TRID

Introduction, Timing, and Other Issues

Reg Z University

October 7 & 8, 2020

Indiana Bankers Association

Ohio Bankers League

Consultants to the Financial Industry
Young & Associates, Inc.
121 E. Main Street
P.O. Box 711
Kent, OH 44240
Phone: 330.678.0524
Fax: 330.678.6219
www.younginc.com

Table of Contents

Manual Notes

This manual contains the following items:

Form Instructions

Each section begins with a synopsis of the requirements of the regulation as prepared by Young & Associates. Inc.

Regulatory Text

"Regulatory Text" is the regulatory language for that section. Items in **bold** are included to assist the read in finding items on the page.

Regulatory Commentary

"Regulatory Commentary" is the commentary text from the regulation for that section. All regulatory commentary has been updated for the October 2018 changes.

CFPB Small Entity Guide

Sections of the Small Entity Guide, have been included where appropriate. Footnotes have been removed, and not all portions of the Guide are included - we have made editorial decisions based on relevance.

Section 2: Introduction
CFPB Small Entity Guide (Abridged)

For more than 30 years, federal law required lenders to provide two different disclosure forms to consumers applying for a mortgage. The law also generally required two different forms at or shortly before closing on the loan. Two different federal agencies developed these forms separately, under two federal statutes: the Truth in Lending Act (TILA) and the Real Estate Settlement Procedures Act of 1974 (RESPA). The information on these forms was overlapping, and the language inconsistent. Consumers often found the forms confusing, and lenders and settlement agents found the forms burdensome to provide and explain.

The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) directed the Consumer Financial Protection Bureau (Bureau) to integrate the mortgage loan disclosures under TILA and RESPA Sections 4 and 5. Section 1032(f) of the Dodd-Frank Act mandated that the Bureau propose for public comment rules and model disclosures that integrate the TILA and RESPA disclosures by July 21, 2012. The Bureau satisfied this statutory mandate and issued proposed rules and forms on July 9, 2012. To accomplish this, the Bureau engaged in extensive consumer and industry research, analysis of public comment, and public outreach for more than a year. After issuing the proposal, the Bureau conducted a large-scale quantitative study of its proposed integrated disclosures with approximately 850 consumers, which concluded that the Bureau's integrated disclosures had on average statistically significant better performance than the pre-existing disclosures under TILA and RESPA.

On December 31, 2013, the Bureau published a final rule with new, integrated disclosures – "Integrated Mortgage Disclosures Under the Real Estate Settlement Procedures Act (Regulation X) and the Truth In Lending Act (Regulation Z)" (TILA-RESPA Final Rule). On January 20, 2015 and July 21, 2015, the Bureau issued amendments to the TILA-RESPA Final Rule. Additionally, the Bureau published technical corrections on December 24, 2015, and a correction to supplementary information on February 10, 2016. On July 7, 2017, the Bureau issued further amendments intended to formalize guidance, and provide greater clarity and certainty (2017 TILA-RESPA Rule or 2017 amendments).1 The 2017 amendments were published in the *Federal Register* on August 11, 2017. The TILA-RESPA Final Rule, the amendments, and corrections are collectively referred to as the TILA-RESPA Rule in this Guide.

The TILA-RESPA Rule provides a detailed explanation of how the forms should be filled out and used. The Good Faith Estimate (GFE) and the initial Truth-in-Lending disclosure (initial TIL) were combined into a single form, the Loan Estimate. Similar to those forms, the Loan Estimate form is designed to provide disclosures that will be helpful to consumers in understanding the key features, costs, and risks of the mortgage loan for which they are applying, and must be provided to consumers no later than the third business day after they submit a loan application. Second, the HUD-1 and final Truth-in-Lending disclosure (final TIL and, together with the initial TIL, the Truth-in-Lending forms) were combined into another form, the Closing Disclosure, which is designed to provide disclosures that will be helpful to consumers in understanding all of the costs of the transaction. This form must be provided to consumers at least three business days before consummation of the loan.

The forms use clear language and design to make it easier for consumers to locate key information, such as interest rate, monthly payments, and costs to close the loan. The Loan

Estimate and Closing Disclosure forms also provide more information to help consumers decide whether they can afford the loan and to facilitate comparison of the cost of different loan offers, including the cost of the loans over time.

The TILA-RESPA Rule applies to most closed-end consumer mortgages. It does not apply to home equity lines of credit (HELOCs), reverse mortgages, or mortgages secured by a mobile home or by a dwelling (other than a cooperative unit) that is not attached to real property. It does not generally apply to loans made by persons who are not considered "creditors" under TILA.3

Generally, the TILA-RESPA Rule's provisions were effective on October 3, 2015. The December 2015 corrections were effective on December 24, 2015, and the February 2016 corrections were effective on February 10, 2016.

The 2017 amendments are effective and will be incorporated into the Code of Federal Regulations on October 10, 2017. However, compliance with the 2017 amendments is not mandatory on the effective date. Generally, compliance with the amendments is only mandatory for transactions for which a creditor or mortgage broker receives an application on or after October 1, 2018. However, the requirements for the Escrow Cancellation Notice (Escrow Closing Notice) and Mortgage Servicing Transfer Notice Partial Payment Policy Disclosure (Partial Payment Policy Disclosure) provided post-consummation apply starting October 1, 2018 without regard to when the creditor or mortgage broker receives the application.

The 2017 amendments include an optional compliance period, which begins on October 10, 2017 and is for transactions for which a creditor or mortgage broker receives an application prior to October 1, 2018. During this period, early compliance with the 2017 amendments is allowed, but not required.

Additionally, if a creditor or mortgage broker receives an application prior to October 1, 2018, optional compliance continues to apply to that transaction after October 1, 2018 (except as noted regarding the Escrow Closing Notice and Partial Payment Policy Disclosures).

During the optional compliance period (beginning on October 10, 2017 and for transactions with applications received prior to October 1, 2018), the provisions of the 2017 amendments can be implemented all at once or phased in over this period. For example, if a creditor chooses to phase in the 2017 amendments, those changes can be phased-in over the course of a transaction or by application date. Notwithstanding this flexibility, a person cannot phase in the 2017 amendments in a way that would violate provisions of Regulation Z that are not being changed.

The information provided in this Guide incorporates the changes and clarifications from the 2017 amendments, and explains the TILA-RESPA Rule as of the mandatory compliance date on October 1, 2018. To understand the rule as it existed prior to the 2017 amendments, please review version 4.0 of the Guide, available on the Bureau's website at:

https://www.consumerfinance.gov/policy-compliance/guidance/implementation-guidance/tila-respa-disclosure-rule/.

Section 3: Overview of the TILA-RESPA Rule
CFPB Small Entity Guide (Unabridged)

2.1 What is the TILA-RESPA Rule about?

The TILA-RESPA Rule consolidates four disclosure forms that were required under TILA and RESPA for closed-end credit transactions secured by real property or cooperative unit into two forms: a Loan Estimate that must be delivered or placed in the mail no later than the third business day after receiving the consumer's application, and a Closing Disclosure that must be provided to the consumer at least three business days prior to consummation.

2.2 What transactions does the rule cover? (§ 1026.19(e) and (f))

The TILA-RESPA Rule applies to most closed-end consumer credit transactions secured by real property or a cooperative unit (regardless of whether state law classifies it as real property). Credit extended to certain trusts for tax or estate planning purposes is not exempt from the TILA-RESPA Rule. (Comment 3(a)-10). However, some specific categories of loans are excluded from the rule. Specifically, the TILA-RESPA Rule does not apply to HELOCs, reverse mortgages, or mortgages secured by a mobile home or by a dwelling (other than a cooperative unit) that is not attached to real property. (§ 1026.19(e) and (f)). For further discussion of coverage, see section 4 below.

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

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

The creditor, or servicer if applicable, must retain the post-consummation Escrow Closing Notice and Partial Payment Policy Disclosure for two years. For additional information, see section 16 below.

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

Creditors are obligated to obtain and retain a copy of the completed Closing Disclosures provided separately by a non-creditor settlement agent to a seller under 1026.38(t)(5), but are not obligated to collect underlying seller-specific documents and records from that third-party settlement agent to support these disclosures. To the extent the creditor does receive documentation related to the seller's disclosure, such as when the creditor is the settlement agent,

or when seller-related documents are provided to the creditor by a third-party settlement agent along with the completed disclosure, the creditor should adhere to the record retention requirements that apply to the Closing Disclosure.

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

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

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

2.5 Is there a requirement on how the records are retained?

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

3.2 Are there any requirements that take effect regardless of when an application was received?

Yes. As discussed in section 13, below, the TILA-RESPA Rule includes some restrictions on certain activity prior to a consumer's receipt of the Loan Estimate. These restrictions took effect on the calendar date October 3, 2015, regardless of when an application was received. These activities include:

A consumer may indicate an intent to proceed in any manner the consumer chooses, unless the creditor requires a particular manner of communication. (§ 1026.19(e)(2)(i)(A)).

- Imposing fees on a consumer before the consumer has received the Loan Estimate and indicated an intent to proceed with the transaction (§ 1026.19(e)(2)(i));
- Providing written estimates of terms or costs specific to consumers before they receive the Loan Estimate without a written statement informing the consumer that the terms and costs may change (§ 1026.19(e)(2)(ii)); and
- Requiring the submission of documents verifying information related to the consumer's application before providing the Loan Estimate. (§ 1026.19(e)(2)(iii))

Beginning on October 1, 2018, a creditor must provide the Escrow Closing Notice and Partial Payment Policy Disclosure when required, regardless of when the creditor or mortgage broker received the application. (Comment 1(d)(5)-1)

For example, for an application received on October 10, 2010, if the escrow account was cancelled on April 14, 2020, the creditor would be required to give the Escrow Closing Notice, because the cancellation occurred after October 1, 2018 and after that time, Escrow Closing Notice and Partial Payment Policy Disclosure are given regardless of when the application was received. (Comment 1(d)(5)-1.v.E)

4.1 What transactions are covered by the TILA-RESPA Rule? (§§ 1024.5; 1026.3; and 1026.19)

The TILA-RESPA Rule applies to most closed-end consumer credit transactions secured by real property or a cooperative unit (regardless of whether state law classifies it as real property), but does not apply to:

- HELOCs;
- Reverse mortgages; or
- Chattel-dwelling loans, such as loans secured by a mobile home or by a dwelling (other than a cooperative unit) that is not attached to real property.

Consistent with existing rules under TILA, the TILA-RESPA Rule also generally does not apply to loans made by a person or entity that is not considered a creditor under Regulation Z. (§ 1026.2(a)(17))

There is also a partial exemption for certain transactions associated with housing assistance loan programs for low- and moderate-income consumers. (§ 1026.3(h))

However, certain types of loans that are subject to TILA but are not subject to RESPA are subject to the TILA-RESPA Rule's integrated disclosure requirements, including:

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

Credit extended to certain trusts for tax or estate planning purposes also are covered by the TILA-RESPA Rule. (Comment 3(a)-10)

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

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

For transactions that satisfy the six criteria for the partial exemption associated with *certain* housing assistance loans for low- and moderate-income consumers (§ 1026.3(h)):

- Creditors are exempt from the requirement to provide the RESPA settlement cost booklet, GFE, settlement statement (HUD-1), and application servicing disclosure statement. (See §§ 1024.5(d)(2), 1024.6, 1024.7, 1024.8, 1024.10, and 1024.33)
- Creditors are exempt from the requirement to provide the Special Information Booklet. (§ 1026.3(h))
- Creditors are exempt from the requirement to provide the **Loan Estimate** and **Closing Disclosure** if they choose to provide the Truth-in-Lending disclosures in connection with the transaction. (§ 1026.3(h)(6)).

For more information on the partial exemption associated with *certain* housing assistance loans, see section 4.5 below.

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

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

4.4 Are trusts for estate or tax planning purposes considered consumers under Regulation Z so as to be covered by the TILA-RESPA Rule? (Comments 2(a)(11)-3 and 3(a)-10)

Yes. Credit extended to trusts established for tax or estate planning purposes or to certain land trusts is considered credit extended to a consumer, and as a result, is covered by the TILA-RESPA Rule.

A trust and its trustee are considered to be the same person for purposes of Regulation Z. Where credit is extended to trusts established for tax or estate planning purposes, the Loan Estimate and Closing Disclosure may be provided to the trustee on behalf of the trust. However, in rescindable transactions, the Closing Disclosure must be given separately to each consumer who has the right to rescind. (Comments 2(a)(22)-3 and 17(d)-2). See section 11.8 for more information about giving a Closing Disclosure to consumers in rescindable transactions.

When disclosing the name of the consumer on the Loan Estimate for a trust, the creditor may opt to disclose the name and mailing address of the trust only, although nothing prohibits the creditor from additionally disclosing the names of the trustee or of other consumers applying for the credit. Further, on both the Loan Estimate and the Closing Disclosure, a creditor may include a signature line and insert the trustee's name below, along with a designation that the trustee is serving in its capacity as a trustee. (Comment 37(a)(5)-1) See the TILA-RESPA Guide to Forms for more information about disclosing the consumer's name and use of signature lines.

4.5 What is the partial exemption for certain housing assistance loans for low- and moderate-income consumers? (§ 1026.3(h))

Regarding situations where changed circumstances effect the applicability of the partial exemption, review § 1026.17(e), which addresses the effect of subsequent events that cause a disclosure to become inaccurate.

Transactions that satisfy six criteria that are associated with *certain* housing assistance loans for low- and moderate-income consumers are eligible for an exemption from Regulation Z requirements pertaining to the Loan Estimate, Closing Disclosure, and Special Information Booklet. These transactions are also eligible for an exemption from certain Regulation X disclosure requirements, as applicable. (§ 1026.3(h) and Comment 3(h)-3)

To qualify for the partial exemption, the transaction must meet all of the following criteria:

- The transaction is secured by a subordinate-lien.
- The transaction is for the purpose of down payment, closing costs, or other similar home buyer assistance, such as principal or interest subsidies; property rehabilitation assistance; energy efficiency assistance; or foreclosure avoidance or prevention.
- The credit contract provides that it does not require the payment of interest.
- The credit contract provides that repayment of the amount of credit extended is forgiven either incrementally or in whole, at a certain date and subject only to specified ownership and occupancy conditions, such as a requirement that the property be the consumer's principal dwelling for five years; deferred for a minimum of 20 years after consummation of the transaction; deferred until sale of the property; or deferred until the property securing the transaction is no longer the consumer's principal dwelling.
- The total of costs payable by the consumer in connection with the transaction include only recording fees, transfer taxes; a bona fide and reasonable application fee; and a bona fide and reasonable fee for housing counseling services. The application fee and housing counseling services fee must be less than one percent of the loan amount.
- The creditor provides either the Truth-in-Lending disclosures or the Loan Estimate and Closing Disclosure. Regardless of which disclosures the creditor chooses to provide, the creditor must comply with all Regulation Z requirements pertaining to those disclosures.

Recording fees and transfer taxes are as defined terms for purposes of Regulation Z. (Comments 3(h)-4 and -5)

The requirements that the loan is not conditioned on the payment of interest and that repayment of the loan amount is forgiven or deferred must be reflected in the loan contract. The other requirements for the partial exemption do not need to be reflected in the loan contract. However, Regulation Z requires that the creditor retain evidence of compliance with those provisions. Further, unless the itemization of the amount financed provided to the consumer sufficiently details that the costs payable by the consumer are limited to the allowable costs (and limited amounts of those costs, if applicable), the creditor is required to keep some other written document that establishes its compliance. (Comment 3(h)-2).

The Loan Estimate

5.1 What are the general requirements for the Loan Estimate disclosure? (§§ 1026.19(e) and 1026.37)

For closed-end credit transactions secured by real property or a cooperative unit (other than reverse mortgages), the creditor is required to provide the consumer with good-faith estimates of credit costs and transaction terms on a form called the Loan Estimate. This form integrates and replaces the GFE and the initial TIL for these transactions. The creditor is generally required to provide the Loan Estimate to the consumer within three business days of the receipt of the consumer's loan application. (§ 1026.19(e)(1)). See section 6.1 below on the timing requirements of the Loan Estimate.

- Loan Estimate must contain a good faith estimate of credit costs and transaction terms. If any information necessary for an accurate disclosure is unknown, the creditor must make the disclosure based on the best information reasonably available at the time the disclosure is provided to the consumer, and use due diligence in obtaining the information. (§ 1026.19(e)(1)(i); Comment 19(e)(1)(i)-1)
- Loan Estimate must be in writing and contain the information prescribed in § 1026.37. The creditor must disclose only the specific information set forth in § 1026.37(a) through (n), as shown in the Bureau's form in appendix H-24. (§ 1026.37(o))
- Delivery must satisfy the timing and method of delivery requirements. The creditor is responsible for delivering the Loan Estimate or placing it in the mail no later than the third business day after receiving the application. (§ 1026.19(e)(1)(iii))
- In certain situations, mortgage brokers may provide a Loan Estimate. As discussed in more detail in section 6.3 below, if a mortgage broker receives a consumer's application, either the creditor or the mortgage broker may provide the Loan Estimate. (§ 1026.19(e)(1)(ii))

Use of an appropriate Loan Estimate sample form (H-24(B) through (F) and H-28(B) through (E)) for federally related mortgage loans or non-federally related mortgage loans provides a safe harbor if properly completed with accurate content.

5.2 Does a creditor have to use the Bureau's Loan Estimate form? (§ 1026.37(o))

Generally, yes. For any loans subject to the TILA-RESPA Rule that are federally related mortgage loans subject to RESPA (which will include most mortgages), an appropriate blank Loan Estimate form (H-24(A) and (G) and H-28(A) and (I)) is a standard form, meaning creditors must use an appropriate blank form, including all of its elements such as various font sizes, bolding, shading, and underscoring. (§ 1026.37(o)(3)(i)). (See also § 1024.2(b) for definition of federally related mortgage loan).

For other loans subject to the TILA-RESPA Rule that are not federally related mortgage loans, an appropriate blank form is a model form, meaning creditors are not strictly required to use the form, but the disclosures must contain the exact same information and be made with headings, content, and format substantially similar to an appropriate blank form. (§ 1026.37(o)(3)(ii))

5.3 How must a creditor complete (i.e., insert information into) the Loan Estimate form?

Creditors are not required to use any particular method to complete the **Loan Estimate**. It may be completed by hand, computer, typewriter, or word processor. The TILA-RESPA Rule only requires that:

- The information must be clear and legible; and
- The information must comply with the required formatting, including replicating bold font where required. (Comment 37(o)(5)-2)

5.4 What information goes on the Loan Estimate form?

The following is a brief, page-by-page overview of the Loan Estimate, generally describing the information creditors are required to disclose. For detailed instructions on the individual fields and calculations for the Loan Estimate, see the Bureau's companion guide, TILA-RESPA Guide to Forms.

5.5 Page 1: General information, loan terms, projected payments, and costs at closing

Page 1 of the Loan Estimate includes general information, a Loan Terms table with descriptions of applicable information about the loan, a Projected Payments table, a Costs at Closing table, and a link for consumers to obtain more information at a website the Bureau maintains. (§§ 1026.37(a), (b), (c), (d), and (e))

Page 1 of the Loan Estimate includes the title "Loan Estimate" and the statement "Save this Loan Estimate to compare with your Closing Disclosure." (§§ 1026.37(a)(1) and (a)(2)). The top of page 1 also includes the name and address of the creditor. (§ 1026.37(a)(3)). A logo or slogan can be used along with the creditor's name and address, so long as the logo or slogan does not exceed the space provided for that information. (§ 1026.37(o)(5)(iii))

If there are multiple creditors, use only the name of the creditor completing the Loan Estimate. (Comment 37(a)(3)-1). If a mortgage broker is completing the Loan Estimate, use the name of the creditor if known. If not yet known, leave this space blank. (Comment 37(a)(3)-2)

5.6 Page 2: Closing cost details

Four main categories of charges are disclosed on page 2 of the Loan Estimate:

- A good-faith itemization of the Loan Costs and Other Costs associated with the loan. (§§ 1026.37(f) and (g))
- A Calculating Cash to Close table to show the consumer how the amount of cash needed at closing is calculated. (§ 1026.37(h))
- For transactions with adjustable monthly payments, an Adjustable Payment (AP) Table with relevant information about how the monthly payments will change. (§ 1026.37(i))
- For transactions with adjustable interest rates, an Adjustable Interest Rate (AIR) Table with relevant information about how the interest rate will change. (§ 1026.37(j))

Construction loan inspection and handling fees are Loan Costs. These fees are disclosed differently depending on whether they are collected at or before closing or after closing. See section 14.18 for more information about the disclosure of construction loan inspection and handling fees. (Comment 37(f)-3)

The items associated with the mortgage loan are broken down into two general types, Loan Costs and Other Costs. Loan Costs are those costs paid by the consumer to the creditor and third-party providers of services the creditor requires to be obtained by the consumer, generally during the origination of the loan. (§ 1026.37(f)).

Other Costs include taxes, governmental recording fees, and certain other payments involved in the real estate closing process. (§ 1026.37(g))

These two tables have additional specific requirements, as discussed below and in section 2.3 of the TILA-RESPA Guide to Forms.

Items that are a component of title insurance must include the introductory description of "Title" followed by a dash or hyphen and then a description of the specific title insurance component (*e.g.* "Title – Lender's Title"). (§§ 1026.37(f)(2)(i) and (g)(4)(i))

If state law requires additional disclosures, those additional disclosures may be made on a document whose pages are separate from, and not presented as part of, the Loan Estimate. (Comments 37(f)(6)-1 and 37(g)(8)-1)

Subject to the terms of the legal obligation, both specific and general lender credits are included under Lender Credits. (Comment 37(g)(6)(ii)-1)

5.7 If there are more or fewer charges in a category of costs, can a creditor change the number of lines for that category? (§§ 1026.37(f)(6) and (g)(8))

No. A creditor cannot change the number of lines for costs on the Loan Estimate. The Loan Estimate has a prescribed number of lines for each category of Loan Costs and Other Costs. In the event that more lines are needed for a particular category, generally the charges in excess of that number are totaled,

disclosed as an aggregate amount, and described as "additional charges." (§§ 1026.37(f)(6) and (g)(8))

However, services disclosed as "additional charges" in the "consumer can shop for" section can be itemized on an addendum. (§ 1026.37(f)(6)(ii))

5.8 Can the designation "N/A" be used where no value is to be disclosed for a cost? (Comment 37-1)

No. The designation "N/A" cannot be used where no value is to be disclosed. The term "N/A" may not be used on the Loan Estimate. In general, when a disclosure is not applicable, that disclosure is either omitted from the Loan Estimate or left blank on the Loan Estimate.

5.9 Page 3: Additional information about the loan

Page 3 of the Loan Estimate contains Contact Information, a Comparisons table, an Other Considerations table, and, if desired, a Signature Statement for the consumer to sign to acknowledge receipt. (See § 1026.37(k), (l), (m), and (n))

In transactions involving new construction, this page may include a clear and conspicuous statement that the creditor may issue a revised disclosure any time prior to 60 days before consummation, pursuant to § 1026.19(e)(3)(iv)(F), if the creditor reasonably expects that settlement will occur more than 60 days after the provision of the initial Loan Estimate. (See section 14 for more information about construction loans)

Section 7: Loan Estimate Timing
12CFR § 1026.19(e)

Introduction

The regulation has many parts and pieces to the timing requirements. Below are the requirements for the Loan Estimate.

Y&A Completion Instructions - Timing

- The Loan Estimate form must be used (at least in the real world).
- The Loan Estimate must be completed within three business days of application. Business day is any day you are open for substantially all business, meaning many institutions will not count Saturday as part of the three business days. The application date is day zero for purposes of this requirement.
- The application definition includes the receipt of six specific items. They include 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, and the mortgage loan amount sought.
- The Loan Estimate may be prepared/delivered by the creditor or a mortgage broker. The instructions must be followed no matter who completes the Loan Estimate.
- The Loan Estimate must be mailed or delivered at least seven days prior to closing. For this seven day calculation, all days count except for Sundays and legal holidays. Whether the institution is open for business is not material.
- The loan may close on the seventh day, although this requires following the timing rules for the Closing Disclosure as well. This is unlikely.
- If the Loan Estimate is snail mailed, the applicant is considered (absent proof to the contrary) to have received the disclosure after day three. The only impact of this rule is that the institution may not collect any fees other than for the credit bureau until the applicant has the Loan Estimate. This effectively delays the collection of fees until day four if the documents are snail mailed.
- Although it will be very rare, the applicant can waive the seven-day waiting period. It must be for a bona fide personal financial emergency.

Regulatory Text - 12 CFR § 1026.19(e)

§ 1026.19(e)(1) Provision of disclosures.

(i) **Creditor.** In a closed-end consumer credit transaction secured by real property or a cooperative unit, other than a reverse mortgage subject to § 1026.33, the creditor shall provide the consumer with good faith estimates of the disclosures in § 1026.37.

(ii) **Mortgage broker.**

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

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

(iii) **Timing.**

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

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

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

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

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

*****

Regulatory Commentary

19(e)(1)(i) Requirements.

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 or a cooperative unit, 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.*

2. ***Cooperative units.*** *Section 1026.19(e)(1)(i) requires early disclosure of credit terms in closed-end credit transactions, other than reverse mortgages, that are secured by real property or a cooperative unit, regardless of whether a cooperative unit is treated as real property under State or other applicable law.*

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, § 1026.19(e)(4)(i) states that 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) or the disclosures required under § 1026.19(f)(1)(i) (including any corrected disclosures provided under § 1026.19(f)(2)(i) or (ii)) reflecting the revised estimate.

   "Mortgage broker" could not be read in place of "creditor" in reference to the disclosures required under § 1026.19(f)(1)(i), (f)(2)(i), or (f)(2)(ii) because mortgage brokers are not responsible for the disclosures required under § 1026.19(f)(1)(i), (f)(2)(i), or (f)(2)(ii). 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).*

5. ***Multiple-advance construction loans.*** *Section 1026.19(e)(1)(iii) generally requires a creditor to deliver the Loan Estimate or place it in the mail not later than the third business day after the creditor receives the consumer's application and not later than the seventh business day before consummation. When a multiple-advance loan to finance the construction of a dwelling*

may be permanently financed by the same creditor, § 1026.17(c)(6)(ii) and comment 17(c)(6)-2 permit creditors to treat the construction phase and the permanent phase as either one transaction, with one combined disclosure, or more than one transaction, with a separate disclosure for each transaction. For construction–permanent transactions disclosed as one transaction, the creditor complies with § 1026.19(e)(1)(iii) by delivering or placing in the mail one combined disclosure required by § 1026.19(e)(1)(i) not later than the third business day after the creditor receives an application and not later than the seventh business day before consummation. For construction - permanent transactions disclosed as a separate construction phase and a separate permanent phase for which an application for the both construction and permanent financing has been received, the creditor complies with § 1026.19(e)(1)(iii) by delivering or placing in the mail the separate disclosures required by § 1026.19(e)(1)(i) for both the construction financing and the permanent financing not later than the third business day after the creditor receives the application and not later than the seventh business day before consummation. A creditor may also provide a separate disclosure required by § 1026.19(e)(1)(i) for the permanent phase before receiving an application for permanent financing at any time not later than the seventh business day before consummation. To illustrate:

i. Assume a creditor receives a consumer's application for construction financing only on Monday, June 1. The creditor must deliver or place in the mail the disclosures required by § 1026.19(e)(1)(i) for only the construction financing no later than Thursday, June 4, the third business day after the creditor received the consumer's application, and not later than the seventh business day before consummation of the transaction.

ii. Assume the creditor receives a consumer's application for both construction and permanent financing on Monday, June 1. The creditor must deliver or place in the mail the disclosures required by § 1026.19(e)(1)(i) for both the construction and permanent financing, disclosed as either one transaction or separate transactions, no later than Thursday, June 4, the third business day after the creditor received the consumer's application, and not later than the seventh business day before consummation of the transaction.

iii. Assume the creditor receives a consumer's application for construction financing only on Monday, June 1. Assume further that the creditor receives the consumer's application for permanent financing on Monday, June 8. The creditor must deliver or place in the mail the disclosures required by § 1026.19(e)(1)(i) for the construction financing no later than Thursday, June 4, the third business day after the creditor received the consumer's application for the construction financing only, and not later than the seventh business day before consummation of the construction transaction. The creditor must deliver or place in the mail the disclosures required by § 1026.19(e)(1)(i) for the permanent financing no later than Thursday, June 11, the third business day after the creditor received the consumer's application for the permanent financing, and not later than the seventh business day before consummation of the permanent financing transaction.

iv. Assume the same facts as in comment 19(e)(1)(iii)-5.ii, under which the creditor provides the disclosures required by § 1026.19(e)(1)(i) for both construction financing and permanent financing. If the creditor generally conducts separate closings for the construction financing and the permanent financing or expects that the construction financing and the permanent financing may have separate closings, providing separate Loan Estimates for the construction financing and for the permanent financing allows the creditor to deliver separate Closing Disclosures for the separate phases. For example, assume further that the

consumer has requested permanent financing after receiving separate Loan Estimates for the construction financing and for the permanent financing, that consummation of the construction financing is scheduled for July 1, and that consummation of the permanent financing is scheduled on or about June 1 of the following year. The creditor may provide the construction financing Closing Disclosure at least three business days before consummation of that transaction on July 1 and delay providing the permanent financing Closing Disclosure until three business days before consummation of that transaction on or about June 1 of the following year, in accordance with § 1026.19(f)(1)(ii). The creditor may also issue a revised Loan Estimate for the permanent financing at any time prior to 60 days before consummation, following the procedures under § 1026.19(e)(3)(iv)(F).

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).*

*****

Small Entity Compliance Guide - Delivery of the Loan Estimate

6.1 What are the general timing and delivery requirements for the Loan Estimate? (§ 1026.19(e)(1)(iii))

Generally, the creditor is responsible for ensuring that it delivers or places in the mail the Loan Estimate no later than the third business day after receiving the consumer's application. Although see section 6.3 below regarding delivery of the Loan Estimate by a mortgage broker.

The Loan Estimate must also be delivered or placed in the mail no later than the seventh business day before consummation of the transaction. (See § 1026.19(e)(1)(iii)(B)). The seven-business-day waiting period is a TILA statutory waiting period that applies to the initial Loan Estimate provided after application, but does not apply to revised Loan Estimates. (See § 1026.19(e)(1)(iii)(B); Comment 19(e)(1)(iii)-2; and 1026.19(e)(4)(ii))

The creditor also is responsible for ensuring that the Loan Estimate and its delivery meet the content, delivery, and timing requirements discussed in sections 5, 6, 7, 8, and 9 of this Guide. (See §§ 1026.19(e) and 1026.37)

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

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

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

To modify or waive the waiting period, the consumer must give the creditor a dated written

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

6.3 Can a mortgage broker provide a Loan Estimate on the creditor's behalf? (§ 1026.19(e)(i)(ii))

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

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

If a mortgage broker provides the Loan Estimate to a consumer, the mortgage broker must comply with the three year record retention requirement discussed in section 2.3 above. (§ 1026.19(e)(1)(ii)(B); Comment 19(e)(1)(ii)-1)

6.4 When does the creditor have to provide the Loan Estimate to the consumer? (§ 1026.19(e)(1)(iii)(A))

The Loan Estimate must be delivered or placed in the mail to the consumer no later than the third business day after the creditor receives the consumer's application for a mortgage loan. (§ 1026.19(e)(1)(iii)(A)). (See definitions of application and business day below at sections 6.6 and 6.14). If the Loan Estimate is not provided to the consumer in person, the consumer is considered to have received the Loan Estimate three business days after it is delivered or placed in the mail. (§ 1026.19(e)(1)(iv))

For construction loans, the timing for delivering or placing the Loan Estimate in the mail depends on when the creditor receives the application for the construction phase, the permanent phase, or both phases. See section 14.3 for more information about when a creditor must provide the Loan Estimate for construction loans. (Comment 19(e)(1)(iii)-5)

6.5 How must the Loan Estimate be delivered? (§ 1026.19(e)(1)(iv))

The Loan Estimate may be:

- Provided to the consumer in person;
- Mailed to the consumer (Comment 19(e)(1)(iv)-1); or
- Provided by other delivery methods, including electronic delivery. Creditors and mortgage brokers may use electronic delivery methods subject to compliance with the consumer consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (15 U.S.C. 7001 *et seq*.). (Comment 19(e)(1)(iv)-2)

6.6 What is an "application" that triggers an obligation to provide a Loan Estimate? (§ 1026.2(a)(3))

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

The six pieces of information must be submitted for purposes of obtaining an extension of credit. The information is not deemed submitted for this purpose simply because it exists in a creditor's files or on a creditor's computer system.

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

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

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

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

This definition of application does not prevent a creditor from collecting whatever additional information it deems necessary in connection with the request for the extension of credit, and creditors have a degree of flexibility that enables them to collect additional information for purposes of producing the Loan Estimate. (See section 6.8 for more information about collecting additional information prior to providing a Loan Estimate). However, once a creditor has received the six pieces of information discussed above, it has an application for purposes of the requirement for delivery of the Loan Estimate to the consumer, including the three-business-day timing requirement. (Comment 2(a)(3) -1)

The obligation to provide the Loan Estimate is not triggered until the consumer submits the six pieces of information that constitute an application under the TILA-RESPA Rule. Creditors may collect additional information, such as loan term or product, prior to producing the Loan Estimate, provided the consumer has not submitted all six pieces of information.

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

No. A creditor or other person may not condition providing the Loan Estimate on a consumer

submitting documents verifying information related to the consumer's mortgage loan application before providing the Loan Estimate. (§ 1026.19(e)(2)(iii); Comment 19(e)(2)(iii)-1)

For example:

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

6.9 May an online application system refuse to accept applications that contain the six elements of an application because other preferred information is not included? (§ 1026.2(a)(3))

No. An online application system designed to reject or refuse to accept **applications** on the basis that they lack other information that a creditor normally would prefer to have beyond the six elements does not comply with the TILA-RESPA Rule.

6.10 If the six pieces of information exist in the creditor's system or its file, does that trigger the requirement to provide a Loan Estimate? (§ 1026.2(a)(3))

No. The obligation to provide the Loan Estimate is only triggered upon submission of the six pieces of information for purposes of obtaining credit, and the information is not deemed submitted simply because it exists on a creditor's system or in its file.

For example, if the consumer starts filling out an application online, completes and saves the six pieces of information required, but does not submit the application, the obligation to provide a Loan Estimate is not triggered.

6.11 Can a creditor review detailed written documentation of income and assets prior to delivering a Loan Estimate? (Comment 2(a)(3)-1)

Yes. A creditor or other person can request, collect, and review documentation or additional information voluntarily provided by the consumer prior to providing a Loan Estimate. However, the TILA-RESPA Rule prohibits a creditor from requiring a consumer to submit documents verifying information related to the consumer's application, such as income and asset information, before providing a Loan Estimate. Additionally, the creditor cannot explicitly or implicitly represent to the consumer that it will not provide a Loan Estimate without the consumer first providing verifying documentation. (See § 1026.19(e)(2)(iii); Comment 19(e)(2)(iii)-1)

If a consumer requests a pre-approval or pre-qualification and provides five of the six pieces of information that constitute an application, the creditor is not yet obligated to provide a Loan Estimate. (Comment 2(a)(3)-1.i). So long as the consumer does not provide that sixth element, for example, the property address, the creditor is not required to provide a Loan Estimate and may

simply provide a pre-approval or pre-qualification in compliance with its current practice and other applicable law. However, if the consumer provides all six elements of the application, the TILA-RESPA Rule requires the creditor to provide a Loan Estimate. (Comment 2(a)(3)-1.ii). The fact that a consumer requests a pre-approval or pre-qualification will not change the creditor's obligation to provide a Loan Estimate.

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

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

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

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

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

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

Note that the term business day is defined differently for other purposes; including counting days to ensure the consumer receives the Closing Disclosure on time. (See §§ 1026.2(a)(6), 1026.19(f)(1)(ii)(A) and (f)(1)(iii)). For these other purposes, business day means all calendar days except Sundays and the legal public holidays specified in 5 U.S.C. 6103(a), such as New Year's Day, the Birthday of Martin Luther King, Jr., Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, and Christmas Day. (See § 1026.2(a)(6); Comment 2(a)(6)-2; Comment 19(f)(1)(ii)-1)

6.15 What if the creditor does not have exact information to calculate various costs at the time the Loan Estimate is delivered? (Comments 17(c)(2)(i)-1 and -2)

Creditors are required to act in good faith and exercise due diligence in obtaining information necessary to complete the Loan Estimate. (Comment 17(c)(2)(i)-1). Normally creditors may rely on the representations of other parties in obtaining information. (§ 1026.17(c)(2)(i))

However, there may be some information that is unknown (*i.e.*, not reasonably available to the creditor at the time the Loan Estimate is made). In these instances, the creditor may use estimates even though it knows that more precise information will be available by the point of consummation. However, new disclosures may be required under § 1026.17(c) or § 1026.19. (Comment 17(c)(2)(i)-1)

When estimated figures are used, they must be designated as such on the Loan Estimate. (Comment 17(c)(2)(i)-2)

Section 8: Shopping for a Settlement Service 12 CFR § 12 CFR § 1026.19(e)(1)(vi)

Y&A Completion Instructions - Timing

If the institution will allow an applicant to shop for a settlement service, the creditor must:

- identify the settlement services for which the consumer is permitted to shop,
- provide the consumer with a written list identifying available providers of that settlement service, and
- state that the consumer may choose a different provider.

The creditor must identify at least one available provider for each settlement service for which the consumer is permitted to shop. The written list must be separate from other disclosures, but meet the timing requirements listed above.

Regulatory Text - 12 CFR § 1026.19(e)

§ 1026.19(e)(1) Provision of disclosures.

*****

(vi) **Shopping for settlement service providers.**

(A) **Shopping permitted.** A creditor permits a consumer to shop for a settlement service if the creditor permits the consumer to select the provider of that service, subject to reasonable requirements.

(B) **Disclosure of services.** The creditor shall identify the settlement services for which the consumer is permitted to shop in the disclosures required under paragraph (e)(1)(i) of this section.

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

Regulatory Commentary

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 the creditor. Whether the creditor permits the consumer to shop consistent with § 1026.19(e)(1)(vi)(A) is determined based on all the relevant facts and circumstances. 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.*** *If a creditor permits a consumer to shop for a settlement service, § 1026.19(e)(1)(vi)(B) requires the creditor to identify settlement services required by the creditor 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 required by the creditor for which the consumer is permitted to shop.*

3. ***Written list of providers.*** *If the creditor permits the consumer to shop for a settlement service it requires, § 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)(1)(vi)(C) must correspond to the required settlement services for which the consumer may shop, disclosed under § 1026.37(f)(3). See form H-27 in appendix H to this part for a model list. Creditors using form H-27 in appendix H properly are deemed to be in compliance with § 1026.19(e)(1)(vi)(C). Creditors may make changes in the format or content of form H-27 in appendix H and be deemed to be in compliance with § 1026.19(e)(1)(vi)(C), so long as the changes do not affect the substance, clarity, or meaningful sequence of the form. An acceptable change to form H-27 in appendix H includes, for example, deleting the column for estimated fee amounts.*

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, for the settlement services that are required by the creditor for which a consumer is permitted to shop. 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).*

Small Entity Compliance Guide - Delivery of the Loan Estimate

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

A consumer is permitted to shop for a service if the creditor permits the consumer to select the third-party service provider. (§ 1026.19(e)(1)(vi)(A)) Permission to shop is based on all the relevant facts and circumstances. (Comment 19(e)(1)(vi)-1)

The creditor may impose reasonable requirements on the third-party service provider's qualifications, such as that the settlement provider is appropriately licensed. However, a consumer is not considered able to shop if the creditor limits the third-party service provider choices to a list selected by the creditor. (Comment 19(e)(1)(vi)-1)

In addition to the Loan Estimate, if the consumer is permitted to shop for a settlement service, the creditor must provide the consumer with a written list of services for which the consumer can shop. See also section 7.6 below for additional information on providing the written list of service providers. This written list of service providers is separate from the Loan Estimate, but must be provided within the same time frame—that is, it must be provided to the consumer no later than three business days after the creditor receives the consumer's application—and the list must:

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

While the written list must correspond to the required services for which the consumer can shop as disclosed on the Loan Estimate, the creditor is not required to provide a detailed breakdown of all related fees that are not themselves required by the creditor but that may be charged to the consumer by the settlement service provider. These fees could include notary fees, title search fees, or other services the settlement service provider needs to perform the service that the creditor requires.

The settlement service providers identified on the written list must correspond to the required settlement services for which the consumer can shop as disclosed on the Loan Estimate. (Comment 19(e)(1)(vi)-3). There must be sufficient information in the written list for the consumer to contact a settlement service provider for each required settlement service for which the consumer can shop as disclosed on the Loan Estimate. This information can include the provider's business name, business address, and telephone number. (Comment 19(e)(1)(vi)-4). The settlement service providers listed must be available to the consumer. For example, they must be in business at the time the Loan Estimate is provided to the consumer, and they must provide the services in the geographic area where the consumer or property is located. (Comment 19(e)(1)(vi)-4)

See form H-27(A) of appendix H to Regulation Z for a model list. A creditor complies with the requirement to provide the written list if it properly uses this model list. (Comment 19(e)(1)(vi)-3). The creditor complies with the requirement even if it makes changes to the model list, so long as the changes do not affect the substance, clarity, or meaningful sequence of the form. For example, the creditor may delete the estimated fees column on the written list because the TILA-RESPA Rule does not require the disclosure of such estimated fees on the written list. (Comment 19(e)(1)(vi)-3)

A creditor is permitted to add language to the written list indicating that the inclusion of a third-party service provider on the written list is not an endorsement. (Comment 19(e)(1)(vi)-6). However, there is no specific language required to be provided when the creditor wishes to do so. The general requirement that the creditor must provide the information clearly and conspicuously on the disclosures under § 1026.17(a) would apply to any language the creditor adds to the written list.

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

Additional Details for Services You Can Shop For

To get you started with shopping, this list identifies some providers for the services you can shop for (see Section C on page 2 of your Loan Estimate).

Service Provider List **You can select these providers or shop for your own providers.**

Service	Estimate	Provider We Identified	Contact Information

APPLICANTS: DATE ISSUED: LOAN ID #

Section 9: 12 CFR § 1026.19(e)(2)
Pre-disclosure Activity

Y&A Completion Instructions – Pre-Disclosure Activity

- The Loan Estimate must be in the applicant's hand prior to collection of fees for items other than the credit report.
- If the Loan Estimate is snail mailed, the applicant is considered (absent proof to the contrary) to have received the disclosure on day four. The only impact of this rule is that the institution may not collect any fees other than for the credit bureau until the applicant has the Loan Estimate. This effectively delays the collection of fees until day four if the documents are snail mailed.
- The institution cannot demand proof of anything (income, etc.) until the applicant has the Loan Estimate in hand and has indicated an intent to proceed. The information can be requested, but the applicant has the right to refuse.
- If the bank chooses to give a disclosure of potential fees prior to the Loan Estimate, it must look very different than the Loan Estimate and be titled: **"Your actual rate, payment, and costs could be higher. Get an official Loan Estimate before choosing a loan."**

Regulatory Text - 12 CFR § 1026.19(e)(2)

(i) Imposition of fees on consumer.

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

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

(ii) **Written information provided to consumer.** If a creditor or other person provides a consumer with a written estimate of terms or costs specific to that consumer before the consumer receives the disclosures required under paragraph (e)(1)(i) of this section, the creditor or such person shall clearly and conspicuously state at the top of the front of the first page of the estimate in a font size that is no smaller than 12-point font: **"Your actual rate, payment, and costs could be higher. Get an official Loan Estimate before**

choosing a loan." The written estimate of terms or costs may not be made with headings, content, and format substantially similar to form H-24 or H-25 of appendix H to this part.

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

Regulatory Commentary

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)(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).*

Section 10: 12 CFR § 1026.19(e)(3)(i) – (iii) Good Faith Determination for Estimates of Closing Costs

Y&A Completion Instructions

The rules are covered in more detail in the Loan Estimate and Closing Disclosure manuals, however, closing costs are divided into three categories, as follows:

- If the institution will not allow the applicant to shop for a service, then the institution must quote the fee accurately. If the charge listed on the Loan Estimate for a service is higher on the Closing Disclosure, then the institution will have to pay the overage.
- If the institution will allow the applicant to shop, but the applicant chooses not to shop and simply uses the institution's provider, then the fee for the service is added together with all other fees in this category (including filing fees), and the result is multiplied by 10%. If the total overage for these services as a group do not exceed the 10% calculation, then there is no amount due the applicant. If the amount of the total overage exceeds the 10% calculation, then the institution must pay the overage amount.
- If the institution allows the applicant to shop, and the applicant actually does shop, then the institution (other than normal due diligence) has no good faith determination responsibilities, and the applicant must pay the amount that the service provider charges.

Certain other charges also are not covered by the good faith determination rule. They include odd-days interest, the amount of insurance premiums such as homeowner's insurance, amounts to open the escrow account, and amounts for items not required by the institution. However, amounts that can be ascertained must be correct.

There are many contingencies regarding this issue, and the complete reading of the regulatory text and commentary below may be useful.

Regulatory Text - 12 CFR § 1026.19(e)(3)

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

(ii) **Limited increases permitted for certain charges.** An estimate of a charge for a third party service or a recording fee is in good faith if:

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

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

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

(iii) Variations permitted for certain charges. An estimate of any of the charges specified in this paragraph (e)(3)(iii) is in good faith if it is consistent with the best information reasonably available to the creditor at the time it is disclosed, regardless of whether the amount paid by the consumer exceeds the amount disclosed under paragraph (e)(1)(i) of this section. For purposes of paragraph (e)(1)(i) of this section, good faith is determined under this paragraph (e)(3)(iii) even if such charges are paid to the creditor or affiliates of the creditor, so long as the charges are bona fide:

(A) Prepaid interest

(B) Property insurance premiums;

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

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

(E) Property taxes and other charges paid for third-party services not required by the creditor.

Regulatory Commentary

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 under § 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 are generally 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 nonspecific, 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 shop for the third-party service, consistent with § 1026.19(e)(1)(vi)(A).

   ii. Recording fees.

2. ***Aggregate increase limited to ten percent.*** *Under § 1026.19(e)(3)(ii)(A), 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, regardless of whether a particular charge increases by more than 10 percent. This is true even if an individual charge was omitted from the estimate provided under § 1026.19(e)(1)(i) and then imposed at consummation. The following examples illustrate the determination of good faith for charges subject to § 1026.19(e)(3)(ii):*

   i. Assume that, in the disclosures provided under § 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. In this case, the creditor does not violate § 1026.19(e)(3)(ii) if the actual settlement agent fee exceeds the estimated settlement agent fee by more than 10 percent (i.e., the fee exceeds $330), provided that the sum of all such actual charges does not exceed the sum of all such estimated charges by more than 10 percent (i.e., the sum of all such charges does not exceed $1,100).

ii. Assume that, in the disclosures provided under § 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 under § 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.*

6. Shopping for a third-party service. *For good faith to be determined under § 1026.19(e)(3)(ii) a creditor must permit a consumer to shop consistent with § 1026.19(e)(1)(vi)(A). Section 1026.19(e)(1)(vi)(A) provides that a creditor permits a consumer to shop for a settlement service if the creditor permits the consumer to select the provider of that service, subject to reasonable requirements. If the creditor permits the consumer to shop consistent with § 1026.19(e)(1)(vi)(A) good faith is determined under § 1026.19(e)(3)(ii), unless the settlement service provider is the creditor or an affiliate of the creditor, in which case good faith is determined under § 1026.19(e)(3)(i). As noted in comment 19(e)(1)(vi)-1, whether the creditor permits the consumer to shop consistent with § 1026.19(e)(1)(vi)(A) is determined based on all the relevant facts and circumstances.*

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 under § 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 under § 1026.19(e)(3)(i) or (ii). 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. 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 under § 1026.19(e)(1)(vi)(C), and the creditor discloses an unreasonably low estimated settlement agent fee of $20 when the average prices for settlement agent fees in that area are $150, then the under-disclosure does not comply with § 1026.19(e)(3)(iii) and good faith is determined under § 1026.19(e)(3)(i). If the creditor permits the consumer to shop consistent with § 1026.19(e)(1)(vi)(A) but fails to provide the written list required under § 1026.19(e)(1)(vi)(C), good faith is determined under § 1026.19(e)(3)(ii) instead of § 1026.19(e)(3)(iii) unless the settlement service provider is the creditor or an affiliate of the creditor in which case good faith is determined under § 1026.19(e)(3)(i). As noted in comment 19(e)(1)(vi)-1 whether the creditor permits the consumer to shop consistent with § 1026.19(e)(1)(vi)(A) is determined based on all the relevant facts and circumstances.

3. Good faith requirement for property taxes or non-required services chosen by the consumer. *Differences between the amounts of estimated charges for property taxes or services not required by the creditor 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. 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 under § 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 under § 1026.19(e)(1)(i), then the creditor's failure to disclose, or unreasonably low estimation, does not comply with § 1026.19(e)(3)(iii). Similarly, the amount disclosed for property taxes must be based on the best information reasonably available to the creditor at the time the disclosure was provided. For example, if the creditor fails to include a charge for property taxes, or includes an unreasonably low estimate for that charge, on the original estimates provided under § 1026.19(e)(1)(i), then the creditor's failure to disclose, or unreasonably low estimation, does not comply with § 1026.19(e)(3)(iii) and the charge for property tax would be subject to the good faith determination under § 1026.19(e)(3)(i).*

4. Bona fide charges. *In covered transactions, § 1026.19(e)(1)(i) requires the creditor to provide the consumer with good faith estimates of the disclosures in § 1026.37. Section 1026.19(e)(3)(iii) provides that an estimate of the charges listed in § 1026.19(e)(3)(iii) is in good faith if it is consistent with the best information reasonably available to the creditor at the time the disclosure is provided and that good faith is determined under § 1026.19(e)(3)(iii) even if such charges are paid to the creditor or affiliates of the creditor, so long as the charges are bona fide. For determining good faith under § 1026.19(e)(1)(i), to be bona fide, charges must be lawful and for services that are actually performed.*

Small Entity Compliance Guide – Accuracy of Loan Estimate

7.1 What is the general accuracy requirement for the Loan Estimate disclosures? (§ 1026.19(e)(3)(iii))

Creditors are responsible for ensuring that the figures stated in the Loan Estimate are made in good faith and consistent with the best information reasonably available to the creditor at the time they are disclosed. (§§ 1026.17(c)(2)(i); 1026.19(e)(3) and Comments 19(e)(3)(iii)-1 through -3)

If a creditor decreases a charge on a revised Loan Estimate or Closing Disclosure, the creditor is not required to use the decreased estimate for purposes of determining good faith, but instead may rely on the amount originally disclosed.

Whether or not a disclosure included in the Loan Estimate was made in good faith is determined by calculating the difference between the estimated charge or charges originally provided in the Loan Estimate and the actual charge or charges paid by or imposed on the consumer in the Closing Disclosure. (§§ 1026.19(e)(3)(i) and (e)(3)(ii)). For more information about what charges are paid or imposed on the consumer, see section 13.6 below.

Generally, if the charge paid by or imposed on the consumer exceeds the amount originally disclosed on the Loan Estimate, it is not in good faith, regardless of whether the creditor later discovers a technical error, miscalculation, or underestimation of a charge. A disclosure on the Loan Estimate is considered to be in good faith if the creditor charges the consumer less than the amount disclosed on the Loan Estimate, without regard to any tolerance limitations.

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

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

- Certain variations between the amount disclosed and the amount charged are expressly permitted by the TILA-RESPA Rule (See section 7.3 below for additional information on which variations are permitted) (§ 1026.19(e)(3)(iii));
- The amount charged falls within explicit tolerance thresholds (and the estimate is not for a zero tolerance charge where variations are never permitted) (§ 1026.19(e)(3)(ii)) (See sections 7.4 and 7.11 below); or
- Changed circumstances or another triggering event under § 1026.19(e)(3)(iv) permits the charge to be changed and a revised Loan Estimate, a Closing Disclosure, or a corrected Closing Disclosure is provided to the consumer in accordance with the TILA-RESPA Rule. (§ 1026.19(e)(3)(iv)) (See section 8.2 below)

7.3 What charges may change without regard to a tolerance limitation? (§

1026.19(e)(3)(iii))

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

These charges are:

Prepaid interest; property insurance premiums; amounts placed into an escrow, impound, reserve or similar account. (§ 1026.19(e)(3)(iii)(A)-(C))

For services required by the creditor if the creditor permits the consumer to shop and the consumer selects a third-party service provider not on the creditor's written list of service providers. (§ 1026.19(e)(3)(iii)(D))

Property taxes and other charges paid to third-party service providers for services not required by the creditor. (§ 1026.19(e)(3)(iii)(E))

However, creditors may only charge consumers more than the amount disclosed when the original estimated charge, or lack of an estimated charge for a particular service, was based on the best information reasonably available to the creditor at the time the disclosure was provided. (§ 1026.19(e)(3)(iii)). Thus, these charges are subject to a "best information reasonably available" standard.

Bona fide, as used for tolerances under the TILA-RESPA Rule, may not mean the same thing as used in other places of Regulation Z or X. A creditor should check the respective definitions.

The charges listed above are permitted to increase, subject to the best information reasonably available standard, even if paid to the creditor or affiliate so long as they are bona fide. Bona fide charges are those that are lawful and for services actually performed. (Comment 19(e)(3)(iii)-4)

Property taxes and other charges paid to third-party service providers for services not required by the creditor are permitted to increase so long as the amount estimated (or omitted) for a particular service was based on the best information reasonably available at the time the creditor provided the disclosure. For example, if a creditor has reason to know that property taxes will be required at consummation, failure to estimate those taxes or providing an unreasonably low estimate of those taxes is not an estimate based on the best information reasonably available, and as a result, is subject to the zero tolerance standard. (Comment 19(e)(3)(iii)-3)

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

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

These charges are:

- Recording fees (Comment 19(e)(3)(ii)-4);
- Charges for third-party services where:

- The charge is not paid to the creditor or the creditor's affiliate (§ 1026.19(e)(3)(ii)(B)); and
- The consumer is permitted by the creditor to shop for the third-party service, and the consumer selects a third-party service provider on the creditor's written list of service providers, or the consumer is permitted by the creditor to shop (based on the facts and circumstances) for the third-party service, but the creditor fails to provide the written list of service providers. (§§ 1026.19(e)(3)(ii)(C); 1026.19(e)(1)(vi); Comments 19(e)(3)(ii)-3 and -6, 19(e)(3)(iii)-2, and 19(e)(1)(vi)-1 through 7)

7.6 What tolerance standard applies if the written list of service providers is not provided to the consumer or if the list is incomplete? (Comments 19(e)(3)(ii)-6 and 19(e)(3)(iii)-2)

Even if the consumer is considered permitted to shop when the creditor fails to provide the written list, it would still be considered a violation of § 1026.19(e)(1)(vi)(C).

Generally, if the creditor permits the consumer to shop, provides a written list, and the consumer selects a third-party service provider on the list, the charges for the settlement services are subject to the 10% cumulative tolerance standard. (§ 1026.19(e)(3)(ii)) If the consumer selects a third-party service provider that is not on the written list provided to the consumer, the charges for the settlement service may change without limitation as long as the charges disclosed on the Loan Estimate were based on the best information reasonably available to the creditor at the time of disclosure. (Comment 19(e)(3)(iii)-2)

If a creditor fails to provide the written list to the consumer, but the facts and circumstances indicate the consumer was permitted to shop for the settlement service, the charges for which the consumer is permitted to shop are subject to the 10% cumulative tolerance standard. However, if those charges are paid to the creditor or an affiliate, they are subject to the zero tolerance standard. (Comments 19(e)(3)(ii)-6 and 19(e)(3)(iii)-2)

Errors or omissions on the written list or untimely delivery of the written list may impact the tolerance standard applicable to the settlement services required to be disclosed on the written list. If the error or omission does not prevent the consumer from shopping, the charges are not paid to the creditor or an affiliate, and the consumer is otherwise considered to have shopped, the charges are subject to the 10% cumulative tolerance standard. If the error or omission does prevent the consumer from shopping, the charges are subject to the zero tolerance standard. The determination of whether the error or omission prevents the consumer from shopping is based on all of the relevant facts and circumstances. For example, a typographical error in the name of a third-party service provider on the written list might not prevent the consumer from shopping if the error does not prevent identification of the service provider. (Comments 19(e)(3)(i)-1.iv and 19(e)(3)(ii)-6)

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

Where a consumer chooses a third-party service provider that is not on the creditor's written

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

Remember, if the creditor permits the consumer to shop, based on the facts and circumstances, for a required settlement service but the consumer either does not select a settlement service provider, chooses a settlement service provider identified by the creditor on the written list of service providers, or the creditor fails to provide the written list of service providers, then the amount charged is included in the sum of all such third-party charges paid by the consumer, and also is subject to the 10% cumulative tolerance. However, if the charge is paid to the creditor or an affiliate, it is subject to the zero tolerance standard. (Comment 19(e)(3)(ii)-3 and -6, and 19(e)(3)(iii)-2)

The TILA-RESPA Rule states that charges for property taxes and other charges paid to third-party service providers for services not required by the creditor, even those paid to affiliates of the creditor, are "variations permitted for certain charges" or charges that are not subject to a tolerance limitation so long as they are based on the best information reasonably available at the time of disclosure and they are bona fide charges. (§ 1026.19(e)(3)(iii)(E); Comments 19(e)(3)(iii)-3 and -4). For example, owner's title insurance that is not required by the creditor will be a variation permitted charge that is not subject to tolerance as long as it is disclosed as optional.

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

The creditor should compare the sum of the charges actually paid by or imposed on the consumer with the sum of the estimated charges on the Loan Estimate that are actually performed. If a service is not performed, the estimate for that charge should be removed from the total amount of estimated charges. (Comment 19(e)(3)(ii)-5)

7.9 What if a consumer pays more for a particular charge for a third-party service or recording fee than estimated, but the total charges paid are still within 10% of the estimate? (Comment 19(e)(3)(ii)-2)

Whether an individual estimated charge subject to § 1026.19(e)(3)(ii) is in good faith depends on whether the sum of all charges subject to the 10% cumulative tolerance increases by more than 10%, even if a particular charge increases by more than 10%. A creditor may charge more than 10% in excess of an individual estimated charge in this category, so long as the sum of all charges is still within the 10% cumulative tolerance. (Comment 19(e)(3)(ii)-2)

For example, if the creditor includes a $300 estimate for a settlement agent, included in the 10% cumulative tolerance, the creditor may not be outside the 10% cumulative tolerance just because that single fee increases by 10%, unless the sum of all fees in the 10% cumulative tolerance increases by more than 10%. (Comment 19(e)(3)(ii)-2)

7.10 What if the creditor does not provide an estimate of a particular fee that is later charged? (Comment 19(e)(3)(ii)-2)

Creditors are provided flexibility in disclosing individual fees by the focus on the aggregate amount of all charges. A creditor may charge a consumer for a fee that would fall under the 10% cumulative tolerance but was not included on the Loan Estimate so long as the sum of all charges in this category does not exceed the sum of all estimated charges by more than 10%. (Comment 19(e)(3)(ii)-2). For example, if the creditor requires lender's title insurance, the creditor must disclose the service (i.e., lender title's insurance) and the fee for the service. However, the creditor is not required to provide a detailed breakdown of all related fees that are not explicitly required by the creditor but that may be charged to the consumer, such as a notary fee, title search fee, or other ancillary and administrative services needed to perform or provide the settlement service required by the creditor.

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

For all other charges, creditors must not charge consumers more than the amount disclosed on the Loan Estimate unless there is a changed circumstance or other triggering event that permits a revised estimate, as discussed below in section 8.

These zero tolerance charges include:

- Fees paid to the creditor, mortgage broker, or an affiliate of either, where such fees do not fall within the exceptions for charges that may change without regard to a tolerance limitation. See sections 7.3 above and 7.12 below. (§ 1026.19(e)(3)(ii)(B); Comment 19(e)(3)(i)-1);
- Fees paid to an unaffiliated third party if the creditor did not permit the consumer to shop, based on the facts and circumstances, for a third-party service provider for a settlement service (§ 1026.19(e)(3)(ii)(C); Comment 19(e)(3)(i)-1.iv); or
- Transfer taxes. (Comments 19(e)(3)(i)-1 and -4)

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

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

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

7.13 Can lender credits change? (§ 1026.19(e)(3)(iv); Comments 19(e)(3)(i)-5 and -6)

General lender credits are generalized payments from the creditor to the consumer that do not pay for a particular fee on the disclosures, whereas specific lender credits are attributed to a specific fee.

Yes, in certain circumstances. Lender credits, both specific and general, may always increase or may decrease if there is an accompanying changed circumstance or other triggering event under § 1026.19(e)(3)(iv).

For purposes of determining good faith and whether a change in lender credits results in an increased charge to the consumer, the total amount of lender credits, whether specific or general, actually provided to the consumer is compared to the amount of the "lender credits" identified in the Total Closing Costs on the Loan Estimate. (Comments 19(e)(3)(i)-5 and -6). For example, if the creditor discloses a $750 estimate for lender credits, but only $500 of lender credits is actually provided to the consumer, the creditor has a zero tolerance standard violation because the actual amount of lender credits provided is less than the estimated lender credits, and is therefore, an increased charge to the consumer. (Comment 19(e)(3)(i)-5)

Additionally, specific lender credits can impact the good faith tolerance analysis for their respective fees. For example, if the creditor discloses a $750 estimate for lender credits on the Loan Estimate 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 specific lender credit by $150 to pay for the increase, the credit is not being revised in a way that violates the good faith tolerance requirements because, although the credit increased from the amount disclosed, the amount paid by the consumer did not. However, if the creditor subsequently reduces the specific lender credit by $50 because the appraisal fee decreased by $50, then the creditor has a zero tolerance standard violation because, although the amount of the appraisal fee decreased, the amount of the lender credit decreased. (Comment 19(e)(3)(i)-5)

But, if changed circumstances or other triggering events cause a lender credit to decrease, the lender would not be subject to a tolerance violation, assuming the other requirements for resetting tolerances are met and the legal obligation allows the decrease. For example, if the consumer enters into a rate lock agreement that causes the lender credit amount to decrease and the creditor provides a revised Loan Estimate reflecting the change no later than three business days afterwards, the lender credit decrease would not result in a zero tolerance standard violation. (Comment 19(e)(3)(iv)(D)-1). For the appraisal fee example above, if the reason the appraisal fee decreased by $50 was due to a change in the loan program and the legal obligation stated the creditor would pay for the appraisal, but not the specific amount, the lender credit decrease would not result in a zero tolerance standard violation (assuming compliance with the requirements for providing a revised Loan Estimate). A creditor must retain evidence of compliance with the requirements for the Loan Estimate. (§ 1026.25(c)(1)(i))

Section 11: 12 CFR § 1026.19(e)(3)(iv)
Revised Estimates

Y&A Completion Instructions

- A revised Loan Estimate is required to be issued when the institution has knowledge that there is a changed circumstance that will result in a good faith violation. The formal definition of changed circumstance is below, however, it generally is a situation in which there is an unanticipated change.
- A changed circumstance may also be a situation in which the customer and/or property does not qualify for the original loan type requested, and there is a change as a result.
- A revised Loan Estimate may be issued at any time, however, if the Loan Estimate was only for courtesy purposes (not required), and the Loan Estimate was issued even though the changed circumstance would not create a good faith violation, then the original Loan Estimate is used for the purpose of determining the good faith violation issues.
- A new Loan Estimate must be issued if there is a Loan Level Price Adjustment based on circumstances not known at the time of the previous Loan Estimate.
- A new Loan Estimate may be issued if the previous Loan Estimate expires.
- A new Loan Estimate must be issued if the interest rate that was floating is now locked.
- A new Loan Estimate may be issued if the take-out financing of a construction loan is unreasonably delayed. See the discussion below for the specific circumstances that would permit this.
- A new Loan Estimate may be issued due to a change requested by the applicant.

Regulatory Text - 12 CFR § 1026.19(e)(3)(iv)

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

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

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

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

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

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

(C) **Revisions requested by the consumer.** The consumer requests revisions to the credit terms or the settlement that cause an estimated charge to increase.

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

(E) Expiration. The consumer indicates an intent to proceed with the transaction more than 10 business days, or more than any additional number of days specified by the creditor before the offer expires, after the disclosures required under paragraph (e)(1)(i) of this section are provided pursuant to paragraph (e)(1)(iii) of this section.

(F) Delayed settlement date on a construction loan. In transactions involving new construction, where the creditor reasonably expects that settlement will occur more than 60 days after the disclosures required under paragraph (e)(1)(i) of this section are provided pursuant to paragraph (e)(1)(iii) of this section, the creditor may provide revised disclosures to the consumer if the original disclosures required under paragraph (e)(1)(i) of this section state clearly and conspicuously that at any time prior to 60 days before consummation, the creditor may issue revised disclosures. If no such statement is provided, the creditor may not issue revised disclosures, except as otherwise provided in paragraph (e)(3)(iv) of this section.

Regulatory Commentary

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.*** *A creditor may determine good faith under § 1026.19(e)(3)(i) and (ii) based on the increased charges reflected on revised disclosures 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 on which a creditor relies for purposes of determining good faith under § 1026.19(e)(3)(i) 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 the creditor may not rely on changes to other charges unrelated to the rate lock extension for purposes of determining good faith under § 1026.19(e)(3)(i) and (ii).*

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).*

4. ***Revised disclosures for general informational purposes.*** *Section 1026.19(e)(3)(iv) does not prohibit the creditor from issuing revised disclosures for informational purposes, e.g., to keep the consumer apprised of updated information, even if the revised disclosures may not be used for purposes of determining good faith under § 1026.19(e)(3)(i) and (ii). See comment 19(e)(3)(iv)(A)-1.ii for an example in which the creditor issues revised disclosures even though the sum of all costs subject to the 10 percent tolerance category has not increased by more than 10 percent.*

5. ***Best information reasonably available.*** *Regardless of whether a creditor may use particular disclosures for purposes of determining good faith under § 1026.19(e)(3)(i) and (ii), except as otherwise provided in § 1026.19(e), any disclosures must be based on the best information reasonably available to the creditor at the time they are provided to the consumer. See § 1026.17(c)(2)(i) and comment 17(c)(2)(i)-1. For example, if the creditor issues revised disclosures reflecting a new rate lock extension fee for purposes of determining good faith under § 1026.19(e)(3)(i), other charges unrelated to the rate lock extension must be reflected on the revised disclosures based on the best information reasonably available to the creditor at the time the revised disclosures are provided. Nonetheless, any increases in those other charges unrelated to the rate lock extension may not be used for the purposes of determining good faith under § 1026.19(e)(3).*

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, then, no later than three business days after the date the interest rate is subsequently 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 under § 1026.37(f)(1), lender credits, and any other interest rate dependent charges and terms. The following example illustrates 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 under § 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 under § 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, no later than three business days after the date that the consumer and the creditor enter 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 under § 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 under § 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 under § 1026.19(e)(3)(i).*

2. ***After the Closing Disclosure is provided.*** *Under § 1026.19(e)(3)(iv)(D), no later than three business days after the date the interest rate is locked, the creditor must provide to the consumer a revised version of the Loan Estimate as required by § 1026.19(e)(1)(i). Section 1026.19(e)(4)(ii) prohibits a creditor from providing a revised version of the Loan Estimate as required by § 1026.19(e)(1)(i) on or after the date on which the creditor provides the Closing Disclosure as required by § 1026.19(f)(1)(i). If the interest rate is locked on or after the date on which the creditor provides the Closing Disclosure and the Closing Disclosure is inaccurate as a result, then the creditor must provide the consumer a corrected Closing Disclosure, at or before consummation, reflecting any changed terms, pursuant to § 1026.19(f)(2). If the rate lock causes the Closing Disclosure to become inaccurate before consummation in a manner listed in § 1026.19(f)(2)(ii), the creditor must ensure that the consumer receives a corrected Closing Disclosure no later than three business days before consummation, as provided in that paragraph.*

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

1. ***Requirements.*** *If the consumer indicates an intent to proceed with the transaction more than 10 business days after the disclosures were originally provided under § 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 10 business days. For example, assume a creditor includes a $500 underwriting fee on the disclosures provided under § 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 under § 1026.19(e)(3)(iv)(E) but do not require the creditor to document a reason for the increase in the underwriting fee.*

2. ***Longer time period.*** *For transactions in which the interest rate is locked for a specific period of time, § 1026.37(a)(13)(ii) requires the creditor to provide the date and time (including the applicable time zone) when that period ends. If the creditor establishes a period greater than 10 business days after the disclosures were originally provided (or subsequently extends it to such a longer period) before the estimated closing costs expire, notwithstanding the 10-business day period discussed in comment 19(e)(3)(iv)(E)-1, that longer time period becomes the relevant time period for purposes of § 1026.19(e)(3)(iv)(E). Accordingly, in such a case, the creditor may not issue revised disclosures for purposes of determining good faith under § 1026.19(e)(3)(i) and (ii) under § 1026.19(e)(3)(iv)(E) until after the longer time period has expired. A creditor establishes such a period greater than 10 business days by communicating the greater time period to the consumer, including through oral communication.*

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).*

Small Entity Compliance Guide – Revised Loan Estimates

7.13 Can lender credits change? (§ 1026.19(e)(3)(iv); Comments 19(e)(3)(i)-5 and -6)

General lender credits are generalized payments from the creditor to the consumer that do not pay for a particular fee on the disclosures, whereas specific lender credits are attributed to a specific fee.

Yes, in certain circumstances. Lender credits, both specific and general, may always increase

or may decrease if there is an accompanying changed circumstance or other triggering event under § 1026.19(e)(3)(iv).

For purposes of determining good faith and whether a change in lender credits results in an increased charge to the consumer, the total amount of lender credits, whether specific or general, actually provided to the consumer is compared to the amount of the "lender credits" identified in the Total Closing Costs on the Loan Estimate. (Comments 19(e)(3)(i)-5 and -6). For example, if the creditor discloses a $750 estimate for lender credits, but only $500 of lender credits is actually provided to the consumer, the creditor has a zero tolerance standard violation because the actual amount of lender credits provided is less than the estimated lender credits, and is therefore, an increased charge to the consumer. (Comment 19(e)(3)(i)-5)

Additionally, specific lender credits can impact the good faith tolerance analysis for their respective fees. For example, if the creditor discloses a $750 estimate for lender credits on the Loan Estimate 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 specific lender credit by $150 to pay for the increase, the credit is not being revised in a way that violates the good faith tolerance requirements because, although the credit increased from the amount disclosed, the amount paid by the consumer did not. However, if the creditor subsequently reduces the specific lender credit by $50 because the appraisal fee decreased by $50, then the creditor has a zero tolerance standard violation because, although the amount of the appraisal fee decreased, the amount of the lender credit decreased. (Comment 19(e)(3)(i)-5)

But, if changed circumstances or other triggering events cause a lender credit to decrease, the lender would not be subject to a tolerance violation, assuming the other requirements for resetting tolerances are met and the legal obligation allows the decrease. For example, if the consumer enters into a rate lock agreement that causes the lender credit amount to decrease and the creditor provides a revised Loan Estimate reflecting the change no later than three business days afterwards, the lender credit decrease would not result in a zero tolerance standard violation. (Comment 19(e)(3)(iv)(D)-1). For the appraisal fee example above, if the reason the appraisal fee decreased by $50 was due to a change in the loan program and the legal obligation stated the creditor would pay for the appraisal, but not the specific amount, the lender credit decrease would not result in a zero tolerance standard violation (assuming compliance with the requirements for providing a revised Loan Estimate). A creditor must retain evidence of compliance with the requirements for the Loan Estimate. (§ 1026.25(c)(1)(i))

8.1 When are revisions permitted for Loan Estimates?

Generally, a creditor may revise a Loan Estimate at any time before it provides the Closing Disclosure. A revised Loan Estimate may be issued to reset tolerances for purposes of determining good faith or to update information for informational purposes. (Comment 19(e)(3)(iv)-4). Regardless of whether a revised Loan Estimate is used for resetting tolerances or for informational purposes, all of the disclosures on a revised Loan Estimate must be based on the best information reasonably available at the time the revised disclosure is provided. (Comment 19(e)(3)(iv)-5)

The creditor must ensure that the consumer receives the revised Loan Estimate no later than four business days prior to consummation. The creditor is permitted to rely on the charges disclosed in a revised Loan Estimate to reset tolerances in more limited circumstances.

Creditors generally are bound by the amounts in the Loan Estimate provided within three business days of the application. Creditors are permitted to provide and use revised estimates for purposes of determining good faith and resetting tolerances only in certain specific circumstances:

- Changed circumstances that occur after the Loan Estimate is provided to the consumer cause an estimated charge to increase more than is permitted under the TILA-RESPA Rule (§ 1026.19(e)(3)(iv)(A));
- Changed circumstances affect the consumer's creditworthiness or the value of the property securing the loan and cause a consumer to be ineligible for an estimated charge previously disclosed to the consumer(§ 1026.19(e)(3)(iv)(B));
- Changes to the credit terms or the settlement are requested by the consumer and those changes cause an estimated charge to increase (§ 1026.19(e)(3)(iv)(C));
- The interest rate was not locked when the Loan Estimate was provided, and locking the rate causes the points, lender credits and any other interest rate dependent charges or terms to change (§ 1026.19(e)(3)(iv)(D));
- The consumer indicates an intent to proceed with the transaction more than 10 business days after the Loan Estimate was originally provided, so long as the creditor has not established a longer expiration period (§ 1026.19(e)(3)(iv)(E); Comment 19(e)(3)(iv)(E)-2); or
- The loan is a new construction loan, and settlement is delayed by more than 60 calendar days, if the original Loan Estimate states clearly and conspicuously that at any time prior to 60 calendar days before consummation, the creditor may issue revised disclosures. (§ 1026.19(e)(3)(iv)(F))

Additionally, if a creditor provides a revised Loan Estimate for informational purposes, any updated fees, although required to be updated based on the best information reasonably available requirement, cannot be used for determining good faith unless one of the above circumstances for resetting tolerances is also present. (Comment 19(e)(3)(iv)-5)

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

A changed circumstance for purposes of providing a revised Loan Estimate and resetting tolerances is:

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

8.3 What are changed circumstances that affect settlement charges?

A changed circumstance affects settlement charges if it causes an estimated charge to increase

by more than the applicable tolerance or, in the case of estimated charges subject to the 10% cumulative tolerance, causes the sum of those charges to increase by more than the 10% tolerance. (§ 1026.19(e)(3)(iv)(A); Comment 19(e)(3)(iv)(A)-1)

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

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

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

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

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

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

A creditor also may provide and use a revised Loan Estimate and reset tolerances if a changed circumstance affected the consumer's creditworthiness or the value of the security for the loan, and resulted in the consumer being ineligible for an estimated loan terms previously disclosed. (§ 1026.19(e)(3)(iv)(B); Comment 19(e)(3)(iv)(B)-1)

This may occur when a changed circumstance causes a change in the consumer's eligibility for specific loan terms disclosed on the **Loan Estimate**, which in turn results in increased cost for a settlement service beyond the applicable tolerance threshold. (Comment 19(e)(3)(iv)(A)-2)

For example:

- The creditor relied on the consumer's representation to the creditor of a $90,000 annual income, but underwriting determines that the consumer's annual income is only $80,000.

- There are two co-applicants applying for a mortgage loan and the creditor relied on a combined income when providing the Loan Estimate, but one applicant subsequently becomes unemployed.

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

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

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

8.7 May the written list of service providers be revised to reflect Loan Estimate revisions?

A creditor may update and re-disclose the written list of service providers to reflect a new service that is added as a result of a changed circumstance or borrower requested change.

When an event that would permit resetting of tolerances under § 1026.19(e)(3)(iv) occurs and an additional settlement service is required, the creditor may disclose third-party service providers of that additional service on the written list at the same time as issuing the revised Loan Estimate. If the creditor will permit the consumer to shop for this new service, there are two ways that a creditor may approach adding this new service to the written list.

- First, the creditor may include the additional service and provide an updated written list; or
- Second, the creditor may provide a written list showing only service providers of the additional service.

If, based on all the relevant facts and circumstances, the creditor allowed the consumer to shop for the additional service but fails to provide an updated or revised written list of service providers, the additional service is subject to 10% cumulative tolerance, so long as the service is not provided by the creditor or its affiliate. (Comment 19(e)(3)(iii)-2)

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

If the interest rate for the loan was not locked when the Loan Estimate was provided and, upon being locked at some later time, the interest rate as well as points, lender credits and other interest rate dependent charges for the mortgage loan may change. The creditor is required to provide a revised Loan Estimate no later than three business days after the date the interest rate is locked, and may use the revised Loan Estimate to compare to points and lender credits charged.

The revised Loan Estimate must reflect the revised interest rate as well as any revisions to the points disclosed on the Loan Estimate pursuant to § 1026.37(f)(1), lender credits, and any other interest rate dependent charges and terms that have changed due to the new interest rate. It must also reflect the expiration date of the interest rate disclosed. The requirement to issue a revised Loan Estimate applies only once. Once the interest rate is subject to a rate lock agreement, the creditor is not required to provide a revised Loan Estimate again for rate lock agreement extensions or new agreements, so long as there are no changes to the charges or other terms. (§ 1026.19(e)(3)(iv)(D); Comment 19(e)(3)(iv)(D)-1)

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

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

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

The TILA-RESPA Rule identifies 10 business days as the period after which a Loan Estimate expires, and after which a creditor may change the original estimate of a charge without other justification. However, if the creditor voluntarily extends the expiration date beyond 10 business days, either orally or in writing, the extended date is the date that the Loan Estimate expires. Absent a permissible justification for changing the original estimate of a charge (*i.e.*, resetting tolerances), the creditor cannot change the amounts disclosed on the Loan Estimate until the extended expiration date has passed. (Comment 19(e)(3)(iv)(E)-2)

8.10 Are there any other circumstances where creditors may use revised Loan Estimates to reset tolerances?

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

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

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

Section 12: § 1026.19(e)(4)
Provision and Receipt of Revised Disclosures

Y&A Completion Instructions

- When a revised Loan Estimate is required to be issued due to a changed circumstance (see previous section), it must be issued within 3 days of the institution's knowledge that it is required.
- Any final revision of the Loan Estimate must be issued at least one day prior to the issuance of the initial Closing Disclosure.

Regulatory Text - 12 CFR § 1026.19(e)(4)

(i) General rule. Subject to the requirements of paragraph (e)(4)(ii) of this section, if a creditor uses a revised estimate pursuant to paragraph (e)(3)(iv) of this section for the purpose of determining good faith under paragraphs (e)(3)(i) and (ii) of this section, the creditor shall provide a revised version of the disclosures required under paragraph (e)(1)(i) of this section or the disclosures required under paragraph (f)(1)(i) of this section (including any corrected disclosures provided under paragraph (f)(2)(i) or (ii) of this section) reflecting the revised estimate within three business days of receiving information sufficient to establish that one of the reasons for revision provided under paragraphs (e)(3)(iv)(A) through (F) of this section applies.

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

Regulatory Commentary

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) or the disclosures required under § 1026.19(f)(1)(i) (including any corrected disclosures provided under § 1026.19(f)(2)(i) or (ii)) 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 (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.*

19(e)(4)(ii) Relationship between revised Loan Estimates and Closing Disclosures.

1. Revised Loan Estimate 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 any 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. However, 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), § 1026.19(e)(4)(i) permits the creditor*

to provide the revised estimate in the disclosures required under § 1026.19(f)(1)(i) (including any corrected disclosures provided under § 1026.19(f)(2)(i) or (ii)). 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, June 3, and the APR becomes inaccurate on Tuesday, June 2, 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, June 3. However, the creditor does not comply with the requirements of § 1026.19(e)(4) if it provides both a revised version of the disclosures required under § 1026.19(e)(1)(i) reflecting the revised APR on Wednesday, June 3, and also provides the disclosures required under § 1026.19(f)(1)(i) on Wednesday, June 3.

ii. If the creditor is scheduled to email the disclosures required under § 1026.19(f)(1)(i) to the consumer on Wednesday, June 3, 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, June 2, 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, June 3. However, the creditor does not comply with the requirements of § 1026.19(e)(4) if it provides disclosures reflecting the consumer-requested changes using both the revised version of the disclosures required under § 1026.19(e)(1)(i) on Wednesday, June 3, and also the disclosures required under § 1026.19(f)(1)(i) on Wednesday, June 3.

iii. Consummation is scheduled for Thursday, June 4. The creditor hand delivers the disclosures required by § 1026.19(f)(1)(i) on Monday, June 1, and, on Tuesday, June 2, the consumer requests a change to the loan that would result in revised disclosures pursuant to § 1026.19(e)(3)(iv)(C) but would not require a new waiting period pursuant to § 1026.19(f)(2)(ii). Under § 1026.19(f)(2)(i), the creditor is required to provide corrected disclosures reflecting any changed terms to the consumer so that the consumer receives the corrected disclosures at or before consummation. The creditor complies with the requirements of § 1026.19(e)(4) by hand delivering the disclosures required by § 1026.19(f)(2)(i) reflecting the consumer-requested changes on Thursday, June 4.

iv. Consummation is originally scheduled for Wednesday, June 10. The creditor hand delivers the disclosures required by § 1026.19(f)(1)(i) on Friday, June 5. On Monday, June 8, the consumer reschedules consummation for Wednesday, June 17. Also on Monday, June 8, the consumer requests a rate lock extension that would result in revised disclosures pursuant to § 1026.19(e)(3)(iv)(C) but would not require a new waiting period pursuant to § 1026.19(f)(2)(ii). The creditor complies with the requirements of § 1026.19(e)(4) by delivering or placing in the mail the disclosures required by § 1026.19(f)(2)(i) reflecting the consumer-requested changes on Thursday, June 11. Under § 1026.19(f)(2)(i), the creditor is required to provide corrected disclosures reflecting any changed terms to the consumer so that the consumer receives the corrected disclosures at or before consummation. The creditor complies with § 1026.19(f)(2)(i) by hand delivering the disclosures on Thursday, June 11.

Alternatively, the creditor complies with § 1026.19(f)(2)(i) by providing the disclosures to the consumer by mail, including by electronic mail, on Thursday, June 11, because the consumer is considered to have received the corrected disclosures on Monday, June 15 (unless the creditor relies on evidence that the consumer received the corrected disclosures earlier). See § 1026.19(f)(1)(iii) and comments 19(f)(1)(iii)-1 and -2. See also § 1026.38(t)(3)

and comment 19(f)(1)(iii)-2 regarding providing the disclosures required by § 1026.19(f)(1)(i) (including any corrected disclosures provided under § 1026.19(f)(2)(i) or (ii)) in electronic form.

v. Consummation is originally scheduled for Wednesday, June 10. The creditor hand delivers the disclosures required by § 1026.19(f)(1)(i) on Friday, June 5, and the APR becomes inaccurate on Monday, June 8, such that 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). Consummation is rescheduled for Friday, June 12. The creditor complies with the requirements of § 1026.19(e)(4) by hand delivering the disclosures required by § 1026.19(f)(2)(ii) reflecting the revised APR and any other changed terms to the consumer on Tuesday, June 9. See § 1026.19(f)(2)(ii) and associated commentary regarding changes before consummation requiring a new waiting period. See comment 19(e)(4)(i)-1 for further guidance on when sufficient information has been received to establish an event has occurred.

Small Entity Compliance Guide – Revised Loan Estimate Timing

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

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

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

Yes.

- The creditor may not provide a revised Loan Estimate on or after the date it provides the Closing Disclosure. (§ 1026.19(e)(4)(ii))
- The creditor must ensure that the consumer receives the revised Loan Estimate no later than four business days prior to consummation. If the creditor is mailing the revised Loan Estimate and relying upon the three business day mailbox rule, the creditor would need to place in the mail the Loan Estimate no later than seven business days before consummation of the transaction to allow three business days for receipt. (§ 1026.19(e)(4); Comment 19(e)(4)(i)-2)
- As discussed in section 11.2 below regarding the Closing Disclosure, when a revised Loan Estimate is provided in person, it is considered received by the consumer on the day it is provided. If it is mailed or delivered electronically, the consumer is considered to have received it three business days after it is delivered or placed in the mail. (Comments 19(e)(1)(iv)-1 and -2)

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

9.3 What definition of "business day" applies to redisclosure rules?

For purposes of providing a revised Loan Estimate within three business days of receiving information sufficient to establish that an event permitting redisclosure has occurred, the standard definition of business day applies. (See section 6.14 above)

However, for purposes of the four-business-day period prior to consummation, "business day" means all calendar days except Sundays and legal public holidays specified in 5 U.S.C. 6103(a) such as New Year's Day, the Birthday of Martin Luther King, Jr., Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, and Christmas Day. (Comment 19(e)(4)(ii)-1; § 1026.2(a)(6) and Comment 2(a)(6)-2)

9.4 May a creditor revise a Loan Estimate after a Closing Disclosure already has been provided? (§ 1026.19(e)(4)(ii))

No. The creditor may not provide a revised **Loan Estimate** on or after the date the creditor provides the consumer with the **Closing Disclosure**. (§ 1026.19(e)(4)(ii); Comment 19(e)(4)(ii)-1.ii). (See also section 11.1 below, discussing timing requirements for the **Closing Disclosure**). Because the **Closing Disclosure** must be provided to the consumer no later than **three business days** before **consummation** (see section 10.2 below), this means the consumer must receive a revised **Loan Estimate** no later than **four business days** prior to **consummation**. (§ 1026.19(e)(4)(ii); Comment 19(e)(4)(ii)-1.ii)

9.5 What if a changed circumstance occurs too close to consummation for the creditor to provide a revised Loan Estimate? (Comment 19(e)(4)(ii)-1)

If there are fewer than four business days between the time the revised Loan Estimate would have been required to be provided to the consumer and consummation, creditors may provide consumers with a Closing Disclosure reflecting any revised charges resulting from a changed circumstance or other triggering event and rely on those figures (rather than the amounts disclosed on the Loan Estimate) for purposes of determining good faith and the applicable tolerance. (Comment 19(e)(4)(ii)-1) See section 9.1 above for information about the timing requirements for revised Loan Estimates.

If those conditions are met and the first Closing Disclosure has already been provided to the consumer, the creditor may use revised charges on a corrected Closing Disclosure provided to the consumer at or before consummation, and compare those amounts to the amounts charged for purposes of determining good faith and tolerance. See section 11.11 below for information about when the three-business-day waiting period applies to corrected Closing Disclosures.

The Closing Disclosure

Section 13: Closing Disclosure
12CFR § 1026.19(f)(1)

Y&A Completion Instructions

- The Closing Disclosure must be issued at least three days prior to consummation. The issue date is day zero, and the loan may close on the third day.
- If the Closing Disclosure is snail mailed, absent other evidence of receipt, the Closing Disclosure is considered received three days after mailing. As there will always be an intervening Sunday, this means that the Closing Disclosure must be issued a full week prior to closing for snail mail deliveries (assuming no legal holidays).
- If the Closing Disclosure is emailed (E-Sign must be in place), the Closing Disclosure is considered received once the institution has received confirmation that the applicant has opened the email. If the confirmation does not occur, then the email delivery is handled as if the delivery was snail mailed (see above).
- The applicant may waive this waiting period. The exact bona fide personal financial emergency details are in the regulation below. This should be a very rare occurrence.
- The Closing Disclosure may be delivered by the institution or the closing agent. The same timing rules apply to both.
- If any item is not known at the time of the initial issuance of the Closing Disclosure, it may be estimated. This will result in a corrected Closing Disclosure at the closing table. See further information on this below.

Regulatory Text - 12 CFR § 1026.19(f)(1)

(1) **Provision of disclosures**

(i) Scope. In a transaction subject to paragraph (e)(1)(i) of this section, the creditor shall provide the consumer with the disclosures required under § 1026.38 reflecting the actual terms of the transaction.

(ii) **Timing.**

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

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

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

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

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

Regulatory Commentary

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 or a cooperative unit, 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 under § 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, under § 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.*

Small Entity Compliance Guide – General Closing Disclosure

10.1 What are the general requirements for the Closing Disclosure? (§§ 1026.19(f) and 1026.38)

For loans that require a Loan Estimate and that proceed to closing, creditors must provide a Closing Disclosure, which is a final disclosure reflecting the actual terms of the transaction. The form integrates and replaces the HUD-1 and the final TIL disclosure for these transactions. The creditor is generally required to ensure that the consumer receives the Closing Disclosure no later than three business days before consummation of the loan. (§ 1026.19(f)(1)(ii))

- The Closing Disclosure generally must contain the actual terms and costs of the transaction. (§ 1026.19(f)(1)(i)). Creditors may estimate disclosures using the best information reasonably available when the actual term or cost is not reasonably available to the creditor at the time the disclosure is made. However, creditors must act in good faith and use due diligence in obtaining the information. The creditor normally may rely on the representations of other parties in obtaining the information, including, for example, the settlement agent. The creditor is required to provide corrected disclosures containing the actual terms of the transaction at or before consummation. (Comments 19(f)(1)(i)-2, -2.i, and -2.ii)
- The Closing Disclosure must be in writing and contain the information prescribed in § 1026.38. The creditor must disclose only the specific information set forth in § 1026.38(a) through (s), as shown in the Bureau's form in appendix H-25. (§ 1026.38(t))
- If the actual terms or costs of the transaction change prior to consummation, the creditor must provide a corrected disclosure that contains the actual terms of the transaction and

complies with the other requirements of § 1026.19(f), including the timing requirements, and requirements for providing corrected disclosures due to subsequent changes. (Comment 19(f)(1)(i)-1)

- New three-day waiting period. If the creditor provides a corrected disclosure, it may also be required to provide the consumer with an additional three-business-day waiting period prior to consummation. (§ 1026.19(f)(2)). (See section 12 below for a discussion of the redisclosure requirements for the Closing Disclosure)

11.1 What are the general timing and delivery requirements for the Closing Disclosure? (§ 1026.19(f))

Generally, the creditor is responsible for ensuring that the consumer receives the Closing Disclosure form no later than three business days before consummation. (§ 1026.19(f)(1)(ii)(A); Comment 19(f)(1)(v)-3). Although see section 11.4 below regarding delivery of the Closing Disclosure by a settlement agent.

The creditor also is responsible for ensuring that the Closing Disclosure meets the content, delivery, and timing requirements discussed in sections 10, 11, and 12 of this Guide. (§§ 1026.19(f) and 1026.38)

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

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

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

10.3 Does a creditor have to use the Bureau's Closing Disclosure form? (§ 1026.38(t))

Generally, yes. For any loans subject to the TILA-RESPA Rule that are federally related mortgage loans subject to RESPA (which will include most mortgages), an appropriate blank Closing Disclosure form (H-25(A) and (H) through (J) and H-28(F) and (J)) is a standard form, meaning creditors must use an appropriate blank form, including all of its elements such as font sizes, bolding, shading, and underscoring. (§ 1026.38(t)(3)(i)). (See also § 1024.2(b) for definition of federally related mortgage loan).

Use of an appropriate Closing Disclosure sample form (H-25(B) through (G) and H-28(G) and (H)) for federally related mortgage loans or non-federally related mortgage loans provides a safe harbor if properly completed with accurate content.

For other transactions subject to the TILA-RESPA Rule that are not federally related mortgage loans, an appropriate blank form is a model form, meaning creditors are not strictly required to use the form, but the disclosures must contain the exact same information and be made with headings, content, and format substantially similar to an appropriate blank form. (§ 1026.38(t)(3)(ii))

10.4 Are creditors required to use any particular method to complete (i.e., insert information into) the Closing Disclosure form?

Creditors are not required to use any particular method to complete the **Closing Disclosure**. It may be completed by hand, computer, typewriter, or word processor. The TILA-RESPA Rule only requires that:

- The information must be clear and legible; and
- The information must comply with the required formatting, including replicating bold font where required. (Comment 38(t)(5)-2)

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

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

- By providing it to the consumer in person;
- By mailing or by other delivery methods, including email. Creditors may use electronic delivery methods, subject to compliance with the consumer consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (15 U.S.C. 7001 *et seq.*). (Comment 19(f)(1)(iii)-2; § 1026.38(t)(3)(iii))
- Creditors must ensure that the consumer receives the Closing Disclosure at least three business days prior to consummation. (§ 1026.19(f)(1)(ii)(A))

11.3 When is the Closing Disclosure considered to be received if it is delivered in person or if it is mailed? (§ 1026.19(f)(1)(iii))

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

However, if the creditor has evidence that the consumer received the Closing Disclosure earlier than three business days after it is mailed or delivered, it may rely on that evidence and consider it to be received on that date. (Comments 19(f)(1)(iii)-1 and -2). (See also the discussion above in section 6.4 of this Guide on similar receipt rule under § 1026.19(e)(1)(iv) and commentary regarding the Loan Estimate.)

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

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

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

10.5 What information goes on the Closing Disclosure form?

The following is a brief, page-by-page overview of the Closing Disclosure form, generally describing the information creditors are required to disclose. For detailed instructions on how to determine the contents of each of these fields, see the TILA-RESPA Guide to Forms.

10.6 Page 1: General information, loan terms, projected payments, and costs at closing

General information, the Loan Terms table, the Projected Payments table, and the Costs at Closing table are disclosed on the first page of the Closing Disclosure. (§§ 1026.38(a), (b), (c), and (d))

10.7 Page 2: Loan costs and other costs

The Loan Costs and Other Costs tables are disclosed under the heading Closing Cost Details on page 2 of the Closing Disclosure. (§§ 1026.38(f), (g), and (h)). The number of items in the Loan Costs and Other Costs tables can be expanded and deleted to accommodate the disclosure of additional line items and keep the Loan Costs and Other Costs tables on page 2 of the Closing Disclosure. (§ 1026.38(t)(5)(iv)(A); Comment 38(t)(5)(iv)-2). See 10.12 below for further discussion.

However, items that are required to be disclosed even if they are not charged to the consumer (such as Points in the Origination Charges subheading) cannot be deleted. (Comment 38(t)(5)(iv)-1)

Seller-paid Loan Costs and Other Costs are required to be disclosed on the consumer's Closing Disclosure, regardless of whether a separate Closing Disclosure is provided to the seller. Seller-paid real estate commissions are one example of seller-paid costs that may not be omitted from and must be included on the consumer's Closing Disclosure. (§ 1026.38(g)(4); Comment 38(g)(4)-4). Additionally, non-commission real estate brokerage or agent charges for services to the seller or consumer are required to be itemized separately, with a description of the service and an identification of the person ultimately receiving the payment. (Comment 38(g)(4)-1 and -4; § 1026.2(a)(11) and (a)(22)). See section 11.7 for more information about the modifications allowed when separating the seller and consumer's Closing Disclosures.

The Loan Costs and Other Costs tables can be disclosed on two separate pages of the Closing Disclosure, but only if the page cannot accommodate all of the costs required to be disclosed on one page. (§ 1026.38(t)(5)(iv)(B); Comment 38(t)(5)(iv)-2). When used, these pages are numbered page 2a and 2b. (Comment 38(t)(5)(iv)-2). For an example of this permissible change to the Closing Disclosure, see form H-25(H) of appendix H to Regulation Z.

Construction loan inspection and handling fees are Loan Costs. These fees are disclosed differently depending on whether they are collected at or before closing or after closing. (Comment 38(f)-2). See section 14.18 of this Guide for more information about construction loan inspection and handling fees.

10.8 Page 3: Calculating cash to close, summaries of transactions, and alternatives for transactions without a seller

On page 3 of the Closing Disclosure, the Calculating Cash to Close table and Summaries of Transactions tables are disclosed. (§ 1026.38(i), (j), and (k)). For transactions without a seller and for simultaneous subordinate-lien loans where the first-lien Closing Disclosure discloses the entirety of the seller's transaction, a Payoffs and Payments table may be substituted for the Summaries of Transactions table and placed before the alternative Calculating Cash to Close table. (§ 1026.38(e)(4) and (t)(5)(vii)(B)). For example, see page 3 of form H-25(J) of appendix H to Regulation Z.

Creditors disclose principal reductions in the Summaries of Transactions table on the standard Closing Disclosure or in the Payoffs and Payments table on the alternative Closing Disclosure. Principal reductions can be provided for, among other things, curing a tolerance violation or reducing the cash back provided to the consumer at closing. Disclosure of principal reductions may vary depending on whether the principal reduction is paid with or without closing funds. (Comment 38-4)

10.9 Page 4: Additional information about this loan

On page 4 of the Closing Disclosure, Loan Disclosures, Adjustable Payment, and Adjustable Interest Rate (AIR) tables are shown with the heading Additional Information About This Loan. (§§ 1026.38(l), (m), and (n))

10.10 Page 5: Loan calculations, other disclosures and contact information

Disclose Loan Calculations, Other Disclosures, Questions Notice, Contact Information, and, if desired by the creditor, Confirm Receipt tables on page 5 of the Closing Disclosure. (§§ 1026.38(o), (p), (q), and (r))

For a description and instructions for calculations of amounts for the information and amounts required on the Closing Disclosure, please see the Closing Disclosure section of the TILA-RESPA Guide to Forms.

10.11 What tolerance standard applies to the Total of Payments on the Closing Disclosure? (§§ 1026.23(g) and (h); 1026.38(o)(1))

In addition to the Total of Payments tolerances, Regulation Z's preexisting finance charge tolerance extends to any disclosure affected by the finance charge, including the Total of Payments, as long as a misdisclosure of the Total of Payments resulted from a misdisclosure of the finance charge. Conversely, a misdisclosure of the Total of Payments that does not result from a misdisclosure of the finance charge is not subject to the finance charge tolerances (but the Total of Payments tolerances still apply).

Generally, the Total of Payments is considered accurate if it:

- Is understated by no more than $100; or
- Is greater than the amount required to be disclosed. (§ 1026.38(o)(1))

There are separate tolerances that apply to the disclosure of the Total of Payments for purposes of the right of rescission for certain refinance transactions, including after the initiation of foreclosure on the consumer's principal dwelling that secures the credit obligation. (§§ 1026.23(g)(1)(ii), (g)(2)(ii) and (h)(2)(ii))

The Total of Payments calculation does not include charges for principal, interest, mortgage insurance, or Loan Costs that are offset by another party through a specific credit, such as a specific lender or seller credit. However, general credits may not be used to offset amounts for purposes of calculating the Total of Payments. (Comment 38(o)(1)-1)

10.12 What should be done if the information required to be disclosed does not fit in the space allotted on the Closing Disclosure form?

In some cases, additional information that does not fit in a particular section of the Closing Disclosure may be disclosed on a separate page with the Closing Disclosure. However, one must look to the particular subsection in § 1026.38 to determine if the TILA-RESPA Rule permits or requires the information to be provided in an additional pages (*i.e.*, an addendum).

There is no required form for an addendum. Additionally, the information that is included on the addendum will depend on the requirements for the original disclosure of that information on the Closing Disclosure. For example, if a creditor or settlement agent is using an additional page to list several other sellers that could not fit onto the first page of the Closing Disclosure, the name and address of the sellers that would not fit would be included on an addendum with the label, "Sellers."

The creditor or settlement agent may want to include information or statements to indicate that the addendum or additional pages relate to the Closing Disclosure so that the additional pages are clear and conspicuous to the consumer. (§ 1026.17(a)(1))

Generally, information that is required or permitted to be disclosed on a separate page with the Closing Disclosure should be formatted similarly to the Closing Disclosure itself. The additional pages should not affect the substance, clarity, or meaningful sequence of the Closing Disclosure. (Comment 38(t)(5)-5)

10.13 The HUD-1 has a comparison chart to show the applicable tolerance levels and how the charges compare. Where is the equivalent chart on the Closing Disclosure?

There is no chart on the Closing Disclosure equivalent to the HUD-1 comparison chart. The creditor is responsible for tracking charges off sheet to ensure that the amounts disclosed on the Loan Estimate were made in good faith and that the charges at closing do not exceed the applicable tolerances. If provided in the form of a lender credit, a cure for a tolerance violation should be itemized in a manner as shown in form H-25(F) of appendix H.

11.8 What if there is more than one consumer involved in a transaction? (§ 1026.17(d))

Under the label Borrower on the Closing Disclosure, only the names and mailing addresses of the person or persons to whom the credit is extended are listed. If the form does not provide enough space to include the required information, a separate addendum can be added. (Comments 38(a)(4)-1 and -4)

In rescindable transactions, the Closing Disclosure must be given separately to each consumer who has the right to rescind under TILA (see § 1026.23), although the disclosures required for adjustable rate mortgages need only be provided to the consumer who expresses an interest in a variable-rate loan program. (§ 1026.19(b)) See Comment 2(a)(12)-2 for more information about which parties are considered consumers in rescindable transactions.

In transactions that are not rescindable, the Closing Disclosure may be provided to any consumer with primary liability on the obligation. (§ 1026.17(d); Comment 17(d)-2)

11.9 When does the creditor have to provide the Closing Disclosure to the consumer? (§ 1026.19(f)(1)(ii))

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

- Consummation is the time that a consumer becomes contractually obligated on the credit transaction, and may not necessarily coincide with the settlement or closing of the entire real estate transaction. (§ 1026.2(a)(13))
- For timeshare transactions, the creditor must ensure that the consumer receives the Closing Disclosure no later than consummation. (§ 1026.19(f)(1)(ii)(B))

Remember that business day is given a different meaning for purposes of providing the Closing Disclosure than it is for purposes of providing the Loan Estimate after receiving a consumer's application. (See section 6.14 above describing definition of business day). For purposes of providing the Closing Disclosure, the term business day means all calendar days except Sundays and the legal public holidays specified in 5 U.S.C. 6103(a), such as New Year's Day, the Birthday of Martin Luther King, Jr., Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, and Christmas Day. (See §§ 1026.2(a)(6); 1026.19(f)(1)(ii)(A) and (f)(1)(iii))

This requirement imposes a three-business-day waiting period, meaning that the loan may not be consummated less than three business days after the Closing Disclosure is received by the

consumer. If a settlement is scheduled during the waiting period, the creditor generally must postpone settlement, unless a settlement within the waiting period is necessary to meet a bona fide personal financial emergency. (§ 1026.19(f)(1)(iv))

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

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

Yes. Like the seven-business-day waiting period after receiving the Loan Estimate (see section 6.2 above), consumers may waive or modify the three-business-day waiting period when:

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

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

Section 14: Closing Disclosure Subsequent Changes 12CFR § 1026.19(f)(2)

Y&A Completion Instructions

- If any item is not known at the time of the initial issuance of the Closing Disclosure, it may be estimated. This will result in a corrected Closing Disclosure at the closing table.
- There are three situations in which a new Closing Disclosure, and a new waiting period (see previous section) are required. They are:
  - The annual percentage rate becomes inaccurate.
  - The loan product is changed, causing the information to become inaccurate.
  - A prepayment penalty is added.
- If errors are discovered after closing, a new Closing Disclosure must be issued. These may be substantive (requiring a change in the dollar amounts), or clerical (other types of errors). This may involve good faith issues, and a rebate of money. The issue must be found in 30 days, and corrected within 30 days of its discovery.
  - There is an exception. If the only "error" is a change in per-diem interest, no new Closing Disclosure is required. However, if a creditor is providing a corrected disclosure for reasons other than changes in per-diem interest and the per-diem interest has changed as well, the correct amount of the per-diem interest must be disclosed.
  - If amounts paid at consummation exceed the tolerance limits, the creditor does not violate the regulation if the creditor refunds the excess to the consumer no later than 60 days after consummation.

Regulatory Text - 12 CFR § 1026.19(f)(2)

(2) **Subsequent changes.**

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

(ii) **Changes before consummation requiring a new waiting period.** If one of the following disclosures provided under paragraph (f)(1)(i) of this section becomes inaccurate in the following manner before consummation, the creditor shall ensure that the consumer

receives corrected disclosures containing all changed terms in accordance with the requirements of paragraph (f)(1)(ii)(A) of this section:

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

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

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

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

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

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

Regulatory Commentary

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, Novem ber 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.

2. ***Per-diem interest.*** *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 must provide the consumer corrected disclosures, except as described in this comment. A creditor is not required to provide corrected disclosures under § 1026.19(f)(2)(iii) if the only changes that would be required to be disclosed in the corrected disclosure are changes to per-diem interest and any disclosures affected by the change in per-diem interest, even if the amount of per-diem interest actually paid by the consumer differs from the amount disclosed under § 1026.38(g)(2) and (o). Nonetheless, if a creditor is providing a corrected disclosure under § 1026.19(f)(2)(iii) for reasons other than changes in per-diem interest and the per-diem interest has changed as well, the creditor must disclose in the corrected disclosures under § 1026.19(f)(2)(iii) the correct amount of the per-diem interest and provide corrected disclosures for any disclosures that are affected by the change in per-diem interest.*

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 nonnumeric 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 consummation 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) exceed their respective estimates on the disclosures required under § 1026.19(e)(1)(i) by $30, $25, $25, and $15, then the total would exceed the limitations prescribed by § 1026.19(e)(3)(i) by $95. 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 the total would exceed the limitations prescribed by § 1026.19(e)(3)(ii) by $90. The creditor does not violate § 1026.19(e)(1)(i) if the creditor refunds $185 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 $185 refund of the excess amount collected no later than 60 days after consummation. See comments 38-4 and 38(h)(3)-2 for additional guidance on disclosing refunds.*

Small Entity Compliance Guide – Subsequent Disclosures

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

Creditors can cure tolerance violations in many ways. For example, a cure for a tolerance violation can be provided by:

- Providing a refund directly to the consumer;
- Providing a principal reduction;
- Providing lender credits, either specific or general, to the consumer.

If the amounts paid by the consumer at closing exceed the amounts disclosed by more than the applicable tolerance threshold, the creditor must provide a corrected Closing Disclosure and provide a cure for a tolerance violation no later than 60 calendar days after consummation. The refund need not be in the form of a cash refund to the consumer. (Comment 19(f)(2)(v)-1)

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

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

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

- The loan's disclosed APR becomes inaccurate;
- There are changes to the loan product; or
- A prepayment penalty is added to the loan. (§ 1026.19(f)(2)(ii))

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

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

Creditors must redisclose terms or costs on the Closing Disclosure if certain changes occur to the transaction after the Closing Disclosure was provided that cause the disclosures to become inaccurate. (Comment 19(f)(1)(i)-1). There are three categories of changes that require a corrected Closing Disclosure containing all changed terms. (§ 1026.19(f)(2))

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

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

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

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

This period may be waived if the consumer is facing a bona fide personal financial emergency. (§ 1026.19(f)(1)(iv))

12.3 Is a new three-day waiting period required if the APR decreases? (§ 1026.19(f)(2)(ii)(A))

The TILA-RESPA Rule requires an additional three-business-day-waiting period if the APR becomes inaccurate as defined in § 1026.22(a). It is possible that an overstated APR would be inaccurate under § 1026.22(a) of Regulation Z. The TILA-RESPA Rule did not change this section of Regulation Z. For additional information on when the APR becomes inaccurate, see § 1026.22(a), noting that § 1026.22(a)(4) contains special APR accuracy rules for mortgage loans. Additional guidance on the accuracy of overstated APR is available in the Federal Reserve's *Consumer Compliance Outlook*, First Quarter 2011 at:

www.consumercomplianceoutlook.org/2011/first-quarter/mortgage-disclosure-improvement-act/.

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

For any other changes before consummation that do not fall under the three categories in § 1026.19(f)(2)(ii) (*i.e.*, related to the APR, loan product, or the addition of a prepayment penalty),

the creditor still must provide a corrected Closing Disclosure with any terms or costs that have changed and ensure that the consumer receives it.

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

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

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

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

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

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

12.6 Is a corrected Closing Disclosure required if the interest rate is locked after the initial Closing Disclosure is provided? (Comment 19(e)(3)(iv)(D)-2)

If the charges or terms on the Closing Disclosure do not become inaccurate because of the rate lock, a corrected Closing Disclosure is not required for the rate lock.

If the interest rate is locked after the creditor provides the Closing Disclosure to the consumer, the creditor must provide a corrected Closing Disclosure if the charges or terms become inaccurate as a result of locking the rate. In that case, the creditor must provide the corrected Closing Disclosure at or before consummation. If the rate lock triggers a new three-business-day waiting period (*e.g.*, the previously disclosed APR becomes inaccurate), the creditor must provide the corrected Closing Disclosure at least three business days before consummation.

The corrected Closing Disclosure must be updated to accurately disclose all interest dependent charges and terms. Additionally, as with all corrected Closing Disclosures, all of the disclosed terms and conditions must be updated based on the best information reasonably available to the creditor at the time that it provides the corrected Closing Disclosure, even if the creditor is not resetting tolerances for those charges.

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

Yes, in some circumstances. Creditors must provide a corrected Closing Disclosure if an event in connection with the settlement occurs during the 30-calendar-day period after consummation and that event causes the Closing Disclosure to become inaccurate and results in a change to an amount paid by the consumer from what was previously disclosed. (§ 1026.19(f)(2)(iii); Comment 19(f)(2)(iii)-1). When a post-consummation event requires a corrected Closing Disclosure, the creditor must deliver or place in the mail a corrected Closing Disclosure not later than 30 calendar days after receiving information sufficient to establish that such an event has occurred. (§ 1026.19(f)(2)(iii); Comment 19(f)(2)(iii)-1)

However, a creditor is not required to provide a corrected Closing Disclosure if the only change that caused an inaccuracy is the per-diem interest and any disclosures affected by the change in per-diem interest. But, if a creditor is providing a corrected Closing Disclosure for any other reason, and the per-diem interest is also inaccurate, the creditor must provide the corrected per-diem interest (and any disclosures affected by the change in per-diem interest) as well as the other updated disclosures. (Comment 19(f)(2)(iii)-2)

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

Yes. Creditors also must provide a corrected **Closing Disclosure** to correct non-numerical **clerical errors** and document **cure**s for tolerance violations no later than **60 calendar days after consummation**. (§ 1026.19(f)(2)(iv)-(v))

An error is **clerical** if it does not affect a numerical disclosure and does not affect the timing, delivery, or other requirements imposed by § 1026.19(e) or (f). (Comment 19(f)(2)(iv)-1)

For example:

- If the **Closing Disclosure** identifies the incorrect settlement service provider as the recipient of a payment, the error would be considered clerical because it is non-numerical and does not affect any of the delivery requirements set forth in § 1026.19(e) or (f).
- However, if the **Closing 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.

12.10 Do creditors need to provide corrected Closing Disclosures when they cure tolerance violations? (§ 1026.19(f)(2)(v))

Yes. If the creditor cures a tolerance violation by providing a reimbursement to the consumer, the creditor must deliver or place in the mail a corrected Closing Disclosure that reflects the reimbursement no later than 60 calendar days after consummation. (§ 1026.19(f)(2)(v)).

Depending on how the cure for the tolerance violation is provided, additional disclosures may apply. If the creditor is providing the cure for the tolerance violation in the form of a principal reduction, the creditor will need to provide the accompanying principal reduction disclosures. (§§

1026.38(e)(2)(iii)(A)(*3*) and 38(i)(1)(iii)(A)(*3*); Comment 38-4). If the creditor is providing the cure for the tolerance violation in the form of a lender credit, the creditor will need to disclose the credit within the Lender Credits disclosure in the closing costs totals section, along with a statement that such amount of Lender Credits includes a credit for an amount that exceeds legal limits. (§§ 1026.38(e)(2)(iii)(A)(*3*) and 38(i)(1)(iii)(A)(*3*); Comment 38(h)(3)-2). See the TILA-RESPA Guide to Forms for more information about how to make these disclosures.

Section 15: Closing Disclosure Charges
12CFR § 1026.19(f)(3)

Y&A Completion Instructions

- The actual charge for each item must be generally be disclosed, and the final recipient of that fee.
- The regulation does permit the use of any average charge for any item not directly related to the loan amount. The rules for calculating the average are quite cumbersome and complicated. As most institutions will not even attempt an average, the reader is directed to the regulatory text and commentary below for further information.

Regulatory Text - 12 CFR § 1026.19(f)(3)

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

(ii) **Average charge.** A creditor or settlement service provider may charge a consumer or seller the average charge for a settlement service if the following conditions are satisfied:

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

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

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

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

(1) For any type of insurance;

(2) For any charge based on the loan amount or property value; or

(3) If doing so is otherwise prohibited by law.

Regulatory Commentary

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 30secured by real property or a cooperative unit 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 or a cooperative unit 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 October 3, 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.*

Small Entity Compliance Guide – Subsequent Disclosures

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

In general, the amount imposed on the consumer for any settlement service must not exceed the amount the settlement service provider actually received for that service. However, an average

charge may be imposed instead of the actual amount received for a particular service, as long as the average charge satisfies certain conditions. (§ 1026.19(f)(3)(i)-(ii); Comment 19(f)(3)(i)-1)

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

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

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

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

Section 16: Closing Disclosure - Seller
12CFR § 1026.19(f)(4)

Y&A Completion Instructions

- The seller receives the Closing Disclosure (seller side only) at consummation.
- All charges must be correct.
- The institution must retain a copy of the seller's side of the Closing Disclosure.
- The seller may not be charged a fee for completion of the Closing Disclosure.

Regulatory Text - 12 CFR § 1026.19(f)(4)

(4) **Transactions involving a seller**

(i) Provision to seller. In a transaction subject to paragraph (e)(1)(i) of this section that involves a seller, the settlement agent shall provide the seller with the disclosures in § 1026.38 that relate to the seller's transaction reflecting the actual terms of the seller's transaction.

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

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

(iv) **Creditor's copy.** When the consumer's and seller's disclosures under this paragraph (f) are provided on separate documents, as permitted under § 1026.38(t)(5), the settlement agent shall provide to the creditor (if the creditor is not the settlement agent) a copy of the disclosures provided to the seller under paragraph (f)(4)(i) of this section.

(5) **No fee.** No fee may be imposed on any person, as a part of settlement costs or otherwise, by a creditor or by a servicer (as that term is defined under 12 U.S.C. 2605(i)(2)) for the preparation or delivery of the disclosures required under paragraph (f)(1)(i) of this section.

Regulatory Commentary

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

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

1. ***Requirement.*** *Section 1026.19(f)(4)(i) requires the settlement agent to provide the seller with the disclosures required under § 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 the Closing Disclosure also contains the information under § 1026.38 relating to the seller's transaction or, alterna**tively, by providing the disclosures under § 1026.38(t)(5)(v) or (vi), as applicable.***

2. ***Simultaneous subordinate financing.*** *In a purchase transaction with simultaneous subordinate financing, the settlement agent complies with § 1026.19(f)(4)(i) by providing the seller with only the first-lien transaction disclosures required under § 1026.38 that relate to the seller's transaction reflecting the actual terms of the seller's transaction in accordance with comment 19(f)(4)(i)-1 if the first-lien Closing Disclosure records the entirety of the seller's transaction. If the first-lien Closing Disclosure does not record the entirety of the seller's transaction, the settlement agent complies with § 1026.19(f)(4)(i) by providing the seller with both the first-lien and simultaneous subordinate financing transaction disclosures required under § 1026.38 that relate to the seller's transaction reflecting the actual terms of the seller's transaction in accordance with comment 19(f)(4)(i)-1.*

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.*

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

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

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

However, the TILA-RESPA Rule affords flexibility in providing the seller those disclosures that relate to the seller's transaction, and does not require that the seller receive the same version of the Closing Disclosure provided to the customer. Therefore, the settlement agent may also provide the seller with a separate disclosure, including only the information applicable to the seller's transaction from the Closing Disclosure (§ 1026.38(t)(5)(v) or (vi), as applicable). (See form H-25(I) of appendix H to Regulation Z for a model form).

Note, in a purchase transaction that involves a subordinate-lien loan, if the Closing Disclosure for the first-lien loan has all the required disclosures related to the seller, a settlement agent may provide the seller with only the first-lien Closing Disclosure (that relates to the seller's transaction reflecting the actual terms of the seller's transaction) instead of also providing the seller with the Closing Disclosure for the subordinate-lien loan. (Comment 19(f)(4)(i)-2). See section 13.9 below for information about simultaneous subordinate-lien loans.

11.6 When a separate disclosure is provided to the seller, is the settlement agent required to provide the creditor with a copy of the seller's Closing Disclosure?

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

11.7 When a separate disclosure is provided to the seller, what information is required to be disclosed on the seller's Closing Disclosure? (§§ 1026.38(t)(5)(v) and (t)(5)(vi))

When separate disclosures are provided, the seller must be provided with the disclosures in section 1026.38 that relate to the seller's transaction reflecting the actual terms of the seller's transaction. Model form H-25(I) of appendix H to Regulation Z illustrates the seller's modified Closing Disclosure, which is required to disclose the summary of the seller's transaction, contact information for the real estate brokers and settlement agent, and Loan Costs and Other Costs paid by the seller at or before closing. (§§ 1026.38(t)(5)(v) and (t)(5)(vi))

To provide separate disclosures for the consumer or seller, a creditor may:

- Leave the applicable disclosure blank on the form provided to the other party;
- Omit tables or labels, as applicable, for the form provided to the other party; or
- Provide the seller with a modified version of the form provided in appendix H. (Comment 38(t)(5)(v)-1)

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

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

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

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

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

The Special Information Booklet

Section 17: Special Information Booklet
12CFR § 1026.19(g)

Y&A Completion Instructions

- In all purchase transactions, the current version of the Special Information Booklet must be given to at least one applicant.
- This is a three-day document, following the rules discussed above.

Regulatory Text - 12 CFR § 1026.19(g)

(g) Special information booklet at time of application

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

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

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

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

(A) Refinancing transactions;

(B) Closed-end loans secured by a subordinate lien; and

(C) Reverse mortgages.

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

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

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

(iii) In the "No Discrimination" section of the appendix to the booklet, "the Bureau of Consumer Financial Protection" may be substituted for the reference to the "Board of Governors of the Federal Reserve System." In the Contact Information section of the appendix to the booklet, the following contact information for the Bureau may be added: "Bureau of Consumer Financial Protection, 1700 G Street NW, Washington, DC 20552; www.consumerfinance.gov/learnmore." The contact information for HUD's Office of RESPA and Interstate Land Sales may be removed from the "Contact Information" section of the appendix to the booklet.

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

Regulatory Commentary

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 October 3, 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 October 3, 2015, a creditor may change the title appearing on the cover of the version of the special information booklet in use before October 3, 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 October 3, 2015.*