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INNOVATIVE BY INSTINCT

TILA/RESPA

Integrated Disclosures

Reference Manual

Together We're Prepared!

This reference manual is intended to provide a comprehensive resource for the rules and regulations pertaining to the new Integrated Disclosures.

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SECTION I. – Background and Summary

How to Use This Reference Manual

- SECTION ONE — Includes background and summary of key changes.

- SECTION TWO — Includes a guide to the general rules related to timing, key definitions, tolerance, etc. This section also includes the CFPB's summary from the "Small Business Entity Compliance Guide".

- SECTION THREE & FOUR — Includes all CFPB rules and official interpretation for completing the forms. There are **Interactive Loan Estimate** and Closing Disclosure Forms at the beginning of each section. You can click on a section of the form to take you directly to the rules pertaining to that section of the form.

- SECTION FIVE — Includes additional resources for complying with the new rules.

Also, throughout the reference manual, take note of the special "  **FAQ/Tips**" Sections. These sections include common questions and answers provided by the CFPB, ALTA and other key industry leaders.

Introduction

When the "Housing Bubble" burst in and around 2008, the words "Financial Crisis" became the standard introductory phrase on the nightly news. In the wake of this crisis, Congress became very active to attempt to make sure that this type of financial threat would never happen again. On July 21, 2010 the Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub. L. 111-203, H.R. 4173) was signed into law (hereinafter "Dodd-Frank"). Title X of Dodd Frank created the Consumer Financial Protection Bureau (hereinafter "CFPB"). The CFPB was charged with re-thinking and re-inventing the manner in which financial terms were communicated to consumers, codifying this new paradigm in our financial landscape and enforcing the very rules that it promulgated. Specifically, Dodd Frank mandated that the CFPB combine, clarify and streamline the consumer disclosures used in a typical residential mortgage transactions.

Historically, consumers had two different agencies promulgating, regulating and enforcing the use of two different consumer disclosure forms. First, we had Housing and Urban Development (hereinafter "HUD") that was in charge of these issues as they related to the "Real Estate Settlement Procedures Act" (hereinafter "RESPA"). HUD and RESPA were primarily concerned with the settlement statement (known as the HUD-1), which detailed all of the expenses and credits of the real estate transaction. Second, we had the Federal Reserve Board (hereinafter "Fed") which was in charge of these issues as they related to the Federal Truth In Lending Act (hereinafter "TILA"). The Fed, through TILA, was charged with accurately informing consumers on the cost of credit ("Annual Percentage Rate" or "APR") and payment terms. The consumer disclosures required by both agencies were required to be disclosed at similar times on similar issues, while using inconsistent terms and complex calculations.

Congress, through Dodd-Frank, said that the consumer had had enough of competing forms and regulations. Further, Congress asserted that while everything was being done in the name of the consumer, the consumer was the victim of competing government regulations. Section 1032(f) of Dodd-Frank requires the CFPB to combine the RESPA & TILA disclosures within one year of establishment. The CFPB started work on July 21, 2011 and released the proposed 1088 page rule on the Integrated Disclosures on July 9, 2012.

The goals of Dodd-Frank were simple and noble in their origins. First, protect the American economy from unreasonable risks. Second, create an easier to use and easier to understand integrated disclosure for a consumer residential mortgage transaction, which would allow the consumer to compare financing terms and avoid undesired surprises at the closing table. In order to achieve these objectives, the CFPB conducted numerous forums, solicited feedback, and worked diligently to meet the Congressional

mandate and provide the consumer with what the consumer wanted in a disclosure. After listening to all of the data collected, the CFPB issued the final rule on the Integrated Disclosures on November 20, 2013 with an effective date of August 1, 2015.

The integration and consolidation of these closing disclosures did not end with the documents themselves. The promulgation, interpretation and enforcement of the regulations were moved under the purview of the same agency, the CFPB. No longer should intergovernmental wrangling occur over the importance and/or effectiveness of one agency over the other. Four disclosures from two agencies were reduced to two disclosures from the same agency. There are actually two primary Integrated Disclosures, the Loan Estimate (following application) and the Closing Disclosure (preceding consummation).

Loan Estimate

Previously, the Fed had the initial Truth in Lending Disclosure (hereinafter "TIL") and HUD had the Good Faith Estimate (hereinafter "GFE") for initial disclosure by the lender within three (3) days of the receipt of the application. Both of these documents provided the consumer with key loan terms and financial responsibilities. Both of these documents are being discontinued in favor of the new Loan Estimate. Congress saw these disclosures as competing with each other and potentially confusing to the consumer. The goal of this Integrated Disclosure, known at the Loan Estimate, is to provide the consumer with one document per lender for the purpose of comparison shopping. Each lender will have to produce the Loan Estimate within three days of application, so that they consumer may lay them side by side and choose the most appropriate financial decision for their household.

Closing Disclosure

Previously, the Fed had the final TIL and HUD had the HUD-1 Settlement Statement. Both of these documents were iconic in the length of their utility in the consumer residential real estate closing. With only small modifications, the forms endured in excess of forty (40) years. While these replaced forms will still exist in certain types of transactions which are excluded from the Integrated Disclosures Rule, as of August 1, 2015, they will not be a part of most closed-end consumer residential mortgage transactions. While this guide will provide more in depth information and analysis on the completion and implementation of the Closing Disclosure, there are a few significant points that are worth identifying in this introduction.

- Closing Disclosure replaces the final TIL and the HUD-1
- Tolerances on APR deviations are redefined
- Must be delivered to the consumer three (3) days in advance of closing

- Re-disclosure (restarting the three day period) is required if there are changes in the transaction post disclosure to the consumer such that:
- The APR tolerances are violated;
- Change to the loan product; and/or
- Addition of a pre-payment penalty.

If there are changes to the final figures post-closing, there are re-disclosure requirements as well. Either the Creditor or Settlement Agent may prepare and provide the Closing Disclosure to the consumer. If it is provided by the Settlement Agent, then the Settlement Agent is considered the creditor for the purposes of compliance with the rule regarding the Closing Disclosure.

The HUD-1 line numbers have been replaced with similar section headings, but the items on the Closing Disclosure must be alphabetical within the section headings.

Exclusions From The Integrated Disclosures Rule

While the Integrated Disclosures Rule applies to most closed-end consumer residential mortgage loan transactions, there are exclusions from the rule. Specifically, the rule does not include the following:

- Home Equity Lines of Credit (hereinafter "HELOC")
- Reverse Mortgages
- Mortgages / Deeds of Trust Secured By Mobile Homes (which are not affixed/attached to the real property in accordance with state law)
- Creditors that make five or less mortgage loans per year which are covered by the rule

We have attempted to provide you with a complete guide through the intricacies of the Integrated Disclosure Rule. This introduction is a mere preview which highlights some of the changes implemented through this new rule. As you read through this manual on the Integrated Disclosure Rule, we hope that you will use it as a reference guide in remaining compliant in your future closed-end consumer residential mortgage transactions.

Summary of Rules

- **Effective date**. August 1, 2015.
- **Forms**
  - Loan Estimate. Consolidation of the initial Truth in Lending (TIL) and Good Faith Estimate (GFE.)
  - Closing Disclosure. Consolidation of the HUD-1/HUD-1A and final Truth in Lending (TIL).
  - *HUD-1 and GFE will continue to be used with reverse mortgages.*
- **Coverage**
  - Applies to most consumer mortgages except:
  - Home equity lines of credit.
  - Reverse mortgages.
  - Mortgages secured by mobile homes or by dwellings not attached to property.
  - Creditor that makes five or fewer mortgage loans in one year.
- **Consummation**

  New rules use the term "Consummation" instead of Closing Date. Consummation occurs when the consumer becomes contractually obligated to the creditor on the loan, not, for example, when the consumer becomes contractually obligated to a seller on a real estate transaction. State law governs Consummation
- **Timelines**
  - Loan Estimate
    - Must deliver 3 business days after receipt of application.
    - Must deliver at least 7 business days before consummation.
    - Revisions must be delivered before Closing Disclosure delivered.
  - Closing Disclosure
    - Must be delivered 3 days before Consummation
    - Corrected Disclosures must be delivered 3 days before consummation.
  - Business Day Definitions.
    - For Loan Estimate Delivery – includes all days on which the credit's offices are open to the public to carry on substantially all functions.
    - For Waiting period for Loan Estimate and consumer receipt of Closing Disclosure – includes all calendar days except Sunday and certain federal holiday.

- **Delivery**

  The Creditor or Settlement may prepare or deliver Closing Disclosure. However, Creditor remains responsible for compliance.

- **Application Definition.**

  Same as before except removes the 7th catch all element " any other information deemed necessary for the originator".

- **Tolerances**

  Zero Tolerance Bucket expanded to include:

  - Fees paid to unaffiliated Settlement Service Providers that a consumer cannot shop for.
  - Affiliate Charges. Affiliate means any company that controls, is controlled by, or is under common control with another company, as set forth in the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.) which defines control as: " Any company has control over a bank or over any company if--

    (A) the company directly or indirectly or acting through one or more other persons owns, controls, or has power to vote 25 per centum or more of any class of voting securities of the bank or company;

    (B) the company controls in any manner the election of a majority of the directors or trustees of the bank or company; or

    (C) the Board determines, after notice and opportunity for hearing, that the company directly or indirectly exercises a controlling influence over the management or policies of the bank or company.

  10% Tolerance Bucket

  Charges paid to unaffiliated Settlement Service Provider selected from Creditor's Settlement Service Provider List

  No Tolerance Bucket

  - Settlement Services shopped for by consumer
  - Prepaid Interest
  - Property Insurance premium
  - Escrow amount, impound reserves

- **Revisions to Loan Estimate**

Allowed based on “good faith” test.

Good Faith Test includes:

- Changed Circumstances. Defined
- Borrower requested changes
- Borrower indicates intent to proceed more than 10 business days after Loan Estimate is provided.
- New construction with closing more than 60 days after initial Loan Estimate
- Interest rate is locked – New Loan Estimate is required on date of rate lock with revisions to interest-rate dependent charges.

- **Written List of Providers**
  - Lender must provide the consumer with a list of Settlement Service Providers.
  - At least 1 provider for each service and may contain affiliates.
- **Pre-Application Estimates**

  Written estimates are allowed prior to receiving an application but creditor must state “Your actual rate, payment and costs could be higher. Get an official Loan Estimate before choosing a loan.”
- **Up-Front Fees**

  Creditor may impose a credit report fee prior to the delivery of the Loan Estimate and prior to the consumer’s expressed intent to proceed.
- **Itemization of Fees and Charges**

  No more bundling. The new disclosures require all services and fees to be itemized and description of services must be listed alphabetically. All Title related charges must be designated as “Title – (description of fee)”, such as Title – Closing Fee.
- **Average Charge**

  The Final Rule allows Average Charge Pricing and expands the rule with clear examples of how to calculate average charges and limitations on use.
- **Record Retention**

  The Loan Estimate must be retained for 3 years and the Closing Disclosure is to be retained for 5 years.
- **Penalties**
- **Changes to APR calculations**

SECTION II. – Guide to General Rules

Coverage

CFPB Summary

The TILA-RESPA rule applies to most closed-end consumer credit transactions secured by real property, but **does not apply to:**

- HELOCs;
- Reverse mortgages; or
- Chattel-dwelling loans, such as loans secured by a mobile home or by a dwelling that is not attached to real property (*i.e.*, land).

Consistent with the current rules under TILA, the rule also does not apply to loans made by a person or entity that makes five or fewer mortgages in a calendar year and thus is not a **creditor**. (§ 1026.2(a)(17))

There is also a partial exemption for certain transactions associated with housing assistance loan programs for low- and moderate-income consumers. (§ 1026.2(h)) However, certain types of loans that are currently subject to TILA but not RESPA **are subject** to the TILA-RESPA rule's integrated disclosure requirements, including:

- Construction-only loans
- Loans secured by vacant land or by 25 or more acres

What are the disclosure obligations for transactions not covered by the TILA- RESPA rule, like HELOCs and reverse mortgages?

The new Integrated Disclosures will not be used to disclose information about reverse mortgages, HELOCs, chattel-dwelling loans, or other transactions not covered by the TILA- RESPA rule. Creditors originating these types of mortgages must continue to use, as applicable, the GFE, HUD-1, and Truth-in-Lending disclosures required under current law.

For these transactions associated with the partial exemption for housing assistance loan programs for low- and moderate-income consumers. (§ 1026.3(h)):

Creditors are exempt from the requirement to provide the RESPA settlement cost booklet, RESPA GFE, RESPA settlement statement, and application servicing disclosure statement requirements. (See §§ 1024.6, 1024.7, 1024.8, 1024.10, and 1024.33)

Creditors are exempt from the requirements to provide a **Loan Estimate**, **Closing Disclosure**, and Special Information Booklet for these loans. (§ 1026.3(h))

Does a creditor have an option to use the new Integrated Disclosure forms for a transaction not covered by the TILA- RESPA rule?

Creditors are not prohibited from using the Integrated Disclosure forms on loans that are not covered by TILA or RESPA (e.g., mortgages associated with housing assistance loan programs for low- and moderate-income consumers). (See §§ 1026.3(h) and 1024.5(d)(2)). However, a creditor cannot use the new Integrated Disclosure forms instead of the GFE, HUD-1, and Truth-in-Lending forms for transactions that are covered by TILA or RESPA that require those disclosures (*e.g.*, reverse mortgages).

FAQS/TIPS

Q: Do the new disclosure requirements apply to assumptions*?* Yes, assuming that assumption that is a post consummation event. 1026.20 (b). Assumption refers to the defined term under Regulation Z.

Q: **Would a successor-in-interest be considered a "subsequent purchaser" for the purpose of the assumption disclosure?** *Refer to the Bureau's interpretative rule found at https://www.federalregister.gov/articles/2014/07/17/2014-16780/application-of-regulation-zs-ability-to-repay-rule-to-certain-situations-involving#h-8*

Generally, where a successor-in-interest (successor) who has previously acquired title to a dwelling agrees to be added as obligor or substituted for the existing obligor on a consumer credit transaction secured by that dwelling, the creditor's written acknowledgement of the successor as obligor does not constitute an assumption. In certain circumstances, however, creditors and consumers agree, after consummation, to changes to an existing transaction that are treated as a "new transaction" under Regulation Z, requiring new disclosures. Section 1026.20(a) and (b) provide that if a creditor and consumer engage in activity that constitutes a "refinancing" or an "assumption," the creditor must make new disclosures.

Q: Section 1026.3(h) exempts certain downpayment assistance loans from the new rules. Do creditors still need to provide the existing TILA disclosures for those loans? Yes. One of the conditions to meeting the exemption is that the current disclosures are provided.

Rules/Official Comments

The Rule: § 1024.5 Coverage of RESPA

(a) *Applicability*. RESPA and this part apply to federally related mortgage loans, except as provided in paragraphs (b) and (d) of this section.

(b) *Exemptions*.

(1) [Reserved]

* * * * *

(d) *Partial exemptions for certain mortgage loans.* Sections 1024.6, 1024.7, 1024.8, 1024.10, and 1024.21(b) and (c) do not apply to a federally related mortgage loan:

(1) That is subject to the special disclosure requirements for certain consumer credit transactions secured by real property set forth in Regulation Z, 12 CFR 1026.19(e), (f) and (g); or

(2) That satisfies the criteria in Regulation Z, 12 CFR 1026.3(h).

The Rule: § 1026.3 Exempt Transactions

The following transactions are not subject to this part or, if the exemption is limited to specified provisions of this part, are not subject to those provisions:

*Note: the rule text for (a) was not changed, however, the official comments for (a) include new comments about Organizational credit as well as Trusts.

The Rule: § 1026.3(a) Business, commercial, agricultural, or organizational credit

(i) An extension of credit primarily for a business, commercial or agricultural purpose.

(ii) An extension of credit to other than a natural person, including credit to government agencies or instrumentalities

Official Comment - 3(a)

Section 1026.3—Exempt Transactions

3(a) Business, commercial, agricultural, or organizational credit.

9. Organizational credit. The exemption for transactions in which the borrower is not a natural person applies, for example, to loans to corporations, partnerships, associations, churches, unions, and fraternal organizations. The exemption applies regardless of the purpose of the

credit extension and regardless of the fact that a natural person may guarantee or provide security for the credit. But see comment 3(a)-10 concerning credit extended to trusts.

10. Trusts. Credit extended for consumer purposes to certain trusts is considered to be credit extended to a natural person rather than credit extended to an organization. Specifically:

i. Trusts for tax or estate planning purposes. In some instances, a creditor may extend credit for consumer purposes to a trust that a consumer has created for tax or estate planning purposes (or both). Consumers sometimes place their assets in trust, with themselves or themselves and their families or other prospective heirs as beneficiaries, to obtain certain tax benefits and to facilitate the future administration of their estates. During their lifetimes, however, such consumers may continue to use the assets and/or income of such trusts as their property. A creditor extending credit to finance the acquisition of, for example, a consumer's dwelling that is held in such a trust, or to refinance existing debt secured by such a dwelling, may prepare the note, security instrument, and similar loan documents for execution by a trustee, rather than the beneficiaries of the trust. Regardless of the capacity or capacities in which the loan documents are executed, assuming the transaction is primarily for personal, family, or household purposes, the transaction is subject to the regulation because in substance (if not form) consumer credit is being extended.

ii. Land trusts. In some jurisdictions, a financial institution financing a residential real estate transaction for an individual uses a land trust mechanism. Title to the property is conveyed to the land trust for which the financial institution itself is trustee. The underlying installment note is executed by the financial institution in its capacity as trustee and payment is secured by a trust deed, reflecting title in the financial institution as trustee. In some instances, the consumer executes a personal guaranty of the indebtedness. The note provides that it is payable only out of the property specifically described in the trust deed and that the trustee has no personal liability on the note. Assuming the transactions are primarily for personal, family, or household purposes, these transactions are subject to the regulation because in substance (if not form) consumer credit is being extended.

The Rule: § 1026.3(h) Partial exemption for certain mortgage loans

The special disclosure requirements in § 1026.19(e), (f), and (g) do not apply to a transaction that satisfies all of the following criteria:

(1) The transaction is secured by a subordinate lien;

(2) The transaction is for the purpose of:

(i) Down payment, closing costs, or other similar home buyer assistance, such as principal or interest subsidies;

(ii) Property rehabilitation assistance;

(iii) Energy efficiency assistance; or

(iv) Foreclosure avoidance or prevention;

(3) The credit contract does not require the payment of interest;

(4) The credit contract provides that repayment of the amount of credit extended is:

(i) Forgiven either incrementally or in whole, at a date certain, and subject only to specified ownership and occupancy conditions, such as a requirement that the consumer maintain the property as the consumer's principal dwelling for five years;

(ii) Deferred for a minimum of 20 years after consummation of the transaction;

(iii) Deferred until sale of the property securing the transaction; or

(iv) Deferred until the property securing the transaction is no longer the principal dwelling of the consumer;

(5) The total of costs payable by the consumer in connection with the transaction at consummation is less than one percent of the amount of credit extended and includes no charges other than:

(i) Fees for recordation of security instruments, deeds, and similar documents;

(ii) A bona fide and reasonable application fee; and

(iii) A bona fide and reasonable fee for housing counseling services; and

(6) The creditor complies with all other applicable requirements of this part in connection with the transaction, including without limitation the disclosures required by § 1026.18

Official Comment - 3(h)

3(h) Partial exemption for certain mortgage loans.

1. Partial exemption. Section 1026.3(h) exempts certain transactions from only the disclosures required by § 1026.19(e), (f), and (g), and not from any of the other applicable requirements of this part. As provided by § 1026.3(h)(6), creditors must comply with all other applicable requirements of this part. In addition, the creditor must provide the disclosures required by § 1026.18, even if the creditor would not otherwise be subject to the disclosure requirements of § 1026.18. The consumer also has the right to rescind the transaction under § 1026.23, to the extent that provision is applicable.

2. Requirements of exemption. The conditions that the transaction not require the payment of interest under § 1026.3(h)(3) and that repayment of the amount of credit extended be forgiven or deferred in accordance with § 1026.3(h)(4) is determined by the terms of the credit contract. The other requirements of § 1026.3(h) need not be reflected in the credit contract, but the creditor must retain evidence of compliance with those provisions, as required by § 1026.25(a). In particular, because the exemption from § 1026.19(e), (f), and (g) means the consumer will not receive the disclosures of closing costs under § 1026.37 or § 1026.38, the creditor must have information reflecting that the total of closing costs imposed in connection with the transaction is less than one percent of the amount of credit extended and include no charges other than recordation, application, and housing counseling fees, in accordance with § 1026.3(h)(5). Unless an itemization of the amount financed sufficiently details this requirement, the creditor must establish compliance with § 1026.3(h)(5) by some other written document and retain it in accordance with § 1026.25(a).

Consumation

CFPB Summary

The rule requires creditors to provide the Closing Disclosure three business days before consummation. Is "consummation" the same thing as closing or settlement? (§ 1026.2(a)(13))

No, **consummation** may commonly occur at the same time as closing or settlement, but it is a legally distinct event. **Consummation** occurs when the consumer becomes contractually obligated to the creditor on the loan, not, for example, when the consumer becomes contractually obligated to a seller on a real estate transaction.

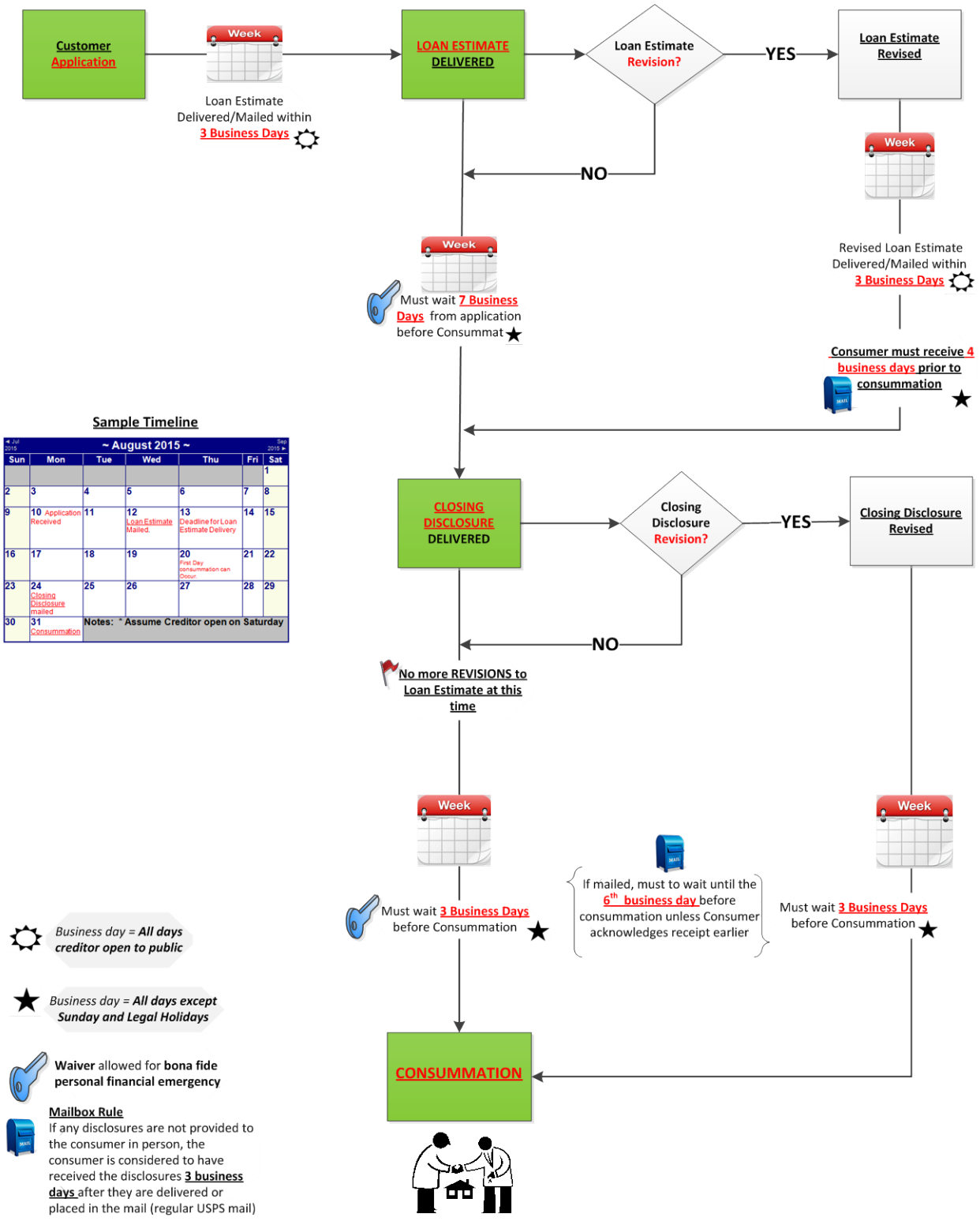
The point in time when a consumer becomes contractually obligated to the creditor on the loan depends on applicable State law. (§ 1026.2(a)(13) and Comment 2(a)(13)-1). Creditors and settlement agents should verify the applicable State laws to determine when **consummation** will occur, and make sure delivery of the **Closing Disclosure** occurs at least three business days before this event.

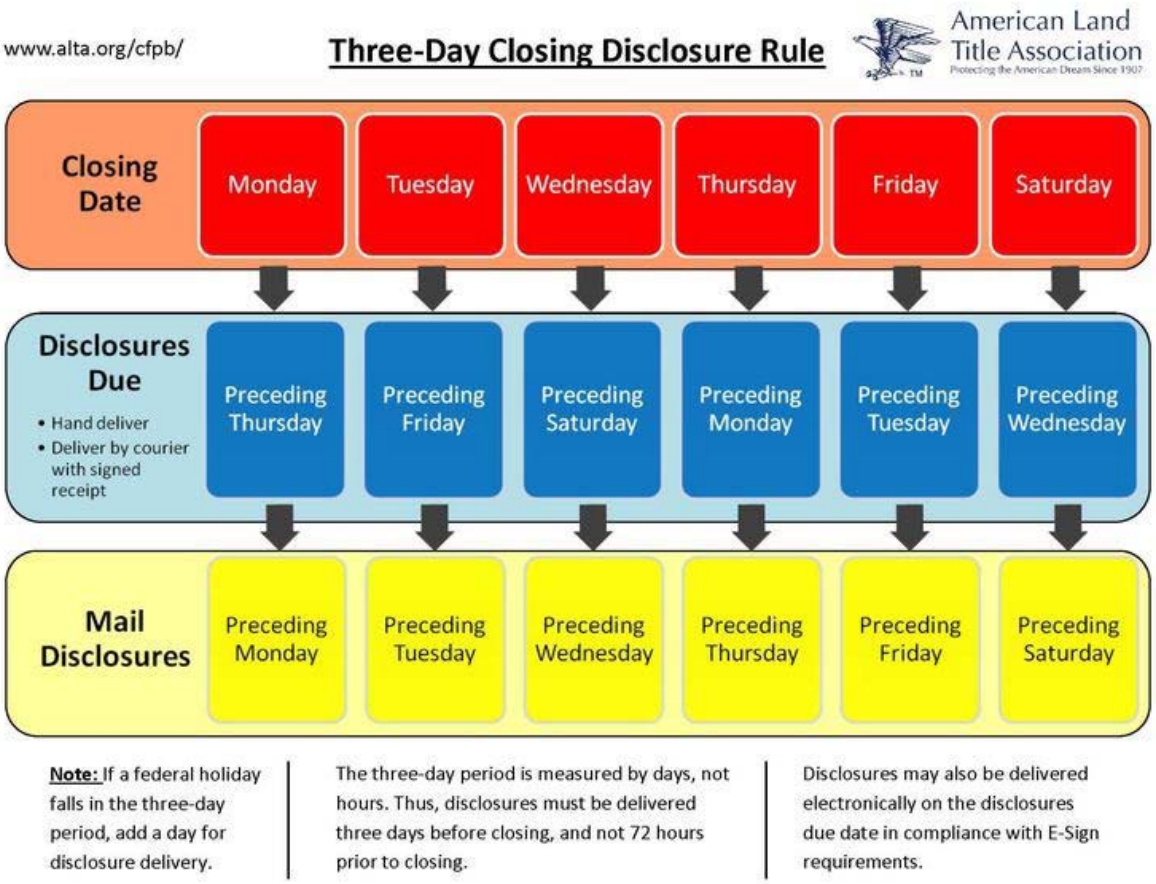
Rule/Official Comments

State law governs. When a contractual obligation on the consumer's part is created is a matter to be determined under applicable law; Regulation Z does not make this determination. A contractual commitment agreement, for example, that under applicable law binds the consumer to the credit terms would be consummation. Consummation, however, does not occur merely because the consumer has made some financial investment in the transaction (for example, by paying a nonrefundable fee) unless, of course, applicable law holds otherwise.

Credit v. sale. Consummation does not occur when the consumer becomes contractually committed to a sale transaction, unless the consumer also becomes legally obligated to accept a particular credit arrangement. For example, when a consumer pays a nonrefundable deposit to purchase an automobile, a purchase contract may be created, but consummation for purposes of the regulation does not occur unless the consumer also contracts for financing at that time.

Flowcharts


Customer Application
Week
Loan Estimate Delivered/Mailed within 3 Business Days
LOAN ESTIMATE DELIVERED
Loan Estimate Revision?
YES
Loan Estimate Revised
NO
Week
Must wait 7 Business Days from application before Consummat
Week
Revised Loan Estimate Delivered/Mailed within 3 Business Days
Consumer must receive 4 business days prior to consummation
Sample Timeline
~ August 2015 ~
Sun Mon Tue Wed Thu Fri Sat
1
2 3 4 5 6 7 8
9 10 Application Received 11 12 Loan Estimate Mailed. 13 Deadline for Loan Estimate Delivery 14 15
16 17 18 19 20 First Day consummation can Occur. 21 22
23 24 Closing Disclosure mailed 25 26 27 28 29
30 31 Consummation
Notes: * Assume Creditor open on Saturday
CLOSING DISCLOSURE DELIVERED
Closing Disclosure Revision?
YES
Closing Disclosure Revised
NO
No more REVISIONS to Loan Estimate at this time
Week
Week
If mailed, must to wait until the 6th business day before consummation unless Consumer acknowledges receipt earlier
Must wait 3 Business Days before Consummation
Must wait 3 Business Days before Consummation
CONSUMMATION
Business day = All days creditor open to public
Business day = All days except Sunday and Legal Holidays
Waiver allowed for bona fide personal financial emergency
Mailbox Rule
If any disclosures are not provided to the consumer in person, the consumer is considered to have received the disclosures 3 business days after they are delivered or placed in the mail (regular USPS mail)



Summary – Loan Estimate

- Must be delivered or placed in the mail 3rd business day after receipt of application.
- Must be delivered/mailed no later than 7 business days before consummation.
- If delivery is via mail, Consumer is presumed to have received the Loan Estimate 3 business days after it's placed in mail.
- Revised Loan Estimates.
    - Must be delivered/mailed no later than 3 business days after receiving the information to revise the Loan Estimate.
    - Must be delivered/mailed prior to consumer's receipt of Closing Disclosure.
    - Consumer must receive revised Loan Estimate no later than 4 business days prior to consummation. Business day for this purpose is all calendar days except Sundays and legal public holidays.

- If mailing, must be mailed 6 business days before consummation. However, if consumer confirms receipt of revised Loan Estimate earlier, the consumer can confirm receipt of the revised Loan Estimate earlier.
- Must deliver same day if interest rate is locked.

Business day

Definition #1 = a day on which the creditor's offices are open to the public for carrying out substantially all of its business functions. (Use for Delivering Loan Estimate)
Definition #2 = all calendar days except Sundays and the legal public holidays. (Use for counting days to ensure consumer received Closing Disclosure)

Summary - Closing Disclosure

- Consumer must receive the Closing Disclosure 3 business days before consummation. Business day = all calendar days except Sunday and legal holidays.
- IF mailed, consumer is presumed to have received 3 business days after it was mailed.
- Consumer can acknowledge receipt earlier.
- Revised Closing Disclosure –
  - *Pre Consummation*

    A new 3 day waiting period is triggered if the Closing Disclosure need to be revised based on:
    - Inaccurate APR (increase, decrease, or both of more than 1/8 of a % for most loans)
    - Change in loan product
    - Prepayment penalty is added
  - Post Consummation
    - If post consummation event triggers change to Closing Disclosure that would change the amount paid by the consumer, the Corrected Disclosure must be delivered /mailed within 30 calendar days of consummation.

FAQS/TIPS

Q: Does the 7-day waiting period before consummation that applies to Loan Estimates apply to revised disclosures? No. The 7 day waiting period is for the initial disclosures. However, the mailbox rule may apply.

Q: Are creditors required to provide revised Loan Estimates on the same business day that a consumer or loan officer requests a rate lock? (1026.19(e)(3)(iv)(D)) Not necessarily. Lock is not expressly defined in the rule. Lock depends on state law or contract. The revised disclosure must be provided on the day the lock agreement is entered into and, not the date the lock is requested.

Q: May a Closing Disclosure be provided early and revised Closing Disclosures used in place of revised Loan Estimates for disclosing estimates that changed due to changed circumstances? No.

Q: Is an additional 3-business-day waiting period required if the APR decreases by more than 1/4 or 1/8 percentage points? This hasn't changed from current rule. Refer to the Federal

Loan Estimate Timing

Generally, the creditor is responsible for ensuring that it delivers or places in the mail the Loan Estimate form no later than the **third business day after receiving the consumer's application** (although see section below regarding delivery of the Loan Estimate by a mortgage broker).

The Loan Estimate must also be delivered or placed in the mail no later than the **seventh business day** before consummation of the transaction. (See § 1026.19(e)(1)(iii)(B))

If the Loan Estimate is not provided to the consumer in person, the consumer is considered to have received the Loan Estimate three business days after it is delivered or placed in the mail. (§ 1026.19(e)(1)(iv))

The creditor also is responsible for ensuring that the Loan Estimate and its delivery meet the content, delivery, and timing requirements. (See §§ 1026.19(e) and 1026.37)

May a consumer waive the seven-business-day waiting period? (§ 1026.19(e)(1)(v))

The consumer may modify or waive the seven-business-day waiting period after receiving the Loan Estimate if the consumer has a bona-fide personal financial emergency that necessitates consummating the credit transaction before the end of the waiting period.

Whether a consumer has a bona fide personal financial emergency is determined by the facts surrounding the consumer's individual situation. (See § 1026.19(e)(1)(v); Comment 19(e)(1)(v)-1). An example of a bona fide personal financial emergency is the imminent sale of the consumer's home at foreclosure, where the foreclosure sale will proceed unless loan proceeds are made available to the consumer during the waiting period.

To modify or waive the waiting period, the consumer must give the creditor a dated written statement that describes the emergency, specifically modifies or waives the waiting period, and is signed by all consumers primarily liable on the legal obligation. (§ 1026.19(e)(1)(v)). The creditor may not provide the consumer with a pre-printed waiver form. (§ 1026.19(e)(1)(v)).

CFPB COMPLIANCE GUIDE SUMMARY

LOAN ESTIMATE TIMING

What is considered a "business day" under the requirements for provision of the Loan Estimate? (Comment 19(e)(1)(iii)-1, § 1026.2(a)(6))

For purposes of providing the Loan Estimate, a business day is a day on which the creditor's offices are open to the public for carrying out substantially all of its business functions. (Comment 19(e)(1)(iii)-1, § 1026.2(a)(6))

Note that the term business day is defined differently for other purposes; including counting days to ensure the consumer receives the Closing Disclosure on time. (See §§ 1026.2(a)(6), 1026.19(f)(1)(ii)(A) and (f)(1)(iii)). For these other purposes, business day means all calendar days except Sundays and the legal public holidays specified in 5 U.S.C. 6103(a

REVISIONS

What is the general timing requirement for providing a revised Loan Estimate? (§1026.19(e)(4)(i))

The general rule is that the creditor must deliver or place in the mail the revised Loan Estimate to the consumer no later than three business days after receiving the information sufficient to establish that one of the reasons for the revision described in section 8.1 above has occurred. (§ 1026.19(e)(4)(i); Comment 19(e)(4)(i)-1)

- As discussed in section 11.2 below regarding the Closing Disclosure, when a revised Loan Estimate is provided in person, it is considered received by the consumer on the day it is provided. If it is mailed or delivered electronically, the consumer is considered to have received it three business days after it is delivered or placed in the mail. (§ 1026.19(e)(1)(iv) and commentary).

However, if the creditor has evidence that the consumer received the revised Loan Estimate earlier than three business days after it is mailed or delivered, it may rely on that evidence and consider it to be received on that date. (Comments 19(e)(1)(iv)-1 and -2) (See also discussion above in section 11.3 of this guide on similar receipt rule under § 1026.19(e)(1)(iv) and commentary regarding the Closing Disclosure)

CFPB COMPLIANCE GUIDE SUMMARY

LOAN ESTIMATE TIMING

Are there any restrictions on how many days before consummation a revised Loan Estimate may be provided? (§ 1026.19(e)(4))

Yes.

- The creditor may not provide a revised Loan Estimate on or after the date it provides the Closing Disclosure.
- The creditor must ensure that the consumer receives the revised Loan Estimate no later than four business days prior to consummation. If the creditor is mailing the revised Loan Estimate and relying upon the 3 business day mailbox rule, the creditor would need to place in the mail the Loan Estimate no later than seven business days before consummation of the transaction to allow 3 business days for receipt. (§ 1026.19(e)4 ; Comment 19(e)(4)(i)-2)

DELIVERY

Can a mortgage broker provide a Loan Estimate on the creditor's behalf?

Yes. If a mortgage broker receives a consumer's application, the mortgage broker may provide the Loan Estimate to the consumer on the creditor's behalf. (§ 1026.19(e)(1)(ii))

The provision of a Loan Estimate by a mortgage broker satisfies the creditor's obligation to provide a Loan Estimate. However, any such creditor is expected to maintain communication with mortgage brokers to ensure that the Loan Estimate and its delivery satisfy the requirements described above, and the creditor is legally responsible for any errors or defects. (§ 1026.19(e)(1)(ii); Comment 19(e)(1)(ii) -1 and -2)

If a mortgage broker provides the Loan Estimate to a consumer, the mortgage broker must comply with the three year record retention requirement discussed in section 2.3 above. (Comment 19(e)(1)(ii)-1)

Creditors must ensure that consumers receive the Closing Disclosure no later than **three business days before consummation**. (§ 1026.19(f)(1)(ii)(A))

Consummation is the time that a consumer becomes contractually obligated on the credit transaction, and may not necessarily coincide with the settlement or closing of the entire real estate transaction. (§ 1026.2(a)(13))

For timeshare transactions, the creditor must ensure that the consumer receives the Closing Disclosure no later than consummation. (§ 1026.19(f)(1)(ii)(B))

If the Closing Disclosure is provided in person, it is considered received by the consumer on the day it is provided. If it is mailed or delivered electronically, the consumer is considered to have received the Closing Disclosure three business days after it is delivered or placed in the mail. (§ 1026.19(f)(1)(iii); Comment 19(f)(1)(ii)-2)

However, if the creditor has evidence that the consumer received the Closing Disclosure earlier than three business days after it is mailed or delivered, it may rely on that evidence and consider it to be received on that date. (Comments 19(f)(1)(iii)-1 and -2)

This requirement imposes a three-business-day waiting period, meaning that the loan may not be consummated less than three business days after the Closing Disclosure is received by the consumer. If a settlement is scheduled during the waiting period, the creditor generally must postpone settlement, unless a settlement within the waiting period is necessary to meet a bona fide personal financial emergency. (§ 1026.19(f)(1)(iv))

Remember that business day is given a different meaning for purposes of providing the Closing Disclosure than it is for purposes of providing the Loan Estimate after receiving a consumer's application. (See section 6.9 above describing definition of business day). For purposes of providing the Closing Disclosure, the term business day means all calendar days except Sundays and the legal public holidays specified in 5 U.S.C. 6103(a), such as Year's Day, the Birthday of Martin Luther King, Jr., Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, and Christmas Day. (See §§ 1026.2(a)(6), 1026.19(f)(1)(ii)(A) and (f)(1)(iii))

May a consumer waive the three-business-day waiting period? (§ 1026.19(f)(1)(iv))

Yes. Like the seven-business-day waiting period after receiving the Loan Estimate, consumers may waive or modify the three-business-day waiting period when:

- The extension of credit is needed to meet a bona fide personal financial emergency. (§1026.19(f)(1)(iv));
- The consumer has received the Closing Disclosure; and
- The consumer gives the creditor a dated written statement that describes the emergency, specifically modifies or waives the waiting period, and bears the signature of all consumers who are primarily liable on the legal obligation. (§ 1026.19(f)(1)(iv))

For example, the imminent sale of the consumer's home at foreclosure, where the foreclosure sale will proceed unless loan proceeds are made available to the consumer during the waiting period, may be considered a **bona fide personal financial emergency**. (Comment 19(f)(1)(iv)-1)

The creditor is prohibited from providing the consumer with a pre-printed waiver form. (§ 1026.19(f)(1)(iv))

REVISIONS

Does the three-business-day waiting period apply when *corrected* Closing Disclosures must be issued to the consumer? (§ 1026.19(f)(2)(i) and (ii))

Yes, in some circumstances. The three-business-day waiting period requirement applies to a corrected Closing Disclosure that is provided when there are:

- Changes to the loan's APR;
- Changes to the loan product; or
- The addition of a prepayment penalty.

If other types of changes occur, creditors must ensure that the consumer receives a corrected Closing Disclosure at or before consummation. (§ 1026.19(f)(2)(i) and (ii))

When must the settlement agent provide the Closing Disclosure to the seller? (§ 1026.19(f)(4)(ii))

The settlement agent must provide the seller its copy of the Closing Disclosure no later than the day of consummation. (§ 1026.19(f)(4)(ii))

CFPB COMPLIANCE GUIDE SUMMARY

CLOSING DISCLOSURE TIMING

What changes do not require a new three-day waiting period? (§ 1026.19(f)(2)(i))

For any other changes before consummation that do not fall under the three categories above (i.e., related to the APR, loan product, or the addition of a prepayment penalty), the creditor still must provide a corrected Closing Disclosure with any terms or costs that have changed and ensure that the consumer receives it.

For these changes, there is no additional three-business-day waiting period required. The creditor must ensure only that the consumer receives the revised Closing Disclosure at or before consummation. (§ 1026.19(f)(2)(i); Comment 19(f)(2)(i)-1 through -2)

What if a consumer asks for the revised Closing Disclosure before consummation? (§ 1026.19(f)(2)(i))

For changes other than to the APR, loan product, or the addition of a prepayment penalty, the creditor is not required to provide the consumer with the revised Closing Disclosure until the day of consummation. However, a consumer has the right to inspect the Closing Disclosure during the business day before consummation. (§ 1026.19(f)(2)(i))

If a consumer asks to inspect the Closing Disclosure the business day before consummation, the Closing Disclosure presented to the consumer must reflect any adjustments to the costs or terms that are known to the creditor at the time the consumer inspects it. (§ 1026.19(f)(2)(i))

Creditors may arrange for settlement agents to permit consumers to inspect the Closing Disclosure. (§ 1026.19(f)(1)(v) and Comment 19(f)(2)(i)-2)

An example of a post-consummation event that would require a new Closing Disclosure is a discovery that a recording fee paid by the consumer is different from the amount that was disclosed on the Closing Disclosure. (Comment 19(f)(2)(iii)-1.i). However, other post-consummation events that are not related to settlement, such as tax increases, do not require a revised Closing Disclosure. (Comment 19(f)(2)(iii)-1.iii). For guidance on when a creditor receives information sufficient to establish that an event has occurred after consummation, see Comment 19(e)(4)(i)-1.

CLOSING DISCLOSURE DELIVERY

How must the Closing Disclosure be delivered? (§ 1026.19(f)(1)(ii))

To ensure the consumer receives the **Closing Disclosure** on time, creditors must arrange for delivery as follows:

- By providing it to the consumer in person.
- By mailing, or by other delivery methods, including email. Creditors may use electronic delivery methods subject to compliance with the consumer consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (15 U.S.C. 7001 *et seq.*). (§ 1026.38(t)(3)(iii))

Can a settlement agent provide the Closing Disclosure on the creditor's behalf? (§ 1026.19(f)(1)(v))

Yes. Creditors may contract with settlement agents to have the settlement agent provide the Closing Disclosure to consumers on the creditor's behalf. (§ 1026.19(f)(1)(v)). Creditors and settlement agents also may agree to divide responsibility with regard to completing the Closing Disclosure, with the settlement agent assuming responsibility to complete some or all the Closing Disclosure. (Comment 19(f)(1)(v)-4)

Any such creditor must maintain communication with the settlement agent to ensure that the Closing Disclosure and its delivery satisfy the requirements described above, and the creditor is legally responsible for any errors or defects. (§ 1026.19(f)(1)(v) and Comment 19(f)(1)(v)-3)

Who is responsible for providing the Closing Disclosure to a seller in a purchase transaction? (§1026.19(f)(4)(i))

The settlement agent is required to provide the seller with the Closing Disclosure reflecting the actual terms of the seller's transaction. (§ 1026.19(f)(4)(i))

The settlement agent may comply with this requirement by providing the seller with a copy of the Closing Disclosure provided to the consumer (buyer) if it also contains information relating to the seller's transaction. (Comment 19(f)(4)(i)-1)

The settlement agent may also provide the seller with a separate disclosure, including only the information applicable to the seller's transaction from the Closing Disclosure (§

1026.38(t)(5)(v) or (vi), as applicable). (See form H-25(I) of appendix H to Regulation Z for a model form).

However, if the seller's disclosure is provided in a separate document, the settlement agent has to provide the creditor with a copy of the disclosure provided to the seller. (§ 1026.19(f)(4)(iv))

When must the settlement agent provide the Closing Disclosure to the seller? (§ 1026.19(f)(4)(ii))
The settlement agent must provide the seller its copy of the Closing Disclosure no later than the day of consummation. (§ 1026.19(f)(4)

Rules/Official Comments

Timing of Loan Estimate

The Rule: § 1026.19(e)(1)(iii) Timing

(A) The creditor shall deliver or place in the mail the disclosures required under paragraph (e)(1)(i) of this section not later than the third business day after the creditor receives the consumer's application, as defined in § 1026.2(a)(3).

(B) Except as set forth in paragraph (e)(1)(iii)(C) of this section, the creditor shall deliver or place in the mail the disclosures required under paragraph (e)(1)(i) of this section not later than the seventh business day before consummation of the transaction.

(C) For a transaction secured by a consumer's interest in a timeshare plan described in 11 U.S.C. 101(53D), paragraph (e)(1)(iii)(B) of this section does not apply.

Official Comment - 19(e)(1)(iii)

*1. **Timing and use of estimates.** The disclosures required by § 1026.19(e)(1)(i) must be delivered not later than three business days after the creditor receives the consumer's application. For example, if an application is received on Monday, the creditor satisfies this requirement by either hand delivering the disclosures on or before Thursday, or placing them in the mail on or before Thursday, assuming each weekday is a business day. For purposes of § 1026.19(e)(1)(iii)(A), the term "business day" means a day on which the creditor's offices are open to the public for carrying out substantially all of its business functions. See § 1026.2(a)(6).*

2. Waiting period. *The seven-business-day waiting period begins when the creditor delivers the disclosures or places them in the mail, not when the consumer receives or is considered to have received the disclosures. For example, if a creditor delivers the early disclosures to the consumer in person or places them in the mail on Monday, June 1, consummation may occur on or after Tuesday, June 9, the seventh business day following delivery or mailing of the early disclosures, because, for the purposes of § 1026.19(e)(1)(iii)(B), Saturday is a business day, pursuant to § 1026.2(a)(6).*

3. Denied or withdrawn applications. *The creditor may determine within the three- business-day period that the application will not or cannot be approved on the terms requested, such as when a consumer's credit score is lower than the minimum score required for the terms the consumer applied for, or the consumer applies for a type or amount of credit that the creditor does not offer. In that case, or if the consumer withdraws the application within the three-business-day period by, for instance, informing the creditor that he intends to take out a loan from another creditor within the three-business-day period, the creditor need not make the disclosures required under § 1026.19(e)(1)(i). If the creditor fails to provide early disclosures and the transaction is later consummated on the terms originally applied for, then the creditor does not comply with § 1026.19(e)(1)(i). If, however, the consumer amends the application because of the creditor's unwillingness to approve it on the terms originally applied for, no violation occurs for not providing disclosures based on those original terms. But the amended application is a new application subject to § 1026.19(e)(1)(i).*

4. Timeshares. *If consummation occurs within three business days after a creditor's receipt of an application for a transaction that is secured by a consumer's interest in a timeshare plan described in 11 U.S.C. 101(53D), a creditor complies with § 1026.19(e)(1)(iii) by providing the disclosures required under § 1026.19(f)(1)(i) instead of the disclosures required under § 1026.19(e)(1)(i).*

The Rule: § 1026.19(e)(1)(iv) Receipt of early disclosures

If any disclosures required under paragraph (e)(1)(i) of this section are not provided to the consumer in person, the consumer is considered to have received the disclosures three business days after they are delivered or placed in the mail.

Official Comment - 19(e)(1)(iv)

Receipt of Early Disclosures

1. Mail delivery. *Section 1026.19(e)(1)(iv) provides that, if any disclosures required under § 1026.19(e)(1)(i) are not provided to the consumer in person, the consumer is considered to have received the disclosures three business days after they are delivered or placed in the mail. The creditor may, alternatively, rely on evidence that the consumer received the disclosures earlier than three business days. For example, if the creditor sends the disclosures via overnight mail on Monday, and the consumer signs for receipt of the overnight delivery on Tuesday, the creditor could demonstrate that the disclosures were received on Tuesday.*

2. Electronic delivery. *The three-business-day period provided in § 1026.19(e)(1)(iv) applies to methods of electronic delivery, such as email. For example, if a creditor sends the disclosures required under § 1026.19(e) via email on Monday, pursuant to § 1026.19(e)(1)(iv) the consumer is considered to have received the disclosures on Thursday, three business days later. The creditor may, alternatively, rely on evidence that the consumer received the emailed disclosures earlier. For example, if the creditor emails the disclosures at 1 p.m. on Tuesday, the consumer emails the creditor with an acknowledgement of receipt of the disclosures at 5 p.m. on the same day, the creditor could demonstrate that the disclosures were received on the same day. Creditors using electronic delivery methods, such as email, must also comply with § 1026.37(o)(3)(iii), which provides that the disclosures in § 1026.37 may be provided to the consumer in electronic form, subject to compliance with the consumer consent and other applicable provisions of the E-Sign Act. For example, if a creditor delivers the disclosures required under § 1026.19(e)(1)(i) to a consumer via email, but the creditor did not obtain the consumer's consent to receive disclosures via email prior to delivering the disclosures, then the creditor does not comply with § 1026.37(o)(3)(iii), and the creditor does not comply with § 1026.19(e)(1)(i), assuming the disclosures were not provided in a different manner in accordance with the timing requirements of § 1026.19(e)(1)(iii)*

The Rule: § 1026.19(e)(1)(v) Consumer's waiver of waiting period before consummation

If the consumer determines that the extension of credit is needed to meet a bona fide personal financial emergency, the consumer may modify or waive the seven-business-day waiting period for early disclosures required under paragraph (e)(1)(iii)(B) of this section, after receiving the disclosures required under paragraph (e)(1)(i) of this section. To modify or waive the waiting period, the consumer shall give

the creditor a dated written statement that describes the emergency, specifically modifies or waives the waiting period, and bears the signature of all the consumers who are primarily liable on the legal obligation. Printed forms for this purpose are prohibited.

Official Comment 19(e)(1)(v)

Consumers Waiver.

1. Modification or waiver*. A consumer may modify or waive the right to the seven-business-day waiting period required by § 1026.19(e)(1)(iii) only after the creditor makes the disclosures required by § 1026.19(e)(1)(i). The consumer must have a bona fide personal financial emergency that necessitates consummating the credit transaction before the end of the waiting period. Whether these conditions are met is determined by the circumstances of the individual situation. The imminent sale of the consumer's home at foreclosure, where the foreclosure sale will proceed unless loan proceeds are made available to the consumer during the waiting period, is one example of a bona fide personal financial emergency. Each consumer who is primarily liable on the legal obligation must sign the written statement for the waiver to be effective.*

2. Examples of waivers within the seven-business-day waiting period. *If the early disclosures are delivered to the consumer in person on Monday, June 1, the seven-business-day waiting period ends on Tuesday, June 9. If on Monday, June 1, the consumer executes a waiver of the seven-business-day waiting period, the final disclosures required by § 1026.19(f)(1)(i) could then be delivered three business days before consummation, as required by § 1026.19(f)(1)(ii), on Tuesday, June 2, and the loan could be consummated on Friday, June 5. See § 1026.19(f)(1)(iv) for waiver of the three-business-day waiting period under § 1026.19(f).*

The Rule: § 1026.2(a)(6) Business Day

Business day means a day on which the creditor's offices are open to the public for carrying on substantially all of its business functions. However, for purposes of rescission under §§ 1026.15 and 1026.23, and for purposes of §§ 1026.19(a)(1)(ii), 1026.19(a)(2), 1026.31, and 1026.46(d)(4), the term means all calendar days except Sundays and the legal public holidays specified in 5 U.S.C. 6103(a), such as New Year's Day, the Birthday of Martin Luther King, Jr., Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, and Christmas Day

Official Comment - 2(a)(6)

Business Day

Business function test. Activities that indicate that the creditor is open for substantially all of its business functions include the availability of personnel to make loan disbursements, to open new accounts, and to handle credit transaction inquiries. Activities that indicate that the creditor is not open for substantially all of its business functions include a retailer's merely accepting credit cards for purchases or a bank's having its customer-service windows open only for limited purposes such as deposits and withdrawals, bill paying, and related services.

Rule for rescission, disclosures for certain mortgage transactions, and private education loans. A more precise rule for what is a business day (all calendar days except Sundays and the Federal legal holidays specified in 5 U.S.C. 6103(a)) applies when the right of rescission, the receipt of disclosures for certain dwelling-secured mortgage transactions under §§ 1026.19(a)(1)(ii), 1026.19(a)(2), 1026.31(c), or the receipt of disclosures for private education loans under § 1026.46(d)(4) is involved. Four Federal legal holidays are identified in 5 U.S.C. 6103(a) by a specific date: New Year's Day, January 1; Independence Day, July 4; Veterans Day, November 11; and Christmas Day, December 25. When one of these holidays (July 4, for example) falls on a Saturday, Federal offices and other entities might observe the holiday on the preceding Friday (July 3). In cases where the more precise rule applies, the observed holiday (in the example, July 3) is a business day.

Timing of Revised Loan Estimate

The Rule: § 1026.19(e)(4) Provision and receipt of revised disclosures

(i) *General rule.* Subject to the requirements of paragraph (e)(4)(ii) of this section, if a creditor uses a revised estimate pursuant to paragraph (e)(3)(iv) of this section for the purpose of determining good faith under paragraphs (e)(3)(i) and (ii) of this section, the creditor shall provide a revised version of the disclosures required under paragraph (e)(1)(i) of this section reflecting the revised estimate within three business days of receiving information sufficient to establish that one of the reasons for revision provided under paragraphs (e)(3)(iv)(A) through (C), (E) and (F) of this section applies.

Official Comment 19(e)(4)(i)

Provision and receipt of revised disclosures.

19(e)(4)(i) General rule.

*1. **Three-business-day requirement**. Section 1026.19(e)(4)(i) provides that subject to the requirements of § 1026.19(e)(4)(ii), if a creditor uses a revised estimate pursuant to § 1026.19(e)(3)(iv) for the purpose of determining good faith under § 1026.19(e)(3)(i) and (ii), the creditor shall provide a revised version of the disclosures required under § 1026.19(e)(1)(i) reflecting the revised estimate within three business days of receiving information sufficient to establish that one of the reasons for revision provided under § 1026.19(e)(3)(iv)(A) through (C), (E) and (F) has occurred. The following examples illustrate these requirements:*

i. Assume a creditor requires a pest inspection. The unaffiliated pest inspection company informs the creditor on Monday that the subject property contains evidence of termite damage, requiring a further inspection, the cost of which will cause an increase in estimated settlement charges subject to § 1026.19(e)(3)(ii) by more than 10 percent. The creditor must provide revised disclosures by Thursday to comply with § 1026.19(e)(4)(i).

ii. Assume a creditor receives information on Monday that, because of a changed circumstance under § 1026.19(e)(3)(iv)(A), the title fees will increase by an amount totaling six percent of the originally estimated settlement charges subject to § 1026.19(e)(3)(ii). The creditor had received information three weeks before that, because of a changed circumstance under § 1026.19(e)(3)(iv)(A), the pest inspection fees increased by an amount totaling five percent of the

originally estimated settlement charges subject to § 1026.19(e)(3)(ii). Thus, on Monday, the creditor has received sufficient information to establish a valid reason for revision and must provide revised disclosures reflecting the 11 percent increase by Thursday to comply with § 1026.19(e)(4)(i).

iii. Assume a creditor requires an appraisal. The creditor receives the appraisal report, which indicates that the value of the home is significantly lower than expected. However, the creditor has reason to doubt the validity of the appraisal report. A reason for revision has not been established because the creditor reasonably believes that the appraisal report is incorrect. The creditor then chooses to send a different appraiser for a second opinion, but the second appraiser returns a similar report. At this point, the creditor has received information sufficient to establish that a reason for revision has, in fact, occurred, and must provide corrected disclosures within three business days of receiving the second appraisal report. In this example, in order to comply with § 1026.19(e)(3)(iv) and § 1026.25, the creditor must maintain records documenting the creditor's doubts regarding the validity of the appraisal to demonstrate that the reason for revision did not occur upon receipt of the first appraisal report.

The Rule: § 1026.19(e)(4)(ii) Relationship to disclosures required under § 1026.19(f)(1)(i)

The creditor shall not provide a revised version of the disclosures required under paragraph (e)(1)(i) of this section on or after the date on which the creditor provides the disclosures required under paragraph (f)(1)(i) of this section. The consumer must receive a revised version of the disclosures required under paragraph (e)(1)(i) of this section not later than four business days prior to consummation. If the revised version of the disclosures required under paragraph (e)(1)(i) of this section is not provided to the consumer in person, the consumer is considered to have received such version three business days after the creditor delivers or places such version in the mail.

Official Comment 19(e)(4)(ii)

19(e)(4)(ii) Relationship to disclosures required under § 1026.19(f)(1)(i).

1. Revised disclosures may not be delivered at the same time as the Closing Disclosure. Section

1026.19(e)(4)(ii) prohibits a creditor from providing a revised version of the disclosures required under § 1026.19(e)(1)(i) on or after the date on which the creditor provides the disclosures required under § 1026.19(f)(1)(i). Section 1026.19(e)(4)(ii) also requires that the consumer must receive a revised version of the disclosures required under § 1026.19(e)(1)(i) no later than four business days prior to consummation, and provides that if the revised version of the disclosures are not provided to the consumer in person, the consumer is considered to have received the revised version of the disclosures three business days after the creditor delivers or places in the mail the revised version of the disclosures. See also comments 19(e)(1)(iv)-1 and -2. If, however, there are less than four business days between the time the revised version of the disclosures is required to be provided pursuant to § 1026.19(e)(4)(i) and consummation, creditors comply with the requirements of § 1026.19(e)(4) if the revised disclosures are reflected in the disclosures required by § 1026.19(f)(1)(i). See below for illustrative examples:

i. If the creditor is scheduled to meet with the consumer and provide the disclosures required by § 1026.19(f)(1)(i) on Wednesday, and the APR becomes inaccurate on Tuesday, the creditor complies with the requirements of § 1026.19(e)(4) by providing the disclosures required under § 1026.19(f)(1)(i) reflecting the revised APR on Wednesday. However, the creditor does not comply with the requirements of § 1026.19(e)(4) if it provided both a revised version of the disclosures required under § 1026.19(e)(1)(i) reflecting the revised APR on Wednesday, and also provides the disclosures required under § 1026.19(f)(1)(i) on Wednesday.

ii. If the creditor is scheduled to email the disclosures required under § 1026.19(f)(1)(i) to the consumer on Wednesday, and the consumer requests a change to the loan that would result in revised disclosures pursuant to § 1026.19(e)(3)(iv)(C) on Tuesday, the creditor complies with the requirements of § 1026.19(e)(4) by providing the disclosures required under § 1026.19(f)(1)(i) reflecting the consumer-requested changes on Wednesday. However, the creditor does not comply if it provides both the revised version of the disclosures required under § 1026.19(e)(1)(i) reflecting consumer requested changes, and also the disclosures required under § 1026.19(f)(1)(i) on Wednesday.

Delivery/Broker

The Rule: § 1026.19(e)(1)(ii) Mortgage broker

(A) If a mortgage broker receives a consumer's application, either the creditor or the mortgage broker shall provide a consumer with the disclosures required under paragraph (e)(1)(i) of this section in accordance with paragraph (e)(1)(iii) of this section. If the mortgage broker provides the required disclosures, the mortgage broker shall comply with all relevant requirements of this paragraph (e). The creditor shall ensure that such disclosures are provided in accordance with all requirements of this paragraph (e). Disclosures provided by a mortgage broker in accordance with the requirements of this paragraph (e) satisfy the creditor's obligation under this paragraph (e).

(B) If a mortgage broker provides any disclosure under § 1026.19(e), the mortgage broker shall also comply with the requirements of § 1026.25(c).

Official Comment Rule 19(e)(1)(ii)

Mortgage Broker.

1. Mortgage broker responsibilities. Section 1026.19(e)(1)(ii)(A) provides that if a mortgage broker receives a consumer's application, either the creditor or the mortgage broker must provide the consumer with the disclosures required under § 1026.19(e)(1)(i) in accordance with § 1026.19(e)(1)(iii). Section 1026.19(e)(1)(ii)(A) also provides that if the mortgage broker provides the required disclosures, it must comply with all relevant requirements of § 1026.19(e). This means that "mortgage broker" should be read in the place of "creditor" for all provisions of § 1026.19(e), except to the extent that such a reading would create responsibility for mortgage brokers under § 1026.19(f). To illustrate, comment 19(e)(4)(ii)-1 states that creditors comply with the requirements of § 1026.19(e)(4) if the revised disclosures are reflected in the disclosures required by § 1026.19(f)(1)(i). "Mortgage broker" could not be read in place of "creditor" in comment 19(e)(4)(ii)-1 because mortgage brokers are not responsible for the disclosures required under § 1026.19(f)(1)(i). In addition, § 1026.19(e)(1)(ii)(A) provides that the creditor must ensure that disclosures provided by mortgage brokers comply with all requirements of § 1026.19(e), and that disclosures provided by mortgage brokers that do comply with all such requirements satisfy the creditor's obligation under § 1026.19(e). The term "mortgage broker," as used in §1026.19(e)(1)(ii), has the same meaning as in § 1026.36(a)(2). See also comment 36(a)-2. Section 1026.19(e)(1)(ii)(B) provides that if a mortgage broker provides any disclosure required

under § 1026.19(e), the mortgage broker must also comply with the requirements of § 1026.25(c). For example, if a mortgage broker provides the disclosures required under § 1026.19(e)(1)(i), it must maintain records for three years, in compliance with § 1026.25(c)(1)(i).

2. Creditor responsibilities. If a mortgage broker issues any disclosure required under § 1026.19(e) in the creditor's place, the creditor remains responsible under § 1026.19(e) for ensuring that the requirements of § 1026.19(e) have been satisfied. For example, if a mortgage broker receives a consumer's application and provides the consumer with the disclosures required under § 1026.19(e)(1)(i), the creditor does not satisfy the requirements of § 1026.19(e)(1)(i) if it provides duplicative disclosures to the consumer. In the same example, even if the broker provides an erroneous disclosure, the creditor is responsible and may not issue a revised disclosure correcting the error. The creditor is expected to maintain communication with the broker to ensure that the broker is acting in place of the creditor.

Timing of Closing Disclosure

The Rule: § 1026.19(f) Mortgage loans secured by real property—final disclosures

1. Provisions of Disclosures.

(i) *Scope.*

In a closed-end consumer credit transaction secured by real property, other than a reverse mortgage subject to § 1026.33, the creditor shall provide the consumer with the disclosures in § 1026.38 reflecting the actual terms of the transaction.

(ii) *Timing*.

(A) *In general*. Except as provided in paragraphs (f)(1)(ii)(B), (f)(2)(i), (f)(2)(iii), (f)(2)(iv), and (f)(2)(v) of this section, the creditor shall ensure that the consumer receives the disclosures required under paragraph (f)(1)(i) of this section no later than three business days before consummation.

(B) *Timeshares*. For transactions secured by a consumer's interest in a timeshare plan described in 11 U.S.C. 101(53D), the creditor shall ensure that the consumer receives the disclosures required under paragraph (f)(1)(i) of this section no later than consummation.

(iii) *Receipt of disclosures*. If any disclosures required under paragraph (f)(1)(i) of this section are not provided to the consumer in person, the consumer is considered to have received the disclosures three business days after they are delivered or placed in the mail.

(iv) *Consumer's waiver of waiting period before consummation.* If the consumer determines that the extension of credit is needed to meet a **bona fide personal financial emergency**, the consumer may modify or waive the three-business-day waiting period under paragraph (f)(1)(ii)(A) or (f)(2)(ii) of this section, after receiving the disclosures required under paragraph (f)(1)(i) of this section. To modify or waive the waiting period, the consumer shall give the creditor a dated written statement that describes the emergency, specifically modifies or waives the waiting period, and bears the signature of all consumers who are primarily liable on the legal obligation. Printed forms for this purpose are prohibited.

Timing of Revised Closing Disclosure

The Rule: § 1026.19(f)(2) Subsequent Changes

(i) *Changes before consummation not requiring a new waiting period.* Except as provided in paragraph (f)(2)(ii), if the disclosures provided under paragraph (f)(1)(i) of this section become inaccurate before consummation, the creditor shall provide corrected disclosures reflecting any changed terms to the consumer so that the consumer receives the corrected disclosures at or before consummation. Notwithstanding the requirement to provide corrected disclosures at or before consummation, the creditor shall permit the consumer to inspect the disclosures provided under this paragraph, completed to set forth those items that are known to the creditor at the time of inspection, during the business day immediately preceding consummation, but the creditor may omit from inspection items related only to the seller's transaction.

Official Comment Rule 19(f)(2)(i)

1. Requirements. Under § 1026.19(f)(2)(i), if the disclosures provided under § 1026.19(f)(1)(i) become inaccurate before consummation, other than as provided under § 1026.19(f)(2)(ii), the creditor shall provide corrected disclosures reflecting any changed terms to the consumer so that the consumer receives the corrected disclosures at or before consummation. The creditor need not comply with the timing requirements in § 1026.19(f)(1)(ii) if an event other than one identified in § 1026.19(f)(2)(ii)

occurs, and such changes occur after the creditor provides the consumer with the disclosures required by § 1026.19(f)(1)(i). For example:

i. *Assume consummation is scheduled for Thursday, the consumer received the disclosures required under § 1026.19(f)(1)(i) on Monday, and a walk-through inspection occurs on Wednesday morning. During the walk-through the consumer discovers damage to the dishwasher. The seller agrees to credit the consumer $500 towards a new dishwasher. The creditor complies with the requirements of § 1026.19(f) if the creditor provides corrected disclosures so that the consumer receives them at or before consummation on Thursday.*

ii. *Assume consummation is scheduled for Friday and on Monday morning the creditor sends the disclosures via overnight delivery to the consumer, ensuring that the consumer receives the disclosures on Tuesday. On Monday night, the seller agrees to sell certain household furnishings to the consumer for an additional $1,000, to be paid at the real estate closing, and the consumer immediately informs the creditor of the change. The creditor must provide corrected disclosures so that the consumer receives them at or before consummation. The creditor does not violate § 1026.19(f) because the change to the transaction resulting from negotiations between the seller and consumer occurred after the creditor provided the final disclosures, regardless of the fact that the change occurred before the consumer had received the final disclosures.*

iii. *Assume consummation is scheduled for Thursday, the consumer received the disclosures required under § 1026.19(f)(1)(i) on Monday, and a walk-through inspection occurs on Wednesday morning. As a result of consumer and seller negotiations, the total amount due from the buyer increases by $500. Also on Wednesday, the creditor discovers that the homeowner's insurance premium that was disclosed as $800 is actually $850. The new $500 amount due and the $50 insurance premium understatements are not violations of § 1026.19(f)(1)(i), and the creditor complies with § 1026.19(f)(1)(i) by providing corrected disclosures reflecting the $550 increase so that the consumer receives them at or before consummation, pursuant to § 1026.19(f)(2)(ii).*

2. Inspection. A settlement agent may satisfy the requirement to permit the consumer to inspect the disclosures under § 1026.19(f)(2)(i), subject to § 1026.19(f)(1)(v).

The Rule: § 1026.19(f)(2) (ii)Changes before consummation requiring a new waiting period

(ii) *Changes before consummation requiring a new waiting period.* If one of the following disclosures provided under paragraph (f)(1)(i) of this section becomes inaccurate in the following manner before consummation, the creditor shall ensure that the consumer receives corrected disclosures containing all changed terms in accordance with the requirements of paragraph (f)(1)(ii)(A) of this section:

(A) The annual percentage rate disclosed under § 1026.38(o)(4) becomes inaccurate, as defined in § 1026.22.

(B) The loan product is changed, causing the information disclosed under § 1 026.38(a)(5)(iii) to become inaccurate.

(C) A prepayment penalty is added, causing the statement regarding a prepayment penalty required under § 1026.38(b) to

Official Comment Rule 19(f)(2)(ii)

Conditions for corrected disclosures. Pursuant to § 1026.19(f)(2)(ii), if, at the time of consummation, the annual percentage rate becomes inaccurate, the loan product changes, or a prepayment penalty is added to the transaction, the creditor must provide corrected disclosures with all changed terms so that the consumer receives them not later than the third business day before consummation. Requirements for annual percentage rate disclosures are set forth in § 1026.38(o)(4), and requirements determining whether an annual percentage rate is accurate are set forth in § 1026.22. Requirements for loan product disclosures are set forth in § 1026.38(a)(5)(iii) and § 1026.37(a)(10). Requirements for prepayment penalty disclosures are set forth in § 1026.38(b) and § 1026.37(b)(4).

i. *Example—APR becomes inaccurate. Assume consummation is scheduled for Thursday, June 11 and the disclosure for a regular mortgage transaction received by the consumer on Monday, June 8 under § 1026.19(f)(1)(i) discloses an annual percentage rate of 7.00 percent:*

   a. *On Thursday, June 11, the annual percentage rate will be 7.10 percent. The creditor is not required to delay consummation to provide corrected disclosures under § 1026.19(f)(2)(ii) because the annual percentage rate is accurate pursuant to § 1026.22, but the creditor is required under § 1026.19(f)(2)(i) to provide*

corrected disclosures, including any other changed terms, so that the consumer receives them on or before Thursday, June 11.

b. On Thursday, June 11, the annual percentage rate will be 7.15 percent and corrected disclosures were not received by the consumer on or before Monday, June 8 because the annual percentage rate is inaccurate pursuant to § 1026.22. The creditor is required to delay consummation and provide corrected disclosures, including any other changed terms, so that the consumer receives them at least three business days before consummation under § 1026.19(f)(2)(ii).

ii. Example—loan product changes. Assume consummation is scheduled for Thursday, June 11 and the disclosures provided under § 1026.19(f)(1)(i) disclose a product required to be disclosed as a "Fixed Rate" that contains no features that may change the periodic payment.

a. On Thursday, June 11, the loan product required to be disclosed changes to a "5/1 Adjustable Rate." The creditor is required to provide corrected disclosures and delay consummation until the consumer has received the corrected disclosures provided under § 1026.19(f)(1)(i) reflecting the change in the product disclosure, and any other changed terms, at least three business days before consummation. If, after the corrected disclosures in this example are provided, the loan product subsequently changes before consummation to a "3/1 Adjustable Rate," the creditor is required to provide additional corrected disclosures and again delay consummation until the consumer has received the corrected disclosures provided under § 1026.19(f)(1)(i) reflecting the change in the product disclosure, and any other changed terms, at least three business days before consummation.

b. On Thursday, June 11, the loan product required to be disclosed has changed to a "Fixed Rate" with a "Negative Amortization" feature. The creditor is required to provide corrected disclosures and delay consummation until the consumer has received the corrected disclosures provided under § 1026.19(f)(1)(i) reflecting the change in the product disclosure, and any other changed terms, at least three business days before consummation.

iii. Example—prepayment penalty is added. Assume consummation is scheduled for Thursday, June 11 and the disclosure provided under § 1026.19(f)(1)(i) did not disclose a prepayment penalty. On Wednesday, June 10, a prepayment penalty is added to the transaction such that the disclosure required by § 1026.38(b) becomes inaccurate. The creditor is required to provide

corrected disclosures and delay consummation until the consumer has received the corrected disclosures provided under § 1026.19(f)(1)(i) reflecting the change in the disclosure of the loan terms, and any other changed terms, at least three business days before consummation. If, after the revised disclosures in this example are provided but before consummation, the prepayment penalty is removed such that the description of the prepayment penalty again becomes inaccurate, and no other changes to the transaction occur, the creditor is required to provide corrected disclosures so that the consumer receives them at or before consummation under § 1026.19(f)(2)(i), but the creditor is not required to delay consummation because § 1026.19(f)(2)(ii)(C) applies only when a prepayment penalty is added.

The Rule: § 1026.19(f)(2) (iii)Changes due to events occurring after consummation

(iii) *Changes due to events occurring after consummation*. If during the 30-day period following consummation, an event in connection with the settlement of the transaction occurs that causes the disclosures required under paragraph (f)(1)(i) of this section to become inaccurate, and such inaccuracy results in a change to an amount actually paid by the consumer from that amount disclosed under paragraph (f)(1)(i) of this section, the creditor shall deliver or place in the mail corrected disclosures **not later than 30 days** after receiving information sufficient to establish that such event has occurred.

Official Comment Rule 19(f)(2)(iii)

Requirements. Under § 1026.19(f)(2)(iii), if during the 30-day period following consummation, an event in connection with the settlement of the transaction occurs that causes the disclosures to become inaccurate, and such inaccuracy results in a change to an amount actually paid by the consumer from that amount disclosed under § 1026.19(f)(1)(i), the creditor shall deliver or place in the mail corrected disclosures not later than 30 days after receiving information sufficient to establish that such event has occurred. The following examples illustrate this requirement. (See also comment 19(e)(4)(i)-1 for further guidance on when sufficient information has been received to establish an event has occurred.)

i. Assume consummation occurs on a Monday and the security instrument is recorded on Tuesday, the day after consummation. If the creditor learns on Tuesday that the fee charged by the recorder's office differs from that previously disclosed pursuant to § 1026.19(f)(1)(i), and the changed fee results in a change in the amount actually paid by the

consumer, the creditor complies with § 1026.19(f)(1)(i) and (f)(2)(iii) by revising the disclosures accordingly and delivering or placing them in the mail no later than 30 days after Tuesday.

ii. *Assume consummation occurs on a Tuesday, October 1 and the security instrument is not recorded until 15 days after October 1 on Thursday, October 16. The creditor learns on Monday, November 4 that the transfer taxes owed to the State differ from those previously disclosed pursuant to § 1026.19(f)(1)(i), resulting in an increase in the amount actually paid by the consumer. The creditor complies with § 1026.19(f)(1)(i) and § 1026.19(f)(2)(iii) by revising the disclosures accordingly and delivering or placing them in the mail no later than 30 days after Monday, November 4. Assume further that the increase in transfer taxes paid by the consumer also exceeds the amount originally disclosed under § 1026.19(e)(1)(i) above the limitations prescribed by § 1026.19(e)(3)(i). Pursuant to § 1026.19(f)(2)(v), the creditor does not violate § 1026.19(e)(1)(i) if the creditor refunds the excess to the consumer no later than 60 days after consummation, and the creditor does not violate § 1026.19(f)(1)(i) if the creditor delivers disclosures corrected to reflect the refund of such excess no later than 60 days after consummation. The creditor satisfies these requirements under § 1026.19(f)(2)(v) if it revises the disclosures accordingly and delivers or places them in the mail by November 30.*

iii. *Assume consummation occurs on a Monday and the security instrument is recorded on Tuesday, the day after consummation. During the recording process on Tuesday the settlement agent and the creditor discover that the property is subject to an unpaid $500 nuisance abatement assessment, which was not disclosed pursuant to § 1026.19(f)(1)(i), and learns that pursuant to an agreement with the seller, the $500 assessment will be paid by the seller rather than the consumer. Because the $500 assessment does not result in a change to an amount actually paid by the consumer, the creditor is not required to provide a corrected disclosure pursuant to § 1026.19(f)(2)(iii). However, the assessment will result in a change to an amount actually paid by the seller from the amount disclosed under § 1026.19(f)(4)(i). Pursuant to § 1026.19(f)(4)(ii), the settlement agent must deliver or place in the mail corrected disclosures to the seller no later than 30 days after Tuesday and provide a copy to the creditor pursuant to § 1026.19(f)(4)(iv).*

iv. *Assume consummation occurs on a Monday and the security instrument is recorded on Tuesday, the day after consummation. Assume further that ten days after consummation*

the municipality in which the property is located raises property tax rates effective after the date on which settlement concludes. Section 1026.19(f)(2)(iii) does not require the creditor to provide the consumer with corrected disclosures because the increase in property tax rates is not in connection with the settlement of the transaction.

The Rule: § 1026.19(f)(2) (iv)Changes due to clerical errors

(iv) *Changes due to clerical errors*. A creditor does not violate paragraph (f)(1)(i) of this section if the disclosures provided under paragraph (f)(1)(i) contain non-numeric clerical errors, provided the creditor delivers or places in the mail corrected disclosures **no later than 60 days after consummation**.

Official Comment Rule 19(f)(2)(iv)

Section 1026.19(f)(2)(iv) requires the creditor to deliver or place in the mail corrected disclosures if the disclosures provided pursuant to § 1026.19(f)(1)(i) contain non-numeric clerical errors. An error is considered clerical if it does not affect a numerical disclosure and does not affect requirements imposed by § 1026.19(e) or (f). For example, if the disclosure identifies the incorrect settlement service provider as the recipient of a payment, then § 1026.19(f)(2)(iv) requires the creditor to deliver or place in the mail corrected disclosures reflecting the corrected non-numeric disclosure no later than 60 days after consummation. However, if, for example, the disclosure lists the wrong property address, which affects the delivery requirement imposed by § 1026.19(e) or (f), the error would not be considered clerical.

The Rule: § 1026.19(f)(2) (v) Refunds related to the good faith analysis

(v) *Refunds related to the good faith analysis*. If amounts paid by the consumer exceed the amounts specified under paragraph (e)(3)(i) or (ii) of this section, the creditor complies with paragraph (e)(1)(i) of this section if the creditor refunds the excess to the consumer no later than 60 days after consummation, and the creditor complies with paragraph (f)(1)(i) of this section if the creditor delivers or places in the mail corrected disclosures that reflect such refund no later than 60 days after consummation.

Official Comment Rule 19(f)(2)(v)

Section 1026.19(f)(2)(v) provides that, if amounts paid at closing exceed the amounts specified under § 1026.19(e)(3)(i) or (ii), the creditor does not violate § 1026.19(e)(1)(i) if the creditor refunds the excess to the consumer no later than 60 days after consummation, and the creditor

does not violate § 1026.19(f)(1)(i) if the creditor delivers or places in the mail disclosures corrected to reflect the refund of such excess no later than 60 days after consummation. For example, assume that at consummation the consumer must pay four itemized charges that are subject to the good faith determination under § 1026.19(e)(3)(i). If the actual amounts paid by the consumer for the four itemized charges subject to § 1026.19(e)(3)(i) exceeded their respective estimates on the disclosures required under § 1026.19(e)(1)(i) by $30, $25, $25, and $10, then there would be a $90 excess amount above the limitations prescribed by § 1026.19(e)(3)(i). If, further, the amounts paid by the consumer for services that are subject to the good faith determination under § 1026.19(e)(3)(ii) totaled $1,190, but the respective estimates on the disclosures required under § 1026.19(e)(1)(i) totaled only $1,000, then there would be a $90 excess amount above the limitations prescribed by § 1026.19(e)(3)(ii). The creditor does not violate § 1026.19(e)(1)(i) if the creditor refunds the excess to the consumer no later than 60 days after consummation. The creditor does not violate § 1026.19(f)(1)(i) if the creditor delivers or places in the mail corrected disclosures reflecting the $180 refund of the excess amount collected no later than 60 days after consummation. See comment 38(h)(3)-2 for additional guidance on disclosing refunds such as these.

Delivery of Closing Disclosure

The Rule: § 1026.19(f)(1)(ii) Timing

(A) *In general*. Except as provided in paragraphs (f)(1)(ii)(B), (f)(2)(i), (f)(2)(iii), (f)(2)(iv), and (f)(2)(v) of this section, the creditor shall ensure that the consumer receives the disclosures required under paragraph (f)(1)(i) of this section no later than **three business days before consummation.**

The Rule: § 1026.19(f)(1)(v) Settlement agent

A settlement agent may provide a consumer with the disclosures required under paragraph (f)(1)(i) of this section, provided the settlement agent complies with all relevant requirements of this paragraph (f). The creditor shall ensure that such disclosures are provided in accordance with all requirements of this paragraph (f). Disclosures provided by a settlement agent in accordance with the requirements of this paragraph (f) satisfy the creditor's obligation under this paragraph (f).

Official Comment - 19(f)(1)(v) Settlement agent.

1. Requirements. For purposes of § 1026.19(f), a settlement agent is the person conducting the settlement. A settlement agent may provide the disclosures required under § 1026.19(f)(1)(i) instead of the creditor. By assuming this responsibility, the settlement agent becomes responsible for complying with all of the relevant requirements of § 1026.19(f), meaning that "settlement agent" should be read in the place of "creditor" for all the relevant provisions of § 1026.19(f), except where such a reading would create responsibility for settlement agents under § 1026.19(e). For example, comment 19(f)(1)(ii)-3 explains that, in some cases involving transactions secured by a consumer's interest in a timeshare plan, a Loan Estimate must be provided under § 1026.19(e). "Settlement agent" could not be read in place of "creditor" in comment 19(f)(1)(ii)-3 because settlement agents are not responsible for the disclosures required by § 1026.19(e)(1)(i). To ensure timely and accurate compliance with the requirements of § 1026.19(f)(1)(v), the creditor and settlement agent need to communicate effectively.

2. Settlement agent responsibilities. If a settlement agent provides any disclosure under §1026.19(f), the settlement agent must comply with the relevant requirements of § 1026.19(f). For example, if the creditor and settlement agent agree that the creditor will deliver the disclosures required under § 1026.19(f)(1)(i) to be received by the consumer three business days before consummation, pursuant to § 1026.19(f)(1)(ii)(A), and that the settlement agent will deliver any corrected disclosures at or before consummation, including disclosures provided so that they are received by the consumer three business days before consummation under § 1026.19(f)(2)(ii), and will permit the consumer to inspect the disclosures during the business day before consummation, the settlement agent must ensure that the consumer receives the disclosures required under §1026.19(f)(1)(i) at or before consummation and is able to inspect the disclosures during the business day before consummation, if the consumer so requests, in accordance with §1026.19(f)(2)(i). See comment 19(f)(1)(v)-3 below for additional guidance regarding the creditor's responsibilities where the settlement agent provides disclosures. The settlement agent may assume the responsibility to provide some or all of the disclosures required by § 1026.19(f). See comment 19(f)(1)(v)-4 for guidance on how creditors and settlement agents may divide responsibilities for completing the disclosures.

3. Creditor responsibilities. If a settlement agent provides disclosures required under § 1026.19(f) in the creditor's place, the creditor remains responsible under § 1026.19(f) for ensuring that the requirements of § 1026.19(f) have been satisfied. For example, if the settlement agent assumes the responsibility for providing all of the disclosures required under § 1026.19(f)(1)(i), the creditor does not comply with § 1026.19(f) if the settlement agent does not provide these disclosures at all, or if the consumer receives the disclosures later than three business days before consummation, as required by § 1026.19(f)(1)(ii)(A) and, as applicable, (f)(2)(ii). The creditor does not satisfy the requirements of § 1026.19(f) if it provides duplicative disclosures. For example, a creditor does not satisfy its obligation by issuing disclosures required under § 1026.19(f) that mirror ones already issued by the settlement agent for the purpose of demonstrating that the consumer received timely disclosures. The creditor is expected to maintain communication with the settlement agent to ensure that the settlement agent is acting in place of the creditor. Disclosures provided by a settlement agent in accordance with § 1026.19(f)(1)(v) satisfy the creditor's obligation under § 1026.19(f)(1)(i).

4. Shared responsibilities permitted—completing the disclosures. Creditors and settlement agents may agree to divide responsibility with respect to completing any of the disclosures under § 1026.38 for the disclosures provided under § 1026.19(f)(1)(i). The settlement agent may assume the responsibility to complete some or all of the disclosures required by § 1026.19(f). For example, the creditor complies with the requirements of § 1026.19(f)(1)(i) and the settlement agent complies with the requirements of § 1026.19(f)(1)(v) if the settlement agent agrees to complete only the portion of the disclosures required by § 1026.19(f)(1)(i) related to closing costs for taxes, title fees, and insurance premiums, and the creditor agrees to complete the remainder of the disclosures required by § 1026.19(f)(1)(i), and either the settlement agent or the creditor provides the consumer with one single disclosure form containing all of the information required to be disclosed pursuant to § 1026.19(f)(1)(i), in accordance with the other requirements in § 1026.19(f), such as requirements related to timing and delivery.

The Rule: § 1026.19(f)(4)(i) Transactions involving a seller

(i) *Provision to seller.* In a closed-end consumer credit transaction secured by real property that involves a seller, other than a reverse mortgage subject to § 1026.33, the settlement agent shall provide the seller with the disclosures in § 1026.38 that relate to the seller's transaction reflecting the actual terms of the seller's transaction.

(ii) *Timing.* The settlement agent shall provide the disclosures required under paragraph (f)(4)(i) of this section no later than the day of consummation. If during the 30-day period following consummation, an event in connection with the settlement of the transaction occurs that causes disclosures required under paragraph (f)(4)(i) of this section to become inaccurate, and such inaccuracy results in a change to the amount actually paid by the seller from that amount disclosed under paragraph (f)(4)(i) of this section, the settlement agent shall deliver or place in the mail corrected disclosures not later than 30 days after receiving information sufficient to establish that such event has occurred.

Official Comment: 19(f)(4)(i)

19(f)(4) Transactions involving a seller.

19(f)(4)(i) Provision to seller.

1. Requirement. Section 1026.19(f)(4)(i) provides that, in a closed-end consumer credit transaction secured by real property that involves a seller, other than a reverse mortgage subject to § 1026.33, the settlement agent shall provide the seller with the disclosures in § 1026.38 that relate to the seller's transaction reflecting the actual terms of the seller's transaction. The settlement agent complies with this provision by providing a copy of the Closing Disclosure provided to the consumer, if it also contains the information under § 1026.38 relating to the seller's transaction, or alternatively providing the disclosures under § 1026.38(t)(5)(v) or (vi), as applicable.

19(f)(4)(ii) Timing.

1. Requirement. Section 1026.19(f)(4)(ii) provides that the settlement agent shall provide the disclosures required under § 1026.19(f)(4)(i) no later than the day of consummation. If during the 30-day period following consummation, an event in connection with the settlement of the transaction occurs that causes such disclosures to become inaccurate and such inaccuracy results in a change to the amount actually paid by the seller from that amount disclosed under § 1026.19(f)(4)(i), the settlement agent shall deliver or place in the mail corrected disclosures not later than 30 days after receiving information sufficient to establish that such event has occurred. Section 1026.19(f)(4)(i) requires disclosure of the items that relate to the seller's transaction. Thus, the settlement agent need only redisclose if an item related to the seller's transaction becomes inaccurate and such inaccuracy results in a change to the amount actually

paid by the seller. For example, assume a transaction where the seller pays the transfer tax, the consummation occurs on Monday, and the security instrument is recorded on Tuesday, the day after consummation. If the settlement agent receives information on Tuesday sufficient to establish that transfer taxes owed to the State differ from those disclosed pursuant to § 1026.19(f)(4)(i), the settlement agent complies with § 1026.19(f)(4)(ii) by revising the disclosures accordingly and delivering or placing them in the mail not later than 30 days after Tuesday. See comment 19(e)(4)(i)-1 for guidance on when sufficient information has been received to establish an event has occurred. See also comment 19(f)(2)(iii)-1.iii for another example in which corrected disclosures must be provided to the seller.

Application

CFPB Summary

An application means the submission of a consumer's financial information for purposes of obtaining an extension of credit. For transactions subject to § 1026.19(e), (f), or (g), an application consists of the submission of the following six pieces of information:

- The consumer's name;
- The consumer's income;
- The consumer's social security number to obtain a credit report;
- The property address;
- An estimate of the value of the property; and
- The mortgage loan amount sought.

An application may be submitted in written or electronic format, and includes a written record of an oral application. (Comment 2(a)(3)-1)

This new definition of **application** is similar to the current definition under Regulation X (§ 1024.2(b)). The Bureau has revised the definition of **application** to remove the seventh "catch-all" element of the current definition under Regulation X, that is, "any other information deemed necessary by the loan originator."

CFPB COMPLIANCE GUIDE SUMMARY

Application

What if a creditor receives these six pieces of information, but needs to collect additional information to proceed with an extension of credit? (Comment 2(a)(3)-1)

This definition of **application** does not prevent a creditor from collecting whatever additional information it deems necessary in connection with the request for the extension of credit. However, once a creditor has received the six pieces of information discussed above, it has an **application** for purposes of the requirement for delivery of the **Loan Estimate** to the consumer, including the **three-business-day** timing requirement. (Comment 2(a)(3) -1)

What if the consumer withdraws the application or the creditor determines it cannot approve it? (Comment 19(e)(1)(iii)-3)

If the creditor determines within the **three-business-day** period that the consumer's **application** will not or cannot be approved on the terms requested by the consumer, or if the consumer withdraws the **application** within that period, the creditor does not have to provide the **Loan Estimate**. (Comment 19(e)(1)(iii)-3). However, if the creditor does not provide the **Loan Estimate**, it will not have complied with the **Loan Estimate** requirements under Regulation Z if it later consummates the transaction on the terms originally applied for by the consumer. (Comment 19(e)(1)(iii)-3)

What if the consumer amends the application and the creditor can now proceed? (Comment 19(e)(1)(iii)-3)

If a consumer amends an **application** and a creditor determines the amended **application** may proceed, then the creditor is required to comply with the **Loan Estimate** requirements, including delivering or mailing a **Loan Estimate** within three **business days** of receiving the amended or resubmitted **application**. (Comment 19(e)(1)(iii)-3)

Are creditors allowed to require additional verifying information other than the six pieces of information that form an application from consumers before providing a Loan Estimate? (§ 1026.19(e)(2)(iii))

No. A creditor or other person may not condition providing the **Loan Estimate** on a consumer submitting documents verifying information related to the consumer's mortgage loan application before providing the **Loan Estimate**. (§ 1026.19(e)(2)(iii); Comment 19(e)(2)(iii)-1)

For example:

A creditor may ask for the sale price and address of the property, but may not require the consumer to provide a purchase and sale agreement to support the information the consumer provides orally before the creditor provides the **Loan Estimate**.

A mortgage broker may ask for the names, account numbers, and balances of the consumer's checking and savings accounts, but the mortgage broker may not require the consumer to provide bank statements or similar documentation to support the information orally provided by the consumer before the creditor provides the **Loan Estimate.**

FAQS/TIPS

Q: **The definition of application does not include loan term or product type. What if a consumer submits the six elements listed in the rule, but does not specify the type of product or term?** Creditor would have discretion in this situation. Creditor would not be required to issue multiple loan estimates for different product types.

Q: What if the consumer starts filling out an online application and saves it with the six pieces of information entered, but has not yet submitted it to the creditor? If consumer enters the six pieces but has not "submitted" on line, then creditor is not required to produce a loan estimate.

Q: What if the loan is a refinance and the creditor already has this particular information on file? Application, requires "submission". Even if the creditor has all the information from a previous file, this is not enough to trigger application.

Q: May an online application system reject applications submitted by a consumer that contain the six elements of an application because other preferred information is not included? The CFPB does not endorse rejection of application because the creditor needs additional *information.*

The Rule: § 1026.2 Definitions and rules of construction

(a) *Definitions*. For purposes of this part, the following definitions apply:

* * * * *

(3)(i) *Application* means the submission of a consumer's financial information for the purposes of obtaining an extension of credit.

(ii) For transactions subject to § 1026.19(e), (f), or (g) of this part, an application consists of the submission of the consumer's name, the consumer's income, the consumer's social security number to obtain a credit report, the property address, an estimate of the value of the property, and the mortgage loan amount sought.

Official Comment - 2

Definitions and Rules of Construction

2(a)(3) Application.

1. In general. An application means the submission of a consumer's financial information for purposes of obtaining an extension of credit. For transactions subject to § 1026.19(e), (f), or (g) of this part, the term consists of the consumer's name, the consumer's income, the consumer's social security number to obtain a credit report, the property address, an estimate of the value of the property, and the mortgage loan amount sought. This definition does not prevent a creditor from collecting whatever additional information it deems necessary in connection with the request for the extension of credit. However, once a creditor has received these six pieces of information, it has an application for purposes of the requirements of Regulation Z. A submission may be in written or electronic format and includes a written record of an oral application. The following examples for a transaction subject to § 1026.19(e), (f), or (g) are illustrative of this provision:

i. Assume a creditor provides a consumer with an application form containing 20 questions about the consumer's credit history and the collateral value. The consumer submits answers to nine of the questions and informs the creditor that the consumer will contact the creditor the next day with answers to the other 11 questions. Although the consumer provided nine pieces of information, the consumer did not provide a social security number. The creditor has not yet received an application for purposes of § 1026.2(a)(3).

ii. Assume a creditor requires all applicants to submit 20 pieces of information. The consumer submits only six pieces of information and informs the creditor that the consumer will contact the creditor the next day with answers to the other 14 questions. The six pieces of information provided by the consumer were the consumer's name, income, social security number, property address, estimate of the value of the property, and the mortgage loan amount sought. Even though the creditor requires 14 additional pieces of information to process the consumer's request for a mortgage loan, the creditor has received an application for the purposes of § 1026.2(a)(3) and therefore must comply with the relevant requirements under § 1026.19.

2. Social security number to obtain a credit report. If a consumer does not have a social security number, the creditor may substitute whatever unique identifier the creditor uses to obtain a credit report on the consumer. For example, a creditor has obtained a social security number to obtain a credit report for purposes of § 1026.2(a)(3)(ii) if the creditor collects a Tax Identification Number from a consumer who does not have a social security number, such as a foreign national.

3. Receipt of credit report fees. Section 1026.19(a)(1)(iii) permits the imposition of a fee to obtain the consumer's credit history prior to the delivery of the disclosures required under §1026.19(a)(1)(i). Section 1026.19(e)(2)(i)(B) permits the imposition of a fee to obtain the consumer's credit report prior to the delivery of the disclosures required under § 1026.19(e)(1)(i). Whether, or when, such fees are received does not affect whether an application has been received for the purposes of the definition in § 1026.2(a)(3) and the timing requirements in § 1026.19(a)(1)(i) and (e)(1)(iii). For example, if, in a transaction subject to § 1026.19(e)(1)(i), a creditor receives the six pieces of information identified under § 1026.2(a)(3)(ii) on Monday, June 1, but does not receive a credit report fee from the consumer until Tuesday, June 2, the creditor does not comply with § 1026.19(e)(1)(iii) if it provides the disclosures required under § 1026.19(e)(1)(i) after Thursday, June 4. The three-business-day period beings on Monday, June 1, the date the creditor received the six pieces of information. The waiting period does not begin on Tuesday, June 2, the date the creditor received the credit report fee.

The Rule: § 1026.19(e)(2)(iii) Verification of information

The creditor or other person shall not require a consumer to submit documents verifying information related to the consumer's application before providing the disclosures required by paragraph (e)(1)(i) of this section.

Official Comment - 19(e)(2)(iii)

Verification of information.

1. Requirements. The creditor or other person may collect from the consumer any information that it requires prior to providing the early disclosures before or at the same time as collecting the information listed in § 1026.2(a)(3)(ii). However, the creditor or other person is not permitted to require, before providing the disclosures required by § 1026.19(e)(1)(i), that the consumer submit documentation to verify the information collected from the consumer. See also § 1026.2(a)(3) and the related commentary regarding the definition of application. To illustrate:

i. A creditor may ask for the sale price and address of the property, but the creditor may not require the consumer to provide a purchase and sale agreement to support the information the consumer provides orally before the creditor provides the disclosures required by § 1026.19(e)(1)(i).

ii. A mortgage broker may ask for the names, account numbers, and balances of the consumer's checking and savings accounts, but the mortgage broker may not require the consumer to provide bank statements, or similar documentation, to support the information the consumer provides orally before the mortgage broker provides the disclosures required by § 1026.19(e)(1)(i).

Form Addenda and Alphabetization

Loan Estimate Addenda

Generally, Addenda can only be used for "Services You Can Shop For".

The Rule: § 1026.37(f)(6) Use of addenda

i. An addendum to a form of disclosures prescribed by this section may not be used for items described in paragraph (f)(1) or (2) of this section. If the creditor is not able to itemize every service and every corresponding charge required to be disclosed in the number of lines provided by paragraph (f)(1)(ii) or (f)(2)(ii) of this section, the remaining charges shall be disclosed as an aggregate amount in the last line permitted under paragraph (f)(1)(ii) or (f)(2)(ii), as applicable, labeled "Additional Charges."

ii. An addendum to a form of disclosures prescribed by this section may be used for items described in paragraph (f)(3) of this section. If the creditor is not able to itemize all of the charges required to be disclosed in the number of lines provided by paragraph (f)(3)(ii), the remaining charges shall be disclosed as follows:

a. Label the last line permitted under paragraph (f)(3)(ii) with an appropriate reference to an addendum and list the remaining items on the addendum in accordance with the requirements in paragraphs (f)(3) and (5) of this section; or

b. Disclose the remaining charges as an aggregate amount in the last line permitted under paragraph (f)(3)(ii), labeled "Additional Charges."

Official Comment - 37(f)(6)

Verification of information.

§1026.37(f)(6) Use of addenda.

State law disclosures. If a creditor is required by State law to make additional disclosures that, pursuant to § 1026.37(f)(6)(i), cannot be included in the disclosures required under § 1026.37(f), the creditor may make those additional State law disclosures on a document whose pages are separate from, and are not presented as part of, the disclosures prescribed in § 1026.37, for example, as an addendum to the Loan Estimate. See comment 37(o)(1)-1.

1. Reference to addendum. If an addendum is used as permitted under § 1026.37(f)(6)(ii), an example of a label that complies with the requirement for an appropriate reference on the last line is: "See attached page for additional items you can shop for."

The Rule: § 1026.37(g)(8) Use of addenda

An addendum to a form of disclosures prescribed by this section may not be used for items required to be disclosed by this paragraph (g). If the creditor is not able to itemize all of the charges described in this paragraph (g) in the number of lines provided by paragraphs (g)(2)(vi), (3)(v), or (4)(iii) of this section, the remaining charges shall be disclosed as an aggregate amount in the last line permitted under paragraphs (g)(2)(vi), (3)(v), or (4)(iii), as applicable, using the label "Additional Charges."

Closing Disclosure Addenda

Official Comment - 38(j)

2. Addenda. Additional pages may be attached to the Closing Disclosure to add lines, as necessary, to accommodate the complete listing of all items required to be shown on the Closing Disclosure under § 1026.38(j) and (k), and for the purpose of including customary recitals and information used locally in real estate closings (for example, breakdown of payoff figures, a breakdown of the consumer's total monthly mortgage payments, an accounting of debits received and check disbursements, a statement stating receipt of funds, applicable special stipulations between consumer and seller, and the date funds are transferred). See § 1026.38(t)(5)(ix). A reference such as "See attached page for additional information" should be placed in the applicable section of the Closing Disclosure.

The Rule: § 1026.38(t)(5)(iv) Closing cost details

A. Additional line numbers. Line numbers provided on form H-25 of appendix H to this part for the disclosure of the information required by paragraphs (f)(1) through (3) and (g)(1) through (4) of this section that are not used may be deleted and the deleted line numbers added to the space provided for any other of those paragraphs as necessary to accommodate the disclosure of additional items.

B. Two pages. To the extent that adding or deleting line numbers provided on form H-25 of appendix H to this part, as permitted by paragraph (t)(5)(iv)(A) of this section, does not

accommodate an itemization of all information required to be disclosed by paragraphs (f) through (h) on one page, the information required to be disclosed by paragraphs (f) through (h) of this section may be disclosed on two pages, provided that the information required by paragraph (f) is disclosed on a page separate from the information required by paragraph (g). The information required by paragraph (g), if disclosed on a page separate from paragraph (f), shall be disclosed on the same page as the information required by paragraph (h).

Official Comment - 38(t)(5)(iv)

Closing Cost Details.

1. Line numbers; closing cost details. Section 1026.38(t)(5)(iv)(A) permits the deletion of unused lines from the disclosures required by § 1026.38(f)(1) through (3) and (g)(1) through (4), if necessary to allow the addition of lines to other sections that require them for the required disclosures. This provision permits creditors and settlement agents to use the space gained from deleting unused lines for additional lines to accommodate all of the costs that are required to be itemized. For example, if the only origination charge required by § 1026.38(f)(1) is points, the remaining seven lines illustrated on form H-25 of appendix H to this part may be deleted and added to the disclosure required by § 1026.38(g)(4), if seven lines in addition to those provided on form H-25 are necessary to accommodate such disclosure.

2. Two pages; closing cost details. Section 1026.38(t)(5)(iv)(B) permits the disclosure of the information required by § 1026.38(f) through (h) over two pages, but only if form H-25 of appendix H to this part, as modified pursuant to § 1026.38(t)(5)(iv)(A), does not accommodate all of the costs required to be disclosed on one page. If the deletion of unused lines and the addition of such lines to other sections permits the disclosures required by § 1026.38(f) through (h) to fit on one page, modification pursuant to § 1026.38(t)(5)(iv)(B) is not permissible.

3. Separate pages for Loan Costs and Other Costs. The modification permitted by § 1026.38(t)(5)(iv)(B) allows the information required by § 1026.38(f) through (h) to be disclosed over two pages, numbered as "2a" and "2b." For an example of such a modification, see form H-25(H) of appendix H to this part. Under this modification, the information required by § 1026.38(h) must remain on the same page as the information required by § 1026.38(g). Accordingly, the Loan Costs section of form H-25 may appear on its own page "2a," but the

Other Costs section must appear on the same page as the Total Closing Costs section on page "2b." The modifications permitted by § 1026.38(t)(5)(iv)(A) and (B) may be used in conjunction to ensure disclosure of § 1026.38(f) on one page and § 1026.38(g) and (h) on a separate page.

Item Descriptions and Alphabetizing

The Rule: § 1026.37(f)(5) Item descriptions and ordering

The items listed as loan costs pursuant to this paragraph (f) shall be labeled using terminology that describes each item, subject to the requirements of paragraphs (f)(1)(i), (f)(2)(i), and (f)(3)(i) of this section.

(i) The item prescribed in paragraph (f)(1)(i) of this section for points shall be the first item listed in the disclosure pursuant to paragraph (f)(1) of this section.

(ii) All other items must be listed in alphabetical order by their labels under the applicable subheading.

Official Comment - 37(f)(5

Clear and conspicuous standard. Section 1026.37(f)(5) requires creditors to label the loan costs disclosed pursuant § 1026.37(f) using terminology that describes each item. A creditor complies with this requirement if it uses terminology that is clear and conspicuous, consistent with § 1026.17(a)(1), and describes the service or administrative function that the charge pays for in a manner that is reasonably understood by consumers within the space provided in form H-24 of appendix H to this part. For example, if a creditor imposes a fee on a consumer to cover the costs associated with underwriting the transaction, the creditor would comply with § 1026.37(f)(5) if it labeled the cost "Underwriting Fee." A label that uses abbreviations or acronyms that are not reasonably understood by consumers would not comply with § 1026.37(f)(5).

The Rule: § 1026.37(g)(4)

(4) Other. Under the subheading "Other," an itemization of any other amounts in connection with the transaction that the consumer is likely to pay or has contracted with a person other than the creditor or loan originator to pay at closing and of which the creditor is aware at the time of issuing the Loan Estimate, a descriptive label of each such amount, and the subtotal of all such amounts.

(i) For any item that is a component of title insurance, the introductory description "Title —" shall appear at the beginning of the label for that item.

(ii) The parenthetical description "(optional)" shall appear at the end of the label for items disclosing any premiums paid for separate insurance, warranty, guarantee, or event-coverage products.

(iii) The number of items disclosed under this paragraph (g)(4) shall not exceed five.

Good Faith & Tolerances

CFPB Summary

Good Faith Requirement

What is the general accuracy requirement for the Loan Estimate disclosures?

(§1026.19(e)(3)(iii))

Creditors are responsible for ensuring that the figures stated in the Loan Estimate are made in good faith and consistent with the best information reasonably available to the creditor at the time they are disclosed. (§ 1026.19(e)(3); Comment 19(e)(3)(iii)-1 through -3)

Whether or not a Loan Estimate was made in good faith is determined by calculating the difference between the estimated charges originally provided in the Loan Estimate and the actual charges paid by or imposed on the consumer in the Closing Disclosure. (§ 1026.19(e)(3)(i) and (ii))

Generally, if the charge paid by or imposed on the consumer exceeds the amount originally disclosed on the Loan Estimate it is not in good faith, regardless of whether the creditor later discovers a technical error, miscalculation, or underestimation of a charge.

However, a Loan Estimate is considered to be in good faith if the creditor charges the consumer less than the amount disclosed on the Loan Estimate, without regard to any tolerance limitations.

Are there circumstances where creditors are allowed to charge more than disclosed on the Loan Estimate?

Yes. A creditor may charge the consumer more than the amount disclosed in the Loan Estimate in specific circumstances, described below:

Certain variations between the amount disclosed and the amount charged are expressly permitted by the TILA-RESPA rule (§ 1026.19(e)(3)(iii));

- The amount charged falls within explicit tolerance thresholds (and the estimate is not for a zero tolerance charge where variations are never permitted) (§ 1026.19(e)(3)(ii)) (See sections 7.5 and 7.10 below); or
- Changed circumstances permit a revised Loan Estimate or a Closing Disclosure that permits the charge to be changed. (§ 1026.19(e)(3)(iv))

No Tolerance

What charges may change without regard to a tolerance limitation?

(§ 1026.19(e)(3)(iii))

For certain costs or terms, creditors are permitted to charge consumers more than the amount disclosed on the Loan Estimate without any tolerance limitation.

These charges are:

- Prepaid interest; property insurance premiums; amounts placed into an escrow, impound, reserve or similar account. (§ 1026.19(e)(3)(iii)(A)-(C))
- For services required by the creditor if the creditor permits the consumer to shop and the consumer selects a third-party service provider not on the creditor's written list of service providers. (§ 1026.19(e)(3)(iii)(D))

Charges paid to third-party service providers for services not required by the creditor(may be paid to affiliates of the creditor). (§ 1026.19(e)(3)(iii)(E)) However, creditors may only charge consumers more than the amount disclosed when the original estimated charge, or lack of an estimated charge for a particular service, was based on the best information reasonably available to the creditor at the time the disclosure was provided. (§ 1026.19(e)(3)(iii))

10% Tolerance

What charges are subject to a 10% cumulative tolerance? (§ 1026.19(e)(3)(ii))

Charges for third-party services and recording fees paid by or imposed on the consumer are grouped together and subject to a 10% cumulative tolerance. This means the creditor may charge the consumer more than the amount disclosed on the Loan Estimate for any of these charges so long as the total sum of the charges added together does not exceed the sum of all such charges disclosed on the Loan Estimate by more than 10%. (§ 1026.19(e)(3)(ii))

These charges are:

- Recording fees (Comment 19(e)(3)(ii)-4);
- Charges for third-party services where:
- The charge is not paid to the creditor or the creditor's affiliate(§ 1026.19(e)(3)(ii)(B)); and The consumer is permitted by the creditor to shop for the third-party service, and the consumer selects a third-party service provider on the creditor's written list of service providers. (§ 1026.19(e)(3)(ii)(C); § 1026.19(e)(1)(vi); Comment 19(e)(1)(vi)-1 through 7)).

- Remember, when a creditor allows a consumer to shop for a third-party service and the consumer chooses a service provider not identified on the creditor's list, the charge is not subject to a tolerance limitation (see section 7.4 above).

What happens to the sum of estimated charges if the consumer is permitted to shop and chooses his or her own service provider? (§ 1026.19(e)(3)(iii)and Comment 19(e)(3)(ii) -3)

Where a consumer chooses a provider that is not on the creditor's written list of providers, then the creditor is not limited in the amount that may be charged for the service.

(§ 1026.19(e)(3)(iii)) (See section 7.3 above, describing charges subject to no tolerance limitation). When this occurs for a service that otherwise would be included in the 10% cumulative tolerance category, the charge is removed from consideration for purposes of determining the 10% tolerance level. (Comment 19(e)(3)(ii)-5)

Remember, if the creditor permits the consumer to shop for a required settlement service but the consumer either does not select a settlement service provider or chooses a settlement service provider identified by the creditor on the written list of providers, then the amount charged **is included** in the sum of all such third-party charges paid by the consumer, and also is subject to the **10% cumulative tolerance**. (Comment 19(e)(3)(ii) -3)

What if the creditor estimates a charge for a service that is not actually performed?(Comment 19(e)(3)(ii)-5)

The creditor should compare the sum of the charges actually paid by or imposed on the consumer with the sum of the estimated charges on the Loan Estimate that are actually performed. If a

service is not performed, the estimate for that charge should be removed from the total amount of estimated charges. (Comment 19(e)(3)(ii)-5).

What if a consumer pays more for a particular charge for a third-party service or recording fee than estimated, but the total charges paid are still within 10% of the estimate? (Comment19(e)(3)(ii)-2) Whether an individual estimated charge subject to § 1026.19(e)(3)(ii) is in good faith depends on whether the sum of all charges subject to that section increases by more than 10 percent, even if a particular charge does not increase by 10 percent. A creditor may charge more than 10% in excess of an individual estimated charge in this category, so long as the sum of all charges is still within the 10% cumulative tolerance. (Comment 19(e)(3)(ii)-2)

What if the creditor does not provide an estimate of a particular charge that is later charged?

(Comment 19(e)(3)(ii)-2) Creditors also are provided flexibility in disclosing individual fees by the focus on the aggregate amount of all charges. A creditor may charge a consumer for a fee that would fall under the 10% cumulative tolerance but was not included on the Loan Estimate so long as the sum of all charges in this category paid does not exceed the sum of all estimated charges by more than 10%. (Comment 19(e)(3)(ii)-2)

Zero Tolerance

What charges are subject to zero tolerance?(§ 1026.19(e)(3)(ii))

For all other charges, creditors are not permitted to charge consumers more than the amount disclosed on the Loan Estimate under any circumstances other than changed circumstances that permit a revised Loan Estimate.

These zero tolerance charges are:

- Fees paid to the creditor, mortgage broker, or an affiliate of either (§ 1026.19(e)(3)(ii)(B));
- Fees paid to an unaffiliated third party if the creditor did not permit the consumer to shop for a third party service provider for a settlement service (§ 1026.19(e)(3)(ii)(C)); or
- Transfer taxes. (Comments 19(e)(3)(i)-1 and -4)

When is a charge paid to a creditor, mortgage broker, or an affiliate of either?

A charge is paid to the creditor, mortgage broker, or an affiliate of either if it is retained by that person or entity. A charge is not paid to one of these entities when it receives money but passes it on to an unaffiliated third party. (Comment 19(e)(3)(i)-3)

The term affiliate is given the same meaning it has for purposes of determining Ability-to- Repay and HOEPA coverage: any company that controls, is controlled by, or is under common control with another company, as set forth in the Bank Holding Company Act of 1956. (12 U.S.C. 1841 et seq.) (§ 1026.32(b)(5))

What must creditors do when the amounts paid exceed the amounts disclosed on the Loan Estimate beyond the applicable tolerance thresholds? (§ 1026.19(f)(2)(v))

If the amounts paid by the consumer at closing exceed the amounts disclosed on the Loan Estimate beyond the applicable tolerance threshold, the creditor must refund the excess to the consumer no later than 60 calendar days after consummation.

- For charges subject to zero tolerance, any amount charged beyond the amount disclosed on the Loan Estimate must be refunded to the consumer. (§ 1026.19(e)(3)(i))
- For charges subject to a 10% cumulative tolerance, to the extent the total sum of the charges added together exceeds the sum of all such charges disclosed on the Loan Estimate by more than 10%, the difference must be refunded to the consumer. (§ 1026.19(e)(3)(ii))

FAQS/TIPS

Is owner's title insurance not required by the creditor subject to the 10% cumulative tolerance? Generally the answer is no. Owner's title insurance is not subject to any tolerance unless owner's title insurance is required by the creditor. To the extent that owners is not required, the rule states that charges not required by the creditor are not subject to tolerance. The Bureau realizes that the preamble language to the rules may appear inconsistent but the text of the final rule governs.

Rules/Official Comments

Good Faith

The Rule: § 1026.19(e)(3) Good Faith Determination for Estimates of Closing Costs

(i) General rule. An estimated closing cost disclosed pursuant to paragraph (e) of this section is in good faith if the charge paid by or imposed on the consumer does not exceed the amount originally disclosed under paragraph (e)(1)(i) of this section, except as otherwise provided in paragraphs (e)(3)(ii) through (iv) of this section

Official Comment - 19(e)(3)(i)

19(e)(3)(i) General rule.

Requirement. Section 1026.19(e)(3)(i) provides the general rule that an estimated closing cost disclosed pursuant to § 1026.19(e) is not in good faith if the charge paid by or imposed on the consumer exceeds the amount originally disclosed under § 1026.19(e)(1)(i). Although § 1026.19(e)(3)(ii) and (iii) provide exceptions to the general rule, the charges that remain subject to § 1026.19(e)(3)(i) include, but are not limited to, the following:

i. Fees paid to the creditor.

ii. Fees paid to a mortgage broker.

iii. Fees paid to an affiliate of the creditor or a mortgage broker.

iv. Fees paid to an unaffiliated third party if the creditor did not permit the consumer to shop for a third party service provider for a settlement service.

v. Transfer taxes.

No Tolerance

The Rule: § 1026.19(e)(3)(iii) Variations permitted for certain charges

An estimate of the following charges is in good faith if it is consistent with the best information reasonably available to the creditor at the time it is disclosed, regardless of whether the amount paid by the consumer exceeds the amount disclosed under paragraph (e)(1)(i) of this section:

A. Prepaid interest;

B. Property insurance premiums;

C. Amounts placed into an escrow, impound, reserve, or similar account;

D. Charges paid to third-party service providers selected by the consumer consistent with paragraph (e)(1)(vi)(A) of this section that are not on the list provided pursuant to paragraph (e)(1)(vi)(C) of this section; and

E. Charges paid for third-party services not required by the creditor. These charges may be paid to affiliates of the creditor.

Official Comment - 19(e)(3)(iii)

Variations permitted for certain charges.

Good faith requirement for prepaid interest, property insurance premiums, and escrowed amounts. Estimates of prepaid interest, property insurance premiums, and amounts placed into an escrow, impound, reserve or similar account must be consistent with the best information reasonably available to the creditor at the time the disclosures are provided. Differences between the amounts of such charges disclosed under § 1026.19(e)(1)(i) and the amounts of such charges paid by or imposed on the consumer do not constitute a lack of good faith, so long as the original estimated charge, or lack of an estimated charge for a particular service, was based on the best information reasonably available to the creditor at the time the disclosure was provided. This means that the estimate disclosed under § 1026.19(e)(1)(i) was obtained by the creditor through due diligence, acting in good faith. See comments 17(c)(2)(i)-1 and 19(e)(1)(i)-1. For example, if the creditor requires homeowner's insurance but fails to include a homeowner's insurance premium on the estimates provided pursuant to § 1026.19(e)(1)(i), then the creditor's failure to disclose does not comply with § 1026.19(e)(3)(iii). However, if the creditor does not require flood insurance and the subject property is located in an area where floods frequently occur, but not specifically located in a zone where flood insurance is required, failure to include flood insurance on the original estimates provided pursuant to § 1026.19(e)(1)(i) does not constitute a lack of good faith under § 1026.19(e)(3)(iii). Or, if the creditor knows that the loan must close on the 15th of the month but estimates prepaid interest to be paid from the 30th of that month, then the under-disclosure does not comply with § 1026.19(e)(3)(iii). If, however, the creditor estimates consistent with the best information reasonably available that the loan will close on the 30th of the month and bases the estimate of prepaid interest accordingly, but the loan actually closed on the 1st of the next month instead, the creditor complies with § 1026.19(e)(3)(iii).

Good faith requirement for required services chosen by the consumer. If a service is required by the creditor, the creditor permits the consumer to shop for that service consistent with § 1026.19(e)(1)(vi)(A), the creditor provides the list required by § 1026.19(e)(1)(vi)(C), and the consumer chooses a service provider that is not on that list to perform that service, then the actual amounts of such fees need not be compared to the original estimates for such fees to perform the good faith analysis required by § 1026.19(e)(3)(i) or (ii). Differences between the amounts of such charges disclosed pursuant to § 1026.19(e)(1)(i) and the amounts of such

charges paid by or imposed on the consumer do not constitute a lack of good faith, so long as the original estimated charge, or lack of an estimated charge for a particular service, was based on the best information reasonably available to the creditor at the time the disclosure was provided. For example, if the consumer informs the creditor that the consumer will choose a settlement agent not identified by the creditor on the written list provided pursuant to § 1026.19(e)(1)(vi)(C), and the creditor subsequently discloses an unreasonably low estimated settlement agent fee, then the under-disclosure does not comply with § 1026.19(e)(3)(iii). If the creditor permits the consumer to shop consistent with § 1026.19(e)(1)(vi)(A) but fails to provide the list required by § 1026.19(e)(1)(vi)(C), good faith is determined pursuant to § 1026.19(e)(3)(ii) instead of § 1026.19(e)(3)(iii) regardless of the provider selected by the consumer, unless the provider is an affiliate of the creditor in which case good faith is determined pursuant to § 1026.19(e)(3)(i).

Good faith requirement for non-required services chosen by the consumer. Differences between the amounts of estimated charges for services not required by the creditor disclosed pursuant to § 1026.19(e)(1)(i) and the amounts of such charges paid by or imposed on the consumer do not constitute a lack of good faith, so long as the original estimated charge, or lack of an estimated charge for a particular service, was based on the best information reasonably available to the creditor at the time the disclosure was provided. For example, if the consumer informs the creditor that the consumer will obtain a type of inspection not required by the creditor, the creditor must include the charge for that item in the disclosures provided pursuant to § 1026.19(e)(1)(i), but the actual amount of the inspection fee need not be compared to the original estimate for the inspection fee to perform the good faith analysis required by § 1026.19(e)(3)(iii). The original estimated charge, or lack of an estimated charge for a particular service, complies with § 1026.19(e)(3)(iii) if it is made based on the best information reasonably available to the creditor at the time that the estimate was provided. But, for example, if the subject property is located in a jurisdiction where consumers are customarily represented at closing by their own attorney, even though it is not a requirement, and the creditor fails to include a fee for the consumer's attorney, or includes an unreasonably low estimate for such fee, on the original estimates provided pursuant to § 1026.19(e)(1)(i), then the creditor's failure to disclose, or under-estimation, does not comply with § 1026.19(e)(3)(iii).

10% Tolerance

The Rule: § 1026.19(e)(3)(ii) Limited increases permitted for certain charges

An estimate of a charge for a third- party service or a recording fee is in good faith if:

(A) The aggregate amount of charges for third-party services and recording fees paid by or imposed on the consumer does not exceed the aggregate amount of such charges disclosed under paragraph (e)(1)(i) of this section by more than 10 percent;

(B) The charge for the third-party service is not paid to the creditor or an affiliate of the creditor; and

(C) The creditor permits the consumer to shop for the third-party service, consistent with paragraph (e)(1)(vi) of this section

Official Comment - 19(e)(3)(ii)

10% Tolerance

19(e)(3)(ii) Limited increases permitted for certain charges.

*1. **Requirements**. Section 1026.19(e)(3)(ii) provides that certain estimated charges are in good faith if the sum of all such charges paid by or imposed on the consumer does not exceed the sum of all such charges disclosed pursuant to § 1026.19(e) by more than 10 percent. Section 1026.19(e)(3)(ii) permits this limited increase for only the following items:*

i. Fees paid to an unaffiliated third party if the creditor permitted the consumer to select a settlement service provider that is not on the list provided pursuant to § 1026.19(e)(1)(vi) and discloses that the consumer may do so on that list.

ii. Recording fees.

*2. **Aggregate increase limited to ten percent**. Pursuant to § 1026.19(e)(3)(ii), whether an individual estimated charge subject to § 1026.19(e)(3)(ii) is in good faith depends on whether the sum of all charges subject to § 1026.19(e)(3)(ii) increases by more than 10 percent, even if a particular charge does not increase by more than 10 percent. For example, if, in the disclosures provided pursuant to § 1026.19(e)(1)(i), the creditor includes a $300 estimated fee for a settlement agent, the settlement agent fee is included in the category of charges subject to § 1026.19(e)(3)(ii), and the sum of all charges subject to § 1026.19(e)(3)(ii) (including the settlement agent fee) equals $1,000 then the creditor does not violate § 1026.19(e)(3)(ii) if the actual settlement agent fee exceeds 10 percent (i.e., exceeds $330), provided that the sum of all such charges does not exceed 10 percent (i.e., $1,100). Section 1026.19(e)(3)(ii) also provides*

flexibility in disclosing individual fees by focusing on aggregate amounts. For example, assume that, in the disclosures provided pursuant to § 1026.19(e)(1)(i), the sum of all estimated charges subject to § 1026.19(e)(3)(ii) equals $1,000. If the creditor does not include an estimated charge for a notary fee but a $10 notary fee is charged to the consumer, and the notary fee is subject to § 1026.19(e)(3)(ii), then the creditor does not violate § 1026.19(e)(1)(i) if the sum of all amounts charged to the consumer subject to § 1026.19(e)(3)(ii) does not exceed $1,100, even though an individual notary fee was not included in the estimated disclosures provided pursuant to § 1026.19(e)(1)(i).

*3. **Services for which the consumer may, but does not, select a settlement service provider.** Good faith is determined pursuant to § 1026.19(e)(3)(ii), instead of § 1026.19(e)(3)(i), if the creditor permits the consumer to shop for a settlement service provider, consistent with § 1026.19(e)(1)(vi)(A). Section 1026.19(e)(3)(ii) provides that if the creditor requires a service in connection with the mortgage loan transaction, and permits the consumer to shop for that service consistent with § 1026.19(e)(1)(vi), but the consumer either does not select a settlement service provider or chooses a settlement service provider identified by the creditor on the list, then good faith is determined pursuant to § 1026.19(e)(3)(ii), instead of § 1026.19(e)(3)(i). For example, if, in the disclosures provided pursuant to §§ 1026.19(e)(1)(i) and 1026.37(f)(3), a creditor discloses an estimated fee for an unaffiliated settlement agent and permits the consumer to shop for that service, but the consumer either does not choose a provider, or chooses a provider identified by the creditor on the written list provided pursuant to § 1026.19(e)(1)(vi)(C), then the estimated settlement agent fee is included with the fees that may, in aggregate, increase by no more than 10 percent for the purposes of § 1026.19(e)(3)(ii). If, however, the consumer chooses a provider that is not on the written list, then good faith is determined according to § 1026.19(e)(3)(iii).*

*4. **Recording fees.** Section 1026.19(e)(3)(ii) provides that an estimate of a charge for a third-party service or recording fees is in good faith if the conditions specified in § 1026.19(e)(3)(ii)(A), (B), and (C) are satisfied. Recording fees are not charges for third-party services because recording fees are paid to the applicable government entity where the documents related to the mortgage transaction are recorded, and thus, the condition specified in § 1026.19(e)(3)(ii)(B) that the charge for third-party service not be paid to an affiliate of the creditor is inapplicable for recording fees. The condition specified in § 1026.19(e)(3)(ii)(C), that the creditor permits the consumer to shop for the third-party service, is similarly inapplicable. Therefore, estimates of*

recording fees need only satisfy the condition specified in § 1026.19(e)(3)(ii)(A) to meet the requirements of § 1026.19(e)(3)(ii).

***Calculating the aggregate amount of estimated charges**. In calculating the aggregate amount of estimated charges for purposes of conducting the good faith analysis pursuant to § 1026.19(e)(3)(ii), the aggregate amount of estimated charges must reflect charges for services that are actually performed. For example, assume that the creditor included a $100 estimated fee for a pest inspection in the disclosures provided pursuant to § 1026.19(e)(1)(i), and the fee is included in the category of charges subject to § 1026.19(e)(3)(ii), but a pest inspection was not obtained in connection with the transaction, then for purposes of the good faith analysis required under § 1026.19(e)(3)(ii), the sum of all charges subject to § 1026.19(e)(3)(ii) paid by or imposed on the consumer is compared to the sum of all such charges disclosed pursuant to § 1026.19(e), minus the $100 estimated pest inspection fee.*

Zero Tolerance

The Rule: § 1026.19(e)(3)(i) General rule

An estimated closing cost disclosed pursuant to paragraph (e) of this section is in good faith if the charge paid by or imposed on the consumer does not exceed the amount originally disclosed under paragraph (e)(1)(i) of this section, except as otherwise provided in paragraphs (e)(3)(ii) through (iv) of this section

Official Comment - 19(e)(3)(i)

19(e)(3)(i) General rule.

Requirement. Section 1026.19(e)(3)(i) provides the general rule that an estimated closing cost disclosed pursuant to § 1026.19(e) is not in good faith if the charge paid by or imposed on the consumer exceeds the amount originally disclosed under § 1026.19(e)(1)(i). Although § 1026.19(e)(3)(ii) and (iii) provide exceptions to the general rule, the charges that remain subject to § 1026.19(e)(3)(i) include, but are not limited to, the following:

i. Fees paid to the creditor.

ii. Fees paid to a mortgage broker.

iii. Fees paid to an affiliate of the creditor or a mortgage broker.

iv. Fees paid to an unaffiliated third party if the creditor did not permit the consumer to shop for a third party service provider for a settlement service.

v. Transfer taxes.

Revisions and Corrections

Loan Estimate Revisions

CFPB Summary

Revisions and Corrections – Loan Estimate

Creditors generally are bound by the Loan Estimate provided within three business days of the application, and may not issue revisions to Loan Estimates because they later discover technical errors, miscalculations, or underestimations of charges. Creditors are permitted to provide to the consumer revised Loan Estimates (and use them to compare estimated amounts to amounts actually charged for purposes of determining good faith) only in certain specific circumstances:

- Changed circumstances that occur after the Loan Estimate is provided to the consumer cause estimated settlement charges to increase more than is permitted under the TILA-RESPA rule (§ 1026.19(e)(3)(iv)(A));
- Changed circumstances that occur after the Loan Estimate is provided to the consumer affect the consumer's eligibility for the terms for which the consumer applied or the value of the security for the loan (§ 1026.19(e)(3)(iv)(B));
- Revisions to the credit terms or the settlement are requested by the consumer.
- The interest rate was not locked when the Loan Estimate was provided, and locking the rate causes the points or lender credits disclosed on the Loan Estimate to change (§ 1026.19(e)(3)(iv)(D));
- The consumer indicates an intent to proceed with the transaction more than 10 business days after the Loan Estimate was originally provided (§ 1026.19(e)(3)(iv)(E)); or
- The loan is a new construction loan, and settlement is delayed by more than 60 calendar days, if the original Loan Estimate states clearly and conspicuously that at any time prior to 60 calendar days before consummation, the creditor may issue revised disclosures. (§ 1026.19(e)(3)(iv)(F)).

CFPB COMPLIANCE GUIDE SUMMARY

Changed Circumstances

What is a "changed circumstance"? (§ 1026.19(e)(3)(iv)(A))

A changed circumstance for purposes of a revised Loan Estimate is:

- An extraordinary event beyond the control of any interested party or other unexpected event specific to the consumer or transaction (§ 1026.19(e)(3)(iv)(A)(1));
- Information specific to the consumer or transaction that the creditor relied upon when providing the Loan Estimate and that was inaccurate or changed after the disclosures were provided (§ 1026.19(e)(3)(iv)(A)(2)); or
- New information specific to the consumer or transaction that the creditor did not rely on when providing the Loan Estimate. (§ 1026.19(e)(3)(iv)(A)*(3)*)

What are changed circumstances that affect settlement charges?

A creditor may provide and use a revised Loan Estimate redisclosing a settlement charge if changed circumstances cause the estimated charge to increase or, in the case of charges subject to the 10% cumulative tolerance, cause the sum of those charges to increase by more than the 10% tolerance. (§ 1026.19(e)(3)(iv)(A); Comment 19(e)(3)(iv)(A)-1)

Examples of changed circumstances affecting settlement costs include (Comment 19(e)(3)(iv)(A)-2):

- A natural disaster, such as a hurricane or earthquake, damages the property or otherwise results in additional closing costs;
- The creditor provided an estimate of title insurance on the Loan Estimate, but the title insurer goes out of business during underwriting;
- New information not relied upon when providing the Loan Estimate is discovered, such as a neighbor of the seller filing a claim contesting the boundary of the property to be sold.

CFPB COMPLIANCE GUIDE SUMMARY

Revisions and Correction

NOTE: *Creditors are not required to collect all six pieces of information constituting the consumer's application—i.e., the consumer's name, monthly income, social security number to obtain a credit report, the property address, an estimate of the value of the property, or the mortgage loan amount sought—prior to issuing the Loan Estimate. However, creditors are presumed to have collected this information prior to providing the Loan Estimate and may not later collect it and claim a changed circumstance. For example, if a creditor provides a Loan Estimate prior to receiving the property address from the consumer, the creditor cannot subsequently claim that the receipt of the property address is a changed circumstance*. (Comment 19(e)(3)(iv)(A)-3)

What if the changed circumstance causes third party charges subject to a cumulative 10% tolerance to increase?

It is possible that one of the events described above may cause one or more third-party charges subject to a **10% cumulative tolerance** to increase. Creditors are permitted to provide and rely upon a revised **Loan Estimate** only when the cumulative effect of the **changed circumstance** results in an increase to the sum of all costs subject to the **tolerance** by more than 10%. (Comment 19(e)(3)(iv)(A)-1.ii)

CFPB COMPLIANCE GUIDE SUMMARY

Revisions and Corrections – Loan Estimate

What are changed circumstances that affect eligibility? (§ 1026.19(e)(3)(iv)(B))

A creditor also may provide and use a revised Loan Estimate if a changed circumstance affected the consumer's creditworthiness or the value of the security for the loan, and resulted in the consumer being ineligible for an estimated loan term previously disclosed. (§ 1026.19(e)(3)(iv)(B) and Comment 19(e)(3)(iv)(B)-1) This may occur when a changed circumstance causes a change in the consumer's eligibility for specific loan terms disclosed on the Loan Estimate, which in turn results in increased cost for a settlement service beyond the applicable tolerance threshold. (Comment 19(e)(3)(iv)(A)-2).

For example:

- The creditor relied on the consumer's representation to the creditor of a $90,000 annual income, but underwriting determines that the consumer's annual income is only $80,000.
- There are two co-applicants applying for a mortgage loan and the creditor relied on a combined income when providing the **Loan Estimate**, but one applicant subsequently becomes unemployed.

CFPB COMPLIANCE GUIDE SUMMARY

Revisions and Corrections – Loan Estimate

May a creditor use a revised Loan Estimate if the consumer requests revisions to the terms or charges? (§ 1026.19(e)(3)(iv)(C))

Yes. A creditor may use a revised estimate of a charge if the consumer requests revisions to the credit terms or settlement that affect items disclosed on the Loan Estimate and cause an estimated charge to increase. (§ 1026.19(e)(3)(iv)(C); Comment 19(e)(3)(iv)(C)-1)

Remember, providing a revised Loan Estimate allows creditors to compare the updated figures for charges that have increased due to an event that allows for redisclosure to the amount actually charged for those services. If amounts decrease or increase only to an extent that does not exceed the applicable tolerance, the original Loan Estimate is still deemed to be in good faith and redisclosure is not permitted. (§ 1026.19(e)(4)(i))

May a creditor use a revised Loan Estimate if the rate is locked after the initial Loan Estimate is provided? (§ 1026.19(e)(3)(iv)(D))

Yes. If the interest rate for the loan was not locked when the Loan Estimate was provided and, upon being locked at some later time, points or lender credits for the mortgage loan change, the creditor is required to provide a revised Loan Estimate on the date the interest rate is locked, and may use the revised Loan Estimate to compare to points and lender credits charged.

The revised Loan Estimate must reflect the revised interest rate as well as any revisions to the points disclosed on the Loan Estimate pursuant to § 1026.37(f)(1), lender credits, and any other interest rate dependent charges and terms that have changed due to the new interest rate. (§ 1026.19(e)(3)(iv)(D); Comment 19(e)(3)(iv)(D)-1)

CFPB COMPLIANCE GUIDE SUMMARY

Revisions and Corrections – Loan Estimate

May a creditor use a revised Loan Estimate if the initial Loan Estimate expires? (§ 1026.19(e)(3)(iv)(E))

Yes. If the consumer indicates an intent to proceed with the transaction more than 10 business days after the Loan Estimate was delivered or placed in the mail to the consumer, a creditor may use a revised Loan Estimate. (§ 1026.19(e)(3)(iv)(E); Comment 19(e)(3)(iv)(E)-1). No justification is required for the change to the original estimate of a charge other than the lapse of 10 business days.

- Creditors should count the number of business days from the date the Loan Estimate was delivered or placed in the mail to the consumer, and use the definition of business day that applies for purposes of providing the Loan Estimate. (§ 1026.19(e)(1)(iii) and Comment 19(e)(1)(iii)-1; § 1026.2(a)(6))

Are there any other circumstances where creditors may use revised Loan Estimates?

Yes. In addition to the circumstances described above, creditors also may use a revised Loan Estimate where the transaction involves financing of new construction and the creditor reasonably expects that settlement will occur more than 60 calendar days after the original Loan Estimate has been provided. (§ 1026.19(e)(3)(iv)(F))

Creditors may use revised Loan Estimates in this circumstance only when the original Loan Estimate clearly and conspicuously stated that at any time prior to 60 days before consummation the creditor may issue revised disclosures. (Comment 19(e)(3)(iv)(F)-1)

- A new construction loan is a loan for the purchase of a home that is not yet constructed or the purchase of a new home where construction is currently underway, not a loan for financing home improvement, remodeling, or adding to an existing structure. Nor is it a loan on a home for which a use and occupancy permit has been issued prior to the issuance of a Loan Estimate.

The Rule: § 1026.19(e)(3)(iv) Revised estimates

For the purpose of determining good faith under paragraph (e)(3)(i) and (ii) of this section, a creditor may use a revised estimate of a charge instead of the estimate of the charge originally disclosed under paragraph (e)(1)(i) of this section if the revision is due to any of the following reasons:

Official Comment - 19(e)(3)(iv)

Revised estimates.

*1. **Requirement**. Pursuant to § 1026.19(e)(3)(i) and (ii), good faith is determined by calculating the difference between the estimated charges originally provided pursuant to § 1026.19(e)(1)(i) and the actual charges paid by or imposed on the consumer. Section 1026.19(e)(3)(iv) provides the exception to this rule. Pursuant to § 1026.19(e)(3)(iv), for purposes of determining good faith under § 1026.19(e)(3)(i) and (ii), the creditor may use a revised estimate of a charge instead of the amount originally disclosed under § 1026.19(e)(1)(i) if the revision is due to one of the reasons set forth in § 1026.19(e)(3)(iv)(A) through (F).*

*2. **Actual increase.** The revised disclosures may reflect increased charges only to the extent that the reason for revision, as identified in § 1026.19(e)(3)(iv)(A) through (F), actually increased the particular charge. For example, if a consumer requests a rate lock extension, then the revised disclosures may reflect a new rate lock extension fee, but the fee may be no more than the rate lock extension fee charged by the creditor in its usual course of business, and other charges unrelated to the rate lock extension may not change.*

*3. **Documentation requirement**. In order to comply with § 1026.25, creditors must retain records demonstrating compliance with the requirements of § 1026.19(e). For example, if revised disclosures are provided because of a changed circumstance under § 1026.19(e)(3)(iv)(A) affecting settlement costs, the creditor must be able to show compliance with § 1026.19(e) by documenting the original estimate of the cost at issue, explaining the reason for revision and how it affected settlement costs, showing that the corrected disclosure increased the estimate only to the extent that the reason for revision actually increased the cost, and showing that the timing requirements of § 1026.19(e)(4) were satisfied. However, the documentation requirement does not require separate corrected disclosures for each change. A creditor may provide corrected disclosures reflecting multiple changed circumstances, provided that the creditor's*

documentation demonstrates that each correction complies with the requirements of § 1026.19(e).

The Rule: § 1026.19(e)(3)(iv)(A) Changed circumstance affecting settlement charges

Changed circumstances cause the estimated charges to increase or, in the case of estimated charges identified in paragraph (e)(3)(ii) of this section, cause the aggregate amount of such charges to increase by more than 10 percent. For purposes of this paragraph, "changed circumstance" means:

(*1*) An extraordinary event beyond the control of any interested party or other unexpected event specific to the consumer or transaction;

(*2*) Information specific to the consumer or transaction that the creditor relied upon when providing the disclosures required under paragraph (e)(1)(i) of this section and that was inaccurate or changed after the disclosures were provided; or

(*3*) New information specific to the consumer or transaction that the creditor did not rely on when providing the original disclosures required under paragraph (e)(1)(i) of this section.

Official Comment - 19(e)(3)(iv)(A)

Changed circumstance affecting settlement charges.

***1. Requirement**. For the purpose of determining good faith under § 1026.19(e)(3)(i) and (ii), revised charges are compared to actual charges if the revision was caused by a changed circumstance. See also comment 19(e)(3)(iv)(A)-2 regarding the definition of a changed circumstance. The following examples illustrate the application of this provision:*

i. Charges subject to the zero percent tolerance category. Assume a creditor provides a $200 estimated appraisal fee pursuant to § 1026.19(e)(1)(i), which will be paid to an affiliated appraiser and therefore may not increase for purposes of determining good faith under §1026.19(e)(3)(i), except as provided in § 1026.19(e)(3)(iv). The estimate was based on information provided by the consumer at application, which included information indicating that the subject property was a single-family dwelling. Upon arrival at the subject property, the appraiser discovers that the property is actually a single-family dwelling located on a farm. A different schedule of appraisal fees applies to residences located on farms. A changed circumstance has occurred (i.e., information provided by the consumer is found to be inaccurate after the disclosures required under § 1026.19(e)(1)(i) were provided), which caused an increase in the cost of the appraisal.

Therefore, if the creditor issues revised disclosures with the corrected appraisal fee, the actual appraisal fee of $400 paid at the real estate closing by the consumer will be compared to the revised appraisal fee of $400 to determine if the actual fee has increased above the estimated fee. However, if the creditor failed to provide revised disclosures, then the actual appraisal fee of $400 must be compared to the originally disclosed estimated appraisal fee of $200.

ii. ***Charges subject to the ten percent tolerance category****. Assume a creditor provides a 400 estimate of title fees, which are included in the category of fees which may not increase by more than 10 percent for the purposes of determining good faith under § 1026.19(e)(3)(ii), except as provided in § 1026.19(e)(3)(iv). An unreleased lien is discovered and the title company must perform additional work to release the lien. However, the additional costs amount to only a five percent increase over the sum of all fees included in the category of fees which may not increase by more than 10 percent. A changed circumstance has occurred (i.e., new information), but the sum of all costs subject to the 10 percent tolerance category has not increased by more than 10 percent. Section 1026.19(e)(3)(iv) does not prohibit the creditor from issuing revised disclosures, but if the creditor issues revised disclosures in this scenario, when the disclosures required by § 1026.19(f)(1)(i) are delivered, the actual title fees of $500 may not be compared to the revised title fees of $500; they must be compared to the originally estimated title fees of $400 because the changed circumstance did not cause the sum of all costs subject to the 10 percent tolerance category to increase by more than 10 percent.*

2. ***Changed circumstance****. A changed circumstance may be an extraordinary event beyond the control of any interested party. For example, a war or a natural disaster would be an extraordinary event beyond the control of an interested party. A changed circumstance may also be an unexpected event specific to the consumer or the transaction. For example, if the creditor provided an estimate of title insurance on the disclosures required under § 1026.19(e)(1)(i), but the title insurer goes out of business during underwriting, then this unexpected event specific to the transaction is a changed circumstance. A changed circumstance may also be information specific to the consumer or transaction that the creditor relied upon when providing the disclosures required under § 1026.19(e)(1)(i) and that was inaccurate or changed after the disclosures were provided. For example, if the creditor relied on the consumer's income when*

providing the disclosures required under § 1026.19(e)(1)(i), and the consumer represented to the creditor that the consumer had an annual income of $90,000, but underwriting determines that the consumer's annual income is only $80,000, then this inaccuracy in information relied upon is a changed circumstance. Or, assume two co-applicants applied for a mortgage loan. One applicant's income was $30,000, while the other applicant's income was $50,000. If the creditor relied on the combined income of $80,000 when providing the disclosures required under § 1026.19(e)(1)(i), but the applicant earning $30,000 becomes unemployed during underwriting, thereby reducing the combined income to $50,000, then this change in information relied upon is a changed circumstance. A changed circumstance may also be the discovery of new information specific to the consumer or transaction that the creditor did not rely on when providing the original disclosures required under § 1026.19(e)(1)(i). For example, if the creditor relied upon the value of the property in providing the disclosures required under § 1026.19(e)(1)(i), but during underwriting a neighbor of the seller, upon learning of the impending sale of the property, files a claim contesting the boundary of the property to be sold, then this new information specific to the transaction is a changed circumstance.

*3. **Six pieces of information presumed collected, but not required**. Section 1026.19(e)(1)(iii) requires creditors to deliver the disclosures not later than the third business day after the creditor receives the consumer's application, which consists of the six pieces of information identified in § 1026.2(a)(3)(ii). A creditor is not required to collect the consumer's name, monthly income, social security number to obtain a credit report, the property address, an estimate of the value of the property, or the mortgage loan amount sought. However, for purposes of determining whether an estimate is provided in good faith under § 1026.19(e)(1)(i), a creditor is presumed to have collected these six pieces of information. For example, if a creditor provides the disclosures required by § 1026.19(e)(1)(i) prior to receiving the property address from the consumer, the creditor cannot subsequently claim that the receipt of the property address is a changed circumstance pursuant to § 1026.19(e)(3)(iv)(A) or (B).*

The Rule: § 1026.19(e)(3)(iv)(B) Changed circumstance affecting eligibility

The consumer is ineligible for an estimated charge previously disclosed because a changed circumstance, as defined under paragraph (e)(3)(iv)(A) of this section, affected the consumer's creditworthiness or the value of the security for the loan.

Official Comment - 19(e)(3)(iv)(B)

Changed circumstance affecting eligibility.

*1. **Requirement**. If changed circumstances cause a change in the consumer's eligibility for specific loan terms disclosed pursuant to § 1026.19(e)(1)(i) and revised disclosures are provided because the change in eligibility resulted in increased cost for a settlement service beyond the applicable tolerance threshold, the charge paid by or imposed on the consumer for the settlement service for which cost increased due to the change in eligibility is compared to the revised estimated cost for the settlement service to determine if the actual fee has increased above the estimated fee. For example, assume that, prior to providing the disclosures required by § 1026.19(e)(1)(i), the creditor believed that the consumer was eligible for a loan program that did not require an appraisal. The creditor then provides the estimated disclosures required by § 1026.19(e)(1)(i), which do not include an estimated charge for an appraisal. During underwriting it is discovered that the consumer was delinquent on mortgage loan payments in the past, making the consumer ineligible for the loan program originally identified on the estimated disclosures, but the consumer remains eligible for a different program that requires an appraisal.*

If the creditor provides revised disclosures reflecting the new program and including the appraisal fee, then the actual appraisal fee will be compared to the appraisal fee included in the revised disclosures to determine if the actual fee has increased above the estimated fee. However, if the revised disclosures also include increased estimates for title fees, the actual title fees must be compared to the original estimates assuming that the increased title fees do not stem from the change in eligibility or any other change warranting a revised disclosure. See also § 1026.19(e)(3)(iv)(A) and comment 19(e)(3)(iv)(A)-2 regarding the definition of changed circumstances.

The Rule: § 1026.19(e)(3)(iv)(C) Revisions requested by the consumer

The consumer requests revisions to the credit terms or the settlement that cause an estimated charge to increase.

Official Comment - 19(e)(3)(iv)(C)

Revisions requested by the consumer.

1. Requirement. *If the consumer requests revisions to the transaction that affect items disclosed pursuant to § 1026.19(e)(1)(i), and the creditor provides revised disclosures reflecting the consumer's requested changes, the final disclosures are compared to the revised disclosures to determine whether the actual fee has increased above the estimated fee. For example, assume that the consumer decides to grant a power of attorney authorizing a family member to consummate the transaction on the consumer's behalf after the disclosures required under § 1026.19(e)(1)(i) are provided. If the creditor provides revised disclosures reflecting the fee to record the power of attorney, then the actual charges will be compared to the revised charges to determine if the fees have increased.*

The Rule: § 1026.19(e)(3)(iv)(D) Interest rate dependent charges

The points or lender credits change because the interest rate was not locked when the disclosures required under paragraph (e)(1)(i) of this section were provided. On the date the interest rate is locked, the creditor shall provide a revised version of the disclosures required under paragraph (e)(1)(i) of this section to the consumer with the revised interest rate, the points disclosed pursuant to § 1026.37(f)(1), lender credits, and any other interest rate dependent charges and terms.

Official Comment - 19(e)(3)(iv)(D)

Interest rate dependent charges.

1. Requirements*. If the interest rate is not locked when the disclosures required by §1026.19(e)(1)(i) are provided, a valid reason for revision exists when the interest rate is subsequently locked. On the date the interest rate is locked, § 1026.19(e)(3)(iv)(D) requires the creditor to provide a revised version of the disclosures required under § 1026.19(e)(1)(i) reflecting the revised interest rate, the points disclosed pursuant to § 1026.37(f)(1), lender credits, and any other interest rate dependent charges and terms. The following examples illustrate this requirement:*

i. Assume a creditor sets the interest rate by executing a rate lock agreement with the consumer. If such an agreement exists when the original disclosures required under §1026.19(e)(1)(i) are provided, then the actual points and lender credits are compared to

the estimated points disclosed pursuant to § 1026.37(f)(1) and lender credits included in the original disclosures provided under § 1026.19(e)(1)(i) for the purpose of determining good faith pursuant to § 1026.19(e)(3)(i). If the consumer enters into a rate lock agreement with the creditor after the disclosures required under § 1026.19(e)(1)(i) were provided, then § 1026.19(e)(3)(iv)(D) requires the creditor to provide, on the date that the consumer and the creditor enters into a rate lock agreement, a revised version of the disclosures required under § 1026.19(e)(1)(i) reflecting the revised interest rate, the points disclosed pursuant to § 1026.37(f)(1), lender credits, and any other interest rate dependent charges and terms. Provided that the revised version of the disclosures required under § 1026.19(e)(1)(i) reflect any revised points disclosed pursuant to § 1026.37(f)(1) and lender credits, the actual points and lender credits are compared to the revised points and lender credits for the purpose of determining good faith pursuant to § 1026.19(e)(3)(i).

The Rule: § 1026.19(e)(3)(iv)(E) Expiration

The consumer indicates an intent to proceed with the transaction more than ten business days after the disclosures required under paragraph (e)(1)(i) of this section are provided pursuant to paragraph (e)(1)(iii) of this section.

Official Comment - 19(e)(3)(iv)(E)

Expiration.

1. Requirements. If the consumer indicates an intent to proceed with the transaction more than ten business days after the disclosures were originally provided pursuant to § 1026.19(e)(1)(iii), for the purpose of determining good faith under § 1026.19(e)(3)(i) and (ii), a creditor may use a revised estimate of a charge instead of the amount originally disclosed under § 1026.19(e)(1)(i). Section 1026.19(e)(3)(iv)(E) requires no justification for the change to the original estimate other than the lapse of ten business days. For example, assume a creditor includes a $500 underwriting fee on the disclosures provided pursuant to § 1026.19(e)(1)(i) and the creditor delivers those disclosures on a Monday. If the consumer indicates intent to proceed 11 business days later, the creditor may provide new disclosures with a $700 underwriting fee. In this example, § 1026.19(e) and § 1026.25 require the creditor to document that a new disclosure was

provided pursuant to § 1026.19(e)(3)(iv)(E), but do not require the creditor to document a reason for the increase in the underwriting fee.

The Rule: § 1026.19(e)(3)(iv)(F) Delayed settlement date on a construction loan

In transactions involving new construction, where the creditor reasonably expects that settlement will occur more than 60 days after the disclosures required under paragraph (e)(1)(i) of this section are provided pursuant to paragraph (e)(1)(iii) of this section, the creditor may provide revised disclosures to the consumer if the original disclosures required under paragraph (e)(1)(i) of this section state clearly and conspicuously that at any time prior to 60 days before consummation, the creditor may issue revised disclosures. If no such statement is provided, the creditor may not issue revised disclosures, except as otherwise provided in paragraph (f) of this section.

Official Comment - 19(e)(3)(iv)(F)

Delayed settlement date on a construction loan.

1. Requirements. A loan for the purchase of a home that has yet to be constructed, or a loan to purchase a home under construction (i.e., construction is currently underway), is a construction loan to build a home for the purposes of § 1026.19(e)(3)(iv)(F). However, if a use and occupancy permit has been issued for the home prior to the issuance of the disclosures required under § 1026.19(e)(1)(i), then the home is not considered to be under construction and the transaction would not be a construction loan to build a home for the purposes of § 1026.19(e)(3)(iv)(F).

Closing Disclosure Revision

CFPB Summary

CFPB COMPLIANCE GUIDE SUMMARY

Revisions and Corrections – Closing Disclosure

When are creditors required to correct or revise Closing Disclosures? (§ 1026.19(f)(2))

Creditors must redisclose terms or costs on the Closing Disclosure if certain changes occur to the transaction after the Closing Disclosure was first provided that cause the disclosures to become inaccurate. There are three categories of changes that require a corrected Closing Disclosure containing all changed terms. (§ 1026.19(f)(2))

- Changes that occur before consummation that require a new three-business-day waiting period. (§ 1026.19(f)(2)(ii))
- Changes that occur before consummation and do not require a new three-business-day waiting period. (§ 1026.19(f)(2)(i))
- Changes that occur after consummation. (§ 1026.19(f)(2)(iii))

What changes before consummation require a new waiting period? (§ 1026.19(f)(2)(ii))

If one of the following occurs after delivery of the Closing Disclosure and before consummation, the creditor must provide a corrected Closing Disclosure containing all changed terms and ensure that the consumer receives it no later than three business days before consummation. (§ 1026.19(f)(2)(ii); Comment 19(f)(2)(ii)-1)

- **The disclosed APR becomes inaccurate.** If the annual percentage rate (APR) previously disclosed becomes inaccurate, the creditor must provide a corrected **Closing Disclosure** with the corrected APR disclosure and all other terms that have changed. The APR's accuracy is determined according to § 1026.22. (§ 1026.19(f)(2)(ii)(A))
- **The loan product changes.** If the loan product previously disclosed becomes inaccurate, the creditor must provide a corrected **Closing Disclosure** with the corrected loan product and all other terms that have changed. (§ 1026.19(f)(2)(ii)(B))
- **A prepayment penalty is added.** If a prepayment penalty is added to the transaction, the creditor must provide a corrected **Closing Disclosure** with the prepayment penalty provision disclosed and all other terms that have changed. (§ 1026.19(f)(2)(ii)(C))

CFPB COMPLIANCE GUIDE SUMMARY

Revisions and Corrections – Closing Disclosure

What changes do not require a new three-day waiting period? (§ 1026.19(f)(2)(i))

For any other changes before consummation that do not fall under the three categories above (i.e., related to the APR, loan product, or the addition of a prepayment penalty), the creditor still must provide a corrected Closing Disclosure with any terms or costs that have changed and ensure that the consumer receives it.

For these changes, there is no additional three-business-day waiting period required. The creditor must ensure only that the consumer receives the revised Closing Disclosure at or before consummation. (§ 1026.19(f)(2)(i); Comment 19(f)(2)(i)-1 through -2)

What if a consumer asks for the revised Closing Disclosure before consummation? (§ 1026.19(f)(2)(i))

For changes other than to the APR, loan product, or the addition of a prepayment penalty, the creditor is not required to provide the consumer with the revised Closing Disclosure until the day of consummation. However, a consumer has the right to inspect the Closing Disclosure during the business day before consummation. (§ 1026.19(f)(2)(i))

If a consumer asks to inspect the Closing Disclosure the business day before consummation, the Closing Disclosure presented to the consumer must reflect any adjustments to the costs or terms that are known to the creditor at the time the consumer inspects it. (§ 1026.19(f)(2)(i))

Creditors may arrange for settlement agents to permit consumers to inspect the Closing Disclosure. (§1026.19(f)(1)(v) and Comment 19(f)(2)(i)-2)

An example of a post-consummation event that would require a new Closing Disclosure is a discovery that a recording fee paid by the consumer is different from the amount that was disclosed on the Closing Disclosure. (Comment 19(f)(2)(iii)-1.i). However, other post-consummation events that are not related to settlement, such as tax increases, do not require a revised Closing Disclosure. (Comment 19(f)(2)(iii)-1.iii). For guidance on when a creditor receives information sufficient to establish that an event has occurred after consummation, see Comment 19(e)(4)(i)-1.

CFPB COMPLIANCE GUIDE SUMMARY

Revisions and Corrections – Closing Disclosure

Are creditors required to provide corrected Closing Disclosures if terms or costs change after consummation? (§ 1026.19(f)(2)(iii))

Yes, in some circumstances. Creditors must provide a corrected Closing Disclosure if an event in connection with the settlement occurs during the 30-calendar-day period after consummation that causes the Closing Disclosure to become inaccurate and results in a change to an amount paid by the consumer from what was previously disclosed. (§ 1026.19(f)(2)(iii); Comment 19(f)(2)(iii)-1)

When a post-consummation event requires a corrected Closing Disclosure, the creditor must deliver or place in the mail a corrected Closing Disclosure not later than 30 calendar days after receiving information sufficient to establish that such an event has occurred. (§ 1026.19(f)(2)(iii); Comment 19(f)(2)(iii)-1)

Is a corrected Closing Disclosure required if a post-consummation event affects an amount paid by the seller? (§ 1026.19(f)(4)(ii))

Yes, in some circumstances. Settlement agents must provide a revised Closing Disclosure if an event related to the settlement occurs during the 30-day period after consummation that causes the Closing Disclosure to become inaccurate and results in a change to an amount actually paid by the seller from what was previously disclosed.

The settlement agent must deliver or place in the mail a corrected Closing Disclosure not later than 30 calendar days after receiving information sufficient to establish that such an event has occurred. (§ 1026.19(f)(4)(ii))

Are clerical errors discovered after consummation subject to the redisclosure obligation? (§ 1026.19(f)(2)(iv); Comment 19(f)(2)(iv)-1)

Yes. Creditors also must provide a revised Closing Disclosure to correct non-numerical clerical errors and document refunds for tolerance violations no later than 60 calendar days after

The Rule: § 1026.19(f)(2) Subsequent Changes

The Rule: § 1026.19(f)(2)(i) Changes before consummation not requiring a new waiting period

Except as provided in paragraph (f)(2)(ii), if the disclosures provided under paragraph (f)(1)(i) of this section become inaccurate before consummation, the creditor shall provide corrected disclosures reflecting any changed terms to the consumer so that the consumer receives the corrected disclosures at or before consummation. Notwithstanding the requirement to provide corrected disclosures at or before consummation, the creditor shall permit the consumer to inspect the disclosures provided under this paragraph, completed to set forth those items that are known to the creditor at the time of inspection, during the business day immediately preceding consummation, but the creditor may omit from inspection items related only to the seller's transaction.

Official Comment - 19(f)(2)(i)

Changes before consummation not requiring a new waiting period.

***1. Requirements**. Under § 1026.19(f)(2)(i), if the disclosures provided under § 1026.19(f)(1)(i) become inaccurate before consummation, other than as provided under § 1026.19(f)(2)(ii), the creditor shall provide corrected disclosures reflecting any changed terms to the consumer so that the consumer receives the corrected disclosures at or before consummation. The creditor need not comply with the timing requirements in § 1026.19(f)(1)(ii) if an event other than one identified in § 1026.19(f)(2)(ii) occurs, and such changes occur after the creditor provides the consumer with the disclosures required by § 1026.19(f)(1)(i).*

For example:

i. Assume consummation is scheduled for Thursday, the consumer received the disclosures required under § 1026.19(f)(1)(i) on Monday, and a walk-through inspection occurs on Wednesday morning. During the walk-through the consumer discovers damage to the dishwasher. The seller agrees to credit the consumer $500 towards a new dishwasher. The creditor complies with the requirements of § 1026.19(f) if the creditor provides corrected disclosures so that the consumer receives them at or before consummation on Thursday.

ii. Assume consummation is scheduled for Friday and on Monday morning the creditor sends the disclosures via overnight delivery to the consumer, ensuring that the consumer receives the disclosures on Tuesday. On Monday night, the seller agrees to sell certain

household furnishings to the consumer for an additional $1,000, to be paid at the real estate closing, and the consumer immediately informs the creditor of the change. The creditor must provide corrected disclosures so that the consumer receives them at or before consummation. The creditor does not violate § 1026.19(f) because the change to the transaction resulting from negotiations between the seller and consumer occurred after the creditor provided the final disclosures, regardless of the fact that the change occurred before the consumer had received the final disclosures.

iii. Assume consummation is scheduled for Thursday, the consumer received the disclosures required under § 1026.19(f)(1)(i) on Monday, and a walk-through inspection occurs on Wednesday morning. As a result of consumer and seller negotiations, the total amount due from the buyer increases by $500. Also on Wednesday, the creditor discovers that the homeowner's insurance premium that was disclosed as $800 is actually $850. The new $500 amount due and the $50 insurance premium understatements are not violations of § 1026.19(f)(1)(i), and the creditor complies with § 1026.19(f)(1)(i) by providing corrected disclosures reflecting the $550 increase so that the consumer receives them at or before consummation, pursuant to §1026.19(f)(2)(ii).

2. Inspection. A settlement agent may satisfy the requirement to permit the consumer to inspect the disclosures under § 1026.19(f)(2)(i), subject to § 1026.19(f)(1)(v).

The Rule: § 1026.19(f)(2)(ii) Changes before consummation requiring a new waiting period

If one of the following disclosures provided under paragraph (f)(1)(i) of this section becomes inaccurate in the following manner before consummation, the creditor shall ensure that the consumer receives corrected disclosures containing all changed terms in accordance with the requirements of paragraph (f)(1)(ii)(A) of this section:

(A) The annual percentage rate disclosed under § 1026.38(o)(4) becomes inaccurate, as defined in § 1026.22.

(B) The loan product is changed, causing the information disclosed under § 1026.38(a)(5)(iii) to become inaccurate.

(C) A prepayment penalty is added, causing the statement regarding a prepayment penalty required under § 1026.38(b) to become inaccurate.

Official Comment - 19(f)(2)(ii)

Changes before consummation requiring a new waiting period.

*1. **Conditions for corrected disclosures**. Pursuant to § 1026.19(f)(2)(ii), if, at the time of consummation, the annual percentage rate becomes inaccurate, the loan product changes, or a prepayment penalty is added to the transaction, the creditor must provide corrected disclosures with all changed terms so that the consumer receives them not later than the third business day before consummation. Requirements for annual percentage rate disclosures are set forth in § 1026.38(o)(4), and requirements determining whether an annual percentage rate is accurate are set forth in § 1026.22. Requirements for loan product disclosures are set forth in §1026.38(a)(5)(iii) and § 1026.37(a)(10). Requirements for prepayment penalty disclosures are set forth in § 1026.38(b) and § 1026.37(b)(4).*

i. Example—APR becomes inaccurate. Assume consummation is scheduled for Thursday, June 11 and the disclosure for a regular mortgage transaction received by the consumer on Monday, June 8 under § 1026.19(f)(1)(i) discloses an annual percentage rate of 7.00 percent:

A. On Thursday, June 11, the annual percentage rate will be 7.10 percent. The creditor is not required to delay consummation to provide corrected disclosures under § 1026.19(f)(2)(ii) because the annual percentage rate is accurate pursuant to § 1026.22, but the creditor is required under § 1026.19(f)(2)(i) to provide corrected disclosures, including any other changed terms, so that the consumer receives them on or before Thursday, June 11.

B. On Thursday, June 11, the annual percentage rate will be 7.15 percent and corrected disclosures were not received by the consumer on or before Monday, June 8 because the annual percentage rate is inaccurate pursuant to § 1026.22. The creditor is required to delay consummation and provide corrected disclosures, including any other changed terms, so that the consumer receives them at least three business days before consummation under § 1026.19(f)(2)(ii).

ii. Example—loan product changes. Assume consummation is scheduled for Thursday, June 11 and the disclosures provided under § 1026.19(f)(1)(i) disclose a product required

to be disclosed as a "Fixed Rate" that contains no features that may change the periodic payment.

A. On Thursday, June 11, the loan product required to be disclosed changes to a "5/1 Adjustable Rate." The creditor is required to provide corrected disclosures and delay consummation until the consumer has received the corrected disclosures provided under § 1026.19(f)(1)(i) reflecting the change in the product disclosure, and any other changed terms, at least three business days before consummation. If, after the corrected disclosures in this example are provided, the loan product subsequently changes before consummation to a "3/1 Adjustable Rate," the creditor is required to provide additional corrected disclosures and again delay consummation until the consumer has received the corrected disclosures provided under § 1026.19(f)(1)(i) reflecting the change in the product disclosure, and any other changed terms, at least three business days before consummation.

B. On Thursday, June 11, the loan product required to be disclosed has changed to a "Fixed Rate" with a "Negative Amortization" feature. The creditor is required to provide corrected disclosures and delay consummation until the consumer has received the corrected disclosures provided under § 1026.19(f)(1)(i) reflecting the change in the product disclosure, and any other changed terms, at least three business days before consummation.

iii. Example—prepayment penalty is added. Assume consummation is scheduled for Thursday, June 11 and the disclosure provided under § 1026.19(f)(1)(i) did not disclose a prepayment penalty. On Wednesday, June 10, a prepayment penalty is added to the transaction such that the disclosure required by § 1026.38(b) becomes inaccurate. The creditor is required to provide corrected disclosures and delay consummation until the consumer has received the corrected disclosures provided under § 1026.19(f)(1)(i) reflecting the change in the disclosure of the loan terms, and any other changed terms, at least three business days before consummation. If, after the revised disclosures in this example are provided but before consummation, the prepayment penalty is removed such that the description of the prepayment penalty again becomes inaccurate, and no

other changes to the transaction occur, the creditor is required to provide corrected disclosures so that the consumer receives them at or before consummation under §1026.19(f)(2)(i), but the creditor is not required to delay consummation because §1026.19(f)(2)(ii)(C) applies only when a prepayment penalty is added.

The Rule: § 1026.19(f)(2)(iii) Changes due to events occurring after consummation

If during the 30-day period following consummation, an event in connection with the settlement of the transaction occurs that causes the disclosures required under paragraph (f)(1)(i) of this section to become inaccurate, and such inaccuracy results in a change to an amount actually paid by the consumer from that amount disclosed under paragraph (f)(1)(i) of this section, the creditor shall deliver or place in the mail corrected disclosures not later than 30 days after receiving information sufficient to establish that such event has occurred.

Official Comment - 19(f)(2)(iii)

Changes due to events occurring after consummation.

*1. **Requirements**. Under § 1026.19(f)(2)(iii), if during the 30-day period following consummation, an event in connection with the settlement of the transaction occurs that causes the disclosures to become inaccurate, and such inaccuracy results in a change to an amount actually paid by the consumer from that amount disclosed under § 1026.19(f)(1)(i), the creditor shall deliver or place in the mail corrected disclosures not later than 30 days after receiving information sufficient to establish that such event has occurred. The following examples illustrate this requirement. (See also comment 19(e)(4)(i)-1 for further guidance on when sufficient information has been received to establish an event has occurred.)*

i. Assume consummation occurs on a Monday and the security instrument is recorded on Tuesday, the day after consummation. If the creditor learns on Tuesday that the fee charged by the recorder's office differs from that previously disclosed pursuant to § 1026.19(f)(1)(i), and the changed fee results in a change in the amount actually paid by the consumer, the creditor complies with § 1026.19(f)(1)(i) and (f)(2)(iii) by revising the disclosures accordingly and delivering or placing them in the mail no later than 30 days after Tuesday.

ii. Assume consummation occurs on a Tuesday, October 1 and the security instrument is not recorded until 15 days after October 1 on Thursday, October 16. The creditor learns on Monday, November 4 that the transfer taxes owed to the State differ from those previously disclosed pursuant to § 1026.19(f)(1)(i), resulting in an increase in the amount actually paid by the consumer. The creditor complies with § 1026.19(f)(1)(i) and § 1026.19(f)(2)(iii) by revising the disclosures accordingly and delivering or placing them in the mail no later than 30 days after Monday, November 4. Assume further that the increase in transfer taxes paid by the consumer also exceeds the amount originally disclosed under § 1026.19(e)(1)(i) above the limitations prescribed by § 1026.19(e)(3)(i). Pursuant to § 1026.19(f)(2)(v), the creditor does not violate § 1026.19(e)(1)(i) if the creditor refunds the excess to the consumer no later than 60 days after consummation, and the creditor does not violate § 1026.19(f)(1)(i) if the creditor delivers disclosures corrected to reflect the refund of such excess no later than 60 days after consummation. The creditor satisfies these requirements under § 1026.19(f)(2)(v) if it revises the disclosures accordingly and delivers or places them in the mail by November 30.

iii. Assume consummation occurs on a Monday and the security instrument is recorded on Tuesday, the day after consummation. During the recording process on Tuesday the settlement agent and the creditor discover that the property is subject to an unpaid $500 nuisance abatement assessment, which was not disclosed pursuant to § 1026.19(f)(1)(i), and learns that pursuant to an agreement with the seller, the $500 assessment will be paid by the seller rather than the consumer. Because the $500 assessment does not result in a change to an amount actually paid by the consumer, the creditor is not required to provide a corrected disclosure pursuant to § 1026.19(f)(2)(iii). However, the assessment will result in a change to an amount actually paid by the seller from the amount disclosed under § 1026.19(f)(4)(i). Pursuant to §1026.19(f)(4)(ii), the settlement agent must deliver or place in the mail corrected disclosures to the seller no later than 30 days after Tuesday and provide a copy to the creditor pursuant to § 1026.19(f)(4)(iv).

iv. Assume consummation occurs on a Monday and the security instrument is recorded on Tuesday, the day after consummation. Assume further that ten days after consummation the municipality in which the property is located raises property tax rates

effective after the date on which settlement concludes. Section 1026.19(f)(2)(iii) does not require the creditor to provide the consumer with corrected disclosures because the increase in property tax rates is not in connection with the settlement of the transaction.

The Rule: § 1026.19(f)(2)(iv) Changes due to clerical errors

A creditor does not violate paragraph (f)(1)(i) of this section if the disclosures provided under paragraph (f)(1)(i) contain non-numeric clerical errors, provided the creditor delivers or places in the mail corrected disclosures no later than 60 days after consummation.

Official Comment - 19(f)(2)(iv)

Changes due to clerical errors.

*1**. Requirements**. Section 1026.19(f)(2)(iv) requires the creditor to deliver or place in the mail corrected disclosures if the disclosures provided pursuant to § 1026.19(f)(1)(i) contain non-numeric clerical errors. An error is considered clerical if it does not affect a numerical disclosure and does not affect requirements imposed by § 1026.19(e) or (f). For example, if the disclosure identifies the incorrect settlement service provider as the recipient of a payment, then §1026.19(f)(2)(iv) requires the creditor to deliver or place in the mail corrected disclosures reflecting the corrected non-numeric disclosure no later than 60 days after consummation. However, if, for example, the disclosure lists the wrong property address, which affects the delivery requirement imposed by § 1026.19(e) or (f), the error would not be considered clerical.*

The Rule: § 1026.19(f)(2)(v) Refunds related to the good faith analysis

If amounts paid by the consumer exceed the amounts specified under paragraph (e)(3)(i) or (ii) of this section, the creditor complies with paragraph (e)(1)(i) of this section if the creditor refunds the excess to the consumer no later than 60 days after consummation, and the creditor complies with paragraph (f)(1)(i) of this section if the creditor delivers or places in the mail corrected disclosures that reflect such refund no later than 60 days after consummation.

Official Comment - 19(f)(2)(v)

Refunds related to the good faith analysis.

1. Requirements. Section 1026.19(f)(2)(v) provides that, if amounts paid at closing exceed the amounts specified under § 1026.19(e)(3)(i) or (ii), the creditor does not violate § 1026.19(e)(1)(i)

if the creditor refunds the excess to the consumer no later than 60 days after consummation, and the creditor does not violate § 1026.19(f)(1)(i) if the creditor delivers or places in the mail disclosures corrected to reflect the refund of such excess no later than 60 days after consummation. For example, assume that at consummation the consumer must pay four itemized charges that are subject to the good faith determination under § 1026.19(e)(3)(i). If the actual amounts paid by the consumer for the four itemized charges subject to § 1026.19(e)(3)(i) exceeded their respective estimates on the disclosures required under § 1026.19(e)(1)(i) by $30, $25, $25, and $10, then there would be a $90 excess amount above the limitations prescribed by § 1026.19(e)(3)(i). If, further, the amounts paid by the consumer for services that are subject to the good faith determination under § 1026.19(e)(3)(ii) totaled $1,190, but the respective estimates on the disclosures required under § 1026.19(e)(1)(i) totaled only $1,000, then there would be a $90 excess amount above the limitations prescribed by § 1026.19(e)(3)(ii). The creditor does not violate § 1026.19(e)(1)(i) if the creditor refunds the excess to the consumer no later than 60 days after consummation. The creditor does not violate § 1026.19(f)(1)(i) if the creditor delivers or places in the mail corrected disclosures reflecting the $180 refund of the excess amount collected no later than 60 days after consummation. See comment 38(h)(3)-2 for additional guidance on disclosing refunds such as these.

Written List of Providers

CFPB Summary

When is a consumer permitted to shop for a service? (§ 1026.19(e)(1)(vi)(C))

In addition to the Loan Estimate, if the consumer is permitted to shop for a settlement service, the creditor must provide the consumer with a written list of services for which the consumer can shop. This written list of providers is separate from the Loan Estimate, but must be provided within the same time frame—that is, it must be provided to the consumer no later than three business days after the creditor receives the consumer's application—and the list must:

- Identify at least one available settlement service provider for each service; and
- State that the consumer may choose a different provider of that service. (§ 1026.19(e)(3)(ii)(C) and (e)(1)(vi)(C))

The settlement service providers identified on the written list must correspond to the settlement services for which the consumer can shop as disclosed on the Loan Estimate. See form H-27(A) of appendix H to Regulation Z for a model list. (Comment 19(e)(1)(vi)-3)The creditor may also identify on the written list of providers those services for which the consumer is not permitted to shop, as long as those services are clearly and conspicuously distinguished from those services for which the consumer is permitted to shop. (Comment 19(e)(1)(vi)-6). See form H-27(C) of appendix H to Regulation Z for a sample of the inclusion of this information.

What happens to the sum of estimated charges if the consumer is permitted to shop and chooses his or her own service provider? (§ 1026.19(e)(3)(iii)and Comment 19(e)(3)(ii) -3)

Where a consumer chooses a provider that is not on the creditor's written list of providers, then the creditor is not limited in the amount that may be charged for the service. (§ 1026.19(e)(3)(iii)) (See section 7.3 above, describing charges subject to no tolerance limitation). When this occurs for a service that otherwise would be included in the 10% cumulative tolerance category, the charge is removed from consideration for purposes of determining the 10% tolerance level. (Comment 19(e)(3)(ii)-5)

Remember, if the creditor permits the consumer to shop for a required settlement service but the consumer either does not select a settlement service provider or chooses a settlement service provider identified by the creditor on the written list of providers, then the amount charged **is included** in the sum of all such third-party charges paid by the consumer, and also is subject to the **10% cumulative tolerance**. (Comment 19(e)(3)(ii) -3)

The Rule: § 1026.19(e)(1)(vi)(C) Written list of providers

If the consumer is permitted to shop for a settlement service, the creditor shall provide the consumer with a written list identifying available providers of that settlement service and stating that the consumer may choose a different provider for that service. The creditor must identify at least one available provider for each settlement service for which the consumer is permitted to shop. The creditor shall provide this written list of settlement service providers separately from the disclosures required by paragraph (e)(1)(i) of this section but in accordance with the timing requirements in paragraph (e)(1)(iii) of this section.

Official Comment - 19(e)(1)(vi)

Shopping for settlement service providers.

1. Permission to shop. *Section 1026.19(e)(1)(vi)(A) permits creditors to impose reasonable requirements regarding the qualifications of the provider. For example, the creditor may require that a settlement agent chosen by the consumer must be appropriately licensed in the relevant jurisdiction. In contrast, a creditor does not permit a consumer to shop for purposes of § 1026.19(e)(1)(vi) if the creditor requires the consumer to choose a provider from a list provided by creditor. The requirements of § 1026.19(e)(1)(vi)(B) and (C) do not apply if the creditor does not permit the consumer to shop consistent with § 1026.19(e)(1)(vi)(A).*

2. Disclosure of services for which the consumer may shop*. Section 1026.19(e)(1)(vi)(B) requires the creditor to identify the services for which the consumer is permitted to shop in the disclosures provided pursuant to § 1026.19(e)(1)(i). See § 1026.37(f)(3) regarding the content and format for disclosure of services for which the consumer may shop.*

3. Written list of providers*. If the creditor permits the consumer to shop for a settlement service, § 1026.19(e)(1)(vi)(C) requires the creditor to provide the consumer with a written list identifying at least one available provider of that service and stating that the consumer may choose a different provider for that service. The settlement service providers identified on the written list required by § 1026.19(e)(vi)(C) must correspond to the settlement services for which the consumer may shop, disclosed pursuant to § 1026.37(f)(3). See form H-27 of appendix H to this part for a model list.*

4. Identification of available providers. *Section 1026.19(e)(1)(vi)(C) provides that the creditor must identify settlement service providers that are available to the consumer. A creditor does not comply with the identification requirement in § 1026.19(e)(1)(vi)(C) unless it provides sufficient information to allow the consumer to contact the provider, such as the name under which the provider does business and the provider's address and telephone number. Similarly, a creditor does not comply with the availability requirement in § 1026.19(e)(1)(vi)(C) if it provides a written list consisting of only settlement service providers that are no longer in business or that do not provide services where the consumer or property is located.*

5. Statement that consumer may choose different provider*. Section 1026.19(e)(1)(vi)(C) requires the creditor to include on the written list a statement that the consumer may choose a provider that is not included on that list. See form H-27 of appendix H to this part for a model of such a statement.*

6. Additional information on written list*. The creditor may include a statement on the written list that the listing of a settlement service provider does not constitute an endorsement of that service provider. The creditor may also identify on the written list providers of services for which the consumer is not permitted to shop, provided that the creditor clearly and conspicuously distinguishes those services from the services for which the consumer is permitted to shop. This may be accomplished by placing the services under different headings. For example, if the list provided pursuant to § 1026.19(e)(1)(vi)(C) identifies providers of pest inspections and surveys, but the consumer may select a provider, other than those identified on the list, for only the survey, then the list must specifically inform the consumer that the consumer is permitted to select a provider, other than a provider identified on the list, for only the survey.*

Relation to RESPA and Regulation X. Section 1026.19 does not prohibit creditors from including affiliates on the written list required under § 1026.19(e)(1)(vi)(C). However, a creditor that includes affiliates on the written list must also comply with 12 CFR 1024.15. Furthermore, the written list is a "referral" under 12 CFR 1024.14(f).

Official Comment - 19(e)(3)(iii)

3. Good faith requirement for non-required services chosen by the consumer*. Differences between the amounts of estimated charges for services not required by the creditor disclosed pursuant to § 1026.19(e)(1)(i) and the amounts of such charges paid by or imposed on the consumer do not constitute a lack of good faith, so long as the original estimated charge, or lack of an estimated charge for a particular service, was based on the best information reasonably available to the creditor at the time the disclosure was provided. For example, if the consumer informs the creditor that the consumer will obtain a type of inspection not required by the creditor, the creditor must include the charge for that item in the disclosures provided pursuant to § 1026.19(e)(1)(i), but the actual amount of the inspection fee need not be compared to the original estimate for the inspection fee to perform the good faith analysis required by § 1026.19(e)(3)(iii). The original estimated charge, or lack of an estimated charge for a particular service, complies with § 1026.19(e)(3)(iii) if it is made based on the best information reasonably available to the creditor at the time that the estimate was provided. But, for example, if the subject property is located in a jurisdiction where consumers are customarily represented at closing by their own attorney, even though it is not a requirement, and the creditor fails to include a fee for the consumer's attorney, or includes an unreasonably low estimate for such fee, on the original estimates provided pursuant to § 1026.19(e)(1)(i), then the creditor's failure to disclose, or under-estimation, does not comply with § 1026.19(e)(3)(iii).*

Limits on Fees

CFPB Summary

Are there any limits on fees that may be charged prior to disclosure or application?

Yes. A creditor or other person may not **impose any fee** on a consumer in connection with the consumer's application for a mortgage transaction until the consumer has received the **Loan Estimate** and has indicated **intent to proceed** with the transaction. (§ 1026.19(e)(2)(i)(A))

This restriction includes limits on imposing:

- Application fees;
- Appraisal fees;

- Underwriting fees; and
- Other fees imposed on the consumer.

The only exception to this exclusion is for a **bona fide and reasonable fee for obtaining a consumer's credit report**. (§ 1026.19)(e)(2)(i)(B); Comment 19(e)(2)(i)(A)-1 through -5 and Comment 19(e)(2)(i)(B)-1)

Rules/Official Comments

The Rule: § 1026.19(e)(2)(i)(A) Fee restriction

Except as provided in paragraph (e)(2)(i)(B) of this section, neither a creditor nor any other person may impose a fee on a consumer in connection with the consumer's application for a mortgage transaction subject to paragraph (e)(1)(i) of this section before the consumer has received the disclosures required under paragraph (e)(1)(i) of this section and indicated to the creditor an intent to proceed with the transaction described by those disclosures. A consumer may indicate an intent to proceed with a transaction in any manner the consumer chooses, unless a particular manner of communication is required by the creditor. The creditor must document this communication to satisfy the requirements of § 1026.25.

Official Comment - 19(e)(2)(i)(A)

Fee restriction.

***1. Fees restricted**. A creditor or other person may not impose any fee, such as for an application, appraisal, or underwriting, until the consumer has received the disclosures required by § 1026.19(e)(1)(i) and indicated an intent to proceed with the transaction. The only exception to the fee restriction allows the creditor or other person to impose a bona fide and reasonable fee for obtaining a consumer's credit report, pursuant to § 1026.19(e)(2)(i)(B).*

***2. Intent to proceed**. Section 1026.19(e)(2)(i)(A) provides that a consumer may indicate an intent to proceed with a transaction in any manner the consumer chooses, unless a particular manner of communication is required by the creditor. The creditor must document this communication to satisfy the requirements of § 1026.25. For example, oral communication in person immediately upon delivery of the disclosures required by § 1026.19(e)(1)(i) is sufficiently indicative of intent. Oral communication over the phone, written communication via email, or signing a pre-printed form are also sufficiently indicative of intent if such actions occur after receipt of the disclosures required by § 1026.19(e)(1)(i). However, a consumer's silence is not indicative of intent because it*

cannot be documented to satisfy the requirements of § 1026.25. For example, a creditor or third party may not deliver the disclosures, wait for some period of time for the consumer to respond, and then charge the consumer a fee for an appraisal if the consumer does not respond, even if the creditor or third party disclosed that it would do so.

***3. Timing of fees**. At any time prior to delivery of the disclosures required under § 1026.19(e)(1)(i), a creditor or other person may impose a credit report fee in connection with the consumer's application for a mortgage loan that is subject to § 1026.19(e)(1)(i) as provided in § 1026.19(e)(2)(i)(B). The consumer must have received the disclosures required under § 1026.19(e)(1)(i) and indicated an intent to proceed with the transaction described by those disclosures before paying or incurring any other fee imposed by a creditor or other person in connection with the consumer's application for a mortgage loan that is subject to § 1026.19(e)(1)(i).*

***4. Collection of fees.** A creditor or other person complies with § 1026.19(e)(2)(i)(A) if:*

I. A creditor receives a consumer's application directly from the consumer and does not impose any fee, other than a bona fide and reasonable fee for obtaining a consumer's credit report, until the consumer receives the disclosures required under § 1026.19(e)(1)(i) and indicates an intent to proceed with the transaction described by those disclosures.

II. A third party submits a consumer's application to a creditor and neither the creditor nor the third party imposes any fee, other than a bona fide and reasonable fee for obtaining a consumer's credit report, until the consumer receives the disclosures required under § 1026.19(e)(1)(i) and indicates an intent to proceed with the transaction described by those disclosures.

III.A third party submits a consumer's application to a creditor following a different creditor's denial of the consumer's application (or following the consumer's withdrawal of that application), and if a fee already has been assessed for obtaining the credit report, the new creditor or third party does not impose any additional fee until the consumer receives disclosures required under § 1026.19(e)(1)(i) from the new creditor and indicates an intent to proceed with the transaction described by those disclosures.

***5. Fees "imposed by" a person**. For purposes of § 1026.19(e), a fee is "imposed by" a person if the person requires a consumer to provide a method for payment, even if the payment is not made at that time. For example, if a creditor or other person requires the consumer to provide a $500 check to pay for a "processing fee" before the consumer receives the disclosures required by § 1026.19(e)(1)(i), the creditor or other person does not comply with § 1026.19(e)(2)(i), even if the creditor or other person had stated that the check will not be cashed until after the disclosures required by § 1026.19(e)(1)(i) are received by the consumer and waited until after the consumer subsequently indicated an intent to proceed to cash the check. Similarly, a creditor or other person does not comply with the requirements of § 1026.19(e)(2)(i) if the creditor or other person requires the consumer to provide a credit card number before the consumer receives the disclosures required by § 1026.19(e)(1)(i), even if the creditor or other person had promised not to charge the consumer's credit card for the $500 processing fee until after the disclosures required by § 1026.19(e)(1)(i) are received by the consumer and waited until after the consumer subsequently indicated an intent to proceed. In contrast, a creditor or other person complies with § 1026.19(e)(2)(i) if the creditor or other person requires the consumer to provide a credit card number before the consumer receives the disclosures required by § 1026.19(e)(1)(i) and subsequently indicates an intent to proceed, provided that the consumer's authorization is only to pay for the cost of a credit report and the creditor or other person only charges a reasonable and bona fide fee for obtaining the consumer's credit report. This is so even if the creditor or other person maintains the consumer's credit card number on file and charges the consumer a $500 processing fee after the disclosures required by § 1026.19(e)(1)(i) are received and the consumer subsequently indicates an intent to proceed with the transaction described by those disclosures, provided that the creditor or other person requested and received a separate authorization from the consumer for the processing fee after the consumer received the disclosures required by § 1026.19(e)(1)(i) and indicated an intent to proceed with the transaction described by those disclosures.*

The Rule: § 1026.19(e)(2)(i)(B) Exception to fee restriction

A creditor or other person may impose a bona fide and reasonable fee for obtaining the consumer's credit report before the consumer has received the disclosures required under paragraph (e)(1)(i) of this section

Official Comment - 19(e)(2)(i)(B)

Exception to fee restriction.

***Requirements**. A creditor or other person may impose a fee before the consumer receives the required disclosures if the fee is for purchasing a credit report on the consumer. The fee also must be bona fide and reasonable in amount. For example, a creditor or other person may collect a fee for obtaining a credit report if it is in the creditor's or other person's ordinary course of business to obtain a credit report. If the criteria in § 1026.19(e)(2)(i)(B) are met, the creditor or other person must accurately describe or refer to this fee, for example, as a "credit report fee."*

Average Charge

CFPB Summary

Are creditors ever allowed to impose average charges on consumers instead of the actual amount received? (§ 1026.19(f)(3)(i)-(ii))

In general, the amount imposed on the consumer for any settlement service must not exceed the amount the settlement service provider actually received for that service. However, an average charge may be imposed instead as the average charge satisfies certain conditions. (§ 1026.19(f)(3)(i)-(ii); Comment 19(f)(3)(i)-1)

An average charge may be used if the following conditions are satisfied (§ 1026.19(f)(3)(ii)):

- The average charge is no more than the average amount paid for that service by or on behalf of all consumers and sellers for a class of transactions;
- The creditor or settlement service provider defines the class of transactions based on an appropriate period of time, geographic area, and type of loan;
- The creditor or settlement service provider uses the same average charge for every transaction within the defined class; and
- The creditor or settlement service provider does not use an average charge:
  - For any type of insurance;
  - For any charge based on the loan amount or property value; or
  - If doing so is otherwise prohibited by law.

If the creditor develops representative samples of specific settlement costs for a particular class of transactions, the creditor may charge the average cost for that settlement service instead of the actual cost for such transactions. An average-charge program may not be used in a way that inflates the cost for settlement services overall. (Comment 19(f)(3)(ii)-1)

Creditors should consult the commentary to § 1026.19(f)(3)(ii) for additional guidance on using average-charge pricing. (See Comments 19(f)(3)(ii)-1 through -9)

Rules/Official Comments

The Rule: § 1026.19(f)(3) Charges Disclosed

The Rule: § 1026.19(f)(3)(i) Actual Charge

The amount imposed upon the consumer for any settlement service shall not exceed the amount actually received by the settlement service provider for that service, except as otherwise provided in paragraph (f)(3)(ii) of this section.

Official Comment - 19(f)(3)(i)

Actual Charge.

Requirements. Section 1026.19(f)(3)(i) provides the general rule that the amount imposed on the consumer for any settlement service shall not exceed the amount actually received by the settlement service provider for that service. Except as otherwise provided in § 1026.19(f)(3)(ii), a creditor violates § 1026.19(f)(3)(i) if the amount imposed upon the consumer exceeds the amount actually received by the service provider for that service.

The Rule: § 1026.19(f)(3)(ii) Average charge

A creditor or settlement service provider may charge a consumer or seller the average charge for a settlement service if the following conditions are satisfied:

A. The average charge is no more than the average amount paid for that service by or on behalf of all consumers and sellers for a class of transactions;

B. The creditor or settlement service provider defines the class of transactions based on an appropriate period of time, geographic area, and type of loan;

C. The creditor or settlement service provider uses the same average charge for every transaction within the defined class; and

D. The creditor or settlement service provider does not use an average charge:

1. For any type of insurance;
2. For any charge based on the loan amount or property value; or
3. If doing so is otherwise prohibited by law

Official Comment - 19(f)(3)(ii)

Average Charge

***1. Requirements**. Average-charge pricing is the exception to the rule in § 1026.19(f)(3)(i) that consumers shall not pay more than the exact amount charged by a settlement service provider for the performance of that service. See comment 19(f)(3)(i)-1. If the creditor develops representative samples of specific settlement costs for a particular class of transactions, the*

creditor may charge the average cost for that settlement service instead of the actual cost for such transactions. An average-charge program may not be used in a way that inflates the cost for settlement services overall.

*2. **Defining the class of transactions**. Section 1026.19(f)(3)(ii)(B) requires a creditor to use an appropriate period of time, appropriate geographic area, and appropriate type of loan to define a particular class of transactions. For purposes of § 1026.19(f)(3)(ii)(B), a period of time is appropriate if the sample size is sufficient to calculate average costs with reasonable precision, provided that the period of time is not less than 30 days and not more than six months. For purposes of § 1026.19(f)(3)(ii)(B), a geographic area and loan type are appropriate if the sample size is sufficient to calculate average costs with reasonable precision, provided that the area and loan type are not defined in a way that pools costs between dissimilar populations.*

For example:

i. Assume a creditor defines a geographic area that contains two subdivisions, one with a median appraisal cost of $200, and the other with a median appraisal cost of $1,000. This geographic area would not satisfy the requirements of § 1026.19(f)(3)(ii) because the cost characteristics of the two populations are dissimilar. However, a geographic area would be appropriately defined if both subdivisions had a relatively normal distribution of appraisal costs, even if the distribution for each subdivision ranges from below $200 to above $1,000.

ii. Assume a creditor defines a type of loan that includes two distinct rate products. The median recording fee for one product is $80, while the median recording fee for the other product is $130. This definition of loan type would not satisfy the requirements of § 1026.19(f)(3)(ii) because the cost characteristics of the two products are dissimilar. However, a type of loan would be appropriately defined if both products had a relatively normal distribution of recording fees, even if the distribution for each product ranges from below $80 to above $130.

*3. **Uniform use**. If a creditor chooses to use an average charge for a settlement service for a particular loan within a class, § 1026.19(f)(3)(ii)(C) requires the creditor to use that average charge for that service on all loans within the class.*

For example:

i. Assume a creditor elects to use an average charge for appraisal fees. The creditor defines a class of transactions as all fixed rate loans originated between January 1 and April 30 secured by real property located within a particular metropolitan statistical area. The creditor must then charge the average appraisal charge to all consumers obtaining fixed rate loans originated between May 1 and August 30 secured by real property located within the same metropolitan statistical area.

ii. The example in paragraph i of this comment assumes that a consumer would not be required to pay the average appraisal charge unless an appraisal was required on that particular loan. Using the example above, if a consumer applies for a loan within the defined class, but already has an appraisal report acceptable to the creditor from a prior loan application, the creditor may not charge the consumer the average appraisal fee because an acceptable appraisal report has already been obtained for the consumer's application. Similarly, although the creditor defined the class broadly to include all fixed rate loans, the creditor may not require the consumer to pay the average appraisal charge if the particular fixed rate loan program the consumer applied for does not require an appraisal.

*4. **Average amount paid.** The average charge must correspond to the average amount paid by or imposed on consumers and sellers during the prior defined time period. For example, assume a creditor calculates an average tax certification fee based on four-month periods starting January 1 of each year. The tax certification fees charged to a consumer on May 20 may not exceed the average tax certification fee paid from January 1 through April 30. A creditor may delay the period by a reasonable amount of time if such delay is needed to perform the necessary analysis and update the affected systems, provided that each subsequent period is scheduled accordingly. For example, a creditor may define a four-month period from January 1 to April 30 and begin using the average charge from that period on May 15, provided the average charge is used until September 15, at which time the average charge for the period from May 1 to August 31 becomes effective.*

*5. **Adjustments based on retrospective analysis required**. Creditors using average charges must ensure that the total amount paid by or imposed on consumers for a service does not exceed the total amount paid to the providers of that service for the particular class of transactions. A*

creditor may find that, even though it developed an average-cost pricing program in accordance with the requirements of § 1026.19(f)(3)(ii), over time it has collected more from consumers than it has paid to settlement service providers. For example, assume a creditor defines a class of transactions and uses that class to develop an average charge of $135 for pest inspections. The creditor then charges $135 per transaction for 100 transactions from January 1 through April 30, but the actual average cost to the creditor of pest inspections during this period is $115. The creditor then decreases the average charge for the May to August period to account for the lower average cost during the January to April period. At this point, the creditor has collected $2,000 more than it has paid to settlement service providers for pest inspections. The creditor then charges $115 per transaction for 70 transactions from May 1 to August 30, but the actual average cost to the creditor of pest inspections during this period is $125. Based on the average cost to the creditor from the May to August period, the average charge to the consumer for the September to December period should be $125. However, while the creditor spent $700 more than it collected during the May to August period, it collected $1,300 more than it spent from January to August. In cases such as these, the creditor remains responsible for ensuring that the amount collected from consumers does not exceed the total amounts paid for the corresponding settlement services over time. The creditor may develop a variety of methods that achieve this outcome. For example, the creditor may choose to refund the proportional overage paid to the affected consumers. Or the creditor may choose to factor in the excess amount collected to decrease the average charge for an upcoming period. Although any method may comply with this requirement, a creditor is deemed to have complied if it defines a six-month time period and establishes a rolling monthly period of reevaluation. For example, assume a creditor defines a six-month time period from January 1 to June 30 and the creditor uses the average charge starting July 1. If, at the end of July, the creditor recalculates the average cost from February 1 to July 31, and then uses the recalculated average cost for transactions starting August 1, the creditor complies with the requirements of § 1026.19(f)(3)(ii), even if the creditor actually collected more from consumers than was paid to providers over time.

*6. **Adjustments based on prospective analysis permitted, but not required**. A creditor may prospectively adjust average charges if it develops a statistically reliable and accurate method for doing so. For example, assume a creditor calculates average charges based on two time periods: winter (October 1 to March 31), and summer (April 1 to September 30). If the creditor*

can demonstrate that the average cost of a particular settlement service is always at least 15 percent more expensive during the winter period than the summer period, the creditor may increase the average charge for the next winter period by 15 percent over the average cost for the current summer period, provided, however, that the creditor performs retrospective periodic adjustments, as explained in comment 19(f)(3)(ii)-5.

7. ***Charges that vary with loan amount or property value****. An average charge may not be used for any charge that varies according to the loan amount or property value. For example, an average charge may not be used for a transfer tax if the transfer tax is calculated as a percentage of the loan amount or property value. Average charges also may not be used for any insurance premium. For example, average charges may not be used for title insurance or for either the upfront premium or initial escrow deposit for hazard insurance.*

*8.****Prohibited by law.*** *An average charge may not be used where prohibited by any applicable State or local law. For example, a creditor may not impose an average charge for an appraisal if applicable law prohibits creditors from collecting any amount in excess of the actual cost of the appraisal.*

*9.****Documentation required.*** *To comply with § 1026.25, a creditor must retain all documentation used to calculate the average charge for a particular class of transactions for at least three years after any settlement for which that average charge was used. The documentation must support the components and methods of calculation. For example, if a creditor calculates an average charge for a particular county recording fee by simply averaging all of the relevant fees paid in the prior month, the creditor need only retain the receipts for the individual recording fees, a ledger demonstrating that the total amount received did not exceed the total amount paid over time, and a document detailing the calculation. However, if a creditor develops complex algorithms for determining averages, not only must the creditor maintain the underlying receipts and ledgers, but the creditor must maintain documentation sufficiently detailed to allow an examiner to verify the accuracy of the calculations.*

Other Disclosures/ Escrow Closing Notice

CFPB Summary

Does TILA-RESPA require any other new disclosures besides the Loan Estimate and Closing Disclosure?

Yes. In addition to the Integrated Disclosures discussed above, the TILA-RESPA rule also changes some other post-consummation disclosures provided to consumers by creditors and servicers: the Escrow Closing Notice (§ 1026.20(e)) and mortgage servicing transfer and partial payment notices (§ 1026.39(a) and (d)).

When must the Escrow Closing Notice be provided? (§ 1026.20(e))

For loans subject to the Escrow Closing Notice requirement, the creditor or servicer must provide consumers with a notice no later than three business days before the consumer's escrow account is canceled. (§ 1026.20(e)(5))

What transactions are subject to the Escrow Closing Notice requirement?

The Escrow Closing Notice must be provided prior to cancelling an escrow account to any consumers for whom an escrow account was established in connection with a closed-end consumer credit transaction secured by a first lien on real property or a dwelling, except for reverse mortgages. (§ 1026.20(e)(1))

There are two exceptions to the requirement to provide the notice:

- Creditors and servicers are not required to provide the notice if the escrow account that is being cancelled was established solely in connection with the consumer's delinquency or default on the underlying debt obligation. (Comment 20(e)(1)-2)
- Creditors and servicers are not required to provide the notice when the underlying debt obligation for which an escrow account was established is terminated, including by repayment, refinancing, rescission, and foreclosure. (Comment 20(e)(1)-3)

For purposes of this requirement, the term escrow account has the same meaning given to it as under Regulation X, 12 CFR § 1024.17(b), and the term servicer has the same meaning given to it as under Regulation X, 12 CFR § 1024.2(b).

What information must be on the Escrow Closing Notice? (§ 1026.20(e)(1))

Creditors and servicers must disclose certain information on the Escrow Closing Notice and may optionally disclose certain additional information. (§ 1026.20(e)(1))

The creditor or servicer must disclose (§ 1026.20(e)(2)):

- The date on which the account will be closed;
- That an escrow account may also be called an impound or trust account;

- The reason why the escrow account will be closed;
- That without an escrow account, the consumer must pay all property costs, such as taxes and homeowner's insurance, directly, possibly in one or two large payments a year;
- A table, titled "Cost to you," that contains an itemization of the amount of any fee the creditor or servicer imposes on the consumer in connection with the closure of the consumer's escrow account, labeled "Escrow Closing Fee," and a statement that the fee is for closing the escrow account;
- Under the reference "In the future":
    - The consequences if the consumer fails to pay property costs, including the actions that a State or local government may take if property taxes are not paid and the actions the creditor or servicer may take if the consumer does not pay some or all property costs;
    - A telephone number that the consumer can use to request additional information about the cancellation of the escrow account;
    - Whether the creditor or servicer offers the option of keeping the escrow account open and, as applicable, a telephone number the consumer can use to request that the account be kept open; and
    - Whether there is a cut-off date by which the consumer can request that the account be kept open.

The creditor or servicer may also, at its option, disclose (§ 1026.20(e)(3)):

- The creditor or servicer's name or logo;
- The consumer's name, phone number, mailing address and property address;
- The issue date of the notice; or
- The loan number, or the consumer's account number.

In addition, the disclosures must:

- Contain a required heading that is more conspicuous than and precedes the required disclosures discussed above. (§ 1026.20(e)(4))
- Be clear and conspicuous. This standard generally requires that the disclosures in the **Escrow Closing Notice** be in a reasonably understandable form and readily noticeable to the consumer. (Comment 20(e)(2)-1)
- Be written in 10-point font, at a minimum. (§ 1026.20(e)(4))

- Be grouped together on the front side of a one-page document. The disclosures must be separate from all other materials, with the headings, content, order and format substantially similar to model form H-29 in appendix H to Regulation Z. (§ 1026.20(e)(4))

When must the creditor send the Escrow Closing Notice before the escrow account is closed?
When the consumer requests cancellation. The creditor or servicer must ensure that the consumer receives the Escrow Closing Notice no later than three business days before the consumer's escrow account is closed. (§ 1026.20(e)(5)(i))

Cancellation for any other reason. The creditor or servicer must ensure that the consumer receives the Escrow Closing Notice no later than 30 business days before consumer's escrow account is closed. (§ 1026.20(e)(5)(ii))

Mailbox rule applies. If the notice is not provided to the consumer in person, the consumer is considered to have received the disclosures three business days after they are delivered or placed in the mail. (§ 1026.20(e)(5)(iii))

Business day is given the meaning it has for purposes of providing the Closing Disclosure—i.e., all calendar days except Sundays and the legal public holidays specified in 5 U.S.C. 6103(a), such as New Year's Day, the Birthday of Martin Luther King, Jr., Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, and Christmas Day. (See §§ 1026.2(a)(6), 1026.19(f)(1)(ii)(A) and (f)(1)(iii))

What does the rule on disclosing partial payment policies in mortgage transfer notices require? (§ 1026.39(a) and (d))
If you are required by existing Regulation Z to provide mortgage transfer notices when the ownership of a mortgage loan is being transferred, you must include in the notice information related to the partial payment policy that will apply to the mortgage loan.
This post-consummation partial payment disclosure is required for a closed-end consumer credit transaction secured by a dwelling or real property, other than a reverse mortgage

What information must be included in the partial payment disclosure and what must the disclosure look like? (§ 1026.39(d)(5))

The partial payment disclosure must include:

- The heading "Partial Payment" over all of the following, additional information:
- If periodic payments that are less than the full amount due are accepted, a statement that the covered person, using the term "lender," may accept partial payments and apply such payments to the consumer's loan;
- If periodic payments that are less than the full amount due are accepted but not applied to a consumer's loan until the consumer pays the remainder of the full amount due, a statement that the covered person, using the term "lender," may hold partial payments in a separate account until the consumer pays the remainder of the payment and then apply the full periodic payment to the consumer's loan;
- If periodic payments that are less than the full amount due are not accepted, a statement that the covered person, using the term "lender," does not accept any partial payments; and
- A statement that, if the loan is sold, the new covered person, using the term "lender," may have a different policy.

You may use the format of the partial payment disclosure illustrated by form H-25 of appendix H to Regulation Z. The text illustrating the disclosure in form H-25 may be modified by you to suit the format of the mortgage transfer notice. (See Comment 39(d)(5)-1)

Record Retention

CFPB Summary

What are the record retention requirements for the TILA-RESPA rule? (§ 1026.25)

The creditor must retain copies of the Closing Disclosure (and all documents related to the Closing Disclosure) for **five years** after consummation.

The creditor, or servicer if applicable, must retain the Post-Consummation Escrow Cancellation Notice (Escrow Closing Notice) and the Post-Consummation Partial Payment Policy disclosure for two years.

For all other evidence of compliance with the Integrated Disclosure provisions of Regulation Z (including the Loan Estimate) creditors must maintain records for three years after consummation of the transaction.

What are the record retention requirements if the creditor transfers or sells the loan? (§ 1026.25)

If a creditor sells, transfers, or otherwise disposes of its interest in a mortgage and does not service the mortgage, the creditor shall provide a copy of the Closing Disclosure to the new owner or servicer of the mortgage as a part of the transfer of the loan file.

Both the creditor and such owner or servicer shall retain the Closing Disclosure for the remainder of the five-year period.

Is there a requirement on how the records are retained?

Regulations X and Z permit, but do not require electronic recordkeeping. Records can be maintained by any method that reproduces disclosures and other records accurately, including computer programs. (Comment 25(a)-2)

FAQS/TIPS

Q: For seller Closing Disclosures provided on a separate document by the settlement agent pursuant to 1026.38(t)(5) and 1026.19(f)(4), are creditors required to collect and retain documents related to the seller that were provided only to the settlement agent?

Yes. The Settlement agent must give the creditor a copy and the creditor must obtain and retain the seller's closing disclosure. However, the creditor is not required to collect other seller documents used to prepare the closing disclosure.

Rules/Official Comments

The Rule: § 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, and other than the requirements under § 1026.19(e) and (f)) for two 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.

Official Comment - 25

Record retention

25(a) General Rule

*1. **Evidence of required actions**. The creditor must retain evidence that it performed the required actions as well as made the required disclosures. This includes, for example, evidence that the creditor properly handled adverse credit reports in connection with amounts subject to a billing dispute under § 1026.13, and properly handled the refunding of credit balances under §§ 1026.11 and 1026.21.*

*2. **Methods of retaining evidence**. Adequate evidence of compliance does not necessarily mean actual paper copies of disclosure statements or other business records. The evidence may be retained by any method that reproduces records accurately (including computer programs). Unless otherwise required, the creditor need retain only enough information to reconstruct the required disclosures or other records. Thus, for example, the creditor need not retain each open-end periodic statement, so long as the specific information on each statement can be retrieved.*

*3. **Certain variable-rate transactions.** In variable-rate transactions that are subject to the disclosure requirements of § 1026.19(b), written procedures for compliance with those requirements as well as a sample disclosure form for each loan program represent adequate evidence of compliance. (See comment 25(a)-2 pertaining to permissible methods of retaining the required disclosures.)*

*4. **Home equity plans**. In home equity plans that are subject to the requirements of § 1026.40, written procedures for compliance with those requirements as well as a sample disclosure form and contract for each home equity program represent adequate evidence of compliance. (See comment 25(a)-2 pertaining to permissible methods of retaining the required disclosures.)*

The Rule: § 1026.25 (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.

The Rule: § 1026.25 (c)(1) Records related to requirements for loans secured by real property

i.General rule. Except as provided under paragraph (c)(1)(ii) of this section, a creditor shall retain evidence of compliance with the requirements of § 1026.19(e) and (f) for three years after the later of the date of consummation, the date disclosures are required to be made, or the date the action is required to be taken.

ii.Closing disclosures.

A. A creditor shall retain each completed disclosure required under § 1026.19(f)(1)(i) or (f)(4)(i), and all documents related to such disclosures, for five years after consummation, notwithstanding paragraph (c)(1)(ii)(B) of this section.

B. If a creditor sells, transfers, or otherwise disposes of its interest in a mortgage loan subject to § 1026.19(f) and does not service the mortgage loan, the creditor shall provide a copy of the disclosures required under § 1026.19(f)(1)(i) or (f)(4)(i) to the owner or servicer of the mortgage as a part of the transfer of the loan file. Such owner or servicer shall retain such disclosures for the remainder of the five-year period described under paragraph (c)(1)(ii)(A) of this section.

C. The Bureau shall have the right to require provision of copies of records related to the disclosures required under § 1026.19(f)(1)(i) and (f)(4)(i).

Official Comments - 25(c)(1)

25(c)(1) Records related to requirements for loans secured by real property.

*1. **Evidence of required actions**. The creditor must retain evidence that it performed the required actions as well as made the required disclosures. This includes, for example, evidence that the creditor properly differentiated between affiliated and independent third party settlement*

service providers for determining good faith under § 1026.19(e)(3); evidence that the creditor properly documented the reason for revisions under § 1026.19(e)(3)(iv); or evidence that the creditor properly calculated average cost under § 1026.19(f)(3)(ii).

*2. **Mortgage brokers.** See § 1026.19(e)(1)(ii)(B) for the responsibilities of mortgage brokers to comply with the requirements of § 1026.25(c).*

The Rule: § 1026.25(c)(2) Records related to requirements for loan originator compensation

Notwithstanding paragraph (a) of this section, for transactions subject to § 1026.36:

i. A creditor shall maintain records sufficient to evidence all compensation it pays to a loan originator, as defined in § 1026.36(a)(1), and the compensation agreement that governs those payments for three years after the date of payment.

ii. A loan originator organization, as defined in § 1026.36(a)(1)(iii), shall maintain records sufficient to evidence all compensation it receives from a creditor, a consumer, or another person; all compensation it pays to any individual loan originator, as defined in § 1026.36(a)(1)(ii); and the compensation agreement that governs each such receipt or payment, for three years after the date of each such receipt or payment.

Official *Comments - 25(c)(2)*

*1. **Scope of records of loan originator compensation**. Section 1026.25(c)(2)(i) requires a creditor to maintain records sufficient to evidence all compensation it pays to a loan originator, as well as the compensation agreements that govern those payments, for three years after the date of the payments. Section 1026.25(c)(2)(ii) requires that a loan originator organization maintain records sufficient to evidence all compensation it receives from a creditor, a consumer, or another person and all compensation it pays to any individual loan originators, as well as the compensation agreements that govern those payments or receipts, for three years after the date of the receipts or payments.*

*i. **Records sufficient to evidence payment and receipt of compensation.** Records are sufficient to evidence payment and receipt of compensation if they demonstrate the following facts: The nature and amount of the compensation; that the compensation was paid, and by whom; that the compensation was received, and by whom; and when the payment and receipt of compensation occurred. The compensation agreements themselves are to be retained in all circumstances consistent with § 1026.25(c)(2)(i). The*

additional records that are sufficient necessarily will vary on a case-by-case basis depending on the facts and circumstances, particularly with regard to the nature of the compensation. For example, if the compensation is in the form of a salary, records to be retained might include copies of required filings under the Internal Revenue Code that demonstrate the amount of the salary. If the compensation is in the form of a contribution to or a benefit under a designated tax-advantaged plan, records to be maintained might include copies of required filings under the Internal Revenue Code or other applicable Federal law relating to the plan, copies of the plan and amendments thereto in which individual loan originators participate and the names of any loan originators covered by the plan, or determination letters from the Internal Revenue Service regarding the plan. If the compensation is in the nature of a commission or bonus, records to be retained might include a settlement agent "flow of funds" worksheet or other written record or a creditor closing instructions letter directing disbursement of fees at consummation. Where a loan originator is a mortgage broker, a disclosure of compensation or broker agreement required by applicable State law that recites the broker's total compensation for a transaction is a record of the amount actually paid to the loan originator in connection with the transaction, unless actual compensation deviates from the amount in the disclosure or agreement. Where compensation has been decreased to defray the cost, in whole or part, of an unforeseen increase in an actual settlement cost over an estimated settlement cost disclosed to the consumer pursuant to section 5(c) of RESPA (or omitted from that disclosure), records to be maintained are those documenting the decrease in compensation and reasons for it.

*ii**. **Compensation agreement**. For purposes of § 1026.25(c)(2), a compensation agreement includes any agreement, whether oral, written, or based on a course of conduct that establishes a compensation arrangement between the parties (e.g., a brokerage agreement between a creditor and a mortgage broker or provisions of employment contracts between a creditor and an individual loan originator employee addressing payment of compensation). Where a compensation agreement is oral or based on a course of conduct and cannot itself be maintained, the records to be maintained are those, if any, evidencing the existence or terms of the oral or course of conduct compensation agreement. Creditors and loan originators are free to specify what transactions are governed by a particular compensation agreement as they see fit.*

For example, they may provide, by the terms of the agreement, that the agreement governs compensation payable on transactions consummated on or after some future effective date (in which case, a prior agreement governs transactions consummated in the meantime). For purposes of applying the record retention requirement to transaction-specific commissions, the relevant compensation agreement for a given transaction is the agreement pursuant to which compensation for that transaction is determined.

iii. ***Three-year retention period****. The requirements in § 1026.25(c)(2)(i) and (ii) that the records be retained for three years after the date of receipt or payment, as applicable, means that the records are retained for three years after each receipt or payment, as applicable, even if multiple compensation payments relate to a single transaction. For example, if a loan originator organization pays an individual loan originator a commission consisting of two separate payments of $1,000 each on June 5 and July 7, 2014, then the loan originator organization is required to retain records sufficient to evidence the two payments through June 4, 2017, and July 6, 2017, respectively.*

2. ***Example****. An example of the application of § 1026.25(c)(2) to a loan originator organization is as follows: Assume a loan originator organization originates only transactions that are not subject to § 1026.36(d)(2), thus all of its origination compensation is paid exclusively by creditors that fund its originations. Further assume that the loan originator organization pays its individual loan originator employees commissions and annual bonuses. The loan originator organization must retain a copy of the agreement with any creditor that pays the loan originator organization compensation for originating consumer credit transactions subject to § 1026.36 and documentation evidencing the specific payment it receives from the creditor for each transaction originated. In addition, the loan originator organization must retain copies of the agreements with its individual loan originator employees governing their commissions and their annual bonuses and records of any specific commissions and bonuses paid.*

The Rule: § 1026.25(c)(3) Records related to minimum standards for transactions secured by a dwelling

Notwithstanding paragraph (a) of this section, a creditor shall retain evidence of compliance with § 1026.43 of this regulation for three years after consummation of a transaction covered by that section.

Official Comment - 25(c)(3)

1. **Evidence of compliance with repayment ability provisions.** A creditor must retain evidence of compliance with § 1026.43 for three years after the date of consummation of a consumer credit transaction covered by that section. (See comment 25(c)(3)-2 for guidance on the retention of evidence of compliance with the requirement to offer a consumer a loan without a prepayment penalty under § 1026.43(g)(3).) If a creditor must verify and document information used in underwriting a transaction subject to § 1026.43, the creditor shall retain evidence sufficient to demonstrate compliance with the documentation requirements of the rule. Although a creditor need not retain actual paper copies of the documentation used in underwriting a transaction subject to § 1026.43, to comply with § 1026.25(c)(3), the creditor must be able to reproduce such records accurately. For example, if the creditor uses a consumer's Internal Revenue Service (IRS) Form W-2 to verify the consumer's income, the creditor must be able to reproduce the IRS Form W-2 itself, and not merely the income information that was contained in the form.

2. **Dwelling-secured transactions and prepayment penalties**. If a transaction covered by § 1026.43 has a prepayment penalty, the creditor must maintain records that document that the creditor complied with requirements for offering the consumer an alternative transaction that does not include a prepayment penalty under § 1026.43(g)(3), (4), or (5). However, the creditor need not maintain records that document compliance with those provisions if a transaction is consummated without a prepayment penalty or if the creditor and consumer do not consummate a covered transaction. If a creditor offers a transaction with a prepayment penalty to a consumer through a mortgage broker, to evidence compliance with § 1026.43(g)(4) the creditor should retain evidence of the alternative covered transaction presented to the mortgage broker, such as a rate sheet, and the agreement with the mortgage broker required by § 1026.43(g)(4)(ii).

Pre-Estimates

CFPB Summary

Can creditors provide estimates of costs and terms to consumers before the Loan Estimate is provided? (§ 1026.19(e)(2)(ii))

The TILA-RESPA rule does not prohibit a creditor or other person from providing a consumer with estimated terms or costs prior to the consumer receiving the Loan Estimate.

However, if a person (such as a creditor or broker) provides a consumer with a written estimate of terms or costs specific to that consumer before the consumer receives the Loan Estimate, it must clearly and conspicuously state at the top of the front of the first page of the written estimate "Your actual rate, payment, and costs could be higher. Get an official Loan Estimate before choosing the loan." (§ 1026.19(e)(2)(ii); Comment 19(e)(2)(ii)-1)

There are other restrictions on the form of this statement to assure it is not confused with the Loan Estimate:

- Must be in font size no smaller than 12-point font.
- May not have headings, content, and format substantially similar to the Loan Estimate or the Closing Disclosure. (§ 1026.19(e)(2)(ii); Comment 19(e)(2)(ii)-1)

The Bureau has provided a model of the required statement in form H-26 of appendix H to Regulation Z.

Rules/Official Comments

The Rule: § 1026.19(e)(2)(ii) Written information provided to consumer

If a creditor or other person provides a consumer with a written estimate of terms or costs specific to that consumer before the consumer receives the disclosures required under paragraph (e)(1)(i) of this section, the creditor or such person shall clearly and conspicuously state at the top of the front of the first page of the estimate in a font size that is no smaller than 12-point font: "Your actual rate, payment, and costs could be higher. Get an official Loan Estimate before choosing a loan." The written estimate of terms or costs may not be made with headings, content, and format substantially similar to form H-24 or H-25 of appendix H to this part.

Official Comment - 19(e)(2)(ii)

Written information provided to consumer

1. Requirements. Section 1026.19(e)(2)(ii) requires the creditor or other person to include a clear and conspicuous statement on the top of the front of the first page of a written estimate of terms or costs specific to the consumer if it is provided to the consumer before the consumer receives the disclosures required by § 1026.19(e)(1)(i). For example, if the creditor provides a document showing the estimated monthly payment for a mortgage loan, and the estimate was based on the estimated loan amount and the consumer's estimated credit score, then the creditor must include the statement on the document. In contrast, if the creditor provides the consumer with a preprinted list of closing costs common in the consumer's area, the creditor need not include the statement. Similarly, the statement would not be required on a preprinted list of available rates for different loan products. This requirement does not apply to an advertisement, as defined in § 1026.2(a)(2). Section 1026.19(e)(2)(ii) requires that the notice must be in a font size that is no smaller than 12-point font, and must state: "Your actual rate, payment, and costs could be higher. Get an official Loan Estimate before choosing a loan." See form H-26 of appendix H to this part for a model statement. Section 1026.19(e)(2)(ii) also prohibits the creditor or other person from making these written estimates with headings, content, and format substantially similar to form H-24 or H-25 of appendix H to this part.

Special Information Booklet

CFPB Summary

When must creditors deliver the special information booklet? (§ 1026.19(g))

Creditors must provide a copy of the special information booklet to consumers who apply for a consumer credit transaction secured by real property, except in certain circumstances (see below). The special information booklet is required pursuant to Section 5 of RESPA (12 U.S.C. 2604) and is published by the Bureau to help consumers applying for federally related mortgage loans understand real estate transactions. (§ 1026.19(g)(1))

- If the consumer is applying for a HELOC subject to § 1026.40, the creditor (or mortgage broker) can provide a copy of the brochure entitled "When Your Home is On the Line: What You Should Know About Home Equity Lines of Credit" instead of the special information booklet. (§ 1026.19(g)(1)(ii))
- The creditor need not provide the special information booklet if the consumer is applying for a real property-secured consumer credit transaction that does not have the purpose of purchasing a one-to-four family residential property, such as a refinancing, a closed-end loan secured by a subordinate lien, or a reverse mortgage. (§ 1026.19(g)(1)(iii))

Creditors must deliver or place in the mail the special information booklet not later than three business days after receiving the consumer's loan application. (§ 1026.19(g)(1)(i))

What happens if the consumer withdraws the application or the creditor determines it cannot approve it? (§ 1026.19(g)(1)(i))

If the creditor denies the consumer's application or if the consumer withdraws the application before the end of the three-business-day period, the creditor need not provide the special information booklet. (§ 1026.19(g)(1)(i); Comment 19(g)(1)(i)-3)

What if there are multiple applicants?

When two or more persons apply together for a loan, the creditor may provide a copy of the special information booklet to just one of them. (Comment 19(g)(1)-2)

If the consumer is using a mortgage broker to apply for the loan, can the broker provide the booklet?

If the consumer uses a mortgage broker, the mortgage broker must provide the special information booklet and the creditor need not do so. (§ 1026.19(g)(1)(i))

Are creditors allowed to change or tailor the booklets to their own preferences and business needs?

Creditors generally are required to use the booklets designed by the Bureau and may make only limited changes to the special information booklet. (§ 1026.19(g)(2)). The Bureau may issue revised or alternative versions of the special information booklet from time to time in the future. Creditors should monitor the Federal Register for notice of updates. (Comment 19(g)(1)-1)

The Rule: § 1026.19(g) Special Information booklet at time of application

The Rule: § 1026.19(g)(1) Creditor to provide special information booklet

1. Creditor to provide special information booklet. Except as provided in paragraphs (g)(1)(ii) and (iii) of this section, the creditor shall provide a copy of the special information booklet (required pursuant to section 5 of the Real Estate Settlement Procedures Act (12 U.S.C. 2604) to help consumers applying for federally related mortgage loans understand the nature and cost of real estate settlement services) to a consumer who applies for a consumer credit transaction secured by real property.

i. The creditor shall deliver or place in the mail the special information booklet not later than three business days after the consumer's application is received. However, if the creditor denies the consumer's application before the end of the three-business-day period, the creditor need not provide the booklet. If a consumer uses a mortgage broker, the mortgage broker shall provide the special information booklet and the creditor need not do so.

ii. In the case of a home equity line of credit subject to § 1026.40, a creditor or mortgage broker that provides the consumer with a copy of the brochure entitled "When Your Home is On the Line: What You Should Know About Home Equity Lines of Credit," or any successor brochure issued by the Bureau, is deemed to be in compliance with this section.

iii. The creditor or mortgage broker need not provide the booklet to the consumer for a consumer credit transaction secured by real property, the purpose of which is not the purchase of a one-to-four family residential property, including, but not limited to, the following:

A. Refinancing transactions;
B. Closed-end loans secured by a subordinate lien; and
C. Reverse mortgages.

Official Comment - 19(g)(1)

Creditor to provide special information booklet

1. ***Revision of booklet****. The Bureau may, from time to time, issue revised or alternative versions of the special information booklet that addresses transactions subject to § 1026.19(g) by publishing a notice in the Federal Register. The Bureau also may choose to permit the forms or booklets of other Federal agencies to be used by creditors. In such an event, the availability of*

the booklet or alternate materials for these transactions will be set forth in a notice in the Federal Register. The current version of the booklet can be accessed on the Bureau's Web site, www.consumerfinance.gov/learnmore.

*2. **Multiple applicants**. When two or more persons apply together for a loan, the creditor complies with § 1026.19(g) if the creditor provides a copy of the booklet to one of the persons applying.*

*3. **Consumer's application**. Section 1026.19(g)(1)(i) requires that the creditor deliver or place in the mail the special information booklet not later than three business days after the consumer's application is received. "Application" is defined in § 1026.2(a)(3)(ii). The creditor need not provide the booklet under § 1026.19(g)(1)(i) when it denies an application or if the consumer withdraws the application before the end of the three-business-day period under § 1026.19(e)(1)(iii)(A). See comment 19(e)(1)(iii)-3 for additional guidance on denied or withdrawn applications.*

The Rule: § 1026.19(g)(2) Permissible changes

Creditors may not make changes to, deletions from, or additions to the special information booklet other than the changes specified in paragraphs (g)(2)(i) through (iv) of this section.

i. In the "Complaints" section of the booklet, "the Bureau of Consumer Financial Protection" may be substituted for "HUD's Office of RESPA" and "the RESPA office."

ii. In the "Avoiding Foreclosure" section of the booklet, it is permissible to inform homeowners that they may find information on and assistance in avoiding foreclosures at http://www.consumerfinance.gov. The reference to the HUD Web site, http://www.hud.gov/foreclosure/, in the "Avoiding Foreclosure" section of the booklet shall not be deleted.

iii. In the "No Discrimination" section of the appendix to the booklet, "the Bureau of Consumer Financial Protection" may be substituted for the reference to the "Board of Governors of the Federal Reserve System." In the Contact Information section of the appendix to the booklet, the following contact information for the Bureau may be added: "Bureau of Consumer Financial

Protection, 1700 G Street NW., Washington, DC 20552; www.consumerfinance.gov/learnmore." The contact information for HUD's Office of RESPA and Interstate Land Sales may be removed from the "Contact Information" section of the appendix to the booklet.

iv. The cover of the booklet may be in any form and may contain any drawings, pictures or artwork, provided that the title appearing on the cover shall not be changed. Names, addresses, and telephone numbers of the creditor or others and similar information may appear on the cover, but no discussion of the matters covered in the booklet shall appear on the cover. References to HUD on the cover of the booklet may be changed to references to the Bureau.

Official Comment to 19(g)(2)

*1. **Reproduction**. The special information booklet may be reproduced in any form, provided that no changes are made, except as otherwise provided under § 1026.19(g)(2). See also comment 19(g)(2)-3. Provision of the special information booklet as a part of a larger document does not satisfy the requirements of § 1026.19(g). Any color, size and quality of paper, type of print, and method of reproduction may be used so long as the booklet is clearly legible.*

*2. **Other permissible changes**. The special information booklet may be translated into languages other than English. Changes to the booklet other than those specified in § 1026.19(g)(2)(i) through (iv) and comment 19(g)(2)-3 do not comply with § 1026.19(g).*

*3. **Permissible changes to title of booklets in use before August 1, 2015**. Section 1026.19(g)(2)(iv) provides that the title appearing on the cover of the booklet shall not be changed. Comment 19(g)(1)-1 states that the Bureau may, from time to time, issue revised or alternative versions of the special information booklet that address transactions subject to § 1026.19(g) by publishing a notice in the Federal Register. Until the Bureau issues a version of the special information booklet relating to the Loan Estimate and Closing Disclosure under §§ 1026.37 and 1026.38, for applications that are received on or after August 1, 2015, a creditor may change the title appearing on the cover of the version of the special information booklet in use before August 1, 2015, provided the words "settlement costs" are used in the title. See comment 1(d)(5)-1 for guidance regarding compliance with § 1026.19(g) for applications received on or after August 1, 2015.*

Loan Estimate –Page 1.

SECTION III. – Loan Estimate Form

Loan Estimate

DATE ISSUED Date Issued
APPLICANTS Applicants

PROPERTY Property
SALE PRICE Sale Price

LOAN TERM Loan Term
PURPOSE Purpose
PRODUCT Product
LOAN TYPE ☐ Conventional ☐ FHA ☐ VA ☐ Loan Type
LOAN ID # Loan ID
RATE LOCK ☐ NO ☐ YES, until Rate Lock

Before closing, your interest rate, points, and lender credits can change unless you lock the interest rate. All other estimated closing costs expire on

Loan Terms		Can this amount increase after closing?
Loan Amount	Loan amount.	
Interest Rate	Interest rate	
Monthly Principal & Interest *See Projected Payments below for your Estimated Total Monthly Payment*	Principal and interest	
		Does the loan have these features?
Prepayment Penalty	Prepayment	
Balloon Payment	Balloon	

Payment Calculation	Payment Calculation
Principal & Interest	Principal& Interest,
Mortgage Insurance	Principal& Interest, Mortgage
Estimated Escrow	
Estimated Total Monthly Payment	

Estimated Taxes, Insurance & Assessments *Amount can increase over time*	Estimated	**This estimate includes** ☐ Property Taxes ☐ Homeowner's Insurance ☐ Other:	**In escrow?**
		See Section G on page 2 for escrowed property costs. You must pay for other property costs separately.	

Costs at Closing

Estimated Closing Costs Includes in Loan Costs + in Other Costs –
in Lender Credits. *See page 2 for details.*

Estimated Cash to Close Includes Closing Costs. *See Calculating Cash to Close on page 2 for details.*

Closing Cost Details

Loan Costs

A. Origination Charges

% of Loan Amount (Points)

Origination

B. Services You Cannot Shop For

Services You Cannot

C. Services You Can Shop For

Services You Can

D. TOTAL LOAN COSTS (A + B + C)

Total Loan

Other Costs

E. Taxes and Other Government Fees

Recording Fees and Other Taxes
Transfer Taxes

Taxes

F. Prepaids

Homeowner's Insurance Premium (months)
Mortgage Insurance Premium (months)
Prepaid Interest (per day for days @)
Property Taxes (months)

PrePaids

G. Initial Escrow Payment at Closing

Initial Escrow

H. Other

Other

I. TOTAL OTHER COSTS (E + F + G + H)

Total

J. TOTAL CLOSING COSTS

D + I
Lender Credits

Total

Calculating

Calculating Cash to Close

Total Closing Costs (J)
Closing Costs Financed (Paid from your Loan Amount)
Down Payment/Funds from Borrower
Deposit
Funds for Borrower
Seller Credits
Adjustments and Other Credits
Estimated Cash to Close

Adjustable Payment (AP) Table

Adjust

Interest Only Payments?	
Optional Payments?	
Step Payments?	
Seasonal Payments?	
Monthly Principal and Interest Payments	
First Change/Amount	
Subsequent Changes	
Maximum Payment	

Adjustable Interest Rate (AIR) Table

Adjust

Index + Margin Initial Interest Rate
Minimum/Maximum Interest Rate
Change Frequency
First Change
Subsequent Changes
Limits on Interest Rate Changes
First Change
Subsequent Changes

Additional Information About This Loan

Contact Information

LENDER

NMLS/___LICENSE ID
LOAN OFFICER
NMLS/___LICENSE ID
EMAIL
PHONE

MORTGAGE BROKER
NMLS/___LICENSE ID
LOAN OFFICER
NMLS/___LICENSE ID
EMAIL
PHONE

Comparison

Comparisons	**Use these measures to compare this loan with other loans.**
In 5 Years	Total you will have paid in principal, interest, mortgage insurance, and loan costs. Principal you will have paid off.
Annual Percentage Rate (APR)	Your costs over the loan term expressed as a rate. This is not your interest rate.
Total Interest Percentage (TIP)	The total amount of interest that you will pay over the loan term as a percentage of your loan amount.

Other

Other Considerations

Appraisal
We may order an appraisal to determine the property's value and charge you for this appraisal. We will promptly give you a copy of any appraisal, even if your loan does not close. You can pay for an additional appraisal for your own use at your own cost.

Assumption
If you sell or transfer this property to another person, we
☐ will allow, under certain conditions, this person to assume this loan on the original terms.
☐ will not allow assumption of this loan on the original terms.

Homeowner's Insurance
This loan requires homeowner's insurance on the property, which you may obtain from a company of your choice that we find acceptable.

Late Payment
If your payment is more than ____days late, we will charge a late fee of _____

Refinance
Refinancing this loan will depend on your future financial situation, the property value, and market conditions. You may not be able to refinance this loan.

Servicing
We intend
☐ to service your loan. If so, you will make your payments to us.
☐ to transfer servicing of your loan.

Signatures

Confirm Receipt

By signing, you are only confirming that you have received this form. You do not have to accept this loan because you have signed or received this form.

Applicant Signature Date

Co-Applicant Signature Date

Back to Form

Loan Estimate –Page 1.

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Date Issued

Back to Form

The Rule: § 1026.37(a)(4) Date issued

The date the disclosures are mailed or delivered to the consumer by the creditor, labeled "Date Issued."

Official Comment - 37(a)(4)

1. Applicable date. Section 1026.37(a)(4) requires disclosure of the date the creditor mails or delivers the Loan Estimate to the consumer. The creditor's method of delivery does not affect the date issued. For example, if the creditor hand delivers the Loan Estimate to the consumer on August 14, or if the creditor places the Loan Estimate in the mail on August 14, the date disclosed under § 1026.37(a)(4) is August 14.

2. Mortgage broker as loan originator. In transactions involving a mortgage broker, the date disclosed is the date the mortgage broker mails or delivers the Loan Estimate to the consumer, because pursuant to § 1026.19(e)(1)(ii), the mortgage broker is required to comply with all relevant requirements of § 1026.19(e).

Applicants

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The Rule: § 1026.37(a)(5) Applicants

The name and mailing address of the consumer(s) applying for the credit, labeled "Applicants."

Official Comment - 37(a)(5)

If there is more than one consumer applying for the credit, § 1026.37(a)(5) requires disclosure of the name and the mailing address of each consumer to whom the Loan Estimate will be delivered. If the names and mailing addresses of all consumers applying for the credit do not fit in the space allocated on the Loan Estimate, an additional page with that information may be appended to the end of the form. For additional information on permissible changes, see § 1026.37(o)(5) and its commentary.

Property

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The Rule: § 1026.37(a)(6) Property

The address including the zip code of the property that secures or will secure the transaction, or if the address is unavailable, the location of such property including a zip code, labeled "Property."

Official Comment - 37(a)(6)

1. Alternate property address. Section 1026.37(a)(6) requires disclosure of the address including the zip code of the property that secures or will secure the transaction. A creditor complies with § 1026.37(a)(6) by disclosing a complete address for purposes of the U.S. Postal Service. If the address is unavailable, a creditor complies with § 1026.37(a)(6) by disclosing the 1754 location of such property including a zip code, which is required in all instances. Location of the property under § 1026.37(a)(6) includes location information, such as a lot number. The disclosure of multiple zip codes is permitted if the consumer is investigating home purchase opportunities in multiple zip codes.

2. Personal property. Where personal property also secures the credit transaction, a description of that property may be disclosed, at the creditor's option pursuant to§ 1026.37(a)(6), if a description fits in the space provided on form H-24 for the disclosure required by § 1026.37(a)(6). An additional page may not be appended to the form to disclose a description of personal property.

3. Multiple properties. Where more than one property secures the credit transaction, §1026.37(a)(6) requires disclosure of all properties. If the addresses of all properties securing the transaction do not fit in the space allocated on the Loan Estimate, an additional page with that information with respect to real properties may be appended to the end of the form.

Sale Price

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The Rule: § 1026.37(a)(7) Sale Price

(i) For transactions that involve a seller, the contract sale price of the property identified in paragraph (a)(6) of this section, labeled "Sale Price." (ii) For transactions that do not involve a seller, the estimated value of the property identified in paragraph (a)(6), labeled "Prop.Value."

Official Comment - 37(a)(7)

1. Estimated property value. In transactions where there is no seller, such as in a refinancing, §1026.37(a)(7)(ii) requires the creditor to disclose the estimated value of the property identified in § 1026.37(a)(6) at the time the disclosure is issued to the consumer. The creditor may use the estimate provided by the consumer at application, or if it has performed its own estimate of the property value by the time the disclosure is provided to the consumer, use that estimate. If the creditor has obtained any appraisals or valuations of the property for the application at the time the disclosure is issued to the consumer, the value determined by the appraisal or valuation to be used during underwriting for the application is disclosed as the estimated property value. If the creditor has obtained multiple appraisals or valuations and has not yet determined which one will be used during underwriting, it may disclose the value from any appraisal or valuation it reasonably believes it may use in underwriting the transaction. In a transaction that involves a seller, if the sale price is not yet known, the creditor complies with § 1026.37(a)(7) if it discloses the estimated value of the property that it used as the basis for the disclosures in the Loan Estimate.

2. Personal property. In transactions involving personal property that is separately valued from real property, only the value of the real property is disclosed pursuant to § 1026.37(a)(7). Where personal property is included in the sale price of the real property (for example, if the consumer is purchasing the furniture inside the dwelling), however, § 1026.37(a)(7) permits disclosure of the aggregate price without any reduction for the appraised or estimated value of the personal property.

Loan Term

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The Rule: § 1026.37(a)(8) Loan term

The term to maturity of the credit transaction, stated in years or months, or both, as applicable, labeled "Loan Term."

Official Comment - 37(a)(8)

1. Partial years.

i. Terms to maturity of 24 months or more. Section 1026.37(a)(8) requires disclosure of the term to maturity in years, or months, or both, as applicable. Where the term exceeds 24months and equals a whole number of years, a creditor complies with § 1026.37(a)(8) by disclosing the number of years, followed by the designation "years." Where the term

exceeds 24months but does not equal a whole number of years, a creditor complies with § 1026.37(a)(8) by disclosing the term to maturity as the number of years followed by the designation "yr." and the remaining number of months, followed by the designation "mo." For example, if the term to maturity of the transaction is 185 months, the correct disclosure would be "15 yr. 5 mo."

ii. Terms to maturity of less than 24 months. If the term to maturity is less than 24 months and does not equal a whole number of years, a creditor complies with § 1026.37(a)(8) by disclosing the number of months only, followed by the designation "mo." For example, if the term to maturity of a transaction is six months or 16 months, it would be disclosed as "6 mo." Or "16 mo.," respectively. If the term to maturity is 12 months, however it would be disclosed simply as "1"year."

2. Adjustable loan term.

Section 1026.37(a)(8) requires disclosure of the term to maturity of the credit transaction. If the term to maturity is adjustable, i.e., it is not known with certainty at consummation, the creditor complies with § 1026.37(a)(8), if it discloses the possible range of the loan term, including the maximum number of years possible under the terms of the legal obligation. For example, if the loan term depends on the value of interest rate adjustments during the term of the loan, to calculate the maximum loan term, the creditor assumes that the interest rate rises as rapidly as possible after consummation, taking into account the terms of the legal obligation, including any applicable caps on interest rate adjustments and lifetime interest rate cap.

Purpose

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The Rule: § 1026.37(a)(9) Purpose

The consumer's intended use for the credit, labeled "Purpose," using one of the following terms:

(i) *Purchase*. If the credit is to finance the acquisition of the property identified in paragraph (a)(6) of this section, the creditor shall disclose that the loan is for a "Purchase."

(ii) *Refinance*. If the credit is not for the purpose described in paragraph (a)(9)(i) of this section, and if the credit will be used to refinance an existing obligation, as defined in § 1026.20(a) (but without regard to whether the creditor is the original creditor or a holder or servicer of the original obligation), that is secured by the property identified in paragraph (a)(6) of this section, the creditor shall disclose that the loan is for a "Refinance."

(iii) *Construction*. If the credit is not for one of the purposes described in paragraphs (a)(9)(i) or (ii) of this section and the credit will be used to finance the initial construction of a dwelling on the property identified in paragraph (a)(6) of this section, the creditor shall disclose that the loan is for "Construction."

(iv) *Home equity loan*. If the credit is not for one of the purposes described in paragraphs (a)(9)(i) through (iii) of this section, the creditor shall disclose that the loan is a "Home Equity Loan."

Official Comment - 37(a)(9)

1. General. Section 1026.37(a)(9) requires disclosure of the consumer's intended use of the credit. In ascertaining the consumer's intended use, § 1026.37(a)(9) requires the creditor to consider all relevant information known to the creditor at the time of the disclosure. If the purpose is not known, the creditor may rely on the consumer's stated purpose. The following examples illustrate when each of the permissible purposes should be disclosed:

i. Purchase. The consumer intends to use the proceeds from the transaction to purchase the property that will secure the extension of credit.

ii. Refinance. The consumer refinances an existing obligation already secured by the consumer's dwelling to change the rate, term, or other loan features and may or may not receive cash from the transaction. For example, in a refinance with no cash provided, the new amount financed does not exceed the unpaid principal balance, any earned unpaid finance charge on the existing debt, and amounts attributed solely to the costs of the refinancing. Conversely, in a refinance with cash provided, the consumer refinances an existing mortgage obligation and receives money from the transaction that is in addition to the funds used to pay the unpaid principal balance, any earned unpaid finance charge on the existing debt, and amounts attributed solely to the costs of the refinancing. In such a transaction, the consumer may, for example, use the newly-extended credit to pay off the balance of the existing mortgage and other consumer debt, such as a credit card balance.

iii. Construction. Section 1026.37(a)(9)(iii) requires the creditor to disclose that the loan is for construction in transactions where the creditor extends credit to finance only the cost of initial construction (construction-only loan), not renovations to existing dwellings, and in transactions where a multiple advance loan may be permanently financed by the

same creditor (construction-to-permanent loan). In a construction-only loan, the borrower may be required to make interest only payments during the loan term with the balance commonly due at the end of the construction project. For additional guidance on disclosing construction-to-permanent loans, see § 1026.17(c)(6)(ii), comments 17(c)(6)-2 and -3, and appendix D to this part.

iv. Home equity loan. The creditor is required to disclose that the credit is for a "home equity loan" if the creditor intends to extend credit for any purpose other than a purchase, refinancing, or construction. This disclosure applies whether the loan is secured by a first or subordinate lien.

2. Refinance coverage. The disclosure requirements under § 1026.37(a)(9)(ii) apply to credit transactions that meet the definition of a refinancing under § 1026.20(a) but without regard to whether they are made by a creditor, holder, or servicer of the existing obligation. Section 1026.20(a) applies only to refinancings undertaken by the original creditor or a holder or servicer of the original debt. See comment 20(a)-5.

Product

Back to Form

The Rule: § 1026.37(a)(10) Product

Description of the loan product, labeled "Product."

(i) The description of the loan product shall include one of the following terms:

(A) *Adjustable rate*. If the interest rate may increase after consummation, but the rates that will apply or the periods for which they will apply are not known at consummation, the creditor shall disclose the loan product as an "Adjustable Rate."

(B) *Step rate*. If the interest rate will change after consummation, and the rates that will apply and the periods for which they will apply are known at consummation, the creditor shall disclose the loan product as a "Step Rate."

(C) *Fixed rate*. If the loan product is not an Adjustable Rate or a Step Rate, as described in paragraphs (a)(10)(i)(A) and (B) of this section, respectively, the creditor shall disclose the loan product as a "Fixed Rate."

(ii) The description of the loan product shall include the features that may change the periodic payment using the following terms, subject to paragraph (a)(10)(iii) of this section, as applicable:

(A) *Negative amortization*. If the principal balance may increase due to the addition of accrued interest to the principal balance, the creditor shall disclose that the loan product has a "Negative Amortization" feature.

(B) *Interest only*. If one or more regular periodic payments may be applied only to interest accrued and not to the loan principal, the creditor shall disclose that the loan product has an "Interest Only" feature.

(C) *Step payment*. If scheduled variations in regular periodic payment amounts occur that are not caused by changes to the interest rate during the loan term, the creditor shall disclose that the loan product has a "Step Payment" feature.

(D) *Balloon payment*. If the terms of the legal obligation include a "balloon payment," as that term is defined in paragraph (b)(5) of this section, the creditor shall disclose that the loan has a "Balloon Payment" feature.

(E) *Seasonal payment*. If the terms of the legal obligation expressly provide that regular periodic payments are not scheduled between specified unit-periods on a regular basis, the creditor shall disclose that the loan product has a "Seasonal Payment" feature.

(iii) The disclosure of a loan feature under paragraph (a)(10)(ii) of this section shall precede the disclosure of the loan product under paragraph (a)(10)(i) of this section. If a transaction has more than one of the loan features described in paragraph (a)(10)(ii) of this section, the creditor shall disclose only the first applicable feature in the order the features are listed in paragraph (a)(10)(ii) of this section.

(iv) The disclosures required by paragraphs (a)(10)(i)(A) and (B), and (a)(10)(ii)(A), (B), (C), and (D) of this section must each be preceded by the duration of any introductory rate or payment period, and the first adjustment period, as applicable.

Official Comment - 37(a)(10)

1. No features. If the loan product disclosed pursuant to § 1026.37(a)(10) does not include any of the features described in § 1026.37(a)(10)(ii), only the product type and introductory and first adjustment periods, if applicable, are disclosed.

For example:

i. Adjustable rate. When disclosing an adjustable rate product, the disclosure of the loan product must be preceded by the length of the introductory period and the frequency of the first adjustment period thereafter. Thus, for example, if the loan product is an

adjustable rate with an introductory rate that is fixed for the first five years of the loan term and then adjusts every three years starting in year six, the disclosure required by § 1026.37(a)(10) is "5/3 Adjustable Rate." If the first adjustment period is not the period for all adjustments under the terms of the legal obligation, the creditor should still disclose the initial adjustment period and should not disclose other adjustment periods. For example, if the loan product is an adjustable rate with an introductory rate that is fixed for the first five years of the loan term and then adjusts every three years starting in year six, and then annually starting in year fifteen, the disclosure required by § 1026.37(a)(10) would still be "5/3 Adjustable Rate."

A. <u>No introductory period</u>. If the loan product is an adjustable rate with no introductory rate, the creditor should disclose "0" where the introductory rate period would ordinarily be disclosed. For example, if the loan product is an adjustable rate that adjusts every three years with no introductory period, the disclosure required by § 1026.37(a)(10) is "0/3 Adjustable Rate."

B. <u>Introductory period not yet known</u>. If the loan product is an adjustable rate with an introductory period that is not yet known at the time of delivery of the Loan Estimate, the creditor should disclose the shortest potential introductory period for the particular loan product offered. For example, if the loan product is an adjustable rate with an introductory period that may be between 36 and 48 months and the rate would then adjust every year, the disclosure required by § 1026.37(a)(10) is "3/1 Adjustable Rate."

ii. <u>Step rate</u>. If the loan product is a step rate with an introductory interest rate that lasts for ten years and adjusts every year thereafter for the next five years, and then adjusts every three years for the next 15 years, the disclosure required by § 1026.37(a)(10) is "10/1 Step Rate." If the loan product is a step rate with no introductory rate, the creditor should disclose "0" where the introductory rate period would ordinarily be disclosed.

iii. <u>Fixed rate</u>. If the loan product is not an adjustable rate or a step rate, as described in § 1026.37(a)(10)(i)(A) and (B), even if an additional feature described in § 1026.37(a)(10)(ii) may change the consumer's periodic payment, the disclosure required by § 1026.37(a)(10)(i) is "Fixed Rate."

2. Additional features. When disclosing a loan product with at least one of the features described in § 1026.37(a)(10)(ii), § 1026.37(a)(10)(iii) and (iv) require the disclosure of only the first

applicable feature in the order of § 1026.37(a)(10)(ii) and that it be preceded by the time period or the length of the introductory period and the frequency of the first adjustment period, as applicable, followed by a description of the loan product and its time period as provided for in § 1026.37(a)(10)(i).

For example:

i. Negative amortization. Some loan products, such as "payment option" loans, permit the borrower to make payments that are insufficient to cover all of the interest accrued, and the unpaid interest is added to the principal balance. Where the loan product includes a loan feature that may cause the loan balance to increase, the disclosure required by § 1026.37(a)(10)(ii)(A) is preceded by the time period that the borrower is permitted to make payments that result in negative amortization (e.g., "2 Year Negative Amortization"), followed by the loan product type. Thus, a fixed rate product with a step-payment feature for the first two years of the legal obligation that may negatively amortize is disclosed as "2 Year Negative Amortization, Fixed Rate."

ii. Interest only. When disclosing an "Interest Only" feature, as that term is defined in § 1026.18(s)(7)(iv), the applicable time period must precede the label "Interest Only." Thus, a fixed rate loan with only interest due for the first five years of the loan term is disclosed as "5 Year Interest Only, Fixed Rate." If the interest only feature fails to cover the total interest due then, as required by § 1026.37(a)(10)(iii), the disclosure must reference the negative amortization feature and not the interest only feature (i.e., "5 Year Negative Amortization, Fixed Rate").

iii. Step payment. When disclosing a step payment feature (which is sometimes referred to instead as a graduated payment), the period of time at the end of which the scheduled payments will change must precede the label "Step Payment" (e.g., "5 Year Step Payment") followed by the name of the loan product. Thus, a fixed rate mortgage subject to a 5-year step payment plan is disclosed as a "5 Year Step Payment, Fixed Rate."

iv. Balloon payment. If a loan product includes a "balloon payment," as that term is defined in § 1026.37(b)(5), the disclosure of the balloon payment feature, including the year the payment is due, precedes the disclosure of the loan

product. Thus, if the loan product is a step rate with an introductory rate that lasts for three years and adjusts each year thereafter until the balloon payment is due in the seventh year of the loan term, the disclosure required is "Year 7 Balloon Payment, 3/1 Step Rate." If the loan product includes more than one balloon payment, only the earliest year that a balloon payment is due shall be disclosed. v. Seasonal payment. If a loan product includes a seasonal payment feature, § 1026.37(a)(10)(ii)(E) requires that the creditor disclose the feature. The feature is not, however, required to be disclosed with any preceding time period. Disclosure of the label "Seasonal Payment" without any preceding number of years satisfies this requirement.

3. Periods not in whole years.

i. Terms of 24 months or more. For product types and features that have introductory periods or adjustment periods that do not equate to a number of whole years, if the period is a number of months that is 24 or greater and does not equate to a whole number of years, § 1026.37(a)(10) requires disclosure of the whole number of years followed by a decimal point with the remaining months rounded to two places. For example, if the loan product is an adjustable rate with an introductory period of 30 months that adjusts every year thereafter, the creditor would be required to disclose "2.5/1 Adjustable Rate." If the introductory period were 31 months, the required disclosure would be 2.58/1 Adjustable Rate."

ii. Terms of less than 24 months. For product types and features that have introductory periods or adjustment periods that do not equate to a number of whole years, if the period is less than 24 months, § 1026.37(a)(10) requires disclosure of the number of months, followed by the designation "mo." For example, if the product type is an adjustable rate with an 18-month introductory period that adjusts every 18 months starting in the 19th month, the required disclosure would be "18 mo./18mo. Adjustable Rate."

iii. Adjustments more frequent than monthly. For adjustment periods that change more frequently than monthly, § 1026.37(a)(10) requires disclosure of the applicable unit-period, such as daily, weekly, or bi-weekly. For example, for an adjustable rate construction loan with no introductory fixed rate period

where the interest rate adjusts every seven days, the disclosure required by § 1026.37(a)(10) is "0/Weekly Adjustable Rate."

Loan Type

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The Rule: § 1026.37(a)(11) Loan type

The type of loan, labeled "Loan Type," offered to the consumer using one of the following terms, as applicable:

(i) *Conventional*. If the loan is not guaranteed or insured by a Federal or State government agency, the creditor shall disclose that the loan is a "Conventional."

(ii) *FHA*. If the loan is insured by the Federal Housing Administration, the creditor shall 1404 disclose that the loan is an "FHA."

(iii) *VA*. If the loan is guaranteed by the U.S. Department of Veterans Affairs, the creditor shall disclose that the loan is a "VA."

(iv) *Other*. For federally-insured or guaranteed loans other than those described in paragraphs (a)(11)(ii) and (iii) of this section, and for loans insured or guaranteed by a State agency, the creditor shall disclose the loan type as "Other," and provide a brief description of the loan type.

Official Comment - 37(a)(11)

1. Other. If the transaction is a type other than a conventional, FHA, or VA loan, § 1026.37(a)(11)(iv) requires the creditor to disclose the loan type as "Other" and provide a name or brief description of the loan type. For example, a loan that is guaranteed or funded by the Federal government under the Rural Housing Service (RHS) of the U.S. Department of Agriculture is required to be disclosed under the subcategory "Other." Section 1026.37(a)(11)(iv) requires a brief description of the loan type (e.g., "RHS"). A loan that is insured or guaranteed by a State agency must also be disclosed as "Other."

Loan ID

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The Rule: § 1026.37(a)(12) Loan Identification Number

Loan identification number (Loan ID #). A number that may be used by the creditor, consumer, and other parties to identify the transaction, labeled "Loan ID #."

Official Comment - 37(a)(12)

1. Unique identifier. Section 1026.37(a)(12) requires that the creditor disclose a loan identification number that may be used by the creditor, consumer, and other parties to identify the transaction, labeled as "Loan ID #." The loan identification number is determined by the creditor, which number may contain any alpha-numeric characters. Because the number must allow for the identification of the particular credit transaction under § 1026.37(a)(12), a creditor must use a unique loan identification number, i.e., the creditor may not use the same loan identification number for different, but related, loan transactions (such as different loans to the same borrower). Where a creditor issues a revised Loan Estimate for a transaction, the loan identification number must be sufficient to enable identification of the transaction pursuant to § 1026.37(a)(12).

Rate Lock

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The Rule: § 1026.37(a)(13) Rate Lock

Rate lock. A statement of whether the interest rate disclosed pursuant to paragraph (b)(2) of this section is locked for a specific period of time, labeled "Rate Lock."

(i) For transactions in which the interest rate is locked for a specific period of time, the creditor must provide the date and time (including the applicable time zone) when that period ends.

(ii) The "Rate Lock" statement required by this paragraph (a)(13) shall be accompanied by a statement that the interest rate, any points, and any lender credits may change unless the interest rate has been locked, and the date and time (including the applicable time zone) at which estimated closing costs expire.

Official Comment - 37(a)(13)

1. Interest rate. For purposes of § 1026.37(a)(13), the interest rate is locked for a specific period of time if the creditor has agreed to extend credit to the consumer at a given rate, subject to contingencies that are described in any rate lock agreement between the creditor and consumer.

2. Expiration date. The disclosure required by § 1026.37(a)(13)(ii) related to estimated closing costs is required regardless of whether the interest rate is locked for a specific period of time or whether the terms and costs are otherwise accepted or extended.

3. Time zone. The disclosure required by § 1026.37(a)(13) requires the applicable time zone for all times provided, as determined by the creditor. For example, if the creditor is located in New

York and determines that the Loan Estimate will expire at 5:00 p.m. in the time zone applicable to its location, while standard time is in effect, the disclosure must include a reference to the Eastern time zone (i.e., 5:00 p.m. EST).

Loan amount

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The Rule: § 1026.37(b)(1) Loan Amount

(1) The amount of credit to be extended under the terms of the legal obligation, labeled "LoanAmount."

Interest rate

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The Rule: § 1026.37(b)(2) Interest Rate

The interest rate that will be applicable to the transaction at 1405 consummation, labeled "Interest Rate." For an adjustable rate transaction, if the interest rate at consummation is not known, the rate disclosed shall be the fully-indexed rate, which, for purposes of this paragraph, means the interest rate calculated using the index value and margin at the time of consummation.

Official Comment - 37(b)(2)

1. Interest rate at consummation not known. Where the interest rate that will apply at consummation is not known at the time the creditor must deliver the disclosures required by § 1026.19(e), § 1026.37(b)(2) requires disclosure of the fully-indexed rate, defined as the index plus the margin at consummation. Although § 1026.37(b)(2) refers to the index plus margin "at consummation," if the index value that will be in effect at consummation is unknown at the time the disclosures are provided pursuant to § 1026.19(e)(1)(iii), i.e., within three business days after receipt of a consumer's application, the fully-indexed rate disclosed under § 1026.37(b)(2) may be based on the index in effect at the time the disclosure is delivered. The index in effect at consummation (or the time the disclosure is delivered pursuant to § 1026.19(e)) need not be used if the contract provides for a delay in the implementation of changes in an index value. For example, if the contract specifies that rate changes are based on the index value in effect 45 days before the change date, creditors may use any index value in effect during the 45 days before consummation (or any earlier date of disclosure) in calculating the fully-indexed rate to be disclosed.

Principal and interest payment

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The Rule: § 1026.37(b)(3) Principal and Interest Payment

The initial periodic payment amount that will be due under the terms of the legal obligation, labeled "Principal & Interest," immediately preceded by the applicable unit-period, and a statement referring to the payment amount that includes any mortgage insurance and escrow payments that is required to be disclosed pursuant to paragraph (c) of this section. If the interest rate at consummation is not known, the amount disclosed shall be calculated using the fully-indexed rate disclosed under paragraph (b)(2) of this section.

Official Comment - 37(b)(3)

1. Frequency of principal and interest payment. Pursuant to § 1026.37(o)(5)(i), if the contract provides for a unit-period, as defined in appendix J to this part, of a month, such as a monthly payment schedule, the payment disclosed under § 1026.37(b)(3) should be labeled "Monthly Principal & Interest." If the contract requires bi-weekly payments of principal or interest, the payment should be labeled "Bi-Weekly Principal & Interest." If a creditor voluntarily permits a payment schedule not provided for in the contract, such as an informal principal-reduction arrangement, the disclosure should reflect only the payment frequency provided for in the contract. See § 1026.17(c)(1).

2. Initial periodic payment if not known. Pursuant to § 1026.37(b)(3), the initial periodic payment amount that will be due under the terms of the legal obligation must be disclosed. If the initial periodic payment is not known because it will be based on an interest rate at consummation that is not known at the time the disclosures required by § 1026.19(e) must be provided, for example if it is based on an external index that may fluctuate before consummation, § 1026.37(b)(3) requires that the disclosure be based on the fully-indexed rate disclosed under § 1026.37(b)(2). See comment 37(b)(2)-1 for guidance regarding calculating the fully-indexed rate (4) Prepayment penalty. A statement of whether the transaction includes a prepayment penalty, labeled "Prepayment Penalty." For purposes of this paragraph (b)(4), "prepayment penalty" means a charge imposed for paying all or part of a transaction's principal before the date on which the principal is due, other than a waived, bona fide third-party charge that the creditor imposes if the consumer prepays all of the transaction's principal sooner than 36 months after consummation.

Prepayment Penalty

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The Rule: § 1026.37(b)(4) Prepayment Penalty

A statement of whether the transaction includes a prepayment penalty, labeled "Prepayment Penalty." For purposes of this paragraph (b)(4), "prepayment penalty" means a charge imposed for paying all or part of a transaction's principal before the date on which the principal is due, other than a waived, bona fide third-party charge that the creditor imposes if the consumer prepays all of the transaction's principal sooner than 36 months after consummation.

Official Comment 37(b)(4)

1. Transaction includes a prepayment penalty. Section 1026.37(b)(4) requires disclosure of a statement of whether the transaction includes a prepayment penalty. If the transaction includes a prepayment penalty, § 1026.37(b)(7) sets forth the information that must be disclosed under § 1026.37(b)(4) (i.e., the maximum amount of the prepayment penalty that may be imposed under the terms of the loan contract and the date on which the penalty will no longer be imposed). For an example of such disclosure, see form H-24 of appendix H to this part. The disclosure under § 1026.37(b)(4) applies to transactions where the terms of the loan contract provide for a prepayment penalty, even though the creditor does not know at the time of the disclosure whether the consumer will, in fact, make a payment to the creditor that would cause imposition of the penalty. For example, if the monthly interest accrual amortization method described in comment 37(b)(4)-2.i is used such that interest is assessed on the balance for a full month even if the consumer makes a full prepayment before the end of the month, the transaction includes a prepayment penalty that must be disclosed pursuant to § 1026.37(b)(4). 1766

2. Examples of prepayment penalties. For purposes of § 1026.37(b)(4), the following are examples of prepayment penalties:

i. A charge determined by treating the loan balance as outstanding for a period of time after prepayment in full and applying the interest rate to such "balance," even if the charge results from interest accrual amortization used for other payments in the transaction under the terms of the loan contract. "Interest accrual amortization" refers to the method by which the amount of interest due for each period (e.g., month) in a transaction's term is determined. For example, "monthly interest accrual amortization" treats each payment as made on the scheduled, monthly due date even if it is actually paid early or late (until the expiration of any grace period). Thus, under the terms of a loan contract providing for monthly interest accrual amortization, if the amount of

interest due on May 1 for the preceding month of April is $3,000, the loan contract will require payment of $3,000 in interest for the month of April whether the payment is made on April 20, on May 1, or on May 10. In this example, if the consumer prepays the loan in full on April 20 and if the accrued interest as of that date is $2,000, then assessment of a charge of $3,000 constitutes a prepayment penalty of $1,000 because the amount of interest actually earned through April 20 is only $2,000.

ii. A fee, such as an origination or other loan closing cost, that is waived by the creditor on the condition that the consumer does not prepay the loan. See comment 37(b)(4)-3.iii below for additional guidance regarding waived bona fide third-party charges imposed by the creditor if the consumer pays all of a covered transaction's principal before the date on which the principal is due sooner than 36 months after consummation.

iii. A minimum finance charge in a simple interest transaction.

iv. Computing a refund of unearned interest by a method that is less favorable to the consumer than the actuarial method, as defined by section 933(d) of the Housing and Community Development Act of 1992, 15 U.S.C. 1615(d). For purposes of computing a refund of unearned interest, if using the actuarial method defined by applicable State law results in a refund that is greater than the refund calculated by using the method described in section 933(d) of the Housing and Community Development Act of 1992, creditors should use the State law definition in determining if a refund is a prepayment penalty.

3. Fees that are not prepayment penalties. For purposes of § 1026.37(b)(4), fees that are not prepayment penalties include, for example:

i. Fees imposed for preparing and providing documents when a loan is paid in full, if such fees are imposed whether or not the loan is prepaid. Examples include a loan payoff statement, a reconveyance document, or another document releasing the creditor's security interest in the dwelling that secures the loan.

ii. Loan guarantee fees.

iii. A waived bona fide third-party charge imposed by the creditor if the consumer pays all of a covered transaction's principal before the date on which the principal is due sooner than 36 months after consummation. For example, assume that at consummation, the creditor waives $3,000 in closing costs to cover bona fide third-party charges but the terms of the loan agreement provide that the creditor may recoup the

$3,000 in waived charges if the consumer repays the entire loan balance sooner than 36 months after consummation. The $3,000 charge is not a prepayment penalty. In contrast, for example, assume that at consummation, the creditor waives $3,000 in closing costs to cover bona fide third-party charges but the terms of the loan agreement provide that the creditor may recoup $4,500 in part to recoup waived charges, if the consumer repays the entire loan balance sooner than 36 months after consummation. The $3,000 that the creditor may impose to cover the waived bona fide third-party charges is not a prepayment penalty, but the additional $1,500 charge is a prepayment penalty and must be disclosed pursuant to § 1026.37(b)(4).

4. Rebate of finance charge. For an obligation that includes a finance charge that does not take into account each reduction in the principal balance of the obligation, the disclosure under § 1026.37(b)(4) reflects whether or not the consumer is entitled to a rebate of any finance charge if the obligation is prepaid in full or part. Finance charges that do not take into account each reduction in the principal balance of an obligation may include precomputed finance charges. If any portion of an unearned precomputed finance charge will not be provided as a rebate upon full prepayment, the disclosure required by § 1026.37(b)(4) will be an affirmative answer, indicate the maximum amount of such precomputed finance charge that may not be provided as a rebate to the consumer upon any prepayment, and state when the period during which a full rebate would not be provided terminates, as required by § 1026.37(b)(7). If, instead, there will be a full rebate of the precomputed finance charge and no other prepayment penalty imposed on the consumer, to comply with the requirements of § 1026.37(b)(4) and (7), the creditor states a negative answer only. If the transaction involves both a precomputed finance charge and a finance charge computed by application of a rate to an unpaid balance, disclosure about both the entitlement to any rebate of the finance charge upon prepayment and any other prepayment penalty are made as one disclosure under § 1026.37(b)(4), stating one affirmative or negative answer and an aggregated amount and time period for the information required by § 1026.37(b)(7). For example, if in such a transaction, a portion of the precomputed finance charge will not be provided as a rebate and the loan contract also provides for a prepayment penalty based on the amount prepaid, both disclosures are made under § 1026.37(b)(4) as one aggregate amount, stating the maximum amount and time period under § 1026.37(b)(7). If the transaction instead provides a rebate of the precomputed finance charge upon prepayment, but imposes a prepayment penalty based on the amount prepaid, to comply with § 1026.37(b)(4),

the creditor states an affirmative answer and the information about the prepayment penalty, as required by § 1026.37(b)(7). For further guidance and examples of these types of charges, see comment 18(k)(2)-1. For analogous guidance, see comment 18(k)-2. For further guidance on prepaid finance charges generally, see comment 18(k)-3.

Balloon Payment

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The Rule: § 1026.37(b)(5) Balloon Payment

(5) Balloon payment. A statement of whether the transaction includes a balloon payment, labeled "Balloon Payment." For purposes of this paragraph (b)(5), "balloon payment" means a payment that is more than two times a regular periodic payment. "Balloon payment" includes the payment or payments under a transaction that requires only one or two payments during the loan term.

Official Comment - 1026.37(b)(5)

1. Regular periodic payment. If a payment is not itself a regular periodic payment and is more than two times any one regular periodic payment during the loan term, then it is disclosed as a balloon payment under § 1026.37(b)(5). The regular periodic payments used to determine whether a payment is a balloon payment under § 1026.37(b)(5) are the payments of principal and interest (or interest only, depending on the loan features) specified under the terms of the loan contract that are due from the consumer for two or more unit-periods in succession. All regular periodic payments during the loan term are used to determine whether a particular payment is a balloon payment, regardless of whether the regular periodic payments have changed during the loan term due to rate adjustments or other payment changes permitted or required under the loan contract.

i. For example, assume that, under a 15-year step rate mortgage, the loan contract provides for scheduled monthly payments of $300 each during the years one through three and scheduled monthly payments of $700 each during years four through 15. If an irregular payment of $1,000 is scheduled during the final month of year 15, that payment is disclosed as a balloon payment under § 1026.37(b)(5), because it is more than two times the regular periodic payment amount of $300 during years one through three. This is the case even though the irregular payment is not more than two times the regular periodic payment of $700 per month during years four through fifteen. The $700 monthly payments during years four through fifteen are not balloon payments even

though they are more than two times the regular periodic payments during years one through three, because they are regular periodic payments.

ii. If the loan has an adjustable rate under which the regular periodic payments may increase after consummation, but the amounts of such payment increases (if any) are unknown at the time of consummation, then the regular periodic payments are based on the fully-indexed rate, except as otherwise determined by any premium or discounted rates, the application of any interest rate adjustment caps, or any other known, scheduled rates under the terms specified in the loan contract. For analogous guidance, see comments 17(c)(1)-8 and -10. Similarly, if a loan has an adjustable interest rate which does not adjust the regular periodic payment but would, if the rate increased, increase only the final payment, the amount of the final payment for purposes of the balloon payment determination is based on the fully-indexed rate, except as otherwise determined by any premium or discounted rate caps, or any other known, scheduled rates under the terms specified in the loan contract. For example, assume that, under a 30-year adjustable rate mortgage, (1) the loan contract requires monthly payments of $300 during years one through five, (2) the loan contract permits interest rate increases every three years starting in the sixth year up to the fully-indexed rate, subject to caps on interest rate adjustments specified in the loan contract, (3) based on the application of the interest rate adjustment caps, the interest rate may increase to the fully-indexed rate starting in year nine, and (4) the monthly payment based on the fully-indexed rate is $700. The regular periodic payments during years one through five are $300 per month, because they are known and scheduled. The regular periodic payments during years six through eight are up to $700 per month, based on the fully-indexed rate but subject to the application of interest rate adjustment caps specified under the loan contract. The regular periodic payments during years nine through thirty are $700, based on the fully-indexed rate. Therefore, if an irregular payment of $1,000 is scheduled during the final month of year 30, that payment is disclosed as a balloon payment under § 1026.37(b)(5), because it is more than two times the regular periodic payment amount of $300 during years one through five. This is the case even though the irregular payment is not more than two times the regular periodic payment during years nine through thirty (i.e., based on the fully-indexed rate). However, the regular periodic payments during years six

through thirty themselves are not balloon payments, even though they may be more than two times the regular periodic payments during years one through five.

iii. For a loan with a negative amortization feature, the regular periodic payment does not take into account the possibility that the consumer may exercise an option to make a payment greater than the scheduled periodic payment specified under the terms of the loan contract, if any.

iv. A final payment that differs from other regular periodic payments because of rounding to account for payment amounts including fractions of cents is still a regular periodic payment and need not be disclosed as a balloon payment under § 1026.37(b)(5).

v. The disclosure of balloon payments in the "Projected Payments" table under § 026.37(c) is governed by that section and its commentary, rather than § 1026.37(b)(5), except that the determination, as a threshold matter, of whether a payment disclosed under § 1026.37(c) is a balloon payment is made in accordance with § 1026.37(b)(5) and its commentary

2. Single and double payment transactions. The definition of a "balloon payment" under §1026.37(b)(5) includes the payments under transactions that require only one or two payments during the loan term, even though a single payment transaction does not require regular periodic payments, and a transaction with only two scheduled payments during the loan term may not require regular periodic payments.

Adjustments after consummation.

The Rule: § 1026.37(b)(6) Adjustment after Consummation

For each amount required to be disclosed by paragraphs (b)(1) through (3) of this section, a statement of whether the amount may increase after consummation as an affirmative or negative answer to the question, and under such question disclosed as a subheading, "Can this amount increase after closing?" and, in the case of an affirmative answer, the following additional information, as applicable:

(i) *Adjustment in loan amount.* The maximum principal balance for the transaction and the due date of the last payment that may cause the principal balance to increase. The disclosure further shall indicate whether the maximum principal balance is potential or is scheduled to occur under the terms of the legal obligation.

(ii) *Adjustment in interest rate.* The frequency of interest rate adjustments, the date when the interest rate may first adjust, the maximum interest rate, and the first date when the interest rate can reach the maximum interest rate, followed by a reference to the disclosure required by paragraph (j) of this section. If the loan term, as defined under paragraph (a)(8) of this section, may increase based on an interest rate adjustment, the disclosure required by this paragraph (b)(6)(ii) shall also state that fact and the maximum possible loan term determined in accordance with paragraph (a)(8) of this section.

(iii) *Increase in periodic payment.* The scheduled frequency of adjustments to the periodic principal and interest payment, the due date of the first adjusted principal and interest payment, the maximum possible periodic principal and interest payment, and the date when the periodic principal and interest payment may first equal the maximum principal and interest payment. If any adjustments to the principal and interest payment are not the result of a change to the interest rate, a reference to the disclosure required by paragraph (i) of this section. If there is a period during which only interest is required to be paid, the disclosure required by this paragraph (b)(6)(iii) shall also state that fact and the due date of the last periodic payment of such period.

Official Comment - 37(b)(6)

Periods not in whole years. For guidance on how to disclose increases after consummation that occur after a period that does not equate to a number of whole years in compliance with § 1026.37(b)(6), see comment 37(a)(10)-3.

37(b)(6)(i) Adjustment in loan amount.

1. Additional information regarding adjustment in loan amount. A creditor complies with the requirement under § 1026.37(b)(6)(i) to disclose additional information indicating whether the maximum principal balance is potential or is scheduled to occur under the terms of the legal obligation by using the phrase "Can go as high as" or "Goes as high as," respectively. A creditor complies with the requirement under § 1026.37(b)(6)(i) to disclose additional information indicating the due date of the last payment that may cause the principal balance to increase by using the phrase "Increases until." See form H-24 of appendix H to this part for the required format of such phrases, which is required for federally related mortgage loans under § 1026.37(o)(3).

37(b)(6)(ii) Adjustment in interest rate.

1. Additional information regarding adjustment in interest rate. A creditor complies with the requirement under § 1026.37(b)(6)(ii) to disclose additional information indicating the frequency of adjustments to the interest rate and date when the interest rate may first adjust by using the phrases "Adjusts every" and "starting in." A creditor complies with the requirement under § 1026.37(b)(6)(ii) to disclose additional information indicating the maximum interest rate, and the first date when the interest rate can reach the maximum interest rate using the phrase "Can go as high as" and then indicating the date at the end of that phrase or for a scheduled maximum interest rate under a step rate loan, "Goes as high as." If the loan term may increase based on an interest rate adjustment, the disclosure shall indicate the maximum possible loan term using the phrase "Can increase loan term to." See form H-24 of appendix H to this part for the required format of such phrases, which is required for federally related mortgage loans under § 1026.37(o)(3).

2. Interest rates that adjust at multiple intervals. If the terms of the legal obligation provide for more than one adjustment period, § 1026.37(b)(6)(ii) requires disclosure of only the frequency of the first interest rate adjustment. For example, if the interest rate is fixed for five years, then adjusts every two years starting in year six, then adjusts every year starting in year 10, the disclosure required is "Adjusts every 2 years starting in year 6."

37(b)(6)(iii) Increase in periodic payment.

1. Additional information regarding increase in periodic payment. A creditor complies with the requirement under § 1026.37(b)(6)(iii) to disclose additional information indicating the scheduled frequency of adjustments to the periodic principal and interest payment by using the phrases "Adjusts every" and "starting in." A creditor complies with the requirement under § 1026.37(b)(6)(iii) to disclose additional information indicating the maximum possible periodic principal and interest payment, and the date when the periodic principal and interest payment may first equal the maximum principal and interest payment by using the phrase "Can go as high as" and then indicating the date at the end of that phrase or for a scheduled maximum amount, such as under a step payment loan, "Goes as high as." A creditor complies with the requirement

under § 1026.37(b)(6)(iii) to indicate that there is a period during which only interest is required to be paid and the due date of the last periodic payment of such period using the phrase "Includes only interest and no principal until." See form H-24 of appendix H to this part for the required format of such phrases, which is required for federally related mortgage loans under § 1026.37(o)(3).

2. Periodic principal and interest payments that adjust at multiple intervals. If there are multiple periods of adjustment under the terms of the legal obligation, § 1026.37(b)(6)(iii) requires disclosure of the frequency of only the first adjustment to the periodic principal and interest payment, regardless of the basis for the adjustment. Accordingly, where the periodic principal and interest payment may change because of more than one factor and such adjustments are on different schedules, the frequency disclosed is the adjustment of whichever factor adjusts first. For example, where the interest rate for a transaction is fixed until year six and then adjusts every three years but the transaction also has a negative amortization feature that ends in year seven, § 1026.37(b)(6)(iii) requires disclosure that the interest rate will adjust every three years starting in year six because the periodic principal and interest payment adjusts based on the interest rate before it adjusts based on the end of the negative amortization period.

Details about prepayment penalty and balloon payment

The Rule: § 1026.37(b)(7) Details about prepayment penalty and Balloon payment

The information required to be disclosed by paragraphs (b)(4) and (5) of this section shall be disclosed as an affirmative or negative answer to the question, and under such question disclosed as a subheading, "Does the loan have these features?" If an affirmative answer for a prepayment penalty or balloon payment is required to be disclosed, the following information shall be included, as applicable:

(i) The maximum amount of the prepayment penalty that may be imposed and the date when the period during which the penalty may be imposed terminates; and

(ii) The maximum amount of the balloon payment and the due date of such payment.

Official Comment - 1026.37(b)(7)

1. Maximum prepayment penalty. Section 1026.37(b)(7)(i) requires disclosure of the maximum amount of the prepayment penalty that may be imposed under the terms of the legal obligation. The creditor complies with § 1026.37(b)(7)(i) when it assumes that the consumer prepays at a time when the prepayment penalty may be charged and that the consumer makes all payments

prior to the prepayment on a timely basis and in the amount required by the terms of the legal obligation. The creditor must determine the maximum of each amount used in calculating the prepayment penalty. For example, if a transaction is fully amortizing and the prepayment penalty is two percent of the loan balance at the time of prepayment, the prepayment penalty amount should be determined by using the highest loan balance possible during the period in which the penalty may be imposed. If more than one type of prepayment penalty applies, the creditor must aggregate the maximum amount of each type of prepayment penalty in the maximum penalty disclosed.

2. Additional information regarding prepayment penalty. A creditor complies with the requirement under § 1026.37(b)(7)(i) to disclose additional information indicating the maximum amount of the prepayment penalty that may be imposed and the date when the period during which the penalty may be imposed terminates using the phrases "As high as" and "if you pay off the loan during." See form H-24 of appendix H to this part for the required format of such phrases, which is required for federally related mortgage loans under § 1026.37(o)(3).

Paragraph 37(b)(7)(ii).

1. Additional information regarding balloon payment. A creditor complies with the requirement under § 1026.37(b)(7)(ii) to disclose additional information indicating the maximum amount of the balloon payment and the due date of such payment using the phrases "You will have to pay" and "at the end of." See form H-24 of appendix H to this part for the required format of such phrases, which is required for federally related mortgage loans under § 1026.37(o)(3). If the transaction includes more than one balloon payment, a creditor complies with § 1026.37(b)(7)(ii) by disclosing the highest of the balloon payments and the due date of that payment.

Timing

The Rule: § 1026.37(b)(8) Timing

(i) The dates required to be disclosed by paragraph (b)(6)(ii) of this section shall be disclosed as the year in which the event occurs, counting from the date that interest for the first scheduled periodic payment begins to accrue after consummation.

(ii) The dates required to be disclosed by paragraphs (b)(6)(i), (b)(6)(iii) and (b)(7)(ii) of this section shall be disclosed as the year in which the event occurs, counting from the due date of the initial periodic payment.

(iii) The date required to be disclosed by paragraph (b)(7)(i) of this section shall be disclosed as the year in which the event occurs, counting from the date of consummation.

Official Comment - 37(b)(8)

1. Whole years. For adjustments that occur after a period of whole years, the timing of information required by § 1026.37(b)(8) starts with year number "1," counting from the date that interest for the first scheduled periodic payment begins to accrue for § 1026.37(b)(8)(i), or from the due date of the first periodic payment for § 1026.37(b)(8)(ii), or from the date of consummation for § 1026.37(b)(8)(iii). For example, an interest rate that is fixed for five years and can first adjust at the beginning of the 61st month from the date that interest for the regularly scheduled periodic payment began to accrue would be disclosed as beginning to adjust in "year 6." A monthly periodic payment that adjusts starting with the 61st scheduled payment likewise would be disclosed as adjusting in "year 6."

2. Periods not in whole years. For adjustments that occur after a number of months less than 24 that do not equate to a number of whole years or within a number of days less than a week, see the guidance provided in comment 37(a)(10)-3.

Payment Calculation

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The Rule: § 1026.37(c)(3) Subheadings

Except as provided in paragraph (c)(3)(iii) of this section, each separate periodic payment or range of payments to be disclosed under this paragraph (c) must be disclosed under a subheading that states the years of the loan during which that payment or range of payments will apply. The subheadings must be stated in a sequence of whole years from the due date of the initial periodic payment.

(iii) A balloon payment that is scheduled as a final payment under the terms of the legal obligation must be disclosed under the subheading "Final Payment."

Official Comment - 37(c)(3)

37(c)(3) Subheadings.

Paragraph 37(c)(3)(ii).

1. Years. Section 1026.37(c)(3)(ii) requires that each separate periodic payment or range of payments be disclosed under a subheading that states the years during which that payment or range of payments will apply and that such subheadings be stated in a sequence of whole years from the due date of the initial periodic payment. Therefore, for purposes of § 1026.37(c), "year" is defined as the twelve-month interval beginning on the due date of the initial periodic payment, and the next whole year begins each anniversary thereafter. If an event requiring the disclosure of an additional separate periodic payment or range of payments occurs on a date other than the anniversary of the due date of the initial periodic payment, and no other events occur during that single year requiring disclosure of multiple events under § 1026.37(c)(1)(iii)(B), such event is disclosed beginning in the next year in the sequence, because the separate periodic payment or range of payments that applied during the previous year will also apply during a portion of that year.

For example:

i. Assume a fixed rate loan with a term of 124 months (10 years, four months). The creditor would label the disclosure of periodic payments as "Years 1-11."

ii. Assume a loan with a 30-year term that does not require mortgage insurance and requires interest only payments for the first 60 months from the due date of the initial periodic payment, then requires fixed, fully amortizing payments of principal and interest beginning at the 61st month for the duration of the loan, the creditor would label the first disclosure of periodic payments as "Years 1-5" (including the term "only interest" pursuant to § 1026.37(c)(2)(i)) and the second disclosure of periodic payments or range of payments as "Years 6-30." If that loan requires interest only payments for the first 54 months from the due date of the initial periodic payment, then requires fixed, fully amortizing payments of principal and interest for the duration of the loan, because the change in the periodic payment occurs on a date other than the anniversary of the due date of the initial periodic payment and the previous payment applies during that year, the creditor would likewise label the first disclosure of periodic payments as "Years 1-5" (including the term "only interest" pursuant to § 1026.37(c)(2)(i)) and the second

disclosure of periodic payments or range of payments as "Years 6-30." If the loan that requires interest only payments for the first 54 months also requires mortgage insurance that would automatically terminate under applicable law after the 100th month from the due date of the initial periodic payment, the creditor would label the first disclosure of periodic payments as "Years 1-5" (including the term "only interest" pursuant to § 1026.37(c)(2)(i)), the second disclosure of periodic payments or range of payments as "Years 6-9," and the third disclosure of periodic payments or range of payments as "Years 10-30."

2. Loans with variable terms. If the loan term may increase based on an adjustment of the interest rate, the creditor must disclose the maximum loan term possible under the legal obligation. To calculate the maximum loan term, the creditor assumes that the interest rate rises as rapidly as possible, taking into account the terms of the legal obligation, including any applicable caps on interest rate adjustments and lifetime interest rate cap. See comment 37(a)(8)-2.

Principal& Interest, Mortgage Insurance and Estimated Escrow

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The Rule: § 1026.37(c)(2) Itemization

Each separate periodic payment or range of payments disclosed on the table required by this paragraph (c) shall be itemized as follows:

(i) The amount payable for principal and interest, labeled "Principal & Interest," including the term "only interest" if the payment or range of payments includes any interest only payment:

(A) In the case of a loan that has an adjustable interest rate, the maximum principal and interest payment amounts are determined by assuming that the interest rate in effect throughout the loan term is the maximum possible interest rate, and the minimum amounts are determined by assuming that the interest rate in effect throughout the loan term is the minimum possible interest rate;

(B) In the case of a loan that has an adjustable interest rate and also contains a negative amortization feature, the maximum principal and interest payment amounts after the end of the period of the loan's term during which the loan's principal balance may increase due to the addition of accrued interest are determined by assuming the maximum principal amount permitted under the terms of the legal obligation at the end

of such period, and the minimum amounts are determined pursuant to paragraph (c)(2)(i)(A) of this section;

Official Comment - 37(c)(2)(i)

37(c)(2) Itemization.

Paragraph 37(c)(2)(i).

1. General rule for adjustable rate loans. For an adjustable rate loan, in disclosing the maximum possible payment for principal and interest under § 1026.37(c), the creditor assumes that the interest rate will rise as rapidly as possible after consummation, taking into account the terms of the legal obligation, including any applicable caps on interest rate adjustments and lifetime interest rate cap. For a loan with no lifetime interest rate cap, the maximum rate is determined by reference to other applicable laws, such as State usury law. In disclosing the minimum payment for purposes of § 1026.37(c), the creditor assumes that the interest rate will decrease as rapidly as possible after consummation, taking into account any introductory rates, caps on interest rate adjustments, and lifetime interest rate floor. For an adjustable rate loan based on an index that has no lifetime interest rate floor, the minimum interest rate is equal to the margin.

2. Special rule for adjustable rate loans with negative amortization features. Section 1026.37(c)(2)(i)(B) provides a special rule for calculation of the maximum principal and interest payment in an adjustable rate loan that contains a negative amortization feature. That section provides that the maximum amounts payable for principal and interest after the negative amortization period ends are calculated using the maximum principal amount permitted under the terms of the legal obligation at the end of the negative amortization period. See section § 1026.37(c)(1)(i)(A) and associated commentary for guidance regarding when the negative amortization period ends for purposes of § 1026.37(c)(2). For example, if the maximum principal balance for the last payment in the negative amortization period is achieved at an interest rate that is not the maximum interest rate permitted under the terms of the legal 1787 obligation before the negative amortization period ends, future events requiring disclosure of additional, separate periodic payments or ranges of payments assume that the interest rate in effect at the end of the negative amortization period was such interest rate, and not the maximum possible interest rate. After the end of the negative amortization period, the general rule under § 1026.37(c)(2)(i)(A) regarding assumptions of interest rate changes for the maximum principal

and interest payment to be disclosed applies from such interest rate. The minimum payment in an adjustable rate loan that contains a negative amortization feature is determined pursuant to the general rule under § 1026.37(c)(2)(i)(A).

3. Disclosure of balloon payment amounts. Although the existence of a balloon payment is determined pursuant to § 1026.37(b)(5) and its commentary (see comment 37(c)(1)(i)(B)-1), balloon payment amounts to be disclosed under § 1026.37(c) are calculated in the same manner as periodic principal and interest payments under § 1026.37(c)(2)(i). For example, for a balloon payment amount that can change depending on previous interest rate adjustments that are based on the value of an index at the time of the adjustment, the balloon payment amounts are calculated using the assumptions for minimum and maximum interest rates described in § 1026.37(c)(2)(i) and its commentary, and should be disclosed as a range of payments. Paragraph 37(c)(2)(ii).

The Rule: § 1026.37(c)(2)(ii)

(ii) The maximum amount payable for mortgage insurance premiums corresponding to the principal and interest payment disclosed pursuant to paragraph (c)(2)(i) of this section, labeled "Mortgage Insurance";

Official Comment - 37(c)(2)(ii)

1. Mortgage insurance disclosure. Mortgage insurance premiums should be reflected on the disclosure required by § 1026.37(c) even if no escrow account is established for the payment of mortgage insurance premiums. If the consumer is not required to purchase mortgage insurance or any functional equivalent, the creditor discloses the mortgage insurance premium amount as "0." If the creditor is disclosing the automatic termination or the absence of mortgage insurance or any functional equivalent under applicable law or the absence of mortgage 1788 insurance or any functional equivalent after coverage has terminated, the creditor discloses the mortgage insurance premium as "–."

2. Relationship to principal and interest disclosure. The creditor discloses mortgage insurance premiums pursuant to § 1026.37(c)(2)(ii) on the same periodic basis that payments for principal and interest are disclosed pursuant to § 1026.37(c)(2)(i), even if mortgage insurance premiums are actually paid on some other periodic basis.

The Rule: § 1026.37(c)(2)(iii) & (iv)

(iii) The amount payable into an escrow account to pay some or all of the charges described in paragraph (c)(4)(ii), as applicable, labeled "Escrow," together with a statement that the amount disclosed can increase over time; and

(iv) The total periodic payment, calculated as the sum of the amounts disclosed pursuant to paragraphs (c)(2)(i) through (iii) of this section, labeled "Total Monthly Payment."

Official Comment - 37(c)(2)(iii)

Paragraph 37(c)(2)(iii).

1. Escrow disclosure. The disclosure described in § 1026.37(c)(2)(iii) is required only if the creditor will establish an escrow account for the payment of some or all of the charges described in § 1026.37(c)(4)(ii). If no escrow account for the payment of some or all such charges will be established, the creditor discloses the escrow amount as "0." If an escrow account is established for the payment of amounts described in § 1026.37(c)(4)(ii), but no escrow payment is required with a particular periodic payment (such as with a final balloon payment) or range of payments, the escrow payment should be disclosed as "—."

**Note - There is no Official Comment for paragraph 37(c)(2)(iv)*

Estimated Taxes, Insurance and Assessments

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The Rule: § 1026.37(c)(4) Taxes, Insurance, and Assessments

Under the information required by paragraphs (c)(1) through (3) of this section:

(i) The label "Taxes, Insurance & Assessments";

(ii) The sum of the charges identified in § 1026.43(b)(8), other than amounts identified in § 1026.4(b)(5), expressed as a monthly amount, even if no escrow account for the payment of some or any of such charges will be established;

(iii) A statement that the amount disclosed pursuant to paragraph (c)(4)(ii) of this section can increase over time;

(iv) A statement of whether the amount disclosed pursuant to paragraph (c)(4)(ii) of this section includes payments for property taxes, amounts identified in § 1026.4(b)(8), and other amounts described in paragraph (c)(4)(ii) of this section, along with a description of any such other

amounts, and an indication of whether such amounts will be paid by the creditor using escrow account funds;

(v) A statement that the consumer must pay separately any amounts described in paragraph (c)(4)(ii) of this section that are not paid by the creditor using escrow account funds; and

(vi) A reference to the information disclosed pursuant to paragraph (g)(3) of this section. (5) *Calculation of taxes and insurance.* For purposes of paragraphs (c)(2)(iii) and (4)(ii) of this section, estimated property taxes and homeowner's insurance shall reflect:

(i) The taxable assessed value of the real property securing the transaction after consummation, including the value of any improvements on the property or to be constructed on the property, if known, whether or not such construction will be financed from the proceeds of the transaction, for property taxes; and

(ii) The replacement costs of the property during the initial year after the transaction, for amounts identified in § 1026.4(b)(8).

Official Comment - 37(c)(4)

37(c)(4) Taxes, insurance, and assessments. Paragraph 37(c)(4)(ii).

1. Definition of taxes, insurance, and assessments. See the commentary under § 1026.43(b)(8) for guidance on the charges that are included in taxes, insurance, and assessments for purposes of § 1026.37(c)(4)(ii), except that the portion of that commentary related to amounts identified in § 1026.4(b)(5) is inapplicable to the disclosure required by § 1026.37(c)(4)(ii).

Paragraph 37(c)(4)(iv).

1. Description of other amounts. Section 1026.37(c)(4)(iv) requires the creditor to disclose a statement of whether the amount disclosed pursuant to § 1026.37(c)(4)(ii) includes payments for property taxes, amounts identified in § 1026.4(b)(8) (homeowner's insurance premiums), and other amounts described in § 1026.37(c)(4)(ii), along with a description of any such other amounts. If the amount disclosed pursuant to § 1026.37(c)(4)(ii) requires the creditor to disclose a description of more than one amount other than amounts for payment of property taxes or homeowner's insurance premiums, the creditor may disclose a descriptive statement of one such amount along with an indication that additional amounts are also included, such as by using the phrase "and additional costs."

2. Amounts paid by the creditor using escrow account funds. Section 1026.37(c)(4)(iv) requires the creditor to disclose an indication of whether the amounts disclosed pursuant to § 1026.37(c)(4)(ii) will be paid by the creditor using escrow account funds. If the amount disclosed pursuant to § 1026.37(c)(4)(ii) requires the creditor to disclose a description of more than one amount and only some of those amounts will be paid by the creditor using escrow account funds, the creditor may indicate that only some of those amounts will be paid using escrow account funds, such as by using the word "some."

Costs at Closing

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The Rule: § 1026.37(d) Costs at Closing

The Rule: § 1026.37(d)(1) Costs at the closing table

In a separate table, under the heading "Costs at Closing":

(i) Labeled "Closing Costs," the dollar amount disclosed pursuant to paragraph (g)(6) of this section, together with:

(A) A statement that the amount disclosed pursuant to paragraph (d)(1)(i) of this section includes the amounts disclosed pursuant to paragraphs (f)(4), (g)(5), and (g)(6)(ii);

(B) The dollar amount disclosed pursuant to paragraph (f)(4) of this section, labeled "Loan Costs";

(C) The dollar amount disclosed pursuant to paragraph (g)(5) of this section, labeled "Other Costs";

(D) The dollar amount disclosed pursuant to paragraph (g)(6)(ii) of this section, labeled "Lender Credits"; and

(E) A statement referring the consumer to the tables disclosed pursuant to paragraphs (f) and (g) of this section for details. (ii) Labeled "Cash to Close," the dollar amount calculated in accordance with paragraph (h)(1)(viii) of this section, together with: (A) A statement that the amount includes the amount disclosed pursuant to paragraph (d)(1)(i) of this section, and (B) A statement referring the consumer to the location of the table required pursuant to paragraph (h) of this section for details.

The Rule: § 1026.37(d)(2) Optional alternative table for transactions without a seller

For transactions that do not involve a seller, instead of the amount and statements described in paragraph (d)(1)(ii) of this section, the creditor may alternatively disclose, using the label "Cash to Close":

(i) The amount calculated in accordance with (h)(2)(iv) of this section;

(ii) A statement of whether the disclosed estimated amount is due from or to the consumer; and

(iii) A statement referring the consumer to the alternative table disclosed pursuant to paragraph (h)(2) of this section for details.

Official Comment - 37(d)(2)

37(d)(2) Optional alternative table for transactions without a seller.

1. Optional use. The optional disclosure of the estimated cash to close provided for in § 1026.37(d)(2) only may be used by a creditor in a transaction without a seller. The use of this alternative estimated cash to close disclosure for transactions without a seller is optional, but only may be used in conjunction with the alternative disclosure under § 1026.37(h)(2).

2. Method of indication. The indication of whether the estimated cash is either due from or payable to the consumer can be made by the use of check boxes as shown in form H-24(D) of appendix H to this part.

The Rule: § 1026.37(e) Web site reference

A statement that the consumer may obtain general information and tools at the Web site of the Bureau, and the link or uniform resource locator address to the Web site: www.consumerfinance.gov/mortgage-estimate.

The Rule: § 1026.37(f) Closing cost details; loan costs

Under the master heading "Closing Cost Details," in a table under the heading "Loan Costs," all loan costs associated with the transaction. The table shall contain the items and amounts listed under four subheadings, described in paragraphs (f)(1) through (4) of this section.

Official Comment - 37(f)

37(f) Closing cost details; loan costs.

1. General description. The items disclosed under § 1026.37(f) include services that the creditor or mortgage broker require for consummation, such as underwriting, appraisal, and title services.

2. Mortgage broker. Commentary under § 1026.19(e)(1)(ii) discusses the requirements and responsibilities of mortgage brokers that provide the disclosures required by § 1026.19(e), which include the disclosures set forth in § 1026.37(f).

Loan Estimate – Page 2.

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Origination Charges

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The Rule: § 1026.37(f)(1) Origination charges

Under the subheading "Origination Charges," an itemization of each amount, and a subtotal of all such amounts, that the consumer will pay to each creditor and loan originator for originating and extending the credit.

(i) The points paid to the creditor to reduce the interest rate shall be itemized separately, as both a percentage of the amount of credit extended and a dollar amount, and using the label " % of Loan Amount (Points)." If points to reduce the interest rate are not paid, the disclosure required by this paragraph (f)(1)(i) must be blank.

(ii) The number of items disclosed under this paragraph (f)(1), including the points disclosed under paragraph (f)(1)(i) of this section, shall not exceed 13.

Official Comment - 37(f)(1)

1. Origination charges. Charges included under the subheading "Origination Charges" pursuant to § 1026.37(f)(1) are those charges paid by the consumer to each creditor and loan originator for originating and extending the credit, regardless of how such fees are denominated. In accordance with § 1026.37(o)(4), the dollar amounts disclosed under § 1026.37(f)(1) must be rounded to the nearest whole dollar and the percentage amounts must be disclosed as an exact number up to two or three decimal places, except that decimal places shall not be disclosed if the percentage is a whole number. See comment 19(e)(3)(i)-3 for a discussion of when a fee is considered to be "paid to" a person. See § 1026.36(a) and associated commentary for a discussion of the meaning of "loan originator" in connection with limits on compensation in a consumer credit transaction secured by a dwelling.

2. Indirect loan originator compensation. Only charges paid directly by the consumer to compensate a loan originator are included in the amounts listed under § 1026.37(f)(1). Compensation of a loan originator paid indirectly by the creditor through the interest rate is not itemized on the Loan Estimate required by § 1026.19(e). However, pursuant to § 1026.38(f)(1), such compensation is itemized on the Closing Disclosure required by § 1026.19(f).

3. Description of charges. Other than for points charged in connection with the transaction to reduce the interest rate, for which specific language must be used, the creditor may use a general label that uses terminology that, under § 1026.37(f)(5), is consistent with § 1026.17(a)(1), clearly and conspicuously describes the service that is disclosed as an origination charge pursuant to § 1026.37(f)(1). Items that are listed under the subheading "Origination Charges" may include, for example, application fee, origination fee, underwriting fee, processing fee, verification fee, and rate-lock fee.

4. Points. If there are no points charged in connection with the transaction to reduce the interest rate, the creditor leaves blank the percentage of points used in the label and the dollar amount disclosed under § 1026.37(f)(1)(i).

5. Itemization. Creditors determine the level of itemization of "Origination Charges" that is appropriate under § 1026.37(f)(1) in relation to charges paid by the consumer to the creditor, subject to the limitations in § 1026.37(f)(1)(ii). For example, the following charges should be itemized separately: compensation paid directly by a consumer to a loan originator that is not also the creditor; or a charge imposed to pay for a loan level pricing adjustment assessed on the creditor, which the creditor passes onto the consumer as a charge at consummation and not as an adjustment to the interest rate.

Services You Cannot Shop For

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The Rule: § 1026.37(f)(2) Services you cannot shop for

Under the subheading "Services You Cannot Shop For," an itemization of each amount, and a subtotal of all such amounts, the consumer will pay for settlement services for which the consumer cannot shop in accordance with § 1026.19(e)(1)(vi)(A) and that are provided by persons other than the creditor or mortgage broker.

(i) For any item that is a component of title insurance or is for conducting the closing, the introductory description "Title –" shall appear at the beginning of the label for that item.

(ii) The number of items disclosed under this paragraph (f)(2) shall not exceed 13.

Official Comment - 37(f)(2)

37(f)(2) Services you cannot shop for.

1. Services disclosed. Items included under the subheading "Services You Cannot Shop For" pursuant to § 1026.37(f)(2) are for those services that the creditor requires in connection with the transaction that would be provided by persons other than the creditor or mortgage broker and for which the creditor does not permit the consumer to shop in accordance with § 1026.19(e)(1)(vi). Comment 19(e)(1)(vi)-1 clarifies that a consumer is not permitted to shop if the consumer must choose a provider from a list provided by the creditor. Comment 19(e)(3)(i)-1 addresses determining good faith in providing estimates under § 1026.19(e), including estimates for services for which the consumer cannot shop. Comments 19(e)(3)(iv)-1 through -3 discuss limits and requirements applicable to providing revised estimates for services for which the consumer cannot shop.

2. Examples of charges. Examples of the services and amounts to be disclosed pursuant to § 1026.37(f)(2) might include an appraisal fee, appraisal management company fee, credit report fee, flood determination fee, government funding fee, homeowner's association certification fee, lender's attorney fee, tax status research fee, third-party subordination fee, title – closing protection letter fee, title – lender's title insurance policy, and an upfront mortgage insurance fee, provided that the fee is charged at consummation and is not a prepayment of future premiums over a specific future time period or a payment into an escrow account. Government funding fees include a United States Department of Veterans Affairs or United States Department of Agriculture guarantee fee, or any other fee paid to a government entity as part of a governmental loan program, that is paid at consummation.

3. Title insurance services. The services required to be labeled beginning with "Title –" pursuant to § 1026.37(f)(2) or (3) are those required for the issuance of title insurance policies to the creditor in connection with the consummation of the transaction or for conducting the closing. These services may include, for example:

i. Examination and evaluation, based on relevant law and title insurance underwriting principles and guidelines, of the title evidence to determine the insurability of the title being examined and what items to include or exclude in any title commitment and policy to be issued;

ii. Preparation and issuance of the title commitment or other document that discloses the status of the title as it is proposed to be insured, identifies the conditions that must be met before the policy will be issued, and obligates the insurer to issue a policy of title insurance if such conditions are met;

iii. Resolution of underwriting issues and taking the steps needed to satisfy any conditions for the issuance of the policies;

iv. Preparation and issuance of the policy or policies of title insurance; and v. Premiums for any title insurance coverage for the benefit of the creditor.

4. Lender's title insurance policy. Section 1026.37(f)(2) and (3) requires disclosure of the amount the consumer will pay for the lender's title insurance policy. However, an owner's title insurance policy that covers the consumer and is not required to be purchased by the creditor is only disclosed pursuant to § 1026.37(g). Accordingly, the creditor must quote the amount of the lender's title insurance coverage pursuant to § 1026.37(f)(2) or (3) as applicable based on the type of lender's title insurance policy required by its underwriting standards for that loan. The amount disclosed for the lender's title insurance policy pursuant to § 1026.37(f)(2) or (3) is the amount of the premium without any adjustment that might be made for the simultaneous purchase of an owner's title insurance policy. This amount may be disclosed as "Title – Premium for Lender's Coverage," or in any similar manner that clearly indicates the amount of the premium disclosed pursuant to § 1026.37(f)(2) is for the lender's title insurance coverage. See comment 37(g)(4)-1 for a discussion of the disclosure of the premium for an owner's title insurance policy that covers the consumer.

FAQS/Tips

From ALTA Blog: 9/30/2014

Endorsement Fees: To Include or Not to Include?

"In following with the spirit of the rule, which promotes accurate disclosures to prevent any consumer confusion, it is best to disclose any endorsement fees separately on the disclosure forms.

The Rule: § 1026.37(f)(3) Services you can shop for

Under the subheading "Services You Can Shop For," an itemization of each amount and a subtotal of all such amounts the consumer will pay for settlement services for which the consumer can shop in accordance with § 1026.19(e)(1)(vi)(A) and that are provided by persons other than the creditor or mortgage broker.

(i) For any item that is a component of title insurance or is for conducting the closing, the introductory description "Title – " shall appear at the beginning of the label for that item.

(ii) The number of items disclosed under this paragraph (f)(3) shall not exceed 14.

Official Comment - 37(f)(3)

1. Services disclosed. Items included under the subheading "Services You Can Shop For" pursuant to § 1026.37(f)(3) are for those services: that the creditor requires in connection with its decision to make the loan; that would be provided by persons other than the creditor or mortgage broker; and for which the creditor allows the consumer to shop in accordance with § 1026.19(e)(1)(vi). Comments 19(e)(3)(ii)-1 through -3, and -5 address the determination of good faith in providing estimates of charges for services for which the consumer can shop. Comment 19(e)(3)(iii)-2 discusses the determination of good faith when the consumer chooses a provider that is not on the list the creditor provides to the consumer when the consumer is permitted to shop consistent with § 1026.19(e)(1)(vi). Comments 19(e)(3)(iv)-1 through -3 discuss limits and requirements applicable to providing revised estimates for services for which the consumer can shop.

2. Example of charges. Examples of the services to be listed under this subheading pursuant to § 1026.37(f)(3) might include a ***pest inspection fee, survey fee, title – closing agent fee, and title – closing protection letter fee****.*

3. Title insurance. See comments 37(f)(2)-3 and -4 for guidance on services that are to be labeled beginning with "Title – " and on calculating and labeling the amount disclosed for lender's title insurance pursuant to § 1026.37(f)(3). See comment 37(g)(4)-1 for a discussion of the disclosure of the premium for owner's title insurance coverage.

Total Loan Costs

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The Rule: § 1026.37(f)(4) Total loan costs

Under the subheading "Total Loan Costs," the sum of the subtotals disclosed under paragraphs (f)(1) through (3) of this section.

Item Descriptions and Alphabetizing

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The Rule: 1026.37(f)(5) Item descriptions and ordering

The items listed as loan costs pursuant to this paragraph (f) shall be labeled using terminology that describes each item, subject to the requirements of paragraphs (f)(1)(i), (f)(2)(i), and (f)(3)(i) of this section.

(i) The item prescribed in paragraph (f)(1)(i) of this section for points shall be the first item listed in the disclosure pursuant to paragraph (f)(1) of this section.

(ii) All other items must be listed in alphabetical order by their labels under the applicable subheading.

Use of Addenda

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The Rule: § 1026.37(f)(6) Use of addenda

(i) An addendum to a form of disclosures prescribed by this section may not be used for items described in paragraph (f)(1) or (2) of this section. If the creditor is not able to itemize every service and every corresponding charge required to be disclosed in the number of lines provided by paragraph (f)(1)(ii) or (2)(ii) of this section, the remaining charges shall be disclosed as an aggregate amount in the last line permitted under paragraph (f)(1)(ii) or (2)(ii), as applicable, labeled "Additional Charges."

(ii) An addendum to a form of disclosures prescribed by this section may be used for items described in paragraph (f)(3) of this section. If the creditor is not able to itemize all of the charges required to be disclosed in the number of lines provided by paragraph (f)(3)(ii), the remaining charges shall be disclosed as follows:

(A) Label the last line permitted under paragraph (f)(3)(ii) with an appropriate reference to an addendum and list the remaining items on the addendum in accordance with the requirements in paragraphs (f)(3) and (5) of this section; or

(B) Disclose the remaining charges as an aggregate amount in the last line permitted under paragraph (f)(3)(ii), labeled "Additional Charges."

Official Comment - 37(f)(6)

37(f)(6) Use of addenda.

1. State law disclosures. If a creditor is required by State law to make additional disclosures that, pursuant to § 1026.37(f)(6)(i), cannot be included in the disclosures required under § 1026.37(f), the creditor may make those additional State law disclosures on a document whose pages are separate from, and are not presented as part of, the disclosures prescribed in § 1026.37, for example, as an addendum to the Loan Estimate. See comment 37(o)(1)-1.

2. Reference to addendum. If an addendum is used as permitted under § 1026.37(f)(6)(ii), an example of a label that complies with the requirement for an appropriate reference on the last line is: "See attached page for additional items you can shop for."

Column 2 - Other Costs

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The Rule: § 1026.37(g) Closing cost details; other costs

Under the master heading "Closing Cost Details," in a table under the heading "Other Costs," all costs associated with the transaction that are in addition to the costs disclosed under paragraph (f) of this section. The table shall contain the items and amounts listed under six subheadings, described in paragraphs (g)(1) through (6) of this section.

Official Comment - 37(g)

1. General description. The items listed under the heading of "Other Costs" pursuant to § 1026.37(g) include services that are ancillary to the creditor's decision to evaluate the collateral and the consumer for the loan. The amounts disclosed for these items are: established by government action; determined by standard calculations applied to ongoing fixed costs; or based on an obligation incurred by the consumer independently of any requirement imposed by the creditor. Except for prepaid interest under § 1026.37(g)(2)(iii), or charges for optional credit insurance provided by the creditor, the creditor does not retain any of the amounts or portions of the amounts disclosed as other costs.

2. Charges pursuant to property contract. The creditor is required to disclose charges that are described in § 1026.37(g)(1) through (3). Other charges that are required to be paid at or before closing pursuant to the property contract for sale between the consumer and seller are disclosed on the Loan Estimate to the extent the creditor has knowledge of those charges when it issues

the Loan Estimate, consistent with the good faith standard under § 1026.19(e). A creditor has knowledge of those charges where, for example, it has the real estate purchase and sale contract. See also § 1026.37(g)(4) and comment 37(g)(4)-3.

Taxes and Other Government Fees

Back to Form

The Rule: § 1026.37(g)(1) Taxes and other government fees

Under the subheading "Taxes and Other Government Fees," the amounts to be paid to State and local governments for taxes and other government fees, and the subtotal of all such amounts, as follows:

(i) On the first line, the sum of all recording fees and other government fees and taxes, except for transfer taxes paid by the consumer and disclosed pursuant to paragraph (g)(1)(ii) of this section, labeled "Recording Fees and Other Taxes."

(ii) On the second line, the sum of all transfer taxes paid by the consumer, labeled "Transfer Taxes."

(iii) If an amount required to be disclosed by this paragraph (g)(1) is not charged to the consumer, the amount disclosed on the applicable line required by this paragraph (g)(1) must be blank.

Official Comment - 37(g)(1)

37(g)(1) Taxes and other government fees.

1. Recording fees. Recording fees listed under § 1026.37(g)(1) are fees assessed by a government authority to record and index the loan and title documents as required under State or local law. Recording fees are assessed based on the type of document to be recorded or its physical characteristics, such as the number of pages. Unlike transfer taxes, recording fees are not based on the sale price of the property or loan amount. For example, a fee for recording a subordination agreement that is $20, plus $3 for each page over three pages, is a recording fee, but a fee of $1,250 based on 0.5 percent of the loan amount is a transfer tax, and not a recording fee.

2. Other government charges. Any charges or fees imposed by a State or local government that are not transfer taxes are aggregated with recording fees and disclosed under § 1026.37(g)(1)(i).

3. Transfer taxes – terminology. In general, transfer taxes listed under § 1026.37(g)(1) are State and local government fees on mortgages and home sales that are based on the loan amount or sales price, while recording fees are State and local government fees for recording the loan and

title documents. The name that is used under State or local law to refer to these amounts is not determinative of whether they are disclosed as transfer taxes or as recording fees and other taxes under § 1026.37(g)(1).

4. Transfer taxes – consumer. Only transfer taxes paid by the consumer are disclosed on the Loan Estimate pursuant to § 1026.37(g)(1). State and local government transfer taxes are governed by State or local law, which determines if the seller or consumer is ultimately responsible for paying the transfer taxes. For example, if State law indicates a lien can attach to the consumer's acquired property if the transfer tax is not paid, the transfer tax is disclosed. If State or local law is unclear or does not specifically attribute transfer taxes to the seller or the consumer, the creditor is in compliance with requirements of § 1026.37(g)(1) if the amount of the transfer tax disclosed is not less than the amount apportioned to the consumer using common practice in the locality of the property.

5. Transfer taxes – seller. Transfer taxes paid by the seller in a purchase transaction are not disclosed on the Loan Estimate under § 1026.37(g)(1), but are disclosed on the Closing Disclosure pursuant to § 1026.38(g)(1)(ii).

6. Deletion and addition of items. The lines and labels required by § 1026.37(g)(1) may not be deleted, even if recording fees or transfer taxes are not charged to the consumer. No additional items may be listed under the subheading in § 1026.37(g)(1).

PrePaids

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The Rule: § 1026.37(g)(2) Prepaids

Under the subheading "Prepaids," an itemization of the amounts to be paid by the consumer in advance of the first scheduled payment, and the subtotal of all such amounts, as follows:

(i) On the first line, the number of months for which homeowner's insurance premiums are to be paid by the consumer at consummation and the total dollar amount to be paid by the consumer at consummation for such premiums, labeled "Homeowner's Insurance Premium (_____ months)."

(ii) On the second line, the number of months for which mortgage insurance premiums are to be paid by the consumer at consummation and the total dollar amount to be paid by the consumer at consummation for such premiums, labeled "Mortgage Insurance Premium (__months)."

(iii) On the third line, the amount of prepaid interest to be paid per day, the number of days for which prepaid interest will be collected, the interest rate, and the total dollar amount to be paid

by the consumer at consumption for such interest, labeled "Prepaid Interest (_ per day for _ days @ _____%)."

(iv) On the fourth line, the number of months for which property taxes are to be paid by the consumer at consumption and the total dollar amount to be paid by the consumer at consumption for such taxes, labeled "Property Taxes (__ months)."

(v) If an amount is not charged to the consumer for any item for which this paragraph (g)(2) prescribes a label, each of the amounts required to be disclosed on that line must be blank.

(vi) A maximum of three additional items may be disclosed under this paragraph (g)(2), and each additional item must be identified and include the applicable time period covered by the amount to be paid by the consumer at consumption and the total amount to be paid.

Official Comment - 37(g)(2)

1. Examples. Prepaid items required to be disclosed pursuant to § 1026.37(g)(2) include the interest due at consummation for the period of time before interest begins to accrue for the first scheduled periodic payment and certain periodic charges that are required by the creditor to be paid at consummation. Each periodic charge listed as a prepaid item indicates, as applicable, the time period that the charge will cover, the daily amount, the percentage rate of interest used to calculate the charge, and the total dollar amount of the charge. Examples of periodic charges that are disclosed pursuant to § 1026.37(g)(2) include:

i. Real estate property taxes due within 60 days after consummation of the transaction;

ii. Past-due real estate property taxes;

iii. Mortgage insurance premiums;

iv. Flood insurance premiums; and

v. Homeowner's insurance premiums.

2. Interest rate. The interest rate disclosed pursuant to § 1026.37(g)(2)(iii) is the same interest rate disclosed pursuant to § 1026.37(b)(2).

3. Terminology. For purposes of § 1026.37(g)(2), the term "property taxes" has the same meaning as in § 1026.43(b)(8) and further described in comment 43(b)(8)-2; the term "homeowner's insurance" means the amounts identified in § 1026.4(b)(8); and the term "mortgage insurance" has the same meaning as "mortgage insurance or any functional equivalent" in § 1026.37(c), which means the amounts identified in § 1026.4(b)(5).

4. Deletion of items. The lines and labels required by § 1026.37(g)(2) may not be deleted, even if amounts for those labeled items are not charged to the consumer. If an amount for a labeled item is not charged to the consumer, the time period, daily amount, and percentage used in the labels are left blank.

Initial Escrow Payment at Closing – Section G.

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The Rule: § 1026.37(g)(3) Initial escrow payment at closing

Under the subheading "Initial Escrow Payment at Closing," an itemization of the amounts that the consumer will be expected to place into a reserve or escrow account at consummation to be applied to recurring periodic charges, and the subtotal of all such amounts, as follows:

(i) On the first line, the amount escrowed per month, the number of months covered by an escrowed amount collected at consummation, and the total amount to be paid into the escrow account by the consumer at consummation for homeowner's insurance premiums, labeled "Homeowner's Insurance _ per month for _ mo."

(ii) On the second line, the amount escrowed per month, the number of months covered by an escrowed amount collected at consummation, and the total amount to be paid into the escrow account by the consumer at consummation for mortgage insurance premiums, labeled "Mortgage Insurance _ per month for _ mo."

(iii) On the third line, the amount escrowed per month, the number of months covered by an escrowed amount collected at consummation, and the total amount to be paid into the escrow account by the consumer at consummation for property taxes, labeled "Property Taxes _ per month for _ mo."

(iv) If an amount is not charged to the consumer for any item for which this paragraph (g)(3) prescribes a label, each of the amounts required to be disclosed on that line must be blank. (v) A maximum of five items may be disclosed pursuant to this paragraph (g)(3) in addition to the items described in paragraph (g)(3)(i) through (iii) of this section, and each such additional item must be identified with a descriptive label and include the applicable amount per month, the number of months collected at consummation, and the total amount to be paid.

Official Comment - 37(g)(3)

1. Listed item not charged. Pursuant to § 1026.37(g)(3), each periodic charge to be included in the escrow or reserve account must be itemized under the "Initial Escrow Payment at Closing"

subheading, with a relevant label, monthly payment amount, and number of months expected to be collected at consummation. If an item described in § 1026.37(g)(3)(i) through (iii) is not charged to the consumer, the monthly payment amount and time period used in the labels are left blank.

2. Aggregate escrow account calculation. The aggregate escrow account adjustment required under § 1026.38(g)(3) and 12 CFR 1024.17(d)(2) is not included on the Loan Estimate under § 1026.37(g)(3).

3. Terminology. As used in § 1026.37(g)(3), the term "property taxes" has the same meaning as in § 1026.43(b)(8) and further described in comment 43(b)(8)-2; the term "homeowner's insurance" means the amounts identified in § 1026.4(b)(8); and the term "mortgage insurance" has the same meaning as "mortgage insurance or any functional equivalent" in § 1026.37(c).

4. Deletion of items. The lines and labels required by § 1026.37(g)(3) may not be deleted, even if amounts for those labeled items are not charged to the consumer.

5. Escrowed tax payments for different time frames. Payments for property taxes that are paid at different time periods can be itemized separately when done in accordance with 12 CFR 1024.17, as applicable. For example, a general property tax covering a fiscal year from January 1 to December 31 can be listed as a property tax under § 1026.37(g)(3)(i); and a separate property tax to fund schools that cover a fiscal year from November 1 to October 31 can be added as a separate item under § 1026.37(g)(3)(v).

Other – Section H on disclosure form

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The Rule: § 1026.37(g)(4) Other

Under the subheading "Other," an itemization of any other amounts in connection with the transaction that the consumer is likely to pay or has contracted with a person other than the creditor or loan originator to pay at closing and of which the creditor is aware at the time of issuing the Loan Estimate, a descriptive label of each such amount, and the subtotal of all such amounts.

(i) For any item that is a component of title insurance, the introductory description "Title –" shall appear at the beginning of the label for that item.

(ii) The parenthetical description "(optional)" shall appear at the end of the label for items disclosing any premiums paid for separate insurance, warranty, guarantee, or event-coverage products.

(iii) The number of items disclosed under this paragraph (g)(4) shall not exceed five.

Official Comment - 37(g)(4)

37(g)(4) Other.

1. Owner's title insurance policy rate. The amount disclosed for an owner's title insurance premium pursuant to § 1026.37(g)(4) is based on a basic owner's policy rate, and not on an "enhanced" title insurance policy premium, except that the creditor may instead disclose the premium for an "enhanced" policy when the "enhanced" title insurance policy is required by the real estate sales contract, if such requirement is known to the creditor when issuing the Loan Estimate. This amount should be disclosed as "Title – Owner's Title Policy (optional)," or in any similar manner that includes the introductory description "Title –" at the beginning of the label for the item, the parenthetical description "(optional)" at the end of the label, and clearly indicates the amount of the premium disclosed pursuant to § 1026.37(g)(4) is for the owner's title insurance coverage. See comment 37(f)(2)-4 for a discussion of the disclosure of the premium for lender's title insurance coverage.

2. Simultaneous title insurance premium rate in purchase transactions. The premium for an owner's title insurance policy for which a special rate may be available based on the simultaneous issuance of a lender's and an owner's policy is calculated and disclosed pursuant to § 1026.37(g)(4) as follows:

i. The title insurance premium for a lender's title policy is based on the full premium rate, consistent with § 1026.37(f)(2) or (f)(3).

ii. The owner's title insurance premium is calculated by taking the full owner's title insurance premium, adding the simultaneous issuance premium for the lender's coverage, and then deducting the full premium for lender's coverage.

3. Designation of optional items. Products disclosed under § 1026.37(g)(4) for which the parenthetical description "(optional)" is included at the end of the label for the item include only items that are separate from any item disclosed on the Loan Estimate under paragraphs other than § 1026.37(g)(4). For example, such items may include optional owner's title insurance, credit life insurance, debt suspension coverage, debt cancellation coverage, warranties of home appliances and systems, and similar products, when coverage is written in connection with a credit transaction that is subject to § 1026.19(e). However, because the requirement in § 1026.37(g)(4)(ii) applies to separate products only, additional coverage and endorsements on insurance otherwise required by the lender are not disclosed under § 1026.37(g)(4). See

comments 4(b)(7) and (b)(8)-1 through -3 and comments 4(b)(10)-1 and -2 for guidance on determining when credit life insurance, debt suspension coverage, debt cancellation coverage, and similar coverage is written in connection with a transaction subject to § 1026.19(e).

4. Examples. Examples of other items that are disclosed under § 1026.37(g)(4) if the creditor is aware of those items when it issues the Loan Estimate include commissions of real estate brokers or agents, additional payments to the seller to purchase personal property pursuant to the property contract, homeowner's association and condominium charges associated with the transfer of ownership, and fees for inspections not required by the creditor but paid by the consumer pursuant to the property contract. Although the consumer is obligated for these costs, they are not imposed upon the consumer by the creditor or loan originator. Therefore, they are not disclosed with the parenthetical description "(optional)" at the end of the label for the item, and they are disclosed pursuant to § 1026.37(g) rather than § 1026.37(f). Even if such items are not required to be disclosed on the Loan Estimate under § 1026.37(g)(4), however, they may be required to be disclosed on the Closing Disclosure pursuant to § 1026.38. Comment 19(e)(3)(iii)-3 discusses application of the good faith requirement for services chosen by the consumer that are not required by the creditor.

Total Other Costs – Section I.

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The Rule: § 1026.37(g)(5) Total other costs

Under the subheading "Total Other Costs," the sum of the subtotals disclosed pursuant to paragraphs (g)(1) through (4) of this section.

Official Comment - 37(g)(5)

N/A

Total Loan Costs. Section J.

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The Rule: § 1026.37(g)(6) Total closing costs

Under the subheading "Total Closing Costs," the component amounts and their sum, as follows:

(i) The sum of the amounts disclosed as loan costs and other costs under paragraphs (f)(4) and (g)(5) of this section, labeled "D + I"; and

(ii) The amount of any lender credits, disclosed as a negative number with the label "Lender Credits" provided that, if no such amount is disclosed, the amount must be blank.

The Rule: § 1026.37(g)(7) Item descriptions and ordering

The items listed as other costs pursuant to this paragraph (g) shall be labeled using terminology that describes each item.

(i) The items prescribed in paragraphs (g)(1)(i) and (ii), (g)(2)(i) through (iv), and (g)(3)(i) through (iii) of this section must be listed in the order prescribed as the initial items under the applicable subheading, with any additional items to follow.

(ii) All additional items must be listed in alphabetical order under the applicable subheading.

Use of Addenda

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The Rule: § 1026.37(g)(8) Use of addenda

An addendum to a form of disclosures prescribed by this section may not be used for items required to be disclosed by this paragraph (g). If the creditor is not able to itemize all of the charges described in this paragraph (g) in the number of lines provided by paragraphs (g)(2)(vi), (3)(v), or (4)(iii) of this section, the remaining charges shall be disclosed as an aggregate amount in the last line permitted under paragraphs (g)(2)(vi), (3)(v), or (4)(iii), as applicable, using the label "Additional Charges."

Calculating Cash to Close

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The Rule: § 1026.37(h) Calculating cash to close

The Rule: § 1026.37(h)(1) For all transactions

Under the master heading "Closing Cost Details," under the heading "Calculating Cash to Close," the total amount of cash or other funds that must be provided by the consumer at consummation, with an itemization of that amount into the following component amounts:

The Rule: § 1026.37(h)(1)(i) Total Closing Costs

(i)*Total closing costs.* The amount disclosed under paragraph (g)(6) of this section, disclosed as a positive number, labeled "Total Closing Costs";

Official Comment - 37(h)(1)

37(h)(1) For all transactions.

1. Labels for amounts disclosed. Section 1026.37(h)(1) describes the amounts that are used to calculate the estimated amount of cash or other funds that the consumer must provide at consummation. The labels that are to be used under § 1026.37(h)(1) are illustrated by form H-24(A) of appendix H to this part.

The Rule: § 1026.37(h)(1)(ii) Closing costs to be financed

(ii) *Closing costs to be financed.* The amount of any closing costs to be paid out of loan proceeds, disclosed as a negative number, labeled "Closing Costs Financed (Paid from your Loan Amount)";

Official Comment - 37(h)(1)(ii)

37(h)(1)(ii) Closing costs financed.

1. *Calculating amount. The amount of closing costs financed disclosed under § 1026.37(h)(1)(ii) is determined by subtracting the estimated total amount of payments to third parties not otherwise disclosed pursuant to § 1026.37(f) and (g) from the total loan amount disclosed pursuant to § 1026.37(b)(1). If the result of the calculation is a positive number, that amount is disclosed as a negative number under § 1026.37(h)(1)(ii), but only to the extent that it does not exceed the total amount of closing costs disclosed under § 1026.37(g)(6). If the result of the calculation is zero or negative, the amount of $0 is disclosed under § 1026.37(h)(1)(ii).*

The Rule: § 1026.37(h)(1)(iii) Downpayment and other fund from the borrower

(iii) *Downpayment and other funds from borrower*. Labeled "Down Payment/Funds from Borrower":

(A) In a purchase transaction as defined in paragraph (a)(9)(i) of this section, the amount of the difference between the purchase price of the property and the principal amount of the loan, disclosed as a positive number; or

(B) In all transactions other than purchase transactions as defined in paragraph (a)(9)(i) of this section, the estimated funds from the consumer as determined in accordance with paragraph (h)(1)(v) of this section;

Official Comment - 37(h)(1)(iii)

37(h)(1)(iii) Downpayment and other funds from borrower.

1. No downpayment or funds from borrower. When the loan amount exceeds the purchase price of the property (other than a construction loan), the amount of $0 is disclosed under §1026.37(h)(1)(iii).

The Rule: § 1026.37(h)(1)(iv) Deposit

(iv) *Deposit.*

(A) In a purchase transaction as defined in paragraph (a)(9)(i) of this section, the amount that is paid to the seller or held in trust or escrow by an attorney or other party under the terms of the agreement for the sale of the property, disclosed as a negative number, labeled "Deposit"; (B) In all transactions other than purchase transactions as defined in paragraph (a)(9)(i) of this section, the amount of $0, labeled "Deposit";

Official Comment - 37(h)(1)(iv)

37(h)(1)(iv) Deposit.

1. Section 1026.37(h)(1)(iv)(A) requires disclosure of a deposit in a purchase transaction. The deposit to be disclosed under § 1026.37(h)(1)(iv)(A) is any amount that the consumer has agreed to pay to a party identified in the real estate purchase and sale agreement to be held until consummation of the transaction, which is often referred to as an earnest money deposit. In a purchase transaction in which no such deposit is paid in connection with the transaction, §1026.37(h)(1)(iv)(A) requires the creditor to disclose $0. In any other type of transaction, §1026.37(h)(1)(iv)(B) requires disclosure of the deposit amount as $0.

The Rule: § 1026.37(h)(1)(v) Funds for borrower

(v) *Funds for borrower.* The amount of funds for the consumer, labeled "Funds for Borrower." The amount of funds from the consumer disclosed under paragraph (h)(1)(iii)(B) of this section, and of funds for the consumer disclosed under this paragraph (h)(1)(v) of this section, are determined by subtracting the principal amount of the credit extended (excluding any amount disclosed pursuant to paragraph (h)(1)(ii) of this section) from the total amount of all existing debt being satisfied in the transaction (except to the extent the satisfaction of such existing debt is disclosed under paragraph (g) of this section);

(A) If the calculation under this paragraph (h)(1)(v) yields an amount that is a positive number, such amount is disclosed under paragraph (h)(1)(iii)(B) of this section, and $0 is disclosed under this paragraph (h)(1)(v);

(B) If the calculation under this paragraph (h)(1)(v) yields an amount that is a negative number, such amount is disclosed under this paragraph (h)(1)(v) as a negative number, and $0 is disclosed under paragraph (h)(1)(iii)(B) of this section;

(C) If the calculation under this paragraph (h)(1)(v) of this section yields $0, then $0 is disclosed under paragraphs (h)(1)(iii)(B) and paragraph (h)(1)(v) of this section;

Official Comment - 37(h)(1)(v)

37(h)(1)(v) Funds for borrower.

1. Use of calculation – non-purchase transactions. The calculation described in § 1026.37(h)(1)(v) is only used to determine the amounts disclosed under § 1026.37(h)(1)(iii) and (h)(1)(v) in a transaction that is not described as a purchase transaction under § 1026.37(a)(9)(i), in accordance with the provisions of § 1026.37(h)(1)(iii)(A). In a purchase transaction (other than a construction loan), the amount disclosed under § 1026.37(h)(1)(v) will be $0, in accordance with § 1026.37(h)(1)(v)(A).

The Rule: § 1026.37(h)(1)(vi) Seller credits

(vi) *Seller credits.* The total amount that the seller will pay for total loan costs as determined by paragraph (f)(4) of this section and total other costs as determined by paragraph (g)(5) of this section, to the extent known, disclosed as a negative number, labeled "Seller Credits";

Official Comment - 37(h)(1)(vi)

37(h)(1)(vi) Seller credits.

1. Credits to be disclosed. The seller credits known to the creditor at the time of delivery of the Loan Estimate are disclosed under § 1026.37(h)(1)(vi). For example, a creditor may know the amount of seller credits that will be paid in the transaction from information obtained verbally from the consumer, from a review of the purchase and sale contract, or from information obtained from a real estate agent in the transaction.

2. Seller credits for specific charges. To the extent known by the creditor at the time of delivery of the Loan Estimate, seller credits for specific items disclosed under § 1026.37(f) and (g) are represented by the total amount disclosed for those items.

The Rule: § 1026.37(h)(1)(vii) Adjustments and other credits

(vii) *Adjustments and other credits.* The amount of all loan costs determined pursuant to paragraph (f) and other costs determined pursuant to paragraph (g) that are paid by persons other than the loan originator, creditor, consumer, or seller, together with any other amounts that are required to be paid by the consumer at closing pursuant to a purchase and sale contract, disclosed as a negative number, labeled "Adjustments and Other Credits"; and

Official Comment - 37(h)(1)(vii)

37(h)(1)(vii) Adjustments and other credits.

1. Other credits known at the time the Loan Estimate is issued. Amounts expected to be paid by third parties not involved in the transaction, such as gifts from family members and not otherwise identified under § 1026.37(h)(1), are included in the amount disclosed pursuant to § 1026.37(h)(1)(vii).

2. Persons that may make payments causing adjustment and other credits. Persons, as defined under § 1026.2(a)(22), means natural persons or organizations. Accordingly, persons that may pay amounts disclosed under § 1026.37(h)(1)(vii) include, for example, any individual family members providing gifts or a developer or home builder organization providing a credit in the transaction.

3. Credits. Only credits from persons other than the creditor or seller can be disclosed pursuant to § 1026.37(h)(1)(vii). Seller credits and credits from the creditor are disclosed pursuant to § 1026.37(h)(1)(vi) and § 1026.37(g)(6)(ii), respectively.

4. Other credits to be disclosed. Credits other than those from the creditor or seller are disclosed under § 1026.37(h)(1)(vii). Disclosure of other credits is, like other disclosures under § 1026.37, subject to the good faith requirement under § 1026.19(e)(1)(i). See § 1026.19(e)(1)(i) and comments 17(c)(2)(i)-1 and 19(e)(1)(i)-1. The creditor may obtain information regarding items to be disclosed under § 1026.37(h)(1)(vii), for example, verbally from the consumer, from a review of the purchase and sale contract, or from information obtained from a real estate agent in the transaction.

5. Proceeds from subordinate financing or other source. Funds that are provided to the consumer from the proceeds of subordinate financing, local or State housing assistance grants, or other similar sources are included in the amount disclosed under § 1026.37(h)(1)(vii).

6. Reduction in amounts for adjustments. Adjustments that require additional funds from the consumer pursuant to the real estate purchase and sale contract, such as for additional personal property that will be disclosed on the Closing Disclosure under § 1026.38(j)(1)(iii) or adjustments that will be disclosed on the Closing Disclosure under § 1026.38(j)(1)(v) can be included in the amount disclosed under § 1026.37(h)(1)(vii), and because the amount disclosed is a sum of adjustments and other credits, such amount would reduce the total amount disclosed. Additional examples of such adjustments for additional funds from the consumer include prorations for property taxes and homeowner's association dues.

The Rule: § 1026.37(h)(1)(vii) Estimated Cash to close

(viii) *Estimated Cash to Close.* The sum of the amounts disclosed under paragraphs (h)(1)(i) through (vii) labeled "Cash to Close."

Official Comment - 37(h)(1)(vii)

37(h)(1)(viii) Estimated cash to close.

1. Result of cash to close calculation. The sum of the amounts disclosed pursuant to § 1026.37(h)(1)(i) through (vii) is disclosed under § 1026.37(h)(1)(viii) as either a positive number, a negative number, or zero. A positive number indicates the amount that the consumer will pay at consummation. A negative number indicates the amount that the consumer will receive at consummation. A result of zero indicates that the consumer will neither pay nor receive any amount at consummation.

Calculating Cash to Close – No Seller

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The Rule: § 1026.37(h)(2) Optional Alternative calculating cash to close table for transactions without a seller

(2) *Optional alternative calculating cash to close table for transactions without a seller.*

For transactions that do not involve a seller, instead of the table described in paragraph (h)(1) above, the creditor may alternatively provide, in a separate table, under the master heading "Closing Cost Details," under the heading "Calculating Cash to Close," the total amount of cash or other funds that must be provided by the consumer at consummation with an itemization of that amount into the following component amounts:

The Rule: § 1026.37(h)(2)(i) Loan Amount

(i) *Loan amount*. The amount disclosed under paragraph (b)(1) of this section, labeled"Loan Amount";

The Rule: § 1026.37(h)(2)(ii) Total closing costs

(ii) *Total closing costs.* The amount disclosed under paragraph (g)(6) of this section, disclosed as a negative number, labeled "Total Closing Costs";

The Rule: § 1026.37(h)(2)(iii) Payoffs and payments

(iii) *Payoffs and payments.* The total amount of payoffs and payments to be made to third parties not otherwise disclosed pursuant to paragraphs (f) and (g) of this section, disclosed as a negative number, labeled "Total Payoffs and Payments";

Official Comment - 37(h)(2)

37(h)(2) Optional alternative calculating cash to close table for transactions without a seller.

1. Optional use. The optional disclosure of the calculating cash to close table in § 1026.37(h)(2) may only be provided by a creditor in a transaction without a seller. The use of this alternative table for transactions without a seller is optional, but must be used in conjunction with the disclosure under § 1026.37(d)(2).

37(h)(2)(iii) Payoffs and payments.

1. Examples. Examples of the amounts incorporated in the total amount disclosed under § 1026.37(h)(2)(iii) include, but are not limited to: payoffs of existing liens secured by the property identified under § 1026.37(a)(6) such as existing mortgages, deeds of trust, judgments that have attached to the real property, mechanics' and materialmans' liens, and local, State and Federal tax liens; payments of unsecured outstanding debts of the consumer; and payments to other third parties for outstanding debts of the consumer (but not for settlement services) as required to be paid as a condition for the extension of credit.

The Rule: § 1026.37(h)(2)(iv) Cash to or from the consumer

(iv) *Cash to or from consumer.* The amount of cash or other funds due from or to the consumer and a statement of whether the disclosed estimated amount is due from or to the consumer, calculated by the sum of the amounts disclosed under paragraphs (h)(2)(i) through (iii), labeled "Cash to Close"; and

Official Comment - 37(h)(2)(iv)

37(h)(2)(iv) Cash to or from consumer.

1. *Method of indication*. The indication of whether the estimated cash to close is either due from or payable to the consumer is made by the use of check boxes, which is illustrated by form H-24(D) of appendix H to this part.

The Rule: § 1026.37(h)(2)(v) Closing costs financed

(v) *Closing costs financed.* The sum of the amounts disclosed under paragraphs (h)(2)(i) and (iii) of this section, but only to the extent that the sum is greater than zero and less than or equal to the sum disclosed under paragraph (g)(6) of this section, labeled "Closing Costs Financed (Paid from your Loan Amount)."

Official Comment - 37(h)(2)(v)

37(h)(2)(v) Closing costs financed.

1. *Limitation on amount disclosed*. The amount disclosed under § 1026.37(h)(2)(v) is limited to the total amount of closing costs disclosed under § 1026.37(g)(6), even if the difference between § 1026.37(h)(2)(i) and § 1026.37(h)(2)(iii) is greater than the amount disclosed under § 1026.37(g)(6).

Adjustable Payment (API) Table

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The Rule: § 1026.37(i)Adjustable payment table

(i) *Adjustable payment table.* If the periodic principal and interest payment may change after consummation but not based on an adjustment to the interest rate, or if the transaction is a seasonal payment product as described in paragraph (a)(10)(ii)(E) of this section, a separate table under the master heading "Closing Cost Details" required by paragraph (f) of this section and under the heading "Adjustable Payment (AP) Table" that contains the following information and satisfies the following requirements:

(1) *Interest only payments.* Whether the transaction is an interest only product pursuant to paragraph (a)(10)(ii)(B) of this section as an affirmative or negative answer to the question "Interest Only Payments?" and, if an affirmative answer is disclosed, the period during which interest only periodic payments are scheduled.

(2) *Optional payments.* Whether the terms of the legal obligation expressly provide that the consumer may elect to pay a specified periodic principal and interest payment in an amount other than the scheduled amount of the payment, as an affirmative or negative answer to the question "Optional Payments?" and, if an affirmative answer is disclosed, the period during which the consumer may elect to make such payments.

(3) *Step payments.* Whether the transaction is a step payment product pursuant to paragraph (a)(10)(ii)(C) of this section as an affirmative or negative answer to the question "Step Payments?" and, if an affirmative answer is disclosed, the period during which the regular periodic payments are scheduled to increase.

(4) *Seasonal payments.* Whether the transaction is a seasonal payment product pursuant to paragraph (a)(10)(ii)(E) of this section as an affirmative or negative answer to the question "Seasonal Payments?" and, if an affirmative answer is disclosed, the period during which periodic payments are not scheduled.

Official Comment - 37(i)(1) - (4)

1. When table is not permitted to be disclosed. The disclosure described in § 1026.37(i) is required only if the periodic principal and interest payment may change after consummation based on a loan term other than a change to the interest rate, or the transaction contains a seasonal payment product feature as described in § 1026.37(a)(10)(ii)(E). If the transaction does not contain such loan terms, this table shall not appear on the Loan Estimate.

2. Periods to be disclosed. Section 1026.37(i)(1) through (4) requires disclosure of the periods during which interest only, optional payment, step payment, and seasonal payment product features will be in effect. The periods required to be disclosed should be disclosed by describing the number of payments counting from the first periodic payment due after consummation. The period of seasonal payments required to be disclosed by § 1026.37(i)(4), to be clear and conspicuous, should be disclosed with a noun that identifies the unit-period, because such feature may apply on a regular basis during the loan term that does not depend on when regular periodic payments begin. The disclosures required by § 1026.37(i)(1) through (4) may include abbreviations to fit in the space provided for the information on form H-24, provided the information is disclosed in a clear and conspicuous manner. For example:

i. Period from date of consummation. If a loan has an interest only period for the first 60 regular periodic payments due after consummation, the disclosure states "for your first 60 payments."

ii. Period during middle of loan term. If the loan has an interest only period between the 61st and 85th payments, the disclosure states "from your 61st to 85th payment."

iii. Multiple successive periods. If there are multiple periods during which a certain adjustable payment term applies, such as a period of step payments that occurs from the first through 12th payments, does not occur from the 13th through 24th payments, and occurs again from the 25th through 36th payments, the period disclosed is the entire span of all such periods. Accordingly, such period is disclosed as "for your first 36 payments."

iv. Seasonal payments. For a seasonal payment product with a unit-period of a month that does not require periodic payments for the months of June, July, and August each year during the loan term, because such feature depends on calendar months and not on when regular periodic payments begin, the period is disclosed as "from June to August." For a transaction with a quarterly unit-period that does not require a periodic payment every third quarter during the loan term and does not depend on calendar months, the period is disclosed as "every third payment." In the same transaction, if the seasonal payment feature ends after the 20th quarter, the period is disclosed as "every quarter until the 20th quarter." As described above in this comment 37(i)-2, the creditor may abbreviate "quarter" to "quart." or "Q."

The Rule: § 1026.37(i)(5) Principal and interest payments

(5) *Principal and interest payments.* Under the subheading "Principal and Interest Payments," which subheading is immediately preceded by the applicable unit-period, the following information:

(i) The number of the payment of the first periodic principal and interest payment that may change under the terms of the legal obligation disclosed under this paragraph (i), counting from the first periodic payment due after consummation, and the amount or range of the periodic principal and interest payment for such payment, labeled "First Change/Amount";

(ii) The frequency of subsequent changes to the periodic principal and interest payment, labeled "Subsequent Changes"; and

(iii) The maximum periodic principal and interest payment that may occur during the term of the transaction, and the first periodic principal and interest payment that can reach such maximum, counting from the first periodic payment due after consummation, labeled "Maximum Payment."

Official Comment - 37(i)(5)

37(i)(5) Principal and interest payments.

1. Statement of periodic payment frequency. The subheading required by § 1026.37(i)(5) must include the unit-period of the transaction, such as "quarterly," "bi-weekly," or "annual." This unit-period should be the same as disclosed under § 1026.37(b)(3). See § 1026.37(o)(5)(i).

2. Initial payment adjustment unknown. The disclosure required by § 1026.37(i)(5) must state the number of the first payment for which the regular periodic principal and interest payment may change. This payment is typically set forth in the legal obligation. However, if the exact payment number of the first adjustment is not known at the time the creditor provides the Loan Estimate, the creditor must disclose the earliest possible payment that may change under the terms of the legal obligation, based on the information available to the creditor at the time, as the initial payment number and amount.

3. Subsequent changes. The disclosure required by § 1026.37(i)(5) must state the frequency of adjustments to the regular periodic principal and interest payment after the initial adjustment, if any, expressed in years, except if adjustments are more frequent than once every year, in which case the disclosure should be expressed as payments. If there is only one adjustment of the periodic payment under the terms of the legal obligation (for example, if the loan has an interest only period for the first 60 payments and there are no adjustments to the payment after the end of the interest only period), the disclosure should state: "No subsequent changes." If the loan has graduated increases in the regular periodic payment every 12th payment, the disclosure should state: "Every year." If the frequency of adjustments to the periodic payment may change under the terms of the legal obligation, the disclosure should state the smallest period of adjustments that may occur. For example, if an increase in the periodic payment is scheduled every sixth payment for 36 payments, and then every 12th payment for the next 24 payments, the disclosure should state: "Every 6th payment."

4. Maximum payment. The disclosure required by § 1026.37(i)(5) must state the larger of the maximum scheduled or maximum potential amount of a regular periodic principal and interest

payment under the terms of the legal obligation, as well as the payment number of the first periodic principal and interest payment that can reach such amount. If the disclosed payment is scheduled, § 1026.37(i)(5) requires that the disclosure state the payment number when such payment is reached with the preceding text, "starting at." If the disclosed payment is only potential, as may be the case for a loan that permits optional payments, the disclosure states the earliest payment number when such payment can be reached with the preceding text, "as early as." Section 1026.37(i)(5) requires that the first possible periodic principal and interest payment that can reach the maximum be disclosed. For example, for a fixed interest rate optional-payment loan with scheduled payments that result in negative amortization under the terms of the legal obligation, the maximum periodic payment disclosed should be based on the consumer having elected to make the periodic payments that would increase the principal balance to the maximum amount at the latest time possible before the loan begins to fully amortize, which would cause the periodic principal and interest payment to be the maximum possible. For example, if the earliest payment that could reach the maximum principal balance was the 41st payment at which time the loan would begin to amortize and the periodic principal and interest payment would be recalculated, but the last payment that permitted the principal balance to increase was the 60th payment, the disclosure required by § 1026.37(i)(5) must assume the consumer only reaches the maximum principal balance at the 60th payment because this would result in the maximum possible principal and interest payment under the terms of the legal obligation. The disclosure must state the maximum periodic principal and interest payment based on this assumption and state "as early as the 61st payment."

5. Payments that do not pay principal. Although the label of the disclosure required by § 1026.37(i)(5) is "Principal and Interest Payments," and the section refers to periodic principal and interest payments, it includes a scheduled periodic payment that only covers some or all of the interest that is due and not any principal (i.e., an interest only or negatively amortizing payment).

Adjustable Interest Rate (AIR) Table

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The Rule: § 1026.37(j) Adjustable interest rate table

(j) *Adjustable interest rate table.* If the interest rate may increase after consummation, a separate table under the master heading "Closing Cost Details" required by paragraph (f) of this section and under the heading "Adjustable Interest Rate (AIR) Table" that contains the following information and satisfies the following requirements:

(1) *Index and margin.* If the interest rate may adjust and the product type is not a "Step Rate" under paragraph (a)(10)(i)(B) of this section, the index upon which the adjustments to the interest rate are based and the margin that is added to the index to determine the interest rate, if any, labeled "Index + Margin."

Official Comment - 37(j)(1)

1. When table is not permitted to be disclosed. The disclosure described in § 1026.37(j) is required only if the interest rate may increase after consummation, either based on changes to an index or scheduled changes to the interest rate. If the legal obligation does not permit the interest rate to adjust after consummation, such as for a "Fixed Rate" product under § 1026.37(a)(10), this table is not permitted to appear on the Loan Estimate. The creditor may not disclose a blank table or a table with "N/A" inserted within each row.

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" may be disclosed instead of London Interbank Offered 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%."

The Rule: § 1026.37(j)(2) Increases in interest rate

(2) *Increases in interest rate.* If the product type is a "Step Rate" and not also an "Adjustable Rate" under paragraph (a)(10)(i)(A) of this section, the maximum amount of any adjustments to the interest rate that are scheduled and pre-determined, labeled "Interest Rate Adjustments."

Official Comment - 37(j)(2)

37(j)(2) Increases in interest rate.

1. Adjustments not based on an index. If the legal obligation includes both adjustments to the interest rate based on an external index and scheduled and pre-determined adjustments to the interest rate, such as for a "Step Rate" product under § 1026.37(a)(10), the disclosure required by § 1026.37(j)(1), and not § 1026.37(j)(2), must be provided pursuant to § 1026.37(j)(2). The disclosure described in § 1026.37(j)(2) is stated only if the product type does not permit the interest rate to adjust based on an external index.

The Rule: § 1026.37(j)(3) Initial Interest rate

(3) *Initial interest rate.* The interest rate at consummation of the loan transaction, labeled "Initial Interest Rate."

Official Comment - 37(j)(3)

37(j)(3) Initial interest rate.

1. Interest rate at consummation. In all cases, the interest rate in effect at consummation must be disclosed as the initial interest rate, even if it will apply only for a short period, such as one month.

The Rule: § 1026.37(j)(4) Minimum and maximum interest rate

(4) *Minimum and maximum interest rate.* The minimum and maximum interest rates for the loan, after any introductory period expires, labeled "Minimum/Maximum Interest Rate."

Official Comment - 37(j)(4)

37(j)(4) Minimum and maximum interest rate.

1. Minimum interest rate. The minimum interest rate required to be disclosed by § 1026.37(j)(4) is the minimum interest rate that may occur at any time during the term of the transaction, after any introductory or "teaser" interest rate expires, under the terms of the legal obligation, such as an interest rate "floor." If the terms of the legal obligation do not state a minimum interest rate,

the minimum interest rate that applies to the transaction under applicable law must be disclosed. If the terms of the legal obligation do not state a minimum interest rate, and no other minimum interest rate applies to the transaction under applicable law, the amount of the margin is disclosed.

2. Maximum interest rate. The maximum interest rate required to be disclosed pursuant to § 1026.37(j)(4) is the maximum interest rate permitted under the terms of the legal obligation, such as an interest rate "cap." If the terms of the legal obligation do not specify a maximum interest rate, the maximum interest rate permitted by applicable law, such as State usury law, must be disclosed.

The Rule: § 1026.37(j)(5) Frequency of adjustments

(5) *Frequency of adjustments.* The following information, under the subheading "Change Frequency":

(i) The month when the interest rate after consummation may first change, calculated from the date interest for the first scheduled periodic payment begins to accrue, labeled "First Change"; and

(ii) The frequency of interest rate adjustments after the initial adjustment to the interest rate, labeled, "Subsequent Changes."

Official Comment - 37(j)(5)

37(j)(5) Frequency of adjustments.

1. Exact month unknown. The disclosure required by § 1026.37(j)(5) must state the first month for which the interest rate may change. This month is typically scheduled in the terms of the legal obligation. However, if the exact month is not known at the time the creditor provides the Loan Estimate, the creditor must disclose the earliest possible month under the terms of the legal obligation, based on the best information available to the creditor at the time.

The Rule: § 1026.37(j)(6) Limits on interest rate changes

(6) *Limits on interest rate changes.* The following information, under the subheading "Limits on Interest Rate Changes":

(i) The maximum possible change for the first adjustment of the interest rate after consummation, labeled "First Change"; and

(ii) The maximum possible change for subsequent adjustments of the interest rate after consummation, labeled "Subsequent Changes."

Official Comment - 37(j)(6)

37(j)(6) Limits on interest rate changes.

1. Different limits on subsequent interest rate adjustments. If more than one limit applies to the amount of adjustments to the interest rate after the initial adjustment, the greatest limit on subsequent adjustments must be disclosed. For example, if the initial interest rate adjustment is capped at two percent, the second adjustment is capped at two and a half percent, and all subsequent adjustments are capped at three percent, the disclosure required by § 1026.37(j)(6)(ii) states "3%."

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Contact Information

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The Rule: § 1026.37(k) Contact Information

(k) *Contact information*. Under the master heading, "Additional Information About This Loan," the following information:

(1) The name and Nationwide Mortgage Licensing System and Registry identification number (NMLSR ID) (labeled "NMLS ID/License ID ") for the creditor (labeled "Lender") and the mortgage broker (labeled "Mortgage Broker"), if any. In the event the creditor or the mortgage broker has not been assigned an NMLSR ID, the license number or other unique identifier issued by the applicable jurisdiction or regulating body with which the creditor or mortgage broker is licensed and/or registered shall be disclosed, with the abbreviation for the State of the applicable jurisdiction or regulatory body stated before the word "License" in the label, if any;

(2) The name and NMLSR ID of the individual loan officer (labeled "Loan Officer" and "NMLS ID/License ID," respectively) of the creditor and the mortgage broker, if any, who is the primary contact for the consumer. In the event the individual loan officer has not been assigned an NMLSR ID, the license number or other unique identifier issued by the applicable jurisdiction or regulating body with which the loan officer is licensed and/or registered shall be disclosed with

the abbreviation for the State of the applicable jurisdiction or regulatory body stated before the word "License" in the label, if any; and

(3) The email address and telephone number of the loan officer (labeled "Email" and"Phone," respectively).

Official Comment - 37(k) (1) - (3)

1. NMLSR ID. Section 1026.37(k) requires the disclosure of an Nationwide Mortgage Licensing System and Registry (NMLSR ID) number for each creditor, mortgage broker, and loan officer identified on the Loan Estimate. The NMLSR ID is a unique number or other identifier generally assigned to individuals registered or licensed through NMLSR to provide loan originating services. For more information, see the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (SAFE Act) sections 1503(3) and (12) and 1504 (12 U.S.C. 5102(3) and (12) and 5103), and its implementing regulations (i.e., 12 CFR 1007.103(a) and 1008.103(a)(2)). An entity may also have an NMLSR ID. Thus, if the creditor, mortgage broker, or loan officer has obtained an NMLSR ID, the NMLSR IDs must be provided in the disclosures required by § 1026.37(k)(1) and (2).

2. License number or unique identifier. Section 1026.37(k)(1) and (2) requires the disclosure of a license number or unique identifier for the creditor, mortgage broker, and loan officer if such entity or individual has not obtained an NMLSR ID. In such event, if the applicable State, locality, or other regulatory body with responsibility for licensing and/or registering such entity's or individual's business activities has issued a license number or other unique identifier to such entity or individual, that number is disclosed. In addition, § 1026.37(k)(1) and (2) require the abbreviation of the State of the jurisdiction or regulatory body that issued such license or registration is required to be included before the word "License" in the label required by § 1026.37(k)(1) and (2). If no such license or registration is required to be disclosed, such as if an NMLSR number is disclosed, the space provided for such an abbreviation in form H-24 of appendix H to this part may be left blank. A U.S. Postal Service State abbreviation complies with § 1026.37(k)(1) and (2), if applicable.

3. Contact. Section 1026.37(k)(2) requires the disclosure of the name and NMLSR ID of the person who is the primary contact for the consumer, labeled "Loan Officer." The loan officer is generally the natural person employed by the creditor or mortgage broker disclosed under § 1026.37(k)(1) who interacts most frequently with the consumer and who has an NMLSR ID or, if

none, a license number or other unique identifier to be disclosed under § 1026.38(k)(2), as applicable.

4. Email address and phone number. Section 1026.37(k)(3) requires disclosure of the loan officer's email address and phone number. Disclosure of a general number or email address for the loan officer's lender or mortgage broker, as applicable, satisfies this requirement if no such information is generally available for such person.

Comparisons

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The Rule: § 1026.37(l) Comparisons

(l) *Comparisons.* Under the master heading, "Additional Information About This Loan" required by paragraph (k) of this section, in a separate table under the heading "Comparisons" along with the statement "Use these measures to compare this loan with other loans":

The Rule: § 1026.37(l)(1) In five years

(1) *In five years.* Using the label "In 5 Years":

(i) The total principal, interest, mortgage insurance, and loan costs scheduled to be paid through the end of the 60th month after the due date of the first periodic payment, expressed as a dollar amount, along with the statement "Total you will have paid in principal, interest, mortgage insurance, and loan costs"; and

Official Comment - 37(l)(1)

37(l)(1) In five years.

1. Loans with terms of less than five years. In transactions with a scheduled loan term of less than 60 months, to comply with § 1026.37(l)(1), the creditor discloses the amounts paid through the end of the loan term.

Paragraph 37(l)(1)(i).

Calculation of total payments in five years. The amount disclosed pursuant to § 1026.37(l)(1)(i) is the sum of principal, interest, mortgage insurance, and loan costs scheduled to be paid through the end of the 60th month after the due date of the first periodic payment. For guidance on how to calculate interest for mortgage loans that are Adjustable Rate products under § 1026.37(a)(10)(i)(A) for purposes of § 1026.37(l)(1)(i), see comment 17(c)(1)-10. In addition, for purposes of § 1026.37(l)(1)(i), the creditor should assume that the consumer makes

payments as scheduled and on time. For purposes of § 1026.37(l)(1)(i), mortgage insurance means "mortgage insurance or any fractional equivalent" as defined pursuant to comment 37(c)(1)(i)(C)-1 and includes prepaid or escrowed mortgage insurance. Loan costs are those costs disclosed pursuant to § 1026.37(f).

2. Negative amortization loans. For loans that have a negative amortization feature under § 1026.37(a)(10)(ii)(A), the creditor calculates the total payments in five years using the scheduled payments, even if it is a negatively amortizing payment amount, until the consumer must begin making fully amortizing payments under the terms of the legal obligation.

The Rule: § 1026.37(l)(1)(ii)

(ii) The principal scheduled to be paid through the end of the 60th month after the due date of the first periodic payment, expressed as a dollar amount, along with the statement "Principal you will have paid off."

Official Comment - 37(l) (1)

Paragraph 37(l)(1)(ii).

1. Calculation of principal paid in five years. The disclosure required by § 1026.37(l)(1)(ii) is calculated in the same manner as the disclosure required by § 1026.37(l)(1)(i), except that the disclosed amount reflects only the total payments to principal through the end of the 60th month after the due date of the first periodic payment.

The Rule: § 1026.37(l)(2) Annual Percentage rate

(2) *Annual percentage rate.* The "Annual Percentage Rate," using that term and the abbreviation "APR" and expressed as a percentage, and the following statement: "Your costs over the loan term expressed as a rate. This is not your interest rate."

The Rule: § 1026.37(l)(3) Total Interest percentage

(3) *Total interest percentage.* The total amount of interest that the consumer will pay over the life of the loan, expressed as a percentage of the amount of credit extended, using the term "Total Interest Percentage," the abbreviation "TIP," and the statement "The total amount of interest that you will pay over the loan term as a percentage of your loan amount."

Official Comment - 37(l) (3)

37(l)(3) Total interest percentage.

1. General. When calculating the total interest percentage, the creditor assumes that the consumer will make each payment in full and on time, and will not make any additional payments.

2. Adjustable rate and step rate mortgages. For Adjustable Rate products under § 1026.37(a)(10)(i)(A), § 1026.37(l)(3) requires that the creditor compute the total interest percentage in accordance with comment 17(c)(1)-10. For Step Rate products under § 1026.37(a)(10)(i)(B), § 1026.37(l)(3) requires that the creditor compute the total interest percentage in accordance with § 1026.17(c)(1) and its associated commentary.

3. Negative amortization loans. For loans that have a negative amortization feature under § 1026.37(a)(10)(ii)(A), § 1026.37(l)(3) requires that the creditor compute the total interest percentage using the scheduled payment, even if it is a negatively amortizing payment amount, until the consumer must begin making fully amortizing payments under the terms of the legal obligation.

Other Considerations

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The Rule: § 1026.37(m)(1) Other Considerations

(m) *Other considerations*. Under the master heading "Additional Information About This Loan" required by paragraph (k) of this section and under the heading "Other Considerations":

(1) *Appraisal*. For transactions subject to 15 U.S.C. 1639h or 1691(e), as implemented in this part or Regulation B, 12 CFR part 1002, respectively, a statement, labeled "Appraisal," that: (i) The creditor may order an appraisal to determine the value of the property identified in paragraph (a)(6) of this section and may charge the consumer for that appraisal;

(ii) The creditor will promptly provide the consumer a copy of any appraisal, even if the transaction is not consummated; and

(iii) The consumer may choose to pay for an additional appraisal of the property for the consumer's use.

Official Comment - 37(m)(1)

37(m) Other considerations.

37(m)(1) Appraisal.

1. *Applicability*. The disclosure required by § 1026.37(m)(1) is only applicable to transactions subject to § 1026.19(e) that are also subject either to 15 U.S.C. 1639h or 1691(e) or both, as implemented by this part or Regulation B, 12 CFR part 1002, respectively. Accordingly, if a transaction is not also subject to either or both of these provisions, as implemented by this part or Regulation B, respectively, the disclosure required by § 1026.37(m)(1) may be omitted from the Loan Estimate as described by comment 37-1 as illustrated by form H-24 of appendix H to this part. For transactions subject to section 1639h but not section 1691(e), the creditor may delete the word "promptly" from the disclosure required by § 1026.37(m)(1)(ii).

2. *Consummation*. Section 1026.37(m)(1) requires the creditor to disclose that it will provide a copy of any appraisal, even if the transaction is not consummated. On form H-24, the disclosure required by § 1026.37(m)(1) states that the creditor will provide an appraisal, even if the "loan does not close." Pursuant to § 1026.37(o)(3), the disclosure required by § 1026.37(m)(1) is that illustrated by form H-24.

The Rule: § 1026.37(m)(2) Assumption

(2) *Assumption.* A statement of whether a subsequent purchaser of the property may be permitted to assume the remaining loan obligation on its original terms, labeled "Assumption."

Official Comment - 37(m)(2)

37(m)(2) Assumption.

1. Disclosure. Section 1026.37(m)(2) requires the creditor to disclose whether or not a third party may be allowed to assume the loan on its original terms if the property is sold or transferred by the consumer. In many cases, the creditor cannot determine, at the time the disclosure is made, whether a loan may be assumable at a future date on its original terms. For example, the assumption clause commonly used in mortgages sold to the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation conditions an assumption on a variety of factors, such as the creditworthiness of the subsequent borrower, the potential for impairment of the creditor's security, and the execution of an assumption agreement by the subsequent borrower. If the creditor can determine that such assumption is not permitted, the creditor complies with § 1026.37(m)(2) by disclosing that the loan is not assumable. In all other situations, including where assumption of a loan is permitted or is dependent on certain conditions or factors, or uncertainty exists as to the future assumability of a mortgage loan, the

creditor complies with § 1026.37(m)(2) by disclosing that, under certain conditions, the creditor may allow a third party to assume the loan on its original terms.

2. Original terms. For purposes of § 1026.37(m)(2), the imposition of an assumption fee is not a departure from the original terms of the obligation but a modification of the legal obligation, such as a change in the contract interest rate, represents a departure from the original terms.

37(m)(3) Homeowner's insurance.

1. Optional disclosure. Section 1026.37(m)(3) provides that creditors may, but are not required to, disclose a statement of whether homeowner's insurance is required on the property and whether the consumer may choose the insurance provider, labeled "Homeowner's Insurance."

2. Relation to the finance charge. Section 1026.4(d)(2) describes the conditions under which a creditor may exclude premiums for homeowner's insurance from the finance charge. For transactions subject to § 1026.19(e), a creditor satisfies § 1026.4(d)(2)(i) by disclosing the statement described in § 1026.37(m)(3).

The Rule: § 1026.37(m)(3) Homeowner's Insurance

(3) *Homeowner's insurance*. At the option of the creditor, a statement that homeowner's insurance is required on the property and that the consumer may choose the insurance provider, labeled "Homeowner's Insurance."

The Rule: § 1026.37(m)(4) Late Payment

(4) *Late payment*. A statement detailing any charge that may be imposed for a late payment, stated as a dollar amount or percentage charge of the late payment amount, and the number of days that a payment must be late to trigger the late payment fee, labeled "Late Payment."

Official Comment - 37(m)(4)

37(m)(4) Late payment.

1. Definition. Section 1026.37(m)(4) requires a disclosure if charges are added to an individual delinquent installment by a creditor that otherwise considers the transaction ongoing on its original terms. Late payment charges do not include: (i) the right of acceleration; (ii) fees imposed for actual collection costs, such as repossession charges or attorney's fees; (iii) referral and extension charges; or (iv) the continued accrual of simple interest at the contract rate after

the payment due date. However, an increase in the interest rate on account of a late payment by the consumer is a late payment charge to the extent of the increase.

2. Applicability of State law. Many State laws authorize the calculation of late charges as either a percentage of the delinquent payment amount or a specified dollar amount, and permit the imposition of the lesser or greater of the two calculations. The language provided in the disclosure may reflect the requirements and alternatives allowed under State law.

The Rule: § 1026.37(m)(5) Refinance

(5) *Refinance*. The following statement, labeled "Refinance": "Refinancing this loan will depend on your future financial situation, the property value, and market conditions. You may not be able to refinance this loan."

The Rule: § 1026.37(m)(6) Servicing

(6) *Servicing*. A statement of whether the creditor intends to service the loan or transfer the loan to another servicer, labeled "Servicing."

Official Comment - 37(m)(6)

37(m)(6) Servicing.

1. Creditor's intent. Section 1026.37(m)(6) requires the creditor to disclose whether it intends to service the loan directly or transfer servicing to another servicer after consummation. A creditor complies with § 1026.37(m)(6) if the disclosure reflects the creditor's intent at the time the Loan Estimate is issued.

37(m)(7) Liability after foreclosure.

1. When statement is not permitted to be disclosed. The disclosure described by § 1026.37(m)(7) is required under the condition specified by § 1026.37(m)(7), specifically, if the purpose of the credit transaction is a refinance under § 1026.37(a)(9)(ii). Under any other conditions, this statement is not permitted to appear in the Loan Estimate.

The Rule: § 1026.37(m)(7) Liability after foreclosure

(7) *Liability after foreclosure*. If the purpose of the credit transaction is to refinance an extension of credit as described in paragraph (a)(9)(ii) of this section, a brief statement that certain State law protections against liability for any deficiency after foreclosure may be lost, the potential consequences

of the loss of such protections, and a statement that the consumer should consult an attorney for additional information, labeled "Liability after Foreclosure."

The Rule: § 1026.37(m)(8) Construction Loans

(8) *Construction loans.* In transactions involving new construction, where the creditor reasonably expects that settlement will occur more than 60 days after the provision of the loan estimate, at the creditor's option, a clear and conspicuous statement that the creditor may issue a revised disclosure any time prior to 60 days before consummation, pursuant to
§ 1026.19(e)(3)(iv)(F).

Official Comment - 37(m)(8)

1. Clear and conspicuous statement regarding redisclosure for construction loans. For construction loans in transactions involving new construction, where the creditor reasonably expects the settlement date to be 60 days or more after the provision of the disclosures required under § 1026.19(e)(1)(i), providing the statement, "You may receive a revised Loan Estimate at any time prior to 60 days before consummation" under the master heading "Additional Information About This Loan" and the heading "Other Considerations" pursuant to § 1026.37(m)(8) satisfies the requirements set forth in § 1026.19(e)(3)(iv)(F) that the statement be made clearly and conspicuously on the disclosure.

Signatures

Back to Form

The Rule: § 1026.37(n) Signature statement

(n) *Signature statement*.

(1) At the creditor's option, under the master heading required by paragraph (k) of this section and under the heading "Confirm Receipt," a line for the signatures of the consumers in the transaction. If the creditor includes a line for the consumer's signature, the creditor must disclose the following above the signature line: "By signing, you are only confirming that you have received this form. You do not have to accept this loan because you have signed or received this form."

(2) If the creditor does not include a line for the consumer's signature, the creditor must disclose the following statement under the heading "Other Considerations" required by paragraph (m) of this section, labeled "Loan Acceptance": "You do not have to accept this loan because you have received this form or signed a loan application."

Official Comment - 37(n)

1. Signature line optional. Whether a signature line is provided under § 1026.37(n) is determined solely by the creditor. If a signature line is provided, however, the disclosure must include the statement required by § 1026.37(n)(1).

2. Multiple consumers. If there is more than one consumer who will be obligated in the transaction, the first consumer signs as the applicant and each additional consumer signs as a co- applicant. If there is not enough space under the heading "Confirm Receipt" to provide signature lines for every consumer in the transaction, the creditor may add additional signature pages, as needed, at the end of the form for the remaining consumers' signatures. However, the creditor is required to disclose the heading and statement required by § 1026.37(n)(1) on such additional pages.

3. Consumer's name. The creditor may insert the consumer's name under the signature line, rather than using the designation "Applicant" or "Co-Applicant" as illustrated in form H-24 of appendix H to this part, but is not required to do so pursuant to § 1026.37(n)(1).

Form of Disclosures – General Rule

Back to Form

The Rule: § 1026.37(o)(1) Form of disclosures - General requirements

(o) *Form of disclosures.*

1) *General requirements.*

(i) The creditor shall make the disclosures required by this section clearly and conspicuously in writing, in a form that the consumer may keep. The disclosures also shall be grouped together and segregated from everything else.

(ii) Except as provided in paragraph (o)(5) of this section, the disclosures shall contain only the information required by paragraphs (a) through (n) of this section and shall be made in the same order, and positioned relative to the master headings, headings, subheadings, labels, and similar designations in the same manner, as shown in form H-24, set forth in appendix H to this part.

Official Comment - 37(o)(1)

37(o)(1) General requirements.

1. Clear and conspicuous; segregation. The clear and conspicuous standard requires that the disclosures required by § 1026.37 be legible and in a readily understandable form. Section 1026.37(o)(1)(i) requires that the disclosures be grouped together and segregated from everything else. For example, creditors may not add additional pages in between the pages of the Loan Estimate, or attach to the Loan Estimate additional pages that are not provided for under § 1026.37 after the last page of the Loan Estimate. As required by § 1026.37(o)(3)(i), the disclosures for any transaction that is a federally related mortgage loan under Regulation X, 12 CFR 1024.2, must be made using the standard form H-24 of appendix H to this part. Accordingly, use of that form constitutes compliance with the clear and conspicuous and segregation requirements of § 1026.37(o). In addition, § 1026.37(o)(1)(ii) requires creditors to disclose on the Loan Estimate only the information required by § 1026.37(a) through (n), except as otherwise provided by § 1026.37(o), and in the same order, and positioned relative to the master headings, headings, subheadings, labels, and similar designations in the same manner, as shown in form H-24, set forth in appendix H to this part. For example, creditors may not use form H-24, but include in the Loan Terms table under the subheading "Can this amount increase after closing?" information that is not required by § 1026.37(b)(6).

2. Balloon payment financing with leasing characteristics. In certain credit sale or loan transactions, a consumer may reduce the dollar amount of the payments to be made during the transaction by agreeing to make, at the end of the loan term, a large final payment based on the expected residual value of the property. The consumer may have a number of options with respect to the final payment, including, among other things, retaining the property and making the final payment, refinancing the final payment, or transferring the property to the creditor in lieu of the final payment. Such transactions may have some of the characteristics of lease transactions subject to Regulation M (12 CFR part 1013), but are considered credit transactions where the consumer assumes the indicia of ownership, including the risks, burdens, and benefits of ownership, upon consummation. These transactions are governed by the disclosure requirements of this part instead of Regulation M. Under § 1026.37(o)(1)(ii), creditors may not include any additional information with the disclosures required by § 1026.37, except as provided in § 1026.37(o)(5). Thus, the disclosures must show the large final payment as a balloon

payment in the projected payments table required by § 1026.37(c) and should not, for example, reflect the other options available to the consumer at maturity.

Form of Disclosures – Headings and Labels

Back to Form

The Rule: § 1026.37(o)(2) Headings and labels

(2) *Headings and labels.* If a master heading, heading, subheading, label, or similar designation contains the word "estimated" or a capital letter designation in form H-24, set forth in appendix H to this part, that heading, label, or similar designation shall contain the word "estimated" and the applicable capital letter designation.

Form of Disclosures - Form

Back to Form

The Rule: § 1026.37(o)(3) Form

(3) *Form.* Except as provided in paragraph (o)(5) of this section: (i) For a transaction subject to § 1026.19(e) that is a federally related mortgage loan, as defined in Regulation X, 12 CFR 1024.2, the disclosures must be made using form H-24, set forth in appendix H to this part. (ii) For any other transaction subject to this section, the disclosures must be made with headings, content, and format substantially similar to form H-24, set forth in appendix H to this part. (iii) The disclosures required by this section may be provided to the consumer in electronic form, subject to compliance with the consumer consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (15 U.S.C. 7001 *et seq.*).

Form of Disclosures - Rounding

Back to Form

The Rule: § 1026.37(o)(4) Rounding

(4) *Rounding.*

(i) *Nearest dollar.*

(A) The dollar amounts required to be disclosed by paragraphs (b)(6) and (7), (c)(1)(iii), (c)(2)(ii) and (iii), (c)(4)(ii), (f), (g), (h), (i), and (l) of this section shall be rounded to the nearest whole dollar, except that the per diem amount required to be disclosed by paragraph (g)(2)(iii) of this section and the monthly amounts required to be disclosed by paragraphs (g)(3)(i) through (iii) and (g)(3)(v) of this section shall not be rounded.

(B) The dollar amount required to be disclosed by paragraph (b)(1) of this section shall not be rounded, and if the amount is a whole number then the amount disclosed shall be truncated at the decimal point.

(C) The dollar amounts required to be disclosed by paragraph (c)(2)(iv) of this section shall be rounded to the nearest whole dollar, if any of the component amounts are required by paragraph (o)(4)(i)(A) of this section to be rounded to the nearest whole dollar.

(ii) *Percentages*. The percentage amounts required to be disclosed under paragraphs (b)(2) and (6), (f)(1)(i), (g)(2)(iii), (j), and (l)(3) of this section shall not be rounded and shall be disclosed up to two or three decimal places. The percentage amount required to be disclosed under paragraph (l)(2) of this section shall be disclosed up to three decimal places. If the amount is a whole number then the amount disclosed shall be truncated at the decimal point.

Official Comment - 37(o)(4)

37(o)(4) Rounding.

1. Rounding. Consistent with § 1026.2(b)(4), except as otherwise provided in § 1026.37(o)(4), any amount required to be disclosed by § 1026.37 is not permitted to be rounded and is disclosed using decimal places where applicable, unless otherwise provided.

2. Calculations. If a dollar amount that is required to be rounded by § 1026.37(o)(4)(i) on the Loan Estimate is a total of one or more dollar amounts that are not required or permitted to be rounded, the total amount must be rounded consistent with § 1026.37(o)(4)(i), but such component amounts used in the calculation must use such unrounded numbers. In addition, if any such unrounded component amount is required to be disclosed under § 1026.37, consistent with § 1026.2(b)(4), it should be disclosed as an unrounded number. If an amount that is required to be rounded by § 1026.37(o)(4)(i) on the Loan Estimate is a total of one or more components that are also required to be rounded by § 1026.37(o)(4)(i), the total amount must be calculated using such rounded amounts. For example, the subtotals required to be disclosed by § 1026.37(f)(1), (2), and (3) are calculated using the rounded amounts disclosed under those subsections. See also comment 37(o)(4)(i)(C)-1. However, the amounts required to be disclosed by § 1026.37(l) reference actual amounts for their components, rather than other amounts disclosed under § 1026.37 and rounded pursuant to § 1026.37(o)(4)(i), and thus, they are calculated using unrounded numbers.

37(o)(4)(i) Nearest dollar. Paragraph 37(o)(4)(i)(A).

1. Rounding of dollar amounts. Section 1026.37(o)(4)(i)(A) requires that certain dollar amounts be rounded to the nearest whole dollar. For example, pursuant to § 1026.37(o)(4)(i)(A), periodic mortgage insurance payments of $164.50 are required to be disclosed under § 1026.37(c)(2)(ii) as $165. However, if the periodic mortgage insurance payment equaled $164.49, the creditor would disclose $164.

Paragraph 37(o)(4)(i)(B).

1. Rounding of loan amount. Section 1026.37(o)(4)(i)(B) requires the loan amount to be disclosed truncated at the decimal place if the loan amount is a whole number. For example, if § 1026.37(b)(1) requires disclosure of a loan amount of $481,516.23, the creditor discloses the amount as $481,516.23. However, if the loan amount required to be disclosed were $481,516.00, the creditor would disclose $481,516.

Paragraph 37(o)(4)(i)(C).

1. Rounding of the total monthly payment. Section 1026.37(o)(4)(i)(C) requires the total monthly payment amount disclosed under § 1026.37(c)(2)(iv) to be rounded if any of its components are rounded. For example, if the total monthly payment disclosed under § 1026.37(c)(2)(iv) is composed of a $2,000.49 periodic principal and interest payment required to be disclosed by § 1026.37(c)(2)(i) and a $164.49 periodic mortgage insurance payment required to be disclosed by § 1026.37(c)(2)(ii), the creditor would calculate the total monthly payment by adding the exact periodic principal and interest payment of $2,000.49 and the rounded periodic mortgage insurance payment of $164, round the total, and disclose $2,164.

37(o)(4)(ii) Percentages.

1. Decimal places. Section 1026.37(o)(4)(ii) requires the percentage amounts disclosed to be truncated at the decimal point, if the amount is a whole number. For example, a 7.005 percent annual percentage rate is disclosed in compliance with § 1026.37(o)(4)(ii) as "7.005%," but a 7.000 percent annual percentage rate would be disclosed as "7%." If any percentage amounts required to be disclosed contain more than three decimal places, they shall be rounded to three decimal places.

The Rule: § 1026.37(o)(5) Exceptions

(i) *Unit-period.* Wherever the form or this section uses "monthly" to describe the frequency of any payments or uses "month" to describe the applicable unit-period, the creditor shall substitute the appropriate term to reflect the fact that the transaction's terms provide for other than monthly periodic payments, such as bi-weekly or quarterly payments.

(ii) *Translation.* The form may be translated into languages other than English, and creditors may modify form H-24 of appendix H to this part to the extent that translation prevents the headings, labels, designations, and required disclosure items under this section from fitting inthe space provided on form H-24

(iii) *Logo or slogan.* The creditor providing the form may use a logo for, and include a slogan with, the information required by paragraph (a)(3) of this section in any font size or type, provided that such logo or slogan does not cause the information required by paragraph (a)(3) of this section to exceed the space provided for that information, as illustrated in form H-24 of appendix H to this part. If the creditor does not use a logo for the information required by paragraph (a)(3) of this section, the information shall be disclosed in a similar format as form H-24.

(iv) *Business card.* The creditor may physically attach a business card over the information required to be disclosed by paragraph (a)(3) of this section.

(v) *Administrative information.* The creditor may insert at the bottom of each page under the disclosures required by this section as illustrated by form H-24 of appendix H to this part, any administrative information, text, or codes that assist in identification of the form or the information disclosed on the form, provided that the space provided on form H-24 of appendix H to this part for any of the information required by this section is not altered.

Closing Disclosure - Page 1.

Closing Disclosure

This form is a statement of final loan terms and closing costs. Compare this document with your Loan Estimate.

Closing Information — *Closing*

Date Issued
Closing Date
Disbursement Date
Settlement Agent
File #
Property

Sale Price

Transaction Information — *Transaction*

Borrower

Seller

Lender

Loan Information — *Transaction and Loan*

Loan Term
Purpose
Product

Loan Type ☐ Conventional ☐ FHA ☐ VA ☐ _____

Loan ID #
MIC #

Loan Terms — *Loan Terms*

Loan Terms	**Can this amount increase after closing?**
Loan Amount	
Interest Rate	
Monthly Principal & Interest *See Projected Payments below for your Estimated Total Monthly Payment*	
	Does the loan have these features?
Prepayment Penalty	
Balloon Payment	

Projected Payments — *Projected Payments*

Payment Calculation	
Principal & Interest	
Mortgage Insurance	
Estimated Escrow *Amount can increase over time*	
Estimated Total Monthly Payment	
Estimated Taxes, Insurance & Assessments *Amount can increase over time* *See page 4 for details*	**This estimate includes** ☐ Property Taxes ☐ Homeowner's Insurance ☐ Other: **In escrow?** *See Escrow Account on page 4 for details. You must pay for other property costs separately.*

Costs at Closing — *Calculating*

Closing Costs	Includes in Loan Costs + in Other Costs – in Lender Credits. *See page 2 for details.*
Cash to Close	Includes Closing Costs. *See Calculating Cash to Close on page 3 for details.*

Closing Disclosure Page 2.

Closing Cost Details

Loan Costs	Borrower-Paid At Closing	Borrower-Paid Before Closing	Seller-Paid At Closing	Seller-Paid Before Closing	Paid by Others
A. Origination Charges					
01 % of Loan Amount (Points)					
02					
03					
04					
05					
06					
07					
08					
B. Services Borrower Did Not Shop For					
01					
02					
03					
04					
05					
06					
07					
08					
09					
10					
C. Services Borrower Did Shop For					
01					
02					
03					
04					
05					
06					
07					
08					
D. TOTAL LOAN COSTS (Borrower-Paid)					
Loan Costs Subtotals (A + B + C)					

Origination

Services Borrow did not Shop

Services Borrower Did Shop

Other Costs					
E. Taxes and Other Government Fees					
01 Recording Fees Deed: Mortgage:					
02					
F. Prepaids					
01 Homeowner's Insurance Premium (mo.)					
02 Mortgage Insurance Premium (mo.)					
03 Prepaid Interest (per day from to)					
04 Property Taxes (mo.)					
05					
G. Initial Escrow Payment at Closing					
01 Homeowner's Insurance per month for mo.					
02 Mortgage Insurance per month for mo.					
03 Property Taxes per month for mo.					
04					
05					
06					
07					
08 Aggregate Adjustment					
H. Other					
01					
02					
03					
04					
05					
06					
07					
08					
I. TOTAL OTHER COSTS (Borrower-Paid)					
Other Costs Subtotals (E + F + G + H)					

Taxes

Prepaids –

Initial Escrows

"Other"

Total Other

J. TOTAL CLOSING COSTS (Borrower-Paid)					
Closing Costs Subtotals (D + I)					

Total Closing Costs – Section J.

07

Closing Disclosure – Page 3.

Calculating Cash to Close

Use this table to see what has changed from your Loan Estimate.

	Loan Estimate	Final	Did this change?
Total Closing Costs (J)			
Closing Costs Paid Before Closing			
Closing Costs Financed (Paid from your Loan Am			
Down Payment/Funds from Borrower			
Deposit			
Funds for Borrower			
Seller Credits			
Adjustments and Other Credits			
Cash to Close			

Total

Closing Costs Paid

Closing Costs Financed

Down Payment/Funds

Deposit

Funds

Seller Credits

Cash to Close

Summaries

Summaries of Transactions

Use this table to see a summary of your transaction.

BORROWER'S TRANSACTION		
K. Due from Borrower at Closing		
01	Sale Price of Property	
02	Sale Price of Any Personal Property Included in Sale	
03	Closing Costs Paid at Closing (J)	
04		
Adjustments		
05		
06		
07		
Adjustments for Items Paid by Seller in Advance		
08	City/Town Taxes	to
09	County Taxes	to
10	Assessments	to
11		
12		
13		
14		
15		
L. Paid Already by or on Behalf of Borrower at Closing		
01	Deposit	
02	Loan Amount	
03	Existing Loan(s) Assumed or Taken Subject to	
04		
05	Seller Credit	
Other Credits		
06		
07		
Adjustments		
08		
09		
10		
11		
Adjustments for Items Unpaid by Seller		
12	City/Town Taxes	to
13	County Taxes	to
14	Assessments	to
15		
16		
17		
CALCULATION		
Total Due from Bor		
Total Paid Already by or on Behalf of Borrower at Closing (		
Cash to Close ☐ From ☐ To Borrower		

Calculation

Paid Already

SELLER'S TRANSACTION		
M. Due to Seller at Closing		
01	Sale Price of Property	
02	Sale Price of Any Personal Property Included in Sale	
03		
04		
05		
06		
07		
08		
Adjustments for Items Paid by Seller in Advance		
09	City/Town Taxes	to
10	County Taxes	to
11	Assessments	to
12		
13		
14		
15		
16		
N. Due from Seller at Closing		
01	Excess Deposit	
02	Closing Costs Paid at Closing (J)	
03	Existing Loan(s) Assumed or Taken Subject to	
04	Payoff of First Mortgage Loan	
05	Payoff of Second Mortgage Loan	
06		
07		
08	Seller Credit	
09		
10		
11		
12		
13		
Adjustments for Items Unpaid by Seller		
14	City/Town Taxes	to
15	County Taxes	to
16	Assessments	to
17		
18		
19		
CALCULATION		
Total Due to Seller at Closing (M)		
Total Due from Seller at Closing (N)		
Cash ☐ From ☐ To Seller		

Sellers

Due from Seller

Calculation

Additional Information About This Loan

Closing Disclosure - Page 4.

Loan Disclosures

Assumption
Assumptions
If you sell or transfer [illegible] person, your lender
- ☐ will allow, under certain conditions, this person to assume this loan on the original terms.
- ☐ will not allow assumption of this loan on the original terms.

Demand Feature
Demand
Your loan
- ☐ has a demand feature, which permits your lender to require early repayment of the loan. You should review your note for details.
- ☐ does not have a demand feature.

Late Payment
Late Payment
If your payment is more than ___ days late, your lender will charge a late fee of _____

Negative Amortization (Increase in Loan Amount)
Negative
Under your loan terms, you
- ☐ are scheduled to make monthly payments that do not pay all of the interest due that month. As a result, your loan amount will increase (negatively amortize), and your loan amount will likely become larger than your original loan amount. Increases in your loan amount lower the equity you have in this property.
- ☐ may have monthly payments that do not pay all of the interest due that month. If you do, your loan amount will increase (negatively amortize), and, as a result, your loan amount may become larger than your original loan amount. Increases in your loan amount lower the equity you have in this property.
- ☐ do not have a negative amortization feature.

Partial Payments
Partial
Your lender
- ☐ may accept payments that are less than the full amount due (partial payments) and apply them to your loan.
- ☐ may hold them in a separate account until you pay the rest of the payment, and then apply the full payment to your loan.
- ☐ does not accept any partial payments.

If this loan is sold, your new lender may have a different policy.

Security Interest
Security
You are granting a security interest in _____

You may lose this property if you do not make your payments or satisfy other obligations for this loan.

Adjustable

Escrow Account
Escrow
For now, your loan
- ☐ will have an escrow account (also called an "impound" or "trust" account) to pay the property costs listed below. Without an escrow account, you would pay them directly, possibly in one or two large payments a year. Your lender may be liable for penalties and interest for failing to make a payment.

Escrow		
Escrowed Property Costs over Year 1		Estimated total amount over year 1 for your escrowed property costs:
Non-Escrowed Property Costs over Year 1		Estimated total amount over year 1 for your non-escrowed property costs: You may have other property costs.
Initial Escrow Payment		A cushion for the escrow account you pay at closing. See Section G on page 2.
Monthly Escrow Payment		The amount included in your total monthly payment.

- ☐ will not have an escrow account because ☐ you declined it ☐ your lender does not offer one. You must directly pay your property costs, such as taxes and homeowner's insurance. Contact your lender to ask if your loan can have an escrow account.

No Escrow		
Estimated Property Costs over Year 1		Estimated total amount over year 1. You must pay these costs directly, possibly in one or two large payments a year.
Escrow Waiver Fee		

In the future,
Your property costs may change and, as a result, your escrow payment may change. You may be able to cancel your escrow account, but if you do, you must pay your property costs directly. If you fail to pay your property taxes, your state or local government may (1) impose fines and penalties or (2) place a tax lien on this property. If you fail to pay any of your property costs, your lender may (1) add the amounts to your loan balance, (2) add an escrow account to your loan, or (3) require you to pay for property insurance that the lender buys on your behalf, which likely would cost more and provide fewer benefits than what you could buy on your own.

Adjustable

Adjustable Payment (AP) Table	
Interest Only Payments?	
Optional Payments?	
Step Payments?	
Seasonal Payments?	
Monthly Principal and Interest Payments	
First Change/Amount	
Subsequent Changes	
Maximum Payment	

Adjustable Interest Rate (AIR) Table
Index + Margin
Initial Interest Rate
Minimum/Maximum Interest Rate
Change Frequency
First Change
Subsequent Changes
Limits on Interest Rate Changes
First Change
Subsequent Changes

Closing Disclosure - Page 5.

Loan Calculations

Loan Calculations

Total of Payments. Total you will have paid after you make all payments of principal, interest, mortgage insurance, and loan costs, as scheduled.	
Finance Charge. The dollar amount the loan will cost you.	
Amount Financed. The loan amount available after paying your upfront finance charge.	
Annual Percentage Rate (APR). Your costs over the loan term expressed as a rate. This is not your interest rate.	
Total Interest Percentage (TIP). The total amount of interest that you will pay over the loan term as a percentage of your loan amount.	

Questions

Questions? If you have questions about the loan terms or costs on this form, use the contact information below. To get more information or make a complaint, contact the Consumer Financial Protection Bureau at **www.consumerfinance.gov/mortgage-closing**

Other Disclosures

Other

Appraisal
If the property was appraised for your loan, your lender is required to give you a copy at no additional cost at least 3 days before closing. If you have not yet received it, please contact your lender at the information listed below.

Contract Details
See your note and security instrument for information about
- what happens if you fail to make your payments,
- what is a default on the loan,
- situations in which your lender can require early repayment of the loan, and
- the rules for making payments before they are due.

Liability after Foreclosure
If your lender forecloses on this property and the foreclosure does not cover the amount of unpaid balance on this loan,

☐ state law may protect you from liability for the unpaid balance. If you refinance or take on any additional debt on this property, you may lose this protection and have to pay any debt remaining even after foreclosure. You may want to consult a lawyer for more information.

☐ state law does not protect you from liability for the unpaid balance.

Refinance
Refinancing this loan will depend on your future financial situation, the property value, and market conditions. You may not be able to refinance this loan.

Tax Deductions
If you borrow more than this property is worth, the interest on the loan amount above this property's fair market value is not deductible from your federal income taxes. You should consult a tax advisor for more information.

Contact Information

Contact

	Lender	Mortgage Broker	Real Estate Broker (B)	Real Estate Broker (S)	Settlement Agent
Name					
Address					
NMLS ID					
___ License ID					
Contact					
Contact NMLS ID					
Contact ___ License ID					
Email					
Phone					

Confirm Receipt

Signatures

By signing, you are only confirming that you have received this form. You do not have to accept this loan because you have signed or received this form.

Applicant Signature Date

Co-Applicant Signature Date

CLOSING DISCLOSURE PAGE 5 OF 5 • LOAN ID #

Closing Disclosure - Page 1.

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Closing Information

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The Rule: § 1026.38 (a) General Information

For each transaction subject to § 1026.19(f), the creditor shall disclose the information in this section :(a) *General information.*

(1) *Form title*. The title of the form, "Closing Disclosure, "using that term.

(2) *Form purpose*. The following statement: "This form is a statement of final loan terms and closing costs. Compare this document with your Loan Estimate."

(3) *Closing information*. Under the heading "Closing Information":

(i) *Date issued*. The date the disclosures required by this section are delivered to the consumer, labeled "Date Issued."

(ii) *Closing date*. The date of consummation, labeled "Closing Date."

(iii) *Disbursement date*. The date the amounts disclosed pursuant to paragraphs (j)(3)(iii) and (k)(3)(iii) of this section are expected to be paid in a purchase transaction under § 1026.37(a)(9)(i) to the consumer and seller, respectively, as applicable, or the date the amounts disclosed pursuant to paragraphs (j)(2)(iii) or (t)(5)(vii)(B) of this section are expected to be paid to the consumer or a third party in a transaction that is not a purchase transaction under § 1026.37(a)(9)(i), labeled "Disbursement Date."

(iv) *Settlement agent*. The name of the settlement agent conducting the closing, labeled "Settlement Agent."

(v) *File number*. The number assigned to the transaction by the settlement agent for identification purposes, labeled "File #."

(vi) *Property*. The address or location of the property required to be disclosed under§ 1026.37(a)(6), labeled "Property."

(vii) *Sale price*. (A) In credit transactions where there is a seller, the contract sale price of the property identified in paragraph (a)(3)(vi) of this section, labeled "Sale Price."

Official Comment - 38(a)

1. No seller. In transactions where there is no seller, such as in a refinancing, § 1026.38(a)(3)(vii)(B) requires the creditor to disclose the appraised value of the property. To comply with this requirement, the creditor discloses the value determined by the appraisal or valuation used to determine approval of the credit transaction. If the creditor has not obtained an appraisal, the creditor may disclose the estimated value of the property. Where an estimate is disclosed, rather than an appraisal, the label for the disclosure is changed to "Estimated Prop. Value." The creditor may use the estimate provided by the consumer at application, or if it has performed its own estimate of the property value by the time the disclosure is provided to the consumer, disclose that estimate provided that it was the estimate the creditor used to determine approval of the credit transaction. (B) In credit transactions where there is no seller, the appraised value of the property identified in paragraph (a)(3)(vi) of this section, labeled "Appraised Prop. Value."

Official Comment - 38(a)(3)(vi)-2

2. Multiple properties. Where more than one property secures the credit transaction, § 1026.38(a)(3)(vi) requires disclosure of all property addresses. If the addresses of all properties securing the transaction do not fit in the space allocated on the Closing Disclosure, an additional page with the addresses of all such properties may be appended to the end of the form.

Transaction and Loan Information

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The Rule: § 1026.38 (a)(4) Transaction information

(4) *Transaction information*. Under the heading "Transaction Information":

(i) *Borrower*. The consumer's name and mailing address, labeled "Borrower."

(ii) *Seller*. Where applicable, the seller's name and mailing address, labeled "Seller."

(iii) *Lender*. The name of the creditor making the disclosure, labeled "Lender."

The Rule: § 1026.38 (a)(5) Loan information

(5) *Loan information*. Under the heading "Loan Information":

(i) *Loan term*. The information required to be disclosed under § 1026.37(a)(8), labeled "Loan Term."

(ii) *Purpose*. The information required to be disclosed under § 1026.37(a)(9), labeled "Purpose."

(iii) *Product*. The information required to be disclosed under § 1026.37(a)(10), labeled "Product."

(iv) *Loan type*. The information required to be disclosed under § 1026.37(a)(11), labeled "Loan Type."

(v) *Loan identification number*. The information required to be disclosed under § 026.37(a)(12), labeled "Loan ID #."

Official Comment - 38(a)(4) - (5)

1. Same identification number as Loan Estimate. The loan identification number disclosed pursuant to § 1026.38(a)(5)(v) must be one that enables the creditor, consumer, and other parties to identify the transaction as the same transaction disclosed on the Loan Estimate. The loan identification number may contain any alpha-numeric characters. If a creditor uses the same loan identification number on several revised Loan Estimates to the consumer, but adds after such number a hyphen and a number to denote the number of revised Loan Estimates in sequence, the creditor must disclose the loan identification number before such hyphen on the Closing Disclosure to identify the transaction as the same for which the initial and revised Loan Estimates were provided.

(vi) Mortgage insurance case number. The case number for any mortgage insurance policy, if required by the creditor, labeled "MIC #."

Loan Terms

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The Rule: § 1026.38 (b) Loan terms

(b) Loan terms. A separate table under the heading "Loan Terms" that includes the information required by § 1026.37(b). See the commentary to § 1026.37(b) for guidance on the content of the disclosures required by § 1026.38(b).

Projected Payments

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The Rule: § 1026.38 (c) Projected payments

(c) *Projected payments.* A separate table, under the heading "Projected Payments," that includes and satisfies the following information and requirements: For guidance on the disclosure of the projected payments table, see § 1026.37(c) and its commentary.

(1) *Projected payments or range of payments.* The information required to be disclosed pursuant to § 1026.37(c)(1) through (4), other than § 1026.37(c)(4)(vi). In disclosing estimated escrow payments as described in § 1026.37(c)(2)(iii) and (4)(ii), the amount disclosed on the Closing Disclosure:

(i) For transactions subject to RESPA, is determined under the escrow account analysis described in Regulation X, 12 CFR 1024.17;

(ii) For transactions not subject to RESPA, may be determined under the escrow account analysis described in Regulation X, 12 CFR 1024.17 or in the manner set forth in § 1026.37(c)(5).

(2) *Estimated taxes, insurance, and assessments.* A reference to the disclosure required by paragraph (l)(7) of this section.

Costs at Closing

The Rule: § 1026.38 (d) Costs at closing

(d) *Costs at closing.* (1) *Costs at closing table.* In a separate table, under the heading "Costs at Closing"

Official Comment - 38(d)

1. Escrow account analysis. The amount of estimated escrow payments disclosed on the Closing Disclosure is accurate if it differs from the estimated escrow payment disclosed on the Loan Estimate because of the escrow account analysis described in Regulation X, 12 CFR 1024.17.

The Rule: § 1026.38 (d)(1) Costs at closing table

(1) *Costs at closing table.* In a separate table, under the heading "Costs at Closing":

(i) Labeled "Closing Costs," the sum of the dollar amounts disclosed pursuant to paragraphs (f)(4), (g)(5), and (h)(3) of this section, together with:

(A) A statement that the amount disclosed pursuant to paragraph (d)(1)(i) of this section includes the amounts disclosed pursuant to paragraphs (f)(4), (g)(5), and (h)(3) of this section;

(B) The dollar amount disclosed pursuant to paragraph (f)(4) of this section, labeled "Loan Costs";

(C) The dollar amount disclosed pursuant to paragraph (g)(5) of this section, labeled "Other Costs";

(D) The dollar amount disclosed pursuant to paragraph (h)(3) of this section, labeled "Lender Credits"; and

(E) A statement referring the consumer to the tables disclosed pursuant to paragraphs (f) and (g) of this section for details.

(ii) Labeled "Cash to Close," the sum of the dollar amounts calculated in accordance with paragraph (i)(9)(ii) of this section, together with:

(A) A statement that the amount disclosed pursuant to paragraph (d)(1)(ii) of this section

includes the amount disclosed pursuant to paragraph (d)(1)(i) of this section; and

(B) A statement referring the consumer to the table required pursuant to paragraph (i) of this section for details.

The Rule: § 1026.38 (d)(2) Alternative table for transactions without a seller

(2) *Alternative table for transactions without a seller.* For transactions that do not involve a seller and where the creditor disclosed the optional alternative table pursuant to § 1026.37(d)(2), the creditor shall disclose, with the label "Cash to Close," instead of the sum of the dollar amounts described in paragraph (d)(1)(ii) of this section:

(i) The amount calculated in accordance with paragraph (e)(5)(ii) of this section;

(ii) A statement of whether the disclosed amount is due from or to the consumer; and

(iii) A statement referring the consumer to the table required pursuant to paragraph (e) of this section for details.

Official Comment - 38(d)(2)

38(d)(2) Alternative table for transactions without a seller.

1. Required use. The disclosure of the cash to close table in § 1026.38(d)(2) may only be provided by a creditor in a transaction without a seller. The use of this alternative table for transactions without a seller is required if the Loan Estimate provided to the consumer disclosed the optional alternative table pursuant to § 1026.37(d)(2), and must be used in conjunction with the use of the alternative calculating cash to close disclosure under § 1026.38(e).

2. *Method of indication*. The indication of whether the cash is either due from or payable to the consumer is made by the use of check boxes as shown in form H-25(J) of appendix H to this part. Forms H-25(E) and H-25(G) of appendix H to this part contain examples of the use of these checkboxes.

Calculating cash to close for transactions without a seller.

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The Rule: § 1026.38 (e) Alternative calculating cash to close table for transactions without a seller

(e) *Alternative calculating cash to close table for transactions without a seller.* For transactions that do not involve a seller and where the creditor disclosed the optional alternative table pursuant to § 1026.37(h)(2), the creditor shall disclose, instead of the table described in paragraph (i) of this section, in a separate table, under the heading "Calculating Cash to Close," together with the statement "Use this table to see what has changed from your Loan Estimate":

Official Comment - 38(e)

38(e) Alternative calculating cash to close table for transactions without a seller.

1. Required use. The disclosure of the table in § 1026.38(e) may only be provided by a creditor in a transaction without a seller. The use of this alternative calculating cash to close table for transactions without a seller is required for transactions in which the Loan Estimate provided to the consumer disclosed the optional alternative table pursuant to § 1026.37(h)(2), and must be used in conjunction with the alternative disclosure under § 1026.38(d)(2).

2. More prominent disclosures. Section 1026.38(e)(1)(iii), (2)(iii), (3)(iii), and (4)(iii) requires that statements are given as to whether the "Final" amount disclosed under each subparagraph (ii) of § 1026.38(e)(1) through (e)(4) is different than or equal to, and in some cases whether the amount is greater than or less than, the corresponding "Loan Estimate" amount disclosed under each subparagraph (i) of § 1026.38(e)(1) through (e)(4). These statements are more prominent than the other disclosures under § 1026.38(e). The statement of whether the estimated and final amounts are different, stated as a "Yes" or "No" in capital letters and in boldface, under the subheading "Did this change?," as shown on forms H-25(E) and H-25(G) of appendix H to this part, complies with the requirement to state whether the amounts are different more prominently. Such statement of "No" satisfies the requirement to state that the estimated and

final amounts are equal, and these sections do not provide for any narrative text to be included with such statement. The prominence requirement also requires that, in the event an increase or decrease in costs has occurred, certain words within the narrative text to be included under the subheading "Did this change?" for a "Yes" answer are displayed more prominently than other disclosures. For example, under § 1026.38(e)(2)(iii)(A), this more prominent statement could take the form of the phrases "Total Loan Costs (D)" and "Total Other Costs (I)" being shown in boldface, as shown on forms H-25(E) and H-25(G) of appendix H to this part. See comment 38(e)-4 for further guidance regarding the prominence of such statements.

3. Statements of differences. The dollar amounts disclosed under § 1026.38 generally are shown to two decimal places unless otherwise required. See comment 38(t)(4)-1. As a result, any "Final" amount that is disclosed in the alternative "Calculating Cash to Close" table under § 1026.38(e) is shown to two decimal places unless otherwise required. Pursuant to § 1026.38(t)(4)(i)(C), however, any "Loan Estimate" amount that is disclosed in the alternative "Calculating Cash to Close" table under § 1026.38(e) is shown to the nearest dollar amount, and thus matches the corresponding estimated amount disclosed on the Loan Estimate's "Calculating Cash to Close" table under § 1026.37(h), which is shown to the nearest whole dollar pursuant to § 1026.37(o)(4)(i)(A). For this reason, a "Final" amount shown to two decimal places could be a larger number than its corresponding "Estimate" amount shown to the nearest whole dollar, when, in fact, the apparent increase is due solely to rounding. Therefore, for purposes of § 1026.38(e)(1)(iii), (2)(iii), (3)(iii), and (4)(iii), each statement of a change between the amounts disclosed on the Loan Estimate and the Closing Disclosure is based on the actual, non-rounded estimate that would have been disclosed on the Loan Estimate under § 1026.37(h) if it had been shown to two decimal places rather than a whole dollar amount. For example, if the "Loan Estimate" amount of "Total Closing Costs" disclosed under § 1026.38(e)(2)(i) is $12,500, and the "Final" amount of "Total Closing Costs" disclosed under § 1026.38(e)(2)(ii) is $12,500.35, then even though the table would appear to show a $0.35 increase in "Total Closing Costs," no statement of such increase is given under § 1026.38(e)(2)(iii) so long as the actual, non-rounded estimate (i.e., the estimated amount of "Total Closing Costs" that would have been shown on the Loan Estimate to two decimal places) is equal to $12,500.35.

4. Statements that the consumer should see details. The provisions of § 1026.38(e)(2)(iii)(A) and (e)(4)(iii)(A) each require a statement that the consumer should see certain details of the closing costs disclosed under § 1026.38(f), (g), or (t). Forms H-25(E) and H-25(G) of appendix H to this

part contain examples of these statements. For example, § 1026.38(e)(4)(iii)(A) requires a statement that the consumer should see the details disclosed pursuant to § 1026.38(t)(5)(vii)(B), and, as shown on forms H-25(E) and H-25(G) of appendix H to this part, the statement, "See Payoffs and Payments," in which the words "Payoffs and Payments" are in boldface, complies with this provision.

5. Statement of increase or decrease. Section 1026.38(e)(1)(iii)(A) requires a statement of whether the loan amount increased or decreased. A creditor complies with this requirement by disclosing, "This amount increased" or "This amount decreased" with the words "increase" and "decrease" in boldface font.

Alternative calculating cash to close table for transactions without seller.

Back to Form

The Rule: § 1026.38 (e) (1) Loan amount

(1) *Loan amount*. Labeled "Loan Amount:"

(i) Under the subheading "Loan Estimate," the loan amount disclosed on the Loan Estimate under § 1026.37(b)(1);

(ii) Under the subheading "Final," the loan amount disclosed under paragraph (b) of this section;

(iii) Disclosed more prominently than the other disclosures under paragraph (e)(1)(i) and (ii) of this section, under the subheading "Did this change?":

(A) If the amount disclosed under paragraph (e)(1)(ii) of this section is different than the amount disclosed under paragraph (e)(1)(i) of this section (unless the difference is due to rounding), a statement of that fact along with a statement of whether this amount increased or decreased; or

(B) If the amount disclosed under paragraph (e)(1)(i) of this section is equal to the amount disclosed under paragraph (e)(1)(ii) of this section a statement of that fact.

Official Comment - 1026.38(e)(1)(iii)(A)

Paragraph 38(e)(1)(iii)(A).

1. Statements of increases or decreases. Section 1026.38(e)(1)(iii)(A) requires a statement of whether the amount increased or decreased from the estimated amount. The statement, "This

amount increased," in which the word "increased" is in boldface font and is replaced with the word "decreased" as applicable, complies with this requirement.

The Rule: § 1026.38 (e)(2) Total closing costs

(2) *Total closing costs.* Labeled "Total Closing Costs":

(i) Under the subheading "Loan Estimate," the amount disclosed on the Loan Estimate under § 1026.37(h)(2)(ii);

Official Comment - 38(e)(2)(i)

Paragraph 38(e)(2)(i).

1. Reference to disclosure of total closing costs. Under § 1026.38(e)(2)(i), the amount disclosed is labeled "Total Closing Costs," and such label is accompanied by a reference to the disclosure of "Total Closing Costs" under § 1026.38(h)(1). This reference may take the form, for example, of a cross-reference in parenthesis to the row on the table disclosed under § 1026.38(h) that includes the itemized amount for "Total Closing Costs," as shown on form H-25 of appendix H to this part.

The Rule: § 1026.38 (e)(2)(ii) & (iii)

(ii) Under the subheading "Final," the amount disclosed under paragraph (h)(1) of this section, disclosed as a negative number; and

(iii) Disclosed more prominently than the other disclosures under this paragraph (e)(2)(i) and (ii) of this section, under the subheading "Did this change?":

(A) If the amount disclosed under paragraph (e)(2)(ii) of this section is different than the amount disclosed under paragraph (e)(2)(i) of this section (unless the difference is due to rounding):

(*1*) A statement of that fact;

(*2*) If the difference in the amounts disclosed under paragraphs (e)(2)(i) and (e)(2)(ii) is attributable to differences in itemized charges that are included in either or both subtotals, a statement that the consumer should see the total loan costs and total other costs subtotals disclosed under paragraphs (f)(4) and (g)(5) of this section (together with references to such disclosures), as applicable; and

(*3*) If the increase exceeds the limitations on increases in closing costs under § 1026.19(e)(3), a statement that such increase exceeds the legal limits by the dollar amount of the excess and if any refund is provided pursuant to § 1026.19(f)(2)(v), a statement directing the consumer to the disclosure required under paragraph (h)(3) of this section. Such dollar amount shall equal the sum total of all excesses of the limitations on increases in closing costs under § 1026.19(e)(3), taking into account the different methods of calculating excesses of the limitations on increases in closing costs under § 1026.19(e)(3)(i) and (ii).

(B) If the amount disclosed under paragraph (e)(2)(i) of this section is equal to the amount disclosed under paragraph (e)(2)(ii) of this section, a statement of that fact.

Official Comment - 38(e)(2)(iii)(A)

Paragraph 38(e)(2)(iii)(A).

1. Statements and references regarding the total loan costs and total other costs. Under §1026.38(e)(2)(iii)(A), the statements under the subheading "Did this change?" that the consumer should see the total loan costs and total other costs subtotals disclosed on the Closing Disclosure under § 1026.38(f)(4) and (g)(5) are made only if and to the extent the difference in the "Total Closing Costs" is attributable to differences in itemized charges that are included in either or both of such subtotals.

i. For example, if an increase in the "Total Closing Costs" is attributable only to an increase in the appraisal fee (which is an itemized charge on the Closing Disclosure under the subheading "Services Borrower Did Not Shop For," itself under the heading "Loan Costs"), then a statement is given under the subheading "Did this change?" that the consumer should see the total loan costs subtotal disclosed on the Closing Disclosure under § 1026.38(f)(4). If the increase in "Total Closing Costs" is attributable only to an increase in recording fees (which is an itemized charge on the Closing Disclosure under the subheading "Taxes and Other Government Fees," itself under the heading "Other Costs"), then a statement is given under the subheading "Did this change?" that the consumer should see the total other costs subtotal disclosed on the Closing Disclosure under § 1026.38(g)(5). If, however, the increase is attributable in part to an increase in the appraisal fee and in part to an increase in the recording fee, then a statement is

given under the subheading "Did this change?" that the consumer should see the total loan costs and total other costs subtotals disclosed on the Closing Disclosure under § 1026.38(f)(4) and (g)(5).

ii. For guidance regarding the requirement that this statement be accompanied by a reference to the disclosures of the total loan costs and total other costs under § 1026.38(f)(4) and (g)(5), see comment 38(e)(2)(i)-1. For an example of such reference, see form H-25 of appendix H to this part.

2. Disclosure of excess amounts above limitations on increases in closing costs.

i. Because certain closing costs, individually, are subject to the limitations on increases in closing costs under § 1026.19(e)(3)(i) (e.g., fees paid to the creditor, transfer taxes, fees paid to an affiliate of the creditor), while other closing costs are collectively subject to the limitations on increases in closing costs under § 1026.19(e)(3)(ii) (e.g., recording fees, fees paid to an unaffiliated third party identified by the creditor if the creditor permitted the consumer to shop

for the service provider), § 1026.38(e)(2)(iii)(A) requires the creditor or closing agent to calculate subtotals for each type of excess amount, and then add such subtotals together to yield the dollar amount to be disclosed in the table. See commentary to § 1026.19(e)(3) for additional guidance on calculating excess amounts above the limitations on increases in closing costs under § 1026.19(e)(3).

ii. Under § 1026.38(e)(2)(iii)(A), calculation of the excess amounts above the limitations on increases in closing costs takes into account that the itemized, estimated closing costs disclosed on the Loan Estimate will not result in charges to the consumer if the service is not actually provided at or before consummation. For example, if the Loan Estimate included under "Services You Cannot Shop For" a $30 charge for a "title courier fee," but the title company elects to hand-deliver the title documents package to the creditor at no charge, the $30 fee is not factored into the calculation of the "Total Closing Costs" that are subject to the limitations on increases in closing costs. However, if the title courier fee was assessed, but at only $15, the charge is factored into the calculation because the third party service was actually provided, albeit at a lower amount than estimated. For an example, see form H-25 of appendix H to this part.

iii. Under § 1026.38(e)(2)(iii)(A), calculation of the excess amounts above the limitations on increases in closing costs takes into account that certain itemized charges listed on

the Loan Estimate under the subheading "Services You Can Shop For" may be subject to different limitations depending on the circumstances. Such a charge would be subject to the limitations under § 1026.19(e)(3)(i) if the consumer decided to use a provider affiliated with the creditor. However, the same charge would instead be subject to the limitations under § 1026.19(e)(3)(ii) if the consumer selected a third party service provider unaffiliated with but identified by the creditor, and the creditor permitted the consumer to shop for the service provider. See commentary to § 1026.19(e)(3) for additional guidance on calculating excess amounts above the limitations on increases in closing costs under § 1026.19(e)(3).

3. Statements regarding excess amount and any credit to the consumer. Section 1026.38(e)(2)(iii)(A) requires a statement that an increase in closing costs exceeds legal limits by the dollar amount of the excess and a statement directing the consumer to the disclosure of lender credits under § 1026.38(h)(3) if a credit is provided under § 1026.19(f)(2)(v). See form H-25(F) in appendix H to this part for examples of such statements.

The Rule: § 1026.38(e)(3) Closing costs paid before closing

(3) *Closing costs paid before closing.*

Labeled "Closing Costs Paid Before Closing:" (i) Under the subheading "Loan Estimate," the amount of $0;

(ii) Under the subheading "Final," any amount designated as borrower-paid before closing under paragraph (h)(2) of this section, disclosed as a positive number; and

(iii) Disclosed more prominently than the other disclosures under this paragraph (e)(3)(i) and (ii) of this section, under the subheading "Did this change?":

(A) If the amount disclosed under paragraph (e)(3)(ii) of this section is different than the amount disclosed under paragraph (e)(3)(i) of this section (unless the difference is due to rounding), a statement of that fact along with a statement that the consumer paid such amounts prior to consummation of the transaction; or

(B) If the amount disclosed under paragraph (e)(3)(ii) of this section is equal to the amount disclosed under paragraph (e)(3)(i) of this section, a statement of that fact.

The Rule: § 1026.38(e)(4) Payoffs and payments

(4) *Payoffs and payments.* Labeled "Total Payoffs and Payments,"

(i) Under the subheading "Loan Estimate," the total payoffs and payments disclosed on the Loan Estimate under § 1026.37(h)(2)(iii);

(ii) Under the subheading "Final," the total amount of payoffs and payments made to third parties disclosed pursuant to paragraph (t)(5)(vii)(B) of this section, to the extent known, disclosed as a negative number;

(iii) Disclosed more prominently than the other disclosures under this paragraph (e)(4)(i) and (ii), under the subheading "Did this change?":

(A) If the amount disclosed under paragraph (e)(4)(ii) of this section is different than the amount disclosed under paragraph (e)(4)(i) of this section (unless the difference is due to rounding), a statement of that fact along with a reference to the table disclosed under paragraph (t)(5)(vii)(B) of this section; or

(B) If the amount disclosed under paragraph (e)(4)(ii) of this section is equal to the amount disclosed under paragraph (e)(4)(i) of this section, a statement of that fact.

The Rule: § 1026.38(e)(5) Cash to or from Consumer

(5) *Cash to or from consumer.* Labeled "Cash to Close:"

(i) Under the subheading "Loan Estimate," the estimated cash to close on the Loan Estimate together with the statement of whether the estimated amount is due from or to the consumer as disclosed under § 1026.37(h)(2)(iv);

(ii) Under the subheading "Final," the amount due from or to the consumer, calculated by the sum of the amounts disclosed under paragraphs (e)(1)(ii), (e)(2)(ii), (e)(3)(ii) and (e)(4)(ii), disclosed as a positive number, together with a statement of whether the disclosed amount is due from or to the consumer.

The Rule: § 1026.38(e)(6) Closing costs financed

(6) *Closing costs financed.* Labeled "Closing Costs Financed (Paid from your Loan Amount)," the sum of the amounts disclosed under paragraphs (e)(1)(ii) and (e)(4)(ii), but only to the extent that the sum is greater than zero and less than or equal to the sum disclosed under paragraph (h)(1) of this section minus the sum disclosed under paragraph (h)(2) of this section designated borrower-paid before closing.

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– Closing Costs Details

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The Rule: § 1026.38(f) Closing cost details; loan costs

(f) *Closing cost details; loan costs.* Under the master heading "Closing Cost Details" with columns stating whether the charge was borrower-paid at or before closing, seller-paid at or before closing, or paid by others, all loan costs associated with the transaction, listed in a table under the heading "Loan Costs." The table shall contain the items and amounts listed under four subheadings, described in paragraphs (f)(1) through (5) of this section.

Origination charges – Section A.

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The Rule: § 1026.38(f)(1) Origination charges

(1) *Origination charges.* Under the subheading "Origination Charges," and in the applicable columns as described in paragraph (f) of this section, an itemization of each amount paid for charges described in § 1026.37(f)(1), the amount of compensation paid by the creditor to a third-party loan originator along with the name of the loan originator ultimately receiving the payment, and the total of all such itemized amounts that are designated borrower-paid at or before closing.

Official Comment - 38(f)(1)

1. Guidance in other comments. For a description of origination charges and discount points, see comments 37(f)(1)-1, -2, and -3.

2. Loan originator compensation. All compensation paid to a loan originator, as defined by § 1026.36(a)(1), that is a third-party associated with the transaction, regardless of the party that pays the compensation, must be disclosed pursuant to § 1026.38(f)(1). Compensation from the consumer to a third-party loan originator is designated as borrower-paid at or before closing, as applicable, on the Closing Disclosure. Compensation from the creditor to a third-party loan originator is designated as paid by others on the Closing Disclosure. Compensation to a third-party loan originator from both the consumer and the creditor in the transaction is prohibited under § 1026.36(d)(2).

3. Calculating compensation to a loan originator from the creditor. The amount disclosed as paid from the creditor to a third-party loan originator under § 1026.38(f)(1) is the dollar value of salaries, commissions, and any financial or similar compensation provided to a third-party loan

originator by the creditor that are considered to be points and fees under § 1026.32(b)(1)(ii). For additional guidance and examples on the calculation of compensation paid to the third-party loan originator from the creditor, see comments 32(b)(1)(ii)-1, -2, -3, and -4.

Services Borrow did not Shop For – Section B.

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The Rule: § 1026.38(f)(2) Services borrower did not shop for

(2) *Services borrower did not shop for.* Under the subheading "Services Borrower Did Not Shop For" and in the applicable columns as described in paragraph (f) of this section, an itemization of the services and corresponding costs for each of the settlement services required by the creditor for which the consumer did not shop in accordance with § 1026.19(e)(1)(vi)(A) and that are provided by persons other than the creditor or mortgage broker, the name of the person ultimately receiving the payment for each such amount, and the total of all such itemized amounts that are designated borrower-paid at or before closing. Items that were disclosed pursuant to § 1026.37(f)(3) must be disclosed under this paragraph (f)(2) if the consumer was provided a written list of settlement service providers under § 1026.19(e)(1)(vi)(C) and the consumer selected a settlement service provider contained on that written list.

Official Comment - 38(f)(2)

1. Guidance in other comments. For examples of services, costs, and their descriptions disclosed under § 1026.38(f)(2), see comments 37(f)(2)-1, -2, -3, and -4.

Services Borrower Did Shop For – Section C.

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The Rule: § 1026.38(f)(2) Services borrower did shop for

(3) *Services borrower did shop for.* Under the subheading "Services Borrower Did Shop For" and in the applicable column as described in paragraph (f) of this section, an itemization of the services and corresponding costs for each of the settlement services required by the creditor for which the consumer shopped in accordance with § 1026.19(e)(1)(vi)(A) and that are provided by persons other than the creditor or mortgage broker, the name of the person ultimately receiving the payment for each such amount, and the total of all such itemized costs that are designated borrower-paid at or before closing. Items that were disclosed pursuant to§ 1026.37(f)(3) must be disclosed under this paragraph (f)(3) if the consumer was provided a written list of settlement service providers under § 1026.19(e)(1)(vi)(C) and the consumer did not select a settlement service provider contained on that written list.

Official Comment - 38(f)(2)

1. Provider on written list. Items that were disclosed pursuant to § 1026.37(f)(3) cannot be disclosed under § 1026.38(f)(3) when the consumer selected a provider contained on the written list provided under § 1026.19(e)(1)(vi)(C). Instead, such costs are disclosed pursuant to §1026.38(f)(2).

Subtotal and Total Loan Costs – Section D.

The Rule: § 1026.38(f)(4) Total loan costs

(4) *Total loan costs.* Under the subheading "Total Loan Costs (Borrower-Paid)," the sum of the amounts disclosed as borrower-paid pursuant to paragraph (f)(5) of this section.

The Rule: § 1026.38(f)(5) Subtotal of loan costs

(5) *Subtotal of loan costs.* The sum of loan costs, calculated by totaling the amounts described in paragraphs (f)(1), (2), and (3) of this section for costs designated borrower-paid at or before closing, labeled "Loan Costs Subtotals."

Taxes and Other Government Recording Fees – Section E.

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The Rule: § 1026.38(g)(1) Taxes and other government fees

(1) *Taxes and other government fees.* Under the subheading "Taxes and Other Government Fees," and in the applicable column as described in paragraph (g) of this section, an itemization of each amount that is expected to be paid to State and local governments for taxes and government fees and the total of all such itemized amounts that are designated borrower-paid at or before closing, as follows:

(i) Recording fees and the amounts paid in the applicable columns; and

(ii) An itemization of transfer taxes, with the name of the government entity assessing the transfer tax.

Official Comment - 38(g)(1)

2. Transfer taxes – itemization. The creditor may itemize the transfer taxes paid on as many lines as necessary pursuant to § 1026.38(g)(1) in order to disclose all of the transfer taxes paid as part of the transaction. The taxes should be allocated in the applicable columns as borrower-paid at or before closing, seller-paid at or before closing, or paid by others, as provided by State or local law, the terms of the legal obligation, or the real estate purchase contract.

Prepaids – Section F.

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The Rule: § 1026.38(g)(2) Prepaids

(2) *Prepaids.* Under the subheading "Prepaids" and in the applicable column as described in paragraph (g) of this section, an itemization of each amount for charges described in § 1026.37(g)(2), the name of the person ultimately receiving the payment or government entity assessing the property tax, provided that the person ultimately receiving the payment need not be disclosed for the disclosure required by § 1026.37(g)(2)(iii) when disclosed pursuant to this paragraph, and the total of all such itemized amounts that are designated borrower-paid at or before closing.

Official Comment - 38(g)(2)

1. Guidance. For additional guidance on prepaids, see comments 37(g)(2)-1 and -2.

2. Negative prepaid interest. The prepaid interest amount is disclosed as a negative number if the calculation of prepaid interest results in a negative number.

3. No prepaid interest. If interest is not collected for a portion of a month or other period between closing and the date from which interest will be collected with the first monthly payment, then $0 must be disclosed under § 1026.38(g)(2).

4. Interest rate for prepaid interest. The dollar amounts disclosed pursuant to§ 1026.38(g)(2) must be based on the interest rate disclosed under § 1026.38(b), as required by § 1026.37(b)(2).

5. Property taxes. For a description of items that constitute property taxes, see comment 43(b)(8)-2.

Initial Escrows – Section G.

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The Rule: § 1026.38(g)(3) Initial escrow payment at closing

(3) *Initial escrow payment at closing.* Under the subheading "Initial escrow payment at closing" and in the applicable column as described in paragraph (g) of this section, an itemization of each amount for charges described in § 1026.37(g)(3), the applicable aggregate adjustment pursuant to 12 CFR 1024.17(d)(2) along with the label "aggregate adjustment," and the total of all such itemized amounts that are designated borrower-paid at or before closing.

Official Comment - 38(g)(3)

1. Initial escrow account itemization. The creditor must state the amount that it will require the consumer to place into a reserve or escrow account at consummation to be applied to recurring charges for property taxes, homeowner's and similar insurance, mortgage insurance, homeowner's association dues, condominium dues, and other periodic charges. Each periodic charge to be included in the escrow or reserve account must be itemized under the "Initial Escrow Payment at Closing" subheading, with a relevant label, monthly payment amount, and number of months collected at closing.

2. Aggregate accounting. The method used to determine the aggregate adjustment for the purposes of establishing the escrow account is described in 12 CFR 1024.17(d)(2). Examples of this calculation methodology can be found in appendix E to 12 CFR part 1024. The aggregate adjustment, as illustrated by form H-25 of appendix H to this part, is disclosed as the last listed item in the amounts disclosed under § 1026.38(g)(3).

3. Escrowed tax payments for different timeframes. Payments for property taxes that are paid at different time periods can be itemized separately when done in accordance with 12 CFR1024.17. For example, a general property tax covering a fiscal year from January 1 to December 31 can be listed as a property tax under § 1026.38(g)(3) and a separate property tax to fund schools that cover a fiscal year from November 1 to October 31 can be added as a separate itemized amount under § 1026.38(g)(3).

4. Property taxes. For a description of items that constitute property taxes, see comment 43(b)(8)-2.

5. Definition of escrow account. For a description of the amounts included in the initial escrow account disclosure under § 1026.38(g)(3), see the definition of "escrow account" in 12 CFR 1024.17(b).

"Other" Section H.

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The Rule: § 1026.38(g)(4) Other

(4) *Other.* Under the subheading "Other" and in the applicable column as described in paragraph (g) of this section, an itemization of each amount for charges in connection with the transaction that are in addition to the charges disclosed under paragraphs (f) and (g)(1) through (3) for services that are required or obtained in the real estate closing by the consumer, the seller, or other party, the name of the person ultimately receiving the payment, and the total of all such itemized amounts that are designated borrower-paid at or before closing.

(i) For any cost that is a component of title insurance services, the introductory description "Title – " shall appear at the beginning of the label for that actual cost.

(ii) The parenthetical description "(optional)" shall appear at the end of the label for costs designated borrower-paid at or before closing for any premiums paid for separate insurance, warranty, guarantee, or event-coverage products.

Official Comment - 38(g)(4)

1. Costs disclosed. The costs disclosed under § 1026.38(g)(4) include all real estate brokerage fees, homeowner's or condominium association charges paid at consummation, home warranties, inspection fees, and other fees that are part of the real estate closing but not required by the creditor or not disclosed elsewhere under § 1026.38.

2. Owner's title insurance premium. In a jurisdiction where simultaneous issuance title insurance rates are permitted, any owner's title insurance premium disclosed under § 1026.38(g)(4) is calculated by using the full owner's title insurance premium, adding any simultaneous issuance premium for issuance of lender's coverage, and then deducting the full premium for lender's coverage disclosed under § 1026.38(f)(2) or (f)(3). Section 1026.38(g)(4)(i) requires that the disclosure of the cost of the premium for an owner's title insurance policy include "Title – " at the beginning of the label. In addition, § 1026.38(g)(4)(ii) requires that the disclosure of the cost of the premium for an owner's title insurance policy include the parenthetical "(optional)" at the end of the label when designated borrower-paid at or before closing.

3. Guidance. For additional guidance on the use of the term "(optional)" under § 1026.38(g)(4)(ii), see comment 37(g)(4)-3.

4. Real estate commissions. The amount of real estate commissions pursuant to § 1026.38(g)(4) must be the total amount paid to any real estate brokerage as a commission, regardless of the identity of the party holding any earnest money deposit. Additional charges made by real estate brokerages or agents to the seller or consumer are itemized separately as additional items for services rendered, with a description of the service and an identification of the person ultimately receiving the payment.

Total Other Costs – Section I.

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The Rule: § 1026.38(g)(5) Total other costs

(5) *Total other costs.* Under the subheading "Total Other Costs (Borrower-Paid)," the sum of the amounts disclosed as borrower-paid pursuant to paragraph (g)(6) of this section.

The Rule: § 1026.38(g)(6) Subtotal of costs

(6) *Subtotal of costs.* The sum of other costs, calculated by totaling the costs disclosed in paragraphs (g)(1) through (4) of this section designated borrower-paid at or before closing, labeled "Other Costs Subtotals."

Total Closing Costs – Section J.

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The Rule: § 1026.38(h) Closing cost totals

(h) *Closing cost totals.*

(1) The sum of the costs disclosed as borrower-paid pursuant to paragraph (h)(2) of this section and the amount disclosed in paragraph (h)(3) of this section, under the subheading "Total Closing Costs (Borrower-Paid)."

(2) The sum of the amounts disclosed in paragraphs (f)(5) and (g)(6) of this section, designated borrower-paid at or before closing, and the sum of the costs designated seller-paid at or before closing or paid by others disclosed pursuant to paragraphs (f) and (g) of this section, labeled "Closing Costs Subtotals."

(3) The amount described in § 1026.37(g)(6)(ii) as a negative number, labeled "Lender Credits" and designated borrower-paid at closing, and if a refund is provided pursuant to § 1026.19(f)(2)(v), a statement that this amount includes a credit for an amount that exceeds the limitations on increases in closing costs under § 1026.19(e)(3), and the amount of such credit under § 1026.19(f)(2)(v).

(4) The services and costs disclosed pursuant to paragraphs (f) and (g) of this section on the Closing Disclosure shall be labeled using terminology that describes the item disclosed, in a manner that is consistent with the descriptions or prescribed labels, as applicable, used for such items on the Loan Estimate pursuant to § 1026.37. The creditor must also list the items on the Closing Disclosure in the same sequential order as on the Loan Estimate pursuant to § 1026.37.

Official Comment - 38(h)(1) - (4)

1. General lender credits. When the consumer receives a generalized credit from the creditor for closing costs, the amount of the credit must be disclosed under § 1026.38(h)(3). However, if such

credit is attributable to a specific loan cost or other cost listed in the Closing Cost Details tables, pursuant to § 1026.38(f) or (g), that amount should be reflected in the Paid by Others column in the Closing Cost Details tables under § 1026.38(f) or (g). For a description of lender credits from the creditor, see comment 17(c)(1)-19. For a discussion of general lender credits and lender credits for specific charges, see comment 19(e)(3)(i)-5.

2. Credits for excess charges. Credits from the creditor to offset an amount charged in excess of the limitations described in § 1026.19(e)(3) are disclosed pursuant to § 1026.38(h)(3), along with a statement that such amount was paid to offset an excess charge, with funds other than closing funds. If an excess charge to the consumer is discovered after consummation and a refund provided, the corrected disclosure must be provided to the consumer under 1026.19(f)(2)(v). For an example, see form H-25(F) of appendix H to this part.

3. Consistent terminology and order of charges. On the Closing Disclosure the creditor must label the corresponding services and costs disclosed under § 1026.38(f) and (g) using terminology that describes each item, as applicable, and must use terminology or the prescribed label, as applicable, that is consistent with that used on the Loan Estimate to identify each corresponding item. In addition, § 1026.38(h)(4) requires the creditor to list the items disclosed under each subcategory of charges in a consistent order. If costs move between subheadings under § 1026.38(f)(2) and (f)(3), listing the costs in alphabetical order in each subheading category is considered to be in compliance with § 1026.38(h)(4). See comment 37(f)(5)-1 for guidance regarding the requirement to use terminology that describes the items to be disclosed.

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Calculating Cash to Close

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The Rule: § 1026.38(i) Calculating cash to close

(i) *Calculating cash to close.* In a separate table, under the heading "Calculating Cash to Close," together with the statement "Use this table to see what has changed from your Loan Estimate":

Official Comment - 38(i)

38(i) Calculating cash to close

1. More prominent disclosures. Section 1026.38(i)(1)(iii), (2)(iii), (3)(iii), (4)(iii), (5)(iii), (6)(iii), (7)(iii), and (8)(iii) requires that statements are given as to whether the "Final" amount disclosed under each subparagraph (ii) of § 1026.38(i)(1) through (i)(8) is different or equal to, and in some cases whether the amount is greater than or less than, the corresponding "Loan Estimate" amount disclosed under each subparagraph (i) of § 1026.38(i)(1) through (i)(8). These statements are more prominent than the other disclosures under § 1026.38(i). The statement of whether the estimated and final amounts are different, stated as a "Yes" or "No" in capital letters and in boldface font, under the subheading "Did this change?," as shown on form H-25 of appendix H to this part, complies with the requirement to state whether the amounts are different more prominently. Such statement of "No" satisfies the requirement to state that the estimated and final amounts are equal, and these sections do not provide for any narrative text to be included with such statement. The prominence requirement also requires that, in the event an increase or decrease in costs has occurred, certain words within the narrative text to be included under the subheading "Did this change?" for a "Yes" answer are displayed more prominently than other disclosures. For example, under § 1026.38(i)(1)(iii)(A), this more prominent statement could take the form of the phrases "Total Loan Costs" and "Total Other Costs" being shown in boldface, as shown on form H-25 of appendix H to this part. See comments 38(i)-3and -4 for further guidance regarding the prominence of such statements.

2. Statements of differences. The dollar amounts disclosed under § 1026.38 generally are shown to two decimal places unless otherwise required. See comment 38(t)(4)-1. As a result, any "Final" amount that is disclosed in the "Calculating Cash to Close" table under § 1026.38(i) is shown to two decimal places unless otherwise required. Pursuant to § 1026.38(t)(4)(i)(C), however, any "Loan Estimate" amount that is disclosed in the "Calculating Cash to Close" table under § 1026.38(i) is shown rounded to the nearest dollar amount, and thus matches the corresponding estimated amount disclosed on the Loan Estimate's "Calculating Cash to Close" table under § 1026.37(h), which is shown rounded to the nearest whole dollar pursuant to § 1026.37(o)(4)(i)(A). For this reason, a "Final" amount shown to two decimal places could be a larger number than its corresponding "Loan Estimate" amount shown rounded to the nearest whole dollar, when, in fact, the apparent increase is due solely to rounding. Therefore, for purposes of § 1026.38(i)(1)(iii), (2)(iii), (3)(iii), (4)(iii), (5)(iii), (6)(iii), (7)(iii), and (8)(iii), each statement of a change between the amounts disclosed on the Loan Estimate and the Closing Disclosure is based on the actual, non-rounded estimate that would have been disclosed on the

Loan Estimate under § 1026.37(h) if it had been shown to two decimal places rather than a whole dollar amount. For example, if the "Loan Estimate" amount of "Total Closing Costs" disclosed under § 1026.38(i)(1)(i) is $12,500, and the "Final" amount of "Total Closing Costs" disclosed under § 1026.38(i)(1)(ii) is $12,500.35, then even though the table would appear to show a $0.35 increase in "Total Closing Costs," no statement of such increase is given under § 1026.38(i)(1)(iii) so long as the actual, non-rounded estimate (i.e., the estimated amount of "Total Closing Costs" that would have been shown on the Loan Estimate to two decimal places) is equal to $12,500.35.

3. Statements that the consumer should see details. The provisions of § 1026.38(i)(4)(iii)(A), (i)(5)(iii)(A), (i)(7)(iii)(A), and (i)(8)(iii)(A) each require a statement that the consumer should see certain details of the closing costs disclosed under § 1026.38(j). Form H-25 of appendix H to this part contains examples of these statements. For example, § 1026.38(i)(7)(iii)(A) requires a statement that the consumer should see the details disclosed pursuant to § 1026.38(j)(2)(v), and, as shown on form H-25(B) of appendix H to this part, the statement, "See Seller Credits in Section L," in which the words "Section L" are in boldface font, complies with this provision. In addition, for example, § 1026.38(i)(5)(iii)(A) requires a statement that the consumer should see the details disclosed pursuant to § 1026.38(j)(2)(ii), and the following statement which is similar to that shown on form H-25(B) of appendix H to this part for § 1026.38(i)(7)(iii)(A), "See Deposit in Section L," in which the words "Section L" are in boldface font, complies with this provision. In addition, for example, the statement "See details in Sections K and L," in which the words "Sections K and L" are in boldface font, complies with the requirement under § 1026.38(i)(8)(iii)(A). See form H-25(B) of appendix H to this part for an example of the statement required by § 1026.38(i)(8)(iii)(A).

4. Statements of increases or decreases. The provisions of § 1026.38(i)(4)(iii)(A), (i)(5)(iii)(A), and (i)(6)(iii)(A) each require a statement of whether the amount increased or decreased from the estimated amount. For the statement required by § 1026.38(i)(6)(iii)(A), the statement "This amount increased," in which the word "increased" is in boldface and is replaced with the word "decreased" as applicable, complies with this requirement. For the statements required by § 1026.38(i)(4)(iii)(A) and (i)(5)(iii)(A), the statement, "You increased this payment," in which the word "increased" is in boldface and is replaced with the word "decreased" as applicable, complies with these requirements.

The Rule: § 1026.38(i)(1) Total closing costs

(1) *Total closing costs*.

(i) Under the subheading "Loan Estimate," the "Total Closing Costs" disclosed on the Loan Estimate under § 1026.37(h)(1)(i), labeled using that term.

(ii) Under the subheading "Final," the amount disclosed under paragraph (h)(1) of this section.

(iii) Under the subheading "Did this change?," disclosed more prominently than the other disclosures under this paragraph (i)(1):

(A) If the amount disclosed under paragraph (i)(1)(ii) of this section is different than the amount disclosed under paragraph (i)(1)(i) of this section (unless the difference is due to rounding):

Official Comment - 38(i)(1)

38(i)(1) Total closing costs. Paragraph 38(i)(1)(iii)(A).

1. Statements and references regarding the total loan costs and total other costs. Under § 1026.38(i)(1)(iii)(A), the statements under the subheading "Did this change?" that the consumer should see the total loan costs and total other costs subtotals disclosed on the Closing Disclosure under § 1026.38(f)(4) and (g)(5) is made only if and to the extent the difference in the "Total Closing Costs" is attributable to differences in itemized charges that are included in either or both of such subtotals.

i. For example, if an increase in the "Total Closing Costs" is attributable only to an increase in the appraisal fee (which is an itemized charge on the Closing Disclosure under the subheading "Services Borrower Did Not Shop For," itself under the heading "Loan Costs"), then a statement is given under the subheading "Did this change?" that the consumer should see the total loan costs subtotal disclosed on the Closing Disclosure under § 1026.38(f)(4). If the increase in "Total Closing Costs" is attributable only to an increase in recording fees (which is an itemized charge on the Closing Disclosure under the subheading "Taxes and Other Government Fees," itself under the heading "Other Costs"), then a statement is given under the subheading "Did this change?" that the consumer should see the total other costs subtotal disclosed on the Closing Disclosure under § 1026.38(g)(5). If, however, the increase is attributable in part to an increase in the appraisal fee and in part to an increase in the recording fee, then a statement is

given under the subheading "Did this change?" that the consumer should see the total loan costs and total other costs subtotals disclosed on the Closing Disclosure under § 1026.38(f)(4) and (g)(5).

ii. For guidance regarding the requirement that this statement be accompanied by a reference to the disclosures of the total loan costs and total other costs under § 1026.38(f)(4) and (g)(5), see comment 38(i)-1. For an example of such reference, see form H-25 of appendix H to this part.

The Rule: § 1026.38(i)(1)(iii)(A)(1-2)

(*1*) A statement of that fact;

(*2*) If the difference in the "Total Closing Costs" is attributable to differences in itemized charges that are included in either or both subtotals, a statement that the consumer should see the total loan costs and total other costs subtotals disclosed under paragraphs (f)(4) and (g)(5) of this section (together with references to such disclosures), as applicable; and

Official Comment - 38(i)(1)(iii)(A)(1-2)

2. Disclosure of excess amounts above limitations on increases in closing costs.

i. Because certain closing costs, individually, are subject to the limitations on increases in closing costs under § 1026.19(e)(3)(i) (e.g., fees paid to the creditor, transfer taxes, fees paid to an affiliate of the creditor), while other closing costs are collectively subject to the limitations on increases in closing costs under § 1026.19(e)(3)(ii) (e.g., recording fees, fees paid to an unaffiliated third party identified by the creditor if the creditor permitted the consumer to shop for the service provider), § 1026.38(i)(1)(iii)(A) requires the creditor or closing agent to calculate subtotals for each type of excess amount, and then add such subtotals together to yield the dollar amount to be disclosed in the table. See commentary to § 1026.19(e)(3) for additional guidance on calculating excess amounts above the limitations on increases in closing costs under § 1026.19(e)(3).

ii. Under § 1026.38(i)(1)(iii)(A), calculation of the excess amounts above the limitations on increases in closing costs takes into account that the itemized, estimated closing costs disclosed on the Loan Estimate will not result in charges to the consumer if the service is not actually provided at or before consummation. For example, if the Loan Estimate included under "Services You Cannot Shop For" a $30 charge for a "title courier fee," but the title company elects to hand-

deliver the title documents package to the creditor at no charge, the $30 fee is not factored into the calculation of the "Total Closing Costs" that are subject to the limitations on increases in closing costs. However, if the title courier fee was assessed, but at only $15, the charge is factored into the calculation because the third-party service was actually provided, albeit at a lower amount than estimated.

iii. Under § 1026.38(i)(1)(iii)(A), calculation of the excess amounts above the limitations on increases in closing costs takes into account that certain itemized charges listed on the Loan Estimate under the subheading "Services You Can Shop For" may be subject to different limitations depending on the circumstances. Such a charge would be subject to the limitations under § 1026.19(e)(3)(i) if the consumer decided to use a provider affiliated with the creditor. However, the same charge would instead be subject to the limitations under § 1026.19(e)(3)(ii) if the consumer selected a third-party service provider unaffiliated with but identified by the creditor, and the creditor permitted the consumer to shop for the service provider. See commentary to § 1026.19(e)(3) for additional guidance on calculating excess amounts above the limitations on increases in closing costs under § 1026.19(e)(3).

The Rule: § 1026.38(i)(1)(iii)(A)(3)

(*3*) If the increase exceeds the limitations on increases in closing costs under § 1026.19(e)(3), a statement that such increase exceeds the legal limits by the dollar amount of the excess, and if any refund is provided pursuant to § 1026.19(f)(2)(v), a statement directing the consumer to the disclosure required under paragraph (h)(3) of this section. Such dollar amount shall equal the sum total of all excesses of the limitations on increases in closing costs under § 1026.19(e)(3), taking into account the different methods of calculating excesses of the limitations on increases in closing costs under § 1026.19(e)(3)(i) and (ii).

Official Comment - 38(i)(1)(iii)(A)(3)

3. Statements regarding excess amount and any credit to the consumer. Section 1026.38(i)(1)(iii)(A)(3) requires statements that an increase in closing costs exceeds legal limits by the dollar amount of the excess and a statement directing the consumer to the disclosure of lender credits under § 1026.38(h)(3) if a credit is provided under § 1026.19(f)(2)(v). See form H-25(F) of appendix H to this part for examples of such statements.

The Rule: § 1026.38(i)(1)(iii)(B)

(B) If the amount disclosed under paragraph (i)(1)(ii) of this section is equal to the amount disclosed under paragraph (i)(1)(i) of this section, a statement of that fact.

Closing Costs Paid Before Closing

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The Rule: § 1026.38(i)(2) Closing costs paid before closing

(i) Under the subheading "Loan Estimate," the dollar amount "$0," labeled "Closing Costs Paid Before Closing."

Official Comment - 38(i)(2)(i)

1. Estimate of closing costs paid before closing. Under § 1026.38(i)(2)(i), the "Loan Estimate" amount for "Closing Costs Paid Before Closing" is always shown as "$0," because an estimate of such amount is not disclosed on the Loan Estimate.

The Rule: § 1026.38(i)(2)(ii)

(ii) Under the subheading "Final," the amount of "Total Closing Costs" disclosed under paragraph (h)(2) of this section and designated as borrower-paid before closing, stated as a negative number.

The Rule: § 1026.38(i)(2)(iii)

(iii) Under the subheading "Did this change?," disclosed more prominently than the other disclosures under this paragraph (i)(2):

(A) If the amount disclosed under paragraph (i)(2)(ii) of this section is different than the amount disclosed under paragraph (i)(2)(i) of this section (unless the difference is due to rounding), a statement of that fact, along with a statement that the consumer paid such amounts prior to consummation of the transaction; or

(B) If the amount disclosed under paragraph (i)(2)(ii) of this section is equal to the amount disclosed under paragraph (i)(2)(i) of this section, a statement of that fact.

Official Comment - 38(i)(2)(iii)(B)

1. Equal amount. Under § 1026.38(i)(2)(iii)(B), the creditor or closing agent will give a statement that the "Final" amount disclosed under § 1026.38(i)(2)(ii) is equal to the "Loan Estimate" amount disclosed under § 1026.38(i)(2)(i), only if the "Final" amount is $0, because the "Loan

Estimate" amount is always disclosed as $0 pursuant to § 1026.38(i)(2)(i). See comment 38(i)(2)(i)-1.

Closing Costs Financed

Back to Form

The Rule: § 1026.38(i)(3) Closing costs financed

(3) *Closing costs financed*.

(i) Under the subheading "Loan Estimate," the amount disclosed under § 1026.37(h)(1)(ii), labeled "Closing Costs Financed (Paid from your Loan Amount)."

(ii) Under the subheading "Final," the actual amount of the closing costs that are to be paid out of loan proceeds, if any, stated as a negative number.

(iii) Under the subheading "Did this change?," disclosed more prominently than the other disclosures under this paragraph (i)(3):

(A) If the amount disclosed under paragraph (i)(3)(ii) of this section is different than the amount disclosed under paragraph (i)(3)(i) of this section (unless the difference is due to rounding), a statement of that fact, along with a statement that the consumer included the closing costs in the loan amount, which increased the loan amount; or

(B) If the amount disclosed under paragraph (i)(3)(ii) of this section is equal to the amount disclosed under paragraph (i)(3)(i) of this section, a statement of that fact.

Down Payment/Funds from Borrower

Back to Form

The Rule: § 1026.38(i)(4) Downpayment/funds from borrower

(4) *Down payment/funds from borrower*.

(i) Under the subheading "Loan Estimate," the amount disclosed under § 1026.37(h)(1)(iii), labeled "Down Payment/Funds from Borrower."

(ii) Under the subheading "Final":

(A) In a transaction that is a purchase as defined in § 1026.37(a)(9)(i), the amount of the difference between the purchase price of the property and the principal amount of the credit extended, stated as a positive number, labeled "Down Payment/Funds from Borrower"; or

(B) In a transaction other than the type described in paragraph (i)(4)(ii)(A) of this section, the "Funds from Borrower" as determined in accordance with paragraph (i)(6)(iv) of this section, labeled "Down Payment/Funds from Borrower."

Official Comment - 38(i)(4)

38(i)(4) Down payment/funds from borrower. Paragraph 38(i)(4)(ii)(A).

1. Down payment. Under § 1026.38(i)(4)(ii)(A), in a transaction that is a purchase as defined in § 1026.37(a)(9)(i), the "Final" amount disclosed for "Down Payment/Funds from Borrower" reflects any change, following delivery of the Loan Estimate, in the amount of down payment required of the consumer. This change might result, for example, from an increase in the purchase price of the property.

38(i)(4) Down payment/funds from borrower. Paragraph 38(i)(4)(ii)(B).

1. Funds from borrower. Section 1026.38(i)(4)(ii)(B) provides that, in a transaction other than a purchase as defined in § 1026.37(a)(9)(i), the "Final" amount disclosed for "Down Payment/Funds from Borrower" is the amount of "Funds from Borrower" determined in accordance with § 1026.38(i)(6)(iv). Under § 1026.38(i)(6)(iv), the "Final" amount of "Funds from Borrower" to be disclosed under § 1026.38(i)(4)(ii)(B) is determined by subtracting from the total amount of all existing debt being satisfied in the real estate closing and disclosed under § 1026.38(j)(1)(v) (except to the extent the satisfaction of such existing debt is disclosed under § 1026.38(g)) the principal amount of the credit extended, and is disclosed either as a positive number or $0 depending on the result of the calculation. An increase in the "Final" amount of "Funds from Borrower" compared to the corresponding "Loan Estimate" amount might result, for example, from a decrease in the amount of the credit extended or an increase in the payoff amount for the consumer's existing debt that is secured by the property. For additional guidance regarding the determination of the "Down Payment/Funds from Borrower" amount, see comment 38(i)(6)(ii)-1.

The Rule: § 1026.38(i)(4)(iii)

(iii) Under the subheading "Did this change?," disclosed more prominently than the other disclosures under this paragraph (i)(4):

(A) If the amount disclosed under paragraph (i)(4)(ii) of this section is different than the amount disclosed under paragraph (i)(4)(i) of this section (unless the difference is due to rounding), a statement of that fact, along with a statement that the consumer increased or decreased this payment and that the consumer should see the details disclosed under paragraph (j)(1) or (j)(2) of this section, as applicable; or

(B) If the amount disclosed under paragraph (i)(4)(ii) of this section is equal to the amount disclosed under paragraph (i)(4)(i) of this section, a statement of that fact.

Official Comment - 38(i)(4)(iii)

Paragraph 38(i)(4)(iii)(A).

1. Statement of differences. Section 1026.38(i)(4)(iii)(A) requires, as applicable, a statement that the consumer has increased or decreased this payment, along with a statement that the consumer should see the details disclosed under § 1026.38(j)(1) or (j)(2), as applicable. The applicable disclosure to be referenced corresponds to the label on the Closing Disclosure under which the information accounting for the increase in the "Down Payment/Funds from Borrower" amount is disclosed. For example, in a transaction that is a purchase as defined in § 1026.37(a)(9)(i), if the purchase price of the property has increased and therefore caused the "Down Payment" amount to increase, the statement, "You increased this payment. See details in Section K," with the words "increased" and "Section K" in boldface, complies with this requirement. In a purchase or refinancing transaction, in the event the amount of the credit extended by the creditor has decreased and therefore caused the "Funds from Borrower" amount to increase, the statement can read, for example, "You increased this payment. See details in Section L," with the same in boldface.

Deposit

Back to Form

The Rule: § 1026.38(i)(5) Deposit

(5) *Deposit*. (i) Under the subheading "Loan Estimate," the amount disclosed under §1026.37(h)(1)(iv), labeled "Deposit."

(ii) Under the subheading "Final," the amount disclosed under paragraph (j)(2)(ii) of this section, stated as a negative number.

(iii) Under the subheading "Did this change?," disclosed more prominently than the other disclosures under this paragraph (i)(5):

(A) If the amount disclosed under paragraph (i)(5)(ii) of this section is different than the amount disclosed under paragraph (i)(5)(i) of this section (unless the difference is due to rounding), a statement of that fact, along with a statement that the consumer increased or decreased this payment, as applicable, and that the consumer should see the details disclosed under paragraph (j)(2)(ii) of this section; or

(B) If the amount disclosed under paragraph (i)(5)(ii) of this section is equal to the amount disclosed under paragraph (i)(5)(i) of this section, a statement of that fact.

Official Comment - 38(i)(5)

1. When no deposit in a purchase transaction. Section 1026.38(i)(5) requires the disclosure in the Calculating Cash to Close table of the deposit required to be disclosed under § 1026.37(h)(1)(iv) and under § 1026.38(j)(2)(ii), and the subheadings "Loan Estimate" and "Final," respectively. Under § 1026.37(h)(1)(iv), in all transactions other than a purchase transaction as defined in § 1026.37(a)(9)(i), the amount required to be disclosed is $0. In a purchase transaction in which no such deposit is paid in connection with the transaction, under §§ 1026.37(h)(1)(iv) and 1026.38(i)(5)(i) and (ii) the amount required to be disclosed is $0.

Funds for Borrower

Back to Form

The Rule: § 1026.38(i)(6) Funds for borrower

(6) *Funds for borrower*. (i) Under the subheading "Loan Estimate," the amount disclosed under § 1026.37(h)(1)(v), labeled "Funds for Borrower."

(ii) Under the subheading "Final," the "Funds for Borrower," labeled using that term, as determined in accordance with paragraph (i)(6)(iv) of this section.

(iii) Under the subheading "Did this change?," disclosed more prominently than the other disclosures under this paragraph (i)(6):

(A) If the amount disclosed under paragraph (i)(6)(ii) of this section is different than the amount disclosed under paragraph (i)(6)(i) of this section (unless the difference is due to rounding), a statement of that fact, along with a statement that the consumer's available funds from the loan amount have increased or decreased, as applicable; or

(B) If the amount disclosed under paragraph (i)(6)(ii) of this section is equal to the amount disclosed under paragraph (i)(6)(i) of this section, a statement of that fact.

(iv) The "Funds from Borrower" to be disclosed under paragraph (i)(4)(ii)(B) of this section and "Funds for Borrower" to be disclosed under paragraph (i)(6)(ii) of this section are determined by subtracting the principal amount of the credit extended (excluding any amount disclosed pursuant to paragraph (i)(3)(ii) of this section) from the total amount of all existing debt being satisfied in the real estate closing and disclosed under paragraph (j)(1)(v) of this section (except

to the extent the satisfaction of such existing debt is disclosed under paragraph (g) of this section).

(A) If the calculation under this paragraph (i)(6)(iv) yields an amount that is a positive number, such amount shall be disclosed under paragraph (i)(4)(ii)(B) of this section, and $0 shall be disclosed under paragraph (i)(6)(ii) of this section.

(B) If the calculation under this paragraph (i)(6)(iv) yields an amount that is a negative number, such amount shall be disclosed under paragraph (i)(6)(ii) of this section, stated as a negative number, and $0 shall be disclosed under paragraph (i)(4)(ii)(B) of this section.

(C) If the calculation under this paragraph (i)(6)(iv) yields $0, $0 shall be disclosed under paragraph (i)(4)(ii)(B) of this section and under paragraph (i)(6)(ii) of this section.

Official Comment - 38(i)(6)

38(i)(6) Funds for borrower. Paragraph 38(i)(6)(ii).

1. Final funds for borrower. Section 1026.38(i)(6)(ii) provides that the "Final" amount for "Funds for Borrower" is determined in accordance with § 1026.38(i)(6)(iv). Under § 1026.38(i)(6)(iv), the "Final" amount of "Funds for Borrower" to be disclosed under § 1026.38(i)(6)(ii) is determined by subtracting from the total amount of all existing debt being satisfied in the transaction and disclosed under § 1026.38(j)(1)(v) (except to the extent the satisfaction of such existing debt is disclosed under § 1026.38(g)) the principal amount of the credit extended (excluding any amount disclosed under § 1026.38(i)(3)(ii)), and is disclosed under § 1026.38(i)(6)(ii) either as a negative number or $0.00 depending on the result of the calculation. The "Final" amount of "Funds for Borrower" disclosed under § 1026.38(i)(6)(ii) is the amount to be disbursed to the consumer or a designee of the consumer at consummation, if any.

Seller Credits

Back to Form

The Rule: § 1026.38(i)(7) Seller credits

(7) *Seller credits*. (i) Under the subheading "Loan Estimate," the amount disclosed under § 1026.37(h)(1)(vi), labeled "Seller Credits."

(ii) Under the subheading "Final," the amount disclosed under paragraph (j)(2)(v) of this section, stated as a negative number.

(iii) Under the subheading "Did this change?," disclosed more prominently than the other disclosures under this paragraph (i)(7):

(A) If the amount disclosed under paragraph (i)(7)(ii) of this section is different than the amount disclosed under paragraph (i)(7)(i) of this section (unless the difference is due to rounding), a statement of that fact, along with a statement that the consumer should see the details disclosed under paragraph (j)(2)(v) of this section; or

(B) If the amount disclosed under paragraph (i)(7)(ii) of this section is equal to the amount disclosed under paragraph (i)(7)(i) of this section, a statement of that fact.

Official Comment - 38(i)(7)

38(i)(7) Seller credits. Paragraph 38(i)(7)(ii).

1. Final seller credits. Under § 1026.38(i)(7)(ii), the "Final" amount of "Seller Credits" reflects any change, following the delivery of the Loan Estimate, in the amount of funds given by the seller to the consumer for generalized (i.e., lump sum) credits for closing costs or for allowances for items purchased separately (e.g., if the seller is a builder). Seller credits are distinguished from payments by the seller for items attributable to periods of time prior to consummation, which are among the "Adjustments and Other Credits" separately disclosed pursuant to § 1026.38(i)(8). For additional guidance regarding seller credits, see comments 38(j)(2)(v)-1 and -2.

Adjustments and Other Credits

The Rule: § 1026.38(i)(8) Adjustments and other credits

(8) *Adjustments and other credits*.

(i) Under the subheading "Loan Estimate," the amount disclosed on the Loan Estimate under § 1026.37(h)(1)(vii) rounded to the nearest whole dollar, labeled "Adjustments and Other Credits."

(ii) Under the subheading "Final," the amount equal to the total of the amounts disclosed under paragraphs (j)(1)(v) through (x) of this section reduced by the total of the amounts disclosed under paragraphs (j)(2)(vi) through (xi) of this section.

(iii) Under the subheading "Did this change?," disclosed more prominently than the other disclosures under this paragraph (i)(8):

(A) If the amount disclosed under paragraph (i)(8)(ii) of this section is different than the amount disclosed under paragraph (i)(8)(i) of this section (unless the difference is due to rounding), a statement of that fact, along with a statement that the consumer should see the details disclosed under paragraphs (j)(1)(v) through (x) and (j)(2)(vi) through (xi) of this section;

or

(B) If the amount disclosed under paragraph (i)(8)(ii) of this section is equal to the amount disclosed under paragraph (i)(8)(i) of this section, a statement of that fact.

Official Comment - 38(i)(8)

Paragraph 38(i)(8)(ii).

1. Adjustments and other credits. Under § 1026.38(i)(8)(ii), the "Final" amount for "Adjustments and Other Credits" would include, for example, prorations of taxes or homeowners' association fees, utilities used but not paid for by the seller, rent collected in advance by the seller from a tenant for a period extending beyond the consummation, and interest on loan assumptions. This category also includes generalized credits toward closing costs given by parties other than the seller. For additional guidance regarding adjustments and other credits, see commentary to §§ 1026.37(h)(7) and 1026.38(j)(2)(vi) and (j)(2)(xi). If the calculation required by § 1026.38(i)(8)(ii) yields a negative number, the creditor or closing agent discloses the amount as a negative number.

Cash to Close

Back to Form

The Rule: § 1026.38(i)(9) Cash to close

(9) *Cash to close*.

(i) Under the subheading "Loan Estimate," the amount disclosed on the Loan Estimate under § 1026.37(h)(1)(viii), labeled "Cash to Close" and disclosed more prominently than the other disclosures under this paragraph (i).

(ii) Under the subheading "Final," the sum of the amounts disclosed under paragraphs (i)(1) through (i)(8) of this section under the subheading "Final," and disclosed more prominently than the other disclosures under this paragraph (i).

Official Comment - 38(i)(9)

38(i)(9) Cash to close. Paragraph 38(i)(9)(ii).

1. Final cash to close amount. The "Final" amount of "Cash to Close" disclosed under § 1026.38(i)(9)(ii) is the same as the amount disclosed on the Closing Disclosure as "Cash to Close" under § 1026.38(j)(3)(iii). If the calculation required by § 1026.38(i)(9)(ii) yields a negative number, the creditor or closing agent discloses the amount as a negative number.

2. More prominent disclosure. Section 1026.38(i)(9)(ii) requires that the disclosure of the "Final" amount of "Cash to Close" be more prominent than the other disclosures under § 1026.38(i). Such more prominent disclosure can take the form, for example, of boldface font, as shown on form H-25 of appendix H to this part.

Summaries of Transactions

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The Rule: § 1026.38(j) Summary of borrower's transaction

(j) *Summary of borrower's transaction.* Under the heading "Summaries of Transactions," with a statement to "Use this table to see a summary of your transaction," two separate tables are disclosed. The first table shall include, under the subheading "Borrower's Transaction," the following information and shall satisfy the following requirements:

Official Comment - 38(j)

1. In general. It is permissible to have two separate Closing Disclosures in a transaction: one that reflects the consumer's costs and credits only, which is provided to the consumer, and one that reflects the seller's costs and credits only, which is provided to the seller. See § 1026.38(t)(5)(v) and (vi). Some State laws may prohibit provision of information about the consumer to the seller and about the seller to the consumer.

2. Addenda. Additional pages may be attached to the Closing Disclosure to add lines, as necessary, to accommodate the complete listing of all items required to be shown on the Closing Disclosure under § 1026.38(j) and (k), and for the purpose of including customary recitals and information used locally in real estate closings (for example, breakdown of payoff figures, a breakdown of the consumer's total monthly mortgage payments, an accounting of debits received

and check disbursements, a statement stating receipt of funds, applicable special stipulations between consumer and seller, and the date funds are transferred). See § 1026.38(t)(5)(ix). A

reference such as "See attached page for additional information" should be placed in the applicable section of
the Closing Disclosure.

3. Identical amounts. The amounts disclosed under the following provisions of § 1026.38(j) are the same as the amounts disclosed under the corresponding provisions of § 1026.38(k): § 1026.38(j)(1)(ii) and (k)(1)(ii); § 1026.38(j)(1)(iii) and (k)(1)(iii); if the amount disclosed under § 1026.38(j)(1)(v) is attributable to contractual adjustments between the consumer and seller, § 1026.38(j)(1)(v) and (k)(1)(iv); § 1026.38(j)(1)(vii) and (k)(1)(vi);§ 1026.38(j)(1)(viii) and (k)(1)(vii); § 1026.38(j)(1)(ix) and (k)(1)(viii); § 1026.38(j)(1)(x) and(k)(1)(ix); § 1026.38(j)(2)(iv) and (k)(2)(iv); § 1026.38(j)(2)(v) and (k)(2)(vii);§ 1026.38(j)(2)(viii) and (k)(2)(x); § 1026.38(j)(2)(ix) and (k)(2)(xi); § 1026.38(j)(2)(x) and(k)(2)(xii); and § 1026.38(j)(2)(xi) and (k)(2)(xiii).

Itemization of amounts due from borrower.

The Rule: § 1026.38(j)(1) Itemization of amounts due from borrower

(i) The total amount due from the consumer at closing, calculated as the sum of items required to be disclosed by paragraph (j)(1)(ii) through (x) of this section, excluding items paid from funds other than closing funds as described in paragraph (j)(4)(i) of this section, labeled "Due from Borrower at Closing";

Official Comment - 38(j)(1)(i)

38(j)(1) Itemization of amounts due from borrower. Paragraph 38(j)(1)(ii).

1. Contract sales price and personal property. Section 1026.38(j)(1)(ii) requires disclosure of the contract sales price of the property being sold, excluding the price of any tangible personal property if the consumer and seller have agreed to a separate price for such items. Personal property is defined by State law, but could include such items as carpets, drapes, and appliances. Manufactured homes are not considered personal property under § 1026.38(j)(1)(ii).

The Rule: § 1026.38(j)(1)(ii) - (v)

(ii) The amount of the contract sales price of the property being sold in a purchase real estate transaction, excluding the price of any tangible personal property if the consumer and seller have agreed to a separate price for such items, labeled "Sale Price of Property";

(iii) The amount of the sales price of any tangible personal property excluded from the contract sales price pursuant to paragraph (j)(1)(ii) of this section, labeled "Sale Price of Any Personal Property Included in Sale";

(iv) The total amount of closing costs disclosed that are designated borrower-paid at closing, calculated pursuant to paragraph (h)(2) of this section, labeled "Closing Costs Paid at Closing";

(v) A description and the amount of any additional items that the seller has paid prior to the real estate closing, but reimbursed by the consumer at the real estate closing, and a description and the amount of any other items owed by the consumer at the real estate closing not otherwise disclosed pursuant to paragraph (f), (g), or (j) of this section;

Official Comment - 38(j)(1)(v)

Paragraph 38(j)(1)(v).

1. Contractual adjustments. Section 1026.38(j)(1)(v) requires disclosure of amounts owed by the consumer that are not otherwise disclosed pursuant to § 1026.38(j). For example, the following items must be disclosed under § 1026.38(j), to the extent applicable:

i. The balance in the seller's reserve account held in connection with an existing loan, if assigned to the consumer in a loan assumption transaction;

ii. Any rent that the consumer will collect after the real estate closing for a period of time prior to the real estate closing; and

iii. The treatment of any tenant security deposit.

2. Other consumer charges. The amounts disclosed under § 1026.38(j)(1)(v) which are for charges owed by the consumer at the real estate closing not otherwise disclosed pursuant to § 1026.38(f), (g), and (j) will not have a corresponding credit in the summary of the seller's transaction under § 1026.38(k)(1)(iv). For example, the amounts paid to any existing holders of liens on the property in a refinance transaction, and any outstanding real estate property taxes are disclosed under § 1026.38(j)(1)(v) without a corresponding credit in the summary of the seller's transaction under § 1026.38(k)(1)(iv).

The Rule: § 1026.38(j)(1)(vii) - (x)

(vii) The prorated amount of any prepaid taxes due from the consumer to reimburse the seller at the real estate closing, and the time period corresponding to that amount, labeled "City/Town Taxes";

(viii) The prorated amount of any prepaid taxes due from the consumer to reimburse the seller at the real estate closing, and the time period corresponding to that amount, labeled “County Taxes”;
(ix) The prorated amount of any prepaid assessments due from the consumer to reimburse the seller at the real estate closing, and the time period corresponding to that amount, labeled “Assessments”; and
(x) A description and the amount of any additional items paid by the seller prior to the real estate closing that are due from the consumer at the real estate closing.

Official Comment - 38(j)(1)(x)

Paragraph 38(j)(1)(x).

1. Additional adjustments. Examples of items for which adjustments may be made include taxes, other than those disclosed pursuant to § 1026.38(j)(1)(vii) and (viii), paid in advance for an entire year or other period, when the real estate closing occurs prior to the expiration of the year or other period for which they were paid. Additional examples of items for which adjustments may be made include:

i. Flood and hazard insurance premiums, if the consumer is being substituted as an insured under the same policy;

ii. Mortgage insurance in loan assumptions;

iii. Planned unit development or condominium association assessments paid in advance;

iv. Fuel or other supplies on hand, purchased by the seller, which the consumer will use when the consumer takes possession of the property; and

v. Ground rent paid in advance.

Paid Already by or on Behalf of Borrower

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The Rule: § 1026.38(j)(2) Itemization of amounts already paid by or on behalf of borrower

(2) *Itemization of amounts already paid by or on behalf of borrower.*
(i) The sum of the amounts disclosed in this paragraphs (j)(2)(ii) through (xi) of this section, excluding items paid from funds other than closing funds as described in paragraph (j)(4)(i) of this section, labeled “Paid Already by or on Behalf of Borrower at Closing”;
(ii) Any amount that is paid to the seller or held in trust or escrow by an attorney or other party under the terms of the agreement for the sale of the property, labeled “Deposit”;

Official Comment - 38(j)(2)(ii)

1. Deposit. All amounts paid into a trust account by the consumer pursuant to the contract of sale for real estate, any addenda thereto, or any other agreement between the consumer and seller must be disclosed under § 1026.38(j)(2)(ii). If there is no deposit paid in a transaction, that amount is left blank on the Closing Disclosure.

2. Reduction of deposit when deposit used to pay for closing charges prior to closing. If the consumer's deposit has been applied toward a charge for a closing cost, the amount applied should not be included in the amount disclosed pursuant to § 1026.38(j)(2)(ii), but instead should be shown on the appropriate line for the closing cost in the Closing Cost Detail tables pursuant to § 1026.38(f) or (g), designated borrower-paid before closing.

The Rule: § 1026.38(j)(2)(iii)

(iii) The amount of the consumer's new loan amount or first user loan as disclosed pursuant to paragraph (b) of this section, labeled "Loan Amount";

Official Comment - 38(j)(2)(iii)

Paragraph 38(j)(2)(iii).

1. First user loan. For purposes of § 1026.38(j), a first user loan is a loan to finance construction of a new structure or purchase of a new manufactured home that is known at the time of consummation to be real property under State law, where the structure was constructed for sale or the manufactured home was purchased for purposes of resale and the loan is used as or converted to a loan to finance purchase by the first user. For other loans subject to § 1026.19(f) that finance construction of a new structure or purchase of a manufactured home that is known at the time of consummation to be real property under State law, the sales price of the land and the construction cost or purchase price of the manufactured home should be disclosed separately and the amount of the loan in the current transaction must be disclosed. The remainder of the Closing Disclosure should be completed taking into account adjustments and charges related to the temporary financing and permanent financing that are known at the time of consummation.

The Rule: § 1026.38(j)(2)(iv)

(iv) The amount of any existing loans that the consumer is assuming, or any loans subject to which the consumer is taking title to the property, labeled "Existing Loan(s) Assumed or Taken Subject to";

Official Comment - 38(j)(2)(iv)

Paragraph 38(j)(2)(iv).

1. Assumption of existing loan obligation of seller by consumer. The outstanding amount of any loans that the consumer is assuming, or subject to which the consumer is taking title to the property must be disclosed under § 1026.38(j)(2)(iv). When more than one loan is being assumed, the total amount of all outstanding loans being assumed should be disclosed under § 1026.38(j)(2)(iv).

The Rule: § 1026.38(j)(2)(v)

(v) The total amount of money that the seller will provide at the real estate closing as a lump sum not otherwise itemized to pay for loan costs as determined by paragraph (f) of this section and other costs as determined by paragraph (g) of this section and any other obligations of the seller to be paid directly to the consumer, labeled "Seller Credit";

Official Comment - 38(j)(2)(v)

Paragraph 38(j)(2)(v).

1. General seller credits. When the consumer receives a generalized credit from the seller for closing costs or where the seller (typically a builder) is making an allowance to the consumer for items to purchase separately, the amount of the credit must be disclosed. However, if the seller credit is attributable to a specific loan cost or other cost listed in the Closing Cost Details tables, pursuant to § 1026.38(f) or (g), that amount should be reflected in the seller-paid column in the Closing Cost Details tables under § 1026.38(f) or (g).

2. Other seller credits. Any other obligations of the seller to be paid directly to the consumer, such as for issues identified at a walk-through of the property prior to closing, are disclosed under § 1026.38(j)(2)(v).

The Rule: § 1026.38(j)(2)(vi)

(vi) The description "Other Credits," together with a description and amount of other items paid by or on behalf of the consumer and not otherwise disclosed pursuant to paragraphs (f), (g), (h), and (j)(2) of this section;

Official Comment - 38(j)(2)(vi)

Paragraph 38(j)(2)(vi).

1. Credits from any party other than the seller or creditor. Section 1026.38(j)(2)(vi) requires disclosure of a description and the amount of items paid by or on behalf of the consumer and not disclosed elsewhere under § 1026.38(j)(2). For example, credits a consumer receives from a real estate agent or other third party, other than a seller or creditor, are disclosed pursuant to § 1026.38(j)(2)(vi). However, if the credit is attributable to a specific closing cost listed in the Closing Cost Details tables under § 1026.38(f) or (g), that amount should be reflected in the paid by others column on the Closing Cost Details tables and not in the disclosure required under § 1026.38(j)(2)(vi). Similarly, if a real estate agent rebates a portion of the agent's commission to the consumer, the rebate should be listed as a credit along with a description of the rebate, which must include the name of the party giving the credit.

2. Subordinate financing proceeds. Any financing arrangements or other new loans not otherwise disclosed pursuant to § 1026.38(j)(2)(iii) or (iv) must also be disclosed pursuant to § 1026.38(j)(2)(vi). For example, if the consumer is using a second mortgage or note to finance part of the purchase price, whether from the same creditor, another creditor, or the seller, the principal amount of the loan must be disclosed with a brief explanation. If the net proceeds of a second loan are less than the principal amount of the second loan, the net proceeds may be listed on the same line as the principal amount of the second loan. For an example, see form H-25(C) of appendix H to this part.

3. Satisfaction of existing subordinate liens by consumer. For payments to subordinate lien holders by or on behalf of the consumer, disclosure of any amounts paid with funds other than closing funds, as defined under § 1026.38(j)(4)(ii), in connection with the second mortgage payoff are required to be disclosed under § 1026.38(j)(2)(vi), with a statement that such amounts were paid outside of closing funds. For an example, see form H-25(D) of appendix H to this part.

4. Transferred escrow balances. In a refinance transaction, any transferred escrow balance is listed as a credit pursuant to § 1026.38(j)(2)(vi), along with a description of the transferred escrow balance.

5. Gift funds. A credit must be disclosed for any money or other payments made by family members or third parties not otherwise associated with the transaction, along with a description of the nature of the funds provided under § 1026.38(j)(2)(vi).

The Rule: § 1026.38(j)(2)(vi) - (xi)

(vii) The description “Adjustments for Items Unpaid by Seller”;

(viii) The prorated amount of any unpaid taxes due from the seller to reimburse the consumer at the real estate closing, and the time period corresponding to that amount, labeled ”City/Town Taxes”;

(ix) The prorated amount of any unpaid taxes due from the seller to reimburse the consumer at the real estate closing, and the time period corresponding to that amount, labeled “County Taxes”;

(x) The prorated amount of any unpaid assessments due from the seller to reimburse the consumer at the real estate closing, and the time period corresponding to that amount, labeled “Assessments”; and

(xi) A description and the amount of any additional items which have not yet been paid and which the consumer is expected to pay after the real estate closing, but which are attributable in part to a period of time prior to the real estate closing.

Official Comment - 38(j)(2)(xi)

Paragraph 38(j)(2)(xi).

1. Examples. Examples of items that would be disclosed under § 1026.38(j)(2)(xi)include:

i. Utilities used but not paid for by the seller;

ii. Rent collected in advance by the seller from a tenant for a period extending beyond the closing date; and

iii. Interest on loan assumptions.

Calculation

Back to Form

The Rule: § 1026.38(j)(3) Calculation of borrower’s transaction

(3) *Calculation of borrower’s transaction.* Under the label “Calculation”:

(i) The amount disclosed pursuant to paragraph (j)(1)(i) of this section, labeled “Total Due from Borrower at Closing”;

(ii) The amount disclosed pursuant to paragraph (j)(2)(i) of this section, if any, disclosed as a negative number, labeled “Total Paid Already by or on Behalf of Borrower at Closing”; and

(iii) A statement that the disclosed amount is due from or to the consumer, and the amount due from or to the consumer at the real estate closing, calculated by the sum of the amounts disclosed under paragraphs (j)(3)(i) and (ii) of this section, labeled “Cash to Close.”

Official Comment - 38(j)(3)

Paragraph 38(j)(3)(iii).

1. *Stating if amount is due to or from consumer*. To comply with § 1026.38(j)(3)(iii), the creditor must state either the cash required from the consumer at closing, or cash payable to the consumer at closing.

2. *Methodology.* To calculate the cash to close, total the amounts disclosed under § 1026.38(j)(3)(i) and (ii). If that calculation results in a positive amount, the amount is due from the consumer. If the calculation results in a negative amount, the amount is due to the consumer.

Items paid Outside of Closing

The Rule: § 1026.38(j)(4) Items paid outside of closing funds

(4) *Items paid outside of closing funds.*

(i) Costs that are not paid from closing funds but that would otherwise be disclosed in the table required pursuant to paragraph (j) of this section, should be marked with the phrase "Paid Outside of Closing" or the abbreviation "P.O.C." and include the name of the party making the payment.

(ii) For purposes of this paragraph (j), "closing funds" means funds collected and disbursed at real estate closing.

Official Comment - 38(j)(4)

38(j)(4) Items paid outside of closing funds. Paragraph 38(j)(4)(i).

1. *Charges not paid with closing funds*. Section 1026.38(j)(4)(i) requires that any charges not paid from closing funds but that otherwise are disclosed pursuant to § 1026.38(j) be marked as "paid outside of closing" or "P.O.C." The disclosure must include a statement of the party making the payment, such as the consumer, seller, loan originator, real estate agent, or any other person. For an example of a disclosure of a charge not made from closing funds, see form H-25(D) of appendix H to this part. For an explanation of what constitutes closing funds, see § 1026.38(j)(4)(ii).

2. *Items paid without closing funds not included in sums*. Charges that are paid outside of closing funds under § 1026.38(j)(4)(i) should not be included in computing totals under § 1026.38(j)(1) and (j)(2).

Sellers Transaction/Due to Seller at Closing

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The Rule: § 1026.38(k) Summary of seller's transaction

(k) *Summary of seller's transaction.* Under the heading "Summaries of Transactions" required by paragraph (j) of this section, a separate table under the subheading "Seller's Transaction," that includes the following information and satisfies the following requirements:

The Rule: § 1026.38(k)(1) Itemization of amounts due to seller

(1) *Itemization of amounts due to seller.*

(i) The total amount due to the seller at the real estate closing, calculated as the sum of items required to be disclosed pursuant to paragraphs (k)(1)(ii) through (ix) of this section, excluding items paid from funds other than closing funds as described in paragraph (k)(4)(i) of this section, labeled "Due to Seller at Closing";

(ii) The amount of the contract sales price of the property being sold, excluding the price of any tangible personal property if the consumer and seller have agreed to a separate price for such items, labeled "Sale Price of Property";

(iii) The amount of the sales price of any tangible personal property excluded from the contract sales price pursuant to paragraph (k)(1)(ii) of this section, labeled "Sale Price of Any Personal Property Included in Sale";

(iv) A description and the amount of other items paid to the seller by the consumer pursuant to the contract of sale or other agreement, such as charges that were not disclosed pursuant to § 1026.37 on the Loan Estimate or items paid by the seller prior to the real estate closing but reimbursed by the consumer at the real estate closing;

(v) The description "Adjustments for Items Paid by Seller in Advance";

(vi) The prorated amount of any prepaid taxes due from the consumer to reimburse the seller at the real estate closing, and the time period corresponding to that amount, labeled "City/Town Taxes";

(vii) The prorated amount of any prepaid taxes due from the consumer to reimburse the seller at the real estate closing, and the time period corresponding to that amount, labeled "County Taxes";

(viii) The prorated amount of any prepaid assessments due from the consumer to reimburse the seller at the real estate closing, and the time period corresponding to that amount, labeled "Assessments"; and

(ix) A description and the amount of additional items paid by the seller prior to the real estate closing that are reimbursed by the consumer at the real estate closing.

Official Comment - 38(k)

38(k) Summary of seller's transaction.

1. Transactions with no seller. Section 1026.38(k) does not apply in transactions where there is no seller, such as a refinance transaction.

2. Extra line items. For guidance regarding the use of addenda for items disclosed on the Closing Disclosure under § 1026.38(k), see comment 38(j)-2.

3. Identical amounts. The amounts disclosed under certain provisions of § 1026.38(k) are the same as the amounts disclosed under certain provisions of § 1026.38(j). See comment 38(j)- 3 for a listing of the specific provisions.

Due from Seller at Closing

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The Rule: § 1026.38(k)(2) Itemization of amounts due from seller

(2) Itemization of amounts due from seller.

(i) The total amount due from the seller at the real estate closing, calculated as the sum of items required to be disclosed pursuant to paragraphs (k)(2)(ii) through (xiii) of this section, excluding items paid from funds other than closing funds as described in paragraph (k)(4)(i) of this section, labeled "Due from Seller at Closing";

(ii) The amount of any excess deposit disbursed to the seller prior to the real estate closing , labeled "Excess Deposit";

Official Comment - 38(k)

38(k)(2) Itemization of amounts due from seller.

Paragraph 38(k)(2)(ii).

1. Distributions of deposit to seller prior to closing. If the deposit or any portion thereof has been disbursed to the seller prior to closing, the amount of the deposit that has been distributed to the seller must be disclosed under § 1026.38(k)(2)(ii).

The Rule: § 1026.38(k)(2)(iii) - (iv)

(iii) The amount of closing costs designated seller-paid at closing disclosed pursuant to paragraph (h)(2) of this section, labeled "Closing Costs Paid at Closing";

(iv) The amount of any existing loans that the consumer is assuming, or any loans subject to which the consumer is taking title to the property, labeled "Existing Loan(s) Assumed or Taken Subject to";

Official Comment - 38(k)(2)(iv)

Paragraph 38(k)(2)(iv).

1. Assumption of existing loan obligation of seller by consumer. If the consumer is assuming or taking title subject to existing liens and the amounts of the outstanding balance of the liens are to be deducted from the sales price, the amounts of the outstanding balance of the liens must be disclosed under § 1026.38(k)(2)(iv).

2. Other seller credits. Any other obligations of the seller to be paid directly to the consumer, such as credits for issues identified at a walk-through of the property prior to the real estate closing, are disclosed under § 1026.38(k)(2)(vii).

The Rule: § 1026.38(k)(2)(v) - (xii)

(v) The amount of any loan secured by a first lien on the property that will be paid off as part of the real estate closing, labeled "Payoff of First Mortgage Loan";

(vi) The amount of any loan secured by a second lien on the property that will be paid off as part of the real estate closing, labeled "Payoff of Second Mortgage Loan";

(vii) The total amount of money that the seller will provide at the real estate closing as a lump sum not otherwise itemized to pay for loan costs as determined by paragraph (f) of this section and other costs as determined by paragraph (g) of this section and any other obligations of the seller to be paid directly to the consumer, labeled "Seller Credit";

(viii) A description and amount of any and all other obligations required to be paid by the seller at the real estate closing, including any lien-related payoffs, fees, or obligations;

(ix) The description "Adjustments for Items Unpaid by Seller";

(x) The prorated amount of any unpaid taxes due from the seller to reimburse the consumer at the real estate closing, and the time period corresponding to that amount, labeled "City/Town Taxes";

(xi) The prorated amount of any unpaid taxes due from the seller to the consumer at the real estate closing, and the time period corresponding to that amount, labeled “County Taxes”;
(xii) The prorated amount of any unpaid assessments due from the seller to reimburse the consumer at the real estate closing, and the time period corresponding to that amount, labeled “Assessments”; and
(xiii) A description and the amount of any additional items which have not yet been paid and which the consumer is expected to pay after the real estate closing, but which are attributable in part to a period of time prior to the real estate closing.

Official Comment - 38(k)(2)(viii)

Paragraph 38(k)(2)(viii).

1. *Satisfaction of other seller obligations*. Seller obligations, other than second liens, that must be paid off to clear title to the property must be disclosed pursuant to § 1026.38(k)(2)(viii). Examples of disclosures pursuant to § 1026.38(k)(2)(viii) include the satisfaction of outstanding liens imposed due to Federal, State, or local income taxes, real estate property tax liens, judgments against the seller reduced to a lien upon the property, or any other obligations the seller wishes the closing agent to pay from their proceeds at the real estate closing.

2. *Consumer satisfaction of outstanding subordinate loans*. If the consumer is satisfying existing liens which will not be deducted from the sales price, the amount of the outstanding balance of the loan must be disclosed under § 1026.38(k)(2)(viii). For example, the amount of any second lien which will be paid as part of the real estate closing that is not deducted from the seller’s proceeds under §1026.38(k)(2)(iv), is disclosed under § 1026.38(k)(2)(viii). For payments to the subordinate lien holder, any amounts paid must be disclosed, and other amounts paid by or on behalf of the seller must be disclosed as paid outside of closing funds under § 1026.38(j)(2)(vi). For additional discussion, see comment 38(j)(2)(vi)-2.

3. *Escrows held by closing agent for payment of invoices received after consummation*. Funds to be held by the closing agent for the payment of either repairs, or water, fuel, or other utility bills that cannot be prorated between the parties at closing because the amounts used by the seller prior to closing are not yet known must be disclosed under § 1026.38(k)(2)(viii). Subsequent disclosure of the actual amount of these post-closing items to be paid from closing funds is optional.

Calculation of Seller’s Costs

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The Rule: § 1026.38(k)(3) Calculation of seller's transaction

(3) *Calculation of seller's transaction.* Under the label "Calculation":

(i) The amount described in paragraph (k)(1)(i) of this section, labeled "Total Due to Seller at Closing";

(ii) The amount described in paragraph (k)(2)(i) of this section, disclosed as a negative number, labeled "Total Due from Seller at Closing"; and

(iii) A statement that the disclosed amount is due from or to the seller, and the amount due from or to the seller at closing, calculated by the sum of the amounts disclosed pursuant to paragraphs (k)(3)(i) and (k)(3)(ii) of this section, labeled "Cash."

Official Comment - 38(k)(3)

1. Stating if amount is due to or from seller. To comply with § 1026.38(k)(3)(iii), the creditor must state either the cash required from the seller at closing, or cash payable to the seller at closing.

2. Methodology. To calculate the cash due to or from the consumer, total the amounts disclosed under § 1026.38(k)(3)(i) and (ii). If that calculation results in a positive amount, the amount is due to the seller. If the calculation results in a negative amount, the amount is due from the seller.

Items Paid Outside of Closing (Seller)

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The Rule: § 1026.38(k)(4) Items paid outside of closing funds

(4) *Items paid outside of closing funds.*

(i) Charges that are not paid from closing funds but that would otherwise be disclosed in the table described in paragraph (k) of this section, should be marked with the phrase "Paid Outside of Closing" or the acronym "P.O.C." and include a statement of the party making the payment.

(ii) For purposes of this paragraph (k), "closing funds" are defined as funds collected and disbursed at real estate closing.

Official Comment - 38(k)(4)

1. Guidance. For guidance regarding the disclosure of items paid with funds other than closing funds, see comments 38(j)(4)(i)-1 and -2.

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Assumptions

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The Rule: § 1026.38(l) Loan disclosures

(l) *Loan disclosures*. Under the master heading "Additional Information About This Loan" and under the heading "Loan Disclosures":

The Rule: § 1026.38(l)(1) Assumptions

(1) *Assumption*. Under the subheading "Assumption," the information required by §1026.37(m)(2).

Demand Feature

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The Rule: § 1026.38(l)(2) Demand feature

(2) *Demand feature*. Under the subheading "Demand Feature," a statement of whether the legal obligation permits the creditor to demand early repayment of the loan and, if the statement is affirmative, a reference to the note or other loan contract for details.

Late Payment

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The Rule: § 1026.38(l)(3) Late payment

(3) *Late payment*. Under the subheading "Late Payment," the information required by §1026.37(m)(4).

Negative Amortization

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The Rule: § 1026.38(l)(4) Negative Amortization

(4) *Negative amortization*. Under the subheading "Negative Amortization (Increase in Loan Amount)," a statement of whether the regular periodic payments may cause the principal balance to increase.

(i) If the regular periodic payments do not cover all of the interest due, the creditor must provide a statement that the principal balance will increase, such balance will likely become larger than the original loan amount, and increases in such balance lower the consumer's equity in the property.

(ii) If the consumer may make regular periodic payments that do not cover all of the interest due, the creditor must provide a statement that, if the consumer chooses a monthly payment option that does not cover all of the interest due, the principal balance may become larger than

the original loan amount and the increases in the principal balance lower the consumer's equity in the property.

Partial Payments

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The Rule: § 1026.38(l)(5) Partial payment policy

(5) *Partial payment policy.* Under the subheading "Partial Payments":

(i) If periodic payments that are less than the full amount due are accepted, a statement that the creditor, using the term "lender," may accept partial payments and apply such payments to the consumer's loan;

(ii) If periodic payments that are less than the full amount due are accepted but not applied to a consumer's loan until the consumer pays the remainder of the full amount due, a statement that the creditor, using the term "lender," may hold partial payments in a separate account until the consumer pays the remainder of the payment and then apply the full periodic payment to the consumer's loan;

(iii) If periodic payments that are less than the full amount due are not accepted, a statement that the creditor, using the term "lender," does not accept any partial payments; and

(iv) A statement that, if the loan is sold, the new creditor, using the term "lender," may have a different policy.

Security Interest

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The Rule: § 1026.38(l)(6) Security interest

(6) *Security interest*. Under the subheading "Security Interest," a statement that the consumer is granting a security interest in the property securing the transaction, the property address including a zip code, and a statement that the consumer may lose the property if the consumer does not make the required payments or satisfy other requirements under the legal obligation.

Official Comment - 38(l)(6)

1. Alternate property address. Section 1026.38(l)(6) requires disclosure of the address for the property that secures the credit, including the zip code. If the address is unavailable, §1026.38(l)(6) requires disclosure of other location information for the property, such as a lot number; however, disclosure of a zip code is required in all instances. For transactions secured

by a consumer's interest in a timeshare plan, the creditor may disclose as other location information a lot, square, or other such number or other legal description of the property assigned by the local governing authority, or if no such number or description is available, disclose the name of the timeshare property or properties with a designation indicating that the property is an interest in a timeshare plan.

2. Personal property. Where personal property also secures the credit transaction, a description of that property may be disclosed, at the creditor's option, pursuant to § 1026.38(l)(6). If the form does not provide enough space to disclose a description of personal property to be disclosed under § 1026.38(l)(6), an additional page may be used and appended to the end of the form provided that the creditor complies with the requirements of § 1026.38(t)(3). The creditor may use one addendum to disclose the personal property under § 1026.38(a)(3)(vi) and (l)(6). See comment 38(a)(3)(vi)-1.

Escrow Account

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The Rule: § 1026.38(l)(7) Escrow account

(7) *Escrow account*. Under the subheading "Escrow Account":

(i) Under the reference "For now," a statement that an escrow account may also be called an impound or trust account, a statement of whether the creditor has established or will establish, at or before consummation, an escrow account in connection with the transaction for the costs that will be paid using escrow account funds described in paragraph (l)(7)(i)(A)(*1*) of this section:

(A) A statement that the creditor may be liable for penalties and interest if it fails to make a payment for any cost for which the escrow account is established, a statement that the consumer would have to pay such costs directly in the absence of the escrow account, and a table, titled "Escrow" that contains, if an escrow account is or will be established, an itemization of the following:

(*1*) The total amount the consumer will be required to pay into an escrow account over the first year after consummation for payment of the charges described in § 1026.37(c)(4)(ii), labeled "Escrowed Property Costs over Year 1," together with a descriptive name of each such charge, calculated as the amount disclosed under paragraph (l)(7)(i)(A)(*4*) of this section multiplied by the number of periodic payments scheduled to be made to the escrow account during the first year after consummation;

(*2*) The estimated amount the consumer is likely to pay during the first year after consummation for charges described in § 1026.37(c)(4)(ii) that are known to the creditor and that will not be paid using escrow account funds, labeled "Non-Escrowed Property Costs over Year 1," together with a descriptive name of each such charge and a statement that the consumer may have to pay other costs that are not listed;

Official Comment 38(l)(7)(i)(A)(2)

38(l)(7) Escrow account. Paragraph 38(l)(7)(i)(A)(2).

1. Estimated costs not paid by escrow account funds. Section 1026.38(l)(7)(i)(A)(2) requires the creditor to estimate the amount the consumer is likely to pay during the first year after consummation for charges described in § 1026.37(c)(4)(ii) that are known to the creditor that will not be paid using escrow account funds. The creditor discloses this amount only if an escrow account will be established for the payment of any amounts described in § 1026.37(c)(4)(ii). The creditor complies with this provision by disclosing the amount of such charges used to calculate the estimated taxes, insurance, and assessments disclosed pursuant to § 1026.38(c)(1) as the total amount scheduled to be paid during the first year after consummation.

The Rule: § 1026.38(l)(7)(i)(A)(3)-(4)

(*3*) The total amount disclosed pursuant to paragraph (g)(3) of this section, a statement that the payment is a cushion for the escrow account, labeled "Initial Escrow Payment," and a reference to the information disclosed pursuant to paragraph (g)(3) of this section;

(*4*) The amount the consumer will be required to pay into the escrow account with each periodic payment during the first year after consummation for payment of the charges described in § 1026.37(c)(4)(ii), labeled "Monthly Escrow Payment."

(*5*) A creditor complies with the requirements of paragraphs (l)(7)(i)(A)(*1*) and (l)(7)(i)(A)(*4*) of this section if the creditor bases the numerical disclosures required by those paragraphs on amounts derived from the escrow account analysis required under Regulation X, 12 CFR 1024.17.

Official Comment 38(l)(7)(i)(A)(4)

Paragraph 38(l)(7)(i)(A)(4).

1. Estimated costs paid using escrow account funds. The amount the consumer will be required to pay into an escrow account with each periodic payment during the first year after consummation pursuant to § 1026.38(l)(7)(i)(A)(4) is the amount of estimated escrow payments disclosed pursuant to § 1026.38(c)(1).

Paragraph 38(l)(7)(i)(B)(1).

1. Estimated costs paid directly by the consumer. The estimated total amount the consumer will pay directly for charges described in § 1026.37(c)(4)(ii) that are known to the creditor in the absence of an escrow account during the first year after consummation pursuant to §1026.38(l)(7)(i)(B)(1) is the amount of estimated taxes, insurance, and assessments disclosed pursuant to § 1026.38(c)(1) as the estimated total amount scheduled to be paid during the first year after consummation. The creditor discloses this amount only if no escrow account will be established for the payment of amounts described in § 1026.37(c)(4)(ii).

The Rule: § 1026.38(l)(7)(i)(B) - (l)(7)(ii)

(B) A statement of whether the consumer will not have an escrow account, the reason why an escrow account will not be established, a statement that the consumer must pay all property costs, such as taxes and homeowner's insurance, directly, a statement that the consumer may contact the creditor to inquire about the availability of an escrow account, and a table, titled "No Escrow," that contains, if an escrow account will not be established, an itemization of the following:

(*1*) The estimated total amount the consumer will pay directly for charges described in § 1026.37(c)(4)(ii) during the first year after consummation that are known to the creditor and a statement that, without an escrow account, the consumer must pay the identified costs, possibly in one or two large payments, labeled "Property Costs over Year 1"; and

(*2*) The amount of any fee the creditor imposes on the consumer for not establishing an escrow account in connection with the transaction, labeled "Escrow Waiver Fee."

(ii) Under the reference "In the future":

(A) A statement that the consumer's property costs may change and that, as a result, the consumer's escrow payment may change;

(B) A statement that the consumer may be able to cancel any escrow account that has been established, but that the consumer is responsible for directly paying all property costs in the absence of an escrow account; and

(C) A description of the consequences if the consumer fails to pay property costs, including the actions that a State or local government may take if property taxes are not paid and the actions the creditor may take if the consumer does not pay some or all property costs, such as adding amounts to the loan balance, adding an escrow account to the loan, or purchasing a property insurance policy on the consumer's behalf that may be more expensive and provide fewer benefits than what the consumer could obtain directly.

Adjustable Payment Table

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The Rule: § 1026.38(m) Adjustable payment table

(m) *Adjustable payment table.* Under the master heading "Additional Information about This Loan" required by paragraph (l) of this section, and under the heading "Adjustable Payment (AP) Table," the table required to be disclosed by § 1026.37(i).

Official Comment - 38(m)

1. Guidance. See the commentary to § 1026.37(i) for guidance regarding the disclosure required by § 1026.38(m).

2. Master heading. The disclosure required by § 1026.38(m) is required to be provided under a different master heading than the disclosure required by § 1026.37(i), but all other requirements applicable to the disclosure required by § 1026.37(i) apply to the disclosure required by § 1026.38(m).

3. When table is not permitted to be disclosed. Like the disclosure required by § 1026.37(i), the disclosure required by § 1026.38(m) is required only if the periodic principal and interest payment may change after consummation based on a loan term other than on an adjustment to the interest rate or if the transaction is a seasonal payment product as described under § 1026.37(a)(10)(ii)(E). If the transaction does not contain these terms, this table is not permitted on the Closing Disclosure. See comments 37-1 and 37(i)-1.

4. Final loan terms. The disclosures required by § 1026.38(m) must include the information required by § 1026.37(i), as applicable, but the creditor must make the disclosure using the information that is required by § 1026.19(f). See comments 19(f)(1)(i)-1 and -2.

Adjustable Interest Rate Table

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The Rule: § 1026.38(n) Adjustable interest rate table

(n) *Adjustable interest rate table.* Under the master heading "Additional Information About This Loan" required by paragraph (l) of this section, and under the heading "Adjustable Interest Rate (AIR) Table," the table required to be disclosed by § 1026.37(j).

Official Comment - 38(n)

1. Guidance. See the commentary to § 1026.37(j) for guidance regarding the disclosures required by § 1026.38(n).

2. Master heading. The disclosure required by § 1026.38(n) is required to be provided under a different master heading than the disclosure required by § 1026.37(j), but all other requirements applicable to the disclosure required by § 1026.37(j) apply to the disclosure required by § 1026.38(n).

3. When table is not permitted to be disclosed. Like the disclosure required by§ 1026.37(j), the disclosure required by § 1026.38(n) is required only if the interest rate may change after consummation based on the terms of the legal obligation. If the interest rate will not change after consummation, this table is not permitted on the Closing Disclosure. See comments37-1 and 37(j)1.

4. Final loan terms. The disclosures required by § 1026.38(n) must include the information required by § 1026.37(j), as applicable, but the creditor must make the disclosure using the information that is known at the time the disclosure is required to be provided by § 1026.19(f).

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Loan Calculations

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The Rule: § 1026.38(o) Loan calculations

(o) *Loan calculations.* In a separate table under the heading "Loan Calculations":

(1) *Total of payments*. The "Total of Payments," using that term and expressed as a dollar amount, and a statement that the disclosure is the total the consumer will have paid after making all payments of principal, interest, mortgage insurance, and loan costs, as scheduled.

(2) *Finance charge.* The "Finance Charge," using that term and expressed as a dollar amount, and the following statement: "The dollar amount the loan will cost you." The disclosed finance charge and other disclosures affected by the disclosed financed charge (including the amount financed and the annual percentage rate) shall be treated as accurate if the amount disclosed as the finance charge:

(i) is understated by no more than $100; or

(ii) is greater than the amount required to be disclosed.

(3) *Amount financed.* The "Amount Financed," using that term and expressed as a dollar amount, and the following statement: "The loan amount available after paying your upfront finance charge."

(4) *Annual percentage rate.* The "Annual Percentage Rate," using that term and the abbreviation "APR" and expressed as a percentage, and the following statement: "Your costs over the loan term expressed as a rate. This is not your interest rate."

(5) *Total interest percentage.* The "Total Interest Percentage," using that term and the abbreviation "TIP" and expressed as a percentage, and the following statement: "The total amount of interest that you will pay over the loan term as a percentage of your loan amount."

Other Disclosures

Back to Form

The Rule: § 1026.38(p) Other disclosures

(p) *Other disclosures*. Under the heading "Other Disclosures":

(1) *Appraisal*. For transactions subject to 15 U.S.C. 1639h or 1691(e), as implemented in this part or Regulation B, 12 CFR part 1002, respectively, under the subheading "Appraisal," that:

(i) If there was an appraisal of the property in connection with the loan, the creditor is required to provide the consumer with a copy at no additional cost to the consumer at least three days prior to consummation; and

(ii) If the consumer has not yet received a copy of the appraisal, the consumer should contact the creditor using the information disclosed pursuant to paragraph (r) of this section.

(2) *Contract details*. A statement that the consumer should refer to the appropriate loan document and security instrument for information about nonpayment, what constitutes a default under the legal obligation, circumstances under which the creditor may accelerate the maturity of the obligation, and prepayment rebates and penalties, under the subheading "Contract Details."

(3) *Liability after foreclosure*. A brief statement of whether, and the conditions under which, the consumer may remain responsible for any deficiency after foreclosure under applicable State law, a brief statement that certain protections may be lost if the consumer refinances or incurs additional debt on the property, and a statement that the consumer should consult an attorney for additional information, under the subheading "Liability after Foreclosure."

(4) *Refinanc*e. Under the subheading "Refinance," the statement required by § 1026.37(m)(5).

(5) *Tax deductions*. Under the subheading "Tax Deductions," a statement that, if the extension of credit exceeds the fair market value of the property, the interest on the portion of the credit extension that is greater than the fair market value of the property is not tax deductible for Federal income tax purposes and a statement that the consumer should consult a tax adviser for further information.

Official Comment - 38(p)

38(p)(1) Appraisal.

1. Applicability. The disclosure required by § 1026.38(p)(1) is only applicable to closed- end transactions subject to § 1026.19(f) that are also subject either to 15 U.S.C. 1639h or 1691(e), as implemented by this part or Regulation B, 12 CFR part 1002, respectively. Accordingly, if a transaction is not subject to either of those provisions, the disclosure required by § 1026.38(p)(1) may be left blank on form H-25 of appendix H to this part.

38(p)(3) Refinance.

1. State law requirements. If the creditor forecloses on the property and the proceeds of the foreclosure sale are less than the unpaid balance on the loan, whether the consumer has continued or additional responsibility for the loan balance after foreclosure, and the conditions under which liability occurs, will vary by State. If the applicable State law affords any type of protection, other than a statute of limitations that only limits the timeframe in which a creditor may seek redress, § 1026.38(p)(3) requires a statement that State law may protect the consumer from liability for the unpaid balance.

Questions

Back to Form

The Rule: § 1026.38(q) Questions notice

(q) *Questions notice.* In a separate notice labeled "Questions?":

(1) A statement directing the consumer to use the contact information disclosed under paragraph (r) of this section if the consumer has any questions about the disclosures required pursuant to § 1026.19(f);

(2) A reference to the Bureau's Web site to obtain more information or to submit a complaint; and the link or uniform resource locator address to the Web site: www.consumerfinance.gov/mortgage-closing; and

(3) A prominent question mark.

Official Comment - 38(q)

38(q) Questions notice. Paragraph 38(q)(3).

1. Prominent question mark. The notice required under § 1026.38(q) includes a prominent question mark. This prominent question mark is an aspect of form H-25 of appendix H to this part, the standard form or model form, as applicable, pursuant to § 1026.38(t). If the creditor deviates from the depiction of the question mark as shown on form H-25, the creditor complies with § 1026.38(q) if (1) the size and location of the question mark on the Closing Disclosure are substantially similar in size and location to the question mark shown on form H- 25, and (2) the creditor otherwise complies with § 1026.38(t)(5) regarding permissible changes to the form of the Closing Disclosure.

Contact Information

Back to Form

The Rule: § 1026.38(r) Contact information

(r) *Contact information*. In a separate table, under the heading "Contact Information," the following information for each creditor (under the subheading "Lender"), mortgage broker (under the subheading "Mortgage Broker"), consumer's real estate broker (under the subheading "Real Estate Broker (B)"), seller's real estate broker (under the subheading "Real Estate Broker (S)"), and settlement agent (under the subheading "Settlement Agent") participating in the transaction:

(1) Name of the person, labeled "Name";

(2) Address, using that label;

(3) Nationwide Mortgage Licensing System & Registry (NMLSR ID) identification number, labeled "NMLS ID," or, if none, license number or other unique identifier issued by the applicable jurisdiction or regulating body with which the person is licensed and/or registered, labeled "License ID," with the abbreviation for the State of the applicable jurisdiction or regulatory body stated before the word "License" in the label, for the persons identified in paragraph (r)(1) of this section;

(4) Name of the natural person who is the primary contact for the consumer with the person identified in paragraph (r)(1) of this section, labeled "Contact";

(5) NMLSR ID, labeled "Contact NMLS ID," or, if none, license number or other unique identifier issued by the applicable jurisdiction or regulating body with which the person is licensed and/or registered, labeled "Contact License ID," with the abbreviation for the State of the applicable jurisdiction or regulatory body stated before the word "License" in the label, for the natural person identified in paragraph (r)(4) of this section,

(6) Email address for the person identified in paragraph (r)(4) of this section, labeled "Email"; and

(7) Telephone number for the person identified in paragraph (r)(4) of this section, labeled "Phone."

Official Comment - 38(r)

38(r) Contact information.

1. Each person to be identified. Form H-25 of appendix H to this part includes the contact information required to be disclosed under § 1026.38(r) generally in a five-column tabular format (i.e., there are columns from left to right that disclose the contact information for the creditor, mortgage broker, consumer's real estate broker, seller's real estate broker, and settlement agent). Columns are left blank where no such person is participating in the transaction. For example, if there is no mortgage broker involved in the transaction, the column for the mortgage broker is left blank. Conversely, in the event the transaction involves more than one of each such person (e.g., two sellers' real estate brokers splitting a commission), the space in the contact information table provided on form H-25 of appendix H to this part may be altered to accommodate the information for such persons, provided that the information required by § 1026.38(o),(p),(q),(r) and (s) is disclosed on the same page as illustrated by form H-25. If the

space provided on form H-25 does not accommodate the addition of such information, an additional table to accommodate the information may be provided on a separate page, with an appropriate reference to the additional table. A creditor or settlement agent may also omit a column on the table that is inapplicable or, if necessary, replace an inapplicable column with the contact information for the additional person.

2. Name of person. Where § 1026.38(r)(1) calls for disclosure of the name of the person participating in the transaction, the person's legal name (e.g., the name used for registration, incorporation, or chartering purposes), the person's trade name, if any, or an abbreviation of the person's legal name or the trade name is disclosed, so long as the disclosure is clear and conspicuous as required by § 1026.38(t)(1)(i). For example, if the creditor's legal name is "Alpha Beta Chi Bank and Trust Company, N.A." and its trade name is "ABC Bank," then under § 1026.38(r)(1) the full legal name, the trade name, or an abbreviation such as "ABC Bank & Trust Co." may be disclosed. However, the abbreviation "Bank & Trust Co." is not sufficiently distinct to enable a consumer to identify the person, and therefore would not be clear and conspicuous. If the creditor, mortgage broker, seller's real estate broker, consumer's real estate broker, or settlement agent participating in the transaction is a natural person, the natural person's name is listed in the § 1026.38(r)(1) and (r)(4) disclosures (assuming that such natural person is the primary contact for the consumer or seller, as applicable).

3. Address. The address disclosed under § 1026.38(r)(2) is the identified person's place of business where the primary contact for the transaction is located (usually the local office), rather than a general corporate headquarters address. If a natural person's name is to be disclosed under § 1026.38(r)(1), see comment 38(r)-2, the business address of such natural person is listed (assuming that such natural person is the primary contact for the consumer or seller, as applicable).

4. NMLSR ID. Section 1026.38(r)(3) and (5) requires the disclosure of an NMLSR identification (ID) number for each person identified in the table. The NMLSR ID is a unique number or other identifier that is generally assigned by the Nationwide Mortgage Licensing System & Registry (NMLSR) to individuals registered or licensed through NMLSR to provide loan originating services (for more information, see the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (SAFE Act) sections 1503(3) and (12) and 1504, 12 U.S.C. 5102(3) and (12) and 5103, and its implementing regulations (i.e., 12 CFR 1007.103(a) and 1008.103(a)(2)). An entity may also have an NMLSR ID. Thus, any NMLSR ID that is obtained by a creditor or mortgage broker entity

disclosed under § 1026.38(r)(1), as applicable, or a natural person disclosed under § 1026.38(r)(4), either as required under the SAFE Act or otherwise, is disclosed. If the creditor, mortgage broker, or natural person has an NMLSR ID and a separate license number or unique identifier issued by the applicable State, locality, or other regulatory body with responsibility for licensing and/or registering such entity or person's business activities, both the NMLSR ID and the separate license number or unique identifier is disclosed. The space in the table is left blank for the disclosures in the columns corresponding to persons that have no NMLSR ID to be disclosed under § 1026.38(r)(3) and (5); provided that, the creditor may omit the column from the table or, if necessary, replace the column with the contact information for an additional person. See comment 38(r)-1.

5. License number or unique identifier. Section 1026.38(r)(3) and (5) requires the disclosure of a license number or unique identifier for each person (including natural persons) identified in the table who does not have a NMLSR ID if the applicable State, locality, or other regulatory body with responsibility for licensing and/or registering such person's business activities has issued a license number or other unique identifier to such person under § 1026.38(r)(3) and (5). The space in the table is left blank for the disclosures in the columns corresponding to persons who are not subject to the issuance of such a license number or unique identifier to be disclosed under § 1026.38(r)(3) and (5); provided that, the creditor or settlement agent may omit the column from the table or, if necessary, replace the column with the contact information for an additional person. See comment 38(r)-1. In addition, under § 1026.38(r)(3) and (5), the abbreviation of the State or the jurisdiction or regulatory body that issued such license or registration is required to be included before the word "License" in the label required by § 1026.37(r)(3) and (5). If no such license or registration is required to be disclosed, such as if an NMLSR number is disclosed, the space provided for such an abbreviation in form H-25 of appendix H to this part may be left blank. A creditor complies with the requirements of § 1026.38(r)(3) and (5) to disclose the abbreviation of the State by disclosing a U.S. Postal Service State abbreviation, if applicable.

6. Contact. Section 1026.38(r)(4) requires the disclosure of the primary contact for the consumer. The primary contact is the natural person employed by the person disclosed under § 1026.38(r)(1) who interacts most frequently with the consumer and who has an NMLSR ID or, if none, a license number or other unique identifier to be disclosed under § 1026.38(r)(5), as applicable. For example, if the senior loan officer employed by the creditor or mortgage broker disclosed under § 1026.38(r)(1) has an NMLSR ID, but the consumer meets with a different loan

officer to complete the application and answer questions, the senior loan officer's name is disclosed under § 1026.38(r)(4) unless the other loan officer also has an NMLSR ID, in which case the other loan officer's name is disclosed. Further, if the sales agent employed by the consumer's real estate broker disclosed under § 1026.38(r)(1) has a State-issued brokers' license number, but the consumer meets with an associate sales agent to tour the property being purchased and complete the sales contract, the sales agent's name is disclosed under § 1026.38(r)(4) unless the associate sales agent also has a State-issued license number, in which case the associate sales agent's name is disclosed. Moreover, if the closing attorney employed by the settlement agent disclosed under § 1026.38(r)(1) has a State-issued settlement agent license number, but the consumer meets with the attorney's assistant to fill out any necessary documentation prior to the closing and to answer questions, the closing attorney's name is disclosed under § 1026.38(r)(4) because the assistant is only performing clerical functions.

7. Email address and phone number. Section 1026.38(r)(6) and (7) requires disclosure of the email address and phone number, respectively, for the persons listed in § 1026.37(r)(4). Disclosure of a general number or email address for the lender, mortgage broker, real estate broker, or settlement agent, as applicable, satisfies this requirement if no such information is generally available for such person.

Signatures

Back to Form

The Rule: § 1026.38(s) Signature statement

(s) *Signature statement*.

(1) At the creditor's option, under the heading "Confirm Receipt," a line for the signatures of the consumers in the transaction. If the creditor provides a line for the consumer's signature, the creditor must disclose above the signature line the statement required to be disclosed under § 1026.37(n)(1).

(2) If the creditor does not provide a line for the consumer's signature, the statement required to be disclosed under § 1026.37(n)(2) under the heading "Other Disclosures" required by paragraph (p) of this section.

Form of Disclosures

The Rule: § 1026.38(t) Form of disclosures

(t) *Form of disclosures.*

(1) *General requirements.*

(i) The creditor shall make the disclosures required by this section clearly and conspicuously in writing, in a form that the consumer may keep. The disclosures also shall be grouped together and segregated from everything else.

(ii) Except as provided in paragraph (t)(5), the disclosures shall contain only the information required by paragraphs (a) through (s) of this section and shall be made in the same order, and positioned relative to the master headings, headings, subheadings, labels, and similar designations in the same manner, as shown in form H-25, set forth in appendix H to this part.

(2) *Headings and labels.* If a master heading, heading, subheading, label, or similar designation contains the word "estimated" or a capital letter designation in form H-25, set forth in appendix H to this part, that heading, label, or similar designation shall contain the word "estimated" and the applicable capital letter designation.

Official Comment 38(t)(1) - (2)

38(t) Form of disclosures.

38(t)(1) General requirements.

1. Clear and conspicuous; segregation. The clear and conspicuous standard requires that the disclosures required by § 1026.38 be legible and in a readily understandable form. The disclosures also must be grouped together and segregated from everything else. As required by § 1026.38(t)(3), the disclosures for any transaction that is a federally related mortgage loan under Regulation X, 12 CFR 1024.2, must be made using the standard form H-25 of appendix H to this part. Accordingly, use of that form constitutes compliance with the clear and conspicuous and segregation requirements of § 1026.38(t)(1).

2. Balloon payment financing with leasing characteristics. In certain credit sale or loan transactions, a consumer may reduce the dollar amount of the payments to be made during the course of the transaction by agreeing to make, at the end of the loan term, a large final payment based on the expected residual value of the property. The consumer may have a number of options with respect to the final payment, including, among other things, retaining the property and making the final payment, refinancing the final payment, or transferring the property to the creditor in lieu of the final payment. Such transactions may have some of the characteristics of lease transactions subject to Regulation M (12 CFR part 1013), but are considered credit

transactions where the consumer assumes the indicia of ownership, including the risks, burdens and benefits of ownership, upon consummation. These transactions are governed by the disclosure requirements of this part instead of Regulation M. Under § 1026.38(t)(1)(ii), creditors may not include any additional information in the disclosures required by § 1026.38. Thus, the disclosures must show the large final payment as a balloon payment in the projected payments table required by § 1026.38(c) and should not, for example, reflect the other options available to the consumer at maturity.

38(t)(2) Headings and labels.

1. Estimated amounts. Certain amounts are estimated when provided on the disclosure required by § 1026.37. When disclosed as required by § 1026.38, however, many of the corresponding disclosures must be actual amounts rather than estimates in accordance with the requirements of § 1026.19(f), even though the provision of § 1026.38 cross-references a counterpart in § 1026.37. Section 1026.38(t)(2) provides that, if a master heading, heading, subheading, label, or similar designation contains the word "estimated" in form H-25 of appendix H to this part, that heading, label, or similar designation shall contain the word "estimated." Thus, § 1026.38(t)(2) incorporates the "estimated" designations reflected on form H-25 into the requirements of § 1026.38. See comment 37(o)(2)-1.

The Rule: § 1026.38(t)(3) Form

(3) *Form.* Except as provided in paragraph (t)(5) of this section:

(i) For a transaction subject to § 1026.19(f) that is a federally related mortgage loan, as defined in Regulation X, 12 CFR 1024.2, the disclosures must be made using form H-25, set forth in appendix H to this part.

(ii) For any other transaction subject to this section, the disclosures must be made with headings, content, and format substantially similar to form H-25, set forth in appendix H to this part.

(iii) The disclosures required by this section may be provided to the consumer in electronic form, subject to compliance with the consumer consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (15 U.S.C. 7001 *et seq.*).

Official Comment 38(t)(3)

38(t)(3) Form.

1. Non-federally related mortgage loans. For a transaction that a non-federally related mortgage loan, the creditor is not required to use form H-25 of appendix H to this part, although its use as a model form for such transactions, if properly completed with accurate content, constitutes compliance with the clear and conspicuous and segregation requirements of § 1026.38(t)(1)(i). Even when the creditor elects not to use the model form, § 1026.38(t)(1)(ii) requires that the disclosures contain only the information required by § 1026.38(a) through (s), and that the creditor make the disclosures in the same order as they occur in form H-25, use the same headings, labels, and similar designations as used in the form (many of which also are expressly required by § 1026.38(a) through (s)), and position the disclosures relative to those designations in the same manner as shown in the form. In order to be in a format substantially similar to form H-25, the disclosures required by § 1026.38 must be provided on letter size (8.5" x 11") paper.

The Rule: § 1026.38(t)(4) Rounding

(4) *Rounding.*

(i) *Nearest dollar.* The following dollar amounts are required to be rounded to the nearest whole dollar:

(A) The dollar amounts required to be disclosed by paragraph (b) of this section that are required to be rounded by § 1026.37(o)(4)(i)(A) when disclosed under § 1026.37(b)(6) and (7); (B) The dollar amounts required to be disclosed by paragraph (c) of this section that are required to be rounded by § 1026.37(o)(4)(i)(A) when disclosed under § 1026.37(c)(1)(iii);

(C) The dollar amounts required to be disclosed by paragraphs (e) and (i) of this section under the subheading "Loan Estimate";

(D) The dollar amounts required to be disclosed by paragraph (m) of this section; and

(E) The dollar amounts required to be disclosed by paragraph (c) of this section that are required to be rounded by § 1026.37(o)(4)(i)(C) when disclosed under § 1026.37(c)(2)(iv).

(ii) *Percentages*. The percentage amounts required to be disclosed under paragraphs (b), (f)(1)(n), and (o)(5) of this section shall not be rounded and shall be disclosed up to two or three decimal places. The percentage amount required to be disclosed under

paragraph (o)(4) of this section shall not be rounded and shall be disclosed up to three decimal places. If the amount is a whole number then the amount disclosed shall be truncated at the decimal point.

(iii) *Loan amount.* The dollar amount required to be disclosed by paragraph (b) of this section as required by § 1026.37(b)(1) shall be disclosed as an unrounded number, except that if the amount is a whole number then the amount disclosed shall be truncated at the decimal point.

Official Comment 38(t)(4)

38(t)(4) Rounding.

1. Generally. Consistent with § 1026.2(b)(4), any amount required to be disclosed by § 1026.38 and not required to be rounded by § 1026.38(t)(4) must be disclosed as an exact numerical amount using decimal places where applicable, unless otherwise provided. For example, under § 1026.38(t)(4), the principal and interest payment disclosed under § 1026.37(b)(3) and § 1026.38(b) must be disclosed using decimal places even if the amount of cents is zero, in contrast to the loan amount disclosed under § 1026.37(b)(1) and § 1026.38(b).

2. Guidance. For guidance regarding the requirements of § 1026.38(t)(4), see the commentary to § 1026.37(o)(4).

The Rule: § 1026.38(t)(5) Exceptions

(5) *Exceptions.*

(i) *Unit-period.* Wherever the form or this section uses "monthly" to describe the frequency of any payments or uses "month" to describe the applicable unit-period, the creditor shall substitute the appropriate term to reflect the fact that the transaction's terms provide for other than monthly periodic payments, such as bi-weekly or quarterly payments.

(ii) *Lender credits.* The amount required to be disclosed by paragraph (d)(1)(i)(D) of this section may be omitted from the form if the amount is zero.

(iii) *Administrative information.* The creditor may insert at the bottom of each page under the disclosures required by this section as illustrated by form H-25 of appendix H to this part, any administrative information, text, or codes that assist in identification of the form or the information disclosed on the form, provided that the space provided on form H-25 for any of the information required by this section is not altered.

(iv) *Closing cost details.*

(A) *Additional line numbers.* Line numbers provided on form H-25 of appendix H to this part for the disclosure of the information required by paragraphs (f)(1) through (3) and (g)(1) through (4) of this section that are not used may be deleted and the deleted line numbers added to the space provided for any other of those paragraphs as necessary to accommodate the disclosure of additional items.

(vi) *Modified version of the form for a seller or third-party.* The information required by paragraphs (a)(2), (a)(4)(iii), (a)(5), (b) through (d), (f) and (g) with respect to costs paid by the consumer, (i), (j), (l) through (p), (q)(1), (r) with respect to the creditor and mortgage broker, and (s) of this section may be deleted from the form provided to the seller or a third-party, as illustrated by form H-25(I) of appendix H to this part.

(vii) *Transaction without a seller.* The following modifications to form H-25 of appendix H to this part may be made for a transaction that does not involve a seller and for which the alternative tables are disclosed pursuant to paragraphs (d)(2) and (e) of this section, as illustrated by form H-25(J) of appendix H to this part:

(A) The information required by paragraph (a)(4)(ii), and paragraphs (f), (g), and (h) of this section with respect to costs paid by the seller, may be deleted.

(B) A table under the master heading "Closing Cost Details" required by paragraph (f) of this section may be added with the heading "Payoffs and Payments" that itemizes the amounts of payments made at closing to other parties from the credit extended to the consumer or funds provided by the consumer in connection with the transaction, including designees of the consumer; the payees and a description of the purpose of such disbursements under the subheading "To"; and the total amount of such payments labeled "Total Payoffs and Payments."

(C) The tables required to be disclosed by paragraphs (j) and (k) of this section may be deleted.

Official Comment 38(t)(5)

38(t)(5) Exceptions.

1. Permissible changes. The changes required and permitted by § 1026.38(t)(5) are permitted for federally related mortgage loans for which the use of form H-25 is required under §

1026.38(t)(3). For non-federally related mortgage loans, the changes required or permitted by § 1026.38(t)(5), do not affect the substance, clarity, or meaningful sequence of the disclosure and therefore, are permissible. Any changes to the disclosure not specified in § 1026.38(t)(5) or not permitted by other provisions of § 1026.38 are not permissible for federally related mortgage loans. Creditors in non-federally related mortgage loans making any changes that affect the substance, clarity, or meaningful sequence of the disclosure will lose their protection from civil liability under TILA section 130.

2. Manual completion. The creditor, or settlement agent preparing the form, under § 1026.19(f)(1)(v) is not required to use a computer, typewriter, or other word processor to complete the disclosure required by § 1026.38. The creditor or settlement agent may fill information and amounts required to be disclosed by § 1026.38 on form H-25 of appendix H to this part by hand printing or using any other method, provided the person produces clear and legible text and uses the formatting required by § 1026.38, including replicating bold font where required.

3. Unit-period. Section 1026.38(t)(5)(i) provides that wherever form H-25 or § 1026.38 uses "monthly" to describe the frequency of any payments or uses "month" to describe the applicable unit-period, the creditor is required to substitute the appropriate term to reflect the fact that the transaction's terms provide for other than monthly periodic payments, such as bi-weekly or quarterly payments. For purposes of § 1026.38, the term "unit-period" has the same meaning as in appendix J to Regulation Z.

4. Signature lines. Section 1026.38(t) does not restrict the addition of signature lines to the disclosure required by § 1026.38, provided any signature lines for confirmations of receipt of the disclosure appear only under the "Confirm Receipt" heading required by § 1026.38(s) as illustrated by form H-25 of appendix H to this part. If the number of signatures requested by the creditor for confirming receipt of the disclosure requires space for signature lines in excess of that provided on form H-25, an additional page may be added to accommodate the additional signature lines with an appropriate reference to the additional page. Such additional page should also contain the heading and statement required by § 1026.38(s) in the format provided on form H-25. Signatures for a purpose other than confirming receipt of the form may be obtained on a separate page, and consistent with § 1026.38(t)(1)(i), not on the same page as the information required by § 1026.38.

5. Additional page. Information required or permitted to be disclosed by § 1026.38 on a separate page should be formatted similarly to form H-25 of appendix H to this part, so as not to affect the substance, clarity, or meaningful sequence of the disclosure. In addition, information provided on additional pages should be consolidated on as few pages as necessary so as not to affect the substance, clarity, or meaningful sequence of the disclosure.

6. Page numbers. References required by provisions of § 1026.38 to information disclosed pursuant to other provisions of the section, as illustrated on form H-25 of appendix H, may be altered to refer to the appropriate page number of the form containing such information.

7. Translation. Section 1026.38(t)(5)(viii) permits the translation of form H-25 into languages other than English, similar to § 1026.37(o)(5)(ii). Pursuant § 1026.38(t)(5)(viii) creditors may modify form H-25 to the extent that translation prevents the headings, labels, designations, and required disclosure items under § 1026.38 from fitting in the space provided on form H-25. For example, if the translation of a required label does not fit within the line provided for such label in form H-25, the label may be disclosed over two lines. See form H-28 of appendix H to this part for Spanish translations of form H-25.

38(t)(5)(iv) Closing Cost Details.

1. Line numbers; closing cost details. Section 1026.38(t)(5)(iv)(A) permits the deletion of unused lines from the disclosures required by § 1026.38(f)(1) through (3) and (g)(1) through (4), if necessary to allow the addition of lines to other sections that require them for the required disclosures. This provision permits creditors and settlement agents to use the space gained from deleting unused lines for additional lines to accommodate all of the costs that are required to be itemized. For example, if the only origination charge required by § 1026.38(f)(1) is points, the remaining seven lines illustrated on form H-25 of appendix H to this part may be deleted and added to the disclosure required by § 1026.38(g)(4), if seven lines in addition to those provided on form H-25 are necessary to accommodate such disclosure.

2. Two pages; closing cost details. Section 1026.38(t)(5)(iv)(B) permits the disclosure of the information required by § 1026.38(f) through (h) over two pages, but only if form H-25 of appendix H to this part, as modified pursuant to § 1026.38(t)(5)(iv)(A), does not accommodate all of the costs required to be disclosed on one page. If the deletion of unused lines and the addition of such lines to other sections permits the disclosures required by § 1026.38(f) through (h) to fit on one page, modification pursuant to § 1026.38(t)(5)(iv)(B) is not permissible.

3. Separate pages for Loan Costs and Other Costs. The modification permitted by §1026.38(t)(5)(iv)(B) allows the information required by § 1026.38(f) through (h) to be disclosed over two pages, numbered as "2a" and "2b." For an example of such a modification, see form H-25(H) of appendix H to this part. Under this modification, the information required by § 1026.38(h) must remain on the same page as the information required by § 1026.38(g). Accordingly, the Loan Costs section of form H-25 may appear on its own page "2a," but the Other Costs section must appear on the same page as the Total Closing Costs section on page "2b." The modifications permitted by § 1026.38(t)(5)(iv)(A) and (B) may be used in conjunction to ensure disclosure of § 1026.38(f) on one page and § 1026.38(g) and (h) on a separate page.

38(t)(5)(vii) Transaction without a seller.

1. Alternative tables. The alternative tables pursuant to § 1026.38(d)(2) and (e) are required to be disclosed to use the modification permitted under § 1026.38(t)(5)(vii).

2. Appraised property value. The modifications permitted by § 1026.38(t)(5)(vii) do not specifically refer to the label required by § 1026.38(a)(3)(vii)(B) for transactions that do not involve a seller, because the label is required by that section and is a requirement and not considered a modification. As required by § 1026.38(a)(3)(vii)(B), a form used for a transaction that does not involve a seller and is modified pursuant to § 1026.38(t)(5)(viii) must contain the label "Appraised Prop. Value" or "Estimated Prop. Value" where there is no appraisal, and the information is required by § 1026.38(a)(3)(vii)(B).

38(t)(5)(ix) Customary recitals and information.

1. Customary recitals and information. Section 1026.38(t)(5)(ix) permits an additional page to be added to the disclosure for customary recitals and information used locally in real estate settlements. Examples of such information include a breakdown of payoff figures, a breakdown of the consumer's total monthly mortgage payments, check disbursements, a statement indicating receipt of funds, applicable special stipulations between buyer and seller, and the date funds are transferred.

Mortgage Transfer Disclosures

The Rule: § 1026.39(a) Scope

(a) *Scope*

(2) A "*mortgage loan*" means:

(i) An open-end consumer credit transaction that is secured by the principal dwelling of a consumer; and

(ii) A closed-end consumer credit transaction secured by a dwelling or real property.

The Rule: § 1026.39(d) Content of required disclosures

(d) *Content of required disclosures.* The disclosures required by this section shall identify the mortgage loan that was sold, assigned or otherwise transferred, and state the following, except that the information required by paragraph

Official Comment - 39(a) & (d)

2. Partial payment policy. The disclosures required by § 1026.39(d)(5) must identify whether the covered person accepts periodic payments from the consumer that are less than the full amount due and whether the covered person applies the payments to a consumer's loan or holds the payments in a separate account until the consumer pays the remainder of the full amount due. The disclosures required by § 1026.39(d)(5) apply only to a mortgage loan that is a closed-end consumer credit transaction secured by a dwelling or real property and that is not a reverse mortgage transaction subject to § 1026.33. In an open-end consumer credit transaction secured by the consumer's principal dwelling, § 1026.39(d) requires a covered person to provide the disclosures required by § 1026.39(d)(1) through (4), but not the partial payment policy disclosure required by § 1026.39(d)(5). If, however, the dwelling in the open-end consumer credit transaction is not the consumer's principal dwelling (e.g., it is used solely for vacation purposes), none of the disclosures required by § 1026.39(d) is required because the transaction is not a mortgage loan for purposes of § 1026.39. See § 1026.39(a)(2). In contrast, a closed-end consumer credit transaction secured by the consumer's dwelling that is not the consumer's principal dwelling is considered a mortgage loan for purposes of § 1026.39. Assuming that the transaction is not a reverse mortgage transaction subject to § 1026.33, § 1026.39(d) requires a covered person to provide the disclosures under § 1026.39(d)(1) through (5). But if the transaction is a reverse mortgage transaction subject to § 1026.33, § 1026.39(d) requires a covered person to provide only the disclosures under § 1026.39(d)(1) through (4).

The Rule: § 1026.39(d)(5)

(d)(5) of this section shall be stated only for a mortgage loan that is a closed-end consumer credit transaction secured by a dwelling or real property other than a reverse mortgage transaction subject to § 1026.33 of this part:

(5) *Partial payment policy.* Under the subheading "Partial Payment":

(i) If periodic payments that are less than the full amount due are accepted, a statement that the covered person, using the term "lender," may accept partial payments and apply such payments to the consumer's loan;

(ii) If periodic payments that are less than the full amount due are accepted but not applied to a consumer's loan until the consumer pays the remainder of the full amount due, a statement that the covered person, using the term "lender," may hold partial payments in a separate account until the consumer pays the remainder of the payment and then apply the full periodic payment to the consumer's loan;

(iii) If periodic payments that are less than the full amount due are not accepted, a statement that the covered person, using the term "lender," does not accept any partial payments; and

(iv) A statement that, if the loan is sold, the new covered person, using the term "lender," may have a different policy.

Official Comment - 39(d)(5)

39(d)(5) Partial payment policy.

1. Format of disclosure. Section 1026.39(d)(5) requires disclosure of the partial payment policy of covered persons for closed-end consumer credit transactions secured by a dwelling or real property, other than a reverse mortgage transaction subject to § 1026.33. A covered person may utilize the format of the disclosure illustrated by form H-25 of appendix H to this part for the information required to be disclosed by § 1026.38(l)(5). For example, the statement required § 1026.39(d)(5)(iii) that a new covered person may have a different partial payment policy may be disclosed using the language illustrated by form H-25, which states "If this loan is sold, your new lender may have a different policy." The text illustrated by form H-25 may be modified to suit the format of the covered person's disclosure under § 1026.39. For example, the format

illustrated by form H-25 begins with the text, "Your lender may" or "Your lender does not," which may not be suitable to the format of the covered person's other disclosures under § 1026.39. This text may be modified to suit the format of the covered person's integrated disclosure, using a phrase such as "We will" or "We are your new lender and have a different Partial Payment Policy than your previous lender. Under our policy we will." Any modifications must be appropriate and not affect the substance, clarity, or meaningful sequence of the disclosure.

SECTION V. - Additional Resources

CFPB Website:

http://www.consumerfinance.gov/regulatory-implementation

CFPB eRules:

http://www.consumerfinance.gov/eregulations/