

## **§ 1026.37(b) Loan terms.**

### **§ 1026.37 Content of disclosures for certain mortgage transactions (Loan Estimate).**

For each transaction subject to § 1026.19(e), the creditor shall disclose the information in this section, as applicable:

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#### **Commentary**

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.

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(b) *Loan terms.* A separate table labeled “Loan Terms” that includes the following information and satisfies the following requirements:

(1) *Loan amount.* The amount of credit to be extended under the terms of the legal obligation, labeled the “Loan Amount.”

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**Commentary: 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.

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(2) *Interest rate.* The initial interest rate that will be applicable to the transaction, labeled the “Interest Rate.” If the initial interest rate may adjust based on an index, the amount disclosed shall be the fully-indexed rate, which, for purposes of this paragraph, means the interest rate calculated using the index value and margin at the time of consummation.

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**Commentary: 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.

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(3) *Principal and interest payment.* The initial periodic payment amount that will be due under the terms of the legal obligation, labeled “Principal & Interest,” immediately preceded by the applicable unit-period, and a statement referring to the payment amount that includes any mortgage insurance and escrow payments that is required to be disclosed pursuant to paragraph (c) of this section. If the initial periodic payment amount may adjust based on an index, the amount disclosed shall be calculated using the fully-indexed rate disclosed under paragraph (b)(2) of this section.

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**Commentary: 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.

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(4) *Prepayment penalty.* A statement of whether the transaction includes a prepayment penalty, labeled “Prepayment Penalty.” For purposes of this paragraph (b)(4), “prepayment penalty” means a charge imposed for paying all or part of a transaction’s principal before the date on which the principal is due.

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**Commentary: 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.

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(5) *Balloon payment.* A statement of whether the transaction includes a balloon payment, labeled “Balloon Payment.” For purposes of this paragraph (b)(5), “balloon payment” means a payment that is more than two times a regular periodic payment and is not itself a regular periodic payment. “Balloon payment” includes the payment or payments under a transaction that requires only one or two payments during the loan term.

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**Commentary: 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.

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(6) *Adjustments after consummation.* For each amount required to be disclosed by paragraphs (b)(1) through (3) of this section, a statement of whether the amount may increase after consummation as an affirmative or negative answer to the question “Can this amount increase after closing?” and, if in the case of an affirmative answer, the following additional information, as applicable:

(i) *Adjustment in loan amount.* The maximum principal balance for the transaction and the due date of the last payment that may cause the principal balance to increase. The disclosure shall indicate whether the maximum principal balance is potential or is scheduled to occur under the terms of the legal obligation using the phrase “Can go as high as” or “Will go as high as,” respectively.

(ii) *Adjustment in interest rate.* The frequency of interest rate adjustments, the date when the interest rate may first adjust, the maximum interest rate, and the first date when

the interest rate can reach the maximum interest rate, followed by a reference to the disclosure required by paragraph (j) of this section. If the loan term, as defined under paragraph (a)(8) of this section, may increase based on an adjustment of the interest rate, the disclosure required by this paragraph (b)(6)(ii) shall also state that fact and the maximum possible loan term.

(iii) *Increase in periodic payment.* The scheduled frequency of adjustments to the periodic principal and interest payment, the due date of the first adjusted principal and interest payment, the maximum possible periodic principal and interest payment, and the date when the periodic principal and interest payment may first equal the maximum principal and interest payment. If any adjustments to the principal and interest payment are not the result of a change to the interest rate, a reference to the disclosure required by paragraph (i) of this section. If there is a period during which only interest is

required to be paid, the disclosure required by this paragraph (b)(6)(iii) shall also state the due date of the last periodic payment of such period.

*(7) Details about prepayment penalty and balloon payment.* The information required to be disclosed by paragraphs (b)(4) and (5) of this section shall be disclosed as an affirmative or negative answer to the question “Does the loan have these features?” If an affirmative answer for a prepayment penalty or balloon payment is required to be disclosed, the following information, as applicable:

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

(i) The maximum amount of the prepayment penalty that may be imposed and the date when the period under which the penalty may be imposed terminates; and

(ii) The maximum amount of the balloon payment(s) and the due date(s).

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.

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(8) *Timing.* The dates required to be disclosed by paragraphs (b)(6) and (7) of this section shall be disclosed as the year in which the date occurs, counting from the date that interest for the first scheduled periodic payment begins to accrue after consummation.

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**Commentary: 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.”

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