from making loans under § 1041.12 with interest-only payments or with a payment schedule that front-loads payments of interest and fees. See comment 11(b)(5)-1.

1. The loan carries a modified total cost of credit of less than or equal to an annual rate of 36 percent. Modified total cost of credit is calculated in the manner set forth in § 1041.2(18)(iii)(A) for calculating total cost of credit for closed-end loans, except that for purposes of this paragraph (b)(5) only, the lender may exclude from the calculation a single origination fee meeting the criteria in paragraph (b)(5)(i) or (ii) of this section.

1. *Cost of credit*. Under § 1041.12(b)(5), the conditional exemption is limited to loans that carry a modified total cost of credit of less than or equal to an annual rate of 36 percent. Under § 1041.12(b)(5), the modified total cost of credit is generally calculated in the same manner in which total cost of credit is calculated under § 1041.2(18)(iii)(A); however, for the purposes of § 1041.12(b)(5) only, the lender may exclude from that calculation a single origination fee meeting the criteria in either § 1041.12(b)(5)(i) or (ii). Loans meeting the criteria for covered longer-term loans under § 1041.3(b)(2) and that have a modified total cost of credit in compliance with § 1041.12(b)(5) remain covered longer-term loans; the effect of § 1041.12(b)(5) is to specify the permissible cost of credit associated with covered longer-term loans made pursuant to the conditional exemption in § 1041.12.

1. *Fee based on costs*. A lender may exclude from the calculation of modified total cost of credit a single origination fee that represents a reasonable proportion of the lender’s cost of underwriting loans made pursuant to this section.

1. *General*. A lender is permitted to exclude from the calculation of modified total cost of credit calculation a single origination fee on a covered longer-term loan made under § 1041.12 if the origination fee represents a reasonable proportion of the lender’s cost of underwriting loans made under § 1041.12. To be a reasonable proportion of the lender’s cost of underwriting, an origination fee must reflect costs that the lender incurs as part of the process of underwriting loans made under § 1041.12. A lender may make a single determination of underwriting costs for all loans made under § 1041.12.

1. *Safe harbor*. A lender may exclude from the calculation of modified total cost of credit a single origination fee if the dollar amount of the fee does not exceed $50.

1. *Safe harbor*. A lender may exclude from the calculation of modified total cost of credit a single origination fee of up to $50 without determining the costs associated with underwriting loans made under § 1041.12.

1. Borrowing history condition. Prior to making a covered longer-term loan under this section, the lender must determine from its records and the records of its affiliates that the loan would not result in the consumer being indebted on more than two outstanding loans made under this section from the lender or its affiliates within a period of 180 days.

1. Relevant records. Under § 1041.12(c), a lender may make a covered longer-term loan under § 1041.12 only if the lender determines from its records and the records of its affiliates that the consumer’s borrowing history on covered longer-term loans made under § 1041.12 meets the criterion set forth in § 1041.12(c). The lender is not required to obtain information about a consumer’s borrowing history from persons that are not affiliates of the lender, as defined in § 1041.2(2), and is not required to obtain a consumer report from an information system currently registered pursuant to § 1041.17(c)(2) or (d)(2).

2. Determining 180-day period. For purposes of counting the number of loans made under § 1041.12, the 180-day period begins on the date that is 180 days prior to the consummation date of the loan to be made under § 1041.12 and ends on the consummation date of such loan.

3. Total number of loans made under § 1041.12. Section 1041.12(c) prohibits a lender from making a loan under § 1041.12 if the loan would result in the consumer being indebted on more than two outstanding loans made under § 1041.12 from the lender or its affiliates in any consecutive 180-day period. See § 1041.2(15) for the definition of outstanding loan. Under § 1041.12(c), the lender is required to determine from its records and the records of its affiliates the consumer’s borrowing history on covered longer-term loans made under § 1041.12 by the lender and its affiliates. The lender must use this information about borrowing history to determine whether the loan would result in the consumer being indebted on more than two outstanding loans made under § 1041.12 from the lender or its affiliates in a 180-day period, determined in the manner described in comment 12(c)-2. Section 1041.12(c) does not prevent lenders from making a covered short-term loan under § 1041.5 or § 1041.7 or a covered longer-term loan under § 1041.9 or § 1041.11.

4. Example. For example, assume that a lender makes a covered longer-term loan (Loan A) to a consumer under § 1041.12 on March 1, which the consumer repaid on April 30, and then makes a second covered longer-term loan (Loan B) under § 1041.12 to the same consumer on March 15, which the consumer repaid on May 14. Under § 1041.12(c), the lender would not be permitted to make a third covered longer-term loan under § 1041.12 until October 27, 180 days after the consumer repaid Loan A. However, prior to October 27, the lender would be permitted to make another covered longer-term loan under § 1041.9 or § 1041.11 to the same consumer, subject to the limitations contained in those sections.

1. Underwriting method. The lender must maintain and comply with policies and procedures for effectuating an underwriting method designed to result in a portfolio default rate that will be less than or equal to 5 percent per year. Such policies and procedures must include the following:

1. General. Section 1041.12(d) requires a lender to maintain policies and procedures for effectuating an underwriting method designed to result in a portfolio default rate of less than or equal to 5 percent per year, and to comply with those policies when making loans under § 1041.12. A lender’s underwriting method may be based upon past experience making loans similar to loans meeting the conditions under § 1041.12(b) or based upon a lender’s projections in light of the lender’s underwriting criteria. A lender may make loans pursuant to § 1041.12 regardless of the performance of prior loan portfolios.

1. At least once every 12 months, the lender must calculate the portfolio default rate for covered longer-term loans made under this section that were outstanding at any time during the preceding year; and

1. Requirement to calculate portfolio default rate. Under § 1041.12(d)(1), a lender making loans under § 1041.12 must calculate a portfolio default rate for loans made under that section at least once every 12 months on an ongoing basis. A lender must calculate portfolio default rate in the manner set forth in § 1041.12(e).

1. If the lender’s portfolio default rate for covered longer-term loans made under this section exceeds 5 percent per year, the lender must, within 30 calendar days of identifying the excessive portfolio default rate, refund to each consumer that received a loan included in the calculation of the portfolio default rate any origination fee imposed in connection with the covered longer-term loan and excluded from the modified total cost of credit pursuant to paragraph (b)(5) of this section. A lender will be deemed to have timely refunded a consumer if the lender delivers payment to the consumer or places the payment in the mail to the consumer within 30 calendar days after identifying the excessive portfolio default rate.

1. Refund required. Under § 1041.12(d)(2), if the lender’s portfolio default rate for covered longer-term loans made under § 1041.12 exceeds 5 percent per year, the lender must, within 30 calendar days of identifying the excessive portfolio default rate, refund to each consumer that received a loan included in the calculation of the portfolio default rate any origination fee imposed in connection with the covered longer-term loan and excluded from the modified total cost of credit pursuant to § 1041.12(b)(5). A lender may satisfy the refund requirement of § 1041.12 by, at the consumer’s election, depositing the refund into the consumer’s deposit account.

2. Prior excessive portfolio default rates. A lender that has made loans pursuant to § 1041.12 in the past but did not achieve a portfolio default rate of less than or equal to 5 percent may make loans under § 1041.12 for a subsequent 12-month period, provided that the lender refunds origination fees in accordance with § 1041.12(d)(2) for the prior 12-month period. For example, if a lender makes loans under § 1041.12 and the portfolio default rate on those loans is 6 percent following the first 12 months of lending and the lender refunds origination fees in accordance with § 1041.12(d)(2), then the lender may again make loans under § 1041.12 for a subsequent 12-month period.

1. Calculation of portfolio default rate. For the purposes of this section, a lender’s portfolio default rate calculation must comply with the following conditions:

1. General. Section 1041.12(e) sets forth the method for calculating the portfolio default rate of a loan portfolio. A lender must use this method of calculation regardless of the lender’s accounting methods.

1. Portfolio default rate means:
2. The sum of the dollar amounts owed on any covered longer-term loans made under this section that were either:
3. Delinquent for a period of 120 consecutive days or more during the 12-month period for which the portfolio default rate is being calculated; or
4. Charged off during the 12-month period for which the portfolio default rate is being calculated before becoming 120 days delinquent;
5. Divided by the average of month-end outstanding balances owed on all covered longer-term loans made under this section for each month of the 12-month period;
6. The portfolio default rate must be calculated as a gross sum using all covered longer-term loans made under this section that were outstanding at any point during the 12-month period for which the portfolio default rate is calculated;

1. Loans included in the calculation. Section 1041.12(e)(2) requires lenders making loans under § 1041.12 to include in the calculation of portfolio default rate all covered longer-term loans made under that section that were outstanding at any time during the calculation period. Under § 1041.12(e)(2), a lender must calculate the gross portfolio default rate; therefore, the portfolio default rate is unaffected by recoveries through collections following default or 120 days of delinquency. Under § 1041.12(e)(2), a lender must consider in the relevant sum both all loans that are on balance sheet and all loans that are off balance sheet. For example, a lender that originates a covered longer-term loan under § 1041.12 and then sells that loan to a third party must nonetheless include the performance of that loan in the calculation of the portfolio default rate.

1. For purposes of this paragraph, a loan is considered 120 days delinquent even if it is re-aged by the lender prior to the 120th day, unless the consumer has made at least one full payment and the re-aging is for a period equivalent to the period for which the consumer has made a payment; and
2. A lender must calculate the portfolio default rate within 90 days following the last day of the applicable 12-month period.

1. Timing of calculation. A lender must calculate the portfolio default rate within 90 days following the last day of the 12-month period included in the calculation. For example, for the period from January 1 through December 31 of a given year, the lender would need to calculate the portfolio default rate under § 1041.12(e) no later than March 31 of the following year.

1. Additional requirements. The lender must comply with the following requirements in connection with a covered longer-term loan made under this section:
2. In connection with a covered longer-term loan made under this section, the lender must not:
3. Impose a prepayment penalty; or
4. If the lender holds funds on deposit in the consumer’s name, in response to an actual or expected delinquency or default on the loan: sweep the account to a negative balance, exercise a right of set-off to collect on the loan, including placing a hold on funds in the consumer’s account, or close the account.

1. Restriction on collection methods. Section 1041.12(f)(1)(ii) prohibits a lender that holds funds on deposit in a consumer’s name from taking certain actions in the event that the consumer becomes delinquent or defaults on a loan made under § 1041.12 or the lender anticipates such delinquency or default. The prohibition in § 1041.12(f)(1)(ii) applies regardless of the type of account in which the consumer’s funds are held. The prohibition in § 1041.12(f)(1)(ii) does not apply to transactions in which the lender does not hold any funds on deposit for the consumer. See comment 11(e)(1)(ii)-1.

2. Preservation of other legal recourse. The prohibition in § 1041.12(f)(1)(ii) does not alter or affect the right of a lender acting under State or Federal law to do any of the following with regard to funds of a consumer held on deposit by the lender if the same procedure is constitutionally available to lenders generally: obtain or enforce a consensual security interest in the funds; attach or otherwise levy upon the funds; or obtain or enforce a court order relating to the funds.

1. For each covered longer-term loan made under this section, the lender must either:
2. Furnish the information concerning the loan as described in § 1041.16(c) to each information system described in § 1041.16(b); or
3. Furnish information concerning the loan at the time of the lender’s next regularly-scheduled furnishing of information to a consumer reporting agency that compiles and maintains files on consumers on a nationwide basis or within 30 days of consummation of the loan, whichever is earlier. For the purposes of this paragraph (f)(2)(ii), “consumer reporting agency that compiles and maintains files on consumers on a nationwide basis” has the same meaning as in section 603(p) of the Fair Credit Reporting Act, 15 U.S.C. 1681a(p).

Subpart D—Payments

**§ 1041.13 Identification of unfair and abusive practice.**

1. Identification. It is an unfair and abusive act or practice for a lender to attempt to withdraw payment from a consumer’s account in connection with a covered loan after the lender’s second consecutive attempt to withdraw payment from the account has failed due to a lack of sufficient funds, unless the lender obtains the consumer’s new and specific authorization to make further withdrawals from the account.

**§ 1041.14 Prohibited payment transfer attempts.**

1. Definitions. For purposes of this section and § 1041.15:
2. Payment transfer means any lender-initiated debit or withdrawal of funds from a consumer’s account for the purpose of collecting any amount due or purported to be due in connection with a covered loan. The term includes, but is not limited to, a debit or withdrawal of funds initiated by the lender from a consumer’s account for such purpose through any of the following means:

1. General. A transfer of funds meeting the general definition in § 1041.14(a)(1) is a payment transfer regardless of whether it is initiated by an instrument, order, or means not specified in § 1041.14(a)(1)(i) through (v).

2. Lender-initiated. A lender-initiated debit or withdrawal includes a debit or withdrawal initiated by the lender’s agent, such as a payment processor.

3. Any amount due. The following are examples of funds transfers that are for the purpose of collecting any amount due in connection with a covered loan:

i. A transfer for the amount of a scheduled payment due under a loan agreement for a covered loan.

ii. A transfer for an amount smaller than the amount of a scheduled payment due under a loan agreement for a covered loan.

iii. A transfer for the amount of the entire unpaid loan balance collected pursuant to an acceleration clause in a loan agreement for a covered loan.

iv. A transfer for the amount of a late fee or other penalty assessed pursuant to a loan agreement for a covered loan.

4. Amount purportedly due. A transfer for an amount that the consumer disputes or does not legally owe is a payment transfer if it otherwise meets the definition set forth in § 1041.14(a)(1).

5. Transfers of funds not initiated by the lender. A lender does not initiate a payment transfer when:

i. A consumer, on her own initiative or in response to a request or demand from the lender, makes a payment to the lender in cash withdrawn by the consumer from the consumer’s account.

ii. A consumer makes a payment via an online or mobile bill payment service offered by the consumer’s account-holding institution.

iii. The lender seeks repayment of a covered loan pursuant to a valid court order authorizing the lender to garnish a consumer’s account.

1. Electronic fund transfer, including a preauthorized electronic fund transfer as defined in Regulation E, 12 CFR 1005.2(k).

1. Electronic fund transfer. Any electronic fund transfer meeting the general definition in § 1041.14(a)(1) is a payment transfer, including but not limited to an electronic fund transfer initiated by a debit card or a prepaid card.

1. Signature check, regardless of whether the transaction is processed through the check network or another network, such as the automated clearing house (ACH) network.

1. Signature check. A transfer of funds by signature check meeting the general definition in § 1041.14(a)(1) is a payment transfer regardless of whether the transaction is processed through the check network or through another network, such as the ACH network. The following example illustrates this concept: A lender processes a consumer’s signature check through the check system to collect a scheduled payment due under a loan agreement for a covered loan. The check is returned for nonsufficient funds. The lender then converts and processes the check through the ACH system, resulting in a successful payment. Both transfers are payment transfers, because both were initiated by lenders for purposes of collecting an amount due in connection with a covered loan.

1. Remotely created check as defined in Regulation CC, 12 CFR 229.2(fff).
2. Remotely created payment order as defined in 16 CFR 310.2(cc).
3. An account-holding institution’s transfer of funds from a consumer’s account that is held at the same institution.

1. Transfer by account-holding institution. Under § 1041.14(a)(1)(v), a transfer of funds by an account-holding institution from a consumer’s account held at the same institution is a payment transfer if it meets the general definition in § 1041.14(a)(1). An example of such a payment transfer is when a consumer’s account-holding institution initiates an internal transfer of funds from a consumer’s account to collect payment on a deposit advance product.

1. Single immediate payment transfer at the consumer’s request means:
2. A payment transfer initiated by a one-time electronic fund transfer within one business day after the lender obtains the consumer’s authorization for the one-time electronic fund transfer.

1. Time of initiation. A one-time electronic fund transfer is initiated at the time that the transfer is sent out of the lender’s control. Thus, the electronic fund transfer is initiated at the time that the lender or its agent sends the transfer to be processed by a third party, such as the lender’s bank. The following example illustrates this concept: A lender obtains a consumer’s authorization for a one-time electronic fund transfer at 2 p.m. and sends the payment entry to its agent, a payment processor, at 5 p.m. on the same day. The agent then sends the payment entry to the lender’s bank for further processing the next business day at 8 a.m. The timing condition in § 1041.14(a)(2)(ii) is satisfied, because the lender’s agent sent the transfer out of its control within one business day after the lender obtained the consumer’s authorization.

1. A payment transfer initiated by means of processing the consumer’s signature check through the check system or through the ACH system within one business day after the consumer provides the check to the lender.

1. Time of processing. A signature check is processed at the time that the check is sent out of the lender’s control. Thus, the check is processed at the time that the lender or its agent sends the check to be processed by a third party, such as the lender’s bank. For an example illustrating this concept within the context of initiating a one-time electronic fund transfer, see comment 14(a)(2)(ii)-1.

2. Check provided by mail. For purposes of § 1041.14(a)(2)(ii), if the consumer provides the check by mail, the check is deemed to be obtained on the date that the lender receives it.

1. Prohibition on initiating payment transfers from a consumer’s account after two consecutive failed payment transfers—

1. General. When the prohibition in § 1041.14(b) applies, a lender is generally restricted from initiating any further payment transfers from the consumer’s account in connection with the covered loan, unless the requirements and conditions in either § 1041.14(c) or (d) are satisfied. The prohibition therefore applies, for example, to payment transfers that might otherwise be initiated to collect payments that later fall due under a loan agreement for a covered loan and to transfers to collect late fees or returned item fees as permitted under the terms of such a loan agreement. In addition, the prohibition applies regardless of whether the lender holds an otherwise valid authorization or instrument from the consumer, including but not limited to an authorization to collect payments by preauthorized electronic fund transfers or a post-dated check. See § 1041.14(c) and (d) and accompanying commentary for guidance on the requirements and conditions that a lender must satisfy to initiate a payment transfer from a consumer’s account after the prohibition applies.

2. Application to bona fide subsequent loan. If a lender triggers the prohibition in § 1041.14(b), the lender is not prohibited under § 1041.14(b) from initiating a payment transfer in connection with a bona fide subsequent covered loan made to the consumer, provided that the lender has not attempted to initiate two consecutive failed payment transfers from the consumer’s account in connection with the bona fide subsequent covered loan.

1. General. A lender must not initiate a payment transfer from a consumer’s account in connection with a covered loan after the lender has attempted to initiate two consecutive failed payment transfers from the consumer’s account in connection with that covered loan. For purposes of this paragraph (b), a payment transfer is deemed to have failed when it results in a return indicating that the consumer’s account lacks sufficient funds or, for a lender that is the consumer’s account-holding institution, it results in the collection of less than the amount for which the payment transfer is initiated because the account lacks sufficient funds.

1. Failed payment transfer. A payment transfer results in a return indicating that the consumer’s account lacks sufficient funds when it is returned unpaid, or is declined, due to nonsufficient funds in the consumer’s account.

2. Date received. The prohibition in § 1041.14(b) applies as of the date on which the lender or its agent, such a payment processor, receives the return of the second consecutive failed transfer or, if the lender is the consumer’s account-holding institution, the date on which the second consecutive failed payment transfer is initiated.

3. Return for other reason. A transfer that results in a return for a reason other than a lack of sufficient funds, such as a return made due to an incorrectly entered account number, is not a failed transfer for purposes of § 1041.14(b).

4. Failed payment transfer initiated by a lender that is the consumer’s account-holding institution. When a lender that is the consumer’s account-holding institution initiates a payment transfer that results in the collection of less than the amount for which the payment transfer is initiated because the account lacks sufficient funds, the payment transfer is a failed payment transfer for purposes of the prohibition in § 1041.14(b), regardless of whether the result is classified or coded in the lender’s internal procedures, processes, or systems as a return for nonsufficient funds. Such a lender does not initiate a failed payment transfer for purposes of the prohibition if the lender merely defers or foregoes debiting or withdrawing payment from an account based on the lender’s observation that the account lacks sufficient funds.

1. Consecutive failed payment transfers. For purposes of the prohibition in this paragraph (b):
2. First failed payment transfer. A failed payment transfer is the first failed payment transfer if it meets any of the following conditions:

1. Examples. The following examples illustrate concepts of first failed payment transfers under § 1041.14(b)(2)(i):

i. A lender, having made no other attempts, initiates an electronic fund transfer to collect the first scheduled payment due under a loan agreement for a covered loan, which results in a return for nonsufficient funds. The failed transfer is the first failed payment transfer. The lender, having made no attempts in the interim, re-presents the electronic fund transfer and the re-presentment results in the collection of the full payment. Because the subsequent attempt did not result in a return for nonsufficient funds, the number of failed payment transfers resets to zero. The following month, the lender initiates an electronic fund transfer to collect the second scheduled payment due under the covered loan agreement, which results in a return for nonsufficient funds. That failed transfer is a first failed payment transfer.

ii. A storefront lender, having made no prior attempts, processes a consumer’s signature check through the check system to collect the first scheduled payment due under a loan agreement for a covered loan. The check is returned for nonsufficient funds. This constitutes the first failed payment transfer. The lender does not convert and process the check through the ACH system, or initiate any other type of transfer, but instead contacts the consumer. At the lender’s request, the consumer comes into the store and makes the full payment in cash withdrawn from the consumer’s account. The number of failed payment transfers remains at one, because the consumer’s cash payment was not a payment transfer as defined in § 1041.14(a)(2).

1. The lender has initiated no other payment transfer from the consumer’s account in connection with the covered loan.
2. The immediately preceding payment transfer was successful, regardless of whether the lender has previously initiated a first failed payment transfer.
3. The payment transfer is the first payment transfer to fail after the lender obtains the consumer’s authorization for additional payment transfers pursuant to paragraph (c) of this section.
4. Second consecutive failed payment transfer. A failed payment transfer is the second consecutive failed payment transfer if the previous payment transfer was a first failed payment transfer. For purposes of this paragraph (b)(2)(ii), a previous payment transfer includes a payment transfer initiated at the same time or on the same day as the failed payment transfer.

1. General. Under § 1041.14(b)(2)(ii), a failed payment transfer is the second consecutive failed transfer if the previous payment transfer was a first failed payment transfer. The following examples illustrate this concept: A lender, having initiated no other payment transfer in connection with the covered loan, initiates an electronic fund transfer to collect the first scheduled payment due under the loan agreement. The transfer is returned for nonsufficient funds. The returned transfer is the first failed payment transfer. The lender next initiates an electronic fund transfer for the following scheduled payment due under the loan agreement for a covered loan, which is also returned for nonsufficient funds. The second returned transfer is the second consecutive failed payment transfer.

2. Previous payment transfer. Section 1041.14(b)(2)(ii) provides that a previous payment transfer includes a payment transfer initiated at the same time or on the same day as the first failed payment transfer. The following example illustrates how this concept applies in determining whether the prohibition in § 1041.14(b) is triggered: A lender has made no other payment transfers in connection with a covered loan. On Monday at 9 a.m., the lender initiates two electronic fund transfers to collect the first scheduled payment under the loan agreement, each for half of the total amount due. Both transfers are returned for nonsufficient funds. Because each transfer is one of two failed transfers initiated at the same time, the lender has initiated a second consecutive failed payment transfer under § 1041.14(b)(2)(ii), and the prohibition in § 1041.14(b) is therefore triggered.

3. Application to exception in § 1041.14(d). When, after a second consecutive failed transfer, a lender initiates a single immediate payment transfer at the consumer’s request pursuant to the exception in § 1041.14(d), the failed transfer count remains at two, regardless of whether the transfer succeeds or fails. The exception therefore is limited to a single payment transfer. Accordingly, if a payment transfer initiated pursuant to the exception fails, the lender is not permitted to re-initiate the transfer, such as by re-presenting it through the ACH system, unless the lender obtains a new authorization under § 1041.14(c) or (d).

1. Different payment channel. A failed payment transfer meeting the conditions in paragraph (b)(2)(ii) of this section is the second consecutive failed payment transfer regardless of whether the first failed payment transfer was initiated through a different payment channel.

1. General. Section 14(b)(2)(iii) provides that if a failed payment transfer meets the descriptions set forth in § 1041.14(b)(2), it is the second consecutive failed transfer regardless of whether the first failed transfer was made through a different payment channel. The following example illustrates this concept: A lender initiates an electronic funds transfer through the ACH system for the purpose of collecting the first payment due under a loan agreement for a covered loan. The transfer results in a return for nonsufficient funds. This constitutes the first failed payment transfer. The lender next processes a remotely created check through the check system for the purpose of collecting the same first payment due. The remotely created check is returned for nonsufficient funds. The second failed attempt is the second consecutive failed attempt because it meets the description set forth in § 1041.14(b)(2)(ii).

1. Exception for additional payment transfers authorized by the consumer—

1. General. Section 1041.14(c) sets forth one of two exceptions to the prohibition in § 1041.14(b). Under the exception in § 1041.14(c), a lender is permitted to initiate additional payment transfers from a consumer’s account after the lender’s second consecutive transfer has failed if the additional transfers are authorized by the consumer in accordance with certain requirements and conditions as specified in the rule. In addition to the exception under § 1041.14(c), a lender is permitted to execute a single immediate payment transfers at the consumer’s request under § 1041.14(d), if certain requirements and conditions are satisfied.

1. General. Notwithstanding the prohibition in paragraph (b) of this section, a lender may initiate additional payment transfers from a consumer’s account after two consecutive failed payment transfers if the additional payment transfers are authorized by the consumer in accordance with the requirements and conditions in this paragraph (c) or if the lender executes a single immediate payment transfer at the consumer’s request in accordance with paragraph (d) of this section.

1. Consumer’s underlying payment authorization or instrument still required. The consumer’s authorization required by § 1041.14(c) is in addition to, and not in lieu of, any separate payment authorization or instrument required to be obtained from the consumer under applicable laws.

1. General authorization requirements and conditions—
2. Required payment transfer terms. For purposes of this paragraph (c), the specific date, amount, and payment channel of each additional payment transfer must be authorized by the consumer, except as provided in paragraph (c)(2)(ii) or (iii) of this section.

1. General. Section 1041.14(2)(i) sets forth the general requirement that, for purposes of the exception in § 1041.14(c), the specific date, amount, and payment channel of each additional payment transfer must be authorized by the consumer, subject to a limited exception in § 1041.14(c)(2)(iii)(A) for payment transfers solely to collect a late fee or returned item fee. Accordingly, for the exception to apply to an additional payment transfer, the transfer’s specific date, amount, and payment channel must be included in the signed authorization obtained from the consumer under § 1041.14(c)(3)(iii). For guidance on the requirements and conditions that apply when obtaining the consumer’s signed authorization, see § 1041.14(c)(3)(iii) and accompanying commentary.

2. Specific date. The requirement that the specific date of each additional payment transfer be authorized by the consumer is satisfied if the consumer authorizes the month, day, and year of each transfer.

3. Amount larger than specific amount. The exception in § 1041.14(c)(2) does not apply if the lender initiates a payment transfer for an amount larger than the specific amount authorized by the consumer, unless the payment transfer satisfies the requirements and conditions in § 1041.14(c)(2)(iii)(B) for adding the amount of a late fee or returned item fee to an amount authorized by the consumer. Accordingly, such a transfer would violate the prohibition on additional payment transfers under § 1041.14(b).

4. Smaller amount. A payment transfer initiated pursuant to § 1041.14(c) is initiated for the specific amount authorized by the consumer if its amount is equal to or smaller than the authorized amount.

1. Application of specific date requirement to re-initiating a returned payment transfer. If a payment transfer authorized by the consumer pursuant to this paragraph (c) is returned for nonsufficient funds, the lender may re-initiate the payment transfer, such as by re-presenting it once through the ACH system, on or after the date authorized by the consumer, provided that the returned payment transfer has not triggered the prohibition in paragraph (b) of this section.
2. Special authorization requirements and conditions for payment transfers to collect a late fee or returned item fee.
3. A lender may initiate a payment transfer pursuant to this paragraph (c) solely to collect a late fee or returned item fee without obtaining the consumer’s authorization for the specific date and amount of the payment transfer only if the consumer authorizes the lender to initiate such payment transfers. For purposes of this paragraph (c)(2)(iii)(A), the consumer authorizes such payment transfers only if the consumer’s authorization obtained under paragraph (c)(3)(iii) of this section includes a statement, in terms that are clear and readily understandable to the consumer, that payment transfers may be initiated solely to collect a late fee or returned item fee and specifies the highest amount for such fees that may be charged, and the payment channel to be used.

1. General. If a lender obtains the consumer’s authorization to initiate a payment transfer solely to collect a late fee or returned item fee in accordance with the requirements and conditions under § 1041.14(c)(2)(iii)(A), the general requirement in § 1041.14(c)(2) that the consumer authorize the specific date and amount of each additional payment transfer need not be satisfied.

2. Highest amount. The requirement that the consumer’s signed authorization include a statement that specifies the highest amount that may be charged for a late fee or returned item fee is satisfied, for example, if the statement specifies the maximum amount permitted under the loan agreement for a covered loan.

3. Varying fee amounts. If a fee amount may vary due to the remaining loan balance or other factors, the rule requires the lender to assume the factors that result in the highest amount possible in calculating the specified amount.

1. A lender may add the amount of one late fee or one returned item fee to the original amount of a payment transfer authorized by the consumer pursuant to this paragraph (c) only if the consumer authorizes the lender to initiate transfers that include such an additional amount. For purposes of this paragraph (c)(2)(iii)(B), the consumer authorizes the lender to initiate payment transfers that include such an amount if the consumer’s authorization obtained under paragraph (c)(3)(iii) of this section includes a statement, in terms that are clear and readily understandable to the consumer, that the amount of one late fee or one returned item fee may be added to any payment transfer and specifies the highest amount for such fees that may be charged, and the payment channel to be used.

1. General. The exception in § 1041.14(c)(2) does not apply to a payment transfer to which the amount of a late fee or returned item fee is added to the original amount authorized by the consumer, unless the consumer authorizes the lender to add the amount of late fee or returned item fee to the original amount of a payment transfer in accordance with the requirements and conditions in § 1041.14(c)(2)(iii)(B).

2. Requirements for specifying highest fee amount. For guidance on how to satisfy the requirement that the consumer’s signed authorization include a statement that specifies the highest amount that may be charged for a late fee or returned item fee, see comment § 1041.14(c)(2)(iii)(A)-2. For guidance on how to calculate the highest fee amount if the amount may vary due to the remaining loan balance or other factors, see comment § 1041.14(c)(2)(iii)(A)-3.

1. Requirements and conditions for obtaining the consumer’s authorization—
2. General. For purposes of this paragraph (c), the lender must request and obtain the consumer’s authorization for additional payment transfers in accordance with the requirements and conditions in this paragraph (c)(3).
3. Provision of payment transfer terms to the consumer. The lender may request the consumer’s authorization for additional payment transfers no earlier than the date on which the lender provides to the consumer the consumer rights notice required by § 1041.15(d). The request must include the payment transfer terms required under paragraph (c)(2)(i) of this section and, if applicable, the statements required by paragraph (c)(2)(iii)(A) or (B) of this section. The lender may provide the terms and statements to the consumer by any one of the following means:

1. General. A lender is permitted under § 1041.14(c)(3)(ii) to request a consumer’s authorization on or after the day that the lender provides the consumer rights notice required by § 1041.15(d). For the exception in § 1041.14(c)(2) to apply, however, the consumer’s signed authorization must be obtained no earlier than the date on which the consumer is considered to have received the consumer rights notice, as specified in § 1041.14(c)(3)(iii).

2. Different options. Nothing in § 1041.14(c)(3)(ii) prohibits a lender from providing different options for the consumer to consider with respect to the date, amount, or payment channel of each additional payment transfer for which the lender is requesting authorization. In addition, if a consumer declines a request, nothing in § 1041.14(c)(3)(ii) prohibits a lender from making a follow-up request by providing a different set of terms for the consumer to consider. For example, if the consumer declines an initial request to authorize two recurring payment transfers for a particular amount, the lender may make a follow-up request for the consumer to authorize three recurring payment transfers for a smaller amount.

1. In writing, by mail or in person, or in a retainable form by email if the consumer has consented to receive electronic disclosures in this manner under § 1041.15(a)(4) or agrees to receive the terms and statements by email in the course of a communication initiated by the consumer in response to the consumer rights notice required by § 1041.15(d).

1. Request by email. Under § 1041.14(c)(3)(ii)(A), a lender is permitted to provide the required terms and statements to the consumer in writing or in a retainable form by email if the consumer has consented to receive electronic disclosures in that manner under § 1041.15(a)(4) or agrees to receive the terms and statements by email in the course of a communication initiated by the consumer in response to the consumer rights notice required by § 1041.15(d). The following example illustrates a situation in which the consumer agrees to receive the required terms and statements by email after affirmatively responding to the notice:

i. After a lender provides the consumer rights notice in § 1041.15(d) by mail to a consumer who has not consented to receive electronic disclosures under § 1041.15(a)(4), the consumer calls the lender to discuss her options for repaying the loan, including the option of authorizing additional payment transfers pursuant to § 1041.14(c). In the course of the call, the consumer asks the lender to provide the request for the consumer’s authorization via email.

Because the consumer has agreed to receive the request via email in the course of a communication initiated by the consumer in response to the consumer rights notice, the lender is permitted under § 1041.14(c)(3)(ii)(A) to provide the request to the consumer by that method.

2. E-Sign Act does not apply to provision of terms and statements. The required terms and statements may be provided to the consumer electronically in accordance with the requirements for requesting the consumer’s authorization in § 1041.14(c)(2)(ii) without regard to the E-Sign Act. However, under § 1041.14(c)(3)(iii), an authorization obtained electronically is valid only if it is signed or otherwise agreed to by the consumer in accordance with the signature requirements in the E-Sign Act. See § 1041.14(c)(3)(iii) and comment 14(c)(3)(iii)-1.

3. Same communication. Nothing in § 1041.14(c)(3)(ii) prohibits a lender from requesting the consumer’s authorization for additional payment transfers and providing the consumer rights notice in the same communication, such as a single written mailing or a single email to the consumer. Nonetheless, the consumer rights notice may be provided to the consumer only in accordance with the requirements and conditions in § 1041.15(d), including, but not limited to, the segregation requirements that apply to the notice. Thus, for example, if a lender mails the request for authorization and the notice to the consumer in the same envelope, the lender must provide the notice on a separate piece of paper, as required under § 1041.15(d).

1. By oral telephone communication, if the consumer affirmatively contacts the lender in that manner in response to the consumer rights notice required by § 1041.15(d) and agrees to receive the terms and statements in that manner in the course of, and as part of, the same communication.

1. Request by oral telephone communication. Nothing in § 1041.14(c)(3)(ii) prohibits a lender from contacting the consumer by telephone to discuss repayment options, including the option of authorizing additional payment transfers. However, under § 1041.14(c)(3)(ii)(B), a lender is permitted to provide the required terms and statements to the consumer by oral telephone communication for purposes of requesting authorization only if the consumer affirmatively contacts the lender in that manner in response to the consumer rights notice required by § 1041.15(d) and agrees to receive the terms and statements by that method of delivery in the course of, and as part of, the same communication.

1. Signed authorization required—
2. General. For an authorization to be valid under this paragraph (c), it must be signed or otherwise agreed to by the consumer in writing or electronically and in a retainable format that memorializes the payment transfer terms required under paragraph (c)(2)(i) of this section and, if applicable, the statements required by paragraph (c)(2)(iii)(A) or (B) of this section to which the consumer has agreed. The signed authorization must be obtained from the consumer no earlier than when the consumer receives the consumer rights notice required by § 1041.15(d) in person or electronically, or the date on which the consumer receives the notice by mail. For purposes of this paragraph (c)(3)(iii)(A), the consumer is considered to have received the notice at the time it is provided to the consumer in person or electronically, or, if the notice is provided by mail, the earlier of the third business day after mailing or the date on which the consumer affirmatively responds to the mailed notice.

1. E-Sign Act signature requirements. For authorizations obtained electronically, the requirement that the authorization be signed or otherwise agreed to by the consumer is satisfied if the E-Sign Act requirements for electronic records and signatures are met. Thus, for example, the requirement is satisfied by an email from the consumer or by a code entered by the consumer into the consumer’s telephone keypad, assuming that in each case the signature requirements in the E-Sign Act are complied with.

2. Consumer’s affirmative response to the notice. A consumer affirmatively responds to the consumer rights notice that was provided by mail when, for example, the consumer calls the lender on the telephone to discuss repayment options after receiving the notice.

1. Special requirements for authorization obtained by oral telephone communication. If the authorization is granted in the course of an oral telephone communication, the lender must record the call and retain the recording.
2. Memorialization required. If the authorization is granted in the course of a recorded telephonic conversation or is otherwise not immediately retainable by the consumer at the time of signature, the lender must provide a memorialization in a retainable form to the consumer by no later than the date on which the first payment transfer authorized by the consumer is initiated.

A memorialization may be provided to the consumer by email in accordance with the requirements and conditions in paragraph (c)(3)(ii)(A) of this section.

1. Timing. The memorialization is deemed to be provided to the consumer on the date it is mailed or transmitted.

2. Form of memorialization. The requirement that the memorialization be provided in a retainable form is not satisfied by a copy of recorded telephone call, notwithstanding that the authorization was obtained in that manner.

3. Electronic delivery. A lender is permitted under § 1041.14(c)(3)(iii)(C) to provide the memorialization to the consumer by email in accordance with the requirements and conditions for requesting authorization in § 1041.14(c)(3)(ii)(A), regardless of whether the lender requested the consumer’s authorization in that manner. For example, if the lender requested the consumer’s authorization by telephone but also has obtained the consumer’s consent to receive electronic disclosures by email under § 1041.15(a)(4), the lender may provide the memorialization to the consumer by email, as specified in § 1041.14(c)(3)(ii)(A).

1. Expiration of authorization. An authorization obtained from a consumer pursuant to this paragraph (c) becomes null and void for purposes of the exception in this paragraph (c) if:
2. The lender subsequently obtains a new authorization from the consumer pursuant to this paragraph (c).
3. Two consecutive payment transfers initiated pursuant to the consumer’s authorization fail, as specified in paragraph (b) of this section.
4. Exception for initiating a single immediate payment transfer at the consumer’s request. After a lender’s second consecutive payment transfer has failed as specified in paragraph (b) of this section, the lender may initiate a payment transfer from the consumer’s account without obtaining the consumer’s authorization for additional payment transfers pursuant to paragraph (c) of this section if:

1. General. For guidance on the requirements and conditions that must be satisfied for a payment transfer to meet the definition of a single immediate payment transfer at the consumer’s request, see § 1041.14(a)(2) and accompanying commentary.

2. Application of prohibition. A lender is permitted under the exception in § 1041.14(d) to initiate the single payment transfer requested by the consumer only once and thus is prohibited under § 1041.14(b) from re-initiating the payment transfer if it fails, unless the lender subsequently obtains the consumer’s authorization to re-initiate the payment transfer under § 1041.14(c) or (d). However, a lender is permitted to initiate any number of payment transfers from a consumer’s account pursuant to the exception in § 1041.14(d), provided that the requirements and conditions are satisfied for each such transfer. See comment 14(b)(2)(ii)-3 for further guidance on how the prohibition in § 1041.14(b) applies to the exception in § 1041.14(d).

3. Timing. A consumer affirmatively contacts the lender when, for example, the consumer calls the lender after noticing on her bank statement that the lender’s last two payment withdrawal attempts have been returned for nonsufficient funds.

1. The payment transfer is a single immediate payment transfer at the consumer’s request as defined in paragraph (a)(2) of this section; and
2. The consumer authorizes the underlying one-time electronic fund transfer or provides the underlying signature check to the lender, as applicable, no earlier than the date on which the lender provides to the consumer the consumer rights notice required by § 1041.15(d) or on the date that the consumer affirmatively contacts the lender to discuss repayment options, whichever date is earlier.

**§ 1041.15 Disclosure of payment transfer attempts.**

1. General. Section 1041.15 sets forth two main disclosure requirements related to collecting payments from a consumer’s account in connection with a covered loan. The first, set forth in § 1041.15(b), is a payment notice required to be provided to a consumer in advance of a initiating a payment transfer from the consumer’s account, subject to certain exceptions. The second, set forth in § 1041.15(d), is a consumer rights notice required to be provided to a consumer after a lender receives notice of a second consecutive failed payment transfer from the consumer’s account, as described in § 1041.14(b). In addition, § 1041.15 requires an electronic short notice when lenders are providing notices through electronic delivery. The first, set forth in § 1041.15(c), is an electronic short notice that must be provided along with the payment notice. The second, set forth in § 1041.15(e), is an electronic short notice that must be provided along with the consumer rights notice.

1. General form of disclosures—
2. Clear and conspicuous. Disclosures required by this section must be clear and conspicuous. Disclosures required by this section may contain commonly accepted or readily understandable abbreviations.

1. Clear and conspicuous standard. Disclosures are clear and conspicuous for purposes of § 1041.15 if they are readily understandable and their location and type size are readily noticeable to consumers.

1. In writing or electronic delivery. Disclosures required by this section must be provided in writing or through electronic delivery. The disclosures may be provided electronically as long as the requirements of paragraph (a)(4) of this section are satisfied. The disclosures must be provided in a form that can be viewed on paper or a screen, as applicable. This provision is not satisfied by a disclosure provided orally or through a recorded message.

1. Electronic delivery. Section 1041.15(a)(2) allows the disclosures required by § 1041.15 to be provided electronically as long as the requirements of § 1041.15(a)(4) are satisfied, without regard to the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. 7001 et seq.).

1. Retainable. Disclosures required by this section must be provided in a retainable form, except for electronic short notices delivered by mobile application or text message under paragraph (c) or (e) of this section.

1. General. Electronic disclosures, to the extent permitted by § 1041.15(a)(4), are retainable for purposes of § 1041.15 if they are in a format that is capable of being printed, saved, or emailed by the consumer. The general requirement to provide disclosures in a retainable form does not apply when the electronic short notices are provided in via mobile application or text message. For example, the requirement does not apply to an electronic short notice that is provided to the consumer’s mobile telephone as a text message. In contrast, if the access is provided to the consumer via email, the notice must be in a retainable form, regardless of whether the consumer uses a mobile telephone to access the notice.

1. Electronic delivery. Disclosures required by this section may be provided through electronic delivery if the following consent requirements are satisfied:
2. Consumer consent—
3. General. Disclosures required by this section may be provided through electronic delivery if the consumer affirmatively consents in writing or electronically to the particular electronic delivery method.

1. General. Section 1041.15(a)(4)(i) permits disclosures required by § 1041.15 to be provided through electronic delivery if the lender obtains the consumer’s affirmative consent to receive the disclosures through a particular electronic delivery method. This affirmative consent requires lenders to provide consumers with an option to select a particular electronic delivery method. The consent must clearly show the method of electronic delivery that will be used, such as email, text message, or mobile application. Consent provided by checking a box during the origination process may qualify as in writing. Consent can be obtained for multiple methods of electronic delivery, but the consumer must have affirmatively selected and provided consent for each method.

1. Email option required. To obtain valid consumer consent to electronic delivery under this paragraph, a lender must provide the consumer with the option to select email as the method of electronic delivery, separate and apart from any other electronic delivery methods such as mobile application or text message.

1. General. Section § 1041.15(4)(i)(B) provides that when obtaining consumer consent to electronic delivery under this paragraph, a lender must always provide the consumer with an option to receive the disclosures through email. The lender may choose to offer email as the only method of electronic delivery under this paragraph.

1. Subsequent loss of consent. Notwithstanding paragraph (a)(3)(i) of this section, a lender must not provide disclosures required by this section through a method of electronic delivery if:

1. General. The prohibition in § 1041.15(a)(4)(ii) applies to the particular electronic method for which consent is lost. When a lender loses a consumer’s consent to receive disclosures via text message, for example, but has not lost the consumer’s consent to receive disclosures via email, the lender may continue to provide disclosures via email, assuming that all of the requirements in § 1041.15(a)(4) are satisfied.

2. Loss of consent applies to all notices. The loss of consent applies to all notices required by this section. For example, if a consumer revokes consent in response to the electronic short notice text message delivered along with the payment notice under § 1041.15(c), that revocation also applies to text delivery of the electronic short notice that would be delivered with the consumer rights notice under § 1041.15(e).

1. The consumer revokes consent to receive disclosures through that delivery method; or

1. Revocation. For purposes of § 1041.15(a)(4)(ii)(A), a consumer may revoke consent for any reason and by any reasonable means of communication. Reasonable means of communication may include calling the lender and revoking consent orally, mailing a revocation to an address provided by the lender on its consumer correspondence, sending an email response or clicking on a revocation link provided in an email from the lender, and responding by text message to a text message sent by the lender.

1. The lender receives notification that the consumer is unable to receive disclosures through that delivery method at the address or number used.

1. Notice. A lender receives notification for purposes of § 1041.15(a)(4)(ii)(B) when the lender receives any information indicating that the consumer did not receive or is unable to receive disclosures in a particular electronic manner. Examples of notice include but are not limited to the following:

i. An email returned with a notification that the consumer’s account is no longer active or does not exist.

ii. A text message returned with a notification that the consumer’s mobile telephone number is no longer in service.

iii. A statement from the consumer that the consumer is unable to access or review disclosures through a particular electronic delivery method.

1. Segregation requirements for notices. All notices required by this section must be segregated from all other written or provided materials and contain only the information required by this section, other than information necessary for product identification, branding, and navigation. Segregated additional content that is not required by this section must not be displayed above, below, or around the required content.

1. Segregated additional content. Although segregated additional content that is not required by this section may not appear above, below, or around the required content, additional content may be delivered through a separate form, such as a separate piece of paper or web page.

1. Machine readable text in notices provided through electronic delivery. If provided through electronic delivery, the payment notice required by paragraph (b) and the consumer rights notice required by paragraph (d) of this section must use machine readable text that is accessible via both web browsers and screen readers.
2. Model Forms—

1. Safe harbor provided by use of model forms. Although the use of the model forms and clauses is not required, lenders using them will be deemed to be in compliance with the disclosure requirement with respect to such model forms.

1. Payment notice. The content, order, and format of the payment notice required by paragraph (b) of this section must be substantially similar to Model Forms A3 through A-4 in appendix A to this part.
2. Consumer rights notice. The content, order, and format of the consumer rights notice required by paragraph (d) of this section must be substantially similar to Model Form A-5 in appendix A to this part.
3. Electronic short notice. The content, order, and format of the electronic short notice required by paragraph (c) of this section must be substantially similar to Model Clauses A-6 and A-7 in appendix A to this part. The content, order, and format of the electronic short notice required by paragraph (e) of this section must be substantially similar to Model Clause A-8 in appendix A to this part.
4. Foreign language disclosures. Disclosures required under this section may be made in a language other than English, provided that the disclosures are made available in English upon the consumer's request.
5. Payment notice—
6. General. Except as provided in paragraph (b)(2) of this section, prior to initiating a payment transfer from a consumer’s account, a lender must provide to the consumer a payment notice in accordance with the requirements in this paragraph (b), as applicable.
7. Exceptions. The payment notice need not be provided when the lender initiates:
8. A payment transfer in connection with a covered loan made under § 1041.11 or § 1041.12;
9. The first payment transfer from a consumer’s account after obtaining consumer consent pursuant to § 1041.14(c), regardless of whether any of the conditions in paragraph (b)(5) of this section apply; or

1. Exception for first transfer applies even if the transfer is unusual. The exception in § 1041.15(b)(2)(ii) applies even if the situation would otherwise trigger the additional disclosure requirements for unusual attempts under § 1041.15(b)(5). For example, if the payment channel of the first transfer after obtaining the consumer’s consent is different than the payment channel used before the prohibition under § 1041.14 was triggered, the exception in § 1041.15(b)(2)(ii) applies.

2. Multiple transfers in advance. If a consumer has affirmatively consented to multiple transfers in advance, as described in § 1041.14(c)(2)(ii)(B), the exception in § 1041.15(b)(2)(ii) applies only to the first transfer.

1. A single immediate payment transfer initiated at the consumer’s request in accordance with § 1041.14(a)(2).
2. Timing—
3. Mail. If the lender provides the payment notice by mail, the lender must mail the notice no earlier than 10 business days and no later than six business days prior to initiating the transfer.

1. General. The six business-day period begins when the lender places the notice in the mail, not when the consumer receives the notice. For example, if a lender places the notice in the mail on Monday, June 1, the lender may initiate the transfer of funds on Monday, June 8, the 6th business day following mailing of the notice.

1. Electronic delivery.
2. If the lender provides the payment notice through electronic delivery, the lender must send the notice no earlier than seven business days and no later than three business days prior to initiating the transfer.

1. General. The three-business-day period begins when the lender sends the notice, not when the consumer receives or is deemed to have received the notice. For example, if a lender sends the notice by email on Monday, June 1, the lender may initiate the transfer of funds on Thursday, June 4, the third business day following transmitting the notice.

1. If, after providing the payment notice through electronic delivery pursuant to the timing requirements in paragraph (b)(3)(ii)(A) of this section, the lender loses the consumer’s consent to receive the notice through a particular electronic delivery method according to paragraph (a)(4)(ii) of this section, the lender must provide the notice before any future payment attempt, if applicable, through alternate means.

1. General. In some circumstances, a lender may lose a consumer’s consent to receive disclosures through a particular electronic delivery method after the lender has provided the notice. In such circumstances, the lender may initiate the transfer for the payment currently due as scheduled. If the lender is scheduled to make any future payment attempt following the one that was disclosed in the previously provided notice, the lender must provide notice for that future payment attempt through alternate means, in accordance with the applicable timing requirements in this paragraph (b)(3).

2. Alternate Means. The alternate means may include a different electronic delivery method that the consumer has consented to, in person, or by mail, in accordance with the applicable timing requirements in this paragraph (b)(3).

3. Illustrative example. The following example illustrates actions that would satisfy the requirement in § 1041.15(b)(3)(ii)(B) to provide the notice again in accordance with any of the timing requirements in § 1041.15(b)(3):

i. On the seventh business day prior to initiating a transfer, a lender transmits the notice to the consumer via email and immediately receives a notification that the email account is no longer active. The next business day, the lender mails the notice to the consumer. Because the notice is mailed on the sixth business day prior to initiating the transfer, the timing requirement in § 1041.15(b)(3)(i) is satisfied.

1. In person. If the lender provides the notice in person, the lender must provide the notice no earlier than seven business days and no later than three business days prior to initiating the transfer.
2. Content requirements. The notice must contain the following information and statements, as applicable, using language substantially similar to the language set forth in Model Forms A-3 and A-4 in appendix A to this part:
3. Identifying statement—
4. Upcoming withdrawal. If none of the additional content requirements set forth in paragraph (b)(5) of this section apply, the statement, “Upcoming Withdrawal Notice,” using that phrase, and, in the same statement, the name of the lender providing the notice.
5. Unusual withdrawal. If any of the additional content requirements in paragraph (b)(5) of this section apply, the statement, “Alert: Unusual Withdrawal,” using that phrase, and, in the same statement, the name of the lender that is providing the notice.
6. Transfer terms.
7. Date. Date that the lender will initiate the transfer.

1. Date. The initiation date is the date that the payment transfer is sent outside of the lender’s control. Accordingly, the initiation date of the transfer is the date that the lender or its agent sends the payment to be processed by a third party. For example, if a lender sends its ACH payments to its payment processor, the lender’s agent, on Monday, June 1, but the processor does not submit them to its bank and the ACH network until Tuesday, June 2, the date of the payment transfer is Tuesday the 2nd.

1. Amount. Dollar amount of the transfer.

1. Amount. The amount of the transfer is the total amount of money that will be transferred from the consumer’s account, regardless of whether the total corresponds to the amount of a regularly scheduled payment. For example, if a single transfer will be initiated for the purpose of collecting a regularly scheduled payment of $50.00 and a late fee of $30.00, the amount that must be disclosed under § 1041.15(b)(4)(ii)(B) is $80.00.

1. Consumer account. Sufficient information to permit the consumer to identify the account from which the funds will be transferred. The lender must not provide the complete account number of the consumer, but may use a truncated version similar to Model Form A-5 in appendix A to this part.
2. Loan identification information. Sufficient information to permit the consumer to identify the covered loan associated with the transfer.
3. Payment channel. Payment channel of the transfer.

1. General. Payment channel is the specific payment network that the transfer will travel through. For example, a lender that uses the consumer’s paper check information to initiate a payment transfer through the ACH network would use the ACH payment channel under this section. A lender that initiates a payment from a consumer’s prepaid card would specify whether that payment is processed as an ACH transfer, PIN debit network payment, or credit card network payment.

2. Illustrative examples. Payment channel includes, but is not limited to, ACH transfer, check, remotely created check, remotely created payment order, internal transfer, and debit card payment. The use of the term “debit card payment” may include any network that processes debit card payments, including the PIN debit network and credit card network.

1. Check number. If the transfer will be initiated by a signature or paper check, remotely created check (as defined in Regulation CC, 12 CFR 229.2(fff)), or remotely created payment order (as defined in 16 CFR 310.2 (cc)), the check number associated with the transfer.
2. Annual percentage rate. Annual percentage rate of the covered loan, as disclosed at consummation pursuant to the requirements in Regulation Z, 12 CFR 1026.6(b)(2)(i) or 1026.18(e), as applicable, unless the transfer is for an unusual attempt under paragraph (b)(5) of this section.
3. Payment breakdown. In a tabular form:
4. Payment breakdown heading. A heading with the statement “Payment Breakdown,” using that phrase.
5. Principal. The amount of the payment that will be applied to principal.

1. General. The amount of the payment that is applied to principal must always be included in the payment breakdown table, even if the amount applied is $0.

1. Interest. The amount of the payment that will be applied to accrued interest on the loan.
2. Fees. If applicable, the amount of the payment that will be applied to fees.

1. General. This field must only be provided if some of the payment amount will be applied to fees. In situations where more than one fee applies, fees may be disclosed separately or aggregated. A lender may use its own term to describe the fee, such as “late payment fee.”

1. Other charges. If applicable, the amount of the payment that will be applied to other charges.

1. General. This field must only be provided if some of the payment amount will be applied to other charges. In situations when more than one other charge applies, other charges may be disclosed separately or aggregated. A lender may use its own term to describe the charge, such as “insurance charge.”

1. Amount. The statement “Total Payment Amount,” using that phrase, and the total dollar amount of the payment as provided in paragraph (b)(4)(ii)(B) of this section.
2. Explanation of interest-only or negatively amortizing payment. If applicable, a statement explaining that the payment will not reduce principal, using the applicable phrase “When you make this payment, your principal balance will stay the same and you will not be closer to paying off your loan” or “When you make this payment, your principal balance will increase and you will not be closer to paying off your loan.”
3. Lender name and contact information. Name of the lender, the name under which the transfer will be initiated (if different from the consumer-facing name of the lender), and two different forms of lender contact information that may be used by the consumer to obtain information about the consumer’s loan.
4. Additional content requirements for unusual attempts. If any of the conditions specified in this paragraph (b)(5) are triggered, the notice must also contain the following content, as applicable, in a form substantially similar to the form in Model Form A-4 in appendix A to this part:

1. General. If the payment transfer is unusual according to the circumstances described in § 1041.15(b)(5), the payment notice must contain both the content required by § 1041.15(b)(4), except for APR, and the content required by § 1041.15(b)(5).

1. Varying amount. If the amount of a transfer will vary in amount from the regularly scheduled payment amount, a statement that the transfer will be for a larger or smaller amount than the regularly scheduled payment amount, as applicable.

1. General. The additional content requirement in § 1041.15(b)(5)(i) applies in two circumstances. First, the requirement applies when a transfer is for the purpose of collecting a payment that is not specified by amount on the payment schedule, including, for example, a onetime electronic payment transfer to collect a late fee. Second, the requirement applies when the transfer is for the purpose of collecting a regularly scheduled payment for an amount different from the regularly scheduled payment amount according to the payment schedule.

1. Date other than date of regularly scheduled payment. If the payment transfer date is not a date on which a regularly scheduled payment is due under the terms of the loan agreement, a statement that the transfer will be initiated on a date other than the date of a regularly scheduled payment.

1. General. The additional content requirement in § 1041.15(b)(5)(ii) applies in two circumstances. First, the requirement applies when a transfer is for the purpose of collecting a payment that is not specified by date on the payment schedule, including, for example, a onetime electronic payment transfer to collect a late fee. Second, the requirement applies when the transfer is for the purpose of collecting a regularly scheduled payment on a date that differs from regularly scheduled payment date according to the payment schedule.

1. Different payment channel. If the payment channel will differ from the payment channel of the transfer directly preceding it, a statement that the transfer will be initiated through a different payment channel and a statement of the payment channel used for the prior transfer.
2. For purpose of re-initiating returned transfer. If the transfer is for the purpose of re-initiating a returned transfer, a statement that the lender is re-initiating a returned transfer, a statement of the date and amount of the previous unsuccessful attempt, and a statement of the reason for the return.
3. Electronic short notice.
4. General. When the consumer has consented to receive disclosures through electronic delivery, the lender may provide the payment notice required by paragraph (b) of this section through electronic delivery only if it also provides an electronic short notice in accordance with the following requirements:
5. Content. The electronic short notice required by this paragraph (c) must contain the following information and statements, as applicable, in a form substantially similar to Model Clause A-6 in appendix A to this part:

1. Identifying statement. If the lender is using email as the method of electronic delivery, the identifying statement required in § 1041.15(c)(2)(i) must be provided in both the email subject line and the body of the email.

1. Identifying statement, as required under paragraph (b)(4)(i) of this section;
2. Transfer terms.
3. Date, as required under paragraph (b)(4)(ii)(A) of this section;
4. Amount, as required under paragraph (b)(4)(ii)(B) of this section;
5. Consumer account, as required and limited under paragraph (b)(4)(ii)(C) of this section;
6. Website URL. The unique URL of a website that the consumer may use to access the full payment notice required by paragraph (b) of this section.
7. Additional content requirements. If any of the conditions for unusual attempts specified in paragraph (b)(5) of this section are triggered, the electronic short notice must also contain the following information and statements, as applicable, using language substantially similar to the language in Model Clause A-7 in appendix A to this part:
8. Varying amount, as defined under paragraph (b)(5)(i) of this section;
9. Date other than due date of regularly scheduled payment, as defined under paragraph (b)(5)(ii) of this section; and
10. Different payment channel, as defined under paragraph (b)(5)(iii) of this section.
11. Consumer rights notice—
12. General. After a lender initiates two consecutive failed payment transfers from a consumer’s account as described in § 1041.14(b), the lender must provide to the consumer a consumer rights notice in accordance with the following requirements:
13. Timing. The lender must send the notice no later than three business days after it receives information that the second consecutive attempt has failed.

1. General. Any information provided to the lender or its agent that the payment transfer has failed would trigger the timing requirement provided in this paragraph. For example, if the lender’s agent, a payment processor, learns on Monday, June 1 that an ACH payment transfer initiated by the processor on the lender’s behalf has been returned for non-sufficient funds, the lender would be required to send the consumer rights notice by Thursday, June 4.

1. Content requirements. The notice must contain the following information and statements, using language substantially similar to the language set forth in Model Form A-5 in appendix A to this part:
2. Identifying statement. A statement that the lender, identified by name, is no longer permitted to withdraw loan payments from the consumer’s account.
3. Last two attempts were returned. A statement that the lender’s last two attempts to withdraw payment from the consumer’s account were returned due to non-sufficient funds.
4. Consumer Account. Sufficient information to permit the consumer to identify the account from which the unsuccessful payment attempts were made. The lender must not provide the complete account number of the consumer, but may use a truncated version similar to Model Form A-5 in appendix A to this part.
5. Loan identification information. Sufficient information to permit the consumer to identify the covered loan associated with the unsuccessful payment attempts.
6. Statement of Federal law prohibition. A statement, using that phrase, that in order to protect the consumer’s account, Federal law prohibits the lender from initiating further payment transfers without the consumer’s permission.
7. Contact about choices. A statement that the lender may be in contact with the consumer about payment choices going forward.
8. Previous unsuccessful payment attempts. In a tabular form:
9. Previous payment attempts heading. A heading with the statement “previous payment attempts.”
10. Payment due date. The scheduled due date of each previous unsuccessful payment transfer attempted by the lender.
11. Date of attempt. The date of each previous unsuccessful payment transfer initiated by the lender.
12. Amount. The amount of each previous unsuccessful payment transfer initiated by the lender.
13. Fees. The fees charged by the lender for each unsuccessful payment attempt, if applicable, with an indication that these fees were charged by the lender.
14. (sb viii?) CFPB information. A statement, using that phrase, that the Consumer Financial Protection Bureau created this notice, a statement that the CFPB is a Federal government agency, and the URL to a relevant portion of the CFPB website. This statement must be the last piece of information provided in the notice.
15. Electronic short notice—
16. General. When the consumer has consented to receive disclosures through electronic delivery, the lender may provide the consumer rights notice required by paragraph (d) through electronic delivery only if it also provides an electronic short notice in accordance with the following requirements:
17. Content. The notice must contain the following information and statements, as applicable, using language substantially similar to the language set forth in Model Clause A-8 in appendix A to this part:

1. Identifying statement. If the lender is using email as the method of electronic delivery, the identifying statement required in § 1041.15(e)(2)(i) must be provided in both the email subject line and the body of the email.

1. Identifying statement, as required under paragraph (d)(3)(i) of this section;
2. Last two attempts were returned, as required under paragraph (d)(3)(ii) of this section;
3. Consumer account, as required and limited under paragraph (d)(3)(iii) of this section;
4. Statement of Federal law prohibition, as required under paragraph (d)(3)(v) of this section; and
5. Website URL. The unique URL of a website that the consumer may use to access the full consumer rights notice required by paragraph (d) of this section.

Subpart E—Information Furnishing, Recordkeeping, Anti-Evasion, and Severability

**§ 1041.16 Information furnishing requirements.**

1. Loans subject to furnishing requirement. For each covered loan a lender makes other than a covered loan that is made under § 1041.11 or § 1041.12, the lender must furnish the information concerning the loan described in paragraph (c) of this section to each information system described in paragraph (b) of this section.

1. Loan made under § 1041.11 or § 1041.12. Section 1041.16(a) requires that, for each covered loan a lender makes other than a covered loan that is made under § 1041.11 or § 1041.12, the lender must furnish the information concerning the loan described in § 1041.16(c) to each information system described in § 1041.16(b). With respect to a loan made under § 1041.11 or § 1041.12, a lender may furnish information concerning the loan described in § 1041.16(c) to each information system described in § 1041.16(b) in order to satisfy § 1041.11(e)(2) or § 1041.12(f)(2), as applicable.

1. Information systems to which information must be furnished.

1. Provisional registration and registration of information system while loan is outstanding. Pursuant to § 1041.16(b)(1), a lender is only required to furnish information about a covered loan to an information system that, at the time the loan is consummated, has been registered pursuant to § 1041.17(c)(2) for 120 days or more or has been provisionally registered pursuant to § 1041.17(d)(1) for 120 days or more or subsequently has become registered pursuant to § 1041.17(d)(2). For example, if an information system is provisionally registered on March 1, 2020, the obligation to furnish information to that system begins on June 29, 2020, 120 days from the date of provisional registration. A lender is not required to furnish information about a loan consummated on June 28, 2020 to an information system that is provisionally registered on March 1, 2020.

2. Preliminary approval. Section 1041.16(b) requires that lenders furnish information to information systems that are provisionally registered pursuant to § 1041.17(d)(1) and information systems that are registered pursuant to § 1041.17(c)(2) or § 1041.17(d)(2). Lenders are not required to furnish information to entities that have received preliminary approval for registration pursuant to § 1041.17(c)(1) but are not registered pursuant to § 1041.17(c)(2).

1. A lender must furnish information as required in paragraphs (a) and (c) of this section to each information system that, as of the date the loan is consummated:
2. Has been registered with the Bureau pursuant to § 1041.17(c)(2) for 120 days or more; or
3. Has been provisionally registered with the Bureau pursuant to § 1041.17(d)(1) for 120 days or more or subsequently has become registered with the Bureau pursuant to § 1041.17(d)(2).
4. The Bureau will publish on its website and in the Federal Register notice of the provisional registration of an information system pursuant to § 1041.17(d)(1), registration of an information system pursuant to § 1041.17(c)(2) or (d)(2), and suspension or revocation of the provisional registration or registration of an information system pursuant to § 1041.17(g). For purposes of paragraph (b)(1) of this section, an information system is provisionally registered or registered, and its provisional registration or registration is suspended or revoked, on the date that the Bureau publishes notice of such provisional registration, registration, suspension, or revocation on its website. The Bureau will maintain on the Bureau’s website a current list of information systems provisionally registered pursuant to § 1041.17(d)(1) and registered pursuant to § 1041.17(c)(2) and (d)(2).
5. Information to be furnished. A lender must furnish the information described in this paragraph, at the times described in this paragraph, concerning each covered loan as required in paragraphs (a) and (b) of this section. A lender must furnish the information in a format acceptable to each information system to which it must furnish information.

1. Deadline for furnishing under § 1041.16(c)(1) and (3). Section 1041.16(c)(1) requires that a lender furnish specified information no later than the date on which the loan is consummated or as close in time as feasible to the date the loan is consummated. Section 1041.16(c)(3) requires that a lender furnish specified information no later than the date the loan ceases to be an outstanding loan or as close in time as feasible to the date the loan ceases to be an outstanding loan. Under each of these paragraphs, if it is feasible to report on the specified date (such as the consummation date), the specified date is the date by which the information must be furnished.

1. Information to be furnished at loan consummation. A lender must furnish the following information no later than the date on which the loan is consummated or as close in time as feasible to the date the loan is consummated:

1. Type of loan. Section 1041.16(c)(1)(iii) requires that a lender furnish information that identifies a covered loan as either a covered short-term loan, a covered longer-term loan, or a covered longer-term balloon-payment loan. For example, a lender must identify a covered short-term loan as a covered short-term loan.

2. Whether a loan is made under § 1041.5, § 1041.7, or § 1041.9. Section 1041.16(c)(1)(iv) requires that a lender furnish information that identifies a covered loan as made under § 1041.5, made under § 1041.7, or made under § 1041.9. For example, a lender must identify a loan made under § 1041.5 as a loan made under § 1041.5. A lender furnishing information concerning a covered loan that is made under § 1041.11 or § 1041.12 is not required to furnish information that identifies the covered loan as subject to one of these sections.

1. Information necessary to uniquely identify the loan;
2. Information necessary to allow the information system to identify the specific consumer(s) responsible for the loan;
3. Whether the loan is a covered short-term loan, a covered longer-term loan, or a covered longer-term balloon-payment loan;
4. Whether the loan is made under § 1041.5, § 1041.7, or § 1041.9, as applicable;
5. For a covered short-term loan, the loan consummation date;
6. For a loan made under § 1041.7, the principal amount borrowed;
7. For a loan that is closed-end credit:
8. The fact that the loan is closed-end credit;
9. The date that each payment on the loan is due; and
10. The amount due on each payment date.
11. For a loan that is open-end credit:
12. The fact that the loan is open-end credit;
13. The credit limit on the loan;
14. The date that each payment on the loan is due; and
15. The minimum amount due on each payment date.
16. Information to be furnished while loan is an outstanding loan. During the period that the loan is an outstanding loan, a lender must furnish any update to information previously furnished pursuant to this section within a reasonable period of the event that causes the information previously furnished to be out of date.

1. Examples. Section 1041.16(c)(2) requires that, during the period that the loan is an outstanding loan, a lender must furnish any update to information previously furnished pursuant to § 1014.16 within a reasonable period of the event that causes the information previously furnished to be out of date. Information previously furnished can become out of date due to changes in the loan terms or due to actions by the consumer. For example, if a lender extends the term of a loan, § 1041.16(c)(2) would require the lender to furnish an update to the date that each payment on the loan is due, previously furnished pursuant to § 1041.16(c)(1)(vii)(B), and to the amount due on each payment date, previously furnished pursuant to § 1041.16(c)(vii)(C), to reflect the updated payment dates and amounts. If the amount or minimum amount due on future payment dates changes because the consumer fails to pay the amount due on a scheduled payment date, § 1041.16(c)(2) would require the lender to furnish an update to the amount or minimum amount due on each payment date, previously furnished pursuant to § 1041.16(c)(1)(vii)(C) or (c)(1)(viii)(D), as applicable, to reflect the updated amount or minimum amount due on each payment date. However, if a consumer makes payment on a closed-end loan as agreed and the loan is not modified to change the dates or amounts of future payments on the loan, § 1041.16(c)(2) would not require the lender to furnish an update to information concerning the date that each payment on the loan is due, previously furnished pursuant to § 1041.16(c)(vii)(B), or the amount due on each payment date, previously furnished pursuant to § 1041.16(c)(vii)(C). Section 1041.16(c)(2) does not require a lender to furnish an update to reflect that a payment was made.

2. Changes to information previously furnished pursuant to § 1041.16(c)(2). Section 1041.16(c)(2) requires that, during the period that the loan is an outstanding loan, a lender must furnish any update to information previously furnished pursuant to § 1014.16 within a reasonable period of the event that causes the information previously furnished to be out of date. This requirement extends to information previously furnished pursuant to § 1014.16(c)(2). For example, if a lender furnishes an update to the amount or minimum amount due on each payment date, previously furnished pursuant to § 1041.16(c)(1)(vii)(C) or (c)(1)(viii)(D), as applicable, and the amount or minimum amount due on each payment date changes again after the update, § 1041.16(c)(2) requires that the lender must furnish an update to the information previously furnished pursuant to § 1041.16(c)(2).

1. Information to be furnished when loan ceases to be an outstanding loan. A lender must furnish the following information no later than the date the loan ceases to be an outstanding loan or as close in time as feasible to the date the loan ceases to be an outstanding loan:
2. The date as of which the loan ceased to be an outstanding loan; and
3. For a covered short-term loan:
4. Whether all amounts owed in connection with the loan were paid in full, including the amount financed, charges included in the total cost of credit, and charges excluded from the total cost of credit; and
5. If all amounts owed in connection with the loan were paid in full, the amount paid on the loan, including the amount financed and charges included in the total cost of credit but excluding any charges excluded from the total cost of credit.

**§ 1041.17 Registered information systems.**

1. Definitions.
2. Consumer report has the same meaning as in section 603(d) of the Fair Credit Reporting Act, 15 U.S.C. 1681a(d).
3. Federal consumer financial law has the same meaning as in section 1002(14) of the Dodd-Frank Wall Street Reform and Consumer Protection Act, 12 U.S.C. 5481(14).
4. Eligibility criteria for information systems. An entity is eligible to be a provisionally registered information system pursuant to paragraph (d)(1) of this section or a registered information system pursuant to paragraph (c)(2) or (d)(2) of this section only if the Bureau determines that the following conditions are satisfied:
5. Receiving capability. The entity possesses the technical capability to receive information lenders must furnish pursuant to § 1041.16 immediately upon the furnishing of such information and uses reasonable data standards that facilitate the timely and accurate transmission and processing of information in a manner that does not impose unreasonable costs or burdens on lenders.
6. Reporting capability. The entity possesses the technical capability to generate a consumer report containing, as applicable for each unique consumer, all information described in § 1041.16 substantially simultaneous to receiving the information from a lender.

1. Timing. To be eligible for provisional registration or registration, an entity must possess the technical capability to generate a consumer report containing, as applicable for each unique consumer, all information described in § 1041.16 substantially simultaneous to receiving the information from a lender. Technological limitations may cause some slight delay in the appearance on a consumer report of the information furnished pursuant to § 1041.16, but any delay must reasonable.

1. Performance. The entity will perform or performs in a manner that facilitates compliance with and furthers the purposes of this part.

1. Relationship with other law. To be eligible for provisional registration or registration, an entity must perform in a manner that facilitates compliance with and furthers the purposes of this part. However, this requirement does not supersede consumer protection obligations imposed upon a provisionally registered or registered information system by other Federal law or regulation. For example, the Fair Credit Reporting Act requires that, “[w]henever a consumer reporting agency prepares a consumer report it shall follow reasonable procedures to assure maximum possible accuracy of the information concerning the individual about whom the report relates.” 15 U.S.C. 1681e(b). If including information furnished pursuant to § 1041.16 in a consumer report would cause a provisionally registered or registered information system to violate this requirement, § 1041.17(b)(3) would not require that the information be included in a consumer report.

1. Federal consumer financial law compliance program. The entity has developed, implemented, and maintains a program reasonably designed to ensure compliance with all applicable Federal consumer financial laws, which includes written policies and procedures, comprehensive training, and monitoring to detect and to promptly correct compliance weaknesses.

1. Policies and procedures. To be eligible for provisional registration or registration, an entity must have policies and procedures that are documented in sufficient detail to implement effectively and maintain its Federal consumer financial law compliance program. The policies and procedures must address compliance with applicable Federal consumer financial laws in a manner reasonably designed to prevent violations and to detect and prevent associated risks of harm to consumers. The entity must also maintain and modify, as needed, the policies and procedures so that all relevant personnel can reference them in their day-to-day activities.

2. Training. To be eligible for provisional registration or registration, an entity must provide specific, comprehensive training to all relevant personnel that reinforces and helps implement written policies and procedures. Requirements for compliance with Federal consumer financial laws must be incorporated into training for all relevant officers and employees. Compliance training must be current, complete, directed to appropriate individuals based on their roles, effective, and commensurate with the size of the entity and nature and risks to consumers presented by its activity. Compliance training also must be consistent with written policies and procedures and designed to enforce those policies and procedures.

3. Monitoring. To be eligible for provisional registration or registration, an entity must implement an organized and risk-focused monitoring program to promptly identify and correct procedural or training weaknesses so as to provide for a high level of compliance with Federal consumer financial laws. Monitoring must be scheduled and completed so that timely corrective actions are taken where appropriate.

1. Independent assessment of Federal consumer financial law compliance program. The entity provides to the Bureau in its application for provisional registration or registration a written assessment of the Federal consumer financial law compliance program described in paragraph (b)(4) of this section and such assessment:

1. Assessor qualifications. An objective and independent third-party individual or entity is qualified to perform the assessment required by § 1041.17(b)(5) of this section if the individual or entity has substantial experience in performing assessments of a similar size, scope, or subject matter; has substantial expertise in both the applicable Federal consumer financial laws and in the entity’s or information system’s business; and has the appropriate professional qualifications necessary to perform the required assessment adequately.

2. Written assessment. A written assessment described in § 1041.17(b)(5) need not conform to any particular format or style as long as it succinctly and accurately conveys the required information.

1. Sets forth a detailed summary of the Federal consumer financial law compliance program that the entity has implemented and maintains;
2. Explains how the Federal consumer financial law compliance program is appropriate for the entity’s size and complexity, the nature and scope of its activities, and risks to consumers presented by such activities;
3. Certifies that, in the opinion of the assessor, the Federal consumer financial law compliance program is operating with sufficient effectiveness to provide reasonable assurance that the entity is fulfilling its obligations under all Federal consumer financial laws; and
4. Certifies that the assessment has been conducted by a qualified, objective, independent third-party individual or entity that uses procedures and standards generally accepted in the profession, adheres to professional and business ethics, performs all duties objectively, and is free from any conflicts of interest that might compromise the assessor’s independent judgment in performing assessments.
5. Information security program. The entity has developed, implemented, and maintains a comprehensive information security program that complies with the Standards for Safeguarding Customer Information, 16 CFR part 314.
6. Independent assessment of information security program.

1. Periodic assessments. Section 1041.17(b)(7) requires that, to maintain its registration, an information system must obtain and provide to the Bureau, on at least a biennial basis, a written assessment of the information security program described in § 1041.17(b)(6). The time period covered by each assessment obtained and provided to the Bureau to satisfy this requirement must commence on the day after the last day of the period covered by the previous assessment obtained and provided to the Bureau.

2. Assessor qualifications. Professionals qualified to conduct assessments required under § 1041.17(b)(7) include: a person qualified as a Certified Information System Security Professional (CISSP) or as a Certified Information Systems Auditor (CISA); a person holding Global Information Assurance Certification (GIAC) from the SysAdmin, Audit, Network, Security (SANS) Institute; and an individual or entity with a similar qualification or certification.

3. Written assessment. A written assessment described in § 1041.17(b)(7) need not conform to any particular format or style as long as it succinctly and accurately conveys the required information.

1. The entity provides to the Bureau in its application for provisional registration or registration and on at least a biennial basis thereafter, a written assessment of the information security program described in paragraph (b)(6) of this section and such assessment:
2. Sets forth the administrative, technical, and physical safeguards that the entity has implemented and maintains;
3. Explains how such safeguards are appropriate to the entity’s size and complexity, the nature and scope of its activities, and the sensitivity of the customer information at issue;
4. Explains how the safeguards that have been implemented meet or exceed the protections required by the Standards for Safeguarding Customer Information, 16 CFR part 314;
5. Certifies that, in the opinion of the assessor, the information security program is operating with sufficient effectiveness to provide reasonable assurance that the entity is fulfilling its obligations under the Standards for Safeguarding Customer Information, 16 CFR part 314; and
6. Certifies that the assessment has been conducted by a qualified, objective, independent third-party individual or entity that uses procedures and standards generally accepted in the profession, adheres to professional and business ethics, performs all duties objectively, and is free from any conflicts of interest that might compromise the assessor’s independent judgment in performing assessments.
7. Each written assessment obtained and provided to the Bureau on at least a biennial basis pursuant to paragraph (b)(7)(i) of this section must be completed and provided to the Bureau within 60 days after the end of the period to which the assessment applies.
8. Bureau supervisory authority. The entity acknowledges it is, or consents to being, subject to the Bureau’s supervisory authority.
9. Registration of information systems prior to effective date of § 1041.16.
10. Preliminary approval. Prior to the effective date of § 1041.16, the Bureau may preliminarily approve an entity for registration only if the entity submits an application for preliminary approval to the Bureau by the deadline set forth in paragraph (c)(3)(i) of this section containing information sufficient for the Bureau to determine that the entity is reasonably likely to satisfy the conditions set forth in paragraph (b) of this section by the deadline set forth in paragraph (c)(3)(ii) of this section. The assessments described in paragraphs (b)(5) and (b)(7) of this section need not be included with an application for preliminary approval for registration or completed prior to the submission of the application.

1. In general. An entity seeking to become preliminarily approved for registration pursuant to § 1041.17(c)(1) must submit an application to the Bureau containing information sufficient for the Bureau to determine that the entity is reasonably likely to satisfy the conditions set forth in § 1041.17(b) as of the deadline set forth in § 1041.17(c)(3)(ii). The application must describe the steps the entity plans to take to satisfy the conditions set forth in § 1041.17(b) by the deadline and the entity’s anticipated timeline for such steps. The entity’s plan must be reasonable and achievable.

1. Registration. Prior to the effective date of § 1041.16, the Bureau may approve the application of an entity to be a registered information system only if:

1. In general. An entity seeking to become a registered information system pursuant to § 1041.17(c)(2) must submit an application to the Bureau by the deadline set forth in § 1041.17(c)(3)(ii) containing information and documentation adequate for the Bureau to determine that the conditions described in § 1041.17(b) are satisfied. The application must succinctly and accurately convey the required information, and must include the written assessments described in § 1041.17(b)(5) and (7).

1. The entity received preliminary approval pursuant to paragraph (c)(1) of this section; and
2. The entity submits an application to the Bureau by the deadline set forth in paragraph (c)(3)(ii) of this section that contains information and documentation sufficient for the Bureau to determine that the entity satisfies the conditions set forth in paragraph (b) of this section. The Bureau may require additional information and documentation to facilitate this determination or otherwise to assess whether registration of the entity would pose an unreasonable risk to consumers.
3. Deadlines.
4. The deadline to submit an application for preliminary approval for registration pursuant to paragraph (c)(1) of this section is 30 days from the effective date of this section.
5. The deadline to submit an application to be a registered information system pursuant to paragraph (c)(2) of this section is 90 days from the date preliminary approval for registration is granted.
6. The Bureau may waive the deadlines set forth in this paragraph.
7. Registration of information systems on or after effective date of § 1041.16.
8. Provisional registration. On or after the effective date of § 1041.16, the Bureau may approve an entity to be a provisionally registered information system only if the entity submits an application to the Bureau that contains information and documentation sufficient for the Bureau to determine that the entity satisfies the conditions set forth in paragraph (b) of this section. The Bureau may require additional information and documentation to facilitate this determination or otherwise to assess whether provisional registration of the entity would pose an unreasonable risk to consumers.

1. In general. An entity seeking to become a provisionally registered information system pursuant to § 1041.17(d)(1) must submit an application to the Bureau containing information and documentation adequate for the Bureau to determine that the conditions described in § 1041.17(b) are satisfied. The application must succinctly and accurately convey the required information, and must include the written assessments described in § 1041.17(b)(5) and (7).

1. Registration. An information system that is provisionally registered pursuant to paragraph (d)(1) of this section shall automatically become a registered information system pursuant to this paragraph (d)(2) upon the expiration of the 180-day period commencing on the date the information system is provisionally registered. For purposes of this paragraph, an information system is provisionally registered on the date that the Bureau publishes notice of the provisional registration on the Bureau’s website.
2. Denial of application. The Bureau will deny the application of an entity seeking preliminary approval for registration under paragraph (c)(1) of this section, registration under paragraph (c)(2) of this section, or provisional registration under paragraph (d)(1) of this section, if the Bureau determines, as applicable, that:
3. The entity does not satisfy the conditions set forth in paragraph (b) of this section, or, in the case of an entity seeking preliminary approval for registration, is not reasonably likely to satisfy the conditions as of the deadline set forth in paragraph (c)(3)(ii) of this section;
4. The entity’s application is untimely or materially inaccurate or incomplete; or
5. Preliminary approval, provisional registration, or registration of the entity would pose an unreasonable risk to consumers.
6. Notice of material change. An entity that is a provisionally registered or registered information system must provide to the Bureau in writing a description of any material change to information contained in its application for registration submitted pursuant to paragraph (c)(2) of this section or provisional registration submitted pursuant to paragraph (d)(1) of this section, or to information previously provided to the Bureau pursuant to this paragraph, within 14 days of such change.
7. Suspension and Revocation.
8. The Bureau will suspend or revoke an entity’s preliminary approval for registration pursuant to paragraph (c)(1) of this section, provisional registration pursuant to paragraph (d)(1) of this section, or registration pursuant to paragraphs (c)(2) or (d)(2) of this section if the Bureau determines:
9. That the entity has not satisfied or no longer satisfies the conditions described in paragraph (b) of this section or has not complied with the requirement described in paragraph (f) of this section; or
10. That preliminary approval, provisional registration, or registration of the entity poses an unreasonable risk to consumers.
11. The Bureau may require additional information and documentation from an entity if it has reason to believe suspension or revocation under paragraph (g)(1) of this section may be warranted.
12. Except in cases of willfulness or those in which the public interest requires otherwise, prior to suspension or revocation under paragraph (g)(1) of this section, the Bureau will provide written notice of the facts or conduct that may warrant the suspension or revocation and an opportunity for the entity or information system to demonstrate or achieve compliance with this section or otherwise address the Bureau’s concerns.
13. The Bureau will revoke an entity’s preliminary approval for registration, provisional registration, or registration if the entity submits a written request to the Bureau that its preliminary approval, provisional registration, or registration be revoked.
14. For purposes of §§ 1041.5 through 1041.7, 1041.9, and 1041.10, suspension or revocation of an information system’s registration is effective five days after the date that the Bureau publishes notice of the suspension or revocation on the Bureau’s website. For purposes of § 1041.16(b)(1), suspension or revocation of an information system’s provisional registration or registration is effective on the date that the Bureau publishes notice of the suspension or revocation on the Bureau’s website. The Bureau will also publish notice of a suspension or revocation in the Federal Register.

**§ 1041.18 Compliance program and record retention.**

1. Compliance program. A lender making a covered loan must develop and follow written policies and procedures that are reasonably designed to ensure compliance with the requirements in this part. These written policies and procedures must be appropriate to the size and complexity of the lender and its affiliates, and the nature and scope of the covered loan lending activities of the lender and its affiliates.

1. General. Section 1041.18(a) requires a lender making a covered loan to develop and follow written policies and procedures that are reasonably designed to ensure compliance with the applicable requirements in this part. These written policies and procedures would provide guidance to a lender’s employees on how to comply with the requirements in this part. In particular, under § 1041.18(a), a lender would need to develop and follow detailed written policies and procedures reasonably designed to achieve compliance, as applicable, with the ability-to-repay requirements in proposed §§ 1041.5 and 1041.6 and proposed §§ 1041.9 and 1041.10, alternative requirements in proposed §§ 1041.7, 1041.11, and 1041.12, payments requirements in proposed §§ 1041.14 and 1041.15, and requirements on furnishing loan information to registered and provisionally registered information systems in proposed § 1041.16. The provisions and commentary in each section listed above provide guidance on what specific directions and other information a lender would need to include in its written policies and procedures.

2. Examples. The written policies and procedures a lender would have to develop and follow under § 1041.18(a) depend on the types of loans that the lender makes. A lender that makes a covered short-term loan under § 1041.5 would have to develop and follow written policies and procedures to ensure compliance with the ability-to-repay requirements, including on projecting a consumer’s net income and payments on major financial obligations. In addition, if, for example, a lender uses an estimated housing expense when making a covered short-term loan under § 1041.5, it would have to develop and follow written policies and procedures for reliably estimating housing expense. These written policies and procedures could stipulate that the lender use, for example, data from the American Community Survey of the United States Census Bureau or a prescribed formula for estimating a consumer’s housing expense. Among other written policies and procedures, a lender that makes a covered loan under § 1041.5, § 1041.7, or § 1041.9 or a covered longer-term loan under § 1041.11 or § 1041.12 for which loan information is not furnished to a consumer reporting agency that compiles and maintains files on consumers on a nationwide basis would have to develop and follow written policies and procedures to furnish loan information to registered and provisionally registered information systems in accordance with § 1041.16. A lender that makes a covered loan subject to the requirements in § 1041.7 or § 1041.15 would also have to develop and follow written policies and procedures to provide the required disclosures to consumers.

1. Record retention. A lender must retain evidence of compliance with this part for 36 months after the date on which a covered loan ceases to be an outstanding loan.
2. Retention of loan agreement and documentation obtained in connection with a covered loan. To comply with the requirements in paragraph (b), a lender must retain or be able to reproduce an image of the loan agreement and documentation obtained in connection with a covered loan, including the following documentation as applicable:

1. General. Section 1041.18(b)(1) requires a lender to retain the loan agreement and documentation obtained in connection with a covered loan. The items of documentation listed in paragraph (b)(1) are non-exhaustive. Depending on the types of information it obtains in connection with a covered loan, a lender may need to retain additional documentation as evidence of compliance with this part.

2. Methods of retaining loan agreement and documentation obtained for a covered loan. Section 1041.18(b)(1) requires a lender either to retain the loan agreement and documentation obtained in connection with a covered loan in original form or to be able to reproduce an image of the loan agreement and documentation obtained for a covered loan accurately. For example, if the lender uses a consumer’s pay stub to verify the consumer’s net income, § 1041.18(b)(1) requires the lender to either retain a paper copy of the pay stub itself or be able to reproduce an image of the pay stub, and not merely the net income information that was contained in the pay stub. For documentation that the lender receives electronically, such as a consumer report from a registered information system, the lender could retain either the electronic version or a printout of the report.

1. Consumer report from an information system registered pursuant to § 1041.17(c)(2) or (d)(2);
2. Verification evidence, as described in §§ 1041.5(c)(3)(ii) and 1041.9(c)(3)(ii);

1. Types of verification evidence for consumer’s net income and major financial obligations. Section 1041.18(b)(1)(ii) requires a lender to retain the evidence that it used to verify a consumer’s borrowing history, net income, and major financial obligations. Comments 5(c)(3)(ii)(A)-1, 5(c)(3)(ii)(B)-1, and 5(c)(3)(ii)(D)-1 and comments 9(c)(3)(ii)(A)-1, 9(c)(3)(ii)(B)-1, and 9(c)(3)(ii)(D)-1 list types of evidence that can be used to verify a consumer’s net income and major financial obligations.

2. Estimate of housing expense. Sections 1041.5(c)(3)(ii)(D)(2) and 1041.9(c)(3)(ii)(D)(2) permit a lender to rely on an estimated housing expense for a consumer. Section 1041.18(b)(1)(ii) does not require a lender to retain verification evidence for estimated housing expense. Section 1041.18(b)(2)(ii)(B), however, does require a lender to retain an electronic record of this estimate. Furthermore, § 1041.18(a) requires a lender that uses an estimated housing expense to develop and maintain policies and procedures for reliably estimating housing expense.

1. Any written statement obtained from the consumer, as described in §§ 1041.5(c)(3)(i) and 1041.9(c)(3)(i);
2. Authorization of additional payment transfer, as described in § 1041.14(c)(3)(iii); and
3. Underlying one-time electronic transfer authorization or underlying signature check, as described in § 1041.14(d)(2).
4. Electronic records in tabular format regarding origination calculations and determinations for a covered loan. To comply with the requirements in this paragraph (b), a lender must retain electronic records in tabular format that include the following information:

1. General. Section 1041.18(b)(2) requires a lender to retain records regarding origination calculations and determinations for a covered loan in electronic, tabular format that establish compliance with this part. The items listed in paragraph (b)(2) are non-exhaustive. Depending on the types of covered loans it makes, a lender may need to retain additional records as evidence of compliance with this part.

2. Electronic records in tabular format. Section 1041.18(b)(2) requires a lender to retain records regarding origination calculations and determinations for a covered loan in electronic, tabular format. Tabular format means a format in which the individual data elements comprising the record can be transmitted, analyzed, and processed by a computer program, such as a widely used spreadsheet or database program. Data formats for image reproductions, such as PDF or document formats used by word processing programs, are not tabular formats. A lender would not have to retain the records required in § 1041.18(b)(2) in a single, combined spreadsheet or database with the records required in paragraphs (b)(3), (b)(4), and (b)(5) of this section. Section 1041.18(b)(2), however, requires a lender to be able to associate the records for a covered loan in paragraph (b)(2) with unique loan and consumer identifiers in § 1041.18(b)(4).

1. For a covered short-term loan made under § 1041.5:
2. The projection made by the lender of the amount and timing of a consumer’s net income;
3. The projections made by the lender of the amounts and timing of a consumer’s major financial obligations;
4. Calculated residual income; and
5. Estimated basic living expenses for the consumer;
6. For a covered longer-term loan made under § 1041.9:
7. The projection made by the lender of the amount and timing of a consumer’s net income;
8. The projections made by the lender of the amounts and timing of a consumer’s major financial obligations;
9. Calculated residual income; and
10. Estimated basic living expenses for the consumer.
11. Whether a non-covered bridge loan was outstanding in the preceding 30 days;
12. Electronic records in tabular format for a consumer who qualifies for an exception to or overcomes a presumption of unaffordability for a covered loan. To comply with the requirements in this paragraph (b), a lender must retain electronic records in tabular format that include the following information for a covered loan:

1. General. Section 1041.18(b)(3) requires a lender to retain records for a consumer who qualifies for an exception to or overcomes a presumption of unaffordability for a covered loan in electronic, tabular format that establish compliance with this part. The items listed in paragraph (b)(3) are non-exhaustive. Depending on the types of covered loans it makes, a lender may need to retain additional records as evidence of compliance with this part.

2. Electronic records in tabular format. Section 1041.18(b)(3) requires a lender to retain records for a consumer who qualifies for an exception to or overcomes a presumption of unaffordability for a covered loan in electronic, tabular format. See comment 18(b)(2)-1 for a description of how to retain electronic records in tabular format. A lender would not have to retain the records required in § 1041.18(b)(3) in a single, combined spreadsheet or database with the records required in paragraphs (b)(2), (b)(3), and (b)(5) of this section. Section 1041.18(b)(3), however, requires a lender to be able to associate the records for a covered loan in paragraph (b)(3) with unique loan and consumer identifiers in § 1041.18(b)(4).

1. For a consumer who qualifies for the exception in § 1041.6(b)(2) to the presumption of unaffordability in § 1041.6(b)(1) for a sequence of covered short-term loans:
2. Percentage difference between the amount to be paid in connection with the new covered short-term loan (including the amount financed, charges included in the total cost of credit, and charges excluded from the total cost of credit) and:
3. Either:
4. The amount that the consumer paid in full on the prior covered short-term loan (including the amount financed and charges included in the total cost of credit, but excluding any charges excluded from the total cost of credit); or
5. The amount that the consumer paid on the prior covered short-term loan that is being rolled over or renewed (including the amount financed and charges included in the total cost of credit but excluding any charges that are excluded from the total cost of credit);
6. Loan term in days of the new covered short-term loan; and
7. The term in days of the period over which the consumer made payment or payments on the prior covered short-term loan;
8. For a consumer who overcomes a presumption of unaffordability in § 1041.6 for a covered short-term: Dollar difference between the consumer’s financial capacity projected for the new covered short-term loan and the consumer’s financial capacity since obtaining the prior loan;
9. For a consumer who qualifies for an exception in § 1041.10(b)(2) to the presumption of unaffordability in § 1041.10(b)(1) for a covered longer-term loan following a covered short-term or covered longer-term balloon-payment loan: Percentage difference between the size of the largest payment on the covered longer-term loan and the largest payment on the prior covered short-term or covered longer-term balloon-payment loan;
10. For a consumer who qualifies for an exception in § 1041.10(c)(2) to the presumption of unaffordability in § 1041.10(c)(1) for a covered longer-term loan during an unaffordable outstanding loan:
11. Percentage difference between the size of the largest payment on the covered longer-term loan and the size of the smallest payment on the outstanding loan; and
12. Percentage difference between the total cost of credit on the covered longer-term loan and the total cost of credit on the outstanding loan;
13. For a consumer who overcomes a presumption of unaffordability in § 1041.10 for a covered longer-term loan: Dollar difference between the consumer’s financial capacity projected for the new covered longer-term loan and the consumer’s financial capacity during the 30 days prior to the lender’s determination.
14. Electronic records in tabular format regarding loan type and terms. To comply with the requirements in this paragraph (b), a lender must retain electronic records in tabular format that include the following information for a covered loan:

1. General. Section 1041.18(b)(4) requires a lender to retain records regarding loan type and terms, including unique loan and consumer identifiers, for a covered loan in electronic, tabular format that establish compliance with this part. The items listed in paragraph (b)(4) are non-exhaustive. Depending on the types of covered loans it makes, a lender may need to retain additional records as evidence of compliance with this part.

2. Electronic records in tabular format. Section 1041.18(b)(4) requires a lender to retain records regarding loan type and terms for a covered loan in electronic, tabular format. See comment 18(b)(2)-1 for a description of how to retain electronic records in tabular format. A lender would not have to retain the records required in § 1041.18(b)(4) in a single, combined spreadsheet or database with the records required in paragraphs (b)(2), (b)(3), and (b)(5) of this section.

1. As applicable, the information listed in § 1041.16(c)(1)(i) through (iii), § 1041.16(c)(1)(v) through (viii), and§ 1041.16(c)(2)
2. Whether the loan is made under § 1041.5, § 1041.7, § 1041.9, § 1041.11, or § 1041.12;
3. Leveraged payment mechanism(s) obtained by the lender from the consumer;
4. Whether the lender obtained vehicle security from the consumer; and
5. For a covered short-term loan made under § 1041.5 or § 1041.7: Loan number in loan sequence.
6. Electronic records in tabular format regarding payment history and loan performance. To comply with the requirements in this paragraph (b), a lender must retain electronic records in tabular format that include the following information for a covered loan:

1. General. Section 1041.18(b)(5) requires a lender to retain records regarding payment history and loan performance for a covered loan in electronic, tabular format that establish compliance with this part. The items listed in paragraph (b)(5) are non-exhaustive. Depending on the types of covered loans it makes, a lender may need to retain additional records as evidence of compliance with this part.

2. Electronic records in tabular format. Section 1041.18(b)(5) requires a lender to retain records regarding loan performance and payment history for a covered loan in electronic, tabular format. See comment 18(b)(2)-1 for a description of how to retain electronic records in tabular format. A lender would not have to retain the records required in § 1041.18(b)(5) in a single, combined spreadsheet or database with the records required in paragraphs (b)(2), (b)(3), and (b)(4) of this section. Section 1041.18(b)(5), however, requires a lender to be able to associate the records for a covered loan in paragraph (b)(5) with unique loan and consumer identifiers in § 1041.18(b)(4).

1. History of payments received and attempted payment transfers, as defined in § 1041.14(a)(1):
2. Date of receipt of payment or attempted payment transfer;
3. Amount of payment due;
4. Amount of attempted payment transfer;
5. Amount of payment received or transferred; and
6. Payment channel used for attempted payment transfer;
7. If an attempt to transfer funds from a consumer’s account was subject to the prohibition in § 1041.14(b)(1), whether the authorization to initiate a payment transfer was obtained from the consumer in accordance with the requirements in § 1041.14(c) or (d);
8. If a full payment, including the amount financed, charges included in the cost of credit, and charges excluded from the cost of credit, was not received or transferred by the contractual due date, the maximum number of days, up to 180 days, any full payment was past due;

1. Maximum number of days, up to 180 days, any full payment was past due. Section 1041.18(b)(5)(iii) requires a lender that makes a covered loan to retain information on the maximum number of days, up to 180 days, any full payment, including the amount financed, charges included in the total cost of credit, and charges excluded from the cost of credit, was past due, in relation to the payment schedule established in the loan agreement. If a consumer makes a partial payment on the contractual due date and the remainder of the payment 10 days later, the lender would have to record a full payment as being 10 days past due. If multiple full payments were past due, the lender would have to record the number of days for the full payment that was past due for the longest period of time. For example, if a consumer made one full payment on a covered loan 21 days after the contractual due date and another full payment on the loan 8 days after the contractual due date, the lender would have to record a full payment on the loan as being 21 days past due. If a consumer fails to make a full payment on a covered loan more than 180 days after the contractual due date, the lender would only have to record a full payment as being 180 days past due.

1. For a covered longer-term loan made under § 1041.12: whether the loan was charged off;
2. For a loan with vehicle security: whether repossession of the vehicle was initiated;

1. Initiation of vehicle repossession. Section 1041.18(b)(5)(v) requires a lender that makes a covered loan with vehicle security to retain information on whether it initiated repossession of the consumer’s vehicle. Initiation of vehicle repossession includes but is not limited to the lender mailing a notice to the consumer that it will physically repossess the consumer’s vehicle within a certain period of time. Initiation of vehicle repossession also covers other actions that deprive or commence the process of depriving the consumer of the use of her vehicle. For example, if a lender installs a device that can remotely disable a consumer’s vehicle as a condition of making the loan, the activation of that device, which renders the consumer’s vehicle non-operational, or a notice that the device will be activated on or after a particular date would be an initiation of vehicle repossession.

1. Date of last or final payment received; and
2. The information listed in § 1041.16(c)(3)(i) and (ii).

**§ 1041.19 Prohibition against evasion.**

A lender must not take any action with the intent of evading the requirements of this part.

1. Lender action taken with the intent of evading the requirements of the rule. Section 1041.19 provides that a lender must not take any action with the intent of evading the requirements of part 1041. In determining whether a lender has taken action with the intent of evading the requirements of part 1041, the form, characterization, label, structure, or written documentation of the lender’s action shall not be dispositive. Rather, the actual substance of the lender’s action as well as other relevant facts and circumstances will determine whether the lender’s action was taken with the intent of evading the requirements of part 1041. If the lender’s action is taken solely for legitimate business purposes, it is not taken with the intent of evading the requirements of part 1041. By contrast, if a consideration of all relevant facts and circumstances reveals the presence of a purpose that is not a legitimate business purpose, the lender’s action may have been taken with the intent of evading the requirements of part 1041. A lender action that is taken with the intent of evading the requirements of part 1041 may be knowing or reckless. Fraud, deceit, or other unlawful or illegitimate activity may be one fact or circumstance that is relevant to the determination of whether a lender’s action was taken with the intent of evading the requirements of part 1041, but fraud, deceit, or other unlawful or illegitimate activity is not a prerequisite to such a finding.

2. Illustrative examples—lender actions that may have been taken with the intent of evading the requirements of the rule. The following non-exhaustive examples illustrate lender actions that, depending on the relevant facts and circumstances, may have been taken with the intent of evading the requirements of part 1041 and thus may have violated § 1041.19:

i. A lender makes non-covered loans to consumers without assessing their ability to repay and with a contractual duration of 46 days or longer and a total cost of credit exceeding a rate of 36 percent per annum, as measured at the time of consummation. As a matter of lender practice for loans with these contractual terms, more than 72 hours after consumers receive the entire amount of funds that they are entitled to receive under their loans, the lender routinely offers consumers a monetary or non-monetary incentive (e.g., the opportunity to skip a payment) in exchange for allowing the lender or its affiliate to obtain a leveraged repayment mechanism or vehicle security, and consumers routinely agree to provide the leveraged payment mechanism or vehicle security. The lender began the practice following the issuance of the final rule that is codified in 12 CFR part 1041. The lender’s prior practice when making loans to consumers with these contractual terms was to obtain a leveraged payment mechanism or vehicle security at or prior to consummation. See § 1041.3(b)(2)(ii) and related commentary.

ii. A lender makes covered short-term loans to consumers without assessing their ability to repay and with a contractual duration of 14 days and a lump-sum repayment structure. The loan contracts provide for a “recurring late fee” as a lender remedy that is automatically triggered in the event of a consumer’s delinquency (i.e., if a consumer does not pay the entire lump-sum amount on the contractual due date, with no grace period). The recurring late fee is to be paid biweekly while the loan remains outstanding. The amount of the recurring late fee is equivalent to the fee that the lender charges on transactions that are considered rollovers under applicable State law. For consumers who are delinquent, the lender takes no other steps to collect on the loan other than charging the recurring late fees for 90 days. The lender also gives non-delinquent consumers who express an inability to repay the principal by the contractual due date the option of paying the recurring late fee. See §§ 1041.6, 1041.7, and related commentary.

iii. A lender makes non-covered loans to consumers without assessing their ability to repay, and the loans have the following terms: a contractual duration of 60 days, repayment through four periodic payments each due every 15 days, and a total cost of credit that is below 36 percent per annum, as measured at the time of consummation. The lender also obtains a leveraged payment mechanism at or prior to consummation. The loan contract imposes a penalty interest rate of 360 percent per annum, i.e., more than 10 times the contractual annual percentage rate, as a lender remedy that is automatically triggered in the event of the consumer’s delinquency (i.e., if the consumer does not make a periodic payment or repay the entire loan balance when due, with no grace period). For consumers who are delinquent, the lender takes no steps to collect on the loan other than charging the penalty interest rate for 90 days. The lender also gives non-delinquent consumers who express an inability to repay the principal by the contractual due date the option of paying the penalty interest rate. The lender did not include the penalty interest rate in its loan contracts prior to the issuance of the final rule that is codified in 12 CFR part 1041. See § 1041.3(b)(2)(ii) and related commentary.

iv. A lender collects payment on its covered longer-term installment loans primarily through recurring electronic fund transfers authorized by consumers at consummation. As a matter of lender policy and practice, after a first ACH payment transfer to a consumer’s account for the full payment amount is returned for nonsufficient funds, the lender makes a second payment transfer to the account on the following day for $1.00. If the second payment transfer succeeds, the lender immediately splits the amount of the full payment into two separate payment transfers and makes both payment transfers to the account at the same time, resulting in two returns for nonsufficient funds in the vast majority of cases. The lender developed the policy and began the practice shortly prior to the effective date of the rule that is codified in 12 CFR part 1041, which, among other provisions, prohibits a lender from attempting to withdraw payment from a consumer’s account after two consecutive attempts have failed due to nonsufficient funds, unless the lender obtains a new and specific authorization from the consumer. The lender’s prior policy and practice when re-presenting the first failed payment transfer was to re-present for the payment’s full amount. See §§ 1041.13 and 1041.14 and related commentary.

3. Illustrative example—lender action not taken with the intent of evading the requirements of the rule. The following example illustrates a lender action that is not taken with the intent of evading the requirements of part 1041 and thus does not violate § 1041.19. Prior to the effective date of the rule that is codified in 12 CFR part 1041, a lender offers a loan product to consumers with a contractual duration of 30 days (Loan Product A). If the lender had continued to make Loan Product A to consumers following the effective date of the rule, Loan Product A would have been treated as a covered short-term loan, requiring the lender to make an ability-to-repay determination under § 1041.5. However, as of the effective date, the lender ceases offering Loan Product A and, in its place, offers consumers an alternative loan product with a 46-day contractual duration and other terms and conditions that result in treatment as a covered longer-term loan (Loan Product B). For Loan Product B, the lender does not make an ability-to-repay determination under § 1041.9, but the lender satisfies the requirements of § 1041.11 or § 1041.12, i.e., one of the conditional exemptions for covered longer-term loans.

See §§ 1041.11 and 1041.12 and related commentary.

**§ 1041.20 Severability.**

The provisions of this rule are separate and severable from one another. If any provision is stayed or determined to be invalid, it is the Bureau’s intention that the remaining provisions shall continue in effect.