24. In Supplement I to Part 1026:

A. Under *Section 1026.1—Authority, Purpose, Coverage, Organization, Enforcement and Liability*:

1. Under the subheading *1(c) Coverage,* paragraph 1(c)(5)-1 is removed and the subheading *Paragraph 1(c)(5)* and paragraph 1 under that subheading are added.

ii. The subheading *1(d) Organization,* the subheading *Paragraph 1(d)(5)* and paragraph 1 under that subheading are added.

B. Under *Section 1026.2—Definitions and Rules of Construction*:

i. The subheading *2(a)(3) Application* and paragraphs 1, 2, and 3 under that subheading are added.

ii. Under subheading *2(a)(6) Business day*, paragraph 2 is revised.

iii. Under subheading *2(a)(25) Security interest*, paragraph 2 is revised.

C. Under *Section 1026.3—Exempt Transactions*:

i. Under subheading *3(a) Business, commercial, agricultural, or organizational credit*, paragraphs 9 and 10 are revised.

ii. The subheading *3(h) Partial exemption for certain mortgage loans* and paragraphs 1. and 2. under that subheading are added.

D. Under *Section 1026.17—General Disclosure Requirements*:

i. Paragraph 1 is added.

ii. Under subheading *17(a) Form of disclosures*, subheading *Paragraph 17(a)(1),* paragraph 7 is revised.

iii. Under subheading *17(c) Basis of disclosures and use of estimates*:

a. Under subheading *Paragraph 17(c)(1)*, paragraphs 1, 2, 3, 4, 5, 8, 10, 11, and 12 are revised and paragraph 19 is added.

b. Under subheading *Paragraph 17(c)(2)(i)*, paragraphs 1, 2, and 3 are revised.

c. Under subheading *Paragraph 17(c)(2)(ii)*, paragraph 1 is revised.

d. Under subheading *Paragraph 17(c)(4)*, paragraph 1 is revised.

e. Under subheading *Paragraph 17(c)(5)*, paragraphs 2, 3, and 4 are revised.

iv. Under subheading *17(d) Multiple creditors; multiple consumers*, paragraph 2 is revised.

v. Under subheading *17(e) Effect of subsequent events*, paragraph 1 is revised.

vi. Under subheading *17(f) Early disclosures*, paragraphs 1, 2, 3, and 4 are revised.

vii. Under subheading *17(g) Mail or telephone orders—delay in disclosures*, paragraph 1 is revised.

viii. Under subheading *17(h) Series of sales—delay in disclosures*, paragraph 1 is revised.

E. Under *Section 1026.18—Content of Disclosures*:

i. Paragraph 3 is added.

ii. Under subheading *18(b) Amount financed*:

a. Paragraph 2 is removed.

ii. Under subheading *18(c) Itemization of amount financed*:

a. Paragraph 4 is revised.

b. Under subheading *Paragraph 18(c)(1)(iv)*, paragraph 2 is revised.

iii. Under subheading *18(g) Payment schedule*:

a. Paragraphs 4 and 6 are revised.

b. Paragraph 5 is removed and reserved.

c. Under subheading *Paragraph 18(g)(2)*, paragraphs 1 and 2 are revised.

iv. Under subheading *18(k) Prepayment*:

a. Paragraphs 1, 2, and 3 are revised.

b. Under subheading *Paragraph 18(k)(1)*, paragraph 1 is revised and paragraph 2 is added.

c. Under subheading *Paragraph 18(k)(2)*, paragraph 1 is revised.

v. Under subheading *18(r) Required deposit*, paragraph 6.vi is removed and reserved.

vi. Under subheading *18(s) Interest rate and payment summary for mortgage transactions*:

a. Paragraph 1. is revised and paragraph 4 is added.

b. Under subheading *18(s)(3) Payments for amortizing loans*, subheading *Paragraph 18(s)(3)(i)(C)*, paragraphs 1 and 2 are revised.

c. Under subheading *18(s)(6) Special disclosures for loans with negative amortization*, paragraph 1 is revised.

F. Under *Section 1026.19—Certain Mortgage and Variable-Rate Transactions*:

i. Under subheading *19(a)(1)(i) Time of disclosures*, paragraph 1 is revised.

ii. Under subheading *19(a)(5) Timeshare plans:*

a. The subheading *19(a)(5) Timeshare plans* is removed.

b. The subheading *Paragraph 19(a)(5)(ii)* and paragraphs 1, 2, 3, 4, and 5 under that subheading are removed.

c. The subheading *Paragraph 19(a)(5)(iii)* and paragraphs 1 and 2 under that subheading are removed.

iii. New subheadings *19(e) Mortgage loans secured by real property—Early disclosures*, *19(f) Mortgage loans secured by real property—Final disclosures,* and *19(g) Special information booklet at time of application* are added.

G. Under *Section 1026.20—Disclosure Requirements Regarding Post-Consummation Events*:

i. New subheading *20(e) Escrow account cancellation notice for certain mortgage transactions* is added.

H. Under *Section 1026.22—Determination of Annual Percentage Rate*, subheading *22(a) Accuracy of annual percentage rate,* subheading *22(a)(4) Mortgage loans*, paragraph 1 is revised.

I. Under *Section 1026.24—Advertising, subheading 24(d) Advertisement of terms that require additional disclosures*, subheading *24(d)(2) Additional terms*, paragraph 2 is revised.

J. Under *Section 1026.25—Record Retention,* subheading *25(c) Records related to certain requirements for mortgage loans*:

i. The subheading *25(c)(1) Records related to requirements for loans secured by real property* and paragraphs 1 and 2 under that subheading are added.

K. Under *Section 1026.28—Effect on State Laws*, subheading *28(a) Inconsistent disclosure requirements*, paragraph 1 is revised.

L. Under *Section 1026.29—State Exemptions*, subheading *29(a) General rule*, paragraphs 2 and 4 are revised.

M. New *Section 1026.37—Content of Disclosures for Certain Mortgage Transactions (Loan Estimate)* is added.

N. New *Section 1026.38—Content of Disclosures for Certain Mortgage Transactions (Closing Disclosure)* is added.

O. Under *Section 1026.39—Mortgage transfer disclosures*, subheading *39(d) Content of required disclosures*:

i. Paragraph 2 is added.

ii. The subheading *Paragraph 39(d)(5)* and paragraph 1 under that subheading are added.

P. Under *Appendix D—Multiple-Advance Construction Loans*, paragraphs 6 and 7 are revised.

Q. Under *Appendices G and H—Open-End and Closed-End Model Forms and Clauses*, paragraph 1 is revised.

R. The subheading *Appendix H—Closed-End Model Forms and Clauses* is revised.

i. Paragraphs 16 and 19 are revised.

ii. Paragraphs 29 and 30 are added.

The revisions and additions read as follows:

Supplement I to Part 1026—Official Interpretations

* * * * *

SUBPART A—GENERAL

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

1(c) Coverage.

* * * * *

Paragraph 1(c)(5).

1. *Exemption for certain mortgage transactions.* 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),

129D(j)(1)(A), and 129D(j)(1)(B) 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, except in certain transactions. The exemptions do not apply to certain transactions for which the disclosure requirements are implemented in other parts of Regulation Z. Sections 1026.37 and 1026.38 implement sections 128(a)(16) through (19), 128(b)(4), 129C(f)(1), 129C(g)(2) and (3), 129D(h), and 129D(j)(1)(A) of the Truth in Lending Act and section 4(c) of the Real Estate Settlement Procedures Act for transactions subject to § 1026.19(e) and (f). Section 1026.38(l)(5) implements the disclosure requirements of section 129C(h) of the Truth in Lending Act for transactions subject to § 1026.19(f). Section 1026.39(d)(5) implements the disclosure requirements of section 129C(h) of the Truth in Lending Act for transactions subject to § 1026.39(d)(5). Section 1026.20(e) implements the disclosure requirements of section 129D(j)(1)(B) of the Truth in Lending Act for transactions subject to § 1026.20(e). 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.

1(d) Organization.

Paragraph 1(d)(5).

1. *Effective date.* The Bureau's revisions to Regulation X and Regulation Z published on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] (the TILA-RESPA Final Rule), apply to covered loans (closed-end credit transactions secured by real property) for which the creditor or mortgage broker receives an application on or after August 1, 2015 (the "effective date"), except that new § 1026.19(e)(2), the amendments to § 1026.28(a)(1), and the amendments to the commentary to § 1026.29, become effective on August 1, 2015 without respect to whether an application has been received. The provisions of § 1026.19(e)(2) apply

prior to a consumer's receipt of the disclosures required by § 1026.19(e)(1)(i), and therefore, restrict activity that may occur prior to receipt of an application by a creditor or mortgage broker under § 1026.19(e). These provisions include § 1026.19(e)(2)(i), which restricts the fees that may be imposed on a consumer, § 1026.19(e)(2)(ii), which requires a statement to be included on written estimates of terms or costs specific to a consumer, and § 1026.19(e)(2)(iii), which prohibits creditors from requiring the submission of documents verifying information related to the consumer's application. Accordingly, the provisions under § 1026.19(e)(2) are effective on August 1, 2015, without respect to whether an application has been received on that date. In addition, the amendments to § 1026.28 and the commentary to § 1026.29 govern the preemption of State laws and thus, the amendments to those provisions and associated commentary made by the TILA-RESPA Final Rule are effective on August 1, 2015, without respect to whether an application has been received on that date. The following examples illustrate the application of the effective date for the TILA-RESPA Final Rule.

i. *General.* Assume a creditor receives an application, as defined under § 1026.2(a)(3) of the TILA-RESPA Final Rule, for a transaction subject to § 1026.19(e) and (f) on August 1, 2015, and that consummation of the transaction occurs on August 31, 2015. The amendments of the TILA-RESPA Final Rule, including the requirements to provide the Loan Estimate and Closing Disclosure under § 1026.19(e) and (f), apply to the transaction. The creditor would also be required to provide the special information booklet under § 1026.19(g) of the TILA-RESPA Final Rule, as applicable. Assume a creditor receives an application, as defined under § 1026.2(a)(3) of the TILA-RESPA Final Rule, for a transaction subject to § 1026.19(e) and (f) on July 31, 2015, and that consummation of the transaction occurs on August 30, 2015. The amendments of the TILA-RESPA Final Rule, including the requirements to provide the Loan

Estimate and Closing Disclosure under § 1026.19(e) and (f), do not apply to the transaction, except that the provisions of § 1026.19(e)(2), specifically § 1026.19(e)(2)(i), (e)(2)(ii), and (e)(2)(iii), do apply to the transaction beginning on August 1, 2015 because they become effective on August 1, 2015, without respect to whether an application, as defined under § 1026.2(a)(3) of the TILA-RESPA Final Rule, has been received by the creditor or mortgage broker on that date. The creditor does not provide the Closing Disclosure so that it is received by the consumer at least three business days before consummation; instead, the creditor and the settlement agent provide the disclosures under § 1026.19(a)(2)(ii) and § 1024.8, as applicable, under the Truth in Lending Act and the Real Estate Settlement Procedures Act, respectively. The requirement to provide the special information booklet under § 1026.19(g) of the TILA-RESPA Final Rule would also not apply to the transaction. But the creditor would provide the special information booklet under § 1024.6, as applicable.

ii. *Predisclosure written estimates.* Assume a creditor receives a request from a consumer for a written estimate of terms or costs specific to the consumer on August 1, 2015, before the consumer submits an application to the creditor, and thus, before the consumer has received the disclosures required under § 1026.19(e)(1)(i). The creditor, if it provides such written estimate to the consumer, must comply with the requirements of § 1026.19(e)(2)(ii) and provide the required statement on the written estimate, even though the creditor has not received an application for a transaction subject to § 1026.19(e) and (f) on that date.

iii. *Request for preemption determination.* Assume a creditor submits a request to the Bureau under § 1026.28(a)(1) for a determination of whether a State law is inconsistent with the disclosure requirements of the TILA-RESPA Final Rule on August 1, 2015. Because the amendments to § 1026.28(a)(1) are effective on that date and do not depend on whether the

creditor has received an application as defined under § 1026.2(a)(3) of the TILA-RESPA Final Rule, § 1026.28(a)(1), as amended by the TILA-RESPA Final Rule, is applicable to the request on that date and the Bureau would make a determination based on the amendments of the TILA-RESPA Final Rule, including, for example, the requirements of § 1026.37.

Section 1026.2—Definitions and Rules of Construction

* * * * *

2(a)(3) Application.

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

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

has not yet received an application for purposes of § 1026.2(a)(3).

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

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

3. *Receipt of credit report fees.* Section 1026.19(a)(1)(iii) permits the imposition of a fee to obtain the consumer's credit history prior to the delivery of the disclosures required under § 1026.19(a)(1)(i). Section 1026.19(e)(2)(i)(B) permits the imposition of a fee to obtain the consumer's credit report prior to the delivery of the disclosures required under § 1026.19(e)(1)(i). Whether, or when, such fees are received does not affect whether an application has been received for the purposes of the definition in § 1026.2(a)(3) and the timing requirements in § 1026.19(a)(1)(i) and (e)(1)(iii). For example, if, in a transaction subject to § 1026.19(e)(1)(i), a creditor receives the six pieces of information identified under

§ 1026.2(a)(3)(ii) on Monday, June 1, but does not receive a credit report fee from the consumer until Tuesday, June 2, the creditor does not comply with § 1026.19(e)(1)(iii) if it provides the disclosures required under § 1026.19(e)(1)(i) after Thursday, June 4. The three-business-day period beings on Monday, June 1, the date the creditor received the six pieces of information. The waiting period does not begin on Tuesday, June 2, the date the creditor received the credit report fee.

* * * * *

2(a)(6) Business day.

* * * * *

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- or real estate-secured mortgage transactions under §§ 1026.19(a)(1)(ii), 1026.19(a)(2), 1026.19(e)(1)(iii)(B), 1026.19(e)(1)(iv), 1026.19(e)(2)(i)(A), 1026.19(e)(4)(ii), 1026.19(f)(1)(ii), 1026.19(f)(1)(iii), 1026.20(e)(5), 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.

* * * * *

2(a)(25) Security interest.

* * * * *

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 purposes of the Truth in Lending Act (15 U.S.C. 1601 *et seq.*) and Regulation Z.

* * * * *

Section 1026.3—Exempt Transactions

* * * * *

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

* * * * *

9. *Organizational credit.* The exemption for transactions in which the borrower is not a natural person applies, for example, to loans to corporations, partnerships, associations, churches, unions, and fraternal organizations. The exemption applies regardless of the purpose of the credit extension and regardless of the fact that a natural person may guarantee or provide security for the credit. *But see* comment 3(a)-10 concerning credit extended to trusts.

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

i. *Trusts for tax or estate planning purposes.* In some instances, a creditor may extend

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

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

* * * * *

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).

* * * * *

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), and § 1026.20(e). For the disclosures required by § 1026.19(e), (f), and (g), 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). For the disclosures required by § 1026.20(e), rules regarding the disclosures' form are found in § 1026.20(e)(4) and rules regarding timing are found in § 1026.20(e)(5).

17(a) Form of disclosures.

Paragraph 17(a)(1).

* * * * *

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 terms to which the consumer and creditor are legally bound as of the outset of the transaction. In the case of disclosures required under § 1026.20(c), (d), and (e), the disclosures shall reflect the credit terms to which the 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 consumer and creditor legally modifies that note or contract. If the 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:

* * * * *

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 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 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 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 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 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 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 given by the bank must not reflect the seller buydown in any way. For example, the annual percentage rate and 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 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 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 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 given for the mortgage, the creditor must reflect the terms of the buydown agreement.

i. For example:

* * * * *

C. The 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 disclosures must reflect that the transaction is a step rate product under §§ 1026.37(a)(10)(B) 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 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 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 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 the disclosures required under §§ 1026.18(g) and

(s), 1026.37(c), 1026.37(l)(1) and (3), 1026.38(c), and 1026.38(o)(5), 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), 1026.37(l)(1) and (3), 1026.38(c), and 1026.38(o)(5) 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 should be $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), 1026.37(l)(1) and (3), 1026.38(c), and 1026.38(o)(5) 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 should be $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), 1026.37(l)(1) and (3), 1026.38(c), and 1026.38(o)(5) 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 should be $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 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 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 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 under §§ 1026.37 and 1026.38, 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) and (f), use of the Loan Estimate form H-24 of appendix H to this part pursuant to § 1026.37(o) or the Closing Disclosure form H-25 of appendix H to this part pursuant to § 1026.38(t), respectively, satisfies the requirement that the disclosure state clearly that the disclosure is an estimate. For all other disclosures, even though they are based on the same assumption on which a specific estimated disclosure was based, the creditor has 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 comply with § 1026.17(c)(2)(i) by basing 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 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 disclose the actual amount of per diem interest that will be collected at consummation, subject only to the disclosure rules in those sections.

* * * * *

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), the disclosures required pursuant to §§ 1026.18(s), 1026.37(c), or 1026.38(c), or the 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. The disclosures for 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 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.

* * * * *

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. When two consumers are joint obligors with primary liability on an obligation, the early disclosures required by § 1026.19(a), (e), or (g), as applicable, may be provided to any one of them. In rescindable transactions, the disclosures required by § 1026.19(f) must be given separately to each consumer who has the right to rescind under § 1026.23. In transactions that are not rescindable, the disclosures required by § 1026.19(f) may be provided to any consumer with primary liability on the obligation. *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 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, in some cases after consummation under § 1026.19(f), 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)(2) 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 § 1026.17(f) even if the prior disclosures would be considered accurate under the tolerances in § 1026.18(d) or 1026.22(a). To illustrate:

i. *Transactions not secured by real property*. A. For transactions not secured by real property, 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).

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).

ii. *Reverse mortgages.* In a transaction subject to § 1026.19(a) and not § 1026.19(e) and (f), assume that, at the time 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. Assume further that consummation actually occurs on August 5, and per-diem

interest for the remainder of August is collected as a prepaid finance charge. 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, assume that, 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. Assume further that 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, other than reverse mortgages.

3. *Content of new disclosures.* Except as provided by § 1026.19(e) and (f), 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.

* * * * *

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) and (f), 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:

* * * * *

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

1. *Applicability.* Except for extensions of credit covered by § 1026.19(a) or (e) and (f), 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 § 1026.17(h) 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(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 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(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 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]

6. *Mortgage transactions.* Section 1026.18(g) applies 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). *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 is not subject to the requirements of § 1026.18(s) or §§ 1026.37(c) and 1026.38(c).

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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. 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 § 1026.18(g)(2) 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 where payments rise sharply for five years and then decline over the next 25 years,

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).

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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 rebate 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. However, the term prepayment penalty does not include a waived bona fide third-party charge imposed by the creditor if the consumer pays all of a covered transaction's principal before the date on which the principal is due sooner than 36 months after consummation. For example, assume that at consummation, the creditor waives $3,000 in closing costs to cover bona fide third-party charges but the terms of the loan agreement provide that the creditor may recoup the $3,000 in waived charges if the consumer repays the entire loan balance sooner than 36 months after consummation. The $3,000 charge is not a prepayment penalty. In contrast, for example, assume that at consummation, the creditor waives $3,000 in closing costs to cover bona fide third-party charges but the terms of the loan agreement provide that the creditor may recoup $4,500 in part to recoup waived charges, if the consumer repays the entire loan balance sooner than 36 months after consummation. The $3,000 that the creditor may impose to cover the waived bona fide third-party charges is not a prepayment penalty, but the additional $1,500 charge is a prepayment penalty and must be disclosed pursuant to § 1026.37(k)(1).

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, if such fees are imposed whether or not the loan is prepaid. Examples include a loan payoff statement, a reconveyance document, or another document releasing the creditor's security interest in the dwelling that secures the loan.

ii. Loan guarantee fees.

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 an 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 § 1026.18(k)(2).

* * * * *

18(r) Required deposit.

* * * * *

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]

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. 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 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.

* * * * *

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

1. *Taxes and insurance.* An estimated payment amount for taxes and insurance must be disclosed if the creditor will establish an escrow account for such amounts. If the escrow account will include amounts for items other than taxes and insurance, such as homeowners association dues, the creditor may but is not required to include such items in the estimate. When such estimated escrow payments must be disclosed in multiple columns of the table, such as for adjustable- and step-rate transactions, each column should use the same estimate for taxes and insurance except that the estimate should reflect changes in periodic mortgage insurance premiums or any functionally equivalent fee that are known to the creditor at the time the disclosure is made. The estimated amounts of mortgage insurance premiums or any functionally equivalent fee should be based on the declining principal balance that will occur as a result of changes to the interest rate that are assumed for purposes of disclosing those rates under § 1026.18(s)(2) and accompanying commentary. The payment amount must include estimated amounts for property taxes and premiums for mortgage-related insurance required by the creditor, such as insurance against loss of or damage to property, or against liability arising out

of the ownership or use of the property, or insurance protecting the creditor against the consumer's default or other credit loss. Premiums for credit insurance, debt suspension and debt cancellation agreements, however, should not be included. Except for periodic mortgage insurance premiums or any functionally equivalent fee included in the escrow payment under § 1026.18(s)(3)(i)(C), amounts included in the escrow payment disclosure such as property taxes and homeowner's insurance generally are not finance charges under § 1026.4 and, therefore, do not affect other disclosures, including the finance charge and annual percentage rate.

2. *Mortgage insurance or any functional equivalent.* For purposes of § 1026.18(s), "mortgage insurance or any functional equivalent" means the amounts identified in § 1026.4(b)(5). "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.

* * * * *

18(s)(6) Special disclosures for loans with negative amortization.

1. *Escrows.* See the commentary under § 1026.18(s)(3)(i)(C) for guidance on escrows for purposes of § 1026.18(s)(6). Under that guidance, because mortgage insurance payments and functionally equivalent fees decline over a loan's term, the payment amounts shown in the table should reflect the mortgage insurance payment and functionally equivalent fees that will be applicable at the time each disclosed periodic payment will be in effect. Accordingly, the disclosed mortgage insurance payment or functionally equivalent fee will be zero if it corresponds to a periodic payment that will occur after the creditor will be legally required to terminate mortgage insurance or any functional equivalent. On the other hand, because only one escrow amount is disclosed under § 1026.18(s)(6) for negative amortization loans and escrows that are not itemized in the payment amounts, the single escrow amount disclosed should reflect the mortgage insurance amount or any functionally equivalent fee that will be collected at the outset of the loan's term, even though that amount will decline in the future and ultimately will be discontinued pursuant to the terms of the mortgage insurance policy.

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Section 1026.19—Certain Mortgage and Variable-Rate Transactions

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

1. *Coverage.* Section 1026.19(a) requires early disclosure of credit terms in reverse mortgage transactions subject to § 1026.33 that are secured by a consumer's dwelling 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(b)), and is subject to any interpretations by the Bureau.

* * * * *

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

1. *Affiliate.* The term "affiliate," as used in § 1026.19(e), has the same meaning as in § 1026.32(b)(5).

19(e)(1) Provision of 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 § 1026.17(c)(2)(i). Section 1026.17(c)(2)(i) provides that if any information necessary for an accurate disclosure is unknown to the creditor, the creditor shall make the disclosure based on the best information reasonably available to the creditor at the time the disclosure is provided to the consumer. The "reasonably available" standard requires that the creditor, acting in good faith, exercise due diligence in obtaining information. See comment 17(c)(2)(i)-1 for an explanation of the standard set forth in § 1026.17(c)(2)(i). See comment 17(c)(2)(i)-2 for labeling disclosures required under

§ 1026.19(e) that are estimates.

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

1. *Mortgage broker responsibilities.* Section 1026.19(e)(1)(ii)(A) provides that if a mortgage broker receives a consumer's application, either the creditor or the mortgage broker must provide the consumer with the disclosures required under § 1026.19(e)(1)(i) in accordance with § 1026.19(e)(1)(iii). Section 1026.19(e)(1)(ii)(A) also provides that if the mortgage broker provides the required disclosures, it must comply with all relevant requirements of § 1026.19(e). This means that "mortgage broker" should be read in the place of "creditor" for all provisions of § 1026.19(e), except to the extent that such a reading would create responsibility for mortgage brokers under § 1026.19(f). To illustrate, comment 19(e)(4)(ii)-1 states that creditors comply with the requirements of § 1026.19(e)(4) if the revised disclosures are reflected in the disclosures required by § 1026.19(f)(1)(i). "Mortgage broker" could not be read in place of "creditor" in comment 19(e)(4)(ii)-1 because mortgage brokers are not responsible for the disclosures required under § 1026.19(f)(1)(i). In addition, § 1026.19(e)(1)(ii)(A) provides that the creditor must ensure that disclosures provided by mortgage brokers comply with all requirements of § 1026.19(e), and that disclosures provided by mortgage brokers that do comply with all such requirements satisfy the creditor's obligation under § 1026.19(e). The term "mortgage broker," as used in § 1026.19(e)(1)(ii), has the same meaning as in § 1026.36(a)(2). *See also* comment 36(a)-2. Section 1026.19(e)(1)(ii)(B) provides that if a mortgage broker provides any disclosure required under § 1026.19(e), the mortgage broker must also comply with the requirements of § 1026.25(c). For example, if a mortgage broker provides the disclosures required under § 1026.19(e)(1)(i), it must maintain records for three years, in compliance with § 1026.25(c)(1)(i).

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

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)(A), the term "business day" means a day on which the creditor's offices are open to the public for carrying out substantially all of its business functions. *See* § 1026.2(a)(6).

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

Saturday is a business day, pursuant to § 1026.2(a)(6).

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

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

19(e)(1)(iv) Receipt of early disclosures.

1. *Mail delivery.* Section 1026.19(e)(1)(iv) provides that, if any disclosures required under § 1026.19(e)(1)(i) are not provided to the consumer in person, the consumer is considered to have received the disclosures three business days after they are delivered or placed in the mail.

The creditor may, alternatively, rely on evidence that the consumer received the disclosures earlier than three business days. For example, if the creditor sends the disclosures via overnight mail on Monday, and the consumer signs for receipt of the overnight delivery on Tuesday, the creditor could demonstrate that the disclosures were received on Tuesday.

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

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 circumstances of the individual situation. The imminent sale of the consumer's home at foreclosure, where the foreclosure sale will proceed unless loan proceeds are made available to the consumer during the waiting period, is one example of a bona fide personal financial emergency. Each consumer who is primarily liable on the legal obligation must sign the written statement for the waiver to be effective.

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

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

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

creditor does not permit the consumer to shop consistent with § 1026.19(e)(1)(vi)(A).

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

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

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

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

such a statement.

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

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

19(e)(2) Predisclosure 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*. Section 1026.19(e)(2)(i)(A) provides that a consumer may indicate an intent to proceed with a transaction in any manner the consumer chooses, unless a particular manner of communication is required by the creditor. The creditor must document this communication to satisfy the requirements of § 1026.25. For example, oral communication in person immediately upon delivery of the disclosures required by § 1026.19(e)(1)(i) is sufficiently indicative of intent. Oral communication over the phone, written communication via email, or signing a pre-printed form are also sufficiently indicative of intent if such actions occur after receipt of the disclosures required by § 1026.19(e)(1)(i). However, a consumer's silence is not indicative of intent because it cannot be documented to satisfy the requirements of § 1026.25. For example, a creditor or third party may not deliver the disclosures, wait for some period of time for the consumer to respond, and then charge the consumer a fee for an appraisal if the consumer does not respond, even if the creditor or third party disclosed that it would do so.

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

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

i. A creditor receives a consumer's application directly from the consumer and does not impose any fee, other than a bona fide and reasonable fee for obtaining a consumer's credit

report, until the consumer receives the disclosures required under § 1026.19(e)(1)(i) and indicates an intent to proceed with the transaction described by those disclosures.

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

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

5. *Fees "imposed by" a person.* For purposes of § 1026.19(e), a fee is "imposed by" a person if the person requires a consumer to provide a method for payment, even if the payment is not made at that time. For example, if a creditor or other person requires the consumer to provide a $500 check to pay for a "processing fee" before the consumer receives the disclosures required by § 1026.19(e)(1)(i), the creditor or other person does not comply with § 1026.19(e)(2)(i), even if the creditor or other person had stated that the check will not be cashed until after the disclosures required by § 1026.19(e)(1)(i) are received by the consumer and waited until after the consumer subsequently indicated an intent to proceed to cash the check. Similarly, a creditor or other person does not comply with the requirements of § 1026.19(e)(2)(i) if the creditor or other person requires the consumer to provide a credit card

number before the consumer receives the disclosures required by § 1026.19(e)(1)(i), even if the creditor or other person had promised not to charge the consumer's credit card for the $500 processing fee until after the disclosures required by § 1026.19(e)(1)(i) are received by the consumer and waited until after the consumer subsequently indicated an intent to proceed. In contrast, a creditor or other person complies with § 1026.19(e)(2)(i) if the creditor or other person requires the consumer to provide a credit card number before the consumer receives the disclosures required by § 1026.19(e)(1)(i) and subsequently indicates an intent to proceed, provided that the consumer's authorization is only to pay for the cost of a credit report and the creditor or other person only charges a reasonable and bona fide fee for obtaining the consumer's credit report. This is so even if the creditor or other person maintains the consumer's credit card number on file and charges the consumer a $500 processing fee after the disclosures required by § 1026.19(e)(1)(i) are received and the consumer subsequently indicates an intent to proceed with the transaction described by those disclosures, provided that the creditor or other person requested and received a separate authorization from the consumer for the processing fee after the consumer received the disclosures required by § 1026.19(e)(1)(i) and indicated an intent to proceed with the transaction described by those disclosures.

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

report fee."

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

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

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

1. *Requirements*. The creditor or other person may collect from the consumer any information that it requires prior to providing the early disclosures before or at the same time as collecting the information listed in § 1026.2(a)(3)(ii). However, the creditor or other person is not permitted to require, before providing the disclosures required by § 1026.19(e)(1)(i), that the

consumer submit documentation to verify the information collected from the consumer. See also § 1026.2(a)(3) and the related commentary regarding the definition of application. To illustrate:

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

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

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

i. Fees paid to the creditor.

ii. Fees paid to a mortgage broker.

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

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

v. Transfer taxes.

2. *Charges "paid by or imposed on the consumer."* For purposes of § 1026.19(e), a charge "paid by or imposed on the consumer" refers to the final amount for the charge paid by or imposed on the consumer at consummation or settlement, whichever is later. "Consummation" is defined in § 1026.2(a)(13). "Settlement" is defined in Regulation X, 12 CFR 1024.2(b). For example, at consummation, the consumer pays the creditor $100 for recording fees. Settlement of the transaction concludes five days after consummation, and the actual recording fees are $70. The creditor refunds the consumer $30 immediately after recording. The recording fee paid by the consumer is $70.

3. *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. For example, if a consumer pays the creditor transfer taxes and recording fees at the real estate closing and the creditor subsequently uses those funds to pay the county that imposed these charges, then the transfer taxes and recording fees are not "paid to" the creditor for purposes of § 1026.19(e). Similarly, 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). A fee is also not considered "paid to" a person, for purposes of § 1026.19(e), if the person retains the fee as reimbursement for an amount it has already paid to another party. 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.

4. *Transfer taxes and recording fees.* See comments 37(g)(1)-1, -2, and -3 for a

discussion of the difference between transfer taxes and recording fees.

5. *Lender credits*. The disclosure of "lender credits," as identified in § 1026.37(g)(6)(ii), is required by § 1026.19(e)(1)(i). "Lender credits," as identified in § 1026.37(g)(6)(ii), represents the sum of non-specific lender credits and specific lender credits. Non-specific lender credits are generalized 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). Specific lender credits are specific payments, such as a credit, rebate, or reimbursement, from a creditor to the consumer to pay for a specific fee. Non-specific lender credits and specific lender credits are negative charges to the consumer. The actual total amount of lender credits, whether specific or non-specific, provided by the creditor that is less than the estimated "lender credits" identified in § 1026.37(g)(6)(ii) and disclosed pursuant to § 1026.19(e) is an increased charge to the consumer for purposes of determining good faith under § 1026.19(e)(3)(i). For example, if the creditor discloses a $750 estimate for "lender credits" pursuant to § 1026.19(e), but only $500 of lender credits is actually provided to the consumer, the creditor has not complied with § 1026.19(e)(3)(i) because the actual amount of lender credits provided is less than the estimated "lender credits" disclosed pursuant to § 1026.19(e), and is therefore, an increased charge to the consumer for purposes of determining good faith under § 1026.19(e)(3)(i). However, if the creditor discloses a $750 estimate for "lender credits" identified in § 1026.37(g)(6)(ii) to cover the cost of a $750 appraisal fee, and the appraisal fee subsequently increases by $150, and the creditor increases the amount of the lender credit by $150 to pay for the increase, the credit is not being revised in a way that violates the requirements of § 1026.19(e)(3)(i) because, although the credit increased from the amount disclosed, the amount paid by the consumer did not. However, if the creditor discloses a $750 estimate for "lender credits" to cover the cost of a $750 appraisal

fee, but subsequently reduces the credit by $50 because the appraisal fee decreased by $50, then the requirements of § 1026.19(e)(3)(i) have been violated because, although the amount of the appraisal fee decreased, the amount of the lender credit decreased. 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.

6. *Good faith analysis for lender credits.* For purposes of conducting the good faith analysis required under § 1026.19(e)(3)(i) for lender credits, the total amount of lender credits, whether specific or non-specific, actually provided to the consumer is compared to the amount of the "lender credits" identified in § 1026.37(g)(6)(ii). The total amount of lender credits actually provided to the consumer is determined by aggregating the amount of the "lender credits" identified in § 1026.38(h)(3) with the amounts paid by the creditor that are attributable to a specific loan cost or other cost, disclosed pursuant to § 1026.38(f) and (g).

7. *Use of unrounded numbers.* Sections 1026.37(o)(4) and 1026.38(t)(4) require that the dollar amounts of certain charges disclosed on the Loan Estimate and Closing Disclosure, respectively, to be rounded to the nearest whole dollar. However, to conduct the good faith analysis required under § 1026.19(e)(3)(i) and (ii), the creditor should use unrounded numbers to compare the actual charge paid by or imposed on the consumer for a settlement service with the estimated cost of the service.

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

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

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

ii. Recording fees.

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

3. *Services for which the consumer may, but does not, select a settlement service*

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

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

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

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

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

1. *Good faith requirement for prepaid interest, property insurance premiums, and escrowed amounts.* Estimates of prepaid interest, property insurance premiums, and amounts placed into an escrow, impound, reserve or similar account must be consistent with the best information reasonably available to the creditor at the time the disclosures are provided. Differences between the amounts of such charges disclosed under § 1026.19(e)(1)(i) and the amounts of such charges paid by or imposed on the consumer do not constitute a lack of good faith, so long as the original estimated charge, or lack of an estimated charge for a particular service, was based on the best information reasonably available to the creditor at the time the disclosure was provided. This means that the estimate disclosed under § 1026.19(e)(1)(i) was obtained by the creditor through due diligence, acting in good faith. *See* comments 17(c)(2)(i)-1

and 19(e)(1)(i)-1. For example, if the creditor requires homeowner's insurance but fails to include a homeowner's insurance premium on the estimates provided pursuant to § 1026.19(e)(1)(i), then the creditor's failure to disclose does not comply with § 1026.19(e)(3)(iii). However, if the creditor does not require flood insurance and the subject property is located in an area where floods frequently occur, but not specifically located in a zone where flood insurance is required, failure to include flood insurance on the original estimates provided pursuant to § 1026.19(e)(1)(i) does not constitute a lack of good faith under § 1026.19(e)(3)(iii). Or, if the creditor knows that the loan must close on the 15th of the month but estimates prepaid interest to be paid from the 30th of that month, then the under-disclosure does not comply with § 1026.19(e)(3)(iii). If, however, the creditor estimates consistent with the best information reasonably available that the loan will close on the 30th of the month and bases the estimate of prepaid interest accordingly, but the loan actually closed on the 1st of the next month instead, the creditor complies with § 1026.19(e)(3)(iii).

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 constitute a lack of good faith, so long as the original estimated charge, or lack of an estimated charge for a particular service, was based on the best information reasonably available to the creditor at the time the disclosure was provided.

For example, if the consumer informs the creditor that the consumer will choose a settlement agent not identified by the creditor on the written list provided pursuant to § 1026.19(e)(1)(vi)(C), and the creditor subsequently discloses an unreasonably low estimated settlement agent fee, then the under-disclosure does not comply with § 1026.19(e)(3)(iii). If the creditor permits the consumer to shop consistent with § 1026.19(e)(1)(vi)(A) but fails to provide the list required by § 1026.19(e)(1)(vi)(C), good faith is determined pursuant to § 1026.19(e)(3)(ii) instead of § 1026.19(e)(3)(iii) regardless of the provider selected by the consumer, unless the provider is an affiliate of the creditor in which case good faith is determined pursuant to § 1026.19(e)(3)(i).

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

closing by their own attorney, even though it is not a requirement, and the creditor fails to include a fee for the consumer's attorney, or includes an unreasonably low estimate for such fee, on the original estimates provided pursuant to § 1026.19(e)(1)(i), then the creditor's failure to disclose, or under-estimation, does not comply with § 1026.19(e)(3)(iii).

19(e)(3)(iv) Revised estimates.

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

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

3. *Documentation requirement.* In order to comply with § 1026.25, creditors must retain records demonstrating compliance with the requirements of § 1026.19(e). For example, if revised disclosures are provided because of a changed circumstance under § 1026.19(e)(3)(iv)(A) affecting settlement costs, the creditor must be able to show compliance with § 1026.19(e) by documenting the original estimate of the cost at issue, explaining the reason

for revision and how it affected settlement costs, showing that the corrected disclosure increased the estimate only to the extent that the reason for revision actually increased the cost, and showing that the timing requirements of § 1026.19(e)(4) were satisfied. However, the documentation requirement does not require separate corrected disclosures for each change. A creditor may provide corrected disclosures reflecting multiple changed circumstances, provided that the creditor's documentation demonstrates that each correction complies with the requirements of § 1026.19(e).

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

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

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

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

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

2. *Changed circumstance*. A changed circumstance may be an extraordinary event beyond the control of any interested party. For example, a war or a natural disaster would be an extraordinary event beyond the control of an interested party. A changed circumstance may also be an unexpected event specific to the consumer or the transaction. For example, if the creditor

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

3. *Six pieces of information presumed collected, but not required.* Section 1026.19(e)(1)(iii) requires creditors to deliver the disclosures not later than the third business day

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

19(e)(3)(iv)(B) Changed circumstance affecting eligibility.

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

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

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 locked when the disclosures required by § 1026.19(e)(1)(i) are provided, a valid reason for revision exists when the interest rate is subsequently locked. On the date the interest rate is locked, § 1026.19(e)(3)(iv)(D) requires the creditor to provide a revised version of the disclosures required under § 1026.19(e)(1)(i)

reflecting the revised interest rate, the points disclosed pursuant to § 1026.37(f)(1), lender credits, and any other interest rate dependent charges and terms. The following examples illustrate this requirement:

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

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

1. *Requirements.* If the consumer indicates an intent to proceed with the transaction more than ten business days after the disclosures were originally provided pursuant to § 1026.19(e)(1)(iii), for the purpose of determining good faith under § 1026.19(e)(3)(i) and (ii), a creditor may use a revised estimate of a charge instead of the amount originally disclosed under

§ 1026.19(e)(1)(i). Section 1026.19(e)(3)(iv)(E) requires no justification for the change to the original estimate other than the lapse of ten business days. For example, assume a creditor includes a $500 underwriting fee on the disclosures provided pursuant to § 1026.19(e)(1)(i) and the creditor delivers those disclosures on a Monday. If the consumer indicates intent to proceed 11 business days later, the creditor may provide new disclosures with a $700 underwriting fee. In this example, § 1026.19(e) and § 1026.25 require the creditor to document that a new disclosure was provided pursuant to § 1026.19(e)(3)(iv)(E), but do not require the creditor to document a reason for the increase in the underwriting fee.

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

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

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

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

1. *Three-business-day requirement.* Section 1026.19(e)(4)(i) provides that subject to the requirements of § 1026.19(e)(4)(ii), if a creditor uses a revised estimate pursuant to § 1026.19(e)(3)(iv) for the purpose of determining good faith under § 1026.19(e)(3)(i) and (ii), the creditor shall provide a revised version of the disclosures required under § 1026.19(e)(1)(i) reflecting the revised estimate within three business days of receiving information sufficient to

establish that one of the reasons for revision provided under § 1026.19(e)(3)(iv)(A) through (C), (E) and (F) has occurred. The following examples illustrate these requirements:

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

ii. Assume a creditor receives information on Monday that, because of a changed circumstance under § 1026.19(e)(3)(iv)(A), the title fees will increase by an amount totaling six percent of the originally estimated settlement charges subject to § 1026.19(e)(3)(ii). The creditor had received information three weeks before that, because of a changed circumstance under § 1026.19(e)(3)(iv)(A), the pest inspection fees increased by an amount totaling five percent of the originally estimated settlement charges subject to § 1026.19(e)(3)(ii). Thus, on Monday, the creditor has received sufficient information to establish a valid reason for revision and must provide revised disclosures reflecting the 11 percent increase by Thursday to comply with § 1026.19(e)(4)(i).

iii. Assume a creditor requires an appraisal. The creditor receives the appraisal report, which indicates that the value of the home is significantly lower than expected. However, the creditor has reason to doubt the validity of the appraisal report. A reason for revision has not been established because the creditor reasonably believes that the appraisal report is incorrect. The creditor then chooses to send a different appraiser for a second opinion, but the second appraiser returns a similar report. At this point, the creditor has received information sufficient to establish that a reason for revision has, in fact, occurred, and must provide corrected

disclosures within three business days of receiving the second appraisal report. In this example, in order to comply with § 1026.19(e)(3)(iv) and § 1026.25, the creditor must maintain records documenting the creditor's doubts regarding the validity of the appraisal to demonstrate that the reason for revision did not occur upon receipt of the first appraisal report.

2. *Relationship to § 1026.19(e)(3)(iv)(D).* If the reason for the revision is provided under § 1026.19(e)(3)(iv)(D), notwithstanding the three-business-day rule set forth in § 1026.19(e)(4)(i), § 1026.19(e)(3)(iv)(D) requires the creditor to provide a revised version of the disclosures required under § 1026.19(e)(1)(i) on the date the interest rate is locked. *See* comment 19(e)(3)(iv)(D)-1.

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

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

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

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

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

19(f)(1) Provision of disclosures.

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 corrected 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) and (f)(2). For example, if the creditor provides the disclosures required by § 1026.19(f)(1)(i) on Monday, June 1, but the consumer adds a mobile notary service 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 corrected disclosures are also provided at or before consummation, pursuant to § 1026.19(f)(2)(i).

2. *Best information reasonably available.* Creditors may estimate disclosures provided under § 1026.19(f)(1)(ii)(A) and (f)(2)(ii) using the best information reasonably available when the actual term is unknown to the creditor at the time disclosures are made, consistent with § 1026.17(c)(2)(i).

i. *Actual term unknown.* An actual term 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 the 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, to realtors for taxes and escrow fees, or to a settlement agent for homeowner's association dues or other information in connection with a real estate

settlement. The following examples illustrate the reasonably available standard for purposes of § 1026.19(f)(1)(i).

A. Assume a creditor provides the disclosure under § 1026.19(f)(1)(ii)(A) for a transaction in which the title insurance company that is providing the title insurance policies is acting as the settlement agent in connection with the transaction, but the creditor does not request the actual cost of the lender's title insurance policy that the consumer is purchasing from the title insurance company and instead discloses an estimate based on information from a different transaction. The creditor has not exercised due diligence in obtaining the information about the cost of the lender's title insurance policy required under the "reasonably available" standard in connection with the estimate disclosed for the lender's title insurance policy.

B. Assume that in the prior example the creditor obtained information about the terms of the consumer's transaction from the settlement agent regarding the amounts disclosed under § 1026.38(j) and (k). The creditor has exercised due diligence in obtaining the information about the costs under § 1026.38(j) and (k) for purposes of the "reasonably available" standard in connection with such disclosures under § 1026.38(j) and (k).

ii. *Estimates.* If an actual term is unknown, the creditor may utilize estimates using the best information reasonably available in making disclosures even though the creditor knows that more precise information will be available at or before consummation. However, the creditor may not utilize an estimate without exercising due diligence to obtain the actual term for the consumer's transaction. *See* comment 19(f)(1)(i)-2.i. The creditor is required to provide corrected disclosures containing the actual terms of the transaction at or before consummation under § 1026.19(f)(2), subject to the exceptions provided for in that paragraph. Disclosures under § 1026.19(f) are subject to the labeling rules set forth in § 1026.38. See comment

17(c)(2)(i)-2 for guidance on labeling estimates.

iii. *Settlement agent.* If a settlement agent provides disclosures required by § 1026.19(f)(1)(i) three business days before consummation pursuant to § 1026.19(f)(1)(v), the "best information reasonably available" standard applies to terms for which the actual term is unknown to the settlement agent at the time the disclosures are provided. The settlement agent normally may rely on the representations of other parties in obtaining information, but if information about actual terms is not reasonably available, the settlement agent also must satisfy the "best information reasonably available" standard. Accordingly, the settlement agent is required to exercise due diligence to obtain information if it is providing the Closing Disclosure pursuant to § 1026.19(f)(1)(v). For example, for the loan terms table required to be disclosed under § 1026.38(b), the settlement agent would be considered to have exercised due diligence if it obtained such information from the creditor. Because the creditor remains responsible under § 1026.19(f)(1)(v) for ensuring that the Closing Disclosure is provided in accordance with § 1026.19(f), the creditor is expected to maintain communication with the settlement agent to ensure that the settlement agent is acting in place of the creditor. See comment 19(f)(1)(v)-3 for guidance on a creditor's responsibilities where a settlement agent provides disclosures.

3. *Denied or withdrawn applications.* The creditor is not required to provide the disclosures required under § 1026.19(f)(1)(i) if, before the time the creditor is required to provide the disclosures under § 1026.19(f), the creditor determines the consumer's application will not or cannot be approved on the terms requested, or the consumer has withdrawn the application, and, as such, the transaction will not be consummated. For transactions covered by § 1026.19(f)(1)(i), the creditor may rely on comment 19(e)(1)(iii)-3 in determining that disclosures are not required by § 1026.19(f)(1)(i) because the consumer's application will not or

cannot be approved on the terms requested or the consumer has withdrawn the application.

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

1. *Timing.* Except as provided in § 1026.19(f)(1)(ii)(B), (f)(2)(i), (f)(2)(iii), (f)(2)(iv), and (f)(2)(v), 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.

2. *Receipt of disclosures three business days before consummation.* Section 1026.19(f)(1)(ii)(A) 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. 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 considered to have received the disclosures three business days after they are delivered or placed in the mail. Thus, for example, if consummation is scheduled for Thursday, a creditor would satisfy the requirements of § 1026.19(f)(1)(ii)(A) 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 is a business day, pursuant to § 1026.2(a)(6), and, pursuant to § 1026.19(f)(1)(iii), the consumer would be considered to have received the disclosures on the Monday before consummation is scheduled. *See* comment 19(f)(1)(iii)-1. A creditor would not satisfy the requirements of § 1026.19(f)(1)(ii)(A) in this example if the creditor places the disclosures in the mail on the Monday before consummation. However, the creditor in this example could satisfy the

requirements of § 1026.19(f)(1)(ii)(A) by delivering the disclosures on Monday, for instance, by way of electronic mail, provided the requirements of § 1026.38(t)(3)(iii) relating to disclosures in electronic form are satisfied and assuming that each weekday is a business day, and provided that the creditor obtains evidence that the consumer received the emailed disclosures on Monday. *See* comment 19(f)(1)(iii)-2.

3. *Timeshares*. For transactions secured by a consumer's interest in a timeshare plan described in 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) no later than consummation. Timeshare transactions covered by § 1026.19(f)(1)(ii)(B) may be consummated at the time or any time after the disclosures required by § 1026.19(f)(1)(i) are received by the consumer. 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, and consummation of the timeshare transaction is scheduled for Friday, June 5, the creditor complies with § 1026.19(f)(1)(ii)(B) by ensuring that the consumer receives the disclosures required by § 1026.19(f)(1)(i) no later than consummation on Friday, June 5. If a consumer provides the creditor with an application for a mortgage loan secured by a timeshare on Monday, June 1 and consummation of the timeshare transaction is scheduled for Tuesday, June 2, then the creditor complies with § 1026.19(f)(1)(ii)(B) by ensuring that the consumer receives the disclosures required by § 1026.19(f)(1)(i) no later than consummation on Tuesday, June 2. In some cases, a Loan Estimate must be provided under § 1026.19(e) before provision of the Closing Disclosure. See comment 19(e)(1)(iii)-4 for guidance on providing the Loan Estimate for transactions secured by a consumer's interest in a timeshare plan.

19(f)(1)(iii) Receipt of disclosures.

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 considered to have received the disclosures three business days after they are delivered or placed in the mail. If the creditor delivers the disclosures required under § 1026.19(f)(1)(i) in person, consummation may occur any time on the third business day following delivery. If the creditor provides the disclosures by mail, the consumer is considered to have received them three business days after they are placed in the mail, for purposes of determining when the three-business-day waiting period required under § 1026.19(f)(1)(ii)(A) begins. The creditor may, alternatively, rely on evidence that the consumer received the disclosures earlier than three business days after mailing. See comment 19(e)(1)(iv)-1 for an example in which the creditor sends disclosures via overnight mail.

2. *Other forms of delivery.* Creditors that use electronic mail or a courier other than the United States Postal Service also may follow the approach for disclosures provided by mail described in comment 19(f)(1)(iii)-1. 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 considered to have received the disclosure on Thursday, three business days later. The creditor may, alternatively, rely on evidence that the consumer received the emailed disclosures earlier after delivery. See comment 19(e)(1)(iv)-2 for an example in which the creditor emails disclosures and receives an acknowledgment from the consumer on the same day. Creditors using electronic delivery methods, such as email, must also comply with § 1026.38(t)(3)(iii). 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 § 1026.38(t)(3)(iii),

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 periods required by § 1026.19(f)(1)(ii)(A) or (f)(2)(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.* For purposes of § 1026.19(f), a settlement agent is the person conducting the settlement. A settlement agent may provide the disclosures required under § 1026.19(f)(1)(i) instead of the creditor. By assuming this responsibility, the settlement agent becomes responsible for complying with all of the relevant requirements of § 1026.19(f), meaning that "settlement agent" should be read in the place of "creditor" for all the relevant provisions of § 1026.19(f), except where such a reading would create responsibility for settlement agents under § 1026.19(e). For example, comment 19(f)(1)(ii)-3 explains that, in some cases involving transactions secured by a consumer's interest in a timeshare plan, a Loan Estimate must be provided under § 1026.19(e). "Settlement agent" could not be read in place of

"creditor" in comment 19(f)(1)(ii)-3 because settlement agents are not responsible for the disclosures required by § 1026.19(e)(1)(i). To ensure timely and accurate compliance with the requirements of § 1026.19(f)(1)(v), the creditor and settlement agent need to communicate effectively.

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

3. *Creditor responsibilities.* If a settlement agent provides disclosures required under § 1026.19(f) in the creditor's place, the creditor remains responsible under § 1026.19(f) for ensuring that the requirements of § 1026.19(f) have been satisfied. For example, if the

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

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

and delivery.

19(f)(2) Subsequent changes.

19(f)(2)(i) Changes before consummation not requiring a new waiting period.

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

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

ii. Assume consummation is scheduled for Friday and on Monday morning the creditor sends the disclosures via overnight delivery to the consumer, ensuring that the consumer receives the disclosures on Tuesday. On Monday night, the seller agrees to sell certain household furnishings to the consumer for an additional $1,000, to be paid at the real estate closing, and the consumer immediately informs the creditor of the change. The creditor must provide corrected disclosures so that the consumer receives them at or before consummation. The creditor does not

violate § 1026.19(f) because the change to the transaction resulting from negotiations between the seller and consumer occurred after the creditor provided the final disclosures, regardless of the fact that the change occurred before the consumer had received the final disclosures.

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

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

19(f)(2)(ii) Changes before consummation requiring a new waiting period.

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

set forth in § 1026.38(b) and § 1026.37(b)(4).

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

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

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

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

A. On Thursday, June 11, the loan product required to be disclosed changes to a "5/1 Adjustable Rate." The creditor is required to provide corrected disclosures and delay consummation until the consumer has received the corrected disclosures provided under § 1026.19(f)(1)(i) reflecting the change in the product disclosure, and any other changed terms,

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

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

iii. *Example—prepayment penalty is added.* Assume consummation is scheduled for Thursday, June 11 and the disclosure provided under § 1026.19(f)(1)(i) did not disclose a prepayment penalty. On Wednesday, June 10, a prepayment penalty is added to the transaction such that the disclosure required by § 1026.38(b) becomes inaccurate. The creditor is required to provide corrected disclosures and delay consummation until the consumer has received the corrected disclosures provided under § 1026.19(f)(1)(i) reflecting the change in the disclosure of the loan terms, and any other changed terms, at least three business days before consummation. If, after the revised disclosures in this example are provided but before consummation, the prepayment penalty is removed such that the description of the prepayment penalty again becomes inaccurate, and no other changes to the transaction occur, the creditor is required to provide corrected disclosures so that the consumer receives them at or before consummation under §1026.19(f)(2)(i), but the creditor is not required to delay consummation because

§ 1026.19(f)(2)(ii)(C) applies only when a prepayment penalty is added.

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

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

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

ii. Assume consummation occurs on a Tuesday, October 1 and the security instrument is not recorded until 15 days after October 1 on Thursday, October 16. The creditor learns on Monday, November 4 that the transfer taxes owed to the State differ from those previously disclosed pursuant to § 1026.19(f)(1)(i), resulting in an increase in the amount actually paid by the consumer. The creditor complies with § 1026.19(f)(1)(i) and § 1026.19(f)(2)(iii) by revising the disclosures accordingly and delivering or placing them in the mail no later than 30 days after Monday, November 4. Assume further that the increase in transfer taxes paid by the consumer

also exceeds the amount originally disclosed under § 1026.19(e)(1)(i) above the limitations prescribed by § 1026.19(e)(3)(i). Pursuant to § 1026.19(f)(2)(v), the creditor does not violate § 1026.19(e)(1)(i) if the creditor refunds the excess to the consumer no later than 60 days after consummation, and the creditor does not violate § 1026.19(f)(1)(i) if the creditor delivers disclosures corrected to reflect the refund of such excess no later than 60 days after consummation. The creditor satisfies these requirements under § 1026.19(f)(2)(v) if it revises the disclosures accordingly and delivers or places them in the mail by November 30.

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

iv. Assume consummation occurs on a Monday and the security instrument is recorded on Tuesday, the day after consummation. Assume further that ten days after consummation the municipality in which the property is located raises property tax rates effective after the date on which settlement concludes. Section 1026.19(f)(2)(iii) does not require the creditor to provide

the consumer with corrected disclosures because the increase in property tax rates is not in connection with the settlement of the transaction.

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

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

19(f)(2)(v) Refunds related to the good faith analysis.

1. *Requirements.* Section 1026.19(f)(2)(v) provides that, if amounts paid at closing exceed the amounts specified under § 1026.19(e)(3)(i) or (ii), the creditor does not violate § 1026.19(e)(1)(i) if the creditor refunds the excess to the consumer no later than 60 days after consummation, and the creditor does not violate § 1026.19(f)(1)(i) if the creditor delivers or places in the mail disclosures corrected to reflect the refund of such excess no later than 60 days after consummation. For example, assume that at consummation the consumer must pay four itemized charges that are subject to the good faith determination under § 1026.19(e)(3)(i). If the actual amounts paid by the consumer for the four itemized charges subject to § 1026.19(e)(3)(i) exceeded their respective estimates on the disclosures required under § 1026.19(e)(1)(i) by $30, $25, $25, and $10, then there would be a $90 excess amount above the limitations prescribed by

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

19(f)(3) Charges disclosed.

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

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

19(f)(3)(ii) Average charge.

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

settlement services overall.

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

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

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

3. *Uniform use.* If a creditor chooses to use an average charge for a settlement service for

a particular loan within a class, § 1026.19(f)(3)(ii)(C) requires the creditor to use that average charge for that service on all loans within the class. For example:

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

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

4. *Average amount paid.* The average charge must correspond to the average amount paid by or imposed on consumers and sellers during the prior defined time period. For example, assume a creditor calculates an average tax certification fee based on four-month periods starting January 1 of each year. The tax certification fees charged to a consumer on May 20 may not exceed the average tax certification fee paid from January 1 through April 30. A creditor may delay the period by a reasonable amount of time if such delay is needed to perform the necessary

analysis and update the affected systems, provided that each subsequent period is scheduled accordingly. For example, a creditor may define a four-month period from January 1 to April 30 and begin using the average charge from that period on May 15, provided the average charge is used until September 15, at which time the average charge for the period from May 1 to August 31 becomes effective.

5. *Adjustments based on retrospective analysis required.* Creditors using average charges must ensure that the total amount paid by or imposed on consumers for a service does not exceed the total amount paid to the providers of that service for the particular class of transactions. A creditor may find that, even though it developed an average-cost pricing program in accordance with the requirements of § 1026.19(f)(3)(ii), over time it has collected more from consumers than it has paid to settlement service providers. For example, assume a creditor defines a class of transactions and uses that class to develop an average charge of $135 for pest inspections. The creditor then charges $135 per transaction for 100 transactions from January 1 through April 30, but the actual average cost to the creditor of pest inspections during this period is $115. The creditor then decreases the average charge for the May to August period to account for the lower average cost during the January to April period. At this point, the creditor has collected $2,000 more than it has paid to settlement service providers for pest inspections. The creditor then charges $115 per transaction for 70 transactions from May 1 to August 30, but the actual average cost to the creditor of pest inspections during this period is $125. Based on the average cost to the creditor from the May to August period, the average charge to the consumer for the September to December period should be $125. However, while the creditor spent $700 more than it collected during the May to August period, it collected $1,300 more than it spent from January to August. In cases such as these, the creditor remains responsible for ensuring that the

amount collected from consumers does not exceed the total amounts paid for the corresponding settlement services over time. The creditor may develop a variety of methods that achieve this outcome. For example, the creditor may choose to refund the proportional overage paid to the affected consumers. Or the creditor may choose to factor in the excess amount collected to decrease the average charge for an upcoming period. Although any method may comply with this requirement, a creditor is deemed to have complied if it defines a six-month time period and establishes a rolling monthly period of reevaluation. For example, assume a creditor defines a six-month time period from January 1 to June 30 and the creditor uses the average charge starting July 1. If, at the end of July, the creditor recalculates the average cost from February 1 to July 31, and then uses the recalculated average cost for transactions starting August 1, the creditor complies with the requirements of § 1026.19(f)(3)(ii), even if the creditor actually collected more from consumers than was paid to providers over time.

6. *Adjustments based on prospective analysis permitted, but not required.* A creditor may prospectively adjust average charges if it develops a statistically reliable and accurate method for doing so. For example, assume a creditor calculates average charges based on two time periods: winter (October 1 to March 31), and summer (April 1 to September 30). If the creditor can demonstrate that the average cost of a particular settlement service is always at least 15 percent more expensive during the winter period than the summer period, the creditor may increase the average charge for the next winter period by 15 percent over the average cost for the current summer period, provided, however, that the creditor performs retrospective periodic adjustments, as explained in comment 19(f)(3)(ii)-5.

7. *Charges that vary with loan amount or property value.* An average charge may not be used for any charge that varies according to the loan amount or property value. For example, an

average charge may not be used for a transfer tax if the transfer tax is calculated as a percentage of the loan amount or property value. Average charges also may not be used for any insurance premium. For example, average charges may not be used for title insurance or for either the upfront premium or initial escrow deposit for hazard insurance.

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

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

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

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

1. *Requirement*. Section 1026.19(f)(4)(i) provides that, in a closed-end consumer credit transaction secured by real property that involves a seller, other than a reverse mortgage subject

to § 1026.33, the settlement agent shall provide the seller with the disclosures in § 1026.38 that relate to the seller's transaction reflecting the actual terms of the seller's transaction. The settlement agent complies with this provision by providing a copy of the Closing Disclosure provided to the consumer, if it also contains the information under § 1026.38 relating to the seller's transaction, or alternatively providing the disclosures under § 1026.38(t)(5)(v) or (vi), as applicable.

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

1. *Requirement.* Section 1026.19(f)(4)(ii) provides that the settlement agent shall provide the disclosures required under § 1026.19(f)(4)(i) no later than the day of consummation. If during the 30-day period following consummation, an event in connection with the settlement of the transaction occurs that causes such disclosures to become inaccurate and such inaccuracy results in a change to the amount actually paid by the seller from that amount disclosed under § 1026.19(f)(4)(i), the settlement agent shall deliver or place in the mail corrected disclosures not later than 30 days after receiving information sufficient to establish that such event has occurred. Section 1026.19(f)(4)(i) requires disclosure of the items that relate to the seller's transaction. Thus, the settlement agent need only redisclose if an item related to the seller's transaction becomes inaccurate and such inaccuracy results in a change to the amount actually paid by the seller. For example, assume a transaction where the seller pays the transfer tax, the consummation occurs on Monday, and the security instrument is recorded on Tuesday, the day after consummation. If the settlement agent receives information on Tuesday sufficient to establish that transfer taxes owed to the State differ from those disclosed pursuant to § 1026.19(f)(4)(i), the settlement agent complies with § 1026.19(f)(4)(ii) by revising the disclosures accordingly and delivering or placing them in the mail not later than 30 days after

Tuesday. See comment 19(e)(4)(i)-1 for guidance on when sufficient information has been received to establish an event has occurred. See also comment 19(f)(2)(iii)-1.iii for another example in which corrected disclosures must be provided to the seller.

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, from time to time, issue revised or alternative versions of the special information booklet that addresses transactions subject to § 1026.19(g) by publishing a notice in the *Federal Register*. The Bureau also may choose to permit the forms or booklets of other Federal agencies to be used by creditors. In such an event, the availability of the booklet or alternate materials for these transactions will be set forth in a notice in the *Federal Register*. The current version of the booklet can be accessed on the Bureau's Web site, www.consumerfinance.gov/learnmore.

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

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

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)(2). *See also* comment 19(g)(2)-3. Provision of the special information booklet as a part of a larger document does not satisfy the requirements of § 1026.19(g). Any color, size and quality of paper, type of print, and method of reproduction may be used so long as the booklet is clearly legible.

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

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

Section 1026.20—Disclosure Requirements Regarding Post-Consummation Events

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20(e) Escrow account cancellation notice for certain mortgage transactions.

20(e)(1) Scope.

1. *Real property or dwelling.* For purposes of § 1026.20(e)(1), the term "real property" includes vacant and unimproved land. The term "dwelling" includes vacation and second homes and mobile homes, boats, and trailers used as residences. *See* § 1026.2(a)(19) and related commentary for additional guidance regarding the term "dwelling."

2. *Escrow account established in connection with the consumer's delinquency or default*. Neither creditors nor servicers are required to provide the disclosures required by § 1026.20(e)(2) when an escrow account that was established solely in connection with the consumer's delinquency or default on the underlying debt obligation will be cancelled.

3. *Termination of the underlying debt obligation.* Neither creditors nor servicers are required to provide disclosures required by § 1026.20(e)(2) when the underlying debt obligation for which an escrow account was established is terminated, including by repayment, refinancing, rescission, and foreclosure.

20(e)(2) Content requirements.

1. *Clear and conspicuous standard*. The clear and conspicuous standard generally requires that disclosures be in a reasonably understandable form and readily noticeable to the consumer.

Paragraph 20(e)(2)(i).

1. *Escrow closing fee.* Section 1026.20(e)(2)(i) requires the creditor to itemize the amount of any fee the creditor or servicer imposes on the consumer in connection with the closure of the consumer's escrow account, labeled "Escrow Closing Fee." If the creditor or servicer independently decides to cancel the escrow account, rather than agreeing to close it at the request of the consumer, and does not charge a fee in connection with the cancellation, the

creditor or service complies with § 1026.20(e)(2) by leaving the disclosure blank on the front-side of the one-page document described in § 1026.20(e)(4).

20(e)(3) Optional information.

1. *Optional information permitted.* Section 1026.20(e)(3) lists information that the creditor or servicer may, at its option, include on the notice required by § 1026.20(e). To comply with § 1026.20(e)(3), the creditor or servicer may place the information required by § 1026.20(e)(3), other than the name and logo of the creditor or servicer, between the heading required by § 1026.20(e)(2) and the disclosures required by § 1026.20(e)(2)(i) and (ii). The name and logo may be placed above the heading required § 1026.20(e)(2).

20(e)(4) Form of disclosures.

1. *Grouped and separate.* The disclosures required by § 1026.20(e)(2) must be grouped together on the front side of a separate one-page document that contains no other material.

2. *Notice must be in writing in a form that the consumer may keep.* The notice containing the disclosures required by § 1026.20(e)(2) must be in writing in a form that the consumer may keep. See also § 1026.17(a) and related commentary for additional guidance on the form requirements applicable to the disclosures required by § 1026.20(e)(2).

20(e)(5) Timing.

20(e)(5)(i) Cancellation upon consumer's request.

1. *Timing requirements* Section 1026.20(e)(5)(i) provides that if the creditor or servicer cancels the escrow account at the consumer's request, the creditor or servicer shall ensure that the consumer receives the disclosures required by § 1026.20(e)(2) no later than three business days before closure of the consumer's escrow account. For example, for closure to occur on Thursday, the consumer must receive the disclosures on or before Monday, assuming each

weekday is a business day. For purposes of § 1026.20(e)(5), 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.

20(e)(5)(iii) Receipt of disclosure.

1. *Timing of receipt.* Section 1026.20(e)(5)(iii) provides that if the disclosures required under § 1026.20(e)(2) are not provided to the consumer in person, the consumer is considered to have received the disclosures three business days after they are delivered or placed in the mail. If the creditor or servicer provides the disclosures required by § 1026.20(e)(2) by mail, the consumer is considered to have received them three business days after they are placed in the mail for purposes of determining when the waiting periods required by § 1026.20(e)(5)(i) and (ii) begins. Creditors and servicers that use electronic mail or a courier to provide disclosures may also follow this approach. If, however, the creditor or servicer delivers the disclosures required by § 1026.20(e)(2) to the consumer in person, the escrow account may be closed any time on the third or 30th business day following the date of delivery, as applicable. Whatever method is used to provide disclosures, creditors and servicers may rely on documentation of receipt in determining when the waiting periods required by § 1026.20(e)(5)(i) and (ii) begin.

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

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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 settlement 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:

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.)

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.)

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.)

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.)

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 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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SUBPART E—SPECIAL RULES FOR CERTAIN HOME MORTGAGE TRANSACTIONS

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

1. *Disclosures not applicable.* The disclosures required by § 1026.37 are required to reflect the terms of the legal obligation between the parties, and if any information necessary for an accurate disclosure is unknown to the creditor, the creditor shall make the disclosure in good

faith, based on the best information reasonably available to the creditor pursuant to §§ 1026.17(c) and 1026.19(e). See comments 17(c)(1)-1, 17(c)(2)(i)-1 and -2, and 19(e)(1)(i)-1. Where a disclosure is not applicable to a particular transaction, unless otherwise provided by § 1026.37, form H-24 of appendix H to this part may not be modified to delete the disclosure from form H-24, or to state "not applicable" or "N/A" in place of such disclosure. The portion of the form pertaining to the inapplicable disclosure may be left blank, unless otherwise provided by § 1026.37. For example, in a transaction for which the consumer does not pay points to the creditor to reduce the interest rate, the amounts required to be disclosed by § 1026.37(f)(1)(i) may be left blank on form H-24. 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 and address of the creditor must be disclosed, if known, even if the mortgage broker provides the disclosures to the consumer under § 1026.19(e)(1)(ii). As required by § 1026.19(e)(1)(i), the mortgage broker must make a good faith effort to disclose the name and address of the creditor, but if the name of the creditor is not yet known, the disclosure required

by § 1026.37(a)(3) may be left blank. *See* comment 37-1.

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. For example, if the creditor hand delivers the Loan Estimate to the consumer on August 14, or if the creditor places the Loan Estimate in the mail on August 14, the date disclosed under § 1026.37(a)(4) is August 14.

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

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

37(a)(6) Property.

1. *Alternate property address*. Section 1026.37(a)(6) requires disclosure of the address including the zip code of the property that secures or will secure the transaction. A creditor complies with § 1026.37(a)(6) by disclosing a complete address for purposes of the U.S. Postal Service. If the address is unavailable, a creditor complies with § 1026.37(a)(6) by disclosing the

location of such property including a zip code, which is required in all instances. Location of the property under § 1026.37(a)(6) includes location information, such as a lot number. The disclosure of multiple zip codes is permitted if the consumer is investigating home purchase opportunities in multiple zip codes.

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

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

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. If the creditor has obtained multiple appraisals or valuations and has

not yet determined which one will be used during underwriting, it may disclose the value from any appraisal or valuation it reasonably believes it may use in underwriting the transaction. In a transaction that involves a seller, if the sale price is not yet known, the creditor complies with § 1026.37(a)(7) if it discloses the estimated value of the property that it used as the basis for the disclosures in the Loan Estimate.

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

37(a)(8) Loan term.

1. *Partial years.*

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

ii. *Terms to maturity of less than 24 months*. If the term to maturity is less than 24 months and does not equal a whole number of years, a creditor complies with § 1026.37(a)(8) by

disclosing the number of months only, followed by the designation "mo." For example, if the term to maturity of a transaction is six months or 16 months, it would be disclosed as "6 mo." or "16 mo.," respectively. If the term to maturity is 12 months, however it would be disclosed simply as "1 year."

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

37(a)(9) Purpose.

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

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

ii. *Refinance.* The consumer refinances an existing obligation already secured by the consumer's dwelling to change the rate, term, or other loan features and may or may not receive

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

iii. *Construction*. Section 1026.37(a)(9)(iii) requires the creditor to disclose that the loan is for construction in transactions where the creditor extends credit to finance only the cost of initial construction (construction-only loan), not renovations to existing dwellings, and in transactions where a multiple advance loan may be permanently financed by the same creditor (construction-to-permanent loan). In a construction-only loan, the borrower may be required to make interest only payments during the loan term with the balance commonly due at the end of the construction project. For additional guidance on disclosing construction-to-permanent loans, see § 1026.17(c)(6)(ii), comments 17(c)(6)-2 and -3, and appendix D to this part.

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

2. *Refinance coverage*. The disclosure requirements under § 1026.37(a)(9)(ii) apply to credit transactions that meet the definition of a refinancing under § 1026.20(a) but without regard

to whether they are made by a creditor, holder, or servicer of the existing obligation. Section 1026.20(a) applies only to refinancings undertaken by the original creditor or a holder or servicer of the original debt. *See* comment 20(a)-5.

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 first adjustment periods, if applicable, are disclosed. For example:

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

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

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

ii. *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) is "10/1 Step Rate." If the loan product is a step rate with no introductory rate, the creditor should disclose "0" where the introductory rate period would ordinarily be disclosed.

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

2. *Additional features*. When disclosing a loan product with at least one of the features described in § 1026.37(a)(10)(ii), § 1026.37(a)(10)(iii) and (iv) require the disclosure of only the first applicable feature in the order of § 1026.37(a)(10)(ii) and that it be preceded by the time period or the length of the introductory period and the frequency of the first adjustment period, as applicable, followed by a description of the loan product and its time period as provided for in § 1026.37(a)(10)(i). For example:

i. *Negative amortization.* Some loan products, such as "payment option" loans, permit the borrower to make payments that are insufficient to cover all of the interest accrued, and the

unpaid interest is added to the principal balance. Where the loan product includes a loan feature that may cause the loan balance to increase, the disclosure required by § 1026.37(a)(10)(ii)(A) is preceded by the time period that the borrower is permitted to make payments that result in negative amortization (*e.g.*, "2 Year Negative Amortization"), followed by the loan product type. Thus, a fixed rate product with a step-payment feature for the first two years of the legal obligation that may negatively amortize is disclosed as "2 Year Negative Amortization, Fixed Rate."

ii. *Interest only*. When disclosing an "Interest Only" feature, as that term is defined in § 1026.18(s)(7)(iv), the applicable time period must precede the label "Interest Only." Thus, a fixed rate loan with only interest due for the first five years of the loan term is disclosed as "5 Year Interest Only, Fixed Rate." If the interest only feature fails to cover the total interest due then, as required by § 1026.37(a)(10)(iii), the disclosure must reference the negative amortization feature and not the interest only feature (*i.e.*, "5 Year Negative Amortization, Fixed Rate").

iii. *Step payment*. When disclosing a step payment feature (which is sometimes referred to instead as a graduated payment), the period of time at the end of which the scheduled payments will change must precede the label "Step Payment" (*e.g.*, "5 Year Step Payment") followed by the name of the loan product. Thus, a fixed rate mortgage subject to a 5-year step payment plan is disclosed as a "5 Year Step Payment, Fixed Rate."

iv. *Balloon payment*. If a loan product includes a "balloon payment," as that term is defined in § 1026.37(b)(5), the disclosure of the balloon payment feature, including the year the payment is due, precedes the disclosure of the loan product. Thus, if the loan product is a step rate with an introductory rate that lasts for three years and adjusts each year thereafter until the

balloon payment is due in the seventh year of the loan term, the disclosure required is "Year 7 Balloon Payment, 3/1 Step Rate." If the loan product includes more than one balloon payment, only the earliest year that a balloon payment is due shall be disclosed.

v. *Seasonal payment.* If a loan product includes a seasonal payment feature, § 1026.37(a)(10)(ii)(E) requires that the creditor disclose the feature. The feature is not, however, required to be disclosed with any preceding time period. Disclosure of the label "Seasonal Payment" without any preceding number of years satisfies this requirement.

3. *Periods not in whole years*.

i. *Terms of 24 months or more*. For product types and features that have introductory periods or adjustment periods that do not equate to a number of whole years, if the period is a number of months that is 24 or greater and does not equate to a whole number of years, § 1026.37(a)(10) requires disclosure of the whole number of years followed by a decimal point with the remaining months rounded to two places. For example, if the loan product is an adjustable rate with an introductory period of 30 months that adjusts every year thereafter, the creditor would be required to disclose "2.5/1 Adjustable Rate." If the introductory period were 31 months, the required disclosure would be 2.58/1 Adjustable Rate."

ii. *Terms of less than 24 months*. For product types and features that have introductory periods or adjustment periods that do not equate to a number of whole years, if the period is less than 24 months, § 1026.37(a)(10) requires disclosure of the number of months, followed by the designation "mo." For example, if the product type is an adjustable rate with an 18-month introductory period that adjusts every 18 months starting in the 19th month, the required disclosure would be "18 mo./18mo. Adjustable Rate."

iii. *Adjustments more frequent than monthly*. For adjustment periods that change more

frequently than monthly, § 1026.37(a)(10) requires disclosure of the applicable unit-period, such as daily, weekly, or bi-weekly. For example, for an adjustable rate construction loan with no introductory fixed rate period where the interest rate adjusts every seven days, the disclosure required by § 1026.37(a)(10) is "0/Weekly Adjustable Rate."

37(a)(11) Loan type.

1. *Other*. If the transaction is a type other than a conventional, FHA, or VA loan, § 1026.37(a)(11)(iv) requires the creditor to disclose the loan type as "Other" and provide a name or brief description of the loan type. For example, a loan that is guaranteed or funded by the Federal government under the Rural Housing Service (RHS) of the U.S. Department of Agriculture is required to be disclosed under the subcategory "Other." Section 1026.37(a)(11)(iv) requires a brief description of the loan type (*e.g.*, "RHS"). A loan that is insured or guaranteed by a State agency must also be disclosed as "Other."

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

1. *Unique identifier*. Section 1026.37(a)(12) requires that the creditor disclose a loan identification number that may be used by the creditor, consumer, and other parties to identify the transaction, labeled as "Loan ID #." The loan identification number is determined by the creditor, which number may contain any alpha-numeric characters. Because the number must allow for the identification of the particular credit transaction under § 1026.37(a)(12), a creditor must use a unique loan identification number, *i.e.*, the creditor may not use the same loan identification number for different, but related, loan transactions (such as different loans to the same borrower). Where a creditor issues a revised Loan Estimate for a transaction, the loan identification number must be sufficient to enable identification of the transaction pursuant to § 1026.37(a)(12).

37(a)(13) Rate lock.

1. *Interest rate*. For purposes of § 1026.37(a)(13), the interest rate is locked for a specific period of time if the creditor has agreed to extend credit to the consumer at a given rate, subject to contingencies that are described in any rate lock agreement between the creditor and consumer.

2. *Expiration date*. The disclosure required by § 1026.37(a)(13)(ii) related to estimated closing costs is required regardless of whether the interest rate is locked for a specific period of time or whether the terms and costs are otherwise accepted or extended.

3. *Time zone*. The disclosure required by § 1026.37(a)(13) requires the applicable time zone for all times provided, as determined by the creditor. For example, if the creditor is located in New York and determines that the Loan Estimate will expire at 5:00 p.m. in the time zone applicable to its location, while standard time is in effect, the disclosure must include a reference to the Eastern time zone (*i.e.*, 5:00 p.m. EST).

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. Accordingly, if certain terms of the transaction are known or reasonably available 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, § 1026.37(b)(4) requires disclosure of the maximum amount of the prepayment penalty and period in which the prepayment penalty may be charged as known to the creditor at the time the disclosures are provided.

37(b)(2) Interest rate.

1. *Interest rate at consummation not known.* Where the interest rate that will apply at consummation is not known at the time the creditor must deliver the disclosures required by § 1026.19(e), § 1026.37(b)(2) requires disclosure of the fully-indexed rate, defined as the index plus the margin at consummation. Although § 1026.37(b)(2) refers to the index plus margin "at consummation," if the index value that will be in effect at consummation is unknown at the time the disclosures are provided pursuant to § 1026.19(e)(1)(iii), *i.e.*, within three business days after receipt of a consumer's application, the fully-indexed rate disclosed under § 1026.37(b)(2) may be based on the index in effect at the time the disclosure is delivered. The index in effect at consummation (or the time the disclosure is delivered pursuant to § 1026.19(e)) need not be used if the contract provides for a delay in the implementation of changes in an index value. For example, if the contract specifies that rate changes are based on the index value in effect 45 days before the change date, creditors may use any index value in effect during the 45 days before consummation (or any earlier date of disclosure) in calculating the fully-indexed rate to be disclosed.

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, as defined in appendix J to this part, of a month, such as a monthly payment schedule, the payment disclosed under § 1026.37(b)(3) should be labeled "Monthly Principal & Interest." If the contract requires bi-weekly payments of principal or interest, the payment should be labeled "Bi-Weekly Principal & Interest." If a creditor voluntarily permits a payment schedule not provided for in the contract, such as an informal principal-reduction arrangement, the disclosure should reflect only the payment frequency

provided for in the contract. *See* § 1026.17(c)(1).

2. *Initial periodic payment if not known.* Pursuant to § 1026.37(b)(3), the initial periodic payment amount that will be due under the terms of the legal obligation must be disclosed. If the initial periodic payment is not known because it will be based on an interest rate at consummation that is not known at the time the disclosures required by § 1026.19(e) must be provided, for example if it is based on an external index that may fluctuate before consummation, § 1026.37(b)(3) requires that the disclosure be based on the fully-indexed rate disclosed under § 1026.37(b)(2). See comment 37(b)(2)-1 for guidance regarding calculating the fully-indexed rate.

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 on which the penalty will no longer be imposed). For an example of such disclosure, see form H-24 of appendix H to this part. The disclosure under § 1026.37(b)(4) applies to transactions where the terms of the loan contract provide for a prepayment penalty, even though the creditor does not know at the time of the disclosure whether the consumer will, in fact, make a payment to the creditor that would cause imposition of the penalty. For example, if the monthly interest accrual amortization method described in comment 37(b)(4)-2.i is used such that interest is assessed on the balance for a full month even if the consumer makes a full prepayment before the end of the month, the transaction includes a prepayment penalty that must be disclosed pursuant to § 1026.37(b)(4).

2. *Examples of prepayment penalties*. For purposes of § 1026.37(b)(4), the following are examples of prepayment penalties:

i. A charge determined by treating the loan balance as outstanding for a period of time after prepayment in full and applying the interest rate to such "balance," even if the charge results from interest accrual amortization used for other payments in the transaction under the terms of the loan contract. "Interest accrual amortization" refers to the method by which the amount of interest due for each period (*e.g.*, month) in a transaction's term is determined. For example, "monthly interest accrual amortization" treats each payment as made on the scheduled, monthly due date even if it is actually paid early or late (until the expiration of any grace period). Thus, under the terms of a loan contract providing for monthly interest accrual amortization, if the amount of interest due on May 1 for the preceding month of April is $3,000, the loan contract will require payment of $3,000 in interest for the month of April whether the payment is made on April 20, on May 1, or on May 10. In this example, if the consumer prepays the loan in full on April 20 and if the accrued interest as of that date is $2,000, then assessment of a charge of $3,000 constitutes a prepayment penalty of $1,000 because the amount of interest actually earned through April 20 is only $2,000.

ii. A fee, such as an origination or other loan closing cost, that is waived by the creditor on the condition that the consumer does not prepay the loan. See comment 37(b)(4)-3.iii below for additional guidance regarding waived bona fide third-party charges imposed by the creditor if the consumer pays all of a covered transaction's principal before the date on which the principal is due sooner than 36 months after consummation.

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

iv. Computing a refund of unearned interest by a method that is less favorable to the

consumer than the actuarial method, as defined by section 933(d) of the Housing and Community Development Act of 1992, 15 U.S.C. 1615(d). For purposes of computing a refund of unearned interest, if using the actuarial method defined by applicable State law results in a refund that is greater than the refund calculated by using the method described in section 933(d) of the Housing and Community Development Act of 1992, creditors should use the State law definition in determining if a refund is a prepayment penalty.

3. *Fees that are not prepayment penalties*. For purposes of § 1026.37(b)(4), fees that are not prepayment penalties include, for example:

i. Fees imposed for preparing and providing documents when a loan is paid in full, if such fees are imposed whether or not the loan is prepaid. Examples include a loan payoff statement, a reconveyance document, or another document releasing the creditor's security interest in the dwelling that secures the loan.

ii. Loan guarantee fees.

iii. A waived bona fide third-party charge imposed by the creditor if the consumer pays all of a covered transaction's principal before the date on which the principal is due sooner than 36 months after consummation. For example, assume that at consummation, the creditor waives $3,000 in closing costs to cover bona fide third-party charges but the terms of the loan agreement provide that the creditor may recoup the $3,000 in waived charges if the consumer repays the entire loan balance sooner than 36 months after consummation. The $3,000 charge is not a prepayment penalty. In contrast, for example, assume that at consummation, the creditor waives $3,000 in closing costs to cover bona fide third-party charges but the terms of the loan agreement provide that the creditor may recoup $4,500 in part to recoup waived charges, if the consumer repays the entire loan balance sooner than 36 months after consummation. The $3,000 that the

creditor may impose to cover the waived bona fide third-party charges is not a prepayment penalty, but the additional $1,500 charge is a prepayment penalty and must be disclosed pursuant to § 1026.37(b)(4).

4. *Rebate of finance charge*. For an obligation that includes a finance charge that does not take into account each reduction in the principal balance of the obligation, the disclosure under § 1026.37(b)(4) reflects whether or not the consumer is entitled to a rebate of any finance charge if the obligation is prepaid in full or part. Finance charges that do not take into account each reduction in the principal balance of an obligation may include precomputed finance charges. If any portion of an unearned precomputed finance charge will not be provided as a rebate upon full prepayment, the disclosure required by § 1026.37(b)(4) will be an affirmative answer, indicate the maximum amount of such precomputed finance charge that may not be provided as a rebate to the consumer upon any prepayment, and state when the period during which a full rebate would not be provided terminates, as required by § 1026.37(b)(7). If, instead, there will be a full rebate of the precomputed finance charge and no other prepayment penalty imposed on the consumer, to comply with the requirements of § 1026.37(b)(4) and (7), the creditor states a negative answer only. If the transaction involves both a precomputed finance charge and a finance charge computed by application of a rate to an unpaid balance, disclosure about both the entitlement to any rebate of the finance charge upon prepayment and any other prepayment penalty are made as one disclosure under § 1026.37(b)(4), stating one affirmative or negative answer and an aggregated amount and time period for the information required by § 1026.37(b)(7). For example, if in such a transaction, a portion of the precomputed finance charge will not be provided as a rebate and the loan contract also provides for a prepayment penalty based on the amount prepaid, both disclosures are made under § 1026.37(b)(4) as one

aggregate amount, stating the maximum amount and time period under § 1026.37(b)(7). If the transaction instead provides a rebate of the precomputed finance charge upon prepayment, but imposes a prepayment penalty based on the amount prepaid, to comply with § 1026.37(b)(4), the creditor states an affirmative answer and the information about the prepayment penalty, as required by § 1026.37(b)(7). For further guidance and examples of these types of charges, see comment 18(k)(2)-1. For analogous guidance, see comment 18(k)-2. For further guidance on prepaid finance charges generally, see comment 18(k)-3.

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

37(b)(5) Balloon payment.

1. *Regular periodic payment.* If a payment is not itself a regular periodic payment and is more than two times any one regular periodic payment during the loan term, then it is disclosed as a balloon payment under § 1026.37(b)(5). The regular periodic payments used to determine whether a payment is a balloon payment under § 1026.37(b)(5) are the payments of principal and interest (or interest only, depending on the loan features) specified under the terms of the loan contract that are due from the consumer for two or more unit-periods in succession. All regular periodic payments during the loan term are used to determine whether a particular payment is a balloon payment, regardless of whether the regular periodic payments have changed during the loan term due to rate adjustments or other payment changes permitted or required under the loan contract.

i. For example, assume that, under a 15-year step rate mortgage, the loan contract provides for scheduled monthly payments of $300 each during the years one through three and scheduled monthly payments of $700 each during years four through 15. If an irregular payment

of $1,000 is scheduled during the final month of year 15, that payment is disclosed as a balloon payment under § 1026.37(b)(5), because it is more than two times the regular periodic payment amount of $300 during years one through three. This is the case even though the irregular payment is not more than two times the regular periodic payment of $700 per month during years four through fifteen. The $700 monthly payments during years four through fifteen are not balloon payments even though they are more than two times the regular periodic payments during years one through three, because they are regular periodic payments.

ii. If the loan has an adjustable rate under which the regular periodic payments may increase after consummation, but the amounts of such payment increases (if any) are unknown at the time of consummation, then the regular periodic payments are based on the fully-indexed rate, except as otherwise determined by any premium or discounted rates, the application of any interest rate adjustment caps, or any other known, scheduled rates under the terms specified in the loan contract. For analogous guidance, see comments 17(c)(1)-8 and -10. Similarly, if a loan has an adjustable interest rate which does not adjust the regular periodic payment but would, if the rate increased, increase only the final payment, the amount of the final payment for purposes of the balloon payment determination is based on the fully-indexed rate, except as otherwise determined by any premium or discounted rate caps, or any other known, scheduled rates under the terms specified in the loan contract. For example, assume that, under a 30-year adjustable rate mortgage, (1) the loan contract requires monthly payments of $300 during years one through five, (2) the loan contract permits interest rate increases every three years starting in the sixth year up to the fully-indexed rate, subject to caps on interest rate adjustments specified in the loan contract, (3) based on the application of the interest rate adjustment caps, the interest rate may increase to the fully-indexed rate starting in year nine, and (4) the monthly payment based on the

fully-indexed rate is $700. The regular periodic payments during years one through five are $300 per month, because they are known and scheduled. The regular periodic payments during years six through eight are up to $700 per month, based on the fully-indexed rate but subject to the application of interest rate adjustment caps specified under the loan contract. The regular periodic payments during years nine through thirty are $700, based on the fully-indexed rate. Therefore, if an irregular payment of $1,000 is scheduled during the final month of year 30, that payment is disclosed as a balloon payment under § 1026.37(b)(5), because it is more than two times the regular periodic payment amount of $300 during years one through five. This is the case even though the irregular payment is not more than two times the regular periodic payment during years nine through thirty (*i.e.*, based on the fully-indexed rate). However, the regular periodic payments during years six through thirty themselves are not balloon payments, even though they may be more than two times the regular periodic payments during years one through five.

iii. For a loan with a negative amortization feature, the regular periodic payment does not take into account the possibility that the consumer may exercise an option to make a payment greater than the scheduled periodic payment specified under the terms of the loan contract, if any.

iv. A final payment that differs from other regular periodic payments because of rounding to account for payment amounts including fractions of cents is still a regular periodic payment and need not be disclosed as a balloon payment under § 1026.37(b)(5).

v. The disclosure of balloon payments in the "Projected Payments" table under § 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)(6) Adjustments after consummation.

1. *Periods not in whole years.* For guidance on how to disclose increases after consummation that occur after a period that does not equate to a number of whole years in compliance with § 1026.37(b)(6), see comment 37(a)(10)-3.

37(b)(6)(i) Adjustment in loan amount.

1. *Additional information regarding adjustment in loan amount.* A creditor complies with the requirement under § 1026.37(b)(6)(i) to disclose additional information indicating whether the maximum principal balance is potential or is scheduled to occur under the terms of the legal obligation by using the phrase "Can go as high as" or "Goes as high as," respectively. A creditor complies with the requirement under § 1026.37(b)(6)(i) to disclose additional information indicating the due date of the last payment that may cause the principal balance to increase by using the phrase "Increases until." See form H-24 of appendix H to this part for the required format of such phrases, which is required for federally related mortgage loans under § 1026.37(o)(3).

37(b)(6)(ii) Adjustment in interest rate.

1. *Additional information regarding adjustment in interest rate.* A creditor complies with the requirement under § 1026.37(b)(6)(ii) to disclose additional information indicating the

frequency of adjustments to the interest rate and date when the interest rate may first adjust by using the phrases "Adjusts every" and "starting in." A creditor complies with the requirement under § 1026.37(b)(6)(ii) to disclose additional information indicating the maximum interest rate, and the first date when the interest rate can reach the maximum interest rate using the phrase "Can go as high as" and then indicating the date at the end of that phrase or for a scheduled maximum interest rate under a step rate loan, "Goes as high as." If the loan term may increase based on an interest rate adjustment, the disclosure shall indicate the maximum possible loan term using the phrase "Can increase loan term to." See form H-24 of appendix H to this part for the required format of such phrases, which is required for federally related mortgage loans under § 1026.37(o)(3).

2. *Interest rates that adjust at multiple intervals.* If the terms of the legal obligation provide for more than one adjustment period, § 1026.37(b)(6)(ii) requires disclosure of only the frequency of the first interest rate adjustment. For example, if the interest rate is fixed for five years, then adjusts every two years starting in year six, then adjusts every year starting in year 10, the disclosure required is "Adjusts every 2 years starting in year 6."

37(b)(6)(iii) Increase in periodic payment.

1. *Additional information regarding increase in periodic payment.* A creditor complies with the requirement under § 1026.37(b)(6)(iii) to disclose additional information indicating the scheduled frequency of adjustments to the periodic principal and interest payment by using the phrases "Adjusts every" and "starting in." A creditor complies with the requirement under § 1026.37(b)(6)(iii) to disclose additional information indicating the maximum possible periodic principal and interest payment, and the date when the periodic principal and interest payment may first equal the maximum principal and interest payment by using the phrase "Can go as high

as" and then indicating the date at the end of that phrase or for a scheduled maximum amount, such as under a step payment loan, "Goes as high as." A creditor complies with the requirement under § 1026.37(b)(6)(iii) to indicate that there is a period during which only interest is required to be paid and the due date of the last periodic payment of such period using the phrase "Includes only interest and no principal until." See form H-24 of appendix H to this part for the required format of such phrases, which is required for federally related mortgage loans under § 1026.37(o)(3).

2. *Periodic principal and interest payments that adjust at multiple intervals.* If there are multiple periods of adjustment under the terms of the legal obligation, § 1026.37(b)(6)(iii) requires disclosure of the frequency of only the first adjustment to the periodic principal and interest payment, regardless of the basis for the adjustment. Accordingly, where the periodic principal and interest payment may change because of more than one factor and such adjustments are on different schedules, the frequency disclosed is the adjustment of whichever factor adjusts first. For example, where the interest rate for a transaction is fixed until year six and then adjusts every three years but the transaction also has a negative amortization feature that ends in year seven, § 1026.37(b)(6)(iii) requires disclosure that the interest rate will adjust every three years starting in year six because the periodic principal and interest payment adjusts based on the interest rate before it adjusts based on the end of the negative amortization period.

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 more than one type of prepayment penalty applies, the creditor must aggregate the maximum amount of each type of prepayment penalty in the maximum penalty disclosed.

2. *Additional information regarding prepayment penalty.* A creditor complies with the requirement under § 1026.37(b)(7)(i) to disclose additional information indicating the maximum amount of the prepayment penalty that may be imposed and the date when the period during which the penalty may be imposed terminates using the phrases "As high as" and "if you pay off the loan during." See form H-24 of appendix H to this part for the required format of such phrases, which is required for federally related mortgage loans under § 1026.37(o)(3).

Paragraph 37(b)(7)(ii).

1. *Additional information regarding balloon payment*. A creditor complies with the requirement under § 1026.37(b)(7)(ii) to disclose additional information indicating the maximum amount of the balloon payment and the due date of such payment using the phrases "You will have to pay" and "at the end of." See form H-24 of appendix H to this part for the required format of such phrases, which is required for federally related mortgage loans under § 1026.37(o)(3). If the transaction includes more than one balloon payment, a creditor complies with § 1026.37(b)(7)(ii) by disclosing the highest of the balloon payments and the due date of

that payment.

37(b)(8) Timing.

1. *Whole years*. For adjustments that occur after a period of whole years, the timing of information required by § 1026.37(b)(8) starts with year number "1," counting from the date that interest for the first scheduled periodic payment begins to accrue for § 1026.37(b)(8)(i), or from the due date of the first periodic payment for § 1026.37(b)(8)(ii), or from the date of consummation for § 1026.37(b)(8)(iii). For example, an interest rate that is fixed for five years and can first adjust at the beginning of the 61st month from the date that interest for the regularly scheduled periodic payment began to accrue would be disclosed as beginning to adjust in "year 6." A monthly periodic payment that adjusts starting with the 61st scheduled payment likewise would be disclosed as adjusting in "year 6."

2. *Periods not in whole years.* For adjustments that occur after a number of months less than 24 that do not equate to a number of whole years or within a number of days less than a week, see the guidance provided in comment 37(a)(10)-3.

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 premiums, 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.

2. *Initial periodic payment or range of payments*. Section 1026.37(c)(1)(i) requires the creditor to disclose the initial periodic payment or range of payments. The disclosure required is of the actual periodic payment or range of payments that corresponds to the interest rate that will apply at consummation, including any initial discounted or premium interest rate. For examples of discounted and premium rate transactions, see comment 17(c)(1)-10.v. For guidance regarding whether the disclosure should reflect a buydown, see comments 17(c)(1)-3 through -5. If the initial periodic payment or range of payments may vary based on an adjustment to an index value that applies at consummation, § 1026.37(c)(1)(i) requires that the disclosure of the initial periodic payment or range of payments 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.

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 contains a negative amortization feature, periodic principal and interest payments or the range of such payments may change for purposes of § 1026.37(c)(1)(i)(A) at the time the negative amortization period ends under the terms of the legal obligation, meaning the consumer must begin making payments that do not result in an increase of the principal balance. The occurrence of an event requiring disclosure of additional

separate periodic payments or ranges of payments should be based on the assumption that the consumer will make payments as scheduled or, if applicable, elect to make the periodic payments that would extend the negative amortization period to the latest time permitted under the terms of the legal obligation. The occurrence of all subsequent events requiring disclosure of additional separate periodic payments or ranges of payments should be based on this assumption. The table required by § 1026.37(c) should also reflect any balloon payment that would result from such scheduled payments or election. See § 1026.37(c)(1)(ii)(A) for special rules regarding disclosure of balloon payments.

3. *Interest only.* In a loan that contains an interest only feature, periodic principal and interest payments may change for purposes of § 1026.37(c)(1)(i)(A) when the interest only period ends, meaning the consumer must begin making payments that do not defer repayment of principal.

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. For guidance on the amount of a balloon payment disclosed on the table required by § 1026.37(c), see comment 37(c)(2)(i)-3

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

1. *General.* "Mortgage insurance or any functional equivalent" means the amounts identified in § 1026.4(b)(5). For purposes of § 1026.37(c), "mortgage insurance 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 of mortgage insurance termination.* 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, applying the interest rates applicable to the transaction. Such calculation should take into account any initial discounted or premium interest rate. For example, for an adjustable rate transaction that has a discounted interest rate during an initial five-year period, the creditor makes the calculation using a composite rate based on the rate in effect during the initial five-year period and, thereafter, the fully-indexed rate, unless otherwise required by applicable law. For guidance on calculation of the amount of mortgage insurance premiums to disclose on the table required by § 1026.37(c), see § 1026.37(c)(2)(ii) and its commentary. See comment 37(b)(2)-1 for guidance regarding calculating the fully-indexed rate.

3. *Disclosure of mortgage insurance termination.* 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)(i)(D).

1. *Anniversary of the due date of initial periodic payment.* Section 1026.37(c)(1)(i)(D) provides that the anniversary of the due date of the initial periodic payment or range of payments that immediately follows the occurrence of multiple events described in § 1026.37(c)(1)(i)(A) during a single year is an event that requires disclosure of additional periodic payments or ranges of payments. Section 1026.37(c)(1)(i)(A) provides that a potential change in the periodic principal and interest payment is an event requiring disclosure of additional separate periodic payments. See comment 37(c)(1)(iii)(B)-1 for an example of the application of § 1026.37(c)(1)(i)(D).

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

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

1. *Special rule regarding 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, in which case the creditor discloses as a single range of payments all events requiring disclosure of additional separate periodic payments or ranges of payments described in § 1026.37(c)(1)(i)(A) through (D), other than the final balloon payment, occurring after the second separate periodic payment or range of payments disclosed. Balloon payments that are not scheduled as final payments under the terms of the legal obligation, 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). A balloon payment that is a final payment is disclosed as a single payment, and not combined with other changes to periodic principal and interest payments and disclosed

as a range.

2. *Example.* Assume a loan with a term of seven years, where the interest rate adjusts each year for the first three years and is fixed thereafter, that provides for a balloon payment as the final payment, where no mortgage insurance is required, and no escrow account will be established for the payment of charges described in § 1026.37(c)(4)(ii). The creditor discloses on the table required by § 1026.37(c) in the first column the initial periodic payment or range of payments, in the second column the periodic payment or range of payments that would apply after the first interest rate adjustment, in the third column the periodic payments or ranges of payments that would apply after the second interest rate adjustment until the final balloon payment (disclosed as a single range of payments), and in the fourth column the final balloon payment. Although the balloon payment that is scheduled as the final payment under the terms of the legal obligation occurs after the third separate periodic payment or range of payments, the creditor discloses the final balloon payment as a separate event requiring disclosure of additional periodic payments or range of payments due to the special rule in § 1026.37(c)(1)(ii)(A).

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

1. *Special rule regarding disclosure of the automatic termination of mortgage insurance.* Section 1026.37(c)(1)(ii)(B) is an exception to the general rule in § 1026.37(c)(1)(ii), and requires that the automatic termination of mortgage insurance or any functional equivalent under applicable law is disclosed as a separate periodic payment or range of payments only if the total number of separate periodic payments or ranges of payments otherwise disclosed does not exceed three. This means that the automatic termination of mortgage insurance or any functional equivalent under applicable law is disclosed as its own event only if there is a column in which to disclose it, *i.e.*, there are only three other separate periodic payments or ranges of payments

that are required to be disclosed. Where the automatic termination of mortgage insurance or any functional equivalent under applicable law is not disclosed as a separate periodic payment or range of payments, the absence of a required mortgage insurance payment is disclosed with the next disclosed event requiring disclosure of additional separate periodic payments or ranges of payments, as applicable.

2. *Examples of special rule regarding disclosure of the automatic termination of mortgage insurance.* i. Assume a step-rate loan with a 30-year term with an introductory interest rate that lasts for five years, a different interest rate that applies for the next five-year period, a final interest rate adjustment after 10 years, where mortgage insurance would terminate for purposes of § 1026.37(c)(1)(i)(C) in the third year, and where no escrow account would be established for the payment of charges described in § 1026.37(c)(4)(ii). The creditor would disclose on the table required by § 1026.37(c) the initial periodic payment for years one through three (reflecting the principal and interest payment corresponding to the introductory interest rate and payments for mortgage insurance premiums), an additional separate periodic payment for years four and five (reflecting the principal and interest payment corresponding to the introductory rate and no payments for mortgage insurance premiums), an additional separate periodic payment or range of payments for years six through 10 (reflecting the principal and interest payment corresponding to the interest rate that would apply after the introductory rate), and an additional separate periodic payment or range of payments for years 11 through 30 (reflecting the principal and interest payment corresponding to the interest rate that would apply after the second interest rate adjustment until the end of the loan term). In this example, the automatic termination of mortgage insurance would be separately disclosed on the table required by § 1026.37(c) because the total number of separate periodic payments or ranges of payments

otherwise disclosed pursuant to § 1026.37(c)(1) does not exceed three.

ii. Assume the same loan as above, except that the terms of the legal obligation also provide for a third interest rate adjustment that would occur after 15 years. The creditor would disclose on the table required by § 1026.37(c) the initial periodic payment for years one through five (reflecting the principal and interest payment corresponding to the introductory interest rate and payments for mortgage insurance premiums), an additional separate periodic payment or range of payments for years six through 10 (reflecting the principal and interest payment corresponding to the interest rate that would apply after the first interest rate adjustment and no payments for mortgage insurance premiums), an additional separate periodic payment or range of payments for years 11 through 15 (reflecting the principal and interest payment corresponding to the interest rate that would apply after the second interest rate adjustment), and an additional separate periodic payment or range of payments for years 16 through 30 (reflecting the principal and interest payment corresponding to the interest rate that would apply after the third interest rate adjustment until the end of the loan term). In this example, the automatic termination of mortgage insurance would not be separately disclosed on the table required by § 1026.37(c) because the total number of separate periodic payments or ranges of payments otherwise disclosed pursuant to § 1026.37(c)(1) exceeds three. However, the creditor would disclose the termination of mortgage insurance beginning with the periodic payment or range of payments for years six through 10, which is the next disclosed event requiring disclosure of additional separate periodic payments or ranges of payments.

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

1. *Ranges of payments.* When a range of payments is required to be disclosed under § 1026.37(c)(1), § 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.

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

1. *Multiple events occurring in a single year.* If changes to periodic principal and interest payments would result in more than one separate periodic payment or range of payments in a single year, § 1026.37(c)(1)(iii)(B) requires the creditor to disclose the range of payments that would apply during the year in which the events occur. For example, assume a loan with a 30-year term with a payment that adjusts every month for the first 12 months and is fixed thereafter, where mortgage insurance is not required, and where no escrow account would be established for the payment of charges described in § 1026.37(c)(4)(ii). The creditor discloses as a single range of payments the initial periodic payment and the periodic payment that would apply after each payment adjustment during the first 12 months and would also disclose, as an additional separate periodic payment or range of payments, the periodic principal and interest payment or range of payments that would apply after the payment becomes fixed. Assume instead a loan with a 30-year term with a payment that adjusts upward at three months and at six months and is fixed thereafter, where mortgage insurance is not required, and where no escrow account would be established for the payment of charges described in § 1026.37(c)(4)(ii). The creditor discloses as a single range of payments the initial periodic payment, the periodic payment that would apply after the payment adjustment that occurs at three months, and the periodic payment that would apply after the payment adjustment that occurs at six months, which single range represents the minimum payment and maximum payment, respectively, which would apply during the first year

of the loan. Pursuant to § 1026.37(c)(1)(i)(D), the creditor also discloses as an additional separate periodic payment or range of payments, the principal and interest payment that would apply on the one-year anniversary of the due date of the initial periodic payment or range of payments, because that is the anniversary that immediately follows the occurrence of the multiple payments or ranges of payments that occurred during the first year of the loan. Assume that the same loan has a payment that, instead of becoming fixed after the adjustment at six months, adjusts once more at 18 months and becomes fixed thereafter. The creditor would disclose the same single range of payments for year one. Pursuant to § 1026.37(c)(1)(iii)(B), the creditor also discloses the principal and interest payment that would apply on the one-year anniversary of the due date of the initial periodic payment (as required by § 1026.37(c)(1)(i)(D)) and the periodic payment that would apply after the payment adjustment that occurs at 18 months as a single range of payments in year two. Pursuant to § 1026.37(c)(1)(i)(D), the creditor also discloses as an additional separate periodic payment or range of payments, the principal and interest payment that would apply on the two-year anniversary of the due date of the initial periodic payment or range of payments, because that is the anniversary that immediately follows the occurrence of the multiple payments or ranges of payments that occurred during the second year of the loan.

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

1. *Adjustable rate mortgages.* For an adjustable rate loan, 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)(i).

1. *General rule for adjustable rate loans.* For an adjustable rate loan, in disclosing the maximum possible payment for principal and interest under § 1026.37(c), the creditor assumes that the interest rate will rise as rapidly as possible after consummation, taking into account the terms of the legal obligation, including any applicable caps on interest rate adjustments and lifetime interest rate cap. For a loan with no lifetime interest rate cap, the maximum rate is determined by reference to other applicable laws, such as State usury law. In disclosing the minimum payment for purposes of § 1026.37(c), the creditor assumes that the interest rate will decrease as rapidly as possible after consummation, taking into account any introductory rates, caps on interest rate adjustments, and lifetime interest rate floor. For an adjustable rate loan based on an index that has no lifetime interest rate floor, the minimum interest rate is equal to the margin.

2. *Special rule for adjustable rate loans with negative amortization features.* Section 1026.37(c)(2)(i)(B) provides a special rule for calculation of the maximum principal and interest payment in an adjustable rate loan that contains a negative amortization feature. That section provides that the maximum amounts payable for principal and interest after the negative amortization period ends are calculated using the maximum principal amount permitted under the terms of the legal obligation at the end of the negative amortization period. See section § 1026.37(c)(1)(i)(A) and associated commentary for guidance regarding when the negative amortization period ends for purposes of § 1026.37(c)(2). For example, if the maximum principal balance for the last payment in the negative amortization period is achieved at an interest rate that is not the maximum interest rate permitted under the terms of the legal

obligation before the negative amortization period ends, future events requiring disclosure of additional, separate periodic payments or ranges of payments assume that the interest rate in effect at the end of the negative amortization period was such interest rate, and not the maximum possible interest rate. After the end of the negative amortization period, the general rule under § 1026.37(c)(2)(i)(A) regarding assumptions of interest rate changes for the maximum principal and interest payment to be disclosed applies from such interest rate. The minimum payment in an adjustable rate loan that contains a negative amortization feature is determined pursuant to the general rule under § 1026.37(c)(2)(i)(A).

3. *Disclosure of balloon payment amounts*. Although the existence of a balloon payment is determined pursuant to § 1026.37(b)(5) and its commentary (*see* comment 37(c)(1)(i)(B)-1), balloon payment amounts to be disclosed under § 1026.37(c) are calculated in the same manner as periodic principal and interest payments under § 1026.37(c)(2)(i). For example, for a balloon payment amount that can change depending on previous interest rate adjustments that are based on the value of an index at the time of the adjustment, the balloon payment amounts are calculated using the assumptions for minimum and maximum interest rates described in § 1026.37(c)(2)(i) and its commentary, and should be disclosed as a range of payments.

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

1. *Mortgage insurance disclosure.* Mortgage insurance premiums should be reflected on the disclosure required by § 1026.37(c) even if no escrow account is established for the payment of mortgage insurance premiums. If the consumer is not required to purchase mortgage insurance or any functional equivalent, the creditor discloses the mortgage insurance premium amount as "0." If the creditor is disclosing the automatic termination or the absence of mortgage insurance or any functional equivalent under applicable law or the absence of mortgage

insurance or any functional equivalent after coverage has terminated, the creditor discloses the mortgage insurance premium as "–."

2. *Relationship to principal and interest disclosure.* The creditor discloses mortgage insurance premiums pursuant to § 1026.37(c)(2)(ii) on the same periodic basis that payments for principal and interest are disclosed pursuant to § 1026.37(c)(2)(i), even if mortgage insurance premiums are actually paid on some other periodic basis. If no escrow account for the payment of some or all such charges will be established, the creditor discloses the mortgage insurance premium as "0."

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

1. *Escrow disclosure.* The disclosure described in § 1026.37(c)(2)(iii) is required only if the creditor will establish an escrow account for the payment of some or all of the charges described in § 1026.37(c)(4)(ii).

37(c)(3) Subheadings.

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

1. *Years.* Section 1026.37(c)(3)(ii) requires that each separate periodic payment or range of payments be disclosed under a subheading that states the years during which that payment or range of payments will apply and that such subheadings be stated in a sequence of whole years from the due date of the initial periodic payment. Therefore, for purposes of § 1026.37(c), "year" is defined as the twelve-month interval beginning on the due date of the initial periodic payment, and the next whole year begins each anniversary thereafter. If an event requiring the disclosure of an additional separate periodic payment or range of payments occurs on a date other than the anniversary of the due date of the initial periodic payment, and no other events occur during that single year requiring disclosure of multiple events under

§ 1026.37(c)(1)(iii)(B), such event is disclosed beginning in the next year in the sequence, because the separate periodic payment or range of payments that applied during the previous year will also apply during a portion of that year. For example:

i. Assume a fixed rate loan with a term of 124 months (10 years, four months). The creditor would label the disclosure of periodic payments as "Years 1-11."

ii. Assume a loan with a 30-year term that does not require mortgage insurance and requires interest only payments for the first 60 months from the due date of the initial periodic payment, then requires fixed, fully amortizing payments of principal and interest beginning at the 61st month for the duration of the loan, the creditor would label the first disclosure of periodic payments as "Years 1-5" (including the term "only interest" pursuant to § 1026.37(c)(2)(i)) and the second disclosure of periodic payments or range of payments as "Years 6-30." If that loan requires interest only payments for the first 54 months from the due date of the initial periodic payment, then requires fixed, fully amortizing payments of principal and interest for the duration of the loan, because the change in the periodic payment occurs on a date other than the anniversary of the due date of the initial periodic payment and the previous payment applies during that year, the creditor would likewise label the first disclosure of periodic payments as "Years 1-5" (including the term "only interest" pursuant to § 1026.37(c)(2)(i)) and the second disclosure of periodic payments or range of payments as "Years 6-30." If the loan that requires interest only payments for the first 54 months also requires mortgage insurance that would automatically terminate under applicable law after the 100th month from the due date of the initial periodic payment, the creditor would label the first disclosure of periodic payments as "Years 1-5" (including the term "only interest" pursuant to § 1026.37(c)(2)(i)), the second disclosure of periodic payments or range of payments as "Years 6-9," and the third disclosure of

periodic payments or range of payments as "Years 10-30."

2. *Loans with variable terms.* If the loan term may increase based on an adjustment of the interest rate, the creditor must disclose the maximum loan term possible under the legal obligation. To calculate the maximum loan term, the creditor assumes that the interest rate rises as rapidly as possible, taking into account the terms of the legal obligation, including any applicable caps on interest rate adjustments and lifetime interest rate cap. *See* comment 37(a)(8)-2.

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

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

1. *Definition of taxes, insurance, and assessments.* See the commentary under § 1026.43(b)(8) for guidance on the charges that are included in taxes, insurance, and assessments for purposes of § 1026.37(c)(4)(ii), except that the portion of that commentary related to amounts identified in § 1026.4(b)(5) is inapplicable to the disclosure required by § 1026.37(c)(4)(ii).

Paragraph 37(c)(4)(iv).

1. *Description of other amounts.* Section 1026.37(c)(4)(iv) requires the creditor to disclose a statement of whether the amount disclosed pursuant to § 1026.37(c)(4)(ii) includes payments for property taxes, amounts identified in § 1026.4(b)(8) (homeowner's insurance premiums), and other amounts described in § 1026.37(c)(4)(ii), along with a description of any such other amounts. If the amount disclosed pursuant to § 1026.37(c)(4)(ii) requires the creditor to disclose a description of more than one amount other than amounts for payment of property taxes or homeowner's insurance premiums, the creditor may disclose a descriptive statement of one such amount along with an indication that additional amounts are also included, such as by

using the phrase “and additional costs.”

2. *Amounts paid by the creditor using escrow account funds.* Section 1026.37(c)(4)(iv) requires the creditor to disclose an indication of whether the amounts disclosed pursuant to § 1026.37(c)(4)(ii) will be paid by the creditor using escrow account funds. If the amount disclosed pursuant to § 1026.37(c)(4)(ii) requires the creditor to disclose a description of more than one amount other than amounts for payments of property taxes or homeowner’s insurance and only some of those amounts will be paid by the creditor using escrow account funds, the creditor may indicate that only some of those amounts will be paid using escrow account funds, such as by using the word “some.”

37(d) Costs at closing.

37(d)(2) Optional alternative table for transactions without a seller.

1. *Optional use.* The optional disclosure of the estimated cash to close provided for in § 1026.37(d)(2) only may be used by a creditor in a transaction without a seller. The use of this alternative estimated cash to close disclosure for transactions without a seller is optional, but only may be used in conjunction with the alternative disclosure under § 1026.37(h)(2).

2. *Method of indication.* The indication of whether the estimated cash is either due from or payable to the consumer can be made by the use of check boxes as shown in form H-24(D) of appendix H to this part.

37(f) Closing cost details; loan costs.

1. *General description.* The items disclosed under § 1026.37(f) include services that the creditor or mortgage broker require for consummation, such as underwriting, appraisal, and title services.

2. *Mortgage broker.* Commentary under § 1026.19(e)(1)(ii) discusses the requirements

and responsibilities of mortgage brokers that provide the disclosures required by § 1026.19(e), which include the disclosures set forth in § 1026.37(f).

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 each creditor and loan originator for originating and extending the credit, regardless of how such fees are denominated. In accordance with § 1026.37(o)(4), the dollar amounts disclosed under § 1026.37(f)(1) must be rounded to the nearest whole dollar and the percentage amounts must be disclosed as an exact number up to two or three decimal places, except that decimal places shall not be disclosed if the percentage is a whole number. See comment 19(e)(3)(i)-3 for a discussion of when a fee is considered to be "paid to" a person. See § 1026.36(a) and associated commentary for a discussion of the meaning of "loan originator" in connection with limits on compensation in a consumer credit transaction secured by a dwelling.

2. *Indirect loan originator compensation.* Only charges paid directly by the consumer to compensate a loan originator are included in the amounts listed under § 1026.37(f)(1). Compensation of a loan originator paid indirectly by the creditor through the interest rate is not itemized on the Loan Estimate required by § 1026.19(e). However, pursuant to § 1026.38(f)(1), such compensation is itemized on the Closing Disclosure required by § 1026.19(f).

3. *Description of charges.* Other than for points charged in connection with the transaction to reduce the interest rate, for which specific language must be used, the creditor may use a general label that uses terminology that, under § 1026.37(f)(5), is consistent with § 1026.17(a)(1), clearly and conspicuously describes the service that is disclosed as an origination charge pursuant to § 1026.37(f)(1). Items that are listed under the subheading

"Origination Charges" may include, for example, application fee, origination fee, underwriting fee, processing fee, verification fee, and rate-lock fee.

4. *Points*. If there are no points charged in connection with the transaction to reduce the interest rate, the creditor leaves blank the percentage of points used in the label and the dollar amount disclosed under § 1026.37(f)(1)(i).

5. *Itemization*. Creditors determine the level of itemization of "Origination Charges" that is appropriate under § 1026.37(f)(1) in relation to charges paid by the consumer to the creditor, subject to the limitations in § 1026.37(f)(1)(ii). For example, the following charges should be itemized separately: compensation paid directly by a consumer to a loan originator that is not also the creditor; or a charge imposed to pay for a loan level pricing adjustment assessed on the creditor, which the creditor passes onto the consumer as a charge at consummation and not as an adjustment to the interest rate.

37(f)(2) Services you cannot shop for.

1. *Services disclosed*. Items included under the subheading "Services You Cannot Shop For" pursuant to § 1026.37(f)(2) are for those services that the creditor requires in connection with the transaction that would be provided by persons other than the creditor or mortgage broker and for which the creditor does not permit the consumer to shop in accordance with § 1026.19(e)(1)(vi). Comment 19(e)(1)(vi)-1 clarifies that a consumer is not permitted to shop if the consumer must choose a provider from a list provided by the creditor. Comment 19(e)(3)(i)-1 addresses determining good faith in providing estimates under § 1026.19(e), including estimates for services for which the consumer cannot shop. Comments 19(e)(3)(iv)-1 through -3 discuss limits and requirements applicable to providing revised estimates for services for which the consumer cannot shop.

2. *Examples of charges.* Examples of the services and amounts to be disclosed pursuant to § 1026.37(f)(2) might include an appraisal fee, appraisal management company fee, credit report fee, flood determination fee, government funding fee, homeowner's association certification fee, lender's attorney fee, tax status research fee, third-party subordination fee, title – closing protection letter fee, title – lender's title insurance policy, and an upfront mortgage insurance fee, provided that the fee is charged at consummation and is not a prepayment of future premiums over a specific future time period or a payment into an escrow account. Government funding fees include a United States Department of Veterans Affairs or United States Department of Agriculture guarantee fee, or any other fee paid to a government entity as part of a governmental loan program, that is paid at consummation.

3. *Title insurance services.* The services required to be labeled beginning with "Title –" pursuant to § 1026.37(f)(2) or (3) are those required for the issuance of title insurance policies to the creditor in connection with the consummation of the transaction or for conducting the closing. These services may include, for example:

i. Examination and evaluation, based on relevant law and title insurance underwriting principles and guidelines, of the title evidence to determine the insurability of the title being examined and what items to include or exclude in any title commitment and policy to be issued;

ii. Preparation and issuance of the title commitment or other document that discloses the status of the title as it is proposed to be insured, identifies the conditions that must be met before the policy will be issued, and obligates the insurer to issue a policy of title insurance if such conditions are met;

iii. Resolution of underwriting issues and taking the steps needed to satisfy any conditions for the issuance of the policies;

iv. Preparation and issuance of the policy or policies of title insurance; and

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

4. *Lender's title insurance policy.* Section 1026.37(f)(2) and (3) requires disclosure of the amount the consumer will pay for the lender's title insurance policy. However, an owner's title insurance policy that covers the consumer and is not required to be purchased by the creditor is only disclosed pursuant to § 1026.37(g). Accordingly, the creditor must quote the amount of the lender's title insurance coverage pursuant to § 1026.37(f)(2) or (3) as applicable based on the type of lender's title insurance policy required by its underwriting standards for that loan. The amount disclosed for the lender's title insurance policy pursuant to § 1026.37(f)(2) or (3) is the amount of the premium without any adjustment that might be made for the simultaneous purchase of an owner's title insurance policy. This amount may be disclosed as "Title – Premium for Lender's Coverage," or in any similar manner that clearly indicates the amount of the premium disclosed pursuant to § 1026.37(f)(2) is for the lender's title insurance coverage. See comment 37(g)(4)-1 for a discussion of the disclosure of the premium for an owner's title insurance policy that covers the consumer.

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). Comments 19(e)(3)(ii)-1 through -3, and -5 address the determination of good faith in providing estimates of charges for services for which the consumer can shop. Comment 19(e)(3)(iii)-2 discusses the determination of good faith when the consumer chooses a

provider that is not on the list the creditor provides to the consumer when the consumer is permitted to shop consistent with § 1026.19(e)(1)(vi). Comments 19(e)(3)(iv)-1 through -3 discuss limits and requirements applicable to providing revised estimates for services for which the consumer can shop.

2. *Example of charges.* Examples of the services to be listed under this subheading pursuant to § 1026.37(f)(3) might include a pest inspection fee, survey fee, title – closing agent fee, and title – closing protection letter fee.

3. *Title insurance.* See comments 37(f)(2)-3 and -4 for guidance on services that are to be labeled beginning with "Title – " and on calculating and labeling the amount disclosed for lender's title insurance pursuant to § 1026.37(f)(3). See comment 37(g)(4)-1 for a discussion of the disclosure of the premium for owner's title insurance coverage.

37(f)(5) Item descriptions and ordering.

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

37(f)(6) Use of addenda.

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

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

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), or charges for optional credit insurance provided by the creditor, the creditor does not retain any of the amounts or portions of the amounts disclosed as other costs.

2. *Charges pursuant to property contract.* The creditor is required to disclose charges that are described in § 1026.37(g)(1) through (3). Other charges that are required to be paid at or before closing pursuant to the property contract for sale between the consumer and seller are disclosed on the Loan Estimate to the extent the creditor has knowledge of those charges when it issues the Loan Estimate, consistent with the good faith standard under § 1026.19(e). A creditor has knowledge of those charges where, for example, it has the real estate purchase and sale

contract. *See also* § 1026.37(g)(4) and comment 37(g)(4)-3.

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

1. *Recording fees.* Recording fees listed under § 1026.37(g)(1) are fees assessed by a government authority to record and index the loan and title documents as required under State or local law. Recording fees are assessed based on the type of document to be recorded or its physical characteristics, such as the number of pages. Unlike transfer taxes, recording fees are not based on the sale price of the property or loan amount. For example, a fee for recording a subordination agreement that is $20, plus $3 for each page over three pages, is a recording fee, but a fee of $1,250 based on 0.5 percent of the loan amount is a transfer tax, and not a recording fee.

2. *Other government charges*. Any charges or fees imposed by a State or local government that are not transfer taxes are aggregated with recording fees and disclosed under § 1026.37(g)(1)(i).

3. *Transfer taxes – terminology.* In general, transfer taxes listed under § 1026.37(g)(1) are State and local government fees on mortgages and home sales that are based on the loan amount or sales price, while recording fees are State and local government fees for recording the loan and title documents. The name that is used under State or local law to refer to these amounts is not determinative of whether they are disclosed as transfer taxes or as recording fees and other taxes under § 1026.37(g)(1).

4. *Transfer taxes – consumer.* Only transfer taxes paid by the consumer are disclosed on the Loan Estimate pursuant to § 1026.37(g)(1). State and local government transfer taxes are governed by State or local law, which determines if the seller or consumer is ultimately responsible for paying the transfer taxes. For example, if State law indicates a lien can attach to

the consumer's acquired property if the transfer tax is not paid, the transfer tax is disclosed. If State or local law is unclear or does not specifically attribute transfer taxes to the seller or the consumer, the creditor is in compliance with requirements of § 1026.37(g)(1) if the amount of the transfer tax disclosed is not less than the amount apportioned to the consumer using common practice in the locality of the property.

5. *Transfer taxes – seller.* Transfer taxes paid by the seller in a purchase transaction are not disclosed on the Loan Estimate under § 1026.37(g)(1), but are disclosed on the Closing Disclosure pursuant to § 1026.38(g)(1)(ii).

6. *Deletion and addition of items*. The lines and labels required by § 1026.37(g)(1) may not be deleted, even if recording fees or transfer taxes are not charged to the consumer. No additional items may be listed under the subheading in § 1026.37(g)(1).

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 interest begins to accrue for the first scheduled periodic payment and certain periodic charges that are required by the creditor to be paid at consummation. Each periodic charge listed as a prepaid item indicates, as applicable, the time period that the charge will cover, the daily amount, the percentage rate of interest used to calculate the charge, and the total dollar amount of the charge. Examples of periodic charges that are disclosed pursuant to § 1026.37(g)(2) include:

i. Real estate property taxes due within 60 days after consummation of the transaction;

ii. Past-due real estate property taxes;

iii. Mortgage insurance premiums;

iv. Flood insurance premiums; and

v. Homeowner's insurance premiums.

2. *Interest rate.* The interest rate disclosed pursuant to § 1026.37(g)(2)(iii) is the same interest rate disclosed pursuant to § 1026.37(b)(2).

3. *Terminology.* For purposes of § 1026.37(g)(2), the term "property taxes" has the same meaning as in § 1026.43(b)(8) and further described in comment 43(b)(8)-2; the term "homeowner's insurance" means the amounts identified in § 1026.4(b)(8); and the term "mortgage insurance" has the same meaning as "mortgage insurance or any functional equivalent" in § 1026.37(c), which means the amounts identified in § 1026.4(b)(5).

4. *Deletion of items*. The lines and labels required by § 1026.37(g)(2) may not be deleted, even if amounts for those labeled items are not charged to the consumer. If an amount for a labeled item is not charged to the consumer, the time period, daily amount, and percentage used in the labels are left blank.

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 described in § 1026.37(g)(3)(i) through (iii) is not charged to the consumer, the monthly payment amount and time period used in the labels are left blank.

2. *Aggregate escrow account calculation.* The aggregate escrow account adjustment required under § 1026.38(g)(3) and 12 CFR 1024.17(d)(2) is not included on the Loan Estimate under § 1026.37(g)(3).

3. *Terminology.* As used in § 1026.37(g)(3), the term "property taxes" has the same

meaning as in § 1026.43(b)(8) and further described in comment 43(b)(8)-2; the term "homeowner's insurance" means the amounts identified in § 1026.4(b)(8); and the term "mortgage insurance" has the same meaning as "mortgage insurance or any functional equivalent" in § 1026.37(c).

4. *Deletion of items*. The lines and labels required by § 1026.37(g)(3) may not be deleted, even if amounts for those labeled items are not charged to the consumer.

5. *Escrowed tax payments for different time frames.* Payments for property taxes that are paid at different time periods can be itemized separately when done in accordance with 12 CFR 1024.17, as applicable. For example, a general property tax covering a fiscal year from January 1 to December 31 can be listed as a property tax under § 1026.37(g)(3)(i); and a separate property tax to fund schools that cover a fiscal year from November 1 to October 31 can be added as a separate item under § 1026.37(g)(3)(v).

37(g)(4) Other.

1. *Owner's title insurance policy rate.* The amount disclosed for an owner's title insurance premium pursuant to § 1026.37(g)(4) is based on a basic owner's policy rate, and not on an "enhanced" title insurance policy premium, except that the creditor may instead disclose the premium for an "enhanced" policy when the "enhanced" title insurance policy is required by the real estate sales contract, if such requirement is known to the creditor when issuing the Loan Estimate. This amount should be disclosed as "Title – Owner's Title Policy (optional)," or in any similar manner that includes the introductory description "Title –" at the beginning of the label for the item, the parenthetical description "(optional)" at the end of the label, and clearly indicates the amount of the premium disclosed pursuant to § 1026.37(g)(4) is for the owner's title insurance coverage. See comment 37(f)(2)-4 for a discussion of the disclosure of the

premium for lender's title insurance coverage.

2. *Simultaneous title insurance premium rate in purchase transactions*. The premium for an owner's title insurance policy for which a special rate may be available based on the simultaneous issuance of a lender's and an owner's policy is calculated and disclosed pursuant to § 1026.37(g)(4) as follows:

i. The title insurance premium for a lender's title policy is based on the full premium rate, consistent with § 1026.37(f)(2) or (f)(3).

ii. The owner's title insurance premium is calculated by taking the full owner's title insurance premium, adding the simultaneous issuance premium for the lender's coverage, and then deducting the full premium for lender's coverage.

3. *Designation of optional items*. Products disclosed under § 1026.37(g)(4) for which the parenthetical description "(optional)" is included at the end of the label for the item include only items that are separate from any item disclosed on the Loan Estimate under paragraphs other than § 1026.37(g)(4). For example, such items may include optional owner's title insurance, credit life insurance, debt suspension coverage, debt cancellation coverage, warranties of home appliances and systems, and similar products, when coverage is written in connection with a credit transaction that is subject to § 1026.19(e). However, because the requirement in § 1026.37(g)(4)(ii) applies to separate products only, additional coverage and endorsements on insurance otherwise required by the lender are not disclosed under § 1026.37(g)(4). See comments 4(b)(7) and (b)(8)-1 through -3 and comments 4(b)(10)-1 and -2 for guidance on determining when credit life insurance, debt suspension coverage, debt cancellation coverage, and similar coverage is written in connection with a transaction subject to § 1026.19(e).

4. *Examples.* Examples of other items that are disclosed under § 1026.37(g)(4) if the

creditor is aware of those items when it issues the Loan Estimate include commissions of real estate brokers or agents, additional payments to the seller to purchase personal property pursuant to the property contract, homeowner's association and condominium charges associated with the transfer of ownership, and fees for inspections not required by the creditor but paid by the consumer pursuant to the property contract. Although the consumer is obligated for these costs, they are not imposed upon the consumer by the creditor or loan originator. Therefore, they are not disclosed with the parenthetical description "(optional)" at the end of the label for the item, and they are disclosed pursuant to § 1026.37(g) rather than § 1026.37(f). Even if such items are not required to be disclosed on the Loan Estimate under § 1026.37(g)(4), however, they may be required to be disclosed on the Closing Disclosure pursuant to § 1026.38. Comment 19(e)(3)(iii)-3 discusses application of the good faith requirement for services chosen by the consumer that are not required by the creditor.

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.

2. *Credits or rebates from the creditor to offset a portion or all of the closing costs.* For loans where a portion or all of the closing costs are offset by a credit or rebate provided by the creditor (sometimes referred to as "no-cost" loans), whether all or a defined portion of the closing costs disclosed under § 1026.37(f) or (g) will be paid by a credit or rebate from the creditor, the creditor discloses such credit or rebate as a lender credit under § 1026.37(g)(6)(ii).

The creditor should ensure that the lender credit disclosed under § 1026.37(g)(6)(ii) is sufficient to cover the estimated costs the creditor represented to the consumer as not being required to be paid by the consumer at consummation, regardless of whether such representations pertained to specific items.

37(g)(7) Item descriptions and ordering.

1. *Clear and conspicuous standard*. See comment 37(f)(5)-1 for guidance regarding the requirement to label items using terminology that describes each item.

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.

37(h)(1) For all transactions.

1. *Labels for amounts disclosed.* Section 1026.37(h)(1) describes the amounts that are used to calculate the estimated amount of cash or other funds that the consumer must provide at consummation. The labels that are to be used under § 1026.37(h)(1) are illustrated by form H-24(A) of appendix H to this part.

37(h)(1)(ii) Closing costs financed.

1. *Calculating amount.* The amount of closing costs financed disclosed under § 1026.37(h)(1)(ii) is determined by subtracting the estimated total amount of payments to third parties not otherwise disclosed pursuant to § 1026.37(f) and § 1026.37(g) from the total loan

amount disclosed pursuant to § 1026.37(b)(1). If the result of the calculation is a positive number, that amount is disclosed as a negative number under § 1026.37(h)(1)(ii), but only to the extent that it does not exceed the total amount of lender credits disclosed under § 1026.37(g)(6)(ii). If the result of the calculation is zero or negative, the amount of $0 is disclosed under § 1026.37(h)(1)(ii).

37(h)(1)(iii) Downpayment and other funds from borrower.

1. *No downpayment or funds from borrower*. When the loan amount exceeds the purchase price of the property (other than a construction loan), the amount of $0 is disclosed under § 1026.37(h)(1)(iii).

37(h)(1)(iv) Deposit.

1. Section 1026.37(h)(1)(iv)(A) requires disclosure of a deposit in a purchase transaction. The deposit to be disclosed under § 1026.37(h)(1)(iv)(A) is any amount that the consumer has agreed to pay to a party identified in the real estate purchase and sale agreement to be held until consummation of the transaction, which is often referred to as an earnest money deposit. In a purchase transaction in which no such deposit is paid in connection with the transaction, § 1026.37(h)(1)(iv)(A) requires the creditor to disclose $0. In any other type of transaction, § 1026.37(h)(1)(iv)(B) requires disclosure of the deposit amount as $0.

37(h)(1)(v) Funds for borrower.

1. *Use of calculation – non-purchase transactions.* The calculation described in § 1026.37(h)(1)(v) is only used to determine the amounts disclosed under § 1026.37(h)(1)(iii) and (h)(1)(v) in a transaction that is not described as a purchase transaction under § 1026.37(a)(9)(i), in accordance with the provisions of § 1026.37(h)(1)(iii)(A). In a purchase transaction (other than a construction loan), the amount disclosed under § 1026.37(h)(1)(v) will

be $0, in accordance with § 1026.37(h)(1)(v)(A).

37(h)(1)(vi) Seller credits.

1. *Credits to be disclosed.* The seller credits known to the creditor at the time of delivery of the Loan Estimate are disclosed under § 1026.37(h)(1)(vi). For example, a creditor may know the amount of seller credits that will be paid in the transaction from information obtained verbally from the consumer, from a review of the purchase and sale contract, or from information obtained from a real estate agent in the transaction.

2. *Seller credits for specific charges.* To the extent known by the creditor at the time of delivery of the Loan Estimate, seller credits for specific items disclosed under § 1026.37(f) and (g) are represented by the total amount disclosed for those items.

37(h)(1)(vii) Adjustments and other credits.

1. *Other credits known at the time the Loan Estimate is issued.* Amounts expected to be paid by third parties not involved in the transaction, such as gifts from family members and not otherwise identified under § 1026.37(h)(1), are included in the amount disclosed pursuant to § 1026.37(h)(1)(vii).

2. *Persons that may make payments causing adjustment and other credits.* Persons, as defined under § 1026.2(a)(22), means natural persons or organizations. Accordingly, persons that may pay amounts disclosed under § 1026.37(h)(1)(vii) include, for example, any individual family members providing gifts or a developer or home builder organization providing a credit in the transaction.

3. *Credits.* Only credits from persons other than the creditor or seller can be disclosed pursuant to § 1026.37(h)(1)(vii). Seller credits and credits from the creditor are disclosed pursuant to § 1026.37(h)(1)(vi) and § 1026.37(g)(6)(ii), respectively.

4. *Other credits to be disclosed.* Credits other than those from the creditor or seller are disclosed under § 1026.37(h)(1)(vii). Disclosure of other credits is, like other disclosures under § 1026.37, subject to the good faith requirement under § 1026.19(e)(1)(i). *See* § 1026.19(e)(1)(i) and comments 17(c)(2)(i)-1 and 19(e)(1)(i)-1. The creditor may obtain information regarding items to be disclosed under § 1026.37(h)(1)(vii), for example, verbally from the consumer, from a review of the purchase and sale contract, or from information obtained from a real estate agent in the transaction.

5. *Proceeds from subordinate financing or other source.* Funds that are provided to the consumer from the proceeds of subordinate financing, local or State housing assistance grants, or other similar sources are included in the amount disclosed under § 1026.37(h)(1)(vii).

6. *Reduction in amounts for adjustments.* Adjustments that require additional funds from the consumer pursuant to the real estate purchase and sale contract, such as for additional personal property that will be disclosed on the Closing Disclosure under § 1026.38(j)(1)(iii) or adjustments that will be disclosed on the Closing Disclosure under § 1026.38(j)(1)(v) can be included in the amount disclosed under § 1026.37(h)(1)(vii), and because the amount disclosed is a sum of adjustments and other credits, such amount would reduce the total amount disclosed. Additional examples of such adjustments for additional funds from the consumer include prorations for property taxes and homeowner's association dues.

37(h)(1)(viii) Estimated cash to close.

1. *Result of cash to close calculation.* The sum of the amounts disclosed pursuant to § 1026.37(h)(1)(i) through (vii) is disclosed under § 1026.37(h)(1)(viii) as either a positive number, a negative number, or zero. A positive number indicates the amount that the consumer will pay at consummation. A negative number indicates the amount that the consumer will

receive at consummation. A result of zero indicates that the consumer will neither pay nor receive any amount at consummation.

37(h)(2) Optional alternative calculating cash to close table for transactions without a seller.

1. *Optional use.* The optional disclosure of the calculating cash to close table in § 1026.37(h)(2) may only be provided by a creditor in a transaction without a seller. The use of this alternative table for transactions without a seller is optional, but must be used in conjunction with the disclosure under § 1026.37(d)(2).

37(h)(2)(iii) Payoffs and payments.

1. *Examples.* Examples of the amounts incorporated in the total amount disclosed under § 1026.37(h)(2)(iii) include, but are not limited to: payoffs of existing liens secured by the property identified under § 1026.37(a)(6) such as existing mortgages, deeds of trust, judgments that have attached to the real property, mechanics' and materialmans' liens, and local, State and Federal tax liens; payments of unsecured outstanding debts of the consumer; and payments to other third parties for outstanding debts of the consumer (but not for settlement services) as required to be paid as a condition for the extension of credit.

37(h)(2)(iv) Cash to or from consumer.

1. *Method of indication.* The indication of whether the estimated cash to close is either due from or payable to the consumer is made by the use of check boxes, which is illustrated by form H-24(D) of appendix H to this part.

37(h)(2)(v) Closing costs financed.

1. *Limitation on amount disclosed.* The amount disclosed under § 1026.37(h)(2)(v) is limited to the total amount of closing costs disclosed under § 1026.37(g)(6), even if the

difference between § 1026.37(h)(2)(i) and § 1026.37(h)(2)(iii) is greater than the amount disclosed under § 1026.37(g)(6).

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 shall not appear on the Loan Estimate.

2. *Periods to be disclosed.* Section 1026.37(i)(1) through (4) requires disclosure of the periods during which interest only, optional payment, step payment, and seasonal payment product features will be in effect. The periods required to be disclosed should be disclosed by describing the number of payments counting from the first periodic payment due after consummation. The period of seasonal payments required to be disclosed by § 1026.37(i)(4), to be clear and conspicuous, should be disclosed with a noun that identifies the unit-period, because such feature may apply on a regular basis during the loan term that does not depend on when regular periodic payments begin. The disclosures required by § 1026.37(i)(1) through (4) may include abbreviations to fit in the space provided for the information on form H-24, provided the information is disclosed in a clear and conspicuous manner. For example:

i. *Period from date of consummation.* If a loan has an interest only period for the first 60 regular periodic payments due after consummation, the disclosure states "for your first 60 payments."

ii. *Period during middle of loan term.* If the loan has an interest only period between the 61st and 85th payments, the disclosure states "from your 61st to 85th payment."

iii. *Multiple successive periods.* If there are multiple periods during which a certain adjustable payment term applies, such as a period of step payments that occurs from the first through 12th payments, does not occur from the 13th through 24th payments, and occurs again from the 25th through 36th payments, the period disclosed is the entire span of all such periods. Accordingly, such period is disclosed as "for your first 36 payments."

iv. *Seasonal payments.* For a seasonal payment product with a unit-period of a month that does not require periodic payments for the months of June, July, and August each year during the loan term, because such feature depends on calendar months and not on when regular periodic payments begin, the period is disclosed as "from June to August." For a transaction with a quarterly unit-period that does not require a periodic payment every third quarter during the loan term and does not depend on calendar months, the period is disclosed as "every third payment." In the same transaction, if the seasonal payment feature ends after the 20th quarter, the period is disclosed as "every quarter until the 20th quarter." As described above in this comment 37(i)-2, the creditor may abbreviate "quarter" to "quart." or "Q."

37(i)(5) Principal and interest payments.

1. *Statement of periodic payment frequency*. The subheading required by § 1026.37(i)(5) must include the unit-period of the transaction, such as "quarterly," "bi-weekly," or "annual." This unit-period should be the same as disclosed under § 1026.37(b)(3). *See* § 1026.37(o)(5)(i).

2. *Initial payment adjustment unknown.* The disclosure required by § 1026.37(i)(5) must state the number of the first payment for which the regular periodic principal and interest payment may change. This payment is typically set forth in the legal obligation. However, if the exact payment number of the first adjustment is not known at the time the creditor provides the Loan Estimate, the creditor must disclose the earliest possible payment that may change under

the terms of the legal obligation, based on the information available to the creditor at the time, as the initial payment number and amount.

3. *Subsequent changes*. The disclosure required by § 1026.37(i)(5) must state the frequency of adjustments to the regular periodic principal and interest payment after the initial adjustment, if any, expressed in years, except if adjustments are more frequent than once every year, in which case the disclosure should be expressed as payments. If there is only one adjustment of the periodic payment under the terms of the legal obligation (for example, if the loan has an interest only period for the first 60 payments and there are no adjustments to the payment after the end of the interest only period), the disclosure should state: "No subsequent changes." If the loan has graduated increases in the regular periodic payment every 12th payment, the disclosure should state: "Every year." If the frequency of adjustments to the periodic payment may change under the terms of the legal obligation, the disclosure should state the smallest period of adjustments that may occur. For example, if an increase in the periodic payment is scheduled every sixth payment for 36 payments, and then every 12th payment for the next 24 payments, the disclosure should state: "Every 6th payment."

4. *Maximum payment.* The disclosure required by § 1026.37(i)(5) must state the larger of the maximum scheduled or maximum potential amount of a regular periodic principal and interest payment under the terms of the legal obligation, as well as the payment number of the first periodic principal and interest payment that can reach such amount. If the disclosed payment is scheduled, § 1026.37(i)(5) requires that the disclosure state the payment number when such payment is reached with the preceding text, "starting at." If the disclosed payment is only potential, as may be the case for a loan that permits optional payments, the disclosure states the earliest payment number when such payment can be reached with the preceding text, "as

early as." Section 1026.37(i)(5) requires that the first possible periodic principal and interest payment that can reach the maximum be disclosed. For example, for a fixed interest rate optional-payment loan with scheduled payments that result in negative amortization under the terms of the legal obligation, the maximum periodic payment disclosed should be based on the consumer having elected to make the periodic payments that would increase the principal balance to the maximum amount at the latest time possible before the loan begins to fully amortize, which would cause the periodic principal and interest payment to be the maximum possible. For example, if the earliest payment that could reach the maximum principal balance was the 41st payment at which time the loan would begin to amortize and the periodic principal and interest payment would be recalculated, but the last payment that permitted the principal balance to increase was the 60th payment, the disclosure required by § 1026.37(i)(5) must assume the consumer only reaches the maximum principal balance at the 60th payment because this would result in the maximum possible principal and interest payment under the terms of the legal obligation. The disclosure must state the maximum periodic principal and interest payment based on this assumption and state "as early as the 61st payment."

5. *Payments that do not pay principal.* Although the label of the disclosure required by § 1026.37(i)(5) is "Principal and Interest Payments," and the section refers to periodic principal and interest payments, it includes a scheduled periodic payment that only covers some or all of the interest that is due and not any principal (*i.e.*, an interest only or negatively amortizing payment).

37(j) Adjustable interest rate table.

1. *When table is not permitted to be disclosed.* The disclosure described in § 1026.37(j) is required only if the interest rate may increase after consummation, either based on changes to

an index or scheduled changes to the interest rate. If the legal obligation does not permit the interest rate to adjust after consummation, such as for a "Fixed Rate" product under § 1026.37(a)(10), this table is not permitted to appear on the Loan Estimate. The creditor may not disclose a blank table or a table with "N/A" inserted within each row.

37(j)(1) Index and margin.

1. *Index and margin*. The index disclosed pursuant to § 1026.37(j)(1) must be stated such that a consumer reasonably can identify it. A common abbreviation or acronym of the name of the index may be disclosed in place of the proper name of the index, if it is a commonly used public method of identifying the index. For example, "LIBOR" may be disclosed instead of London Interbank Offered Rate. The margin should be disclosed as a percentage. For example, if the contract determines the interest rate by adding 4.25 percentage points to the index, the margin should be disclosed as "4.25%."

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 interest rate required to be disclosed by § 1026.37(j)(4) is the minimum interest rate that may occur at any time during the term of the transaction, after any introductory or "teaser" interest rate expires, under the terms of the legal obligation, such as an interest rate "floor." If the terms of the legal obligation do not state a minimum interest rate, the minimum interest rate that applies to the transaction under applicable law must be disclosed. If the terms of the legal obligation do not state a minimum interest rate, and no other minimum interest rate applies to the transaction under applicable law, the amount of the margin is disclosed.

2. *Maximum interest rate*. The maximum interest rate required to be disclosed pursuant to § 1026.37(j)(4) is the maximum interest rate permitted under the terms of the legal obligation, such as an interest rate "cap." If the terms of the legal obligation do not specify a maximum interest rate, the maximum interest rate permitted by applicable law, such as State usury law, must be disclosed.

37(j)(5) Frequency of adjustments.

1. *Exact month unknown*. The disclosure required by § 1026.37(j)(5) must state the first month for which the interest rate may change. This month is typically scheduled in the terms of the legal obligation. However, if the exact month is not known at the time the creditor provides the Loan Estimate, the creditor must disclose the earliest possible month under the terms of the legal obligation, based on the best information available to the creditor at the time.

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 Nationwide Mortgage Licensing System and Registry (NMLSR ID) number for each creditor, mortgage broker, and loan officer identified on the Loan Estimate. The NMLSR ID is a unique number or other identifier generally assigned to individuals registered or licensed through NMLSR to provide loan originating services. For more information, see the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (SAFE Act) sections 1503(3) and (12) and 1504 (12 U.S.C. 5102(3) and (12) and 5103), and its implementing regulations (*i.e.*, 12 CFR 1007.103(a) and 1008.103(a)(2)). An entity may also have an NMLSR ID. Thus, if the creditor, mortgage broker, or loan officer has obtained an NMLSR ID, the NMLSR IDs must be provided in the disclosures required by § 1026.37(k)(1) and (2).

2. *License number or unique identifier*. Section 1026.37(k)(1) and (2) requires the disclosure of a license number or unique identifier for the creditor, mortgage broker, and loan officer if such entity or individual has not obtained an NMLSR ID. In such event, if the applicable State, locality, or other regulatory body with responsibility for licensing and/or registering such entity's or individual's business activities has issued a license number or other unique identifier to such entity or individual, that number is disclosed. In addition, § 1026.37(k)(1) and (2) require the abbreviation of the State of the jurisdiction or regulatory body that issued such license or registration is required to be included before the word "License"

in the label required by § 1026.37(k)(1) and (2). If no such license or registration is required to be disclosed, such as if an NMLSR number is disclosed, the space provided for such an abbreviation in form H-24 of appendix H to this part may be left blank. A U.S. Postal Service State abbreviation complies with § 1026.37(k)(1) and (2), if applicable.

3. *Contact*. Section 1026.37(k)(2) requires the disclosure of the name and NMLSR ID of the person who is the primary contact for the consumer, labeled "Loan Officer." The loan officer is generally the natural person employed by the creditor or mortgage broker disclosed under § 1026.37(k)(1) who interacts most frequently with the consumer and who has an NMLSR ID or, if none, a license number or other unique identifier to be disclosed under § 1026.38(k)(2), as applicable.

4. *Email address and phone number*. Section 1026.37(k)(3) requires disclosure of the loan officer's email address and phone number. Disclosure of a general number or email address for the loan officer's lender or mortgage broker, as applicable, satisfies this requirement if no such information is generally available for such person.

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

guidance on how to calculate interest for mortgage loans that are Adjustable Rate products under § 1026.37(a)(10)(i)(A) for purposes of § 1026.37(l)(1)(i), see comment 17(c)(1)-10. In addition, for purposes of § 1026.37(l)(1)(i), the creditor should assume that the consumer makes payments as scheduled and on time. For purposes of § 1026.37(l)(1)(i), mortgage insurance means "mortgage insurance or any fractional equivalent" as defined pursuant to comment 37(c)(1)(i)(C)-1 and includes prepaid or escrowed mortgage insurance. Loan costs are those costs disclosed pursuant to § 1026.37(f).

2. *Negative amortization loans.* For loans that have a negative amortization feature under § 1026.37(a)(10)(ii)(A), the creditor calculates the total payments in five years using the scheduled payments, even if it is a negatively amortizing payment amount, until the consumer must begin making fully amortizing payments under the terms of the legal obligation.

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 products under § 1026.37(a)(10)(i)(A), § 1026.37(l)(3) requires that the creditor compute the total interest percentage in accordance with comment 17(c)(1)-10. For Step Rate products under

§ 1026.37(a)(10)(i)(B), § 1026.37(l)(3) requires that the creditor compute the total interest percentage in accordance with § 1026.17(c)(1) and its associated commentary.

3. *Negative amortization loans.* For loans that have a negative amortization feature under § 1026.37(a)(10)(ii)(A), § 1026.37(l)(3) requires that the creditor compute the total interest percentage using the scheduled payment, even if it is a negatively amortizing payment amount, until the consumer must begin making fully amortizing payments under the terms of the legal obligation.

37(m) Other considerations.

37(m)(1) Appraisal.

1. *Applicability*. The disclosure required by § 1026.37(m)(1) is only applicable to transactions subject to § 1026.19(e) that are also subject either to 15 U.S.C. 1639h or 1691(e) or both, as implemented by this part or Regulation B, 12 CFR part 1002, respectively. Accordingly, if a transaction is not also subject to either or both of these provisions, as implemented by this part or Regulation B, respectively, the disclosure required by § 1026.37(m)(1) may be omitted from the Loan Estimate as described by comment 37-1 as illustrated by form H-24 of appendix H to this part. For transactions subject to section 1639h but not section 1691(e), the creditor may delete the word "promptly" from the disclosure required by § 1026.37(m)(1)(ii).

2. *Consummation*. Section 1026.37(m)(1) requires the creditor to disclose that it will provide a copy of any appraisal, even if the transaction is not consummated. On form H-24, the disclosure required by § 1026.37(m)(1) states that the creditor will provide an appraisal, even if the "loan does not close." Pursuant to § 1026.37(o)(3), the disclosure required by § 1026.37(m)(1) is that illustrated by form H-24.

37(m)(2) Assumption.

1. *Disclosure*. Section 1026.37(m)(2) requires the creditor to disclose whether or not a third party may be allowed to assume the loan on its original terms if the property is sold or transferred by the consumer. In many cases, the creditor cannot determine, at the time the disclosure is made, whether a loan may be assumable at a future date on its original terms. For example, the assumption clause commonly used in mortgages sold to the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation conditions an assumption on a variety of factors, such as the creditworthiness of the subsequent borrower, the potential for impairment of the creditor's security, and the execution of an assumption agreement by the subsequent borrower. If the creditor can determine that such assumption is not permitted, the creditor complies with § 1026.37(m)(2) by disclosing that the loan is not assumable. In all other situations, including where assumption of a loan is permitted or is dependent on certain conditions or factors, or uncertainty exists as to the future assumability of a mortgage loan, the creditor complies with § 1026.37(m)(2) by disclosing that, under certain conditions, the creditor may allow a third party to assume the loan on its original terms.

2. *Original terms*. For purposes of § 1026.37(m)(2), the imposition of an assumption fee is not a departure from the original terms of the obligation but a modification of the legal obligation, such as a change in the contract interest rate, represents a departure from the original terms.

37(m)(3) Homeowner's insurance.

1. *Optional disclosure.* Section 1026.37(m)(3) provides that creditors may, but are not required to, disclose a statement of whether homeowner's insurance is required on the property and whether the consumer may choose the insurance provider, labeled "Homeowner's Insurance."

2. *Relation to the finance charge.* Section 1026.4(d)(2) describes the conditions under which a creditor may exclude premiums for homeowner's insurance from the finance charge. For transactions subject to § 1026.19(e), a creditor satisfies § 1026.4(d)(2)(i) by disclosing the statement described in § 1026.37(m)(3).

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 consummation. A creditor complies with § 1026.37(m)(6) if the disclosure reflects the creditor's intent at the time the Loan Estimate is issued.

37(m)(7) Liability after foreclosure.

1. *When statement is not permitted to be disclosed*. The disclosure described by

§ 1026.37(m)(7) is required under the condition specified by § 1026.37(m)(7), specifically, if the purpose of the credit transaction is a refinance under § 1026.37(a)(9)(ii). Under any other conditions, this statement is not permitted to appear in the Loan Estimate.

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 who will be obligated in the transaction, the first consumer signs as the applicant and each additional consumer signs as a co-applicant. If there is not enough space under the heading "Confirm Receipt" to provide signature lines for every consumer in the transaction, the creditor may add additional signature pages, as needed, at the end of the form for the remaining consumers' signatures. However, the creditor is required to disclose the heading and statement required by § 1026.37(m)(7) on such additional pages.

3. *Consumer's name.* The creditor may insert the consumer's name under the signature line, rather than using the designation "Applicant" or "Co-Applicant" as illustrated in form H-24 of appendix H to this part, but is not required to do so pursuant to § 1026.37(n)(1).

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 and segregated from everything else. For example, creditors may not add additional pages in between the pages of the

Loan Estimate, or attach to the Loan Estimate additional pages that are not provided for under § 1026.37 after the last page of the Loan Estimate. As required by § 1026.37(o)(3)(i), the disclosures for any transaction that is a federally related mortgage loan under Regulation X, 12 CFR 1024.2, must be made using the standard form H-24 of appendix H to this part. Accordingly, use of that form constitutes compliance with the clear and conspicuous and segregation requirements of § 1026.37(o). In addition, § 1026.37(o)(1)(ii) requires creditors to disclose on the Loan Estimate only the information required by § 1026.37(a) through (n), except as otherwise provided by § 1026.37(o), and in the same order, and positioned relative to the master headings, headings, subheadings, labels, and similar designations in the same manner, as shown in form H-24, set forth in appendix H to this part. For example, creditors may not use form H-24, but include in the Loan Terms table under the subheading "Can this amount increase after closing?" information that is not required by § 1026.37(b)(6).

2. *Balloon payment financing with leasing characteristics.* In certain credit sale or loan transactions, a consumer may reduce the dollar amount of the payments to be made during the transaction by agreeing to make, at the end of the loan term, a large final payment based on the expected residual value of the property. The consumer may have a number of options with respect to the final payment, including, among other things, retaining the property and making the final payment, refinancing the final payment, or transferring the property to the creditor in lieu of the final payment. Such transactions may have some of the characteristics of lease transactions subject to Regulation M (12 CFR part 1013), but are considered credit transactions where the consumer assumes the indicia of ownership, including the risks, burdens, and benefits of ownership, upon consummation. These transactions are governed by the disclosure requirements of this part instead of Regulation M. Under § 1026.37(o)(1)(ii), creditors may not

include any additional information with the disclosures required by § 1026.37, except as provided in § 1026.37(o)(5). Thus, the disclosures must show the large final payment as a balloon payment in the projected payments table required by § 1026.37(c) and should not, for example, reflect the other options available to the consumer at maturity.

37(o)(2) Headings and labels.

1. *Estimated amounts.* Section 1026.37(o)(2) incorporates the "estimated" designations reflected on form H-24 of appendix H to this part into the disclosure requirements of § 1026.37, even if the relevant provision of § 1026.37 does not expressly require or permit disclosure of the word "estimate." Where form H-24 uses the abbreviation "est." in place of the word "estimated," § 1026.37(o)(2) also incorporates that designation into its requirement. 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 of appendix H to this part, although its use as a model form for such transactions, if properly completed with accurate content, constitutes compliance with the clear and conspicuous and segregation requirements of § 1026.37(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 § 1026.37 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 is not permitted to be rounded and is disclosed using decimal places where applicable, unless otherwise provided.

2. *Calculations.* If a dollar amount that is required to be rounded by § 1026.37(o)(4)(i) on the Loan Estimate is a total of one or more dollar amounts that are not required or permitted to be rounded, the total amount must be rounded consistent with § 1026.37(o)(4)(i), but such component amounts used in the calculation must use such unrounded numbers. In addition, if any such unrounded component amount is required to be disclosed under § 1026.37, consistent with § 1026.2(b)(4), it should be disclosed as an unrounded number. If an amount that is required to be rounded by § 1026.37(o)(4)(i) on the Loan Estimate is a total of one or more components that are also required to be rounded by § 1026.37(o)(4)(i), the total amount must be calculated using such rounded amounts. For example, the subtotals required to be disclosed by § 1026.37(f)(1), (2), and (3) are calculated using the rounded amounts disclosed under those subsections. *See also* comment 37(o)(4)(i)(C)-1. However, the amounts required to be disclosed by § 1026.37(l) reference actual amounts for their components, rather than other amounts disclosed under § 1026.37 and rounded pursuant to § 1026.37(o)(4)(i), and thus, they are

calculated using unrounded numbers.

37(o)(4)(i) Nearest dollar.

Paragraph 37(o)(4)(i)(A).

1. *Rounding of dollar amounts.* Section 1026.37(o)(4)(i)(A) requires that certain dollar amounts be rounded to the nearest whole dollar. For example, pursuant to § 1026.37(o)(4)(i)(A), periodic mortgage insurance payments of $164.50 are required to be disclosed under § 1026.37(c)(2)(ii) as $165. However, if the periodic mortgage insurance payment equaled $164.49, the creditor would disclose $164.

Paragraph 37(o)(4)(i)(B).

1. *Rounding of loan amount.* Section 1026.37(o)(4)(i)(B) requires the loan amount to be disclosed truncated at the decimal place if the loan amount is a whole number. For example, if § 1026.37(b)(1) requires disclosure of a loan amount of $481,516.23, the creditor discloses the amount as $481,516.23. However, if the loan amount required to be disclosed were $481,516.00, the creditor would disclose $481,516.

Paragraph 37(o)(4)(i)(C).

1. *Rounding of the total monthly payment.* Section 1026.37(o)(4)(i)(C) requires the total monthly payment amount disclosed under § 1026.37(c)(2)(iv) to be rounded if any of its components are rounded. For example, if the total monthly payment disclosed under § 1026.37(c)(2)(iv) is composed of a $2,000.49 periodic principal and interest payment required to be disclosed by § 1026.37(c)(2)(i) and a $164.49 periodic mortgage insurance payment required to be disclosed by § 1026.37(c)(2)(ii), the creditor would calculate the total monthly payment by adding the exact periodic principal and interest payment of $2,000.49 and the rounded periodic mortgage insurance payment of $164, round the total, and disclose $2,164.

37(o)(4)(ii) Percentages.

1. *Decimal places.* Section 1026.37(o)(4)(ii) requires the percentage amounts disclosed to be truncated at the decimal point, if the amount is a whole number. For example, a 7.005 percent annual percentage rate is disclosed in compliance with § 1026.37(o)(4)(ii) as "7.005%," but a 7.000 percent annual percentage rate would be disclosed as "7%." If any percentage amounts required to be disclosed contain more than three decimal places, they shall be rounded to three decimal places.

37(o)(5) Exceptions.

1. *Permissible changes.* The changes required or permitted by § 1026.37(o)(5) are permitted for federally related mortgage loans for which the use of form H-24 is required under § 1026.37(o)(3). For non-federally related mortgage loans, 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 are not permissible for federally related mortgage loans. Creditors in non-federally related mortgage loans making any changes that affect the substance, clarity, or meaningful sequence of the disclosure will lose their protection from civil liability under TILA section 130.

2. *Manual completion.* Section 1026.37(o) does not require the creditor to use a computer, typewriter, or other word processor to complete the disclosure form. The information and amounts required to be disclosed by § 1026.37 on form H-24 of appendix H to this part may be filled in by hand printing or using any other method, provided the information is clear and legible and complies with the formatting required by form H-24, including replicating bold font where required.

3. *Contact information.* If a transaction involves more than one creditor or mortgage broker, the space provided on form H-24 of 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 of 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. *Unit-period.* Section 1026.37(o)(5)(i) provides that wherever form H-24 or § 1026.37 uses "monthly" to describe the frequency of any payments or uses "month" to describe the applicable unit-period, the creditor is required to substitute the appropriate term to reflect the fact that the transaction's terms provide for other than monthly periodic payments, such as bi-weekly or quarterly payments. For purposes of § 1026.37, the term "unit-period" has the same meaning as in appendix J to Regulation Z.

5. *Additional page.* Information required or permitted to be disclosed by § 1026.37 on a separate page should be formatted similarly to form H-24 of appendix H to this part, so as not to affect the substance, clarity, or meaningful sequence of the disclosure. In addition, information provided on additional pages should be consolidated on as few pages as necessary to not affect the substance, clarity, or meaningful sequence of the disclosure.

6. *Translation*. Section 1026.37(o)(5)(ii) permits the translation of form H-24 into languages other than English, consistent with § 1026.27. Pursuant to § 1026.37(o)(5)(ii) creditors may modify form H-24 to the extent that translation prevents the headings, labels, designations, and required disclosure items under § 1026.37 from fitting in the space provided on

form H-24. For example, if the translation of a required label does not fit within the line provided for such label in form H-24, the label may be disclosed over two lines. See form H-28 of appendix H to this part for Spanish translations of form H-24.

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

1. *Disclosures not applicable.* Where a disclosure is not applicable to a particular transaction, form H-25 of appendix H to this part may not be modified to state "not applicable" or "N/A." The portion of the form pertaining to the inapplicable disclosure may be left blank unless otherwise provided by § 1026.38. For example, the disclosure required by § 1026.38(r) of the consumer's or seller's real estate broker may be left blank for a transaction that does not involve real estate brokers, such as a refinance or home equity loan. As provided in § 1026.38(m) and (n), 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 § 1026.38(t) and its commentary for guidance on the proper format to be used in making the disclosures, as well as required and permissible modifications.

3. *Good faith requirement.* The disclosures required by § 1026.38 are required to reflect the actual terms of the legal obligation between the parties, and the actual costs associated with the settlement of the transaction. Creditors and settlement agents may estimate disclosures as provided pursuant to § 1026.19(f)(1)(i) when the actual term or cost is unknown at the time the disclosures are made. *See* §§ 1026.17(c)(2) and 1026.19(f)(1)(i) and comments 17(c)(2)(i)-1 and -2, and 19(f)(1)(i)-2.

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) Settlement agent.

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

38(a)(3)(v) File number.

1. *Alpha-numeric characters.* The file number required by § 1026.38(a)(3)(v) may contain any alpha-numeric characters and need not be limited to numbers.

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

1. *Alternative property*. For guidance on disclosing the location of a property for which an address is unavailable, see the commentary to § 1026.37(a)(6). Where personal property also secures the credit transaction, a description of that property may be disclosed, at the creditor's option, pursuant to § 1026.38(a)(3)(vi). If the form does not provide enough space to disclose a description of personal property under § 1026.38(a)(3)(vi), at the creditor's option 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).

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. If the creditor has not obtained an appraisal, the creditor may disclose the estimated value of the property. Where an estimate is

disclosed, rather than an appraisal, the label for the disclosure is changed to "Estimated Prop. Value." The creditor may use the estimate provided by the consumer at application, or if it has performed its own estimate of the property value by the time the disclosure is provided to the consumer, disclose that estimate provided that it was the estimate the creditor used to determine approval of the credit transaction.

2. *Personal property*. For guidance on how to disclose the sale price of a transaction that includes personal property under § 1026.38(a)(3)(vii), see comment 37(a)(7)-2.

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 consumer and 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 comment 37(a)(5)-1.

2. *No seller*. In transactions where there is no seller, such as in a refinancing or home equity loan, the disclosure under § 1026.38(a)(4)(ii) may be left blank. *See also* § 1026.38(t)(5)(vii)(A).

3. *Multiple creditors*. See comment 37(a)(3)-1 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(a)(5)(v) Loan identification number.

1. *Same identification number as Loan Estimate.* The loan identification number disclosed pursuant to § 1026.38(a)(5)(v) must be one that enables the creditor, consumer, and other parties to identify the transaction as the same transaction disclosed on the Loan Estimate. The loan identification number may contain any alpha-numeric characters. If a creditor uses the same loan identification number on several revised Loan Estimates to the consumer, but adds after such number a hyphen and a number to denote the number of revised Loan Estimates in sequence, the creditor must disclose the loan identification number before such hyphen on the Closing Disclosure to identify the transaction as the same for which the initial and revised Loan Estimates were provided.

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(d) Costs at closing.

38(d)(2) Alternative table for transactions without a seller.

1. *Required use.* The disclosure of the cash to close table in § 1026.38(d)(2) may only be

provided by a creditor in a transaction without a seller. The use of this alternative table for transactions without a seller is required if the Loan Estimate provided to the consumer disclosed the optional alternative table pursuant to § 1026.37(d)(2), and must be used in conjunction with the use of the alternative calculating cash to close disclosure under § 1026.38(e).

2. *Method of indication.* The indication of whether the cash is either due from or payable to the consumer is made by the use of check boxes as shown in form H-25(J) of appendix H to this part. Forms H-25(E) and H-25(G) of appendix H to this part contain examples of the use of these checkboxes.

38(e) Alternative calculating cash to close table for transactions without a seller.

1. *Required use.* The disclosure of the table in § 1026.38(e) may only be provided by a creditor in a transaction without a seller. The use of this alternative calculating cash to close table for transactions without a seller is required for transactions in which the Loan Estimate provided to the consumer disclosed the optional alternative table pursuant to § 1026.37(h)(2), and must be used in conjunction with the alternative disclosure under § 1026.38(d)(2).

2. *More prominent disclosures.* Section 1026.38(e)(1)(iii), (2)(iii), (3)(iii), and (4)(iii) requires that statements are given as to whether the "Final" amount disclosed under each subparagraph (ii) of § 1026.38(e)(1) through (e)(4) is different than or equal to, and in some cases whether the amount is greater than or less than, the corresponding "Loan Estimate" amount disclosed under each subparagraph (i) of § 1026.38(e)(1) through (e)(4). These statements are more prominent than the other disclosures under § 1026.38(e). The statement of whether the estimated and final amounts are different, stated as a "Yes" or "No" in capital letters and in boldface, under the subheading "Did this change?," as shown on forms H-25(E) and H-25(G) of appendix H to this part, complies with the requirement to state whether the amounts are different

more prominently. Such statement of "No" satisfies the requirement to state that the estimated and final amounts are equal, and these sections do not provide for any narrative text to be included with such statement. The prominence requirement also requires that, in the event an increase or decrease in costs has occurred, certain words within the narrative text to be included under the subheading "Did this change?" for a "Yes" answer are displayed more prominently than other disclosures. For example, under § 1026.38(e)(2)(iii)(A), this more prominent statement could take the form of the phrases "Total Loan Costs (D)" and "Total Other Costs (I)" being shown in boldface, as shown on forms H-25(E) and H-25(G) of appendix H to this part. See comment 38(e)-4 for further guidance regarding the prominence of such statements.

3. *Statements of differences*. The dollar amounts disclosed under § 1026.38 generally are shown to two decimal places unless otherwise required. *See* comment 38(t)(4)-1. As a result, any "Final" amount that is disclosed in the alternative "Calculating Cash to Close" table under § 1026.38(e) is shown to two decimal places unless otherwise required. Pursuant to § 1026.38(t)(4)(i)(C), however, any "Loan Estimate" amount that is disclosed in the alternative "Calculating Cash to Close" table under § 1026.38(e) is shown to the nearest dollar amount, and thus matches the corresponding estimated amount disclosed on the Loan Estimate's "Calculating Cash to Close" table under § 1026.37(h), which is shown to the nearest whole dollar pursuant to § 1026.37(o)(4)(i)(A). For this reason, a "Final" amount shown to two decimal places could be a larger number than its corresponding "Estimate" amount shown to the nearest whole dollar, when, in fact, the apparent increase is due solely to rounding. Therefore, for purposes of § 1026.38(e)(1)(iii), (2)(iii), (3)(iii), and (4)(iii), each statement of a change between the amounts disclosed on the Loan Estimate and the Closing Disclosure is based on the actual, non-rounded estimate that would have been disclosed on the Loan Estimate under § 1026.37(h) if it had been

shown to two decimal places rather than a whole dollar amount. For example, if the "Loan Estimate" amount of "Total Closing Costs" disclosed under § 1026.38(e)(2)(i) is $12,500, and the "Final" amount of "Total Closing Costs" disclosed under § 1026.38(e)(2)(ii) is $12,500.35, then even though the table would appear to show a $0.35 increase in "Total Closing Costs," no statement of such increase is given under § 1026.38(e)(2)(iii) so long as the actual, non-rounded estimate (*i.e.*, the estimated amount of "Total Closing Costs" that would have been shown on the Loan Estimate to two decimal places) is equal to $12,500.35.

4. *Statements that the consumer should see details*. The provisions of § 1026.38(e)(2)(iii)(A) and (e)(4)(iii)(A) each require a statement that the consumer should see certain details of the closing costs disclosed under § 1026.38(f), (g), or (t). Forms H-25(E) and H-25(G) of appendix H to this part contain examples of these statements. For example, § 1026.38(e)(4)(iii)(A) requires a statement that the consumer should see the details disclosed pursuant to § 1026.38(t)(5)(vii)(B), and, as shown on forms H-25(E) and H-25(G) of appendix H to this part, the statement, "See Payoffs and Payments," in which the words "Payoffs and Payments" are in boldface, complies with this provision.

5. *Statement of increase or decrease.* Section 1026.38(e)(1)(iii)(A) requires a statement of whether the loan amount increased or decreased. A creditor complies with this requirement by disclosing, "This amount increased" or "This amount decreased" with the words "increase" and "decrease" in boldface font.

38(e)(1) Loan amount.

Paragraph 38(e)(1)(iii)(A).

1. *Statements of increases or decreases.* Section 1026.38(e)(1)(iii)(A) requires a statement of whether the amount increased or decreased from the estimated amount. For

§ 1026.38(e)(1)(iii)(A), the statement, "You increased this amount," in which the word "increased" is in boldface font and is replaced with the word "decreased" as applicable, complies with this provision.

38(e)(2) Total closing costs.

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

1. *Reference to disclosure of total closing costs*. Under § 1026.38(e)(2)(i), the amount disclosed is labeled "Total Closing Costs," and such label is accompanied by a reference to the disclosure of "Total Closing Costs" under § 1026.38(h)(1). This reference may take the form, for example, of a cross-reference in parenthesis to the row on the table disclosed under § 1026.38(h) that includes the itemized amount for "Total Closing Costs," as shown on form H-25 of appendix H to this part.

Paragraph 38(e)(2)(iii)(A).

1. *Statements and references regarding the total loan costs and total other costs*. Under § 1026.38(e)(2)(iii)(A), the statements under the subheading "Did this change?" that the consumer should see the total loan costs and total other costs subtotals disclosed on the Closing Disclosure under § 1026.38(f)(4) and (g)(5) are made only if and to the extent the difference in the "Total Closing Costs" is attributable to differences in itemized charges that are included in either or both of such subtotals.

i. For example, if an increase in the "Total Closing Costs" is attributable only to an increase in the appraisal fee (which is an itemized charge on the Closing Disclosure under the subheading "Services Borrower Did Not Shop For," itself under the heading "Loan Costs"), then a statement is given under the subheading "Did this change?" that the consumer should see the total loan costs subtotal disclosed on the Closing Disclosure under § 1026.38(f)(4). If the

increase in "Total Closing Costs" is attributable only to an increase in recording fees (which is an itemized charge on the Closing Disclosure under the subheading "Taxes and Other Government Fees," itself under the heading "Other Costs"), then a statement is given under the subheading "Did this change?" that the consumer should see the total other costs subtotal disclosed on the Closing Disclosure under § 1026.38(g)(5). If, however, the increase is attributable in part to an increase in the appraisal fee and in part to an increase in the recording fee, then a statement is given under the subheading "Did this change?" that the consumer should see the total loan costs and total other costs subtotals disclosed on the Closing Disclosure under § 1026.38(f)(4) and (g)(5).

ii. For guidance regarding the requirement that this statement be accompanied by a reference to the disclosures of the total loan costs and total other costs under § 1026.38(f)(4) and (g)(5), see comment 38(e)(2)(i)-1. For an example of such reference, see form H-25 of appendix H to this part.

2. *Disclosure of excess amounts above limitations on increases in closing costs*.

i. Because certain closing costs, individually, are subject to the limitations on increases in closing costs under § 1026.19(e)(3)(i) (*e.g.*, fees paid to the creditor, transfer taxes, fees paid to an affiliate of the creditor), while other closing costs are collectively subject to the limitations on increases in closing costs under § 1026.19(e)(3)(ii) (*e.g.*, recording fees, fees paid to an unaffiliated third party identified by the creditor if the creditor permitted the consumer to shop for the service provider), § 1026.38(e)(2)(iii)(A) requires the creditor or closing agent to calculate subtotals for each type of excess amount, and then add such subtotals together to yield the dollar amount to be disclosed in the table. See commentary to § 1026.19(e)(3) for additional guidance on calculating excess amounts above the limitations on increases in closing costs under

§ 1026.19(e)(3).

ii. Under § 1026.38(e)(2)(iii)(A), calculation of the excess amounts above the limitations on increases in closing costs takes into account that the itemized, estimated closing costs disclosed on the Loan Estimate will not result in charges to the consumer if the service is not actually provided at or before consummation. For example, if the Loan Estimate included under "Services You Cannot Shop For" a $30 charge for a "title courier fee," but the title company elects to hand-deliver the title documents package to the creditor at no charge, the $30 fee is not factored into the calculation of the "Total Closing Costs" that are subject to the limitations on increases in closing costs. However, if the title courier fee was assessed, but at only $15, the charge is factored into the calculation because the third party service was actually provided, albeit at a lower amount than estimated. For an example, see form H-25 of appendix H to this part.

iii. Under § 1026.38(e)(2)(iii)(A), calculation of the excess amounts above the limitations on increases in closing costs takes into account that certain itemized charges listed on the Loan Estimate under the subheading "Services You Can Shop For" may be subject to different limitations depending on the circumstances. Such a charge would be subject to the limitations under § 1026.19(e)(3)(i) if the consumer decided to use a provider affiliated with the creditor. However, the same charge would instead be subject to the limitations under § 1026.19(e)(3)(ii) if the consumer selected a third party service provider unaffiliated with but identified by the creditor, and the creditor permitted the consumer to shop for the service provider. See commentary to § 1026.19(e)(3) for additional guidance on calculating excess amounts above the limitations on increases in closing costs under § 1026.19(e)(3).

38(e)(3) Closing costs paid before closing.

Paragraph 38(e)(3)(i).

1. *Estimate of closing costs paid before closing*. Under § 1026.38(e)(3)(i), the "Loan 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(e)(3)(iii)(B).

1. *Equal amount*. Under § 1026.38(e)(3)(iii)(B), the creditor or settlement agent gives a statement that the "Final" amount disclosed under § 1026.38(e)(3)(ii) is equal to the "Loan Estimate" amount disclosed under § 1026.38(e)(3)(i), only if the "Final" amount is $0, because the "Loan Estimate" amount is always disclosed as $0 pursuant to § 1026.38(e)(3)(i). *See* comment 38(e)(3)(i)-1.

38(f) Closing cost details; loan costs.

1. *Lender-paid charges and specific lender credits.* Charges that are designated as paid by others under § 1026.38(f) and (g), below, may include the letter "L" in parentheses, *i.e.* "(L)," to the left of the amount in the column to designate those charges paid by the creditor pursuant to the legal obligation between the creditor and consumer.

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.

2. *Loan originator compensation.* All compensation paid to a loan originator, as defined by § 1026.36(a)(1), that is a third-party associated with the transaction, regardless of the party that pays the compensation, must be disclosed pursuant to § 1026.38(f)(1). Compensation from the consumer to a third-party loan originator is designated as borrower-paid at or before closing, as applicable, on the Closing Disclosure. Compensation from the creditor to a third-party loan

originator is designated as paid by others on the Closing Disclosure. Compensation to a third-party loan originator from both the consumer and the creditor in the transaction is prohibited under § 1026.36(d)(2).

3. *Calculating compensation to a loan originator from the creditor.* The amount disclosed as paid from the creditor to a third-party loan originator under § 1026.38(f)(1) is the dollar value of salaries, commissions, and any financial or similar compensation provided to a third-party loan originator by the creditor that are considered to be points and fees under § 1026.32(b)(1)(ii). For additional guidance and examples on the calculation of compensation paid to the third-party loan originator from the creditor, see comments 32(b)(1)(ii)-1, -2, -3, and -4.

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.

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 § 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.

2. *Transfer taxes – itemization.* The creditor may itemize the transfer taxes paid on as many lines as necessary pursuant to § 1026.38(g)(1) in order to disclose all of the transfer taxes paid as part of the transaction. The taxes should be allocated in the applicable columns as borrower-paid at or before closing, seller-paid at or before closing, or paid by others, as provided by State or local law, the terms of the legal obligation, or the real estate purchase contract.

38(g)(2) Prepaids.

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

2. *Negative prepaid interest.* The prepaid interest amount is disclosed as a negative number if the calculation of prepaid interest results in a negative number.

3. *No prepaid interest.* If interest is not collected for a portion of a month or other period between closing and the date from which interest will be collected with the first monthly payment, then $0 must be disclosed under § 1026.38(g)(2).

4. *Interest rate for prepaid interest.* The interest rate disclosed pursuant to § 1026.38(g)(2) is the interest rate disclosed under § 1026.38(b), as required by § 1026.37(b)(2).

5. *Property taxes.* For a description of items that constitute property taxes, see comment 43(b)(8)-2.

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. The aggregate adjustment, as illustrated by form H-25 of appendix H to this part, is disclosed as the last listed item in the amounts disclosed under § 1026.38(g)(3).

3. *Escrowed tax payments for different timeframes.* Payments for property taxes that are paid at different time periods can be itemized separately when done in accordance with 12 CFR 1024.17. For example, a general property tax covering a fiscal year from January 1 to December 31 can be listed as a property tax under § 1026.38(g)(3) and a separate property tax to fund schools that cover a fiscal year from November 1 to October 31 can be added as a separate itemized amount under § 1026.38(g)(3).

4. *Property taxes.* For a description of items that constitute property taxes, see comment 43(b)(8)-2.

5. *Definition of escrow account.* For a description of the amounts included in the initial escrow account disclosure under § 1026.38(g)(3), see the definition of "escrow account" in 12 CFR 1024.17(b).

38(g)(4) Other.

1. *Costs disclosed.* The costs disclosed under § 1026.38(g)(4) include all real estate brokerage fees, homeowner's or condominium association charges paid at consummation, home warranties, inspection fees, and other fees that are part of the real estate closing but not required by the creditor or not disclosed elsewhere under § 1026.38.

2. *Owner's title insurance premium.* In a jurisdiction where simultaneous issuance title insurance rates are permitted, any owner's title insurance premium disclosed under § 1026.38(g)(4) is calculated by using the full owner's title insurance premium, adding any simultaneous issuance premium for issuance of lender's coverage, and then deducting the full premium for lender's coverage disclosed under § 1026.38(f)(2) or (f)(3). Section 1026.38(g)(4)(i) requires that the disclosure of the cost of the premium for an owner's title insurance policy include "Title – " at the beginning of the label. In addition, § 1026.38(g)(4)(ii) requires that the disclosure of the cost of the premium for an owner's title insurance policy include the parenthetical "(optional)" at the end of the label when designated borrower-paid at or before closing.

3. *Guidance.* For additional guidance on the use of the term "(optional)" under § 1026.38(g)(4)(ii), see comment 37(g)(4)-3.

4. *Real estate commissions.* The amount of real estate commissions pursuant to § 1026.38(g)(4) must be the total amount paid to any real estate brokerage as a commission, regardless of the identity of the party holding any earnest money deposit. Additional charges made by real estate brokerages or agents to the seller or consumer are itemized separately as additional items for services rendered, with a description of the service and an identification of the person ultimately receiving the payment.

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 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 the creditor for closing costs, the amount of the credit must be disclosed under § 1026.38(h)(3). However, if such credit is attributable to a specific loan cost or other cost listed in the Closing Cost Details tables, pursuant to § 1026.38(f) or (g), that amount should be reflected in the Paid by Others column in the Closing Cost Details tables under § 1026.38(f) or (g). For a description of lender credits from the creditor, see comment 17(c)(1)-19. For a discussion of general lender credits and lender credits for specific charges, see comment 19(e)(3)(i)-5.

2. *Credits for excess charges.* Credits from the creditor to offset an amount charged in excess of the limitations described in § 1026.19(e)(3) are disclosed pursuant to § 1026.38(h)(3), along with a statement that such amount was paid to offset an excess charge, with funds other than closing funds. If an excess charge to the consumer is discovered after consummation and a refund provided, the corrected disclosure must be provided to the consumer under

§ 1026.19(f)(2)(v). For an example, see form H-25(F) of appendix H to this part.

Paragraph 38(h)(4).

1. *Consistent terminology and order of charges.* On the Closing Disclosure the creditor must label the corresponding services and costs disclosed under § 1026.38(f) and (g) using terminology that describes each item, as applicable, and must use terminology or the prescribed label, as applicable, that is consistent with that used on the Loan Estimate to identify each corresponding item. In addition, § 1026.38(h)(4) requires the creditor to list the items disclosed under each subcategory of charges in a consistent order. If costs move between subheadings under § 1026.38(f)(2) and (f)(3), listing the costs in alphabetical order in each subheading category is considered to be in compliance with § 1026.38(h)(4). See comment 37(f)(5)-1 for guidance regarding the requirement to use terminology that describes the items to be disclosed.

38(i) Calculating cash to close.

1. *More prominent disclosures.* Section 1026.38(i)(1)(iii), (2)(iii), (3)(iii), (4)(iii), (5)(iii), (6)(iii), (7)(iii), and (8)(iii) requires that statements are given as to whether the "Final" amount disclosed under each subparagraph (ii) of § 1026.38(i)(1) through (i)(8) is different or equal to, and in some cases whether the amount is greater than or less than, the corresponding "Loan Estimate" amount disclosed under each subparagraph (i) of § 1026.38(i)(1) through (i)(8). These statements are more prominent than the other disclosures under § 1026.38(i). The statement of whether the estimated and final amounts are different, stated as a "Yes" or "No" in capital letters and in boldface font, under the subheading "Did this change?," as shown on form H-25 of appendix H to this part, complies with the requirement to state whether the amounts are different more prominently. Such statement of "No" satisfies the requirement to state that the estimated and final amounts are equal, and these sections do not provide for any narrative text to

be included with such statement. The prominence requirement also requires that, in the event an increase or decrease in costs has occurred, certain words within the narrative text to be included under the subheading "Did this change?" for a "Yes" answer are displayed more prominently than other disclosures. For example, under § 1026.38(i)(1)(iii)(A), this more prominent statement could take the form of the phrases "Total Loan Costs" and "Total Other Costs" being shown in boldface, as shown on form H-25 of appendix H to this part. See comments 38(i)-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 required. *See* comment 38(t)(4)-1. As a result, any "Final" amount that is disclosed in the "Calculating Cash to Close" table under § 1026.38(i) is shown to two decimal places unless otherwise required. Pursuant to § 1026.38(t)(4)(i)(C), however, any "Loan Estimate" amount that is disclosed in the "Calculating Cash to Close" table under § 1026.38(i) is shown rounded to the nearest dollar amount, and thus matches the corresponding estimated amount disclosed on the Loan Estimate's "Calculating Cash to Close" table under § 1026.37(h), which is shown rounded to the nearest whole dollar pursuant to § 1026.37(o)(4)(i)(A). For this reason, a "Final" amount shown to two decimal places could be a larger number than its corresponding "Loan Estimate" amount shown rounded to the nearest whole dollar, when, in fact, the apparent increase is due solely to rounding. Therefore, for purposes of § 1026.38(i)(1)(iii), (2)(iii), (3)(iii), (4)(iii), (5)(iii), (6)(iii), (7)(iii), and (8)(iii), each statement of a change between the amounts disclosed on the Loan Estimate and the Closing Disclosure is based on the actual, non-rounded estimate that would have been disclosed on the Loan Estimate under § 1026.37(h) if it had been shown to two decimal places rather than a whole dollar amount. For example, if the "Loan Estimate" amount of "Total Closing Costs" disclosed

under § 1026.38(i)(1)(i) is $12,500, and the "Final" amount of "Total Closing Costs" disclosed under § 1026.38(i)(1)(ii) is $12,500.35, then even though the table would appear to show a $0.35 increase in "Total Closing Costs," no statement of such increase is given under § 1026.38(i)(1)(iii) so long as the actual, non-rounded estimate (*i.e.*, the estimated amount of "Total Closing Costs" that would have been shown on the Loan Estimate to two decimal places) is equal to $12,500.35.

3. *Statements that the consumer should see details*. The provisions of § 1026.38(i)(4)(iii)(A), (i)(5)(iii)(A), (i)(7)(iii)(A), and (i)(8)(iii)(A) each require a statement that the consumer should see certain details of the closing costs disclosed under § 1026.38(j). Form H-25 of appendix H to this part contains examples of these statements. For example, § 1026.38(i)(7)(iii)(A) requires a statement that the consumer should see the details disclosed pursuant to § 1026.38(j)(2)(v), and, as shown on form H-25(B) of appendix H to this part, the statement, "See Seller Credits in Section L," in which the words "Section L" are in boldface font, complies with this provision. In addition, for example, § 1026.38(i)(5)(iii)(A) requires a statement that the consumer should see the details disclosed pursuant to § 1026.38(j)(2)(ii), and the following statement which is similar to that shown on form H-25(B) of appendix H to this part for § 1026.38(i)(7)(iii)(A), "See Deposit in Section L," in which the words "Section L" are in boldface font, complies with this provision. In addition, for example, the statement "See details in Sections K and L," in which the words "Sections K and L" are in boldface font, complies with the requirement under § 1026.38(i)(8)(iii)(A). See form H-25(B) of appendix H to this part for an example of the statement required by § 1026.38(i)(8)(iii)(A).

4. *Statements of increases or decreases.* The provisions of § 1026.38(i)(4)(iii)(A), (i)(5)(iii)(A), and (i)(6)(iii)(A) each require a statement of whether the amount increased or

decreased from the estimated amount. For the statement required by § 1026.38(i)(6)(iii)(A), the statement "This amount increased," in which the word "increased" is in boldface and is replaced with the word "decreased" as applicable, complies with this requirement. For the statements required by § 1026.38(i)(4)(iii)(A) and (i)(5)(iii)(A), the statement, "You increased this payment," in which the word "increased" is in boldface and is replaced with the word "decreased" as applicable, complies with these requirements.

38(i)(1) Total closing costs.

Paragraph 38(i)(1)(iii)(A).

1. *Statements and references regarding the total loan costs and total other costs*. Under § 1026.38(i)(1)(iii)(A), the statements under the subheading "Did this change?" that the consumer should see the total loan costs and total other costs subtotals disclosed on the Closing Disclosure under § 1026.38(f)(4) and (g)(5) is made only if and to the extent the difference in the "Total Closing Costs" is attributable to differences in itemized charges that are included in either or both of such subtotals.

i. For example, if an increase in the "Total Closing Costs" is attributable only to an increase in the appraisal fee (which is an itemized charge on the Closing Disclosure under the subheading "Services Borrower Did Not Shop For," itself under the heading "Loan Costs"), then a statement is given under the subheading "Did this change?" that the consumer should see the total loan costs subtotal disclosed on the Closing Disclosure under § 1026.38(f)(4). If the increase in "Total Closing Costs" is attributable only to an increase in recording fees (which is an itemized charge on the Closing Disclosure under the subheading "Taxes and Other Government Fees," itself under the heading "Other Costs"), then a statement is given under the subheading "Did this change?" that the consumer should see the total other costs subtotal disclosed on the

Closing Disclosure under § 1026.38(g)(5). If, however, the increase is attributable in part to an increase in the appraisal fee and in part to an increase in the recording fee, then a statement is given under the subheading "Did this change?" that the consumer should see the total loan costs and total other costs subtotals disclosed on the Closing Disclosure under § 1026.38(f)(4) and (g)(5).

ii. For guidance regarding the requirement that this statement be accompanied by a reference to the disclosures of the total loan costs and total other costs under § 1026.38(f)(4) and (g)(5), see comment 38(i)-1. For an example of such reference, see form H-25 of appendix H to this part.

2. *Disclosure of excess amounts above limitations on increases in closing costs*.

i. Because certain closing costs, individually, are subject to the limitations on increases in closing costs under § 1026.19(e)(3)(i) (*e.g.*, fees paid to the creditor, transfer taxes, fees paid to an affiliate of the creditor), while other closing costs are collectively subject to the limitations on increases in closing costs under § 1026.19(e)(3)(ii) (*e.g.*, recording fees, fees paid to an unaffiliated third party identified by the creditor if the creditor permitted the consumer to shop for the service provider), § 1026.38(i)(1)(iii)(A) requires the creditor or closing agent to calculate subtotals for each type of excess amount, and then add such subtotals together to yield the dollar amount to be disclosed in the table. See commentary to § 1026.19(e)(3) for additional guidance on calculating excess amounts above the limitations on increases in closing costs under § 1026.19(e)(3).

ii. Under § 1026.38(i)(1)(iii)(A), calculation of the excess amounts above the limitations on increases in closing costs takes into account that the itemized, estimated closing costs disclosed on the Loan Estimate will not result in charges to the consumer if the service is not

actually provided at or before consummation. For example, if the Loan Estimate included under "Services You Cannot Shop For" a $30 charge for a "title courier fee," but the title company elects to hand-deliver the title documents package to the creditor at no charge, the $30 fee is not factored into the calculation of the "Total Closing Costs" that are subject to the limitations on increases in closing costs. However, if the title courier fee was assessed, but at only $15, the charge is factored into the calculation because the third-party service was actually provided, albeit at a lower amount than estimated.

iii. Under § 1026.38(i)(1)(iii)(A), calculation of the excess amounts above the limitations on increases in closing costs takes into account that certain itemized charges listed on the Loan Estimate under the subheading "Services You Can Shop For" may be subject to different limitations depending on the circumstances. Such a charge would be subject to the limitations under § 1026.19(e)(3)(i) if the consumer decided to use a provider affiliated with the creditor. However, the same charge would instead be subject to the limitations under § 1026.19(e)(3)(ii) if the consumer selected a third-party service provider unaffiliated with but identified by the creditor, and the creditor permitted the consumer to shop for the service provider. See commentary to § 1026.19(e)(3) for additional guidance on calculating excess amounts above the limitations on increases in closing costs under § 1026.19(e)(3).

3. *Statements regarding excess amount and any credit to the consumer.* Section 1026.38(i)(1)(iii)(A)(*3*) requires statements that an increase in closing costs exceeds legal limits by the dollar amount of the excess and a statement directing the consumer to the disclosure of lender credits under § 1026.38(h)(3) if a credit is provided under § 1026.19(f)(2)(v). See form H-25(F) of appendix H to this part for examples of such statements.

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

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

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

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

38(i)(4) Down payment/funds from borrower.

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

1. *Down payment*. Under § 1026.38(i)(4)(ii)(A), in a transaction that is a purchase as defined in § 1026.37(a)(9)(i), the "Final" amount disclosed for "Down Payment/Funds from Borrower" reflects any change, following delivery of the Loan Estimate, in the amount of down payment required of the consumer. This change might result, for example, from an increase in the purchase price of the property.

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

1. *Funds from borrower*. Section 1026.38(i)(4)(ii)(B) provides that, in a transaction other than a purchase as defined in § 1026.37(a)(9)(i), the "Final" amount disclosed for "Down Payment/Funds from Borrower" is the amount of "Funds from Borrower" determined in accordance with § 1026.38(i)(6)(iv). Under § 1026.38(i)(6)(iv), the "Final" amount of "Funds from Borrower" to be disclosed under § 1026.38(i)(4)(ii)(B) is determined by subtracting from

the total amount of all existing debt being satisfied in the real estate closing and disclosed under § 1026.38(j)(1)(v) (except to the extent the satisfaction of such existing debt is disclosed under § 1026.38(g)) the principal amount of the credit extended, and is disclosed either as a positive number or $0 depending on the result of the calculation. An increase in the "Final" amount of "Funds from Borrower" compared to the corresponding "Loan Estimate" amount might result, for example, from a decrease in the amount of the credit extended or an increase in the payoff amount for the consumer's existing debt that is secured by the property. For additional guidance regarding the determination of the "Down Payment/Funds from Borrower" amount, see comment 38(i)(6)(ii)-1.

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

1. *Statement of differences*. Section 1026.38(i)(4)(iii)(A) requires, as applicable, a statement that the consumer has increased or decreased this payment, along with a statement that the consumer should see the details disclosed under § 1026.38(j)(1) or (j)(2), as applicable. The applicable disclosure to be referenced corresponds to the label on the Closing Disclosure under which the information accounting for the increase in the "Down Payment/Funds from Borrower" amount is disclosed. For example, in a transaction that is a purchase as defined in § 1026.37(a)(9)(i), if the purchase price of the property has increased and therefore caused the "Down Payment" amount to increase, the statement, "You increased this payment. See details in Section K," with the words "increased" and "Section K" in boldface, complies with this requirement. In a purchase or refinancing transaction, in the event the amount of the credit extended by the creditor has decreased and therefore caused the "Funds from Borrower" amount to increase, the statement can read, for example, "You increased this payment. See details in Section L," with the same in boldface.

38(i)(5) Deposit.

1. *When no deposit in a purchase transaction.* Section 1026.38(i)(5) requires the disclosure in the Calculating Cash to Close table of the deposit required to be disclosed under § 1026.37(h)(1)(iv) and under § 1026.38(j)(2)(ii), and the subheadings "Loan Estimate" and "Final," respectively. Under § 1026.37(h)(1)(iv), in all transactions other than a purchase transaction as defined in § 1026.37(a)(9)(i), the amount required to be disclosed is $0. In a purchase transaction in which no such deposit is paid in connection with the transaction, under §§ 1026.37(h)(1)(iv) and 1026.38(i)(5)(i) and (ii) the amount required to be disclosed is $0.

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) and 1026.38(j)(2)(vi) and (j)(2)(xi). If the calculation required by § 1026.38(i)(8)(ii) yields a negative number, the creditor or closing agent discloses the amount as a negative number.

38(i)(9) Cash to close.

Paragraph 38(i)(9)(ii).

1. *Final cash to close amount.* The "Final" amount of "Cash to Close" disclosed under § 1026.38(i)(9)(ii) is the same as the amount disclosed on the Closing Disclosure as "Cash to

Close" under § 1026.38(j)(3)(iii). If the calculation required by § 1026.38(i)(9)(ii) yields a negative number, the creditor or closing agent discloses the amount as a negative number.

2. *More prominent disclosure*. Section 1026.38(i)(9)(ii) requires that the disclosure of the "Final" amount of "Cash to Close" be more prominent than the other disclosures under § 1026.38(i). Such more prominent disclosure can take the form, for example, of boldface font, as shown on form H-25 of appendix H to this part.

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

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

3. *Identical amounts.* The amounts disclosed under the following provisions of § 1026.38(j) are the same as the amounts disclosed under the corresponding provisions of § 1026.38(k): § 1026.38(j)(1)(ii) and (k)(1)(ii); § 1026.38(j)(1)(iii) and (k)(1)(iii); if the amount

disclosed under § 1026.38(j)(1)(v) is attributable to contractual adjustments between the consumer and seller, § 1026.38(j)(1)(v) and (k)(1)(iv); § 1026.38(j)(1)(vii) and (k)(1)(vi); § 1026.38(j)(1)(viii) and (k)(1)(vii); § 1026.38(j)(1)(ix) and (k)(1)(viii); § 1026.38(j)(1)(x) and (k)(1)(ix); § 1026.38(j)(2)(iv) and (k)(2)(iv); § 1026.38(j)(2)(v) and (k)(2)(vii); § 1026.38(j)(2)(viii) and (k)(2)(x); § 1026.38(j)(2)(ix) and (k)(2)(xi); § 1026.38(j)(2)(x) and (k)(2)(xii); and § 1026.38(j)(2)(xi) and (k)(2)(xiii).

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; and

iii. The treatment of any tenant security deposit.

2. *Other consumer charges.* The amounts disclosed under § 1026.38(j)(1)(v) which are for charges owed by the consumer at the real estate closing not otherwise disclosed pursuant to § 1026.38(f), (g), and (j) will not have a corresponding credit in the summary of the seller's transaction under § 1026.38(k)(1)(iv). For example, the amounts paid to any existing holders of liens on the property in a refinance transaction, and any outstanding real estate property taxes are disclosed under § 1026.38(j)(1)(v) without a corresponding credit in the summary of the seller's transaction under § 1026.38(k)(1)(iv).

Paragraph 38(j)(1)(x).

1. *Additional adjustments.* Examples of items for which adjustments may be made include taxes, other than those disclosed pursuant to § 1026.38(j)(1)(vii) and (viii), paid in advance for an entire year or other period, when the real estate closing occurs prior to the expiration of the year or other period for which they were paid. Additional examples of items for which adjustments may be made include:

i. Flood and hazard insurance premiums, if the consumer is being substituted as an insured under the same policy;

ii. Mortgage insurance in loan assumptions;

iii. Planned unit development or condominium association assessments paid in advance;

iv. Fuel or other supplies on hand, purchased by the seller, which the consumer will use when the consumer takes possession of the property; and

v. Ground rent paid in advance.

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). If there is no deposit paid in a transaction, that amount is left blank on the Closing Disclosure.

2. *Reduction of deposit when deposit used to pay for closing charges prior to closing.* If the consumer's deposit has been applied toward a charge for a closing cost, the amount applied should not be included in the amount disclosed pursuant to § 1026.38(j)(2)(ii), but instead should be shown on the appropriate line for the closing cost in the Closing Cost Detail tables pursuant to § 1026.38(f) or (g), designated borrower-paid before closing.

Paragraph 38(j)(2)(iii).

1. *First user loan.* For purposes of § 1026.38(j), a first user loan is a loan to finance construction of a new structure or purchase of a new manufactured home that is known at the time of consummation to be real property under State law, where the structure was constructed for sale or the manufactured home was purchased for purposes of resale and the loan is used as or converted to a loan to finance purchase by the first user. For other loans subject to § 1026.19(f) that finance construction of a new structure or purchase of a manufactured home that is known at the time of consummation to be real property under State law, the sales price of the land and the construction cost or purchase price of the manufactured home should be disclosed separately and the amount of the loan in the current transaction must be disclosed. The remainder of the Closing Disclosure should be completed taking into account adjustments and charges related to the temporary financing and permanent financing that are known at the time of consummation.

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

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

of any loans that the consumer is assuming, or subject to which the consumer is taking title to the property must be disclosed under § 1026.38(j)(2)(iv). When more than one loan is being assumed, the total amount of all outstanding loans being assumed should be disclosed under § 1026.38(j)(2)(iv).

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 must be disclosed with a brief explanation. If the net proceeds of a second loan are less than the principal amount of the second loan, the net proceeds may be listed on the same line as the principal amount of the second loan. For an example, see form H-25(C) of appendix H to this part.

3. *Satisfaction of existing subordinate liens by consumer.* For payments to subordinate lien holders by or on behalf of the consumer, disclosure of any amounts paid with funds other than closing funds, as defined under § 1026.38(j)(4)(ii), in connection with the second mortgage payoff are required to be disclosed under § 1026.38(j)(2)(vi), with a statement that such amounts were paid outside of closing funds. For an example, see form H-25(D) of appendix H to this part.

4. *Transferred escrow balances.* In a refinance transaction, any transferred escrow balance is listed as a credit pursuant to § 1026.38(j)(2)(vi), along with a description of the transferred escrow balance.

5. *Gift funds.* A credit must be disclosed for any money or other payments made by family members or third parties not otherwise associated with the transaction, along with a description of the nature of the funds provided under § 1026.38(j)(2)(vi).

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 closing, or cash payable to the consumer at closing.

2. *Methodology.* To calculate the cash to close, total the amounts disclosed under § 1026.38(j)(3)(i) and (ii). If that calculation results in a positive amount, the amount is due from the consumer. If the calculation results in a negative amount, the amount is due to the consumer.

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

Paragraph 38(j)(4)(i).

1. *Charges not paid with closing funds.* Section 1026.38(j)(4)(i) requires that any charges not paid from closing funds but that otherwise are disclosed pursuant to § 1026.38(j) be marked as "paid outside of closing" or "P.O.C." The disclosure must include a statement of the party making the payment, such as the consumer, seller, loan originator, real estate agent, or any other person. For an example of a disclosure of a charge not made from closing funds, see form H-25(D) of appendix H to this part. For an explanation of what constitutes closing funds, see

§ 1026.38(j)(4)(ii).

2. *Items paid without closing funds not included in sums.* Charges that are paid outside of closing funds under § 1026.38(j)(4)(i) should not be included in computing totals under § 1026.38(j)(1) and (j)(2).

38(k) Summary of seller's transaction.

1. *Transactions with no seller.* Section 1026.38(k) does not apply in transactions where there is no seller, such as a refinance transaction.

2. *Extra line items.* For guidance regarding the use of addenda for items disclosed on the Closing Disclosure under § 1026.38(k), see comment 38(j)-2.

3. *Identical amounts.* The amounts disclosed under certain provisions of § 1026.38(k) are the same as the amounts disclosed under certain provisions of § 1026.38(j). *See* comment 38(j)-3 for a listing of the specific provisions.

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

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

1. *Distributions of deposit to seller prior to closing.* If the deposit or any portion thereof has been disbursed to the seller prior to closing, the amount of the deposit that has been distributed to the seller must be disclosed under § 1026.38(k)(2)(ii).

Paragraph 38(k)(2)(iv).

1. *Assumption of existing loan obligation of seller by consumer.* If the consumer is assuming or taking title subject to existing liens and the amounts of the outstanding balance of the liens are to be deducted from the sales price, the amounts of the outstanding balance of the liens must be disclosed under § 1026.38(k)(2)(iv).

2. *Other seller credits.* Any other obligations of the seller to be paid directly to the

consumer, such as credits for issues identified at a walk-through of the property prior to the real estate closing, are disclosed under § 1026.38(k)(2)(vii).

Paragraph 38(k)(2)(viii).

1. *Satisfaction of other seller obligations.* Seller obligations, other than second liens, that must be paid off to clear title to the property must be disclosed pursuant to § 1026.38(k)(2)(viii). Examples of disclosures pursuant to § 1026.38(k)(2)(viii) include the satisfaction of outstanding liens imposed due to Federal, State, or local income taxes, real estate property tax liens, judgments against the seller reduced to a lien upon the property, or any other obligations the seller wishes the closing agent to pay from their proceeds at the real estate closing.

2. *Consumer satisfaction of outstanding subordinate loans.* If the consumer is satisfying existing liens which will not be deducted from the sales price, the amount of the outstanding balance of the loan must be disclosed under § 1026.38(k)(2)(viii). For example, the amount of any second lien which will be paid as part of the real estate closing that is not deducted from the seller's proceeds under § 1026.38(k)(2)(iv), is disclosed under § 1026.38(k)(2)(viii). For payments to the subordinate lien holder, any amounts paid must be disclosed, and other amounts paid by or on behalf of the seller must be disclosed as paid outside of closing funds under § 1026.38(j)(2)(vi). For additional discussion, see comment 38(j)(2)(vi)-2.

3. *Escrows held by closing agent for payment of invoices received after consummation.* Funds to be held by the closing agent for the payment of either repairs, or water, fuel, or other utility bills that cannot be prorated between the parties at closing because the amounts used by the seller prior to closing are not yet known must be disclosed under § 1026.38(k)(2)(viii). Subsequent disclosure of the actual amount of these post-closing items to be paid from closing funds is optional.

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.

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)(i)-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 fees, as required under § 1026.38(l)(3).

38(l)(6) Security interest.

1. *Alternate property address.* Section 1026.38(l)(6) requires disclosure of the address for the property that secures the credit, including the zip code. If the address is unavailable, § 1026.38(l)(6) requires disclosure of other location information for the property, such as a lot number; however, disclosure of a zip code is required in all instances. For transactions secured

by a consumer's interest in a timeshare plan, the creditor may disclose as other location information a lot, square, or other such number or other legal description of the property assigned by the local governing authority, or if no such number or description is available, disclose the name of the timeshare property or properties with a designation indicating that the property is an interest in a timeshare plan.

2. *Personal property*. Where personal property also secures the credit transaction, a description of that property may be disclosed, at the creditor's option, pursuant to § 1026.38(l)(6). If the form does not provide enough space to disclose a description of personal property to be disclosed under § 1026.38(l)(6), an additional page may be used and appended to the end of the form provided that the creditor complies with the requirements of § 1026.38(t)(3). The creditor may use one addendum to disclose the personal property under § 1026.38(a)(3)(vi) and (l)(6). *See* comment 38(a)(3)(vi)-1.

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 required only if the periodic principal and interest payment may change after consummation based on a loan term other than on an

adjustment to the interest rate or if the transaction is a seasonal payment product as described under § 1026.37(a)(10)(ii)(E). If the transaction does not contain these terms, this table is not permitted on the Closing Disclosure. *See* comments 37-1 and 37(i)-1.

4. *Final loan terms.* The disclosures required by § 1026.38(m) must include the information required by § 1026.37(i), as applicable, but the creditor must make the disclosure using the information that is required by § 1026.19(f). *See* comments 19(f)(1)(i)-1 and -2.

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 required only if the interest rate may change after consummation based on the terms of the legal obligation. If the interest rate will not change after consummation, this table is not permitted on the Closing Disclosure. *See* 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(l)(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*. The disclosure required by § 1026.38(p)(1) is only applicable to closed-end transactions subject to § 1026.19(f) that are also subject either to 15 U.S.C. 1639h or 1691(e), as implemented by this part or Regulation B, 12 CFR part 1002, respectively. Accordingly, if a transaction is not subject to either of those provisions, the disclosure required by § 1026.38(p)(1) may be left blank on form H-25 of appendix H to this part.

38(p)(3) 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. If the applicable State law affords any type of protection, other than a statute of limitations that only limits the timeframe in which a creditor may seek redress, § 1026.38(p)(3) requires a statement that State law may protect the consumer from liability for the unpaid balance.

38(q) Questions notice.

Paragraph 38(q)(3).

1. *Prominent question mark.* The notice required under § 1026.38(q) includes a prominent question mark. This prominent question mark is an aspect of form H-25 of appendix H to this part, the standard form or model form, as applicable, pursuant to § 1026.38(t). If the creditor deviates from the depiction of the question mark as shown on form H-25, the creditor complies with § 1026.38(q) if (1) the size and location of the question mark on the Closing Disclosure are substantially similar in size and location to the question mark shown on form H-25, and (2) the creditor otherwise complies with § 1026.38(t)(5) regarding permissible changes to the form of the Closing Disclosure.

38(r) Contact information.

1. *Each person to be identified.* Form H-25 of appendix H to this part includes the contact information required to be disclosed under § 1026.38(r) generally in a five-column tabular format (*i.e.*, there are columns from left to right that disclose the contact information for the creditor, mortgage broker, consumer's real estate broker, seller's real estate broker, and

settlement agent). Columns are left blank where no such person is participating in the transaction. For example, if there is no mortgage broker involved in the transaction, the column for the mortgage broker is left blank. Conversely, in the event the transaction involves more than one of each such person (*e.g.*, two sellers' real estate brokers splitting a commission), the space in the contact information table provided on form H-25 of appendix H to this part may be altered to accommodate the information for such persons, provided that the information required by § 1026.38(o),(p),(q),(r) and (s) is disclosed on the same page as illustrated by form H-25. If the space provided on form H-25 does not accommodate the addition of such information, an additional table to accommodate the information may be provided on a separate page, with an appropriate reference to the additional table. A creditor or settlement agent may also omit a column on the table that is inapplicable or, if necessary, replace an inapplicable column with the contact information for the additional person.

2. *Name of person*. Where § 1026.38(r)(1) calls for disclosure of the name of the person participating in the transaction, the person's legal name (*e.g.*, the name used for registration, incorporation, or chartering purposes), the person's trade name, if any, or an abbreviation of the person's legal name or the trade name is disclosed, so long as the disclosure is clear and conspicuous as required by § 1026.38(t)(1)(i). For example, if the creditor's legal name is "Alpha Beta Chi Bank and Trust Company, N.A." and its trade name is "ABC Bank," then under § 1026.38(r)(1) the full legal name, the trade name, or an abbreviation such as "ABC Bank & Trust Co." may be disclosed. However, the abbreviation "Bank & Trust Co." is not sufficiently distinct to enable a consumer to identify the person, and therefore would not be clear and conspicuous. If the creditor, mortgage broker, seller's real estate broker, consumer's real estate broker, or settlement agent participating in the transaction is a natural person, the natural

person's name is listed in the § 1026.38(r)(1) and (r)(4) disclosures (assuming that such natural person is the primary contact for the consumer or seller, as applicable).

3. *Address*. The address disclosed under § 1026.38(r)(2) is the identified person's place of business where the primary contact for the transaction is located (usually the local office), rather than a general corporate headquarters address. If a natural person's name is to be disclosed under § 1026.38(r)(1), *see* comment 38(r)-2, the business address of such natural person is listed (assuming that such natural person is the primary contact for the consumer or seller, as applicable).

4. *NMLSR ID*. Section 1026.38(r)(3) and (5) requires the disclosure of an NMLSR identification (ID) number for each person identified in the table. The NMLSR ID is a unique number or other identifier that is generally assigned by the Nationwide Mortgage Licensing System & Registry (NMLSR) to individuals registered or licensed through NMLSR to provide loan originating services (for more information, see the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (SAFE Act) sections 1503(3) and (12) and 1504, 12 U.S.C. 5102(3) and (12) and 5103, and its implementing regulations (*i.e.*, 12 CFR 1007.103(a) and 1008.103(a)(2)). An entity may also have an NMLSR ID. Thus, any NMLSR ID that is obtained by a creditor or mortgage broker entity disclosed under § 1026.38(r)(1), as applicable, or a natural person disclosed under § 1026.38(r)(4), either as required under the SAFE Act or otherwise, is disclosed. If the creditor, mortgage broker, or natural person has an NMLSR ID and a separate license number or unique identifier issued by the applicable State, locality, or other regulatory body with responsibility for licensing and/or registering such entity or person's business activities, both the NMLSR ID and the separate license number or unique identifier is disclosed. The space in the table is left blank for the disclosures in the columns corresponding to

persons that have no NMLSR ID to be disclosed under § 1026.38(r)(3) and (5); provided that, the creditor may omit the column from the table or, if necessary, replace the column with the contact information for an additional person. *See* comment 38(r)-1.

5. *License number or unique identifier*. Section 1026.38(r)(3) and (5) requires the disclosure of a license number or unique identifier for each person (including natural persons) identified in the table who does not have a NMLSR ID if the applicable State, locality, or other regulatory body with responsibility for licensing and/or registering such person's business activities has issued a license number or other unique identifier to such person under § 1026.38(r)(3) and (5). The space in the table is left blank for the disclosures in the columns corresponding to persons who are not subject to the issuance of such a license number or unique identifier to be disclosed under § 1026.38(r)(3) and (5); provided that, the creditor or settlement agent may omit the column from the table or, if necessary, replace the column with the contact information for an additional person. *See* comment 38(r)-1. In addition, under § 1026.38(r)(3) and (5), the abbreviation of the State or the jurisdiction or regulatory body that issued such license or registration is required to be included before the word "License" in the label required by § 1026.37(r)(3) and (5). If no such license or registration is required to be disclosed, such as if an NMLSR number is disclosed, the space provided for such an abbreviation in form H-25 of appendix H to this part may be left blank. A creditor complies with the requirements of § 1026.38(r)(3) and (5) to disclose the abbreviation of the State by disclosing a U.S. Postal Service State abbreviation, if applicable.

6. *Contact*. Section 1026.38(r)(4) requires the disclosure of the primary contact for the consumer. The primary contact is the natural person employed by the person disclosed under § 1026.38(r)(1) who interacts most frequently with the consumer and who has an NMLSR ID or,

if none, a license number or other unique identifier to be disclosed under § 1026.38(r)(5), as applicable. For example, if the senior loan officer employed by the creditor or mortgage broker disclosed under § 1026.38(r)(1) has an NMLSR ID, but the consumer meets with a different loan officer to complete the application and answer questions, the senior loan officer's name is disclosed under § 1026.38(r)(4) unless the other loan officer also has an NMLSR ID, in which case the other loan officer's name is disclosed. Further, if the sales agent employed by the consumer's real estate broker disclosed under § 1026.38(r)(1) has a State-issued brokers' license number, but the consumer meets with an associate sales agent to tour the property being purchased and complete the sales contract, the sales agent's name is disclosed under § 1026.38(r)(4) unless the associate sales agent also has a State-issued license number, in which case the associate sales agent's name is disclosed. Moreover, if the closing attorney employed by the settlement agent disclosed under § 1026.38(r)(1) has a State-issued settlement agent license number, but the consumer meets with the attorney's assistant to fill out any necessary documentation prior to the closing and to answer questions, the closing attorney's name is disclosed under § 1026.38(r)(4) because the assistant is only performing clerical functions.

7. *Email address and phone number.* Section 1026.38(r)(6) and (7) requires disclosure of the email address and phone number, respectively, for the persons listed in § 1026.37(r)(4). Disclosure of a general number or email address for the lender, mortgage broker, real estate broker, or settlement agent, as applicable, satisfies this requirement if no such information is generally available for such person.

38(s) Signature statement.

1. *General requirements.* See the commentary to § 1026.37(n) for guidance regarding the 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 and segregated from everything else. As required by § 1026.38(t)(3), the disclosures for any transaction that is a federally related mortgage loan under Regulation X, 12 CFR 1024.2, must be made using the standard form H-25 of appendix H to this part. Accordingly, use of that form constitutes compliance with the clear and conspicuous and segregation requirements of § 1026.38(t)(1).

2. *Balloon payment financing with leasing characteristics.* In certain credit sale or loan transactions, a consumer may reduce the dollar amount of the payments to be made during the course of the transaction by agreeing to make, at the end of the loan term, a large final payment based on the expected residual value of the property. The consumer may have a number of options with respect to the final payment, including, among other things, retaining the property and making the final payment, refinancing the final payment, or transferring the property to the creditor in lieu of the final payment. Such transactions may have some of the characteristics of lease transactions subject to Regulation M (12 CFR part 1013), but are considered credit transactions where the consumer assumes the indicia of ownership, including the risks, burdens and benefits of ownership, upon consummation. These transactions are governed by the disclosure requirements of this part instead of Regulation M. Under § 1026.38(t)(1)(ii), creditors may not include any additional information in the disclosures required by § 1026.38. Thus, the disclosures must show the large final payment as a balloon payment in the projected payments table required by § 1026.38(c) and should not, for example, reflect the other options available to

the consumer at maturity.

38(t)(2) Headings and labels.

1. *Estimated amounts.* Certain amounts are estimated when provided on the disclosure required by § 1026.37. When disclosed as required by § 1026.38, however, many of the corresponding disclosures must be actual amounts rather than estimates in accordance with the requirements of § 1026.19(f), even though the provision of § 1026.38 cross-references a counterpart in § 1026.37. Section 1026.38(t)(2) provides that, if a master heading, heading, subheading, label, or similar designation contains the word "estimated" in form H-25 of appendix H to this part, that heading, label, or similar designation shall contain the word "estimated." Thus, § 1026.38(t)(2) incorporates the "estimated" designations reflected on form H-25 into the requirements of § 1026.38. *See* comment 37(o)(2)-1.

38(t)(3) Form.

1. *Non-federally related mortgage loans.* For a transaction that a non-federally related mortgage loan, the creditor is not required to use form H-25 of appendix H to this part, although its use as a model form for such transactions, if properly completed with accurate content, constitutes compliance with the clear and conspicuous and segregation requirements of § 1026.38(t)(1)(i). Even when the creditor elects not to use the model form, § 1026.38(t)(1)(ii) requires that the disclosures contain only the information required by § 1026.38(a) through (s), and that the creditor make the disclosures in the same order as they occur in form H-25, use the same headings, labels, and similar designations as used in the form (many of which also are expressly required by § 1026.38(a) through (s)), and position the disclosures relative to those designations in the same manner as shown in the form. In order to be in a format substantially similar to form H-25, the disclosures required by § 1026.38 must be provided on letter size (8.5"

x 11”) paper.

38(t)(4) Rounding.

1. *Generally.* Consistent with § 1026.2(b)(4), any amount required to be disclosed by § 1026.38 and not required to be rounded by § 1026.38(t)(4) must be disclosed as an exact numerical amount using decimal places where applicable, unless otherwise provided. For example, under § 1026.38(t)(4), the principal and interest payment disclosed under § 1026.37(b)(3) and § 1026.38(b) must be disclosed using decimal places even if the amount of cents is zero, in contrast to the loan amount disclosed under § 1026.37(b)(1) and § 1026.38(b).

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

38(t)(5) Exceptions.

1. *Permissible changes.* The changes required and permitted by § 1026.38(t)(5) are permitted for federally related mortgage loans for which the use of form H-25 is required under § 1026.38(t)(3). For non-federally related mortgage loans, the changes required or permitted by § 1026.38(t)(5), do not affect the substance, clarity, or meaningful sequence of the disclosure and therefore, are permissible. Any changes to the disclosure not specified in § 1026.38(t)(5) or not permitted by other provisions of § 1026.38 are not permissible for federally related mortgage loans. Creditors in non-federally related mortgage loans making any changes that affect the substance, clarity, or meaningful sequence of the disclosure will lose their protection from civil liability under TILA section 130.

2. *Manual completion.* The creditor, or settlement agent preparing the form, under § 1026.19(f)(1)(v) is not required to use a computer, typewriter, or other word processor to complete the disclosure required by § 1026.38. The creditor or settlement agent may fill in

information and amounts required to be disclosed by § 1026.38 on form H-25 of appendix H to this part by hand printing or using any other method, provided the person produces clear and legible text and uses the formatting required by § 1026.38, including replicating bold font where required.

3. *Unit-period.* Section 1026.38(t)(5)(i) provides that wherever form H-25 or § 1026.38 uses "monthly" to describe the frequency of any payments or uses "month" to describe the applicable unit-period, the creditor is required to substitute the appropriate term to reflect the fact that the transaction's terms provide for other than monthly periodic payments, such as bi-weekly or quarterly payments. For purposes of § 1026.38, the term "unit-period" has the same meaning as in appendix J to Regulation Z.

4. *Signature lines.* Section 1026.38(t) does not restrict the addition of signature lines to the disclosure required by § 1026.38, provided any signature lines for confirmations of receipt of the disclosure appear only under the "Confirm Receipt" heading required by § 1026.38(s) as illustrated by form H-25 of appendix H to this part. If the number of signatures requested by the creditor for confirming receipt of the disclosure requires space for signature lines in excess of that provided on form H-25, an additional page may be added to accommodate the additional signature lines with an appropriate reference to the additional page. Such additional page should also contain the heading and statement required by § 1026.38(s) in the format provided on form H-25. Signatures for a purpose other than confirming receipt of the form may be obtained on a separate page, and consistent with § 1026.38(t)(1)(i), not on the same page as the information required by § 1026.38.

5. *Additional page*. Information required or permitted to be disclosed by § 1026.38 on a separate page should be formatted similarly to form H-25 of appendix H to this part, so as not to

affect the substance, clarity, or meaningful sequence of the disclosure. In addition, information provided on additional pages should be consolidated on as few pages as necessary so as not to affect the substance, clarity, or meaningful sequence of the disclosure.

6. *Page numbers.* References required by provisions of § 1026.38 to information disclosed pursuant to other provisions of the section, as illustrated on form H-25 of appendix H, may be altered to refer to the appropriate page number of the form containing such information.

7. *Translation.* Section 1026.38(t)(5)(viii) permits the translation of form H-25 into languages other than English, similar to § 1026.37(o)(5)(ii). Pursuant § 1026.38(t)(5)(viii) creditors may modify form H-25 to the extent that translation prevents the headings, labels, designations, and required disclosure items under § 1026.38 from fitting in the space provided on form H-25. For example, if the translation of a required label does not fit within the line provided for such label in form H-25, the label may be disclosed over two lines. See form H-28 of appendix H to this part for Spanish translations of form H-25.

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

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

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

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

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

1. *Alternative tables.* The alternative tables pursuant to § 1026.38(d)(2) and (e) are required to be disclosed to use the modification permitted under § 1026.38(t)(5)(vii).

2. *Appraised property value.* The modifications permitted by § 1026.38(t)(5)(vii) do not specifically refer to the label required by § 1026.38(a)(3)(vii)(B) for transactions that do not involve a seller, because the label is required by that section and is a requirement and not considered a modification. As required by § 1026.38(a)(3)(vii)(B), a form used for a transaction that does not involve a seller and is modified pursuant to § 1026.38(t)(5)(viii) must contain the

label “Appraised Prop. Value” or “Estimated Prop. Value” where there is no appraisal, and the information is required by § 1026.38(a)(3)(vii)(B).

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

1. *Customary recitals and information.* Section 1026.38(t)(5)(ix) permits an additional page to be added to the disclosure for customary recitals and information used locally in real estate settlements. Examples of such information include a breakdown of payoff figures, a breakdown of the consumer’s total monthly mortgage payments, check disbursements, a statement indicating receipt of funds, applicable special stipulations between buyer and seller, and the date funds are transferred.

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 periodic payments from the consumer that are less than the full amount due and whether the covered person applies the payments to a consumer’s loan or holds the payments in a separate account until the consumer pays the remainder of the full amount due. The disclosures required by § 1026.39(d)(5) apply only to a mortgage loan that is a closed-end consumer credit transaction secured by a dwelling or real property and that is not a reverse mortgage transaction subject to § 1026.33. In an open-end consumer credit transaction secured by the consumer’s principal dwelling, § 1026.39(d) requires a covered person to provide the disclosures required by § 1026.39(d)(1) through (4), but not the partial payment policy disclosure required by § 1026.39(d)(5). If, however, the dwelling in the open-end consumer

credit transaction is not the consumer's principal dwelling (*e.g.*, it is used solely for vacation purposes), none of the disclosures required by § 1026.39(d) is required because the transaction is not a mortgage loan for purposes of § 1026.39. *See* § 1026.39(a)(2). In contrast, a closed-end consumer credit transaction secured by the consumer's dwelling that is not the consumer's principal dwelling is considered a mortgage loan for purposes of § 1026.39. Assuming that the transaction is not a reverse mortgage transaction subject to § 1026.33, § 1026.39(d) requires a covered person to provide the disclosures under § 1026.39(d)(1) through (5). But if the transaction is a reverse mortgage transaction subject to § 1026.33, § 1026.39(d) requires a covered person to provide only the disclosures under § 1026.39(d)(1) through (4).

* * * * *

39(d)(5) Partial payment policy.

1. *Format of disclosure.* Section 1026.39(d)(5) requires disclosure of the partial payment policy of covered persons for closed-end consumer credit transactions secured by a dwelling or real property, other than a reverse mortgage transaction subject to § 1026.33. A covered person may utilize the format of the disclosure illustrated by form H-25 of appendix H to this part for the information required to be disclosed by § 1026.38(l)(5). For example, the statement required § 1026.39(d)(5)(iii) that a new covered person may have a different partial payment policy may be disclosed using the language illustrated by form H-25, which states "If this loan is sold, your new lender may have a different policy." The text illustrated by form H-25 may be modified to suit the format of the covered person's disclosure under § 1026.39. For example, the format illustrated by form H-25 begins with the text, "Your lender may" or "Your lender does not," which may not be suitable to the format of the covered person's other disclosures under § 1026.39. This text may be modified to suit the format of the covered person's integrated

disclosure, using a phrase such as “We will” or “We are your new lender and have a different Partial Payment Policy than your previous lender. Under our policy we will.” Any modifications must be appropriate and not affect the substance, clarity, or meaningful sequence of the disclosure.

* * * * *

APPENDIX D—MULTIPLE-ADVANCE CONSTRUCTION LOANS

* * * *

6. *Relation to § 1026.18(s).* A creditor must disclose an interest rate and payment summary table for certain transactions secured by a dwelling, pursuant to § 1026.18(s), instead of the general payment schedule required by § 1026.18(g) or the projected payments table required by §§ 1026.37(c) and 1026.38(c). Accordingly, some home construction loans that are secured by 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) or the interest rate and payments summary table required by § 1026.18(s). 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.

* * * * *

APPENDICES G AND H—OPEN-END AND CLOSED-END MODEL FORMS AND CLAUSES

1. *Permissible changes.* Although use of the model forms and clauses is not required, creditors using them properly will be deemed to be in compliance with the regulation with regard to those disclosures. Creditors may make certain changes in the format or content of the forms and clauses and may delete any disclosures that are inapplicable to a transaction or a plan without losing the Act's protection from liability, except formatting changes may not be made to model forms and samples in H-18, H-19, H-20, H-21, H-22, H-23, H-24, H-25, H-26, H-27, H-28, G-2(A), G-3(A), G-4(A), G-10(A)-(E), G-17(A)-(D), G-18(A) (except as permitted pursuant to § 1026.7(b)(2)), G-18(B)-(C), G-19, G-20, and G-21, or to the model clauses in H-4(E), H-4(F), H-4(G), and H-4(H). Creditors may modify the heading of the second column shown in Model Clause H-4(H) to read "first adjustment" or "first increase," as applicable, pursuant to § 1026.18(s)(2)(i)(C). The rearrangement of the model forms and clauses may not be so extensive as to affect the substance, clarity, or meaningful sequence of the forms and clauses. Creditors making revisions with that effect will lose their protection from civil liability. Except as otherwise specifically required, acceptable changes include, for example:

i. Using the first person, instead of the second person, in referring to the borrower.

ii. Using "borrower" and "creditor" instead of pronouns.

iii. Rearranging the sequences of the disclosures.

iv. Not using bold type for headings.

v. Incorporating certain State “plain English” requirements.

vi. Deleting inapplicable disclosures by whiting out, blocking out, filling in “N/A” (not applicable) or “0,” crossing out, leaving blanks, checking a box for applicable items, or circling applicable items. (This should permit use of multipurpose standard forms.)

vii. Using a vertical, rather than a horizontal, format for the boxes in the closed-end disclosures.

* * * * *

APPENDIX H—CLOSED-END FORMS AND CLAUSES

* * * * *

16. *Samples H-13 through H-15.* These samples illustrate various closed-end transactions. Samples H-13 and H-15 are for transactions subject to § 1026.17(a). 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.

* * * * *

19. *Sample H-15.* This sample illustrates a graduated payment 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 guarantee insurance premium of $225.00, are included in the prepaid finance charge. The 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 guarantee insurance portion of the obligation.

* * * * *

29. *Model Form H*-29. Model form H–29 contains the disclosures for the cancellation of an escrow account established in connection with a closed-end transaction secured by a first lien on real property or a dwelling.

i. This model form illustrates the disclosures required by § 1026.20(e).

ii. A creditor or servicer satisfies § 1026.20(e) if it provides model form H–29 or a substantially similar notice, which is properly completed with the disclosures required by § 1026.20(e).

iii. Although creditors and servicers are not required to use a certain paper size in disclosing the information under § 1026.20(e), model form H–29 is designed to be printed on an 8½ × 11 inch sheet of paper. In addition, the following formatting techniques were used in presenting the information in the model form to ensure that the information is readable:

A. A readable font style and font size (10-point minimum font size);

B. Sufficient spacing between lines of the text;

C. Standard spacing between words and characters. In other words, the text was not compressed to appear smaller than 10-point type;

D. Sufficient white space around the text of the information in each row, by providing sufficient margins above, below and to the sides of the text;

E. Sufficient contrast between the text and the background. Generally, black text was used on white paper.

iv. While the regulation does not require creditors or servicers to use the above

formatting techniques in presenting information in the tabular format (except for the 10-point minimum font size requirement), creditors and servicers are encouraged to consider these techniques when deciding how to disclose information in the notice to ensure that the information is presented in a readable format.

v. Creditors and servicers may use color, shading and similar graphic techniques with respect to the notice, so long as the notice remains substantially similar to model form H-29.

30. *Standard Loan Estimate and Closing Disclosure forms.* Forms H-24(A) through (G), H-25(A) through (J), and H-28(A) through (J) are model forms for the disclosures required under §§ 1026.37 and 1026.38. However, pursuant to §§ 1026.37(o)(3) and 1026.38(t)(3), for federally related mortgage loans forms H-24(A) through (G) and H-25(A) through (J) are standard forms required to be used for the disclosures required under §§ 1026.37 and 1026.38, respectively.

[THIS SIGNATURE PAGE PERTAINS TO THE FINAL RULE TITLED "INTEGRATED MORTGAGE DISCLOSURES UNDER THE REAL ESTATE SETTLEMENT PROCEDURES ACT (REGULATION X) AND THE TRUTH IN LENDING ACT (REGULATION Z)"]

Dated: November 20, 2013.

Richard Cordray

Richard Cordray,

Director, Bureau of Consumer Financial Protection.