Consumer Financial Protection Bureau

1700 G Street NW, Washington, DC 20552

December 7, 2021

Unofficial Redline of the LIBOR Transition Final Rule

On December 7, 2021, the Consumer Financial Protection Bureau (Bureau) issued a final rule (LIBOR Transition Final Rule) to revise several provisions of Regulation Z and its commentary to facilitate creditors' transition away from using LIBOR as an index for variable-rate consumer credit products. The Bureau is releasing this unofficial, informal redline to assist industry and other stakeholders in reviewing the changes to Regulation Z's regulatory text and commentary.

The underlying (unmarked) text in this document reflects the existing text of the relevant provisions of Regulation Z and its commentary that are impacted by the final rule. The changes that the final rule makes to Regulation Z and its commentary are marked in red.

This redline is not a substitute for reviewing Regulation Z, its commentary, or the final rule. If any conflicts exist between this redline and the text of Regulation Z, its commentary, or the final rule, the documents published in the *Federal Register* are the controlling documents. The redline includes asterisks to indicate where it omits text from current Regulation Z or its commentary that the final rule would not change.

PART 1026—TRUTH IN LENDING (REGULATION Z)

Authority: 12 U.S.C. 2601, 2603-2605, 2607, 2609, 2617, 3353, 5511, 5512, 5532, 5581; 15 U.S.C. 1601 *et seq.*

Subpart B—Open-End Credit

* * * * *

§ 1026.9 Subsequent disclosure requirements.

* * * * *

(c) *Change in terms* —(1) *Rules affecting home-equity plans* —(i) *Written notice required.* * * *

(ii) *Notice not required.* For home-equity plans subject to the requirements of § 1026.40, a creditor is not required to provide notice under this section when the change involves a reduction of any component of a finance or other charge (except that on or after October 1, 2022, this provision on when the change involves a reduction of any component of a finance or other charge does not apply to any change in the margin when a LIBOR index is replaced, as permitted by § 1026.40(f)(3)(ii)(A) or (B)) or when the change results from an agreement involving a court proceeding.

* * * * *

(2) *Rules affecting open-end (not home-secured) plans* —(i) *Changes where written advance notice is required* —* * *

* * * * *

(v) *Notice not required.* For open-end plans (other than home equity plans subject to the requirements of § 1026.40) a creditor is not required to provide notice under this section:

(A) When the change involves charges for documentary evidence; a reduction of any component of a finance or other charge~~;~~ (except that on or after October 1, 2022, this provision on when the change involves a reduction of any component of a finance or other charge does not apply to any change in the margin when a LIBOR index is replaced, as permitted by

§ 1026.55(b)(7)(i) or (ii)); suspension of future credit privileges (except as provided in paragraph (c)(2)(vi) of this section) or termination of an account or plan; when the change results from an agreement involving a court proceeding; when the change is an extension of the grace period; or if the change is applicable only to checks that access a credit card account and the changed terms are disclosed on or with the checks in accordance with paragraph (b)(3) of this section;

*   *   *   *   *

Subpart E—Special Rules for Certain Home Mortgage Transactions

*   *   *   *   *

§ 1026.36 Prohibited acts or practices and certain requirements for credit secured by a dwelling.

*   *   *   *   *

(a) *Definitions*—* * *

(4) *Seller financers; three properties.* A person (as defined in § 1026.2(a)(22)) that meets all of the following criteria is not a loan originator under paragraph (a)(1) of this section:

*   *   *   *   *

(iii) The person provides seller financing that meets the following requirements:

*   *   *   *   *

(C) The financing has a fixed rate or an adjustable rate that is adjustable after five or more years, subject to reasonable annual and lifetime limitations on interest rate increases. If the financing agreement has an adjustable rate, the rate is determined by the addition of a margin to an index rate and is subject to reasonable rate adjustment limitations. The index the adjustable rate is based on is a widely available index such as indices for U.S. Treasury securities or ~~LIBOR~~SOFR.

*   *   *   *   *

(5) *Seller financers; one property*. A natural person, estate, or trust that meets all of the following criteria is not a loan originator under paragraph (a)(1) of this section:

*   *   *   *   *

(iii) The natural person, estate, or trust provides seller financing that meets the following requirements:

*   *   *   *   *

(B) The financing has a fixed rate or an adjustable rate that is adjustable after five or more years, subject to reasonable annual and lifetime limitations on interest rate increases. If the financing agreement has an adjustable rate, the rate is determined by the addition of a margin to an index rate and is subject to reasonable rate adjustment limitations. The index the adjustable rate is based on is a widely available index such as indices for U.S. Treasury securities or ~~LIBOR~~SOFR.

*   *   *   *   *

§ 1026.40 Requirements for home equity plans.

*   *   *   *   *

(f) *Limitations on home equity plans*. No creditor may, by contract or otherwise:

*   *   *   *   *

(3) Change any term, except that a creditor may:

*   *   *   *   *

(ii~~)~~)(A) Change the index and margin used under the plan if the original index is no longer available, the ~~new~~replacement index has ~~an~~ historical ~~movement~~fluctuations substantially similar to that of the original index, and the ~~new~~replacement index and replacement margin would have resulted in an annual percentage rate substantially similar to the rate in effect at the time the original index became unavailable. If the replacement index is newly established and therefore does not have any rate history, it may be used if it and the replacement margin will produce an annual percentage rate substantially similar to the rate in effect when the original index became unavailable; or

(B) If a variable rate on the plan is calculated using a LIBOR index, change the LIBOR index and the margin for calculating the variable rate on or after April 1, 2022, to a replacement index and a replacement margin, as long as historical fluctuations in the LIBOR index and replacement index were substantially similar, and as long as the replacement index value in effect on October 18, 2021, and replacement margin will produce an annual percentage rate substantially similar to the rate calculated using the LIBOR index value in effect on October 18, 2021, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. If the replacement index is newly established and therefore does not have any rate history, it may be used if the replacement index value in effect on October 18, 2021, and the replacement margin will produce an annual percentage rate substantially similar to the rate calculated using the LIBOR index value in effect on October 18, 2021, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. If the replacement index is not published on October 18, 2021, the creditor generally must use the next calendar day for which both the LIBOR index and the replacement index are published as the date for selecting indices values in determining whether the annual percentage rate based on the replacement index is substantially similar to the rate based on the LIBOR index. The one exception is that if the replacement index is the spread-adjusted index based on SOFR recommended by the Alternative Reference Rates Committee for consumer products to replace the 1-month, 3-month, 6-month, or 1-year U.S. Dollar LIBOR index, the creditor must use the index value on June 30, 2023, for the LIBOR index and, for the SOFR-based spread-adjusted index for consumer products, must use the index value on the first date that index is published, in determining whether the annual percentage rate based on the replacement index is substantially similar to the rate based on the

LIBOR index.

*   *   *   *   *

Subpart G—Special Rules Applicable to Credit Card Accounts and Open-End Credit Offered to College Students

*   *   *   *   *

§ 1026.55 Limitations on increasing annual percentage rates, fees, and charges.

*   *   *   *   *

(b) *Exceptions*. A card issuer may increase an annual percentage rate or a fee or charge required to be disclosed under § 1026.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii) pursuant to an exception set forth in this paragraph even if that increase would not be permitted under a different exception.

*   *   *   *   *

(7) *Index replacement and margin change exception*. A card issuer may increase an annual percentage rate when:

(i) The card issuer changes the index and margin used to determine the annual percentage rate if the original index becomes unavailable, as long as historical fluctuations in the original and replacement indices were substantially similar, and as long as the replacement index and replacement margin will produce a rate substantially similar to the rate that was in effect at the time the original index became unavailable. If the replacement index is newly established and therefore does not have any rate history, it may be used if it and the replacement margin will produce a rate substantially similar to the rate in effect when the original index became unavailable; or

(ii) If a variable rate on the plan is calculated using a LIBOR index, the card issuer changes the LIBOR index and the margin for calculating the variable rate on or after April 1, 2022, to a replacement index and a replacement margin, as long as historical fluctuations in the

LIBOR index and replacement index were substantially similar, and as long as the replacement index value in effect on October 18, 2021, and replacement margin will produce an annual percentage rate substantially similar to the rate calculated using the LIBOR index value in effect on October 18, 2021, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. If the replacement index is newly established and therefore does not have any rate history, it may be used if the replacement index value in effect on October 18, 2021, and the replacement margin will produce an annual percentage rate substantially similar to the rate calculated using the LIBOR index value in effect on October 18, 2021, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. If the replacement index is not published on October 18, 2021, the card issuer generally must use the next calendar day for which both the LIBOR index and the replacement index are published as the date for selecting indices values in determining whether the annual percentage rate based on the replacement index is substantially similar to the rate based on the LIBOR index. The one exception is that if the replacement index is the spread-adjusted index based on SOFR recommended by the Alternative Reference Rates Committee for consumer products to replace the 1-month, 3-month, 6-month, or 1-year U.S. Dollar LIBOR index, the card issuer must use the index value on June 30, 2023, for the LIBOR index and, for the SOFR-based spread-adjusted index for consumer products, must use the index value on the first date that index is published, in determining whether the annual percentage rate based on the replacement index is substantially similar to the rate based on the LIBOR index.

*   *   *   *   *

§ 1026.59 Reevaluation of rate increases.

*   *   *   *   *

(f) *Termination of the obligation to review such factors*. The obligation to review factors described in paragraph (a) and (d) of this section ceases to apply:

* * * * *

(3) Effective April 1, 2022, in the case where the rate applicable immediately prior to the increase was a variable rate with a formula based on a LIBOR index, the card issuer reduces the annual percentage rate to a rate determined by a replacement formula that is derived from a replacement index value on October 18, 2021, plus replacement margin that is equal to the LIBOR index value on October 18, 2021, plus the margin used to calculate the rate immediately prior to the increase (previous formula). A card issuer must satisfy the conditions set forth in § 1026.55(b)(7)(ii) for selecting a replacement index. If the replacement index is not published on October 18, 2021, the card issuer generally must use the values of the indices on the next calendar day for which both the LIBOR index and the replacement index are published as the index values to use to determine the replacement formula. The one exception is that if the replacement index is the spread-adjusted index based on SOFR recommended by the Alternative Reference Rates Committee for consumer products to replace the 1-month, 3-month, 6-month, or 1-year U.S. Dollar LIBOR index, the card issuer must use the index value on June 30, 2023, for the LIBOR index and, for the SOFR-based spread-adjusted index for consumer products, must use the index value on the first date that index is published, as the index values to use to determine the replacement formula.

* * * * *

(h) *Exceptions*.

* * * * *

(3) *Transition from LIBOR*. The requirements of this section do not apply to increases in an annual percentage rate that occur as a result of the transition from the use of a LIBOR index as the index in setting a variable rate to the use of a replacement index in setting a variable

rate if the change from the use of the LIBOR index to a replacement index occurs in accordance with § 1026.55(b)(7)(i) or (ii).

* * * * *

Appendix H to Part 1026— Closed-End Model Forms and Clauses

* * * * *

H-4(D)(2) SAMPLE FORM FOR § 1026.20(C)

NOTE: From April 1, 2022 through September 30, 2023, this final rule retains both form H-4(D)(2) that was in effect prior to April 1, 2022 (denoted as the "Legacy Form") and a revised H-4(D)(2) form that will become effective on April 1, 2022 (denoted as the "Revised Form").

LEGACY FORM – CAN ONLY BE USED THROUGH SEPTEMBER 30, 2023

July 20, 2012

Jordan and Dana Smith
4700 Jones Drive
Memphis, TN 38109

Springside Mortgage
1234 Main St
Memphis, TN 31801

Changes to Your Mortgage Interest Rate and Payments on September 1, 2012

Under the terms of your Adjustable-Rate Mortgage (ARM), you had a three-year period during which your interest rate stayed the same. That period ends on September 1, 2012, so on that date your interest rate and mortgage payment change. After that, your interest rate may change annually for the rest of your loan term.

	Current Rate and Monthly Payment	**New** Rate and Monthly Payment
Interest Rate	4.25%	6.25%
Total Monthly Payment	**$983.88**	**$1,211.81 (due October 1, 2012)**

Interest Rate: We calculated your interest rate by taking a published "index rate" and adding a certain number of percentage points, called the "margin." Under your loan agreement, your index rate is the 1-year LIBOR and your margin is 2.25%. The LIBOR index is published daily in the Wall Street Journal.

Rate Limits: Your rate cannot go higher than 11.625% over the life of the loan. Your rate can change each year by no more than 2.00%.

New Interest Rate and Monthly Payment: The table above shows your new interest rate and new monthly payment. Your new payment is based on the LIBOR index, your margin, your loan balance of $189,440, and your remaining loan term of 324 months.

Prepayment Penalty: Keep in mind that if you pay off your loan, refinance or sell your home before September 1, 2012, you could be charged a penalty. Contact Springside Mortgage at (800) 765-4321 for more information, such as the maximum amount of the penalty you could be charged.

REVISED FORM – CAN BE USED ON OR AFTER APRIL 1, 2022

July 20, 2022

Jordan and Dana Smith
4700 Jones Drive
Memphis, TN 38109

Springside Mortgage
1234 Main St
Memphis, TN 31801

Changes to Your Mortgage Interest Rate and Payments on September 1, 2022

Under the terms of your Adjustable-Rate Mortgage (ARM), you had a three-year period during which your interest rate stayed the same. That period ends on September 1, 2022, so on that date your interest rate and mortgage payment change. After that, your interest rate may change every six months for the rest of your loan term.

	Current Rate and Monthly Payment	**New** Rate and Monthly Payment
Interest Rate	4.25%	6.25%
Total Monthly Payment	**$983.88**	**$1,211.81 (due October 1, 2022)**

Interest Rate: We calculated your interest rate by taking a published "index rate" and adding a certain number of percentage points, called the "margin." Under your loan agreement, your index rate is the 30-day Average SOFR (SOFR) and your margin is 2.75%. The SOFR index is published daily on the website of the Federal Reserve Bank of New York.

Rate Limits: Your rate cannot go higher than 11.625% over the life of the loan. Your rate can change every six months by no more than 1.00%.

New Interest Rate and Monthly Payment: The table above shows your new interest rate and new monthly payment. Your new payment is based on the SOFR index, your margin, your loan balance of $189,440, and your remaining loan term of 324 months.

Prepayment Penalty: Keep in mind that if you pay off your loan, refinance or sell your home before September 1, 2022, you could be charged a penalty. Contact Springside Mortgage at (800) 765-4321 for more information, such as the maximum amount of the penalty you could be charged.

*   *   *   *   *

H-4(D)(4) SAMPLE FORM FOR § 1026.20(D)

NOTE: From April 1, 2022 through September 30, 2023, the final rule retains both form H-4(D)(4) that was in effect prior to April 1, 2022 (denoted as the "Legacy Form") and a revised H-4(D)(4) form that will become effective on April 1, 2022 (denoted as the "Revised Form").

LEGACY FORM – CAN ONLY BE USED THROUGH SEPTEMBER 30, 2023

Jordan and Dana Smith
4700 Jones Drive
Memphis, TN 38109

Springside Mortgage
1234 Main St
Memphis, TN 31801

Changes to Your Mortgage Interest Rate and Payments on September 1, 2012

Under the terms of your Adjustable-Rate Mortgage (ARM), you had a three-year period during which your interest rate stayed the same. That period ends on September 1, 2012, so on that date your interest rate may change. After that, your interest rate may change annually for the rest of your loan term. Any change in your interest rate may also change your mortgage payment. Also, as of September 1, 2012 your mortgage payment will include principal as well as interest.

	Current Rate and Monthly Payment	**Estimated New** Rate and Monthly Payment
Interest Rate	4.25%	6.25%
Principal	- **none** -	$237.70
Interest	$708.33	$1,041.66
Escrow (Taxes and Insurance)	$450.00	$450.00
Total Monthly Payment	**$1,158.33**	**$1,729.36 (due October 1, 2012)**

Interest Rate: We calculated your interest rate by taking a published "index rate" and adding a certain number of percentage points, called the "margin." Under your loan agreement, your index rate is the 1-year LIBOR and your margin is 2.25%. The LIBOR index is published daily in the Wall Street Journal.

Rate Limits: Your rate cannot go higher than 11.625% over the life of the loan. Your rate can change each year by no more than 2.00%. We did not include an additional 1.00% interest rate increase to your new rate because a rate limit applied. This additional increase may be applied to your interest rate when it adjusts again on September 1, 2013.

New Interest Rate and Monthly Payment: The table above shows our estimate of your new interest rate and new monthly payment. These amounts are based on the LIBOR index as of now, your margin, your loan balance of $200,000, and your remaining loan term of 324 months. **However, if the LIBOR index has changed when we calculate the exact amount of your new interest rate and payment, your new interest rate and payment may be different from the estimate above. We will send you another notice with the exact amount of your new interest rate and payment 2 to 4 months before the first new payment is due, if your new payment will be different from your current payment.**

Prepayment Penalty: None

If You Anticipate Problems Making Your Payments:

- Contact Springside Mortgage at 1-800-555-4567 as soon as possible.
- If you seek an alternative to the upcoming changes to your interest rate and payment, the following options **may** be possible (most are subject to lender approval):
  - Refinance your loan with us or another lender;
  - Sell your home and use the proceeds to pay off your current loan;
  - Modify your loan terms with us;
  - Payment forbearance temporarily gives you more time to pay your monthly payment.
- If you would like contact information for counseling agencies or programs in your area, call the U.S. Department of Housing and Urban Development (HUD) at 800-569-4287 or visit www.hud.gov/offices/hsg/sfh/hcc/hcs.cfm. If you would like contact information for a State housing finance agency, visit the U.S. Consumer Financial Protection Bureau (CFPB) at http://www.consumerfinance.gov.

REVISED FORM – CAN BE USED ON OR AFTER APRIL 1, 2022

April 15, 2022

Jordan and Dana Smith
4700 Jones Drive
Memphis, TN 38109

Springside Mortgage
1234 Main St
Memphis, TN 31801

Changes to Your Mortgage Interest Rate and Payments on November 1, 2022

Under the terms of your Adjustable-Rate Mortgage (ARM), you had a three-year period during which your interest rate stayed the same. That period ends on November 1, 2022, so on that date your interest rate may change. After that, your interest rate may change every six months for the rest of your loan term. Any change in your interest rate may also change your mortgage payment. Also, as of November 1, 2022 your mortgage payment will include principal as well as interest.

	Current Rate and Monthly Payment	**Estimated** **New** Rate and Monthly Payment
Interest Rate	4.25%	6.25%
Principal	- **none** -	$237.70
Interest	$708.33	$1,041.66
Escrow (Taxes and Insurance)	$450.00	$450.00
Total Monthly Payment	**$1,158.33**	**$1,729.36 (due December 1, 2022)**

Interest Rate: We calculated your interest rate by taking a published "index rate" and adding a certain number of percentage points, called the "margin." Under your loan agreement, your index rate is the 30-day Average SOFR (SOFR) and your margin is 2.75%. The SOFR index is published daily on the website of the Federal Reserve Bank of New York.

Rate Limits: Your rate cannot go higher than 11.625% over the life of the loan. Your rate can change every six months by no more than 1.00%. We did not include an additional 1.00% interest rate increase to your new rate because a rate limit applied. This additional increase may be applied to your interest rate when it adjusts again on May 1, 2023.

New Interest Rate and Monthly Payment: The table above shows our estimate of your new interest rate and new monthly payment. These amounts are based on the SOFR index as of now, your margin, your loan balance of $200,000, and your remaining loan term of 324 months. **However, if the SOFR index has changed when we calculate the exact amount of your new interest rate and payment, your new interest rate and payment may be different from the estimate above. We will send you another notice with the exact amount of your new interest rate and payment 2 to 4 months before the first new payment is due, if your new payment will be different from your current payment.**

Prepayment Penalty: None

If You Anticipate Problems Making Your Payments:

- Contact Springside Mortgage at 1-800-555-4567 as soon as possible.
- If you seek an alternative to the upcoming changes to your interest rate and payment, the following options **may** be possible (most are subject to lender approval):
  - Refinance your loan with us or another lender;
  - Sell your home and use the proceeds to pay off your current loan;
  - Modify your loan terms with us;
  - Payment forbearance temporarily gives you more time to pay your monthly payment.
- If you would like contact information for counseling agencies or programs in your area, call the U.S. Department of Housing and Urban Development (HUD) at 800-569-4287 or visit www.hud.gov/offices/hsg/sfh/hcc/hcs.cfm. If you would like contact information for a State housing finance agency, visit the U.S. Consumer Financial Protection Bureau (CFPB) at http://www.consumerfinance.gov.

*   *   *   *   *

Appendix H to Part 1026—Closed-End Model Forms and Clauses

*   *   *   *   *

NOTE: Effective October 1, 2023, only the Revised Forms for H-4(D)(2) and (4) would be retained in appendix H.

H-4(D)(2) Sample Form for § 1026.20(c)

July 20, 2022

Jordan and Dana Smith
4700 Jones Drive
Memphis, TN 38109

Springside Mortgage
1234 Main St
Memphis, TN 31801

Changes to Your Mortgage Interest Rate and Payments on September 1, 2022

Under the terms of your Adjustable-Rate Mortgage (ARM), you had a three-year period during which your interest rate stayed the same. That period ends on September 1, 2022, so on that date your interest rate and mortgage payment change. After that, your interest rate may change every six months for the rest of your loan term.

	Current Rate and Monthly Payment	**New** Rate and Monthly Payment
Interest Rate	4.25%	6.25%
Total Monthly Payment	**$983.88**	**$1,211.81 (due October 1, 2022)**

Interest Rate: We calculated your interest rate by taking a published "index rate" and adding a certain number of percentage points, called the "margin." Under your loan agreement, your index rate is the 30-day Average SOFR (SOFR) and your margin is 2.75%. The SOFR index is published daily on the website of the Federal Reserve Bank of New York.

Rate Limits: Your rate cannot go higher than 11.625% over the life of the loan. Your rate can change every six months by no more than 1.00%.

New Interest Rate and Monthly Payment: The table above shows your new interest rate and new monthly payment. Your new payment is based on the SOFR index, your margin, your loan balance of $189,440, and your remaining loan term of 324 months.

Prepayment Penalty: Keep in mind that if you pay off your loan, refinance or sell your home before September 1, 2022, you could be charged a penalty. Contact Springside Mortgage at (800) 765-4321 for more information, such as the maximum amount of the penalty you could be charged.

*   *   *   *   *

H-4(D)(4) SAMPLE FORM FOR § 1026.20(D)

April 15, 2022

Jordan and Dana Smith
4700 Jones Drive
Memphis, TN 38109

Springside Mortgage
1234 Main St
Memphis, TN 31801

Changes to Your Mortgage Interest Rate and Payments on November 1, 2022

Under the terms of your Adjustable-Rate Mortgage (ARM), you had a three-year period during which your interest rate stayed the same. That period ends on November 1, 2022, so on that date your interest rate may change. After that, your interest rate may change every six months for the rest of your loan term. Any change in your interest rate may also change your mortgage payment. Also, as of November 1, 2022 your mortgage payment will include principal as well as interest.

	Current Rate and Monthly Payment	**Estimated** New Rate and Monthly Payment
Interest Rate	4.25%	6.25%
Principal	- **none** -	$237.70
Interest	$708.33	$1,041.66
Escrow (Taxes and Insurance)	$450.00	$450.00
Total Monthly Payment	**$1,158.33**	**$1,729.36 (due December 1, 2022)**

Interest Rate: We calculated your interest rate by taking a published "index rate" and adding a certain number of percentage points, called the "margin." Under your loan agreement, your index rate is the 30-day Average SOFR (SOFR) and your margin is 2.75%. The SOFR index is published daily on the website of the Federal Reserve Bank of New York.

Rate Limits: Your rate cannot go higher than 11.625% over the life of the loan. Your rate can change every six months by no more than 1.00%. We did not include an additional 1.00% interest rate increase to your new rate because a rate limit applied. This additional increase may be applied to your interest rate when it adjusts again on May 1, 2023.

New Interest Rate and Monthly Payment: The table above shows our estimate of your new interest rate and new monthly payment. These amounts are based on the SOFR index as of now, your margin, your loan balance of $200,000, and your remaining loan term of 324 months. **However, if the SOFR index has changed when we calculate the exact amount of your new interest rate and payment, your new interest rate and payment may be different from the estimate above. We will send you another notice with the exact amount of your new interest rate and payment 2 to 4 months before the first new payment is due, if your new payment will be different from your current payment.**

Prepayment Penalty: None

If You Anticipate Problems Making Your Payments:

- Contact Springside Mortgage at 1-800-555-4567 as soon as possible.
- If you seek an alternative to the upcoming changes to your interest rate and payment, the following options **may** be possible (most are subject to lender approval):
  - Refinance your loan with us or another lender;
  - Sell your home and use the proceeds to pay off your current loan;
  - Modify your loan terms with us;
  - Payment forbearance temporarily gives you more time to pay your monthly payment.
- If you would like contact information for counseling agencies or programs in your area, call the U.S. Department of Housing and Urban Development (HUD) at 800-569-4287 or visit www.hud.gov/offices/hsg/sfh/hcc/hcs.cfm. If you would like contact information for a State housing finance agency, visit the U.S. Consumer Financial Protection Bureau (CFPB) at http://www.consumerfinance.gov.

*   *   *   *   *

Supplement I to Part 1026—Official Interpretations

*   *   *   *   *

Section 1026.9—Subsequent Disclosure Requirements

*   *   *   *   *

9(c) Change in Terms

*   *   *   *   *

9(c)(1) Rules Affecting Home-Equity Plans

*   *   *   *   *

4. *Changing index for calculating a variable rate from LIBOR to SOFR in specified circumstances.* If a creditor is replacing a LIBOR index with the index based on SOFR recommended by the Alternative Reference Rates Committee for consumer products to replace the 1-month, 3-month, or 6-month U.S. Dollar LIBOR index, the creditor is not changing the margin used to calculate the variable rate as a result of the replacement, and a periodic rate or the corresponding annual percentage rate based on the replacement index is unknown to the creditor at the time the change-in-terms notice is provided because the SOFR index has not been published at the time the creditor provides the change-in-terms notice but will be published by the time the replacement of the index takes effect on the account, the creditor may comply with any requirement to disclose the amount of the new rate (as calculated using the new index), or a change in the periodic rate or the corresponding annual percentage rate (as calculated using the replacement index), based on the best information reasonably available, clearly stating that the disclosure is an estimate. For example, in this situation, the creditor may state that: (1) information about the rate is not yet available but that the creditor estimates that, at the time the index is replaced, the rate will be substantially similar to what it would be if the index did not have to be replaced; and (2) the rate will vary with the market based on a SOFR index.

*   *   *   *   *

9(c)(1)(ii) Notice not Required

*   *   *   *   *

3. *Replacing LIBOR*. The exception in § 1026.9(c)(1)(ii) under which a creditor is not required to provide a change-in-terms notice under § 1026.9(c)(1) when the change involves a reduction of any component of a finance or other charge does not apply on or after October 1, 2022, to margin reductions when a LIBOR index is replaced, as permitted by § 1026.40(f)(3)(ii)(A) or (f)(3)(ii)(B). For change-in-terms notices provided under § 1026.9(c)(1) on or after October 1, 2022, covering changes permitted by § 1026.40(f)(3)(ii)(A) or (f)(3)(ii)(B), a creditor must provide a change-in-terms notice under § 1026.9(c)(1) disclosing the replacement index for a LIBOR index and any adjusted margin that is permitted under § 1026.40(f)(3)(ii)(A) or (f)(3)(ii)(B), even if the margin is reduced. From April 1, 2022, through September 30, 2022, a creditor has the option of disclosing a reduced margin in the change-in-terms notice that discloses the replacement index for a LIBOR index as permitted by § 1026.40(f)(3)(ii)(A) or (f)(3)(ii)(B).

*   *   *   *   *

9(c)(2) Rules Affecting Open-End (Not Home-Secured) Plans

*   *   *   *   *

9(c)(2)(iv) Disclosure Requirements

*   *   *   *   *

2. *Changing index for calculating a variable rate*. i. *In general*. If a creditor is changing the index used to calculate a variable rate, the creditor must disclose the amount of the new rate (as calculated using the new index) and indicate that the rate varies and how the rate is determined, as explained in § 1026.6(b)(2)(i)(A). For example, if a creditor is changing from using a ~~prime rate~~LIBOR index to using ~~the LIBOR~~a prime index in calculating a variable rate,

the creditor would disclose in the table the new rate (using the new index) and indicate that the rate varies with the market based on ~~the LIBOR~~a prime index.

ii. *Changing index for calculating a variable rate from LIBOR to SOFR in specified circumstances.* If a creditor is replacing a LIBOR index with an index based on SOFR recommended by the Alternative Reference Rates Committee for consumer products to replace the 1-month, 3-month, or 6-month U.S. Dollar LIBOR index, the creditor is not changing the margin used to calculate the variable rate as a result of the replacement, and a periodic rate or the corresponding annual percentage rate based on the replacement index is unknown to the creditor at the time the change-in-terms notice is provided because the SOFR index has not been published at the time the creditor provides the change-in-terms notice, but will be published by the time the replacement of the index takes effect on the account, the creditor may comply with any requirement to disclose the amount of the new rate (as calculated using the new index), or a change in the periodic rate or the corresponding annual percentage rate (as calculated using the replacement index), based on the best information reasonably available, clearly stating that the disclosure is an estimate. For example, in this situation, the creditor may state that: (1) information about the rate is not yet available but that the creditor estimates that, at the time the index is replaced, the rate will be substantially similar to what it would be if the index did not have to be replaced; and (2) the rate will vary with the market based on a SOFR index.

* * * * *

9(c)(2)(v) Notice not Required

* * * * *

14. *Replacing LIBOR.* The exception in § 1026.9(c)(2)(v)(A) under which a creditor is not required to provide a change-in-terms notice under § 1026.9(c)(2) when the change involves a reduction of any component of a finance or other charge does not apply on or after October 1, 2022, to margin reductions when a LIBOR index is replaced as permitted by § 1026.55(b)(7)(i)

or (b)(7)(ii). For change-in-terms notices provided under § 1026.9(c)(2) on or after October 1, 2022, covering changes permitted by § 1026.55(b)(7)(i) or (b)(7)(ii), a creditor must provide a change-in-terms notice under § 1026.9(c)(2) disclosing the replacement index for a LIBOR index and any adjusted margin that is permitted under § 1026.55(b)(7)(i) or (b)(7)(ii), even if the margin is reduced. From April 1, 2022, through September 30, 2022, a creditor has the option of disclosing a reduced margin in the change-in-terms notice that discloses the replacement index for a LIBOR index as permitted by § 1026.55(b)(7)(i) or (b)(7)(ii).

* * * * *

Section 1026.20—Disclosure Requirements Regarding Post-Consummation Events

20(a) Refinancings

* * * * *

3. *Variable-rate.* i. * * *

ii. Even if it is not accomplished by the cancellation of the old obligation and substitution of a new one, a new transaction subject to new disclosures results if the creditor either:

A. * * *

B. Adds a variable-rate feature to the obligation. A creditor does not add a variable-rate feature by changing the index of a variable-rate transaction to a comparable index, whether the change replaces the existing index or substitutes an index for one that no longer exists. For example, a creditor does not add a variable-rate feature by changing the index of a variable-rate transaction from the 1-month, 3-month, or 6-month U.S. Dollar LIBOR index to the spread-adjusted index based on SOFR recommended by the Alternative Reference Rates Committee for consumer products to replace the 1-month, 3-month, or 6-month U.S. Dollar LIBOR index respectively because the replacement index is a comparable index to the corresponding U.S. Dollar LIBOR index. *See* comment 20(a)-3.iv for factors to be used in determining whether a replacement index is comparable to a particular LIBOR index.

iii. * * *

iv. The relevant factors to be considered in determining whether a replacement index is comparable to a particular LIBOR index depend on the replacement index being considered and the LIBOR index being replaced. For example, these determinations may need to consider certain aspects of the historical data itself for a particular replacement index, such as whether the replacement index is a backward-looking rate (*e.g.*, historical average of rates) such that timing aspects of the data may need to be adjusted to match up with the particular forward-looking LIBOR term-rate being replaced. The types of relevant factors to establish if a replacement index could meet the "comparable" standard with respect to a particular LIBOR index using historical data or future expectations, include but are not limited to, whether: (1) the movements over time are comparable; (2) the consumers' payments using the replacement index compared to payments using the LIBOR index are comparable if there is sufficient data for this analysis; (3) the index levels are comparable; (4) the replacement index is publicly available; and (5) the replacement index is outside the control of the creditor.

* * * * *

Section 1026.37—Content of Disclosures for Certain Mortgage Transactions (Loan Estimate)

* * * * *

37(j) Adjustable interest rate table.

* * * * *

37(j)(1) Index and margin.

1. *Index and margin.* The index disclosed pursuant to § 1026.37(j)(1) must be stated such that a consumer reasonably can identify it. A common abbreviation or acronym of the name of the index may be disclosed in place of the proper name of the index, if it is a commonly used public method of identifying the index. For example, "~~LIBOR~~SOFR" may be disclosed instead of ~~London Interbank Offered~~Secured Overnight Financing Rate. The margin should be

disclosed as a percentage. For example, if the contract determines the interest rate by adding 4.25 percentage points to the index, the margin should be disclosed as "4.25%."

* * * * *

Section 1026.40—Requirements for Home-Equity Plans

* * * * *

40(f) Limitations on Home Equity Plans

* * * * *

Paragraph 40(f)(3)

* * * * *

Paragraph 40(f)(3)(ii)

1. *Replacing LIBOR.* A creditor may use either the provision in § 1026.40(f)(3)(ii)(A) or (f)(3)(ii)(B) to replace a LIBOR index used under a plan so long as the applicable conditions are met for the provision used. Neither provision, however, excuses the creditor from noncompliance with contractual provisions. The following examples illustrate when a creditor may use the provisions in § 1026.40(f)(3)(ii)(A) or (f)(3)(ii)(B) to replace the LIBOR index used under a plan.

i. Assume that LIBOR becomes unavailable after June 30, 2023, and assume a contract provides that a creditor may not replace an index unilaterally under a plan unless the original index becomes unavailable and provides that the replacement index and replacement margin will result in an annual percentage rate substantially similar to a rate that is in effect when the original index becomes unavailable. In this case, the creditor may use § 1026.40(f)(3)(ii)(A) to replace the LIBOR index used under the plan so long as the conditions of that provision are met. Section 1026.40(f)(3)(ii)(B) provides that a creditor may replace the LIBOR index if, among other conditions, the replacement index value in effect on October 18, 2021, and replacement margin will produce an annual percentage rate substantially similar to the rate calculated using the LIBOR index value in effect on October 18, 2021, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. If the replacement index is not published on October 18, 2021, the creditor generally must use the next calendar day for which both the LIBOR index and the replacement index are published as the date for selecting indices values in determining whether the annual percentage rate based on the replacement index is substantially similar to the rate based on the LIBOR index. The one exception is that if the replacement index is the spread-adjusted index based on SOFR recommended by the Alternative Reference Rates Committee for consumer products to replace the 1-month, 3-month, 6-month, or 1-year U.S. Dollar LIBOR index, the creditor must use the index value on June 30, 2023, for the LIBOR index and, for the SOFR-based spread-adjusted index for consumer products, must use the index value on the first date that index is published, in determining whether the annual percentage rate based on the replacement index is substantially similar to the rate based on the LIBOR index. In this example, however, the creditor would be contractually prohibited from replacing the LIBOR index used under the plan unless the replacement index and replacement margin also will produce an annual percentage rate substantially similar to a rate that is in effect when the LIBOR index becomes unavailable.

ii. Assume that LIBOR becomes unavailable after June 30, 2023, and assume a contract provides that a creditor may not replace an index unilaterally under a plan unless the original index becomes unavailable but does not require that the replacement index and replacement margin will result in an annual percentage rate substantially similar to a rate that is in effect when the original index becomes unavailable. In this case, the creditor would be contractually prohibited from unilaterally replacing a LIBOR index used under the plan until it becomes unavailable. At that time, the creditor has the option of using § 1026.40(f)(3)(ii)(A) or (f)(3)(ii)(B) to replace the LIBOR index if the conditions of the applicable provision are met.

iii. Assume that LIBOR becomes unavailable after June 30, 2023, and assume a contract provides that a creditor may change the terms of the contract (including the index) as permitted by law. In this case, if the creditor replaces a LIBOR index under a plan on or after April 1, 2022, but does not wait until the LIBOR index becomes unavailable to do so, the creditor may only use § 1026.40(f)(3)(ii)(B) to replace the LIBOR index if the conditions of that provision are met. In this case, the creditor may not use § 1026.40(f)(3)(ii)(A). If the creditor waits until the LIBOR index used under the plan becomes unavailable to replace the LIBOR index, the creditor has the option of using § 1026.40(f)(3)(ii)(A) or (f)(3)(ii)(B) to replace the LIBOR index if the conditions of the applicable provision are met.

Paragraph 40(f)(3)(ii)(A)

1. *Substitution of index.* A creditor may change the index and margin used under the plan if the original index becomes unavailable, as long as historical fluctuations in the original and replacement indices were substantially similar, and as long as the replacement index and replacement margin will produce a rate substantially similar to the rate that was in effect at the time the original index became unavailable. If the replacement index is newly established and therefore does not have any rate history, it may be used if it ~~produces~~and the replacement margin will produce a rate substantially similar to the rate in effect when the original index became unavailable.

2. *Replacing LIBOR.* For purposes of replacing a LIBOR index used under a plan, a replacement index that is not newly established must have historical fluctuations that are substantially similar to those of the LIBOR index used under the plan, considering the historical fluctuations up through when the LIBOR index becomes unavailable or up through the date indicated in a Bureau determination that the replacement index and the LIBOR index have historical fluctuations that are substantially similar, whichever is earlier.

i. The Bureau has determined that effective April 1, 2022, the prime rate published in the Wall Street Journal has historical fluctuations that are substantially similar to those of the 1-month and 3-month U.S. Dollar LIBOR indices. In order to use this prime rate as the replacement index for the 1-month or 3-month U.S. Dollar LIBOR index, the creditor also must comply with the condition in § 1026.40(f)(3)(ii)(A) that the prime rate and replacement margin would have resulted in an annual percentage rate substantially similar to the rate in effect at the time the LIBOR index became unavailable. *See also* comment 40(f)(3)(ii)(A)-3.

ii. The Bureau has determined that effective April 1, 2022, the spread-adjusted indices based on SOFR recommended by the Alternative Reference Rates Committee for consumer products to replace the 1-month, 3-month, or 6-month U.S. Dollar LIBOR indices have historical fluctuations that are substantially similar to those of the 1-month, 3-month, or 6-month U.S. Dollar LIBOR indices respectively. In order to use this SOFR-based spread-adjusted index for consumer products as the replacement index for the applicable LIBOR index, the creditor also must comply with the condition in § 1026.40(f)(3)(ii)(A) that the SOFR-based spread-adjusted index for consumer products and replacement margin would have resulted in an annual percentage rate substantially similar to the rate in effect at the time the LIBOR index became unavailable. *See also* comment 40(f)(3)(ii)(A)-3.

iii. The relevant factors to be considered in determining whether a replacement index has historical fluctuations substantially similar to those of a particular LIBOR index depend on the replacement index being considered and the LIBOR index being replaced. For example, these determinations may need to consider certain aspects of the historical data itself for a particular replacement index, such as whether the replacement index is a backward-looking rate (*e.g.*, historical average of rates) such that timing aspects of the data may need to be adjusted to match up with the particular forward-looking LIBOR term-rate being replaced. The types of relevant factors to establish if a replacement index would meet the "historical fluctuations are substantially similar" standard with respect to a particular LIBOR index using historical data, include but are not limited to, whether: (1) the movements over time are substantially similar; and (2) the consumers' payments using the replacement index compared to payments using the LIBOR index are substantially similar if there is sufficient historical data for this analysis.

3. *Substantially similar rate when LIBOR becomes unavailable*. Under § 1026.40(f)(3)(ii)(A), the replacement index and replacement margin must produce an annual percentage rate substantially similar to the rate that was in effect based on the LIBOR index used under the plan when the LIBOR index became unavailable. For this comparison of the rates, a creditor generally must use the value of the replacement index and the LIBOR index on the day that LIBOR becomes unavailable. If the replacement index is not published on the day that the LIBOR index becomes unavailable, the creditor generally must use the previous calendar day that both indices are published as the date for selecting indices values in determining whether the annual percentage rate based on the replacement index is substantially similar to the rate based on the LIBOR index. The one exception is that if the replacement index is the spread-adjusted index based on SOFR recommended by the Alternative Reference Rates Committee for consumer products to replace the 1-month, 3-month, 6-month, or 1-year U.S. Dollar LIBOR index, the creditor must use the index value on June 30, 2023, for the LIBOR index and, for the SOFR-based spread-adjusted index for consumer products, must use the index value on the first date that index is published, in determining whether the annual percentage rate based on the replacement index is substantially similar to the rate based on the LIBOR index. The replacement index and replacement margin are not required to produce an annual percentage rate that is substantially similar on the day that the replacement index and replacement margin become effective on the plan. For purposes of § 1026.40(f)(3)(ii)(A), if a creditor uses the SOFR-based spread-adjusted index recommended by the Alternative Reference Rates Committee for consumer products to replace the 1-month, 3-month, or 6-month U.S.

Dollar LIBOR index as the replacement index and uses as the replacement margin the same margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan, the creditor will be deemed to be in compliance with the condition in § 1026.40(f)(3)(ii)(A) that the replacement index and replacement margin would have resulted in an annual percentage rate substantially similar to the rate in effect at the time the LIBOR index became unavailable. The following example illustrates this comment.

i. Assume that the 1-month U.S. Dollar LIBOR index used under a plan becomes unavailable on June 30, 2023, and on that day the LIBOR index value is 2%, the margin is 10%, and the annual percentage rate is 12%. Also, assume that a creditor has selected the prime index published in the Wall Street Journal as the replacement index, and the value of the prime index is 5% on June 30, 2023. The creditor would satisfy the requirement to use a replacement index and replacement margin that will produce an annual percentage rate substantially similar to the rate that was in effect when the LIBOR index used under the plan became unavailable by selecting a 7% replacement margin. (The prime index value of 5% and the replacement margin of 7% would produce a rate of 12% on June 30, 2023.) Thus, if the creditor provides a change-in-terms notice under § 1026.9(c)(1) on July 1, 2023, disclosing the prime index as the replacement index and a replacement margin of 7%, where these changes will become effective on July 17, 2023, the creditor satisfies the requirement to use a replacement index and replacement margin that will produce an annual percentage rate substantially similar to the rate that was in effect when the LIBOR index used under the plan became unavailable. This is true even if the prime index value changes after June 30, 2023, and the annual percentage rate calculated using the prime index value and 7% margin on July 17, 2022, is not substantially similar to the rate calculated using the LIBOR index value on June 30, 2023.

Paragraph 40(f)(3)(ii)(B)

1. *Replacing LIBOR*. For purposes of replacing a LIBOR index used under a plan, a replacement index that is not newly established must have historical fluctuations that are substantially similar to those of the LIBOR index used under the plan, considering the historical fluctuations up through the relevant date. If the Bureau has made a determination that the replacement index and the LIBOR index have historical fluctuations that are substantially similar, the relevant date is the date indicated in that determination. If the Bureau has not made a determination that the replacement index and the LIBOR index have historical fluctuations that are substantially similar, the relevant date is the later of April 1, 2022, or the date no more than 30 days before the creditor makes a determination that the replacement index and the LIBOR index have historical fluctuations that are substantially similar.

i. The Bureau has determined that effective April 1, 2022, the prime rate published in the Wall Street Journal has historical fluctuations that are substantially similar to those of the 1-month and 3-month U.S. Dollar LIBOR indices. In order to use this prime rate as the replacement index for the 1-month or 3-month U.S. Dollar LIBOR index, the creditor also must comply with the condition in § 1026.40(f)(3)(ii)(B) that the prime rate index value in effect on October 18, 2021, and replacement margin will produce an annual percentage rate substantially similar to the rate calculated using the LIBOR index value in effect on October 18, 2021, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. *See also* comments 40(f)(3)(ii)(B)-2 and -3.

ii. The Bureau has determined that effective April 1, 2022, the spread-adjusted indices based on SOFR recommended by the Alternative Reference Rates Committee for consumer products to replace the 1-month, 3-month, or 6-month U.S. Dollar LIBOR indices have historical fluctuations that are substantially similar to those of the 1-month, 3-month, or 6-month U.S. Dollar LIBOR indices respectively. In order to use this SOFR-based spread-adjusted index for consumer products as the replacement index for the applicable LIBOR index, the creditor also must comply with the condition in § 1026.40(f)(3)(ii)(B) that the SOFR-based spread-adjusted index for consumer products and replacement margin will produce an annual percentage rate substantially similar to the rate calculated using the LIBOR index and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. Because of the exception in § 1026.40(f)(3)(ii)(B), the creditor must use the index value on June 30, 2023, for the LIBOR index and, for the SOFR-based spread-adjusted index for consumer products, must use the index value on the first date that index is published, in determining whether the annual percentage rate based on the replacement index is substantially similar to the rate based on the LIBOR index. *See also* comments 40(f)(3)(ii)(B)-2 and -3.

iii. The relevant factors to be considered in determining whether a replacement index has historical fluctuations substantial similar to those of a particular LIBOR index depend on the replacement index being considered and the LIBOR index being replaced. For example, these determinations may need to consider certain aspects of the historical data itself for a particular replacement index, such as whether the replacement index is a backward-looking rate (*e.g.*, historical average of rates) such that timing aspects of the data may need to be adjusted to match up with the particular forward-looking LIBOR term-rate being replaced. The types of relevant factors to establish if a replacement index would meet the "historical fluctuations are substantially similar" standard with respect to a particular LIBOR index using historical data, include but are not limited to, whether: (1) the movements over time are substantially similar; and (2) the consumers' payments using the replacement index compared to payments using the LIBOR index are substantially similar if there is sufficient historical data for this analysis.

2. *Using index values on October 18, 2021, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan.* Under § 1026.40(f)(3)(ii)(B), if the replacement index was published on October 18, 2021, the

replacement index value in effect on October 18, 2021, and replacement margin must produce an annual percentage rate substantially similar to the rate calculated using the LIBOR index value in effect on October 18, 2021, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. The margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan is the margin that applied to the variable rate immediately prior to when the creditor provides the change-in-terms notice disclosing the replacement index for the variable rate. The following example illustrates this comment.

i. Assume a variable rate used under the plan that is based on the 1-month U.S. Dollar LIBOR index and assume that LIBOR becomes unavailable after June 30, 2023. On October 18, 2021, the LIBOR index value is 2%, the margin on that day is 10% and the annual percentage rate using that index value and margin is 12%. Assume on January 1, 2022, a creditor provides a change-in-terms notice under § 1026.9(c)(1) disclosing a new margin of 12% for the variable rate pursuant to a written agreement under § 1026.40(f)(3)(iii), and this change in the margin becomes effective on January 1, 2022, pursuant to § 1026.9(c)(1). Assume that there are no more changes in the margin that is used in calculating the variable rate prior to April 1, 2022, the date on which the creditor provides a change-in-terms notice under § 1026.9(c)(1), disclosing the replacement index and replacement margin for the variable rate that will be effective on April 17, 2022. In this case, the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan is 12%. Assume that the creditor has selected the prime index published in the Wall Street Journal as the replacement index, and the value of the prime index is 5% on October 18, 2021. A replacement margin of 9% is permissible under § 1026.40(f)(3)(ii)(B) because that replacement margin combined with the prime index value of 5% on October 18, 2021, will produce an annual percentage rate of 14%, which is substantially similar to the 14% annual percentage rate calculated using the LIBOR index value in effect on October 18, 2021, (which is 2%) and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan (which is 12%).

3. *Substantially similar rates using index values on October 18, 2021*. Under § 1026.40(f)(3)(ii)(B), if the replacement index was published on October 18, 2021, the replacement index value in effect on October 18, 2021, and replacement margin must produce an annual percentage rate substantially similar to the rate calculated using the LIBOR index value in effect on October 18, 2021, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. The replacement index and replacement margin are not required to produce an annual percentage rate that is substantially similar on the day that the replacement index and replacement margin become effective on the plan. For purposes of § 1026.40(f)(3)(ii)(B), if a creditor uses the SOFR-based spread-adjusted index recommended by the Alternative Reference Rates Committee for consumer products to replace the 1-month, 3-month, or 6-month U.S. Dollar LIBOR index as the replacement index and uses as the replacement margin the same margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan, the creditor will be deemed to be in compliance with the condition in § 1026.40(f)(3)(ii)(B) that the replacement index and replacement margin would have resulted in an annual percentage rate substantially similar to the rate calculated using the LIBOR index. The following example illustrates this comment.

i. Assume that the 1-month U.S. Dollar LIBOR index used under the plan has a value of 2% on October 18, 2021, the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan is 10%, and the annual percentage rate based on that LIBOR index value and that margin is 12%. Also, assume that the creditor has selected the prime index published in the Wall Street Journal as the replacement index, and the value of the prime index is 5% on October 18, 2021. A creditor would satisfy the requirement to use a replacement index value in effect on October 18, 2021, and replacement margin that will produce an annual percentage rate substantially similar to the rate calculated using the LIBOR index value in effect on October 18, 2021, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan, by selecting a 7% replacement margin. (The prime index value of 5% and the replacement margin of 7% would produce a rate of 12%.) Thus, if the creditor provides a change-in-terms notice under § 1026.9(c)(1) on April 1, 2022, disclosing the prime index as the replacement index and a replacement margin of 7%, where these changes will become effective on April 17, 2022, the creditor satisfies the requirement to use a replacement index value in effect on October 18, 2021, and replacement margin that will produce an annual percentage rate substantially similar to the rate calculated using the LIBOR value in effect on October 18, 2021, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. This is true even if the prime index value or the LIBOR index value changes after October 18, 2021, and the annual percentage rate calculated using the prime index value and 7% margin on April 17, 2022, is not substantially similar to the rate calculated using the LIBOR index value on October 18, 2021, or substantially similar to the rate calculated using the LIBOR index value on April 17, 2022.

* * * * *

Section 1026.55—Limitations on Increasing Annual Percentage Rates, Fees, and Charges

* * * *

55(b) Exceptions

* * * * *

55(b)(2) Variable rate exception

* * * * *

~~6. *Substitution of index*. A card issuer may change the index and margin used to determine the annual percentage rate under § 1026.55(b)(2) if the original index becomes unavailable, as long as historical fluctuations in the original and replacement indices were substantially similar, and as long as the replacement index and margin will produce a rate similar to the rate that was in effect at the time the original index became unavailable. If the replacement index is newly established and therefore does not have any rate history, it may be used if it produces a rate substantially similar to the rate in effect when the original index became unavailable.~~

* * * * *

55(b)(7) Index replacement and margin change exception

1. Replacing LIBOR. A card issuer may use either the provision in § 1026.55(b)(7)(i) or (b)(7)(ii) to replace a LIBOR index used under the plan so long as the applicable conditions are met for the provision used. Neither provision, however, excuses the card issuer from noncompliance with contractual provisions. The following examples illustrate when a card issuer may use the provisions in § 1026.55(b)(7)(i) or (b)(7)(ii) to replace a LIBOR index on the plan.

i. Assume that LIBOR becomes unavailable after June 30, 2023, and assume a contract provides that a card issuer may not replace an index unilaterally under a plan unless the original index becomes unavailable and provides that the replacement index and replacement margin will result in an annual percentage rate substantially similar to a rate that is in effect when the original index becomes unavailable. The card issuer may use § 1026.55(b)(7)(i) to replace the LIBOR index used under the plan so long as the conditions of that provision are met. Section 1026.55(b)(7)(ii) provides that a card issuer may replace the LIBOR index if, among other conditions, the replacement index value in effect on October 18, 2021, and replacement margin will produce an annual percentage rate substantially similar to the rate calculated using the

LIBOR index value in effect on October 18, 2021, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. If the replacement index is not published on October 18, 2021, the card issuer generally must use the next calendar day for which both the LIBOR index and the replacement index are published as the date for selecting indices values in determining whether the annual percentage rate based on the replacement index is substantially similar to the rate based on the LIBOR index. The one exception is that if the replacement index is the spread-adjusted index based on SOFR recommended by the Alternative Reference Rates Committee for consumer products to replace the 1-month, 3-month, 6-month, or 1-year U.S. Dollar LIBOR index, the card issuer must use the index value on June 30, 2023, for the LIBOR index and, for the SOFR-based spread-adjusted index for consumer products, must use the index value on the first date that index is published, in determining whether the annual percentage rate based on the replacement index is substantially similar to the rate based on the LIBOR index. In this example, however, the card issuer would be contractually prohibited from replacing the LIBOR index used under the plan unless the replacement index and replacement margin also will produce an annual percentage rate substantially similar to a rate that is in effect when the LIBOR index becomes unavailable.

ii. Assume that LIBOR becomes unavailable after June 30, 2023, and assume a contract provides that a card issuer may not replace an index unilaterally under a plan unless the original index becomes unavailable but does not require that the replacement index and replacement margin will result in an annual percentage rate substantially similar to a rate that is in effect when the original index becomes unavailable. In this case, the card issuer would be contractually prohibited from unilaterally replacing the LIBOR index used under the plan until it becomes unavailable. At that time, the card issuer has the option of using § 1026.55(b)(7)(i) or (b)(7)(ii) to replace the LIBOR index used under the plan if the conditions of the applicable provision are met.

iii. Assume that LIBOR becomes unavailable after June 30, 2023, and assume a contract provides that a card issuer may change the terms of the contract (including the index) as permitted by law. In this case, if the card issuer replaces the LIBOR index used under the plan on or after April 1, 2022, but does not wait until the LIBOR index becomes unavailable to do so, the card issuer may only use § 1026.55(b)(7)(ii) to replace the LIBOR index if the conditions of that provision are met. In that case, the card issuer may not use § 1026.55(b)(7)(i). If the card issuer waits until the LIBOR index used under the plan becomes unavailable to replace LIBOR, the card issuer has the option of using § 1026.55(b)(7)(i) or (b)(7)(ii) to replace the LIBOR index if the conditions of the applicable provisions are met.

Paragraph 55(b)(7)(i)

1. *Replacing LIBOR*. For purposes of replacing a LIBOR index used under a plan, a replacement index that is not newly established must have historical fluctuations that are substantially similar to those of the LIBOR index used under the plan, considering the historical fluctuations up through when the LIBOR index becomes unavailable or up through the date indicated in a Bureau determination that the replacement index and the LIBOR index have historical fluctuations that are substantially similar, whichever is earlier.

i. The Bureau has determined that effective April 1, 2022, the prime rate published in the Wall Street Journal has historical fluctuations that are substantially similar to those of the 1-month and 3-month U.S. Dollar LIBOR indices. In order to use this prime rate as the replacement index for the 1-month or 3-month U.S. Dollar LIBOR index, the card issuer also must comply with the condition in § 1026.55(b)(7)(i) that the prime rate and replacement margin will produce a rate substantially similar to the rate that was in effect at the time the LIBOR index became unavailable. *See also* comment 55(b)(7)(i)-2.

ii. The Bureau has determined that effective April 1, 2022, the spread-adjusted indices based on SOFR recommended by the Alternative Reference Rates Committee for consumer products to replace the 1-month, 3-month, or 6-month U.S. Dollar LIBOR indices have historical fluctuations that are substantially similar to those of the 1-month, 3-month, or 6-month U.S. Dollar LIBOR indices respectively. In order to use this SOFR-based spread-adjusted index for consumer products as the replacement index for the applicable LIBOR index, the card issuer also must comply with the condition in § 1026.55(b)(7)(i) that the SOFR-based spread-adjusted index for consumer products replacement margin will produce a rate substantially similar to the rate that was in effect at the time the LIBOR index became unavailable. *See also* comment 55(b)(7)(i)-2.

iii. The relevant factors to be considered in determining whether a replacement index has historical fluctuations substantial similar to those of a particular LIBOR index depend on the replacement index being considered and the LIBOR index being replaced. For example, these determinations may need to consider certain aspects of the historical data itself for a particular replacement index, such as whether the replacement index is a backward-looking rate (*e.g.*, historical average of rates) such that timing aspects of the data may need to be adjusted to match up with the particular forward-looking LIBOR term-rate being replaced. The types of relevant factors to establish if a replacement index would meet the "historical fluctuations are substantially similar" standard with respect to a particular LIBOR index using historical data, include but are not limited to, whether: (1) the movements over time are substantially similar; and (2) the consumers' payments using the replacement index compared to payments using the LIBOR index are substantially similar if there is sufficient historical data for this analysis.

2. *Substantially similar rate when LIBOR becomes unavailable*. Under § 1026.55(b)(7)(i), the replacement index and replacement margin must produce an annual percentage rate substantially similar to the rate that was in effect at the time the LIBOR index used under the plan became unavailable. For this comparison of the rates, a card issuer generally must use the value of the replacement index and the LIBOR index on the day that

LIBOR becomes unavailable. If the replacement index is not published on the day that the LIBOR index becomes unavailable, the card issuer generally must use the previous calendar day that both indices are published as the date for selecting indices values in determining whether the annual percentage rate based on the replacement index is substantially similar to the rate based on the LIBOR index. The one exception is that, if the replacement index is the SOFR-based spread-adjusted index recommended by the Alternative Reference Rates Committee for consumer products to replace the 1-month, 3-month, 6-month, or 1-year U.S. Dollar LIBOR index, the card issuer must use the index value on June 30, 2023, for the LIBOR index and, for the SOFR-based spread-adjusted index for consumer products, must use the index value on the first date that index is published, in determining whether the annual percentage rate based on the replacement index is substantially similar to the rate based on the LIBOR index. The replacement index and replacement margin are not required to produce an annual percentage rate that is substantially similar on the day that the replacement index and replacement margin become effective on the plan. For purposes of § 1026.55(b)(7)(i), if a card issuer uses the SOFR-based spread-adjusted index recommended by the Alternative Reference Rates Committee for consumer products to replace the 1-month, 3-month, or 6-month U.S. Dollar LIBOR index as the replacement index and uses as the replacement margin the same margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan the card issuer will be deemed to be in compliance with the condition in § 1026.55(b)(7)(i) that the replacement index and replacement margin would have resulted in an annual percentage rate substantially similar to the rate in effect at the time the LIBOR index became unavailable. The following example illustrates this comment.

i. Assume that the 1-month U.S. Dollar LIBOR index used under the plan becomes unavailable on June 30, 2023, and on that day the LIBOR value is 2%, the margin is 10%, and the annual percentage rate is 12%. Also, assume that a card issuer has selected the prime index published in the Wall Street Journal as the replacement index, and the value of the prime index is 5% on June 30, 2023. The card issuer would satisfy the requirement to use a replacement index and replacement margin that will produce an annual percentage rate substantially similar to the rate that was in effect when the LIBOR index used under the plan became unavailable by selecting a 7% replacement margin. (The prime index value of 5% and the replacement margin of 7% would produce a rate of 12% on June 30, 2023.) Thus, if the card issuer provides a change-in-terms notice under § 1026.9(c)(2) on July 1, 2023, disclosing the prime index as the replacement index and a replacement margin of 7%, where these changes will become effective on August 16, 2023, the card issuer satisfies the requirement to use a replacement index and replacement margin that will produce an annual percentage rate substantially similar to the rate that was in effect when the LIBOR index used under the plan became unavailable. This is true even if the prime index value changes after June 30, 2023, and the annual percentage rate calculated using the prime index value and 7% margin on August 16, 2023, is not substantially similar to the rate calculated using the LIBOR index value on June 30, 2023.

Paragraph 55(b)(7)(ii)

1. *Replacing LIBOR*. For purposes of replacing a LIBOR index used under a plan, a replacement index that is not newly established must have historical fluctuations that are substantially similar to those of the LIBOR index used under the plan, considering the historical fluctuations up through the relevant date. If the Bureau has made a determination that the replacement index and the LIBOR index have historical fluctuations that are substantially similar, the relevant date is the date indicated in that determination. If the Bureau has not made a determination that the replacement index and the LIBOR index have historical fluctuations that are substantially similar, the relevant date is the later of April 1, 2022, or the date no more than 30 days before the card issuer makes a determination that the replacement index and the LIBOR index have historical fluctuations that are substantially similar.

i. The Bureau has determined that effective April 1, 2022, the prime rate published in the Wall Street Journal has historical fluctuations that are substantially similar to those of the 1-month and 3-month U.S. Dollar LIBOR indices. In order to use this prime rate as the replacement index for the 1-month or 3-month U.S. Dollar LIBOR index, the card issuer also must comply with the condition in § 1026.55(b)(7)(ii) that the prime rate index value in effect on October 18, 2021, and replacement margin will produce an annual percentage rate substantially similar to the rate calculated using the LIBOR index value in effect on October 18, 2021, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. *See also* comments 55(b)(7)(ii)-2 and -3.

ii. The Bureau has determined that effective April 1, 2022, the spread-adjusted indices based on SOFR recommended by the Alternative Reference Rates Committee for consumer products to replace the 1-month, 3-month, or 6-month U.S. Dollar LIBOR indices have historical fluctuations that are substantially similar to those of the 1-month, 3-month, or 6-month U.S. Dollar LIBOR indices respectively. In order to use this SOFR-based spread-adjusted index for consumer products as the replacement index for the applicable LIBOR index, the card issuer also must comply with the condition in § 1026.55(b)(7)(ii) that the SOFR-based spread-adjusted index for consumer products and replacement margin will produce an annual percentage rate substantially similar to the rate calculated using the LIBOR index, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. Because of the exception in § 1026.55(b)(7)(ii), the card issuer must use the index value on June 30, 2023, for the LIBOR index and, for the SOFR-based spread-adjusted index for consumer products, must use the index value on the first date that index is published, in determining whether the annual percentage rate based on the replacement index is substantially similar to the rate based on the LIBOR index. *See also* comments 55(b)(7)(ii)-2 and -3.

iii. The relevant factors to be considered in determining whether a replacement index has historical fluctuations substantial similar to those of a particular LIBOR index depend on the replacement index being considered and the LIBOR index being replaced. For example, these determinations may need to consider certain aspects of the historical data itself for a particular replacement index, such as whether the replacement index is a backward-looking rate (*e.g.*, historical average of rates) such that timing aspects of the data may need to be adjusted to match up with the particular forward-looking LIBOR term-rate being replaced. The types of relevant factors to establish if a replacement index would meet the "historical fluctuations are substantially similar" standard with respect to a particular LIBOR index using historical data, include but are not limited to, whether: (1) the movements over time are substantially similar; and (2) the consumers' payments using the replacement index compared to payments using the LIBOR index are substantially similar if there is sufficient historical data for this analysis.

2. Using index values on October 18, 2021, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. Under § 1026.55(b)(7)(ii), if the replacement index was published on October 18, 2021, the replacement index value in effect on October 18, 2021, and replacement margin must produce an annual percentage rate substantially similar to the rate calculated using the LIBOR index value in effect on October 18, 2021, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. The margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan is the margin that applied to the variable rate immediately prior to when the card issuer provides the change-in-terms notice disclosing the replacement index for the variable rate. The following examples illustrate how to determine the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan.

i. Assume a variable rate used under the plan that is based on the 1-month U.S. Dollar LIBOR index, and assume that LIBOR becomes unavailable after June 30, 2023. On October 18, 2021, the LIBOR index value is 2%, the margin on that day is 10% and the annual percentage rate using that index value and margin is 12%. Assume that on November 16, 2021, pursuant to § 1026.55(b)(3), a card issuer provides a change-in-terms notice under § 1026.9(c)(2) disclosing a new margin of 12% for the variable rate that will apply to new transactions after November 30, 2021, and this change in the margin becomes effective on January 1, 2022. The margin for the variable rate applicable to the transactions that occurred on or prior to November 30, 2021, remains at 10%. Assume that there are no more changes in the margin used on the variable rate that applied to transactions that occurred after November 30, 2021, or to the margin used on the variable rate that applied to transactions that occurred on or prior to November 30, 2021, prior to when the card issuer provides a change-in-terms notice on April 1, 2022, disclosing the replacement index and replacement margins for both variable rates that will be effective on May 17, 2022. In this case, the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan for transactions that occurred on or prior to November 30, 2021, is 10%. The margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan for transactions that occurred after November 30, 2021, is 12%. Assume that the card issuer has selected the prime index published in the Wall Street Journal as the replacement index, and the value of the prime index is 5% on October 18, 2021. A replacement margin of 7% is permissible under § 1026.55(b)(7)(ii) for transactions that occurred on or prior to November 30, 2021, because that replacement margin combined with the prime index value of 5% on October 18, 2021, will produce an annual percentage rate of 12%, which is substantially similar to the 12% annual percentage rate calculated using the LIBOR index value in effect on October 18, 2021, (which is 2%) and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan for that balance (which is 10%). A replacement margin of 9% is permissible under § 1026.55(b)(7)(ii) for transactions that occurred after November 30, 2021, because that replacement margin combined with the prime index value of 5% on October 18, 2021, will produce an annual percentage rate of 14%, which is substantially similar to the 14% annual percentage rate calculated using the LIBOR index value in effect on October 18, 2021, (which is 2%) and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan for transactions that occurred after November 30, 2021, (which is 12%).

ii. Assume a variable rate used under the plan that is based on the 1-month U.S. Dollar LIBOR index, and assume that LIBOR becomes unavailable after June 30, 2023. On October 18, 2021, the LIBOR index value is 2%, the margin on that day is 10% and the annual percentage rate using that index value and margin is 12%. Assume that on November 16, 2021, pursuant to § 1026.55(b)(4), a card issuer provides a penalty rate notice under § 1026.9(g) increasing the margin for the variable rate to 20% that will apply to both outstanding balances and new transactions effective January 1, 2022, because the consumer was more than 60 days late in making a minimum payment. Assume that there are no more changes in the margin used on the variable rate for either the outstanding balance or new transactions prior to April 1, 2022, the date on which the card issuer provides a change-in-terms notice under § 1026.9(c)(2) disclosing the replacement index and replacement margin for the variable rate that will be effective on May 17, 2022. The margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan for the outstanding balance and new transactions is 12%. Assume that the card issuer has selected the prime index published in the Wall Street Journal as the replacement index, and the value of the prime index is 5% on October 18, 2021. A replacement margin of 17% is permissible under § 1026.55(b)(7)(ii) for the outstanding balance and new transactions because that replacement margin combined with the prime index value of

5% on October 18, 2021, will produce an annual percentage rate of 22%, which is substantially similar to the 22% annual percentage rate calculated using the LIBOR index value in effect on October 18, 2021, (which is 2%) and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan for the outstanding balance and new transactions (which is 20%).

3. *Substantially similar rate using index values on October 18, 2021*. Under § 1026.55(b)(7)(ii), if the replacement index was published on October 18, 2021, the replacement index value in effect on October 18, 2021, and replacement margin must produce an annual percentage rate substantially similar to the rate calculated using the LIBOR index value in effect on October 18, 2021, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. A card issuer is not required to produce an annual percentage rate that is substantially similar on the day that the replacement index and replacement margin become effective on the plan. For purposes of § 1026.55(b)(7)(ii), if a card issuer uses the SOFR-based spread-adjusted index recommended by the Alternative Reference Rates Committee for consumer products to replace the 1-month, 3-month, or 6-month U.S. Dollar LIBOR index as the replacement index and uses as the replacement margin the same margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan, the card issuer will be deemed to be in compliance with the condition in § 1026.55(b)(7)(ii) that the replacement index and replacement margin would have resulted in an annual percentage rate substantially similar to the rate calculated using the LIBOR index. The following example illustrates this comment.

i. Assume that the 1-month U.S. Dollar LIBOR index used under the plan has a value of 2% on October 18, 2021, the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan is 10%, and the annual percentage rate based on that LIBOR index value and that margin is 12%. Also, assume that the card issuer has selected the prime index published in the Wall Street Journal as the replacement index, and the value of the prime index is 5% on October 18, 2021. A card issuer would satisfy the requirement to use a replacement index value in effect on October 18, 2021, and replacement margin that will produce an annual percentage rate substantially similar to the rate calculated using the LIBOR index value in effect on October 18, 2021, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan, by selecting a 7% replacement margin. (The prime index value of 5% and the replacement margin of 7% would produce a rate of 12%.) Thus, if the card issuer provides a change-in-terms notice under § 1026.9(c)(2) on April 1, 2022, disclosing the prime index as the replacement index and a replacement margin of 7%, where these changes will become effective on May 17, 2022, the card issuer satisfies the requirement to use a replacement index value in effect on October 18, 2021, and replacement margin that will produce an annual percentage rate substantially similar to the rate calculated using the LIBOR value in effect on October 18, 2021, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. This is true even if the prime index value or the LIBOR value change after October 18, 2021, and the annual percentage rate calculated using the prime index value and 7% margin on May 17, 2022, is not substantially similar to the rate calculated using the LIBOR index value on October 18, 2021, or substantially similar to the rate calculated using the LIBOR index value on May 17, 2022.

* * * * *

Section 1026.59—Reevaluation of Rate Increases

* * * * *

59(d) Factors

* * * * *

2. *Comparison of existing account to factors used for similar new accounts.* Under

§ 1026.59(a), if a ~~creditor~~card issuer evaluates an existing account using the same factors that it considers in determining the rates applicable to similar new accounts, the review of factors need not result in existing accounts being subject to exactly the same rates and rate structure as a ~~creditor~~card issuer imposes on similar new accounts. For example, a ~~creditor~~card issuer may offer variable rates on similar new accounts that are computed by adding a margin that depends on various factors to the value of ~~the LIBOR~~a SOFR index. The account that the ~~creditor~~card issuer is required to review pursuant to § 1026.59(a) may have variable rates that were determined by adding a different margin, depending on different factors, to a published prime ~~rate~~index. In performing the review required by § 1026.59(a), the ~~creditor~~card issuer may review the factors it uses to determine the rates applicable to similar new accounts. If a rate reduction is required, however, the ~~creditor~~card issuer need not base the variable rate for the existing account on the ~~LIBOR~~SOFR index but may continue to use the published prime ~~rate~~index. Section 1026.59(a) requires, however, that the rate on the existing account after the reduction, as determined by adding the published prime ~~rate~~index and margin, be comparable to the rate, as determined by adding the margin and ~~LIBOR~~the SOFR index, charged on a new account for which the factors are comparable.

*   *   *   *   *

59(f) Termination of Obligation to Review Factors~~.~~

*   *   *   *   *

3. *Transition from LIBOR.* i. *General.* Effective April 1, 2022, in the case where the rate applicable immediately prior to the increase was a variable rate with a formula based on a LIBOR index, a card issuer may terminate the obligation to review if the card issuer reduces the annual percentage rate to a rate determined by a replacement formula that is derived from a replacement index value on October 18, 2021, plus replacement margin that is equal to the

annual percentage rate of the LIBOR index value on October 18, 2021, plus the margin used to calculate the rate immediately prior to the increase (previous formula).

ii. *Examples*. A. Assume that on April 1, 2022, the previous formula is the 1-month U.S. Dollar LIBOR index plus a margin of 10% equal to a 12% annual percentage rate. In this case, the LIBOR index value is 2%. The card issuer selects the prime index published in the Wall Street Journal as the replacement index. The replacement formula used to derive the rate at which the card issuer may terminate its obligation to review factors must be set at a replacement index plus replacement margin that equals 12%. If the prime index is 4% on October 18, 2021, the replacement margin must be 8% in the replacement formula. The replacement formula for purposes of determining when the card issuer can terminate the obligation to review factors is the prime index plus 8%.

B. Assume that on April 1, 2022, the account was not subject to § 1026.59 and the annual percentage rate was the 1-month U.S. Dollar LIBOR index plus a margin of 10% equal to 12%. On May 1, 2022, the card issuer raises the annual percentage rate to the 1-month U.S. Dollar LIBOR index plus a margin of 12% equal to 14%. On June 1, 2022, the card issuer transitions the account from the LIBOR index in accordance with § 1026.55(b)(7)(ii). The card issuer selects the prime index published in the Wall Street Journal as the replacement index with a value on October 18, 2021, of 4%. The replacement formula used to derive the rate at which the card issuer may terminate its obligation to review factors must be set at the value of a replacement index on October 18, 2021, plus replacement margin that equals 12%. In this example, the replacement formula is the prime index plus 8%.

4. *Selecting a replacement index*. In selecting a replacement index for purposes of § 1026.59(f)(3), the card issuer must meet the conditions for selecting a replacement index that are described in § 1026.55(b)(7)(ii) and comment 55(b)(7)(ii)-1. For example, a card issuer may select a replacement index that is not newly established for purposes of § 1026.59(f)(3), so long

as the replacement index has historical fluctuations that are substantially similar to those of the LIBOR index used in the previous formula, considering the historical fluctuations up through the relevant date. If the Bureau has made a determination that the replacement index and the LIBOR index have historical fluctuations that are substantially similar, the relevant date is the date indicated in that determination. If the Bureau has not made a determination that the replacement index and the LIBOR index have historical fluctuations that are substantially similar, the relevant date is the later of April 1, 2022, or the date no more than 30 days before the card issuer makes a determination that the replacement index and the LIBOR index have historical fluctuations that are substantially similar. The Bureau has determined that effective April 1, 2022, the prime rate published in the Wall Street Journal has historical fluctuations that are substantially similar to those of the 1-month and 3-month U.S. Dollar LIBOR indices. The Bureau also has determined that effective April 1, 2022, the spread-adjusted indices based on SOFR recommended by the Alternative Reference Rates Committee for consumer products to replace the 1-month, 3-month, or 6-month U.S. Dollar LIBOR indices have historical fluctuations that are substantially similar to those of the 1-month, 3-month, or 6-month U.S. Dollar LIBOR indices respectively. *See* comment 55(b)(7)(ii)-1. Also, for purposes of § 1026.59(f)(3), a card issuer may select a replacement index that is newly established as described in § 1026.55(b)(7)(ii).

* * * * *

59(h) Exceptions

1. *Transition from LIBOR.* The exception to the requirements of this section does not apply to rate increases already subject to § 1026.59 prior to the transition from the use of a LIBOR index as the index in setting a variable rate to the use of a different index in setting a variable rate where the change from the use of a LIBOR index to a different index occurred in accordance with § 1026.55(b)(7)(i) or (b)(7)(ii).