

(ii) *Application to variable-rate transactions.* If the advertisement is for a variable-rate transaction, and the advertised payment or simple annual rate is based on the index and margin that will be used to make subsequent rate or payment adjustments over the term of the loan, the advertisement includes an equally prominent statement in close proximity to the payment or rate that the payment or rate is subject to adjustment and the time period when the first adjustment will occur.

(3) *Misrepresentations about government endorsement.* Making any statement in an advertisement that the product offered is a “government loan program”, “government-supported loan”, or is otherwise endorsed or sponsored by any Federal, state, or local government entity, unless the advertisement is for an FHA loan, VA loan, or similar loan program that is, in fact, endorsed or sponsored by a Federal, state, or local government entity.

(4) *Misleading use of the current lender’s name.* Using the name of the consumer’s current lender in an advertisement that is not sent by or on behalf of the consumer’s current lender, unless the advertisement:

(i) Discloses with equal prominence the name of the person or creditor making the advertisement; and

(ii) Includes a clear and conspicuous statement that the person making the advertisement is not associated with, or acting on behalf of, the consumer’s current lender.

(5) *Misleading claims of debt elimination.* Making any misleading claim in an advertisement that the mortgage product offered will eliminate debt or result in a waiver or forgiveness of a consumer’s existing loan terms with, or obligations to, another creditor.

(6) *Misleading use of the term “counselor”.* Using the term “counselor” in an advertisement to refer to a for-profit mortgage broker or mortgage creditor, its employees, or persons working for the broker or creditor that are involved in offering, originating or selling mortgages.

(7) *Misleading foreign-language advertisements.* Providing information about some trigger terms or required disclosures, such as an initial rate or payment, only in a foreign language in an

advertisement, but providing information about other trigger terms or required disclosures, such as information about the fully-indexed rate or fully amortizing payment, only in English in the same advertisement.

### Subpart D—Miscellaneous

#### § 1026.25 Record retention.

(a) *General rule.* A creditor shall retain evidence of compliance with this part (other than advertising requirements under §§ 1026.16 and 1026.24) for 2 years after the date disclosures are required to be made or action is required to be taken. The administrative agencies responsible for enforcing the regulation may require creditors under their jurisdictions to retain records for a longer period if necessary to carry out their enforcement responsibilities under section 108 of the Act.

(b) *Inspection of records.* A creditor shall permit the agency responsible for enforcing this part with respect to that creditor to inspect its relevant records for compliance.

#### § 1026.26 Use of annual percentage rate in oral disclosures.

(a) *Open-end credit.* In an oral response to a consumer’s inquiry about the cost of open-end credit, only the annual percentage rate or rates shall be stated, except that the periodic rate or rates also may be stated. If the annual percentage rate cannot be determined in advance because there are finance charges other than a periodic rate, the corresponding annual percentage rate shall be stated, and other cost information may be given.

(b) *Closed-end credit.* In an oral response to a consumer’s inquiry about the cost of closed-end credit, only the annual percentage rate shall be stated, except that a simple annual rate or periodic rate also may be stated if it is applied to an unpaid balance. If the annual percentage rate cannot be determined in advance, the annual percentage rate for a sample transaction shall be stated, and other cost information for the consumer’s specific transaction may be given.