Note: *We are providing a version of our Notice of Proposed Rulemaking for Integrated Mortgage Disclosures under the Real Estate Settlement Procedures Act and the Truth in Lending Act (as submitted to the Federal Register) in separate parts. These partial documents will download and open more quickly than the full Notice. If you do not need the full notice, you may find these partial versions easier to use.*

Beginning on page 3, this document contains the proposed guidance regarding compliance with amended regulations (the Official Interpretations).

The preamble and the proposed amendments to regulations, as well as the full submitted notice, are available for download at: http://www.consumerfinance.gov/knowbeforeyouowe/#rule

BILLING CODE: 4810-AM-P

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Parts 1024 and 1026

[Docket No. CFPB-2012-0028]

RIN 3170-AA19

Integrated Mortgage Disclosures under the Real Estate Settlement Procedures Act (Regulation X) and the Truth In Lending Act (Regulation Z)

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Proposed rule with request for public comment.

SUMMARY: Sections 1032(f), 1098, and 1100A of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) direct the Bureau to issue proposed rules and forms that combine certain disclosures that consumers receive in connection with applying for and closing on a mortgage loan under the Truth in Lending Act and the Real Estate Settlement Procedures Act. Consistent with this requirement, the Bureau is proposing to amend Regulation X (Real Estate Settlement Procedures Act) and Regulation Z (Truth in Lending) to establish new disclosure requirements and forms in Regulation Z for most closed-end consumer

credit transactions secured by real property. In addition to combining the existing disclosure requirements and implementing new requirements in the Dodd-Frank Act, the proposed rule provides extensive guidance regarding compliance with those requirements.

DATES: Comments regarding the proposed amendments to 12 CFR §§ 1026.1(c) and 1026.4 must be received on or before September 7, 2012. For all other sections including proposed amendments, comments must be received on or before November 6, 2012.

ADDRESSES: You may submit comments, identified by Docket No. CFPB-2012-0028 or RIN 3170-AA19, by any of the following methods:

- *Electronic*: http://www.regulations.gov. Follow the instructions for submitting comments.
- *Mail/Hand Delivery/Courier:* Monica Jackson, Office of the Executive Secretary, Consumer Financial Protection Bureau, 1700 G Street, NW, Washington, DC 20552.

Instructions: All submissions should include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. Because paper mail in the Washington, DC area and at the Bureau is subject to delay, commenters are encouraged to submit comments electronically. In general, all comments received will be posted without change to http://www.regulations.gov. In addition, comments will be available for public inspection and copying at 1700 G Street, NW, Washington, DC 20552, on official business days between the hours of 10 a.m. and 5 p.m. Eastern Time. You can make an appointment to inspect the documents by telephoning (202) 435-7275.

All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Sensitive personal information, such as

account numbers or social security numbers, should not be included. Comments will not be edited to remove any identifying or contact information.

FOR FURTHER INFORMATION CONTACT: David Friend, Michael G. Silver and Priscilla Walton-Fein, Counsels; Andrea Pruitt Edmonds, Richard B. Horn, Joan Kayagil, and Thomas J. Kearney, Senior Counsels; Paul Mondor, Senior Counsel & Special Advisor; and Benjamin K. Olson, Managing Counsel, Office of Regulations, at (202) 435-7700.

Supplement I to Part 1026—Official Interpretations

* * * * *

SUBPART A—GENERAL

Section 1026.1—Authority, Purpose, Coverage, Organization, Enforcement and Liability

1(c) Coverage.

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►*Paragraph 1(c)(5).*

1. *Temporary exemption.* Section 1026.1(c)(5) implements sections 128(a)(16) through (19), 128(b)(4), 129C(f)(1), 129C(g)(2) and (3), 129C(h), 129D(h), and 129D(j)(1)(A) of the Truth in Lending Act and section 4(c) of the Real Estate Settlement Procedures Act, by exempting persons from the disclosure requirements of those sections. These exemptions are intended to be temporary, lasting only until regulations implementing the integrated disclosures required by section 1032(f) of the Dodd-Frank Act (12 U.S.C. 5532(f)) becomes mandatory. Section 1026.1(c)(5) does not exempt any person from any other requirement of this part, Regulation X (12 CFR part 1024), the Truth in Lending Act, or the Real Estate Settlement Procedures Act.◄

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Section 1026.2—Definitions and Rules of Construction

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►*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. Except for purposes of subpart B, subpart F, and subpart G, 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 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.◄

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2(a)(6) Business day.

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2. *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), ►1026.19(e)(1)(iii), 1026.19(e)(1)(iv), 1026.19(e)(2)(i)(A), 1026.19(f)(1)(ii), 1026.19(f)(1)(iii),◄ 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.

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2(a)(25) Security interest.

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2. *Exclusions*. The general definition of security interest excludes three groups of interests: incidental interests, interests in after-acquired property, and interests that arise solely by operation of law. These interests may not be disclosed with the disclosures required under ►§◄§ 1026.18, ►1026.19(e) and (f), and 1026.38(l)(6)◄, but the creditor is not precluded from preserving these rights elsewhere in the contract documents, or invoking and enforcing such rights, if it is otherwise lawful to do so. If the creditor is unsure whether a particular interest is one of the excluded interests, the creditor may, at its option, consider such interests as security interests for Truth in Lending purposes.

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Section 1026.3—Exempt Transactions

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

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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 as trustee(s), and 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 continue to use the assets 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 the consumer either in both the consumer's individual capacity and as trustee or in only one capacity or the other. Regardless of the capacity or capacities in which the consumer executes the loan documents, assuming the transaction is 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.* **[**Credit extended for consumer purposes to a land trust is considered to be credit extended to a natural person rather than credit extended to an organization.**]** 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 for personal, family, or household purposes, these transactions are subject to the regulation because in substance (if not form) consumer credit is being extended.

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►*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).◄

Section 1026.4—Finance Charge

4(a) Definition.

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►6. *Transactions with no seller.* In a transaction where there is no seller, such as a refinancing of an existing extension of credit described in § 1026.20(a), there is no comparable cash transaction. Thus, the exclusion from the finance charge for charges of a type payable in a comparable cash transaction does not apply to such transactions.◄

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4(a)(2) Special rule; closing agent charges.

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►3. *Closed-end mortgage transactions.* Comments 4(a)(2)-1 and 4(a)(2)-2 do not apply to closed-end transactions secured by real property or a dwelling, pursuant to § 1026.4(g).◄

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4(b) Examples of finance charges.

1. *Relationship to other provisions.* Charges or fees shown as examples of finance charges in § 1026.4(b) may be excludable under § 1026.4(c), (d), or (e). For example **[**:

i. Premiums**]** ►, premiums◄ for credit life insurance, shown as an example of a finance charge under § 1026.4(b)(7), may be excluded if the requirements of § 1026.4(d)(1) are met. ►They may not be excluded, however, in closed-end transactions secured by real property or a dwelling, pursuant to § 1026.4(g).◄

[ii. Appraisal fees mentioned in § 1026.4(b)(4) are excluded for real property or residential mortgage transactions under § 1026.4(c)(7).**]**

* * * * *

4(c) Charges excluded from the finance charge.

Paragraph 4(c)(1).

1. *Application fees.* An application fee that is excluded from the finance charge is a charge to recover the costs associated with processing applications for credit. The fee may cover the costs of services such as credit reports, credit investigations, and appraisals. The creditor is free to impose the fee in only certain of its loan programs, such as ►automobile◄ **[**mortgage**]** loans. However, if the fee is to be excluded from the finance charge under § 1026.4(c)(1), it must be charged to all applicants, not just to applicants who are approved or who actually receive credit.

* * * * *

4(c)(7) Real-estate related fees.

1. *Real estate or residential mortgage transaction charges.* The list of charges in **[**§ 1026.4(c)(7)**]** ►§ 1026.4(c)(7)(i) through (iv)◄ applies ►only to open-end credit plans

secured by real property and open-end residential mortgage transactions because § 1026.4(g) makes them inapplicable to closed-end transactions secured by real property or a dwelling. The exclusion of escrowed amounts under § 1026.4(c)(7)(v), on the other hand, applies to all◄ [both to] residential mortgage transactions (which may include, for example, the purchase of a mobile home) and to other transactions secured by real estate. The fees are excluded from the finance charge even if the services for which the fees are imposed are performed by the creditor's employees rather than by a third party. In addition, the cost of verifying or confirming information connected to the item is also excluded. For example, credit-report fees cover not only the cost of the report but also the cost of verifying information in the report. In all cases, charges excluded under § 1026.4(c)(7) must be bona fide and reasonable.

* * * * *

3. *Charges assessed during the loan term.* ►Charges◄ [Real estate or residential mortgage transaction charges] excluded under § 1026.4(c)(7) are those charges imposed solely in connection with the initial decision to grant credit. This would include, for example, a fee to search for tax liens on the property or to determine if flood insurance is required. The exclusion does not apply to fees for services to be performed periodically during the loan term, regardless of when the fee is collected. For example, a fee for one or more determinations during the loan term of the current tax-lien status or flood-insurance requirements is a finance charge, regardless of whether the fee is imposed at closing, or when the service is performed. If a creditor is uncertain about what portion of a fee to be paid at consummation or loan closing is related to the initial decision to grant credit, the entire fee may be treated as a finance charge.

4(d) Insurance and debt cancellation and debt suspension coverage.

* * * * *

8. *Property insurance.* To exclude property insurance premiums or charges from the finance charge, the creditor must allow the consumer to choose the insurer and disclose that fact. This disclosure must be made whether or not the property insurance is available from or through the creditor. The requirement that an option be given does not require that the insurance be readily available from other sources. The premium or charge must be disclosed only if the consumer elects to purchase the insurance from ►or through◄ the creditor; in such a case, the creditor must also disclose the term of the property insurance coverage if it is less than the term of the obligation. ►Insurance is available "from or through a creditor" only if it is available from the creditor or the creditor's affiliate, as defined under the Bank Holding Company Act, 12 U.S.C. 1841(k).◄

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12. *Initial term; alternative.* i. *General.* A creditor has the option of providing cost disclosures on the basis of one year of insurance or debt cancellation or debt suspension coverage instead of a longer initial term (provided the premium or fee is clearly labeled as being for one year) if:

A. The initial term is indefinite or not clear, or

B. The consumer has agreed to pay a premium or fee that is assessed periodically but the consumer is under no obligation to continue the coverage, whether or not the consumer has made an initial payment.

ii. *Open-end plans.* For open-end plans, a creditor also has the option of providing unit-cost disclosure on the basis of a period that is less than one year if the consumer has agreed to

pay a premium or fee that is assessed periodically, for example monthly, but the consumer is under no obligation to continue the coverage.

iii. *Examples.* To illustrate:

A. A credit life insurance policy providing coverage for a ►four-year automobile◄ **[**30-year mortgage**]** loan has an initial term of ►four◄ **[**30**]** years, even though premiums are paid monthly and the consumer is not required to continue the coverage. Disclosures may be based on the initial term, but the creditor also has the option of making disclosures on the basis of coverage for an assumed initial term of one year.

* * * * *

4(e) Certain security interest charges.

1. *Examples.* i. *Excludable charges.* Sums must be actually paid to public officials to be excluded from the finance charge under § 1026.4(e)(1) and (e)(3). Examples are charges or other fees required for filing or recording security agreements, mortgages ►(for open-end credit; but see § 1026.4(g) regarding closed-end mortgage credit)◄, continuation statements, termination statements, and similar documents, as well as intangible property or other taxes even when the charges or fees are imposed by the state solely on the creditor and charged to the consumer (if the tax must be paid to record a security agreement). See comment 4(a)-5 regarding the treatment of taxes, generally.

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►*4(g) Special rule for closed-end mortgage transactions.*

1. *Applicability of commentary to mortgages.* The commentary to § 1026.4(a)(2) and (c) through (e), other than that under § 1026.4(c)(2), (c)(5), (c)(7) (to the extent it relates to escrowed items as described in paragraph (c)(7)(v) of that section), and (d) (to the extent it

relates to property insurance premiums described in paragraph (d)(2) of that section), does not apply to closed-end transactions secured by real property or a dwelling. Commentary under § 1026.4(a) (other than paragraph (a)(2) of that section), (c)(2), (c)(5), (c)(7) (to the extent it relates to escrowed items as described in paragraph (c)(7)(v) of that section), and (d) (to the extent it relates to property insurance premiums described in paragraph (d)(2) of that section), however, does apply to such transactions.

2. *Third-party charges.* Charges imposed by third parties are included in the finance charge if they meet the general definition under § 1026.4(a). Thus, if a third-party charge is payable directly or indirectly by the consumer and imposed directly or indirectly by the creditor as an incident to the extension of credit, it is a finance charge unless it would be payable in a comparable cash transaction. For example, appraisal and credit report fees are included in the finance charge because they meet the definition in § 1026.4(a). This test generally does not depend on whether the creditor requires the service for which the charge is imposed. In addition, charges imposed by closing agents, if the creditor requires that a closing agent conduct the loan closing, generally are included in the finance charge unless otherwise excluded. Insurance premiums generally are included in the finance charge, whether imposed by a closing agent or another insurer, although premiums for property insurance are excluded if § 1026.4(d)(2) is satisfied. Premiums for credit insurance (or fees for debt cancellation or debt suspension agreements) and premiums for lender's coverage under a title insurance policy are included in the finance charge because they are imposed as an incident to the extension of credit. In contrast, premiums for owner's title insurance coverage are not included in the finance charge because they are not imposed as an incident to the extension of credit.

3. *Charges in comparable cash transactions.* While the exclusions in § 1026.4(c) through (e), other than § 1026.4(c)(2), (c)(5), (c)(7)(v), and (d)(2), are inapplicable to closed-end transactions secured by real property or a dwelling, charges in connection with such transactions that are payable in a comparable cash transaction are not included in the finance charge. *See* comment 4(a)-1. For example, property taxes imposed to record the deed evidencing transfer from the seller to the buyer of title to the property are not included in the finance charge because they would be paid even if no credit were extended to finance the purchase. In contrast, fees or taxes imposed to record the mortgage, deed of trust, or other security instrument evidencing the creditor's security interest in the property securing transaction are included in the finance charge because they would not be incurred in a cash transaction.◄

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SUBPART C—CLOSED-END CREDIT

Section 1026.17—General Disclosure Requirements

►1. *Rules for certain mortgage disclosures.* Section 1026.17(a) and (b) does not apply to the disclosures required by § 1026.19(e), (f), and (g). For those disclosures, rules regarding the disclosures' form are found in §§ 1026.19(g), 1026.37(o), and 1026.38(t) and rules regarding timing are found in § 1026.19(e), (f), and (g).◄

17(a) Form of disclosures.

Paragraph 17(a)(1).

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7. *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. Creditors should not include in the segregated Truth in Lending disclosures additional information. Thus, disclosures should show the large final payment in the payment schedule ►or interest rate and payment summary table under § 1026.18(g) or (s), as applicable,◄ and should not, for example, reflect the other options available to the consumer at maturity.

* * * * *

17(c) Basis of disclosures and use of estimates.

Paragraph 17(c)(1).

1. *Legal obligation.* The disclosures shall reflect the **[**credit**]** terms to which the **[**parties**]** ►consumer and creditor◄ are legally bound as of the outset of the transaction. In the case of disclosures required under § 1026.20(c), the disclosures shall reflect the credit terms to which the **[**parties**]** ►consumer and creditor◄ are legally bound when the disclosures are provided. The legal obligation is determined by applicable State law or other law. ►Disclosures based on the assumption that the consumer will abide by the terms of the legal obligation throughout the term of the transaction comply with § 1026.17(c)(1).◄ (Certain transactions are specifically addressed in this commentary. See, for example, the discussion of buydown transactions

elsewhere in the commentary to § 1026.17(c).) The fact that a term or contract may later be deemed unenforceable by a court on the basis of equity or other grounds does not, by itself, mean that disclosures based on that term or contract did not reflect the legal obligation.

2. *Modification of obligation.* The legal obligation normally is presumed to be contained in the note or contract that evidences the agreement ►between the consumer and the creditor◄. But this presumption is rebutted if another agreement between the **[**parties**]** ►consumer and creditor◄ legally modifies that note or contract. If the **[**parties**]** ►consumer and creditor◄ informally agree to a modification of the legal obligation, the modification should not be reflected in the disclosures unless it rises to the level of a change in the terms of the legal obligation. For example:

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3. *Third-party buydowns.* In certain transactions, a seller or other third party may pay an amount, either to the creditor or to the consumer, in order to reduce the consumer's payments **[**or buy down the interest rate**]** for all or a portion of the credit term. For example, a consumer and a bank agree to a mortgage with an interest rate of 15% and level payments over 25 years. By a separate agreement, the seller of the property agrees to subsidize the consumer's payments for the first two years of the mortgage, giving the consumer an effective rate of 12% for that period.

i. If the **[**lower rate**]** ►third-party buydown◄ is reflected in the credit contract between the consumer and the bank, the ►finance charge and all other disclosures affected by it◄ **[**disclosures**]** must take the buydown into account ►as an amendment to the contract's interest rate provision◄. For example, the annual percentage rate must be a composite rate that takes account of both the lower initial rate and the higher subsequent rate, and the **[**payment schedule disclosures**]** ►disclosures required under §§ 1026.18(g), 1026.18(s), 1026.37(c), and 1026.38(c),

as applicable,◄ must reflect the two payment levels►, except as otherwise provided in those paragraphs◄. However, the amount paid by the seller would not be specifically reflected in the ►disclosure of the finance charge and other disclosures affected by it◄ **[**disclosures**]** given by the bank, since that amount constitutes seller's points and thus is not part of the finance charge. ►The seller-paid amount is disclosed, however, as a credit from the seller in the summaries of transactions disclosed pursuant to § 1026.38(j) and (k).◄

ii. If the **[**lower rate**]** ►third-party buydown◄ is not reflected in the credit contract between the consumer and the bank and the consumer is legally bound to the 15% rate from the outset, the ►disclosure of the finance charge and other disclosures affected by it◄ **[**disclosures**]** given by the bank must not reflect the seller buydown in any way. For example, the annual percentage rate and **[**payment schedule**]** ►disclosures required under §§ 1026.18(g), 1026.18(s), 1026.37(c), and 1026.38(c), as applicable,◄ would not take into account the reduction in the interest rate and payment level for the first two years resulting from the buydown. ►The seller-paid amount is, however, disclosed as a credit from the seller in the summaries of transactions disclosed pursuant to § 1026.38(j) and (k).◄

4. *Consumer buydowns.* In certain transactions, the consumer may pay an amount to the creditor to reduce the payments **[**or obtain a lower interest rate**]** on the transaction. Consumer buydowns must be reflected ►as an amendment to the contract's interest rate provision◄ in the ► disclosure of the finance charge and other disclosures affected by it ◄ **[**disclosures**]** given for that transaction. To illustrate, in a mortgage transaction, the creditor and consumer agree to a note specifying a 14 percent interest rate. However, in a separate document, the consumer agrees to pay an amount to the creditor at consummation in return for **[**a reduction in the interest rate to 12 percent**]** ►lower payments◄ for a portion of the mortgage term. The amount paid by the

consumer may be deposited in an escrow account or may be retained by the creditor. Depending upon the buydown plan, the consumer's prepayment of the obligation may or may not result in a portion of the amount being credited or refunded to the consumer. In the ► disclosure of the finance charge and other disclosures affected by it ◄ **[**disclosures**]** given for the mortgage, the creditor must reflect the terms of the buydown agreement.

i. For example:

* * * * *

C. The **[**payment schedule**]** ►disclosures under §§ 1026.18(g) and (s), 1026.37(c), and 1026.38(c), as applicable,◄ must reflect the multiple ►rate and◄ payment levels resulting from the buydown, ►except as otherwise provided in those sections. Further, for example, the transaction is disclosed as a step rate product under §§ 1026.37(a)(10) and 1026.38(a)(5)(iii).◄

ii. The rules regarding consumer buydowns do not apply to transactions known as "lender buydowns." In lender buydowns, a creditor pays an amount (either into an account or to the party to whom the obligation is sold) to reduce the consumer's payments or interest rate for all or a portion of the credit term. Typically, these transactions are structured as a buydown of the interest rate during an initial period of the transaction with a higher than usual rate for the remainder of the term. The ►disclosure of the finance charge and other disclosures affected by it◄ **[**disclosures**]** for lender buydowns should be based on the terms of the legal obligation between the consumer and the creditor. See comment 17(c)(1)-3 for the analogous rules concerning third-party buydowns.

5. *Split buydowns.* In certain transactions, a third party (such as a seller) and a consumer both pay an amount to the creditor to reduce the interest rate. The creditor must include the portion paid by the consumer in the finance charge and disclose the corresponding multiple

payment levels►, except as otherwise provided in §§ 1026.18(s), 1026.37(c), and 1026.38(c),◄ and composite annual percentage rate. The portion paid by the third party and the corresponding reduction in interest rate, however, should not be reflected in the ►disclosure of the finance charge and other disclosures affected by it ◄ **[**disclosures**]** unless the lower rate is reflected in the credit contract. See the discussion on third-party and consumer buydown transactions elsewhere in the commentary to § 1026.17(c).

* * * * *

8. *Basis of disclosures in variable-rate transactions*. ►Except as otherwise provided in §§ 1026.18(s), 1026.37 and 1026.38, as applicable, the◄ **[**The**]** disclosures for a variable-rate transaction must be given for the full term of the transaction and must be based on the terms in effect at the time of consummation. Creditors should base the disclosures only on the initial rate and should not assume that this rate will increase►, except as otherwise provided in §§ 1026.18(s), 1026.37 and 1026.38◄. For example, in a loan with an initial rate of 10 percent and a 5 percentage points rate cap, creditors should base the disclosures on the initial rate and should not assume that this rate will increase 5 percentage points. However, in a variable-rate transaction with a seller buydown that is reflected in the credit contract, a consumer buydown, or a discounted or premium rate, disclosures should not be based solely on the initial terms. In those transactions, the disclosed annual percentage rate should be a composite rate based on the rate in effect during the initial period and the rate that is the basis of the variable-rate feature for the remainder of the term. See the commentary to § 1026.17(c) for a discussion of buydown, discounted, and premium transactions and the commentary to § 1026.19(a)(2) ►, (e), and (f)◄ for a discussion of the redisclosure in certain mortgage transactions with a variable-rate feature.

►See §§ 1026.37(c) and 1026.38(c) for rules regarding disclosure of variable-rate transactions in the projected payments table for transactions subject to § 1026.19(e) and (f).◄

* * * * *

10. *Discounted and premium variable-rate transactions.* * * *

i. When creditors use an initial interest rate that is not calculated using the index or formula for later rate adjustments, the disclosures should reflect a composite annual percentage rate based on the initial rate for as long as it is charged and, for the remainder of the term, the rate that would have been applied using the index or formula at the time of consummation. The rate at consummation need not be used if a 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 day period before consummation in calculating a composite annual percentage rate.

ii. The effect of the multiple rates must also be reflected in the calculation and disclosure of the finance charge, total of payments, and **[**payment schedule**]** ►the disclosures required under §§ 1026.18(g) and (s), 1026.37(c), and 1026.38(c), as applicable◄.

* * * * *

v. Examples of discounted variable-rate transactions include:

A. A 30-year loan for $100,000 with no prepaid finance charges and rates determined by the Treasury bill rate plus two percent. Rate and payment adjustments are made annually. Although the Treasury bill rate at the time of consummation is 10 percent, the creditor sets the interest rate for one year at 9 percent, instead of 12 percent according to the formula. The disclosures should reflect a composite annual percentage rate of 11.63 percent based on 9 percent

for one year and 12 percent for 29 years. Reflecting those two rate levels, the payment schedule ►disclosed pursuant to § 1026.18(g)◄ should show 12 payments of $804.62 and 348 payments of $1,025.31. ►Similarly, the disclosures required by §§ 1026.18(s), 1026.37(c), and 1026.38(c) should reflect the effect of this calculation.◄ The finance charge should be $266,463.32 and►, for transactions subject to § 1026.18,◄ the total of payments $366,463.32.

B. Same loan as above, except with a two-percent rate cap on periodic adjustments. The disclosures should reflect a composite annual percentage rate of 11.53 percent based on 9 percent for the first year, 11 percent for the second year, and 12 percent for the remaining 28 years. Reflecting those three rate levels, the payment schedule ►disclosed pursuant to § 1026.18(g)◄ should show 12 payments of $804.62, 12 payments of $950.09, and 336 payments of $1,024.34. ►Similarly, the disclosures required by §§ 1026.18(s), 1026.37(c), and 1026.38(c) should reflect the effect of this calculation.◄ The finance charge should be $265,234.76 and►, for transactions subject to § 1026.18,◄ the total of payments $365,234.76.

C. Same loan as above, except with a 7 ½ percent cap on payment adjustments. The disclosures should reflect a composite annual percentage rate of 11.64 percent, based on 9 percent for one year and 12 percent for 29 years. Because of the payment cap, five levels of payments should be reflected. The payment schedule ►disclosed pursuant to § 1026.18(g)◄ should show 12 payments of $804.62, 12 payments of $864.97, 12 payments of $929.84, 12 payments of $999.58, and 312 payments of $1,070.04. ►Similarly, the disclosures required by §§ 1026.18(s), 1026.37(c), and 1026.38(c) should reflect the effect of this calculation.◄ The finance charge should be $277,040.60, and►, for transactions subject to § 1026.18,◄ the total of payments $377,040.60.

* * * * *

11. *Examples of variable-rate transactions.* Variable-rate transactions include:

* * * * *

v. "Price level adjusted mortgages" or other indexed mortgages that have a fixed rate of interest but provide for periodic adjustments to payments and the loan balance to reflect changes in an index measuring prices or inflation. Disclosures are to be based on the fixed interest rate►, except as otherwise provided in §§ 1026.18(s), 1026.37, and 1026.38, as applicable◄.

12. *Graduated payment adjustable rate mortgages.* These mortgages involve both a variable interest rate and scheduled variations in payment amounts during the loan term. For example, under these plans, a series of graduated payments may be scheduled before rate adjustments affect payment amounts, or the initial scheduled payment may remain constant for a set period before rate adjustments affect the payment amount. In any case, the initial payment amount may be insufficient to cover the scheduled interest, causing negative amortization from the outset of the transaction. In these transactions, ►except as otherwise provided in §§ 1026.18(s), 1026.37(c), and 1026.38(c)◄, the disclosures should treat these features as follows:

* * * * *

iv. The **[**schedule of payments discloses**]** ►disclosures required by § 1026.18(g) and (s) reflect◄ the amount of any scheduled initial payments followed by an adjusted level of payments based on the initial interest rate. Since some mortgage plans contain limits on the amount of the payment adjustment, the **[**payment schedule**]** ►disclosures required by § 1026.18(g) and (s)◄ may require several different levels of payments, even with the assumption that the original interest rate does not increase. ►For transactions subject to

§ 1026.19(e) and (f), see § 1026.37(c) and its commentary for a discussion of different rules for graduated payment adjustable rate mortgages.◄

* * * * *

►19. *Rebates and loan premiums.* In a loan transaction, the creditor may offer a premium in the form of cash or merchandise to prospective borrowers. Similarly, in a credit sale transaction, a seller's or manufacturer's rebate may be offered to prospective purchasers of the creditor's goods or services. Such premiums and rebates must be reflected in accordance with the terms of the legal obligation between the consumer and the creditor. Thus, if the creditor is legally obligated to provide the premium or rebate to the consumer as part of the credit transaction, the disclosures should reflect its value in the manner and at the time the creditor is obligated to provide it.◄

Paragraph 17(c)(2)(i).

1. *Basis for estimates.* ►Except as otherwise provided in §§ 1026.19, 1026.37, and 1026.38, disclosures◄ **[**Disclosures**]** may be estimated when the exact information is unknown at the time disclosures are made. Information is unknown if it is not reasonably available to the creditor at the time the disclosures are made. The "reasonably available" standard requires that the creditor, acting in good faith, exercise due diligence in obtaining information. For example, the creditor must at a minimum utilize generally accepted calculation tools, but need not invest in the most sophisticated computer program to make a particular type of calculation. The creditor normally may rely on the representations of other parties in obtaining information. For example, the creditor might look to the consumer for the time of consummation, to insurance companies for the cost of insurance, or to realtors for taxes and escrow fees. The creditor may utilize estimates in making disclosures even though the creditor knows that more precise information

will be available by the point of consummation. However, new disclosures may be required under § 1026.17(f) or § 1026.19. ►For purposes of § 1026.17(c)(2)(i), creditors must provide the actual amounts of the information required to be disclosed pursuant to § 1026.19(e) and (f), subject to the estimation and redisclosure rules in those provisions.◄

2. *Labeling estimates.* Estimates must be designated as such in the segregated disclosures. ►For the disclosures required by § 1026.19(e), use of the Loan Estimate form H-24 in appendix H to this part, pursuant to § 1026.37(o), satisfies the requirement that the disclosure state clearly that the disclosure is an estimate. For all other disclosures, even though they◄ **[**Even though other disclosures**]** are based on the same assumption on which a specific estimated disclosure was based, the creditor has **[**some**]** flexibility in labeling the estimates. Generally, only the particular disclosure for which the exact information is unknown is labeled as an estimate. However, when several disclosures are affected because of the unknown information, the creditor has the option of labeling either every affected disclosure or only the disclosure primarily affected. For example, when the finance charge is unknown because the date of consummation is unknown, the creditor must label the finance charge as an estimate and may also label as estimates the total of payments and the payment schedule. When many disclosures are estimates, the creditor may use a general statement, such as "all numerical disclosures except the late payment disclosure are estimates," as a method to label those disclosures as estimates.

3. *Simple-interest transactions.* If consumers do not make timely payments in a simple-interest transaction, some of the amounts calculated for Truth in Lending disclosures will differ from amounts that consumers will actually pay over the term of the transaction. Creditors may label disclosures as estimates in these transactions►, except as otherwise provided by § 1026.19◄. For example, because the finance charge and total of payments may be larger than

disclosed if consumers make late payments, creditors may label the finance charge and total of payments as estimates. On the other hand, creditors may choose not to label disclosures as estimates►. In all cases, creditors◄ [and may] ►comply with § 1026.17(c)(2)(i) by basing◄ [base all] disclosures on the assumption that payments will be made on time ►and in the amounts required by the terms of the legal obligation◄, disregarding any possible [inaccuracies] ►differences◄ resulting from consumers' payment patterns.

Paragraph 17(c)(2)(ii).

1. *Per-diem interest.* Section 1026.17(c)(2)(ii) applies to any numerical amount (such as the finance charge, annual percentage rate, or payment amount) that is affected by the amount of the per-diem interest charge that will be collected at consummation. If the amount of per-diem interest used in preparing the disclosures for consummation is based on the information known to the creditor at the time the disclosure document is prepared, the disclosures are considered accurate under this rule, and affected disclosures are also considered accurate, even if the disclosures are not labeled as estimates. For example, if the amount of per-diem interest used to prepare disclosures is less than the amount of per-diem interest charged at consummation, and as a result the finance charge is understated by $200, the disclosed finance charge is considered accurate even though the understatement is not within the $100 tolerance of § 1026.18(d)(1), and the finance charge was not labeled as an estimate. In this example, if in addition to the understatement related to the per-diem interest, a $90 fee is incorrectly omitted from the finance charge, causing it to be understated by a total of $290, the finance charge is considered accurate because the $90 fee is within the tolerance in § 1026.18(d)(1). ►For purposes of transactions subject to § 1026.19(e) and (f), the creditor shall disclosure the actual amount of per diem

interest that will be collected at consummation, subject only to the disclosure rules in those sections.◄

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Paragraph 17(c)(4).

1. *Payment schedule irregularities.* When one or more payments in a transaction differ from the others because of a long or short first period, the variations may be ignored in disclosing the payment schedule ► pursuant to § 1026.18(g) or the disclosures required pursuant to §§ 1026.18(s), 1026.37(c), or 1026.38(c)◄, finance charge, annual percentage rate, and other terms. For example:

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Paragraph 17(c)(5).

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2. *Future event as maturity date.* An obligation whose maturity date is determined solely by a future event, as for example, a loan payable only on the sale of property, is not a demand obligation. Because no demand feature is contained in the obligation, demand disclosures under § 1026.18(i) are inapplicable ►and demand disclosures under § 1026.38(l)(2) are answered in the negative◄. The disclosures should be based on the creditor's estimate of the time at which the specified event will occur and ►, except as otherwise provided in § 1026.19(e) and (f),◄ may indicate the basis for the creditor's estimate, as noted in the commentary to § 1026.17(a).

3. *Demand after stated period.* Most demand transactions contain a demand feature that may be exercised at any point during the term, but certain transactions convert to demand status only after a fixed period. **[**For example, in States prohibiting due-on-sale clauses, the Federal National Mortgage Association (FNMA) requires mortgages that it purchases to include a call

option rider that may be exercised after 7 years. These mortgages are generally written as long-term obligations, but contain a demand feature that may be exercised only within a 30-day period at 7 years.**]** The disclosures for **[**these transactions**]** ►a transaction that converts to demand status after a fixed period◄ should be based upon the legally agreed-upon maturity date. Thus, ►for example,◄ if a mortgage containing **[**the 7-year FNMA call option**]** ►a call option that the creditor may exercise during the first 30 days of the eighth year after loan origination◄ is written as a 20-year obligation, the disclosures should be based on the 20-year term, with the demand feature disclosed under § 1026.18(i)►or § 1026.38(l)(2), as applicable◄.

4. *Balloon mortgages.* Balloon payment mortgages, with payments based on a long-term amortization schedule and a large final payment due after a shorter term, are not demand obligations unless a demand feature is specifically contained in the contract. For example, a mortgage with a term of five years and a payment schedule based on 20 years would not be treated as a mortgage with a demand feature, in the absence of any contractual demand provisions. In this type of mortgage, disclosures should be based on the five-year term. ►See §§ 1026.37(c) and 1026.38(c) and their commentary for projected payment disclosures for balloon payment mortgages.◄

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17(d) Multiple creditors; multiple consumers.

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2. *Multiple consumers.* When two consumers are joint obligors with primary liability on an obligation, the disclosures may be given to either one of them. If one consumer is merely a surety or guarantor, the disclosures must be given to the principal debtor. In rescindable transactions, however, separate disclosures must be given to each consumer who has the right to

rescind under § 1026.23, although the disclosures required under § 1026.19(b) need only be provided to the consumer who expresses an interest in a variable-rate loan program. ►In addition, the early disclosures required by § 1026.19(a), (e), or (g), as applicable, may be provided to any consumer with primary liability on the obligation. Material disclosures, as defined in § 1026.23(a)(3)(ii), under § 1026.23(a) and the notice of the right to rescind required by § 1026.23(b), however, must be given before consummation to each consumer who has the right to rescind, even if such consumer is not an obligor. *See* §§ 1026.2(a)(11), 1026.17(b), 1026.19(a), 1026.19(f), and 1026.23(b).◄

17(e) Effect of subsequent events.

1. *Events causing inaccuracies.* ►Subject to § 1026.19(e) and (f), inaccuracies◄ **[**Inaccuracies**]** in disclosures are not violations if attributable to events occurring after the disclosures are made. For example, when the consumer fails to fulfill a prior commitment to keep the collateral insured and the creditor then provides the coverage and charges the consumer for it, such a change does not make the original disclosures inaccurate. The creditor may, however, be required to make new disclosures under § 1026.17(f) or § 1026.19 if the events occurred between disclosure and consummation or under § 1026.20 if the events occurred after consummation. ►For rules regarding permissible changes to the information required to be disclosed by § 1026.19(e) and (f), see § 1026.19(e)(3) and (f)(4) and their commentary.◄

17(f) Early disclosures.

1. *Change in rate or other terms.* Redisclosure is required for changes that occur between the time disclosures are made and consummation if the annual percentage rate in the consummated transaction exceeds the limits prescribed in **[**this section,**]** ►§ 1026.17(f)◄ even if

the [initial] ►prior◄ disclosures would be considered accurate under the tolerances in § 1026.18(d) or 1026.22(a). To illustrate:

i. [*General.*] ►*Transactions not secured by real property.*◄ A. ►For transactions not secured by real property, if◄ [If] disclosures are made in a regular transaction on July 1, the transaction is consummated on July 15, and the actual annual percentage rate varies by more than 1/8 of 1 percentage point from the disclosed annual percentage rate, the creditor must either redisclose the changed terms or furnish a complete set of new disclosures before consummation. Redisclosure is required even if the disclosures made on July 1 are based on estimates and marked as such.

B. In a regular transaction ►not secured by real property ◄, if early disclosures are marked as estimates and the disclosed annual percentage rate is within 1/8 of 1 percentage point of the rate at consummation, the creditor need not redisclose the changed terms (including the annual percentage rate).

[ii. *Nonmortgage loan.*] ►C.◄ If disclosures ►for transactions not secured by real property◄ are made on July 1, the transaction is consummated on July 15, and the finance charge increased by $35 but the disclosed annual percentage rate is within the permitted tolerance, the creditor must at least redisclose the changed terms that were not marked as estimates. *See* § 1026.18(d)(2) of this part.

[iii.] ►ii. *Reverse mortgages.*◄[*Mortgage loan*]. [At] ►In a transaction subject to § 1026.19(a) and not § 1026.19(e) and (f), at◄ the time [TILA disclosures] ►the disclosures required by § 1026.19(a)◄ are prepared in July, the loan closing is scheduled for July 31 and the creditor does not plan to collect per-diem interest at consummation. Consummation actually occurs on August 5, and per-diem interest for the remainder of August is collected as a prepaid

finance charge. [Assuming there were no other changes requiring redisclosure, the]►The◄ creditor may rely on the disclosures prepared in July that were accurate when they were prepared. However, if the creditor prepares new disclosures in August that will be provided at consummation, the new disclosures must take into account the amount of the per-diem interest known to the creditor at that time.

►iii. *Mortgages other than reverse mortgages and mortgage loans not secured by real property.* For transactions secured by real property other than reverse mortgages, at the time the disclosures required by § 1026.19(e) are prepared in July, the loan closing is scheduled for July 31 and the creditor does not plan to collect per-diem interest at consummation. Consummation actually occurs on August 5, and per-diem interest for the remainder of August is collected as a prepaid finance charge. The creditor must make the disclosures required by § 1026.19(f) three days before consummation, and the disclosures required by § 1026.19(f) must take into account the amount of per-diem interest that will be collected at consummation.◄

2. *Variable rate.* The addition of a variable rate feature to the credit terms, after early disclosures are given, requires new disclosures. ►See § 1026.19(e) and (f) to determine when new disclosures are required for transactions secured by real property.◄

3. *Content of new disclosures.* ►Except as provided by § 1026.19(e) and (f), if◄ [If] redisclosure is required, the creditor has the option of either providing a complete set of new disclosures, or providing disclosures of only the terms that vary from those originally disclosed. *See* the commentary to § 1026.19(a)(2).

4. *Special rules*. In mortgage transactions subject to § 1026.19►(a)◄, the creditor must redisclose if, between the delivery of the required early disclosures and consummation, the annual percentage rate changes by more than a stated tolerance. When subsequent events occur

after consummation, new disclosures are required only if there is a refinancing or an assumption within the meaning of § 1026.20.

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17(g) Mail or telephone orders—delay in disclosures.

1. *Conditions for use.* ►Except for extensions of credit subject to § 1026.19(a) or (e), (f), and (g), when◄ **[**When**]** the creditor receives a mail or telephone request for credit, the creditor may delay making the disclosures until the first payment is due if the following conditions are met:

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17(h) Series of sales—delay in disclosures.

1. *Applicability.* ►Except for extensions of credit covered by § 1026.19(a) or (e), (f), and (g), the◄ **[**The**]** creditor may delay the disclosures for individual credit sales in a series of such sales until the first payment is due on the current sale, assuming the two conditions in this paragraph are met. If those conditions are not met, the general timing rules in § 1026.17(b) apply.

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Section 1026.18—Content of Disclosures

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►3. *Scope of coverage.* i. Section 1026.18 applies to closed-end consumer credit transactions, other than transactions that are subject to § 1026.19(e) and (f). Section 1026.19(e) and (f) applies to closed-end consumer credit transactions that are secured by real property, other than reverse mortgages subject to § 1026.33. Accordingly, the disclosures required by § 1026.18 apply only to closed-end consumer credit transactions that are:

A. Unsecured;

B. Secured by personal property that is not a dwelling;

C. Secured by personal property that is a dwelling and is not also secured by real property; or

D. Reverse mortgages subject to § 1026.33.

ii. Of the foregoing transactions that are subject to § 1026.18, the creditor discloses a payment schedule pursuant to § 1026.18(g) for those described in paragraphs i.A and i.B of this comment. For transactions described in paragraphs i.C and i.D of this comment, the creditor discloses an interest rate and payment summary table pursuant to § 1026.18(s). See also comments 18(g)-6 and 18(s)-4 for additional guidance on the applicability to different transaction types of §§ 1026.18(g) or (s) and 1026.19(e) and (f).

iii. Because § 1026.18 does not apply to transactions secured by real property, other than reverse mortgages, references in the section and its commentary to "mortgages" refer only to transactions described in paragraphs i.C and i.D of this comment, as applicable.◄

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18(b) Amount financed.

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[2. *Rebates and loan premiums.* In a loan transaction, the creditor may offer a premium in the form of cash or merchandise to prospective borrowers. Similarly, in a credit sale transaction, a seller's or manufacturer's rebate may be offered to prospective purchasers of the creditor's goods or services. At the creditor's option, these amounts may be either reflected in the Truth in Lending disclosures or disregarded in the disclosures. If the creditor chooses to

reflect them in the § 1026.18 disclosures, rather than disregard them, they may be taken into account in any manner as part of those disclosures.**]**

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Paragraph 18(b)(2).

1. *Adding other amounts.* Fees or other charges that are not part of the finance charge and that are financed rather than paid separately at consummation of the transaction are included in the amount financed. Typical examples are **[**real estate settlement charges and premiums for voluntary credit life and disability insurance**]** ►government recording fees for deeds and premiums for insurance against loss of or damage to property◄ excluded from the finance charge under § 1026.4. This paragraph does not include any amounts already accounted for under § 1026.18(b)(1), such as taxes, tag and title fees, or the costs of accessories or service policies that the creditor includes in the cash price.

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18(c) Itemization of amount financed.

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4. *RESPA transactions.* The Real Estate Settlement Procedures Act (RESPA) requires creditors to provide a good faith estimate of closing costs and a settlement statement listing the amounts paid by the consumer. ►Reverse mortgages◄ **[**Transactions**]** subject to RESPA ►and § 1026.18◄ are exempt from the requirements of § 1026.18(c) if the creditor complies with RESPA's requirements for a good faith estimate and settlement statement. The itemization of the amount financed need not be given, even though the content and timing of the good faith estimate and settlement statement under RESPA differ from the requirements of §§ 1026.18(c) and 1026.19(a)(2). If a creditor chooses to substitute RESPA's settlement statement for the

itemization when redisclosure is required under § 1026.19(a)(2), the statement must be delivered to the consumer at or prior to consummation. The disclosures required by §§ 1026.18(c) and 1026.19(a)(2) may appear on the same page or on the same document as the good faith estimate or the settlement statement, so long as the requirements of § 1026.17(a) are met.

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Paragraph 18(c)(1)(iv).

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2. *Prepaid mortgage insurance premiums.* ►Regulation X under◄ RESPA►, 12 CFR 1024.8,◄ requires creditors to give consumers a settlement statement disclosing the costs associated with ►reverse◄ mortgage loan transactions. Included on the settlement statement are mortgage insurance premiums collected at settlement, which are prepaid finance charges. In calculating the total amount of prepaid finance charges, creditors should use the amount for mortgage insurance listed on the line for mortgage insurance on the settlement statement (line 1003 on HUD-1 or HUD 1-A), without adjustment, even if the actual amount collected at settlement may vary because of RESPA's escrow accounting rules. Figures for mortgage insurance disclosed in conformance with RESPA shall be deemed to be accurate for purposes of Regulation Z.

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18(f) Variable rate.

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Paragraph 18(f)(1)(iv).

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2. *Hypothetical example not required.* The creditor need not provide a hypothetical example in the following transactions with a variable-rate feature:

i. Demand obligations with no alternate maturity date.

ii. Private education loans as defined in § 1026.46(b)(5).

[iii. Multiple-advance construction loans disclosed pursuant to Appendix D, Part I.**]**

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18(g) Payment schedule.

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4. *Timing of payments.* i. *General rule.* * * *

ii. *Exception.* In a limited number of circumstances, the beginning-payment date is unknown and difficult to determine at the time disclosures are made. For example, a consumer may become obligated on a credit contract that contemplates the delayed disbursement of funds based on a contingent event, such as the completion of **[**home**]** repairs. Disclosures may also accompany loan checks that are sent by mail, in which case the initial disbursement and repayment dates are solely within the consumer's control. In such cases, if the beginning-payment date is unknown the creditor may use an estimated date and label the disclosure as an estimate pursuant to § 1026.17(c). Alternatively, the disclosure may refer to the occurrence of a particular event, for example, by disclosing that the beginning payment is due "30 days after the first loan disbursement." This information also may be included with an estimated date to explain the basis for the creditor's estimate. *See* comment 17(a)(1)-5.iii.

5. ►[Reserved]◄**[***Mortgage insurance.* The payment schedule should reflect the consumer's mortgage insurance payments until the date on which the creditor must automatically terminate coverage under applicable law, even though the consumer may have a right to request

that the insurance be cancelled earlier. The payment schedule must reflect the legal obligation, as determined by applicable State or other law. For example, assume that under applicable law, mortgage insurance must terminate after the 130th scheduled monthly payment, and the creditor collects at closing and places in escrow two months of premiums. If, under the legal obligation, the creditor will include mortgage insurance premiums in 130 payments and refund the escrowed payments when the insurance is terminated, the payment schedule should reflect 130 premium payments. If, under the legal obligation, the creditor will apply the amount escrowed to the two final insurance payments, the payment schedule should reflect 128 monthly premium payments. (For assumptions in calculating a payment schedule that includes mortgage insurance that must be automatically terminated, see comments 17(c)(1)-8 and 17(c)(1)-10.)**]**

6. *Mortgage transactions.* Section 1026.18(g) applies **[**only**]** to closed-end transactions, other than transactions that are subject to § 1026.18(s)►or § 1026.19(e) and (f)◄. Section 1026.18(s) applies to closed-end transactions secured by real property or a dwelling►, unless they are subject to § 1026.19(e) and (f). Section 1026.19(e) and (f) applies to closed-end transactions secured by real property, other than reverse mortgages◄. Thus, if a closed-end consumer credit transaction is secured by real property or a dwelling ►and the transaction is a reverse mortgage or the dwelling is personal property◄, the creditor discloses an interest rate and payment summary table in accordance with § 1026.18(s) **[**and does not observe**]**. ►*See* comment 18(s)-4. If a closed-end consumer credit transaction is secured by real property and is not a reverse mortgage, the creditor discloses a projected payments table in accordance with §§ 1026.37(c) and 1026.38(c), as required by § 1026.19(e) and (f). In all such cases, the creditor is not subject to◄ the requirements of § 1026.18(g). On the other hand, if a closed-end consumer credit transaction is not secured by real property or a dwelling ►(for example, if it is

unsecured or secured by an automobile)◄, the creditor discloses a payment schedule in accordance with § 1026.18(g) and **[**does not observe**]** ►is not subject to◄ the requirements of § 1026.18(s) ►or §§ 1026.37(c) and 1026.38(c)◄.

* * * * *

Paragraph 18(g)(2).

1. *Abbreviated disclosure.* The creditor may disclose an abbreviated payment schedule when the amount of each regularly scheduled payment (other than the first or last payment) includes an equal amount to be applied on principal and a finance charge computed by application of a rate to the decreasing unpaid balance. **[**This option is also available when mortgage-guarantee insurance premiums, paid either monthly or annually, cause variations in the amount of the scheduled payments, reflecting the continual decrease or increase in the premium due.**]** In addition, in transactions where payments vary because interest and principal are paid at different intervals, the two series of payments may be disclosed separately and the abbreviated payment schedule may be used for the interest payments. For example, in transactions with fixed quarterly principal payments and monthly interest payments based on the outstanding principal balance, the amount of the interest payments will change quarterly as principal declines. In such cases the creditor may treat the interest and principal payments as two separate series of payments, separately disclosing the number, amount, and due dates of principal payments, and, using the abbreviated payment schedule, the number, amount, and due dates of interest payments. This option may be used when interest and principal are scheduled to be paid on the same date of the month as well as on different dates of the month. The creditor using this alternative must disclose the dollar amount of the highest and lowest payments and make reference to the variation in payments.

2. *Combined payment schedule disclosures.* Creditors may combine the option in this paragraph with the general payment schedule requirements in transactions where only a portion of the payment schedule meets the conditions of § 1026.18(g)(2). For example, in a ►transaction◄ **[**graduated payment mortgage**]** where payments rise sharply for five years and then decline over the next 25 years **[**because of decreasing mortgage insurance premiums**]**, the first five years would be disclosed under the general rule in § 1026.18(g) and the next 25 years according to the abbreviated schedule in § 1026.18(g)(2).

* * * * *

18(k) Prepayment.

1. *Disclosure required.* The creditor must give a definitive statement of whether or not a ►prepayment◄ penalty will be imposed or a ►prepayment◄ rebate will be given.

i. The fact that no ►prepayment◄ penalty will be imposed may not simply be inferred from the absence of a ►prepayment◄ penalty disclosure; the creditor must indicate that prepayment will not result in a ►prepayment◄ penalty.

ii. If a ►prepayment◄ penalty or ►prepayment◄ refund is possible for one type of prepayment, even though not for all, a positive disclosure is required. This applies to any type of prepayment, whether voluntary or involuntary as in the case of prepayments resulting from acceleration.

iii. Any difference in ►prepayment◄ rebate or ►prepayment◄ penalty policy, depending on whether prepayment is voluntary or not, must not be disclosed with the segregated disclosures.

2. *Rebate-penalty disclosure.* A single transaction may involve both a precomputed finance charge and a finance charge computed by application of a rate to the unpaid balance (for

example, mortgages with mortgage-guarantee insurance). In these cases, disclosures about both prepayment rebates and ►prepayment◄ penalties are required. Sample form H-15 in appendix H to this part illustrates a mortgage transaction in which both rebate and penalty disclosures are necessary.

3. *Prepaid finance charge.* The existence of a prepaid finance charge in a transaction does not, by itself, require a disclosure under § 1026.18(k). A prepaid finance charge is not considered a ►prepayment◄ penalty under § 1026.18(k)(1), nor does it require a disclosure under § 1026.18(k)(2). At its option, however, a creditor may consider a prepaid finance charge to be under § 1026.18(k)(2). If a disclosure is made under § 1026.18(k)(2) with respect to a prepaid finance charge or other finance charge, the creditor may further identify that finance charge. For example, the disclosure may state that the borrower "will not be entitled to a refund of the prepaid finance charge" or some other term that describes the finance charge.

Paragraph 18(k)(1).

►1. *Examples of prepayment penalties*. For purposes of § 1026.18(k)(1), 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.

iii. A minimum finance charge in a simple interest transaction.

2. *Fees that are not prepayment penalties*. For purposes of § 1026.18(k)(1), fees which are not prepayment penalties include, for example:

i. Fees imposed for preparing and providing documents when a loan is paid in full, whether or not the loan is prepaid, such as 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.◄

[1. *Penalty.* This applies only to those transactions in which the interest calculation takes account of all scheduled reductions in principal, as well as transactions in which interest calculations are made daily. The term penalty as used here encompasses only those charges that are assessed strictly because of the prepayment in full of a simple-interest obligation, as an addition to all other amounts. Items which are penalties include, for example:

i. Interest charges for any period after prepayment in full is made. (See the commentary to § 1026.17(a)(1) regarding disclosure of interest charges assessed for periods after prepayment in full as directly related information.)

ii. A minimum finance charge in a simple-interest transaction. (See the commentary to § 1026.17(a)(1) regarding the disclosure of a minimum finance charge as directly related information.) Items which are not penalties include, for example, loan guarantee fees.**]**

Paragraph 18(k)(2).

1. *Rebate of finance charge.* i. This applies to any finance charges that do not take account of each reduction in the principal balance of an obligation. This category includes, for example:

A. Precomputed finance charges such as add-on charges. ►This includes computing a refund of unearned finance charge, such as precomputed 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.◄

B. Charges that take account of some but not all reductions in principal, such as mortgage guarantee insurance assessed on the basis of an annual declining balance, when the principal is reduced on a monthly basis.

ii. No description of the method of computing earned or unearned finance charges is required or permitted as part of the segregated disclosures under this section.

* * * * *

18(r) Required deposit.

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6. *Examples of amounts excluded.* The following are among the types of deposits that need not be treated as required deposits:

i. Requirement that a borrower be a customer or a member even if that involves a fee or a minimum balance.

ii. Required property insurance escrow on a mobile home transaction.

iii. Refund of interest when the obligation is paid in full.

iv. Deposits that are immediately available to the consumer.

v. Funds deposited with the creditor to be disbursed (for example, for construction) before the loan proceeds are advanced.

vi. ►[Reserved]◄ **[**Escrow of condominium fees.**]**

vii. Escrow of loan proceeds to be released when the repairs are completed.

18(s) Interest rate and payment summary for mortgage transactions.

1. *In general.* Section 1026.18(s) prescribes format and content for disclosure of interest rates and monthly (or other periodic) payments for ►reverse mortgages and certain transactions secured by dwellings that are personal property◄ **[**mortgage loans**]**. The information in § 1026.18(s)(2) through (4) is required to be in the form of a table, except as otherwise provided, with headings and format substantially similar to model clause H-4(E), H-4(F), H-4(G), or H-4(H) in appendix H to this part. A disclosure that does not include the shading shown in a model clause but otherwise follows the model clause's headings and format is substantially similar to that model clause. Where § 1026.18(s)(2) through (4) or the applicable model clause requires that a column or row of the table be labeled using the word "monthly" but the periodic payments are not due monthly, the creditor should use the appropriate term, such as "bi-weekly" or "quarterly." In all cases, the table should have no more than five vertical columns corresponding

to applicable interest rates at various times during the loan's term; corresponding payments would be shown in horizontal rows. Certain loan types and terms are defined for purposes of § 1026.18(s) in § 1026.18(s)(7).

* * * * *

►4. *Scope of coverage in relation to § 1026.19(e) and (f).* Section 1026.18(s) applies to transactions secured by a real property or a dwelling, other than transactions that are subject to § 1026.19(e) and (f). Those provisions apply to closed-end transactions secured by real property, other than reverse mortgages. Accordingly, § 1026.18(s) governs only closed-end reverse mortgages and closed-end transactions secured by a dwelling that is personal property (such as a mobile home that is not deemed real property under State or other applicable law).◄

* * * * *

18(s)(3) Payments for amortizing loans.

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Paragraph 18(s)(3)(i)(C).

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2. *Mortgage insurance ►or any functional equivalent◄.* ►For purposes of § 1026.18(s), "mortgage insurance" means insurance against the nonpayment of, or default on, an individual mortgage. "Mortgage guarantees" (such as a United States Department of Veterans Affairs or United States Department of Agriculture guarantee) provide coverage similar to mortgage insurance, even if not technically considered insurance under State or other applicable law. For purposes of § 1026.18(s), "mortgage insurance or any functional equivalent" includes any mortgage guarantee.◄ Payment amounts under § 1026.18(s)(3)(i) should reflect the consumer's mortgage insurance payments ►or any functionally equivalent fee◄ until the date

on which the creditor must automatically terminate coverage under applicable law, even though the consumer may have a right to request that the insurance be cancelled earlier. The payment amount must reflect the terms of the legal obligation, as determined by applicable State or other law. For example, assume that under applicable law, mortgage insurance must terminate after the 130th scheduled monthly payment, and the creditor collects at closing and places in escrow two months of premiums. If, under the legal obligation, the creditor will include mortgage insurance premiums in 130 payments and refund the escrowed payments when the insurance is terminated, payment amounts disclosed through the 130th payment should reflect premium payments. If, under the legal obligation, the creditor will apply the amount escrowed to the two final insurance payments, payments disclosed through the 128th payment should reflect premium payments. The escrow amount reflected on the disclosure should include mortgage insurance premiums even if they are not escrowed and even if there is no escrow account established for the transaction.

* * * * *

Section 1026.19—Certain Mortgage and Variable-Rate Transactions

19(a)(1)(i) Time of disclosures.

1. *Coverage.* This section requires early disclosure of credit terms in ►reverse◄ mortgage transactions ►subject to § 1026.33◄ that are secured by a consumer's dwelling **[**(other than home equity lines of credit subject to § 1026.40 or mortgage transactions secured by an interest in a timeshare plan)**]** that are also subject to the Real Estate Settlement Procedures Act (RESPA) and its implementing Regulation X. To be covered by § 1026.19►(a)◄, a transaction must be a Federally related mortgage loan under RESPA. "Federally related mortgage loan" is

defined under RESPA (12 U.S.C. 2602) and Regulation X (12 CFR 1024.2), and is subject to any interpretations by the Bureau.

* * * * *

[*19(a)(5) Timeshare plans.*

Paragraph 19(a)(5)(ii).

1. *Timing.* A mortgage transaction secured by a consumer's interest in a "timeshare plan," as defined in 11 U.S.C. 101(53D), that is also a Federally related mortgage loan under RESPA is subject to the requirements of § 1026.19(a)(5) instead of the requirements of § 1026.19(a)(1) through § 1026.19(a)(4). *See* comment 19(a)(1)(i)-1. Early disclosures for transactions subject to § 1026.19(a)(5) must be given (a) before consummation or (b) within three business days after the creditor receives the consumer's written application, whichever is earlier. The general definition of "business day" in § 1026.2(a)(6)—a day on which the creditor's offices are open to the public for substantially all of its business functions—applies for purposes of § 1026.19(a)(5)(ii). *See* comment 2(a)(6)-1. These timing requirements are different from the timing requirements under § 1026.19(a)(1)(i). Timeshare transactions covered by § 1026.19(a)(5) may be consummated any time after the disclosures required by § 1026.19(a)(5)(ii) are provided.

2. *Use of estimates.* If the creditor does not know the precise credit terms, the creditor must base the disclosures on the best information reasonably available and indicate that the disclosures are estimates under § 1026.17(c)(2). If many of the disclosures are estimates, the creditor may include a statement to that effect (such as "all numerical disclosures except the late-payment disclosure are estimates") instead of separately labeling each estimate. In the alternative, the creditor may label as an estimate only the items primarily affected by unknown

information. (*See* the commentary to § 1026.17(c)(2).) The creditor may provide explanatory material concerning the estimates and the contingencies that may affect the actual terms, in accordance with the commentary to § 1026.17(a)(1).

3. *Written application.* For timeshare transactions, creditors may rely on comment 19(a)(1)(i)-3 in determining whether a "written application" has been received.

4. *Denied or withdrawn applications.* For timeshare transactions, creditors may rely on comment 19(a)(1)(i)-4 in determining that disclosures are not required by § 1026.19(a)(5)(ii) because the consumer's application will not or cannot be approved on the terms requested or the consumer has withdrawn the application.

5. *Itemization of amount financed.* For timeshare transactions, creditors may rely on comment 19(a)(1)(i)-5 in determining whether providing the good faith estimates of settlement costs required by RESPA satisfies the requirement of § 1026.18(c) to provide an itemization of the amount financed.

Paragraph 19(a)(5)(iii).

1. *Consummation or settlement.* For extensions of credit secured by a consumer's timeshare plan, when corrected disclosures are required, they must be given no later than "consummation or settlement." "Consummation" is defined in § 1026.2(a). "Settlement" is defined in Regulation X (12 CFR 1024.2(b)) and is subject to any interpretations issued by the Bureau. In some cases, a creditor may delay redisclosure until settlement, which may be at a time later than consummation. If a creditor chooses to redisclose at settlement, disclosures may be based on the terms in effect at settlement, rather than at consummation. For example, in a variable-rate transaction, a creditor may choose to base disclosures on the terms in effect at

settlement, despite the general rule in comment 17(c)(1)-8 that variable-rate disclosures should be based on the terms in effect at consummation.

2. *Content of new disclosures.* Creditors may rely on comment 19(a)(2)(ii)-2 in determining the content of corrected disclosures required under § 1026.19(a)(5)(iii).**]**

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►*19(e) Mortgage loans secured by real property—Early disclosures.*

19(e)(1)(i) Creditor.

1. *Requirements.* Section 1026.19(e)(1)(i) requires early disclosure of credit terms in closed-end credit transactions that are secured by real property, other than reverse mortgages. These disclosures must be provided in good faith. Except as otherwise provided in § 1026.19(e), a disclosure is in good faith if it is consistent with the best information reasonably available to the creditor at the time the disclosure is provided.

19(e)(1)(ii) Mortgage broker.

1. *Requirements.* A mortgage broker may provide the disclosures required under § 1026.19(e)(1)(i) instead of the creditor. By assuming this responsibility, the mortgage broker becomes responsible for complying with all of the relevant requirements as if it were the creditor, meaning that "mortgage broker" should be read in the place of "creditor" for all the relevant provisions of § 1026.19(e), except to the extent that such a reading would create responsibility for mortgage brokers under § 1026.19(f). For example, comment 19(e)(4)-2 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)-2 because the mortgage brokers are not responsible for the disclosures required by § 1026.19(f)(1)(i).

2. *Broker responsibilities.* If a mortgage broker issues any disclosure under § 1026.19(e), the mortgage broker must comply with the requirements of § 1026.19(e). For example, if the mortgage broker receives sufficient information to complete an application, the mortgage broker must issue the disclosures required under § 1026.19(e)(1)(i) within three business days in accordance with § 1026.19(e)(1)(iii). If the mortgage broker subsequently receives information sufficient to establish that a disclosure provided under § 1026.19(e)(1)(i) must be reissued under § 1026.19(e)(3)(iv), then the mortgage broker is responsible for ensuring that a revised disclosure is provided. If a mortgage broker issues any disclosure under § 1026.19(e), the mortgage broker must also comply with the requirements of § 1026.25. For example, if a mortgage broker issues the disclosure required under § 1026.19(e)(1)(i), it must maintain records for three years, in compliance with § 1026.25(c)(1)(i), and must maintain such records in an electronic, machine-readable format, in compliance with § 1026.25(c)(1)(iii).

3. *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, the creditor must ensure that the broker provides the disclosures required under § 1026.19(e) not later than three business days after the mortgage broker received information sufficient to constitute an application, as defined in § 1026.2(a)(3)(ii). The creditor does not satisfy the requirements of § 1026.19(e) if it provides duplicative disclosures. For example, a creditor does not meet its burden by issuing disclosures required under § 1026.19(e) that mirror ones already issued by the broker for the purpose of demonstrating that the consumer received timely disclosures. 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. Disclosures provided by a broker in accordance with § 1026.19(e)(1)(ii) satisfy the creditor's obligation under § 1026.19(e)(1)(i).

4. *Broker provision of preliminary written estimates specific to the consumer.* Section 1026.19(e)(2)(ii) requires creditors to provide consumers with a disclosure indicating that the written estimate is not the Loan Estimate required by RESPA and TILA, if a creditor provides a consumer with certain written estimates of specific credit terms or costs. Section 1026.19(e)(1)(ii) states that, if a mortgage broker provides any disclosure required by § 1026.19(e), the mortgage broker must comply with the requirements in § 1026.19(e) related to such disclosure. Thus, § 1026.19(e)(1)(ii) requires mortgage brokers to comply with § 1026.19(e)(2)(ii) if a mortgage broker provides any disclosures under § 1026.19(e). For example, if a mortgage broker never provides disclosures required by § 1026.19(e), the mortgage broker need not include the disclosure required by § 1026.19(e)(2)(ii) on written information provided to consumers.

19(e)(1)(iii) Timing.

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), the term "business day" means all calendar days except Sundays and legal public holidays referred to in § 1026.2(a)(6). *See* comment 2(a)(6)-2. If the creditor does not know the precise credit terms, the creditor must base the disclosures on the best information reasonably available.

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 presumed 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), 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, 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).

19(e)(1)(iv) Delivery.

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 presumed to have received the disclosures three business days after they are mailed or delivered to the

address specified by the consumer. This presumption may be rebutted by providing 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, thereby rebutting the presumption that the disclosures were received on Thursday, three business days after the disclosures were sent.

2. *Electronic delivery.* The presumption established in § 1026.19(e)(1)(iv) applies to methods of electronic delivery, such as email. For example, if a creditor sends a disclosure required under § 1026.19(e) via email on Monday, pursuant to § 1026.19(e)(1)(iv) the consumer is presumed to have received the disclosure on Thursday, three business days later. However, the creditor may rebut the presumption by providing evidence that the consumer received the emailed disclosures earlier. Creditors using electronic delivery methods, such as email, must also comply with § 1026.17(a)(1). For example, if a creditor delivers the disclosures required by § 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 § 1026.17(a)(1), 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).

19(e)(1)(v) Consumer's waiver of waiting period before consummation.

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 facts surrounding individual situations. 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 days before consummation, as required by § 1026.19(f)(1)(ii), on Tuesday, June 2, and the loan can be consummated on Friday, June 5.

19(e)(1)(vi) Shopping for settlement service providers.

1. *Permission to shop.* Section 1026.19(e)(1)(vi)(A) states that the creditor may impose reasonable minimum 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. Similarly, the creditor may require that the homeowner's insurance carrier chosen by the consumer have a minimum rating by an independent insurance rating service. 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)(C) 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 this disclosure.

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 available providers of that service and stating that the consumer may choose a different provider for that service. The settlement service providers identified on such written list must correspond to the settlement services for which the consumer may shop, disclosed pursuant to § 1026.37(f)(3). See form H-27 in appendix H to this part for a model list. See also comment 19(e)(1)(ii)-4 regarding mortgage broker provision of the written list of settlement service providers.

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. If the creditor determines that there is only one available settlement service provider, the creditor need only identify that provider on the written list.

5. *Statement that consumer may choose different provider.* Section 1026.19(e)(1)(vi)(C) requires the creditor to include in the written list a statement that the consumer may choose a provider that is not included on that list. See form H-27 in appendix H to this part for an example 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 in the written list providers of services for which the consumer is not permitted to shop, provided that the creditor clearly and expressly 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, homeowner's insurance, and surveys, but the consumer may select a provider, other than those identified on the list, for only the homeowner's insurance carrier and surveyor, 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 homeowner's insurance carrier and the surveyor.

7. *Relation to RESPA and Regulation X.* Section 1026.19 does not prohibit creditors from including affiliates on the written list under § 1026.19(e)(1)(vi). 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).

19(e)(2) Pre-disclosure activity.

19(e)(2)(i) Imposition of fees on consumer.

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*. A consumer may indicate intent to proceed with a transaction in any manner the consumer chooses, unless a particular manner of communication is required by the creditor, provided that the creditor does not assume silence is indicative of intent. 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 creditor 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 disclosed that it would do so.

3. *Timing of fees*. At any time prior to delivery of the required disclosures, the creditor may impose a credit report fee as provided in § 1026.19(e)(2)(i)(B). The consumer must receive the disclosures required by this section and indicate an intent to proceed with the mortgage loan transaction 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 complies with § 1026.19(e)(2)(i)(A) if:

i. The creditor receives a consumer's written application directly from the consumer and does not collect any fee, other than a fee for obtaining a consumer's credit report, until the consumer receives the early mortgage loan disclosure and indicates an intent to proceed.

ii. A third party submits a consumer's written application to a creditor and both the creditor and third party do not collect any fee, other than a fee for obtaining a consumer's credit report, until the consumer receives the early mortgage loan disclosure from the creditor and indicates an intent to proceed.

iii. A third party submits a consumer's written 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, the new creditor or third party does not collect or impose any additional fee until the consumer receives an early mortgage loan disclosure from the new creditor and indicates an intent to proceed.

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 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) and the consumer subsequently indicates intent to proceed, then the creditor does not comply with § 1026.19(e)(2), even if the creditor states that the check will not be cashed until after the disclosures required by § 1026.19(e)(1)(i) are received by the consumer and the consumer indicates intent to proceed. Similarly, a creditor does not comply with the requirements of § 1026.19(e)(2) if the creditor requires the consumer to provide a credit card number before the consumer receives the disclosures required by § 1026.19(e)(1)(i) and the

consumer subsequently indicates intent to proceed, even if the creditor promises 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 the consumer subsequently indicates intent to proceed. In contrast, a creditor complies with § 1026.19(e)(2) if the creditor 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 intent to proceed if the consumer's authorization is only to pay for the cost of a credit report. This is so even if the creditor 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 intent to proceed, provided that the creditor requested and received a separate authorization for the processing fee from the consumer after the consumer received the disclosures required by § 1026.19(e)(1)(i).

19(e)(2)(i)(B) Exception to fee restriction.

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

19(e)(2)(ii) Written information provided to consumer.

1. *Requirements*. Section 1026.19(e)(2)(ii) requires the creditor to include a notice on certain written estimates provided to the consumer before the disclosures required by § 1026.19(e)(1)(i) are provided. The requirement applies only to written information specific to

the consumer. 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 warning 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 warning. Similarly, the warning 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). See also comment 19(e)(1)(ii)-4 regarding mortgage broker provision of written estimates specific to the consumer.

19(e)(2)(iii) Verification of information.

1. *Requirements*. The creditor may collect from the consumer any information that it requires prior to providing the early disclosures, including information not listed in § 1026.2(a)(3)(ii). However, the creditor 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 provided by the consumer. For example, the creditor may ask for the names, account numbers, and balances of the consumer's checking and savings accounts, but the creditor may not require the consumer to provide bank statements, or similar documentation, to support the information the consumer provides orally before providing the disclosures required by § 1026.19(e)(1)(i). See also § 1026.2(a)(3) and the related commentary regarding the definition of application.

19(e)(3) Good faith determination for estimates of closing costs.

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

1. *Requirement.* Section 1026.19(e)(3)(i) provides the general rule that an estimated charge disclosed pursuant to § 1026.19(e) is not in good faith if the charge paid by or imposed

upon the consumer exceeds the amount originally disclosed. 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 select a third party service provider, other than those providers identified on the written list provided pursuant to § 1026.19(e)(1)(vi).

v. Transfer taxes.

2. *Fees "paid to" a person.* For purposes of § 1026.19(e), a fee is not considered "paid to" a person if the person does not retain the fee, or if the person retains the fee as reimbursement for an amount it has already paid to another party. For example, if a consumer pays the creditor an appraisal fee in advance of the real estate closing and the creditor subsequently uses those funds to pay another party for an appraisal, then the appraisal fee is not "paid to" the creditor for the purposes of § 1026.19(e). Similarly, if a creditor pays for an appraisal in advance of the real estate closing and the consumer pays the creditor an appraisal fee at the real estate closing, then the fee is not "paid to" the creditor for the purposes of § 1026.19(e), even though the creditor retains the fee, because the payment is a reimbursement for an amount already paid.

3. *Transfer taxes and recording fees.* See comments 37(g)(1)-1, -2, -3 and -4 for a discussion of the difference between transfer taxes and recording fees.

4. *Specific credits, rebates, or reimbursements.* An item identified, on the disclosures provided pursuant to § 1026.19(e), as a payment from a creditor to the consumer to pay for a

specific fee, such as a credit, rebate, or reimbursement, is not subject to the good faith determination requirements in § 1026.19(e)(3)(i) or (ii) if the increased specific credit, rebate, or reimbursement actually reduces the cost to the consumer. Specific credits, rebates, or reimbursements may not be disclosed or revised in a way that achieves what would otherwise violate the requirements of § 1026.19(e)(3)(i) and (ii). For example, assume the creditor originally disclosed a $100 pest inspection fee credit to cover the cost of a $100 pest inspection fee paid to an affiliated provider and subject to § 1026.19(e)(3)(i). If the pest inspection fee subsequently increases to $150, and the creditor increases the amount of the pest inspection fee credit from $100 to $150 to pay for the increase, the credit is not being revised in a way that would otherwise violate the requirements of § 1026.19(e)(3)(i) because, although the disclosed amount increased, the amount paid by the consumer did not. However, if the creditor disclosed a $150 pest inspection fee credit to cover the cost of a $150 pest inspection fee paid to an affiliated provider and subject to § 1026.19(e)(3)(i), and the creditor subsequently decreases the pest inspection fee credit from $150 to $100, even though the pest inspection fee remained at $150, then the requirements of § 1026.19(e)(3)(i) have been violated because, although the disclosed amount did not increase, the amount paid by the consumer for this service did increase.

5. *Lender credits*. The disclosure of "lender credits," as identified in § 1026.37(g)(6)(ii), is required by § 1026.19(e)(1)(i). These are payments from the creditor to the consumer that do not pay for a particular fee on the disclosures provided pursuant to § 1026.19(e)(1)(i). These non-specific credits are negative charges to the consumer – as the lender credit decreases, the overall cost to the consumer increases. Thus, an actual lender credit provided at the real estate closing that is less than the estimated lender credit provided pursuant to § 1026.19(e)(1)(i) is an increased charge to the consumer for purposes of determining good faith under

§ 1026.19(e)(3)(i). For example, if the creditor provides a $750 estimate for lender credits in the disclosures required by § 1026.19(e)(1)(i), but only a $500 lender credit is actually provided to the consumer at the real estate closing, the creditor has not complied with § 1026.19(e)(3)(i) because, although the actual lender credit was less than the estimated lender credit provided in the revised disclosures, the overall cost to the consumer increased and, therefore, did not comply with § 1026.19(e)(3)(i). See also § 1026.19(e)(3)(iv)(D) and comment 19(e)(3)(iv)(D)-1 for a discussion of lender credits in the context of interest rate dependent charges.

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 ten 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) increase by more than ten percent, even if a particular charge does not increase by more than ten 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 ten percent (*i.e.*, exceeds $330), provided that the sum of all such charges does not exceed ten 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)(A), 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)(A), instead of § 1026.19(e)(3)(i) and subject to the other requirements in § 1026.19(e)(3)(ii)(B) and (C). 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 ten 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 recording fees is in good faith if the conditions specified in § 1026.19(e)(3)(ii)(A), (B), and (C) are satisfied. However, the condition specified in § 1026.19(e)(3)(ii)(B), that the charge 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 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).

19(e)(3)(iii) Variations permitted for certain charges.

1. *Good faith requirement for prepaid interest, property insurance premiums, and impound amounts.* Estimates of prepaid interest, property insurance premiums, and impound amounts 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 necessarily 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 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).

2. *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 necessarily constitute a lack of good faith. However, the original estimated charge, or lack of an estimated charge for a particular service, must be made based on the best information reasonably available to the creditor at that time. 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).

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 necessarily constitute a lack of good faith. For example, if the consumer informs the creditor that the consumer will obtain a type of inspection not required by the creditor, the creditor may 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). However, the original estimated charge, or lack of an estimated charge for a particular service, must still be made based on the best information reasonably available to the creditor at the time that the estimate was provided. For example, if the subject property is located in a jurisdiction where consumers are customarily represented at closing by their own attorney, but 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).

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 the consumer. Section 1026.19(e)(3)(iv) provides the exception to this rule. Pursuant to § 1026.19(e)(3)(iv), a charge paid by or imposed

on the consumer may exceed the originally estimated charge if the revision is due to one of the reasons specified 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).

19(e)(3)(iv)(A) Changed circumstance affecting settlement charges.

1. *Requirement*. Except for the items identified in § 1026.19(e)(3) (iii), 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. 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. 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 ten 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 ten percent. A

changed circumstance has occurred (*i.e.*, new information), but costs have not increased by more than ten percent. Therefore, if the creditor issues revised disclosures, 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.

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. 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 § 1026.2(a)(3)(ii) defines as six pieces of information. A creditor is not required to collect the consumer's name, monthly income, or 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).

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 reflecting such change, the final amounts paid by the consumer may be compared to the revised estimated disclosures 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 revised appraisal fee 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 because the increased title fees do not stem from the change in eligibility. See also § 1026.19(e)(3)(iv)(A) and comment 19(e)(3)(iv)(A)-2 regarding the definition of changed circumstances.

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.

19(e)(3)(iv)(D) Interest rate dependent charges.

1. *Requirements*. If the interest rate is not set when the disclosures required by § 1026.19(e)(1)(i) are delivered, a valid reason for revision exists when the interest rate is subsequently set, at which point § 1026.19(e)(3)(iv)(D) requires the creditor to issue a revised version of the disclosures required by § 1026.19(e)(1)(i) reflecting the revised interest rate, bona fide discount points, and lender credits. 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 disclosures required by § 1026.19(e)(1)(i) are originally provided, then the actual bona fide discount points and lender credits are compared to the estimated bona fide discount points and lender credits included in the disclosures originally provided pursuant to § 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 by § 1026.19(e)(1)(i) were provided, then § 1026.19(e)(3)(iv)(D) requires the creditor to provide revised disclosures reflecting any revised bona fide discount points and lender credits, in which case the actual bona fide discount points and lender credits are compared to the revised bona fide discount points and lender credits for the purpose of determining good faith pursuant to § 1026.19(e)(3)(i).

ii. Assume a creditor does not offer rate lock agreements, but instead sets the interest rate on all mortgage loan transactions according to the interest rate in effect seven days prior to consummation. Section 1026.19(e)(3)(iv)(D) requires the creditor to issue a revised version of the disclosures required by § 1026.19(e)(1)(i) reflecting the set interest rate, bona fide discount

points, and lender credits. The actual bona fide discount points and lender credits are compared to the revised bona fide discount points and lender credits for the purpose of determining good faith pursuant to § 1026.19(e)(3)(i).

19(e)(3)(iv)(E) Expiration.

1. *Requirements*. Section 1026.19(e)(3)(i) provides the general rule that the actual fees charged cannot exceed the fees disclosed pursuant to § 1026.19(e)(1)(i). An exception to that rule applies if the creditor provides revised versions of the disclosures required by § 1026.19(e)(1)(i) because the consumer indicates an intent to proceed with the transaction more than ten business days after the disclosures were originally provided. However, § 1026.19(e)(3)(iv)(E) requires no justification for the change 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.

19(e)(3)(iv)(F) Delayed settlement date on a construction loan.

1. *Requirements*. A loan for the purchase of a home either to be constructed or under construction is considered a construction loan to build a home for the purposes of § 1026.19(e)(3)(iv)(F). For example, a loan to purchase and build a home that has yet to be constructed, or a loan to purchase a home on which 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 Loan Estimate,

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).

19(e)(4) Provision of revised disclosures.

1. *Three-day requirement.* Section 1026.19(e)(4) provides that the creditor must deliver revised disclosures within three business days of receiving information sufficient to establish that a reason for revision, as specified under § 1026.19(e)(3)(iv)(A) through (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 ten percent. The creditor must deliver 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 appraisal 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.

2. *Revised disclosures may not be delivered at the same time as the final disclosures.* 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). For example, 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 would comply with the requirements of § 1026.19(e)(4) by providing the disclosures required by § 1026.19(f)(1)(i) reflecting the revised APR on Wednesday. However, the creditor would not comply with the requirements of § 1026.19(e)(4) if it provided both a revised version of the disclosures required by § 1026.19(e)(1)(i) reflecting the revised APR on Wednesday, and also provided the disclosures required by § 1026.19(f)(1)(i) on Wednesday. Or, if the creditor is scheduled to email the disclosures required by § 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 would comply with the requirements § 1026.19(e)(4) by providing the disclosures required by § 1026.19(f)(1)(i) reflecting the

consumer requested changes on Wednesday. However, the creditor would not comply if it provided both the disclosures required by § 1026.19(e)(1)(i) reflecting consumer requested changes and the disclosures required by § 1026.19(f)(1)(i) on Wednesday.

Alternative 1—Paragraph (f)(1)

19(f) Mortgage loans secured by real property—Final disclosures.

19(f)(1) Provision.

19(f)(1)(i) Scope.

1. *Requirements.* Section 1026.19(f)(1)(i) requires disclosure of the actual terms of the credit transaction, and the actual costs associated with the settlement of that transaction, for closed-end credit transactions that are secured by real property, other than reverse mortgages subject to § 1026.33. For example, if the creditor requires the consumer to pay money into a reserve account for the future payment of taxes, the creditor must disclose to the consumer the exact amount that the consumer is required to pay into the reserve account. If the disclosures provided pursuant to § 1026.19(f)(1)(i) do not contain the actual terms of the transaction, the creditor does not violate § 1026.19(f)(1)(i) if the creditor provides new disclosures that contain the actual terms of the transaction and complies with the other requirements of § 1026.19(f), including the timing requirements in § 1026.19(f)(1)(ii). For example, if the creditor provides the disclosures required by § 1026.19(f)(1)(i) on Monday, June 1, but the consumer requests a change to the terms of the transaction on Tuesday, June 2, the creditor complies with § 1026.19(f)(1)(i) if it provides disclosures reflecting the revised terms of the transaction on or after Tuesday, June 2, assuming that the revised disclosures are also provided no later than three business days before consummation.

19(f)(1)(ii) Timing.

1. *Timing.* Except as provided in § 1026.19(f)(1)(ii)(B) or (f)(2), the disclosures required by § 1026.19(f)(1)(i) must be received by the consumer no later than three business days before consummation. For example, if consummation is scheduled for Thursday, the creditor satisfies this requirement by hand delivering the disclosures on Monday, assuming each weekday is a business day. For purposes of § 1026.19(f)(1)(ii), the term "business day" means all calendar days except Sundays and legal public holidays referred to in § 1026.2(a)(6). *See* comment 2(a)(6)-2. *See* comment 2(a)(6)-1.

2. *Receipt of disclosures three business days before consummation.* Section 1026.19(f)(1)(ii) provides that the consumer must receive the disclosures no later than three business days before consummation. To comply with this requirement, the creditor must arrange for delivery accordingly. For example, if the consummation is scheduled for Thursday, the creditor satisfies this requirement by delivering the disclosures on Monday by way of electronic mail, provided the requirements of § 1026.17(a)(1) relating to disclosures in electronic form are satisfied and assuming that each weekday is a business day. However, a creditor does not satisfy the requirements of § 1026.19(f)(1)(ii) in this example if the creditor places the disclosures in the mail on Monday. A creditor would satisfy the requirements of § 1026.19(f)(1)(ii) in this example if the creditor places the disclosures in the mail on Thursday of the previous week, because, for the purposes of § 1026.19(f)(1)(ii), Saturday as a business day, pursuant to § 1026.2(a)(6).

3. *Timeshares*. For loans secured by timeshares, as defined under 11 U.S.C. 101(53D), § 1026.19(f)(1)(ii)(B) requires a creditor to ensure that the consumer receives the disclosures required under § 1026.19(f)(1)(i) as soon as reasonably practicable, but no later than

consummation. For example, if a consumer provides the creditor with an application, as defined by § 1026.2(a)(3), for a mortgage loan secured by a timeshare on Monday, June 1, the creditor may provide the consumer with the disclosures required by § 1026.19(e)(1)(i) on the same day, pursuant to § 1026.19(e)(1)(iii). If consummation of this transaction is scheduled for Friday, June 5, the creditor may provide the consumer with the disclosures required by § 1026.19(f)(1)(i) on Tuesday, June 2, if doing so is reasonably practicable. If, however, consummation is scheduled for Tuesday, June 2, then the creditor complies with § 1026.19(f)(1)(ii)(B) by providing the disclosures required by § 1026.19(f)(1)(i) on Tuesday, June 2, the day of consummation. If the consumer provides the creditor with an application, as defined by § 1026.2(a)(3), for a mortgage loan secured by a timeshare on Monday, June 1, and wishes to consummate the transaction on that same day, then the creditor complies with § 1026.19(e)(4)(ii) by providing the disclosures required by § 1026.19(f)(1)(i) instead of the disclosures required by § 1026.19(e)(1)(i) on Monday, June 1, and the creditor also complies with § 1026.19(f)(1)(ii)(B) by providing the disclosures required by § 1026.19(f)(1)(i) on Monday, June 1.

19(f)(1)(iii) Delivery.

1. *Mail delivery.* Section 1026.19(f)(1)(iii) provides that, if any disclosures required under § 1026.19(f)(1)(i) are not provided to the consumer in person, the consumer is presumed to have received the disclosures three business days after they are mailed or delivered to the address specified by the consumer. This is a presumption which may be rebutted by providing 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, thereby rebutting the presumption that the disclosures were received on Thursday, three business days after the disclosures were sent.

2. *Electronic delivery.* The presumption established in § 1026.19(f)(1)(iii) applies to methods of electronic delivery, such as email. For example, if a creditor sends a disclosure required under § 1026.19(f) via email on Monday, pursuant to § 1026.19(f)(1)(iii) the consumer is presumed to have received the disclosure on Thursday, three business days later. However, the creditor may rebut the presumption by providing evidence that the consumer received the emailed disclosures earlier. Creditors using electronic delivery methods, such as email, must also comply with § 1026.17(a)(1). For example, if a creditor delivers the disclosures required by § 1026.19(f)(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 § 1026.17(a)(1), and the creditor does not comply with § 1026.19(f)(1)(i), assuming the disclosures were not provided in a different manner in accordance with the timing requirements of § 1026.19(f)(1)(ii).

19(f)(1)(iv) Consumer's waiver of waiting period before consummation.

1. *Modification or waiver.* A consumer may modify or waive the right to the three-business-day waiting period required by § 1026.19(f)(1)(ii) only after the creditor makes the disclosures required by § 1026.19(f)(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 facts surrounding individual situations. 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.

Alternative 2—Paragraph (f)(1)

19(f) Mortgage loans secured by real property—Final disclosures.

19(f)(1) Provision.

19(f)(1)(i) Scope.

1. *Requirements.* Section 1026.19(f)(1)(i) requires disclosure of the actual terms of the credit transaction, and the actual costs associated with the settlement of that transaction, for closed-end credit transactions that are secured by real property, other than reverse mortgages subject to § 1026.33. For example, if the creditor requires the consumer to pay money into a reserve account for the future payment of taxes, the creditor must disclose to the consumer the exact amount that the consumer is required to pay into the reserve account. If the disclosures provided pursuant to § 1026.19(f)(1)(i) do not contain the actual terms of the transaction, the creditor does not violate § 1026.19(f)(1)(i) if the creditor provides new disclosures that contain the actual terms of the transaction and complies with the other requirements of § 1026.19(f), including the timing requirements in § 1026.19(f)(1)(ii). For example, if the creditor provides the disclosures required by § 1026.19(f)(1)(i) on Monday, June 1, but the consumer requests a change to the terms of the transaction on Tuesday, June 2, the creditor complies with § 1026.19(f)(1)(i) if it provides disclosures reflecting the revised terms of the transaction on or after Tuesday, June 2, assuming that the revised disclosures are also provided no later than three business days before consummation.

19(f)(1)(ii) Timing.

1. *Timing.* Except as provided in § 1026.19(f)(1)(ii)(B) or (f)(2), the disclosures required by § 1026.19(f)(1)(i) must be received by the consumer no later than three business days before consummation. For example, if consummation is scheduled for Thursday, the creditor satisfies this requirement by hand delivering the disclosures on Monday, assuming each weekday is a business day. For purposes of § 1026.19(f)(1)(ii), the term "business day" means all calendar days except Sundays and legal public holidays referred to in § 1026.2(a)(6). *See* comment 2(a)(6)-2. *See* comment 2(a)(6)-1.

2. *Receipt of disclosures three business days before consummation.* Section 1026.19(f)(1)(ii) provides that the consumer must receive the disclosures no later than three business days before consummation. To comply with this requirement, the creditor must arrange for delivery accordingly. For example, if the consummation is scheduled for Thursday, the creditor satisfies this requirement by delivering the disclosures on Monday by way of electronic mail, provided the requirements of § 1026.17(a)(1) relating to disclosures in electronic form are satisfied and assuming that each weekday is a business day. However, a creditor does not satisfy the requirements of § 1026.19(f)(1)(ii) in this example if the creditor places the disclosures in the mail on Monday. A creditor would satisfy the requirements of § 1026.19(f)(1)(ii) in this example if the creditor places the disclosures in the mail on Thursday of the previous week, because, for the purposes of § 1026.19(f)(1)(ii), Saturday as a business day, pursuant to § 1026.2(a)(6).

3. *Timeshares*. For loans secured by timeshares, as defined under 11 U.S.C. 101(53D), § 1026.19(f)(1)(ii)(B) requires a creditor to ensure that the consumer receives the disclosures required under § 1026.19(f)(1)(i) as soon as reasonably practicable, but no later than

consummation. For example, if a consumer provides the creditor with an application, as defined by § 1026.2(a)(3), for a mortgage loan secured by a timeshare on Monday, June 1, the creditor may provide the consumer with the disclosures required by § 1026.19(e)(1)(i) on the same day, pursuant to § 1026.19(e)(1)(iii). If consummation of this transaction is scheduled for Friday, June 5, the creditor may provide the consumer with the disclosures required by § 1026.19(f)(1)(i) on Tuesday, June 2, if doing so is reasonably practicable. If, however, consummation is scheduled for Tuesday, June 2, then the creditor complies with § 1026.19(f)(1)(ii)(B) by providing the disclosures required by § 1026.19(f)(1)(i) on Tuesday, June 2, the day of consummation. If the consumer provides the creditor with an application, as defined by § 1026.2(a)(3), for a mortgage loan secured by a timeshare on Monday, June 1, and wishes to consummate the transaction on that same day, then the creditor complies with § 1026.19(e)(4)(ii) by providing the disclosures required by § 1026.19(f)(1)(i) instead of the disclosures required by § 1026.19(e)(1)(i) on Monday, June 1, and the creditor also complies with § 1026.19(f)(1)(ii)(B) by providing the disclosures required by § 1026.19(f)(1)(i) on Monday, June 1.

19(f)(1)(iii) Delivery.

1. *Mail delivery.* Section 1026.19(f)(1)(iii) provides that, if any disclosures required under § 1026.19(f)(1)(i) are not provided to the consumer in person, the consumer is presumed to have received the disclosures three business days after they are mailed or delivered to the address specified by the consumer. This is a presumption which may be rebutted by providing 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, thereby rebutting the presumption that the disclosures were received on Thursday, three business days after the disclosures were sent.

2. *Electronic delivery.* The presumption established in § 1026.19(f)(1)(iii) applies to methods of electronic delivery, such as email. For example, if a creditor sends a disclosure required under § 1026.19(f) via email on Monday, pursuant to § 1026.19(f)(1)(iii) the consumer is presumed to have received the disclosure on Thursday, three business days later. However, the creditor may rebut the presumption by providing evidence that the consumer received the emailed disclosures earlier. Creditors using electronic delivery methods, such as email, must also comply with § 1026.17(a)(1). For example, if a creditor delivers the disclosures required by § 1026.19(f)(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 § 1026.17(a)(1), and the creditor does not comply with § 1026.19(f)(1)(i), assuming the disclosures were not provided in a different manner in accordance with the timing requirements of § 1026.19(f)(1)(ii).

19(f)(1)(iv) Consumer's waiver of waiting period before consummation.

1. *Modification or waiver.* A consumer may modify or waive the right to the three-business-day waiting period required by § 1026.19(f)(1)(ii) only after the creditor makes the disclosures required by § 1026.19(f)(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 facts surrounding individual situations. 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.

19(f)(1)(v) Settlement agent.

1. *Requirements.* 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 as if it were the creditor, 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 agent under § 1026.19(e). For example, comment 19(f)(1)(ii)-3 states that, if a consumer provides the creditor with an application for a mortgage loan secured by a timeshare on Monday, June 1, the creditor may provide the consumer with the disclosures required by § 1026.19(e)(1)(i) on the same day, pursuant to § 1026.19(e)(1)(iii). "Settlement agent" could not be read in place of "creditor" in comment 19(f)(1)(ii)-3 because the 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 this section, the creditor and settlement agent need to effectively communicate.

2. *Settlement agent responsibilities.* If a settlement agent issues any disclosure under § 1026.19(f), the settlement agent must comply with the requirements of § 1026.19(f). For example, the settlement agent must ensure that the consumer received the disclosures required under § 1026.19(f)(1)(i) no later than three business days before consummation in accordance with § 1026.19(f)(1)(ii). The settlement agent may assume the responsibility to provide some or all of the disclosures required by § 1026.19(f). For example, both the creditor and the settlement agent comply 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, 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.

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, the creditor does not comply with § 1026.19(f) if the settlement agent does not provide the disclosures required under § 1026.19(f)(1)(i), or if the consumer receives the disclosures later than three business days before consummation, in accordance with § 1026.19(f)(1)(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*. The settlement agent may assume the responsibility to provide 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, 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.

19(f)(2) Subsequent changes.

19(f)(2)(i) Changes due to consumer and seller negotiations.

1. *Requirements.* Section 1026.19(f)(2)(i) provides that the creditor need not comply with the timing requirements in § 1026.19(f)(1)(ii) if the revisions reflect changes to the transaction due to negotiations between the seller and the consumer, 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 a revised disclosure 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 may deliver revised disclosures 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.

19(f)(2)(ii) Changes to the amount actually paid by the consumer.

1. *Requirements.* Section 1026.19(f)(2)(ii) states that the creditor may provide revised disclosures without complying with the timing requirements in § 1026.19(f)(1)(ii) if the amount actually paid by the consumer does not exceed the amount disclosed pursuant to § 1026.19(f)(1)(i) by more than $100, provided that the creditor delivers revised disclosures at or before consummation. For example, assume the disclosures provided pursuant to § 1026.19(f)(1)(i) reflect $18,700 as the total amount the consumer must pay at the real estate closing. If the disclosures reflect a homeowner's insurance premium of $800, but the premium is actually $850, the $50 understatement is not a violation of § 1026.19(f)(1)(i). In such case, the creditor complies with § 1026.19(f)(1)(i) by providing revised disclosures to the consumer at or before consummation, pursuant to § 1026.19(f)(2)(ii), reflecting the revised $850 homeowner's insurance premium and the revised $18,750 as the total amount the consumer must pay at the real estate closing. *See* also comment 38(i)(9)(ii)-1.

2. *Other adjustments permitted*. Revised disclosures provided at consummation may reflect adjustments pursuant to both § 1026.19(f)(2)(i) and (f)(2)(ii). Thus, although § 1026.19(f)(2)(ii) limits the difference between the amount disclosed pursuant to § 1026.19(f)(1)(i) and the amount actually paid by the consumer to $100, the amount actually paid by the consumer may vary by more than $100 to the extent permitted by § 1026.19(f)(2)(i).

For example, if the disclosures reflect a homeowner's insurance premium of $800, but the premium is actually $850, the $50 understatement is not a violation of § 1026.19(f)(1)(i). If, in addition to this understatement, the total amount due from the buyer increases by $500 as a result of consumer and seller negotiations, the creditor complies with § 1026.19(f)(1)(i) by providing revised disclosures reflecting the $550 increase to the consumer at or before closing, pursuant to § 1026.19(f)(2)(ii). However, to comply with § 1026.25, the creditor must maintain documentation demonstrating that $500 of the increase was due to negotiations between the consumer and the seller under § 1026.19(f)(2)(i), and that the remainder of the increase complied with § 1026.19(f)(2)(ii).

19(f)(2)(iii) Changes due to events occurring after consummation.

1. *Requirements.* Section 1026.19(f)(2)(iii) requires the creditor to deliver revised disclosures within three business days of an event that occurs after consummation that causes the disclosures to become inaccurate, provided such inaccuracy results solely from payments to a government entity in connection with the transaction. For example:

i. Assume consummation occurs on a Monday and the security instrument is recorded on Tuesday, the day after consummation. If the fees charged by the recorder's office differ from those disclosed pursuant to § 1026.19(f)(1)(i), the creditor complies with § 1026.19(f)(1)(i) by revising the disclosures accordingly and delivering or placing them in the mail no later than Friday, three business days after Tuesday. However, if the fees charged by the recorder's office differ from those disclosed pursuant to § 1026.19(f)(1)(i), but the security instrument is not recorded until the 28th day after consummation, the creditor does not comply with § 1026.19(f)(1)(i) by placing the revised disclosures in the mail on that day, unless the creditor

otherwise ensures that the consumer receives the revised disclosures by no later than 30 days after consummation, pursuant to § 1026.19(f)(2)(iii).

ii. Assume consummation occurs on a Monday and the security instrument is recorded on Tuesday, the day after consummation. If the transfer taxes owed to the State differ from those disclosed pursuant to § 1026.19(f)(1)(i), then the creditor complies with § 1026.19(f)(1)(i) by revising the disclosures accordingly and delivering or placing them in the mail no later than Friday, three business days after Tuesday, and the consumer receives them no later than 30 days after consummation, pursuant to § 1026.19(f)(2)(iii).

iii. Assume consummation occurs on a Monday and the security instrument is recorded on Tuesday, the day after consummation. During the recording process it is discovered that the property is subject to an unpaid $500 nuisance abatement assessment, which was not disclosed pursuant to § 1026.19(f)(1)(i). The creditor complies with § 1026.19(f)(1)(i) by revising the disclosures accordingly and delivering or placing them in the mail no later than Friday, three business days after Tuesday, and the consumer receives them no later than 30 days after consummation, pursuant to § 1026.19(f)(2)(iii).

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 taxes. Section 1026.19(f)(2)(iii) does not require the creditor to provide the consumer with a revised version of the disclosure required pursuant to § 1026.19(f)(1)(i), because the increase in property tax rates is not in connection with the consumer's transaction.

19(f)(2)(iv) Changes due to clerical errors.

1. *Requirements.* Section 1026.19(f)(2)(iv) requires the creditor to deliver revised disclosures to the consumer 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 provide revised disclosures reflecting the corrected non-numeric disclosure as soon as reasonably practicable, but no later than 30 days after consummation.

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 as soon as reasonably practicable and no later than 30 days after consummation, and the creditor does not violate § 1026.19(f)(1)(i) if the creditor delivers disclosures revised to reflect the refund of such excess as soon as reasonably practicable and no later than 30 days after consummation. For example, assume that at closing 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). Consequently, to comply with § 1026.19(f)(1)(i), the creditor must provide revised disclosures to the consumer reflecting the $180 refund of the excess amount collected. See comment 38(h)(3)-2 for additional guidance on disclosing refunds such as these.

19(f)(3) Charges disclosed.

19(f)(3)(i) Actual charge.

1. *Requirement.* 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 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.

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 transaction. For purposes of § 1026.19(f)(3)(ii)(B), a period of time is

appropriate if the sample size is sufficient to obtain a representative sample, 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 obtain a representative sample, 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 appropriate if both subdivisions had a relatively normal distribution of appraisal costs, even if the distribution 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 fees for one product are $80, while the median recording fees for the other product are $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 appropriate if both products had a relatively normal distribution of recording fees, even if the distribution 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 two 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.

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

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

1. *Requirement.* Section 1026.19(f)(4)(ii) provides that the person conducting the closing shall provide the disclosures required under § 1026.19(f)(4)(i) no later than the day of consummation. If an event occurs after consummation that causes such disclosures to become inaccurate and such inaccuracy results solely from payments to a government entity, the person conducting the closing shall deliver revised disclosures to the seller no later than 30 days after consummation. Section 1026.19(f)(4)(i) requires disclosure of the items that relate to the seller's

transaction. Thus, the person conducting the closing need only redisclose if an item related to the seller's transaction becomes inaccurate and such inaccuracy results solely from payments to a government entity. 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 transfer taxes owed to the State differ from those disclosed pursuant to § 1026.19(f)(4)(i), the person conducting the settlement complies with § 1026.19(f)(4)(ii) by revising the disclosures accordingly and providing them to the seller no later than 30 days after consummation.

19(g) Special information booklet at time of application.

19(g)(1) Creditor to provide special information booklet.

1. *Revision of booklet.* The Bureau may, after publishing a notice in the Federal Register, issue a revised or separate special information booklet that addresses transactions subject to § 1026.19(g). The Bureau may also choose to permit the forms or booklets of other Federal agencies. 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 website, 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.

19(g)(2) Permissible changes.

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). 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 those specified in § 1026.19(g)(2)(i) through (iv), do not comply with § 1026.19(g).◄

Section 1026.22—Determination of Annual Percentage Rate

22(a) Accuracy of annual percentage rate.

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22(a)(4) Mortgage loans.

1. *Example.* If a creditor improperly omits a $75 fee from the finance charge on a regular transaction, the understated finance charge is considered accurate under § 1026.18(d)(1) ►or 1026.38(o)(2), as applicable◄, and the annual percentage rate corresponding to that understated finance charge also is considered accurate even if it falls outside the tolerance of 1/8 of 1 percentage point provided under § 1026.22(a)(2). Because a $75 error was made, an annual percentage rate corresponding to a $100 understatement of the finance charge would not be considered accurate.

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Section 1026.24—Advertising

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24(d) Advertisement of terms that require additional disclosures.

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24(d)(2) Additional terms.

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2. *Disclosure of repayment terms.* The phrase "terms of repayment" generally has the same meaning as the "payment schedule" required to be disclosed under § 1026.18(g)►, the interest rate and payment summary table required to be disclosed pursuant to § 1026.18(s), or the projected payments table required to be disclosed pursuant to §§ 1026.37(c) and 1026.38(c), as applicable◄. Section 1026.24(d)(2)(ii) provides flexibility to creditors in making this disclosure for advertising purposes. Repayment terms may be expressed in a variety of ways in addition to an exact repayment schedule; this is particularly true for advertisements that do not contemplate a single specific transaction. Repayment terms, however, must reflect the consumer's repayment obligations over the full term of the loan, including any balloon payment, *see* comment 24(d)(2)–3, not just the repayment terms that will apply for a limited period of time. For example:

i. A creditor may use a unit-cost approach in making the required disclosure, such as "48 monthly payments of $27.83 per $1,000 borrowed."

ii. In an advertisement for credit secured by a dwelling, when any series of payments varies because of the inclusion of mortgage insurance premiums, a creditor may state the number and timing of payments, the fact that payments do not include amounts for mortgage insurance premiums, and that the actual payment obligation will be higher.

iii. In an advertisement for credit secured by a dwelling, when one series of monthly payments will apply for a limited period of time followed by a series of higher monthly payments for the remaining term of the loan, the advertisement must state the number and time period of each series of payments, and the amounts of each of those payments. For this purpose, the creditor must assume that the consumer makes the lower series of payments for the maximum allowable period of time.

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SUBPART D—MISCELLANEOUS

Section 1026.25—Record Retention

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►*25(c) Records related to certain requirements for mortgage loans.*

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 comment 19(e)(1)(ii)-2 regarding instances where § 1026.19(e) imposes § 1026.25(c) responsibilities on mortgage brokers.

25(c)(1)(iii) Electronic records.

1. *Other recordkeeping formats may also be required.* The requirements of § 1026.25(c)(1)(iii) are in addition to any other recordkeeping formats that may be required by administrative agencies responsible for enforcing the regulation.◄

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Section 1026.28—Effect on State Laws

28(a) Inconsistent disclosure requirements.

1. *General.* There are three sets of preemption criteria: one applies to the general disclosure and advertising rules of the regulation, and two apply to the credit billing provisions. Section 1026.28 also provides for Bureau determinations of preemption. ►For purposes of

determining whether a State law is inconsistent with the requirements of sections 4 and 5 of RESPA (other than the RESPA section 5(c) requirements regarding provision of a list of certified homeownership counselors) and §§ 1026.19(e) and (f), 1026.37, and 1026.38 under § 1026.28, any reference to "creditor" in § 1026.28 or this commentary includes a creditor, a mortgage broker, or a closing agent, as applicable.◄

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Section 1026.29—State Exemptions

29(a) General rule.

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2. *Substantial similarity.* The "substantially similar" standard requires that State statutory or regulatory provisions and State interpretations of those provisions be generally the same as the Federal Act and Regulation Z. This includes the requirement that State provisions for reimbursement to consumers for overcharges be at least equivalent to those required in section 108 of the Act. A State will be eligible for an exemption even if its law covers classes of transactions not covered by the Federal law. For example, if a State's law covers agricultural credit, this will not prevent the Bureau from granting an exemption for consumer credit, even though agricultural credit is not covered by the Federal law. ►For transactions subject to § 1026.19(e) and (f), § 1026.29(a)(1) requires that the State statutory or regulatory provisions and State interpretations of those provisions require disclosures that are generally the same as the disclosures required by § 1026.19(e) and (f), with form and content as prescribed by §§ 1026.37 and 1026.38.◄

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4. *Exemptions granted.* ►i.◄ The Bureau recognizes exemptions granted by the Board of Governors of the Federal Reserve System prior to July 21, 2011, until and unless the Bureau makes and publishes any contrary determination. Effective October 1, 1982, the Board of Governors granted the following exemptions from portions of the revised Truth in Lending Act:

[i.] ►A.◄ *Maine.* Credit or lease transactions subject to the Maine Consumer Credit Code and its implementing regulations are exempt from chapters 2, 4 and 5 of the Federal Act. (The exemption does not apply to transactions in which a Federally chartered institution is a creditor or lessor.)

[ii.] ►B.◄ *Connecticut.* Credit transactions subject to the Connecticut Truth in Lending Act are exempt from chapters 2 and 4 of the Federal Act. (The exemption does not apply to transactions in which a Federally chartered institution is a creditor.)

[iii.] ►C.◄ *Massachusetts.* Credit transactions subject to the Massachusetts Truth in Lending Act are exempt from chapters 2 and 4 of the Federal Act. (The exemption does not apply to transactions in which a Federally chartered institution is a creditor.)

[iv.] ►D.◄ *Oklahoma.* Credit or lease transactions subject to the Oklahoma Consumer Credit Code are exempt from chapters 2 and 5 of the Federal Act. (The exemption does not apply to sections 132 through 135 of the Federal Act, nor does it apply to transactions in which a Federally chartered institution is a creditor or lessor.)

[v.] ►E.◄ *Wyoming.* Credit transactions subject to the Wyoming Consumer Credit Code are exempt from chapter 2 of the Federal Act. (The exemption does not apply to transactions in which a Federally chartered institution is a creditor.)

►ii. Although RESPA and its implementing Regulation X do not provide procedures for granting State exemptions, for transactions subject to § 1026.19(e) and (f), compliance with the

requirements of §§ 1026.19(e) and (f), 1026.37, and 1026.38 satisfies the requirements of sections 4 and 5 of the Real Estate Settlement Procedures Act (RESPA) (other than the RESPA section 5(c) requirements regarding provision of a list of certified homeownership counselors). If such a transaction is subject to one of the State exemptions previously granted by the Board of Governors and noted in comment 29(a)-4.i above, however, then compliance with the requirements of any State laws and regulations incorporating the requirements of §§ 1026.19(e) and (f), 1026.37, and 1026.38 likewise satisfies the requirements of sections 4 and 5 of RESPA (other than the RESPA section 5(c) requirements regarding provision of a list of certified homeownership counselors) and the provisions of Regulation X (12 CFR part 1024) implementing those sections of RESPA.◄

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

1. *As applicable.* The disclosures required by § 1026.37 are to be made only as applicable, except as otherwise provided in § 1026.37(o). A disclosure that is not applicable to a particular transaction generally may be eliminated entirely. For example, in a transaction for which the creditor does not require homeowner's insurance, the disclosure required by § 1026.37(m)(3) need not be included. Alternatively, the creditor generally may include disclosures that are not applicable to the transaction and note that they are "not applicable" or "N/A." As provided in § 1026.37(i) and (j), however, the adjustable payment and adjustable interest rate tables required by those paragraphs may be included only if those disclosures are applicable to the transaction and otherwise must be excluded.

2. *Format.* See § 1026.37(o) and its commentary for guidance on the proper format to be used in making the disclosures, as well as permissible modifications.

37(a) General information.

37(a)(3) Creditor.

1. *Multiple creditors*. For transactions with multiple creditors, see § 1026.17(d) and comment 17(d)-1 for further guidance. The creditor making the disclosures, however, must be identified as the creditor for purposes of § 1026.37(a)(3).

2. *Mortgage broker as loan originator*. In transactions involving a mortgage broker, the name of the creditor must be disclosed, if known, even if the mortgage broker provides the disclosures to the consumer.

37(a)(4) Date issued.

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.

37(a)(5) Applicants.

1. *Multiple consumers*. If there is more than one consumer applying for the credit, § 1026.37(a)(5) requires disclosure of the name and mailing address of each consumer on the Loan Estimate. If the number of consumers applying for the credit does 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) and its commentary.

37(a)(6) Property.

1. *Alternate property address*. Section 1026.37(a)(6) requires disclosure of the street address, if available, and the city, state, and zip code for the property that secures the credit. If there is no street address, § 1026.37(a)(6) requires disclosure of a legal description or other

location information for the property; however, disclosure of a zip code is required in all instances.

37(a)(7) Sale price.

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.

37(a)(8) Loan term.

1. *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, to comply with § 1026.37(a)(8), the possible range of the loan term, including the maximum number of years possible under the terms of the legal obligation, must be disclosed. 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 should assume 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.

37(a)(9) Purpose.

1. *General*. Section 1026.37(a)(9) requires disclosure of the consumer's intended use of the credit extended. 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. To the extent 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 credit to purchase the property.

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 construction ("construction-only" loan), whether it is new construction or a renovation project, 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) and comments 17(c)(6)-2 and -3.

iv. *Home equity loan*. The creditor is required to disclose that the credit is for a "home equity loan" if the creditor extends credit for any purpose other than a purchase, refinancing, or construction. This disclosure applies whether the property that secures the loan is 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 that are made by any creditor. This differs from § 1026.20(a), which applies only to refinancings undertaken by the original creditor or a holder or servicer of the original debt.

37(a)(10) Product.

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 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 adjustment periods thereafter. Thus, for example, if the loan product is an adjustable rate with an introductory rate that remains the same 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(10)(i) is "5/3 Adjustable Rate."

ii. *Step rate*. 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)(i) is "10/1/3 Step Rate."

iii. *Fixed rate*. If the loan product is not an adjustable rate or a step rate, as described in § 1026.37(a)(10)(i), 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) requires 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 adjustment periods, 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 negative amortization is permitted (*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 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 also referred to as a graduated payment), the period of time over which the scheduled payments will increase 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 an adjustable 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."

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.

37(a)(11) Loan type.

1. *Other loan type*. If the transaction is a type other than a conventional, FHA, or VA loan, § 1026.37(a)(11) requires the creditor to 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," because it is guaranteed or funded by a Federal agency, and therefore is not "Conventional," but is neither a "VA" nor an "FHA" loan. 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."

37(a)(12) Loan identification number (Loan ID #).

1. *Unique identifier*. The unique loan identification number is determined by the lender. Because the number must be unique under § 1026.37(a)(12), different, but related, loan transactions with a single creditor may not share the same loan identification number.

37(a)(13) Rate lock.

1. *Interest rate*. For purposes of § 1026.37(a)(13), the interest rate is set for a specific period of time if the rate will not vary during that period, other than under circumstances that are described in any rate-lock agreement between the creditor and consumer.

2. *Expiration date*. Whether or not the interest rate is set for a specific period of time, § 1026.37(a)(13) requires the creditor to provide the date and time the terms and costs disclosed in the Loan Estimate expire if the transaction is not yet consummated, or the terms and costs are not otherwise accepted or extended.

3. *Time zone*. The disclosures required by § 1026.37(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 PM 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).

37(b) Loan terms.

1. *Legal obligation*. The disclosures required by § 1026.37 must reflect good faith estimates of the credit terms to which the parties will be legally bound for the transaction. If certain terms of the transaction are known or reasonably should be known to the creditor, based on information such as the consumer's selection of a product type or other information in the consumer's application, § 1026.37 requires the creditor to disclose those credit terms. For example, if the consumer selects a product type with a prepayment penalty, the terms of the prepayment penalty known to the creditor at the time the disclosure is provided shall be set forth in the disclosure.

37(b)(2) Interest rate.

1. *Initial interest rate if adjustable.* The fully-indexed rate is defined in § 1026.37(b)(2) 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 disclosure is provided pursuant to § 1026.19(e), such as for the disclosure delivered 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 provided. The index in effect at consummation (or the time the disclosure is provided 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.

37(b)(3) Principal and interest payment.

1. *Frequency of principal and interest payment*. Pursuant to § 1026.37(o)(5)(i), if the contract provides for a unit-period 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 adjustable.* 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 may vary based on an adjustment to an index, § 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.

37(b)(4) Prepayment penalty.

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 when the penalty will no longer be imposed). For an example of such disclosure, see form H-24 in appendix H to this part. The disclosure under § 1026.37(b)(4) would apply to transactions where the terms of the loan contract provide for a prepayment penalty, even though it is not certain 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, as discussed in comment 37(b)(4)-2.i, the transaction includes a prepayment penalty that must be disclosed pursuant to § 1026.37(b)(4).

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.

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 which are not prepayment penalties include, for example:

i. Fees imposed for preparing and providing documents when a loan is paid in full, whether or not the loan is prepaid, such as 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.

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 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.

5. *Additional guidance*. For additional guidance generally on disclosures of prepayment penalties, see comment 18(k)-1.

37(b)(5) Balloon payment.

1. *Regular periodic payment*. 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. If a specific payment 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) unless the specific payment itself is a regular periodic payment.

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. 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. The disclosure of balloon payments in the "Projected Payments" table under § 1026.37(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.

37(b)(7) Details about prepayment penalty and balloon payment.

Paragraph 37(b)(7)(i).

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 the loan is negatively amortizing and the prepayment penalty equals three percent of the loan balance in the first year and two percent in the second year during the first two years after loan origination, the creditor must determine the

highest loan balance in each year and apply the respective two percent or three percent rate to such balance to determine the maximum amount. 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.

37(b)(8) Timing.

1. *Timing*. 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 example, an interest rate that can first adjust at the beginning of the 13th month from the date that interest for the regularly scheduled periodic payment began to accrue would be disclosed as beginning to adjust in "year 2." An interest rate that 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 principal and interest payment that begins to adjust at the 13th payment would be disclosed as beginning to adjust in "year 2."

37(c) Projected payments.

1. *Definitions.* For purposes of § 1026.37(c), the terms "adjustable rate," "fixed rate," "negative amortization," and "interest-only" have the meanings in § 1026.37(a)(10).

37(c)(1) Periodic payment or range of payments.

Paragraph 37(c)(1)(i).

1. *Periodic payments.* For purposes of § 1026.37(c)(1)(i), the periodic payment is the regularly scheduled payment of principal and interest, mortgage insurance, and escrow payments described in § 1026.37(c)(2) without regard to any final payment that differs from other payments because of rounding to account for payment amounts including fractions of cents.

Paragraph 37(c)(1)(i)(A).

1. *Periodic principal and interest payments.* For purposes of § 1026.37(c)(1)(i)(A), periodic principal and interest payments may change when the interest rate, applicable interest rate caps, required periodic principal and interest payments, or ranges of such payments may change. Minor payment variations resulting solely from the fact that months have different numbers of days are not changes to periodic principal and interest payments.

2. *Negative amortization.* In a loan that permits negative amortization, periodic principal and interest payments may change at the time of a scheduled recast of the mortgage loan and when the consumer must begin making fully amortizing payments of principal and interest. The disclosure should be based on the assumption that the consumer will make only the minimum payment required under the terms of the legal obligation, for the maximum amount of time permitted, taking into account potential changes to the interest rate. The table required by § 1026.37(c) should also reflect any balloon payment that would result from making the minimum payment required under the terms of the legal obligation.

3. *Interest-only.* In a loan that permits payment of only interest for a specified period, periodic principal and interest payments may change for purposes of § 1026.37(c)(1)(i)(A) when the consumer must begin making fully amortizing periodic payments of principal and interest.

Paragraph 37(c)(1)(i)(B).

1. *Balloon payment.* For purposes of § 1026.37(c)(1)(i)(B), whether a balloon payment occurs is determined pursuant to § 1026.37(b)(5) and its commentary. Although the existence of a balloon payment is determined pursuant to § 1026.37(b)(5) and its commentary, 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). 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)(1)(iii) and its commentary, and should be disclosed as a range of payments.

Paragraph 37(c)(1)(i)(C).

1. *General.* "Mortgage insurance" means insurance against the nonpayment of, or default on, an individual mortgage. For purposes of § 1026.37(c), "mortgage insurance coverage or any functional equivalent" includes any mortgage guarantee that provides coverage similar to mortgage insurance (such as a United States Department of Veterans Affairs or United States Department of Agriculture guarantee), even if not technically considered insurance under State or other applicable law. The fees for such a guarantee are included in "mortgage insurance premiums."

2. *Calculation.* For purposes of § 1026.37(c)(1)(i)(C), mortgage insurance premiums should be calculated based on the declining principal balance that will occur as a result of changes to the interest rate and payment amounts, assuming the fully-indexed rate applies at consummation, taking into account any introductory interest rates.

3. *Disclosure.* The table required by § 1026.37(c) should reflect the consumer's mortgage insurance premiums until the date on which the creditor must automatically terminate coverage under applicable law, even though the consumer may have a right to request that the insurance be cancelled earlier. Unlike termination of mortgage insurance, a subsequent decline in the consumer's mortgage insurance premiums is not, by itself, an event that requires the disclosure of additional separate periodic payments or ranges of payments in the table required by § 1026.37(c). For example, some mortgage insurance programs annually adjust premiums

based on the declining loan balance. Such annual adjustment to the amount of premiums would not require a separate disclosure of a periodic payment or range payments.

Paragraph 37(c)(1)(ii).

Paragraph 37(c)(1)(ii)(A).

1. *Balloon payments that are final payments.* Section 1026.37(c)(1)(ii)(A) is an exception to the general rule in § 1026.37(c)(1)(ii), and requires that a balloon payment that is scheduled as a final payment under the terms of the legal obligation is always disclosed as a separate periodic payment or range of payments. Balloon payments that are not final payments, such as a balloon payment due at the scheduled recast of a loan that permits negative amortization, are disclosed pursuant to the general rule in § 1026.37(c)(1)(ii).

Paragraph 37(c)(1)(iii).

1. *Calculation of minimum and maximum payments.* A range of payments is disclosed under § 1026.37(c)(1)(iii) when the periodic principal and interest payments are not known at the time the disclosure is provided because they are subject to changes based on index rates at the time of an interest rate adjustment, or when multiple events are disclosed as a range of payments pursuant to § 1026.37(c)(1)(ii). For such transactions, § 1026.37(c)(1)(iii) requires the creditor to disclose both the minimum and maximum periodic principal and interest payments, expressed as a range. In disclosing the maximum possible interest rate 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 possible interest rate for purposes of § 1026.37(c), the creditor assumes

that the interest rate will decrease as rapidly possible after consummation, taking into account any introductory rates, caps on interest rate adjustments, and lifetime interest rate floor. For an adjustable rate mortgage based on an index that has no lifetime interest rate floor, the minimum interest rate is equal to the margin.

2. *Ranges of payments.* When a range of payments is required, § 1026.37(c)(1)(iii) requires the creditor to disclose the minimum and maximum amount for both the principal and interest payment under § 1026.37(c)(2)(i) and the total periodic payment under § 1026.37(c)(2)(iv). The amount required to be disclosed for mortgage insurance premiums pursuant to § 1026.37(c)(2)(ii) and the amount payable into an escrow account pursuant to § 1026.37(c)(2)(iii) shall not be disclosed as a range.

3. *Adjustable rate mortgages.* For an adjustable rate mortgage, the periodic principal and interest payment at each time the interest rate may change will depend on the rate that applies at the time of the adjustment, which is not known at the time the disclosure is provided. As a result, the creditor discloses the minimum and maximum periodic principal and interest payment that could apply during each period disclosed pursuant to § 1026.37(c)(1) after the first period.

37(c)(2) Itemization.

Paragraph 37(c)(2)(ii).

1. *Mortgage insurance.* 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, the creditor shall disclose the mortgage insurance premium as "0".

2. *Periodic payments.* 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.

Paragraph 37(c)(2)(iii).

1. *Escrow.* 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)(A) through (E).

37(c)(3) Subheadings.

Paragraph 37(c)(3)(ii).

1. *Years.* Section 1026.37(c)(3)(ii) requires that each periodic payment or range of payments be disclosed under a subheading that states the number of years during which that payment or range of payments will apply and that such subheadings be stated in a sequence of whole years. For purposes of § 1026.37(c), "year" is defined as the twelve-month interval beginning on the due date of the first periodic payment and each anniversary thereafter. For example, for a loan with a 30-year term that does not require mortgage insurance and requires interest-only payments for the first 60 months of the loan, then requires fixed, fully amortizing payments of principal and interest for the duration of the loan, the creditor would label the first disclosure of periodic payments as "Years 1-5" and the second disclosure of periodic payments or range of payments as "Years 6-30." However, if that loan requires interest-only payments for the first 54 months of the loan, then requires fixed, fully amortizing payments of principal and interest for the duration of the loan, the creditor would label the first disclosure of periodic payments as "Years 1-4" and the second disclosure of periodic payments or range of payments as "Years 5-30." Finally, 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 of the loan's term, the creditor would label the first disclosure of periodic payments as "Years 1-4," the second disclosure of periodic payments or range of payments as "Years 5-8," and the third disclosure of periodic payments or range of payments as "Years 9-30."

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)-1.

37(c)(4) Taxes, insurance, and assessments.

Paragraph 37(c)(4)(ii).

1. *Mortgage-related insurance premiums.* Mortgage-related insurance premiums required by the creditor are those described § 1026.35(b)(3)(i) and its commentary, except that, for purposes of § 1026.37(c)(4)(ii), mortgage-related insurance premiums do not include mortgage insurance premiums disclosed pursuant to § 1026.37(c)(2)(ii). A creditor need not include premiums for mortgage-related insurance that are not required as part of the legal obligation or under applicable law, such as optional earthquake insurance or credit insurance, or fees for optional debt suspension and debt cancellation agreements.

2. *Special assessments.* Special assessments are imposed on the consumer at or before consummation, such as a one-time homeowners' association fee that will not be paid by the consumer in full at or before consummation.

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.* Official 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).

37(f)(1) Origination charges.

1. *Origination charges.* Charges included under the subheading "Origination Charges" pursuant to § 1026.37(f)(1) are those charges paid by the consumer to the creditor and each 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 three decimal places, except that decimal places shall not be disclosed if the percentage is a whole number. See comment 19(e)(3)(i)-2 for a discussion of when a fee is considered to be "paid to" a person. See comment 36(a)-1 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 that the consumer will pay to the creditor to reduce the interest rate, for which specific language must be used, the creditor may use a general description to identify each 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 the consumer is not charged any points to reduce the interest rate, the creditor may leave blank the percentage of points disclosed under § 1026.37(f)(1)(i), but must disclose a dollar amount of "$0."

5. *Itemization*. Creditors determine the level of itemization of "Origination Charges" that is appropriate under § 1026.37(f)(1), subject to the limitations in § 1026.37(f)(1)(ii).

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)(A). Comment 19(e)(1)(iv)-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 to be disclosed pursuant to § 1026.37(f)(2) might include appraisal fee, appraisal management company fee, credit report fee, flood determination fee, lender's attorney, tax status research fee, title – closing protection letter, and title – lender's coverage.

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. 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;

v. Premiums for any title insurance coverage for the benefit of the creditor; and

vi. Conducting the closing.

4. *Lender's title insurance policy.* The amount disclosed for lender's title insurance coverage 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 should 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 owner's title insurance coverage.

37(f)(3) Services you can shop for.

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)(A). Comments 19(e)(3)(ii)-1 through -3 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)(A). 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 pest inspection fee, survey fee, title – closing agent fee, and title – closing protection letter.

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.

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. *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 would comply with the requirement for an appropriate reference on the last line is: "See attached page for additional items you can shop for."

37(g) Closing cost details; other costs.

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), the creditor does not retain any of the amounts or portions of the amounts disclosed as Other Costs, nor does the creditor use any of the services listed to evaluate the collateral and the consumer for the loan.

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 not

disclosed on the Loan Estimate, except to the extent the creditor is aware of those charges when it issues the Loan Estimate. *See* § 1026.37(g)(4) and comment 37(g)(4)-3.

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 sales 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% 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 imposed on 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) as long as 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 will be 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).

37(g)(2) Prepaids.

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 the first scheduled payment is due 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 used to calculate the charge, and the total dollar amount of the charge. Examples of periodic charges that the creditor may require the consumer to pay at consummation 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.* As used in § 1026.37(g)(2), the terms "property taxes," "homeowner's insurance," "mortgage insurance" have the same meaning as those terms are used in § 1026.37(c) and its commentary.

4. *Deletion of items*. The lines and labels required by paragraph (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 may be left blank.

37(g)(3) Initial escrow payment at closing.

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 required to be listed under § 1026.37(g)(3)(i) through (iii) is not charged to the consumer, the monthly payment amount and time period may be 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 terms "property taxes," "homeowner's insurance," and "mortgage insurance" have the same meaning as those terms are used in § 1026.37(c) and its commentary.

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.

37(g)(4) Other.

1. *Basic owner's 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. 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 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 descriptions of credit life insurance, debt suspension coverage, debt cancellation coverage, and similar coverage and for guidance on determining when such 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.

37(g)(6) Total closing costs.

Paragraph 37(g)(6)(ii).

1. *Lender credits.* Section 1026.19(e)(1)(i) requires disclosure of lender credits as provided in § 1026.37(g)(6)(ii). Comment 19(e)(3)(i)-5 describes such lender credits as payments from the creditor to the consumer that do not pay for a particular fee on the disclosures provided under § 1026.37. Comment 19(e)(3)(i)-4 addresses payments by a creditor to a consumer to pay for particular fees.

37(g)(8) Use of addenda.

1. *State law disclosures*. If a creditor is required by State law to make additional disclosures that, pursuant to § 1026.37(g)(8), cannot be included in the disclosures required under § 1026.37(g), the creditor may make those additional State law disclosures on a separate document whose pages are physically separate from, and are not presented as part of, the disclosures prescribed in § 1026.37. *See* comment 37(o)(1)-1.

37(h) Calculating cash to close.

1. *Labels for amounts disclosed.* Paragraph 37(h) describes the amounts that are used to calculate the estimated amount of cash or other form of payment that the consumer must provide at consummation. The labels used on the chart must correspond to the italicized descriptions of § 1026.37(h)(1) through (7).

37(h)(4) Deposit.

1. A deposit must be disclosed in a purchase transaction. In any other type of transaction, any deposit amount is disclosed under § 1026.37(h)(4) as $0.

37(h)(6) Seller credits.

1. *Credits to be disclosed.* The seller credits known to the creditor at the time of application are disclosed under § 1026.37(h)(6). Seller credits that are not known by the creditor at the time of application are not disclosed under § 1026.37(h)(6).

37(h)(7) 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), would be included in the amount disclosed pursuant to § 1026.37(h)(7) to the extent known by the creditor.

2. *Persons.* The term "persons" as used in § 1026.37(h)(7) includes all individuals and any entity, regardless of the legal structure of such entity.

3. *Credits.* Only credits from parties other than the creditor or seller can be disclosed pursuant to § 1026.37(h)(7). Seller credits and credits from the creditor are disclosed pursuant to § 1026.37(h)(6) and § 1026.37(g)(6)(ii), respectively.

4. *Other credits to be disclosed.* Other credits known to the creditor at the time of application are disclosed under § 1026.37(h)(7). Other credits that are not known by the creditor at the time of application are not disclosed under § 1026.37(h)(7).

37(h)(8) Estimated cash to close.

1. *Result of cash to close calculation.* The total of § 1026.37(h)(1) through (7) is disclosed under § 1026.37(h)(8) as either a positive number, a negative number, or zero. A positive number indicates the estimated amount that the consumer can be expected to pay at consummation. A negative number indicates the estimated amount that the consumer can

receive at consummation. A result of zero indicates that the consumer is anticipated to neither pay any amount or receive any amount at consummation.

37(i) Adjustable payment table.

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 may not appear on the Loan Estimate. *See* comment 37-1.

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. 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 to

12th payment, does not apply to 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 twentieth quarter, the period is disclosed as "every quarter until the 20th quarter."

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 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, 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 reached 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 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).

37(j) Adjustable interest rate table.

1. *When table is permitted to be disclosed*. The disclosure described in § 1026.37(j) is only required 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. *See* comment 37-1.

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%."

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.

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.

37(j)(4) Minimum and maximum interest rate.

1. *Minimum interest rate.* The minimum 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 possible 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.

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 information available to the creditor at the time.

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%."

37(k) Contact information.

1. *NMLSR ID*. Section 1026.37(k) requires the disclosure of an NMLSR identification (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 by the Nationwide Mortgage Licensing System and 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, 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.

3. *Contact*. Section 1026.37(k)(2) requires the disclosure of the name and NMLSR ID of the loan officer for the consumer. The loan officer is generally the natural person employed by

the person disclosed under § 1026.37(k)(2) 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.

37(l) Comparisons.

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).

1. *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 purposes of § 1026.37(l)(1)(i), interest is calculated using the fully-indexed rate at consummation and includes any prepaid interest. 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 is 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 permit negative amortization, the creditor calculates the total payments in five years using the negatively amortizing payment amount until the consumer must begin making fully amortizing payments under the terms of the legal obligation.

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.

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 mortgages, § 1026.37(1)(3) requires that the creditor compute the total interest percentage using the fully-indexed rate. For step-rate mortgages, § 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 permit negative amortization, § 1026.37(l)(3) requires that the creditor compute the total interest percentage using the negatively amortizing payment amount until the consumer must begin making fully amortizing payments under the terms of the legal obligation.

37(m) Other considerations.

37(m)(1) Appraisal.

1. *Applicability*. Section 1026.37 requires the disclosures required by this section to be made as applicable. 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), as implemented by this part or Regulation B, 12 CFR part 1002, respectively. Accordingly, if a

transaction is not also subject to either of these provisions, the disclosure required by § 1026.37(m)(1) may be omitted from the Loan Estimate.

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, 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 phrase "original terms" does not preclude the imposition of an assumption fee, but a modification of the legal obligation, such as a change in the contract interest rate, represents different 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. A creditor satisfies § 1026.4(d)(2)(i) by disclosing the statement described in § 1026.37(m)(3).

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.

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 closing. 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 statement required by § 1026.37(m)(7) is permitted only 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).

37(n) Signature statement.

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 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.

37(o) Form of disclosures.

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, segregated from everything else, and provided on separate pages that are not commingled with any other documents or disclosures, including any other disclosures required by State or other laws. 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 in appendix H

to this part. Accordingly, use of that form constitutes compliance with the clear and conspicuous and segregation requirements of § 1026.37(o).

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.

37(o)(2) Estimated disclosures.

1. *Estimated amounts.* Section 1026.37(o)(2) incorporates the "estimated" designations reflected on form H-24 in appendix H to this part into the disclosure requirements of § 1026.37, even if the relevant provision of § 1026.37 does not expressly require disclosure of the word "estimate." For example, § 1026.37(c)(2)(iv) requires disclosure of the total periodic payment labeled "Total Monthly Payment," but the label on form H-24 contains the designation

"Estimated" and thus, the label required by § 1026.37(c)(2)(iv) must contain the designation "Estimated." Although many of the disclosures required by § 1026.38 cross-reference their counterparts in § 1026.37, § 1026.38(t) incorporates the "estimated" designations reflected on form H-25, not form H-24.

37(o)(3) Form.

1. *Non-federally related mortgage loans.* For a non-federally related mortgage loan, the creditor is not required to use form H-24 in 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 § 1026.37(o)(1)(i). Even when the creditor elects not to use the model form, § 1026.37(o)(1) requires that the disclosures be grouped together and segregated from everything else; contain only the information required by § 1026.37(a) through (n); and be provided in the same order as they occur in form H-24, using the same relative positions of the headings, labels, and similar designations as shown in the form. In addition, § 1026.37(o)(2) requires that the creditor include the designation of "estimated" for all headings, subheading, labels, and similar designations required by § 1026.37 for which form H-24 contains the "estimated" designation in such heading, subheading, label, or similar designation. The disclosures required by this section comply with the requirement to be in a format substantially similar to form H-24 when provided on letter size (8.5" x 11") paper.

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 must be disclosed as an exact numerical amount 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 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 such exact numbers. In addition, if any such exact component amount is required to be disclosed under § 1026.37, consistent with § 1026.2(b)(4), it should be disclosed as an exact 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* 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 exact 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), if § 1026.37(c)(2)(ii) requires disclosure of periodic mortgage insurance payments of $164.50, the creditor would disclose $165. However, if the periodic mortgage insurance payment required to be disclosed by § 1026.37(c)(2)(ii) were $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 without decimal places denoting cents if the amount of cents is zero. 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 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 not to use decimal places, 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%."

37(o)(5) Exceptions.

1. *Permissible changes.* The changes required or permitted by § 1026.37(o)(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 § 1026.37(o)(5) or not permitted by other provisions of § 1026.37, may affect the substance, clarity, or meaningful sequence of the disclosure and therefore are not permissible. Creditors making any changes that affect substance, clarity, or meaningful sequence will lose their protection from civil liability under TILA.

2. *Manual completion.* Section 1026.37(o) does not require the creditor to use a computer, typewriter, or other word processor to complete the disclosure form. The person may fill in information and amounts required to be disclosed by § 1026.37 on form H-24 in 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 form H-24, including replicating bold font where required. Completion by hand or typewriter does not provide an exemption from the requirement to keep records in an electronic, machine readable format under § 1026.25.

3. *Contact information.* If a transaction involves more than one creditor or mortgage broker, the space provided on form H-24 in appendix H to this part for the contact information required by § 1026.37(m) may be altered to add additional labels to accommodate the additional information of such parties, provided that the information required by § 1026.37(l), (m), and (n) are disclosed on the same page as illustrated by form H-24. If the space provided on form H-24 in appendix H to this part does not allow for the disclosure of such contact and other information on the same page, an additional page may be added to provide the required contact information with an appropriate reference to the additional page.

4. *Signature lines.* Section 1026.37(o) does not restrict the addition of signature lines to the disclosure required by § 1026.37, provided any signature lines appear only under the "Confirm Receipt" heading required by § 1026.37(n) as illustrated by form H-24 in appendix H

to this part. If the number of signatures requested by the creditor requires space for signature lines in excess of that provided on form H-24, 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 § 1026.37(n) in the format provided on form H-24.

5. *Additional page.* Information required or permitted to be disclosed by § 1026.37(o)(5) on a separate page should be formatted similarly to form H-24 in appendix H to this part, so as not 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 to not affect the substance, clarity, or meaningful sequence of the disclosure.

Section 1026.38—Content of Disclosures for Certain Mortgage Transactions (Closing Disclosure)

1. *As applicable.* The disclosures required by § 1026.38 are to be made only as applicable. A disclosure that is not applicable to a particular transaction generally may be eliminated entirely. For example, the disclosure required by § 1026.38(r) of the consumer or seller's real estate brokers may be eliminated for a transaction that does not involve such real estate brokers, such as a refinance or home equity loan. Alternatively, the creditor generally may include disclosures that are not applicable to the transaction and note that they are "not applicable" or "N/A."

2. *Format.* See § 1026.38(t) and its commentary for guidance on the proper format to be used in making the disclosures, as well as required and permissible modifications.

38(a) General information.

38(a)(3) Closing information.

38(a)(3)(i) Date issued.

1. *Applicable date*. For general guidance on identifying the date issued for the Closing Disclosure, see the commentary to § 1026.37(a)(4).

38(a)(3)(iv) Agent.

1. *Agency name*. Section 1026.38(a)(3)(iv) requires the name of the agency that employs the settlement agent. The name of the individual conducting the closing is not required.

38(a)(3)(vi) Property.

1. *Alternative property location.* For guidance on providing the location of a property that does not have a standard street address, see the commentary to § 1026.37(a)(6).

38(a)(3)(vii) Sale price.

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, or if a more recent appraisal or valuation has been obtain by the creditor, the value determined by the more recent appraisal or valuation.

38(a)(4) Transaction information.

1. *Multiple borrowers and sellers*. The name and address of each consumer and seller in the transaction must be provided under the heading "Transaction Information." If the form does not provide enough space to include the required information for each seller, 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). For additional guidance on disclosing multiple borrowers, see the commentary to § 1026.37(a)(5).

2. *No seller*. In transactions where there is no seller, such as in a refinancing or home equity loan, this disclosure may be left blank.

3. *Multiple creditors*. See commentary to § 1026.37(a)(3) regarding identification requirements for multiple creditors.

38(a)(5) Loan information.

1. *General*. See commentary to § 1026.37(a)(8) through (12) for guidance on the general requirements and definitions applicable to § 1026.38(a)(5)(i) through (v).

38(b) Loan terms.

1. *Guidance*. See the commentary to § 1026.37(b) for guidance on the content of the disclosures required by § 1026.38(b).

38(c) Projected payments.

1. *In general*. For guidance on the disclosure of the projected payments table, see § 1026.37(c) and its commentary.

38(c)(1) Projected payments or range of payments.

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.

38(f) Closing cost details; loan costs.

38(f)(1) Origination charges.

1. *Guidance in other comments.* For a description of origination charges and discount points, see comments 37(f)(1)-1, 2 and 3 of this part.

2. *Loan originator compensation.* All compensation paid to a loan originator, as defined by § 1026.36(a)(1), 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 loan originator will be designated as borrower-paid at or before closing, as applicable, on the Closing Disclosure. Compensation from the creditor to a loan originator will be designated as paid by others on the Closing Disclosure. Compensation to a 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 loan originator under § 1026.38(f)(1) is the dollar value of salaries, commissions, and any financial or similar compensation provided to a loan originator by the creditor. For additional guidance and examples on the calculation of compensation paid to the loan originator from the creditor, see comments 36(d)(1)-1, -2, -3 and -6.

38(f)(2) Services borrower did not shop for.

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 of this part.

38(f)(3) Services borrower did shop for.

1. *Provider on written list.* Items that were disclosed pursuant to § 1026.37(f)(3) cannot be disclosed under this § 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).

38(f)(5) Subtotal of loan costs.

1. *Charges subtotaled.* The only charges that are loan costs that are subtotaled pursuant to § 1026.38(f)(5) are those costs designated borrower-paid at or before closing. Charges which are loan costs designated seller-paid at or before closing, or paid by others, are not subtotaled pursuant to § 1026.38(f)(5). The subtotal of charges that are seller-paid at or before closing or paid by others is disclosed under § 1026.38(h)(2).

38(g) Closing costs details; other costs.

38(g)(1) Taxes and other government fees.

1. *Guidance.* For additional guidance on taxes and other government fees, see comments 37(g)(1) -1, -2, -3 and -4.

38(g)(2) Prepaids.

1. *Guidance.* For additional guidance on prepaids, see comment 37(g)(2)-1.

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).

38(g)(3) Initial escrow payment at closing.

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.

38(g)(4) Other.

1. *Costs disclosed.* The costs disclosed under § 1038(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 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 must 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 must 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 § 1038(g)(4)(ii), see comment 37(g)(4)-3.

38(g)(6) Subtotal of costs.

1. *Costs subtotaled.* The only costs that are subtotaled pursuant to § 1026.38(g)(6) are those costs that are designated borrower-paid at or before closing. Costs that are other costs designated seller-paid at or before closing, or paid by others, are not subtotaled pursuant to § 1026.38(g)(6). The subtotal of charges that are designated seller-paid at or before closing or paid by others is disclosed under § 1026.38(h)(2).

38(h) Closing cost totals.

Paragraph 38(h)(2).

1. *Charges paid by seller and by others subtotaled.* All loan costs and other costs that are designated seller-paid at or before closing, or paid by others, are also totaled under § 1026.38(h)(2).

Paragraph 38(h)(3).

1. *General lender credits.* When the consumer receives a generalized credit from creditor for closing costs, the amount of the credit must be disclosed. 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 determining amounts of general lender credits, see comment 19(e)(3)(i)-5. For a discussion of lender credits for specific charges, see comment 19(3)(i)-4.

2. *Credits for excess charges.* Credits from the creditor to offset an amount charged in excess of the limitations described in § 1026.19(e)(ii) 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 is discovered after the revised Closing Disclosure has been provided, the revised form must be provided to the consumer and other appropriate parties, as described under § 1026.19(f)(2)(iii).

Paragraph 38(h)(4).

1. *Consistent terminology and order of charges.* On the Closing Disclosure the creditor must use terminology that is consistent with that used on the Loan Estimate to identify each corresponding loan cost and other cost. In addition, § 1026.38(h)(4) requires the creditor to list the costs disclosed under each subcategory of charges in a consistent order. If costs move between subheadings under § 1026.38(f)(2) and (f)(3) of this part, listing the costs in alphabetical order in each subheading category is considered to be in compliance with § 1026.38(h)(4).

38(i) Calculating cash to close.

1. *More prominent disclosures*. Sections 1026.38(i)(1)(iii), 1026.38(i)(2)(iii), 1026.38(i)(3)(iii), 1026.38(i)(4)(iii), 1026.38(i)(5)(iii), 1026.38(i)(6)(iii), 1026.38(i)(7)(iii), and 1026.38(i)(8)(iii) require 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 "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 boldface font, under the subheading "Did this change?," as shown on form H-25 in 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 (D)" and "Total Other Costs (I)" being shown in boldface, as shown on form H-25 in appendix H to this part. See comments 38(i)-3 and -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 stated. *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 stated. Pursuant to § 1026.38(t)(4)(i)(C), however, any "Estimate" amount that is disclosed in the "Calculating Cash to Close" table under § 1026.38(i) 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(i)(1)(iii), 1026.38(i)(2)(iii), 1026.38(i)(3)(iii), 1026.38(i)(4)(iii), 1026.38(i)(5)(iii), 1026.38(i)(6)(iii), 1026.38(i)(7)(iii), and 1026.38(i)(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 "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 in 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, the statement, "See Seller Credits in Section L," in which the words "Section L" are boldface, 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 similar statement to that shown on form H-25 for § 1026.38(i)(7)(iii)(A), "See Deposit in Section L," complies with this provision.

4. *Statements of increases or decreases.* The statements of whether there is a difference between the final and estimated amounts under the subheading "Did this change?," as required by § 1026.38(i) 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. Form H-25 in appendix H to this part contains an example of the statement required by § 1026.38(i)(6)(iii)(A). For the provisions of § 1026.38(i)(4)(iii)(A) and (i)(5)(iii)(A). the statement, "You increased this payment," in which the word "increased" is boldface and is replaced with the word "decreased" as applicable, complies with this provision.

38(i)(1) Total closing costs.

Paragraph 38(i)(1)(i).

1. *Reference to disclosure of total closing costs*. Under § 1026.38(i)(1)(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 in appendix H to this part.

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)(i)-1. For an example of such reference, see form H-25 in 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.*, recordation 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).

38(i)(2) Closing costs subtotal paid before closing.

Paragraph 38(i)(2)(i).

1. *Estimate of closing costs subtotal paid before closing*. Under § 1026.38(i)(2)(i), the "Estimate" amount for "Closing Costs Subtotal Paid Before Closing" is always shown as "$0," because an estimate of such amount is not disclosed on the Loan Estimate.

Paragraph 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 "Estimate" amount disclosed under § 1026.38(i)(2)(i), only if the "Final" amount is $0, because the "Estimate" amount is always disclosed as $0 pursuant to § 1026.38(i)(2)(i). *See* comment 38(i)(2)(i)-1.

38(i)(4) Downpayment/funds from borrower.

Paragraph 38(i)(4)(ii)(A).

1. *Downpayment*. 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 "Downpayment/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.

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 "Downpayment/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 "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 "Funds from Borrower" amount, see comment 38(i)(6)(ii)-1.

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 "Downpayment/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 "Downpayment" amount to increase, the statement, "You increased this payment. See details in Section K," with the words "increased" and "Section K" in boldface text, 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 boldface text.

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.

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.

38(i)(8) Adjustments and other credits.

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), 1026.38(j)(2)(vi), and 1026.38(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.

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 in appendix H to this part.

38(j) Summary of borrower's transaction.

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 with the seller's costs and credits only, which is provided to the seller. *See* § 1026.38(t)(5)(vii) and (viii). Some State laws may prohibit provision of information about the consumer to the seller and about the seller to the consumer.

2. *Addendums.* 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, 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)(vi).

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 § 1026.38(k)(1)(ii); § 1026.38(j)(1)(iii) and § 1026.38(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 § 1026.38(k)(1)(iv); § 1026.38(j)(1)(vii) and § 1026.38(k)(1)(vi); § 1026.38(j)(1)(viii) and § 1026.38(k)(1)(vii); § 1026.38(j)(1)(ix) and § 1026.38(k)(1)(viii); § 1026.38(j)(1)(x) and § 1026.38(k)(1)(ix); § 1026.38(j)(2)(iv) and § 1026.38(k)(2)(iv); § 1026.38(j)(2)(v) and § 1026.38(k)(2)(vii); § 1026.38(j)(2)(viii) and § 1026.38(k)(2)(x); § 1026.38(j)(2)(ix) and § 1026.38(k)(2)(xi); § 1026.38(j)(2)(x) and § 1026.38(k)(2)(xii); and § 1026.38(j)(2)(xi) and § 1026.38(k)(2)(xiii).

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).

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; or

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 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 seller's transaction under § 1026.38(k)(1)(iv).

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 consumer takes possession of the property; and

v. Ground rent paid in advance.

38(j)(2) Itemization of amounts already paid by or on behalf of borrower.

Paragraph 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).

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.

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 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.

Paragraph 38(j)(2)(iv).

1. *Assumption of existing loan obligation of seller by consumer.* The outstanding amount of any loan 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).

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).

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 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 in 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.

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).

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.

38(j)(3) Calculation of borrower's transaction.

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 consummation, or cash payable to the consumer at consummation, as described under § 1026.38(j)(2)(iii).

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.

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 in 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 totals.* 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).

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 an addendum, see comment 38(j)-2.

3. *Identical amounts.* For guidance regarding the amounts disclosed under certain provisions of § 1026.38(k) are the same as amounts disclosed under certain provisions of § 1026.38(j), see comment 38(j)-3.

38(k)(2) Itemization of amounts due from seller.

Paragraph 38(k)(2)(ii).

1. *Excess deposit disbursed to seller by party other than closing agent.* If the seller's real estate broker or other party who is not the closing agent has received and holds a deposit against the sales price (earnest money) which exceeds the fee or commission owed to that party, the excess deposit must be disclosed pursuant to § 1026.38(k)(2)(ii), if that party will provide the excess deposit directly to the seller, rather than through the closing agent.

2. *Distributions of deposit to seller prior to consummation.* If the deposit or any portion thereof has been disbursed to the seller prior to closing, only the amount of the deposit that has not been distributed to the seller must be disclosed under § 1026.38(k)(2)(ii).

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 lien are to be deducted from sales price, the amounts of the outstanding balance of the lien 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).

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 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.

38(k)(3) Calculation of seller's transaction.

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, as described under § 1026.38(k)(2)(iii).

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.

38(k)(4) Items paid outside of closing funds.

1. *Guidance.* For guidance regarding the disclosure of items paid with funds other than closing funds, see comments 38(j)(4)-1 and -2.

38(l) Loan disclosures.

38(l)(2) Demand feature.

1. *Covered features*. See comment 18(i)-2 for a description of demand features triggering the disclosure requirements of § 1026.38(l)(2).

38(l)(3) Late payment.

1. *Guidance*. See the commentary to § 1026.37(m)(4) for guidance on disclosing late payment requirements under § 1026.38(l)(3).

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.

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).

38(m) Adjustable payment table.

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 permitted 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 known at the time the disclosure is required to be provided by § 1026.19(f).

38(n) Adjustable interest rate table.

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 permitted 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* comments 37-1 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).

38(o) Loan Calculations.

38(o)(1) Total of payments.

1. *Calculation of total of payments.* The total of payments is calculated in the same manner as the "In 5 Years" disclosure pursuant to § 1026.37(l)(1)(i), except that the disclosed amount reflects the total payments through the end of the loan term. For guidance on the amounts included in the total of payments calculation, see comment 37(1)(1)(i)-1.

38(o)(2) Finance charge.

1. *Calculation of finance charge.* The finance charge is calculated in accordance with the requirements of § 1026.4 and its commentary and is expressed as a dollar amount.

2. *Disclosure.* The finance charge is disclosed as a total amount; the components of the finance charge are not itemized.

38(o)(3) Amount financed.

1. *Calculation of amount financed.* The amount financed is calculated in accordance with the requirements of § 1026.18(b) and its commentary.

38(o)(5) Total interest percentage.

1. *In general.* For guidance on calculation and disclosure of the total interest percentage, see § 1026.37(l)(3) and its commentary.

38(p) Other disclosures.

38(p)(1) Appraisal.

1. *Applicability*. Section 1026.38 provides that the disclosures must be made as applicable. 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 omitted from the Closing Disclosure.

38(p)(3) Liability after foreclosure.

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. Section 1026.38(p)(3) requires the creditor to provide a brief description of the applicable State's requirements. Any type of protection afforded by State law, other than a statute of limitations that only limits the timeframe in which a

creditor may seek redress, requires a statement that State law may protect the consumer from liability for the unpaid balance.

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 in appendix H to this part, the standard form or model form, as applicable, pursuant to § 1026.38(t). If the creditor or closing agent deviates from the depiction of the question mark as shown on form H-25, the creditor or closing agent 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 or closing agent otherwise complies with § 1026.38(t)(5) regarding permissible changes to the form of the Closing Disclosure.

38(r) Contact information.

1. *Each person to be identified*. Form H-25 in 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 closing agent). Because § 1026.38 requires disclosures only to the extent applicable, columns are either left blank or filled in with "N/A" 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 either left blank or filled in with "N/A." Conversely, in the event the transaction involves more than one of each such person (*e.g.*, two seller's real estate brokers splitting a commission), the contact information table may be altered to accommodate the

information for such persons, provided that the other information is disclosed on the same page. If the format of the page 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. *See* § 1026.38(t)(2)(x). A creditor or closing 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 distinct as 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 closing 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, only the NMLSR ID is disclosed. Because § 1026.38 requires disclosures only to the extent applicable, the table is left blank, or "N/A" is entered, for these disclosures in the columns corresponding to persons that have no NMLSR ID and no license number or unique identifier to be disclosed under § 1026.38(r)(3) and (5), *see* comment 38(r)-5; provided that, the creditor or closing agent may omit the column from the table or, if necessary, replace the column with the contact information for an additional person. *See* § 1026.38(t)(2)(xii) and 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 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, and that person's NMLSR ID number has not already been disclosed under § 1026.38(r)(3) and (5). *See* comment 38(r)-4. Because § 1026.38 requires disclosures only to the extent applicable, the table is either left blank or "N/A" is entered for these disclosures in the columns corresponding to persons who are not subject to the issuance of such a license number or unique identifier and who have not obtained an NMLSR ID to be disclosed under § 1026.38(r)(3) and (5) (*see* comment 38(r)-4); provided that, the creditor or closing agent may omit the column from the table or, if necessary, replace the column with the contact information for an additional person. *See* § 1026.38(t)(2)(xii) and comment 38(r)-1.

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. *See* comments 38(r)-4 and -5. 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 sale's 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 closing agent disclosed under § 1026.38(r)(1) has a State-issued closing agent license number, but the consumer meets with a secretary 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) since a secretary is only performing clerical functions.

38(s) Signature statement.

1. *General requirements*. See the commentary to § 1026.37(n) for guidance regarding optional signature requirements and signature lines for multiple consumers.

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, segregated from everything else, and provided on separate pages that are not commingled with any other documents or disclosures, including any other disclosures required by State or other laws. As required by § 1026.38(t)(2), 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 in appendix H to this part. Accordingly, use of that form constitutes compliance with the clear and conspicuous and segregation requirements of § 1026.38(t).

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)(2), 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) Estimated disclosures.

1. *Estimated amounts.* Although certain amounts are estimated when provided on the disclosure required by § 1026.37, many of these amounts, must be actual amounts rather than estimates in accordance with the requirements of § 1026.19(f), even though the corresponding 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 in 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.

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 in 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 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 this section must be provided on letter size (8.5" x 11") paper.

38(t)(4) Rounding.

1. *Generally.* Consistent with § 1026.2(b)(4), any amount required to be disclosed by § 1026.38 must be disclosed as an exact numerical amount using decimal places where applicable, unless otherwise provided. For example, § 1026.38(t)(4) requires that the loan amount be disclosed using decimal places even if the amount of cents is zero. Accordingly, in contrast to the amounts disclosed under § 1026.37(b)(1), loan amounts disclosed pursuant to § 1026.38(b) are disclosed with decimal places even if they denote zero cents.

2. *Guidance.* For guidance regarding the requirements of § 1026.38(t)(4), see the commentary to § 1026.37(o)(4).

38(t)(5) Exceptions.

1. *Permissible changes.* The changes required and 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, may affect the substance, clarity, or meaningful sequence of the disclosure. Creditors making any changes that do not conform to these requirements will lose their protection from civil liability under TILA.

2. *Manual completion.* The creditor or settlement agent preparing the form is not required to use a computer, typewriter, or other word processor to complete the disclosure required by this section. The creditor or settlement may fill in information and amounts required to be disclosed by this section on form H-25 in 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 this section, including replicating bold font where required. Completion by hand or typewriter does not provide an exemption from the requirement to keep records in an electronic, machine readable format under § 1026.25.

3. *Contact information.* If a transaction involves more than one creditor or mortgage broker, the space provided on form H-25 in appendix H to this part for the contact information required by § 1026.38(r) may be altered to accommodate the information for such parties, provided that the information required by § 1026.38(o), (p), (q), (r), and (s) are disclosed on the same page as illustrated by form H-25. If the space provided on form H-25 does not allow for the disclosure of such contact and other information on the same page, an additional page may be added to provide the required contact information with an appropriate reference to the additional page.

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 in 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(t)(5) on a separate page should be formatted similarly to form H-25 in appendix H to this part, so as not 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 to not 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 in appendix H, may be altered to refer to the appropriate page number of the form containing such information.

38(t)(5)(iv) Line numbers (Closing Cost Details).

1. *Line numbers; Closing Cost Details.* Section 1026.38(t)(5)(iv) permits the deletion of unused lines from the disclosures required by § 1026.38(f)(1), (2) and (3) and (g)(1), (2), (3), and (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 in 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.

38(t)(5)(v) Additional page (Closing Cost Details).

1. *Additional page; Closing Cost Details.* Section 1026.38(t)(5)(v) permits the disclosure of the information required by § 1026.38(f), (g), and (h) over two pages, but only if form H-25 in appendix H to this part, as modified pursuant to § 1026.38(t)(5)(iv), 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), (g), and (h) to fit on one page, modification pursuant to § 1026. 38(t)(5)(v) is not permissible.

2. *Separate pages for Loan Costs and Other Costs.* The modification permitted by § 1026.38(t)(5)(v) allows the information required by § 1026.38(f), (g), and (h) to be disclosed over two pages. 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 and Other Costs sections of form H-25 in appendix H to this part may each appear on their own page, but the Other Costs section must appear on the same page as the Total Closing Costs section. The modifications permitted by § 1026.38(t)(5)(iv) and (v) may be used in conjunction to ensure disclosure of § 1026.38(f) on one page and § 1026.38(g) and (h) on one separate page.

38(t)(5)(viii) Transaction without a seller.

1. *Calculating Cash to Close.* The modifications permitted by § 1026.38(t)(5)(viii)(C) to the table required to be disclosed by § 1026.38(i) should be factored into the calculation of the total amount required by § 1026.38(i)(9)(ii). In addition, the modifications should be factored into the disclosures required by § 1026.38(i) to be disclosed under the subheading "Estimate," using the estimated amounts disclosed or used in calculating the disclosures under § 1026.37.

2. *Appraised Property Value.* The modifications permitted by § 1026.38(t)(5)(viii) 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" and the information required by § 1026.38(a)(3)(vii)(B).

38(t)(5)(x) Customary recitals and information.

1. *Customary recitals and information.* Section 1026.38(t)(5)(x) 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 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.◄

Section 1026.39—Mortgage transfer disclosures.

* * * * *

39(d) Content of required disclosures.

* * * * *

►2. *Partial Payment Policy.* The disclosures required by § 1026.39(d)(5) must identify whether the covered person accepts payments from the consumer that are less than the full amount due and, if so, provide a description of such policy. The disclosures required by § 1026.39(d)(5) apply only to a closed-end consumer credit transaction secured by a dwelling or real property, other than a reverse mortgage transaction subject to § 1026.33. For example, an open or closed-end consumer credit transaction secured by a principal dwelling is a mortgage loan under § 1026.39(a) and a covered person must provide the disclosures required by § 1026.39(d)(1) through (4). However, the covered person is only required to include the partial payment policy disclosure required by § 1026.39(d)(5) if the transaction is a closed-end non-reverse mortgage transaction. If the dwelling in the same transaction is not a principal dwelling (*e.g.*, it is used solely for vacation purposes), the disclosure required by § 1026.39 is not required for an open-end credit transaction, because the transaction is not secured by a principal dwelling. If the transaction that is transferred is a non-reverse mortgage closed-end consumer credit transaction secured by nonresidential real property, the transaction is a mortgage loan requiring a covered person to provide the disclosures under § 1026.39(d)(1) through (5).◄

* * * * *

►*Paragraph 39(d)(5).*

1. *Format of Disclosure.* Section 1026.39(d)(5) requires disclosure of the partial payment policy of covered persons for closed-end mortgage loans. A covered person may utilize

the format of the disclosure illustrated by form H-25 in 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 payments 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 will," 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.◄

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APPENDIX D—MULTIPLE-ADVANCE CONSTRUCTION LOANS

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6. *Relation to § 1026.18(s).* A creditor must disclose an interest rate and payment summary table for ►certain◄ transactions secured by **[**real property or**]** a dwelling, pursuant to § 1026.18(s), instead of the general payment schedule required by § 1026.18(g). Accordingly, ►some◄ home construction loans that are secured by **[**real property or**]** a dwelling are subject to § 1026.18(s) and not § 1026.18(g). ►*See* comment app. D-7 for a discussion of transactions that are subject to §§ 1026.37 and 1026.38.◄ Under § 1026.17(c)(6)(ii), when a multiple-advance construction loan may be permanently financed by the same creditor, the construction phase and the permanent phase may be treated as either one transaction or more than one

transaction. ►Following are illustrations of the application of appendix D to transactions subject to § 1026.18(s), under each of these two alternatives:◄

i. If a creditor uses appendix D and elects pursuant to § 1026.17(c)(6)(ii) to disclose the construction and permanent phases as separate transactions, the construction phase must be disclosed according to the rules in § 1026.18(s). Under § 1026.18(s), the creditor must disclose the applicable interest rates and corresponding periodic payments during the construction phase in an interest rate and payment summary table. The provision in appendix D, part I.A.3, which allows the creditor to omit the number and amounts of any interest payments "in disclosing the payment schedule under § 1026.18(g)" does not apply because the transaction is governed by § 1026.18(s) rather than § 1026.18(g). Also, because the construction phase is being disclosed as a separate transaction and its terms do not repay all principal, the creditor must disclose a balloon payment, pursuant to § 1026.18(s)(5).

ii. On the other hand, if the creditor elects to disclose the construction and permanent phases as a single transaction, ►where interest is payable on the amount actually advanced for the time it is outstanding,◄ the construction phase must be disclosed pursuant to appendix D, part II.C►.1◄, which provides that the creditor shall disclose the repayment schedule without reflecting the number or amounts of payments of interest only that are made during the construction phase. Appendix D also provides, however, that creditors must disclose (outside of the table) the fact that interest payments must be made and the timing of such payments. The interest rate and payment summary table disclosed under § 1026.18(s) ►in such cases◄ must reflect only the permanent phase of the transaction. Therefore, in determining the rates and payments that must be disclosed in the columns of the table, creditors should apply the requirements of § 1026.18(s) to the permanent phase only. For example, under

§ 1026.18(s)(2)(i)(A) or § 1026.18(s)(2)(i)(B)(*1*), as applicable, the creditor should disclose the interest rate corresponding to the first installment due under the permanent phase and not any rate applicable during the construction phase.

►7. *Relation to §§ 1026.37 and 1026.38.* A creditor must disclose a projected payments table for certain transactions secured by real property, pursuant to §§ 1026.37(c) and 1026.38(c), instead of the general payment schedule required by § 1026.18(g). Accordingly, some home construction loans that are secured by real property are subject to §§ 1026.37(c) and 1026.38(c) and not § 1026.18(g). See comment app. D-6 for a discussion of transactions that are subject to § 1026.18(s). Under § 1026.17(c)(6)(ii), when a multiple-advance construction loan may be permanently financed by the same creditor, the construction phase and the permanent phase may be treated as either one transaction or more than one transaction. Following are illustrations of the application of appendix D to transactions subject to §§ 1026.37(c) and 1026.38(c), under each of these two alternatives:

i. If a creditor uses appendix D and elects pursuant to § 1026.17(c)(6)(ii) to disclose the construction and permanent phases as separate transactions, the construction phase must be disclosed according to the rules in §§ 1026.37(c) and 1026.38(c). Under §§ 1026.37(c) and 1026.38(c), the creditor must disclose the periodic payments during the construction phase in a projected payments table. The provision in appendix D, part I.A.3, which allows the creditor to omit the number and amounts of any interest payments "in disclosing the payment schedule under § 1026.18(g)" does not apply because the transaction is governed by §§ 1026.37(c) and 1026.38(c) rather than § 1026.18(g). The creditor determines the amount of the interest-only payment to be made during the construction phase using the assumption in appendix D, part I.A.1. Also, because the construction phase is being disclosed as a separate transaction and its

terms do not repay all principal, the creditor must disclose the construction phase transaction as a product with a balloon payment feature, pursuant to §§ 1026.37(a)(10)(ii)(D) and 1026.38(a)(5)(iii), in addition to reflecting the balloon payment in the projected payments table.

ii. If the creditor elects to disclose the construction and permanent phases as a single transaction, the repayment schedule must be disclosed pursuant to appendix D, part II.C.2. Under appendix D, part II.C.2, the projected payments table must reflect the interest-only payments during the construction phase in a first column, followed by the appropriate column(s) reflecting the amortizing payments for the permanent phase. The creditor determines the amount of the interest-only payment to be made during the construction phase using the assumption in appendix D, part II.A.1.◄

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APPENDIX H—CLOSED-END **[**MODEL**]** FORMS AND CLAUSES

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16. *Samples H-13 through H-15.* These samples illustrate various **[**mortgage**]** ►closed-end◄ transactions. ►Samples H-13 and H-15 are for transactions subject to § 1026.17(a).◄ **[**They assume that the mortgages are subject to the Real Estate Settlement Procedures Act (RESPA). As a result, no option regarding the itemization of the amount financed has been included in the samples, because providing the good faith estimates of settlement costs required by RESPA satisfies Truth in Lending's amount financed itemization requirement. (*See* § 1026.18(c).)**]** ►Samples H-13 and H-15 do not illustrate the requirements of § 1026.18(c) or (p) regarding the itemization of the amount financed and a reference to contract documents. See form H-2 for a model for these requirements.◄

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19. *Sample H-15.* This sample illustrates a graduated payment **[**mortgage**]** ►transaction subject to § 1026.17(a)◄ with a 5-year graduation period and a 7 ½ percent yearly increase in payments. The loan amount is $44,900, payable in 360 monthly installments at a simple interest rate of 14.75%. Two points ($898), as well as an initial **[**mortgage**]** guarantee insurance premium of $225.00, are included in the prepaid finance charge. The **[**mortgage**]** guarantee insurance premiums are calculated on the basis of ¼ of 1% of the outstanding principal balance under an annual reduction plan. The abbreviated disclosure permitted under § 1026.18(g)(2) is used for the payment schedule for years 6 through 30. The prepayment disclosure refers to both penalties and rebates because information about penalties is required for the simple interest portion of the obligation and information about rebates is required for the **[**mortgage**]** ►guarantee◄ insurance portion of the obligation.

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