

## **Regulation Z**

### **TRID**

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### **Community Bankers Association of Illinois**

### **April 2019**

This publication is designed to provide information in regard to the subject matter covered. It is provided with the understanding that the publisher is not engaged in rendering legal, accounting, or other professional service. If legal advice or other expert assistance is required, the services of a professional competent in the area of special need should be sought.

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# Timing

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# Section 1: Manual Notes

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## *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 Version 5**

Sections of the Small Entity Guide, Version 5 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)

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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).<sup>1</sup> 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.<sup>3</sup>

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)**

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#### ***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)



## Section 4: Effective Date

### CFPB Small Entity Guide (Unabridged)

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#### ***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)

## Section 5: Coverage

### CFPB Small Entity Guide (Unabridged)

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#### ***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**

## **Section 6: Loan Estimate - General**

### **CFPB Small Entity Guide (Unabridged)**

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#### ***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)

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#### *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.
- 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.**

- (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.

**(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)(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).

#### **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***

### **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-RESPA 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)

**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.

## Section 8: 12 CFR § 1026.19(e)(2)

### Pre-disclosure Activity

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#### *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 9: 12 CFR § 1026.19(e)(3)(i) – (iii)

### Good Faith Determination for Estimates of Closing Costs

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#### *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 10: 12 CFR § 1026.19(e)(3)(iv)

### Revised Estimates

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#### *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 11: § 1026.19(e)(4)

### Provision and Receipt of Revised Disclosures

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#### ***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 12: Closing Disclosure

### 12CFR § 1026.19(f)(1)

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#### *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 13: Closing Disclosure Subsequent Changes

## 12CFR § 1026.19(f)(2)

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### *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, November 4 that the transfer taxes owed to the State differ from those previously disclosed pursuant to § 1026.19(f)(1)(i), resulting in an increase in the amount actually paid by the consumer. The creditor complies with § 1026.19(f)(1)(i) and § 1026.19(f)(2)(iii) by revising the disclosures accordingly and delivering or placing them in the mail no later than 30 days after Monday, November 4. Assume further that the increase in transfer taxes paid by the consumer also exceeds the amount originally disclosed under § 1026.19(e)(1)(i) above the limitations prescribed by § 1026.19(e)(3)(i). Pursuant to § 1026.19(f)(2)(v), the creditor does not violate § 1026.19(e)(1)(i) if the creditor refunds the excess to the consumer no later than 60 days after consummation, and the creditor does not violate § 1026.19(f)(1)(i) if the creditor delivers disclosures corrected to reflect the refund of such excess no later than 60 days after consummation. The creditor satisfies these requirements under § 1026.19(f)(2)(v) if it revises the disclosures accordingly and delivers or places them in the mail by November 30.*
- iii. Assume consummation occurs on a Monday and the security instrument is recorded on Tuesday, the day after consummation. During the recording process on Tuesday the settlement agent and the creditor discover that the property is subject to an unpaid \$500 nuisance abatement assessment, which was not disclosed pursuant to § 1026.19(f)(1)(i), and learns that pursuant to an agreement with the seller, the \$500 assessment will be paid by the seller rather than the consumer. Because the \$500 assessment does not result in a change to an amount actually paid by the consumer, the creditor is not required to provide a corrected disclosure pursuant to § 1026.19(f)(2)(iii). However, the assessment will result in a change to an amount actually paid by the seller from the amount disclosed under § 1026.19(f)(4)(i). Pursuant to § 1026.19(f)(4)(ii), the settlement agent must deliver or place in the mail corrected disclosures to the seller no later than 30 days after Tuesday and provide a copy to the creditor pursuant to § 1026.19(f)(4)(iv).*
- iv. Assume consummation occurs on a Monday and the security instrument is recorded on Tuesday, the day after consummation. Assume further that ten days after consummation the municipality in which the property is located raises property tax rates effective after the date on which settlement concludes. Section 1026.19(f)(2)(iii) does not require the creditor to provide the consumer with corrected disclosures because the increase in property tax rates is not in connection with the settlement of the transaction.*

**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/](http://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 **cures** 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 14: Closing Disclosure Charges

### 12CFR § 1026.19(f)(3)

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#### *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 30 secured 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 15: Closing Disclosure - Seller

### 12CFR § 1026.19(f)(4)

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#### *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, alternatively, 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 16: Special Information Booklet

## 12CFR § 1026.19(g)

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### *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](http://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](http://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.*

# Loan Estimate

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# Section 1: Introduction

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## ***Manual Notes***

Each field on the Loan Estimate form has been numbered. For each field, we have included the following information.

### **Title of the Instruction**

The title of the instruction includes its name, the relative placement of the item on the form, when appropriate, and an indication of the severity of the violation (low, moderate, high).

### **Picture of the Fields**

A picture of the portion of the disclosure that is under discussion (where appropriate). All pictures are surrounded by a heavy border.

### **Y&A Completion Instructions**

The manual contains instructions about how to complete the field accurately.

### **Regulation and Commentary**

“**Regulatory Text**” is the regulatory text from § 1026.37 – the Loan Estimate. Items in **bold** are included to assist the reader in finding items on the page. **Bold** for an entire paragraph indicates the new text for October 1, 2018. **Bold** has no other implication. Young & Associates, Inc. has defined this section of the regulation into 78 components or sets of instructions.

“**Regulatory Commentary**” is the commentary text from § 1026.37 – the Loan Estimate. It is in *italics*. Items in **bold** are included to assist the reader in finding items on the page. **Bold** has no other implication.

### **CFPB Guide**

Included, are sections from the CFPB’s TILA-RESPA Integrated Disclosure Guide to the Loan Estimate and Closing Disclosure (Version 2.1) forms as additional guidance for completion of the forms.

## ***General Introductory Commentary to the Loan Estimate***

### **Y&A Commentary:**

This commentary sets forth basic rules for the Loan Estimate, including the requirement not to use “N/A” or “Not Applicable.” The disclosures must be based on the anticipated obligation.

### **Regulatory Commentary**

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

**1. Disclosures not applicable.** *The disclosures required by § 1026.37 are required to reflect the terms of the legal obligation between the parties, and if any information necessary for an accurate disclosure is unknown to the creditor, the creditor shall make the disclosure in good faith, based on the best information reasonably available to the creditor pursuant to §§ 1026.17(c) and 1026.19(e). See comments 17(c)(1)-1, 17(c)(2)(i)-1 and -2, and 19(e)(1)(i)-1. Where a disclosure is not applicable to a particular transaction, unless otherwise provided by § 1026.37, form H-24 of appendix H to this part may not be modified to delete the disclosure from form H-24, or to state “not applicable” or “N/A” in place of such disclosure. The portion of the form pertaining to the inapplicable disclosure may be left blank, unless otherwise provided by § 1026.37. For example, in a transaction for which the consumer does not pay points to the creditor to reduce the interest rate, the amounts required to be disclosed by § 1026.37(f)(1)(i) may be left blank on form H-24. As provided in § 1026.37(i) and (j), however, the adjustable payment and adjustable interest rate tables required by those paragraphs may be included only if those disclosures are applicable to the transaction and otherwise must be excluded.*

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

### **CFPB Guide**

#### **2.1 Loan Estimate General Requirements**

##### ***2.1.1 Issuance and Delivery***

You must provide a Loan Estimate to the consumer, either by delivering it by hand or placing it in the mail, no later than three business days of the receipt of an application. (§ 1026.19(e)(1)(iii)(A)) An application is considered received when the consumer provides the following information:

- Consumer’s name,
- Consumer’s income,



- Consumer's Social Security number to obtain a credit report,
- Address of the property,
- Estimate of the value of the property, and
- The mortgage loan amount sought. (§ 1026.2(a)(3)(ii))

### **2.1.2 Revised Loan Estimate**

When there is a changed circumstance after the Loan Estimate has been provided, the creditor can revise the Loan Estimate within three business days of receiving information sufficient to establish that there has been a changed circumstance. Revised Loan Estimates generally can be provided no later than four business days before consummation. (See section 2.1.5 below; § 1026.19(e)(4))

### **2.1.4 Rounding**

Dollar amounts must be rounded to the nearest whole dollar where noted in the TILA-RESPA Rule. (§ 1026.37(o)(4)) If an amount is required to be rounded but is composed of other amounts that are **not** required or permitted to be rounded, use the unrounded amounts in calculating the total and then round the final sum. Conversely, if an amount is required to be rounded and is composed of rounded amounts, use the rounded amounts in calculating the total. (Comment 37(o)(4)-2)

Percentage amounts are disclosed by rounding to three decimals and then dropping any trailing zeros that occur to the right of the decimal place, except where otherwise noted in the TILA-RESPA Rule. (§ 1026.37(o)(4)(ii); Comment 37(o)(4)(ii)-1)

### **2.1.5 Consummation**

This Guide uses references to the legal obligation, which includes the promissory note plus any other agreements between the creditor and consumer concerning the extension of credit. Consummation is not the same thing as closing or settlement. 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. (§ 1026.2(a)(13))

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 Loan Estimate occurs within three business days of the receipt of an application.

## Section 2: Loan Estimate General

### 12CFR §1026.37(a)

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#### ***CFPB Guide – General Comments***

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 maintained by the Bureau.

Page 1 of the Loan Estimate includes the title “Loan Estimate” and a statement of “Save this Loan Estimate to compare with your Closing Disclosure.” (§ 1026.37(a)(1), (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 and address of the creditor if known. If not yet known, leave this space blank. (Comment 37(a)(3)-2)

**[1] Form Title (page 1, top)**

<b>Loan Estimate</b> ←		<b>LOAN TERM</b>
<b>DATE ISSUED</b>		<b>PURPOSE</b>
<b>APPLICANTS</b>		<b>PRODUCT</b>
		<b>LOAN TYPE</b> <input type="checkbox"/> Conventional <input type="checkbox"/> FHA <input type="checkbox"/> VA <input type="checkbox"/> _____
		<b>LOAN ID #</b>
<b>PROPERTY</b>		<b>RATE LOCK</b> <input type="checkbox"/> NO <input type="checkbox"/> YES, until
<b>SALE PRICE</b>		<i>Before closing, your interest rate, points, and lender credits can change unless you lock the interest rate. All other estimated closing costs expire on</i>

**Y&A Completion Instruction**

Title the document “Loan Estimate.” This is boilerplate, and should require no processor action.

**Regulatory Text § 1026.37(a)(1)**


(1) **Form Title:** The title of the form, “**Loan Estimate,**” using that term.

**Regulatory Commentary**

*None.*

**CFPB Guide**

*None.*

**[2] Form Purpose (page 1, top)**


Loan Estimate	
DATE ISSUED	LOAN TERM
APPLICANTS	PURPOSE
	PRODUCT
	LOAN TYPE <input type="checkbox"/> Conventional <input type="checkbox"/> FHA <input type="checkbox"/> VA <input type="checkbox"/> _____
	LOAN ID #
PROPERTY	RATE LOCK <input type="checkbox"/> NO <input type="checkbox"/> YES, until
SALE PRICE	Before closing, your interest rate, points, and lender credits can change unless you lock the interest rate. All other estimated closing costs expire on

**Y&A Completion Instruction**

State the form's purpose as "Save this Loan Estimate to compare with your Closing Disclosure." This is boilerplate, and should require no processor action.

**Regulatory Text § 1026.37(a)(2)**

(2) **Form Purpose:** The statement, "Save this Loan Estimate to compare with your Closing Disclosure."

**Regulatory Commentary**

*None.*

**CFPB Guide**

*None.*

**[3] Creditor (page 1, top left)**

The image shows a portion of a Loan Estimate form. At the top right, it says "Save this Loan Estimate to compare with your Closing Disclosure." Below this, the form is divided into sections. On the left, under the heading "Loan Estimate", there are fields for "DATE ISSUED", "APPLICANTS", "PROPERTY", and "SALE PRICE". To the right of these, there are fields for "LOAN TERM", "PURPOSE", "PRODUCT", "LOAN TYPE", "LOAN ID #", and "RATE LOCK". The "LOAN TYPE" field has checkboxes for "Conventional", "FHA", "VA", and a blank space. The "RATE LOCK" field has checkboxes for "NO" and "YES, until". Below the "RATE LOCK" field, there is a note: "Before closing, your interest rate, points, and lender credits can change unless you lock the interest rate. All other estimated closing costs expire on". A white arrow points to the area above the "DATE ISSUED" and "APPLICANTS" fields.

**Y&A Completion Instruction**

This information appears above the line at the top left of the form. There is no specific label to indicate the placement of the information. The processor should assure that the name and address that appears in this location is the name and address of the institution completing this disclosure. If the loan is being generated from a branch of the institution, the main office address is acceptable for this disclosure. If there are multiple creditors, the creditor making the disclosure appears in this location.

**Regulatory Text § 1026.37(a)(3)**

(3) **Creditor:** The name and address of the creditor making the disclosures.

**Regulatory Commentary**

1. **Multiple creditors.** For transactions with multiple creditors, see § 1026.17(d) and comment 17(d)-1 for further guidance. The creditor making the disclosures, however, must be identified as the creditor for purposes of § 1026.37(a)(3).
2. **Mortgage broker as loan originator.** In transactions involving a mortgage broker, the name and address of the creditor must be disclosed, if known, even if the mortgage broker provides the disclosures to the consumer under § 1026.19(e)(1)(ii). As required by § 1026.19(e)(1)(i), the mortgage broker must make a good faith effort to disclose the name and address of the creditor, but if the name of the creditor is not yet known, the disclosure required by § 1026.37(a)(3) may be left blank. See comment 37-1.

**CFPB Guide**

None.

**[4] Date Issued (page 1, top left)**

<b>Loan Estimate</b>		LOAN TERM
DATE ISSUED ←		PURPOSE
APPLICANTS		PRODUCT
		LOAN TYPE <input type="checkbox"/> Conventional <input type="checkbox"/> FHA <input type="checkbox"/> VA <input type="checkbox"/> _____
PROPERTY		LOAN ID #
SALE PRICE		RATE LOCK <input type="checkbox"/> NO <input type="checkbox"/> YES, until
		<i>Before closing, your interest rate, points, and lender credits can change unless you lock the interest rate. All other estimated closing costs expire on</i>

**Y&A Completion Instruction**

The processor should insert the date that the Loan Estimate was delivered. The method of delivery is not material. Remember to change this date if this is a subsequent Loan Estimate.

**Regulatory Text § 1026.37(a)(4)**

- (4) **Date Issued:** The date the disclosures are mailed or delivered to the consumer by the creditor, labeled “**Date Issued.**”

**Regulatory Commentary**

- Applicable date.** Section 1026.37(a)(4) requires disclosure of the date the creditor mails or delivers the Loan Estimate to the consumer. The creditor’s method of delivery does not affect the date issued. For example, if the creditor hand delivers the Loan Estimate to the consumer on August 14, or if the creditor places the Loan Estimate in the mail on August 14, the date disclosed under § 1026.37(a)(4) is August 14.
- Mortgage broker as loan originator.** In transactions involving a mortgage broker, the date disclosed is the date the mortgage broker mails or delivers the Loan Estimate to the consumer, because pursuant to § 1026.19(e)(1)(ii), the mortgage broker is required to comply with all relevant requirements of § 1026.19(e).

**CFPB Guide****Date Issued**

The Date Issued is the date the Loan Estimate is placed in the mail or delivered to the consumer (not the date the form is actually printed). (§ 1026.37(a)(4))



**[5] Applicants (page 1, top left)**

Loan Estimate	
DATE ISSUED	LOAN TERM
APPLICANTS	PURPOSE
	PRODUCT
	LOAN TYPE <input type="checkbox"/> Conventional <input type="checkbox"/> FHA <input type="checkbox"/> VA <input type="checkbox"/> _____
	LOAN ID #
PROPERTY	RATE LOCK <input type="checkbox"/> NO <input type="checkbox"/> YES, until
SALE PRICE	Before closing, your interest rate, points, and lender credits can change unless you lock the interest rate. All other estimated closing costs expire on

**Y&A Completion Instruction**

The processor must insert the names and addresses of all applicants. If there is insufficient space (which will occur), an additional page must be added to include all additional names and addresses. This additional page may be generated automatically by your software. If it is not generated automatically, the processor must add this additional page manually. Do not include the names and addresses of any party to the transaction who is only involved based on their right to rescind.

If credit is extended to a trust established for tax or estate planning purposes, the Loan Estimate may be provided to the trustee on behalf of the trust. If the Loan Estimate is delivered to the trustee on behalf of the trust (and to no other consumer), a creditor may opt to disclose the name and mailing address of the trust only, although you can disclose the names of the trustee or other consumers applying for the credit.

**Regulatory Text § 1026.37(a)(5)**

(5) **Applicants:** The name and mailing address of the consumer(s) applying for the credit, labeled “Applicants.”

**Regulatory Commentary**

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

## CFPB Guide

Applicants include the name(s) and mailing address(es) of the consumer(s) applying for the loan. (§ 1026.37(a)(5)) Use each Applicant's name and mailing address if there are multiple Applicants. The mailing address disclosed must be the U.S. Postal mailing address of the consumer applying for credit. The mailing address cannot be any other type of address, such as an Applicant's email address. An additional page may be added to the Loan Estimate if the space provided is insufficient to list all of the Applicants. (Comment 37(a)(5)-1)

If credit is extended to a trust established for tax or estate planning purposes, the Loan Estimate may be provided to the trustee on behalf of the trust. If the Loan Estimate is delivered to the trustee on behalf of the trust (and to no other consumer), a creditor may opt to disclose the name and mailing address of the trust only, although nothing in the TILA-RESPA Rule prohibits the creditor from additionally disclosing the names of the trustee or other consumers applying for the credit. Guidance on who should receive disclosures when credit is extended to a trust established for tax or estate planning purposes can be found in § 1026.2(a)(22) and § 1026.17(d) and their associated commentary. Information is also available in the Compliance Guide.

**[6] Property (page 1, top left)**

Loan Estimate	
DATE ISSUED	LOAN TERM
APPLICANTS	PURPOSE
	PRODUCT
	LOAN TYPE <input type="checkbox"/> Conventional <input type="checkbox"/> FHA <input type="checkbox"/> VA <input type="checkbox"/> _____
	LOAN ID #
PROPERTY	RATE LOCK <input type="checkbox"/> NO <input type="checkbox"/> YES, until
SALE PRICE	Before closing, your interest rate, points, and lender credits can change unless you lock the interest rate. All other estimated closing costs expire on

**Y&A Completion Instruction**

The processor must insert all collateral property addresses, including the zip code. If the property does not have an address, insert a sufficient description to identify the property, including the zip code. We do NOT recommend completing a Loan Estimate for a preapproval, as it is not required and may create future difficulties. However, if you choose to do so, for preapprovals, all potential zip codes are to be inserted. Personal property does not have to be included if it does not fit in the space provided (which is likely to be true). If there are multiple addresses for the real property, an addendum page may be added. Do not add an addendum page only for personal property.

**Regulatory Text § 1026.37(a)(6)**

- (6) **Property:** The address including the zip code of the property that secures or will secure the transaction, or if the address is unavailable, the location of such property including a zip code, labeled “**Property.**”

**Regulatory Commentary**

- Alternate property address.** Section 1026.37(a)(6) requires disclosure of the address including the zip code of the property that secures or will secure the transaction. A creditor complies with § 1026.37(a)(6) by disclosing a complete address for purposes of the U.S. Postal Service. If the address is unavailable, a creditor complies with § 1026.37(a)(6) by disclosing the location of such property including a zip code, which is required in all instances. Location of the property under § 1026.37(a)(6) includes location information, such as a lot number. The disclosure of multiple zip codes is permitted if the consumer is investigating home purchase opportunities in multiple zip codes.
- Personal property.** Where personal property also secures the credit transaction, a description of that property may be disclosed, at the creditor’s option pursuant to § 1026.37(a)(6), if a description fits in the space provided on form H-24 for the disclosure required by § 1026.37(a)(6). An additional page may not be appended to the form to disclose a description of

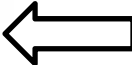
*personal property.*

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

## CFPB Guide

Property is the address of the property (which must include the zip code) that will secure the transaction. (§ 1026.37(a)(6)) If the address of the property is unavailable, use a description of the location of the property, for example a lot number. Always use a zip code. (Comment 37(a)(6)-1) Personal property such as furniture or appliances that also secures the credit transaction may be, but is not required to be included as Property. An additional page may not be appended to the Loan Estimate to disclose a description of personal property. (Comment 37(a)(6)-2)

**[7] Sale Price (page 1, top left)**

Loan Estimate	
DATE ISSUED	LOAN TERM
APPLICANTS	PURPOSE
	PRODUCT
	LOAN TYPE <input type="checkbox"/> Conventional <input type="checkbox"/> FHA <input type="checkbox"/> VA <input type="checkbox"/> _____
	LOAN ID #
PROPERTY	RATE LOCK <input type="checkbox"/> NO <input type="checkbox"/> YES, until
SALE PRICE 	Before closing, your interest rate, points, and lender credits can change unless you lock the interest rate. All other estimated closing costs expire on

**Y&A Completion Instruction**

The processor must insert the sale price of the collateral property for a purchase, or the estimated value (based on either your estimate or the applicant's estimate) for any other loan type. If the purchase price includes both personal and real property, and the amount for each is not defined, then enter the entire sale price. However, if there are separate purchase prices for the personal and real property, only the price for the real property is entered.

The value for a construction loan would be based on "when complete." However, if part of the loan was to purchase the land, list only the purchase price of the land. Any additional value information should be used to make this field as accurate as possible. The commentary below speaks to many possible scenarios.

**Regulatory Text § 1026.37(a)(7)****(7) Sale Price:**

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

**Regulatory Commentary**

1. **Estimated property value.** In transactions where there is no seller, such as in a refinancing, § 1026.37(a)(7)(ii) requires the creditor to disclose the estimated value of the property identified in § 1026.37(a)(6) based on the best information reasonably available to the creditor at the time the disclosure is provided to the consumer, which may include, at the creditor's option, the estimated value of the improvements to be made on the property in transactions involving

*construction. The creditor may use the estimate provided by the consumer at application unless it has performed its own estimate of the property value by the time the disclosure is provided to the consumer, in which case the creditor must use its own estimate. If the creditor has obtained any appraisals or valuations of the property for the application at the time the disclosure is issued to the consumer, the value determined by the appraisal or valuation to be used during underwriting for the application is disclosed as the estimated property value. If the creditor has obtained multiple appraisals or valuations and has not yet determined which one will be used during underwriting, it may disclose the value from any appraisal or valuation it reasonably believes it may use in underwriting the transaction. In a transaction that involves a seller, if the sale price is not yet known, the creditor complies with § 1026.37(a)(7) if it discloses the estimated value of the property that it used as the basis for the disclosures in the Loan Estimate.*

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

## CFPB Guide

If the loan is a purchase money mortgage loan (i.e., the transaction involves a seller), use the contract sale price for the Property and label it as Sale Price. (§ 1026.37(a)(7)(i)) If personal property is included in the Sale Price of the Property, use that price without any reduction for the appraised or estimated value of the personal property. (Comment 37(a)(7)-2) If the Sale Price is not yet known, disclose the estimated value of the Property, using the label “Sale Price.” (Comment 37(a)(7)-1)


For a transaction without a seller, disclose an Appraised Value or an Estimated Value, as applicable, and use the label “Prop. Value.” The disclosed value must be based on the best information reasonably available to the creditor at the time that the Loan Estimate is provided to the consumer. (Comment 37(a)(7)-1)

If the creditor has obtained an appraisal of the Property at the time the Loan Estimate is provided to the consumer, disclose the Appraised Value stated in the appraisal that the creditor will use during the underwriting of the loan. If the creditor does not know which appraisal it will use to underwrite the loan at the time the Loan Estimate is provided to the consumer, disclose the value set forth in any appraisal that the creditor reasonably believes it will use in the underwriting.

If the creditor has not obtained an appraisal but has prepared its own estimate of value, use the creditor’s estimate of value rather than an estimate of value received from a consumer. If the creditor has not obtained an appraisal or prepared its own estimate of value, it may disclose an estimate of value provided by a consumer. (Comment 37(a)(7)-1)

When disclosing an Appraised Value or an Estimated Value for a construction loan without a seller (i.e., a non-purchase mortgage loan where some or all of the proceeds will finance improvements), the creditor has the option to include the estimated value of improvements to be made on the Property. Alternatively, the creditor may disclose a value that does not include the estimated value of the improvements. (Comment 37(a)(7)-1)

**[8] Loan Term (page 1, top right)**

<b>Loan Estimate</b>				<b>LOAN TERM</b>
<b>DATE ISSUED</b>		<b>PURPOSE</b>		
<b>APPLICANTS</b>		<b>PRODUCT</b>		
		<b>LOAN TYPE</b>	<input type="checkbox"/> Conventional	<input type="checkbox"/> FHA <input type="checkbox"/> VA <input type="checkbox"/> _____
<b>PROPERTY</b>		<b>LOAN ID #</b>		
<b>SALE PRICE</b>		<b>RATE LOCK</b>	<input type="checkbox"/> NO <input type="checkbox"/> YES, until	
			<i>Before closing, your interest rate, points, and lender credits can change unless you lock the interest rate. All other estimated closing costs expire on</i>	

**Y&A Completion Instruction**

Insert the loan term using the appropriate method detailed below:

- Loan term exceeds 24 months – complete with the number of years and number of months, if applicable. Example, 326 months would be “27 years, 2 months.”
- Loan term equals 24 months – complete with “2 years.”
- Loan term equals 12 months – complete with “1 year.”
- Loan term is less than 24 months, but not 12 months – complete with number of months. Example, 18 months would be completed as “18 months.”
- Specific Situations:
  - If the loan term can adjust, use the maximum loan term, based on the appropriate instruction above.
  - For construction only loans, use the construction loan term, based on the appropriate instruction above.
- For construction/permanent loans, either disclose each phase separately or together, depending upon your preference or the software’s limitations, using the appropriate instruction above.

**Regulatory Text § 1026.37(a)(8)**

- (8) **Loan Term:** The term to maturity of the credit transaction, stated in years or months, or both, as applicable, labeled “**Loan Term.**”

**Regulatory Commentary****1. Partial years.**

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



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

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

2. **Adjustable loan term.** Section 1026.37(a)(8) requires disclosure of the term to maturity of the credit transaction. If the term to maturity is adjustable, i.e., it is not known with certainty at consummation, the creditor complies with § 1026.37(a)(8), if it discloses the possible range of the loan term, including the maximum number of years possible under the terms of the legal obligation. For example, if the loan term depends on the value of interest rate adjustments during the term of the loan, to calculate the maximum loan term, the creditor assumes that the interest rate rises as rapidly as possible after consummation, taking into account the terms of the legal obligation, including any applicable caps on interest rate adjustments and lifetime interest rate cap.
3. **Loan term start date.** See comment app. D-7.i for an explanation of how a creditor discloses the loan term of a multiple-advance loan to finance the construction of a dwelling that may be permanently financed by the same creditor.

## CFPB Guide

Loan Term is the term of the debt obligation. (§ 1026.37(a)(8)) Describe the Loan Term as “years” when the Loan Term is in whole years (e.g., “1 year” or “30 years”). (Comment 37(a)(8)-1.i, -1.ii) For a Loan Term that is more than 24 months but is not whole years, describe using years and months with the abbreviations “yr.” and “mo.,” respectively. For example, a Loan Term of 185 months is disclosed as “15 yr., 5 mo.” For a Loan Term that is less than 24 months and not whole years, use months only with the abbreviation “mo.” For example, “6 mo.” or “16 mo.” (Comment 37(a)(8)-2)

For a construction-permanent loan disclosed as a single transaction, the Loan Term is the total combined term of both phases. If the construction-permanent loan is disclosed as two separate transactions, the Loan Term for the permanent phase is counted from the date interest for the permanent phase’s periodic payment begins to accrue.

**[9] Purpose (page 1, top right)**

Loan Estimate	
DATE ISSUED	LOAN TERM
APPLICANTS	PURPOSE
	PRODUCT
	LOAN TYPE <input type="checkbox"/> Conventional <input type="checkbox"/> FHA <input type="checkbox"/> VA <input type="checkbox"/> _____
	LOAN ID #
PROPERTY	RATE LOCK <input type="checkbox"/> NO <input type="checkbox"/> YES, until
SALE PRICE	Before closing, your interest rate, points, and lender credits can change unless you lock the interest rate. All other estimated closing costs expire on

**Y&A Completion Instruction**

The processor must insert the loan purpose based on the best information known at the time of completion, using Purchase, Refinance, Construction, or Home Equity, using the definitions in the regulation, which are in the order of a “waterfall.” So the processor must use the first definition that applies to the loan. These definitions do not match the definitions in HMDA. The processor may have to rely on the applicant’s stated purpose.

- If the credit is to finance the acquisition of the property, disclose “Purchase.”
- If the credit is not a purchase, and if the credit will be used to refinance an existing obligation, with the same property as collateral, disclose “Refinance.”
- If the credit is not for purchase or refinance and the credit will be used to finance the initial construction of a dwelling on the property, disclose “Construction.” Do not use this code for renovation loans.
- If the credit is not for any of the above purposes, disclose “Home Equity Loan.”

**Regulatory Text § 1026.37(a)(9)**

(9) **Purpose:** The consumer’s intended use for the credit, labeled “**Purpose**,” using one of the following terms:

- Purchase.** If the credit is to finance the acquisition of the property identified in paragraph (a)(6) of this section, the creditor shall disclose that the loan is for a “**Purchase**.”
- Refinance.** If the credit is not for the purpose described in paragraph (a)(9)(i) of this section, and if the credit will be used to refinance an existing obligation, as defined in § 1026.20(a) (but without regard to whether the creditor is the original creditor or a holder or servicer of the original obligation), that is secured by the property identified in paragraph (a)(6) of this section, the creditor shall disclose that the loan is for a “**Refinance**.”
- Construction.** If the credit is not for one of the purposes described in paragraphs (a)(9)(i) or (ii) of this section and the credit will be used to finance the initial construction of a dwelling on the property identified in paragraph (a)(6) of this section, the creditor shall disclose that the loan is for “**Construction**.”

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

## Regulatory Commentary

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

- i. Purchase.** The consumer intends to use the proceeds from the transaction to purchase the property that will secure the extension of credit. In a purchase transaction with simultaneous subordinate financing, the simultaneous subordinate loan is also disclosed with the purpose “Purchase.”
- ii. Refinance.** The consumer refinances an existing obligation already secured by the consumer’s dwelling to change the rate, term, or other loan features and may or may not receive cash from the transaction. For example, in a refinance with no cash provided, the new amount financed does not exceed the unpaid principal balance, any earned unpaid finance charge on the existing debt, and amounts attributed solely to the costs of the refinancing. Conversely, in a refinance with cash provided, the consumer refinances an existing mortgage obligation and receives money from the transaction that is in addition to the funds used to pay the unpaid principal balance, any earned unpaid finance charge on the existing debt, and amounts attributed solely to the costs of the refinancing. In such a transaction, the consumer may, for example, use the newly-extended credit to pay off the balance of the existing mortgage and other consumer debt, such as a credit card balance.
- iii. Construction.** Section 1026.37(a)(9)(iii) requires the creditor to disclose that the loan is for construction in transactions where the creditor extends credit to finance only the cost of initial construction (construction-only loan), not renovations to existing dwellings, and in transactions where a multiple advance loan may be permanently financed by the same creditor (construction-permanent loan). In a construction-only loan, the borrower may be required to make interest-only payments during the loan term with the balance commonly due at the end of the construction project. For additional guidance on disclosing construction-permanent loans, see § 1026.17(c)(6)(ii), comments 17(c)(6)-2, -3, and -5, and appendix D to this part.
- iv. Home equity loan.** The creditor is required to disclose that the credit is for a “home equity loan” if the creditor intends to extend credit for any purpose other than a purchase, refinancing, or construction. This disclosure applies whether the loan is secured by a first or subordinate lien.

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

## CFPB Guide

Describe the consumer's intended use for the loan. (§ 1026.37(a)(9)) Purpose is disclosed using one of four descriptions: Purchase, Refinance, Construction, or Home Equity Loan.

Purchase is disclosed if the loan will be used to finance the Property's acquisition. (§ 1026.37(a)(9)(i)) The purpose of a simultaneous subordinate lien loan is disclosed as "Purchase" if the loan will be used to finance the Property's acquisition and will be secured by the Property. (Comment 37(a)(9)-1.i)

Refinance is disclosed if the loan will be used for the refinance of an existing obligation that is secured by the Property (even if the creditor is not the holder or servicer of the original obligation). (§ 1026.37(a)(9)(ii))

Construction is disclosed if the loan will be used to finance the initial construction of a dwelling on the Property. (§ 1026.37(a)(9)(iii))

Home Equity Loan is disclosed if the loan will be used for any other purpose. (§ 1026.37(a)(9)(iv))

**[10] Product (page 1, top right)**

Loan Estimate	
DATE ISSUED	LOAN TERM
APPLICANTS	PURPOSE
	PRODUCT
	LOAN TYPE <input type="checkbox"/> Conventional <input type="checkbox"/> FHA <input type="checkbox"/> VA <input type="checkbox"/> _____
	LOAN ID #
PROPERTY	RATE LOCK <input type="checkbox"/> NO <input type="checkbox"/> YES, until
SALE PRICE	Before closing, your interest rate, points, and lender credits can change unless you lock the interest rate. All other estimated closing costs expire on

**Y&A Completion Instruction**

Insert the product type. All product features (should they exist) are described first. The appropriate order of presentation is the time period that the product feature will be in effect, followed by the product feature. This information is followed by the length of the loan product. If there are multiple time periods (for instance a loan that has a fixed rate for 5 years, followed by a 3 year adjustable rate for the next 9 years, followed by an annual adjustable rate for the remainder of the loan term) then only the first two periods are shown.

This is followed by the actual product type. Someone in your institution should have already determined what your product types are. Follow their direction on this. The system can become very confusing, and a careful reading of the regulation and commentary may be useful to assure that your loan origination system is placing things in the right order with the right titles.

**Regulatory Text § 1026.37(a)(10)**

(10) **Product:** A description of the loan product, labeled “**Product.**”

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

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

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

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

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

- (A) **Negative amortization.** If the principal balance may increase due to the addition of accrued interest to the principal balance, the creditor shall disclose that the loan product has a “**Negative Amortization**” feature.
- (B) **Interest only.** If one or more regular periodic payments may be applied only to interest accrued and not to the loan principal, the creditor shall disclose that the loan product has an “**Interest Only**” feature.
- (C) **Step payment.** If scheduled variations in regular periodic payment amounts occur that are not caused by changes to the interest rate during the loan term, the creditor shall disclose that the loan product has a “**Step Payment**” feature.
- (D) **Balloon payment.** If the terms of the legal obligation include a “balloon payment,” [final payment more than twice a regular payment], a creditor shall disclose that the loan has a “**Balloon Payment**” feature.
- (E) **Seasonal payment.** If the terms of the legal obligation expressly provide that regular periodic payments are not scheduled between specified unit-periods on a regular basis, the creditor shall disclose that the loan product has a “**Seasonal Payment**” feature.
- (iii) The disclosure of a loan feature under paragraph (a)(10)(ii) of this section shall precede the disclosure of the loan product under paragraph (a)(10)(i) of this section. If a transaction has more than one of the loan features described in paragraph (a)(10)(ii) of this section, the creditor shall disclose only the first applicable feature in the order the features are listed in paragraph (a)(10)(ii) of this section.
- (iv) The disclosures required by paragraphs (a)(10)(i)(A) and (B), and (a)(10)(ii)(A), (B), (C), and (D) of this section must each be preceded by the duration of any introductory rate or payment period, and the first adjustment period, as applicable.

## Regulatory Commentary

1. **No features.** *If the loan product disclosed pursuant to § 1026.37(a)(10) does not include any of the features described in § 1026.37(a)(10)(ii), only the product type and introductory and first adjustment periods, if applicable, are disclosed. For example:*
  - i. **Adjustable rate.** *When disclosing an adjustable rate product, the disclosure of the loan product must be preceded by the length of the introductory period and the frequency of the first adjustment period thereafter. Thus, for example, if the loan product is an adjustable rate with an introductory rate that is fixed for the first five years of the loan term and then adjusts every three years starting in year six, the disclosure required by § 1026.37(a)(10) is “**5/3 Adjustable Rate.**” If the first adjustment period is not the period for all adjustments under the terms of the legal obligation, the creditor should still disclose the initial adjustment period and should not disclose other adjustment periods. For example, if the loan product is an adjustable rate with an introductory rate that is fixed for the first five years of the loan term and then adjusts every three years starting in year six, and then annually starting in year fifteen, the disclosure required by § 1026.37(a)(10) would still be “**5/3 Adjustable Rate.**”*



- A. **No introductory period.** If the loan product is an adjustable rate with no introductory rate, the creditor should disclose “0” where the introductory rate period would ordinarily be disclosed. For example, if the loan product is an adjustable rate that adjusts every three years with no introductory period, the disclosure required by § 1026.37(a)(10) is **“0/3 Adjustable Rate.”**
- B. **Introductory period not yet known.** If the loan product is an adjustable rate with an introductory period that is not yet known at the time of delivery of the Loan Estimate, the creditor should disclose the shortest potential introductory period for the particular loan product offered. For example, if the loan product is an adjustable rate with an introductory period that may be between 36 and 48 months and the rate would then adjust every year, the disclosure required by § 1026.37(a)(10) is **“3/1 Adjustable Rate.”**
- ii. **Step rate.** If the loan product is a step rate with an introductory interest rate that lasts for ten years and adjusts every year thereafter for the next five years, and then adjusts every three years for the next 15 years, the disclosure required by § 1026.37(a)(10) is **“10/1 Step Rate.”** If the loan product is a step rate with no introductory rate, the creditor should disclose “0” where the introductory rate period would ordinarily be disclosed.
- iii. **Fixed rate.** If the loan product is not an adjustable rate or a step rate, as described in § 1026.37(a)(10)(i)(A) and (B), even if an additional feature described in § 1026.37(a)(10)(ii) may change the consumer’s periodic payment, the disclosure required by § 1026.37(a)(10)(i) is **“Fixed Rate.”**
2. **Additional features.** When disclosing a loan product with at least one of the features described in § 1026.37(a)(10)(ii), § 1026.37(a)(10)(iii) and (iv) require the disclosure of only the first applicable feature in the order of § 1026.37(a)(10)(ii) and that it be preceded by the time period or the length of the introductory period and the frequency of the first adjustment period, as applicable, followed by a description of the loan product and its time period as provided for in § 1026.37(a)(10)(i). For example:
- i. **Negative amortization.** Some loan products, such as “payment option” loans, permit the borrower to make payments that are insufficient to cover all of the interest accrued, and the unpaid interest is added to the principal balance. Where the loan product includes a loan feature that may cause the loan balance to increase, the disclosure required by § 1026.37(a)(10)(ii)(A) is preceded by the time period that the borrower is permitted to make payments that result in negative amortization (e.g., “2 Year Negative Amortization”), followed by the loan product type. Thus, a fixed rate product with a step-payment feature for the first two years of the legal obligation that may negatively amortize is disclosed as “2 Year Negative Amortization, Fixed Rate.”
- ii. **Interest only.** When disclosing an “Interest Only” feature, as defined in § 1026.18(s)(7)(iv), the applicable time period must precede the label “Interest Only.” Thus, a fixed rate loan with only interest due for the first five years of the loan term is disclosed as “5 Year Interest Only, Fixed Rate.” If the interest only feature fails to cover the total interest due, then, as required by § 1026.37(a)(10)(iii), the disclosure must reference the negative amortization feature and not the interest only feature (e.g., “5 Year Negative Amortization, Fixed Rate”). See comment app. D-7.ii for an explanation of the disclosure of the time period of an interest only feature for a construction loan or a construction-permanent loan.



- iii. **Step payment.** When disclosing a step payment feature (which is sometimes referred to instead as a graduated payment), the period of time at the end of which the scheduled payments will change must precede the label “Step Payment” (e.g., “5 Year Step Payment”) followed by the name of the loan product. Thus, a fixed rate mortgage subject to a 5-year step payment plan is disclosed as a “5 Year Step Payment, Fixed Rate.”*
- iv. **Balloon payment.** If a loan product includes a “balloon payment,” as that term is defined in § 1026.37(b)(5), the disclosure of the balloon payment feature, including the year the payment is due, precedes the disclosure of the loan product. Thus, if the loan product is a step rate with an introductory rate that lasts for three years and adjusts each year thereafter until the balloon payment is due in the seventh year of the loan term, the disclosure required is “Year 7 Balloon Payment, 3/1 Step Rate.” If the loan product includes more than one balloon payment, only the earliest year that a balloon payment is due shall be disclosed.*
- v. **Seasonal payment.** If a loan product includes a seasonal payment feature, § 1026.37(a)(10)(ii)(E) requires that the creditor disclose the feature. The feature is not, however, required to be disclosed with any preceding time period. Disclosure of the label “Seasonal Payment” without any preceding number of years satisfies this requirement.*

### **3. Periods not in whole years.**

- i. **Terms of 24 months or more.** For product types and features that have introductory periods or adjustment periods that do not equate to a number of whole years, if the period is a number of months that is 24 or greater and does not equate to a whole number of years, § 1026.37(a)(10) requires disclosure of the whole number of years followed by a decimal point with the remaining months rounded to two places. For example, if the loan product is an adjustable rate with an introductory period of 30 months that adjusts every year thereafter, the creditor would be required to disclose “**2.5/1 Adjustable Rate.**” If the introductory period were 31 months, the required disclosure would be “**2.58/1 Adjustable Rate.**”*
- ii. **Terms of less than 24 months.** For product types and features that have introductory periods or adjustment periods that do not equate to a number of whole years, if the period is less than 24 months, § 1026.37(a)(10) requires disclosure of the number of months, followed by the designation “mo.” For example, if the product type is an adjustable rate with an 18-month introductory period that adjusts every 18 months starting in the 19th month, the required disclosure would be “**18 mo./18mo. Adjustable Rate.**”*
- iii. **Adjustments more frequent than monthly.** For adjustment periods that change more frequently than monthly, § 1026.37(a)(10) requires disclosure of the applicable unit-period, such as daily, weekly, or bi-weekly. For example, for an adjustable rate construction loan with no introductory fixed rate period where the interest rate adjusts every seven days, the disclosure required by § 1026.37(a)(10) is “**0/Weekly Adjustable Rate.**”*

## **CFPB Guide**

Provide a description of the loan. You are required to include two pieces of information in this disclosure:

The first piece of information is any payment feature that may change the periodic payment, which includes Negative Amortization, Interest Only, Step Payment, Balloon Payment, or

Seasonal Payment. (§ 1026.37(a)(10)(ii)) Additionally, the duration of the relevant payment feature must be disclosed with a Negative Amortization, Interest Only, Step Payment, or Balloon Payment. (§ 1026.37(a)(10)(iv)) For example, a payment feature where there is a five-year period during which the payments cover only interest, and are not applied to the principal balance, would be disclosed as a 5 Year Interest Only for the payment feature.

- Negative Amortization is when the principal balance of the loan may increase due to the addition of accrued interest to the principal balance.
- Interest Only is when one or more regular periodic payments may be applied only to interest accrued and not to the principal of the loan.
- Step Payment is when the scheduled variations in regular periodic payment amounts occur that are not caused by changes to the interest rate during the loan term.
- Balloon Payment is when the terms of the legal obligation include a payment that is more than two times that of a regular periodic payment.
- Seasonal Payment is when the terms of the legal obligation expressly provide that regular periodic payments are not scheduled between specified unit-periods on a regular basis. For example, a “teacher” loan that does not require monthly payments during summer months has a Seasonal Payment.

If the loan can be described with more than one of these descriptions, only the first applicable feature is disclosed. (§ 1026.37(a)(10)(iii)) For example, a loan that would result in both Negative Amortization and a Balloon Payment would only disclose Negative Amortization as part of Product.

The second piece of information disclosed is whether the loan uses an Adjustable Rate, Step Rate, or Fixed Rate to determine the interest rate applied to the principal balance. (§ 1026.37(a)(10)(i))

- An interest rate is an Adjustable Rate if the interest rate may increase after consummation, but the rates that will apply or the periods for which they will apply are not known at consummation. (§ 1026.37(a)(10)(i)(A))
  - Each description must be preceded by the duration of any introductory rate or payment period, and the first adjustment period, as applicable. (§ 1026.37(a)(10)(iv)) For example, a product with an introductory rate that is fixed for the first five years and adjusts every three years starting in year 6 is a 5/3 Adjustable Rate.
  - When there is no introductory period for an Adjustable Rate, disclose “0.” (Comment 37(a)(10)-1.i.A) For example, a product with no introductory rate that adjusts every year after consummation is a 0/1 Adjustable Rate.
- An interest rate is a Step Rate if the interest rate will change after consummation and the rates that will apply and the periods for which they apply are known at consummation. (§ 1026.37(a)(10)(i)(B))
  - Each description must be preceded by the duration of any introductory rate or payment period, and the first adjustment period, as applicable. (§ 1026.37(a)(10)(iv)) For example, a product with a step rate that lasts for ten years, adjusts every year for five years, and then adjusts every three years for the next 15 years is a 10/1 Step Rate. (Comment 37(a)(10)-1.ii)

- When there is no introductory rate for a Step Rate, disclose “0” and then the applicable time period until the first adjustment. (Comment 37(a)(10)-1.ii)
- An interest rate is a Fixed Rate if the interest rate is not an Adjustable Rate or Step Rate. (§ 1026.37(a)(10)(i)(C))
- If the loan product consists of a combination of product types, only one product type should be used. Section 1026.37(a)(10) does not provide for a combination of product types and requires the creditor to choose one, and only one, type.

For example:

- If a loan has a Step Rate for a set period of time followed by an Adjustable Rate for the remaining term, only the Adjustable Rate is disclosed. Here, there will be periods of the loan where the rate is not known at consummation, and, as a result, the product cannot be disclosed as Step Rate.
- If a loan has a Fixed Rate for a set period of time followed by an Adjustable Rate for the remaining term, only the Adjustable Rate is disclosed. Here, there will be periods where an Adjustable Rate applies, and as a result, it would not meet the requirements of a Fixed Rate disclosure.

Sections 14.7 and 14.8 of the Compliance Guide include more information about how to disclose Product types for construction loans

The following are examples of Product with both pieces of information included:

- Year 7 Balloon Payment, 3/1 Step Rate: a step rate with an introductory interest rate that lasts for three years and adjusts each year thereafter until a balloon payment is due in the seventh year of the loan term.
- 2 Year Negative Amortization, Fixed Rate: a fixed rate product with a step-payment feature for the first two years of the legal obligation that may negatively amortize.

When the time periods disclosed in Product are not in whole years, for time periods of 24 months or more, disclose the applicable fraction of a year by use of decimals rounded to two places. For time periods of 24 months or less, disclose the number of months with the abbreviation “mo.” (Comment 37(a)(10)-3) For example:

- An Adjustable Rate Product with an introductory interest rate for 31 months that adjusts every year thereafter is a 2.58/1 Adjustable Rate.
- An Adjustable Rate Product with an introductory interest rate for 18 months that adjusts every 18 months thereafter is an 18 mo./18 mo. Adjustable Rate.

**[11] Loan Type (page 1, top right)**

Loan Estimate	
DATE ISSUED	LOAN TERM
APPLICANTS	PURPOSE
	PRODUCT
	LOAN TYPE <input type="checkbox"/> Conventional <input type="checkbox"/> FHA <input type="checkbox"/> VA <input type="checkbox"/> _____
PROPERTY	LOAN ID #
SALE PRICE	RATE LOCK <input type="checkbox"/> NO <input type="checkbox"/> YES, until
	Before closing, your interest rate, points, and lender credits can change unless you lock the interest rate. All other estimated closing costs expire on

**Y&A Completion Instruction**

The processor should indicate the loan type. There are four choices. These choices are: conventional, FHA, VA, and Other. If the processor chooses “Other,” the processor must include additional information regarding the loan type. This disclosure is completed based on the best information available at the time of the Loan Estimate.

**Regulatory Text § 1026.37(a)(11)**

(11) **Loan Type:** The type of loan, labeled “**Loan Type**,” offered to the consumer using one of the following terms, as applicable:

- (i) **Conventional.** If the loan is not guaranteed or insured by a Federal or State government agency, the creditor shall disclose that the loan is a “**Conventional**.”
- (ii) **FHA.** If the loan is insured by the Federal Housing Administration, the creditor shall disclose that the loan is an “**FHA**.”
- (iii) **VA.** If the loan is guaranteed by the U.S. Department of Veterans Affairs, the creditor shall disclose that the loan is a “**VA**.”
- (iv) **Other.** For federally-insured or guaranteed loans other than those described in paragraphs (a)(11)(ii) and (iii) of this section, and for loans insured or guaranteed by a State agency, the creditor shall disclose the loan type as “**Other**,” and provide a brief description of the loan type.

**Regulatory Commentary**

1. **Other.** If the transaction is a type other than a conventional, FHA, or VA loan, § 1026.37(a)(11)(iv) requires the creditor to disclose the loan type as “**Other**” and provide a name

*or brief description of the loan type. For example, a loan that is guaranteed or funded by the Federal government under the Rural Housing Service (RHS) of the U.S. Department of Agriculture is required to be disclosed under the subcategory “**Other.**” Section 1026.37(a)(11)(iv) requires a brief description of the loan type (e.g., “**RHS**”). A loan that is insured or guaranteed by a State agency must also be disclosed as “**Other.**”*

## CFPB Guide

Loan Type is the type of the loan, such as Conventional or FHA. For Loan Type, disclose:

- Conventional if the loan is not guaranteed or insured by a Federal or State government agency,
- FHA if the loan is insured by the Federal Housing Administration,
- VA if the loan is guaranteed by the U.S. Department of Veterans Affairs, and
- Other with a brief description if the loan is insured or guaranteed by another Federal or a State agency. (§ 1026.37(a)(11))

## ***[12] Loan Identification Number (Loan ID #) (page 1, top right)***

Loan Estimate	
DATE ISSUED	LOAN TERM
APPLICANTS	PURPOSE
	PRODUCT
	LOAN TYPE <input type="checkbox"/> Conventional <input type="checkbox"/> FHA <input type="checkbox"/> VA <input type="checkbox"/> _____
	LOAN ID #
PROPERTY	RATE LOCK <input type="checkbox"/> NO <input type="checkbox"/> YES, until
SALE PRICE	Before closing, your interest rate, points, and lender credits can change unless you lock the interest rate. All other estimated closing costs expire on

### **Y&A Completion Instruction**

Insert the loan ID. This can be any combination of letters and numbers. The purpose of the ID is to permit the applicant/borrower to compare the Loan ID number on the Loan Estimate and the Loan ID number on the Closing Disclosure to assure them that these two documents reference the same loan. It could be, but most of the time will not be, this loan number.

### **Regulatory Text § 1026.37(a)(12)**

(12) **Loan identification number (Loan ID #).** A number that may be used by the creditor, consumer, and other parties to identify the transaction, labeled “**Loan ID #.**”

### **Regulatory Commentary**

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

### **CFPB Guide**

Loan ID # is the creditor’s loan identification number that may be used by a creditor, consumer, and other parties to identify the transaction. (§ 1026.37(a)(12)) The Loan ID # may contain alpha-

numeric characters and must be unique to the particular transaction. The same Loan ID # may not be used for different, but related, loan transactions (such as different loans to the same borrower). When a revised Loan Estimate is issued, the Loan ID # must be sufficient for the purpose of identifying the transaction associated with the initial Loan Estimate. (Comment 37(a)(12)-1)

When the Loan Estimate is completed by a mortgage broker:

- If the creditor is known, the Loan ID # must be completed. (Comment 37(a)(12)-1) The creditor can outsource the generation and assignment of the Loan ID # to the mortgage broker or the creditor can provide the Loan ID # in advance of the disclosures for inclusion.
- If the creditor is unknown and the Loan ID # is not reasonably available, the mortgage broker may leave that disclosure blank. (Comment 37-1)



**[13] Rate Lock (page 1, top right)**

**Loan Estimate**

DATE ISSUED  
APPLICANTS

PROPERTY  
SALE PRICE

LOAN TERM  
PURPOSE  
PRODUCT  
LOAN TYPE ☐ Conventional ☐ FHA ☐ VA ☐ \_\_\_\_\_  
LOAN ID #  
RATE LOCK ☐ NO ☐ YES, until  
Before closing, your interest rate, points, and lender credits can change unless you lock the interest rate. All other estimated closing costs expire on

Rate lock date, time, and time zone

10 day rule date, time, and time zone. Omit after intent given.

**Y&A Completion Instruction**

The processor must insert the rate lock information. If the interest rate is floating, the processor should mark the “no” box. If the rate is locked, the processor should mark the “yes” box, and then insert the date, time, and time zone (based on the expiration date for daylight or standard time) when the rate lock will expire. The preamble to the regulation indicates that there must be a signed agreement in order to consider the rate locked, although the regulation does not make that statement. If there is any question regarding whether the rate was locked appropriately, consult with your compliance staff.

The applicant has 10 business days to inform the institution of their intent to proceed with the loan application (essentially 2 calendar weeks plus additional days for legal holidays). For all institutions, the business day definition used does not include weekends or holidays. If the 10 business day period has passed and the applicant has not indicated an intent to proceed, then the institution is not legally bound to the amounts quoted on the Loan Estimate, and may redisclose. The 10 day intent to proceed date is completed with a date, time, and time zone. Time zone here will also be determined based on whether your bank will be on daylight or standard time as of the expiration date.

If the Loan Estimate being completed is a redisclosure for any reason, the 10 day intent to proceed date does not change from the date on the original Loan Estimate, unless the applicant has given an intent to proceed. If they have given an intent to proceed, then the date, time. And time zone for intent to proceed is removed from the document, as it is no longer needed.

**Regulatory Text § 1026.37(a)(13)**

(13) **Rate lock.** A statement of whether the interest rate disclosed pursuant to paragraph (b)(2) of this section is locked for a specific period of time, labeled “**Rate Lock.**”

- (i) For transactions in which the interest rate is locked for a specific period of time, the creditor must provide the date and time (including the applicable time zone) when that period ends.

- (ii) The **“Rate Lock”** statement required by this paragraph (a)(13) shall be accompanied by a statement that the interest rate, any points, and any lender credits may change unless the interest rate has been locked, and the date and time (including the applicable time zone) at which estimated closing costs expire.

## Regulatory Commentary

1. **Interest rate.** *For purposes of § 1026.37(a)(13), the interest rate is locked for a specific period of time if the creditor has agreed to extend credit to the consumer at a given rate, subject to contingencies that are described in any rate lock agreement between the creditor and consumer.*
2. **Expiration date.** *The disclosure required by § 1026.37(a)(13)(ii) related to estimated closing costs is required regardless of whether the interest rate is locked for a specific period of time or whether the terms and costs are otherwise accepted or extended. If the consumer fails to indicate an intent to proceed with the transaction within 10 business days after the disclosures were originally provided under § 1026.19(e)(1)(iii) (or within any longer time period established by the creditor), then, for 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). See comment 19(e)(3)(iv)(E)-2.*
3. **Time zone.** *The disclosure required by § 1026.37(a)(13) requires the applicable time zone for all times provided, as determined by the creditor. For example, if the creditor is located in New York and determines that the Loan Estimate will expire at 5:00 p.m. in the time zone applicable to its location, while standard time is in effect, the disclosure must include a reference to the Eastern time zone (i.e., 5:00 p.m. EST).*
4. **Revised disclosures.** *Once the consumer indicates an intent to proceed within the time specified by the creditor under § 1026.37(a)(13)(ii), the date and time at which estimated closing costs expire are left blank on any subsequent revised disclosures. The creditor may extend the period of availability to expire beyond the time disclosed under § 1026.37(a)(13)(ii). If the consumer indicates an intent to proceed within that longer time period, the date and time at which estimated closing costs expire are left blank on subsequent revised disclosures, if any. See comment 19(e)(3)(iv)-5.*

## CFPB Guide

Indicate the rate is locked with Yes, indicate the rate is not locked with No. (§ 1026.37(a)(13))

When the interest rate is locked at the time of the Loan Estimate’s delivery, the date and time (including the applicable time zone) when the lock period ends must be disclosed. (§ 1026.37(a)(13)(i))

The date and time (including the applicable time zone) at which the estimated closing costs expire are disclosed on the Loan Estimate. (§ 1026.37(a)(13)(ii)) However, the date and time are left blank on any revised Loan Estimate provided after a consumer has indicated an intent to proceed with the transaction. (Comment 37(a)(13)-4)

## Section 3: Loan Terms

### 12 CFR § 1026.37(b)

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#### *General Language*

#### Y&A Comment

This general commentary reminds the creditor that the terms shown must match the terms of the anticipated obligation, and include all items known at the time of the Loan Estimate's completion.

#### Regulatory Text § 1026.37(b)

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

#### Regulatory Commentary

1. **Legal obligation.** *The disclosures required by § 1026.37 must reflect good faith estimates of the credit terms to which the parties will be legally bound for the transaction. Accordingly, if certain terms of the transaction are known or reasonably available to the creditor, based on information such as the consumer's selection of a product type or other information in the consumer's application, § 1026.37 requires the creditor to disclose those credit terms. For example, if the consumer selects a product type with a prepayment penalty, § 1026.37(b)(4) requires disclosure of the maximum amount of the prepayment penalty and period in which the prepayment penalty may be charged as known to the creditor at the time the disclosures are provided.*

#### CFPB Guide

Disclose in the Loan Terms table:

- Loan Amount (if the amount is in whole dollars, do not disclose cents) (§ 1026.37(o)(4)),
- Initial Interest Rate,
- Initial Monthly Principal & Interest amount,
- Any adjustments to these amounts after consummation,
- Whether the loan includes a Prepayment Penalty, and
- Whether the loan includes a Balloon Payment. (§ 1026.37(b))

**[14] Loan Amount (page 1, Loan Terms section)**

Loan Terms		Can this amount increase after closing?
Loan Amount		Loan Amount will appear here
Interest Rate		
Monthly Principal & Interest <i>See Projected Payments below for your Estimated Total Monthly Payment</i>		
		Does the loan have these features?
Prepayment Penalty		
Balloon Payment		

**Y&A Completion Instruction**

The processor should enter the anticipated loan amount. If the loan amount changes, and it increases the fees being charged to the consumer, then a re-disclosure is probably required. However, if the loan amount change will not create a tolerance issue or an APR error, then there would not necessarily be a need for a re-disclosure, even though the loan amount changed.

**Regulatory Text § 1026.37(b)(1)**

**(1) Loan amount.** The total amount the consumer will borrow, as reflected by the face amount of the note, labeled "Loan Amount."

**Regulatory Commentary**

*None.*

**CFPB Guide**

*None.*

**[15] Interest Rate (page 1, Loan Terms section)**

<b>Loan Terms</b>	<b>Can this amount increase after closing?</b>
<b>Loan Amount</b>	
<b>Interest Rate</b> ←	Initial Interest Rate will appear here
<b>Monthly Principal &amp; Interest</b> <i>See Projected Payments below for your Estimated Total Monthly Payment</i>	
	<b>Does the loan have these features?</b>
<b>Prepayment Penalty</b>	
<b>Balloon Payment</b>	

**Y&A Completion Instruction**

The processor should insert the interest rate, or the current interest rate for the loan type, if the applicant has chosen to allow the interest rate to float. For an ARM loan, insert the initial interest rate if known. If that rate has not yet been determined, insert the fully indexed ARM rate. For a fixed rate loan, use the anticipated initial rate.

**Regulatory Text § 1026.37(b)(2)**

- (2) **Interest rate.** The interest rate that will be applicable to the transaction at consummation, labeled “**Interest Rate.**” For an adjustable rate transaction, if the interest rate at consummation is not known, the rate disclosed shall be the fully-indexed rate, which, for purposes of this paragraph, means the interest rate calculated using the index value and margin at the time of consummation.

**Regulatory Commentary**

- Interest rate at consummation not known.** Where the interest rate that will apply at consummation is not known at the time the creditor must deliver the disclosures required by § 1026.19(e), § 1026.37(b)(2) requires disclosure of the fully-indexed rate, defined as the index plus the margin at consummation. Although § 1026.37(b)(2) refers to the index plus margin “at consummation,” if the index value that will be in effect at consummation is unknown at the time the disclosures are provided under § 1026.19(e)(1)(iii), i.e., within three business days after receipt of a consumer’s application, the fully-indexed rate disclosed under § 1026.37(b)(2) may be based on the index in effect at the time the disclosure is delivered. The index in effect at

*consummation (or the time the disclosure is delivered under § 1026.19(e)) need not be used if the contract provides for a delay in the implementation of changes in an index value. For example, if the contract specifies that rate changes are based on the index value in effect 45 days before the change date, creditors may use any index value in effect during the 45 days before consummation (or any earlier date of disclosure) in calculating the fully-indexed rate to be disclosed. See comment app. D-7.iii for an explanation of the disclosure of the permanent financing interest rate for a construction-permanent loan.*

## **CFPB Guide**

The Interest Rate disclosed is the initial rate at consummation. If the initial Interest Rate is not known at consummation, the fully-indexed rate is disclosed; a fully-indexed rate is the interest rate calculated using the index value and margin at the time of consummation. (§ 1026.37(b)(2))

The initial principal and interest payment amount also would be calculated using the same fully-indexed rate, if the initial Interest Rate is not known at consummation. (§ 1026.37(b)(3))

**[16] Principal and Interest Payment (page 1, Loan Terms section)**

Loan Terms		Can this amount increase after closing?
Loan Amount		
Interest Rate		
<b>Monthly Principal &amp; Interest</b> <i>See Projected Payments below for your Estimated Total Monthly Payment</i>		
Prepayment Penalty		
Balloon Payment		

Initial Monthly Payment will appear here

**Y&A Completion Instruction**

The processor inserts the anticipated first payment amount here. It may be either the principal and interest payment or the interest only payment. It must include the frequency of the payments (monthly, bi-weekly, etc.) first, then the dollar amount. If the interest rate is not yet known, assume that the interest rate is equal to the fully indexed rate. If the disclosure is for a construction loan with an initial interest only period, the quoted payment can be one half of one month's interest, or a whole month's interest, if your institution has chosen that approach.

**Regulatory Text § 1026.37(b)(3)**

- (3) **Principal and interest payment.** The initial periodic payment amount that will be due under the terms of the legal obligation, labeled **"Principal & Interest,"** immediately preceded by the applicable unit-period, and a statement referring to the payment amount that includes any mortgage insurance and escrow payments that is required to be disclosed pursuant to paragraph (c) of this section. If the interest rate at consummation is not known, the amount disclosed shall be calculated using the fully-indexed rate disclosed under paragraph (b)(2) of this section.

**Regulatory Commentary**

- Frequency of principal and interest payment.** Pursuant to § 1026.37(o)(5)(i), if the contract provides for a unit-period, as defined in appendix J to this part, of a month, such as a monthly payment schedule, the payment disclosed under § 1026.37(b)(3) should be labeled **"Monthly Principal & Interest."** If the contract requires bi-weekly payments of principal or interest, the payment should be labeled **"Bi-Weekly Principal & Interest."** If a creditor voluntarily



*permits a payment schedule not provided for in the contract, such as an informal principal-reduction arrangement, the disclosure should reflect only the payment frequency provided for in the contract. See § 1026.17(c)(1).*

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

## CFPB Guide

The Interest Rate disclosed is the initial rate at consummation. If the initial **Interest Rate** is **not** known at consummation, the fully-indexed rate is disclosed; a fully-indexed rate is the interest rate calculated using the index value and margin at the time of consummation. (§ 1026.37(b)(2))

The initial principal and interest payment amount also would be calculated using the same fully-indexed rate, if the initial Interest Rate is not known at consummation. (§ 1026.37(b)(3))

**[17] Prepayment Penalty (page 1, Loan Terms section)**

Loan Terms	Can this amount increase after closing?
Loan Amount	
Interest Rate	
Monthly Principal & Interest <small>See Prepayment Penalty below for your Estimated Total Monthly Payment</small>	
Prepayment Penalty	
Balloon Payment	

Prepayment Penalty  
"yes" or "no" will  
appear here

**Y&A Completion Instruction**

The processor inserts either a "yes" or "no," based on the anticipated obligation. A prepayment penalty is any amount due during the first three years as a result of an early payoff. It can include a situation in which the consumer must pay a full month's interest even though the payoff of the loan occurs at mid-month. Minimum finance charges and computing a refund of finance charge that is not advantageous to the consumer are also prepayment penalties. A recapture of the institution's fees that were waived on the condition that the loan did not pay off early is a prepayment penalty.

Prepayment penalties do not include a required repayment of a bona fide waived charge, such as an appraisal fee (again, during the first three years).

**Regulatory Text § 1026.37(b)(4)**

- (4) **Prepayment penalty.** A statement of whether the transaction includes a prepayment penalty, labeled "**Prepayment Penalty.**" For purposes of this paragraph (b)(4), "prepayment penalty" means a charge imposed for paying all or part of a transaction's principal before the date on which the principal is due, other than a waived, bona fide third-party charge that the creditor imposes if the consumer prepays all of the transaction's principal sooner than 36 months after consummation.

**Regulatory Commentary**

1. **Transaction includes a prepayment penalty.** Section 1026.37(b)(4) requires disclosure of a

statement of whether the transaction includes a prepayment penalty. If the transaction includes a prepayment penalty, § 1026.37(b)(7) sets forth the information that must be disclosed under § 1026.37(b)(4) (i.e., the maximum amount of the prepayment penalty that may be imposed under the terms of the loan contract and the date on which the penalty will no longer be imposed). For an example of such disclosure, see form H-24 of appendix H to this part. The disclosure under § 1026.37(b)(4) applies to transactions where the terms of the loan contract provide for a prepayment penalty, even though the creditor does not know at the time of the disclosure whether the consumer will, in fact, make a payment to the creditor that would cause imposition of the penalty. For example, if the monthly interest accrual amortization method described in comment 37(b)(4)-2.i is used such that interest is assessed on the balance for a full month even if the consumer makes a full prepayment before the end of the month, the transaction includes a prepayment penalty that must be disclosed pursuant to § 1026.37(b)(4).

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

- i. A charge determined by treating the loan balance as outstanding for a period of time after prepayment in full and applying the interest rate to such “balance,” even if the charge results from interest accrual amortization used for other payments in the transaction under the terms of the loan contract. “Interest accrual amortization” refers to the method by which the amount of interest due for each period (e.g., month) in a transaction’s term is determined. For example, “monthly interest accrual amortization” treats each payment as made on the scheduled, monthly due date even if it is actually paid early or late (until the expiration of any grace period). Thus, under the terms of a loan contract providing for monthly interest accrual amortization, if the amount of interest due on May 1 for the preceding month of April is \$3,000, the loan contract will require payment of \$3,000 in interest for the month of April whether the payment is made on April 20, on May 1, or on May 10. In this example, if the consumer prepays the loan in full on April 20 and if the accrued interest as of that date is \$2,000, then assessment of a charge of \$3,000 constitutes a prepayment penalty of \$1,000 because the amount of interest actually earned through April 20 is only \$2,000.
- ii. A fee, such as an origination or other loan closing cost, that is waived by the creditor on the condition that the consumer does not prepay the loan. See comment 37(b)(4)-3.iii below for additional guidance regarding waived bona fide third-party charges imposed by the creditor if the consumer pays all of a covered transaction’s principal before the date on which the principal is due sooner than 36 months after consummation.
- iii. A minimum finance charge in a simple interest transaction.
- iv. Computing a refund of unearned interest by a method that is less favorable to the consumer than the actuarial method, as defined by section 933(d) of the Housing and Community Development Act of 1992, 15 U.S.C. 1615(d). For purposes of computing a refund of unearned interest, if using the actuarial method defined by applicable State law results in a refund that is greater than the refund calculated by using the method described in section 933(d) of the Housing and Community Development Act of 1992, creditors should use the State law definition in determining if a refund is a prepayment penalty.

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

- i. Fees imposed for preparing and providing documents when a loan is paid in full, if such

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

*ii. Loan guarantee fees.*

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

4. ***Rebate of finance charge.*** *For an obligation that includes a finance charge that does not take into account each reduction in the principal balance of the obligation, the disclosure under § 1026.37(b)(4) reflects whether or not the consumer is entitled to a rebate of any finance charge if the obligation is prepaid in full or part. Finance charges that do not take into account each reduction in the principal balance of an obligation may include precomputed finance charges. If any portion of an unearned precomputed finance charge will not be provided as a rebate upon full prepayment, the disclosure required by § 1026.37(b)(4) will be an affirmative answer, indicate the maximum amount of such precomputed finance charge that may not be provided as a rebate to the consumer upon any prepayment, and state when the period during which a full rebate would not be provided terminates, as required by § 1026.37(b)(7). If, instead, there will be a full rebate of the precomputed finance charge and no other prepayment penalty imposed on the consumer, to comply with the requirements of § 1026.37(b)(4) and (7), the creditor states a negative answer only. If the transaction involves both a precomputed finance charge and a finance charge computed by application of a rate to an unpaid balance, disclosure about both the entitlement to any rebate of the finance charge upon prepayment and any other prepayment penalty are made as one disclosure under § 1026.37(b)(4), stating one affirmative or negative answer and an aggregated amount and time period for the information required by § 1026.37(b)(7). For example, if in such a transaction, a portion of the precomputed finance charge will not be provided as a rebate and the loan contract also provides for a prepayment penalty based on the amount prepaid, both disclosures are made under § 1026.37(b)(4) as one aggregate amount, stating the maximum amount and time period under § 1026.37(b)(7). If the transaction instead provides a rebate of the precomputed finance charge upon prepayment, but imposes a prepayment penalty based on the amount prepaid, to comply with § 1026.37(b)(4), the creditor states an affirmative answer and the information about the prepayment penalty, as required by § 1026.37(b)(7). For further guidance and examples of these types of charges, see comment 18(k)(2)-1. For analogous guidance, see comment 18(k)-2. For further guidance on prepaid finance charges generally, see comment 18(k)-3.*

## CFPB Guide

A Prepayment Penalty is a charge imposed for paying all or part of a transaction's principal before the date on which the principal is due. It does not include a waived third-party charge that the creditor imposes if the consumer prepays the loan's entire principal sooner than 36 months after closing. (§ 1026.37(b)(4))

A Balloon Payment is a payment that is more than two times a regular periodic payment. (§ 1026.37(b)(5))

Under the subheading Does the loan have these features?, when the loan has a Prepayment Penalty or a Balloon Payment disclose Yes, as applicable. (§ 1026.37(b)(4) and (5)) When the answer is Yes to either, also disclose, as applicable:

- The maximum amount of the Prepayment Penalty and the date when the period during which the penalty may be imposed terminates. For example, As high as \$3,240 if you pay off the loan in the first two years. (§ 1026.37(b)(7)(i))
- The maximum amount of the Balloon Payment and the due date of such payment. For example, You will have to pay \$149,263 at the end of year 7. (§ 1026.37(b)(7)(ii))

**[18] Balloon Payment (page 1, Loan Terms section)**

Loan Terms	Can this amount increase after closing?
Loan Amount	
Interest Rate	
Monthly Principal & Interest <small>See Projected Payments below for your Estimate</small>	
Prepayment Penalty	
Balloon Payment	

Balloon Payment "yes" or "no" will appear here

**Y&A Completion Instruction**

Indicate whether the loan will have a balloon payment. A balloon payment is any final payment that is more than 200% of a regular payment. You must use the smallest payment of principal and interest that will be paid during the life of the loan to calculate whether the final payment is more than 200% of the regular payment. Excess payments on a negative amortization loan or odd cents will not create a balloon payment.

**Regulatory Text § 1026.37(b)(5)**

**(5) Balloon payment.** A statement of whether the transaction includes a balloon payment, labeled **"Balloon Payment."** For purposes of this paragraph (b)(5), "balloon payment" means a payment that is more than two times a regular periodic payment. "Balloon payment" includes the payment or payments under a transaction that requires only one or two payments during the loan term.

**Regulatory Commentary**

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



changed during the loan term due to rate adjustments or other payment changes permitted or required under the loan contract.

- i. For example, assume that, under a 15-year step rate mortgage, the loan contract provides for scheduled monthly payments of \$300 each during the years one through three and scheduled monthly payments of \$700 each during years four through 15. If an irregular payment of \$1,000 is scheduled during the final month of year 15, that payment is disclosed as a balloon payment under § 1026.37(b)(5), because it is more than two times the regular periodic payment amount of \$300 during years one through three. This is the case even though the irregular payment is not more than two times the regular periodic payment of \$700 per month during years four through fifteen. The \$700 monthly payments during years four through fifteen are not balloon payments even though they are more than two times the regular periodic payments during years one through three, because they are regular periodic payments.
- ii. If the loan has an adjustable rate under which the regular periodic payments may increase after consummation, but the amounts of such payment increases (if any) are unknown at the time of consummation, then the regular periodic payments are based on the fully-indexed rate, except as otherwise determined by any premium or discounted rates, the application of any interest rate adjustment caps, or any other known, scheduled rates under the terms specified in the loan contract. For analogous guidance, see comments 17(c)(1)-8 and -10. Similarly, if a loan has an adjustable interest rate which does not adjust the regular periodic payment but would, if the rate increased, increase only the final payment, the amount of the final payment for purposes of the balloon payment determination is based on the fully-indexed rate, except as otherwise determined by any premium or discounted rate caps, or any other known, scheduled rates under the terms specified in the loan contract. For example, assume that, under a 30-year adjustable rate mortgage, (1) the loan contract requires monthly payments of \$300 during years one through five, (2) the loan contract permits interest rate increases every three years starting in the sixth year up to the fully-indexed rate, subject to caps on interest rate adjustments specified in the loan contract, (3) based on the application of the interest rate adjustment caps, the interest rate may increase to the fully-indexed rate starting in year nine, and (4) the monthly payment based on the fully-indexed rate is \$700. The regular periodic payments during years one through five are \$300 per month, because they are known and scheduled. The regular periodic payments during years six through eight are up to \$700 per month, based on the fully-indexed rate but subject to the application of interest rate adjustment caps specified under the loan contract. The regular periodic payments during years nine through thirty are \$700, based on the fully-indexed rate. Therefore, if an irregular payment of \$1,000 is scheduled during the final month of year 30, that payment is disclosed as a balloon payment under § 1026.37(b)(5), because it is more than two times the regular periodic payment amount of \$300 during years one through five. This is the case even though the irregular payment is not more than two times the regular periodic payment during years nine through thirty (i.e., based on the fully-indexed rate). However, the regular periodic payments during years six through thirty themselves are not balloon payments, even though they may be more than two times the regular periodic payments during years one through five.
- iii. For a loan with a negative amortization feature, the regular periodic payment does not take into account the possibility that the consumer may exercise an option to make a payment greater than the scheduled periodic payment specified under the terms of the loan contract, if any.



- iv. *A final payment that differs from other regular periodic payments because of rounding to account for payment amounts including fractions of cents is still a regular periodic payment and need not be disclosed as a balloon payment under § 1026.37(b)(5).*
  - v. *The disclosure of balloon payments in the “Projected Payments” table under § 1026.37(c) is governed by that section and its commentary, rather than § 1026.37(b)(5), except that the determination, as a threshold matter, of whether a payment disclosed under § 1026.37(c) is a balloon payment is made in accordance with § 1026.37(b)(5) and its commentary.*
2. **Single and double payment transactions.** *The definition of a “balloon payment” under § 1026.37(b)(5) includes the payments under transactions that require only one or two payments during the loan term, even though a single payment transaction does not require regular periodic payments, and a transaction with only two scheduled payments during the loan term may not require regular periodic payments.*

## CFPB Guide

A Prepayment Penalty is a charge imposed for paying all or part of a transaction’s principal before the date on which the principal is due. It does not include a waived third-party charge that the creditor imposes if the consumer prepays the loan’s entire principal sooner than 36 months after closing. (§ 1026.37(b)(4))

A Balloon Payment is a payment that is more than two times a regular periodic payment. (§ 1026.37(b)(5))

Under the subheading Does the loan have these features?, when the loan has a Prepayment Penalty or a Balloon Payment disclose Yes, as applicable. (§ 1026.37(b)(4) and (5)) When the answer is Yes to either, also disclose, as applicable:

- The maximum amount of the Prepayment Penalty and the date when the period during which the penalty may be imposed terminates. For example, As high as \$3,240 if you pay off the loan in the first two years. (§ 1026.37(b)(7)(i))
- The maximum amount of the Balloon Payment and the due date of such payment. For example, You will have to pay \$149,263 at the end of year 7. (§ 1026.37(b)(7)(ii))

### ***[19] Adjustments after Consummation (page 1, Loan Terms section)***

Information regarding increases in the loan amount appear here

Loan Terms	
Loan Amount	Can this amount increase after closing?
Interest Rate	Information regarding increases in the interest rate appear here
Monthly Principal & Interest <i>See Projected Payments below for your Estimated Total Monthly Payment</i>	
Prepayment Penalty	Does the loan have these features?
Balloon Payment	Information regarding increases in the principal and interest payments appear here

### **Y&A Completion Instruction**

The Loan Estimate must indicate whether the loan amount, interest rate, and principal and interest payment amounts can increase. If the answer to the question in any category is “no,” the processor does not have to include any additional information in that particular category. If the answer is “yes,” additional information must be provided, including details regarding any limits and timing issues that are anticipated to be present in the note.

For the loan amount, the processor must disclose the maximum amount that the loan amount can reach and whether the increase is scheduled or only potential.

For the interest rate increases, the processor must disclose the frequency of changes, when the first change occurs, the maximum rate and when it can occur, a reference to the AIR table, and a disclosure if the term can increase.

For increases in payment amounts, the processor must disclose what is scheduled and when it can occur, including all triggers and any interest only payments.

**Regulatory Text § 1026.37(b)(6)**

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

- (i) **Adjustment in loan amount.** The maximum principal balance for the transaction and the due date of the last payment that may cause the principal balance to increase. The disclosure further shall indicate whether the maximum principal balance is potential or is scheduled to occur under the terms of the legal obligation.
- (ii) **Adjustment in interest rate.** The frequency of interest rate adjustments, the date when the interest rate may first adjust, the maximum interest rate, and the first date when the interest rate can reach the maximum interest rate, followed by a reference to the disclosure required by paragraph (j) of this section. If the loan term, as defined under paragraph (a)(8) of this section, may increase based on an interest rate adjustment, the disclosure required by this paragraph (b)(6)(ii) shall also state that fact and the maximum possible loan term determined in accordance with paragraph (a)(8) of this section.
- (iii) **Increase in periodic payment.** The scheduled frequency of adjustments to the periodic principal and interest payment, the due date of the first adjusted principal and interest payment, the maximum possible periodic principal and interest payment, and the date when the periodic principal and interest payment may first equal the maximum principal and interest payment. If any adjustments to the principal and interest payment are not the result of a change to the interest rate, a reference to the disclosure required by paragraph (i). If there is a period during which only interest is required to be paid, the disclosure required by this paragraph (b)(6)(iii) shall also state that fact and the due date of the last periodic payment of such period.

**Regulatory Commentary**

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

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

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

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

1. **Additional information regarding adjustment in interest rate.** A creditor complies with the requirement under § 1026.37(b)(6)(ii) to disclose additional information indicating the frequency of adjustments to the interest rate and date when the interest rate may first adjust by using the phrases **“Adjusts every”** and **“starting in.”** A creditor complies with the requirement under § 1026.37(b)(6)(ii) to disclose additional information indicating the maximum interest rate, and the first date when the interest rate can reach the maximum interest rate using the phrase **“Can go as high as”** and then indicating the date at the end of that phrase or for a scheduled maximum interest rate under a step rate loan, **“Goes as high as.”** If the loan term may increase based on an interest rate adjustment, the disclosure shall indicate the maximum possible loan term using the phrase **“Can increase loan term to.”** See form H-24 of appendix H to this part for the required format of such phrases, which is required for federally related mortgage loans under § 1026.37(o)(3).
2. **Interest rates that adjust at multiple intervals.** If the terms of the legal obligation provide for more than one adjustment period, § 1026.37(b)(6)(ii) requires disclosure of only the frequency of the first interest rate adjustment. For example, if the interest rate is fixed for five years, then adjusts every two years starting in year six, then adjusts every year starting in year 10, the disclosure required is **“Adjusts every 2 years starting in year 6.”**

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

1. **Additional information regarding increase in periodic payment.** A creditor complies with the requirement under § 1026.37(b)(6)(iii) to disclose additional information indicating the scheduled frequency of adjustments to the periodic principal and interest payment by using the phrases **“Adjusts every”** and **“starting in.”** A creditor complies with the requirement under § 1026.37(b)(6)(iii) to disclose additional information indicating the maximum possible periodic principal and interest payment, and the date when the periodic principal and interest payment may first equal the maximum principal and interest payment by using the phrase **“Can go as high as”** and then indicating the date at the end of that phrase or, for a scheduled maximum amount, such as under a step payment loan, **“Goes as high as.”** A creditor complies with the requirement under § 1026.37(b)(6)(iii) to indicate that there is a period during which only interest is required to be paid and the due date of the last periodic payment of such period using the phrase **“Includes only interest and no principal until.”** See form H-24 of appendix H to this part for the required format of such phrases, which is required for federally related mortgage loans under § 1026.37(o)(3). See comment app. D-7.iv for an explanation of the disclosure of an increase in the periodic payment for a construction or construction-permanent loan.
2. **Periodic principal and interest payments that adjust at multiple intervals.** If there are multiple periods of adjustment under the terms of the legal obligation, § 1026.37(b)(6)(iii) requires disclosure of the frequency of only the first adjustment to the periodic principal and interest payment, regardless of the basis for the adjustment. Accordingly, where the periodic principal and interest payment may change because of more than one factor and such adjustments are on different schedules, the frequency disclosed is the adjustment of whichever factor adjusts first. For example, where the interest rate for a transaction is fixed until year six and then adjusts every three years but the transaction also has a negative amortization feature that ends in year seven, § 1026.37(b)(6)(iii) requires disclosure that the interest rate will adjust every three years starting in year six because the periodic principal and interest payment

*adjusts based on the interest rate before it adjusts based on the end of the negative amortization period.*

## **CFPB Guide**

When describing time periods of less than 24 months that are not whole years, see the instructions related to the Product in section 2.2.1 above.

Under the subheading Can this amount increase after closing?, if the Loan Amount, Interest Rate, or Monthly Principal & Interest amounts can increase after consummation, disclose Yes where applicable with the information pertinent to the adjustment after consummation. (§ 1026.37(b)(6))

For an adjustment in Loan Amount, the creditor must also disclose the maximum principal balance for the transaction and the due date (expressed as the year or month in which it occurs, rather than an exact date) of the last payment that may cause the principal balance to increase, together with a statement whether the maximum principal balance may or will occur under the terms of the legal obligation. (§ 1026.37(b)(6)(i)) The date disclosed is the year in which the event occurs, counting from the due date of the initial periodic payment. (§ 1026.37(b)(8)(ii))

For an adjustment in the Interest Rate, also disclose the frequency of interest rate adjustments, the date when the interest rate may first adjust, the maximum interest rate, and the first date when the interest rate can reach the maximum interest rate. (§ 1026.37(b)(6)(ii)) The date disclosed is the year in which the event occurs, counting from the date that interest for the first scheduled periodic payment begins to accrue after consummation. (§ 1026.37(b)(8)(i)) Also, disclose and reference the Adjustable Interest Rate (AIR) Table on page 2 of the Loan Estimate. (§ 1026.37(b)(6)(ii)) For an adjustment to the Monthly Principal & Interest, the creditor would also disclose the scheduled frequency of adjustments, due date of the first adjustment, and the maximum possible amount (and the earliest date it can occur) of the Monthly Principal & Interest. In addition, if there is a period during which only interest is required to be paid, also disclose that fact and the due date of the last periodic payment of such period. (§ 1026.37(b)(6)(iii)) The date disclosed is the year in which the event occurs, counting from the due date of the initial payment. (§ 1026.37(b)(8)(ii)) Also, disclose and reference the Adjustable Payment (AP) Table on page 2. (§ 1026.37(b)(6)(iii))

When the Loan Amount, Interest Rate, or Monthly Principal & Interest payment cannot increase after consummation, disclose No where applicable. (§ 1026.37(b)(6))

**[20] Details about Prepayment Penalty and Balloon Payment (page 1, Loan Terms section)**

Loan Terms		Can this amount increase after closing?
Loan Amount		
Interest Rate		
Monthly Principal & Interest <small>See Projected Payments below for your Estimated Total Monthly Payment</small>		
Prepayment Penalty		Does the loan have these features?
Balloon Payment		

If the loan has a prepayment penalty, additional PPP information will appear here

If the loan has a balloon payment, the date and amount of the balloon payment will appear here

**Y&A Completion Instruction**

For both the prepayment penalty disclosure and the balloon payment disclosure, the processor must answer “yes” or “no” to the question “Does the loan have these features?” This was discussed in Instructions [17] and [18]. If the answer to the question was yes for either of these items, additional information must be furnished.

For the prepayment penalty disclosure, the processor must disclose the maximum prepayment penalty amount and the date that the prepayment penalty will end. For this calculation, the processor must assume that all payments are timely and there are no other issues that might change this amount.

For the balloon payment disclosure, the processor must disclose the maximum amount for the balloon amount and the due date for the balloon.

**Regulatory Text § 1026.37(b)(7)**

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

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



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

## Regulatory Commentary

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

1. **Maximum prepayment penalty.** Section 1026.37(b)(7)(i) requires disclosure of the maximum amount of the prepayment penalty that may be imposed under the terms of the legal obligation. The creditor complies with § 1026.37(b)(7)(i) when it assumes that the consumer prepays at a time when the prepayment penalty may be charged and that the consumer makes all payments prior to the prepayment on a timely basis and in the amount required by the terms of the legal obligation. The creditor must determine the maximum of each amount used in calculating the prepayment penalty. For example, if a transaction is fully amortizing and the prepayment penalty is two percent of the loan balance at the time of prepayment, the prepayment penalty amount should be determined by using the highest loan balance possible during the period in which the penalty may be imposed. If more than one type of prepayment penalty applies, the creditor must aggregate the maximum amount of each type of prepayment penalty in the maximum penalty disclosed.
2. **Additional information regarding prepayment penalty.** A creditor complies with the requirement under Section 1026.37(b)(7)(i) to disclose additional information indicating the maximum amount of the prepayment penalty that may be imposed and the date when the period during which the penalty may be imposed terminates using the phrases **“As high as”** and **“if you pay off the loan during.”** See form H-24 of appendix H to this part for the required format of such phrases, which is required for federally related mortgage loans under § 1026.37(o)(3).

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

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

## CFPB Guide

A Prepayment Penalty is a charge imposed for paying all or part of a transaction's principal before the date on which the principal is due. It does not include a waived third-party charge that the creditor imposes if the consumer prepays the loan's entire principal sooner than 36 months after closing. (§ 1026.37(b)(4))

A Balloon Payment is a payment that is more than two times a regular periodic payment. (§ 1026.37(b)(5))



Under the subheading Does the loan have these features?, when the loan has a Prepayment Penalty or a Balloon Payment disclose Yes, as applicable. (§ 1026.37(b)(4) and (5)) When the answer is Yes to either, also disclose, as applicable:

The maximum amount of the Prepayment Penalty and the date when the period during which the penalty may be imposed terminates. For example, As high as \$3,240 if you pay off the loan in the first two years. (§ 1026.37(b)(7)(i))

The maximum amount of the Balloon Payment and the due date of such payment. For example, You will have to pay \$149,263 at the end of year 7. (§ 1026.37(b)(7)(ii))

## **[21] Timing (Loan Terms section)**

### **Y&A Completion Instruction**

All timing for the disclosures in Loan Terms are based on the date that interest begins to accrue, and are disclosed in the year that it occurs, not necessarily in the specific month or day for Loan Amount, Increase in Payment and Balloons. The Prepayment Penalty disclosure is based on the note date. In general, compliance with this section is within the software, and outside of the processor's control.

When disclosing the timing issues, use the methods set forth in Instruction [10].

### **Regulatory Text § 1026.37(b)(8)**

- (i) The dates required to be disclosed by paragraph (b)(6)(ii) of this section shall be disclosed as the year in which the event occurs, counting from the date that interest for the first scheduled periodic payment begins to accrue after consummation.
- (ii) The dates required to be disclosed by paragraphs (b)(6)(i), (b)(6)(iii) and (b)(7)(ii) of this section shall be disclosed as the year in which the event occurs, counting from the due date of the initial periodic payment.
- (iii) The date required to be disclosed by paragraph (b)(7)(i) of this section shall be disclosed as the year in which the event occurs, counting from the date of consummation.

### **Regulatory Commentary**

1. **Whole years.** *For adjustments that occur after a period of whole years, the timing of information required by § 1026.37(b)(8) starts with year number “1,” counting from the date that interest for the first scheduled periodic payment begins to accrue for § 1026.37(b)(8)(i), or from the due date of the first periodic payment for § 1026.37(b)(8)(ii), or from the date of consummation for § 1026.37(b)(8)(iii). For example, an interest rate that is fixed for five years and can first adjust at the beginning of the 61st month from the date that interest for the regularly scheduled periodic payment began to accrue would be disclosed as beginning to adjust in “year 6.” A monthly periodic payment that adjusts starting with the 61st scheduled payment likewise would be disclosed as adjusting in “year 6.”*
2. **Periods not in whole years.** *For adjustments that occur after a number of months less than 24 that do not equate to a number of whole years or within a number of days less than a week, see the guidance provided in comment 37(a)(10)-3.*

### **CFPB Guide**

None.

## Section 4: Projected Payments

### 12 CFR § 1026.37(c)

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#### *General Language § 1026.37(c)*

##### **Y&A Commentary:**

The projected payments table allows for four potential payment streams, which for some loans (notably ARM loans) is likely to be inadequate. When there are more than four potential payment streams, with the exception of a balloon loan, the fourth payment stream becomes a catch-all for everything that can occur after the third payment stream. You are required to disclose each separate payment stream, including mortgage insurance and escrow (if required), subject to these limitations.

##### **Regulatory Text**

(c) **Projected payments.** In a separate table under the heading “Projected Payments,” an itemization of each separate periodic payment or range of payments, together with an estimate of taxes, insurance, and assessments and the payments to be made with escrow account funds.

##### **Regulatory Commentary**

1. **Definitions.** For purposes of § 1026.37(c), the terms “*adjustable rate*,” “*fixed rate*,” “*negative amortization*,” and “*interest only*” have the meanings in § 1026.37(a)(10).
2. **Construction loans.** See comment app. D-7.v for an explanation of the projected payments disclosure for a construction or construction-permanent loan.

##### **CFPB Guide**

The Projected Payments table shows estimates of the periodic payments that the consumer will make over the life of the loan. Creditors must disclose estimates of the following periodic payment amounts in the Projected Payments table:

- Principal & Interest;
- Mortgage Insurance;
- Estimated Escrow;
- Estimated Total Monthly Payment; and
- Estimated Taxes, Insurance, & Assessments, even if not paid with escrow funds.

The Projected Payments table also describes whether taxes, insurance, and other assessments will be paid with funds in the consumer’s escrow account. (§ 1026.37(c)(2))

## ***[22] Periodic payment or range of payments (page 1, Projected Payments)***

<b>Projected Payments</b>	
<b>Payment Calculation</b>	
Principal & Interest	
Mortgage Insurance	
Estimated Escrow <i>Amount can increase over time</i>	
<b>Estimated Total Monthly Payment</b>	

Although it is not obvious based on the form, there is room for four separate payment streams within this portion of the Loan Estimate.

### **Y&A Completion Instruction**

The processor must complete up to four potential projected payment streams. A new payment stream occurs when the periodic payment may change, a scheduled balloon payment occurs, mortgage insurance automatically terminates, or when the anniversary date of a year occurs that has multiple events which will change the payment amount due. The payment streams change based on major events, not minor events, such as odd days interest. For instance, should the interest only period expire and the loan begin a principal and interest payment, the processor discloses a new payment stream, subject to the limitations of the disclosure. The payment streams are always based on full years, not partial years.

The first payment stream is always based on the anticipated original interest rate, loan term, etc. If the interest rate has not yet been set on an ARM loan, the first payment stream must be based on the fully indexed rate. For construction loans, the first payment stream will be about one half of a monthly interest payment based on the full principal balance, or a full month's interest, depending upon the approach that your institution has chosen.. The payment schedule is completed to show the best and worst case scenario for each rate change, given the limitations on the number of payment streams.

If more than four payment streams are required to fully describe the loan payments, the fourth payment stream becomes a "catch all" for everything that occurs from the beginning of the fourth payment stream to the end of the loan.

Balloon loan payments must always appear in the table, so if a loan has several potential payment streams, the final payment stream contains the balloon payment. This may require the third payment stream to become the "catch all" payment stream.

If mortgage insurance actually reaches its mandatory cancellation date during the fourth payment stream, then the payment schedule will not show the cancellation of the mortgage insurance. The processor should note that mortgage insurance is not only PMI – it is any type of payment (including VA, FHA, etc.) that acts as insurance, regardless of whether state law considers these fees as insurance. Mortgage insurance cancellation dates are calculated in the same manner that you have always used, and are likely to be an estimate at this point.

For negative amortization loans, the payment stream must be based on the maximum loan amount, and assumes that the consumer has not made any additional principal reductions.

## **Regulatory Text § 1026.37(c)(1)**

### **(1) Periodic payment or range of payments.**

- (i) The initial periodic payment or range of payments is a separate periodic payment or range of payments and, except as otherwise provided in paragraph (c)(1)(ii) and (iii) of this section, the following events require the disclosure of additional separate periodic payments or ranges of payments:
  - (A) The periodic principal and interest payment or range of such payments may change;
  - (B) A scheduled balloon payment, as defined in paragraph (b)(5) of this section;
  - (C) The creditor must automatically terminate mortgage insurance or any functional equivalent under applicable law; and
  - (D) The anniversary of the due date of the initial periodic payment or range of payments that immediately follows the occurrence of multiple events described in paragraph (c)(1)(i)(A) of this section during a single year.
- (ii) The table required by this paragraph (c) shall not disclose more than four separate periodic payments or ranges of payments. For all events requiring disclosure of additional separate periodic payments or ranges of payments described in paragraph (c)(1)(i)(A) through (D) of this section occurring after the third separate periodic payment or range of payments disclosed, the separate periodic payments or ranges of payments shall be disclosed as a single range of payments, subject to the following exceptions:
  - (A) A balloon payment that is scheduled as a final payment under the terms of the legal obligation shall always be disclosed as a separate periodic payment or range of payments, in which case all events requiring disclosure of additional separate periodic payments or ranges of payments described in paragraph (c)(1)(i)(A) through (D) of this section occurring after the second separate periodic payment or range of payments disclosed, other than the balloon payment that is scheduled as a final payment, shall be disclosed as a single range of payments.
  - (B) The automatic termination of mortgage insurance or any functional equivalent under applicable law shall require disclosure of an additional separate periodic payment or range of payments only if the total number of separate periodic payments or ranges of payments otherwise disclosed pursuant to this paragraph (c)(1) does not exceed three.
- (iii) When a range of payments is required to be disclosed under this paragraph (c)(1), the creditor

must disclose the minimum and maximum amount for both the principal and interest payment under paragraph (c)(2)(i) of this section and the total periodic payment under paragraph (c)(2)(iv) of this section. A range of payments is required to be disclosed under this paragraph (c)(1) when:

- (A) Multiple events described in paragraph (c)(1)(i) of this section are combined in a single range of payments pursuant to paragraph (c)(1)(ii) of this section;
- (B) Multiple events described in paragraph (c)(1)(i)(A) of this section occur during a single year or an event described in paragraph (c)(1)(i)(A) of this section occurs during the same year as the initial periodic payment or range of payments, in which case the creditor discloses the range of payments that would apply during the year in which the events occur; or
- (C) The periodic principal and interest payment may adjust based on index rates at the time an interest rate adjustment may occur.

## Regulatory Commentary

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

1. ***Periodic payments.*** For purposes of § 1026.37(c)(1)(i), the periodic payment is the regularly scheduled payment of principal and interest, mortgage insurance premiums, and escrow payments described in § 1026.37(c)(2) without regard to any final payment that differs from other payments because of rounding to account for payment amounts including fractions of cents.
2. ***Initial periodic payment or range of payments.*** Section 1026.37(c)(1)(i) requires the creditor to disclose the initial periodic payment or range of payments. The disclosure required is of the actual periodic payment or range of payments that corresponds to the interest rate that will apply at consummation, including any initial discounted or premium interest rate. For examples of discounted and premium rate transactions, see comment 17(c)(1)-10.v. For guidance regarding whether the disclosure should reflect a buydown, see comments 17(c)(1)-3 through -5. If the initial periodic payment or range of payments may vary based on an adjustment to an index value that applies at consummation, § 1026.37(c)(1)(i) requires that the disclosure of the initial periodic payment or range of payments be based on the fully-indexed rate disclosed under § 1026.37(b)(2). See comment 37(b)(2)-1 for guidance regarding calculating the fully-indexed rate.

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

1. ***Periodic principal and interest payments.*** For purposes of § 1026.37(c)(1)(i)(A), periodic principal and interest payments may change when the interest rate, applicable interest rate caps, required periodic principal and interest payments, or ranges of such payments may change. Minor payment variations resulting solely from the fact that months have different numbers of days are not changes to periodic principal and interest payments.
2. ***Negative amortization.*** In a loan that contains a negative amortization feature, periodic principal and interest payments or the range of such payments may change for purposes of § 1026.37(c)(1)(i)(A) at the time the negative amortization period ends under the terms of the legal obligation, meaning the consumer must begin making payments that do not result in an increase of the principal balance. The

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

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

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

1. **Balloon payment.** For purposes of § 1026.37(c)(1)(i)(A), whether a balloon payment occurs is determined pursuant to § 1026.37(c)(1)(i)(B) and its commentary. For guidance on the amount of a balloon payment disclosed on the table required by § 1026.37(c), see comment 37(c)(2)(i)-3.

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

1. **General. “Mortgage insurance or any functional equivalent”** means the amounts identified in § 1026.4(b)(5). For purposes of § 1026.37(c), **“mortgage insurance or any functional equivalent”** includes any mortgage guarantee that provides coverage similar to mortgage insurance (such as a United States Department of Veterans Affairs or United States Department of Agriculture guarantee), even if not technically considered insurance under State or other applicable law. The fees for such a guarantee are included in **“mortgage insurance premiums”**.
2. **Calculation of mortgage insurance termination.** For purposes of § 1026.37(c)(1)(i)(C), mortgage insurance premiums should be calculated based on the declining principal balance that will occur as a result of changes to the interest rate and payment amounts, applying the interest rates applicable to the transaction. Such calculation should take into account any initial discounted or premium interest rate. For example, for an adjustable rate transaction that has a discounted interest rate during an initial five-year period, the creditor makes the calculation using a composite rate based on the rate in effect during the initial five year period and, thereafter, the fully-indexed rate, unless otherwise required by applicable law. For guidance on calculation of the amount of mortgage insurance premiums to disclose on the table required by § 1026.37(c), see § 1026.37(c)(2)(ii) and its commentary. See comment 37(b)(2)-1 for guidance regarding calculating the fully-indexed rate.
3. **Disclosure of mortgage insurance termination.** The table required by § 1026.37(c) should reflect the consumer’s mortgage insurance premiums until the date on which the creditor must automatically terminate coverage under applicable law, even though the consumer may have a right to request that the insurance be cancelled earlier. Unlike termination of mortgage insurance, a subsequent decline in the consumer’s mortgage insurance premiums is not, by itself, an event that requires the disclosure of additional separate periodic payments or ranges of payments in the table required by § 1026.37(c). For example, some mortgage insurance programs annually adjust premiums based on the declining loan balance. Such annual



*adjustment to the amount of premiums would not require a separate disclosure of a periodic payment or range payments.*

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

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

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

1. **Special rule regarding balloon payments that are final payments.** Section 1026.37(c)(1)(ii)(A) is an exception to the general rule in § 1026.37(c)(1)(ii), and requires that a balloon payment that is scheduled as a final payment under the terms of the legal obligation is always disclosed as a separate periodic payment or range of payments, in which case the creditor discloses as a single range of payments all events requiring disclosure of additional separate periodic payments or ranges of payments described in § 1026.37(c)(1)(i)(A) through (D), other than the final balloon payment, occurring after the second separate periodic payment or range of payments disclosed. Balloon payments that are not scheduled as final payments under the terms of the legal obligation, such as a balloon payment due at the scheduled recast of a loan that permits negative amortization, are disclosed pursuant to the general rule in § 1026.37(c)(1)(ii). A balloon payment that is a final payment is disclosed as a single payment, and not combined with other changes to periodic principal and interest payments and disclosed as a range.
2. **Example.** Assume a loan with a term of seven years, where the interest rate adjusts each year for the first three years and is fixed thereafter, that provides for a balloon payment as the final payment, where no mortgage insurance is required, and no escrow account will be established for the payment of charges described in § 1026.37(c)(4)(ii). The creditor discloses on the table required by § 1026.37(c) in the first column the initial periodic payment or range of payments, in the second column the periodic payment or range of payments that would apply after the first interest rate adjustment, in the third column the periodic payments or ranges of payments that would apply after the second interest rate adjustment until the final balloon payment (disclosed as a single range of payments), and in the fourth column the final balloon payment. Although the balloon payment that is scheduled as the final payment under the terms of the legal obligation occurs after the third separate periodic payment or range of payments, the creditor discloses the final balloon payment as a separate event requiring disclosure of additional periodic payments or range of payments due to the special rule in § 1026.37(c)(1)(ii)(A).

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

1. **Special rule regarding disclosure of the automatic termination of mortgage insurance.** Section 1026.37(c)(1)(ii)(B) is an exception to the general rule § 1026.37(c)(1)(ii), and requires that the automatic termination of mortgage insurance or any functional equivalent under applicable law is disclosed as a separate periodic payment or range of payments only if the total number of separate periodic payments or ranges of payments otherwise disclosed does not exceed three. This means that the automatic termination of mortgage insurance or any functional equivalent under applicable law is disclosed as its own event only if there is a column in which to disclose it, i.e., there are only three other separate periodic payments or ranges of payments that are required to be disclosed. Where the automatic termination of mortgage insurance or any functional equivalent under applicable law is not disclosed as a separate periodic payment or range of payments, the absence of a required mortgage insurance payment is disclosed with the next disclosed event requiring disclosure of additional separate periodic payments or ranges of payments, as applicable.
2. **Examples of special rule regarding disclosure of the automatic termination of mortgage insurance.**
  - i. Assume a step-rate loan with a 30-year term with an introductory interest rate that lasts for five years, a different interest rate that applies for the next five-year period, a final interest rate adjustment after 10 years, where mortgage insurance would terminate for purposes of § 1026.37(c)(1)(i)(C) in the third year, and where no escrow account would be established for the payment of charges § 1026.37(c)(4)(ii). The creditor would disclose on the table required by the initial periodic payment for years one through three (reflecting the principal and interest payment corresponding to the introductory interest rate and payments for mortgage insurance premiums), an additional separate periodic payment for years four and five (reflecting the principal and interest payment corresponding to the introductory rate and no payments for mortgage insurance premiums), an additional separate periodic payment or range of payments for years six through 10 (reflecting the principal and interest payment corresponding to the interest rate that would apply after the introductory rate), and an additional separate periodic payment or range of payments for years 11 through 30 (reflecting the principal and interest payment corresponding to the interest rate that would apply after the second interest rate adjustment until the end of the loan term). In this example, the automatic termination of mortgage insurance would be separately disclosed on the table required by § 1026.37(c) because the total number of separate periodic payments or ranges of payments otherwise disclosed pursuant to does not exceed three.
  - ii. Assume the same loan as above, except that the terms of the legal obligation also provide for a third interest rate adjustment that would occur after 15 years. The creditor would disclose on the table required by § 1026.37(c) the initial periodic payment for years one through five (reflecting the principal and interest payment corresponding to the introductory interest rate and payments for mortgage insurance premiums), an additional separate periodic payment or range of payments for years six through 10 (reflecting the principal and interest payment corresponding to the interest rate that would apply after the first interest rate adjustment and no payments for mortgage insurance premiums), an additional separate periodic payment or range of payments for years 11 through 15 (reflecting the principal and interest payment corresponding to the interest rate that would apply after the second interest rate adjustment), and an additional separate periodic payment or range of payments for years 16 through 30 (reflecting the principal and interest payment corresponding to the interest

rate that would apply after the third interest rate adjustment until the end of the loan term). In this example, the automatic termination of mortgage insurance would not be separately disclosed on the table required by § 1026.37(c) because the total number of separate periodic payments or ranges of payments otherwise disclosed pursuant to § 1026.37(c)(1) exceeds three. However, the creditor would disclose the termination of mortgage insurance beginning with the periodic payment or range of payments for years six through 10, which is the next disclosed event requiring disclosure of additional separate periodic payments or ranges of payments.

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

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

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

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

- iii. Assume that the same loan has a payment that, instead of becoming fixed after the adjustment at six months, adjusts once more at 18 months and becomes fixed thereafter. The creditor discloses the same single range of payments for year one. Under § 1026.37(c)(1)(i)(D), the creditor separately discloses the principal and interest payment that would apply on the first anniversary of the due date of the initial periodic payment in year two. Under § 1026.37(c)(1)(i)(A) and (c)(3)(ii), beginning in the next year in the sequence (i.e., in year three), the creditor separately discloses the periodic payment that would apply after the payment adjustment that occurs at 18 months. See comment 37(c)(3)(ii)-1 regarding subheadings that state the years.

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

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

**CFPB Guide**

Show in one column the initial Periodic Payment (or range of payments if required) for each of Principal & Interest, Mortgage Insurance, and Estimated Escrow. (§ 1026.37(c)(1)) Depending on the features of the loan, subsequent periodic payments also may be required to be disclosed. The Periodic Payment is the regularly scheduled payment of Principal & Interest, Mortgage Insurance, and Estimated Escrow. (Comment 37(c)(1)(i)-1)

**Initial Periodic Payment**

To calculate the initial Periodic Payment, use the interest rate that will apply at closing, including any initial discounted or premium interest rate. If the interest rate at closing is not known, such as for an adjustable rate loan without an introductory fixed rate period, use the fully-indexed rate to determine the initial Periodic Payment. (Comment 37(c)(1)(i)-2) Information on how to calculate the initial Periodic Payment for a construction loan is available in Section 14 of the Compliance Guide.

If the consumer's periodic payments will remain constant over the life of the loan, such as in a fixed rate, fixed payment loan without mortgage insurance, the Projected Payments table has just one column.

**Subsequent Periodic Payments**

If any of the triggering events listed below may occur during the life of the loan, add a column to show the amount of the periodic payments after the triggering event. (§ 1026.37(c)(1)(i)):

The Principal & Interest amount or range of such amount may change (for example if the loan has an adjustable rate). (§ 1026.37(c)(1)(i)(A)) Negative Amortization – for loans that have a Negative Amortization feature, the Principal & Interest amount may change when the Negative Amortization period ends under the terms of the legal obligation, meaning the consumer must

begin making payments that do not result in an increase of the principal balance. (Comment 37(c)(1)(i)(A)-2)

- Interest Only – for Interest Only loans, the Principal & Interest amount may change when the Interest Only period ends, meaning the consumer must begin making payments that do not defer repayment of principal. (Comment 37(c)(1)(i)(A)-3)
- Minor Periodic Payment variations resulting solely from the fact that months have different numbers of days are not triggering events. (Comment 37(c)(1)(i)(A)-1)

§§Adjustable Rate loans – the Projected Payments table will have a new column, up to a maximum of four columns, for each scheduled rate adjustment. Because the Principal & Interest amount may change each time the rate is scheduled to adjust, a new column is required, up to a maximum of four columns. There is a new column, up to a maximum of four columns, even if the range of payments will stay the same. For example, there is a new column, up to a maximum of four columns, even when the range will stay the same because the range is the minimum and maximum interest rate caps listed in the contract. (Comment 37(c)(1)(i)(A)-1)

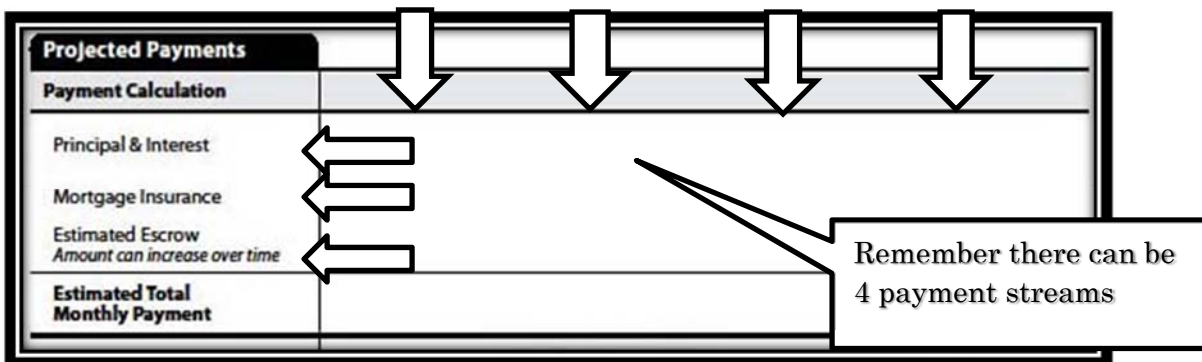
There is a scheduled Balloon Payment. (§ 1026.37(c)(1)(i)(B))

The lender must automatically terminate Mortgage Insurance or any functional equivalent. (§ 1026.37(c)(1)(i)(C)) Even if the borrower may cancel the insurance earlier, use the date on which the lender must automatically terminate Mortgage Insurance coverage under applicable law. Only termination of Mortgage Insurance is a triggering event, while a decline in Mortgage Insurance premiums is not. (Comment 37(c)(1)(i)(C)-3)

However, if there are already four columns, and Mortgage Insurance would terminate during the range disclosed in the fourth column, no automatic termination of Mortgage Insurance is disclosed on the Projected Payments table. (§ 1026.37(c)(1)(ii)(b))

When the Periodic Payment amount changes more than once in a single year, show in the subsequent column the Periodic Payment amounts in the year following the one in which there were multiple changes. (§ 1026.37(c)(1)(i)(D)) A year for this table is the 12-month period following the due date of the initial Periodic Payment. (§ 1026.37(c)(3)(ii))



**[23] Itemization (page 1, Projected Payments)****Y&A Completion Instruction**

For each of the four potential projected payment streams, the processor must disclose the amount of the payment. It will be principal and interest or interest only, as appropriate. Also included are any amounts for mortgage insurance and escrow. The disclosure should contain the maximum and minimum payment possible for each payment stream (generally for ARM loans). For negative amortization loans, the payment schedule is based on the highest principal balance that the loan could reach, based on the note terms and conditions.

**Regulatory Text § 1026.37(c)(2)**

(2) **Itemization.** Each separate periodic payment or range of payments disclosed on the table required by this paragraph (c) shall be itemized as follows:

- (i) The amount payable for principal and interest, labeled **“Principal & Interest,”** including the term **“only interest”** if the payment or range of payments includes any interest only payment:
  - (A) In the case of a loan that has an adjustable interest rate, the maximum principal and interest payment amounts are determined by assuming that the interest rate in effect throughout the loan term is the maximum possible interest rate, and the minimum amounts are determined by assuming that the interest rate in effect throughout the loan term is the minimum possible interest rate;
  - (B) In the case of a loan that has an adjustable interest rate and also contains a negative amortization feature, the maximum principal and interest payment amounts after the end of the period of the loan’s term during which the loan’s principal balance may increase due to the addition of accrued interest are determined by assuming the maximum principal amount permitted under the terms of the legal obligation at the end of such period, and the minimum amounts are determined pursuant to paragraph (c)(2)(i)(A)];

- (ii) The maximum amount payable for mortgage insurance premiums corresponding to the principal and interest payment disclosed pursuant to paragraph (c)(2)(i) of this section, labeled **“Mortgage Insurance”**;
- (iii) The amount payable into an escrow account to pay some or all of the charges described in paragraph (c)(4)(ii), as applicable, labeled **“Escrow,”** together with a statement that the amount disclosed can increase over time; and
- (iv) The total periodic payment, calculated as the sum of the amounts disclosed pursuant to paragraphs (c)(2)(i) through (iii) of this section, labeled **“Total Monthly Payment.”**

## Regulatory Commentary

### **37(c)(2) Itemization.**

#### **Paragraph 37(c)(2)(i).**

1. **General rule for adjustable rate loans.** *For an adjustable rate loan, in disclosing the maximum possible payment for principal and interest under § 1026.37(c), the creditor assumes that the interest rate will rise as rapidly as possible after consummation, taking into account the terms of the legal obligation, including any applicable caps on interest rate adjustments and lifetime interest rate cap. For a loan with no lifetime interest rate cap, the maximum rate is determined by reference to other applicable laws, such as State usury law. In disclosing the minimum payment for purposes of § 1026.37(c), the creditor assumes that the interest rate will decrease as rapidly as possible after consummation, taking into account any introductory rates, caps on interest rate adjustments, and lifetime interest rate floor. For an adjustable rate loan based on an index that has no lifetime interest rate floor, the minimum interest rate is equal to the margin.*
2. **Special rule for adjustable rate loans with negative amortization features.** *Section 1026.37(c)(2)(i)(B) provides a special rule for calculation of the maximum principal and interest payment in an adjustable rate loan that contains a negative amortization feature. That section provides that the maximum amounts payable for principal and interest after the negative amortization period ends are calculated using the maximum principal amount permitted under the terms of the legal obligation at the end of the negative amortization period. See section § 1026.37(c)(1)(i)(A) and associated commentary for guidance regarding when the negative amortization period ends for purposes of § 1026.37(c)(2). For example, if the maximum principal balance for the last payment in the negative amortization period is achieved at an interest rate that is not the maximum interest rate permitted under the terms of the legal obligation before the negative amortization period ends, future events requiring disclosure of additional, separate periodic payments or ranges of payments assume that the interest rate in effect at the end of the negative amortization period was such interest rate, and not the maximum possible interest rate. After the end of the negative amortization period, the general rule under § 1026.37(c)(2)(i)(A) regarding assumptions of interest rate changes for the maximum principal and interest payment to be disclosed applies from such interest rate. The minimum payment in an adjustable rate loan that contains a negative amortization feature is determined pursuant to the general rule under § 1026.37(c)(2)(i)(A).*



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

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

1. **Mortgage insurance disclosure.** *Mortgage insurance premiums should be reflected on the disclosure required by § 1026.37(c) even if no escrow account is established for the payment of mortgage insurance premiums. If the consumer is not required to purchase mortgage insurance or any functional equivalent, the creditor discloses the mortgage insurance premium amount as “0.” If the creditor is disclosing the automatic termination or the absence of mortgage insurance or any functional equivalent under applicable law or the absence of mortgage insurance or any functional equivalent after coverage has terminated, the creditor discloses the mortgage insurance premium as “-.”*
2. **Relationship to principal and interest disclosure.** *The creditor discloses mortgage insurance premiums pursuant to § 1026.37(c)(2)(ii) on the same periodic basis that payments for principal and interest are disclosed pursuant to § 1026.37(c)(2)(i), even if mortgage insurance premiums are actually paid on some other periodic basis. If no escrow account for the payment of some or all such charges will be established, the creditor discloses the mortgage insurance premium as “0.”*

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

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

**CFPB Guide**

The maximum number of columns the **Periodic Payments** table may contain is four. If a loan has more than four triggering events, for example, if the loan has more than three rate changes, show a range of payments in the fourth column that reflects all remaining periodic payments **not** shown in the first three columns. (§ 1026.37(c)(1)(ii)) EXCEPT:

- A Balloon Payment scheduled as a final payment always requires its own column. (§ 1026.37(c)(1)(ii)(A))
- If disclosing the final Balloon Payment means that other triggering events will not fit within the four-column maximum, show the other triggering events as a range of payments in the third column. (§ 1026.37(c)(1)(ii)(A))
- A Balloon Payment that is not a final payment is a triggering event that does not necessarily require its own column. (Comment 37(c)(1)(ii)(A)-1)

- The automatic termination of Mortgage Insurance generally requires the corresponding periodic payment to be shown in its own column, unless doing so would exceed the four-column maximum. (§ 1026.37(c)(1)(ii)(B)) Where the automatic termination of Mortgage Insurance need not be shown in its own column, the column showing the next periodic payment or range of payments should show the periodic payment amount without Mortgage Insurance. (Comment 37(c)(1)(ii)(B)-1)
  - Show a range of payments rather than a single payment when: There are more triggering events than can be shown in four columns and thus one column must be used to show two or more periodic payment amounts.

The Principal & Interest payment or range of such payments may change more than once in a single year or may change (at least once) in the same year as the initial periodic payment.

The Principal & Interest payment may adjust based on an interest rate index and the rates are not yet known (i.e., for an Adjustable Rate loan). (§ 1026.37(c)(1)(iii))

For a column that contains a range of payments, show both a minimum and maximum payment using rounded dollar amounts. (§ 1026.37(c)(1)(iii), (o)(4)(ii)) For an **Adjustable Rate** loan, use the maximum and minimum interest rates that could apply such as through an interest rate cap. (Comment 37(c)(1)(iii)(C)-1)

Ranges of payments are required only for the Principal & Interest amount and the Estimated Total Monthly Payment. Do not show a range of payments for Mortgage Insurance or Estimated Escrow. (Comment 37(c)(1)(iii)-1)

### ***Payment Calculation Column Headings***

To the right of the Payment Calculation label, as column headings, use the years of the loan during which the payments or ranges of payments shown in that column will apply. (§ 1026.37(c)(3)(ii))

Use a sequence of whole years, counting from the due date of the initial Periodic Payment. For example, a two-column projected payments table might contain the headings “years 1-7” and “Years 8-30” if a triggering event occurs 85 months after the due date of the initial Periodic Payment. If a triggering event occurs in the middle of a year, use the next year in sequence as the heading for the subsequent column.

For example, assume a 30-year loan that requires Interest Only payments for the first 54 months from the due date of the initial Periodic Payment. The column heading for the initial Periodic Payment would be “Years 1-5” and the column heading for the subsequent Periodic Payment would be “Years 6-30” because the triggering event occurs during the 5th year of the loan. (Comment 37(c)(3)(ii)-1)

For Periodic Payments that may increase based on an adjustment of the interest rate, use the maximum loan term possible under the terms of the legal obligation. To calculate the maximum loan term, assume that the interest rate rises as rapidly as is possible under the terms of the legal obligation, taking into account any applicable interest rate caps. (Comment 37(c)(3)(ii)-2)

For a Balloon Payment scheduled as a final payment, use Final Payment as the column heading. (§ 1026.37(c)(3)(iii))

***Principal & Interest***

Use the amount due for Principal & Interest for the period shown in the column heading. (§ 1026.37(c)(2)(i)) If the payment or range of payments includes any payments of Interest Only, use the phrase Only Interest under the amount of the payment or range of payments.

***Adjustable Rate Loans***

Generally, calculate Principal & Interest using the maximum payments by assuming that the interest rate will rise as rapidly as possible, taking into account the terms of the legal obligation, including any applicable caps on interest rate adjustments and lifetime interest rate cap. Other laws, such as a State usury law, can set the maximum rate if the legal obligation does not include a lifetime interest rate cap. Calculate the minimum payments by assuming that the interest rate will decrease as rapidly as possible, taking into account any introductory rates, caps on interest rate adjustments, and lifetime interest rate floor. For an Adjustable Rate loan based on an index that has no lifetime interest rate floor, the minimum interest rate is equal to the margin. (Comment 37(c)(2)(i)-1)

For loans with a Negative Amortization feature, calculate Principal & Interest using the maximum payment amounts after the end of the period during which the principal balance may increase by assuming the maximum principal amount permitted under the terms of the legal obligation at the end of the period. Calculate the minimum payment amount by assuming the interest rate is the minimum possible under the terms of the legal obligation. (Comment 37(c)(2)(i)-2)

For loans with a Balloon Payment feature that may change depending on previous interest rate adjustments, calculate Principal & Interest using the assumptions for minimum and maximum interest rates described above and show as a range of payments. (Comment 37(c)(2)(i)-3)

***Mortgage Insurance***

Disclose the maximum amount payable as Mortgage Insurance that corresponds to the Principal & Interest payment shown in the same column. (§ 1026.37(c)(2)(ii)) Disclose as a rounded number. (§ 1026.37(o)(4)(ii))

Mortgage Insurance includes any mortgage guarantee that provides coverage similar to mortgage insurance (such as a U.S. Department of Veterans Affairs or U.S. Department of Agriculture guarantee), even if not technically considered insurance under State or other applicable law. (§ 1026.4(b)(5); Comment 37(c)(1)(i)(C)-1)

Calculate Mortgage Insurance premiums based on the principal balance that will exist after changes to the interest rate and payment amounts pursuant to the legal obligation. The calculations should take into account any initial discounted or premium interest rate. For example, for an Adjustable Rate transaction that has a discounted interest rate during an initial five-year period, calculate Mortgage Insurance premiums using a composite rate based on the rate in effect during the initial five-year period and, thereafter, the fully-indexed rate, unless otherwise required by applicable law. (Comment 37(c)(1)(i)(C)-2)

If Mortgage Insurance is not required, disclose “0.” (Comments 37(c)(2)(ii)-1 and -2)

Disclose the Mortgage Insurance amount that corresponds with the Principal & Interest amount shown in the same column, even if Mortgage Insurance is paid on a different schedule than Principal & Interest. (Comment 37(c)(2)(ii)-2)

***Estimated Escrow***

Disclose the amount the consumer will pay into an escrow account each month under the terms of the legal obligation. (§ 1026.37(c)(2)(iii)) Use a rounded number. (§ 1026.37(o)(4)(ii)) If an escrow account will not be established, disclose “0.” Disclose “—” if there will be an escrow account, but the escrow account will be closed during the time-frame attributable to the applicable Periodic Payment. (Comment 37(c)(2)(iii)-1)

***Estimated Total Monthly Payment***

For each column, disclose the sum of the Principal & Interest, Mortgage Insurance, and Estimated Escrow as Estimated Total Monthly Payment. (§ 1026.37(c)(2)(iv)) The amount is rounded if any of the component amounts are rounded. (§ 1026.37(o)(4)(i)(C))

## ***[24] Subheadings (page 1, Projected Payments)***

### **Y&A Completion Instruction**

All of the subheadings will actually appear as boilerplate items on the Loan Estimate. These subheadings should not require the processor to “do” anything.

### **Regulatory Text § 1026.37(c)(3)**

#### **(3) Subheadings.**

- (i) The labels required pursuant to paragraph (c)(2) of this section must be listed under the subheading **“Payment Calculation.”**
- (ii) Except as provided in paragraph (c)(3)(iii) of this section, each separate periodic payment or range of payments to be disclosed under this paragraph (c) must be disclosed under a subheading that states the years of the loan during which that payment or range of payments will apply. The subheadings must be stated in a sequence of whole years from the due date of the initial periodic payment.
- (iii) A balloon payment that is scheduled as a final payment under the terms of the legal obligation must be disclosed under the subheading **“Final Payment.”**

### **Regulatory Commentary**

#### **37(c)(3) Subheadings.**

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

1. **Years.** *Section 1026.37(c)(3)(ii) requires that each separate periodic payment or range of payments be disclosed under a subheading that states the years during which that payment or range of payments will apply and that such subheadings be stated in a sequence of whole years from the due date of the initial periodic payment. Therefore, for purposes of § 1026.37(c), “year” is defined as the twelve-month interval beginning on the due date of the initial periodic payment, and the next whole year begins each anniversary thereafter. If an event requiring the disclosure of an additional separate periodic payment or range of payments occurs on a date other than the anniversary of the due date of the initial periodic payment, and no other events occur during that single year requiring disclosure of multiple events under § 1026.37(c)(1)(iii)(B), such event is disclosed beginning in the next year in the sequence, because the separate periodic payment or range of payments that applied during the previous year will also apply during a portion of that year. For example:*
  - i. *Assume a fixed rate loan with a term of 124 months (10 years, four months). The creditor would label the disclosure of periodic payments as “Years 1-11.”*

- ii. Assume a loan with a 30-year term that does not require mortgage insurance and requires interest only payments for the first 60 months from the due date of the initial periodic payment, then requires fixed, fully amortizing payments of principal and interest beginning at the 61st month for the duration of the loan, the creditor would label the first disclosure of periodic payments as **“Years 1-5”** (including the term “only interest” pursuant to § 1026.37(c)(2)(i)) and the second disclosure of periodic payments or range of payments as **“Years 6-30.”** If that loan requires interest only payments for the first 54 months from the due date of the initial periodic payment, then requires fixed, fully amortizing payments of principal and interest for the duration of the loan, because the change in the periodic payment occurs on a date other than the anniversary of the due date of the initial periodic payment and the previous payment applies during that year, the creditor would likewise label the first disclosure of periodic payments as **“Years 1-5”** (including the term **“only interest”** pursuant to § 1026.37(c)(2)(i)) and the second disclosure of periodic payments or range of payments as **“Years 6-30.”** If the loan that requires interest only payments for the first 54 months also requires mortgage insurance that would automatically terminate under applicable law after the 100th month from the due date of the initial periodic payment, the creditor would label the first disclosure of periodic payments as **“Years 1-5”** (including the term “only interest” pursuant to § 1026.37(c)(2)(i)), the second disclosure of periodic payments or range of payments as **“Years 6-9,”** and the third disclosure of periodic payments or range of payments as **“Years 10-30.”**
2. **Loans with variable terms.** If the loan term may increase based on an adjustment of the interest rate, the creditor must disclose the maximum loan term possible under the legal obligation. To calculate the maximum loan term, the creditor assumes that the interest rate rises as rapidly as possible, taking into account the terms of the legal obligation, including any applicable caps on interest rate adjustments and lifetime interest rate cap. See comment 37(a)(8)-2.

## CFPB Guide

None.



**[25] Taxes, Insurance, and Assessments (page 1, Projected Payments)**

<b>Estimated Taxes, Insurance &amp; Assessments</b> <i>Amount can increase over time</i>	<b>This estimate includes</b> <input type="checkbox"/> Property Taxes <input type="checkbox"/> Homeowner's Insurance <input type="checkbox"/> Other: <small>See Section G on page 2 for escrowed property costs and property costs separately.</small>	<b>In escrow?</b> <small>You must pay for other</small>
---	--	--

Total monthly amount for taxes, insurance and escrow goes here.

Indicate in these check boxes whether the total amount to the left includes these items.

Indicate in this column if the taxes, insurance and other items are being escrowed. If some of the items include in "other" are being escrowed, enter "some."

**Y&A Completion Instruction**

All financial institutions, whether they offer escrow services or not, are required to complete this portion of the form. It explains, or perhaps reminds, the consumer of their obligation to pay taxes and insurance, as well as other items related to the property, even if they are not establishing an escrow account. The amounts are expressed based on a monthly basis, not an annual basis. The processor completes this information using the best information available, understanding that this information may be inaccurate, especially for construction loans or division of land loans.

This section also requires an indication as to whether any of the amounts included are going to be paid through an escrow account. It is possible that only a portion of the "other" category is going to have an escrow account established. Should that occur, then the answer to the escrow question is "some." Otherwise, the answer to the escrow question is either "yes" or "no."

**Regulatory Text § 1026.37(c)(4)**

(4) **Taxes, insurance, and assessments.** Under the information required by paragraphs (c)(1) through (3) of this section:

- (i) The label "**Taxes, Insurance & Assessments**";
- (ii) The sum of the charges identified in § 1026.43(b)(8), other than amounts identified in § 1026.4(b)(5), expressed as a monthly amount, even if no escrow account for the payment of some or any of such charges will be established;
- (iii) A statement that the amount disclosed pursuant to paragraph (c)(4)(ii) of this section can increase over time;



- (iv) A statement of whether the amount disclosed pursuant to paragraph (c)(4)(ii) of this section includes payments for property taxes, amounts identified in § 1026.4(b)(8), and other amounts described in paragraph (c)(4)(ii) of this section, along with a description of any such other amounts, and an indication of whether such amounts will be paid by the creditor using escrow account funds;
- (v) A statement that the consumer must pay separately any amounts described in paragraph (c)(4)(ii) of this section that are not paid by the creditor using escrow account funds; and
- (vi) A reference to the information disclosed pursuant to paragraph (g)(3) of this section.

## Regulatory Commentary

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

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

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

1. ***Description of other amounts.*** Section 1026.37(c)(4)(iv) requires the creditor to disclose a statement of whether the amount disclosed pursuant to § 1026.37(c)(4)(ii) includes payments for property taxes, amounts identified in § 1026.4(b)(8) (homeowner's insurance premiums), and other amounts described in § 1026.37(c)(4)(ii), along with a description of any such other amounts. If the amount disclosed pursuant to § 1026.37(c)(4)(ii) requires the creditor to disclose a description of more than one amount other than amounts for payment of property taxes or homeowner's insurance premiums, the creditor may disclose a descriptive statement of one such amount along with an indication that additional amounts are also included, such as by using the phrase ***"and additional costs."***
2. ***Amounts paid by the creditor using escrow account funds.*** Section 1026.37(c)(4)(iv) requires the creditor to disclose an indication of whether the amounts disclosed under § 1026.37(c)(4)(ii) will be paid by the creditor using escrow account funds. If only a portion of the amounts disclosed under § 1026.37(c)(4)(ii), including, without limitation, property taxes, homeowner's insurance, and assessments, will be paid by the creditor using escrow account funds, the creditor may indicate that only a portion of the amounts disclosed will be paid using escrow account funds, such as by using the word ***"some."***

## CFPB Guide

As Estimated Taxes, Insurance & Assessments, disclose the total monthly amount due for Property Taxes, Homeowner's Insurance, charges imposed by a cooperative, condominium or homeowners association; ground rent; leasehold payments; and certain insurance premiums or charges if required by the lender. (§§ 1026.37(c)(4)(ii), 1026.43(b)(8)) Disclose Estimated Taxes, Insurance & Assessments as a rounded number. (§ 1026.37(o)(4)(i))

Homeowner's Insurance is any insurance against loss or damage, or against liability arising out of the property. (§§ 1026.4(b)(8), 1026.37(c)(4)(ii)) The insurance premiums included as Estimated Taxes, Insurance & Assessments are for credit life, accident, health, or loss-of-income insurance; insurance against loss of or damage to property, or against liability arising out of the ownership or use of property; and debt cancellation or debt suspension coverage. (§§ 1026.4(b)(7), (8), (10), 1026.37(c)(4)(ii)) Homeowner's Insurance includes flood insurance. (§§ 1026.37(c)(4)(ii); 1026.43(b)(8))

To calculate Property Taxes, Homeowner's Insurance, and other insurance premiums, use the taxable assessed value of the real property or cooperative unit securing the transaction after consummation, including the value of any improvements or construction, to the extent known, and the replacement costs of the property over the first year. (§ 1026.37(c)(5))

Include these amounts as Estimated Taxes, Insurance & Assessments even if an escrow account will not be established under the terms of the legal obligation.

If the time period disclosed is not monthly, use the appropriate term to reflect the fact that the transaction's terms provide for other than monthly period payments, such as bi-weekly or quarterly payments. (§ 1026.37(o)(5)(i); Comment 37(o)(5)-4) For example, if the legal obligation calls for biweekly payments, the Estimated Taxes, Insurance and Assessments must be disclosed as a biweekly payment amount. However, if the legal obligation calls for monthly payments, the Estimated Taxes, Insurance and Assessments must be disclosed as a monthly amount.

By the use of checkboxes, disclose if Property Taxes, Homeowner's Insurance, or Other required charges will be paid from an escrow account established under the terms of the legal obligation under the heading "This estimate includes". When applicable, describe briefly the type of charge to the right of the word "Other". If there is more than one Other charge, disclose one type and the phrase and additional charges. (Comment 37(c)(4)(iv)-1)

Under a heading of In Escrow?: disclose Yes when funds from an escrow account established under the terms of the legal obligation will be used to pay Property Taxes, Homeowner's Insurance, and Other assessments; or disclose No when funds from an escrow account established under the terms of the legal obligation will not be used to pay Property Taxes, Homeowner's Insurance, and Other assessments. If a portion of Property Taxes, Homeowner's Insurance, and Other assessments will be paid using funds from such an escrow account, a creditor may indicate that is the case by using the word "Some." If more than one item is disclosed as Other, disclose Yes, Some when one item is paid using funds from such an escrow account and another is not. (Comment 37(c)(4)(iv)-2)

## ***[26] Calculation of Taxes and Insurance (Projected Payments)***

### **Y&A Completion Instruction**

This instruction requires that the applicant be informed regarding all amounts due for taxes, insurance, homeowners association dues, etc. These amounts are expressed as a monthly amount due. If the disclosure is for a construction-permanent loan, or a home improvement loan that will substantially increase the home's value, the amount(s) listed in this section must be based on the finished product. For instance, for taxes, the amount shown here will be based on the tax bill that will be due when construction is completed, not on the vacant lot. See the next instruction.

### **Regulatory Text § 1026.37(c)(5)**

**(5) Calculation of taxes and insurance.** For purposes of paragraphs (c)(2)(iii) and (4)(ii) of this section, estimated property taxes and homeowner's insurance shall reflect:

- (i)** The taxable assessed value of the real property or cooperative unit securing the transaction after consummation, including the value of any improvements on the property or to be constructed on the property, if known, whether or not such construction will be financed from the proceeds of the transaction, for property taxes; and
- (ii)** The replacement costs of the property during the initial year after the transaction, for amounts identified in § 1026.4(b)(8).

### **Regulatory Commentary**

*None.*

### **CFPB Guide**

See previous instruction.

## Section 5: Costs at Closing

### 12 CFR § 1026.37(d)

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#### *General Language § 1026.37(d)*

#### **Y&A Comments:**

There are two potential “**Costs at Closing**” tables. The difference is whether there is a seller involved.

Regardless of the table used, it simply totals that amounts required to close the loan. Every amount comes from a table or field located elsewhere in the disclosure.

**[27] Costs at Closing Table (page 1, Costs at Closing)**

<b>Costs at Closing</b>	
<b>Estimated Closing Costs</b>	Includes in Loan Costs + in Lender Credits. See page 2 for details.
<b>Estimated Cash to Close</b>	Includes Closing Costs. See Calculating Cash to Close on page 2 for details. <input type="checkbox"/> From <input type="checkbox"/> To Borrower

Total estimated closing costs appear here

Total loan costs appear here

Total other costs appear here

Total lender credits appear here

**Y&A Completion Instruction**

The processor completes this section by completing page two of the Loan Estimate. The first line totals the estimated closing costs. All totals appear as shown above. Every amount used in the calculation comes from a table or field located elsewhere in the disclosure.

**Regulatory Text § 1026.37(d)(1)**

**(1) Costs at closing table.** In a separate table, under the heading “**Costs at Closing**”:

- (i) Labeled “**Closing Costs**,” the dollar amount disclosed pursuant to paragraph (g)(6) of this section, together with:
  - (A) A statement that the amount disclosed pursuant to paragraph (d)(1)(i) of this section includes the amounts disclosed pursuant to paragraphs (f)(4), (g)(5), and (g)(6)(ii);
  - (B) The dollar amount disclosed pursuant to paragraph (f)(4) of this section, labeled “**Loan Costs**”;
  - (C) The dollar amount disclosed pursuant to paragraph (g)(5) of this section, labeled “**Other Costs**”;
  - (D) The dollar amount disclosed pursuant to paragraph (g)(6)(ii) of this section, labeled “**Lender Credits**”; and
  - (E) A statement referring the consumer to the tables disclosed pursuant to paragraphs (f) and (g) of this section for details.

<b>Costs</b>	<b>Closing</b>	
Estimated Closing Costs	Includes	in Loan Costs + in Lender Credits. See page 2 for details.
Estimated Cash to Close	Includes Closing Costs. See Calculating Cash to Close on page 2 for details.	in Other Costs –
	<input type="checkbox"/> From	<input type="checkbox"/> To Borrower

Place Estimated Cash to Close from page 2 here.

Indicate whether the cash must come from the consumer or to the consumer.

### Regulatory Text

- (ii) Labeled “**Cash to Close**,” the dollar amount calculated in accordance with paragraph (h)(1)(viii) of this section, together with:
- (A) A statement that the amount includes the amount disclosed pursuant to paragraph (d)(1)(i) of this section, and
- (B) A statement referring the consumer to the location of the table required pursuant to paragraph (h) of this section for details.

### Regulatory Commentary

*None.*

### CFPB Guide

Estimated Closing Costs are calculated in the same manner as the Total Closing Costs disclosed on page 2 of the Loan Estimate. (see section 2.3.1 below)

The Estimated Closing Costs are also itemized to show from page 2 of the Loan Estimate:

- The total of the Loan Costs table,
- The total of the Other Costs table, and
- Lender Credits in the Total Closing Costs subheading. (§ 1026.37(d)(1)(i))

The estimated amount of cash the consumer will be expected to pay at closing is also shown as Estimated Cash to Close. This amount is the same as the Estimated Cash to Close, from the Calculating Cash to Close table on page 2 of the Loan Estimate. (§ 1026.37(d)(1)(ii))

## ***[28] Optional Alternative Table for Transactions Without a Seller (page 1, Costs at Closing)***

### **Y&A Completion Instruction**

There is very little difference from the table above, and like the original table, all of the amounts come from other locations on the disclosure. This disclosure may be used for a subordinate lien financing of a purchase. See the commentary below for additional information.

### **Regulatory Text § 1026.37(d)(2)**

**(2) Optional alternative table for transactions without a seller or for simultaneous subordinate financing.** For transactions that do not involve a seller or for simultaneous subordinate financing, instead of the amount and statements described in paragraph (d)(1)(ii) of this section, the creditor may alternatively disclose, using the label “Cash to Close”:

- (i) The amount calculated in accordance with paragraph (h)(2)(iv) of this section;
- (ii) A statement of whether the disclosed estimated amount is due from or to the consumer; and
- (iii) A statement referring the consumer to the alternative table disclosed pursuant to paragraph (h)(2) of this section for details.

### **Regulatory Commentary**

#### ***37(d)(2) Optional alternative table for transactions without a seller or for simultaneous subordinate financing.***

- 1. *Optional use.*** *The optional alternative disclosure of the estimated cash to close provided for in § 1026.37(d)(2) may be used by a creditor only in a transaction without a seller or a simultaneous subordinate financing transaction. In a purchase transaction, the optional alternative disclosure may be used for the simultaneous subordinate financing Loan Estimate only if the first-lien Closing Disclosure will record the entirety of the seller’s transaction. Creditors may only use this alternative estimated cash to close disclosure in conjunction with the alternative disclosure under § 1026.37(h)(2).*
- 2. *Method of indication.*** *The indication of whether the estimated cash is either due from or payable to the consumer can be made by the use of check boxes as shown in form H-24(D) of appendix H to this part.*

### **CFPB Guide**

For transactions without a seller, an Alternative Costs at Closing table shown as Figure 6



(together with an Alternative Calculating Cash to Close table on page 2 of the Loan Estimate shown later in Figure 20) can be used in place of the Costs at Closing table shown in Figure 5 above. Similarly, an Alternative Costs at Closing table and an Alternative Calculating Cash to Close table can be used in place of the Costs at Closing table shown in Figure 5 for a simultaneous subordinate lien loan in a purchase transaction if the Closing Disclosure for the first lien loan will disclose the entirety of the seller's transaction. (§ 1026.37(d)(2) and (h)(2))

The Alternative Costs at Closing table contains a variation that places checkboxes with Estimated Cash to Close in order to indicate whether the cash is due from or to the consumer. (Comment 37(d)(2)-2) If the Alternative Costs at Closing table is used, then the Alternative Calculating Cash to Close on page 2 of the Loan Estimate also must be used. (Comment 37(d)(2)-1)

## Section 6: Web Site Reference

### 12 CFR § 1026.37(e)

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#### *[29] Web Site Reference (page 1, Bottom)*



#### **Y&A Completion Instruction**

This language is boilerplate on the bottom of the first page of the disclosure. No action on the processor's part is required.

#### **Regulatory Text § 1026.37(e)**

- (e) **Web site reference.** A statement that the consumer may obtain general information and tools at the Web site of the CFPB, and the link or uniform resource locator address to the Web site: [www.consumerfinance.gov/mortgage-estimate](http://www.consumerfinance.gov/mortgage-estimate).

#### **Regulatory Commentary**

*None.*

#### **CFPB Guide**

None.

## Section 7: Closing Cost Details

### 12 CFR § 1026.37(f)

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#### *General Language*

#### **Y&A Commentary**

This section is the “good faith estimate” section of the disclosure. See the section below regarding construction fees for additional information.

#### **Regulatory Text § 1026.37(f)**

- (f) **Closing cost details; loan costs.** Under the master heading “**Closing Cost Details**,” in a table under the heading “**Loan Costs**,” all loan costs associated with the transaction. The table shall contain the items and amounts listed under four subheadings, described in paragraphs (f)(1) through (4) of this section.

#### **Regulatory Commentary**

##### ***37(f) Closing cost details; loan costs.***

- 1. General description.** *The items disclosed under § 1026.37(f) include services that the creditor or mortgage broker require for consummation, such as underwriting, appraisal, and title services.*
- 2. Mortgage broker.** *Commentary under § 1026.19(e)(1)(ii) discusses the requirements and responsibilities of mortgage brokers that provide the disclosures required by § 1026.19(e), which include the disclosures set forth in § 1026.37(f).*
- 3. Construction loan inspection and handling fees.** *Inspection and handling fees for the staged disbursement of construction loan proceeds, including draw fees, are loan costs associated with the transaction for purposes of § 1026.37(f). If inspection and handling fees are collected at or before consummation, the total of such fees is disclosed in the loan costs table. If inspection and handling fees will be collected after consummation, the total of such fees is disclosed in a separate addendum and the fees are not counted for purposes of the calculating cash to close table. See comment 37(f)(6)-3 for a description of an addendum used to disclose inspection and handling fees that will be collected after consummation. See also comments 38(f)-2 and app. D-7.vii. If the number of inspections and disbursements is not known at the time the disclosures are provided, the creditor discloses the fees that will be collected based on the best information reasonably available to the creditor at the time the disclosure is provided. See comment 19(e)(1)(i)-1. See § 1026.17(e) and its commentary for an explanation of the effect of subsequent events that cause inaccuracies in disclosures.*

## CFPB Guide

Up to four main categories of costs are disclosed on page 2 of the Loan Estimate:

1. A good-faith itemization of the Loan Costs and Other Costs associated with the loan. (§ 1026.37(f) and (g))
2. A Calculating Cash to Close table that shows how the amount of cash needed at closing is calculated. (§ 1026.37(h))
3. For transactions with adjustable monthly payments, an Adjustable Payments (AP) Table with relevant information about how the monthly payments will change. (§ 1026.37(i))
4. 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))

The items associated with the mortgage are broken down into two general types, Loan Costs and Other Costs. Generally, 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 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))

Items that are a component of title insurance or are for conducting the closing must include the introductory description of Title —. (§§ 1026.37(f)(2)(i), (g)(4)(i))

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

The amounts disclosed in the Loan Costs and Other Costs table are rounded to the nearest whole dollar. The daily amount of Prepaid Interest and the monthly amounts for the items in the Initial Escrow Payment at Closing are rounded or truncated to the nearest whole cent. (§ 1026.37(o)(4); Comment 37(o)(4)(i)(A)-1)

The Loan Costs and Other Costs tables are further broken down in the next subsection.

Loan Costs are disclosed in three subheadings, each of which is subtitled: Information about allocating Loan Costs when disclosing a construction-permanent loan as two separate transactions is available in Section 14.4 of the Compliance Guide. Information on disclosing construction inspection fees and similar construction loan fees is available in Section 14.18 of the Compliance Guide.

- Origination Charges,
- Services You Cannot Shop For, and
- Services You Can Shop For.

Disclose the sum of these three subtotals as Total Loan Costs. (§ 1026.37(f))

**[30] Origination Charges (page 2, Loan Costs [A])**

**Closing Cost Details**

**Loan Costs**

**A. Origination Charges**  
% of Loan Amount (Points)

13 lines are available

**Y&A Completion Instruction**

The processor must include all charges anticipated to be paid to the creditor and/or mortgage broker. This section also includes any Loan Level Price Adjustments that are paid to third parties. All fees in this section must be correct. There is no tolerance for errors, although changes can be made in Section A should there be a change necessary due to an interest rate lock that occurs after the Loan Estimate is issued, or a loan level price adjustment that was not anticipated. These would be a changed circumstance, and require a new Loan Estimate.

Should the application require a change of loan products, Section A can also be redisclosed, based on the new product. See changed circumstances for additional information.

Points paid to the creditor and/or mortgage broker are listed first. Any line item that does not contain a dollar amount, other than the points line, must remain blank. Additional lines on an addendum are not permitted. Entries, other than points, must be in alphabetical order.

**Regulatory Text § 1026.37(f)(1)**

- (1) **Origination charges.** Under the subheading “**Origination Charges,**” an itemization of each amount, and a subtotal of all such amounts, that the consumer will pay to each creditor and loan originator for originating and extending the credit.
  - (i) The points paid to the creditor to reduce the interest rate shall be itemized separately, as both a percentage of the amount of credit extended and a dollar amount, and using the label “**\_\_% of Loan Amount (Points).**” If points to reduce the interest rate are not paid, the disclosure required by this paragraph (f)(1)(i) must be blank.

- (ii) The number of items disclosed under this paragraph (f)(1), including the points disclosed under paragraph (f)(1)(i) of this section, shall not exceed 13.

## Regulatory Commentary

### **37(f)(1) Origination charges.**

1. **Origination charges.** Charges included under the subheading **“Origination Charges”** pursuant to § 1026.37(f)(1) are those charges paid by the consumer to each creditor and loan originator for originating and extending the credit, regardless of how such fees are denominated. In accordance with § 1026.37(o)(4), the dollar amounts disclosed under § 1026.37(f)(1) must be rounded to the nearest whole dollar and the percentage amounts must be disclosed as an exact number up to two or three decimal places, except that decimal places shall not be disclosed if the percentage is a whole number. See comment 19(e)(3)(i)-3 for a discussion of when a fee is considered to be “paid to” a person. See § 1026.36(a) and associated commentary for a discussion of the meaning of “loan originator” in connection with limits on compensation in a consumer credit transaction secured by a dwelling.
2. **Indirect loan originator compensation.** Only charges paid directly by the consumer to compensate a loan originator are included in the amounts listed under § 1026.37(f)(1). Compensation of a loan originator paid indirectly by the creditor through the interest rate is not itemized on the Loan Estimate required by § 1026.19(e). However, pursuant to § 1026.38(f)(1), such compensation is itemized on the Closing Disclosure required by § 1026.19(f).
3. **Description of charges.** Other than for points charged in connection with the transaction to reduce the interest rate, for which specific language must be used, the creditor may use a general label that uses terminology that, under § 1026.37(f)(5), is consistent with § 1026.17(a)(1), clearly and conspicuously describes the service that is disclosed as an origination charge pursuant to § 1026.37(f)(1). Items that are listed under the subheading **“Origination Charges”** may include, for example, application fee, origination fee, underwriting fee, processing fee, verification fee, and rate-lock fee.
4. **Points.** If there are no points charged in connection with the transaction to reduce the interest rate, the creditor leaves blank the percentage of points used in the label and the dollar amount disclosed under § 1026.37(f)(1)(i).
5. **Itemization.** Creditors determine the level of itemization of **“Origination Charges”** that is appropriate under § 1026.37(f)(1) in relation to charges paid by the consumer to the creditor, subject to the limitations in § 1026.37(f)(1)(ii). For example, the following charges should be itemized separately: compensation paid directly by a consumer to a loan originator that is not also the creditor; or a charge imposed to pay for a loan level pricing adjustment assessed on the creditor, which the creditor passes onto the consumer as a charge at consummation and not as an adjustment to the interest rate.

## CFPB Guide

Origination Charges are items the consumer will pay to each creditor and loan originator for originating and extending credit. (§ 1026.37(f)(1))

First, include the amount paid, if any, by the consumer to the creditor to reduce the interest rate as both a percentage of the loan amount and a dollar amount. (§ 1026.37(f)(1)(i)) If no amount is paid by the consumer to the creditor to reduce the interest rate, then leave blank both the percentage of points stated in the label and the dollar amount. (Comment 37(f)(1)-4)

Any other items that the consumer will pay to the creditor and loan originator may also be disclosed, up to 13 individual items. (§ 1026.37(f)(1)(ii)) If there are more than 13 Origination Charges, disclose the total amount of the items that exceed 12 as Additional Charges. (§ 1026.37(f)(6)(i)) Describe the items, other than for points paid, using terminology that clearly and conspicuously describes the service that is disclosed. (Comment 37(f)(1)-3)

The following items should be itemized separately in the Origination Charges subheading:

- Compensation paid directly by a consumer to a loan originator that is **not** also the creditor; or
- Any charge imposed to pay for a loan level pricing adjustment (LLPA) assessed on the creditor that is passed on to the consumer as a cost at consummation and **not** as an adjustment to the interest rate. (Comment 37(f)(1)-5)

Only items paid directly by the consumer to compensate a loan originator are Origination Charges. Do not disclose compensation to a loan originator paid indirectly by a creditor through the interest rate on the Loan Estimate. (Comment 37(f)(1)-2) Also, if the LLPA is accounted for through the rate but not charged as a direct up-front fee, do not disclose the LLPA as a separately itemized Origination Charge.



**[31] Services You Cannot Shop For (page 2, Loan Costs [B])**

The diagram shows a rectangular box representing the 'Services You Cannot Shop For' section. Inside the box, at the top, is a header 'B. Services You Cannot Shop For'. Two callout boxes with arrows point to the box. The first callout box, pointing to the top right, contains the text '13 lines are available'. The second callout box, pointing to the bottom right, contains the text 'Bottom line is a “catch all” if items exceed 13. No addendum permitted.'

**Y&A Completion Instruction**

The processor must list all charges for which the creditor will not allow the consumer to shop. Typically, these services do not appear on the service provider list. Items that might appear in Section B include appraisers, flood companies, credit bureaus, PMI companies, and perhaps other services. Any service that is title work related must begin with “Title – “ to assure that all title fees are grouped together. Lender title insurance premiums must be quoted without any simultaneous issue discount.

Thirteen lines are available for these fees. The last line is a “catch all” for any remaining items. No addendum is permitted. All lines that do not contain fees must remain completely blank.

As the creditor is not permitting shopping, there is no tolerance limit. All fees must either be accurate or high. Entries must be in alphabetical order.

**Regulatory Text § 1026.37(f)(2)**

(2) **Services you cannot shop for.** Under the subheading “**Services You Cannot Shop For,**” an itemization of each amount, and a subtotal of all such amounts, the consumer will pay for settlement services for which the consumer cannot shop in accordance with § 1026.19(e)(1)(vi)(A) and that are provided by persons other than the creditor or mortgage broker.

- (i) For any item that is a component of title insurance or is for conducting the closing, the introductory description “**Title –**” shall appear at the beginning of the label for that item.
- (ii) The number of items disclosed under this paragraph (f)(2) shall not exceed 13.

## Regulatory Commentary

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

1. **Services disclosed.** Items included under the subheading “**Services You Cannot Shop For**” pursuant to § 1026.37(f)(2) are for those services that the creditor requires in connection with the transaction that would be provided by persons other than the creditor or mortgage broker and for which the creditor does not permit the consumer to shop in accordance with § 1026.19(e)(1)(vi). Comment 19(e)(1)(vi)-1 clarifies that a consumer is not permitted to shop if the consumer must choose a provider from a list provided by the creditor. cOmmment 19(e)(3)(i)-1 addresses determining good faith in providing estimates under § 1026.19(e), including estimates for services for which the consumer cannot shop. Comments 19(e)(3)(iv)-1 through -3 discuss limits and requirements applicable to providing revised estimates for services for which the consumer cannot shop.
2. **Examples of charges.** Examples of the services and amounts to be disclosed pursuant to § 1026.37(f)(2) might include an appraisal fee, appraisal management company fee, credit report fee, flood determination fee, government funding fee, homeowner’s association certification fee, lender’s attorney fee, tax status research fee, third-party subordination fee Title – closing protection letter fee, title – lender’s title insurance policy, and an upfront mortgage insurance fee, provided that the fee is charged at consummation and is not a prepayment of future premiums over a specific future time period or a payment into an escrow account. Government funding fees include a United States Department of Veterans Affairs or United States Department of Agriculture guarantee fee, or any other fee paid to a government entity as part of a governmental loan program, that is paid at consummation.
3. **Title insurance services.** The services required to be labeled beginning with “**Title –**” pursuant to § 1026.37(f)(2) or (3) are those required for the issuance of title insurance policies to the creditor in connection with the consummation of the transaction or for conducting the closing. These services may include, for example:
  - i. Examination and evaluation, based on relevant law and title insurance underwriting principles and guidelines, of the title evidence to determine the insurability of the title being examined and what items to include or exclude in any title commitment and policy to be issued;
  - ii. Preparation and issuance of the title commitment or other document that discloses the status of the title as it is proposed to be insured, identifies the conditions that must be met before the policy will be issued, and obligates the insurer to issue a policy of title insurance if such conditions are met;
  - iii. Resolution of underwriting issues and taking the steps needed to satisfy any conditions for the issuance of the policies;
  - iv. Preparation and issuance of the policy or policies of title insurance; and
  - v. Premiums for any title insurance coverage for the benefit of the creditor.
4. **Lender’s title insurance policy.** Section 1026.37(f)(2) and (3) requires disclosure of the amount the consumer will pay for the lender’s title insurance policy. However, an owner’s title insurance policy that covers the consumer and is not required to be purchased by the creditor is only

*disclosed pursuant to § 1026.37(g). Accordingly, the creditor must quote the amount of the lender's title insurance coverage pursuant to § 1026.37(f)(2) or (3) as applicable based on the type of lender's title insurance policy required by its underwriting standards for that loan. The amount disclosed for the lender's title insurance policy pursuant to § 1026.37(f)(2) or (3) is the amount of the premium without any adjustment that might be made for the simultaneous purchase of an owner's title insurance policy. This amount may be disclosed as **"Title – Premium for Lender's Coverage,"** or in any similar manner that clearly indicates the amount of the premium disclosed pursuant to § 1026.37(f)(2) is for the lender's title insurance coverage. See comment 37(g)(4)-1 for a discussion of the disclosure of the premium for an owner's title insurance policy that covers the consumer.*

## CFPB Guide

Services You Cannot Shop For are items provided by persons other than the creditor or mortgage broker that the consumer cannot shop for and will pay for at settlement. (§ 1026.37(f)(2)) Items listed as Services You Cannot Shop For must use terminology that describes each item, and disclose them in alphabetical order. (§ 1026.37(f)(5))

Services You Cannot Shop For might include:

- Appraisal fee,
- Appraisal management company fee,
- Credit report fee,
- Flood determination fee,
- Government funding fee (such as a VA or USDA guarantee fee, or any other fee paid to a government entity as part of a governmental loan program),
- Homeowner's association certification fee,
- Lender's attorney fee,
- Tax status search fee,
- Third-party subordination fee,
- Title – closing protection letter fee,
- Title – lender's title insurance policy, and
- An upfront mortgage insurance fee (unless the fee is a prepayment of future premiums or a payment into an escrow account). (Comment 37(f)(2)-2)

Describe services related to the issuance of title insurance policies with the word **Title** – at the beginning of the item. (Comment 37(f)(2)-3)

Items that are required for the issuance of title insurance policies may include:

- Examination and evaluation of title evidence to determine the insurability of the title being examined and what items to include or exclude in any title commitment and policy to be issued,

- Preparation and issuance of the title commitment or other document that discloses the status of title, identifies the conditions that must be met before the policy will be issued, and obligates the insurer to issue a policy of title insurance if such conditions are met,
- Resolution of title underwriting issues and taking steps needed to satisfy any conditions for the issuance of title insurance policies,
- Preparation and issuance of the title insurance policies, and
- Payment of premiums for any lender's title insurance coverage. (Comment 37(f)(2)-3)

The amount of the premium for the lender's title insurance coverage must be disclosed without any adjustment to the premium that might be made for the simultaneous purchase of an owner's title insurance policy. (Comment 37(f)(2)-4)

Disclose no more than 13 Services You Cannot Shop For. (§ 1026.37(f)(2)(ii)) If there are more than 13 Services You Cannot Shop For, disclose the total amount of the items that exceed 12 with the label Additional Charges. An addendum to the Loan Estimate cannot be used to disclose the additional items. (§ 1026.37(f)(6)(i))

**[32] Services You Can Shop For (page 2, Loan Costs [C])**

The diagram illustrates the layout of the 'Services You Can Shop For' section. It features a rectangular box with a header 'C. Services You Can Shop For'. Below the header is a large, empty rectangular area for listing services. Two callout boxes with arrows pointing to the area provide instructions: 'There are 14 lines available.' and 'Line 14 can be a “catch-all” or can be a total line from an addendum.'

**Y&A Completion Instruction**

The processor must include in Section C all charges for which the creditor will permit the applicant to shop. These items must appear on the service providers list, and the descriptions on both the service provider list and the Loan Estimate must match. If a service the processor is listing in this section is not included on the service provider list, then the consumer may not shop, and that service must be placed in Section B, following Section B rules. All title related fees must begin with “Title – “ to assure that these items remain together. Even if the applicant chooses a service provider from the service provider list, the fee appears in Section C. The fee that appears is generally the fee that the institution’s provider would charge. Title insurance must be quoted without a simultaneous discount.

There are 14 lines available. The bottom line can be a “catch-all” or there can be an addendum. Unused lines remain blank. Entries must be in alphabetical order.

**Regulatory Text § 1026.37(f)(3)**

- (3) **Services you can shop for.** Under the subheading “**Services You Can Shop For,**” an itemization of each amount and a subtotal of all such amounts the consumer will pay for settlement services for which the consumer can shop in accordance with § 1026.19(e)(1)(vi)(A) and that are provided by persons other than the creditor or mortgage broker.
- (i) For any item that is a component of title insurance or is for conducting the closing, the introductory description “**Title –**” shall appear at the beginning of the label for that item.
  - (ii) The number of items disclosed under this paragraph (f)(3) shall not exceed 14.

## Regulatory Commentary

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

1. **Services disclosed.** *Items included under the subheading “Services You Can Shop For” pursuant to § 1026.37(f)(3) are for those services: that the creditor requires in connection with its decision to make the loan; that would be provided by persons other than the creditor or mortgage broker; and for which the creditor allows the consumer to shop in accordance with § 1026.19(e)(1)(vi). Comments 19(e)(3)(ii)-1 through -3, and -5 address the determination of good faith in providing estimates of charges for services for which the consumer can shop. Comment 19(e)(3)(iii)-2 discusses the determination of good faith when the consumer chooses a provider that is not on the list the creditor provides to the consumer when the consumer is permitted to shop consistent with § 1026.19(e)(1)(vi). Comments 19(e)(3)(iv)-1 through -3 discuss limits and requirements applicable to providing revised estimates for services for which the consumer can shop.*
2. **Example of charges.** *Examples of the services to be listed under this subheading pursuant to § 1026.37(f)(3) might include a pest inspection fee, survey fee, title – closing agent fee, and title – closing protection letter fee.*
3. **Title insurance.** *See comments 37(f)(2)-3 and -4 for guidance on services that are to be labeled beginning with “Title – ” and on calculating and labeling the amount disclosed for lender’s title insurance pursuant to § 1026.37(f)(3). See comment 37(g)(4)-1 for a discussion of the disclosure of the premium for owner’s title insurance coverage.*

## CFPB Guide

Services You Can Shop For are services that the creditor requires but that are provided by persons other than the creditor or mortgage broker. They are services that the consumer can shop for and will pay for at settlement. (§ 1026.37(f)(3)) Items listed as Services You Can Shop For must use terminology that describes each item and disclose them in alphabetical order. (§ 1026.37(f)(5))

A creditor permits a consumer to shop for an item if the creditor permits the consumer to select the provider of that item, subject to reasonable requirements (such as appropriate licensing of the provider). (§ 1026.19(e)(1)(vi)(A); Comment 19(e)(1)(vi)-1) Whether a creditor permits a consumer to shop is determined by the relevant facts and circumstances. More information on when a creditor permits a consumer to shop is available in Section 7.5 of the Compliance Guide.

Services You Can Shop For might include:

- Pest inspection fee,
- Survey fee,
- Title – closing agent fee, and
- Title – closing protection letter fee. (Comment 37(f)(3)-2)
- When disclosing services related to the issuance of title insurance policies, use the word Title – at the beginning of the item. (Comment 37(f)(2)-3)
- Items that are related to the issuance of title insurance policies may include:

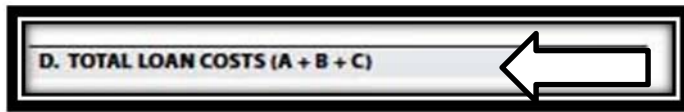
- Examination and evaluation of title evidence to determine the insurability of the title being examined and what items to include or exclude in any title commitment and policy to be issued,
- Preparation and issuance of the title commitment or other document that discloses the status of title, identifies the conditions that must be met before the policy will be issued, and obligates the insurer to issue a policy of title insurance if such conditions are met,
- Resolution of title underwriting issues and taking steps needed to satisfy any conditions for the issuance of title insurance policies,
- Preparation and issuance of the title insurance policies, and
- Payment of premiums for any lender's title insurance coverage. (Comment 37(f)(3)-3)

The creditor must disclose the amount of the premium for the lender's title insurance coverage without any adjustment to the premium that might be made for the simultaneous purchase of an owner's title insurance policy. (Comment 37(f)(3)-3)

Disclose no more than 14 Services You Can Shop For. (§ 1026.37(f)(3)(ii)) If there are more than 14 Services You Can Shop For, disclose the total amount of the items that exceed 13 with the label Additional Charges. (§ 1026.37(f)(6)(ii)(B)) An addendum to the Loan Estimate can be used to disclose the additional items. (§ 1026.37(f)(6)(ii))



***[33] Total Loan Costs (page 2, Loan Costs [D])***



**Y&A Completion Instruction**

No processor action is required. This section is simply the sum of A + B + C. The dollar amount must be rounded to the nearest dollar.

**Regulatory Text § 1026.37(f)(4)**

(4) **Total loan costs.** Under the subheading “**Total Loan Costs,**” the sum of the subtotals disclosed under paragraphs (f)(1) through (3) of this section.

**Regulatory Commentary**

*None.*

**CFPB Guide**

Total Loan Costs is the sum of the subtotals of Origination Charges, Services You Cannot Shop For, and Services You Can Shop For. (§ 1026.37(f)(4))

## ***[34] Item Descriptions and Ordering (page 2, Loan Costs)***

### **Y&A Completion Instruction**

The processor must assure that points are always listed first in Section A. Other than this one exception, all other items in Section A, Section B, and Section C must be properly identified (reasonably understood) and placed in alphabetical order. Any description(s) for services listed on the service provider list should match the service provider list description. This will help the creditor meet the standard of “clear and conspicuous.”

### **Regulatory Text § 1026.37(f)(5)**

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

- (i) The item prescribed in paragraph (f)(1)(i) of this section for points shall be the first item listed in the disclosure pursuant to paragraph (f)(1) of this section.
- (ii) All other items must be listed in alphabetical order by their labels under the applicable subheading.

### **Regulatory Commentary**

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

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

### **CFPB Guide**

None.

## ***[35] Use of Addenda (page 2, Loan Costs)***

### **Y&A Completion Instruction**

The processor must assure that Loan Origination Charges (Section A) and Services You Cannot Shop For (Section B) do not have an addendum. Services You Can Shop For (Section C) can have an addendum at the creditor's discretion. Any required state law disclosures must be separate, and the creditor must assure that the consumer can tell the difference between the two. There is now a new section to the commentary about post closing fees that should be considered.

### **Regulatory Text § 1026.37(f)(6)**

#### **(6) Use of addenda.**

- (i) An addendum to a form of disclosures prescribed by this section may not be used for items described in paragraph (f)(1) or (2) of this section. If the creditor is not able to itemize every service and every corresponding charge required to be disclosed in the number of lines provided by paragraph (f)(1)(ii) or (2)(ii) of this section, the remaining charges shall be disclosed as an aggregate amount in the last line permitted under paragraph (f)(1)(ii) or (2)(ii), as applicable, labeled **“Additional Charges.”**
- (ii) An addendum to a form of disclosures prescribed by this section may be used for items described in paragraph (f)(3) of this section. If the creditor is not able to itemize all of the charges required to be disclosed in the number of lines provided by paragraph (f)(3)(ii), the remaining charges shall be disclosed as follows:
  - (A) Label the last line permitted under paragraph (f)(3)(ii) with an appropriate reference to an addendum and list the remaining items on the addendum in accordance with the requirements in paragraphs (f)(3) and (5) of this section; or
  - (B) Disclose the remaining charges as an aggregate amount in the last line permitted under paragraph (f)(3)(ii), labeled **“Additional Charges.”**

### **Regulatory Commentary**

#### ***37(f)(6) Use of addenda.***

- 1. State law disclosures.*** *If a creditor is required by State law to make additional disclosures that, pursuant to § 1026.37(f)(6)(i), cannot be included in the disclosures required under § 1026.37(f), the creditor may make those additional State law disclosures on a document whose pages are separate from, and are not presented as part of, the disclosures prescribed in § 1026.37, for example, as an addendum to the Loan Estimate. See comment 37(o)(1)-1*
- 2. Reference to addendum.*** *If an addendum is used as permitted under § 1026.37(f)(6)(ii) an example of a label that complies with the requirement for an appropriate reference on the last line is: “See attached page for additional items you can shop for.”*

**3. Addendum for post-consummation inspection and handling fees.** *A creditor makes the disclosures required by § 1026.37(f) and comment 37(f)-3 for construction loan inspection and handling fees collected after consummation by disclosing the total of such fees under the heading “Inspection and Handling Fees Collected After Closing” in an addendum, which may be the addendum pursuant to § 1026.37(f)(6) or any other addendum or additional page under § 1026.37. See comment 37(o)(1)-1. For purposes of comment 38(f)-2, the addendum may be any addendum or additional page under § 1026.38. If the actual amount of such fees is not known at the time the disclosures are provided, the disclosures in the addendum are based upon the best information reasonably available to the creditor at the time the disclosure is provided. See comment 19(e)(1)(i)-1. For example, such information could include amounts the creditor has previously charged in similar construction transactions or the amount of estimated inspection and handling fees used by the creditor for purposes of setting the construction loan’s commitment amount.*

## CFPB Guide

None.

## Section 8: Closing Cost Details; Other Costs

### 12 CFR § 1026.37(g)

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#### *General Language*

#### **Y&A Completion Instruction**

This section details the right hand side of page 2 of the Loan Estimate. There are six subheadings that are all boilerplate in nature. This portion of the Loan Estimate is for both items that are required and items that are optional. They include filing fees, escrow, prepaids, and other similar items.

#### **Regulatory Text § 1026.37(g)**

- (g) **Closing cost details; other costs.** Under the master heading “**Closing Cost Details,**” in a table under the heading “**Other Costs,**” all costs associated with the transaction that are in addition to the costs disclosed under paragraph (f) of this section. The table shall contain the items and amounts listed under six subheadings, described in paragraphs (g)(1) through (6) of this section.

#### **Regulatory Commentary**

##### ***37(g) Closing cost details; other costs.***

- 1. General description.** *The items listed under the heading of “Other Costs” pursuant to § 1026.37(g) include services that are ancillary to the creditor’s decision to evaluate the collateral and the consumer for the loan. The amounts disclosed for these items are: established by government action; determined by standard calculations applied to ongoing fixed costs; or based on an obligation incurred by the consumer independently of any requirement imposed by the creditor, except for prepaid interest under § 1026.37(g)(2)(iii), or charges for optional credit insurance provided by the creditor, the creditor does not retain any of the amounts or portions of the amounts disclosed as other costs.*
- 2. Charges pursuant to property contract.** *The creditor is required to disclose charges that are described in § 1026.37(g)(1) through (3). Other charges that are required to be paid at or before closing pursuant to the property contract for sale between the consumer and seller are disclosed on the Loan Estimate to the extent the creditor has knowledge of those charges when it issues the Loan Estimate, consistent with the good faith standard under § 1026.19(e). A creditor has knowledge of those charges where, for example, it has the real estate purchase and sale contract. See also § 1026.37(g)(4) and comment 37(g)(4)-3.*

## CFPB Guide

Disclose Other Costs under four subheadings, each of which is subtotaled:

- Taxes and Other Government Fees,
- Prepaids,
- Initial Escrow Payment at Closing, and
- Other.

Total Other Costs is the sum of these four subtotals. (§ 1026.37(g)(5))


Other Costs are established by government action, determined by standard calculations applied to ongoing fixed costs, or based on an obligation incurred by the consumer independently of any requirement imposed by the creditor. (Comment 37(g)-1) Other items that are required to be paid at or before closing pursuant to the contract for sale between the consumer and a seller are disclosed on the Loan Estimate to the extent the creditor has knowledge of those items when it issues the Loan Estimate. (Comment 37(g)-2)

Other Costs must be disclosed in the order listed in the TILA-RESPA Rule, with any additional items listed in alphabetical order in subsequent lines of the applicable subheading. (§ 1026.37(g)(7))

An addendum to the Loan Estimate cannot be used for additional items on the Other Costs table. If all of the charges cannot be itemized in the number of lines provided in a subheading of the Other Costs table, the total of those items that exceed the number permitted are disclosed with the label “Additional Charges” on the last line of that subheading. (§ 1026.37(g)(8))

**[36] Taxes and Other Government Fees (page 2, Loan Costs [E])**

<b>Other Costs</b>
<b>E. Taxes and Other Government Fees</b>
Recording Fees and Other Taxes
Transfer Taxes


**Y&A Completion Instruction**

This section includes recording fees, other government fees, and transfer taxes (if applicable under state law). The processor must place recording fees and other taxes as a lump sum on the first line. This amount should be as accurate as possible, as it is possible that this number may be the only items in the 10% tolerance classification. Depending on the state, electronic filing fees may appear here or with the title work.

The second line specifically for transfer taxes, when paid by the applicant. If there is no transfer tax or the transfer tax is being paid by someone other than the applicant, the transfer tax line remains blank. All dollar amounts must be rounded to the nearest dollar.

**Regulatory Text § 1026.37(g)(1)**

- (1) **Taxes and other government fees.** Under the subheading “**Taxes and Other Government Fees**,” the amounts to be paid to State and local governments for taxes and other government fees, and the subtotal of all such amounts, as follows:
- (i) On the first line, the sum of all recording fees and other government fees and taxes, except for transfer taxes paid by the consumer and disclosed pursuant to paragraph (g)(1)(ii) of this section, labeled “**Recording Fees and Other Taxes**.”
  - (ii) On the second line, the sum of all transfer taxes paid by the consumer, labeled “**Transfer Taxes**.”
  - (iii) If an amount required to be disclosed by this paragraph (g)(1) is not charged to the consumer, the amount disclosed on the applicable line required by this paragraph (g)(1) must be blank.

**Regulatory Commentary****37(g)(1) Taxes and other government fees.**

1. **Recording fees.** Recording fees listed under § 1026.37(g)(1) are fees assessed by a government authority to record and index the loan and title documents as required under State or local law. Recording fees are assessed based on the type of document to be recorded or its physical



characteristics, such as the number of pages. Unlike transfer taxes, recording fees are not based on the sale price of the property or loan amount. For example, a fee for recording a subordination agreement that is \$20, plus \$3 for each page over three pages, is a recording fee, but a fee of \$1,250 based on 0.5 percent of the loan amount is a transfer tax, and not a recording fee.

2. **Other government charges.** Any charges or fees imposed by a State or local government that are not transfer taxes are aggregated with recording fees and disclosed under § 1026.37(g)(1)(i).
3. **Transfer taxes – terminology.** In general, transfer taxes listed under § 1026.37(g)(1) are State and local government fees on mortgages and home sales that are based on the loan amount or sales price, while recording fees are State and local government fees for recording the loan and title documents. The name that is used under State or local law to refer to these amounts is not determinative of whether they are disclosed as transfer taxes or as recording fees and other taxes under § 1026.37(g)(1).
4. **Transfer taxes – consumer.** Only transfer taxes paid by the consumer are disclosed on the Loan Estimate pursuant to § 1026.37(g)(1). State and local government transfer taxes which determines if the seller or consumer is ultimately responsible for paying the transfer taxes. For example, if State law indicates a lien can attach to the consumer's acquired property if the transfer tax is not paid, the transfer tax is disclosed. If State or local law is unclear or does not specifically attribute transfer taxes to the seller or the consumer, the creditor is in compliance with requirements of § 1026.37(g)(1) if the amount of the transfer tax disclosed is not less than the amount apportioned to the consumer using common practice in the locality of the property.
5. **Transfer taxes – seller.** Transfer taxes paid by the seller in a purchase transaction are not disclosed on the Loan Estimate under § 1026.37(g)(1)], but are disclosed on the Closing Disclosure pursuant to § 1026.38(g)(1)(ii).
6. **Deletion and addition of items.** The lines and labels required by § 1026.37(g)(1) may not be deleted, even if recording fees or transfer taxes are not charged to the consumer. No additional items may be listed under the subheading in § 1026.37(g)(1).

## CFPB Guide

Under Taxes and Other Government Fees, disclose Recording Fees and Other Taxes first and Transfer Taxes second. (§ 1026.37(g)(1))

Recording Fees and Other Taxes are fees assessed by a government authority to record and index the loan and title documents as required under State or local law, together with any charges or fees imposed by a State or local government that are not Transfer Taxes. (Comment 37(g)(1)-1 and -2) Recording Fees and Other Taxes do not include fees that are based on the Sale Price of the Property or Loan Amount. For example, a fee for recording a subordination that is \$20, plus \$3 for each page over three pages, is included as Recording Fees and Other Taxes; but a fee of \$1,250 based on 0.5% of the Loan Amount is included as Transfer Taxes, and not included as Recording Fees and Other Taxes. (Comment 37(g)(1)-1) Sales tax and other types of tax assessed on the individual settlement services provided are included in the cost of the individual service and are not disclosed as Recording Fees and Other Taxes.

Transfer Taxes are State and local government fees on mortgages and home sales that are based on the Loan Amount or Sale Price of the Property. The name that is used under State or

local law to refer to these amounts is not determinative of whether or not they are disclosed as Transfer Taxes on the Loan Estimate. (Comment 37(g)(1)-3)

Disclose only Transfer Taxes paid by the consumer on the Loan Estimate. Whether the consumer pays the transfer tax is based on applicable State or local law. For example:

- If a State law indicates a lien can attach to the consumer's acquired property if the charge is not paid, the amount is included as part of Transfer Taxes;
- If State or local law is unclear or does not specifically attribute the amount to the seller or consumer, disclose the amount apportioned to the consumer using common practice in the locality of the property. (Comment 38(g)(1)-4)

Transfer taxes to be paid by the seller are not disclosed on the Loan Estimate as Transfer Taxes. (Comment 38(g)(1)-5)

The amount of Transfer Taxes disclosed could be modified to the extent the creditor has knowledge of the apportionment of transfer taxes in the contract for sale between the consumer and a seller when it issues the Loan Estimate. (Comment 37(g)-2) When a creditor does not have the contract of sale when it issues the Loan Estimate, the creditor must use the apportionment of transfer taxes provided for by State or local law, or common practice when State or local law is unclear. (Comment 37(g)(1)-4)

Disclose the sum of all transfer taxes paid by the consumer as Transfer Taxes. (§ 1026.37(g)(1)(ii)) No additional items may be listed or deleted in the Taxes and Other Government Fees category. (Comment 37(g)(1)-6)

**[37] Prepays (page 2, Loan Costs [F])**

<b>F. Prepays</b>			
Homeowner's Insurance Premium (	months)		
Mortgage Insurance Premium (	months)		
Prepaid Interest (	per day for	days @	)
Property Taxes (	months)		

There is room within this disclosure for an additional three items. Fill out all required items for each of the seven possible categories.

**Y&A Completion Instruction**

The processor must indicate in this section all items that the consumer must pay at or before consummation of the loan for the purpose of inducing the creditor to make the loan. The include homeowners insurance, up front mortgage insurance premiums, prepaid (odd days) interest, property taxes that will be coming due shortly (within 60 days) and any other additional items that must be paid. These may include flood insurance, delinquent taxes, or any similar item that must be paid before the creditor is willing close the loan. There is room on the form for an additional 3 items. The totals for each line item are rounded to the nearest dollar.

**Regulatory Text § 1026.37(g)(2)**

(2) **Prepays.** Under the subheading “**Prepays,**” an itemization of the amounts to be paid by the consumer in advance of the first scheduled payment, and the subtotal of all such amounts, as follows:

- (i) On the first line, the number of months for which homeowner’s insurance premiums are to be paid by the consumer at consummation and the total dollar amount to be paid by the consumer at consummation for such premiums, labeled “**Homeowner’s Insurance Premium ( \_\_ months).**”
- (ii) On the second line, the number of months for which mortgage insurance premiums are to be paid by the consumer at consummation and the total dollar amount to be paid by the consumer at consummation for such premiums, labeled “**Mortgage Insurance Premium ( \_\_ months).**”
- (iii) On the third line, the amount of prepaid interest to be paid per day, the number of days for which prepaid interest will be collected, the interest rate, and the total dollar amount to be paid by the consumer at consummation for such interest, labeled “**Prepaid Interest ( \_\_\_\_ per day for \_ days @ \_\_\_\_ %).**”
- (iv) On the fourth line, the number of months for which property taxes are to be paid by the consumer at consummation and the total dollar amount to be paid by the consumer at consummation for such taxes, labeled “**Property Taxes ( \_\_ months).**”
- (v) If an amount is not charged to the consumer for any item for which this paragraph (g)(2) prescribes a label, each of the amounts required to be disclosed on that line must be blank.

- (vi) A maximum of three additional items may be disclosed under this paragraph (g)(2), and each additional item must be identified and include the applicable time period covered by the amount to be paid by the consumer at consummation and the total amount to be paid.

## Regulatory Commentary

### **37(g)(2) Prepays.**

1. **Examples.** *Prepaid items required to be disclosed pursuant to § 1026.37(g)(2) include the interest due at consummation for the period of time before interest begins to accrue for the first scheduled periodic payment and certain periodic charges that are required by the creditor to be paid at consummation. Each periodic charge listed as a prepaid item indicates, as applicable, the time period that the charge will cover, the daily amount, the percentage rate of interest used to calculate the charge, and the total dollar amount of the charge. Examples of periodic charges that are disclosed pursuant to § 1026.37(g)(2) include:*
  - i. *Real estate property taxes due within 60 days after consummation of the transaction;*
  - ii. *Past-due real estate property taxes;*
  - iii. *Mortgage insurance premiums;*
  - iv. *Flood insurance premiums; and*
  - v. *Homeowner's insurance premiums.*
2. **Interest rate.** *The interest rate disclosed pursuant to § 1026.37(g)(2)(iii) is the same interest rate disclosed pursuant to § 1026.37(b)(2).*
3. **Terminology.** *For purposes of § 1026.37(g)(2), the term “property taxes” has the same meaning as in § 1026.43(b)(8) and further described in comment 43(b)(8)-2; the term “homeowner's insurance” means the amounts identified in § 1026.4(b)(8); and the term “mortgage insurance” has the same meaning as “mortgage insurance or any functional equivalent” in § 1026.37(c), which means the amounts identified in § 1026.4(b)(5).*
4. **Deletion of items.** *The lines and labels required by § 1026.37(g)(2) may not be deleted, even if amounts for those labeled items are not charged to the consumer. If an amount for a labeled item is not charged to the consumer, the time period, daily amount, and percentage used in the labels are left blank.*

## CFPB Guide

Prepays are items to be paid by the consumer in advance of the first scheduled payment of the loan. (§ 1026.37(g)(2)) Prepays are:

- Homeowner's Insurance Premium,
- Mortgage Insurance Premium,
- Prepaid Interest,

- Property Taxes, and
- A maximum of three additional items.

Each item must include the applicable time period covered by the amount to be paid by the consumer and the total amount to be paid. (§ 1026.37(g)(2)(i)-(iv))

**[38] Initial Escrow Payment at Closing (page 2, Loan Costs [G])**

<b>G. Initial Escrow Payment at Closing</b>		
Homeowner's Insurance	per month for	mo.
Mortgage Insurance	per month for	mo.
Property Taxes	per month for	mo.

There is room for 7 possible escrow items. Note that the disclosure does not allow for a negative aggregate adjustment. The negative aggregate adjustment does appear on the Closing Disclosure.

**Y&A Completion Instruction**

The processor should complete all relevant escrow items, based on the best information available at the time of completion. This disclosure uses the single item accounting system. There is no negative aggregate adjustment at this time. There is room on the form for up to seven escrow items. The totals for each line item are rounded to the nearest dollar, even if the monthly amount is not whole dollars.

**Regulatory Text § 1026.37(g)(3)**

- (3) **Initial escrow payment at closing.** Under the subheading “**Initial Escrow Payment at Closing,**” an itemization of the amounts that the consumer will be expected to place into a reserve or escrow account at consummation to be applied to recurring periodic charges, and the subtotal of all such amounts, as follows:
- (i) On the first line, the amount escrowed per month, the number of months covered by an escrowed amount collected at consummation, and the total amount to be paid into the escrow account by the consumer at consummation for homeowner’s insurance premiums, labeled “**Homeowner’s Insurance \_ per month for \_ mo.**”
  - (ii) On the second line, the amount escrowed per month, the number of months covered by an escrowed amount collected at consummation, and the total amount to be paid into the escrow account by the consumer at consummation for mortgage insurance premiums, labeled “**Mortgage Insurance \_ per month for \_ mo.**”
  - (iii) On the third line, the amount escrowed per month, the number of months covered by an escrowed amount collected at consummation, and the total amount to be paid into the escrow account by the consumer at consummation for property taxes, labeled “**Property Taxes \_ per month for \_ mo.**”
  - (iv) If an amount is not charged to the consumer for any item for which this paragraph (g)(3) prescribes a label, each of the amounts required to be disclosed on that line must be blank.

- (v) A maximum of five items may be disclosed pursuant to this paragraph (g)(3) in addition to the items described in paragraph (g)(3)(i) through (iii) of this section, and each such additional item must be identified with a descriptive label and include the applicable amount per month, the number of months collected at consummation, and the total amount to be paid.

## Regulatory Commentary

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

- 1. Listed item not charged.** Pursuant to § 1026.37(g)(3), each periodic charge to be included in the escrow or reserve account must be itemized under the **“Initial Escrow Payment at Closing”** subheading, with a relevant label, monthly payment amount, and number of months expected to be collected at consummation. If an item described in § 1026.37(g)(3)(i) through (iii) is not charged to the consumer, the monthly payment amount and time period used in the labels are left blank.
- 2. Aggregate escrow account calculation.** The aggregate escrow account adjustment required under § 1026.38(g)(3) and 12 CFR 1024.17(d)(2) is not included on the Loan Estimate under § 1026.37(g)(3).
- 3. Terminology.** As used in § 1026.37(g)(3), the term **“property taxes”** has the same meaning as in § 1026.43(b)(8) and further described in comment 43(b)(8)-2; the term **“homeowner’s insurance”** means the amounts identified in § 1026.4(b)(8); and the term **“mortgage insurance”** has the same meaning as **“mortgage insurance or any functional equivalent”** in § 1026.37(c).
- 4. Deletion of items.** The lines and labels required by § 1026.37(g)(3) may not be deleted, even if amounts for those labeled items are not charged to the consumer.
- 5. Escrowed tax payments for different time frames.** Payments for property taxes that are paid at different time periods can be itemized separately when done in accordance with 12 CFR 1024.17, as applicable. For example, a general property tax covering a fiscal year from January 1 to December 31 can be listed as a property tax under § 1026.37(g)(3)(i); and a separate property tax to fund schools that cover a fiscal year from November 1 to October 31 can be added as a separate item under § 1026.37(g)(3)(v).

## CFPB Guide

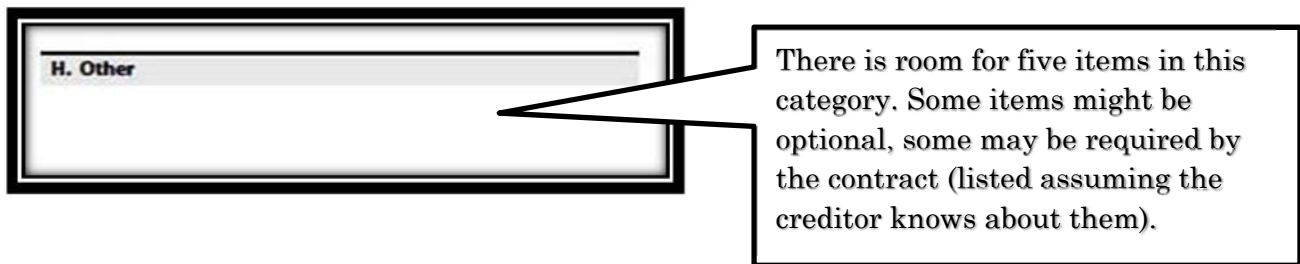
Initial Escrow Payment at Closing includes items that the consumer will be expected to place into a reserve or escrow account at consummation to be applied to recurring periodic payments. (§ 1026.37(g)(3)) Initial Escrow Payment at Closing includes:

- Homeowner’s Insurance,
- Mortgage Insurance,
- Property Taxes, and



- A maximum of five other items.

Also disclose the amount escrowed per month for each item, the number of months collected at consummation and the total amount paid. (§ 1026.37(g)(3)(i), (ii), (iii), (v))

**[39] Other (page 2, Loan Costs [H])**


H. Other

There is room for five items in this category. Some items might be optional, some may be required by the contract (listed assuming the creditor knows about them).

**Y&A Completion Instruction**

The processor must list a wide variety of items in this section. If it is a purchase, owner's title insurance (based on the full premium, not any simultaneous discount) is included here, although it can be marked as optional. Other optional items are also listed here, as well as any items that are required under the sales contract, if the creditor has all access to that information. If any item is related to title issues (notably the owner's title insurance), then the label must begin "Title –." There is room on the form for up to five items. All dollar amounts are rounded to the nearest dollar.

**Regulatory Text § 1026.37(g)(4)**

- (4) **Other.** Under the subheading "**Other,**" an itemization of any other amounts in connection with the transaction that the consumer is likely to pay or has contracted with a person other than the creditor or loan originator to pay at closing and of which the creditor is aware at the time of issuing the Loan Estimate, a descriptive label of each such amount, and the subtotal of all such amounts.
- (i) For any item that is a component of title insurance, the introductory description "**Title –**" shall appear at the beginning of the label for that item.
  - (ii) The parenthetical description "**(optional)**" shall appear at the end of the label for items disclosing any premiums paid for separate insurance, warranty, guarantee, or event-coverage products.
  - (iii) The number of items disclosed under this paragraph (g)(4) shall not exceed five.

**Regulatory Commentary****37(g)(4) Other.**

1. **Owner's title insurance policy rate.** *The amount disclosed for an owner's title insurance premium pursuant to § 1026.37(g)(4) is based on a basic owner's policy rate, and not on an "enhanced" title insurance policy premium, except that the creditor may instead disclose the premium for an "enhanced" policy when the "enhanced" title insurance policy is required by the*

real estate sales contract, if such requirement is known to the creditor when issuing the Loan Estimate. This amount should be disclosed as **“Title – Owner’s Title Policy (optional),”** or in any similar manner that includes the introductory description **“Title –”** at the beginning of the label for the item, the parenthetical description **“(optional)”** at the end of the label, and clearly indicates the amount of the premium disclosed pursuant to § 1026.37(g)(4) is for the owner’s title insurance coverage. See comment 37(f)(2)-4 for a discussion of the disclosure of the premium for lender’s title insurance coverage.

2. **Simultaneous title insurance premium rate in purchase transactions.** The premium for an owner’s title insurance policy for which a special rate may be available based on the simultaneous issuance of a lender’s and an owner’s policy is calculated and disclosed pursuant to § 1026.37(g)(4) as follows:
  - i. The title insurance premium for a lender’s title policy is based on the full premium rate, consistent with § 1026.37(f)(2) or (f)(3).
  - ii. The owner’s title insurance premium is calculated by taking the full owner’s title insurance premium, adding the simultaneous issuance premium for the lender’s coverage, and then deducting the full premium for lender’s coverage.
3. **Designation of optional items.** Products disclosed under § 1026.37(g)(4) for which the parenthetical description **“(optional)”** is included at the end of the label for the item include only items that are separate from any item disclosed on the Loan Estimate under paragraphs other than § 1026.37(g)(4). For example, such items may include optional owner’s title insurance, credit life insurance, debt suspension coverage, debt cancellation coverage, warranties of home appliances and systems, and similar products, when coverage is written in connection with a credit transaction that is subject to § 1026.19(e). However, because the requirement in § 1026.37(g)(4)(ii) applies to separate products only, additional coverage and endorsements on insurance otherwise required by the lender are not disclosed under § 1026.37(g)(4). See comments 4(b)(7) and (b)(8)-1 through -3 and comments 4(b)(10)-1 and -2 for guidance on determining when credit life insurance, debt suspension coverage, debt cancellation coverage, and similar coverage is written in connection with a transaction subject to § 1026.19(e).
4. **Examples.** Examples of other items that are disclosed under § 1026.37(g)(4) if the creditor is aware of those items when it issues the Loan Estimate include commissions of real estate brokers or agents, additional payments to the seller to purchase personal property pursuant to the property contract, homeowner’s association and condominium charges associated with the transfer of ownership, and fees for inspections not required by the creditor but paid by the consumer pursuant to the property contract. Although the consumer is obligated for these costs, they are not imposed upon the consumer by the creditor or loan originator. Therefore, they are not disclosed with the parenthetical description **“(optional)”** at the end of the label for the item, and they are disclosed pursuant to § 1026.37(g) rather than § 1026.37(f). Even if such items are not required to be disclosed on the Loan Estimate under § 1026.37(g)(4), however, they may be required to be disclosed on the Closing Disclosure pursuant to § 1026.38. Comment 19(e)(3)(iii)-3 discusses application of the good faith requirement for services chosen by the consumer that are not required by the creditor.

## CFPB Guide

Other includes items in connection with the transaction that the consumer is likely to pay or has contracted with a person other than the creditor or loan originator to pay at closing and of which the creditor is aware at the time of issuing the Loan Estimate. (§ 1026.37(g)(4))

Separate insurance, warranty, guarantee or event-coverage products include, for example:

- Owner's title insurance,
- Credit life insurance,
- Debt suspension coverage,
- Debt cancellation coverage,
- Warranties of home appliances and systems, and
- Similar products.

These items are disclosed when coverage is written in connection with a mortgage. These examples would not include additional coverage and endorsements on insurance otherwise required by the creditor. (Comment 37(g)(4)-3)

Items that disclose any premiums paid for separate insurance, warranty, guarantee, or event-coverage products not required by the creditor must include the parenthetical description (optional) at the end of the label. (§ 1026.37(g)(4)(ii))

A maximum of five items can be disclosed as Other. (§ 1026.37(g)(4)(iii))

Describe services related to the issuance of title insurance policies with the word Title – at the beginning of the item. When the owner's title insurance premium includes a simultaneous issuance premium, the premium is calculated by taking the full owner's title insurance premium, adding the simultaneous issuance premium for the lender's coverage (if any), and then deducting the full premium for lender's coverage. (Comment 37(g)(4)-2)

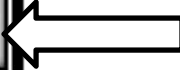
When the creditor is aware of those items, Other includes for example:

- Commissions of real estate brokers or agents,
- Additional payments to the seller to purchase personal property pursuant to the contract of sale,
- Homeowner's association and condominium charges associated with the transfer of ownership, and
- Fees for inspections **not** required by the creditor but paid by the consumer pursuant to the contract of sale. (Comment 37(g)(4)-4)

Other does not include construction costs, payoffs of existing liens, or payoffs of other secured debt or unsecured debt.

***[40] Total Other Costs (page 2, Loan Costs [I])***

<b>I. TOTAL OTHER COSTS (E + F + G + H)</b>
---

**Y&A Completion Instruction**

No processor action is required. This section is simply the sum of E + F + G + H. The total is rounded to the nearest dollar.

**Regulatory Text § 1026.37(g)(5)**

(5) **Total other costs.** Under the subheading “**Total Other Costs,**” the sum of the subtotals disclosed pursuant to paragraphs (g)(1) through (4) of this section.

**Regulatory Commentary**

*None.*

**CFPB Guide**

None.

**[41] Total Closing Costs (page 2, Loan Costs [J])**

<b>J. TOTAL CLOSING COSTS</b>
D + I
Lender Credits

**Y&A Completion Instruction**

This section totals the closing costs, by adding D + I and subtracting any lender credits. Lender credits are entered as a negative number. The processor should enter any lender credit, understanding that any credit provided can never be reduced or removed, only increased.

**Regulatory Text § 1026.37(g)(6)**

- (6) **Total closing costs.** Under the subheading “**Total Closing Costs,**” the component amounts and their sum, as follows:
- (i) The sum of the amounts disclosed as loan costs and other costs under paragraphs (f)(4) and (g)(5) of this section, labeled “**D + I**”; and
  - (ii) The amount of any lender credits, disclosed as a negative number with the label “**Lender Credits**” provided that, if no such amount is disclosed, the amount must be blank.

**Regulatory Commentary****37(g)(6) Total closing costs.****Paragraph 37(g)(6)(ii).**

1. **Lender credits.** Section 1026.19(e)(1)(i) requires disclosure of lender credits as provided in § 1026.37(g)(6)(ii). Such lender credits include non-specific lender credits as well as specific lender credits. See comment 19(e)(3)(i)-5.
2. **Credits or rebates from the creditor to offset a portion or all of the closing costs.** For loans where a portion or all of the closing costs are offset by a credit or rebate provided by the creditor (sometimes referred to as “**no-cost**” loans), whether all or a defined portion of the closing costs disclosed under § 1026.37(f) or (g) will be paid by a credit or rebate from the creditor, the creditor discloses such credit or rebate as a lender credit under § 1026.37(g)(6)(ii). The creditor should ensure that the lender credit disclosed under § 1026.37(g)(6)(ii) is sufficient to cover the estimated costs the creditor represented to the consumer as not being required to be paid by the consumer at consummation, regardless of whether such representations pertained to specific items.

## CFPB Guide

Total Closing Costs is the sum of Total Loan Costs (shown in Figure 8), Total Other Costs, and Lender Credits. (§ 1026.37(g)(6))

Lender Credits is the amount of any payments from the creditor to the consumer and is disclosed as a negative number. Lender Credits include specific lender credits (if any) that pay for a particular fee disclosed on the Loan Estimate and general or non-specific lender credits (if any) that do not pay for a particular fee on the Loan Estimate. (Comment 37(g)(6)(ii)-1)

For loans where all or a portion of closing costs are offset by a credit or rebate provided by the creditor (sometimes referred to as “no cost” loans), disclose such credit or rebate as Lender Credits. The creditor should ensure that Lender Credits is sufficient to cover the estimated items the creditor represented to the consumer as not being paid by the consumer at consummation, regardless of whether such representations pertained to specific items. (Comment 37(g)(6)(ii)-2.



## ***[42] Item Descriptions and Ordering (page 2, Loan Costs)***

### **Y&A Completion Instruction**

The processor must label each fee included in “Other Costs” clearly. Some labels are dictated by the regulation, others are not. All items must be in alphabetical order within each section, unless the required labels will not permit this to occur.

### **Regulatory Text § 1026.37(g)(7)**

**(7) Item descriptions and ordering.** The items listed as other costs pursuant to this paragraph (g) shall be labeled using terminology that describes each item.

(i) The items prescribed in paragraphs (g)(1)(i) and (ii), (g)(2)(i) through (iv), and (g)(3)(i) through (iii) of this section must be listed in the order prescribed as the initial items under the applicable subheading, with any additional items to follow.

(ii) All additional items must be listed in alphabetical order under the applicable subheading.

### **Regulatory Commentary**

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

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

### **CFPB Guide**

None.

## ***[43] Use of Addenda (page 2, Loan Costs)***

### **Y&A Completion Instruction**

None of the items in “Other Costs” may have an addendum. If there are more charges than lines, the bottom line in each section becomes a “catch-all.”

State law required forms must be separate, and it must be clear that the state law required forms are not part of the Loan Estimate.

### **Regulatory Text § 1026.37(g)(8)**

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

### **Regulatory Commentary**

#### ***37(g)(8) Use of addenda.***

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

### **CFPB Guide**

None.

## Section 9: Calculating Cash to Close

### 12 CFR § 1026.37(h)

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#### **Regulatory Text**

(h) Calculating cash to close.

#### **Regulatory Commentary**

*None.*

#### **CFPB Guide**

*None.*

**[44] For All Transactions (page 2, Calculating Cash to Close)**

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

Seven items are part of this calculation.

**Y&A Commentary**

This table is designed to explain to the customer the amount of cash that is either required at closing, or that they may be receiving at closing. There are seven components that are discussed below. The addition and subtraction of these items (as applicable) will lead to the Estimated Cash to Close.

Some of the components are intuitive. Some are not. So a careful reading of the regulatory text would be useful.

**Y&A Completion Instruction**

The processor must calculate and enter the following eight items. Some of these amounts are calculated elsewhere and included in this calculation without processor input.

- The amount disclosed as the total of Section J.
- The amount of any closing costs to be paid out of loan proceeds, disclosed as a negative number.
- Down Payment/Funds from Borrower
  - The down payment required in a purchase (the amount of the difference between the purchase price of the property and the principal amount of the loan), disclosed as a positive number; or
  - In non-purchase transactions, the estimated funds required from the consumer.
- In a purchase transaction, the amount that is paid to the seller or held in trust or escrow by an attorney or other party under the terms of the agreement for the sale of the property, disclosed as a negative number. In non purchase loans, the processor should disclose "\$0."
- The amount of funds for the consumer, which is calculated by subtracting the principal amount of the credit extended from the total amount of all existing debt being satisfied in the transaction (this is only calculated if this form of the disclosure is being used in a

refinance, and additional information about this calculation appears below. In general, this field will be \$0 in most transactions

- The total amount that the seller will pay for total loan costs, to the extent known, disclosed as a negative number.
- The amount of all loan costs that are paid by persons other than the loan originator, creditor, consumer, or seller, together with any other amounts that are required to be paid by the consumer at closing pursuant to a purchase and sale contract, disclosed as a negative number.
- The sum of all of these amounts.

There is additional information about many of these fields located in the regulatory text and commentary below. A careful reading of this text is required.

### **Regulatory Text § 1026.37(h)(1)**

- (1) For all transactions. **Under the master heading “Closing Cost Details,”** under the heading **“Calculating Cash to Close,”** the total amount of cash or other funds that must be provided by the consumer at consummation, with an itemization of that amount into the following component amounts:

### **Regulatory Commentary**

#### ***37(h)(1) For all transactions.***

1. ***Labels for amounts disclosed.*** Section 1026.37(h)(1) describes the amounts that are used to calculate the estimated amount of cash or other funds that the consumer must provide at consummation. The labels that are to be used under § 1026.37(h)(1) are illustrated by form H-24(A) of appendix H to this part.
2. ***Simultaneous subordinate financing.*** On the Loan Estimate for simultaneous subordinate financing purchase transactions, the sale price disclosed under § 1026.37(a)(7)(i) is not used under § 1026.37(h)(1) for the calculating cash to close table calculations that include the sale price as a component of the calculation. For example, sale price is generally included in the closing costs financed calculation under § 1026.37(h)(1)(ii) as a component of the estimated total amount of payments to third parties. However, for simultaneous subordinate financing transactions, the estimated total amount of payments to third parties would not include the sale price. The estimated total amount of payments to third parties only includes payments occurring in the simultaneous subordinate financing transaction other than payments toward the sale price.

### **CFPB Guide**

A creditor discloses a calculation yielding an estimate of the cash needed from or provided to the consumer at consummation. The calculation is based on seven components:

- Total Closing Costs,
- Closing Costs Financed (Paid from your Loan Amount),
- Down Payment /Funds from Borrower,
- Deposit,
- Funds for Borrower,
- Seller Credits, and
- Adjustments and Other Credits.

The estimate is based on these components, as set out in the TILA-RESPA Rule and further discussed below and in the Compliance Guide. The calculation and its components, such as the Down Payment/Funds from Borrower, are independent of and may differ from certain loan program or investor requirements.

The diagram shows a table titled "Calculating Cash to Close" with the following rows: Total Closing Costs (J), Closing Costs Financed (Paid from your Loan Amount), Down Payment/Funds from Borrower, Deposit, Funds for Borrower, Seller Credits, Adjustments and Other Credits, and Estimated Cash to Close. Two callout boxes are present: "Item One: Total Closing Costs: Line J" pointing to the "Total Closing Costs (J)" row, and "Item Two: Closing Costs Financed (Paid from your Loan Amount)" pointing to the "Closing Costs Financed (Paid from your Loan Amount)" row.

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

## Regulatory Text

- (i) **Total closing costs.** The amount disclosed under paragraph (g)(6) of this section, labeled “Total Closing Costs”;
- (ii) **Closing costs to be financed.** The amount of any closing costs to be paid out of loan proceeds, disclosed as a negative number, labeled “Closing Costs Financed (Paid from your Loan Amount)”;

## Regulatory Commentary

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

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

*§ 1026.37(b)(1). The estimated total amount of payments to third parties includes the sale price disclosed under § 1026.37(a)(7)(i), if applicable, unless otherwise excluded under comment 37(h)(1)-2. Other examples of payments to third parties not otherwise disclosed under § 1026.37(f) and (g) include the amount of construction costs for transactions that involve improvements to be made on the property and payoffs of secured or unsecured debt. If the result of the calculation is zero or negative, the amount of \$0 is disclosed under § 1026.37(h)(1)(ii). If the result of the calculation is a positive number, that amount is disclosed as a negative number under § 1026.37(h)(1)(ii), but only to the extent that the absolute value of the amount disclosed under § 1026.37(h)(1)(ii) does not exceed the total amount of closing costs disclosed under § 1026.37(g)(6).*

- 2. *Loan amount.*** *The loan amount disclosed under § 1026.37(b)(1), a component of the closing costs financed calculation, is the total amount the consumer will borrow, as reflected by the face amount of the note.*

## CFPB Guide

### ***Total Closing Costs***

**Total Closing Costs** is the same amount disclosed as Total Closing Costs in the Other Costs table (see section 2.3.2 above). The amount is disclosed as a positive number. (§ 1026.37(h)(1)(i))

### ***Closing Costs Financed (Paid from Your Loan Amount)***

Closing Costs Financed (Paid from your Loan Amount) is calculated by subtracting the estimated total amount of payments to third parties not otherwise disclosed in the Loan Costs (see section 2.3.1 above) and Other Costs (see section 2.3.2 above) tables from the Loan Amount disclosed on page 1 of the Loan Estimate (see section 2.2.2 above). For a Purchase loan other than a simultaneous subordinate lien loan, the Sale Price is included in the Closing Costs Financed calculation as a payment to a third party. The Sale Price is not included in the Closing Costs Financed disclosure for a simultaneous subordinate lien loan, even if it is a Purchase transaction. Other examples of payments to third parties not otherwise disclosed in the Loan Costs or Other Costs tables include the amount of construction costs for transactions that involve improvements to be made on the property and payoffs of secured or unsecured debt. (Comment 37(h)(1)(ii)-1)

- If the result of the calculation is a positive number, Closing Costs Financed (Paid from Your Loan Amount) is that amount, disclosed as a negative number, but only to the extent that it does not exceed the amount of Total Closing Costs.
- If the result of the calculation is zero or negative, then Closing Costs Financed (paid from Your Loan Amount) is \$0. (Comment 37(h)(1)(ii)-1)



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

Line 3: Down Payment/Funds from Borrower

## Regulatory Text

### (iii) Downpayment and other funds from borrower. Labeled “Down Payment/Funds from Borrower”:

#### (A)

- (1) In a purchase transaction as defined in paragraph (a)(9)(i) of this section, the amount determined by subtracting the sum of the loan amount disclosed under paragraph (b)(1) of this section and any amount of existing loans assumed or taken subject to that will be disclosed under § 1026.38(j)(2)(iv) from the sale price of the property disclosed under paragraph (a)(7)(i) of this section, except as required by paragraph (h)(1)(iii)(A)(2) of this section;
- (2) In a purchase transaction as defined in paragraph (a)(9)(i) of this section that is a simultaneous subordinate financing transaction or that involves improvements to be made on the property, or when the sum of the loan amount disclosed under paragraph (b)(1) of this section and any amount of existing loans assumed or taken subject to that will be disclosed under § 1026.38(j)(2)(iv) exceeds the sale price of the property disclosed under paragraph (a)(7)(i) of this section, the amount of estimated funds from the consumer as determined in accordance with paragraph (h)(1)(v) of this section; or

- (B) In all transactions not subject to paragraph (h)(1)(iii)(A) of this section, the amount of estimated funds from the consumer as determined in accordance with paragraph (h)(1)(v) of this section;

## Regulatory Commentary

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

1. **Down payment and funds from borrower calculation.** For purposes of § 1026.37(h)(1)(iii)(A)(1), the down payment and funds from borrower amount is calculated as the difference between the sale price of the property disclosed under § 1026.37(a)(7)(i) and the sum of the loan amount and any amount of existing loans assumed or taken subject to that

*will be disclosed on the Closing Disclosure under § 1026.38(j)(2)(iv). The calculation is independent of any loan program or investor requirements.*

**2. Funds for borrower.** *Section 1026.37(h)(1)(iii)(A)(2) requires that, in a purchase transaction as defined in paragraph (a)(9)(i) of this section that is a simultaneous subordinate financing transaction or that involves improvements to be made on the property, or when the sum of the loan amount disclosed under § 1026.37(b)(1) and any amount of existing loans assumed or taken subject to that will be disclosed under § 1026.38(j)(2)(iv) exceeds the sale price disclosed under § 1026.37(a)(7)(i), the amount of funds from the consumer is determined in accordance with § 1026.37(h)(1)(v). Section 1026.37(h)(1)(iii)(B) requires that, for all non-purchase transactions, the amount of estimated funds from the consumer is determined in accordance with § 1026.37(h)(1)(v). Pursuant to § 1026.37(h)(1)(v), the amount to be disclosed under § 1026.37(h)(1)(iii)(A)(2) or (B) is determined by subtracting the sum of the loan amount disclosed under § 1026.37(b)(1) and any amount of existing loans assumed or taken subject to that will be disclosed under § 1026.38(j)(2)(iv) (excluding any closing costs financed disclosed under § 1026.37(h)(1)(ii)) from the total amount of all existing debt being satisfied in the transaction. The total amount of all existing debt being satisfied in the transaction is the sum of the amounts that will be disclosed on the Closing Disclosure in the summaries of transactions table under § 1026.38(j)(1)(ii), (iii), and (v), as applicable. When the result of the calculation is positive, that amount is disclosed under § 1026.37(h)(1)(iii) as “Down Payment/Funds from Borrower,” and \$0 is disclosed under § 1026.37(h)(1)(v) as “Funds for Borrower.” When the result of the calculation is negative, that amount is disclosed as a negative number under § 1026.37(h)(1)(v) as “Funds for Borrower,” and \$0 is disclosed under § 1026.37(h)(1)(iii) as “Down Payment/Funds from Borrower.” When the result is \$0, \$0 is disclosed as “Down Payment/Funds from Borrower” and “Funds for Borrower” under § 1026.37(h)(1)(iii) and (v), respectively.*

## CFPB Guide

In a Purchase loan other than a simultaneous subordinate lien loan or a loan that involves improvements to be made on the property, subtract the sum of:

- The Loan Amount,
- Any existing loans the Borrower will assume, and
- Any loans subject to which the Borrower will take title to the Property,

from the Sale Price. The calculation is Sale Price less Loan Amount less the amount that will be disclosed as Existing Loans Assumed or Taken Subject to on the Closing Disclosure's Summaries of Transactions table. If the result is \$0 or a positive number, disclose that result as Down Payment/ Funds from Borrower. (§ 1026.37(h)(1)(iii)(A)) However, when the sum of the Loan Amount and the amount to be disclosed as Existing Loans Assumed or Taken Subject to exceeds the Sale Price, the result will be negative. In such cases, the creditor must perform another calculation, as discussed immediately below, to determine what number to disclose as Down Payment/Funds from Borrower. (§ 1026.37(h)(1)(iii))

For a Purchase loan that is a simultaneous subordinate lien loan, a Purchase loan that involves improvements to be made on the property, or a Purchase loan where the sum of the Loan Amount and the amount to be disclosed as Existing Loans Assumed or Taken Subject to exceeds

the Sale Price, subtract the sum of the Loan Amount and the amount that will be disclosed as Existing Loans Assumed or Taken Subject to (excluding any amount disclosed as Closing Costs Financed (Paid from your Loan Amount)) from the total amount of all existing debt being satisfied in the transaction. (§ 1026.37(h)(1)(iii)(A)(2)) If this calculation yields an amount that is positive, disclose that amount as the Down Payment/Funds from Borrower.

If this calculation yields a negative amount or \$0, disclose \$0 as the Down Payment/Funds from Borrower. (Comment 37(h)(1)(iii)-2)

For purposes of calculating the Down Payment/Funds from Borrower, “the total amount of all existing debt being satisfied in the transaction” is the sum of amounts that will be disclosed on the Closing Disclosure in the Summaries of Transactions under § 1026.38(j)(1)(ii), (iii) and (v), as applicable. (Comment 37(h)(1)(v)-2. Generally, this includes the Sale Price of Property, the Sale Price of Any Personal Property Included in the Sale as well as the Adjustments and the other consumer charges that may be disclosed on Line K.04.

In all other transactions, subtract the sum of the Loan Amount and the amount that will be disclosed as Existing Loans Assumed or Taken Subject to (excluding any amount disclosed as Closing Costs Financed (Paid from your Loan Amount)) from the total amount of all existing debt being satisfied in the transaction. (§ 1026.37(h)(1)(iii)(B)) If this calculation yields an amount that is positive, disclose that amount as the Down Payment/Funds from Borrower.

If this calculation yields a negative amount or \$0, disclose \$0 as the Down Payment/Funds from Borrower. (§ 1026.37(h)(1)(iii)(B))

The calculation of Down Payment/ Funds from Borrower is independent of any loan program or investor requirements. (Comment 37(h)(1)(iii)-1))

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

Line 4: Deposit

Line 5: Funds for Borrower

## Regulatory Text

### (iv) **Deposit.**

- (A) In a purchase transaction as defined in paragraph (a)(9)(i) of this section, the amount that is paid to the seller or held in trust or escrow by an attorney or other party under the terms of the agreement for the sale of the property, disclosed as a negative number, labeled **“Deposit”**;
- (B) In all transactions other than purchase transactions as defined in paragraph (a)(9)(i) of this section, the amount of \$0, labeled **“Deposit”**;

- (v) **Funds for borrower.** The amount of funds for the consumer, labeled “Funds for Borrower.” The amount of the down payment and other funds from the consumer disclosed under paragraph (h)(1)(iii)(A)(2) or (B) of this section, as applicable, and of funds for the consumer disclosed under this paragraph (h)(1)(v), are determined by subtracting the sum of the loan amount disclosed under paragraph (b)(1) of this section and any amount of existing loans assumed or taken subject to that will be disclosed under § 1026.38(j)(2)(iv) (excluding any closing costs financed disclosed under paragraph (h)(1)(ii) of this section) from the total amount of all existing debt being satisfied in the transaction;
- (A) If the calculation under this paragraph (h)(1)(v) yields an amount that is a positive number, such amount is disclosed under paragraph (h)(1)(iii)(A)(2) or (B) of this section, as applicable, and \$0 is disclosed under this paragraph (h)(1)(v);
- (B) If the calculation under this paragraph (h)(1)(v) yields an amount that is a negative number, such amount is disclosed under this paragraph (h)(1)(v) as a negative number, and \$0 is disclosed under paragraph (h)(1)(iii)(A)(2) or (B) of this section, as applicable;
- (C) If the calculation under this paragraph (h)(1)(v) yields \$0, then \$0 is disclosed under paragraph (h)(1)(iii)(A)(2) or (B) of this section, as applicable, and under this paragraph (h)(1)(v);

## Regulatory Commentary

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

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

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

1. **No funds for borrower.** *When the down payment and other funds from the borrower is determined in accordance with § 1026.37(h)(1)(iii)(A)(1), the amount disclosed under § 1026.37(h)(1)(v) as funds for the borrower is \$0.*
2. **Total amount of existing debt satisfied in the transaction.** *The amounts disclosed under § 1026.37(h)(1)(iii)(A)(2) or (B), as applicable, and (h)(1)(v) are determined by subtracting the sum of the loan amount disclosed under § 1026.37(b)(1) and any amount of existing loans assumed or taken subject to that will be disclosed on the Closing Disclosure under § 1026.38(j)(2)(iv) (excluding any closing costs financed disclosed under § 1026.37(h)(1)(ii)) from the total amount of all existing debt being satisfied in the transaction. The total amount of all*

*existing debt being satisfied in the transaction is the sum of the amounts that will be disclosed on the Closing Disclosure in the summaries of transactions table under § 1026.38(j)(1)(ii), (iii), and (v), as applicable.*

## CFPB Guide

### ***Deposit***

In a Purchase transaction, Deposit is the amount, disclosed as a negative number, that is paid to the seller or held in trust or escrow by an attorney or other party under the terms of the contract for sale of the property. (§ 1026.37(h)(1)(iv)(A))

In all other transactions, Deposit is \$0. (§ 1026.37(h)(1)(iv)(B))

### ***Funds for Borrower***

In a Purchase loan (other than a simultaneous subordinate lien loan, a Purchase loan that involves improvements to be made on the property, or a loan where the sum of the Loan Amount and the amount to be disclosed as Existing Loans Assumed or Taken Subject to exceeds the Sale Price), disclose \$0 as Funds for Borrower. (Comment 37(h)(1)(v)-1)

In all other transactions, subtract the sum of the Loan Amount and the amount to be disclosed as Existing Loans Assumed or Taken Subject to (excluding any amount disclosed as Closing Costs Financed (Paid from your Loan Amount)) from the total amount of all existing debt being satisfied in the transaction. If this calculation yields a negative amount, disclose that amount as Funds for Borrower.

If the calculation yields a positive amount or \$0, disclose \$0 as Funds for Borrower. (§ 1026.37(h)(1)(v))

For purposes of calculating the Funds for Borrower, “the total amount of all existing debt being satisfied in the transaction” is the sum of amounts that will be disclosed on the Closing Disclosure in the Summaries of Transactions under § 1026.38(j)(1)(ii), (iii) and (v), as applicable. (Comment 37(h)(1)(v)-2. Generally, this includes the Sale Price of Property, the Sale Price of Any Personal Property Included in the Sale as well as the Adjustments and the other consumer charges that may be disclosed on Line K.04.

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

Line 6: Seller Credits

Line 7: Adjustments and Other Credits



## Regulatory Text

- (vi) **Seller credits.** The total amount that the seller will pay for total loan costs as determined by paragraph (f)(4) of this section and total other costs as determined by paragraph (g)(5) of this section, to the extent known, disclosed as a negative number, labeled “**Seller Credits**”;
- (vii) **Adjustments and other credits.** The amount of all loan costs determined under paragraph (f) of this section and other costs determined under paragraph (g) of this section that are paid by persons other than the loan originator, creditor, consumer, or seller, together with any other amounts not otherwise disclosed under paragraph (f) or (g) of this section that are required to be paid by the consumer at closing in a transaction disclosed under paragraph (h)(1)(iii)(A)(I) of this section or pursuant to a purchase and sale contract, labeled “Adjustments and Other Credits”; and

## Regulatory Commentary

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

1. **Non-specific seller credits to be disclosed.** *Non-specific seller credits, i.e., general payments from the seller to the consumer that do not pay for a particular fee on the disclosures provided under § 1026.19(e)(1), known to the creditor at the time of delivery of the Loan Estimate, are disclosed under § 1026.37(h)(1)(vi). For example, a creditor may learn the amount of seller credits that will be paid in the transaction from information obtained from the consumer, from a review of the purchase and sale contract, or from information obtained from a real estate agent in the transaction.*
2. **Seller credits for specific charges.** *To the extent known by the creditor at the time of delivery of the Loan Estimate, specific seller credits, i.e., seller credits for specific items disclosed under § 1026.37(f) and (g), may be either disclosed under § 1026.37(h)(1)(vi) or reflected in the amounts disclosed for those specific items under § 1026.37(f) and (g). For example, if the creditor knows at the time of the delivery of the Loan Estimate that the seller has agreed to pay half of a \$100 required pest inspection fee, the creditor may either disclose the required pest inspection fee as \$100 under § 1026.37(f) with a \$50 seller credit disclosed under § 1026.37(h)(1)(vi) or disclose the required pest inspection fee as \$50 under § 1026.37(f), reflecting the specific seller credit in the amount disclosed for the pest inspection fee. If the creditor knows at the time of the delivery of the Loan Estimate that the seller has agreed to pay the entire \$100 pest inspection fee, the creditor may either disclose the required pest inspection fee as \$100 under § 1026.37(f) with a \$100 seller credit disclosed under § 1026.37(h)(1)(vi) or disclose nothing under § 1026.37(f), reflecting that the specific seller credit will cover the entire pest inspection fee.*

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

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

2. **Persons that may make payments causing adjustment and other credits.** *Persons, as defined under § 1026.2(a)(22), means natural persons or organizations. Accordingly, persons that may pay amounts disclosed under § 1026.37(h)(1)(vii) include, for example, any individual family members providing gifts or a developer or home builder organization providing a credit in the transaction.*
3. **Credits.** *Only credits from persons other than the creditor or seller can be disclosed pursuant to § 1026.37(h)(1)(vii). Seller credits and credits from the creditor are disclosed pursuant to § 1026.37(h)(1)(vi) and § 1026.37(g)(6)(ii), respectively.*
4. **Other credits to be disclosed.** *Credits other than those from the creditor or seller are disclosed under § 1026.37(h)(1)(vii). Disclosure of other credits is, like other disclosures under § 1026.37, subject to the good faith requirement under § 1026.19(e)(1)(i). See § 1026.19(e)(1)(i) and comments 17(c)(2)(i)-1 and 19(e)(1)(i)-1. The creditor may obtain information regarding items to be disclosed under § 1026.37(h)(1)(vii), for example, from the consumer, from a review of the purchase and sale contract, or from information obtained from a real estate agent in the transaction.*
5. **Proceeds from subordinate financing or other source.** *Funds that are provided to the consumer from the proceeds of subordinate financing, local or State housing assistance grants, or other similar sources are included in the amount disclosed under § 1026.37(h)(1)(vii) on the first lien transaction Loan Estimate.*
6. **Reduction in amounts for adjustments.** *Adjustments that require additional funds from the consumer in a transaction disclosed using the formula under § 1026.37(h)(1)(iii)(A)(1) or pursuant to the real estate purchase and sale contract, such as for additional personal property that will be disclosed on the Closing Disclosure under § 1026.38(j)(1)(iii) or adjustments that will be disclosed on the Closing Disclosure under § 1026.38(j)(1)(v), are only included in the amount disclosed under § 1026.37(h)(1)(vii) if such amounts are not included in the calculation under § 1026.37(h)(1)(iii)(A)(2) or (B) or § 1026.37(h)(1)(v) as debt being satisfied in the transaction. Other examples of adjustments for additional funds from the consumer include payoffs of secured or unsecured debt in a purchase transaction disclosed using the formula under § 1026.37(h)(1)(iii)(A)(1) or prorations for property taxes and homeowner's association dues. The total amount disclosed under § 1026.37(h)(1)(vii) is a sum of adjustments requiring additional funds from the consumer, calculated as positive amounts, and other credits, such as those provided for in comment 37(h)(1)(vii)-1, calculated as negative amounts.*

## CFPB Guide

### ***Seller Credits***

Seller Credits is the sum of the amounts that the seller will pay for items included in the Loan Costs and Other Costs table, to the extent known. The amount disclosed as Seller Credits in the Calculating Cash to Close table includes non-specific or general seller credits and any specific seller credits not disclosed in the Loan Costs or Other Costs table. Non-specific or general seller credits are payments from the seller to the consumer that do not pay for a particular fee. Specific seller credits are payments from the seller to the consumer to pay for a specific fee. (Comments 37(h)(1)(iv)- 1 and -2) The Seller Credit amount in the Calculating Cash to Close table is disclosed as a negative number. (§ 1026.37(h)(1)(vi))



## Adjustments and Other Credits

Adjustments and Other Credits is the sum of adjustments requiring additional funds from the consumer, calculated as a positive amount, and other credits for certain items expected to be paid at closing by persons other than the loan originator, creditor, consumer, or seller, calculated as negative amounts. The calculation includes:

- The total of all items in the Loan Costs and Other Costs tables that are expected to be paid at closing by persons other than the loan originator, creditor, consumer, or seller. A creditor is not required to include such amounts if they are expected to be paid in advance of closing. Examples of items that are paid by persons other than the loan originator, creditor, consumer, or seller include: Gifts from family members expected to be paid at closing. Gifts expected to be paid in advance of closing are not included.
- Credits from a developer or home builder to be applied to items in the Loan Costs and Other Costs tables. (Comment 37(h)(1)(vii)-1 and -2)
- Funds provided to the consumer from the proceeds of subordinate financing, local or State housing assistance grants, or other similar sources. (Comment 37(h)(1)(vii)-5) For a Purchase transaction that involves both a first lien loan and a simultaneous subordinate lien loan, these amounts are included in the Loan Estimate for the first lien loan only.
- Any other amounts (i.e., amounts not included in the Loan Costs or Other Costs tables) that are required to be paid by the consumer at closing or pursuant to the contract of sale (if any) as long as they are not already included in the calculation for Down Payment/Funds from Borrower or Funds for Borrower as debt that is being satisfied in the transaction.

Examples of amounts to be paid by the consumer at closing pursuant to the contract of sale include:

- Charges for personal property to be acquired by the consumer,
- Prorations for property taxes, and
- Prorations for homeowner's association dues.

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

Total: Estimated  
Cash to Close

## Regulatory Text

- (viii) **Estimated Cash to Close.** The sum of the amounts disclosed under paragraphs (h)(1)(i) through (vii) labeled “**Cash to Close.**”

## Regulatory Commentary

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

- 1. Result of cash to close calculation.*** *The sum of the amounts disclosed pursuant to § 1026.37(h)(1)(i) through (vii) is disclosed under § 1026.37(h)(1)(viii) as either a positive number, a negative number, or zero. A positive number indicates the amount that the consumer will pay at consummation. A negative number indicates the amount that the consumer will receive at consummation. A result of zero indicates that the consumer will neither pay nor receive any amount at consummation.*

## CFPB Guide

Estimated Cash to Close is calculated as the sum of the seven other amounts disclosed in the Estimated Cash to Close table. (§ 1026.37(h)(1)(viii))

**[45] Transactions with No Seller (page 2, Calculating Cash to Close)**

Calculating Cash to Close	
Loan Amount	
Total Closing Costs (J)	
Estimated Total Payoffs and Payments	
Estimated Cash to Close <input type="checkbox"/> From <input type="checkbox"/> To Borrower	
Estimated Closing Costs Financed (Paid from your Loan Amount)	

This is a simplified Cash to Close table for non-purchase loans.

**Y&A Completion Instruction**

This table is an alternate version of Instruction that is designed for use for use for non-purchase loans. There are fewer fields here, making this a good choice for these types of loans.

The fields are:

- The loan amount
- The closing costs as they are disclosed as the total of Section J.
- The estimated total payoffs and payments to be made in the refinance
- The estimated cash to close
- The estimated closing costs financed.

Additional information about many of these fields located in the regulatory text and commentary below.

Note that this version of the form will not accommodate any credits other than a lender's credit, not will it accommodate any situation in which funds will be held in escrow. A reading of all the regulatory text and commentary will be helpful.

**Regulatory Text § 1026.37(h)(2)**

**(2) Optional alternative calculating cash to close table for transactions without a seller or for simultaneous subordinate financing.** For transactions that do not involve a seller or for simultaneous subordinate financing, instead of the table described in paragraph (h)(1) above, the creditor may alternatively provide, in a separate table, under the master heading "Closing Cost Details," under the heading "Calculating Cash to Close," the total amount of cash or other funds that must be provided by the consumer at consummation with an itemization of that amount into the following component amounts:

- (i) **Loan amount.** The amount disclosed under paragraph (b)(1) of this section, labeled “Loan Amount”;
- (ii) **Total closing costs.** The amount disclosed under paragraph (g)(6) of this section, disclosed as a negative number if the amount disclosed under paragraph (g)(6) of this section is a positive number and disclosed as a positive number if the amount disclosed under paragraph (g)(6) of this section is a negative number, labeled “Total Closing Costs”;
- (iii) **Payoffs and payments.** The total amount of payoffs and payments to be made to third parties not otherwise disclosed under paragraphs (f) and (g) of this section, labeled “Total Payoffs and Payments”;
- (iv) **Cash to or from consumer.** The amount of cash or other funds due from or to the consumer and a statement of whether the disclosed estimated amount is due from or to the consumer, calculated by the sum of the amounts disclosed under paragraphs (h)(2)(i) through (iii), labeled “Cash to Close”; and
- (v) **Closing costs financed.** The sum of the amounts disclosed under paragraphs (h)(2)(i) and (iii) of this section, but only to the extent that the sum is greater than zero and less than or equal to the sum disclosed under paragraph (g)(6) of this section, labeled “Closing Costs Financed (Paid from your Loan Amount).”

## Regulatory Commentary

### ***37(h)(2) Optional alternative calculating cash to close table for transactions without seller or for simultaneous subordinate financing.***

1. **Optional use.** *The optional alternative disclosure of the calculating cash to close table in § 1026.37(h)(2) may only be provided by a creditor in a transaction without a seller or for simultaneous subordinate financing. In a purchase transaction, the optional alternative disclosure may be used for the simultaneous subordinate financing Loan Estimate only if the first-lien Closing Disclosure will record the entirety of the seller’s transaction. The use of this alternative table for transactions without a seller or for simultaneous subordinate financing is optional, but creditors may only use this alternative estimated cash to close disclosure in conjunction with the alternative disclosure under § 1026.37(d)(2).*

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

1. **Examples.** *Examples of the amounts incorporated in the total amount disclosed under § 1026.37(h)(2)(iii) include, but are not limited to: payoffs of existing liens secured by the property identified under § 1026.37(a)(6) such as existing mortgages, deeds of trust, judgments that have attached to the real property, mechanics’ and materialmen’s liens, and local, State and Federal tax liens; payments of unsecured outstanding debts of the consumer; construction costs associated with the transaction that the consumer will be obligated to pay in any transaction in which the creditor is otherwise permitted to use the alternative calculating cash to close table; and payments to other third parties for outstanding debts of the consumer, excluding settlement services, as required to be paid as a condition for the extension of credit. Amounts that will be paid with funds provided by the consumer, including partial payments, such as a portion of*

construction costs, or amounts that will be paid by third parties and will be disclosed on the Closing Disclosure under § 1026.38(t)(5)(vii)(B), are calculated as credits, using positive numbers, in the total amount disclosed under § 1026.37(h)(2)(iii).

## **2. Disclosure of subordinate financing.**

- i. **First-lien Loan Estimate.** On the Loan Estimate for a first-lien transaction disclosed with the optional alternative table pursuant to § 1026.37(h)(2), such as a refinance transaction that also has simultaneous subordinate financing, the proceeds of the simultaneous subordinate financing are included, as a positive number, in the total amount disclosed under § 1026.37(h)(2)(iii). The total amount disclosed under § 1026.37(h)(2)(iii) is a negative number unless the proceeds from the subordinate financing and any amounts entered as credits as discussed in comment 37(h)(2)(iii)-1 equal or exceed the total amount of other payoffs and payments that are included in the calculation under § 1026.37(h)(2)(iii). If the proceeds from the subordinate financing and any amounts entered as credits as discussed in comment 37(h)(2)(iii)-1 equal or exceed the total amount of other payoffs and payments that are included in the calculation under § 1026.37(h)(2)(iii), the total amount disclosed under § 1026.37(h)(2)(iii) is disclosed as \$0 or a positive number.*
- ii. **Simultaneous subordinate financing Loan Estimate.** On the simultaneous subordinate financing Loan Estimate disclosed with the optional alternative table pursuant to § 1026.37(h)(2), the proceeds of the subordinate financing that will be applied to the first-lien transaction may be included in the payoffs and payments disclosure under § 1026.37(h)(2)(iii).*

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

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

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

- 1. **Limitation on amount disclosed.** The amount disclosed under § 1026.37(h)(2)(v) is limited to the total amount of closing costs disclosed under § 1026.37(g)(6), even if the difference between § 1026.37(h)(2)(i) and § 1026.37(h)(2)(iii) is greater than the amount disclosed under § 1026.37(g)(6).*

## **CFPB Guide**

An optional Alternative Calculating Cash to Close table can be disclosed for a transaction without a seller. It can also be disclosed for a simultaneous subordinate lien loan in a purchase transaction if the Closing Disclosure for the first lien transaction will disclose all required information related to the seller. (§ 1026.37(h)(2); Comment 37(h)(2)-1)

This Alternative Calculating Cash to Close table would be used in place of the table in Figure 19. (§ 1026.37(h)(2)) A creditor that uses the optional Alternative Calculating Cash to Close table must also use the alternative disclosure provisions of the Alternative Costs at Closing table on Loan Estimate page 1. (see section 2.2.4 above; Comment 37(h)(2)-1)

***Loan Amount***

The amount disclosed as Loan Amount is the same amount disclosed as Loan Amount on Loan Estimate page 1. (see section 2.2.2 above; § 1026.37(h)(2)(i))

***Total Closing Costs***

If the amount disclosed as the Total Closing Costs in the Other Costs table is a positive number, disclose that amount as a negative number. If the amount disclosed in the Total Closing Costs in the Other Costs table is a negative number, disclose that amount as a positive number. (§ 1026.37(h)(2)(ii))

***Estimated Payoffs and Payments***

Estimated Payoffs and Payments is the total amount to be paid to third parties not otherwise disclosed as items in the Loan Costs or Other Costs tables. (§ 1026.37(h)(2)(iii)) Estimated Payoffs and Payments is disclosed as a negative number unless the proceeds from a simultaneous subordinate lien loan and any amounts entered as credits (i.e., amounts that will be paid with funds provided by the consumer or amounts that will be disclosed in the Closing Costs Details table and that will be paid by third parties) equal or exceed the total amount of other payoffs and payments. (Comment 37(h)(2)(iii)-1 and 2.i) In that case, the Estimated Payoffs and Payments is disclosed as a positive number.

Examples of the Payoffs and Payments to be made to third parties not otherwise disclosed in the Loan Costs or Other Costs tables can include:

- Payoffs of existing liens secured by the property such as mortgages, deeds of trust, judgments that have attached to the property,
- Mechanics' and materialmans' liens,
- Local, State, and Federal tax liens,
- Payments of unsecured outstanding debts of the consumer, and
- **Construction costs that are associated with the transaction and that the consumer will be obligated to pay, and**
- Payments to other third parties for outstanding debts of the consumer as required to be paid as a condition for the extension of credit. (Comment 37(h)(2)(iii)-1)

For a transaction that involves a first lien loan disclosed using the optional table and that also involves a simultaneous subordinate lien loan, the proceeds of the simultaneous subordinate lien loan are included, as a positive number, in the total amount disclosed as Payoffs and Payments on the Loan Estimate for the first lien loan. (Comment 37(h)(2)(iii)-2.i) The proceeds of a simultaneous subordinate lien loan that will be applied to the first lien loan may be included in the Payoffs and Payments for the subordinate lien loan. (Comment 37(h)(2)(iii)-2.ii)

***Estimated Cash to Close***

The amount for the Estimated Cash to Close is the sum total of the amounts disclosed as Loan Amount, Total Closing Costs, and Payoffs and Payments. (§ 1026.37(h)(2)(iv)) Check boxes are used to disclose whether the Estimated Cash to Close is either due from the consumer or will be paid to the consumer at consummation. (Comment 37(h)(2)(iv)-1)

***Estimated Closing Costs Financed***

Closing Costs Financed is the sum of Loan Amount and Payoffs and Payments, but only to the extent the amount is greater than zero and less than or equal to the sum of Total Closing Costs. (§ 1026.37(h)(2)(v))

For example:

- If the Loan Amount is \$100,000, the Payoffs and Payments is -\$80,000, and the Total Closing Costs is \$10,000; then the Closing Costs Financed would be \$10,000.
- If the Loan Amount is \$100,000, the Payoff and Payments is -\$95,000, and the Total Closing Costs is \$10,000; then the Closing Costs Financed would be \$5,000.
- If the Loan Amount is \$100,000, the Payoffs and Payments is -\$110,000 and the Total Closing Costs is \$10,000; then the Closing Costs Financed would be \$0.



## Section 10: Adjustable Payment Table

### 12 CFR § 1026.37(i)

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*[46] Adjustable Payment Table (page 2, bottom left)*

Adjustable Payment (AP) Table	
Interest Only Payments?	
Optional Payments?	
Step Payments?	
Seasonal Payments?	
Monthly Principal and Interest Payments	
First Change/Amount	
Subsequent Changes	
Maximum Payment	
LOAN ESTIMATE	

This table only used if the payment amount may change

#### Y&A Completion Instruction

The AP table may only be disclosed if the periodic principal and interest payment may change after consummation based on a factor other than a change to the interest rate, or if the transaction is a seasonal payment product. The creditor is not permitted to show this table on the Loan Estimate if the loan terms do not meet these requirements, even if the table were left blank. As a result, if the answers to the first four questions are all “no,” this table does not appear.

#### Regulatory Text § 1026.37(i)

- (i) **Adjustable payment table.** If the periodic principal and interest payment may change after consummation but not based on an adjustment to the interest rate, or if the transaction is a seasonal payment product as described in paragraph (a)(10)(ii)(E) of this section, a separate table under the master heading “**Closing Cost Details**” required by paragraph (f) of this section and under the heading “**Adjustable Payment (AP) Table**” that contains the following information and satisfies the following requirements:

#### Regulatory Commentary

##### *37(i) Adjustable payment table.*

- 1. When table is not permitted to be disclosed. The disclosure described in § 1026.37(i) is required*

only if the periodic principal and interest payment may change after consummation based on a loan term other than a change to the interest rate, or the transaction contains a seasonal payment product feature as described in § 1026.37(a)(10)(ii)(E). If the transaction does not contain such loan terms, this table shall not appear on the Loan Estimate.

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

- i. **Period from date of consummation.** If a loan has an interest only period for the first 60 regular periodic payments due after consummation, the disclosure states **“for your first 60 payments.”**
- ii. **Period during middle of loan term.** If the loan has an interest only period between the 61st and 85th payments, the disclosure states **“from your 61st to 85th payment.”**
- iii. **Multiple successive periods.** If there are multiple periods during which a certain adjustable payment term applies, such as a period of step payments that occurs from the first through 12th payments, does not occur from the 13th through 24th payments, and occurs again from the 25th through 36th payments, the period disclosed is the entire span of all such periods. Accordingly, such period is disclosed as **“for your first 36 payments.”**
- iv. **Seasonal payments.** For a seasonal payment product with a unit-period of a month that does not require periodic payments for the months of June, July, and August each year during the loan term, because such feature depends on calendar months and not on when regular periodic payments begin, the period is disclosed as **“from June to August.”** For a transaction with a quarterly unit-period that does not require a periodic payment every third quarter during the loan term and does not depend on calendar months, the period is disclosed as **“every third payment.”** In the same transaction, if the seasonal payment feature ends after the 20th quarter, the period is disclosed as **“every quarter until the 20th quarter.”** As described above in this comment 37(i)-2, the creditor may abbreviate **“quarter”** to **“quart.”** or **“Q.”**

## CFPB Guide

The Adjustable Payment (AP) Table is disclosed when the periodic principal and interest payment may change after consummation, but not because of a change to the interest rate, or the loan is considered to be a Seasonal Payment product. (§ 1026.37(i)) For example, the AP Table is disclosed on a Fixed Rate loan with an Step Payment feature that is not the result of a change to the interest rate. If the loan does not contain these features, the AP Table is not disclosed. (Comment 37(i)-1)

The AP Table includes the following information (§ 1026.37(i)):

- Whether there are Interest Only Payments, and, if so, the period during which the interest only payment would apply (§ 1026.37(i)(1));
- Whether the amount of any periodic payment can be selected by the consumer as an Optional Payment and, if so, the period during which the consumer can select optional payments (§ 1026.37(i)(2));
- Whether the loan is a Step Payment product and, if so, the period during which the regular periodic payments are scheduled to increase (§ 1026.37(i)(3));
- Whether the loan is a Seasonal Payment product, and, if so, the period during which the periodic payments are not scheduled (§ 1026.37(i)(4));
- A subheading of Monthly Principal and Interest Payments (§ 1026.37(i)(5)), that also lists:
  - As First Change/Amount, the number of the payment that may change, counting from the first periodic payment due after consummation, and the amount or range of the periodic principal and interest payment for such payment (§ 1026.37(i)(5)(i));
  - The frequency of Subsequent Changes to the periodic payment (§ 1026.37(i)(5)(ii)); and
  - The Maximum Payment that may be paid during the term of the loan with the number of the first periodic principal and interest payment that can reach such Maximum Payment amount. (§ 1026.37(i)(5)(iii))

Adjustable Payment (AP) Table	
Interest Only Payments?	
Optional Payments?	
Step Payments?	
Seasonal Payments?	
<b>Monthly Principal and Interest Payments</b>	
First Change/Amount	
Subsequent Changes	
Maximum Payment	
LOAN ESTIMATE	

Yes or no. If yes, the length of the period or the time period covered by the interest only payments.

### Y&A Completion Instruction

The AP table includes an interest only disclosure. The processor must answer “Yes” or “No.” If the answer is yes, then the processor must include additional information about the interest only payments, such as the length of the interest only period.

### Regulatory Text § 1026.37(i)(1)

**(1) Interest only payments.** Whether the transaction is an interest only product pursuant to

paragraph (a)(10)(ii)(B) of this section as an affirmative or negative answer to the question **“Interest Only Payments?”** and, if an affirmative answer is disclosed, the period during which interest only periodic payments are scheduled.

## Regulatory Commentary

*None.*

## CFPB Guide

None.

Adjustable Payment (AP) Table	
Interest Only Payments?	
Optional Payments?	
Step Payments?	
Seasonal Payments?	
Monthly Principal and Interest Payments	
First Change/Amount	
Subsequent Changes	
Maximum Payment	
LOAN ESTIMATE	

Yes or no. If yes, the period of time that the consumer will make these payments.

## Y&A Completion Instruction

The processor must indicate whether the loan contains any provision for optional payments in the AP table. Optional payments are scheduled payments that are higher than the payment amount shown on the note. The response is either “Yes” or “No.” If the answer is yes, then there must be additional information about the optional payments as appropriate.

## Regulatory Text § 1026.37(i)(2)

- (2) **Optional payments.** Whether the terms of the legal obligation expressly provide that the consumer may elect to pay a specified periodic principal and interest payment in an amount other than the scheduled amount of the payment, as an affirmative or negative answer to the question **“Optional Payments?”** and, if an affirmative answer is disclosed, the period during which the consumer may elect to make such payments.

**Regulatory Commentary**

None.

**CFPB Guide**

None.

Adjustable Payment (AP) Table	
Interest Only Payments?	
Optional Payments?	
Step Payments?	
Seasonal Payments?	
Monthly Principal and Interest Payments	
First Change/Amount	
Subsequent Changes	
Maximum Payment	
LOAN ESTIMATE	

Yes or no. If yes, the period of time that step payments will be made.

**Y&A Completion Instruction**

The processor must indicate in the AP table any step payments that occur. Generally step payments occur when the interest rate remains unchanged, but the payment gradually increase over the life of the loan. The initial response is either “Yes” or “No.” If the answer is yes, then there must be additional information about the step payments.

**Regulatory Text § 1026.37(i)(3)**

- (3) **Step payments.** Whether the transaction is a step payment product pursuant to paragraph (a)(10)(ii)(C) of this section as an affirmative or negative answer to the question “**Step Payments?**” and, if an affirmative answer is disclosed, the period during which the regular periodic payments are scheduled to increase.

**Regulatory Commentary**

None.

## CFPB Guide

None.

Adjustable Payment (AP) Table	
Interest Only Payments?	
Optional Payments?	
Step Payments?	
Seasonal Payments?	
Monthly Principal and Interest Payments	
First Change/Amount	
Subsequent Changes	
Maximum Payment	
LOAN ESTIMATE	

Yes or no. If yes, the period of time that seasonal payments will be made.

## Y&amp;A Completion Instruction

The processor must answer whether the loan has seasonal payments within the AP table. The initial response is either “Yes” or “No.” If the answer is yes, then there must be additional information about the seasonal payments. (For instance, payments in March and September).

## Regulatory Text § 1026.37(i)(4)

- (4) **Seasonal payments.** Whether the transaction is a seasonal payment product pursuant to paragraph (a)(10)(ii)(E) of this section as an affirmative or negative answer to the question “Seasonal Payments?” and, if an affirmative answer is disclosed, the period during which periodic payments are not scheduled.

## Regulatory Commentary

None.

## CFPB Guide

None.

Adjustable Payment (AP) Table	
Interest Only Payments?	
Optional Payments?	
Step Payments?	
Seasonal Payments?	
Monthly Principal and Interest Payments	
First Change/Amount	
Subsequent Changes	
Maximum Payment	
LOAN ESTIMATE	

These three amounts must be completed based on the loan terms.

### Y&A Completion Instruction

The processor must complete the AP table section indicating what the subsequent principal and interest payments might be for the loan. There are 3 items required – the first change and amount, what can happen in subsequent changes, and what is the maximum payment that can be reached during the life of the loan. This information may be a duplication of information that appears on the front page of the document, and should not require any additional input.

### Regulatory Text § 1026.37(i)(5)

- (5) **Principal and interest payments.** Under the subheading “**Principal and Interest Payments**,” which subheading is immediately preceded by the applicable unit-period, the following information:
- (i) The number of the payment of the first periodic principal and interest payment that may change under the terms of the legal obligation disclosed under this paragraph (i), counting from the first periodic payment due after consummation, and the amount or range of the periodic principal and interest payment for such payment, labeled “**First Change/Amount**”;
  - (ii) The frequency of subsequent changes to the periodic principal and interest payment, labeled “**Subsequent Changes**”; and
  - (iii) The maximum periodic principal and interest payment that may occur during the term of the transaction, and the first periodic principal and interest payment that can reach such maximum, counting from the first periodic payment due after consummation, labeled “**Maximum Payment**.”

### Regulatory Commentary

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



2. **Initial payment adjustment unknown.** *The disclosure required by § 1026.37(i)(5) must state the number of the first payment for which the regular periodic principal and interest payment may change. This payment is typically set forth in the legal obligation. However, if the exact payment number of the first adjustment is not known at the time the creditor provides the Loan Estimate, the creditor must disclose the earliest possible payment that may change under the terms of the legal obligation, based on the information available to the creditor at the time, as the initial payment number and amount.*
3. **Subsequent changes.** *The disclosure required by § 1026.37(i)(5) must state the frequency of adjustments to the regular periodic principal and interest payment after the initial adjustment, if any, expressed in years, except if adjustments are more frequent than once every year, in which case the disclosure should be expressed as payments. If there is only one adjustment of the periodic payment under the terms of the legal obligation (for example, if the loan has an interest only period for the first 60 payments and there are no adjustments to the payment after the end of the interest only period), the disclosure should state: “No subsequent changes if the loan has graduated increases in the regular periodic payment every 12<sup>th</sup> payment, the disclosure should state: “Every year.” If the frequency of adjustments to the periodic payment may change under the terms of the legal obligation, the disclosure should state the smallest period of adjustments that may occur. For example, if an increase in the periodic payment is scheduled every sixth payment for 36 payments, and then every 12th payment for the next 24 payments, the disclosure should state: “Every 6th payment.”*
4. **Maximum payment.** *The disclosure required by § 1026.37(i)(5) must state the larger of the maximum scheduled or maximum potential amount of a regular periodic principal and interest payment under the terms of the legal obligation, as well as the payment number of the first periodic principal and interest payment that can reach such amount. If the disclosed payment is scheduled, § 1026.37(i)(5) requires that the disclosure state the payment number when such payment is reached with the preceding text, “starting at.” If the disclosed payment is only potential, as may be the case for a loan that permits optional payments, the disclosure states the earliest payment number when such payment can be reached with the preceding text, “as early as.” Section 1026.37(i)(5) requires that the first possible periodic principal and interest payment that can reach the maximum be disclosed. For example, for a fixed interest rate optional-payment loan with scheduled payments that result in negative amortization under the terms of the legal obligation, the maximum periodic payment disclosed should be based on the consumer having elected to make the periodic payments that would increase the principal balance to the maximum amount at the latest time possible before the loan begins to fully amortize, which would cause the periodic principal and interest payment to be the maximum possible. For example, if the earliest payment that could reach the maximum principal balance was the 41st payment at which time the loan would begin to amortize and the periodic principal and interest payment would be recalculated, but the last payment that permitted the principal balance to increase was the 60th payment, the disclosure required by § 1026.37(i)(5) must assume the consumer only reaches the maximum principal balance at the 60th payment because this would result in the maximum possible principal and interest payment under the terms of the legal obligation. The disclosure must state the maximum periodic principal and interest payment based on this assumption and state “as early as the 61st payment.”*
5. **Payments that do not pay principal.** *Although the label of the disclosure required by § 1026.37(i)(5) is “Principal and Interest Payments,” and the section refers to periodic principal and interest payments, it includes a scheduled periodic payment that only covers some or all of the interest that is due and not any principal (i.e., an interest only or negatively amortizing payment).*

*The AP table may only be disclosed if the periodic principal and interest payment may change after consummation based on an adjustment that is not an adjustment to the interest rate, or if the transaction is a seasonal payment product. The creditor would not be permitted to disclose the table if the loan terms do not meet these requirements, even if the table were left blank.*

## **CFPB Guide**

If the exact payment number of the first payment adjustment is not known at the time of the Loan Estimate, the earliest possible payment that may change must be disclosed. (Comment 37(i)(5)-2)

The label “Monthly Principal and Interest Payments” can be changed to reflect a payment schedule that is not monthly, such as Biweekly or Annual. (Comment 37(i)(5)-1)

Disclose any scheduled periodic payment that only covers some or all of the interest that is due and not any principal as Monthly Principal and Interest Payments, even though the AP Table refers to Monthly Principal and Interest Payments. (Comment 37(i)(5)-5)

## Section 11: Adjustable Interest Rate Table

### 12 CFR § 1026.37(j)

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#### [47] *Adjustable Interest Rate Table*

Adjustable Interest Rate (AIR) Table	
Index + Margin	
Initial Interest Rate	
Minimum/Maximum Interest Rate	
Change Frequency	
First Change	
Subsequent Changes	
Limits on Interest Rate Changes	
First Change	
Subsequent Changes	

This table is only displayed if the interest rate may change during the term of the loan.

#### Y&A Completion Instruction

The AIR table is required to appear when the interest rate may change during the life of the loan. If a change in the interest rate is not anticipated (fixed rate) then the table cannot appear. The processor completes this section based on what is “normal” for the loan type for which the applicant is applying.

#### Regulatory Text § 1026.37(j)

- (j) **Adjustable interest rate table.** If the interest rate may increase after consummation, a separate table under the master heading “**Closing Cost Details**” required by paragraph (f) of this section, and under the heading “**Adjustable Interest Rate (AIR) Table**” that contains the following information and satisfies the following requirements:

#### Regulatory Commentary

##### **37(j) Adjustable interest rate table.**

- 1. When table is not permitted to be disclosed. The disclosure described in § 1026.37(j) is required only if the interest rate may increase after consummation, either based on changes to an index or scheduled changes to the interest rate. If the legal obligation does not permit the interest rate to adjust after consummation, such as for a “Fixed Rate” product under § 1026.37(a)(10), this table is not permitted to appear on the Loan Estimate. The creditor may not disclose a blank table or a table with “N/A” inserted within each row.*

## CFPB Guide

The Adjustable Interest Rate (AIR) Table is disclosed when the loan's interest rate may increase after consummation. (§ 1026.37(j)) If the loan's interest rate will not increase after consummation, the AIR Table is not disclosed. (Comment 37(j)-1) Because the interest rate for a Fixed Rate loan cannot change according to the definition in the TILA-RESPA rule, the AIR Table should never be disclosed with a Fixed Rate loan.

The AIR Table includes the following information (§ 1026.37(j)):

- As Index + Margin, the index upon which adjustments to the interest rate will be based and the margin that is added to the index to determine the interest rate (§ 1026.37(j)(1));
- For Step Rate products, the maximum amount of any adjustments to the interest rate that are scheduled and pre-determined (§ 1026.37(j)(2));
- The Initial Interest Rate at consummation (§ 1026.37(j)(3));
- The Minimum/Maximum Interest Rate for the loan, after any introductory period expires (§ 1026.37(j)(4));
- As Change Frequency (§ 1026.37(j)(5)):
  - For First Change, list the month when the first interest rate change may occur after consummation (§ 1026.37(j)(5)(i)); and
  - As Subsequent Changes, the frequency of interest rate adjustments after the initial adjustment (§ 1026.37(j)(5)(ii)); and
- As Limits on Interest Rate Changes (§ 1026.37(j)(6)):
  - As First Change, the maximum possible change for the first adjustment of the interest rate after consummation (§ 1026.37(j)(6)(i)); and
  - As Subsequent Changes, the maximum possible change for subsequent adjustments of the interest rate. (§ 1026.37(j)(6)(ii))

Adjustable Interest Rate (AIR) Table	
Index + Margin	
Initial Interest Rate	
Minimum/Maximum Interest Rate	
<b>Change Frequency</b>	
First Change	
Subsequent Changes	
<b>Limits on Interest Rate Changes</b>	
First Change	
Subsequent Changes	

Insert anticipated index and margin here.

## Y&A Completion Instruction

The processor must indicate the index and margin anticipated to be used in the note. This is generally set by the loan product type standards.

The second section discusses a very rare situation, and is likely to never impact your institution. The first line of this table (see instruction changes to indicate the fact that this is a step rate loan, in which all increases in the interest rate are predetermined, not based on an index and margin. Should this occur, this information must be included.

### Regulatory Text § 1026.37(j)(1)

- (1) **Index and margin.** If the interest rate may adjust and the product type is not a “**Step Rate**” under paragraph (a)(10)(i)(B) of this section, the index upon which the adjustments to the interest rate are based and the margin that is added to the index to determine the interest rate, if any, labeled “**Index + Margin.**”

### Regulatory Text § 1026.37(j)(2)

- (2) **Increases in interest rate.** If the product type is a “**Step Rate**” and not also an “**Adjustable Rate**” under paragraph (a)(10)(i)(A) of this section, the maximum amount of any adjustments to the interest rate that are scheduled and pre-determined, labeled “**Interest Rate Adjustments.**”

### Regulatory Commentary § 1026.37(j)(1)

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

### Regulatory Commentary § 1026.37(j)(2)

1. **Adjustments not based on an index.** *If the legal obligation includes both adjustments to the interest rate based on an external index and scheduled and pre-determined adjustments to the interest rate, such as for a “Step Rate” product under § 1026.37(a)(10), the disclosure required by § 1026.37(j)(1), and not § 1026.37(j)(2), must be provided pursuant to § 1026.37(j)(2). The disclosure described in § 1026.37(j)(2) is stated only if the product type does not permit the interest rate to adjust based on an external index.*

## CFPB Guide

The index must be described such that a consumer can reasonably identify it. For example, LIBOR may be used instead of the London Interbank Offered Rate. The margin should be disclosed as a percentage. For example, if the interest rate is calculated by adding 4.25 to LIBOR, the margin should be disclosed as 4.25%. (Comment 37(j)(1)-1)

Adjustable Interest Rate (AIR) Table	
Index + Margin	
Initial Interest Rate	
Minimum/Maximum Interest Rate	
Change Frequency	
First Change	
Subsequent Changes	
Limits on Interest Rate Changes	
First Change	
Subsequent Changes	

Insert initial anticipated interest rate here.

## Y&A Completion Instruction

The processor must insert the initial anticipated interest rate for the loan.

## Regulatory Text § 1026.37(j)(3)

- (3) **Initial interest rate.** The interest rate at consummation of the loan transaction, labeled “**Initial Interest Rate.**”

## Regulatory Commentary

- Interest rate at consummation.** *In all cases, the interest rate in effect at consummation must be disclosed as the initial interest rate, even if it will apply only for a short period, such as one month.*

## CFPB Guide

None.

Adjustable Interest Rate (AIR) Table	
Index + Margin	
Initial Interest Rate	
Minimum/Maximum Interest Rate	
Change Frequency	
First Change	
Subsequent Changes	
Limits on Interest Rate Changes	
First Change	
Subsequent Changes	

Insert minimum and maximum interest rates here.

### Y&A Completion Instruction

The processor must insert the minimum and maximum interest rates here. These rates are generally called the floor rate and the ceiling rate. The regulation requires a ceiling rate. The floor rate is at the institution's option. Often the floor rate will equal the margin, but it is not required to do so.

### Regulatory Text § 1026.37(j)(4)

- (4) **Minimum and maximum interest rate.** The minimum and maximum interest rates for the loan, after any introductory period expires, labeled “**Minimum/Maximum Interest Rate.**”

### Regulatory Commentary

1. **Minimum interest rate.** *The minimum interest rate required to be disclosed by § 1026.37(j)(4) is the minimum interest rate that may occur at any time during the term of the transaction, after any introductory or “teaser” interest rate expires, under the terms of the legal obligation, such as an interest rate “floor.” If the terms of the legal obligation do not state a minimum interest rate, the minimum interest rate that applies to the transaction under applicable law must be disclosed. If the terms of the legal obligation do not state a minimum interest rate, and no other minimum interest rate applies to the transaction under applicable law, the amount of the margin is disclosed.*
2. **Maximum interest rate.** *The maximum interest rate required to be disclosed pursuant to § 1026.37(j)(4) is the maximum interest rate permitted under the terms of the legal obligation, such as an interest rate “cap.” If the terms of the legal obligation do not specify a maximum interest rate, the maximum interest rate permitted by applicable law, such as State usury law, must be disclosed.*

### CFPB Guide

The maximum interest rate that applies to the loan under applicable law, such as State usury law, must be disclosed if the loan does not provide for a maximum interest rate. (Comment 37(j)(4)-



2)

The minimum interest rate that applies to the loan under applicable law must be disclosed if the loan does not provide for a minimum interest rate. However, if applicable law does not set a minimum interest rate, disclose the amount of the margin as the minimum interest rate. (Comment 37(j)(4)-1)

Adjustable Interest Rate (AIR) Table	
Index + Margin	
Initial Interest Rate	
Minimum/Maximum Interest Rate	
<b>Change Frequency</b>	
First Change	
Subsequent Changes	
<b>Limits on Interest Rate Changes</b>	
First Change	
Subsequent Changes	

Insert the time period to the first rate change, based on the first payment date.

Insert the frequency of the subsequent rate changes here.

### Y&A Completion Instruction

The processor should insert the time period to the first interest rate change and the time period between subsequent interest rate changes here. These rate change time periods are usually driven by the adjustable rate product being offered for this loan.

### Regulatory Text § 1026.37(j)(5)

(5) **Frequency of adjustments.** The following information, under the subheading “**Change Frequency**”:

- (i) The month when the interest rate after consummation may first change, calculated from the date interest for the first scheduled periodic payment begins to accrue, labeled “**First Change**”; and
- (ii) The frequency of interest rate adjustments after the initial adjustment to the interest rate, labeled, “**Subsequent Changes.**”

### Regulatory Commentary

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

*Estimate, the creditor must disclose the earliest possible month under the terms of the legal obligation, based on the best information available to the creditor at the time.*

## CFPB Guide

Typically, the first change month for the interest rate is scheduled in the terms of the loan, but if the exact month is not known at the time creditor provides the Loan Estimate, the earliest possible month for the first change to the interest rate of the loan must be disclosed based on the best information available to the creditor at the time the Loan Estimate is disclosed. (Comment 37(j)(5)-1)

The diagram shows a table titled "Adjustable Interest Rate (AIR) Table" with the following sections:

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

Two callout boxes point to the "Limits on Interest Rate Changes" section:

- The first callout points to the "First Change" row and contains the text: "Insert the limit for changes on the first interest rate change here."
- The second callout points to the "Subsequent Changes" row and contains the text: "Insert the limit for subsequent interest rate changes here."

## Y&A Completion Instruction

The processor should insert the maximum amount that the interest rate may increase for both the first rate change and any subsequent rate changes. These maximum rate changes are usually driven by the adjustable rate product being offered for this loan.

## Regulatory Text § 1026.37(j)(6)

(6) **Limits on interest rate changes.** The following information, under the subheading “**Limits on Interest Rate Changes**”:

- (i) The maximum possible change for the first adjustment of the interest rate after consummation, labeled “**First Change**”; and
- (ii) The maximum possible change for subsequent adjustments of the interest rate after consummation, labeled “**Subsequent Changes.**”

## Regulatory Commentary

1. ***Different limits on subsequent interest rate adjustments.*** *If more than one limit applies to the amount of adjustments to the interest rate after the initial adjustment, the greatest limit on subsequent adjustments must be disclosed. For example, if the initial interest rate adjustment is capped at two percent, the second adjustment is capped at two and a half percent, and all subsequent adjustments are capped at three percent, the disclosure required by § 1026.37(j)(6)(ii) states “3%.”*

## CFPB Guide

The greatest limit on changes in the interest rate must be disclosed when more than one limit applies to changes in the interest rate. For example, if the initial interest rate adjustment is capped at 2%, the second adjustment is capped at 2.5%, and all subsequent adjustments are capped at 3%, 3% is disclosed as Subsequent Changes. (Comment 37(j)(6)-1)

## Section 12: Contact Information

### 12 CFR § 1026.37(k)

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#### *[48] Contact Information*

Additional Information About This Loan	
LENDER	MORTGAGE BROKER
NMLS/___ LICENSE ID	NMLS/___ LICENSE ID
LOAN OFFICER	LOAN OFFICER
NMLS/___ LICENSE ID	NMLS/___ LICENSE ID
EMAIL	EMAIL
PHONE	PHONE

#### Y&A Commentary

This section of the third page informs the applicant of the players on the creditor side. This presentation will focus on the lender portion of the document, although if there is a broker, additional information should appear for the broker as well. We have elected not to include the broker information portion, as it will impact few Loan Estimates.

#### Regulatory Text § 1026.37(k)

(k) **Contact information.** Under the master heading, “**Additional Information About This Loan,**” the following information:

#### Regulatory Commentary

*None.*

#### CFPB Guide

Disclose the Name and NMLS/\_\_\_License ID number for the creditor and mortgage broker, if any, and the individual loan officer of both. The NMLS/\_\_\_License ID number should be the same as that identified on the note and other documents. (§ 1026.36(g)) Also, disclose the Email and/or Phone number of the individual loan officer. The person identified as the individual loan officer must be the primary contact for the consumer. (§ 1026.37(k))

**Additional Information About This Loan**

LENDER  
NMLS/\_\_\_ LICENSE ID  
LOAN OFFICER  
NMLS/\_\_\_ LICENSE ID  
EMAIL  
PHONE

NMLS/\_\_\_ LICENSE ID  
EMAIL  
PHONE

Lender (bank) name and NMLS number here.

### Y&A Completion Instruction

The processor should enter the first two fields: the creditor's name and NMLS number. This should not vary from loan to loan, so this is close to "boilerplate."

### Regulatory Text § 1026.37(k)(1)

- (1) The name and Nationwide Mortgage Licensing System and Registry identification number (NMLSR ID) (labeled "NMLS ID/License ID ") for the creditor (labeled "**Lender**") and the mortgage broker (labeled "**Mortgage Broker**"), if any. In the event the creditor or the mortgage broker has not been assigned an NMLSR ID, the license number or other unique identifier issued by the applicable jurisdiction or regulating body with which the creditor or mortgage broker is licensed and/or registered shall be disclosed, with the abbreviation for the State of the applicable jurisdiction or regulatory body stated before the word "**License**" in the label, if any;

### Regulatory Commentary

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

## CFPB Guide

None.

**Additional Information About This Loan**

LENDER	MORTGAGE SERVICER
NMLS/___ LICENSE ID	
LOAN OFFICER	
NMLS/___ LICENSE ID	
EMAIL	
PHONE	

Loan Officer's name and NMLS number here.

## Y&A Completion Instruction

The processor should enter the third the fourth fields with the loan officer's name and NMLS number (assuming the loan officer has a number).

## Regulatory Text § 1026.37(k)(2)

- (2) The name and NMLSR ID of the individual loan officer (labeled **“Loan Officer”** and **“NMLS ID/License ID,”** respectively) of the creditor and the mortgage broker, if any, who is the primary contact for the consumer. In the event the individual loan officer has not been assigned an NMLSR ID, the license number or other unique identifier issued by the applicable jurisdiction or regulating body with which the loan officer is licensed and/or registered shall be disclosed with the abbreviation for the State of the applicable jurisdiction or regulatory body stated before the word **“License”** in the label, if any; and

## Regulatory Commentary

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

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

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

## CFPB Guide

None.

The diagram shows a form with two main sections: **LENDER** and **MORTGAGE BROKER**. Each section has fields for NMLSR/\_\_\_ LICENSE ID, LOAN OFFICER, NMLSR/\_\_\_ LICENSE ID, EMAIL, and PHONE. A callout box points to the EMAIL field in the Lender section, stating: "Email (either general or direct) is placed here". Another callout box points to the PHONE field in the Lender section, stating: "Telephone number (either general or direct) is placed here".

## Y&A Completion Instruction

The processor should enter the appropriate contact information in the last two fields. These include an email address and a telephone number. Both the email address and telephone number can be general contact information or specific contact information, as long as the information provided allows the applicant to contact the loan officer. Specific information is preferred.

## Regulatory Text § 1026.37(k)(3)

- (3) The email address and telephone number of the loan officer (labeled **“Email”** and **“Phone,”** respectively).



## Regulatory Commentary

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

## CFPB Guide

None.

## Section 13: Comparisons

### 12 CFR § 1026.37(l)

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#### *[49] Comparisons*

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

#### Y&A Commentary:

There are four comparison numbers to assist the applicant in evaluating the loan. The first two numbers focus on what the applicant is anticipated to pay the lender in the first five years. The third number is the traditional APR. The final number is the TIP, which explains the amount of interest that is anticipated to be paid as a percentage of the principal loan amount.

#### Regulatory Text Text § 1026.37(l)

- (l) **Comparisons.** Under the master heading, “**Additional Information About This Loan**” required by paragraph (k) of this section, in a separate table under the heading “**Comparisons**” along with the statement “**Use these measures to compare this loan with other loans**”:

#### Regulatory Commentary

*None.*

#### CFPB Guide

The Comparisons table discloses information related to the costs of the loan In Five Years, the Annual Percentage Rate (APR), and the Total Interest Percentage (TIP).

Comparisons	Use these measures to compare this loan with other loans.	
In 5 Years	Total you will have paid in principal, interest, mortgage insurance, and loan costs. Principal you will have paid off.	
Annual Percentage Rate (APR)	Your	Insert two amounts – what the applicant will pay in the first five years, and the portion of that total that will be principal reduction.
Total Interest Percentage (TIP)	The total annual percentage	

### Y&A Completion Instruction

The processor should assure that the software inserts the appropriate information in this table. All amounts here should be calculated without intervention of the processor. The first two numbers are related to the first five years of payments, counting from the date of first payment. Closing costs are part of the total amount paid calculation, making the total amount disclosed as paid in the first five years higher than simply the payment amount times 60. The second amount shown is the anticipated principal reduction that should occur during that same time period. All dollar amounts are rounded to the nearest dollar.

### Regulatory Text § 1026.37(l)(1)

(1) **In five years.** Using the label “**In 5 Years**”:

- (i) The total principal, interest, mortgage insurance, and loan costs scheduled to be paid through the end of the 60th month after the due date of the first periodic payment, expressed as a dollar amount, along with the statement “**Total you will have paid in principal, interest, mortgage insurance, and loan costs**”; and
- (ii) The principal scheduled to be paid through the end of the 60th month after the due date of the first periodic payment, expressed as a dollar amount, along with the statement “**Principal you will have paid off.**”

### Regulatory Commentary

#### **37(l)(1) In five years.**

1. **Loans with terms of less than five years.** In transactions with a scheduled loan term of less than 60 months, to comply with § 1026.37(l)(1), the creditor discloses the amounts paid through the end of the loan term.

**Paragraph 37(l)(1)(i).**

- 1. Calculation of total payments in five years.** *The amount disclosed under § 1026.37(l)(1)(i) is the sum of principal, interest, mortgage insurance, and loan costs scheduled to be paid through the end of the 60th month after the due date of the first periodic payment. For guidance on how to calculate interest for mortgage loans that are Adjustable Rate products under § 1026.37(a)(10)(i)(A) for purposes of § 1026.37(l)(1)(i), see comment 17(c)(1)-10. In addition, for purposes of § 1026.37(l)(1)(i), the creditor should assume that the consumer makes payments as scheduled and on time. For purposes of § 1026.37(l)(1)(i), mortgage insurance means “mortgage insurance or any functional equivalent” as defined under comment 37(c)(1)(i)(C)-1 and includes prepaid or escrowed mortgage insurance. Loan costs are those costs disclosed under § 1026.37(f).*
- 2. Negative amortization loans.** *For loans that have a negative amortization feature under § 1026.37(a)(10)(ii)(A), the creditor calculates the total payments in five years using the scheduled payments, even if it is a negatively amortizing payment amount, until the consumer must begin making fully amortizing payments under the terms of the legal obligation.*

**Paragraph 37(l)(1)(ii).**

- 1. Calculation of principal paid in five years.** *The disclosure required by § 1026.37(l)(1)(ii) is calculated in the same manner as the disclosure required by § 1026.37(l)(1)(i), except that the disclosed amount reflects only the total payments to principal through the end of the 60th month after the due date of the first periodic payment.*

**CFPB Guide**

In 5 Years includes the following information:

- The total amount the consumer will have paid in principal, interest, mortgage insurance, and loan costs paid through the end of the 60th month after the due date of the first periodic payment; and
- The amount of principal paid through the end of the 60th month after the due date of the first periodic payment. (§ 1026.37(l)(1))

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

### Y&A Completion Instruction

The third number in this table is the traditional APR. No direct processor action is required.

### Regulatory Text § 1026.37(l)(2)

- (2) **Annual percentage rate.** The “Annual Percentage Rate,” using that term and the abbreviation “APR” and expressed as a percentage, and the following statement: **“Your costs over the loan term expressed as a rate. This is not your interest rate.”**

### Regulatory Commentary

*None.*

### CFPB Guide

Disclose the APR, together with a brief descriptive statement, in the Comparisons table on page 3. For information on how to calculate the APR, see § 1026.22 and appendix J to Regulation Z. (§ 1026.37(l)(2))

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

### Y&A Completion Instruction

The TIP is a percentage that indicates what portion of the principal the applicant is anticipated to pay back in interest over the life of the loan. For instance, a loan with a \$100,000 principal balance and a total of payments of \$160,000 would have a TIP of 60%. This should not involve any direct action by the processor.

### Regulatory Text § 1026.37(l)(3)

- (3) **Total interest percentage.** The total amount of interest that the consumer will pay over the life of the loan, expressed as a percentage of the amount of credit extended, using the term

**“Total Interest Percentage,”** the abbreviation **“TIP,”** and the statement **“The total amount of interest that you will pay over the loan term as a percentage of your loan amount.”**

## Regulatory Commentary

### ***37(l)(3) Total interest percentage.***

- 1. General.** *When calculating the total interest percentage, the creditor assumes that the consumer will make each payment in full and on time and will not make any additional payments. The creditor includes prepaid interest that the consumer will pay when calculating the total interest percentage. Prepaid interest that is disclosed as a negative number under §§ 1026.37(g)(2) or 1026.38(g)(2) is included as a negative value when calculating the total interest percentage.*
- 2. Adjustable rate and step rate mortgages.** *For Adjustable Rate products under § 1026.37(a)(10)(i)(A), § 1026.37(l)(3) requires that the creditor compute the total interest percentage in accordance with comment 17(c)(1)-10. For Step Rate products under § 1026.37(a)(10)(i)(B), § 1026.37(l)(3) requires that the creditor compute the total interest percentage in accordance with § 1026.17(c)(1) and its associated commentary.*
- 3. Negative amortization loans.** *For loans that have a negative amortization feature under § 1026.37(a)(10)(ii)(A), § 1026.37(l)(3) requires that the creditor compute the total interest percentage using the scheduled payment, even if it is a negatively amortizing payment amount, until the consumer must begin making fully amortizing payments under the terms of the legal obligation.*

## CFPB Guide

The TIP is the total amount of interest that the consumer will pay over the loan term, expressed as a percentage of the Loan Amount. (§ 1026.37(l)(3)) The TIP includes prepaid interest that the consumer will pay, but does not include prepaid interest that someone other than the consumer will pay. If prepaid interest is disclosed as a negative number, the negative value of the prepaid interest must be included in the calculation of the TIP. (Comment 37(l)(3)-1).

For example, if the Loan Amount is \$100,000 and the total amount of interest that the consumer will pay over the Loan Term is \$50,000, then the TIP is 50%.

## Section 14: Other Considerations

### 12 CFR § 1026.37(m)

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#### *General Language*

##### **Y&A Commentary**

This section offers general information regarding the loan. It also includes the Regulation B appraisal notice and the Servicing Disclosure. In this section, some of the items appear or do not appear, based on the loan requirements.

##### **Regulatory Text § 1026.37(m)**

(m) **Other considerations.** Under the master heading “**Additional Information About This Loan**” required by paragraph (k) of this section and under the heading “**Other Considerations**”:

##### **Regulatory Commentary**

*None.*

##### **CFPB Guide**

Other Considerations includes the following information:

- Appraisal;
- As to Assumption, whether the subsequent purchaser of the property can assume the loan on its original terms;
- At the option of the creditor, a statement that Homeowner’s Insurance is required and that the consumer may choose the provider;
- A statement detailing any amount that may be imposed for a Late Payment;
- A statement about the nature of a Refinance of the loan in the future;
- A statement whether the creditor intends to service the loan or transfer it to another servicer; and
- For Refinance transactions, a statement relating to State law protections against Liability After Foreclosure; and
- At the option of the creditor, for transactions involving new construction, where the creditor reasonably expects that settlement will occur 60 days or more after the provision of the loan estimate, a clear and conspicuous statement that the creditor may issue a revised disclosure any time prior to 60 days before consummation. (§ 1026.37(m))



## [50] Appraisal (page 3, Other Considerations)



### Y&A Completion Instruction

This is the Regulation B appraisal notice. It has been incorporated into this form, and does not need to be given separately when using the Loan Estimate. It is omitted when the loan does not require its presence (for instance, a second mortgage).

### Regulatory Text § 1026.37(m)(1)

- (1) **Appraisal.** For transactions subject to 15 U.S.C. 1639h or 1691(e), as implemented in this part or Regulation B, 12 CFR part 1002, respectively, a statement, labeled “**Appraisal**,” that:
- (i) The creditor may order an appraisal to determine the value of the property identified in paragraph (a)(6) of this section and may charge the consumer for that appraisal;
  - (ii) The creditor will promptly provide the consumer a copy of any appraisal, even if the transaction is not consummated; and
  - (iii) The consumer may choose to pay for an additional appraisal of the property for the consumer’s use.

### Regulatory Commentary

1. **Applicability.** *The disclosure required by § 1026.37(m)(1) is only applicable to transactions subject to § 1026.19(e) that are also subject either to 15 U.S.C. 1639h or 1691(e) or both, as implemented by this part or Regulation B, 12 CFR part 1002, respectively. Accordingly, if a transaction is not also subject to either or both of these provisions, as implemented by this part or Regulation B, respectively, the disclosure required by § 1026.37(m)(1) may be omitted from the Loan Estimate as described by comment 37-1 as illustrated by form H-24 of appendix H to this part. For transactions subject to section 1639h but not section 1691(e), the creditor may delete the word “promptly” from the disclosure required by § 1026.37(m)(1)(ii).*
2. **Consummation.** *Section 1026.37(m)(1) requires the creditor to disclose that it will provide a copy of any appraisal, even if the transaction is not consummated. On form H-24, the disclosure required by § 1026.37(m)(1) states that the creditor will provide an appraisal, even if the “loan does not close.” Pursuant to § 1026.37(o)(3), the disclosure required by § 1026.37(m)(1) is that illustrated by form H-24.*

## CFPB Guide

A statement concerning the Appraisal must be provided for:

- Higher-priced Mortgage Loans, and
- Loans covered by the Equal Credit Opportunity Act. (§ 1026.37(m)(1))

If the loan is a Higher-priced Mortgage Loan, but is not covered by the Equal Credit Opportunity Act, the word “promptly” may be removed from the language provided on the model form. (Comment 37(m)(1)-1)

**[51] Assumption (page 3, Other Considerations)**

<b>Assumption</b>	if you sell or transfer this property to another person, we <input type="checkbox"/> will allow, under certain conditions, this person to assume this loan on the original terms. <input type="checkbox"/> will not allow assumption of this loan on the original terms.
-------------------	--

Creditor must mark one of the boxes.

**Y&A Completion Instruction**

The processor should answer this question based on the rules set forth by management.

**Regulatory Text § 1026.37(m)(2)**

- (2) **Assumption.** A statement of whether a subsequent purchaser of the property may be permitted to assume the remaining loan obligation on its original terms, labeled “**Assumption.**”

**Regulatory Commentary**

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

**CFPB Guide**

None.

## ***[52] Homeowners Insurance (page 3, Other Considerations)***



### **Y&A Completion Instruction**

This is an optional disclosure. When used, it is boilerplate. While we believe that this disclosure should always be present, loan processors should follow the direction of management.

### **Regulatory Text § 1026.37(m)(3)**

- (3) **Homeowner's insurance.** At the option of the creditor, a statement that homeowner's insurance is required on the property and that the consumer may choose the insurance provider, labeled **"Homeowner's Insurance."**

### **Regulatory Commentary**

1. **Optional disclosure.** Section 1026.37(m)(3) provides that creditors may, but are not required to, disclose a statement of whether homeowner's insurance is required on the property and whether the consumer may choose the insurance provider, labeled **"Homeowner's Insurance."**
2. **Relation to the finance charge.** Section 1026.4(d)(2) describes the conditions under which a creditor may exclude premiums for homeowner's insurance from the finance charge. For transactions subject to § 1026.19(e), a creditor satisfies § 1026.4(d)(2)(i) by disclosing the statement described in § 1026.37(m)(3).

### **CFPB Guide**

None.

**[53] Late Payment (page 3, Other Considerations)**

<b>Late Payment</b> If your payment is more than ____ days late, we will charge a late fee of _____.
--

Creditor must complete all fields based on the Anticipated loan terms.

**Y&A Completion Instruction**

The processor should complete this disclosure based on the anticipated late charge language that will appear in the note.

**Regulatory Text § 1026.37(m)(4)**

- (4) **Late payment.** A statement detailing any charge that may be imposed for a late payment, stated as a dollar amount or percentage charge of the late payment amount, and the number of days that a payment must be late to trigger the late payment fee, labeled “**Late Payment.**”

**Regulatory Commentary**

1. **Definition.** Section 1026.37(m)(4) requires a disclosure if charges are added to an individual delinquent installment by a creditor that otherwise considers the transaction ongoing on its original terms. Late payment charges do not include:

- (i) the right of acceleration;
- (ii) fees imposed for actual collection costs, such as repossession charges or attorney’s fees;
- (iii) referral and extension charges; or
- (iv) the continued accrual of simple interest at the contract rate after the payment due date.

*However, an increase in the interest rate on account of a late payment by the consumer is a late payment charge to the extent of the increase.*

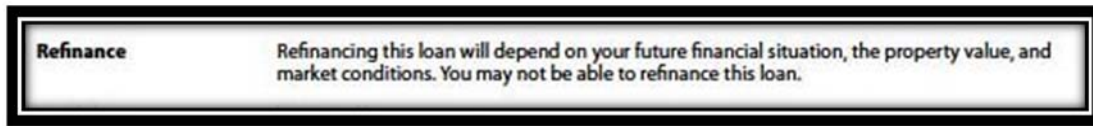
2. **Applicability of State law.** Many State laws authorize the calculation of late charges as either a percentage of the delinquent payment amount or a specified dollar amount, and permit the imposition of the lesser or greater of the two calculations. The language provided in the disclosure may reflect the requirements and alternatives allowed under State law.

## CFPB Guide

An increase in the interest rate triggered by a Late Payment is a charge for late payment. The following are not charges for Late Payment:

- The right of acceleration;
- Fees imposed for actual collection costs;
- Referral and extension charges; or
- Interest charged at the contract rate after the payment due date. (Comment 37(m)(4)-1)

***[54] Refinance (page 3, Other Considerations)***



**Y&A Completion Instruction**

This is a boilerplate disclosure, and requires no processor action.

**Regulatory Text § 1026.37(m)(5)**

- (5) **Refinance.** The following statement, labeled “**Refinance**”: “**Refinancing this loan will depend on your future financial situation, the property value, and market conditions. You may not be able to refinance this loan.**”

**Regulatory Commentary**

*None.*

**CFPB Guide**

*None.*



## [55] Servicing (page 3, Other Considerations)

The diagram shows a rectangular box representing the 'Servicing' disclosure. Inside the box, the word 'Servicing' is in the top left. To its right, the text 'We intend' is followed by two lines of text, each preceded by an empty checkbox: 'to service your loan. If so, you will make your payments to us.' and 'to transfer servicing of your loan.' A callout line points from the right side of the box to a separate rectangular box containing the text: 'Servicing Disclosures – creditor must mark one of the boxes.'

### Y&A Completion Instruction

The processor must complete the Servicing Disclosure. The choices have been reduced to two, and should the decision change regarding the sale of the servicing of the loan (generally due to a changed circumstance) during the course of the loan closing process, then this disclosure must change as well.

### Regulatory Text § 1026.37(m)(6)

(6) **Servicing.** A statement of whether the creditor intends to service the loan or transfer the loan to another servicer, labeled “**Servicing.**”

### Regulatory Commentary

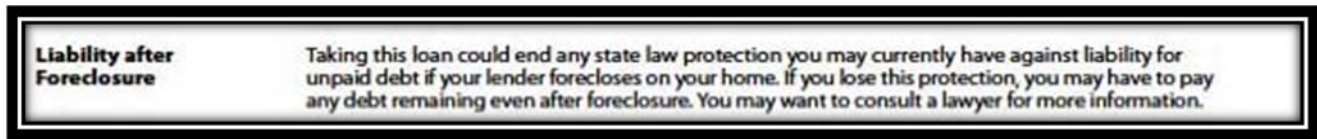
1. **Creditor’s intent.** Section 1026.37(m)(6) requires the creditor to disclose whether it intends to service the loan directly or transfer servicing to another servicer after consummation. A creditor complies with § 1026.37(m)(6) if the disclosure reflects the creditor’s intent at the time the Loan Estimate is issued.

### CFPB Guide

The Servicing disclosure is a statement about the creditor’s intentions regarding servicing. (§ 1026.37(m)(6)) The disclosure is based on the intent at the time the Loan Estimate is issued. (Comment 37(m)(6)-1) Intent to transfer servicing of the loan includes:

- The intent to transfer servicing immediately after consummation;
- The intent to transfer servicing anytime throughout the life of the loan; and
- The intent to transfer servicing to a subsidiary or affiliate.

## [56] Liability After Foreclosure – Moderate



### Y&A Completion Instruction

This is a boilerplate disclosure that will only appear in refinance of purchase money loan. No processor action is required.

### Regulatory Text § 1026.37(m)(7)

- (7) **Liability after foreclosure.** If the purpose of the credit transaction is to refinance an extension of credit as described in paragraph (a)(9)(ii) of this section, a brief statement that certain State law protections against liability for any deficiency after foreclosure may be lost, the potential consequences of the loss of such protections, and a statement that the consumer should consult an attorney for additional information, labeled “**Liability after Foreclosure.**”
- (8) **Construction loans.** In transactions involving new construction, where the creditor reasonably expects that settlement will occur more than 60 days after the provision of the loan estimate, at the creditor's option, a clear and conspicuous statement that the creditor may issue a revised disclosure any time prior to 60 days before consummation, pursuant to §1026.19(e)(3)(iv)(F).

### Regulatory Commentary

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

### CFPB Guide

None.

## Section 15: Signature Statement

### 12 CFR § 1026.37(n)

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#### *Signature Statement*

#### **Regulatory Text § 1026.37(n)**

(n) *Signature statement.*

#### **Regulatory Commentary**

*None.*

#### **CFPB Guide**

None.

### ***[57] Confirm Receipt (page 3, Confirm Receipt)***

<b>Confirm Receipt</b>			
By signing, you are only confirming that you have received this form. You do not have to accept this loan because you have signed or received this form.			
Applicant Signature	Date	Co-Applicant Signature	Date

#### **Y&A Completion Instruction**

The Confirm Receipt portion of the Loan Estimate is optional. The processor will include or exclude this section based on management decision.

#### **Regulatory Text § 1026.37(n)(1)**

- (1) At the creditor's option, under the master heading required by paragraph (k) of this section and under the heading "**Confirm Receipt**," a line for the signatures of the consumers in the transaction. If the creditor includes a line for the consumer's signature, the creditor must disclose the following above the signature line: "**By signing, you are only confirming that you have received this form. You do not have to accept this loan because you have signed or received this form.**"

#### **Regulatory Commentary**

- Signature line optional.** *Whether a signature line is provided under § 1026.37(n) is determined solely by the creditor. If a signature line is provided, however, the disclosure must include the statement required by § 1026.37(n)(1).*
- Multiple consumers.** *If there is more than one consumer who will be obligated in the transaction, the first consumer signs as the applicant and each additional consumer signs as a co-applicant. If there is not enough space under the heading "Confirm Receipt" to provide signature lines for every consumer in the transaction, the creditor may add additional signature pages, as needed, at the end of the form for the remaining consumers' signatures. However, the creditor is required to disclose the heading and statement required by § 1026.37(m)(7) on such additional pages.*
- Consumer's name.** *The creditor may insert the consumer's name under the signature line, rather than using the designation "Applicant" or "Co-Applicant" as illustrated in form H-24 of appendix H to this part, but is not required to do so pursuant to § 1026.37(n)(1).*

## CFPB Guide

The consumer is not required to sign the Loan Estimate. The creditor may add a signature statement and have the consumer sign page 3 of the Loan Estimate in order to Confirm Receipt of the Loan Estimate by the consumer. If used by the creditor, the signature statement must contain the exact language from the model form. (§ 1026.37(n)(1))

If the Confirm Receipt table is not used by a creditor, a statement about Loan Acceptance must be included at the end of the Other Consideration table that states, “You do not have to accept this loan because you have received this form or signed a loan application.” (§ 1026.37(n)(2))

## ***[58] Loan Acceptance (page 3, Confirm Receipt)***

### **Y&A Completion Instruction**

If the Confirm Receipt portion of the Loan Estimate has been omitted, this disclosure automatically appears within “Other Considerations.” No processor action should be required regarding this disclosure, as the software should make the change automatically.

### **Regulatory Text § 1026.37(n)(2)**

- (2) If the creditor does not include a line for the consumer’s signature, the creditor must disclose the following statement under the heading “**Other Considerations**” required by paragraph (m) of this section, labeled “**Loan Acceptance**”: “**You do not have to accept this loan because you have received this form or signed a loan application.**”

### **Regulatory Commentary**

*None.*

### **CFPB Guide**

None.

## Section 16: Form of Disclosures

### 12 CFR § 1026.37(o)

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#### *General Language*

##### **Regulation § 1026.37(o)**

**(o) Form of disclosures.**

##### **Regulatory Commentary**

*None.*

##### **CFPB Guide**

None.



## **[59] General Requirements**

### **Y&A Completion Instruction:**

There are no completion instructions for this section. This instruction requires that all disclosures be clear and conspicuous.

### **Regulatory Text § 1026.37(o)(1)**

#### **(1) General requirements.**

- (i) The creditor shall make the disclosures required by this section clearly and conspicuously in writing, in a form that the consumer may keep. The disclosures also shall be grouped together and segregated from everything else.
- (ii) Except as provided in paragraph (o)(5) of this section, the disclosures shall contain only the information required by paragraphs (a) through (n) of this section and shall be made in the same order, and positioned relative to the master headings, headings, subheadings, labels, and similar designations in the same manner, as shown in form H-24, set forth in appendix H to this part.

### **Regulatory Commentary**

1. **Clear and conspicuous; segregation.** *The clear and conspicuous standard requires that the disclosures required by § 1026.37 be legible and in a readily understandable form. Section 1026.37(o)(1)(i) requires that the disclosures be grouped together and segregated from everything else. For example, creditors may not add additional pages in between the pages of the Loan Estimate, or attach to the Loan Estimate additional pages that are not provided for under § 1026.37 after the last page of the Loan Estimate. As required by § 1026.37(o)(3)(i), the disclosures for any transaction that is a federally related mortgage loan under Regulation X, 12 CFR 1024.2, must be made using the standard form H-24 of appendix H to this part. Accordingly, use of that form constitutes compliance with the clear and conspicuous and segregation requirements of § 1026.37(o). In addition, § 1026.37(o)(1)(ii) requires creditors to disclose on the Loan Estimate only the information required by § 1026.37(a) through (n), except as otherwise provided by § 1026.37(o), and in the same order, and positioned relative to the master headings, headings, subheadings, labels, and similar designations in the same manner, as shown in form H-24, set forth in appendix H to this part. For example, creditors may not use form H-24, but include in the Loan Terms table under the subheading “**Can this amount increase after closing?**” information that is not required by § 1026.37(b)(6).*
2. **Balloon payment financing with leasing characteristics.** *In certain credit sale or loan transactions, a consumer may reduce the dollar amount of the payments to be made during the transaction by agreeing to make, at the end of the loan term, a large final payment based on the expected residual value of the property. The consumer may have a number of options with respect to the final payment, including, among other things, retaining the property and making the final payment, refinancing the final payment, or transferring the property to the creditor in*

*lieu of the final payment. Such transactions may have some of the characteristics of lease transactions subject to Regulation M (12 CFR part 1013), but are considered credit transactions where the consumer assumes the indicia of ownership, including the risks, burdens, and benefits of ownership, upon consummation. These transactions are governed by the disclosure requirements of this part instead of Regulation M. Under § 1026.37(o)(1)(ii), creditors may not include any additional information with the disclosures required by § 1026.37, except as provided in § 1026.37(o)(5). Thus, the disclosures must show the large final payment as a balloon payment in the projected payments table required by § 1026.37(c) and should not, for example, reflect the other options available to the consumer at maturity.*

**CFPB Guide**

None.

## ***[60] Headings and Labels***

### **Y&A Completion Instruction:**

There are no completion instructions for this section. This instruction requires that all requirements for bold print and capitalization be followed.

### **Regulatory Text § 1026.37(o)(2)**

- (2) **Headings and labels.** If a master heading, heading, subheading, label, or similar designation contains the word “**estimated**” or a capital letter designation in form H-24, set forth in appendix H to this part, that heading, label, or similar designation shall contain the word “**estimated**” and the applicable capital letter designation.

### **Regulatory Commentary**

1. ***Estimated amounts.*** Section 1026.37(o)(2) incorporates the “**estimated**” designations reflected on form H-24 of appendix H to this part into the disclosure requirements of § 1026.37, even if the relevant provision of § 1026.37 does not expressly require or permit disclosure of the word “**estimate**.” Where form H-24 uses the abbreviation “**est.**” in place of the word “**estimated**,” § 1026.37(o)(2) also incorporates that designation into its requirement. For example, § 1026.37(c)(2)(iv) requires disclosure of the total periodic payment labeled “**Total Monthly Payment**,” but the label on form H-24 contains the designation “**Estimated**” and thus, the label required by § 1026.37(c)(2)(iv) must contain the designation “**Estimated**.” Although many of the disclosures required by § 1026.38 cross-reference their counterparts in § 1026.37, § 1026.38(t) incorporates the “**estimated**” designations reflected on form H-25, not form H-24.

### **CFPB Guide**

None.

## [61] Form

### Y&A Completion Instruction:

There are no completion instructions for this section. This instruction requires that all federally related mortgage loans use the Loan Estimate form (H-24) or a substantially similar document.

### Regulation § 1026.37(o)(3)

(3) **Form.** Except as provided in paragraph (o)(5) of this section:

- (i) For a transaction subject to § 1026.19(e) that is a federally related mortgage loan, as defined in Regulation X, 12 CFR 1024.2, the disclosures must be made using form H-24, set forth in appendix H to this part.
- (ii) For any other transaction subject to this section, the disclosures must be made with headings, content, and format substantially similar to form H-24, set forth in appendix H to this part.
- (iii) The disclosures required by this section may be provided to the consumer in electronic form, subject to compliance with the consumer consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (15 U.S.C. 7001 et seq.).

### Regulatory Commentary

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

### CFPB Guide

None.

## **[62] Rounding**

### **Y&A Completion Instruction:**

There are no completion instructions for this section. This instruction requires that all fields follow the rounding rules. This is strictly a software issue.

### **Regulatory Text § 1026.37(o)(4)**

#### **(4) Rounding.**

##### **(i) Nearest dollar.**

(A) The dollar amounts required to be disclosed by paragraphs (b)(6) and (7), (c)(1)(iii), (c)(2)(ii) and (iii), (c)(4)(ii), (f), (g), (h), (i), and (l) of this section shall be rounded to the nearest whole dollar, except that the per-diem dollar amount required to be disclosed by paragraph (g)(2)(iii) of this section and the monthly dollar amounts required to be disclosed by paragraphs (g)(3)(i) through (iii) and (g)(3)(v) of this section shall not be rounded.

(B) The dollar amount required to be disclosed by paragraph (b)(1) of this section shall not be rounded, and if the amount is a whole number then the amount disclosed shall be truncated at the decimal point.

(C) The dollar amounts required to be disclosed by paragraph (c)(2)(iv) of this section shall be rounded to the nearest whole dollar, if any of the component amounts are required by paragraph (o)(4)(i)(A) of this section to be rounded to the nearest whole dollar.

(ii) **Percentages.** The percentage amounts required to be disclosed under paragraphs (b)(2) and (6), (f)(1)(i), (g)(2)(iii), (j), and (l)(2) and (3) of this section shall be disclosed by rounding the exact amounts to three decimal places and then dropping any trailing zeros that occur to the right of the decimal place.

### **Regulatory Commentary**

#### **37(o)(4) Rounding.**

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

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

- 1. Rounding of dollar amounts.** Section 1026.37(o)(4)(i)(A) requires that certain dollar amounts be rounded to the nearest whole dollar. For example, under § 1026.37(o)(4)(i)(A), periodic mortgage insurance payments are rounded and disclosed to the nearest dollar, such that a periodic mortgage insurance payment of \$164.50 is disclosed under § 1026.37(c)(2)(ii) as \$165, but a periodic mortgage insurance payment of \$164.49 is disclosed as \$164. The per-diem amount disclosed under § 1026.37(g)(2)(iii) and the monthly amounts for the initial escrow payment at closing disclosed pursuant to § 1026.37(g)(3)(i) through (iii) and (v) do not include

partial cents. Dollar amounts are rounded or truncated to the nearest whole cent. For example, under § 1026.37(g)(2)(iii), the creditor discloses per-diem interest of \$68.1254 as \$68.13 or \$68.12. See form H-24(B) in appendix H to this part for an illustration of per-diem amounts for homeowner's insurance disclosed pursuant to § 1026.37(g)(3)(i).

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

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

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

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

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

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

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

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

1. **Decimal places.** *Section 1026.37(o)(4)(ii) requires the percentage amounts disclosed rounding exact amounts to three decimal places, but the creditor does not disclose trailing zeros to the right of the decimal point. For example, a 2.4999 percent annual percentage rate is disclosed as “2.5%” under § 1026.37(o)(4)(ii). Similarly, a 7.005 percent annual percentage rate is disclosed as “7.005%,” and a 7.000 percent annual percentage rate is disclosed as “7%.”*

**CFPB Guide**

None.



## [63] Exceptions

### Y&A Completion Instruction:

There are no completion instructions for this section. This is strictly a software issue.

### Regulatory Text § 1026.37(o)(5)

#### (5) Exceptions.

- (i) **Unit-period.** Wherever the form or this section uses “monthly” to describe the frequency of any payments or uses “**month**” to describe the applicable unit-period, the creditor shall substitute the appropriate term to reflect the fact that the transaction’s terms provide for other than monthly periodic payments, such as bi-weekly or quarterly payments.
- (ii) **Translation.** The form may be translated into languages other than English, and creditors may modify form H-24 of appendix H to this part to the extent that translation prevents the headings, labels, designations, and required disclosure items under this section from fitting in the space provided on form H-24.
- (iii) **Logo or slogan.** The creditor providing the form may use a logo for, and include a slogan with, the information required by paragraph (a)(3) of this section in any font size or type, provided that such logo or slogan does not cause the information required by paragraph (a)(3) of this section to exceed the space provided for that information, as illustrated in form H-24 of appendix H to this part. If the creditor does not use a logo for the information required by paragraph (a)(3) of this section, the information shall be disclosed in a similar format as form H- 24.
- (iv) **Business card.** The creditor may physically attach a business card over the information required to be disclosed by paragraph (a)(3) of this section.
- (v) **Administrative information.** The creditor may insert at the bottom of each page under the disclosures required by this section as illustrated by form H-24 of appendix H to this part, any administrative information, text, or codes that assist in identification of the form or the information disclosed on the form, provided that the space provided on form H-24 of appendix H to this part for any of the information required by this section is not altered.

### Regulatory Commentary

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

2. **Manual completion.** *Section 1026.37(o) does not require the creditor to use a computer, typewriter, or other word processor to complete the disclosure form. The information and amounts required to be disclosed by § 1026.37 on form H-24 of appendix H to this part may be filled in by hand printing or using any other method, provided the information is clear and legible and complies with the formatting required by form H-24, including replicating bold font where required.*
3. **Contact information.** *If a transaction involves more than one creditor or mortgage broker, the space provided on form H-24 of appendix H to this part for the contact information required by § 1026.37(m) may be altered to add additional labels to accommodate the additional information of such parties, provided that the information required by § 1026.37(l), (m), and (n) are disclosed on the same page as illustrated by form H-24. If the space provided on form H-24 of appendix H to this part does not allow for the disclosure of such contact and other information on the same page, an additional page may be added to provide the required contact information with an appropriate reference to the additional page.*
4. **Unit-period.** *Section 1026.37(o)(5)(i) provides that wherever form H-24 or § 1026.37 applicable unit-period, the creditor is required to substitute the appropriate term to reflect the fact that the transaction's terms provide for other than monthly periodic payments, such as bi-weekly or quarterly payments. For purposes of § 1026.37, the term "unit-period" has the same meaning as in appendix J to Regulation Z.*
5. **Additional page.** *Information required or permitted to be disclosed by § 1026.37 on a separate page should be formatted similarly to form H-24 of appendix H to this part, so as not to affect the substance, clarity, or meaningful sequence of the disclosure. In addition, information provided on additional pages should be consolidated on as few pages as necessary to not affect the substance, clarity, or meaningful sequence of the disclosure.*
6. **Translation.** *Section 1026.37(o)(5)(ii) permits the translation of form H-24 into languages other than English, consistent with § 1026.27. Pursuant to § 1026.37(o)(5)(ii) creditors may modify form H-24 to the extent that translation prevents the headings, labels, designations, and required disclosure items under § 1026.37 from fitting in the space provided on form H-24. For example, if the translation of a required label does not fit within the line provided for such label in form H-24, the label may be disclosed over two lines. See form H-28 of appendix H to this part for Spanish translations of form H-24.*

## CFPB Guide

None.

# Closing Disclosures

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# Section 1: Manual Notes and Introduction

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## *Manual Notes*

Each field on the Closing Disclosure form has been numbered. For each field, we have included the following information.

### **Picture of the Fields**

A picture of the portion of the disclosure that is under discussion (where appropriate). All pictures are surrounded by a heavy border.

### **Y&A Completion Instructions**

The manual contains instructions about how to complete the field accurately.

### **Regulation and Commentary**

“**Regulatory Text**” is the regulatory text from § 1026.38 – the Closing Disclosure. Items in **bold** are included to assist the reader in finding items on the page. **Bold** has no other implication.

“**Regulatory Commentary**” is the commentary text from § 1026.38 – the Closing Disclosure. It is in *italics*. Items in **bold** are included to assist the reader in finding items on the page. **Bold** has no other implication.

### **CFPB Guide**

Included, are sections from the CFPB’s TILA-RESPA Integrated Disclosure Guide to the Loan Estimate and Closing Disclosure (Version 2.1) forms as additional guidance for completion of the forms.

## *Loan Estimate Instructions*

In the Closing Disclosure portion of the regulation, the instruction refers the reader back to the Loan Estimate language. When appropriate, the Loan Estimate regulatory text and commentary is replicated in this manual. This will assist the reader in understanding the Closing Disclosure instructions.

## General Commentary

### Y&A Commentary

This section reminds financial institutions to avoid using “N/A.” It also reminds the reader that this is the Closing Disclosure, which requires “real” numbers, not estimates. If an estimate is used on the Closing Disclosure, the creditor will be required to issue a new Closing Disclosure once the estimated information can be replaced with the correct amount.

### Regulatory Commentary

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

- 1. Disclosures not applicable.*** Where a disclosure is not applicable to a particular transaction, form H-25 of appendix H to this part may not be modified to state “**not applicable**” or “**N/A.**” The portion of the form pertaining to the inapplicable disclosure may be left blank unless otherwise provided by § 1026.38. For example, the disclosure required by § 1026.38(r) of the consumer’s or seller’s real estate broker may be left blank for a transaction that does not involve real estate brokers, such as a refinance or home equity loan. As provided in § 1026.38(m) and (n), however, the adjustable payment and adjustable interest rate tables required by those paragraphs may be included only if those disclosures are applicable to the transaction and otherwise must be excluded.
- 2. Format.*** See § 1026.38(t) and its commentary for guidance on the proper format to be used in making the disclosures, as well as required and permissible modifications.
- 3. Good faith requirement.*** The disclosures required by § 1026.38 are required to reflect the actual terms of the legal obligation between the parties, and the actual costs associated with the settlement of the transaction. Creditors and settlement agents may estimate disclosures as provided pursuant to § 1026.19(f)(1)(i) when the actual term or cost is unknown at the time the disclosures are made. See §§ 1026.17(c)(2) and 1026.19(f)(1)(i) and comments 17(c)(2)(i)-1 and -2, and 19(f)(1)(i)-2.
- 4. Reductions in principal balance.*** A principal reduction that occurs immediately or very soon after closing must be disclosed in the summaries of transactions table on the standard Closing Disclosure pursuant to § 1026.38(j)(1)(v) or in the payoffs and payments table on the alternative Closing Disclosure pursuant to § 1026.38(t)(5)(vii)(B). The disclosure of a principal reduction under § 1026.38(j)(1)(v) or (t)(5)(vii)(B) includes the following elements: (1) the amount of the principal reduction; (2) the phrase “principal reduction” or a similar phrase; (3) for a principal reduction disclosure under § 1026.38(t)(5)(vii)(B) only, the name of the payee; (4) if applicable to the transaction, the phrase “Paid Outside of Closing” or “P.O.C.” and the name of the party making the payment; and (5) if the principal reduction is used to satisfy the requirements of § 1026.19(f)(2)(v), a statement that the principal reduction is being provided to offset charges that exceed the legal limits, using any language that meets the clear and conspicuous standard

*under § 1026.38(t)(1)(i). If a creditor is required to disclose the name of the party making the payment or that the principal reduction is being provided to offset charges that exceed the legal limits, and there is insufficient space under the § 1026.38(j)(1)(v) or (t)(5)(vii)(B) disclosure for these elements of the principal reduction disclosure, the creditor may omit these elements from the § 1026.38(j)(1)(v) or (t)(5)(vii)(B) disclosure. If the creditor omits these elements from the § 1026.38(j)(1)(v) or (t)(5)(vii)(B) disclosure, the creditor must provide a complete principal reduction disclosure under an appropriate heading on an additional page, in accordance with § 1026.38(j) and (t)(5)(ix), as applicable, with a reference to the abbreviated principal reduction disclosure under § 1026.38(j)(1)(v) or (t)(5)(vii)(B).*

- i. Principal reduction not paid with closing funds. A principal reduction is disclosed in the summaries of transactions table under § 1026.38(j)(1)(v) and marked with the phrase “Paid Outside of Closing” or the abbreviation “P.O.C.” pursuant to § 1026.38(j)(4)(i), or in the payoffs and payments table under § 1026.38(t)(5)(vii)(B) marked with the phrase “Paid Outside of Closing” or the abbreviation “P.O.C.,” if it is not paid from closing funds. For a principal reduction disclosed under § 1026.38(j)(1)(v) that is not paid from closing funds, the amount of the principal reduction is not included in computing the summaries of transactions totals under § 1026.38(j) or the cash to close disclosures under § 1026.38(i). For a principal reduction disclosed under § 1026.38(t)(5)(vii)(B) that is not paid from closing funds, the amount of the principal reduction is not included in computing the total payoffs and payments amount disclosed under § 1026.38(t)(5)(vii)(B) or the cash to close amount disclosed under § 1026.38(e)(5)(ii). For example, a creditor providing a \$500 principal reduction to satisfy the refund requirements of § 1026.19(f)(2)(v) discloses the principal reduction under § 1026.38(j)(1)(v) by providing in Section K of the summaries of transactions table a statement such as “\$500.00 Principal Reduction for exceeding legal limits P.O.C. Lender,” and not including the amount of the principal reduction in the summaries of transactions totals under § 1026.38(j) or the calculating cash to close disclosures under § 1026.38(i). Alternatively, if there is insufficient space under § 1026.38(j)(1)(v) for a creditor to disclose the name of the party making the payment or a statement that the principal reduction is being provided to offset charges that exceed the legal limits, a creditor may disclose a statement such as “\$500.00 Principal Reduction P.O.C.” under § 1026.38(j)(1)(v) and a statement on an additional page such as “\$500.00 Principal Reduction for exceeding legal limits P.O.C. Lender. See Section K on page 3.”*
- ii. Principal reduction paid with closing funds. A principal reduction is disclosed in the summaries of transactions table under § 1026.38(j)(1)(v) or in the payoffs and payments table under § 1026.38(t)(5)(vii)(B) without the phrase “Paid Outside of Closing” or the abbreviation “P.O.C.” if it is paid from closing funds. The amount of a principal reduction that is paid with closing funds is included in the applicable calculations required under § 1026.38. For example, in a refinance transaction using the alternative tables on the Closing Disclosure, a creditor discloses a \$1,000 principal reduction to reduce the cash provided to the consumer by providing in the payoffs and payments table under § 1026.38(t)(5)(vii)(B) a statement such as “Principal Reduction to Consumer” under the column heading “TO” and “\$1,000.00” under the column heading “AMOUNT,” and by including such amount in the total payoffs and payments amount under § 1026.38(t)(5)(vii)(B) and in the cash to close amount under § 1026.38(e)(5)(ii). In this example, the creditor must disclose the following elements under § 1026.38(t)(5)(vii)(B): the amount of the principal reduction, the phrase “principal reduction” or a similar phrase, and the name of the payee. The creditor should not include in the disclosure the phrase “Paid Outside of Closing” or “P.O.C.” and the name of the party making the payment, or a statement that the principal reduction is being*



*provided to offset charges that exceed the legal limits, because those principal reduction disclosure elements are not applicable to the transaction in this particular example. The creditor may not use an addendum for the principal reduction disclosure in this example.*

## **CFPB Guide**

### ***Issuance and Delivery***

A Closing Disclosure must be provided to the consumer at least three business days prior to consummation. (see section 3.1.5 for more information; § 1026.19(f)(1)(ii))

### ***Corrected Closing Disclosure***

Prior to consummation, an additional three-business-day waiting period applies when there are changes to the Closing Disclosure that result in an increase to the APR that becomes inaccurate, the addition of a Prepayment Penalty, or the change of a loan product. (§ 1026.19(f)(2)(ii); Comment 19(f)(2)(ii)-1)

For other changes prior to consummation, provide the updated information in a revised Closing Disclosure no later than consummation to the consumer. Upon the consumer's request, by the business day before consummation, a creditor must permit the consumer to inspect the Closing Disclosure, although the creditor may omit items related only to the seller's transaction. (§ 1026.19(f)(2)(i))

In addition, provide a corrected Closing Disclosure if an event related to the settlement occurs during the 30-calendar-day period after consummation that causes the Closing Disclosure to become inaccurate and results in a change to an amount paid by the consumer from what was previously disclosed. (§ 1026.19(f)(2)(iii); Comment 19(f)(2)(iii)-1) Deliver or place in the mail the revised Closing Disclosure no later than 30 calendar days after receiving information sufficient to establish changes to the amount paid by the consumer. (§ 1026.19(f)(2)(iii))

### ***Rounding***

Dollar amounts must be rounded to the nearest whole dollar where noted. (§ 1026.38(t)(4)(i)) If an amount must be rounded but is composed of other amounts that are **not** rounded, use the unrounded amounts in calculating the total and then round the final sum. Conversely, if an amount is required to be rounded and is composed of rounded amounts, use the rounded amounts in calculating the total. (Comment 38(t)(4)-2)

Percentage amounts should **not** be rounded and are shown up to two or three decimals, as needed, except where noted in the regulation. If a percentage amount is a whole number, show the whole number only with no decimals. (§ 1026.38(t)(4)(ii))

### ***Consummation***

Consummation is not the same thing as closing or settlement. 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. (§ 1026.2(a)(13))

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.

## Section 2: Closing Disclosure General

### 12 CFR § 1026.38(a)

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#### *General Language*

##### **Y&A Commentary**

For the Closing Disclosure to apply, the loan must be subject to § 1026.19(f).

##### **Regulatory Text**

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

(a) **General information.**

##### **Regulatory Commentary**

*None.*

##### **CFPB Guide**

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), (d))

**[1] Form Title (page 1, top left)**

Closing Disclosure		
This form is a statement of final loan terms and closing costs. Compare this document with your Loan Estimate.		
<b>Closing Information</b>	<b>Transaction Information</b>	<b>Loan Information</b>
Date Issued	Borrower	Loan Term
Closing Date		Purpose
Disbursement Date		Product
Settlement Agent	Seller	
File #		Loan Type <input type="checkbox"/> Conventional <input type="checkbox"/> FHA
Property	Lender	<input type="checkbox"/> VA <input type="checkbox"/> _____
Sale Price		Loan ID #
		MIC #

### Y&A Completion Instruction

Title the document “Closing Disclosure.” This is boilerplate, and should require no processor action.

### Regulatory Text § 1026.38(a)(1)

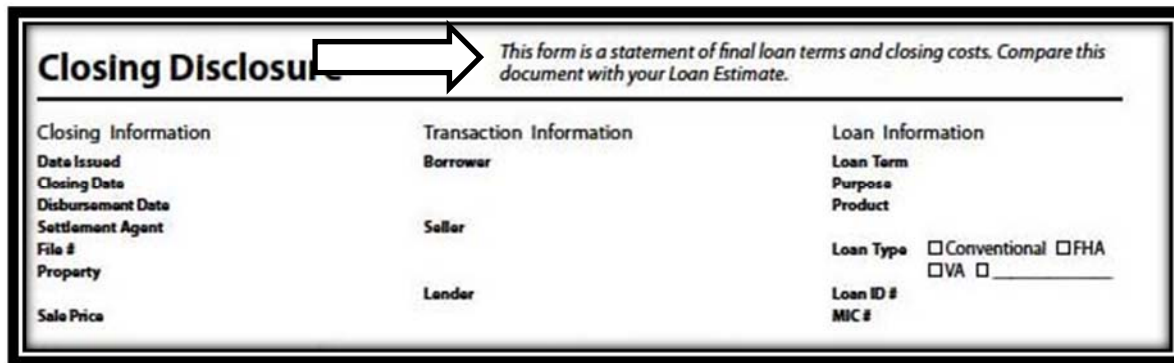
(1) **Form title.** The title of the form, “**Closing Disclosure,**” using that term.

### Regulatory Commentary

*None.*

### CFPB Guide

*None.*

**[2] Form Purpose (page 1, top right)**


The image shows the top portion of a Closing Disclosure form. At the top left, the title "Closing Disclosure" is followed by a large right-pointing arrow. To the right of the arrow is the text: "This form is a statement of final loan terms and closing costs. Compare this document with your Loan Estimate." Below this header is a table with three columns: "Closing Information", "Transaction Information", and "Loan Information".

Closing Information	Transaction Information	Loan Information
Date Issued	Borrower	Loan Term
Closing Date		Purpose
Disbursement Date		Product
Settlement Agent	Seller	Loan Type <input type="checkbox"/> Conventional <input type="checkbox"/> FHA
File #		<input type="checkbox"/> VA <input type="checkbox"/> _____
Property	Lender	Loan ID #
Sale Price		MIC #

**Y&A Completion Instruction**

State the form's purpose as "This form is a statement of final loan terms and closing costs. Compare this document with your Loan Estimate." This is boilerplate and requires no processor action.

**Regulatory Text § 1026.38(a)(2)**

(2) **Form purpose.** The following statement: **"This form is a statement of final loan terms and closing costs. Compare this document with your Loan Estimate."**

**Regulatory Commentary**

*None.*

**CFPB Guide**

*None.*

### [3] Closing Information (page 1, top left)

The diagram shows a simplified version of the Closing Disclosure form. It is titled "Closing Disclosure" and includes a subtitle: "A statement of final loan terms and closing costs. Compare this document with your Loan Estimate." The form is divided into three main sections: Closing Information, Transaction Information, and Loan Information.

Closing Information	Transaction Information	Loan Information
Date Issued	Borrower	Loan Term
Closing Date		Purpose
Disbursement Date		Product
Settlement Agent	Seller	Loan Type <input type="checkbox"/> Conventional <input type="checkbox"/> FHA
File #		<input type="checkbox"/> VA <input type="checkbox"/> _____
Property	Lender	Loan ID #
Sale Price		MIC #

Callout 1 (top): There are 3 required dates that must be modified with every new version of the Closing Disclosure (pointing to Date Issued, Closing Date, and Disbursement Date).

Callout 2 (middle right): There are 2 fields for Settlement Agent information (pointing to Settlement Agent and File #).

Callout 3 (bottom left): There are 2 fields specific to the loan: Property Address and the Sale Price or other value (Sale Price is a dynamic title) (pointing to Property and Sale Price).

### Y&A Completion Instruction

**Dates:** There are three dates – the issue date, the closing date, and the disbursement date. The processor must insert these dates. The Date Issued is the date the closing disclosure is delivered to the consumer, no matter the delivery method used. The Closing Date is the date of consummation, generally the note date. The Disbursement Date is the date the amounts are expected to be disbursed, which can vary between purchase and non-purchase, rescission loans, etc. Depending upon the circumstances, all three dates can be different or the same. For instance, in a purchase transaction, the closing date and the disbursement date normally would match. Each time a Closing Disclosure is issued, the processor must review these dates for accuracy, as they will change.

**Settlement Agent Data:** The processor must insert the name of the settlement agent conducting the closing, and the file number for the settlement agent, if one is available.

**Property Data:** The processor must insert all collateral property addresses, including the zip code. If the property does not have an address, insert a sufficient description to identify the property, including the zip code. Personal property does not have to be included if it does not fit in the space provided (which is likely to be true). If there are multiple addresses for the real property, an addendum page may be added.

**Sale Price Data:** the processor must insert either the contract sale price of the property or the appraised value of the property. The label for this value will change based on the loan type.

### **Regulatory Text § 1026.38(a)(3)**

**(3) Closing information.** Under the heading “**Closing Information**”:

- (i) **Date issued.** The date the disclosures required by this section are delivered to the consumer, labeled “**Date Issued.**”
- (ii) **Closing date.** The date of consummation, labeled “**Closing Date.**”
- (iii) **Disbursement date.** The date the amount disclosed under paragraph (j)(3)(iii) (cash to close from or to borrower) or (k)(3)(iii) (cash from or to seller) of this section is expected to be paid in a purchase transaction under § 1026.37(a)(9)(i) to the consumer or seller, respectively, as applicable, except as provided in comment 38(a)(3)(iii)-1, or the date some or all of the loan amount disclosed under paragraph (b) of this section is expected to be paid to the consumer or a third party other than a settlement agent in a transaction that is not a purchase transaction under § 1026.37(a)(9)(i), labeled “**Disbursement Date.**”
- (iv) **Settlement agent.** The name of the settlement agent conducting the closing, labeled “**Settlement Agent.**”
- (v) **File number.** The number assigned to the transaction by the settlement agent for identification purposes, labeled “**File #.**”
- (vi) **Property.** The address or location of the property required to be disclosed under § 1026.37(a)(6), labeled “**Property.**”
- (vii) **Sale price.**
  - (A) In credit transactions where there is a seller, the contract sale price of the property identified in paragraph (a)(3)(vi) of this section, labeled “**Sale Price.**”
  - (B) In credit transactions where there is no seller, the appraised value of the property identified in paragraph (a)(3)(vi) of this section, labeled “**Appraised Prop. Value.**”

### **Regulatory Commentary**

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

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

#### **38(a)(3)(iii) Disbursement date.**

1. **Simultaneous subordinate financing disbursement date.** *The disbursement date on the simultaneous subordinate financing Closing Disclosure is the date some or all of the subordinate financing loan amount disclosed under § 1026.38(b) is expected to be paid to the consumer or a third party other than a settlement agent.*



**38(a)(3)(iv) Settlement agent.**

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

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

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

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

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

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

1. **No seller.** In transactions where there is no seller, such as in a refinancing, § 1026.38(a)(3)(vii)(B) requires the creditor to disclose the appraised value of the property. To comply with this requirement, the creditor discloses the value determined by the appraisal or valuation used to determine approval of the credit transaction. If the creditor has not obtained an appraisal, the creditor may disclose the estimated value of the property. Where an estimate is disclosed, rather than an appraisal, the label for the disclosure is changed to "Estimated Prop. Value." The creditor may use the estimate provided by the consumer at application but, if it has performed its own estimate of the property value for purposes of approving the credit transaction by the time the disclosure is provided to the consumer, the creditor must disclose the estimate it used for purposes of approving the credit transaction. For transactions involving construction where there is no seller, the creditor must disclose the value of the property that is used to determine the approval of the credit transaction, including improvements to be made on the property if those improvements are used in determining the approval of the credit transaction.
2. **Personal property.** For guidance on how to disclose the sale price of a transaction that includes personal property under § 1026.38(a)(3)(vii), see comment 37(a)(7)-2.

**Loan Estimate Regulatory Text and Commentary Assistance****Regulatory Text § 1026.37(a)(6)**

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

## Regulatory Commentary

1. **Alternate property address.** *Section 1026.37(a)(6) requires disclosure of the address including the zip code of the property that secures or will secure the transaction. A creditor complies with § 1026.37(a)(6) by disclosing a complete address for purposes of the U.S. Postal Service. If the address is unavailable, a creditor complies with § 1026.37(a)(6) by disclosing the location of such property including a zip code, which is required in all instances. Location of the property under § 1026.37(a)(6) includes location information, such as a lot number. The disclosure of multiple zip codes is permitted if the consumer is investigating home purchase opportunities in multiple zip codes.*
2. **Personal property.** *Where personal property also secures the credit transaction, a description of that property may be disclosed, at the creditor's option pursuant to § 1026.37(a)(6), if a description fits in the space provided on form H-24 for the disclosure required by § 1026.37(a)(6). An additional page may not be appended to the form to disclose a description of personal property.*
3. **Multiple properties.** *Where more than one property secures the credit transaction, §1026.37(a)(6) requires disclosure of all properties. If the addresses of all properties securing the transaction do not fit in the space allocated on the Loan Estimate, an additional page with that information with respect to real properties may be appended to the end of the form.*

## CFPB Guide

For Closing Information, disclose the following information:

- The Date Issued, which is the date the Closing Disclosure is delivered or placed in the mail to the consumer (not the date the form is actually printed),
- The Closing Date, which is the date of consummation (see section 3.1.5),
- The Disbursement Date, which is the date funds are disbursed.
  - In a Purchase other than a simultaneous subordinate lien transaction, the Disbursement Date is the date that the cash to close amount is expected to be paid to the consumer or seller, as applicable.
  - In a simultaneous subordinate lien transaction or in a non-purchase transaction, the Disbursement Date is the date that some of all of the Loan Amount is expected to be paid to the consumer or a third party other than the Settlement Agency
- The name of the Settlement Agent, which is the name of the entity, not the individual agent conducting the closing,
- The File #, which is the settlement agent's file number assigned to the transaction by the settlement agent (the TILA-RESPA rule does not prescribe how the settlement agent creates the file number; the file number, for example, may be alphanumeric),
- The Property address or location, and
- For the property securing the loan:
  - Sale Price,
  - Appraised Prop. Value, or
  - Estimated Prop. Value. (§ 1026.38(a)(3))

The Appraised Prop. Value of the Property is disclosed for transactions without a seller if a creditor has obtained an appraisal of the Property. (§ 1026.38(a)(3)(vii)(B)) If a creditor has obtained more than one appraisal of the Property, the creditor discloses the value set forth in the appraisal that the creditor used to approve the loan.

The Estimated Prop. Value of the Property is disclosed if the creditor has not obtained an appraisal for a transaction without a seller. If the creditor has prepared its own estimate of value for purposes of approving the credit transaction, it must use that value when disclosing the Estimated Prop. Value, rather than an estimate of value from a consumer. (Comment 38(a)(3)(vii)-1) If the creditor has prepared more than one estimate of value, it discloses the value in the estimate it used to approve the transaction. (Comment 38(a)(3)(vii)-1)

If a creditor considers the value of improvements to the Property when approving a construction loan where there is no seller, it must include the value of the improvements when disclosing the Appraised Prop. Value or Estimated Prop. Value. (Comment 38(a)(3)(vii)-1)

**[4] Transaction Information (page 1, top middle)**

The diagram shows a sample Closing Disclosure form. Three callout boxes point to specific sections of the form:

- Borrower information here.** Points to the **Borrower** field under the **Transaction Information** heading.
- Seller information here.** Points to the **Seller** field under the **Transaction Information** heading.
- Lender information here.** Points to the **Lender** field under the **Transaction Information** heading.

The form itself is titled **Closing Disclosure** and includes the following sections:

- Closing Information:** Date Issued, Closing Date, Disbursement Date, Settlement Agent, File #, Property, Sale Price.
- Transaction Information:** Borrower, Seller, Lender.
- Loan Information:** Loan Term, Purpose, Product, Loan Type (with checkboxes for Conventional, FHA, VA), Loan ID #, MIC #.

**Y&A Completion Instruction**

The processor must insert the borrower(s) and seller(s) name(s) and address(es) as indicated. The lender information is limited to name only. All buyers and sellers must appear, so extra pages are permitted. If there are multiple lenders, the lender making this disclosure is the name that appears. If there is no seller, the seller area must be left blank.

**Regulatory Text § 1026.38(a)(4)**

(4) **Transaction information.** Under the heading “**Transaction Information**”:

- (i) **Borrower.** The consumer’s name and mailing address, labeled “**Borrower.**”
- (ii) **Seller.** Where applicable, the seller’s name and mailing address, labeled “**Seller.**”
- (iii) **Lender.** The name of the creditor making the disclosure, labeled “**Lender.**”

**Regulatory Commentary**

**1. Multiple borrowers and sellers.** The name and address of each consumer and seller in the transaction must be provided under the heading “**Transaction Information.**” If the form does not provide enough space to include the required information for each consumer and seller, an additional page may be used and appended to the end of the form provided that the creditor complies with the requirements of § 1026.38(t)(3). For additional guidance on disclosing multiple borrowers, see comment 37(a)(5)-1.

2. **No seller transactions or simultaneous subordinate financing transactions.** In transactions where there is no seller, such as in a refinancing or home equity loan, or for simultaneous subordinate financing purchase transactions if the first-lien Closing Disclosure will record the entirety of the seller's transaction, the disclosure under § 1026.38(a)(4)(ii) may be left blank. *See also* § 1026.38(t)(5)(vii)(A).
3. **Multiple creditors.** *See comment 37(a)(3)-1 regarding identification requirements for multiple creditors.*
4. **Consumers.** Section 1026.38(a)(4)(i) requires disclosure of the consumer's name and mailing address, labeled "Borrower." For purposes of § 1026.38(a)(4)(i), the term "consumer" is limited to persons to whom the credit is offered or extended. For guidance on how to disclose multiple consumers, see comment 38(a)(4)-1.

## CFPB Guide

For Transaction Information, disclose the name of the seller (if any) as Seller, and the name of the creditor as Lender. (§ 1026.38(a)(4)) Disclose the name(s) and address(es) of the person(s) to whom credit is extended as Borrower. Do not disclose the names or addresses of other consumers. (Comment 38(a)(4)-4)

The name and address of each person who is a seller in the transaction and each person to whom credit is extended must be disclosed, except that the name and address for Seller may be left blank on the Closing Disclosure for a simultaneous subordinate lien loan if the Closing Disclosure for the first lien loan will disclose the entirety of the seller's transaction. The name and address of the Seller is also left blank for transactions without a seller. (Comment 38(a)(4)-2) If there is not enough space to show the name and address of all such persons, an additional page may be used and appended to the end of the Closing Disclosure. (Comment 38(a)(4)-1)

**[5] Loan Information (page 1, top right)**

Closing Disclosure		
This form is a statement of final loan terms and closing costs. Compare this document with your Loan Estimate.		
<b>Closing Information</b>	<b>Transaction Information</b>	<b>Loan Information</b>
Date Issued	Borrower	Loan Term
Closing Date		Purpose
Disbursement Date	Seller	Product
Settlement Agent		Loan Type <input type="checkbox"/> Conventional <input type="checkbox"/> FHA
File #	Lender	<input type="checkbox"/> VA <input type="checkbox"/> _____
Property		Loan ID #
Sale Price		MIC #

First 5 fields follow the Loan Estimate rules.

Mortgage Insurance case number

**Y&A Completion Instruction**

The processor must complete the third column for loan information. The information for the first five fields rely on the Loan Estimate definitions and rules. Remember that the Loan ID # must match the number on the Loan Estimate. The last field is only used if mortgage insurance is required, and is the mortgage insurance case number. Reminders of the requirements under the Loan Estimate for each of these fields (with some necessary alterations) are:

**Loan Term:**

Insert the loan term using the appropriate method detailed below:

- Loan term exceeds 24 months – complete with the number of years and number of months, if applicable. Example, 326 months would be “27 years, 2 months.”
- Loan term equals 24 months – complete with “2 years.”
- Loan term equals 12 months – complete with “1 year.”
- Loan term is less than 24 months, but not 12 months – complete with number of months. Example, 18 months would be completed as “18 months.”
- Specific Situations:
  - If the loan term can adjust, use the maximum loan term, based on the appropriate instruction above.
  - For construction only loans, use the construction loan term, based on the appropriate instruction above.
  - For construction/permanent loans, either disclose each phase separately or together, depending upon your preference or the software’s limitations, using the appropriate instruction above.

***Loan Purpose:***

The processor must insert the loan purpose based on the best information known at the time of completion, using Purchase, Refinance, Construction, or Home Equity, using the definitions in the regulation. These definitions do not match the definitions in HMDA. The processor may have to rely on the applicant's stated purpose.

- If the credit is to finance the acquisition of the property, disclose "Purchase."
- If the credit is not a purchase, and if the credit will be used to refinance an existing obligation, with the same property as collateral, disclose "Refinance."
- If the credit is not for purchase or refinance and the credit will be used to finance the initial construction of a dwelling on the property, disclose "Construction."
- If the credit is not for any of the above purpose, disclose "Home Equity Loan."

***Loan Product:***

The processor inserts the product type. All product features (should they exist) are described first. The appropriate order of presentation is the time period that the product feature will be in effect, followed by the product feature. This information is followed by the length of the loan product. If there are multiple time periods (for instance a loan that has a fixed rate for 5 years, followed by a 3 year adjustable rate for the next 9 years, followed by an annual adjustable rate for the remainder of the loan term) then only the first two periods are shown.

This is followed by the actual product type. Someone in your institution should have already determined what your product types are. Follow their direction on this. The system can become very confusing, and a careful reading of the regulation and commentary may be useful to assure that your loan origination system is placing things in the right order with the right titles.

***Loan Type:***

The processor should indicate the loan type. There are four choices. These choices are the same choices that have appeared on the HUD-1 for many years: conventional, FHA, VA, and Other. If the processor chooses "Other," the processor must include additional information regarding the loan type. The HUD-1 rules that have been used for years will continue to be applicable for this disclosure. This disclosure is completed based on the best information available at the time of the Loan Estimate.

***Loan ID:***

Insert the loan ID. This can be any combination of letters and numbers. The purpose of the ID is to permit the applicant/borrower to compare the Loan ID number on the Loan Estimate and the Loan ID number on the Closing Disclosure to assure that these two documents reference the same loan.

**Regulatory Text § 1026.38(a)(5)**

**(5) Loan information.** Under the heading "**Loan Information**":



- (i) **Loan term.** The information required to be disclosed under § 1026.37(a)(8), labeled “**Loan Term.**”
- (ii) **Purpose.** The information required to be disclosed under § 1026.37(a)(9), labeled “**Purpose.**”
- (iii) **Product.** The information required to be disclosed under § 1026.37(a)(10), labeled “**Product.**”
- (iv) **Loan type.** The information required to be disclosed under § 1026.37(a)(11), labeled “**Loan Type.**”
- (v) **Loan identification number.** The information required to be disclosed under § 1026.37(a)(12), labeled “**Loan ID #.**”
- (vi) **Mortgage insurance case number.** The case number for any mortgage insurance policy, if required by the creditor, labeled “**MIC #.**”

## Commentary

1. **General.** See commentary to § 1026.37(a)(8) through (12) for guidance on the general requirements and definitions applicable to § 1026.38(a)(5)(i) through (v).
2. **Same identification number as Loan Estimate.** The loan identification number disclosed pursuant to § 1026.38(a)(5)(v) must be one that enables the creditor, consumer, and other parties to identify the transaction as the same transaction disclosed on the Loan Estimate. The loan identification number may contain any alpha-numeric characters. If a creditor uses the same loan identification number on several revised Loan Estimates to the consumer, but adds after such number a hyphen and a number to denote the number of revised Loan Estimates in sequence, the creditor must disclose the loan identification number before such hyphen on the Closing Disclosure to identify the transaction as the same for which the initial and revised Loan Estimates were provided.

## Loan Estimate Regulatory Text and Commentary Assistance

### LOAN TERM

#### **Regulatory Text § 1026.37(a)(8)**

- (8) **Loan Term:** The term to maturity of the credit transaction, stated in years or months, or both, as applicable, labeled “**Loan Term.**”

### Regulatory Commentary

1. **Partial years.**

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

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

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

**3. Loan term start date.** See comment app. D-7.i for an explanation of how a creditor discloses the loan term of a multiple-advance loan to finance the construction of a dwelling that may be permanently financed by the same creditor.

## PURPOSE

### **Regulatory Text § 1026.37(a)(9)**

**(9) Purpose:** The consumer’s intended use for the credit, labeled “**Purpose,**” using one of the following terms:

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

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

**(iii) Construction.** If the credit is not for one of the purposes described in paragraphs (a)(9)(i) or (ii) of this section and the credit will be used to finance the initial construction of a

dwelling on the property identified in paragraph (a)(6) of this section, the creditor shall disclose that the loan is for **“Construction.”**

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

## **Regulatory Commentary**

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

- i. Purchase.** The consumer intends to use the proceeds from the transaction to purchase the property that will secure the extension of credit. In a purchase transaction with simultaneous subordinate financing, the simultaneous subordinate loan is also disclosed with the purpose “Purchase.”
- ii. Refinance.** The consumer refinances an existing obligation already secured by the consumer’s dwelling to change the rate, term, or other loan features and may or may not receive cash from the transaction. For example, in a refinance with no cash provided, the new amount financed does not exceed the unpaid principal balance, any earned unpaid finance charge on the existing debt, and amounts attributed solely to the costs of the refinancing. Conversely, in a refinance with cash provided, the consumer refinances an existing mortgage obligation and receives money from the transaction that is in addition to the funds used to pay the unpaid principal balance, any earned unpaid finance charge on the existing debt, and amounts attributed solely to the costs of the refinancing. In such a transaction, the consumer may, for example, use the newly-extended credit to pay off the balance of the existing mortgage and other consumer debt, such as a credit card balance.
- iii. Construction.** Section 1026.37(a)(9)(iii) requires the creditor to disclose that the loan is for construction in transactions where the creditor extends credit to finance only the cost of initial construction (construction-only loan), not renovations to existing dwellings, and in transactions where a multiple advance loan may be permanently financed by the same creditor (construction-permanent loan). In a construction-only loan, the borrower may be required to make interest-only payments during the loan term with the balance commonly due at the end of the construction project. For additional guidance on disclosing construction-permanent loans, see § 1026.17(c)(6)(ii), comments 17(c)(6)-2, -3, and -5, and appendix D to this part.
- iv. Home equity loan.** The creditor is required to disclose that the credit is for a “home equity loan” if the creditor intends to extend credit for any purpose other than a purchase, refinancing, or construction. This disclosure applies whether the loan is secured by a first or subordinate lien.

**2. Refinance coverage.** The disclosure requirements under § 1026.37(a)(9)(ii) apply to credit transactions that meet the definition of a refinancing under § 1026.20(a) but without regard to whether they are made by a creditor, holder, or servicer of the existing obligation. Section

*1026.20(a) applies only to refinancings undertaken by the original creditor or a holder or servicer of the original debt. See comment 20(a)-5.*

## PRODUCT

### **Regulatory Text § 1026.37(a)(10)**

(10) **Product:** A description of the loan product, labeled “**Product.**”

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

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

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

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

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

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

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

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

**(D) Balloon payment.** If the terms of the legal obligation include a “balloon payment,” [final payment more than twice a regular payment], a creditor shall disclose that the loan has a “**Balloon Payment**” feature.

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

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

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

### **Regulatory Commentary**

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

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

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

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

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

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



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

- i. Negative amortization.** Some loan products, such as “payment option” loans, permit the borrower to make payments that are insufficient to cover all of the interest accrued, and the unpaid interest is added to the principal balance. Where the loan product includes a loan feature that may cause the loan balance to increase, the disclosure required by § 1026.37(a)(10)(ii)(A) is preceded by the time period that the borrower is permitted to make payments that result in negative amortization (e.g., “2 Year Negative Amortization”), followed by the loan product type. Thus, a fixed rate product with a step-payment feature for the first two years of the legal obligation that may negatively amortize is disclosed as “2 Year Negative Amortization, Fixed Rate.”
- ii. Interest only.** When disclosing an “Interest Only” feature, as defined in § 1026.18(s)(7)(iv), the applicable time period must precede the label “Interest Only.” Thus, a fixed rate loan with only interest due for the first five years of the loan term is disclosed as “5 Year Interest Only, Fixed Rate.” If the interest only feature fails to cover the total interest due, then, as required by § 1026.37(a)(10)(iii), the disclosure must reference the negative amortization feature and not the interest only feature (e.g., “5 Year Negative Amortization, Fixed Rate”). See comment app. D-7.ii for an explanation of the disclosure of the time period of an interest only feature for a construction loan or a construction-permanent loan.
- iii. Step payment.** When disclosing a step payment feature (which is sometimes referred to instead as a graduated payment), the period of time at the end of which the scheduled payments will change must precede the label “Step Payment” (e.g., “5 Year Step Payment”) followed by the name of the loan product. Thus, a fixed rate mortgage subject to a 5-year step payment plan is disclosed as a “5 Year Step Payment, Fixed Rate.”
- iv. Balloon payment.** If a loan product includes a “balloon payment,” as that term is defined in § 1026.37(b)(5), the disclosure of the balloon payment feature, including the year the payment is due, precedes the disclosure of the loan product. Thus, if the loan product is a step rate with an introductory rate that lasts for three years and adjusts each year thereafter until the balloon payment is due in the seventh year of the loan term, the disclosure required is “Year 7 Balloon Payment, 3/1 Step Rate.” If the loan product includes more than one balloon payment, only the earliest year that a balloon payment is due shall be disclosed.
- v. Seasonal payment.** If a loan product includes a seasonal payment feature, § 1026.37(a)(10)(ii)(E) requires that the creditor disclose the feature. The feature is not, however, required to be disclosed with any preceding time period. Disclosure of the label “Seasonal Payment” without any preceding number of years satisfies this requirement.

### **3. Periods not in whole years.**

- i. Terms of 24 months or more.** For product types and features that have introductory periods or adjustment periods that do not equate to a number of whole years, if the period is a number of months that is 24 or greater and does not equate to a whole number of years, § 1026.37(a)(10) requires disclosure of the whole number of years followed by a decimal point

*with the remaining months rounded to two places. For example, if the loan product is an adjustable rate with an introductory period of 30 months that adjusts every year thereafter, the creditor would be required to disclose “2.5/1 Adjustable Rate.” If the introductory period were 31 months, the required disclosure would be “2.58/1 Adjustable Rate.”*

- ii. **Terms of less than 24 months.** For product types and features that have introductory periods or adjustment periods that do not equate to a number of whole years, if the period is less than 24 months, § 1026.37(a)(10) requires disclosure of the number of months, followed by the designation “mo.” For example, if the product type is an adjustable rate with an 18-month introductory period that adjusts every 18 months starting in the 19th month, the required disclosure would be “18 mo./18mo. Adjustable Rate.”*
- iii. **Adjustments more frequent than monthly.** For adjustment periods that change more frequently than monthly, § 1026.37(a)(10) requires disclosure of the applicable unit-period, such as daily, weekly, or bi-weekly. For example, for an adjustable rate construction loan with no introductory fixed rate period where the interest rate adjusts every seven days, the disclosure required by § 1026.37(a)(10) is “0/Weekly Adjustable Rate.”*

## LOAN TYPE

### **Regulatory Text § 1026.37(a)(11)**

(11) **Loan Type:** The type of loan, labeled “**Loan Type**,” offered to the consumer using one of the following terms, as applicable:

- (i) Conventional.** If the loan is not guaranteed or insured by a Federal or State government agency, the creditor shall disclose that the loan is a “**Conventional**.”
- (ii) FHA.** If the loan is insured by the Federal Housing Administration, the creditor shall disclose that the loan is an “**FHA**.”
- (iii) VA.** If the loan is guaranteed by the U.S. Department of Veterans Affairs, the creditor shall disclose that the loan is a “**VA**.”
- (iv) Other.** For federally-insured or guaranteed loans other than those described in paragraphs (a)(11)(ii) and (iii) of this section, and for loans insured or guaranteed by a State agency, the creditor shall disclose the loan type as “**Other**,” and provide a brief description of the loan type.

### **Regulatory Commentary**

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



## LOAN ID

### ***Regulatory Text § 1026.37(a)(12)***

(12) **Loan identification number (Loan ID #).** A number that may be used by the creditor, consumer, and other parties to identify the transaction, labeled “**Loan ID #.**”

### ***Regulatory Commentary***

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

## **CFPB Guide**

For Loan Information, disclose the Loan Term, Purpose, Product, Loan Type, the creditor’s loan identification number as Loan ID #, and mortgage insurance case number, if required by the creditor, as MIC # under the Loan Information subheading. (§ 1026.38(a)(5))

The information disclosed for Loan Term, Purpose, Product, Loan Type, and Loan ID # are determined by the same definitions for those items on the Loan Estimate. (see section 2.2.1 above) These items should be updated to reflect the terms of the legal obligation at consummation. (Comment 38(a)(5)-1)

## Section 3: Loan Terms

### 12 CFR § 1026.38(b)

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#### *[6] Loan Terms (page 1, Loan Terms)*

Amounts/Yes/No here.

Additional information here.

Loan Terms	Can this amount increase after closing?
Loan Amount	
Interest Rate	
Monthly Principal & Interest <small>See Projected Payments below for your Estimated Total Monthly Payment</small>	
	Does the loan have these features?
Prepayment Penalty	
Balloon Payment	

#### Y&A Completion Instruction

All required completion instructions here mirror the Loan Estimate. The following paragraphs contain the Loan Estimate instructions, with some necessary alterations. Most amounts will be rounded automatically by your software to conform to the regulatory requirements.

##### ***Loan Amount***

The processor should enter the loan amount.

##### ***Interest Rate***

The processor should insert the initial interest rate. There can be no more than three decimal places.

##### ***First Payment Amount***

The processor inserts the first payment amount here. It may be either the principal and interest payment or the interest only payment. It must include the frequency of the payments

(monthly, bi-weekly, etc.) first, then the dollar amount. If the loan is a construction loan, the interest payment amount is usually based on one half of the loan being disbursed. But it is permissible to base it on the entire loan amount being disbursed.

### ***Prepayment Penalty***

The processor inserts either a “yes” or “no,” based on the obligation. A prepayment penalty is any amount due during the first three years as a result of an early payoff. It can include a situation in which the consumer must pay a full month’s interest even though the payoff of the loan occurs at mid-month. Minimum finance charges and computing a refund of finance charge that is not advantageous to the consumer are also prepayment penalties. A recapture of the institution’s fees that were waived on the condition that the loan did not pay off early is a prepayment penalty. Prepayment penalties do not include a required repayment of a bona fide waived charge, such as an appraisal fee (again, during the first three years).

### ***Balloon Payment***

Indicate whether the loan will have a balloon payment. A balloon payment is any final payment that is more than 200% of a regular payment. You must use the smallest payment of principal and interest that will be paid during the life of the loan to calculate whether the final payment is more than 200% of the regular payment. Excess payments on a negative amortization loan or odd cents will not create a balloon payment.

### ***Can This Amount Increase After Closing***

The Closing Disclosure must indicate whether the loan amount, interest rate, and principal and interest payment amounts can increase. If the answer to the question in any category is “no,” the processor does not have to include any additional information in that particular category. If the answer is “yes,” additional information must be provided, including details regarding any limits and timing issues that are anticipated to be present in the note.

For the loan amount, the processor must disclose the maximum amount that the loan amount can reach and whether the increase is scheduled or only potential.

For the interest rate increases, the processor must disclose the frequency of changes, when the first change occurs, the maximum rate and when it can occur, a reference to the AIR table, and a disclosure if the term can increase.

For increases in payment amounts, the processor must disclose what is scheduled and when it can occur, including all triggers and any interest only payments.

### ***Amount of Prepayment Penalty or Balloon Payment***

For both the prepayment penalty disclosure and the balloon payment disclosure, the processor must answer “yes” or “no” to the question “Does the loan have these features?” This was discussed above. If the answer to the question was yes for either of these items, additional information must be furnished.

For the prepayment penalty disclosure, the processor must disclose the maximum prepayment penalty amount and the date that the prepayment penalty will end. For this calculation, the

processor must assume that all payments are timely and there are no other issues that might change this amount.

For the balloon payment disclosure, the processor must disclose the maximum amount for the balloon amount and the due date for the balloon.

## **Loan Estimate Regulatory Text and Commentary Assistance**

### **LOAN AMOUNT**

#### ***Regulatory Text § 1026.37(b)(1)***

- (1) **Loan amount.** The total amount the consumer will borrow, as reflected by the face amount of the note, labeled “Loan Amount.”

#### ***Regulatory Commentary***

*None.*

### **INTEREST RATE**

#### ***Regulatory Text § 1026.37(b)(2)***

- (2) **Interest rate.** The interest rate that will be applicable to the transaction at consummation, labeled “**Interest Rate.**” For an adjustable rate transaction, if the interest rate at consummation is not known, the rate disclosed shall be the fully-indexed rate, which, for purposes of this paragraph, means the interest rate calculated using the index value and margin at the time of consummation.

#### ***Regulatory Commentary***

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

disclosure) in calculating the fully-indexed rate to be disclosed. See comment app. D-7.iii for an explanation of the disclosure of the permanent financing interest rate for a construction-permanent loan.

## PRINCIPAL AND INTEREST PAYMENTS

### ***Regulatory Text § 1026.37(b)(3)***

- (3) **Principal and interest payment.** The initial periodic payment amount that will be due under the terms of the legal obligation, labeled “**Principal & Interest,**” immediately preceded by the applicable unit-period, and a statement referring to the payment amount that includes any mortgage insurance and escrow payments that is required to be disclosed pursuant to paragraph (c) of this section. If the interest rate at consummation is not known, the amount disclosed shall be calculated using the fully-indexed rate disclosed under paragraph (b)(2) of this section.

### ***Regulatory Commentary***

- 1. Frequency of principal and interest payment.*** Pursuant to § 1026.37(o)(5)(i), if the contract provides for a unit-period, as defined in appendix J to this part, of a month, such as a monthly payment schedule, the payment disclosed under § 1026.37(b)(3) should be labeled “**Monthly Principal & Interest.**” If the contract requires bi-weekly payments of principal or interest, the payment should be labeled “**Bi-Weekly Principal & Interest.**” If a creditor voluntarily permits a payment schedule not provided for in the contract, such as an informal principal-reduction arrangement, the disclosure should reflect only the payment frequency provided for in the contract. See § 1026.17(c)(1).
- 2. Initial periodic payment if not known.*** Under § 1026.37(b)(3), the initial periodic payment amount that will be due under the terms of the legal obligation must be disclosed. If the initial periodic payment is not known because it will be based on an interest rate at consummation that is not known at the time the disclosures required by § 1026.19(e) must be provided, for example, if it is based on an external index that may fluctuate before consummation, § 1026.37(b)(3) requires that the disclosure be based on the fully-indexed rate disclosed under § 1026.37(b)(2). See comment 37(b)(2)-1 for guidance regarding calculating the fully-indexed rate.

## PREPAYMENT PENALTY

### ***Regulatory Text § 1026.37(b)(4)***

- (4) **Prepayment penalty.** A statement of whether the transaction includes a prepayment penalty, labeled “**Prepayment Penalty.**” For purposes of this paragraph (b)(4), “prepayment penalty” means a charge imposed for paying all or part of a transaction’s principal before the date on which the principal is due, other than a waived, bona fide third-party charge that the creditor imposes if the consumer prepays all of the transaction’s principal sooner than 36 months after consummation.

## Regulatory Commentary

1. **Transaction includes a prepayment penalty.** Section 1026.37(b)(4) requires disclosure of a statement of whether the transaction includes a prepayment penalty. If the transaction includes a prepayment penalty, § 1026.37(b)(7) sets forth the information that must be disclosed under § 1026.37(b)(4) (i.e., the maximum amount of the prepayment penalty that may be imposed under the terms of the loan contract and the date on which the penalty will no longer be imposed). For an example of such disclosure, see form H-24 of appendix H to this part. The disclosure under § 1026.37(b)(4) applies to transactions where the terms of the loan contract provide for a prepayment penalty, even though the creditor does not know at the time of the disclosure whether the consumer will, in fact, make a payment to the creditor that would cause imposition of the penalty. For example, if the monthly interest accrual amortization method described in comment 37(b)(4)-2.i is used such that interest is assessed on the balance for a full month even if the consumer makes a full prepayment before the end of the month, the transaction includes a prepayment penalty that must be disclosed pursuant to § 1026.37(b)(4).
2. **Examples of prepayment penalties.** For purposes of § 1026.37(b)(4), the following are examples of prepayment penalties:
  - i. A charge determined by treating the loan balance as outstanding for a period of time after prepayment in full and applying the interest rate to such “balance,” even if the charge results from interest accrual amortization used for other payments in the transaction under the terms of the loan contract. “Interest accrual amortization” refers to the method by which the amount of interest due for each period (e.g., month) in a transaction’s term is determined. For example, “monthly interest accrual amortization” treats each payment as made on the scheduled, monthly due date even if it is actually paid early or late (until the expiration of any grace period). Thus, under the terms of a loan contract providing for monthly interest accrual amortization, if the amount of interest due on May 1 for the preceding month of April is \$3,000, the loan contract will require payment of \$3,000 in interest for the month of April whether the payment is made on April 20, on May 1, or on May 10. In this example, if the consumer prepays the loan in full on April 20 and if the accrued interest as of that date is \$2,000, then assessment of a charge of \$3,000 constitutes a prepayment penalty of \$1,000 because the amount of interest actually earned through April 20 is only \$2,000.
  - ii. A fee, such as an origination or other loan closing cost, that is waived by the creditor on the condition that the consumer does not prepay the loan. See comment 37(b)(4)-3.iii below for additional guidance regarding waived bona fide third-party charges imposed by the creditor if the consumer pays all of a covered transaction’s principal before the date on which the principal is due sooner than 36 months after consummation.
  - iii. A minimum finance charge in a simple interest transaction.
  - iv. Computing a refund of unearned interest by a method that is less favorable to the consumer than the actuarial method, as defined by section 933(d) of the Housing and Community Development Act of 1992, 15 U.S.C. 1615(d). For purposes of computing a refund of unearned interest, if using the actuarial method defined by applicable State law results in a refund that is greater than the refund calculated by using the method described in section 933(d) of the Housing and Community Development Act of 1992, creditors should use the State law definition in determining if a refund is a prepayment penalty.



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

- i. Fees imposed for preparing and providing documents when a loan is paid in full, if such fees are imposed whether or not the loan is prepaid. Examples include a loan payoff statement, a reconveyance document, or another document releasing the creditor's security interest in the dwelling that secures the loan.
- ii. Loan guarantee fees.
- iii. A waived bona fide third-party charge imposed by the creditor if the consumer pays all of a covered transaction's principal before the date on which the principal is due sooner than 36 months after consummation. For example, assume that at consummation, the creditor waives \$3,000 in closing costs to cover bona fide third-party charges but the terms of the loan agreement provide that the creditor may recoup the \$3,000 in waived charges if the consumer repays the entire loan balance sooner than 36 months after consummation. The \$3,000 charge is not a prepayment penalty. In contrast, for example, assume that at consummation, the creditor waives \$3,000 in closing costs to cover bona fide third-party charges but the terms of the loan agreement provide that the creditor may recoup \$4,500 in part to recoup waived charges, if the consumer repays the entire loan balance sooner than 36 months after consummation. The \$3,000 that the creditor may impose to cover the waived bona fide third-party charges is not a prepayment penalty, but the additional \$1,500 charge is a prepayment penalty and must be disclosed pursuant to § 1026.37(b)(4).

**4. Rebate of finance charge.** For an obligation that includes a finance charge that does not take into account each reduction in the principal balance of the obligation, the disclosure under § 1026.37(b)(4) reflects whether or not the consumer is entitled to a rebate of any finance charge if the obligation is prepaid in full or part. Finance charges that do not take into account each reduction in the principal balance of an obligation may include precomputed finance charges. If any portion of an unearned precomputed finance charge will not be provided as a rebate upon full prepayment, the disclosure required by § 1026.37(b)(4) will be an affirmative answer, indicate the maximum amount of such precomputed finance charge that may not be provided as a rebate to the consumer upon any prepayment, and state when the period during which a full rebate would not be provided terminates, as required by § 1026.37(b)(7). If, instead, there will be a full rebate of the precomputed finance charge and no other prepayment penalty imposed on the consumer, to comply with the requirements of § 1026.37(b)(4) and (7), the creditor states a negative answer only. If the transaction involves both a precomputed finance charge and a finance charge computed by application of a rate to an unpaid balance, disclosure about both the entitlement to any rebate of the finance charge upon prepayment and any other prepayment penalty are made as one disclosure under § 1026.37(b)(4), stating one affirmative or negative answer and an aggregated amount and time period for the information required by § 1026.37(b)(7). For example, if in such a transaction, a portion of the precomputed finance charge will not be provided as a rebate and the loan contract also provides for a prepayment penalty based on the amount prepaid, both disclosures are made under § 1026.37(b)(4) as one aggregate amount, stating the maximum amount and time period under § 1026.37(b)(7). If the transaction instead provides a rebate of the precomputed finance charge upon prepayment, but imposes a prepayment penalty based on the amount prepaid, to comply with § 1026.37(b)(4), the creditor states an affirmative answer and the information about the prepayment penalty, as required by § 1026.37(b)(7). For further guidance and examples of these types of charges, see comment 18(k)(2)-1. For analogous guidance, see comment 18(k)-2. For further guidance on prepaid finance charges generally, see comment 18(k)-3.



## BALLOON PAYMENT

### *Regulatory Text § 1026.37(b)(5)*

- (5) Balloon payment.** A statement of whether the transaction includes a balloon payment, labeled “Balloon Payment.” For purposes of this paragraph (b)(5), “balloon payment” means a payment that is more than two times a regular periodic payment. “Balloon payment” includes the payment or payments under a transaction that requires only one or two payments during the loan term.

### *Regulatory Commentary*

1. **Regular periodic payment.** *If a payment is not itself a regular periodic payment and is more than two times any one regular periodic payment during the loan term, then it is disclosed as a balloon payment under § 1026.37(b)(5). The regular periodic payments used to determine whether a payment is a balloon payment under § 1026.37(b)(5) are the payments of principal and interest (or interest only, depending on the loan features) specified under the terms of the loan contract that are due from the consumer for two or more unit-periods in succession. All regular periodic payments during the loan term are used to determine whether a particular payment is a balloon payment, regardless of whether the regular periodic payments have changed during the loan term due to rate adjustments or other payment changes permitted or required under the loan contract.*
  - i. *For example, assume that, under a 15-year step rate mortgage, the loan contract provides for scheduled monthly payments of \$300 each during the years one through three and scheduled monthly payments of \$700 each during years four through 15. If an irregular payment of \$1,000 is scheduled during the final month of year 15, that payment is disclosed as a balloon payment under § 1026.37(b)(5), because it is more than two times the regular periodic payment amount of \$300 during years one through three. This is the case even though the irregular payment is not more than two times the regular periodic payment of \$700 per month during years four through fifteen. The \$700 monthly payments during years four through fifteen are not balloon payments even though they are more than two times the regular periodic payments during years one through three, because they are regular periodic payments.*
  - ii. *If the loan has an adjustable rate under which the regular periodic payments may increase after consummation, but the amounts of such payment increases (if any) are unknown at the time of consummation, then the regular periodic payments are based on the fully-indexed rate, except as otherwise determined by any premium or discounted rates, the application of any interest rate adjustment caps, or any other known, scheduled rates under the terms specified in the loan contract. For analogous guidance, see comments 17(c)(1)-8 and -10. Similarly, if a loan has an adjustable interest rate which does not adjust the regular periodic payment but would, if the rate increased, increase only the final payment, the amount of the final payment for purposes of the balloon payment determination is based on the fully-indexed rate, except as otherwise determined by any premium or discounted rate caps, or any other known, scheduled rates under the terms specified in the loan contract. For example, assume that, under a 30-year adjustable rate mortgage, (1) the loan contract requires monthly payments of \$300 during years one through five, (2) the loan contract permits interest rate increases every three years starting in the sixth year up to the fully-indexed rate, subject to caps on interest rate adjustments specified in the loan contract, (3)*

based on the application of the interest rate adjustment caps, the interest rate may increase to the fully-indexed rate starting in year nine, and (4) the monthly payment based on the fully-indexed rate is \$700. The regular periodic payments during years one through five are \$300 per month, because they are known and scheduled. The regular periodic payments during years six through eight are up to \$700 per month, based on the fully-indexed rate but subject to the application of interest rate adjustment caps specified under the loan contract. The regular periodic payments during years nine through thirty are \$700, based on the fully-indexed rate. Therefore, if an irregular payment of \$1,000 is scheduled during the final month of year 30, that payment is disclosed as a balloon payment under § 1026.37(b)(5), because it is more than two times the regular periodic payment amount of \$300 during years one through five. This is the case even though the irregular payment is not more than two times the regular periodic payment during years nine through thirty (i.e., based on the fully-indexed rate). However, the regular periodic payments during years six through thirty themselves are not balloon payments, even though they may be more than two times the regular periodic payments during years one through five.

- iii. For a loan with a negative amortization feature, the regular periodic payment does not take into account the possibility that the consumer may exercise an option to make a payment greater than the scheduled periodic payment specified under the terms of the loan contract, if any.
- iv. A final payment that differs from other regular periodic payments because of rounding to account for payment amounts including fractions of cents is still a regular periodic payment and need not be disclosed as a balloon payment under § 1026.37(b)(5).
- v. The disclosure of balloon payments in the “Projected Payments” table under § 1026.37(c) is governed by that section and its commentary, rather than § 1026.37(b)(5), except that the determination, as a threshold matter, of whether a payment disclosed under § 1026.37(c) is a balloon payment is made in accordance with § 1026.37(b)(5) and its commentary.

**2. Single and double payment transactions.** The definition of a “balloon payment” under § 1026.37(b)(5) includes the payments under transactions that require only one or two payments during the loan term, even though a single payment transaction does not require regular periodic payments, and a transaction with only two scheduled payments during the loan term may not require regular periodic payments.

## ADJUSTMENTS AFTER CONSUMMATION

### **Regulatory Text § 1026.37(b)(6)**

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

- (i) **Adjustment in loan amount.** The maximum principal balance for the transaction and the due date of the last payment that may cause the principal balance to increase. The disclosure further shall indicate whether the maximum principal balance is potential or is scheduled to occur under the terms of the legal obligation.

- (ii) **Adjustment in interest rate.** The frequency of interest rate adjustments, the date when the interest rate may first adjust, the maximum interest rate, and the first date when the interest rate can reach the maximum interest rate, followed by a reference to the disclosure required by paragraph (j) of this section. If the loan term, as defined under paragraph (a)(8) of this section, may increase based on an interest rate adjustment, the disclosure required by this paragraph (b)(6)(ii) shall also state that fact and the maximum possible loan term determined in accordance with paragraph (a)(8) of this section.
- (iii) **Increase in periodic payment.** The scheduled frequency of adjustments to the periodic principal and interest payment, the due date of the first adjusted principal and interest payment, the maximum possible periodic principal and interest payment, and the date when the periodic principal and interest payment may first equal the maximum principal and interest payment. If any adjustments to the principal and interest payment are not the result of a change to the interest rate, a reference to the disclosure required by paragraph (i). If there is a period during which only interest is required to be paid, the disclosure required by this paragraph (b)(6)(iii) shall also state that fact and the due date of the last periodic payment of such period.

### **Regulatory Commentary**

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

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

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

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

1. **Additional information regarding adjustment in interest rate.** A creditor complies with the requirement under § 1026.37(b)(6)(ii) to disclose additional information indicating the frequency of adjustments to the interest rate and date when the interest rate may first adjust by using the phrases “**Adjusts every**” and “**starting in**.” A creditor complies with the requirement under § 1026.37(b)(6)(ii) to disclose additional information indicating the maximum interest rate, and the first date when the interest rate can reach the maximum interest rate using the phrase “**Can go as high as**” and then indicating the date at the end of that phrase or for a scheduled maximum interest rate under a step rate loan, “**Goes as high as**.” If the loan term may increase based on an interest rate adjustment, the disclosure shall

indicate the maximum possible loan term using the phrase **“Can increase loan term to.”** See form H-24 of appendix H to this part for the required format of such phrases, which is required for federally related mortgage loans under § 1026.37(o)(3).

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

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

1. **Additional information regarding increase in periodic payment.** A creditor complies with the requirement under § 1026.37(b)(6)(iii) to disclose additional information indicating the scheduled frequency of adjustments to the periodic principal and interest payment by using the phrases “Adjusts every” and “starting in.” A creditor complies with the requirement under § 1026.37(b)(6)(iii) to disclose additional information indicating the maximum possible periodic principal and interest payment, and the date when the periodic principal and interest payment may first equal the maximum principal and interest payment by using the phrase “Can go as high as” and then indicating the date at the end of that phrase or, for a scheduled maximum amount, such as under a step payment loan, “Goes as high as.” A creditor complies with the requirement under § 1026.37(b)(6)(iii) to indicate that there is a period during which only interest is required to be paid and the due date of the last periodic payment of such period using the phrase “Includes only interest and no principal until.” See form H-24 of appendix H to this part for the required format of such phrases, which is required for federally related mortgage loans under § 1026.37(o)(3). See comment app. D-7.iv for an explanation of the disclosure of an increase in the periodic payment for a construction or construction-permanent loan.
2. **Periodic principal and interest payments that adjust at multiple intervals.** If there are multiple periods of adjustment under the terms of the legal obligation, § 1026.37(b)(6)(iii) requires disclosure of the frequency of only the first adjustment to the periodic principal and interest payment, regardless of the basis for the adjustment. Accordingly, where the periodic principal and interest payment may change because of more than one factor and such adjustments are on different schedules, the frequency disclosed is the adjustment of whichever factor adjusts first. For example, where the interest rate for a transaction is fixed until year six and then adjusts every three years but the transaction also has a negative amortization feature that ends in year seven, § 1026.37(b)(6)(iii) requires disclosure that the interest rate will adjust every three years starting in year six because the periodic principal and interest payment adjusts based on the interest rate before it adjusts based on the end of the negative amortization period.

## **DETAILS ABOUT PREPAYMENT PENALTY AND BALLOON PAYMENT**

### **Regulatory Text § 1026.37(b)(7)**

- (7) **Details about prepayment penalty and balloon payment.** The information required to be disclosed by paragraphs (b)(4) and (5) of this section shall be disclosed as an affirmative or



negative answer to the question, and under such question disclosed as a subheading, **“Does the loan have these features?”** If an affirmative answer for a prepayment penalty or balloon payment is required to be disclosed, the following information shall be included, as applicable:

- (i) The maximum amount of the prepayment penalty that may be imposed and the date when the period during which the penalty may be imposed terminates; and
- (ii) The maximum amount of the balloon payment and the due date of such payment.

## **Regulatory Commentary**

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

- 1. Maximum prepayment penalty.** *Section 1026.37(b)(7)(i) requires disclosure of the maximum amount of the prepayment penalty that may be imposed under the terms of the legal obligation. The creditor complies with § 1026.37(b)(7)(i) when it assumes that the consumer prepays at a time when the prepayment penalty may be charged and that the consumer makes all payments prior to the prepayment on a timely basis and in the amount required by the terms of the legal obligation. The creditor must determine the maximum of each amount used in calculating the prepayment penalty. For example, if a transaction is fully amortizing and the prepayment penalty is two percent of the loan balance at the time of prepayment, the prepayment penalty amount should be determined by using the highest loan balance possible during the period in which the penalty may be imposed. If more than one type of prepayment penalty applies, the creditor must aggregate the maximum amount of each type of prepayment penalty in the maximum penalty disclosed.*
- 2. Additional information regarding prepayment penalty.** *A creditor complies with the requirement under Section 1026.37(b)(7)(i) to disclose additional information indicating the maximum amount of the prepayment penalty that may be imposed and the date when the period during which the penalty may be imposed terminates using the phrases **“As high as”** and **“if you pay off the loan during.”** See form H-24 of appendix H to this part for the required format of such phrases, which is required for federally related mortgage loans under § 1026.37(o)(3).*

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

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

## **CFPB Guide**

The Loan Terms table on the Closing Disclosure discloses the same information required to be disclosed on the Loan Estimate (see section 2.2.2 above), updated to reflect the terms of the legal obligation at consummation. (§ 1026.38(b))

## Section 4: Projected Payments

### 12 CFR § 1026.38(c)

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#### *General Language*

#### **Y&A Commentary**

The projected payments instruction mirrors the Loan Estimate instructions.

#### **Regulatory Text**

- (c) **Projected payments.** A separate table, under the heading “**Projected Payments**,” that includes and satisfies the following information and requirements:

#### **Regulatory Commentary**

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

#### **CFPB Guide**

None.



## ***[7] Projected Payments or Range of Payments (page 1, Projected Payments)***

<b>Projected Payments</b>	
<b>Payment Calculation</b>	
Principal & Interest	Four payment schedules can appear here.
Mortgage Insurance	
Estimated Escrow <i>Amount can increase over time</i>	
<b>Estimated Total Monthly Payment</b>	

### **Y&A Completion Instruction**

There is the potential for four payment schedules, following the same pattern as the Loan Estimate. The only change is in the estimated escrow. For the Loan Estimate, for construction and similar loans, the tax escrow was calculated on the value of the finished home. For this final disclosure, escrow is calculated using the rules as they appear in RESPA, which may mean a lower initial escrow payment. The Loan Estimate completion instructions are as follows (with appropriate alterations):

The processor must complete up to four potential projected payment streams. A new payment stream occurs when the periodic payment may change, a scheduled balloon payment occurs, mortgage insurance automatically terminates, or when the anniversary date of a year occurs that has multiple events which will change the payment amount due. The payment streams change based on major events, not minor events, such as odd days interest. For instance, should the interest only period expire and the loan begin a principal and interest payment, the processor discloses a new payment stream, subject to the limitations of the disclosure. The payment streams are always based on full years, not partial years.

The first payment stream is always based on the original interest rate, loan term, etc. Subsequent payment schedules are completed to show the best and worst case scenario for each rate change (ARM loans), given the limitations on the number of payment streams.

If more than four payment streams are required to fully describe the loan payments, the fourth payment stream becomes a “catch all” for everything that occurs from the beginning of the fourth payment stream to the end of the loan.

Balloon loan payments must always appear in the table, so if a loan has several potential payment streams, the final payment stream contains the balloon payment. This may require the third payment stream to become the “catch all” payment stream.

If mortgage insurance actually reaches its mandatory cancellation date during the fourth payment stream, then the payment schedule will not show the cancellation of the mortgage insurance. The processor should note that mortgage insurance is not only PMI – it is any type of

payment (including VA, FHA, etc.) that acts as insurance, regardless of whether state law considers these fees as insurance. Mortgage insurance cancellation dates are calculated in the same manner that you have always used, and are likely to be an estimate at this point.

For negative amortization loans, the payment stream must be based on the maximum loan amount, and assumes that the consumer has not made any additional principal reductions.

### **Regulatory Text § 1026.38(c)(1)**

(1) **Projected payments or range of payments.** The information required to be disclosed pursuant to § 1026.37(c)(1) through (4), other than § 1026.37(c)(4)(vi). In disclosing estimated escrow payments as described in § 1026.37(c)(2)(iii) and (4)(ii), the amount disclosed on the Closing Disclosure:

- (i) For transactions subject to RESPA, is determined under the escrow account analysis described in Regulation X, 12 CFR 1024.17;
- (ii) For transactions not subject to RESPA, may be determined under the escrow account analysis described in Regulation X, 12 CFR 1024.17 or in the manner set forth in § 1026.37(c)(5).

### **Regulatory Commentary**

**1. Escrow account analysis.** *The amount of estimated escrow payments disclosed on the Closing Disclosure is accurate if it differs from the estimated escrow payment disclosed on the Loan Estimate because of the escrow account analysis described in Regulation X, 12 CFR 1024.17.*

## **Loan Estimate Regulatory Text and Commentary Assistance**

### **PERIODIC PAYMENT OR RANGE OF PAYMENTS**

#### ***Regulatory Text § 1026.37(c)(1)***

(1) **Periodic payment or range of payments.**

- (i) The initial periodic payment or range of payments is a separate periodic payment or range of payments and, except as otherwise provided in paragraph (c)(1)(ii) and (iii) of this section, the following events require the disclosure of additional separate periodic payments or ranges of payments:
  - (A) The periodic principal and interest payment or range of such payments may change;
  - (B) A scheduled balloon payment, as defined in paragraph (b)(5) of this section;
  - (C) The creditor must automatically terminate mortgage insurance or any functional equivalent under applicable law; and

- (D) The anniversary of the due date of the initial periodic payment or range of payments that immediately follows the occurrence of multiple events described in paragraph (c)(1)(i)(A) of this section during a single year.
- (ii) The table required by this paragraph (c) shall not disclose more than four separate periodic payments or ranges of payments. For all events requiring disclosure of additional separate periodic payments or ranges of payments described in paragraph (c)(1)(i)(A) through (D) of this section occurring after the third separate periodic payment or range of payments disclosed, the separate periodic payments or ranges of payments shall be disclosed as a single range of payments, subject to the following exceptions:
- (A) A balloon payment that is scheduled as a final payment under the terms of the legal obligation shall always be disclosed as a separate periodic payment or range of payments, in which case all events requiring disclosure of additional separate periodic payments or ranges of payments described in paragraph (c)(1)(i)(A) through (D) of this section occurring after the second separate periodic payment or range of payments disclosed, other than the balloon payment that is scheduled as a final payment, shall be disclosed as a single range of payments.
- (B) The automatic termination of mortgage insurance or any functional equivalent under applicable law shall require disclosure of an additional separate periodic payment or range of payments only if the total number of separate periodic payments or ranges of payments otherwise disclosed pursuant to this paragraph (c)(1) does not exceed three.
- (iii) When a range of payments is required to be disclosed under this paragraph (c)(1), the creditor must disclose the minimum and maximum amount for both the principal and interest payment under paragraph (c)(2)(i) of this section and the total periodic payment under paragraph (c)(2)(iv) of this section. A range of payments is required to be disclosed under this paragraph (c)(1) when:
- (A) Multiple events described in paragraph (c)(1)(i) of this section are combined in a single range of payments pursuant to paragraph (c)(1)(ii) of this section;
- (B) Multiple events described in paragraph (c)(1)(i)(A) of this section occur during a single year or an event described in paragraph (c)(1)(i)(A) of this section occurs during the same year as the initial periodic payment or range of payments, in which case the creditor discloses the range of payments that would apply during the year in which the events occur; or
- (C) The periodic principal and interest payment may adjust based on index rates at the time an interest rate adjustment may occur.

## ***Regulatory Commentary***

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

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

2. **Initial periodic payment or range of payments.** Section 1026.37(c)(1)(i) requires the creditor to disclose the initial periodic payment or range of payments. The disclosure required is of the actual periodic payment or range of payments that corresponds to the interest rate that will apply at consummation, including any initial discounted or premium interest rate. For examples of discounted and premium rate transactions, see comment 17(c)(1)-10.v. For guidance regarding whether the disclosure should reflect a buydown, see comments 17(c)(1)-3 through -5. If the initial periodic payment or range of payments may vary based on an adjustment to an index value that applies at consummation, § 1026.37(c)(1)(i) requires that the disclosure of the initial periodic payment or range of payments be based on the fully-indexed rate disclosed under § 1026.37(b)(2). See comment 37(b)(2)-1 for guidance regarding calculating the fully-indexed rate.

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

1. **Periodic principal and interest payments.** For purposes of § 1026.37(c)(1)(i)(A), periodic principal and interest payments may change when the interest rate, applicable interest rate caps, required periodic principal and interest payments, or ranges of such payments may change. Minor payment variations resulting solely from the fact that months have different numbers of days are not changes to periodic principal and interest payments.
2. **Negative amortization.** In a loan that contains a negative amortization feature, periodic principal and interest payments or the range of such payments may change for purposes of § 1026.37(c)(1)(i)(A) at the time the negative amortization period ends under the terms of the legal obligation, meaning the consumer must begin making payments that do not result in an increase of the principal balance. The occurrence of an event requiring disclosure of additional separate periodic payments or ranges of payments should be based on the assumption that the consumer will make payments as scheduled or, if applicable, elect to make the periodic payments that would extend the negative amortization period to the latest time permitted under the terms of the legal obligation. The occurrence of all subsequent events requiring disclosure of additional separate periodic payments or ranges of payments should be based on this assumption. The table required by § 1026.37(c) should also reflect any balloon payment that would result from such scheduled payments or election. See § 1026.37(c)(1)(ii)(A) for special rules regarding disclosure of balloon payments.
3. **Interest only.** In a loan that contains an interest only feature, periodic principal and interest payments may change for purposes of § 1026.37(c)(1)(i)(A) when the interest only period ends, meaning the consumer must begin making payments that do not defer repayment of principal.

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

1. **Balloon payment.** For purposes of § 1026.37(c)(1)(i)(A), whether a balloon payment occurs is determined pursuant to § 1026.37(c)(1)(i)(B) and its commentary. For guidance on the amount of a balloon payment disclosed on the table required by § 1026.37(c), see comment 37(c)(2)(i)-3.

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

1. **General.** “Mortgage insurance or any functional equivalent” means the amounts identified in § 1026.4(b)(5). For purposes of § 1026.37(c), “mortgage insurance or any functional equivalent” includes any mortgage guarantee that provides coverage similar to

mortgage insurance (such as a United States Department of Veterans Affairs or United States Department of Agriculture guarantee), even if not technically considered insurance under State or other applicable law. The fees for such a guarantee are included in **“mortgage insurance premiums.”**

2. **Calculation of mortgage insurance termination.** For purposes of § 1026.37(c)(1)(i)(C), mortgage insurance premiums should be calculated based on the declining principal balance that will occur as a result of changes to the interest rate and payment amounts, applying the interest rates applicable to the transaction. Such calculation should take into account any initial discounted or premium interest rate. For example, for an adjustable rate transaction that has a discounted interest rate during an initial five-year period, the creditor makes the calculation using a composite rate based on the rate in effect during the initial five year period and, thereafter, the fully-indexed rate, unless otherwise required by applicable law. For guidance on calculation of the amount of mortgage insurance premiums to disclose on the table required by § 1026.37(c), see § 1026.37(c)(2)(ii) and its commentary. See comment 37(b)(2)-1 for guidance regarding calculating the fully-indexed rate.
3. **Disclosure of mortgage insurance termination.** The table required by § 1026.37(c) should reflect the consumer’s mortgage insurance premiums until the date on which the creditor must automatically terminate coverage under applicable law, even though the consumer may have a right to request that the insurance be cancelled earlier. Unlike termination of mortgage insurance, a subsequent decline in the consumer’s mortgage insurance premiums is not, by itself, an event that requires the disclosure of additional separate periodic payments or ranges of payments in the table required by § 1026.37(c). For example, some mortgage insurance programs annually adjust premiums based on the declining loan balance. Such annual adjustment to the amount of premiums would not require a separate disclosure of a periodic payment or range payments.

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

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

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

1. **Special rule regarding balloon payments that are final payments.** Section 1026.37(c)(1)(ii)(A) is an exception to the general rule in § 1026.37(c)(1)(ii), and requires that a balloon payment that is scheduled as a final payment under the terms of the legal obligation is always disclosed as a separate periodic payment or range of payments, in which case the creditor discloses as a single range of payments all events requiring disclosure of additional separate periodic payments or ranges of payments described in § 1026.37(c)(1)(i)(A) through (D), other than the final balloon payment, occurring after the second separate periodic payment or range of payments disclosed. Balloon payments that are not scheduled as final payments under the terms of the legal obligation, such as a balloon payment due at the scheduled recast



of a loan that permits negative amortization, are disclosed pursuant to the general rule in § 1026.37(c)(1)(ii). A balloon payment that is a final payment is disclosed as a single payment, and not combined with other changes to periodic principal and interest payments and disclosed as a range.

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

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

1. **Special rule regarding disclosure of the automatic termination of mortgage insurance.** Section 1026.37(c)(1)(ii)(B) is an exception to the general rule § 1026.37(c)(1)(ii), and requires that the automatic termination of mortgage insurance or any functional equivalent under applicable law is disclosed as a separate periodic payment or range of payments only if the total number of separate periodic payments or ranges of payments otherwise disclosed does not exceed three. This means that the automatic termination of mortgage insurance or any functional equivalent under applicable law is disclosed as its own event only if there is a column in which to disclose it, i.e., there are only three other separate periodic payments or ranges of payments that are required to be disclosed. Where the automatic termination of mortgage insurance or any functional equivalent under applicable law is not disclosed as a separate periodic payment or range of payments, the absence of a required mortgage insurance payment is disclosed with the next disclosed event requiring disclosure of additional separate periodic payments or ranges of payments, as applicable.
2. **Examples of special rule regarding disclosure of the automatic termination of mortgage insurance.**
  - i. Assume a step-rate loan with a 30-year term with an introductory interest rate that lasts for five years, a different interest rate that applies for the next five-year period, a final interest rate adjustment after 10 years, where mortgage insurance would terminate for purposes of § 1026.37(c)(1)(i)(C) in the third year, and where no escrow account would be established for the payment of charges § 1026.37(c)(4)(ii). The creditor would disclose on the table required by the initial periodic payment for years one through three (reflecting the principal and interest payment corresponding to the introductory interest rate and payments for mortgage insurance premiums), an additional separate periodic payment for years four and five (reflecting the principal and interest payment corresponding to the introductory rate and no payments for mortgage insurance premiums), an additional separate periodic payment or range of payments for years six through 10 (reflecting the principal and interest payment corresponding to the interest rate that would apply after the introductory rate),

and an additional separate periodic payment or range of payments for years 11 through 30 (reflecting the principal and interest payment corresponding to the interest rate that would apply after the second interest rate adjustment until the end of the loan term). In this example, the automatic termination of mortgage insurance would be separately disclosed on the table required by § 1026.37(c) because the total number of separate periodic payments or ranges of payments otherwise disclosed pursuant to does not exceed three.

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

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

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

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

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



*the first 12 months, which single range represents the minimum payment and maximum payment, respectively. Under § 1026.37(c)(1)(i)(D), the creditor also discloses, as an additional separate periodic payment or range of payments, the periodic principal and interest payment or range of payments that would apply after the payment becomes fixed.*

- ii. Assume instead a loan with a 30-year term with a payment that adjusts upward at three months and at six months and is fixed thereafter, where mortgage insurance is not required, and where no escrow account would be established for the payment of charges described in § 1026.37(c)(4)(ii). The creditor discloses as a single range of payments the initial periodic payment, the periodic payment that would apply after the payment adjustment that occurs at three months, and the periodic payment that would apply after the payment adjustment that occurs at six months, which single range represents the minimum payment and maximum payment, respectively, which would apply during the first year of the loan. Under § 1026.37(c)(1)(i)(D), the creditor also discloses as an additional separate periodic payment or range of payments, the principal and interest payment that would apply on the first anniversary of the due date of the initial periodic payment or range of payments, because that is the anniversary that immediately follows the occurrence of the multiple payments or ranges of payments that occurred during the first year of the loan.*
- iii. Assume that the same loan has a payment that, instead of becoming fixed after the adjustment at six months, adjusts once more at 18 months and becomes fixed thereafter. The creditor discloses the same single range of payments for year one. Under § 1026.37(c)(1)(i)(D), the creditor separately discloses the principal and interest payment that would apply on the first anniversary of the due date of the initial periodic payment in year two. Under § 1026.37(c)(1)(i)(A) and (c)(3)(ii), beginning in the next year in the sequence (i.e., in year three), the creditor separately discloses the periodic payment that would apply after the payment adjustment that occurs at 18 months. See comment 37(c)(3)(ii)-1 regarding subheadings that state the years.*

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

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

## **ITEMIZATION**

### **Regulatory Text § 1026.37(c)(2)**

- (2) Itemization.** Each separate periodic payment or range of payments disclosed on the table required by this paragraph (c) shall be itemized as follows:
  - (i) The amount payable for principal and interest, labeled **“Principal & Interest,”** including the term **“only interest”** if the payment or range of payments includes any interest only payment:

- (A) In the case of a loan that has an adjustable interest rate, the maximum principal and interest payment amounts are determined by assuming that the interest rate in effect throughout the loan term is the maximum possible interest rate, and the minimum amounts are determined by assuming that the interest rate in effect throughout the loan term is the minimum possible interest rate;
- (B) In the case of a loan that has an adjustable interest rate and also contains a negative amortization feature, the maximum principal and interest payment amounts after the end of the period of the loan's term during which the loan's principal balance may increase due to the addition of accrued interest are determined by assuming the maximum principal amount permitted under the terms of the legal obligation at the end of such period, and the minimum amounts are determined pursuant to paragraph (c)(2)(i)(A)];
- (ii) The maximum amount payable for mortgage insurance premiums corresponding to the principal and interest payment disclosed pursuant to paragraph (c)(2)(i) of this section, labeled **"Mortgage Insurance"**;
- (iii) The amount payable into an escrow account to pay some or all of the charges described in paragraph (c)(4)(ii), as applicable, labeled **"Escrow,"** together with a statement that the amount disclosed can increase over time; and
- (iv) The total periodic payment, calculated as the sum of the amounts disclosed pursuant to paragraphs (c)(2)(i) through (iii) of this section, labeled **"Total Monthly Payment."**

## **Regulatory Commentary**

### **37(c)(2) Itemization.**

#### **Paragraph 37(c)(2)(i).**

1. **General rule for adjustable rate loans.** *For an adjustable rate loan, in disclosing the maximum possible payment for principal and interest under § 1026.37(c), the creditor assumes that the interest rate will rise as rapidly as possible after consummation, taking into account the terms of the legal obligation, including any applicable caps on interest rate adjustments and lifetime interest rate cap. For a loan with no lifetime interest rate cap, the maximum rate is determined by reference to other applicable laws, such as State usury law. In disclosing the minimum payment for purposes of § 1026.37(c), the creditor assumes that the interest rate will decrease as rapidly as possible after consummation, taking into account any introductory rates, caps on interest rate adjustments, and lifetime interest rate floor. For an adjustable rate loan based on an index that has no lifetime interest rate floor, the minimum interest rate is equal to the margin.*
2. **Special rule for adjustable rate loans with negative amortization features.** *Section 1026.37(c)(2)(i)(B) provides a special rule for calculation of the maximum principal and interest payment in an adjustable rate loan that contains a negative amortization feature. That section provides that the maximum amounts payable for principal and interest after the negative amortization period ends are calculated using the maximum principal amount permitted under the terms of the legal obligation at the end of the negative amortization period. See section §*

1026.37(c)(1)(i)(A) and associated commentary for guidance regarding when the negative amortization period ends for purposes of § 1026.37(c)(2). For example, if the maximum principal balance for the last payment in the negative amortization period is achieved at an interest rate that is not the maximum interest rate permitted under the terms of the legal obligation before the negative amortization period ends, future events requiring disclosure of additional, separate periodic payments or ranges of payments assume that the interest rate in effect at the end of the negative amortization period was such interest rate, and not the maximum possible interest rate. After the end of the negative amortization period, the general rule under § 1026.37(c)(2)(i)(A) regarding assumptions of interest rate changes for the maximum principal and interest payment to be disclosed applies from such interest rate. The minimum payment in an adjustable rate loan that contains a negative amortization feature is determined pursuant to the general rule under § 1026.37(c)(2)(i)(A).

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

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

1. **Mortgage insurance disclosure.** Mortgage insurance premiums should be reflected on the disclosure required by § 1026.37(c) even if no escrow account is established for the payment of mortgage insurance premiums. If the consumer is not required to purchase mortgage insurance or any functional equivalent, the creditor discloses the mortgage insurance premium amount as “0.” If the creditor is disclosing the automatic termination or the absence of mortgage insurance or any functional equivalent under applicable law or the absence of mortgage insurance or any functional equivalent after coverage has terminated, the creditor discloses the mortgage insurance premium as “-.”
2. **Relationship to principal and interest disclosure.** The creditor discloses mortgage insurance premiums pursuant to § 1026.37(c)(2)(ii) on the same periodic basis that payments for principal and interest are disclosed pursuant to § 1026.37(c)(2)(i), even if mortgage insurance premiums are actually paid on some other periodic basis. If no escrow account for the payment of some or all such charges will be established, the creditor discloses the mortgage insurance premium as “0.”

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

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

## CFPB Guide

The Projected Payments table on the Closing Disclosure discloses the same information required to be disclosed on the Projected Payments table disclosed on the Loan Estimate (see section 2.2.3 above), updated to reflect the terms of the legal obligation at consummation. (§ 1026.38(c); Comment 38(c)-1)

However, there are two differences in the Closing Disclosure:

- For loans subject to RESPA, the amounts disclosed under the Estimated Escrow and Estimated Taxes, Insurance, and Assessments sections on the Closing Disclosure must be determined under the escrow account analysis described in Regulation X, 12 C.F.R. § 1024.17. Loans not subject to RESPA also have this option on the Closing Disclosure.
- The Closing Disclosure refers the consumer to page 4 of the Closing Disclosure, instead of the reference to page 2 that is on the Loan Estimate.

## ***[8] Estimated Taxes, Insurance, and Assessments (page 1, Projected Payments)***

The diagram illustrates the layout of the 'Estimated Taxes, Insurance & Assessments' section on page 1 of the Projected Payments. It features a main rectangular box divided into two columns. The left column is titled 'Estimated Taxes, Insurance & Assessments' with a sub-note 'Amount can increase over time'. The right column is titled 'In escrow?' and contains a section 'This estimate includes' with three checkboxes: 'Property Taxes', 'Homeowner's Insurance', and 'Other:'. Below these checkboxes is a note: 'See Section G on page 2 for escrowed property costs. You must pay for other property costs separately.' Three callout boxes provide additional context: one points to the 'Other:' checkbox with the text 'What is included in the other property costs.', another points to the 'In escrow?' header with the text 'Is the item being escrowed?', and a third points to the bottom of the form with the text 'Total other property costs here.'

### **Y&A Completion Instruction**

All financial institutions, whether they offer escrow services or not, are required to complete this portion of the form. It explains, or perhaps reminds, the consumer of their obligation to pay taxes and insurance, as well as other items related to the property, even if they are not establishing an escrow account. The amounts are calculated based on the amount due monthly, and must be rounded. The processor completes this information using the best information available, understanding that this information may still be an estimate, based on the circumstances of the loan.

This section also requires an indication as to whether any of the amounts included are going to be paid through an escrow account. It is possible that only a portion of the “other” category is going to have an escrow account established. Should that occur, then the answer to the escrow question is “some.” Otherwise, the answer to the escrow question is either “yes” or “no.”

### **Regulatory Text § 1026.38(c)(2)**

(2) **Estimated taxes, insurance, and assessments.** A reference to the disclosure required by paragraph (l)(7) of this section.

### **Regulatory Commentary**

*None.*

## Loan Estimate Regulatory Text and Commentary Assistance

### ***Regulatory Text § 1026.37(c)(4)***

- (4) **Taxes, insurance, and assessments.** Under the information required by paragraphs (c)(1) through (3) of this section:
- (i) The label “**Taxes, Insurance & Assessments**”;
  - (ii) The sum of the charges identified in § 1026.43(b)(8), other than amounts identified in § 1026.4(b)(5), expressed as a monthly amount, even if no escrow account for the payment of some or any of such charges will be established;
  - (iii) A statement that the amount disclosed pursuant to paragraph (c)(4)(ii) of this section can increase over time;
  - (iv) A statement of whether the amount disclosed pursuant to paragraph (c)(4)(ii) of this section includes payments for property taxes, amounts identified in § 1026.4(b)(8), and other amounts described in paragraph (c)(4)(ii) of this section, along with a description of any such other amounts, and an indication of whether such amounts will be paid by the creditor using escrow account funds;
  - (v) A statement that the consumer must pay separately any amounts described in paragraph (c)(4)(ii) of this section that are not paid by the creditor using escrow account funds; and
  - (vi) A reference to the information disclosed pursuant to paragraph (g)(3) of this section.

### ***Regulatory Commentary***

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

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

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

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

**2. Amounts paid by the creditor using escrow account funds.** *Section 1026.37(c)(4)(iv) requires the creditor to disclose an indication of whether the amounts disclosed under § 1026.37(c)(4)(ii) will be paid by the creditor using escrow account funds. If only a portion of the amounts disclosed under § 1026.37(c)(4)(ii), including, without limitation, property taxes, homeowner's insurance, and assessments, will be paid by the creditor using escrow account funds, the creditor may indicate that only a portion of the amounts disclosed will be paid using escrow account funds, such as by using the word "some."*

## CFPB Guide

None.



## Section 5: Costs at Closing

### 12 CFR § 1026.38(d)

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#### *General Language*

#### **Y&A Commentary**

This appears at the bottom of the first page of the Closing Disclosure, and offers totals regarding the amount the consumer must bring to the closing table.

#### **Regulatory Text**

(d) **Costs at closing.**

#### **Regulatory Commentary**

*None.*

#### **CFPB Guide**

None.

**[9] Costs at Closing Table (page 1, bottom)**

Costs at Closing	
Closing Costs	Includes in Lender Credits. See page 2 for details. in Loan Costs + in Other Costs –
Cash to Close	Includes Closing Costs. See Calculating Cash to Close on page 3 for details.
CLOSING DISCLOSURE	
PAGE 1 OF 5 • LOAN ID #	

Totals appear in this column.

Detail appears in this area.

**Y&A Completion Instruction**

This section includes two separate rows: the first row contains the total closing costs, loan costs, other costs, and lender credits in connection with the transaction, as well as a reference to the closing cost details disclosed on page 2 of the Closing Disclosure, and the second row contains the cash to close amount, a statement that the cash to close amount includes closing costs, and a reference to the calculating cash to close table disclosed on page 3 of the Closing Disclosure. This section also provides for an alternative cash to close disclosure for transactions without a seller. All of these amounts come from other information on the form, and the processor will not need to take any action to complete this portion of the form.

**Regulatory Text § 1026.38(d)(1)**

- (1) **Costs at closing table.** In a separate table, under the heading “**Costs at Closing**”:
- (i) Labeled “**Closing Costs**,” the sum of the dollar amounts disclosed pursuant to paragraphs (f)(4), (g)(5), and (h)(3) of this section, together with:
    - (A) A statement that the amount disclosed pursuant to paragraph (d)(1)(i) of this section includes the amounts disclosed pursuant to paragraphs (f)(4), (g)(5), and (h)(3) of this section;
    - (B) The dollar amount disclosed pursuant to paragraph (f)(4) of this section, labeled “**Loan Costs**”;
    - (C) The dollar amount disclosed pursuant to paragraph (g)(5) of this section, labeled “**Other Costs**”;
    - (D) The dollar amount disclosed pursuant to paragraph (h)(3) of this section, labeled “**Lender Credits**”; and
    - (E) A statement referring the consumer to the tables disclosed pursuant to paragraphs (f) and (g) of this section for details.

- (ii) Labeled “**Cash to Close**,” the sum of the dollar amounts calculated in accordance with paragraph (i)(9)(ii) of this section, together with:
- (A) A statement that the amount disclosed pursuant to paragraph (d)(1)(ii) of this section includes the amount disclosed pursuant to paragraph (d)(1)(i) of this section; and
  - (B) A statement referring the consumer to the table required pursuant to paragraph (i) of this section for details.

### **Regulatory Commentary**

*None.*

### **CFPB Guide**

The **Costs at Closing** table discloses:

- The total amount disclosed as Total Closing Costs in the Other Costs table disclosed on page 2 of the Closing Disclosure. Total Closing Costs are also itemized to show the Total Loan Costs, the Total Other Costs, and Lender Credits from the Total Closing Costs subheading disclosed on page 2 of the Closing Disclosure (§ 1026.38(d)(1)(i)), and
- The estimated amount of cash the consumer will pay at, or receive from, closing as Cash to Close. This amount is the same as the Cash to Close calculated in the Calculating Cash to Close table on page 3 of the Closing Disclosure. (§ 1026.37(d)(1)(ii))

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## ***[10] Alternative Table for Transactions Without a Seller (page 1, bottom)***

### **Y&A Completion Instruction**

We have elected to omit a discussion of this disclosure. All amounts that are shown in this disclosure come from other locations on the form, and no additional efforts will be required to create this disclosure. The regulatory language for the disclosure appears below. The software companies appear to have determined that this additional table was not necessary to program.

### **Regulatory Text § 1026.38(d)(2)**

**(2) Alternative table for transactions without a seller or for simultaneous subordinate financing.** For transactions that do not involve a seller or for simultaneous subordinate financing, if the creditor disclosed the optional alternative table under § 1026.37(d)(2), the creditor shall disclose, with the label “Cash to Close,” instead of the sum of the dollar amounts described in paragraph (d)(1)(ii) of this section:

- (i) The amount calculated in accordance with paragraph (e)(5)(ii) of this section;
- (ii) A statement of whether the disclosed amount is due from or to the consumer; and
- (iii) A statement referring the consumer to the table required pursuant to paragraph (e) of this section for details.

### **Regulatory Commentary**

#### ***38(d)(2) Alternative table for transactions without a seller or for simultaneous subordinate financing.***

1. ***Required use.*** The disclosure of the alternative cash to close table in § 1026.38(d)(2) may only be provided by a creditor in a transaction without a seller or for a simultaneous subordinate financing transaction. In a purchase transaction, the alternative disclosure may be used for the simultaneous subordinate financing Closing Disclosure only if the first-lien Closing Disclosure records the entirety of the seller’s transaction. The use of this alternative table for transactions without a seller or for simultaneous subordinate financing transactions is required if the Loan Estimate provided to the consumer disclosed the optional alternative table under § 1026.37(d)(2) and must be used in conjunction with the use of the alternative calculating cash to close disclosure under § 1026.38(e). See comments 38(j)-3 and 38(k)(2)(vii)-1 for disclosure requirements applicable to the first-lien transaction when the alternative disclosures are used for a simultaneous subordinate financing transaction and a seller contributes to the costs of the subordinate financing. See also comments 38(t)(5)(vii)(B)-1 and -2 for the requirement to disclose the seller’s contributions, if any, toward the subordinate financing in the payoffs and payments table on the simultaneous subordinate financing Closing Disclosure.

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

## **CFPB Guide**

Disclose the Alternative Costs at Closing table for a transaction without a seller or for a simultaneous subordinate lien transaction where the Alternative Estimated Costs at Closing table was disclosed on the Loan Estimate. (see section 2.2.4 above; § 1026.38(d)(2)) Note that the Alternative Costs at Closing table must be used on the Closing Disclosure if it was used on the Loan Estimate.

Check boxes are used in order to indicate whether the amount of cash is due from or paid to the consumer at consummation. (Comment 38(d)(2)-2) If the Alternative Costs at Closing table is used, then the Alternative Calculating Cash to Close on page 3 of the Closing Disclosure must also be used. (Comment 38(d)(2)-1)

## Section 6: Alternative Calculating Cash to Close Table 12 CFR § 1026.38(e)

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### *General Language (page 3, top)*

#### Y&A Commentary

There are two potential cash to close tables. One is a version used for purchases, that is described in Section 10 of this manual, and this version, which is used for non-purchase transactions. This format will also generally include the payoffs listing that appears below.

<b>Payoffs and Payments</b> <span style="font-weight: normal; padding-left: 10px;">Use this table to see a summary of your payoffs and payments to others from your loan amount.</span>	
TO	AMOUNT
01	
02	
03	
04	
05	
06	
07	
08	
09	
10	
11	
12	
13	
14	
15	
<b>K. TOTAL PAYOFFS AND PAYMENTS</b>	

This table appears out of order in the regulation. We have chosen to leave the regulation in order. This table is used for for payoffs and payments. It is not used for construction escrow, or any miscellaneous credits. Those items must appear using the standard form.

## Y&A Completion Instruction

The processor enters all payoff and payments in this section. Items other than payoffs and payments do not belong here. If there are other items, likely the processor will have to switch to the full version of this document, discussed below. This section is not used for any miscellaneous credits. Those items must appear elsewhere.

## Regulatory Text § 1026.38(e)

**(e) Alternative calculating cash to close table for transactions without a seller or for simultaneous subordinate financing.** For transactions that do not involve a seller or for simultaneous subordinate financing, if the creditor disclosed the optional alternative table under § 1026.37(h)(2), the creditor shall disclose, instead of the table described in paragraph (i) of this section, in a separate table, under the heading “Calculating Cash to Close,” together with the statement “Use this table to see what has changed from your Loan Estimate”:

## Regulatory Commentary

### ***38(e) Alternative calculating cash to close table for transactions without a seller or for simultaneous subordinate financing.***

- 1. Required use.** *The disclosure of the table in § 1026.38(e) may only be provided by a creditor in a transaction without a seller or for a simultaneous subordinate financing transaction. In a purchase transaction, the alternative disclosure may be used for the simultaneous subordinate financing Closing Disclosure only if the first-lien Closing Disclosure records the entirety of the seller’s transaction. The use of this alternative calculating cash to close table for transactions without a seller or for simultaneous subordinate financing is required for transactions in which the Loan Estimate provided to the consumer disclosed the optional alternative table under § 1026.37(h)(2), and must be used in conjunction with the alternative disclosure under § 1026.38(d)(2).*
- 2. More prominent disclosures.** *Section 1026.38(e)(1)(iii), (2)(iii), (3)(iii), and (4)(iii) requires that statements are given as to whether the “**Final**” amount disclosed under each subparagraph (ii) of § 1026.38(e)(1) through (e)(4) is different than or equal to, and in some cases whether the amount is greater than or less than, the corresponding “**Loan Estimate**” amount disclosed under each subparagraph (i) of § 1026.38(e)(1) through (e)(4). These statements are more prominent than the other disclosures under § 1026.38(e). The statement of whether the estimated and final amounts are different, stated as a “**Yes**” or “**No**” in capital letters and in boldface, under the subheading “**Did this change?**,” as shown on forms H-25(E) and H-25(G) of appendix H to this part, complies with the requirement to state whether the amounts are different more prominently. Such statement of “**No**” satisfies the requirement to*



state that the estimated and final amounts are equal, and these sections do not provide for any narrative text to be included with such statement. The prominence requirement also requires that, in the event an increase or decrease in costs has occurred, certain words within the narrative text to be included under the subheading **“Did this change?”** for a **“Yes”** answer are displayed more prominently than other disclosures. For example, under § 1026.38(e)(2)(iii)(A), this more prominent statement could take the form of the phrases **“Total Loan Costs (D)”** and **“Total Other Costs (I)”** being shown in boldface, as shown on forms H-25 (E) and H-25(G) of appendix H to this part. See comment 38(e)-4 for further guidance regarding the prominence of such statements.

3. **Statements of differences.** The dollar amounts disclosed under § 1026.38 generally are shown to two decimal places unless otherwise required. See comment 38(t)(4)-1. Any amount in the “Final” column of the alternative calculating cash to close table under § 1026.38(e) is shown to two decimal places unless otherwise required. Pursuant to § 1026.38(t)(4)(i)(C), however, any amount in the “Loan Estimate” column of the alternative calculating cash to close table under § 1026.38(e) is rounded to the nearest dollar amount to match the corresponding estimated amount disclosed on the Loan Estimate’s calculating cash to close table under § 1026.37(h). For purposes of § 1026.38(e)(1)(iii), (2)(iii), and (4)(iii), each statement of a change between the amounts disclosed on the Loan Estimate and the Closing Disclosure is based on the actual, non-rounded estimate that would have been disclosed on the Loan Estimate under § 1026.37(h) if it had been shown to two decimal places rather than a whole dollar amount. For example, if the amounts in the “Loan Estimate” column of the total closing costs row disclosed under § 1026.38(e)(2)(i) is \$12,500, but the non-rounded estimate of total closing costs is \$12,500.35, and the “Final” column of the total closing costs row disclosed under § 1026.38(e)(2)(ii) is \$12,500.35, then, even though the table would appear to show a \$0.35 increase in total closing costs, no statement of such increase is given under § 1026.38(e)(2)(iii).
4. **Statements that the consumer should see details.** The provisions of § 1026.38(e)(2)(iii)(A) and (e)(4)(iii)(A) each require a statement that the consumer should see certain details of the closing costs disclosed under § 1026.38(f), (g), or (t). Forms H-25(E) and H-25(G) of appendix H to this part contain examples of these statements. For example, § 1026.38(e)(4)(iii)(A) requires a statement that the consumer should see the details disclosed pursuant to § 1026.38(t)(5)(vii)(B), and, as shown on forms H-25(E) and H-25(G) of appendix H to this part, the statement, **“See Payoffs and Payments,”** in which the words **“Payoffs and Payments”** are in boldface, complies with this provision.
5. **Statement of increase or decrease.** Section 1026.38(e)(1)(iii)(A) requires a statement of whether the loan amount increased or decreased. A creditor complies with this requirement by disclosing, **“This amount increased”** or **“This amount decreased”** with the words **“increase”** and **“decrease”** in boldface font.
6. **Estimated amounts.** The amounts disclosed on the alternative calculating cash to close table under the subheading “Loan Estimate” under § 1026.38(e)(1)(i), (2)(i), (4)(i), and (5)(i) are the amounts disclosed on the most recent Loan Estimate provided to the consumer under § 1026.19(e).

## CFPB Guide

On page 3 of the Closing Disclosure, the Calculating Cash to Close table and Summaries of

Transaction table are disclosed. For transactions without a seller, a Payoffs and Payments table may be substituted for the Summaries of Transactions table and placed before the Alternative Calculating Cash to Close table. (See Figure 40; form H-25(J) of appendix H to Regulation Z).

Disclose an Alternative Calculating Cash to Close table for transactions without a seller when the Alternative Calculating Cash to Close table was used on the Loan Estimate.

The Alternative Calculating Cash to Close table has five items listed in the table:

- Loan Amount,
- Total Closing Costs,
- Closing Costs Paid Before Closing,
- Total Payoffs and Payments, and
- Cash to Close.

The table has three columns to disclose the amount for each item as it was disclosed on the Loan Estimate, the Final amount for the item, and an answer to the question Did this change? (§ 1026.38(e))

In addition, disclose Closing Costs Financed (Paid from your Loan Amount) in the third column of the Final item. (§ 1026.38(e)(6))

Except as discussed below, the amount disclosed in the Loan Estimate column is the same as the amount disclosed on the Loan Estimate or a revised Loan Estimate. (§ 1026.38(e)(1)(i), (2)(i), (4)(i), (5)(i)) The amounts disclosed in the Loan Estimate column are rounded to the nearest dollar in order to match the corresponding amount disclosed on the Loan Estimate's Calculating Cash to Close table. (Comment 38(e)-3)

Alternative Calculating Cash to Close Table For Transaction Without a Seller or for Simultaneous Subordinate Lien Loans

Disclose an Alternative Calculating Cash to Close table for a transaction without a seller or for a simultaneous subordinate lien transaction if the Alternative Calculating Cash to Close table was used on the Loan Estimate.

Principal reductions that occur immediately or very soon after closing must be disclosed in the Summaries of Transactions table or in the Payoffs and Payments table, as applicable. The disclosure must include the following elements: (1) the amount of the principal reduction; (2) the phrase "principal reduction" or a similar phrase; (3) if disclosed in the Payoffs and Payments table, the name of the payee; (4) if the principal reduction is not paid from closing funds, the phrase "Paid Outside Closing" or "P.O.C." and the name of the party making the payment; and (5) if applicable, a statement that the principal reduction is being provided to offset charges that exceed the legal limits (using any language that satisfies the clear and conspicuous standard). If a principal reduction is not paid from closing funds, it is not included when computing the total for the Summaries of Transactions table or when calculating total Payoffs and Payments or Cash to Close. (Comment 38-4) For additional guidance on disclosing principal reductions, see Comment 38-4.

If the settlement agent uses the Alternative Calculating Cash to Close table for a simultaneous subordinate lien transaction, the Closing Disclosure for the first lien loan must disclose the entirety of the seller's transaction. Therefore, any contributions from the seller to the subordinate

lien loan must be included in the Summaries of Transactions table on the Closing Disclosure for the first lien loan. The seller contributions are also disclosed in the Payoff and Payments table on the subordinate lien loan's Closing Disclosure. (Comment 38(k)(2)(vii)-1)

The Alternative Calculating Cash to Close table has five items listed in the table:

- Loan Amount,
- Total Closing Costs,
- Closing Costs Paid Before Closing,
- Total Payoffs and Payments, and
- Cash to Close.

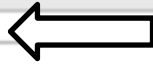
The table has three columns to disclose the amount for each item as it was disclosed on the Loan Estimate, the Final amount for the item, and an answer to the question Did this change? (§ 1026.38(e))

In addition, disclose Closing Costs Financed (Paid from your Loan Amount) in the third column of the Final item. (§ 1026.38(e)(6))

The amount disclosed in the Loan Estimate column is the same as the amount disclosed on the most recent Loan Estimate provided to the consumer. (§ 1026.38(e)(1)(i), (2)(i), (4)(i), (5)(i)) The amounts disclosed in the Loan Estimate column are rounded to the nearest dollar in order to match the corresponding amount disclosed on the Loan Estimate's Calculating Cash to Close table. (Comment 38(e)-3)

**[11] Loan Amount (page 3, Alternative Cash to Close Table)**

Calculating Cash to Close		Use this table to see what has changed from your Loan Estimate.	
	Loan Estimate	Final	Did this change?
Loan Amount			
Total Closing Costs (J)			
Closing Costs Paid Before Closing			
Total Payoffs and Payments (K)			
Cash to Close	<input type="checkbox"/> From <input type="checkbox"/> To Borrower	<input type="checkbox"/> From <input type="checkbox"/> To Borrower	Closing Costs Financed (Paid From your Loan Amount)


**Y&A Completion Instruction**

The processor must assure that the Loan Amount that appears on the final Loan Estimate is appropriately listed, as well as the final loan amount as it appears on the note. The processor must also assure that the “Did this Change” column is properly completed, with the appropriate bolded font as described below in the regulatory text and commentary.

**Regulatory Text § 1026.38(e)(1)****(1) Loan amount.** Labeled “**Loan Amount:**”

- (i) Under the subheading “**Loan Estimate,**” the loan amount disclosed on the Loan Estimate under § 1026.37(b)(1);
- (ii) Under the subheading “**Final,**” the loan amount disclosed under paragraph (b) of this section;
- (iii) Disclosed more prominently than the other disclosures under paragraph (e)(1)(i) and (ii) of this section, under the subheading “**Did this change?**”:
  - (A) If the amount disclosed under paragraph (e)(1)(ii) of this section is different than the amount disclosed under paragraph (e)(1)(i) of this section (unless the difference is due to rounding), a statement of that fact along with a statement of whether this amount increased or decreased; or
  - (B) If the amount disclosed under paragraph (e)(1)(i) of this section is equal to the amount disclosed under paragraph (e)(1)(ii) of this section a statement of that fact.

**Regulatory Commentary****Paragraph 38(e)(1)(iii)(A).**

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

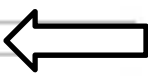
1026.38(e)(1)(iii)(A), the statement, ***“You increased this amount,”*** in which the word ***“increased”*** is in boldface font and is replaced with the word ***“decreased”*** as applicable, complies with this provision.

## CFPB Guide

Loan Amount should have the same amount disclosed, as a positive number, in the Final column as the Loan Amount in the Loan Terms table on page 1 of the Closing Disclosure. (§ 1026.38(e)(1)(ii))

**[12] Total Closing Costs (page 3, Alternative Cash to Close Table)**

<b>Calculating Cash to Close</b>		Use this table to see what has changed from your Loan Estimate.	
	Loan Estimate	Final	Did this change?
Loan Amount			
Total Closing Costs (J)			
Closing Costs Paid Before Closing			
Total Payoffs and Payments (K)			
Cash to Close	<input type="checkbox"/> From <input type="checkbox"/> To Borrower	<input type="checkbox"/> From <input type="checkbox"/> To Borrower	Closing Costs Financed (Paid from your Loan Amount)


**Y&A Completion Instruction**

The processor must assure that the totals from Line J for both the Loan Estimate and the Closing Disclosure. The processor must also assure that the “Did this Change” column is properly completed, with the appropriate bold font as described below in the regulatory text and commentary.

**Regulatory Text § 1026.38(e)(2)****(2) Total closing costs.** Labeled “**Total Closing Costs**”:

- (i) Under the subheading “**Loan Estimate**,” the amount disclosed on the Loan Estimate under § 1026.37(h)(2)(ii);
- (ii) Under the subheading “**Final**,” the amount disclosed under paragraph (h)(1) of this section, disclosed as a negative number if the amount disclosed under paragraph (h)(1) of this section is a positive number and disclosed as a positive number if the amount disclosed under paragraph (h)(1) of this section is a negative number; and
- iii. Disclosed more prominently than the other disclosures under this paragraph (e)(2)(i) and (ii) of this section, under the subheading “**Did this change?**”:
  - (A) If the amount disclosed under paragraph (e)(2)(ii) of this section is different than the amount disclosed under paragraph (e)(2)(i) of this section (unless the difference is due to rounding):
    - (1) A statement of that fact;
    - (2) If the difference in the amounts disclosed under paragraphs (e)(2)(i) and (e)(2)(ii) is attributable to differences in itemized charges that are included in either or both subtotals, a statement that the consumer should see the total loan costs and total other costs subtotals disclosed under paragraphs (f)(4) and (g)(5) of this section (together with references to such disclosures), as applicable; and

- (3) If the increase exceeds the limitations on increases in closing costs under § 1026.19(e)(3), a statement that such increase exceeds the legal limits by the dollar amount of the excess and, if any refund is provided under § 1026.19(f)(2)(v), a statement directing the consumer to the disclosure required under paragraph (h)(3) of this section or, if applicable, a statement directing the consumer to the principal reduction disclosure under paragraph (t)(5)(vii)(B) of this section. Such dollar amount shall equal the sum total of all excesses of the limitations on increases in closing costs under § 1026.19(e)(3), taking into account the different methods of calculating excesses of the limitations on increases in closing costs under § 1026.19(e)(3)(i) and (ii).

(B) If the amount disclosed under paragraph (e)(2)(i) of this section is equal to the amount disclosed under paragraph (e)(2)(ii) of this section, a statement of that fact.

## Regulatory Commentary

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

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

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

1. **Statements and references regarding the total loan costs and total other costs.** Under § 1026.38(e)(2)(iii)(A), the statements under the subheading **“Did this change?”** that the consumer should see the total loan costs and total other costs subtotals disclosed on the Closing Disclosure under § 1026.38(f)(4) and (g)(5) are made only if and to the extent the difference in the **“Total Closing Costs”** is attributable to differences in itemized charges that are included in either or both of such subtotals.
  - i. For example, if an increase in the **“Total Closing Costs”** is attributable only to an increase in the appraisal fee (which is an itemized charge on the Closing Disclosure under the subheading **“Services Borrower Did Not Shop For,”** itself under the heading **“Loan Costs”**), then a statement is given under the subheading **“Did this change?”** that the consumer should see the total loan costs subtotal disclosed on the Closing Disclosure under § 1026.38(f)(4). If the increase in **“Total Closing Costs”** is attributable only to an increase in recording fees (which is an itemized charge on the Closing Disclosure under the subheading **“Taxes and Other Government Fees,”** itself under the heading **“Other Costs”**), then a statement is given under the subheading **“Did this change?”** that the consumer should see the total other costs subtotal disclosed on the Closing Disclosure under § 1026.38(g)(5). If, however, the increase is attributable in part to an increase in the appraisal fee and in part to an increase in the recording fee, then a statement is given under the subheading **“Did this change?”** that the consumer should see the total loan costs and total other costs subtotals disclosed on the Closing Disclosure under § 1026.38(f)(4) and (g)(5).



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

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

- i. Because certain closing costs, individually, are generally subject to the limitations on increases in closing costs under § 1026.19(e)(3)(i) (e.g., fees paid to the creditor, transfer taxes, fees paid to an affiliate of the creditor), while other closing costs are collectively subject to the limitations on increases in closing costs under § 1026.19(e)(3)(ii) (e.g., recording fees, fees paid to an unaffiliated third party identified by the creditor if the creditor permitted the consumer to shop for the service provider), § 1026.38(e)(2)(iii)(A) requires the creditor or closing agent to calculate subtotals for each type of excess amount, and then add such subtotals together to yield the dollar amount to be disclosed in the table. See commentary to § 1026.19(e)(3) for additional guidance on calculating excess amounts above the limitations on increases in closing costs under § 1026.19(e)(3).
- ii. Under § 1026.38(e)(2)(iii)(A), calculation of the excess amounts above the limitations on increases in closing costs takes into account that the itemized, estimated closing costs disclosed on the Loan Estimate will not result in charges to the consumer if the service is not actually provided at or before consummation. For example, if the Loan Estimate included under “Services You Cannot Shop For” a \$30 charge for a “title courier fee,” but the title company elects to hand-deliver the title documents package to the creditor at no charge, the \$30 fee is not factored into the calculation of the “Total Closing Costs” that are subject to the limitations on increases in closing costs. However, if the title courier fee was assessed, but at only \$15, the charge is factored into the calculation because the third party service was actually provided, albeit at a lower amount than estimated. For an example, see form H-25 of appendix H to this part.
- iii. Under § 1026.38(e)(2)(iii)(A), calculation of the excess amounts above the limitations on increases in closing costs takes into account that certain itemized charges listed on the Loan Estimate under the subheading “Services You Can Shop For” may be subject to different limitations depending on the circumstances. Although § 1026.19(e)(3)(iii) provides exceptions to the general rule, such a charge would generally be subject to the limitations under § 1026.19(e)(3)(i) if the consumer decided to use a provider affiliated with the creditor. However, the same charge would instead be subject to the limitations under § 1026.19(e)(3)(ii) if the consumer selected a third party service provider unaffiliated with but identified by the creditor, and the creditor permitted the consumer to shop for the service provider. See commentary to § 1026.19(e)(3) for additional guidance on calculating excess amounts above the limitations on increases in closing costs under § 1026.19(e)(3).

## **3. Statements regarding excess amount and any credit to the consumer.** Section 1026.38(e)(2)(iii)(A) requires a statement that an increase in closing costs exceeds legal limits by the dollar amount of the excess and a statement directing the consumer to the disclosure of lender credits under § 1026.38(h)(3) or a principal reduction under § 1026.38(t)(5)(vii)(B), if provided under § 1026.19(f)(2)(v). See form H-25(F) in appendix H to this part for examples of such statements under § 1026.38(h)(3). See also comments 38-4 and 38(h)(3)-2.

## CFPB Guide

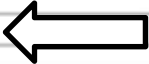
If the amount disclosed as the Total Closing Costs (Borrower Paid) on page 2 is a positive number, disclose that amount as a negative number in the Final column for Total Closing Costs. If the amount disclosed as the Total Closing Costs (Borrower Paid) on page 2 is a negative number, disclose that amount as a positive number in the Final column for Total Closing Costs. (§ 1026.38(e)(2)(ii)) When the amount in the Final column is different from the amount in the Loan Estimate column, the creditor should indicate that the consumer should see the Total Loan Costs or Total Other Costs subheadings, as applicable, on page 2 of the Closing Disclosure. (§ 1026.38(e)(2)(iii)(A)(2))

## Increase in Total Closing Costs That Exceed The Legal Limit

When the increase in Total Closing Costs exceeds the legal limits, disclose a statement that an increase in closing costs exceeds the legal limits by the dollar amount of the excess in the Did this change? column. (§ 1026.38(i)(1)(iii)(A)(3)) If a creditor will provide a lender credit to the consumer for the excess amount, the creditor must include a statement directing the consumer to the Lender Credit on page 2. If a creditor will reduce the amount of the principal to offset the excess amount, the creditor must include a statement informing the consumer the creditor is providing a principal reduction to offset the charges that exceed the legal limit. (Comment 38(i)(1)(iii)(A)-3)

**[13] Closing Costs Paid Before Closing (page 3, Alternate Cash to Close Table)**

Calculating Cash to Close		Use this table to see what has changed from your Loan Estimate.	
	Loan Estimate	Final	Did this change?
Loan Amount			
Total Closing Costs (J)			
Closing Costs Paid Before Closing			
Total Payoffs and Payments (K)			
Cash to Close	<input type="checkbox"/> From <input type="checkbox"/> To Borrower	<input type="checkbox"/> From <input type="checkbox"/> To Borrower	Closing Costs Financed (Paid from your Loan Amount)



**Y&A Completion Instruction**

The processor must complete this third item, which is “Closing Costs Paid Before Closing.” As this field does not exist on the Loan Estimate, the Loan Estimate column here will always be \$0. If items were prepaid per the Closing Disclosure, then the total amount prepaid must be placed in the “Final” column. The processor must also assure that the “Did this Change” column is properly completed, with the appropriate bolded font as described below in the regulatory text and commentary.

**Regulatory Text § 1026.38(e)(3)**

**(3) Closing costs paid before closing.** Labeled “**Closing Costs Paid Before Closing:**”

- (i) Under the subheading “**Loan Estimate,**” the amount of \$0;
- (ii) Under the subheading “**Final,**” any amount designated as borrower-paid before closing under paragraph (h)(2) of this section, disclosed as a positive number; and
- (iii) Disclosed more prominently than the other disclosures under this paragraph (e)(3)(i) and (ii) of this section, under the subheading “**Did this change?**”:
  - (A) If the amount disclosed under paragraph (e)(3)(ii) of this section is different than the amount disclosed under paragraph (e)(3)(i) of this section (unless the difference is due to rounding), a statement of that fact along with a statement that the consumer included the closing costs in the loan amount, which increased the loan amount; or
  - (B) If the amount disclosed under paragraph (e)(3)(ii) of this section is equal to the amount disclosed under paragraph (e)(3)(i) of this section, a statement of that fact.

## Regulatory Commentary

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

1. ***Estimate of closing costs paid before closing.*** Under § 1026.38(e)(3)(i), the “**Loan Estimate**” amount for “**Closing Costs Subtotal Paid Before Closing**” is always shown as “**\$0,**” because an estimate of such amount is not disclosed on the Loan Estimate.

### ***Paragraph 38(e)(3)(iii)(B).***

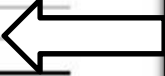
1. ***Equal amount.*** Under § 1026.38(e)(3)(iii)(B), the creditor gives a statement that the “Final” amount disclosed under § 1026.38(e)(3)(ii) is equal to the “Loan Estimate” amount disclosed under § 1026.38(e)(3)(i), only if the “Final” amount is \$0, because the “Loan Estimate” amount is always disclosed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

## CFPB Guide

For Closing Costs Paid Before Closing, disclose \$0 in the Loan Estimate column. (§ 1026.38(e)(3)(i)) The Final column should disclose the same amount designated as Borrower-Paid Before Closing in the Closing Costs Subtotals of the Other Costs table on Closing Disclosure page 2, as a positive number. (§ 1026.38(e)(3)(ii))

**[14] Payoffs and Payments (page 3, Alternative Cash to Close Table)**

Calculating Cash to Close		Use this table to see what has changed from your Loan Estimate.	
	Loan Estimate	Final	Did this change?
Loan Amount			
Total Closing Costs (J)			
Closing Costs Paid Before Closing			
Total Payoffs and Payments (K)			
Cash to Close	<input type="checkbox"/> From <input type="checkbox"/> To Borrower Borrower	<input type="checkbox"/> From <input type="checkbox"/> To Borrower Borrower	
Closing Costs Financed (Paid from your Loan Amount)			


**Y&A Completion Instruction**

This disclosure is the total payoffs and payments as detailed in Section K. See section K above. The processor must complete this field. As this field does not exist on the Loan Estimate, the Loan Estimate column here will always be \$0. The Final column contains the total from the Section K document discussed above. The processor must also assure that the “Did this Change” column is properly completed, with the appropriate bolded font as described below in the regulatory text and commentary.

**Regulatory Text § 1026.38(e)(4)****(4) Payoffs and payments. Labeled “Total Payoffs and Payments,”**

- (i) Under the subheading “**Loan Estimate**,” the total payoffs and payments disclosed on the Loan Estimate under § 1026.37(h)(2)(iii);
- (ii) Under the subheading “**Final**,” the total amount of payoffs and payments made to third parties disclosed under paragraph (t)(5)(vii)(B) of this section, to the extent known, disclosed as a negative number if the total amount disclosed under paragraph (t)(5)(vii)(B) of this section is a positive number and disclosed as a positive number if the total amount disclosed under paragraph (t)(5)(vii)(B) of this section is a negative number;
- (iii) Disclosed more prominently than the other disclosures under this paragraph (e)(4)(i) and (ii) under the subheading “**Did this change?**”:
  - (A) If the amount disclosed under paragraph (e)(4)(ii) of this section is different than the amount disclosed under paragraph (e)(4)(i) of this section (unless the difference is due to rounding), a statement of that fact along with a reference to the table disclosed under paragraph (t)(5)(vii)(B) of this section; or
  - (B) If the amount disclosed under paragraph (e)(4)(ii) of this section is equal to the amount disclosed under paragraph (e)(4)(i) of this section, a statement of that fact.

## Regulatory Commentary

*None.*

## CFPB Guide

If the amount disclosed in the Payoffs and Payments table on page 3 is a positive number, disclose that amount as a negative in the Final column for Total Payoffs and Payments. If the amount disclosed in the Payoffs and Payments table on page 3 is a negative number, disclose that amount as a positive number in the Final column for Total Payoffs and Payments. (§ 1026.38(e)(4)(ii))

**[15] Cash to or from Consumer (page 3, Alternative Cash to Close Table)**

Calculating Cash to Close		Use this table to see what has changed from your Loan Estimate.	
	Loan Estimate	Final	Did this change?
Loan Amount			
Total Closing Costs (J)			
Closing Costs Paid Before Closing			
Total Payoffs and Payments (K)			
Cash to Close	<input type="checkbox"/> From <input type="checkbox"/> To Borrower	<input type="checkbox"/> From <input type="checkbox"/> To Borrower	<div style="text-align: right;">←</div> Closing Costs Financed (Paid From your Loan Amount)

**Y&A Completion Instruction**

This disclosure totals these tables to determine what the amounts are, and whether the amounts are due to the consumer or from the consumer. There is generally no processor action required to complete this portion of the disclosure.

**Regulatory Text § 1026.38(e)(5)**

**(5) Cash to or from consumer. Labeled “Cash to Close:”**

- (i) Under the subheading “**Loan Estimate**,” the estimated cash to close on the Loan Estimate together with the statement of whether the estimated amount is due from or to the consumer as disclosed under § 1026.37(h)(2)(iv);
- (ii) Under the subheading “**Final**,” the amount due from or to the consumer, calculated by the sum of the amounts disclosed under paragraphs (e)(1)(ii), (e)(2)(ii), (e)(3)(ii) and (e)(4)(ii), disclosed as a positive number, together with a statement of whether the disclosed amount is due from or to the consumer.

**Regulatory Commentary**

*None.*

**CFPB Guide**

Cash to Close discloses the sum of Loan Amount, Total Closing Costs, Closing Costs Paid Before Closing, and Total Payoffs and Payments in the Loan Estimate and Final columns, with indications of whether the totals are due to or from the consumer. (§ 1026.38(e)(5)(ii))



**[16] Closing Costs Financed (page 3, Alternative Cash to Close Table)**

Calculating Cash to Close		Use this table to see what has changed from your Loan Estimate.	
	Loan Estimate	Final	Did this change?
Loan Amount			
Total Closing Costs (J)			
Closing Costs Paid Before Closing			
Total Payoffs and Payments (K)			
Cash to Close	<input type="checkbox"/> From <input type="checkbox"/> To Borrower	<input type="checkbox"/> From <input type="checkbox"/> To Borrower	<div style="border: 1px solid black; width: 100px; height: 30px; margin: 0 auto; transform: rotate(180deg);"></div> Closing Costs Financed (Paid from your Loan Amount)

**Y&A Completion Instruction**

This disclosure indicates the amount of the closing costs that were financed within the loan. Once again, this is a calculated amount, and should require no processor action.

**Regulatory Text § 1026.38(e)(6)**

- (6) **Closing costs financed.** Labeled “**Closing Costs Financed (Paid from your Loan Amount)**,” the sum of the amounts disclosed under paragraphs (e)(1)(ii) and (e)(4)(ii), but only to the extent that the sum is greater than zero and less than or equal to the sum disclosed under paragraph (h)(1) of this section minus the sum disclosed under paragraph (h)(2) of this section designated borrower-paid before closing.

**Regulatory Commentary**

*None.*

**CFPB Guide**

Closing Costs Financed (Paid from your Loan Amount) is the sum of the amounts in the Final column of the Loan Amount and Total Payoffs and Payments. However, the amount is disclosed only if the sum is greater than zero and no larger than the Total Closing Costs (deducting the amount in the Final column of Closing Costs Paid Before Closing). (§ 1026.38(e)(6))

# Section 7: Closing Cost Details; Loan Costs

## 12 CFR § 1026.38(f)

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### *General Language (page 2)*

#### Y&A Commentary

This entire section details the closing costs paid by or on behalf of the consumer. It matches Sections A through D on the Loan Estimate. Note that there are several versions of this page. For instance, there is one for the buyer, one for the seller, etc. To simplify the presentation, we will be focusing on what we would call the “creditor” version, which shows both sides of the transaction.

#### Regulatory Text

**(f) Closing cost details; loan costs.** Under the master heading “Closing Cost Details” with columns stating whether the charge was borrower-paid at or before closing, seller-paid at or before closing, or paid by others, all loan costs associated with the transaction, listed in a table under the heading “Loan Costs.” The table shall contain the items and amounts listed under four subheadings, described in paragraphs (f)(1) through (5) of this section.

#### Regulatory Commentary

##### ***38(f) Closing cost details; loan costs.***

- 1. Lender-paid charges and specific lender credits.*** Charges that are designated as paid by others under § 1026.38(f) and (g), below, may include the letter “L” in parentheses, i.e. “**(L)**,” to the left of the amount in the column to designate those charges paid by the creditor pursuant to the legal obligation between the creditor and consumer.
- 2. Construction loan inspection and handling fees.*** Construction loan inspection and handling fees are loan costs associated with the transaction for purposes of § 1026.38(f). For information on how to disclose inspection and handling fees for the staged disbursement of construction loan proceeds if the amount or number of such fees or when they will be collected is not known at or before consummation, see comments 37(f)-3, 37(f)(6)-3, and app. D-7.vii. See § 1026.17(e) and its commentary concerning the effect of subsequent events that cause inaccuracies in disclosures.

#### CFPB Guide

Use the Summaries of Transactions table to disclose the amounts associated with the real estate purchase transaction between the consumer and seller, together with closing costs, in order to disclose the amounts due from or payable to the consumer and seller at closing, as applicable.

(§ 1026.38(j),(k)) A separate Closing Disclosure can be provided to the consumer and the seller that do not reflect the other party's costs and credits by omitting certain disclosures on each separate Closing Disclosure. (§ 1026.38(t)(5)(v),(vi),(ix)) If using a separate seller's disclosure, the settlement agent must also provide a copy to the creditor. (§ 1026.19(f)(4)(iv)) More information on separating consumer and seller information on the Closing Disclosure can be found in Section 11.7 of the Compliance Guide

In transactions without a seller, the creditor either does not provide the Seller's Transaction column or leaves that column blank. (Comment 38(k)-1) Similarly, for purchase transactions that involve a simultaneous subordinate lien loan, the creditor either does not provide the Seller's Transaction column or leaves that column blank if the Closing Disclosure for the first lien loan discloses the entirety of the seller's transaction.

A creditor can also decide to replace the Summaries of Transactions table with a Payoffs and Payments table (see Figure 40) when the Alternative Cash to Close and Alternative Calculating Cash to Close tables are used. (§ 1026.38(t)(5)(vii))

Generally, the Summaries of Transactions table is similar to the Summary of Borrower's Transaction and Summary of Seller's Transaction tables on the HUD-1 Settlement Statement provided under Regulation X prior to the TILA-RESPA Rule taking effect. There are some modifications to the Closing Disclosure related to the handling of the disclosure of the consumer's Deposit, the disclosure of Credits, and other matters, discussed below.

**[17] Origination Charges (page 2, Section [A])**

This section is for items paid to the creditor or broker. Further information is in the synopsis below.

Closing Cost Details					
Loan Costs		Borrower-Paid		Seller-Paid	
		At Closing	Before Closing	At Closing	Before Closing
A. Origination Charges					
01	% of Loan Amount (Points)				
02					
03					
04					
05					
06					
07					
08					

**Y&A Completion Instruction**

This section corresponds with Section A of the Loan Estimate. The subtotal for the borrower's portion of Section A appears at the top in the gray area. Points must be listed first, followed by all other charges paid to the creditor or broker, in alphabetical order.

The processor must include all charges paid to the creditor and/or mortgage broker. This section also includes any Loan Level Price Adjustments that are paid to third parties. Points paid to the creditor and/or mortgage broker are listed first. Any line item that does not contain a dollar amount, other than the points line, must remain blank.

Some items that appear in Section A may not be finance charge.

Both the borrower and seller have two columns, with a fifth column for paid by others. This is the "creditor" version of this disclosure.

**Regulatory Text § 1026.38(f)(1)**

- (1) **Origination charges.** Under the subheading "**Origination Charges,**" and in the applicable columns as described in paragraph (f) of this section, an itemization of each amount paid for charges described in § 1026.37(f)(1), the amount of compensation paid by the creditor to a third-party loan originator along with the name of the loan originator ultimately receiving the payment, and the total of all such itemized amounts that are designated borrower-paid at or before closing.

**Regulatory Commentary**

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

2. **Loan originator compensation.** *All compensation paid to a loan originator, as defined by § 1026.36(a)(1), that is a third-party associated with the transaction, regardless of the party that pays the compensation, must be disclosed pursuant to § 1026.38(f)(1). Compensation from the consumer to a third-party loan originator is designated as borrower-paid at or before closing, as applicable, on the Closing Disclosure. Compensation from the creditor to a third-party loan originator is designated as paid by others on the Closing Disclosure. Compensation to a third-party loan originator from both the consumer and the creditor in the transaction is prohibited under § 1026.36(d)(2).*
3. **Calculating compensation to a loan originator from the creditor.** *The amount disclosed as paid from the creditor to a third-party loan originator under § 1026.38(f)(1) is the dollar value of salaries, commissions, and any financial or similar compensation provided to a third-party loan originator by the creditor that are considered to be points and fees under § 1026.32(b)(1)(ii). For additional guidance and examples on the calculation of compensation paid to the third-party loan originator from the creditor, see comments 32(b)(1)(ii)-1, -2, -3, and -4.*

## Loan Estimate Regulatory Text and Commentary Assistance

### **Regulatory Text § 1026.37(f)(1)**

- (1) **Origination charges.** Under the subheading “**Origination Charges**,” an itemization of each amount, and a subtotal of all such amounts, that the consumer will pay to each creditor and loan originator for originating and extending the credit.
  - (i) The points paid to the creditor to reduce the interest rate shall be itemized separately, as both a percentage of the amount of credit extended and a dollar amount, and using the label “**\_\_% of Loan Amount (Points).**” If points to reduce the interest rate are not paid, the disclosure required by this paragraph (f)(1)(i) must be blank.
  - (ii) The number of items disclosed under this paragraph (f)(1), including the points disclosed under paragraph (f)(1)(i) of this section, shall not exceed 13.

## Regulatory Commentary

### **37(f)(1) Origination charges.**

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

2. **Indirect loan originator compensation.** Only charges paid directly by the consumer to compensate a loan originator are included in the amounts listed under § 1026.37(f)(1). Compensation of a loan originator paid indirectly by the creditor through the interest rate is not itemized on the Loan Estimate required by § 1026.19(e). However, pursuant to § 1026.38(f)(1), such compensation is itemized on the Closing Disclosure required by § 1026.19(f).
3. **Description of charges.** Other than for points charged in connection with the transaction to reduce the interest rate, for which specific language must be used, the creditor may use a general label that uses terminology that, under § 1026.37(f)(5), is consistent with § 1026.17(a)(1), clearly and conspicuously describes the service that is disclosed as an origination charge pursuant to § 1026.37(f)(1). Items that are listed under the subheading **“Origination Charges”** may include, for example, application fee, origination fee, underwriting fee, processing fee, verification fee, and rate-lock fee.
4. **Points.** If there are no points charged in connection with the transaction to reduce the interest rate, the creditor leaves blank the percentage of points used in the label and the dollar amount disclosed under § 1026.37(f)(1)(i).
5. **Itemization.** Creditors determine the level of itemization of **“Origination Charges”** that is appropriate under § 1026.37(f)(1) in relation to charges paid by the consumer to the creditor, subject to the limitations in § 1026.37(f)(1)(ii). For example, the following charges should be itemized separately: compensation paid directly by a consumer to a loan originator that is not also the creditor; or a charge imposed to pay for a loan level pricing adjustment assessed on the creditor, which the creditor passes onto the consumer as a charge at consummation and not as an adjustment to the interest rate.

## CFPB Guide

The items to be disclosed in the Loan Costs table should generally be the same as they were disclosed on the Loan Estimate (see section 2.3.1 above), updated to reflect the terms of the legal obligation at consummation, except as specifically discussed below. (§ 1026.38(f))

### **Origination Charges - Loan Originator Compensation**

Loan originator compensation is disclosed as Origination Charges, even though loan originator compensation is not disclosed on the Loan Estimate. Compensation from the consumer to a third-party loan originator is designated as Borrower-Paid At Closing or Before Closing on the Closing Disclosure. (§ 1026.38(f)(1); Comment 38(f)(1)-2)

Compensation from the creditor to a third-party loan originator is designated as Paid by Others on the Closing Disclosure. (Comment 38(f)(1)-2) A designation of (L) can be listed with the amount to indicate that the creditor pays the compensation at consummation. The amount of compensation from the party compensation included in points and fees for purposes of determining the consumer's ability to pay the loan. (Comment 38(f)(1)-3) Compensation to individual loan originators is not calculated or disclosed on the Closing Disclosure. (Comment 38(f)(1)-3)

**[18] Services Borrower Did Not Shop For (page 2, Section [B])**

This section details services for which the borrower did not shop. Additional information in the synopsis below.

B. Services Borrower Did Not Shop For					
01					
02					
03					
04					
05					
06					
07					
08					
09					
10					

**Y&A Completion Instruction**

The processor must include all items for which the consumer did not shop. This includes items such as appraisals for which the creditor would never permit the consumer to shop. This section mostly corresponds with Section B of the Loan Estimate. However, this section can include items which were originally part of Section C, but were moved to Section B because the consumer chose not to shop, and the provider used was a provider that was on the service provider list. The subtotal for the borrower's portion of Section B appears at the top in the gray area.

All title related items must begin "Title –."

All charges listed here must be in alphabetical order. The recipient of the funds must be included. Any line item that does not contain a dollar amount must remain blank.

Both the borrower and seller have two columns, with a fifth column for paid by others. This is the "creditor" version of this disclosure.

**Regulatory Text § 1026.38(f)(2)**

- (2) **Services borrower did not shop for.** Under the subheading "**Services Borrower Did Not Shop For**" and in the applicable columns as described in paragraph (f) of this section an itemization of the services and corresponding costs for each of the settlement services required by the creditor for which the consumer did not shop in accordance with § 1026.19(e)(1)(vi)(A) and that are provided by persons other than the creditor or mortgage broker, the name of the person ultimately receiving the payment for each such amount, and the total of all such itemized amounts that are designated borrower-paid at or before closing. Items that were disclosed pursuant to § 1026.37(f)(3) must be disclosed under this paragraph (f)(2) if the consumer was provided a written list of settlement service providers under § 1026.19(e)(1)(vi)(C) and the consumer selected a settlement service provider contained on that written list.



## Regulatory Commentary

1. **Guidance in other comments.** For examples of services, costs, and their descriptions disclosed under § 1026.38(f)(2), see comments 37(f)(2)-1, -2, -3, and -4.

## Loan Estimate Regulatory Text and Commentary Assistance

### **Regulatory Text § 1026.37(f)(2)**

- (2) **Services you cannot shop for.** Under the subheading “**Services You Cannot Shop For**,” an itemization of each amount, and a subtotal of all such amounts, the consumer will pay for settlement services for which the consumer cannot shop in accordance with § 1026.19(e)(1)(vi)(A) and that are provided by persons other than the creditor or mortgage broker.
  - (i) For any item that is a component of title insurance or is for conducting the closing, the introductory description “**Title –**” shall appear at the beginning of the label for that item.
  - (ii) The number of items disclosed under this paragraph (f)(2) shall not exceed 13.

## Regulatory Commentary

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

1. **Services disclosed.** Items included under the subheading “**Services You Cannot Shop For**” pursuant to § 1026.37(f)(2) are for those services that the creditor requires in connection with the transaction that would be provided by persons other than the creditor or mortgage broker and for which the creditor does not permit the consumer to shop in accordance with § 1026.19(e)(1)(vi). Comment 19(e)(1)(vi)-1 clarifies that a consumer is not permitted to shop if the consumer must choose a provider from a list provided by the creditor. Comment 19(e)(3)(i)-1 addresses determining good faith in providing estimates under § 1026.19(e), including estimates for services for which the consumer cannot shop. Comments 19(e)(3)(iv)-1 through -3 discuss limits and requirements applicable to providing revised estimates for services for which the consumer cannot shop.
2. **Examples of charges.** Examples of the services and amounts to be disclosed pursuant to § 1026.37(f)(2) might include an appraisal fee, appraisal management company fee, credit report fee, flood determination fee, government funding fee, homeowner’s association certification fee, lender’s attorney fee, tax status research fee, third-party subordination fee Title – closing protection letter fee, title – lender’s title insurance policy, and an upfront mortgage insurance fee, provided that the fee is charged at consummation and is not a prepayment of future premiums over a specific future time period or a payment into an escrow account. Government funding fees include a United States Department of Veterans Affairs or United States Department of Agriculture guarantee fee, or any other fee paid to a government entity as part of a governmental loan program, that is paid at consummation.

- 3. Title insurance services.** *The services required to be labeled beginning with “Title –” pursuant to § 1026.37(f)(2) or (3) are those required for the issuance of title insurance policies to the creditor in connection with the consummation of the transaction or for conducting the closing. These services may include, for example:*
- i. Examination and evaluation, based on relevant law and title insurance underwriting principles and guidelines, of the title evidence to determine the insurability of the title being examined and what items to include or exclude in any title commitment and policy to be issued;*
  - ii. Preparation and issuance of the title commitment or other document that discloses the status of the title as it is proposed to be insured, identifies the conditions that must be met before the policy will be issued, and obligates the insurer to issue a policy of title insurance if such conditions are met;*
  - iii. Resolution of underwriting issues and taking the steps needed to satisfy any conditions for the issuance of the policies;*
  - iv. Preparation and issuance of the policy or policies of title insurance; and*
  - v. Premiums for any title insurance coverage for the benefit of the creditor.*
- 4. Lender’s title insurance policy.** *Section 1026.37(f)(2) and (3) requires disclosure of the amount the consumer will pay for the lender’s title insurance policy. However, an owner’s title insurance policy that covers the consumer and is not required to be purchased by the creditor is only disclosed pursuant to § 1026.37(g). Accordingly, the creditor must quote the amount of the lender’s title insurance coverage pursuant to § 1026.37(f)(2) or (3) as applicable based on the type of lender’s title insurance policy required by its underwriting standards for that loan. The amount disclosed for the lender’s title insurance policy pursuant to § 1026.37(f)(2) or (3) is the amount of the premium without any adjustment that might be made for the simultaneous purchase of an owner’s title insurance policy. This amount may be disclosed as “**Title – Premium for Lender’s Coverage,**” or in any similar manner that clearly indicates the amount of the premium disclosed pursuant to § 1026.37(f)(2) is for the lender’s title insurance coverage. See comment 37(g)(4)-1 for a discussion of the disclosure of the premium for an owner’s title insurance policy that covers the consumer.*

## CFPB Guide

Items that the consumer could have shopped for, but did not, are disclosed in the Services Borrower Did Not Shop For subheading, regardless of where the item was disclosed on the Loan Estimate. (§ 1026.38(f)(2))

When a consumer chooses a provider that was on the Written List of Providers for a service, that service is listed as Services Borrower Did Not Shop For in the Closing Disclosure Loan Costs table. (§ 1026.38(f)(2); Comment 38(f)(3)-1) For example, if the consumer could have shopped for the flood determination fee on the Loan Estimate, but chose a provider that was on the creditor’s Written List of Providers, that charge is listed as Services Borrower Did Not Shop For even though the creditor did not require that service provider. Items disclosed as Services Borrower Did Shop For and Services Borrower Did Not Shop For are re-alphabetized when an item is added to or removed from the Closing Disclosure, when compared to the Loan Estimate.

**[19] Services Borrower Did Shop For (page 2, Section [C])**

This section details services for which the borrower shopped. Additional information is in the synopsis below.

C. Services Borrower Did Shop For					
01					
02					
03					
04					
05					
06					
07					
08					

**Y&A Completion Instruction**

In this section the processor must list services for which the consumer shopped, using a provider that was not the creditor or broker, or an affiliate of either. This section mostly corresponds with Section C of the Loan Estimate, although some Loan Estimate Section C items move to Section B if the customer was permitted to shop, but did not. The subtotal for the borrower's portion of Section C appears at the top in the gray area. The titles for fees must match the Loan Estimate and service provider list in a manner that avoids consumer misunderstandings. All title related items must begin "Title –." All charges listed here must be in alphabetical order. Any line item that does not contain a dollar amount must remain blank.

Both the borrower and seller have two columns, with a fifth column for paid by others. This is the "creditor" version of this disclosure.

**Regulatory Text § 1026.38(f)(3)**

- (1) **Services borrower did shop for.** Under the subheading "**Services Borrower Did Shop For**" and in the applicable column as described in paragraph (f) of this section, an itemization of the services and corresponding costs for each of the settlement services required by the creditor for which the consumer shopped in accordance with § 1026.19(e)(1)(vi)(A) and that are provided by persons other than the creditor or mortgage broker, the name of the person ultimately receiving the payment for each such amount, and the total of all such itemized costs that are designated borrower-paid at or before closing. Items that were disclosed pursuant to § 1026.37(f)(3) must be disclosed under this paragraph (f)(3) if the consumer was provided a written list of settlement service providers under § 1026.19(e)(1)(vi)(C) and the consumer did not select a settlement service provider contained on that written list.

**Regulatory Commentary**

1. **Provider on written list.** Items that were disclosed pursuant to § 1026.37(f)(3) cannot be disclosed under § 1026.38(f)(3) when the consumer selected a provider contained on the written list provided under § 1026.19(e)(1)(vi)(C). Instead, such costs are disclosed pursuant to § 1026.38(f)(2).

## Loan Estimate Regulatory Text and Commentary Assistance

### ***Regulatory Text § 1026.37(f)(3)***

- (3) **Services you can shop for.** Under the subheading “**Services You Can Shop For,**” an itemization of each amount and a subtotal of all such amounts the consumer will pay for settlement services for which the consumer can shop in accordance with § 1026.19(e)(1)(vi)(A) and that are provided by persons other than the creditor or mortgage broker.
- (i) For any item that is a component of title insurance or is for conducting the closing, the introductory description “**Title –**” shall appear at the beginning of the label for that item.
  - (ii) The number of items disclosed under this paragraph (f)(3) shall not exceed 14.

### ***Regulatory Commentary***

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

1. **Services disclosed.** *Items included under the subheading “Services You Can Shop For” pursuant to § 1026.37(f)(3) are for those services: that the creditor requires in connection with its decision to make the loan; that would be provided by persons other than the creditor or mortgage broker; and for which the creditor allows the consumer to shop in accordance with § 1026.19(e)(1)(vi). Comments 19(e)(3)(ii)-1 through -3, and -5 address the determination of good faith in providing estimates of charges for services for which the consumer can shop. Comment 19(e)(3)(iii)-2 discusses the determination of good faith when the consumer chooses a provider that is not on the list the creditor provides to the consumer when the consumer is permitted to shop consistent with § 1026.19(e)(1)(vi). Comments 19(e)(3)(iv)-1 through -3 discuss limits and requirements applicable to providing revised estimates for services for which the consumer can shop.*
2. **Example of charges.** *Examples of the services to be listed under this subheading pursuant to § 1026.37(f)(3) might include a pest inspection fee, survey fee, title – closing agent fee, and title – closing protection letter fee.*
3. **Title insurance.** *See comments 37(f)(2)-3 and -4 for guidance on services that are to be labeled beginning with “Title –” and on calculating and labeling the amount disclosed for lender’s title insurance pursuant to § 1026.37(f)(3). See comment 37(g)(4)-1 for a discussion of the disclosure of the premium for owner’s title insurance coverage.*

### **CFPB Guide**

None.

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## ***[21] Subtotal of Loan Costs (page 2, line below Section [D])***

### **Y&A Completion Instruction**

The subtotal calculation is only for the borrower, not the seller. Once again, the processor should not have to do anything to comply, as the software should complete this correctly without any intervention.

### **Regulatory Text § 1026.38(f)(5)**

(5) **Subtotal of loan costs.** The sum of loan costs, calculated by totaling the amounts described in paragraphs (f)(1), (2), and (3) of this section for costs designated borrower-paid at or before closing, labeled “**Loan Costs Subtotals.**”

### **Regulatory Commentary**

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

### **CFPB Guide**

None.

## Section 8: Closing Costs Detail; Other Costs

### 12 CFR § 1026.38(g)

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#### *General Language*

#### **Y&A Commentary**

This section is for charges in Sections E through J. These are mostly items such as filing fees, taxes, escrow setup, and miscellaneous items that are required to complete the mortgage loan.

#### **Regulatory Text**

- (g) **Closing cost details; other costs.** Under the master heading “**Closing Cost Details**” disclosed pursuant to paragraph (f) of this section, with columns stating whether the charge was borrower-paid at or before closing, seller-paid at or before closing, or paid by others, all costs in connection with the transaction, other than those disclosed under paragraph (f) of this section, listed in a table with a heading disclosed as “**Other Costs.**” The table shall contain the items and amounts listed under five subheadings, described in paragraphs (g)(1) through (6) of this section.

#### **Regulatory Commentary**

*None.*

#### **CFPB Guide**

The items to be disclosed in the Other Costs table should be disclosed as they would be disclosed on the Loan Estimate (see section 2.3.2 above), updated to reflect the terms of the legal obligation and real estate transaction at consummation, except as specifically discussed below. (§ 1026.38(g))



**[22] Taxes and Other Government Fees (page 2, Section [E])**

Taxes, recording fees and transfer taxes appear here.  
More information in the synopsis.

Other Costs					
E. Taxes and Other Government Fees					
01 Recording Fees	Deed:	Mortgage:			
02					

**Y&A Completion Instruction**

There are only two lines in this section, although there is another version of the disclosure that expands this section to 10 lines. The processor should place taxes and other government fees such as filing fees on the first line. Transfer taxes appear on the second line. This section corresponds with Section E of the Loan Estimate. The subtotal for the borrower's portion of Section E appears at the top in the gray area. All charges listed here must be in the order shown.

Both the borrower and seller have two columns, with a fifth column for paid by others. This is the "creditor" version of this disclosure.

**Regulatory Text § 1026.38(g)(1)**

- (1) Taxes and other government fees. Under the subheading "Taxes and Other Government Fees," an itemization of each amount that is expected to be paid to State and local governments for taxes and government fees and the total of all such itemized amounts that are designated borrower-paid at or before closing, as follows:
  - (i) On the first line:
    - (A) Before the columns described in paragraph (g) of this section, the total amount of fees for recording deeds and, separately, the total amount of fees for recording security instruments; and
    - (B) In the applicable column as described in paragraph (g) of this section, the total amounts paid for recording fees (including, but not limited to, the amounts in paragraphn(g)(1)(i)(A) of this section); and
  - (ii) On subsequent lines, in the applicable column as described in paragraph (g) of this section, an itemization of transfer taxes, with the name of the government entity assessing the transfer tax.

## Regulatory Commentary

1. **Guidance.** *For additional guidance on taxes and other government fees, see comments 37(g)(1)-1, -2, -3, and -4.*
2. **Transfer taxes – itemization.** *The creditor may itemize the transfer taxes paid on as many lines as necessary pursuant to § 1026.38(g)(1) in order to disclose all of the transfer taxes paid as part of the transaction. The taxes should be allocated in the applicable columns as borrower-paid at or before closing, seller-paid at or before closing, or paid by others, as provided by State or local law, the terms of the legal obligation, or the real estate purchase contract.*
3. **Recording fees.**
  - i. **Fees for recording deeds and security instruments.** *Section 1026.38(g)(1)(i)(A) requires, on the first line under the subheading “Taxes and Other Government Fees” and before the columns described in § 1026.38(g), disclosure of the total fees expected to be paid to State and local governments for recording deeds and, separately, the total fees expected to be paid to State and local governments for recording security instruments. On a line labeled “Recording Fees,” form H-25 of appendix H to this part illustrates such disclosures with the additional labels “Deed” and “Mortgage,” respectively.*
  - ii. **Total of all recording fees.** *Section 1026.38(g)(1)(i)(B) requires, on the first line under the subheading “Taxes and Other Government Fees” and in the applicable column described in § 1026.38(g), disclosure of the total amounts paid for recording fees, including but not limited to the amounts subject to § 1026.38(g)(1)(i)(A). The total amount disclosed under § 1026.38(g)(1)(i)(B) also includes recording fees expected to be paid to State and local governments for recording any other instrument or document to preserve marketable title or to perfect the creditor’s security interest in the property. See comments 37(g)(1)-1, -2, and -3 for discussions of the difference between transfer taxes and recording fees.*

## CFPB Guide

In the shaded column of the line with the subheading Taxes and Other Government Fees, disclose the total amount expected to be paid by the consumer to State or local governments for Recording Fees and Transfer Taxes at or before closing. (§ 1026.38(g)(1))

In the appropriate columns of the next line, disclose the total amount expected to be paid to State or local governments for recording the deed, security instruments, and any other instrument or document recorded to preserve marketable title or to perfect the creditor’s security interest in the Property. Also, on this line (which includes the label Recording Fees), disclose the total fees expected to be paid to the State or local government for recording deeds after the word “Deed” and, separately, disclose the total fees expected to be paid to State or local government for recording security instruments after the word “Mortgage.” (Comment 38(g)(1)-3)

An itemization of Transfer Taxes paid by the consumer and the seller is disclosed under the heading Taxes and Other Government Fees, instead of the sum total of Transfer Taxes to be paid by the consumer. (§ 1026.38(g)(1)) This itemization is disclosed after the disclosure of the recording fees. The name of the government entity assessing the fee (which may not necessarily be the payee of the check cut by the settlement agent) is provided on the Closing Disclosure, unlike on the Loan Estimate. Itemize each Transfer Tax and each government entity, because multiple taxes may be assessed by each governmental entity. (Comment 38(g)(1)-2)

**[23] Prepaids (page 2, Section [F])**

This section details items that must be paid in advance. More detail in the synopsis.

F. Prepaids					
01	Homeowner's Insurance Premium ( mo.)				
02	Mortgage Insurance Premium ( mo.)				
03	Prepaid Interest ( per day from to )				
04	Property Taxes ( mo.)				
05					

**Y&A Completion Instruction**

The processor should insert the amounts for items that the creditor required the consumer to pay for at closing or in advance. There are three additional lines available under the four that already have titles. These additional lines might be used for flood insurance, delinquent taxes, or other miscellaneous items. This section corresponds with Section F of the Loan Estimate. The subtotal for the borrower's portion of Section F appears at the top in the gray area. All charges listed here must be in the order shown, with additional items in alphabetical order. It is possible that this section will include P.O.C. items.

Both the borrower and seller have two columns, with a fifth column for paid by others. This is the "creditor" version of this disclosure.

**Regulatory Text § 1026.38(g)(2)**

- (2) **Prepaids.** Under the subheading "**Prepaids**" and in the applicable column as described in paragraph (g) of this section, an itemization of each amount for charges described in § 1026.37(g)(2), the name of the person ultimately receiving the payment or government entity assessing the property tax, provided that the person ultimately receiving the payment need not be disclosed for the disclosure required by § 1026.37(g)(2)(iii) when disclosed pursuant to this paragraph, and the total of all such itemized amounts that are designated borrower-paid at or before closing.

**Regulatory Commentary**

- Guidance.** For additional guidance on prepaids, see comments 37(g)(2)-1 and -2.
- Negative prepaid interest.** The prepaid interest amount is disclosed as a negative number if the calculation of prepaid interest results in a negative number.
- No prepaid interest.** If interest is not collected for any period between closing and the date from which interest will be collected with the first monthly payment, then \$0.00 is disclosed under § 1026.38(g)(2).

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

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

## Loan Estimate Regulatory Text and Commentary Assistance

### **Regulatory Text § 1026.37(g)(2)**

(2) **Prepays.** Under the subheading “**Prepays**,” an itemization of the amounts to be paid by the consumer in advance of the first scheduled payment, and the subtotal of all such amounts, as follows:

- (i) On the first line, the number of months for which homeowner’s insurance premiums are to be paid by the consumer at consummation and the total dollar amount to be paid by the consumer at consummation for such premiums, labeled “**Homeowner’s Insurance Premium ( \_\_ months).**”
- (ii) On the second line, the number of months for which mortgage insurance premiums are to be paid by the consumer at consummation and the total dollar amount to be paid by the consumer at consummation for such premiums, labeled “**Mortgage Insurance Premium ( \_\_ months).**”
- (iii) On the third line, the amount of prepaid interest to be paid per day, the number of days for which prepaid interest will be collected, the interest rate, and the total dollar amount to be paid by the consumer at consummation for such interest, labeled “**Prepaid Interest ( \_\_\_\_ per day for \_ days @ \_\_\_\_ %).**”
- (iv) On the fourth line, the number of months for which property taxes are to be paid by the consumer at consummation and the total dollar amount to be paid by the consumer at consummation for such taxes, labeled “**Property Taxes ( \_\_ months).**”
- (v) If an amount is not charged to the consumer for any item for which this paragraph (g)(2) prescribes a label, each of the amounts required to be disclosed on that line must be blank.
- (vi) A maximum of three additional items may be disclosed under this paragraph (g)(2), and each additional item must be identified and include the applicable time period covered by the amount to be paid by the consumer at consummation and the total amount to be paid.

### **Regulatory Commentary**

#### **37(g)(2) Prepays.**

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

- i. Real estate property taxes due within 60 days after consummation of the transaction;*
  - ii. Past-due real estate property taxes;*
  - iii. Mortgage **insurance** premiums;*
  - iv. Flood insurance premiums; and*
  - v. Homeowner's insurance premiums.*
2. **Interest rate.** *The interest rate disclosed pursuant to § 1026.37(g)(2)(iii) is the same interest rate disclosed pursuant to § 1026.37(b)(2).*
3. **Terminology.** *For purposes of § 1026.37(g)(2), the term “**property taxes**” has the same meaning as in § 1026.43(b)(8) and further described in comment 43(b)(8)-2; the term “**homeowner's insurance**” means the amounts identified in § 1026.4(b)(8); and the term “**mortgage insurance**” has the same meaning as “**mortgage insurance or any functional equivalent**” in § 1026.37(c), which means the amounts identified in § 1026.4(b)(5).*
4. **Deletion of items.** *The lines and labels required by § 1026.37(g)(2) may not be deleted, even if amounts for those labeled items are not charged to the consumer. If an amount for a labeled item is not charged to the consumer, the time period, daily amount, and percentage used in the labels are left blank.*

## CFPB Guide

Prepays are items to be paid by the consumer in advance of the first scheduled payment of the loan. (§ 1026.38(g)(2)) Prepays include:

- Homeowner's Insurance Premium,
- Mortgage Insurance Premium,
- Prepaid Interest,
- Property Taxes, and
- A maximum of three additional items.

Each item must include the applicable time period covered by the amount to be paid by the consumer and the total amount to be paid.

If Homeowner's Insurance premiums, Mortgage Insurance premiums, Prepaid Interest, or Property Taxes are not applicable to the loan, the inapplicable lines should not be deleted. (Comments 38(g)(2)-1 and 37(g)(2)-4)

Instead:

- If there are no prepaid Homeowner's Insurance premiums, Mortgage Insurance premiums, or Property Taxes associated with the loan, the time period, daily amount, and percentage used in the labels should be left blank. (Comment 37(g)(2)-4)

If no Prepaid Interest will be collected at consummation, the amount should be disclosed as “\$0.00.” (Comment 38(g)(2)-3)

**[24] Initial Escrow Payment at Closing (page 2, Section [G])**

Monthly amount due for item.		Number of months							
<b>G. Initial Escrow Payment at Closing</b>									
01	Homeowner's Insurance	per month for	mo.						
02	Mortgage Insurance	per month for	mo.						
03	Property Taxes	per month for	mo.						
04									
05									
06									
07									

**Y&A Completion Instruction**

The processor must complete this section if the consumer has elected to escrow. This is the standard escrow calculation that has been in place for many years. Although not shown above, the last line in this section is the negative aggregate adjustment amount. This allows the line item accounting to be converted to aggregate accounting, and allows this disclosure to match the creditor's aggregate analysis. This section corresponds with Section G of the Loan Estimate. The subtotal for the borrower's portion of Section G appears at the top in the gray area. All charges listed here must be in the order shown, with additional items in alphabetical order. Any line item that does not contain a dollar amount must remain blank. This section should be completed to assure that the negative aggregate adjustment is minimal.

Both the borrower and seller have two columns, with a fifth column for paid by others. This is the "creditor" version of this disclosure.

**Regulatory Text § 1026.38(g)(3)**

- (3) **Initial escrow payment at closing.** Under the subheading "**Initial escrow payment at closing**" and in the applicable column as described in paragraph (g) of this section, an itemization of each amount for charges described in § 1026.37(g)(3), the applicable aggregate adjustment pursuant to 12 CFR 1024.17(d)(2) along with the label "aggregate adjustment," and the total of all such itemized amounts that are designated borrower-paid at or before closing.

**Regulatory Commentary**

1. **Initial escrow account itemization.** *The creditor must state the amount that it will require the consumer to place into a reserve or escrow account at consummation to be applied to recurring charges for property taxes, homeowner's and similar insurance, mortgage insurance, homeowner's association dues, condominium dues, and other periodic charges. Each periodic charge to be included in the escrow or reserve account must be itemized under the "Initial Escrow Payment at Closing" subheading, with a relevant label, monthly payment amount, and number of months collected at closing.*



2. **Aggregate accounting.** *The method used to determine the aggregate adjustment for the purposes of establishing the escrow account is described in 12 CFR 1024.17(d)(2). Examples of this calculation methodology can be found in appendix E to 12 CFR part 1024. The aggregate adjustment, as illustrated by form H-25 of appendix H to this part, is disclosed as the last listed item in the amounts disclosed under § 1026.38(g)(3).*
3. **Escrowed tax payments for different timeframes.** *Payments for property taxes that are paid at different time periods can be itemized separately when done in accordance with 12 CFR 1024.17. For example, a general property tax covering a fiscal year from January 1 to December 31 can be listed as a property tax under § 1026.38(g)(3) and a separate property tax to fund schools that cover a fiscal year from November 1 to October 31 can be added as a separate itemized amount under § 1026.38(g)(3).*
4. **Property taxes.** *For a description of items that constitute property taxes, see comment 43(b)(8)-2.*
5. **Definition of escrow account.** *For a description of the amounts included in the initial escrow account disclosure under § 1026.38(g)(3), see the definition of “escrow account” in 12 CFR 1024.17(b).*

## CFPB Guide

Property Taxes paid during different time periods can be disclosed as separate items. (§ 1026.38(g)(3)) For example, general property taxes assessed for January 1 to December 31 and property taxes to fund schools for November 1 to October 31 can be disclosed as separate items. (Comment 38(g)(3)-3)

The last item disclosed in the Initial Escrow Payment at Closing is the Aggregate Adjustment. (§ 1026.38(g)(3)) The Aggregate Adjustment is calculated under Regulation X. (§ 1024.17(d)(2); Comment 38(g)(3)-2)



**[25] Other (page 2, Section [H])**

This section is for all other charges.

H. Other						
01						
02						
03						
04						
05						
06						
07						
08						

**Y&A Completion Instruction**

The processor may have to include a wide variety of charges in this section. Items that are included in this section are generally not required by the creditor. They include owner's title insurance, realtor's commissions, entrance fees to condominiums, home inspections and other similar inspections, home warranties, etc. This section corresponds with Section H of the Loan Estimate, although it might be greatly expanded to include seller charges. The subtotal for the borrower's portion of Section H appears at the top in the gray area. All charges listed here must be in alphabetical order. Any line item that does not contain a dollar amount must remain blank.

Both the borrower and seller have two columns, with a fifth column for paid by others. This is the "creditor" version of this disclosure.

**Regulatory Text § 1026.38(g)(4)**

- (4) **Other.** Under the subheading "**Other**" and in the applicable column as described in paragraph (g) of this section, an itemization of each amount for charges in connection with the transaction that are in addition to the charges disclosed under paragraphs (f) and (g)(1) through (3) for services that are required or obtained in the real estate closing by the consumer, the seller, or other party, the name of the person ultimately receiving the payment, and the total of all such itemized amounts that are designated borrower-paid at or before closing.
- (i) For any cost that is a component of title insurance services, the introductory description "**Title** –" shall appear at the beginning of the label for that actual cost.
  - (ii) The parenthetical description "**(optional)**" shall appear at the end of the label for costs designated borrower-paid at or before closing for any premiums paid for separate insurance, warranty, guarantee, or event-coverage products.

**Regulatory Commentary**

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

2. **Owner's title insurance premium.** *In a jurisdiction where simultaneous issuance title insurance rates are permitted, any owner's title insurance premium disclosed under § 1026.38(g)(4) is calculated by using the full owner's title insurance premium, adding any simultaneous issuance premium for issuance of lender's coverage, and then deducting the full premium for lender's coverage disclosed under § 1026.38(f)(2) or (f)(3). Section 1026.38(g)(4)(i) requires that the disclosure of the cost of the premium for an owner's title insurance policy include **"Title – "** at the beginning of the label. In addition, § 1026.38(g)(4)(ii) requires that the disclosure of the cost of the premium for an owner's title insurance policy include the parenthetical **"(optional)"** at the end of the label when designated borrower-paid at or before closing.*
3. **Guidance.** *For additional guidance on the use of the term **"(optional)"** under § 1026.38(g)(4)(ii), see comment 37(g)(4)-3.*
4. **Real estate commissions.** *The amount of real estate commissions pursuant to § 1026.38(g)(4) must be the total amount paid to any real estate brokerage as a commission, regardless of the identity of the party holding any earnest money deposit. Additional charges made by real estate brokerages or agents to the seller or consumer are itemized separately as additional items for services rendered, with a description of the service and an identification of the person ultimately receiving the payment.*

## CFPB Guide

Items are disclosed as Other to reflect costs incurred by the consumer or seller that were not required to be disclosed on the Loan Estimate. (§ 1026.38(g)(4); Comment 38(g)(4)-1) These costs include:

- Real estate brokerage fees,
- Homeowner or condominium association fees paid at consummation,
- Home warranties,
- Inspection fees, and
- Other fees paid at closing that are not required by the creditor or otherwise required to be disclosed elsewhere on the Closing Disclosure.

The amount of an earnest money deposit does not affect the amount of real estate commissions paid by the consumer or seller on the Closing Disclosure, even if the earnest money deposit is held by the real estate brokerage. (Comment 38(g)(4)-1 and -4)

**[26] Total Other Costs (page 2, Section [I])**

<b>I. TOTAL OTHER COSTS (Borrower-Paid)</b>			
Other Costs Subtotals (E + F + G + H)			

Total costs for E+F+G+H appear here.

**Y&A Completion Instruction**

This instruction should require no processor action. It is the total of E+F+G+H. This section corresponds with Section I of the Loan Estimate. The subtotal for the borrower's portion of Section I appears at the top in the gray area.

**Regulatory Text § 1026.38(g)(5)**

(5) **Total other costs.** Under the subheading “**Total Other Costs (Borrower-Paid)**,” the sum of the amounts disclosed as borrower-paid pursuant to paragraph (g)(6) of this section.

**Regulatory Commentary**

*None.*

**CFPB Guide**

The total of all closing costs paid by the consumer, reduced by the Lender Credit, is disclosed as Total Closing Costs (Borrower-Paid). (§ 1026.38(h)(1)) The total of items designated as Borrower-Paid At or Before Closing, Seller-Paid At or Before Closing, and Paid by Others are disclosed as Closing Cost Subtotals. (§ 1026.38(h)(2)) Lastly, the total amount of Lender Credits, if any, are disclosed and designated as Borrower-Paid At Closing. (§ 1026.38(h)(3))

**[27] Other Costs Subtotals (page 2, line under [I])****Y&A Completion Instruction**

This instruction should not require any processor actions. It limits the subtotalling of Instruction 26 to the borrower side only.

**Regulatory Text § 1026.38(g)(6)**

- (6) **Subtotal of costs.** The sum of other costs, calculated by totaling the costs disclosed in paragraphs (g)(1) through (4) of this section designated borrower-paid at or before closing, labeled “**Other Costs Subtotals.**”

**Regulatory Commentary**

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

**CFPB Guide**

The total of all closing costs paid by the consumer, reduced by the Lender Credit, is disclosed as Total Closing Costs (Borrower-Paid). (§ 1026.38(h)(1)) The total of items designated as Borrower-Paid At or Before Closing, Seller-Paid At or Before Closing, and Paid by Others are disclosed as Closing Cost Subtotals. (§ 1026.38(h)(2)) Lastly, the total amount of Lender Credits, if any, are disclosed and designated as Borrower-Paid At Closing. (§ 1026.38(h)(3))

# Section 9: Closing Cost Subtotals, Totals, and Lender Credits

## 12 CFR § 1026.38(h)

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### *General Language*

#### *Regulatory Text § 1026.38(h)*

(h) Closing cost totals.

#### **Regulatory Commentary**

*None.*

#### **CFPB Guide**

None.

**[28] Total Closing Costs (Borrower Paid) (page 2, Section [JJ])**

J. TOTAL CLOSING COSTS (Borrower-Paid)				
Closing Costs Subtotals (D + I)				
Lender Credits				

Total closing costs, less lender credits.

**Y&A Completion Instruction**

This instruction should not require processor action. The total in Section J is equal to Section D + Section I minus Lender Credits. This section corresponds with Section J of the Loan Estimate. The subtotal for the borrower's portion of Section J appears at the top in the gray area.

Both the borrower and seller have two columns, with a fifth column for paid by others. This is the "creditor" version of this disclosure.

**Regulatory Text § 1026.38(h)(1)**

- (1) The sum of the costs disclosed as borrower-paid pursuant to paragraph (h)(2) of this section and the amount disclosed in paragraph (h)(3) of this section, under the subheading **"Total Closing Costs (Borrower-Paid)."**

**Regulatory Commentary**

*None.*

**CFPB Guide**

The total of all closing costs paid by the consumer, reduced by the Lender Credit, is disclosed as Total Closing Costs (Borrower-Paid). (§ 1026.38(h)(1)) The total of items designated as Borrower-Paid At or Before Closing, Seller-Paid At or Before Closing, and Paid by Others are disclosed as Closing Cost Subtotals. (§ 1026.38(h)(2)) Lastly, the total amount of Lender Credits, if any, are disclosed and designated as Borrower-Paid At Closing. (§ 1026.38(h)(3))

***[29] Closing Costs Subtotals (page 2, line under [J])*****Y&A Completion Instruction**

This instruction should also not require any processor actions. It limits the subtotalling of Instruction 28 to the borrower side only.

**Regulatory Text § 1026.38(h)(2)**

- (2) The sum of the amounts disclosed in paragraphs (f)(5) and (g)(6) of this section, designated borrower-paid at or before closing, and the sum of the costs designated seller-paid at or before closing or paid by others disclosed pursuant to paragraphs (f) and (g) of this section, labeled **“Closing Costs Subtotals.”**

**Regulatory Commentary**

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

**CFPB Guide**

The total of all closing costs paid by the consumer, reduced by the Lender Credit, is disclosed as Total Closing Costs (Borrower-Paid). (§ 1026.38(h)(1)) The total of items designated as Borrower-Paid At or Before Closing, Seller-Paid At or Before Closing, and Paid by Others are disclosed as Closing Cost Subtotals. (§ 1026.38(h)(2)) Lastly, the total amount of Lender Credits, if any, are disclosed and designated as Borrower-Paid At Closing. (§ 1026.38(h)(3))



**[30] Lender Credits (page 2, 2 lines under [J])**

<b>J. TOTAL CLOSING COSTS (Borrower-Paid)</b>				
Closing Costs Subtotals (D + I)				
Lender Credits				

**Y&A Completion Instruction**

The processor must enter Lender Credits as a negative number to make the calculation work appropriately. Remember that Lender Credits cannot be reduced, but may be increased as needed.

If some or all of the lender credits were for specific items, the processor must place the credit in the fifth column. For instance, if the lender credit is specifically for the appraisal, it would appear on the appraisal line in Sections A or B in the fifth column (paid by others).

**Regulatory Text § 1026.38(h)(3)**

- (3) The amount of lender credits as a negative number, labeled “Lender Credits” and designated borrower-paid at closing, and if a refund is provided pursuant to § 1026.19(f)(2)(v), a statement that this amount includes a credit for an amount that exceeds the limitations on increases in closing costs under § 1026.19(e)(3), and the amount of such credit under § 1026.19(f)(2)(v).

**Regulatory Commentary**

- General lender credits.** When the consumer receives a generalized credit from the creditor for closing costs, the amount of the credit must be disclosed under § 1026.38(h)(3). However, if such credit is attributable to a specific loan cost or other cost listed in the Closing Cost Details tables, pursuant to § 1026.38(f) or (g), that amount should be reflected in the Paid by Others column in the Closing Cost Details tables under § 1026.38(f) or (g). For a description of lender credits from the creditor, see comment 17(c)(1)-19. For a discussion of general lender credits and lender credits for specific charges, see comment 19(e)(3)(i)-5.
- Credits for excess charges.** Credits from the creditor to offset an amount charged in excess of the limitations described in § 1026.19(e)(3) are disclosed pursuant to § 1026.38(h)(3), along with a statement that such amount was paid to offset an excess charge, with funds other than closing funds. If an excess charge to the consumer is discovered after consummation and a refund provided, the corrected disclosure must be provided to the consumer under § 1026.19(f)(2)(v). For an example, see form H-25(F) of appendix H to this part.

## Loan Estimate Regulatory Text and Commentary Assistance

### ***Regulatory Text § 1026.37(g)(6)***

(6) **Total closing costs.** Under the subheading “**Total Closing Costs,**” the component amounts and their sum, as follows:

- (i) The sum of the amounts disclosed as loan costs and other costs under paragraphs (f)(4) and (g)(5) of this section, labeled “**D + I**”; and
- (ii) The amount of any lender credits, disclosed as a negative number with the label “**Lender Credits**” provided that, if no such amount is disclosed, the amount must be blank.

### ***Regulatory Commentary***

#### ***37(g)(6) Total closing costs.***

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

- 1. Lender credits. Section 1026.19(e)(1)(i) requires disclosure of lender credits as provided in § 1026.37(g)(6)(ii). Such lender credits include non-specific lender credits as well as specific lender credits. See comment 19(e)(3)(i)-5.***
- 2. Credits or rebates from the creditor to offset a portion or all of the closing costs. For loans where a portion or all of the closing costs are offset by a credit or rebate provided by the creditor (sometimes referred to as “no-cost” loans), whether all or a defined portion of the closing costs disclosed under § 1026.37(f) or (g) will be paid by a credit or rebate from the creditor, the creditor discloses such credit or rebate as a lender credit under § 1026.37(g)(6)(ii). The creditor should ensure that the lender credit disclosed under § 1026.37(g)(6)(ii) is sufficient to cover the estimated costs the creditor represented to the consumer as not being required to be paid by the consumer at consummation, regardless of whether such representations pertained to specific items.***

## **CFPB Guide**

All general lender credits, regardless of their reason or source, are included as Lender Credits. (Comment 38(h)(3)-1) However, if the lender credit is attributable to a charge listed on Closing Disclosure page 2, then the amount should be listed with the item and designated as Paid By Others. (Comment 38(h)(3)-1) A designation of (L) can be listed with the amount to indicate that the creditor pays the item at consummation. Lender Credits

A creditor may include the amount of any offset to resolve an excess charge by the creditor as a Lender Credit. (§ 1026.38(h)(3)) If the excess charge is refunded through a Lender Credit, a statement that such an amount is paid by the creditor to offset an excess charge is also included as part of Lender Credits. (Comment 38(h)(3)-2; see form H-25(F) of appendix H to Regulation Z for an example of this statement) See also Section 3.4.1 of this Guide for information on disclosing an excess charge refunded using a principal reduction.

## ***[31] Totals – Methods of Disclosure***

### **Y&A Completion Instruction**

This instruction indicates that all items be in alphabetical order in sections A through H, except as otherwise indicated by boilerplate terminology. The terminology for non-boilerplate items must match the terminology used on the Loan Estimate, to facilitate consumer understanding and the consumer's ability to compare the documents.

### **Regulatory Text § 1026.38(h)(4)**

- (4) The services and costs disclosed pursuant to paragraphs (f) and (g) of this section on the Closing Disclosure shall be labeled using terminology that describes the item disclosed, in a manner that is consistent with the descriptions or prescribed labels, as applicable, used for such items on the Loan Estimate pursuant to § 1026.37. The creditor must also list the items on the Closing Disclosure in the same sequential order as on the Loan Estimate pursuant to § 1026.37.

### **Regulatory Commentary**

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

### **Loan Estimate Regulatory Text and Commentary Assistance**

### ***Regulatory Text § 1026.37(g)(7)***

- (7) **Item descriptions and ordering.** The items listed as other costs pursuant to this paragraph (g) shall be labeled using terminology that describes each item.
- (i) The items prescribed in paragraphs (g)(1)(i) and (ii), (g)(2)(i) through (iv), and (g)(3)(i) through (iii) of this section must be listed in the order prescribed as the initial items under the applicable subheading, with any additional items to follow.
- (ii) All additional items must be listed in alphabetical order under the applicable subheading.

### ***Regulatory Commentary***

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

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

### **CFPB Guide**

None.

# Section 10: Closing Cost Final Totals

## 12 CFR § 1026.38(i)

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### *General Language*

#### Y&A Commentary

This section offers general information regarding the final closing costs totals and cash to close. It indicates certain items have to appear in the table, and some items must be in bold print. It discusses the difference between actual changes in amounts between the Loan Estimate and Closing Disclosure and what is merely a rounding error.

#### Regulatory Text

- (1) **Calculating cash to close.** In a separate table, under the heading “**Calculating Cash to Close,**” together with the statement “**Use this table to see what has changed from your Loan Estimate:**”

#### Regulatory Commentary

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

*The prominence requirement also requires that, in the event an increase or decrease in costs has occurred, certain words within the narrative text to be included under the subheading “**Did this change?**” for a “**Yes**” answer are displayed more prominently than other disclosures. For example, under § 1026.38(i)(1)(iii)(A), this more prominent statement could take the form of the phrases “**Total Loan Costs**” and “**Total Other Costs**” being shown in boldface, as shown on form H-25 of appendix H to this part. See comments 38(i)-3 and -4 for further guidance regarding the prominence of such statements.*

2. **Statements of differences.** *The dollar amounts disclosed under § 1026.38 generally are shown to two decimal places unless otherwise required. See comment 38(t)(4)-1. Any amount in the*

*“Final” column of the calculating cash to close table under § 1026.38(i) is shown to two decimal places unless otherwise required. Under § 1026.38(t)(4)(i)(C), however, any amount in the “Loan Estimate” column of the calculating cash to close table under § 1026.38(i) is rounded to the nearest dollar amount to match the corresponding estimated amount disclosed on the Loan Estimate’s calculating cash to close table under § 1026.37(h). For purposes of § 1026.38(i)(1)(iii), (3)(iii), (4)(iii), (5)(iii), (6)(iii), (7)(iii), and (8)(iii), each statement of a change between the amounts disclosed on the Loan Estimate and the Closing Disclosure is based on the actual, non-rounded estimate that would have been disclosed on the Loan Estimate under § 1026.37(h) if it had been shown to two decimal places rather than a whole dollar amount. For example, if the amount in the “Loan Estimate” column of the total closing costs row disclosed under § 1026.38(i)(1)(i) is \$12,500, but the non-rounded estimate of total closing costs is \$12,500.35, and the amount in the “Final” column of the total closing costs row disclosed under § 1026.38(i)(1)(ii) is \$12,500.35, then, even though the table would appear to show a \$0.35 increase in total closing costs, no statement of such increase is given under § 1026.38(i)(1)(iii).*

3. **Statements that the consumer should see details.** *The provisions of § 1026.38(i)(4)(iii)(A), (5)(iii)(A), (7)(iii)(A), and (8)(iii)(A) each require a statement that the consumer should see certain details of the closing costs disclosed under § 1026.38(j). Form H-25 of appendix H to this part contains some examples of these statements. For example, § 1026.38(i)(5)(iii)(A) requires a statement that the consumer should see the details disclosed under § 1026.38(j)(2)(ii). The following statement, which is similar to that shown on form H-25(B) of appendix H to this part for § 1026.38(i)(7)(iii)(A), “See Deposit in Section L,” in which the words “Section L” are in boldface font, complies with this provision. In addition, for example, the statement “See details in Sections K and L,” in which the words “Sections K and L” are in boldface font, complies with the requirement under § 1026.38(i)(8)(iii)(A). See form H-25(B) of appendix H to this part for an example of the statement required by § 1026.38(i)(8)(iii)(A). See also comment 38(i)(7)(iii)(A)-1 for additional examples that comply with the requirements under § 1026.38(i)(7)(iii)(A).*
4. **Statements of increases or decreases.** *The provisions of § 1026.38(i)(4)(iii)(A), (i)(5)(iii)(A), and (i)(6)(iii)(A) each require a statement of whether the amount increased or decreased from the estimated amount. For the statement required by § 1026.38(i)(6)(iii)(A), the statement “**This amount increased,**” in which the word “**increased**” is in boldface and is replaced with the word “**decreased**” as applicable, complies with this requirement. For the statements required by § 1026.38(i)(4)(iii)(A) and (i)(5)(iii)(A), the statement, “**You increased this payment,**” in which the word “**increased**” is in boldface and is replaced with the word “**decreased**” as applicable, complies with these requirements.*
5. **Estimated amounts.** *The amounts disclosed in the “Loan Estimate” column of the calculating cash to close table under § 1026.38(i)(1)(i), (3)(i), (4)(i), (5)(i), (6)(i), (7)(i), (8)(i), and (9)(i) are the amounts disclosed on the most recent Loan Estimate provided to the consumer.*

## CFPB Guide

On page 3 of the Closing Disclosure, the Calculating Cash to Close table and Summaries of Transaction table are disclosed. For transactions without a seller or for simultaneous subordinate lien loans (if the Closing Disclosure for the first lien loan will disclose 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. (See Figure 40; form H-25(J) of appendix H to Regulation Z)

The **Calculating Cash to Close** table has nine items listed in the table:

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

The table has three columns to disclose the amount for each item as it was disclosed on the Loan Estimate (see section 2.3.3 above), the Final amount for the item, and an answer to the question Did this change? (§ 1026.38(i))

The amounts disclosed in the Loan Estimate column are the same as the amounts disclosed on the most recent Loan Estimate provided to the consumer. (§ 1026.38(i)(1)(i), (3)(i), (4)(i), (5)(i), (6)(i), (7)(i), (8)(i), (9)(i)) The amounts disclosed in the Loan Estimate column are rounded to the nearest dollar in order to match the corresponding amount disclosed on the Loan Estimate's Calculating Cash to Close table. (Comment 38(i)-2)


Generally, the amounts in the Final column are calculated using the same methods that were used for the Calculating Cash to Close table on the Loan Estimate, and must be based on the best information reasonably available to the creditor at the time that the Closing Disclosure is provided to the consumer. (Comment 38(i)-2)

When the answer to the question Did this change? is Yes, indicate where the consumer can find the amounts that have changed on the Loan Estimate. If the Seller Credit amount changed and the change is attributable only to general seller credits, the creditor may disclose "See Seller Credits in Section L." (Comment 38(i)-3) See Comment 38(i)(7)(iii)(A)-1 for additional statements a creditor may use if the Seller Credit amount changes. Examples of language for disclosing changes to other items are found in example form H-25(B) in appendix H of Regulation Z. When determining whether an amount changed, use the actual, non-rounded estimate that would have been shown on the Loan Estimate if the amount had been shown to two decimal places. (Comment 38(i)-2)



**[32] Total Closing Costs (page 3, Calculating Cash to Close)**

<b>Calculating Cash to Close</b>		Use this table to see what has changed from your Loan Estimate.	
	Loan Estimate	Final	Did this change?
Total Closing Costs (J)			
Closing Costs Paid Before Closing			
Closing Costs Financed (Paid from your Loan Amount)			
Down Payment/Funds from Borrower			
Deposit			
Funds for Borrower			
Seller Credits			
Adjustments and Other Credits			
<b>Cash to Close</b>			


**Y&A Completion Instruction**

This instruction requires the processor to enter the amount on Line J of the final Loan Estimate and Line J of the Closing Disclosure, that these amounts be compared, and if there are differences, the creditor is to indicate where the consumer should look to find the differences. There are specific language and bold requirements (see regulatory text and commentary below).

**Regulatory Text § 1026.38(i)(1)****(1) Total closing costs.**

- (i) Under the subheading **“Loan Estimate,”** the **“Total Closing Costs”** disclosed on the Loan Estimate under § 1026.37(h)(1)(i), labeled using that term.
- (ii) Under the subheading **“Final,”** the amount disclosed under paragraph (h)(1) of this section.
- (iii) Under the subheading **“Did this change?”** disclosed more prominently than the other disclosures under this paragraph (i)(1):
  - (A) If the amount disclosed under paragraph (i)(1)(ii) of this section is different than the amount disclosed under paragraph (i)(1)(i) of this section (unless the difference is due to rounding):
    - (1) A statement of that fact;
    - (2) If the difference in the **“Total Closing Costs”** is attributable to differences in itemized charges that are included in either or both subtotals, a statement that the consumer should see the total loan costs and total other costs subtotals disclosed under paragraphs (f)(4) and (g)(5) of this section (together with references to such disclosures), as applicable; and

(3) If the increase exceeds the limitations on increases in closing costs under § 1026.19(e)(3), a statement that such increase exceeds the legal limits by the dollar amount of the excess, and if any refund is provided under § 1026.19(f)(2)(v), a statement directing the consumer to the disclosure required under paragraph (h)(3) of this section or, if a principal reduction is used to provide the refund, a statement directing the consumer to the principal reduction disclosure under paragraph (j)(1)(v) of this section. Such dollar amount shall equal the sum total of all excesses of the limitations on increases in closing costs under § 1026.19(e)(3), taking into account the different methods of calculating excesses of the limitations on increases in closing costs under § 1026.19(e)(3)(i) and (ii).

(B) If the amount disclosed under paragraph (i)(1)(ii) of this section is equal to the amount disclosed under paragraph (i)(1)(i) of this section, a statement of that fact.

## Regulatory Commentary

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

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

i. For example, if an increase in the **“Total Closing Costs”** is attributable only to an increase in the appraisal fee (which is an itemized charge on the Closing Disclosure under the subheading **“Services Borrower Did Not Shop For,”** itself under the heading **“Loan Costs”**), then a statement is given under the subheading **“Did this change?”** that the consumer should see the total loan costs subtotal disclosed on the Closing Disclosure under § 1026.38(f)(4). If the increase in **“Total Closing Costs”** is attributable only to an increase in recording fees (which is an itemized charge on the Closing Disclosure under the subheading **“Taxes and Other Government Fees,”** itself under the heading **“Other Costs”**), then a statement is given under the subheading **“Did this change?”** that the consumer should see the total other costs subtotal disclosed on the Closing Disclosure under § 1026.38(g)(5). If, however, the increase is attributable in part to an increase in the appraisal fee and in part to an increase in the recording fee, then a statement is given under the subheading **“Did this change?”** that the consumer should see the total loan costs and total other costs subtotals disclosed on the Closing Disclosure under § 1026.38(f)(4) and (g)(5).

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

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

i. Because certain closing costs, individually, are generally subject to the limitations on increases in closing costs under § 1026.19(e)(3)(i) (e.g., fees paid to the creditor, transfer

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

- ii. Under § 1026.38(i)(1)(iii)(A), calculation of the excess amounts above the limitations on increases in closing costs takes into account that the itemized, estimated closing costs disclosed on the Loan Estimate will not result in charges to the consumer if the service is not actually provided at or before consummation. For example, if the Loan Estimate included under “Services You Cannot Shop For” a \$30 charge for a “title courier fee,” but the title company elects to hand-deliver the title documents package to the creditor at no charge, the \$30 fee is not factored into the calculation of the “Total Closing Costs” that are subject to the limitations on increases in closing costs. However, if the title courier fee was assessed, but at only \$15, the charge is factored into the calculation because the third-party service was actually provided, albeit at a lower amount than estimated.*
- iii. Under § 1026.38(i)(1)(iii)(A), calculation of the excess amounts above the limitations on increases in closing costs takes into account that certain itemized charges listed on the Loan Estimate under the subheading “Services You Can Shop For” may be subject to different limitations depending on the circumstances. Although § 1026.19(e)(3)(iii) provides exceptions to the general rule, such a charge would generally be subject to the limitations under § 1026.19(e)(3)(i) if the consumer decided to use a provider affiliated with the creditor. However, the same charge would instead be subject to the limitations under § 1026.19(e)(3)(ii) if the consumer selected a third-party service provider unaffiliated with but identified by the creditor, and the creditor permitted the consumer to shop for the service provider. See commentary to § 1026.19(e)(3) for additional guidance on calculating excess amounts above the limitations on increases in closing costs under § 1026.19(e)(3).*

- 3. Statements regarding excess amount and any credit to the consumer.** *Section 1026.38(i)(1)(iii)(A)(3) requires statements that an increase in closing costs exceeds legal limits by the dollar amount of the excess and a statement directing the consumer to the disclosure of lender credits under § 1026.38(h)(3), or a principal reduction under § 1026.38(j)(1)(v), if either is provided under § 1026.19(f)(2)(v). See form H-25(F) of appendix H to this part for examples of such statements under § 1026.38(h)(3). See also comments 38-4 and 38(h)(3)-2.*

## CFPB Guide

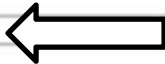
In the Final column, Total Closing Costs is the same amount as the amount disclosed as Total Closing Costs (Borrower-Paid) on page 2 of the Closing Disclosure. (see section 3.2.4 above; § 1026.38(i)(1)(ii)) When the amount in the Final column is different from the amount in the Loan Estimate column, indicate that the consumer should see the Total Loan Costs or Total Other Costs tables, as applicable, on page 2 of the Closing Disclosure. (§ 1026.38(i)(1)(iii)(A)(2))

### **Increases in Total Closing Costs That Exceed the Legal Limits**

When the increase in Total Closing Costs exceeds the legal limits, disclose a statement that an increase in closing costs exceeds the legal limits by the dollar amount of the excess in the Did this change? column. (§ 1026.38(i)(1)(iii)(A)(3)) If a creditor will provide a lender credit to the consumer for the excess amount, the creditor must include a statement directing the consumer to the Lender Credit on page 2. If a creditor will reduce the amount of the principal to offset the excess amount, the creditor must include a statement informing the consumer the creditor is providing a principal reduction to offset the charges that exceed the legal limit. (Comment 38(i)(1)(iii)(A)-3)

**[33] Closing Costs Paid Before Closing (page 3, Calculating Cash to Close)**

Calculating Cash to Close		Use this table to see what has changed from your Loan Estimate.	
	Loan Estimate	Final	Did this change?
Total Closing Costs (J)			
Closing Costs Paid Before Closing			
Closing Costs Financed (Paid from your Loan Amount)			
Down Payment/Funds from Borrower			
Deposit			
Funds for Borrower			
Seller Credits			
Adjustments and Other Credits			
<b>Cash to Close</b>			



**Y&A Completion Instruction**

This instruction requires the processor to insert the amount of closing costs paid before closing. The Loan Estimate does not have this field, so in the Loan Estimate column, the amount will always be \$0. The amount of closing costs paid prior to closing based on the Closing Disclosure must appear on this line as well, and if the amount is not \$0, the consumer must be told what sections to review to see the changes. The Closing Disclosure amount (if not \$0) will always be a negative number. This amount comes from the totals on page 2 of the Closing Disclosure. There are specific language and bold requirements (see regulatory text and commentary below).

**Regulatory Text § 1026.38(i)(2)**

**(2) Closing costs paid before closing.**

- (i) Under the subheading **“Loan Estimate,”** the dollar amount **“\$0,”** labeled **“Closing Costs Paid Before Closing.”**
- (ii) Under the subheading **“Final,”** the amount of **“Total Closing Costs”** disclosed under paragraph (h)(2) of this section and designated as borrower-paid before closing, stated as a negative number.
- (iii) Under the subheading **“Did this change?”** disclosed more prominently than the other disclosures under this paragraph (i)(2):
  - (A) If the amount disclosed under paragraph (i)(2)(ii) of this section is different than the amount disclosed under paragraph (i)(2)(i) of this section (unless the difference is due to rounding), a statement of that fact, along with a statement that the consumer paid such amounts prior to consummation of the transaction; or

- (B) If the amount disclosed under paragraph (i)(2)(ii) of this section is equal to the amount disclosed under paragraph (i)(2)(i) of this section, a statement of that fact.

## Regulatory Commentary

### *Paragraph 38(i)(2)(i).*

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

### *Paragraph 38(i)(2)(iii)(B).*

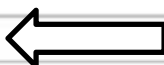
1. **Equal amount.** Under § 1026.38(i)(2)(iii)(B), the creditor or closing agent will give a statement that the **“Final”** amount disclosed under § 1026.38(i)(2)(ii) is equal to the **“Loan Estimate”** amount disclosed under § 1026.38(i)(2)(i), only if the **“Final”** amount is \$0, because the **“Loan Estimate”** amount is always disclosed as \$0 pursuant to § 1026.38(i)(2)(i). See comment 38(i)(2)(i)-1.

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The amount disclosed in the Loan Estimate column for the Closing Costs Paid Before Closing item is \$0. (§ 1026.38(i)(2)(i)) The Final column should disclose the same amount designated as Borrower-Paid Before Closing in the Closing Costs Subtotals of the Closing Cost Details table on Closing Disclosure page 2, as a positive number. (§ 1026.38(e)(3)(ii))

**[34] Closing Costs Financed (page 3, Calculating Cash to Close)**

<b>Calculating Cash to Close</b>		Use this table to see what has changed from your Loan Estimate.	
	Loan Estimate	Final	Did this change?
Total Closing Costs (J)			
Closing Costs Paid Before Closing			
Closing Costs Financed (Paid from your Loan Amount)			
Down Payment/Funds from Borrower			
Deposit			
Funds for Borrower			
Seller Credits			
Adjustments and Other Credits			
<b>Cash to Close</b>			


**Y&A Completion Instruction**

This instruction requires the processor to enter the amount of closing costs that are being paid through loan proceeds. The final Loan Estimate and Closing Disclosure amounts are shown as negative numbers, and if there are differences, the creditor is to indicate where the consumer should look to find the differences. There are specific language and bold requirements (see regulatory text and commentary below).

**Regulatory Text § 1026.38(i)(3)****(3) Closing costs financed.**

- (i) Under the subheading “**Loan Estimate,**” the amount disclosed under § 1026.37(h)(1)(ii), labeled “**Closing Costs Financed (Paid from your Loan Amount).**”
- (ii) Under the subheading “**Final,**” the actual amount of the closing costs that are to be paid out of loan proceeds, if any, stated as a negative number.
- (iii) Under the subheading “**Did this change?,**” disclosed more prominently than the other disclosures under this paragraph (i)(3):
  - (A) If the amount disclosed under paragraph (i)(3)(ii) of this section is different than the amount disclosed under paragraph (i)(3)(i) of this section (unless the difference is due to rounding), a statement of that fact, along with a statement that the consumer included the closing costs in the loan amount, which increased the loan amount; or
  - (B) If the amount disclosed under paragraph (i)(3)(ii) of this section is equal to the amount disclosed under paragraph (i)(3)(i) of this section, a statement of that fact.



## Regulatory Commentary

### **38(i)(3) Closing costs financed.**

#### **1. Calculation of amount.**

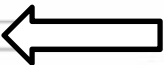
- i. Generally. The amount of closing costs financed disclosed under § 1026.38(i)(3) is determined by subtracting the total amount of payments to third parties not otherwise disclosed under § 1026.38(f) and (g) from the loan amount disclosed under § 1026.38(b). The total amount of payments to third parties includes the sale price of the property disclosed under § 1026.38(j)(1)(ii). Other examples of payments to third parties not otherwise disclosed under § 1026.38(f) and (g) include the amount of construction costs for transactions that involve improvements to be made on the property, and payoffs of secured or unsecured debt. If the result of the calculation is zero or negative, the amount of \$0 is disclosed under § 1026.38(i)(3). If the result of the calculation is positive, that amount is disclosed as a negative number under § 1026.38(i)(3), but only to the extent that the absolute value of the amount disclosed under § 1026.38(i)(3) does not exceed the total amount of closing costs disclosed under § 1026.38(h)(1).*
  - ii. Simultaneous subordinate financing. For simultaneous subordinate financing transactions, no sale price will be disclosed under § 1026.38(j)(1)(ii), and therefore no sale price will be included in the closing costs financed calculation as a payment to third parties. The total amount of payments to third parties only includes payments occurring in the simultaneous subordinate financing transaction other than payments toward the sale price.*
- 2. Loan amount.** *The loan amount disclosed under § 1026.38(b), a component of the closing costs financed calculation, is the total amount the consumer will borrow, as reflected by the face amount of the note.*

## CFPB Guide

None.

**[35] Down Payment / Funds from Borrower (page 3, Calculating Cash to Close)**

Calculating Cash to Close		Use this table to see what has changed from your Loan Estimate.	
	Loan Estimate	Final	Did this change?
Total Closing Costs (J)			
Closing Costs Paid Before Closing			
Closing Costs Financed (Paid from your Loan Amount)			
Down Payment/Funds from Borrower			
Deposit			
Funds for Borrower			
Seller Credits			
Adjustments and Other Credits			
<b>Cash to Close</b>			



**Y&A Completion Instruction**

In a purchase, the down payment is the difference between the sale price and the loan amount. In a non-purchase transaction, the funds from borrower is any consumer contribution in cash toward the transaction. The final Loan Estimate and Closing Disclosure amounts are shown as positive numbers, and if there are differences, the creditor is to indicate where the consumer should look to find the differences. There are specific language and bold requirements (see regulatory text and commentary below).

**Regulatory Text § 1026.38(i)(4)**

**(4) Down payment/funds from borrower.**

(i) Under the subheading “**Loan Estimate**,” the amount disclosed under § 1026.37(h)(1)(iii), labeled “**Down Payment/Funds from Borrower**.”

(ii) Under the subheading “**Final**”:

(A) In a transaction that is a purchase as defined in § 1026.37(a)(9)(i), the amount of the difference between the purchase price of the property and the principal amount of the credit extended, stated as a positive number, labeled “Down Payment/Funds from Borrower”; or

(1) In a purchase transaction as defined in § 1026.37(a)(9)(i), the amount determined by subtracting the sum of the loan amount disclosed under paragraph (b) of this section and any amount of existing loans assumed or taken subject to that is disclosed under paragraph (j)(2)(iv) of this section from the sale price of the property disclosed under paragraph (a)(3)(vii)(A) of this section, labeled “Down

Payment/Funds from Borrower,” except as required by paragraph (i)(4)(ii)(A)(2) of this section;

(2) In a purchase transaction as defined in § 1026.37(a)(9)(i) that is a simultaneous subordinate financing transaction or that involves improvements to be made on the property, or when the sum of the loan amount disclosed under paragraph (b) of this section and any amount of existing loans assumed or taken subject to that is disclosed under paragraph (j)(2)(iv) of this section exceeds the sale price disclosed under paragraph (a)(3)(vii)(A) of this section, the amount of funds from the consumer as determined in accordance with paragraph (i)(6)(iv) of this section labeled “Down Payment/Funds from Borrower;” or

(B) In all transactions not subject to paragraph (i)(4)(ii)(A) of this section, the amount of funds from the consumer as determined in accordance with paragraph (i)(6)(iv) of this section, labeled “Down Payment/Funds from Borrower.”

(iii) Under the subheading “**Did this change?**,” disclosed more prominently than the other disclosures under this paragraph (i)(4):

(A) If the amount disclosed under paragraph (i)(4)(ii) of this section is different than the amount disclosed under paragraph (i)(4)(i) of this section (unless the difference is due to rounding), a statement of that fact, along with a statement that the consumer increased or decreased this payment and that the consumer should see the details disclosed under paragraph (j)(1) or (j)(2) of this section, as applicable; or

(B) If the amount disclosed under paragraph (i)(4)(ii) of this section is equal to the amount disclosed under paragraph (i)(4)(i) of this section, a statement of that fact.

## Regulatory Commentary

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

1. **Down payment and funds from borrower calculation.** Under § 1026.38(i)(4)(ii)(A)(1), the down payment and funds from borrower amount is calculated as the difference between the sale price of the property disclosed under § 1026.38(a)(3)(vii)(A) and the sum of the loan amount disclosed under § 1026.38(b) and any amount of existing loans assumed or taken subject to that is disclosed under § 1026.38(j)(2)(iv), except as required by § 1026.38(i)(4)(ii)(A)(2). The calculation is independent of any loan program or investor requirements. The “Final” amount disclosed for “Down Payment/Funds from Borrower” reflects any change, following delivery of the Loan Estimate, in the amount of down payment and other funds required of the consumer. This change might result, for example, from an increase in the purchase price of the property.
2. **Funds for borrower.** Section 1026.38(i)(4)(ii)(A)(2) requires that, in a purchase transaction as defined in § 1026.37(a)(9)(i) that is a simultaneous subordinate financing transaction or that involves improvements to be made on the property, or when the sum of the loan amount disclosed under § 1026.38(b) and any amount of existing loans assumed or taken subject to that is disclosed under § 1026.38(j)(2)(iv) exceeds the sale price disclosed under § 1026.38(a)(3)(vii)(A), the amount of funds from the consumer is determined in accordance with § 1026.38(i)(6)(iv). Pursuant to § 1026.38(i)(6)(iv), the “Final” amount of “Down

*Payment/Funds from Borrower” to be disclosed under § 1026.38(i)(4)(ii)(A)(2) is determined by subtracting the sum of the loan amount and any amount of existing loans assumed or taken subject to that is disclosed under § 1026.38(j)(2)(iv) (excluding any closing costs financed disclosed under § 1026.38(i)(3)(ii)) from the total amount of all existing debt being satisfied in the transaction disclosed under § 1026.38(j)(1)(ii), (iii), and (v). The amount of “Down Payment/Funds from Borrower” under the subheading “Final” is disclosed either as a positive number or \$0, depending on the result of the calculation. When the result of the calculation is positive, that amount is disclosed under § 1026.38(i)(4)(ii)(A)(2) as “Down Payment/Funds from Borrower,” and \$0 is disclosed under § 1026.38(i)(6)(ii) as “Funds for Borrower.” When the result of the calculation is negative, that amount is disclosed under § 1026.38(i)(6)(ii) as “Funds for Borrower,” and \$0 is disclosed under § 1026.38(i)(4)(ii)(A)(2) as “Down Payment/Funds from Borrower.” When the result is \$0, \$0 is disclosed as “Down Payment/Funds from Borrower” and “Funds for Borrower” under § 1026.38(i)(4)(ii)(A)(2) and (6)(ii), respectively. An increase in the amount of “Down Payment/Funds from Borrower” under the subheading “Final” relative to the corresponding amount under the subheading “Loan Estimate” might result, for example, from a decrease in the loan amount or an increase in the amount of existing debt being satisfied in the transaction. For additional discussion of the determination of the “Down Payment/Funds from Borrower” amount, see comment 38(i)(6)(ii)-1.*

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

1. **Funds for borrower.** *Section 1026.38(i)(4)(ii)(B) requires that, in all transactions not subject to § 1026.38(i)(4)(ii)(A), the “Final” amount disclosed for “Down Payment/Funds from Borrower” is the amount determined in accordance with § 1026.38(i)(6)(iv). Pursuant to § 1026.38(i)(6)(iv), the “Final” amount of “Down Payment/Funds from Borrower” to be disclosed under § 1026.38(i)(4)(ii)(B) is determined by subtracting the sum of the loan amount disclosed under § 1026.38(b) and any amount of existing loans assumed or taken subject to that is disclosed under § 1026.38(j)(2)(iv) (excluding any closing costs financed disclosed under § 1026.38(i)(3)(ii)) from the total amount of all existing debt being satisfied in the transaction disclosed under § 1026.38(j)(1)(ii), (iii), and (v). The “Final” amount of “Down Payment/Funds from Borrower” is disclosed either as a positive number or \$0, depending on the result of the calculation. When the result of the calculation is positive, that amount is disclosed under § 1026.38(i)(4)(ii)(B) as “Down Payment/Funds from Borrower,” and \$0 is disclosed under § 1026.38(i)(6)(ii) as “Funds for Borrower.” When the result of the calculation is negative, that amount is disclosed under § 1026.38(i)(6)(ii) as “Funds for Borrower,” and \$0 is disclosed under § 1026.38(i)(4)(ii)(B) as “Down Payment/Funds from Borrower.” When the result is \$0, \$0 is disclosed as “Down Payment/Funds from Borrower” and “Funds for Borrower” under § 1026.38(i)(4)(ii)(B) and (6)(ii), respectively. An increase in the “Final” amount of “Down Payment/Funds from Borrower” relative to the corresponding “Loan Estimate” amount might result, for example, from a decrease in the loan amount or an increase in the amount of existing debt being satisfied in the transaction. For additional discussion of the determination of the “Down Payment/Funds from Borrower” amount, see comment 38(i)(6)(ii)-1.*

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

1. **Statement of differences.** *Section 1026.38(i)(4)(iii)(A) requires, as applicable, a statement that the consumer has increased or decreased this payment, along with a statement that the*

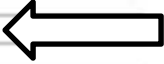
*consumer should see the details disclosed under § 1026.38(j)(1) or (j)(2), as applicable. The applicable disclosure to be referenced corresponds to the label on the Closing Disclosure under which the information accounting for the increase in the “Down Payment/Funds from Borrower” amount is disclosed.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

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None.

**[36] Deposit (page 3, Calculating Cash to Close)**

<b>Calculating Cash to Close</b>		Use this table to see what has changed from your Loan Estimate.	
	Loan Estimate	Final	Did this change?
Total Closing Costs (J)			
Closing Costs Paid Before Closing			
Closing Costs Financed (Paid from your Loan Amount)			
Down Payment/Funds from Borrower			
Deposit			
Funds for Borrower			
Seller Credits			
Adjustments and Other Credits			
<b>Cash to Close</b>			


**Y&A Completion Instruction**

In a purchase loan, the deposit is any amount held by a third party toward the purchase price. It might be held by the seller, the financial institution, or realtor. Regardless of who is holding the deposit, it results in a reduction in the amount owed for the purchase, and is shown as a negative number. In a non-purchase transaction, the amount shown is \$0. If there are differences between the final Loan Estimate and the Closing Disclosure amounts, the creditor is to indicate where the consumer should look to find the differences. There are specific language and bold requirements (see regulatory text and commentary below).

**Regulatory Text § 1026.38(i)(5)****(5) Deposit.**

- (i) Under the subheading **“Loan Estimate,”** the amount disclosed under § 1026.37(h)(1)(iv), labeled **“Deposit.”**
- (ii) Under the subheading **“Final,”** the amount disclosed under paragraph (j)(2)(ii) of this section, stated as a negative number.
- (iii) Under the subheading **“Did this change?,”** disclosed more prominently than the other disclosures under this paragraph (i)(5):
  - (A) If the amount disclosed under paragraph (i)(5)(ii) of this section is different than the amount disclosed under paragraph (i)(5)(i) of this section (unless the difference is due to rounding), a statement of that fact, along with a statement that the consumer increased or decreased this payment, as applicable, and that the consumer should see the details disclosed under paragraph (j)(2)(ii) of this section; or

(B) If the amount disclosed under paragraph (i)(5)(ii) of this section is equal to the amount disclosed under paragraph (i)(5)(i) of this section, a statement of that fact.

### **Regulatory Commentary**

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

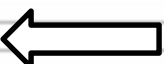
### **CFPB Guide**

None.



**[37] Funds for Borrower (page 3, Calculating Cash to Close)**

<b>Calculating Cash to Close</b>		Use this table to see what has changed from your Loan Estimate.	
	Loan Estimate	Final	Did this change?
Total Closing Costs (J)			
Closing Costs Paid Before Closing			
Closing Costs Financed (Paid from your Loan Amount)			
Down Payment/Funds from Borrower			
Deposit			
Funds for Borrower			
Seller Credits			
Adjustments and Other Credits			
<b>Cash to Close</b>			


**Y&A Completion Instruction**

The processor must indicate the amount of funds for borrower - the amount to be disbursed to the consumer or the consumer's designee. This is essentially "cash out," but limited to those amounts that are actually being delivered to or on behalf of the consumer. It could also include other cash out amounts that are being delivered to others, such as the payoff of a credit card debt. However, if the loan is a refinance for the purpose of paying other debt, the alternate cash to close table may be a more appropriate choice, as the format of the alternate table is designed specifically for that purpose. If there are differences between the final Loan Estimate and the Closing Disclosure amounts, the creditor is to indicate where the consumer should look to find the differences. There are specific language and bold requirements (see regulatory text and commentary below).

**Regulatory Text § 1026.38(i)(6)****(6) Funds for borrower.**

- (i) Under the subheading "**Loan Estimate**," the amount disclosed under § 1026.37(h)(1)(v), labeled "**Funds for Borrower**."
- (ii) Under the subheading "**Final**," the "**Funds for Borrower**," labeled using that term, as determined in accordance with paragraph (i)(6)(iv) of this section.
- (iii) Under the subheading "**Did this change?**," disclosed more prominently than the other disclosures under this paragraph (i)(6):
  - (A) If the amount disclosed under paragraph (i)(6)(ii) of this section is different than the amount disclosed under paragraph (i)(6)(i) of this section (unless the difference is due to rounding), a statement of that fact, along with a statement that the consumer's available funds from the loan amount have increased or decreased, as applicable; or

(B) If the amount disclosed under paragraph (i)(6)(ii) of this section is equal to the amount disclosed under paragraph (i)(6)(i) of this section, a statement of that fact.

(iv) The “Down Payment/Funds from Borrower” to be disclosed under paragraph (i)(4)(ii)(A)(2) or (B) of this section, as applicable, and “Funds for Borrower” to be disclosed under paragraph (i)(6)(ii) of this section are determined by subtracting the sum of the loan amount disclosed under paragraph (b) of this section and any amount for existing loans assumed or taken subject to that is disclosed under paragraph (j)(2)(iv) of this section (excluding any closing costs financed disclosed under paragraph (i)(3)(ii) of this section) from the total amount of all existing debt being satisfied in the transaction disclosed under paragraphs (j)(1)(ii), (iii), and (v) of this section.

(A) If the calculation under this paragraph (i)(6)(iv) yields an amount that is a positive number, such amount shall be disclosed under paragraph (i)(4)(ii)(A)(2) or (B) of this section, as applicable, and \$0 shall be disclosed under paragraph (i)(6)(ii) of this section.

(B) If the calculation under this paragraph (i)(6)(iv) yields an amount that is a negative number, such amount shall be disclosed under paragraph (i)(6)(ii) of this section, stated as a negative number, and \$0 shall be disclosed under paragraph (i)(4)(ii)(A)(2) or (B) of this section, as applicable.

(C) If the calculation under this paragraph (i)(6)(iv) yields \$0, \$0 shall be disclosed under paragraph (i)(4)(ii)(A)(2) or (B) of this section, as applicable, and under paragraph (i)(6)(ii) of this section.

## Regulatory Commentary

### ***Paragraph 38(i)(6)(ii).***

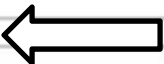
1. ***Final funds for borrower.*** Section 1026.38(i)(6)(ii) provides that the “Final” amount for “Funds for Borrower” is determined in accordance with § 1026.38(i)(6)(iv). Under § 1026.38(i)(6)(iv), the “Final” amount of “Funds for Borrower” to be disclosed under § 1026.38(i)(6)(ii) is determined by subtracting the sum of the loan amount disclosed under § 1026.38(b) and any amount of existing loans assumed or taken subject to that is disclosed under § 1026.38(j)(2)(iv) (excluding any closing costs financed disclosed under § 1026.38(i)(3)(ii)) from the total amount of all existing debt being satisfied in the transaction disclosed under § 1026.38(j)(1)(ii), (iii), and (v). The amount is disclosed under § 1026.38(i)(6)(ii) either as a negative number or as \$0, depending on the result of the calculation. The “Final” amount of “Funds for Borrower” disclosed under § 1026.38(i)(6)(ii) is an amount to be disbursed to the consumer or a designee of the consumer at consummation, if any.
2. ***No funds for borrower.*** When the down payment and funds from the borrower is determined in accordance with § 1026.38(i)(4)(ii)(A)(1), the amount disclosed under § 1026.38(i)(6)(ii) as “Funds for Borrower” is \$0.

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None.

**[38] Seller Credits (page 3, Calculating Cash to Close)**

<b>Calculating Cash to Close</b>		Use this table to see what has changed from your Loan Estimate.	
	Loan Estimate	Final	Did this change?
Total Closing Costs (J)			
Closing Costs Paid Before Closing			
Closing Costs Financed (Paid from your Loan Amount)			
Down Payment/Funds from Borrower			
Deposit			
Funds for Borrower			
Seller Credits			
Adjustments and Other Credits			
<b>Cash to Close</b>			


**Y&A Completion Instruction**

The processor must disclose the amount of seller contribution toward the loan closing. As in all other fields in this table, disclose the amount that was shown on the final Loan Estimate, as well as the Closing Disclosure amount. Other than \$0, this amount is always negative. If there are differences between the final Loan Estimate and the Closing Disclosure amounts, the creditor is to indicate where the consumer should look to find the differences. There are specific language and bold requirements (see regulatory text and commentary below).

**Regulatory Text § 1026.38(i)(7)****(7) Seller credits.**

- (i) Under the subheading “**Loan Estimate**,” the amount disclosed under § 1026.37(h)(1)(vi), labeled “**Seller Credits**.”
- (ii) Under the subheading “**Final**,” the amount disclosed under paragraph (j)(2)(v) of this section, stated as a negative number.
- (iii) Under the subheading “Did this change?,” disclosed more prominently than the other disclosures under this paragraph (i)(7):
  - (A) If the amount disclosed under paragraph (i)(7)(ii) of this section is different than the amount disclosed under paragraph (i)(7)(i) of this section (unless the difference is due to rounding), a statement of that fact, along with a statement that the consumer should see the details disclosed:
    - (1) Under paragraph (j)(2)(v) of this section and in the seller-paid column under paragraphs (f) and (g) of this section; or

(2) Under either paragraph (j)(2)(v) of this section or in the seller-paid column under paragraphs (f) or (g) of this section, if the details are only disclosed under paragraph (j)(2)(v) or paragraphs (f) or (g); or

(B) If the amount disclosed under paragraph (i)(7)(ii) of this section is equal to the amount disclosed under paragraph (i)(7)(i) of this section, a statement of that fact.

## Regulatory Commentary

### **Paragraph 38(i)(7)(ii).**

1. **Final seller credits.** Under § 1026.38(i)(7)(ii), the **“Final”** amount of **“Seller Credits”** reflects any change, following the delivery of the Loan Estimate, in the amount of funds given by the seller to the consumer for generalized (i.e., lump sum) credits for closing costs or for allowances for items purchased separately (e.g., if the seller is a builder). Seller credits are distinguished from payments by the seller for items attributable to periods of time prior to consummation, which are among the **“Adjustments and Other Credits”** separately disclosed pursuant to § 1026.38(i)(8). For additional guidance regarding seller credits, see comments 38(j)(2)(v)-1 and -2.ID.

### **Paragraph 38(i)(7)(iii)(A).**

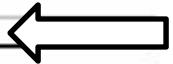
1. **Statement that the consumer should see details.** Under § 1026.38(i)(7)(iii)(A), if the amount disclosed under § 1026.38(i)(7)(ii) in the “Final” column is not equal to the amount disclosed under § 1026.38(i)(7)(i) in the “Loan Estimate” column (unless the difference is due to rounding), the creditor must disclose a statement that the consumer should see the details disclosed either: (1) under § 1026.38(j)(2)(v) in the summaries of transactions table and the seller-paid column of the closing cost details table under § 1026.38(f) or (g); or (2) if the difference is attributable only to general seller credits disclosed under § 1026.38(j)(2)(v), or only to specific seller credits disclosed in the seller-paid column of the closing cost details table under § 1026.38(f) or (g), under only the applicable provision. If, for example, a decrease in the seller credits disclosed under § 1026.38(i)(7)(ii) is attributable only to a decrease in general (i.e., lump sum) seller credits, then a statement is given under the subheading “Did this change?” in the calculating cash to close table that the consumer should see the details disclosed under § 1026.38(j)(2)(v) in the summaries of transactions table and the seller-paid column of § 1026.38(f) or (g), or that the consumer should see the details disclosed under § 1026.38(j)(2)(v) in the summaries of transactions table. Form H-25(B) in appendix H to this part demonstrates this disclosure where the decrease in seller credits is attributable only to a decrease in general seller credits and the creditor chooses only to reference the applicable provision; form H-25(B)’s statement “See Seller Credits in Section L,” in which the words “Section L” are in boldface font, complies with this requirement. Where the decrease in the seller credits disclosed under § 1026.38(i)(7)(ii) is attributable to specific and general seller credits, or the creditor does not elect to reference only the applicable provision, then a statement is given under the subheading “Did this change?” that the consumer should see both the details disclosed under § 1026.38(j)(2)(v) in the summaries of transactions table and the seller-paid column of the closing cost details table under § 1026.38(f) or (g). For example, the statement “See Seller-Paid column on page 2 and Seller Credits in Section L,” in which the words “Seller-Paid” and “Section L” are in boldface font, complies with this requirement.

**CFPB Guide**

None.

### **[39] Adjustments and Other Credits (page 3, Calculating Cash to Close)**

<b>Calculating Cash to Close</b>		Use this table to see what has changed from your Loan Estimate.	
	Loan Estimate	Final	Did this change?
Total Closing Costs (J)			
Closing Costs Paid Before Closing			
Closing Costs Financed (Paid from your Loan Amount)			
Down Payment/Funds from Borrower			
Deposit			
Funds for Borrower			
Seller Credits			
Adjustments and Other Credits			
<b>Cash to Close</b>			



#### **Y&A Completion Instruction**

Often (though not in every loan) the adjustments and other credits for the Loan Estimate will be \$0. For the Closing Disclosure, there will usually be an amount other than \$0, particularly in a purchase, as there will be miscellaneous credits and tax prorations, etc. The processor must indicate the amount of Adjustments and Other Credits as a negative number. If there are differences between the final Loan Estimate and the Closing Disclosure amounts, the creditor is to indicate where the consumer should look to find the differences. There are specific language and bold requirements (see regulatory text and commentary below).

#### **Regulatory Text § 1026.38(i)(8)**

##### **(8) Adjustments and other credits.**

- (i) Under the subheading “Loan Estimate,” the amount disclosed on the Loan Estimate under § 1026.37(h)(1)(vii), labeled “Adjustments and Other Credits.”
- (ii) Under the subheading “Final,” the amount equal to the total of the amounts disclosed under paragraphs (j)(1)(iii) and (v) of this section, to the extent amounts in paragraphs (j)(1)(iii) and (v) were not included in the calculation required by paragraph (i)(4) or (6) of this section, and paragraphs (j)(1)(vi) through (x) of this section, reduced by the total of the amounts disclosed under paragraphs (j)(2)(vi) through (xi) of this section.
- (iii) Under the subheading “Did this change?,” disclosed more prominently than the other disclosures under this paragraph (i)(8):
  - (A) If the amount disclosed under paragraph (i)(8)(ii) of this section is different than the amount disclosed under paragraph (i)(8)(i) of this section (unless the difference is due to rounding), a statement of that fact, along with a statement that the consumer should see the details disclosed under paragraphs (j)(1)(iii) and (v) through (x) and (j)(2)(vi) through (xi) of this section, as applicable; or

(B) If the amount disclosed under paragraph (i)(8)(ii) of this section is equal to the amount disclosed under paragraph (i)(8)(i) of this section, a statement of that fact.

## Regulatory Commentary

### ***Paragraph 38(i)(8)(ii).***

- 1. Adjustments and other credits.*** Under § 1026.38(i)(8)(ii), the “Final” amount for “Adjustments and Other Credits” would include, for example, prorations of taxes or homeowner’s association fees, utilities used but not paid for by the seller, rent collected in advance by the seller from a tenant for a period extending beyond the consummation, and interest on loan assumptions. This category also includes generalized credits toward closing costs given by parties other than the seller. For additional guidance regarding adjustments and other credits, see commentary to §§ 1026.37(h)(1)(vii) and 1026.38(j)(2)(vi) and (xi). If the calculation required by § 1026.38(i)(8)(ii) yields a negative number, the creditor or closing agent discloses the amount as a negative number.


## CFPB Guide

None.



**[40] Cash to Close (page 3, Calculating Cash to Close)**

Calculating Cash to Close		Use this table to see what has changed from your Loan Estimate.	
	Loan Estimate	Final	Did this change?
Total Closing Costs (J)			
Closing Costs Paid Before Closing			
Closing Costs Financed (Paid from your Loan Amount)			
Down Payment/Funds from Borrower			
Deposit			
Funds for Borrower			
Seller Credits			
Adjustments and Other Credits			
<b>Cash to Close</b>			


**Y&A Completion Instruction**

The processor should not have to input any amounts here. This line totals both the Loan Estimate and Final columns.

**Regulatory Text § 1026.38(i)(9)****(9) Cash to close.**

- (i) Under the subheading “**Loan Estimate**,” the amount disclosed on the Loan Estimate under § 1026.37(h)(1)(viii), labeled “**Cash to Close**” and disclosed more prominently than the other disclosures under this paragraph (i).
- (ii) Under the subheading “**Final**,” the sum of the amounts disclosed under paragraphs (i)(1) through (i)(8) of this section under the subheading “**Final**,” and disclosed more prominently than the other disclosures under this paragraph (i).

**Regulatory Commentary****Paragraph 38(i)(9)(ii).**

1. **Final cash to close amount.** The “**Final**” amount of “Cash to Close” disclosed under § 1026.38(i)(9)(ii) is the same as the amount disclosed on the Closing Disclosure as “**Cash to Close**” under § 1026.38(j)(3)(iii). If the calculation required by § 1026.38(i)(9)(ii) yields a negative number, the creditor or closing agent discloses the amount as a negative number.
2. **More prominent disclosure.** Section 1026.38(i)(9)(ii) requires that the disclosure of the “**Final**” amount of “Cash to Close” be more prominent than the other disclosures under § 1026.38(i). Such more prominent disclosure can take the form, for example, of boldface font, as shown on form H-25 of appendix H to this part.*ID Instructions*

**CFPB Guide**

None.

# Section 11: Summary of Borrower's Transaction

## 12 CFR § 1026.38(j)

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### *General Language*

#### **Y&A Commentary**

This summary is essentially the 100, 200, and 300 series (left side) of the front page of the current HUD-1. It summarizes all of the borrower's transaction, including the amount that the borrower has to pay, the amount that the borrower is credited, and then a calculation of whether the borrower owes or will receive funds from the transaction.

#### **Regulatory Text**

- (j) **Summary of borrower's transaction.** Under the heading “**Summaries of Transactions,**” with a statement to “**Use this table to see a summary of your transaction,**” two separate tables are disclosed. The first table shall include, under the subheading “**Borrower's Transaction,**” the following information and shall satisfy the following requirements:

#### **Regulatory Commentary**

1. ***In general.*** *It is permissible to have two separate Closing Disclosures in a transaction: one that reflects the consumer's costs and credits only, which is provided to the consumer, and one that reflects the seller's costs and credits only, which is provided to the seller. See § 1026.38(t)(5)(v) and (vi). Some State laws may prohibit provision of information about the consumer to the seller and about the seller to the consumer.*
2. ***Addenda.*** *Additional pages may be attached to the Closing Disclosure to add lines, as necessary, to accommodate the complete listing of all items required to be shown on the Closing Disclosure under § 1026.38(j) and (k), and for the purpose of including customary recitals and information used locally in real estate closings (for example, breakdown of payoff figures, a breakdown of the consumer's total monthly mortgage payments, an accounting of debits received and check disbursements, a statement stating receipt of funds, applicable special stipulations between consumer and seller, and the date funds are transferred). See § 1026.38(t)(5)(ix). A reference such as “See attached page for additional information” should be placed in the applicable section of the Closing Disclosure.*
3. ***Identical amounts.*** *The amounts disclosed under the following provisions of § 1026.38(j) are the same as the amounts disclosed under the corresponding provisions of § 1026.38(k): § 1026.38(j)(1)(ii) and (k)(1)(ii); § 1026.38(j)(1)(iii) and (k)(1)(iii); if the amount disclosed under § 1026.38(j)(1)(v) is attributable to contractual adjustments between the consumer and seller, § 1026.38(j)(1)(v) and (k)(1)(iv); § 1026.38(j)(1)(vii) and (k)(1)(vi); § 1026.38(j)(1)(viii) and (k)(1)(vii); § 1026.38(j)(1)(ix) and (k)(1)(viii); § 1026.38(j)(1)(x) and (k)(1)(ix); § 1026.38(j)(2)(iv)*

*and (k)(2)(iv); unless seller contributions toward simultaneous subordinate financing are disclosed under § 1026.38(t)(5)(vii)(B) on the simultaneous subordinate financing Closing Disclosure and § 1026.38(k)(2)(vii) on the first-lien Closing Disclosure, § 1026.38(j)(2)(v) and (k)(2)(vii); § 1026.38(j)(2)(viii) and (k)(2)(x); § 1026.38(j)(2)(ix) and (k)(2)(xi); § 1026.38(j)(2)(x) and (k)(2)(xii); and § 1026.38(j)(2)(xi) and (k)(2)(xiii).*

## CFPB Guide

Use the Summaries of Transactions table to disclose the amounts associated with the real estate purchase transaction between the consumer and seller, together with closing costs, in order to disclose the amounts due from or payable to the consumer and seller at closing, as applicable. (§ 1026.38(j),(k)) A separate Closing Disclosure can be provided to the consumer and the seller that do not reflect the other party's costs and credits by omitting certain disclosures on each separate Closing Disclosure. (§ 1026.38(t)(5)(v),(vi),(ix)) If using a separate seller's disclosure, the settlement agent must also provide a copy to the creditor. (§ 1026.19(f)(4)(iv))

In transactions without a seller, the creditor does not provide the Seller's Transaction column as part of the Closing Disclosure. (Comment 38(k)-1) A creditor can also decide to replace the Summaries of Transactions table with a Payoffs and Payments table (see Figure 40) when the Alternative Cash to Close and Alternative Calculating Cash to Close tables are used. (§ 1026.38(t)(5)(vii))

Generally, the Summaries of Transactions table is similar to the Summary of Borrower's Transaction and Summary of Seller's Transaction tables on the HUD-1 Settlement Statement provided under Regulation X prior to the TILA-RESPA rule taking effect. There are some modifications to the Closing Disclosure related to the handling of the disclosure of the consumer's Deposit, the disclosure of Credits, and other matters, discussed below.

**[41] Itemization of Amounts due from Borrower (page 3, Section [K])**

BORROWER'S TRANSACTION	
<b>K. Due from Borrower at Closing</b>	
01	Sale Price of Property
02	Sale Price of Any Personal Property Included in Sale
03	Closing Costs Paid at Closing (J)
04	
<b>Adjustments</b>	
05	
06	
07	
<b>Adjustments for Items Paid by Seller in Advance</b>	
08	City/Town Taxes to
09	County Taxes to
10	Assessments to
11	
12	
13	
14	
15	

Amounts owed by the borrower at closing.

**Y&A Completion Instruction**

Section K (equivalent to the 100 series on the HUD-1) contains information regarding what the borrower owes in order to complete this transaction. The processor must complete this section with items such as the sales price of the property, closing costs, and any other amounts the borrower owes. A laundry list of potential items appears in the regulatory text and commentary below. There is a column for the actual dollar amounts that is not shown in the graphic above.

**Regulatory Text § 1026.38(j)(1)****(1) Itemization of amounts due from borrower.**

- (i) The total amount due from the consumer at closing, calculated as the sum of items required to be disclosed by paragraph (j)(1)(ii) through (x) of this section, excluding items paid from funds other than closing funds as described in paragraph (j)(4)(i) of this section, labeled **“Due from Borrower at Closing”**;
- (ii) The amount of the contract sales price of the property being sold in a purchase real estate transaction, excluding the price of any tangible personal property if the consumer and seller have agreed to a separate price for such items, labeled **“Sale Price of Property”**;
- (iii) The amount of the sales price of any tangible personal property excluded from the contract sales price pursuant to paragraph (j)(1)(ii) of this section, labeled **“Sale Price of Any Personal Property Included in Sale”**;
- (iv) The total amount of closing costs disclosed that are designated borrower-paid at closing, calculated pursuant to paragraph (h)(2) of this section, labeled **“Closing Costs Paid at Closing”**;

- (v) A description and the amount of any additional items that the seller has paid prior to the real estate closing, but reimbursed by the consumer at the real estate closing, and a description and the amount of any other items owed by the consumer at the real estate closing not otherwise disclosed pursuant to paragraph (f), (g), or (j) of this section;
- (vi) The description **“Adjustments for Items Paid by Seller in Advance”**;
- (vii) The prorated amount of any prepaid taxes due from the consumer to reimburse the seller at the real estate closing, and the time period corresponding to that amount, labeled **“City/Town Taxes”**;
- (viii) The prorated amount of any prepaid taxes due from the consumer to reimburse the seller at the real estate closing, and the time period corresponding to that amount, labeled **“County Taxes”**;
- (ix) The prorated amount of any prepaid assessments due from the consumer to reimburse the seller at the real estate closing, and the time period corresponding to that amount, labeled **“Assessments”**; and
- (x) A description and the amount of any additional items paid by the seller prior to the real estate closing that are due from the consumer at the real estate closing.

## Regulatory Commentary

### ***Paragraph 38(j)(1)(ii).***

1. ***Contract sales price and personal property.*** Section 1026.38(j)(1)(ii) requires disclosure of the contract sales price of the property being sold, excluding the price of any tangible personal property if the consumer and seller have agreed to a separate price for such items. On the simultaneous subordinate financing Closing Disclosure, no contract sales price is disclosed under § 1026.38(j)(1)(ii). Personal property is defined by State law, but could include such items as carpets, drapes, and appliances. Manufactured homes are not considered personal property under § 1026.38(j)(1)(ii).

### ***Paragraph 38(j)(1)(v).***

1. ***Contractual adjustments.*** Section 1026.38(j)(1)(v) requires disclosure of amounts not otherwise disclosed under § 1026.38(j) that are owed to the seller but payable to the consumer after the real estate closing. For example, the following items must be disclosed and listed under the heading “Adjustments” under § 1026.38(j), to the extent applicable:
  - i. The balance in the seller’s reserve account held in connection with an existing loan, if assigned to the consumer in a loan assumption transaction;
  - ii. Any rent that the consumer will collect after the real estate closing for a period of time prior to the real estate closing; and
  - iii. The treatment of any tenant security deposit.

2. *Other consumer charges.* The amounts disclosed under § 1026.38(j)(1)(v) which are for charges owed by the consumer at the real estate closing not otherwise disclosed under § 1026.38(f), (g), and (j) will not have a corresponding credit in the summary of the seller's transaction under § 1026.38(k)(1)(iv). For example, the amounts paid to any holders of existing liens on the property in a refinance transaction, construction costs in connection with the transaction that the consumer will be obligated to pay, payoff of other secured or unsecured debt, any outstanding real estate property taxes, and principal reductions are disclosed under § 1026.38(j)(1)(v) without a corresponding credit in the summary of the seller's transaction under § 1026.38(k)(1)(iv). See comment 38-4 for an explanation of how to disclose a principal reduction under § 1026.38(j)(1)(v).
3. *Simultaneous subordinate financing Closing Disclosure.* On the simultaneous subordinate financing Closing Disclosure, the proceeds of the subordinate financing applied to the first-lien transaction may be included in the summaries of transactions table under § 1026.38(j)(1)(v). See also comments 37(h)(1)(v)-2 and 37(h)(1)(vii)-6 for an explanation of how to disclose on the Loan Estimate amounts that will be disclosed on the Closing Disclosure under § 1026.38(j)(1)(v).

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

1. **Additional adjustments.** Examples of items for which adjustments may be made include taxes, other than those disclosed pursuant to § 1026.38(j)(1)(vii) and (viii), paid in advance for an entire year or other period, when the real estate closing occurs prior to the expiration of the year or other period for which they were paid. Additional examples of items for which adjustments may be made include:
  - i. Flood and hazard insurance premiums, if the consumer is being substituted as an insured under the same policy;
  - ii. Mortgage insurance in loan assumptions;
  - iii. Planned unit development or condominium association assessments paid in advance;
  - iv. Fuel or other supplies on hand, purchased by the seller, which the consumer will use when the consumer takes possession of the property; and
  - v. Ground rent paid in advance.

### **CFPB Guide**

A creditor can work with a Settlement Agent, and the Settlement Agent can disclose the Borrower's Transaction column of the Summaries of Transactions table. Any references to the creditor would apply to the settlement agent when the Settlement Agent discloses the Borrower's Transaction column. (§ 1026.19(f)(1)(v))

### **Due From Borrower at Closing**

The amount Due from Borrower at Closing is the sum of:

- Sale Price of Property,



- Sale Price of Any Personal Property Included in Sale,
- Closing Costs Paid at Closing,
- Other consumer charges,
- Adjustments, and
- Adjustments for Items Paid by the Seller in Advance, pursuant to the terms of the real estate sale contract. (§ 1026.38(j)(1))

Personal Property is defined by State law, but could include such items as carpets, drapes, and appliances. Manufactured homes are not considered personal property for the Closing Disclosure. (Comment 38(j)(1)(ii)-1)

Closing Costs Paid at Closing is the amount designated as Borrower-Paid At Closing minus any Lender Credits on page 2 of the Closing Disclosures. (§ 1026.38(j)(1)(iv))

Disclose other consumer charges owed by the consumer in the real estate closing not otherwise disclosed on page 2 of the Closing Disclosure as Due from Borrower at Closing. Examples include:

- Amounts paid to any existing holders of liens on the property in a refinance transaction, and
- Any outstanding real estate property taxes.

These amounts are disclosed without a corresponding credit in the Seller's Transaction column. (Comment 38(j)(1)(v)-2)

Adjustments due from the consumer to be paid to the seller are disclosed in two places.

First, amounts owed by the consumer that are neither disclosed on Closing Disclosure page 2 nor specifically required to be disclosed as Due from Borrower at Closing. Examples of these amounts include: A balance in a seller's reserve account transferred to the consumer in connection with an assumed loan,

- Rent that the consumer will collect after closing for a period of time prior to the closing, and
- The treatment of any tenant security deposit. (Comment 38(j)(1)(v)-1)

Second, additional adjustments are disclosed along with the time-period associated with the adjustment. Examples include:

- Taxes paid in advance for an entire year when the closing occurs prior to the expiration of the year,
- Flood or hazard insurance premiums when the consumer is being substituted as an insured under the same policy,
- Mortgage insurance in connection with an assumed loan,
- Planned unit development or condominium association assessments paid in advance,
- Fuel or other supplies on hand purchased by the seller which the consumer will use when the consumer takes possession of the property, and
- Ground rent paid in advance by the seller. (Comment 38(j)(1)(x)-1)

***[42] Itemization of Amounts Already Paid by or on Behalf of Borrower (page 3, Section [L])***

L. Paid Already by or on Behalf of Borrower at Closing	
01	Deposit
02	Loan Amount
03	Existing Loan(s) Assumed or Taken Subject to
04	
05	Seller Credit
Other Credits	
06	
07	
Adjustments	
08	
09	
10	
11	
Adjustments for Items Unpaid by Seller	
12	City/Town Taxes to
13	County Taxes to
14	Assessments to
15	
16	
17	

Credits received by borrower at closing.

**Y&A Completion Instruction**

Section L (equivalent to the 200 series on the HUD-1) contains information regarding what credits the borrower is receiving in order to complete this transaction. The processor must complete this section, including the deposit, loan amount, tax prorations, and any other similar item. A laundry list of potential items appears in the regulatory text and commentary below. There is a column for the actual dollar amounts that is not shown in the graphic above.

**Regulatory Text § 1026.38(j)(2)**

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

- (i) The sum of the amounts disclosed in this paragraphs (j)(2)(ii) through (xi) of this section, excluding items paid from funds other than closing funds as described in paragraph (j)(4)(i) of this section, labeled **“Paid Already by or on Behalf of Borrower at Closing”**;
- (ii) Any amount that is paid to the seller or held in trust or escrow by an attorney or other party under the terms of the agreement for the sale of the property, labeled **“Deposit”**;
- (iii) The amount of the consumer’s new loan amount or first user loan as disclosed pursuant to paragraph (b) of this section, labeled **“Loan Amount”**;
- (iv) The amount of any existing loans that the consumer is assuming, or any loans subject to which the consumer is talking title to the property, labeled **“Existing Loan(s) Assumed or Taken Subject to”**;
- (v) The total amount of money that the seller will provide at the real estate closing as a lump sum not otherwise itemized to pay for loan costs as determined by paragraph (f) of this

section and other costs as determined by paragraph (g) of this section and any other obligations of the seller to be paid directly to the consumer, labeled **“Seller Credit”**;

- (vi) Descriptions and amounts of other items paid by or on behalf of the consumer and not otherwise disclosed under paragraphs (f), (g), (h), and (j)(2) of this section, labeled **“Other Credits,”** and descriptions and the amounts of any additional amounts owed the consumer but payable to the seller before the real estate closing, under the heading **“Adjustments”**;
- (vii) The description **“Adjustments for Items Unpaid by Seller”**;
- (viii) The prorated amount of any unpaid taxes due from the seller to reimburse the consumer at the real estate closing, and the time period corresponding to that amount, labeled **“City/Town Taxes”**;
- (ix) The prorated amount of any unpaid taxes due from the seller to reimburse the consumer at the real estate closing, and the time period corresponding to that amount, labeled **“County Taxes”**;
- (x) The prorated amount of any unpaid assessments due from the seller to reimburse the consumer at the real estate closing, and the time period corresponding to that amount, labeled **“Assessments”**; and
- (xi) A description and the amount of any additional items which have not yet been paid and which the consumer is expected to pay after the real estate closing, but which are attributable in part to a period of time prior to the real estate closing.

## Regulatory Commentary

### **Paragraph 38(j)(2)(ii).**

1. **Deposit.** All amounts paid into a trust account by the consumer pursuant to the contract of sale for real estate, any addenda thereto, or any other agreement between the consumer and seller must be disclosed under § 1026.38(j)(2)(ii). If there is no deposit paid in a transaction, that amount is left blank on the Closing Disclosure.
2. **Reduction of deposit when deposit used to pay for closing charges prior to closing.** If the consumer’s deposit has been applied toward a charge for a closing cost, the amount applied should not be included in the amount disclosed pursuant to § 1026.38(j)(2)(ii), but instead should be shown on the appropriate line for the closing cost in the Closing Cost Detail tables pursuant to § 1026.38(f) or (g), designated borrower-paid before closing.

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

1. **First user loan.** For purposes of § 1026.38(j), a first user loan is a loan to finance construction of a new structure or purchase of a new manufactured home that is known at the time of consummation to be real property under State law, where the structure was constructed for sale or the manufactured home was purchased for purposes of resale and the loan is used as or converted to a loan to finance purchase by the first user. For other loans subject to § 1026.19(f) that finance construction of a new structure or purchase of a manufactured home that is known at the time of

consummation to be real property under State law, the sales price of the land and the construction cost or purchase price of the manufactured home should be disclosed separately and the amount of the loan in the current transaction must be disclosed. The remainder of the Closing Disclosure should be completed taking into account adjustments and charges related to the temporary financing and permanent financing that are known at the time of consummation.

**Paragraph 38(j)(2)(iv)**

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

**Paragraph 38(j)(2)(v).**

1. **General seller credits.** When the consumer receives a generalized credit from the seller for closing costs or where the seller (typically a builder) is making an allowance to the consumer for items to purchase separately, the amount of the credit must be disclosed. However, if the seller credit is attributable to a specific loan cost or other cost listed in the Closing Cost Details tables, pursuant to § 1026.38(f) or (g), that amount should be reflected in the seller-paid column in the Closing Cost Details tables under § 1026.38(f) or (g).
2. **Other seller credits.** Any other obligations of the seller to be paid directly to the consumer, such as for issues identified at a walk-through of the property prior to closing, are disclosed under § 1026.38(j)(2)(v).

**Paragraph 38(j)(2)(vi).**

1. **Credits from any party other than the seller or creditor.** Section 1026.38(j)(2)(vi) requires disclosure of a description and the amount of items paid by or on behalf of the consumer and not disclosed elsewhere under § 1026.38(j)(2). For example, credits a consumer receives from a real estate agent or other third party, other than a seller or creditor, are disclosed pursuant to § 1026.38(j)(2)(vi). However, if the credit is attributable to a specific closing cost listed in the Closing Cost Details tables under § 1026.38(f) or (g), that amount should be reflected in the paid by others column on the Closing Cost Details tables and not in the disclosure required under § 1026.38(j)(2)(vi). Similarly, if a real estate agent rebates a portion of the agent's commission to the consumer, the rebate should be listed as a credit along with a description of the rebate, which must include the name of the party giving the credit.
2. **Subordinate financing proceeds on first-lien Closing Disclosure.** Any financing arrangements or other new loans not otherwise disclosed under § 1026.38(j)(2)(iii) or (iv) must be disclosed under § 1026.38(j)(2)(vi) on the first-lien Closing Disclosure. For example, if the consumer is using a second mortgage loan to finance part of the purchase price, whether from the same creditor, another creditor, or the seller, the principal amount of the second loan must be disclosed with a brief explanation on the first-lien Closing Disclosure. In this example, the principal amount of the subordinate financing is disclosed on the summaries of transactions table for the borrower's transaction either on line 04 under the subheading "L. Paid Already by or on Behalf of Borrower at Closing," or under the subheading "Other Credits." If the net

*proceeds of the subordinate financing are less than the principal amount of the subordinate financing, the net proceeds must also be listed, and may be listed on the same line as the principal amount of the subordinate financing on the first-lien Closing Disclosure. For an example, see form H-25(C) of appendix H to this part.*

3. **Satisfaction of existing subordinate liens by consumer.** *For payments to subordinate lien holders by or on behalf of the consumer, disclosure of any amounts paid with funds other than closing funds, as defined under § 1026.38(j)(4)(ii), in connection with the second mortgage payoff are required to be disclosed under § 1026.38(j)(2)(vi), with a statement that such amounts were paid outside of closing funds. For an example, see form H-25(D) of appendix H to this part.*
4. **Transferred escrow balances.** *In a refinance transaction, any transferred escrow balance is listed as a credit pursuant to § 1026.38(j)(2)(vi), along with a description of the transferred escrow balance.*
5. **Gift funds.** *A credit must be disclosed only for any money or other payments made at closing by third parties, including family members, not otherwise associated with the transaction, along with a description of the nature of the funds provided under § 1026.38(j)(2)(vi). Amounts provided in advance of the real estate closing to consumers by third parties, including family members, not otherwise associated with the transaction, are not required to be disclosed under § 1026.38(j)(2)(vi).*
6. **Adjustments.** *Section 1026.38(j)(2)(vi) requires the disclosure of any additional amounts not already disclosed under § 1026.38(f), (g), (h), and (j)(2), that are owed to the consumer but payable to the seller before the real estate closing. The disclosures made under § 1026.38(j)(2)(vi) must also include a description for each disclosed amount. For example, rent paid to the seller from a tenant before the real estate closing for a period extending beyond the real estate closing is disclosed by identifying the amount as rent from a tenant under the heading “Adjustments.” See also § 1026.38(k)(2)(viii), which requires disclosure of a description and amount of any and **all other obligations required to be paid by the seller at the real estate closing.***

#### **Paragraph 38(j)(2)(xi).**

1. **Examples.** *Section 1026.38(j)(2)(xi) requires the disclosure of any amounts the consumer is expected to pay after the real estate closing that are attributable in part to a period of time prior to the real estate closing. Examples of items that would be disclosed under § 1026.38(j)(2)(xi) include:*
  - i. Utilities used but not paid for by the seller; and*
  - ii. Interest on loan assumptions.*

#### **CFPB Guide**

The amount Paid Already by or on Behalf of Borrower at Closing is the sum of:

- Deposit,
- Loan Amount,

- Existing Loan(s) Assumed or Taken Subject to,
- Seller Credits,
- Other Credits, and
- Adjustments for Items Unpaid by Seller pursuant to the terms of the real estate sale contract. (§ 1026.38(j)(2))

Deposit is the amount paid into a trust account by the consumer pursuant to a contract of sale. (Comment 38(j)(2)(ii)-1) If the Deposit has been applied toward a closing cost paid by the consumer, the amount so applied should be deducted from the amount of the Deposit. (Comment 38(j)(2)(ii)-2) No deduction in the amount of the Deposit is to be made for the payment of any real estate commission disclosed on page 2 of the Closing Disclosure. (Comment 38(g)(4)-4)

Existing Loan(s) Assumed is the total amount of all loans that the consumer is assuming in the transaction, even if more than one loan is being assumed. (Comment 38(j)(2)(iv)-1)

Seller Credits include any general credit to the consumer from the seller and includes a seller making an allowance to the consumer for items to purchase separately. (§ 1026.38(j)(2)(v)) However, if the seller's agreement is attributable to a charge listed on Closing Disclosure page 2, then the amount should be listed with the item and designated as Seller-Paid at Closing or Seller-Paid Before Closing on Closing Disclosure page 2. (Comment 38(j)(2)(v)-1)

Seller Credits include any seller credits for issues identified at a walk-through of the Property. (Comment 38(j)(2)(v)-2)

Other Credits include a general credit from any party other than the seller or creditor. (§ 1026.38(j)(2)(vi)) One example is a credit a consumer receives from a real estate agent. A description of the credit and the name of the party giving the credit must also be included. However, if the credit or rebate is attributable to a charge listed on page 2 of the Closing Disclosure, then the amount should be listed with the item and designated as Paid by Others on Closing Disclosure page 2. (Comment 38(j)(2)(vi)-1)

Other Credits include any transferred escrow balance in a refinance transaction. (Comment 38(j)(2)(vi)-4) Other Credits also include a credit for any money or other payments made by family members associated with the transaction, along with a description of the nature of the funds. (Comment 38(j)(2)(vi)-5)

Disclosure of any amount paid with funds other than closing funds by a consumer in connection with a subordinate loan payoff are disclosed with a statement that such amounts were paid with outside of closing funds. (Comment 38(j)(2)(vi)-3)

Adjustments for Items Unpaid by Seller are amounts due to the consumer to be paid by the seller and are disclosed in two places.

First, items are disclosed along with the time-period associated with the item. Examples include:

- Taxes paid in arrears for an entire year when the closing occurs prior the start of the year,
- Flood or hazard insurance premiums when the consumer is being substituted as an insured under the same policy,



- Mortgage insurance in connection with an assumed loan,
- Planned unit development or condominium assessments not yet paid, and
- Ground rent not yet paid by the seller. (§ 1026.38(j)(2)(vii), (viii), (ix), (x))

Second, additional amounts owed by the seller that are not disclosed on page 2 or specifically included as Due from Seller at Closing. Examples of these amounts include:

- Utilities used but not paid for by the seller,
- Rent collected in advance by the seller for a period extending beyond the closing date, and
- Interest on loan assumptions. (Comment 38(j)(2)(xi)-1)



**[43] Calculation of Borrower's Transaction (page 3, bottom left)**

CALCULATION	
Total Due from Borrower at Closing (K)	
Total Paid Already by or on Behalf of Borrower at Closing (L)	
Cash to Close <input type="checkbox"/> From <input type="checkbox"/> To Borrower	

Calculation of whether the borrower owes cash or will receive cash at closing.

**Y&A Completion Instruction**

This calculation totals Sections K and L. By using check boxes, the calculation indicates whether the borrower will be receiving cash in the transaction, or will have to pay additional amounts to close the transaction. This calculation is the equivalent of the 300 series on the HUD-1. The processor should not have to actually do any input for this calculation. If the calculation indicates that the borrower must pay money, the Cash to Close number in the Cash to Close table above will be positive. If the calculation indicates that the borrower is receiving money, the Cash to Close number in the Cash to Close table above will be negative. Positive or negative, these two amounts must match. There is a column for the actual dollar amounts that is not shown in the graphic above.

**Regulatory Text § 1026.38(j)(3)**

**(3) Calculation of borrower's transaction.** Under the label “**Calculation**”:

- (i) The amount disclosed pursuant to paragraph (j)(1)(i) of this section, labeled “**Total Due from Borrower at Closing**”;
- (ii) The amount disclosed pursuant to paragraph (j)(2)(i) of this section, if any, disclosed as a negative number, labeled “**Total Paid Already by or on Behalf of Borrower at Closing**”; and
- (iii) A statement that the disclosed amount is due from or to the consumer, and the amount due from or to the consumer at the real estate closing, calculated by the sum of the amounts disclosed under paragraphs (j)(3)(i) and (ii) of this section, labeled “**Cash to Close**.”

**Regulatory Commentary****Paragraph 38(j)(3)(iii).**

1. **Stating if amount is due to or from consumer.** To comply with § 1026.38(j)(3)(iii), the creditor must state either the cash required from the consumer at closing, or cash payable to the consumer at closing.

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

## CFPB Guide

Under a subheading of **Calculation**:

- Disclose Total Due from the Borrower at Closing as a positive number.
- Disclose Total Paid Already by or on Behalf of the Borrower at Closing as a negative number. (§ 1026.38(j)(3))
- Disclose the sum of Total Due from the Borrower at Closing and Total Paid Already by or on Behalf of the Borrower at Closing. Disclose the sum as Cash to Close From Borrower when the sum is a positive number, and disclose the sum as Cash to Close To Borrower when the result is a negative number. The sum is disclosed as a positive number in either event. (Comment 38(j)(3)(iii)-2)

## ***[44] Items Paid Outside of Closing Funds (Sections [K] and [L])***

### **Y&A Completion Instruction**

Although unlikely, it is possible that some items may be paid for at closing from funds that are not part of the loan transaction itself. These items still need to be shown on the Closing Disclosure, are listed in the appropriate category, and the processor lists these items as P.O.C. These items have no impact on any calculation required by the disclosures.

### **Regulatory Text § 1026.38(j)(4)**

#### **(4) Items paid outside of closing funds.**

- (i) Costs that are not paid from closing funds but that would otherwise be disclosed in the table required pursuant to paragraph (j) of this section, should be marked with the phrase “**Paid Outside of Closing**” or the abbreviation “**P.O.C.**” and include the name of the party making the payment.
- (ii) For purposes of this paragraph (j), “**closing funds**” means funds collected and disbursed at real estate closing.

### **Regulatory Commentary**

- 1. Charges not paid with closing funds.** *Section 1026.38(j)(4)(i) requires that any charges not paid from closing funds but that otherwise are disclosed under § 1026.38(j) be marked as “paid outside of closing” or “P.O.C.” The disclosure must identify the party making the payment, such as the consumer, seller, loan originator, real estate agent, or any other person. For an example of a disclosure of a charge not made from closing funds, see form H-25(D) of appendix H to this part. For an explanation of what constitutes closing funds, see § 1026.38(j)(4)(ii). See also comment 38-4 for an explanation of how to disclose a principal reduction that is not paid from closing funds.*
- 2. Items paid without closing funds not included in sums.** *Charges that are paid outside of closing funds under § 1026.38(j)(4)(i) should not be included in computing totals under § 1026.38(j)(1) and (j)(2).*

### **CFPB Guide**

None.

## Section 12: Summary of Seller's Transaction

### 12 CFR § 1026.38(k)

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#### *General Language*

##### **Y&A Commentary**

This summary is essentially the 400, 500, and 600 series (right side) of the front page of the current HUD-1. It summarizes all of the seller's transaction, including the amount that the seller has to pay, the amount that the seller is credited, and then a calculation of whether the seller owes or will receive funds from the transaction.

##### **Regulatory Text**

(k) **Summary of seller's transaction.** Under the heading “**Summaries of Transactions**” required by paragraph (j) of this section, a separate table under the subheading “**Seller's Transaction,**” that includes the following information and satisfies the following requirements:

##### **Regulatory Commentary**

- 1. Transactions with no seller or simultaneous subordinate financing transactions.** *Section 1026.38(k) does not apply in a transaction where there is no seller, such as a refinance transaction or a transaction with a construction purpose as defined in § 1026.37(a)(9)(iii), or in a simultaneous subordinate financing purchase transaction as defined in § 1026.37(a)(9)(i) if the first-lien Closing Disclosure records the entirety of the seller's transaction.*
- 2. Extra line items.** *For guidance regarding the use of addenda for items disclosed on the Closing Disclosure under § 1026.38(k), see comment 38(j)-2.*
- 3. Identical amounts.** *The amounts disclosed under certain provisions of § 1026.38(k) are the same as the amounts disclosed under certain provisions of § 1026.38(j). See comment 38(j)-3 for a listing of the specific provisions.*

##### **CFPB Guide**

The Settlement Agent completes and discloses the Seller's Transaction column of the Summaries of Transactions table. (§ 1026.19(f)(4)) The requirement to complete the Seller's Transaction column of the Summaries of Transactions table does not apply to a simultaneous subordinate lien loan if the Closing Disclosure for the first lien loan discloses the entirety of the seller's transaction. If the requirement to complete the Seller's Transaction column applies to a simultaneous subordinate lien loan, complete the disclosures based only on the terms and conditions of the subordinate lien loan and do not include Sale Price. (Comment 38(k)(1)-1)

**[45] Itemization of Amounts Due Seller (page 3, Section [M])**

SELLER'S TRANSACTION	
<b>M. Due to Seller at Closing</b>	
01	Sale Price of Property
02	Sale Price of Any Personal Property Included in Sale
03	
04	
05	
06	
07	
08	
<b>Adjustments for Items Paid by Seller in Advance</b>	
09	City/Town Taxes to
10	County Taxes to
11	Assessments to
12	
13	
14	
15	
16	

Amount seller is due at closing

**Y&A Completion Instruction**

Section M (equivalent to the 400 series on the HUD-1) contains information regarding what the seller will receive in the transaction. The processor must complete this section with the sales price of the property, sale price of personal property, and any other similar item. A laundry list of potential items appears in the regulatory text and commentary below. There is a column for the actual dollar amounts that is not shown in the graphic above.

**Regulatory Text § 1026.38(k)(1)****(1) Itemization of amounts due to seller.**

- (i) The total amount due to the seller at the real estate closing, calculated as the sum of items required to be disclosed pursuant to paragraphs (k)(1)(ii) through (ix) of this section, excluding items paid from funds other than closing funds as described in paragraph (k)(4)(i) of this section, labeled **“Due to Seller at Closing”**;
- (ii) The amount of the contract sales price of the property being sold, excluding the price of any tangible personal property if the consumer and seller have agreed to a separate price for such items, labeled **“Sale Price of Property”**;
- (iii) The amount of the sales price of any tangible personal property excluded from the contract sales price pursuant to paragraph (k)(1)(ii) of this section, labeled **“Sale Price of Any Personal Property Included in Sale”**;
- (iv) A description and the amount of other items paid to the seller by the consumer pursuant to the contract of sale or other agreement, such as charges that were not disclosed pursuant to § 1026.37 on the Loan Estimate or items paid by the seller prior to the real estate closing but reimbursed by the consumer at the real estate closing;

- (v) The description “**Adjustments for Items Paid by Seller in Advance**”;
- (vi) The prorated amount of any prepaid taxes due from the consumer to reimburse the seller at the real estate closing, and the time period corresponding to that amount, labeled “**City/Town Taxes**”;
- (vii) The prorated amount of any prepaid taxes due from the consumer to reimburse the seller at the real estate closing, and the time period corresponding to that amount, labeled “**County Taxes**”;
- viii) The prorated amount of any prepaid assessments due from the consumer to reimburse the seller at the real estate closing, and the time period corresponding to that amount, labeled “**Assessments**”; and
- (ix) A description and the amount of additional items paid by the seller prior to the real estate closing that are reimbursed by the consumer at the real estate closing.

## Regulatory Commentary

### *38(k)(1) Itemization of amounts due to seller.*

*1. **Simultaneous subordinate financing.** Section 1026.38(k) does not apply in a simultaneous subordinate financing purchase transaction as defined in § 1026.37(a)(9)(i) if the first-lien Closing Disclosure records the entirety of the seller’s transaction. If § 1026.38(k) applies to a simultaneous subordinate financing transaction, § 1026.38(k) is completed based only on the terms and conditions of the simultaneous subordinate financing transaction and no contract sales price is disclosed under § 1026.38(k)(1)(ii) on the Closing Disclosure for the simultaneous subordinate financing.*

## CFPB Guide

Disclose the amount **Due to Seller at Closing** as the sum of:

- The Sale Price of the Property,
- Sale Price of Any Personal Property Included in Sale,
- Adjustments, and
- Adjustments for Items Paid by Seller in Advance due to the seller pursuant to the terms of the real estate sales contract. (§ 1026.38(k)(1))

**Personal Property** is defined by state law, but could include such items as carpets, drapes, and appliances. Manufactured homes are **not** considered personal property for the **Closing Disclosure**. (Comment 38(j)(1)(ii)-1)

Adjustments due from the consumer to be paid to the seller are disclosed in two categories:

First, amounts owed by the consumer that are neither disclosed on page 2 nor specifically required to be disclosed as Due from Borrower at Closing. Examples of these amounts include:

- A balance in a seller's reserve account transferred to the consumer in connection with an assumed loan,
- Rent that the consumer will collect after closing for a period of time prior to the closing, and
- The treatment of any tenant security deposit. (Comment 38(j)(1)(v)-1)

Second, **Adjustments for Items Paid by Seller in Advance** are disclosed along with the time-period associated with the adjustment. Examples include:

- Taxes paid in advance for an entire year when the closing occurs prior the expiration of the year,
- Flood or hazard insurance premiums when the consumer is being substituted as an insured under the same policy,
- Mortgage insurance in connection with an assumed loan,
- Planned unit development or condominium association assessments paid in advance,
- Fuel or other supplies on hand purchased by the seller which the consumer will use when the consumer takes possession of the property, and
- Ground rent paid in advance by the seller. (Comment 38(j)(1)(x)-1)



**[46] Itemization of Amounts due From Seller (page 3, Section [N])**

N. Due from Seller at Closing	
01	Excess Deposit
02	Closing Costs Paid at Closing (J)
03	Existing Loan(s) Assumed or Taken Subject to
04	Payoff of First Mortgage Loan
05	Payoff of Second Mortgage Loan
06	
07	
08	Seller Credit
09	
10	
11	
12	
13	
Adjustments for Items Unpaid by Seller	
14	City/Town Taxes to
15	County Taxes to
16	Assessments to
17	
18	
19	

The amount that the seller must pay at closing (loan payoffs, for instance).

**Y&A Completion Instruction**

Section N (equivalent to the 500 series on the HUD-1) contains information regarding what amounts the seller must pay in order to complete this transaction. This includes the payoffs of existing loans, tax prorations owed to the borrower, any other seller credits, and any other similar item. A laundry list of potential items appears in the regulatory text and commentary below. There is a column for the actual dollar amounts that is not shown in the graphic above.

**Regulatory Text § 1026.38(k)(2)****(2) Itemization of amounts due from seller.**

- (i) The total amount due from the seller at the real estate closing, calculated as the sum of items required to be disclosed pursuant to paragraphs (k)(2)(ii) through (xiii) of this section, excluding items paid from funds other than closing funds as described in paragraph (k)(4)(i) of this section, labeled **“Due from Seller at Closing”**;
- (ii) The amount of any excess deposit disbursed to the seller prior to the real estate closing, labeled **“Excess Deposit”**;
- (iii) The amount of closing costs designated seller-paid at closing disclosed pursuant to paragraph (h)(2) of this section, labeled **“Closing Costs Paid at Closing”**;
- (iv) The amount of any existing loans that the consumer is assuming, or any loans subject to which the consumer is taking title to the property, labeled **“Existing Loan(s) Assumed or Taken Subject to”**;

- (v) The amount of any loan secured by a first lien on the property that will be paid off as part of the real estate closing, labeled **“Payoff of First Mortgage Loan”**;
- (vi) The amount of any loan secured by a first lien on the property that will be paid off as part of the real estate closing, labeled **“Payoff of Second Mortgage Loan”**;
- (vii) The total amount of money that the seller will provide at the real estate closing as a lump sum not otherwise itemized to pay for loan costs as determined by paragraph (f) of this section and other costs as determined by paragraph (g) of this section and any other obligations of the seller to be paid directly to the consumer, labeled **“Seller Credit”**;
- (viii) A description and amount of any and all other obligations required to be paid by the seller at the real estate closing, including any lien-related payoffs, fees, or obligations;
- (ix) The description **“Adjustments for Items Unpaid by Seller”**;
- (x) The prorated amount of any unpaid taxes due from the seller to reimburse the consumer at the real estate closing, and the time period corresponding to that amount, labeled **“City/Town Taxes”**;
- (xi) The prorated amount of any unpaid taxes due from the seller to the consumer at the real estate closing, and the time period corresponding to that amount, labeled **“County Taxes”**;
- (xii) The prorated amount of any unpaid assessments due from the seller to reimburse the consumer at the real estate closing, and the time period corresponding to that amount, labeled **“Assessments”**; and
- (xiii) A description and the amount of any additional items which have not yet been paid and which the consumer is expected to pay after the real estate closing, but which are attributable in part to a period of time prior to the real estate closing.

## Regulatory Commentary

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

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

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

1. ***Assumption of existing loan obligation of seller by consumer.*** *If the consumer is assuming or taking title subject to existing liens and the amounts of the outstanding balance of the liens are to be deducted from the sales price, the amounts of the outstanding balance of the liens must be disclosed under § 1026.38(k)(2)(iv).*
2. ***Other seller credits.*** *Any other obligations of the seller to be paid directly to the consumer, such as credits for issues identified at a walk-through of the property prior to the real estate closing, are disclosed under § 1026.38(k)(2)(vii).*

**Paragraph 38(k)(2)(vii).**

1. **Simultaneous subordinate financing - seller contribution.** *If a simultaneous subordinate financing transaction is disclosed with the alternative tables pursuant to § 1026.38(d)(2) and (e), the first-lien Closing Disclosure must include any contributions from the seller toward the simultaneous subordinate financing that are disclosed in the payoffs and payments table under § 1026.38(t)(5)(vii)(B) on the simultaneous subordinate financing Closing Disclosure. For example, assume the simultaneous subordinate financing transaction is disclosed using the alternative tables pursuant to § 1026.38(d)(2) and (e) and the seller contributes \$200.00 toward the closing costs of the simultaneous subordinate financing. The simultaneous subordinate financing Closing Disclosure must include the \$200.00 contribution in the payoffs and payments table pursuant to § 1026.38(t)(5)(vii)(B) and comments 38(t)(5)(vii)(B)-1 and -2. The first-lien Closing Disclosure must include the \$200.00 contribution in the summaries of transactions table for the seller's transaction under § 1026.38(k)(2)(vii).*

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

1. **Satisfaction of other seller obligations.** *Seller obligations, other than second liens, that must be paid off to clear title to the property must be disclosed pursuant to § 1026.38(k)(2)(viii). Examples of disclosures pursuant to § 1026.38(k)(2)(viii) include the satisfaction of outstanding liens imposed due to Federal, State, or local income taxes, real estate property tax liens, judgments against the seller reduced to a lien upon the property, or any other obligations the seller wishes the closing agent to pay from their proceeds at the real estate closing.*
2. **Consumer satisfaction of outstanding subordinate loans.** *If the consumer is satisfying existing liens which will not be deducted from the sales price, the amount of the outstanding balance of the loan must be disclosed under § 1026.38(k)(2)(viii). For example, the amount of any second lien which will be paid as part of the real estate closing that is not deducted from the seller's proceeds under § 1026.38(k)(2)(iv), is disclosed under § 1026.38(k)(2)(viii). For payments to the subordinate lien holder, any amounts paid must be disclosed, and other amounts paid by or on behalf of the seller must be disclosed as paid outside of closing funds under § 1026.38(j)(2)(vi). For additional discussion, see comment 38(j)(2)(vi)-2.*
3. **Escrows held by closing agent for payment of invoices received after consummation.** *Funds to be held by the closing agent for the payment of either repairs, or water, fuel, or other utility bills that cannot be prorated between the parties at closing because the amounts used by the seller prior to closing are not yet known must be disclosed under § 1026.38(k)(2)(viii). Subsequent disclosure of the actual amount of these post-closing items to be paid from closing funds is optional.*

**CFPB Guide**

Disclose the amount Due from Seller at Closing as the sum of:

- Any Excess Deposit,
- Closing Costs Paid at Closing by the Seller,
- Existing Loan(s) Assumed or Taken Subject to by the consumer,

- Payoff of First Mortgage Loan,
- Payoff of Second Mortgage Loan,
- Payment of other seller obligations,
- Seller Credit,
- Adjustments, and
- Adjustments for Items Unpaid by Seller due to the consumer pursuant to the terms of the real estate sale contract. (§ 1026.38(k)(2))

Excess Deposit is the amount of any deposit made by the consumer that has been disbursed to the seller prior to closing. (Comment 38(k)(2)(ii)-1) Note that the calculation of the excess deposit does not include any deposits held by the real estate brokerage.

Seller Credit is an amount the seller is giving as a general credit not tied to a specific charge on page 2 or is making as an allowance to the consumer for items to purchase separately. (§ 1026.38(k)(2)(vii)) The amount of Seller Credit would include any credits to the consumer as the result of a walk-through of the property prior to the closing. (Comment 38(k)(2)(iv)-2) However, if the amount of a credit is attributable to a charge listed on page 2, then the amount should be listed with the applicable item on page 2 and designated as Seller-Paid At Closing or Seller-Paid Before Closing, as appropriate. (Comment 38(j)(2)(v)-1)

Disclose the Payoff of the First Mortgage Loan, if any, (§ 1026.38(k)(2)(v)) and then the Payoff of the Second Mortgage Loan, if any. (§ 1026.38(k)(2)(vi)) Disclose the payoff or satisfaction amounts for any additional seller obligations as separately itemized amounts. (§ 1026.38(k)(2)(viii)) Examples of these seller obligations include, but are not limited to:

- Satisfaction of outstanding liens imposed due to Federal, State or local income taxes,
- Real estate property tax liens,
- Judgments against the seller reduced to a lien upon the property,
- Other obligations the seller wishes the Settlement Agent to pay from the seller's proceeds at closing, and (Comment 38(k)(2)(viii)-1)

Funds to be held by the Settlement Agent for repairs or the payment of water, fuel, or other utility bills that cannot be prorated between the parties at closing because the amounts used by the seller prior to closing are not yet known at closing. Subsequent disclosure of a revised Closing Disclosure after the repairs are made or the utility bill is received is optional. (Comment 38(k)(2)(viii)-3)

Disclose any amount paid with funds other than closing funds in connection with a subordinate loan payoff with a statement that such amounts were paid from outside of closing funds. (Comment 38(k)(2)(viii)-2)

Adjustments for Items Unpaid by Seller due to the consumer to be paid by the seller pursuant to the real estate sales contract has two components:

First, disclose amounts owed by the seller with the time period associated with the adjustments. Examples include:

- Taxes paid in arrears for an entire year when the closing occurs prior the start of the year,
- Flood or hazard insurance premiums when the consumer is being substituted as an assured under the same policy,
- Mortgage insurance in connection with an assumed loan,
- Planned unit development or condominium assessments not yet paid, and
- Ground rent not yet paid by the seller. (§ 1026.38(k)(2)(ix), (x), (xi), (xii))

Second, disclose amounts owed by the seller that are neither disclosed on page 2 nor specifically disclosed as Due from Seller at Closing. (§ 1026.38(k)(2)(xiii)) Examples of these amounts include:

- Utilities used but not paid for by the seller,
- Rent collected in advance by the seller from a tenant for a period of extending beyond the closing date, and
- Interest on loan assumptions. (Comment 38(j)(2)(xi)-1)

**[47] Calculation of Seller's Transaction (page 3, bottom right)**

CALCULATION	
Total Due to Seller at Closing (M)	
Total Due from Seller at Closing (N)	
Cash <input type="checkbox"/> From <input type="checkbox"/> To Seller	

Calculation of the amount that the seller will receive of will have to pay at closing.

**Y&A Completion Instruction**

This calculation totals Sections M and N. By using check boxes, the calculation indicates whether the seller will be receiving cash in the transaction, or will have to pay additional amounts to close the transaction. This calculation is the equivalent of the 600 series on the HUD-1. The processor should not have to actually do any input for this calculation. There is a column for the actual dollar amounts that is not shown in the graphic above.

**Regulatory Text § 1026.38(k)(3)**

**(3) Calculation of seller's transaction.** Under the label “**Calculation**”:

- (i) The amount described in paragraph (k)(1)(i) of this section, labeled “**Total Due to Seller at Closing**”;
- (ii) The amount described in paragraph (k)(2)(i) of this section, disclosed as a negative number, labeled “**Total Due from Seller at Closing**”; and
- (iii) A statement that the disclosed amount is due from or to the seller, and the amount due from or to the seller at closing, calculated by the sum of the amounts disclosed pursuant to paragraphs (k)(3)(i) and (k)(3)(ii) of this section, labeled “**Cash.**”

**Regulatory Commentary**

1. **Stating if amount is due to or from seller.** *To comply with § 1026.38(k)(3)(iii), the creditor must state either the cash required from the seller at closing, or cash payable to the seller at closing.*
2. **Methodology.** *To calculate the cash due to or from the consumer, total the amounts disclosed under § 1026.38(k)(3)(i) and (ii). If that calculation results in a positive amount, the amount is due to the seller. If the calculation results in a negative amount, the amount is due from the seller.*

## CFPB Guide

Under a subheading of Calculation:

- Disclose Total Due to the Seller at Closing, as a positive number.
- Disclose Total Due from Seller at Closing, as a negative number. (§ 1026.38(k)(3))
- Disclose the sum of Total Due to the Seller at Closing and Total Due from Seller at Closing as a positive number. When the result is a positive number, disclose the amount as Cash to Seller. When the result is a negative number, disclose the amount as Cash from Seller. The sum is disclosed as a positive number in either event. (Comment 38(k)(3)-2)



***[48] Items Paid Outside of Closing Funds (page 3, Sections [M] and [N])*****Y&A Completion Instruction**

Although unlikely, it is possible that some items may be paid for at closing from funds that are not part of the loan transaction itself. These items still need to be shown on the Closing Disclosure, are listed in the appropriate category, and the processor lists these items as P.O.C. These items have no impact on any calculation required by the disclosures.

**Regulatory Text § 1026.38(k)(4)****(4) Items paid outside of closing funds.**

- (i) Charges that are not paid from closing funds but that would otherwise be disclosed in the table described in paragraph (k) of this section, should be marked with the phrase **“Paid Outside of Closing”** or the acronym **“P.O.C.”** and include a statement of the party making the payment.
- (ii) For purposes of this paragraph (k), **“closing funds”** are defined as funds collected and disbursed at real estate closing.

**Regulatory Commentary**

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

**CFPB Guide**

None.

## Section 13: Loan Disclosures

### 12 CFR § 1026.38(l)

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#### *General Language*

#### **Y&A Completion Instruction**

Some of the disclosures in this section are disclosures that have been completed for years. Some are new. The goal of these disclosures is to give the consumer specific information regarding the features of the consumer's loan. Each feature should be clearly understood by the consumer. This is accomplished mostly through a system of check boxes.

#### **Regulatory Text**

(l) **Loan disclosures.** Under the master heading “**Additional Information About This Loan**” and under the heading “**Loan Disclosures**”:

#### **Regulatory Commentary**

*None.*

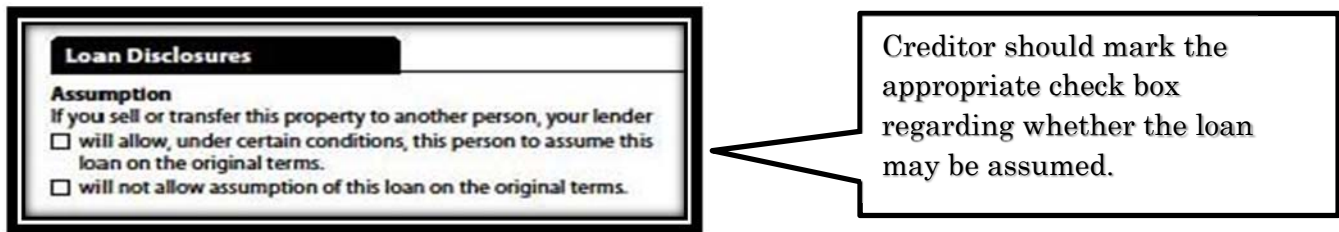
#### **CFPB Guide**

On page 4 of the Closing Disclosure, a Loan Disclosures table is shown with the heading Additional Information About This Loan.

In the Loan Disclosures table, disclose:

- Information concerning future **Assumption** of the loan by a subsequent purchaser,
- Whether the legal obligation contains a **Demand Feature** that can require early payment of the loan,
- The terms of the legal obligation that impose a fee for a **Late Payment** including the amount of time that passes before a fee is imposed and the amount of such fee or how it is calculated,
- Whether the regular periodic payments can cause the principal balance of the loan to increase, creating **Negative Amortization**,
- The creditor's policy in relation to **Partial Payments** by the consumer,

- A statement that the consumer is granting a **Security Interest** in the **Property** (along with an identification of the **Property**), and
- Information related to any **Escrow Account** held by the servicer (or a statement that an Escrow Account has **not** been established with a description of estimated property costs during the first year after consummation). (§ 1026.38(l)(1)-(7))

**[49] Assumption (page 4, Loan Disclosures)**


**Loan Disclosures**

**Assumption**  
If you sell or transfer this property to another person, your lender

☐ will allow, under certain conditions, this person to assume this loan on the original terms.

☐ will not allow assumption of this loan on the original terms.

Creditor should mark the appropriate check box regarding whether the loan may be assumed.

**Y&A Completion Instruction**

The processor indicates whether the loan is assumable by a third party. This is a “yes” or “no” question. The regulation refers to the rules set forth in the Loan Estimate for further details.

**Regulatory Text § 1026.38(l)(1)**

- (1) **Assumption.** Under the subheading “**Assumption,**” the information required by § 1026.37(m)(2).

**Regulatory Commentary**

*None.*

**Loan Estimate Regulatory Text and Commentary Assistance****Regulatory Text § 1026.37(m)(2)**

- (2) **Assumption.** A statement of whether a subsequent purchaser of the property may be permitted to assume the remaining loan obligation on its original terms, labeled “**Assumption.**”

**Regulatory Commentary**

1. **Disclosure.** Section 1026.37(m)(2) requires the creditor to disclose whether or not a third party may be allowed to assume the loan on its original terms if the property is sold or transferred by the consumer. In many cases, the creditor cannot determine, at the time the disclosure is made, whether a loan may be assumable at a future date on its original terms. For example, the assumption clause commonly used in mortgages sold to the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation conditions an assumption on a variety of factors, such as the creditworthiness of the subsequent borrower, the potential for impairment of the creditor’s security, and the execution of an assumption agreement by the

*subsequent borrower. If the creditor can determine that such assumption is not permitted, the creditor complies with § 1026.37(m)(2) by disclosing that the loan is not assumable. In all other situations, including where assumption of a loan is permitted or is dependent on certain conditions or factors, or uncertainty exists as to the future assumability of a mortgage loan, the creditor complies with § 1026.37(m)(2) by disclosing that, under certain conditions, the creditor may allow a third party to assume the loan on its original terms.*

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

## **CFPB Guide**

None.

**[50] Demand Feature (page 4, Loan Disclosures)**

<b>Demand Feature</b> Your loan <input type="checkbox"/> has a demand feature, which permits your lender to require early repayment of the loan. You should review your note for details. <input type="checkbox"/> does not have a demand feature.	Creditor should mark the appropriate check box as to whether the loan has a demand feature.
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**Y&A Completion Instruction**

This disclosure does not exist on the Loan Estimate. However, while the text is more lengthy, this is essentially the same demand feature disclosure that creditors have given for many years. There is no “on demand” option, merely demand feature. The processor completes this “yes” or “no” question based on the terms of the note. It is likely that there will only be a demand feature for loans to executive officers under Regulation O.

**Regulatory Text § 1026.38(l)(2)**

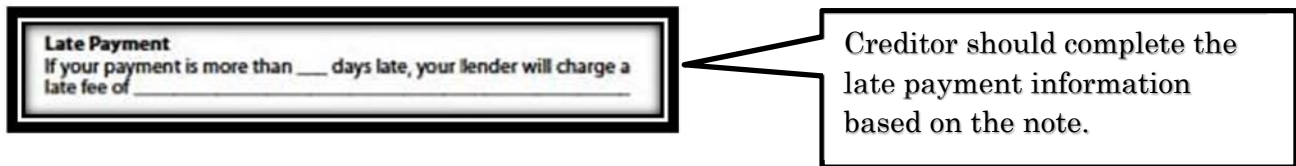
(2) **Demand feature.** Under the subheading “**Demand Feature,**” a statement of whether the legal obligation permits the creditor to demand early repayment of the loan and, if the statement is affirmative, a reference to the note or other loan contract for details.

**Regulatory Commentary**

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

**CFPB Guide**

None.

**[51] Late Payment (page 4, Loan Disclosures)****Y&A Completion Instruction**

The processor completes the information regarding late payment is based on the language in the note. The regulation relies on the Loan Estimate requirements for completion.

**Regulatory Text § 1026.38(l)(3)**

- (3) **Late payment.** Under the subheading “**Late Payment,**” the information required by § 1026.37(m)(4).

**Regulatory Commentary**

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

**Loan Estimate Regulatory Text and Commentary Assistance****Regulatory Text § 1026.37(m)(4)**

- (4) **Late payment.** A statement detailing any charge that may be imposed for a late payment, stated as a dollar amount or percentage charge of the late payment amount, and the number of days that a payment must be late to trigger the late payment fee, labeled “**Late Payment.**”

**Regulatory Commentary**

1. **Definition.** Section 1026.37(m)(4) requires a disclosure if charges are added to an individual delinquent installment by a creditor that otherwise considers the transaction ongoing on its original terms. Late payment charges do not include:

- (i) the right of acceleration;
- (ii) fees imposed for actual collection costs, such as repossession charges or attorney’s fees;



(iii) referral and extension charges; or

(iv) the continued accrual of simple interest at the contract rate after the payment due date.

*However, an increase in the interest rate on account of a late payment by the consumer is a late payment charge to the extent of the increase.*

**2. Applicability of State law.** *Many State laws authorize the calculation of late charges as either a percentage of the delinquent payment amount or a specified dollar amount, and permit the imposition of the lesser or greater of the two calculations. The language provided in the disclosure may reflect the requirements and alternatives allowed under State law.*

## CFPB Guide

None.

## [52] Negative Amortization (page 4, Loan Disclosures)

**Negative Amortization (Increase in Loan Amount)**  
Under your loan terms, you

☐ are scheduled to make monthly payments that do not pay all of the interest due that month. As a result, your loan amount will increase (negatively amortize), and your loan amount will likely become larger than your original loan amount. Increases in your loan amount lower the equity you have in this property.

☐ may have monthly payments that do not pay all of the interest due that month. If you do, your loan amount will increase (negatively amortize), and, as a result, your loan amount may become larger than your original loan amount. Increases in your loan amount lower the equity you have in this property.

☐ do not have a negative amortization feature.

Creditor marks the appropriate check box regarding negative amortization. It will happen, might happen, or will not happen.

### Y&A Completion Instruction

The processor completes this section based on whether the loan has the possibility of negative amortization. The three boxes tell the customer that there will be negative amortization, there is a possibility of negative amortization, or there will not be negative amortization. The processor merely marks the correct answer based on the note.

### Regulatory Text § 1026.38(l)(4)

- (4) **Negative amortization.** Under the subheading “**Negative Amortization (Increase in Loan Amount),**” a statement of whether the regular periodic payments may cause the principal balance to increase.
- (i) If the regular periodic payments do not cover all of the interest due, the creditor must provide a statement that the principal balance will increase, such balance will likely become larger than the original loan amount, and increases in such balance lower the consumer’s equity in the property.
  - (ii) If the consumer may make regular periodic payments that do not cover all of the interest due, the creditor must provide a statement that, if the consumer chooses a monthly payment option that does not cover all of the interest due, the principal balance may become larger than the original loan amount and the increases in the principal balance lower the consumer’s equity in the property.

### Regulatory Commentary

*None.*

### CFPB Guide

*None.*

### ***[53] Partial Payment Policy (page 4, Loan Disclosures)***

<p><b>Partial Payments</b></p> <p>Your lender</p> <p><input type="checkbox"/> may accept payments that are less than the full amount due (partial payments) and apply them to your loan.</p> <p><input type="checkbox"/> may hold them in a separate account until you pay the rest of the payment, and then apply the full payment to your loan.</p> <p><input type="checkbox"/> does not accept any partial payments.</p> <p>If this loan is sold, your new lender may have a different policy.</p>	<p>Creditor marks the appropriate check box for partial payments. Accepted and applied, accepted and held till there is enough for a full payment, not accepted.</p>
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### **Y&A Completion Instruction**

The processor must choose from three options. The three choices are that the creditor will accept partial payments and immediately apply them to the loan, the creditor will accept partial payments and hold them until enough funds are available for a full payment, or the creditor will not accept partial payments. The processor completes this section based on the institution's policy for the loan type being reviewed, as the answer can change from loan type to loan type.

### **Regulatory Text § 1026.38(l)(5)**

**(5) Partial payment policy.** Under the subheading **“Partial Payments”**:

- (i) If periodic payments that are less than the full amount due are accepted, a statement that the creditor, using the term **“lender,”** may accept partial payments and apply such payments to the consumer's loan;
- (ii) If periodic payments that are less than the full amount due are accepted but not applied to a consumer's loan until the consumer pays the remainder of the full amount due, a statement that the creditor, using the term **“lender,”** may hold partial payments in a separate account until the consumer pays the remainder of the payment and then apply the full periodic payment to the consumer's loan;
- (iii) If periodic payments that are less than the full amount due are not accepted, a statement that the creditor, using the term **“lender,”** does not accept any partial payments; and
- (iv) A statement that, if the loan is sold, the new creditor, using the term **“lender,”** may have a different policy.

### **Regulatory Commentary**

*None.*

## CFPB Guide

When disclosing its partial payments policy, the creditor checks at least one of three options:

- Partial Payments will be accepted and applied to the loan;
- Partial Payments will be accepted, but held in a separate account until the remainder of the full amount due is received; or
- Partial Payments will not be accepted. (§ 1026.38(l)(5))

The creditor may check multiple boxes for the partial payments disclosure in some circumstances. But note that, if there are any circumstances where the creditor would accept partial payments, the creditor cannot check the third option indicating Partial Payments will not be accepted. As a result, the third box should not be checked if either of the first two options are checked.

## [54] Security Interest (page 4, Loan Disclosures)

<p><b>Security Interest</b>          You are granting a security interest in _____          _____          _____</p> <p>You may lose this property if you do not make your payments or satisfy other obligations for this loan.</p>
---

Creditor inserts address or description and zip code. Additional pages are okay. Personal property can be listed if it will fit.

### Y&A Completion Instruction

The processor completes this section with the property address including zip code for the property securing the loan. If there is no street address, or otherwise is not available, a good description of the property with the zip code is acceptable. Personal property can also be inserted here (at creditor's option) if it will fit, and an additional page may be added as necessary.

### Regulatory Text § 1026.38(l)(6)

- (6) **Security interest.** Under the subheading “**Security Interest,**” a statement that the consumer is granting a security interest in the property securing the transaction, the property address including a zip code, and a statement that the consumer may lose the property if the consumer does not make the required payments or satisfy other requirements under the legal obligation.

### Regulatory Commentary

- 1. Alternate property address.** Section 1026.38(l)(6) requires disclosure of the address for the property that secures the credit, including the zip code. If the address is unavailable, § 1026.38(l)(6) requires disclosure of other location information for the property, such as a lot number; however, disclosure of a zip code is required in all instances. For transactions secured by a consumer's interest in a timeshare plan, the creditor may disclose as other location information a lot, square, or other such number or other legal description of the property assigned by the local governing authority, or if no such number or description is available, disclose the name of the timeshare property or properties with a designation indicating that the property is an interest in a timeshare plan.
- 2. Personal property.** Where personal property also secures the credit transaction, a description of that property may be disclosed, at the creditor's option, pursuant to § 1026.38(l)(6). If the form does not provide enough space to disclose a description of personal property to be disclosed under § 1026.38(l)(6), an additional page may be used and appended to the end of the form provided that the creditor complies with the requirements of § 1026.38(t)(3). The creditor may use one addendum to disclose the personal property under § 1026.38(a)(3)(vi) and (l)(6). See comment 38(a)(3)(vi)-1.

**CFPB Guide**

None.

**[55] Escrow Account (page 4, right column)**

<b>Escrow Account</b> <b>For now, your loan</b> <input type="checkbox"/> will have an escrow account (also called an "impound" or "trust" account) to pay the property costs listed below. Without an escrow account, you would pay them directly, possibly in one or two large payments a year. Your lender may be liable for penalties and interest for failing to make a payment.		
<b>Escrow</b>		
Escrowed Property Costs over Year 1		Estimated total amount over year 1 for your escrowed property costs:
Non-Escrowed Property Costs over Year 1		Estimated total amount over year 1 for your non-escrowed property costs:
		You may have other property costs.
Initial Escrow Payment		A cushion for the escrow account you pay at closing. See Section G on page 2.
Monthly Escrow Payment		The amount included in your total monthly payment.

Creditor completes all areas of this table if an escrow account is being created.

**Y&A Completion Instruction**

The processor completes this initial section of the escrow disclosure if an escrow account is being established. It gives basic information, including (1) what will be paid from the escrow account during the first year, (2) property expenses that the borrower will have pay directly (such as homeowner's association dues), (3) the initial escrow amount due to open the account, and (4) the monthly escrow payment.

**Regulatory Text § 1026.38(l)(7)**

(7) **Escrow account.** Under the subheading **"Escrow Account"**:

- (i) Under the reference "For now," a statement that an escrow account may also be called an impound or trust account, a statement of whether the creditor has established or will establish (at or before consummation) an escrow account in connection with the transaction, and the information required under paragraph (l)(7)(i)(A) and (B) of this section:
  - (A) A statement that the creditor may be liable for penalties and interest if it fails to make a payment for any cost for which the escrow account is established, a statement that the consumer would have to pay such costs directly in the absence of the escrow account, and a table, titled "Escrow," that contains, if an escrow account is or will be established, an itemization of the amounts listed in this paragraph (l)(7)(i)(A)(I) through (4);



- (1) The total amount the consumer will be required to pay into an escrow account over the first year after consummation, labeled “Escrowed Property Costs over Year 1,” together with a descriptive name of each charge to be paid (in whole or in part) from the escrow account, calculated as the amount disclosed under paragraph (l)(7)(i)(A)(4) of this section multiplied by the number of periodic payments scheduled to be made to the escrow account during the first year after consummation;
  - (2) The estimated amount the consumer is likely to pay during the first year after consummation for the mortgage-related obligations described in § 1026.43(b)(8) that are known to the creditor and that will not be paid using escrow account funds, labeled “Non-Escrowed Property Costs over Year 1,” together with a descriptive name of each such charge and a statement that the consumer may have to pay other costs that are not listed;
  - (3) The total amount disclosed under paragraph (g)(3) of this section, a statement that the payment is a cushion for the escrow account, labeled “Initial Escrow Payment,” and a reference to the information disclosed under paragraph (g)(3) of this section;
  - (4) The amount the consumer will be required to pay into the escrow account with each periodic payment during the first year after consummation, labeled “Monthly Escrow Payment.”
  - (5) A creditor complies with the requirements of paragraphs (l)(7)(i)(A)(1) and (l)(7)(i)(A)(4) of this section if the creditor bases the numerical disclosures required by those paragraphs on amounts derived from the escrow account analysis required under Regulation X, 12 CFR 1024.17.
- (B) A statement of whether the consumer will not have an escrow account, the reason why an escrow account will not be established, a statement that the consumer must pay all property costs, such as taxes and homeowner’s insurance, directly, a statement that the consumer may contact the creditor to inquire about the availability of an escrow account, and a table, titled “No Escrow,” that contains, if an escrow account will not be established, an itemization of the following:
- (1) The estimated total amount the consumer will pay directly for the mortgage-related obligations described in § 1026.43(b)(8) during the first year after consummation that are known to the creditor and a statement that, without an escrow account, the consumer must pay the identified costs, possibly in one or two large payments, labeled “Property Costs over Year 1”; and
  - (2) The amount of any fee the creditor imposes on the consumer for not establishing an escrow account in connection with the transaction, labeled “Escrow Waiver Fee.”

☐ will not have an escrow account because ☐ you declined it ☐ your lender does not offer one. You must directly pay your property costs, such as taxes and homeowner's insurance. Contact your lender to ask if your loan can have an escrow account.

No Escrow	
Estimated Property Costs over Year 1	Estimated total amount over year 1. You must pay these costs directly, possibly in one or two large payments a year.
Escrow Waiver Fee	

Creditor completes this section of the disclosure if no escrow account is being established.

## Y&A Completion Instruction

The processor completes this second portion of the escrow disclosure in situations where no escrow account will be established. The disclosure alerts the consumer to the total amount that the consumer will have to pay to meet the consumer's annual obligations outside of the loan payment, and a comment about any escrow waiver fee that the institution may have charged (which is a memo field – the escrow waiver fee needs to be quoted in Section A).

## Regulatory Text

(B) A statement of whether the consumer will not have an escrow account, the reason why an escrow account will not be established, a statement that the consumer must pay all property costs, such as taxes and homeowner's insurance, directly, a statement that the consumer may contact the creditor to inquire about the availability of an escrow account, and a table, titled **"No Escrow,"** that contains, if an escrow account will not be established, an itemization of the following:

- (1) The estimated total amount the consumer will pay directly for charges described in § 1026.37(c)(4)(ii) during the first year after consummation that are known to the creditor and a statement that, without an escrow account, the consumer must pay the identified costs, possibly in one or two large payments, labeled **"Property Costs over Year 1";** and
- (2) The amount of any fee the creditor imposes on the consumer for not establishing an escrow account in connection with the transaction, labeled **"Escrow Waiver Fee."**

**In the future,**  
Your property costs may change and, as a result, your escrow payment may change. You may be able to cancel your escrow account, but if you do, you must pay your property costs directly. If you fail to pay your property taxes, your state or local government may (1) impose fines and penalties or (2) place a tax lien on this property. If you fail to pay any of your property costs, your lender may (1) add the amounts to your loan balance, (2) add an escrow account to your loan, or (3) require you to pay for property insurance that the lender buys on your behalf, which likely would cost more and provide fewer benefits than what you could buy on your own.

This completes the escrow disclosure, and is boilerplate.

## Y&A Completion Instruction

This third portion of the escrow disclosure discusses the future, the possibility of cancelling escrow, the risks involved, and the potential for negative events if normally escrowed items are not paid on time. No processor actions are required.

## Regulatory Text

(ii) Under the reference “**In the future**”:

- (A) A statement that the consumer’s property costs may change and that, as a result, the consumer’s escrow payment may change;
- (B) A statement that the consumer may be able to cancel any escrow account that has been established, but that the consumer is responsible for directly paying all property costs in the absence of an escrow account; and
- (C) A description of the consequences if the consumer fails to pay property costs, including the actions that a State or local government may take if property taxes are not paid and the actions the creditor may take if the consumer does not pay some or all property costs, such as adding amounts to the loan balance, adding an escrow account to the loan, or purchasing a property insurance policy on the consumer’s behalf that may be more expensive and provide fewer benefits than what the consumer could obtain directly.

## Regulatory Commentary

### **38(l)(7) Escrow account.**

1. **Definition of escrow account.** *For a description of an escrow account for purposes of the escrow account disclosure under § 1026.38(l)(7), see the definition of “escrow account” in 12CFR 1024.17(b).*
2. **Addenda.** *Additional pages may be attached to the Closing Disclosure to add lines, as necessary, to accommodate the complete listing of all items required to be shown on the Closing Disclosure under § 1026.38(l)(7). See § 1026.38(t)(5)(ix). A reference such as “See attached page for additional information” must be placed in the applicable section of the Closing Disclosure, if an additional page is used to list all items required to be shown.*

### **Paragraph 38(l)(7)(i)(A)(2).**

1. **Estimated costs not paid by escrow account funds.** *Section 1026.38(l)(7)(i)(A)(2) requires the creditor to estimate the amount the consumer is likely to pay during the first year after consummation for the mortgage-related obligations described in § 1026.43(b)(8) that are known to the creditor and that will not be paid using escrow account funds. The creditor discloses this amount only if an escrow account will be established.*

2. **During the first year.** Section 1026.38(l)(7)(i)(A)(2) requires disclosure based on payments during the first year after consummation. Alternatively, if the creditor elects to make the disclosures required by § 1026.38(l)(7)(i)(A)(1) and (l)(7)(i)(A)(4) based on amounts derived from the escrow account analysis required under Regulation X, 12 CFR 1024.17, then the creditor may make the disclosures required by § 1026.38(l)(7)(i)(A)(2) based on a 12-month period beginning with the borrower's initial payment date (rather than beginning with consummation). See comment 38(l)(7)(i)(A)(5)-1.

**Paragraph 38(l)(7)(i)(A)(4).**

1. **Estimated costs paid using escrow account funds.** The amount the consumer will be required to pay into an escrow account with each periodic payment during the first year after consummation disclosed under § 1026.38(l)(7)(i)(A)(4) is equal to the sum of the amount of estimated escrow payments disclosed under § 1026.38(c)(1) (as described in § 1026.37(c)(2)(iii)) and the amount the consumer will be required to pay into an escrow account to pay some or all of the mortgage insurance premiums disclosed under § 1026.38(c)(1) (as described in § 1026.37(c)(2)(ii)).

**Paragraph 38(l)(7)(i)(A)(5).**

1. **During the first year.** Section 1026.38(l)(7)(i)(A)(4) requires disclosure of the amount the consumer will be required to pay into the escrow account with each periodic payment during the first year after consummation. Section 1026.38(l)(7)(i)(A)(1) requires a disclosure, labeled "Escrowed Property Costs over Year 1," calculated as the amount disclosed under § 1026.38(l)(7)(i)(A)(4) multiplied by the number of periodic payments scheduled to be made to the escrow account during the first year after consummation. For example, creditors may base such disclosures on less than 12 payments if, based on the payment schedule dictated by the legal obligation, fewer than 12 periodic payments will be made to the escrow account during the first year after consummation. Alternatively, § 1026.38(l)(7)(i)(A)(5) permits the creditor to base the disclosures required by § 1026.38(l)(7)(i)(A)(1) and (4) on amounts derived from the escrow account analysis required under Regulation X, 12 CFR 1024.17, even if those disclosures differ from what would otherwise be disclosed under § 1026.38(l)(7)(i)(A)(1) and (4) - as, for example, when there are fewer than 12 periodic payments scheduled to be made to the escrow account during the first year after consummation.

**Paragraph 38(l)(7)(i)(B)(1).**

1. **Estimated costs paid directly by the consumer.** The creditor discloses an amount under § 1026.38(l)(7)(i)(B)(1) only if no escrow account will be established.
2. **During the first year.** Section 1026.38(l)(7)(i)(B)(1) requires disclosure based on payments during the first year after consummation. A creditor may comply with this requirement by basing the disclosure on a 12-month period beginning with the borrower's initial payment date or on a 12-month period beginning with consummation.

## CFPB Guide

When an Escrow Account is established, disclose:

- The amount of Escrowed Property Costs over Year 1 with a list of the costs that will be paid by the Escrow Account,
- The amount of Non-Escrowed Property Costs over Year 1 with a list of the costs that will not be paid by the Escrow Account (to the extent there is room to list the costs in the space provided),
- Initial Escrow Payment, and
- Monthly Escrow Payment. (§ 1026.38(l)(7)(i)(A))

When an Escrow Account is not established, disclose:

- The amount of Estimated Property Costs over Year 1, and
- The amount of any Escrow Waiver Fee imposed for waiving the creation of an Escrow Account with the loan. (§ 1026.38(l)(7)(i)(B))

Property Costs include:

- Property Taxes,
- Homeowner's Insurance,
- Charges imposed by a cooperative, condominium or homeowners association,
- Ground rent,
- Leasehold payments, and
- Certain insurance premiums or charges if required by the lender. §§ 1026.38(l)(7)(i); 1026.37(c)(4)(ii); 1026.43(b)(8))

The Initial Escrow Payment can be the total of the amounts disclosed under Initial Escrow Payment at Closing on page 2 of the Closing Disclosure. The Initial Escrow Payment is the amount initially added to the escrow account regardless of the person contributing the funds (consumer, seller, lender, etc.). (§§ 1026.38(l)(7)(i)(A)(3); 1026.38(g)(3))

## Section 14: Adjustable Payment Table

### 12 CFR § 1026.38(m)

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*[56] Adjustable Payment Table (page 4, bottom left)*

Adjustable Payment (AP) Table	
Interest Only Payments?	
Optional Payments?	
Step Payments?	
Seasonal Payments?	
Monthly Principal and Interest Payments	
First Change/Amount	
Subsequent Changes	
Maximum Payment	

LOAN ESTIMATE

This table is the same table that appears in the Loan Estimate, and follows the Loan Estimate rules.

#### Y&A Completion Instruction

This is the same Adjustable Payment table that was discussed at length in the Loan Estimate manual.

The AP table includes an interest only disclosure. The processor must answer “Yes” or “No.” If the answer is yes, then the processor must include additional information about the interest only payments, such as the length of the interest only period.

The processor must indicate whether the loan contains any provision for optional payments in the AP table. Optional payments are scheduled payments that are higher than the payment amount shown on the note. The response is either “Yes” or “No.” If the answer is yes, then there must be additional information about the optional payments as appropriate.

The processor must indicate in the AP table any step payments that occur. Generally step payments occur when the interest rate remains unchanged, but the payment gradually increase over the life of the loan. The initial response is either “Yes” or “No.” If the answer is yes, then there must be additional information about the step payments.

The processor must answer whether the loan has seasonal payments within the AP table. The initial response is either “Yes” or “No.” If the answer is yes, then there must be additional information about the seasonal payments. (For instance, payments in March and September).

The processor must complete the AP table section indicating what the subsequent principal and interest payments might be for the loan. There are 3 items required – the first change and amount, what can happen in subsequent changes, and what is the maximum payment that can be reached during the life of the loan. This information may be a duplication of information that appears on the front page of the document, and should not require any additional input.



The Closing Disclosure regulation sends the reader to the Loan Estimate rules for all further information.

## Regulatory Text

- (m) **Adjustable payment table.** Under the master heading “**Additional Information About This Loan**” required by paragraph (l) of this section, and under the heading “**Adjustable Payment (AP) Table**,” the table required to be disclosed by § 1026.37(i).

## Regulatory Commentary

1. **Guidance.** See the commentary to § 1026.37(i) for guidance regarding the disclosure required by § 1026.38(m).
2. **Master heading.** The disclosure required by § 1026.38(m) is required to be provided under a different master heading than the disclosure required by § 1026.37(i), but all other requirements applicable to the disclosure required by § 1026.37(i) apply to the disclosure required by § 1026.38(m).
3. **When table is not permitted to be disclosed.** Like the disclosure required by § 1026.37(i), the disclosure required by § 1026.38(m) is required only if the periodic principal and interest payment may change after consummation based on a loan term other than on an adjustment to the interest rate or if the transaction is a seasonal payment product as described under § 1026.37(a)(10)(ii)(E). If the transaction does not contain these terms, this table is not permitted on the Closing Disclosure. See comments 37-1 and 37(i)-1.
4. **Final loan terms.** The disclosures required by § 1026.38(m) must include the information required by § 1026.37(i), as applicable, but the creditor must make the disclosure using the information that is required by § 1026.19(f). See comments 19(f)(1)(i)-1 and -2.

## Loan Estimate Regulatory Text and Commentary Assistance

### Regulatory Text § 1026.37(i)

- (1) **Interest only payments.** Whether the transaction is an interest only product pursuant to paragraph (a)(10)(ii)(B) of this section as an affirmative or negative answer to the question “**Interest Only Payments?**” and, if an affirmative answer is disclosed, the period during which interest only periodic payments are scheduled.
- (2) **Optional payments.** Whether the terms of the legal obligation expressly provide that the consumer may elect to pay a specified periodic principal and interest payment in an amount other than the scheduled amount of the payment, as an affirmative or negative answer to the question “**Optional Payments?**” and, if an affirmative answer is disclosed, the period during which the consumer may elect to make such payments.
- (3) **Step payments.** Whether the transaction is a step payment product pursuant to paragraph (a)(10)(ii)(C) of this section as an affirmative or negative answer to the question “**Step**



**Payments?”** and, if an affirmative answer is disclosed, the period during which the regular periodic payments are scheduled to increase.

- (4) **Seasonal payments.** Whether the transaction is a seasonal payment product pursuant to paragraph (a)(10)(ii)(E) of this section as an affirmative or negative answer to the question **“Seasonal Payments?”** and, if an affirmative answer is disclosed, the period during which periodic payments are not scheduled.
- (5) **Principal and interest payments.** Under the subheading **“Principal and Interest Payments,”** which subheading is immediately preceded by the applicable unit-period, the following information:
  - (i) The number of the payment of the first periodic principal and interest payment that may change under the terms of the legal obligation disclosed under this paragraph (i), counting from the first periodic payment due after consummation, and the amount or range of the periodic principal and interest payment for such payment, labeled **“First Change/Amount”**;
  - (ii) The frequency of subsequent changes to the periodic principal and interest payment, labeled **“Subsequent Changes”**; and
  - (iii) The maximum periodic principal and interest payment that may occur during the term of the transaction, and the first periodic principal and interest payment that can reach such maximum, counting from the first periodic payment due after consummation, labeled **“Maximum Payment.”**

### **Regulatory Commentary**

1. **Statement of periodic payment frequency.** The subheading required by § 1026.37(i)(5) must include the unit-period of the transaction, such as **“quarterly,” “bi-weekly,”** or **“annual.”** This unit-period should be the same as disclosed under § 1026.37(b)(3). See § 1026.37(o)(5)(i).
2. **Initial payment adjustment unknown.** The disclosure required by § 1026.37(i)(5) must state the number of the first payment for which the regular periodic principal and interest payment may change. This payment is typically set forth in the legal obligation. However, if the exact payment number of the first adjustment is not known at the time the creditor provides the Loan Estimate, the creditor must disclose the earliest possible payment that may change under the terms of the legal obligation, based on the information available to the creditor at the time, as the initial payment number and amount.
3. **Subsequent changes.** The disclosure required by § 1026.37(i)(5) must state the frequency of adjustments to the regular periodic principal and interest payment after the initial adjustment, if any, expressed in years, except if adjustments are more frequent than once every year, in which case the disclosure should be expressed as payments. If there is only one adjustment of the periodic payment under the terms of the legal obligation (for example, if the loan has an interest only period for the first 60 payments and there are no adjustments to the payment after the end of the interest only period), the disclosure should state: **“No subsequent changes if the loan has graduated increases in the regular periodic payment every 12<sup>th</sup> payment, the disclosure should state: “Every year.”** If the frequency of adjustments to the periodic payment may change under

*the terms of the legal obligation, the disclosure should state the smallest period of adjustments that may occur. For example, if an increase in the periodic payment is scheduled every sixth payment for 36 payments, and then every 12th payment for the next 24 payments, the disclosure should state: “Every 6th payment.”*

4. **Maximum payment.** *The disclosure required by § 1026.37(i)(5) must state the larger of the maximum scheduled or maximum potential amount of a regular periodic principal and interest payment under the terms of the legal obligation, as well as the payment number of the first periodic principal and interest payment that can reach such amount. If the disclosed payment is scheduled, § 1026.37(i)(5) requires that the disclosure state the payment number when such payment is reached with the preceding text, “starting at.” If the disclosed payment is only potential, as may be the case for a loan that permits optional payments, the disclosure states the earliest payment number when such payment can be reached with the preceding text, “as early as.” Section 1026.37(i)(5) requires that the first possible periodic principal and interest payment that can reach the maximum be disclosed. For example, for a fixed interest rate optional-payment loan with scheduled payments that result in negative amortization under the terms of the legal obligation, the maximum periodic payment disclosed should be based on the consumer having elected to make the periodic payments that would increase the principal balance to the maximum amount at the latest time possible before the loan begins to fully amortize, which would cause the periodic principal and interest payment to be the maximum possible. For example, if the earliest payment that could reach the maximum principal balance was the 41st payment at which time the loan would begin to amortize and the periodic principal and interest payment would be recalculated, but the last payment that permitted the principal balance to increase was the 60th payment, the disclosure required by § 1026.37(i)(5) must assume the consumer only reaches the maximum principal balance at the 60th payment because this would result in the maximum possible principal and interest payment under the terms of the legal obligation. The disclosure must state the maximum periodic principal and interest payment based on this assumption and state “as early as the 61st payment.”*
5. **Payments that do not pay principal.** *Although the label of the disclosure required by § 1026.37(i)(5) is “Principal and Interest Payments,” and the section refers to periodic principal and interest payments, it includes a scheduled periodic payment that only covers some or all of the interest that is due and not any principal (i.e., an interest only or negatively amortizing payment).*

*The AP table may only be disclosed if the periodic principal and interest payment may change after consummation based on an adjustment that is not an adjustment to the interest rate, or if the transaction is a seasonal payment product. The creditor would not be permitted to disclose the table if the loan terms do not meet these requirements, even if the table were left blank.*

## CFPB Guide

Disclose the Adjustable Payment (AP) Table when the periodic principal and interest payment may change after consummation, but not because of a change to the interest rate, or the loan is a seasonal payment product. (§ 1026.38(m)) If the loan does not contain these features, do not disclose the AP Table. (Comment 38(m)-3) The same information that was or would have been disclosed in the AP Table on the Loan Estimate is disclosed in the AP Table on Closing Disclosure page 4, updated to reflect the terms of the loan at consummation. (Comment 38(m)-4)

## Section 15: Adjustable Interest Rate Table

### 12 CFR § 1026.38(n)

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#### *[57] Adjustable Interest Rate Table (page 4, bottom right)*

Adjustable Interest Rate (AIR) Table	
Index + Margin	
Initial Interest Rate	
Minimum/Maximum Interest Rate	
Change Frequency	
First Change	
Subsequent Changes	
Limits on Interest Rate Changes	
First Change	
Subsequent Changes	

This table is the same table that appears on the Loan Estimate, and it follows the Loan Estimate rules.

#### Y&A Completion Instruction

This is the same Adjustable Interest Rate table that was discussed at length in the Loan Estimate manual. The Closing Disclosure regulation sends the reader to the Loan Estimate rules for all further information.

The AIR table is required to appear when the interest rate may change during the life of the loan. If a change in the interest rate is not anticipated (fixed rate) then the table cannot appear.

The processor must indicate the index and margin anticipated to be used in the note. This is generally set by the loan product type standards.

The processor must insert the initial interest rate for the loan.

The processor must insert the minimum and maximum interest rates. These rates are generally called the floor rate and the ceiling rate. The regulation requires a ceiling rate. The floor rate is at the institution's option. Often the floor rate will equal the margin, but it is not required to do so.

The processor should insert the time period to the first interest rate change and the time period between subsequent interest rate changes here. These rate change time periods are usually driven by the variable rate product being offered for this loan.

The processor should insert the maximum amount that the interest rate may increase for both the first rate change and any subsequent rate changes. These maximum rate changes are usually driven by the variable rate product being offered for this loan.

## Regulatory Text

- (n) **Adjustable interest rate table.** Under the master heading “**Additional Information About This Loan**” required by paragraph (l) of this section, and under the heading “Adjustable Interest Rate (AIR) Table,” the table required to be disclosed by § 1026.37(j).

## Regulatory Commentary

1. **Guidance.** *See the commentary to § 1026.37(j) for guidance regarding the disclosures required by § 1026.38(n).*
2. **Master heading.** *The disclosure required by § 1026.38(n) is required to be provided under a different master heading than the disclosure required by § 1026.37(j), but all other requirements applicable to the disclosure required by § 1026.37(j) apply to the disclosure required by § 1026.38(n).*
3. **When table is not permitted to be disclosed.** *Like the disclosure required by § 1026.37(j), the disclosure required by § 1026.38(n) is required only if the interest rate may change after consummation based on the terms of the legal obligation. If the interest rate will not change after consummation, this table is not permitted on the Closing Disclosure. See comments 37-1 and 37(j)-1 1.*
4. **Final loan terms.** *The disclosures required by § 1026.38(n) must include the information required by § 1026.37(j), as applicable, but the creditor must make the disclosure using the information that is known at the time the disclosure is required to be provided by § 1026.19(f).*

## Loan Estimate Regulatory Text and Commentary Assistance

### Regulatory Text § 1026.37(j)

- (j) **Adjustable interest rate table.** If the interest rate may increase after consummation, a separate table under the master heading “**Closing Cost Details**” required by paragraph (f) of this section, and under the heading “**Adjustable Interest Rate (AIR) Table**” that contains the following information and satisfies the following requirements:

## Regulatory Commentary

### 37(j) Adjustable interest rate table.

1. **When table is not permitted to be disclosed.** *The disclosure described in § 1026.37(j) is required only if the interest rate may increase after consummation, either based on changes to an index or scheduled changes to the interest rate. If the legal obligation does not permit the interest rate to adjust after consummation, such as for a “**Fixed Rate**” product under § 1026.37(a)(10), this table is not permitted to appear on the Loan Estimate. The creditor may not disclose a blank table or a table with “N/A” inserted within each row.*

## CFPB Guide

None.

Adjustable Interest Rate (AIR) Table	
Index + Margin	
Initial Interest Rate	
Minimum/Maximum Interest Rate	
Change Frequency	
First Change	
Subsequent Changes	
Limits on Interest Rate Changes	
First Change	
Subsequent Changes	

Insert the index and margin here.

## Y&amp;A Completion Instruction

The processor must indicate the index and margin anticipated used in the note.

The second section discusses a very rare situation, and is likely to never impact your institution. The first line of this table (see instruction changes to indicate the fact that this is a step rate loan, in which all increases in the interest rate are predetermined, not based on an index and margin. Should this occur, this information must be included.

## Loan Estimate Regulatory Text and Commentary Assistance

**Regulatory Text § 1026.37(j)(1)**

- (1) **Index and margin.** If the interest rate may adjust and the product type is not a “**Step Rate**” under paragraph (a)(10)(i)(B) of this section, the index upon which the adjustments to the interest rate are based and the margin that is added to the index to determine the interest rate, if any, labeled “**Index + Margin.**”

**Regulatory Text § 1026.37(j)(2)**

- (2) **Increases in interest rate.** If the product type is a “**Step Rate**” and not also an “**Adjustable Rate**” under paragraph (a)(10)(i)(A) of this section, the maximum amount of any adjustments to the interest rate that are scheduled and pre-determined, labeled “**Interest Rate Adjustments.**”

**Regulatory Commentary § 1026.37(j)(1)**

1. **Index and margin.** The index disclosed pursuant to § 1026.37(j)(1) must be stated such that a

consumer reasonably can identify it. A common abbreviation or acronym of the name of the index may be disclosed in place of the proper name of the index, if it is a commonly used public method of identifying the index. For example, “LIBOR” may be disclosed instead of London Interbank Offered Rate. The margin should be disclosed as a percentage. For example, if the contract determines the interest rate by adding 4.25 percentage points to the index, the margin should be disclosed as “4.25%.”

### **Regulatory Commentary § 1026.37(j)(2)**

1. **Adjustments not based on an index.** If the legal obligation includes both adjustments to the interest rate based on an external index and scheduled and pre-determined adjustments to the interest rate, such as for a “**Step Rate**” product under § 1026.37(a)(10), the disclosure required by § 1026.37(j)(1), and not § 1026.37(j)(2), must be provided pursuant to § 1026.37(j)(2). The disclosure described in § 1026.37(j)(2) is stated only if the product type does not permit the interest rate to adjust based on an external index.

### **CFPB Guide**

None.

Adjustable Interest Rate (AIR) Table	
Index + Margin	
Initial Interest Rate	
Minimum/Maximum Interest Rate	
Change Frequency	
First Change	
Subsequent Changes	
Limits on Interest Rate Changes	
First Change	
Subsequent Changes	

Insert initial interest rate here.

### **Y&A Completion Instruction**

The processor must insert the initial interest rate for the loan.

### **Loan Estimate Regulatory Text and Commentary Assistance**

#### **Regulatory Text § 1026.37(j)(3)**

- (3) **Initial interest rate.** The interest rate at consummation of the loan transaction, labeled “Initial Interest Rate.”



### Regulatory Commentary

- 1. Interest rate at consummation.** *In all cases, the interest rate in effect at consummation must be disclosed as the initial interest rate, even if it will apply only for a short period, such as one month.*

### CFPB Guide

None.

Adjustable Interest Rate (AIR) Table	
Index + Margin	
Initial Interest Rate	
Minimum/Maximum Interest Rate	
Change Frequency	
First Change	
Subsequent Changes	
Limits on Interest Rate Changes	
First Change	
Subsequent Changes	

Insert minimum and maximum interest rates here.

### Y&A Completion Instruction

The processor must insert the minimum and maximum interest rates here. These rates are generally called the floor rate and the ceiling rate. The regulation requires a ceiling rate. The floor rate is at the institution's option. Often the floor rate will equal the margin, but it is not required to do so.

### Loan Estimate Regulatory Text and Commentary Assistance

#### Regulatory Text § 1026.37(j)(4)

- (4) Minimum and maximum interest rate.** The minimum and maximum interest rates for the loan, after any introductory period expires, labeled **“Minimum/Maximum Interest Rate.”**

### Regulatory Commentary

- 1. Minimum interest rate.** *The minimum interest rate required to be disclosed by § 1026.37(j)(4) is the minimum interest rate that may occur at any time during the term of the transaction, after any introductory or “teaser” interest rate expires, under the terms of the legal obligation, such as an interest rate “floor.” If the terms of the legal obligation do not state a minimum*



interest rate, the minimum interest rate that applies to the transaction under applicable law must be disclosed. If the terms of the legal obligation do not state a minimum interest rate, and no other minimum interest rate applies to the transaction under applicable law, the amount of the margin is disclosed.

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

## CFPB Guide

None.

Adjustable Interest Rate (AIR) Table	
Index + Margin	
Initial Interest Rate	
Minimum/Maximum Interest Rate	
<b>Change Frequency</b>	
First Change	
Subsequent Changes	
<b>Limits on Interest Rate Changes</b>	
First Change	
Subsequent Changes	

Insert the time period to the first rate change, based on the first payment date.

Insert the frequency of the subsequent rate changes here.

## Y&A Completion Instruction

The processor should insert the time period to the first interest rate change and the time period between subsequent interest rate changes here. These rate change time periods are usually driven by the adjustable rate product being offered for this loan.

## Loan Estimate Regulatory Text and Commentary Assistance

### *Regulatory Text § 1026.37(j)(5)*

- (5) **Frequency of adjustments.** The following information, under the subheading “**Change Frequency**”:

- (i) The month when the interest rate after consummation may first change, calculated from the date interest for the first scheduled periodic payment begins to accrue, labeled “**First Change**”; and

- (ii) The frequency of interest rate adjustments after the initial adjustment to the interest rate, labeled, **“Subsequent Changes.”**

### Regulatory Commentary

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

### CFPB Guide

None.

Adjustable Interest Rate (AIR) Table	
Index + Margin	
Initial Interest Rate	
Minimum/Maximum Interest Rate	
Change Frequency	
First Change	
Subsequent Changes	
Limits on Interest Rate Changes	
First Change	
Subsequent Changes	

Insert the limit for changes on the first interest rate change here.

Insert the limit for subsequent interest rate changes here.

### Y&A Completion Instruction

The processor should insert the maximum amount that the interest rate may increase for both the first rate change and any subsequent rate changes. These maximum rate changes are usually driven by the adjustable rate product being offered for this loan.

### Loan Estimate Regulatory Text and Commentary Assistance

#### Regulatory Text § 1026.37(j)(6)

- (6) **Limits on interest rate changes.** The following information, under the subheading **“Limits on Interest Rate Changes”**:

- (i) The maximum possible change for the first adjustment of the interest rate after consummation, labeled **“First Change”**; and
- (ii) The maximum possible change for subsequent adjustments of the interest rate after consummation, labeled **“Subsequent Changes.”**

### **Regulatory Commentary**

- 1. **Different limits on subsequent interest rate adjustments.** If more than one limit applies to the amount of adjustments to the interest rate after the initial adjustment, the greatest limit on subsequent adjustments must be disclosed. For example, if the initial interest rate adjustment is capped at two percent, the second adjustment is capped at two and a half percent, and all subsequent adjustments are capped at three percent, the disclosure required by § 1026.37(j)(6)(ii) states **“3%.”***

### **CFPB Guide**

Disclose the Adjustable Interest Rate (AIR) Table when the loan’s interest rate may increase after consummation. (§ 1026.38(n)) If the loan’s interest rate will not increase after consummation, do not disclose the AIR Table. (Comment 38(n)-3) The same information that was or would have been disclosed in the AIR Table on the Loan Estimate is disclosed in the AIR Table on Closing Disclosure page 4, updated to reflect the terms of the loan at consummation. (Comment 38(n)-4)

## Section 16: Loan Calculations

### 12 CFR § 1026.38(o)

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#### *General Language*

#### **Y&A Completion Instruction**

This section covers familiar ground for most readers of this manual. The normal “fed box” disclosures that have been used for years appear here, along with the Total Interest Percentage (TIP) calculation which was discussed at some length in the Loan Estimate manual.

#### **Regulatory Text**

(o) **Loan calculations.** In a separate table under the heading “**Loan Calculations**”:

#### **Regulatory Commentary**

#### **38(o) Loan calculations.**

1. **Examples.** Section 1026.38(o)(1) and (2) sets forth the accuracy requirements for the total of payments and the finance charge, respectively. The following examples illustrate the interaction of these provisions:
  - i. Assume that loan costs that are designated borrower-paid at or before closing and that are part of the finance charge (see § 1026.4 for calculation of the finance charge) are understated by more than \$100. For example, assume that borrower-paid loan origination fees (see § 1026.4(a)) are cumulatively understated by \$150, resulting in the amounts disclosed as the total of payments and the finance charge both being understated by more than \$100. Both the disclosed total of payments and the disclosed finance charge would not be accurate for purposes of § 1026.38(o)(1) and (2), respectively.
  - ii. Assume that loan costs that are designated borrower-paid at or before closing and that are not part of the finance charge are understated by more than \$100. For example, assume that borrower-paid property appraisal and inspection fees that are excluded from the finance charge under § 1026.4(c)(7)(iv) are cumulatively understated by \$150, resulting in the amount disclosed as the total of payments being understated by more than \$100. The disclosed total of payments would not be accurate for purposes of § 1026.38(o)(1), but the disclosed finance charge would be accurate for purposes of § 1026.38(o)(2).

#### **CFPB Guide**

Disclose Loan Calculations, Other Disclosures, Questions, Contact Information, and, if desired by the creditor, Confirm Receipt tables on page 5 of the Closing Disclosure.

**[58] Total of Payments (page 5, Loan Calculations)**

Loan Calculations	
<b>Total of Payments.</b> Total you will have paid after you make all payments of principal, interest, mortgage insurance, and loan costs, as scheduled.	
<b>Finance Charge.</b> The dollar amount the loan will cost you.	
<b>Amount Financed.</b> The loan amount available after paying your upfront finance charge.	
<b>Annual Percentage Rate (APR).</b> Your costs over the loan term expressed as a rate. This is not your interest rate.	
<b>Total Interest Percentage (TIP).</b> The total amount of interest that you will pay over the loan term as a percentage of your loan amount.	

Total of Payments appears here.

**Y&A Completion Instruction**

In the past and in other forms of the TIL disclosures, the total of payments was generally the number of payments multiplied by the payment amount. This version of the Total of Payments also includes loan costs incurred at loan inception. This total should be system calculated and should not require any processor action.

**Regulatory Text § 1026.38(o)(1)**

- (1) **Total of payments.** The “Total of Payments,” using that term and expressed as a dollar amount, and a statement that the disclosure is the total the consumer will have paid after making all payments of principal, interest, mortgage insurance, and loan costs, as scheduled. The disclosed total of payments shall be treated as accurate if the amount disclosed as the total of payments:
- (i) Is understated by no more than \$100; or
  - (ii) Is greater than the amount required to be disclosed.

**Regulatory Commentary**

1. **Calculation of total of payments.** *The total of payments is the total, expressed as a dollar amount, the consumer will have paid after making all payments of principal, interest, mortgage insurance, and loan costs, as scheduled, through the end of the loan term. The total of payments excludes charges that would otherwise be included as components of the total of payments if such charges are designated on the Closing Disclosure as paid by seller or paid by others. A seller or other party, such as the creditor, may agree to offset payments of principal,*

*interest, mortgage insurance, or loan costs, whether in whole or in part, through a specific credit, for example through a specific seller or lender credit. Because these amounts are not paid by the consumer, they are excluded from the total of payments calculation. Non-specific credits, however, are generalized payments to the consumer that do not pay for a particular fee and therefore do not offset amounts for purposes of the total of payments calculation. For guidance on the amounts included in the total of payments calculation, see the “In 5 Years” disclosure under § 1026.37(l)(1)(i) and comment 37(l)(1)(i)-1. For a discussion of lender credits, see comment 19(e)(3)(i)-5. For a discussion of seller credits, see comment 38(j)(2)(v)-1.*

## **CFPB Guide**

Disclose the Total of Payments, the Finance Charge, the Amount Financed, the APR, and the Total Interest Percentage (TIP) in the Loan Calculations table. (§ 1026.38(o)) The APR and TIP amounts should be updated from the amounts disclosed on the Loan Estimate to reflect the terms of the legal obligation at consummation.

**[59] Finance Charge (page 5, Loan Calculations)**

<b>Loan Calculations</b>	
<b>Total of Payments.</b> Total you will have paid after you make all payments of principal, interest, mortgage insurance, and loan costs, as scheduled.	
<b>Finance Charge.</b> The dollar amount the loan will cost you.	
<b>Amount Financed.</b> The loan amount available after paying your upfront finance charge.	
<b>Annual Percentage Rate (APR).</b> Your costs over the loan term expressed as a rate. This is not your interest rate.	
<b>Total Interest Percentage (TIP).</b> The total amount of interest that you will pay over the loan term as a percentage of your loan amount.	

Finance Charge appears here.

**Y&A Completion Instruction**

This disclosure is exactly the same finance charge disclosure that has been disclosed for many years. It is the total of interest earned during the life of the loan plus prepaid finance charge. The tolerances for error remain the same as well. This total should be system calculated and should not require any processor action.

**Regulatory Text § 1026.38(o)(2)**

(2) **Finance charge.** The “**Finance Charge**,” using that term and expressed as a dollar amount, and the following statement: “**The dollar amount the loan will cost you.**” The disclosed finance charge and other disclosures affected by the disclosed financed charge (including the amount financed and the annual percentage rate) shall be treated as accurate if the amount disclosed as the finance charge:

- (i) is understated by no more than \$100; or
- (ii) is greater than the amount required to be disclosed.

**Regulatory Commentary**

- Calculation of finance charge.** The finance charge is calculated in accordance with the requirements of § 1026.4 and its commentary and is expressed as a dollar amount.
- Disclosure.** The finance charge is disclosed as a total amount; the components of the finance charge are not itemized.



## **CFPB Guide**

Disclose the Total of Payments, the Finance Charge, the Amount Financed, the APR, and the Total Interest Percentage (TIP) in the Loan Calculations table. (§ 1026.38(o)) The APR and TIP amounts should be updated from the amounts disclosed on the Loan Estimate to reflect the terms of the legal obligation at consummation

**[60] Amount Financed (page 5, Loan Calculations)**

Loan Calculations	
<b>Total of Payments.</b> Total you will have paid after you make all payments of principal, interest, mortgage insurance, and loan costs, as scheduled.	
<b>Finance Charge.</b> The dollar amount the loan will cost you.	
<b>Amount Financed.</b> The loan amount available after paying your upfront finance charge.	
<b>Annual Percentage Rate (APR).</b> Your costs over the loan term expressed as a rate. This is not your interest rate.	
<b>Total Interest Percentage (TIP).</b> The total amount of interest that you will pay over the loan term as a percentage of your loan amount.	

The Amount Financed appears here.

**Y&A Completion Instruction**

This is the same disclosure that has been given for many years. The Amount Financed is equal to the note amount less any prepaid finance charge. This total should be system calculated and should not require any processor action.

**Regulatory Text § 1026.38(o)(3)**

- (3) **Amount financed.** The “Amount Financed,” using that term and expressed as a dollar amount, and the following statement: **“The loan amount available after paying your upfront finance charge.”**

**Regulatory Commentary**

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

**CFPB Guide**

Disclose the Total of Payments, the Finance Charge, the Amount Financed, the APR, and the Total Interest Percentage (TIP) in the Loan Calculations table. (§ 1026.38(o)) The APR and TIP amounts should be updated from the amounts disclosed on the Loan Estimate to reflect the terms of the legal obligation at consummation.

## [61] Annual Percentage Rate (page 5, Loan Calculations)

Loan Calculations	
<b>Total of Payments.</b> Total you will have paid after you make all payments of principal, interest, mortgage insurance, and loan costs, as scheduled.	
<b>Finance Charge.</b> The dollar amount the loan will cost you.	
<b>Amount Financed.</b> The loan amount available after paying your upfront finance charge.	
<b>Annual Percentage Rate (APR).</b> Your costs over the loan term expressed as a rate. This is not your interest rate.	
<b>Total Interest Percentage (TIP).</b> The total amount of interest that you will pay over the loan term as a percentage of your loan amount.	

Annual Percentage Rate appears here.

### Y&A Completion Instruction

The Annual Percentage Rate calculation remains unchanged from the past. This total should be system calculated and should not require any processor action.

### Regulatory Text § 1026.38(o)(4)

- (4) **Annual percentage rate.** The “**Annual Percentage Rate,**” using that term and the abbreviation “**APR**” and expressed as a percentage, and the following statement: “**Your costs over the loan term expressed as a rate. This is not your interest rate.**”

### Regulatory Commentary

*None.*

### CFPB Guide

Disclose the Total of Payments, the Finance Charge, the Amount Financed, the APR, and the Total Interest Percentage (TIP) in the Loan Calculations table. (§ 1026.38(o)) The APR and TIP amounts should be updated from the amounts disclosed on the Loan Estimate to reflect the terms of the legal obligation at consummation.

**[62] Total Interest Percentage (page 5, Loan Calculations)**

Loan Calculations	
<b>Total of Payments.</b> Total you will have paid after you make all payments of principal, interest, mortgage insurance, and loan costs, as scheduled.	
<b>Finance Charge.</b> The dollar amount the loan will cost you.	
<b>Amount Financed.</b> The loan amount available after paying your upfront finance charge.	
<b>Annual Percentage Rate (APR).</b> Your costs over the loan term expressed as a rate. This is not your interest rate.	
<b>Total Interest Percentage (TIP).</b> The total amount of interest that you will pay over the loan term as a percentage of your loan amount.	

Total Interest Percentage appears here.

**Y&A Completion Instruction**

This new disclosure is the same calculation as what appears on the Loan Estimate manual. This disclosure is repeated here, although the regulation simply refers the reader back to the Loan Estimate instructions. This total should be system calculated and should not require any processor action.

**Regulatory Text § 1026.38(o)(5)**

- (5) **Total interest percentage.** The “**Total Interest Percentage**,” using that term and the abbreviation “**TIP**” and expressed as a percentage, and the following statement: “**The total amount of interest that you will pay over the loan term as a percentage of your loan amount.**”

**Regulatory Commentary**

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

## Loan Estimate Regulatory Text and Commentary Assistance

### ***Regulatory Text § 1026.37(l)(3) (TIP)***

- (3) **Total interest percentage.** The total amount of interest that the consumer will pay over the life of the loan, expressed as a percentage of the amount of credit extended, using the term “**Total Interest Percentage**,” the abbreviation “**TIP**,” and the statement “**The total amount of interest that you will pay over the loan term as a percentage of your loan amount.**”

### ***Regulatory Commentary § 1026.37(l)(3) (TIP)***

1. **General.** *When calculating the total interest percentage, the creditor assumes that the consumer will make each payment in full and on time, and will not make any additional payments.*
2. **Adjustable rate and step rate mortgages.** *For Adjustable Rate products under § 1026.37(a)(10)(i)(A), § 1026.37(l)(3) requires that the creditor compute the total interest percentage in accordance with comment 17(c)(1)-10. For Step Rate products under § 1026.37(a)(10)(i)(B) [10], § 1026.37(l)(3) requires that the creditor compute the total interest percentage in accordance with § 1026.17(c)(1) and its associated commentary.*
3. **Negative amortization loans.** *For loans that have a negative amortization feature under § 1026.37(a)(10)(ii)(A), § 1026.37(l)(3) requires that the creditor compute the total interest percentage using the scheduled payment, even if it is a negatively amortizing payment amount, until the consumer must begin making fully amortizing payments under the terms of the legal obligation.*

## CFPB Guide

Disclose the Total of Payments, the Finance Charge, the Amount Financed, the APR, and the Total Interest Percentage (TIP) in the Loan Calculations table. (§ 1026.38(o)) The APR and TIP amounts should be updated from the amounts disclosed on the Loan Estimate to reflect the terms of the legal obligation at consummation.

## Section 17: Other Disclosures

### 12 CFR § 1026.38(p)

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#### *General Language*

(p) *Other disclosures.* Under the heading “**Other Disclosures**”:

#### **Additional Information**

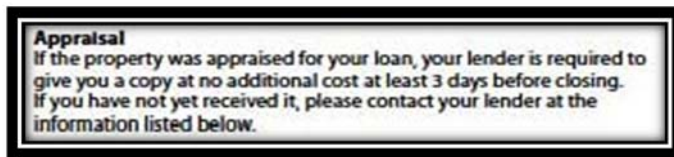
None.

#### **CFPB Guide**

The creditor discloses in the Other Disclosures table:

- A statement related to the consumer’s rights in relation to any **Appraisal** conducted for the property,
- A statement informing the consumer of consequences of nonpayment, what constitutes default, when a creditor can accelerate maturity, and prepayment rebates and penalties pursuant to **Contract Details**,
- A statement, among other things, of whether State law provides for continued consumer responsibility for any **Liability after Foreclosure**,
- A statement concerning the consumer’s ability to **Refinance** the loan, and
- A statement concerning the extent that interest on the loan can be included as a **Tax Deduction** by the consumer. (§ 1026.38(p))

## [63] Appraisal (page 5, Other Disclosures)



This disclosure appears if the Regulation B Appraisal notice was given. It reminds the consumer to ask for the appraisal if they do not yet have it.

### Y&A Completion Instruction

This boilerplate disclosure reminds the consumer that they have a right to a copy of their appraisal early, and tells the consumer to ask the creditor for the appraisal if they do not yet have a copy. If this disclosure is not applicable, it is omitted. The processor should not have to take any action at this point. The system should make the appropriate choice based on the Loan Estimate.

### Regulatory Text § 1026.38(p)(1)

- (1) **Appraisal.** For transactions subject to 15 U.S.C. 1639h or 1691(e), as implemented in this part or Regulation B, 12 CFR part 1002, respectively, under the subheading “**Appraisal**,” that:
- (i) If there was an appraisal of the property in connection with the loan, the creditor is required to provide the consumer with a copy at no additional cost to the consumer at least three days prior to consummation; and
  - (ii) If the consumer has not yet received a copy of the appraisal, the consumer should contact the creditor using the information disclosed pursuant to paragraph (r) of this section.

### Regulatory Commentary

1. **Applicability.** *The disclosure required by § 1026.38(p)(1) is only applicable to closed-end transactions subject to § 1026.19(f) that are also subject either to 15 U.S.C. 1639h or 1691(e), as implemented by this part or Regulation B, 12 CFR part 1002, respectively. Accordingly, if a transaction is not subject to either of those provisions, the disclosure required by § 1026.38(p)(1) may be left blank on form H-25 of appendix H to this part.*

### CFPB Guide

A statement concerning the **Appraisal** must be provided for:

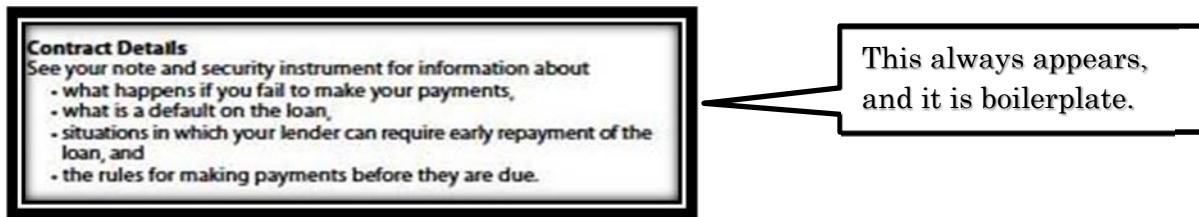
- Higher-priced Mortgage Loans, and
- Loans covered by the Equal Credit Opportunity Act. (§ 1026.38(p)(1))



For these transactions, the creditor must provide the following statement:

“If the property was appraised for your loan, your lender is required to give you a copy at no additional cost at least 3 days before closing. If you have not yet received it, please contact your lender at the information below.”

## ***[64] Contract Details (page 5, Other Disclosures)***



### **Y&A Completion Instruction**

This disclosure reminds the consumer that they should review the overall contract for further details. This version is more lengthy, but this general warning has been part of the disclosure process for many years. This disclosure requires no processor action.

### **Regulatory Text § 1026.38(p)(2)**

- (2) **Contract details.** A statement that the consumer should refer to the appropriate loan document and security instrument for information about nonpayment, what constitutes a default under the legal obligation, circumstances under which the creditor may accelerate the maturity of the obligation, and prepayment rebates and penalties, under the subheading “Contract Details.”

### **Regulatory Commentary**

*None.*

### **CFPB Guide**

*None.*

## ***[65] Liability after Foreclosure (page 5, Other Disclosures)***

<p><b>Liability after Foreclosure</b>          If your lender forecloses on this property and the foreclosure does not cover the amount of unpaid balance on this loan,</p> <p><input type="checkbox"/> state law may protect you from liability for the unpaid balance. If you refinance or take on any additional debt on this property, you may lose this protection and have to pay any debt remaining even after foreclosure. You may want to consult a lawyer for more information.</p> <p><input type="checkbox"/> state law does not protect you from liability for the unpaid balance.</p>	<p>Creditors must check the correct box based on state law. Discuss this with your attorney.</p>
---	--

### **Y&A Completion Instruction**

This disclosure discusses state law issues, so the answer may vary from state to state. The Loan Processor should rely on the institution's attorney regarding the appropriate answer.

### **Regulatory Text § 1026.38(p)(3)**

1. **Liability after foreclosure.** A brief statement of whether, and the conditions under which, the consumer may remain responsible for any deficiency after foreclosure under applicable State law, a brief statement that certain protections may be lost if the consumer refinances or incurs additional debt on the property, and a statement that the consumer should consult an attorney for additional information, under the subheading “**Liability after Foreclosure.**”

### **Regulatory Commentary**

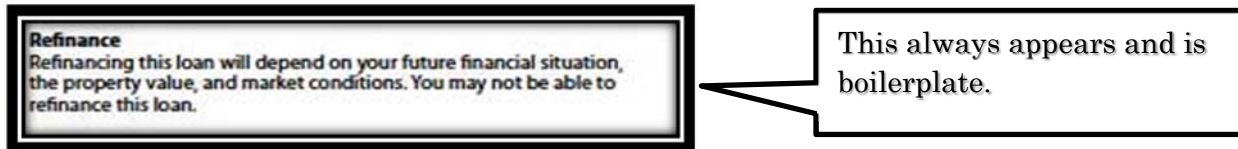
1. **State law requirements.** *If the creditor forecloses on the property and the proceeds of the foreclosure sale are less than the unpaid balance on the loan, whether the consumer has continued or additional responsibility for the loan balance after foreclosure, and the conditions under which liability occurs, will vary by State. If the applicable State law affords any type of protection, other than a statute of limitations that only limits the timeframe in which a creditor may seek redress, § 1026.38(p)(3) requires a statement that State law may protect the consumer from liability for the unpaid balance.*

### **CFPB Guide**

The creditor complies with the obligation to notify the consumer of any State law Anti-Deficiency Protections that apply to the consumer's loan by checking one of the options on the Closing Disclosure. (§ 1026.38(p)(3)) If any State law Anti-Deficiency Protections could apply, then the creditor should disclose that Anti-Deficiency Protections may apply.

Generally, statute of limitation laws that only limit the timeframe in which a creditor may obtain or collect deficiency judgments do not count as Anti-Deficiency Protections included in the disclosure. (Comment 38(p)(3)-1)

## ***[66] Refinance (page 5, Other Disclosures)***



### **Y&A Completion Instruction**

This disclosure instruction refers the reader to the Loan Estimate for the information concerning this disclosure. This disclosure requires no processor action.

### **Regulatory Text § 1026.38(p)(4)**

(4) **Refinance.** Under the subheading “**Refinance,**” the statement required by § 1026.37(m)(5).

### **Regulatory Commentary**

*None.*

### **Loan Estimate Regulatory Text and Commentary Assistance**

#### ***Regulatory Text § 1026.37(m)(5) (Refinance Warning)***

(5) **Refinance.** The following statement, labeled “**Refinance**”: “**Refinancing this loan will depend on your future financial situation, the property value, and market conditions. You may not be able to refinance this loan.**”

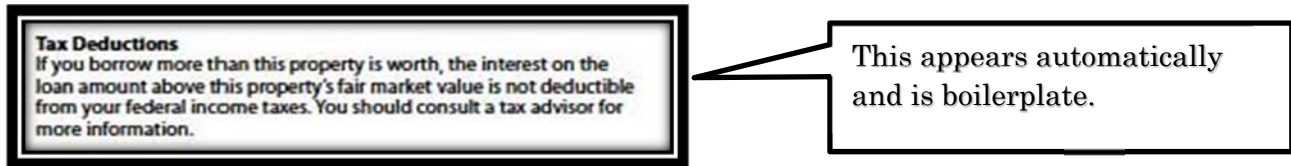
#### ***Regulatory Commentary § 1026.37(m)(5) (Refinance Warning)***

*None.*

### **CFPB Guide**

*None.*

## ***[67] Tax Deductions (page 5, Other Disclosures)***



### **Y&A Completion Instruction**

This is a boilerplate disclosure reminding the consumer that there are potential tax consequences, and that they should discuss these consequences with their tax advisor. This disclosure requires no processor action.

### **Regulatory Text § 1026.38(p)(5)**

- (5) **Tax deductions.** Under the subheading “**Tax Deductions,**” a statement that, if the extension of credit exceeds the fair market value of the property, the interest on the portion of the credit extension that is greater than the fair market value of the property is not tax deductible for Federal income tax purposes and a statement that the consumer should consult a tax adviser for further information.

### **Regulatory Commentary**

*None.*

### **CFPB Guide**

*None.*

## Section 18: Questions Notice

### 12 CFR § 1026.38(q)

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#### *General Language*

#### **Y&A Completion Instruction**

The questions notice assists consumers in asking questions regarding their loan, as well as making complaints regarding the creditor.

#### **Regulatory Text**

(q) *Questions notice*. In a separate notice labeled “Questions?”:

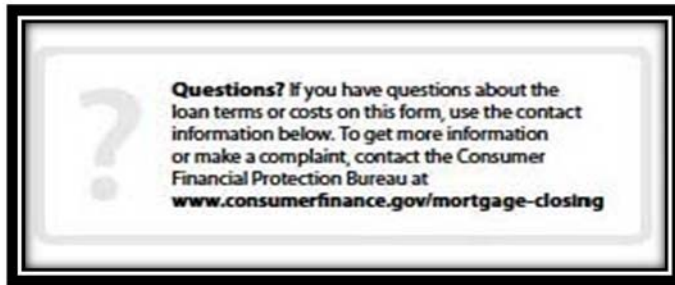
#### **Regulatory Commentary**

*None.*

#### **CFPB Guide**

None.

## ***[68] Questions - Contact Information (page 5, Left Column)***



### **Y&A Completion Instruction**

The notice includes contact information for the consumer to ask questions regarding their loan. It refers to the contact information discussed below. This instruction requires no processor action.

### **Regulatory Text § 1026.38(q)(1)**

- (1) A statement directing the consumer to use the contact information disclosed under paragraph (r) of this section if the consumer has any questions about the disclosures required pursuant to § 1026.19(f);
- (2) A reference to the Bureau's Web site to obtain more information or to submit a complaint; and the link or uniform resource locator address to the Web site:  
[www.consumerfinance.gov/mortgage-closing](http://www.consumerfinance.gov/mortgage-closing); and
- (3) A prominent question mark.

### **Regulatory Commentary**

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

### **CFPB Guide**

None.



## Section 19: Contact Information

### 12 CFR § 1026.38(r)

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#### *General Language*

#### **Y&A Completion Instruction**

The regulation requires a listing of all of the major loan participants, including the lender, the broker, the realtors, and the settlement agent. Each field needs to be completed based on whether the specific item applies to that provider. As a result, the contact information section will have many fields that are empty.

#### **Regulatory Text**

- (r) **Contact information.** In a separate table, under the heading “**Contact Information,**” the following information for each creditor (under the subheading “**Lender**”), mortgage broker (under the subheading “**Mortgage Broker**”), consumer’s real estate broker (under the subheading “**Real Estate Broker (B)**”), seller’s real estate broker (under the subheading “**Real Estate Broker (S)**”), and settlement agent (under the subheading “**Settlement Agent**”) participating in the transaction.

#### **Regulatory Commentary**

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

#### **Note on This Section**

Other Commentary from this section is included below as appropriate. The order of the

commentary and the regulation do not match, and a complete reading of this section may be required due to this inconsistency.

This balance of the manual does not have any Loan Estimate Regulation or Commentary, so this is omitted as well.

## CFPB Guide

In the Contact Information table, disclose the following information for the Lender, the Mortgage Broker, the consumer's Real Estate Brokerage, the seller's Real Estate Brokerage, and the Settlement Agent in a columnar format:

- Name,
- Address,
- The NMLS or State license ID, as applicable,
- The Contact name of an individual (and the NMLS or State license ID),
- Email, and
- Phone number. (§ 1026.38(r))

Unused columns may be removed and columns may be added for additional parties. For example:

If there are two real estate brokers representing the seller, a column may be added to identify that party and a column for a party **not** involved in the transaction may be deleted. (Comment 38(r)-1)

**[69] Contact Name (page 5, bottom table)**

Contact Information					
	Lender	Mortgage Broker	Real Estate Broker (B)	Real Estate Broker (S)	Settlement Agent
Name					
Address					
NMLS ID					
___ License ID					
Contact					
Contact NMLS ID					
Contact ___ License ID					
Email					
Phone					


**Y&A Completion Instruction**

All columns that have a participant in the loan should have a name listed. The processor should use the company name (if available), not the individual for each provider listed.

**Regulatory Text § 1026.38(r)(1)**

- (1) Name of the person, labeled “Name”;

**Regulatory Commentary**


2. **Name of person.** Where § 1026.38(r)(1) calls for disclosure of the name of the person participating in the transaction, the person’s legal name (e.g., the name used for registration, incorporation, or chartering purposes), the person’s trade name, if any, or an abbreviation of the person’s legal name or the trade name is disclosed, so long as the disclosure is clear and conspicuous as required by § 1026.38(t)(1)(i). For example, if the creditor’s legal name is “Alpha Beta Chi Bank and Trust Company, N.A.” and its trade name is “ABC Bank,” then under § 1026.38(r)(1) the full legal name, the trade name, or an abbreviation such as “ABC Bank & Trust Co.” may be disclosed. However, the abbreviation “Bank & Trust Co.” is not sufficiently distinct to enable a consumer to identify the person, and therefore would not be clear and conspicuous. If the creditor, mortgage broker, seller’s real estate broker, consumer’s real estate broker, or settlement agent participating in the transaction is a natural person, the natural person’s name is listed in the § 1026.38(r)(1) and (r)(4) disclosures (assuming that such natural person is the primary contact for the consumer or seller, as applicable).

**CFPB Guide**

None.

**[70] Contact Address (page 5, bottom table)**

Contact Information					
	Lender	Mortgage Broker	Real Estate Broker (B)	Real Estate Broker (S)	Settlement Agent
Name					
Address					
NMLS ID					
__ License ID					
Contact					
Contact NMLS ID					
Contact __ License ID					
Email					
Phone					


**Y&A Completion Instruction**

All columns that have a name on the first set line must have an appropriate address. Usually, this will be the office where the primary contact (see below) is located. The processor must insert this information.

**Regulatory Text § 1026.38(r)(2)**

(2) **Address**, using that label;

**Regulatory Commentary**

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

**CFPB Guide**

None.

**[71] NMLSR Number (page 5, bottom table)**

For license, indicate state of issuance here.

NMLSR number on this line.

Contact Information		Lender	Mortgage Broker	Real Estate Broker (B)	Real Estate Broker (S)	Settlement Agent
Name						
Address						
NMLS ID						
License ID						
Contact						
Contact NMLS ID						
Contact License ID						
Email						
Phone						

License number on this line, if applicable.

**Y&A Completion Instruction**

The disclosure must contain the NMLSR number (or the license and state of issuance) for each provider listed. the creditor. The appropriate line should be used, with the other line remaining blank. The processor should insert this information, as appropriate.

**Regulatory Text § 1026.38(r)(3)**

- (3) **Nationwide Mortgage Licensing System & Registry (NMLSR ID) identification number**, labeled “NMLS ID,” or, if none, license number or other unique identifier issued by the applicable jurisdiction or regulating body with which the person is licensed and/or registered, labeled “**License ID**,” with the abbreviation for the State of the applicable jurisdiction or regulatory body stated before the word “**License**” in the label, for the persons identified in paragraph (r)(1) of this section;

**Regulatory Commentary**

4. **NMLSR ID.** Section 1026.38(r)(3) and (5) requires the disclosure of an NMLSR identification (ID) number for each person identified in the table. The NMLSR ID is a unique number or other identifier that is generally assigned by the Nationwide Mortgage Licensing System & Registry (NMLSR) to individuals registered or licensed through NMLSR to provide loan originating services (for more information, see the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (SAFE Act) sections 1503(3) and (12) and 1504, 12 U.S.C. 5102(3) and (12) and 5103, and its implementing regulations (i.e., 12 CFR 1007.103(a) and 1008.103(a)(2)). An entity may

*also have an NMLSR ID. Thus, any NMLSR ID that is obtained by a creditor or mortgage broker entity disclosed under § 1026.38(r)(1), as applicable, or a natural person disclosed under § 1026.38(r)(4), either as required under the SAFE Act or otherwise, is disclosed. If the creditor, mortgage broker, or natural person has an NMLSR ID and a separate license number or unique identifier issued by the applicable State, locality, or other regulatory body with responsibility for licensing and/or registering such entity or person's business activities, both the NMLSR ID and the separate license number or unique identifier is disclosed. The space in the table is left blank for the disclosures in the columns corresponding to persons that have no NMLSR ID to be disclosed under § 1026.38(r)(3) and (5); provided that, the creditor may omit the column from the table or, if necessary, replace the column with the contact information for an additional person. See comment 38(r)-1.*


**CFPB Guide**

None.



**[72] Primary Contact (page 5, bottom table)**

Contact Information					
	Lender	Mortgage Broker	Real Estate Broker (B)	Real Estate Broker (S)	Settlement Agent
Name					
Address					
NMLS ID					
___ License ID					
Contact					
Contact NMLS ID					
Contact ___ License ID					
Email					
Phone					


**Y&A Completion Instruction**

The disclosure must contain the primary contact person for each entity that is in a column. The contact person is determined by the service provider, but should be someone with an NMSL number. The purpose of this disclosure is to assist the consumer in getting questions answered, so the contact person should be in a position to answer consumer questions. The processor completes this information based on the information provided by each entity.

**Regulatory Text § 1026.38(r)(4)**

- (4) Name of the natural person who is the **primary contact** for the consumer with the person identified in paragraph (r)(1) of this section, labeled “**Contact**”;

**Regulatory Commentary**

6. **Contact.** Section 1026.38(r)(4) requires the disclosure of the primary contact for the consumer. The primary contact is the natural person employed by the person disclosed under § 1026.38(r)(1) who interacts most frequently with the consumer and who has an NMLSR ID or, if none, a license number or other unique identifier to be disclosed under § 1026.38(r)(5), as applicable. For example, if the senior loan officer employed by the creditor or mortgage broker disclosed under § 1026.38(r)(1) has an NMLSR ID, but the consumer meets with a different loan officer to complete the application and answer questions, the senior loan officer’s name is disclosed under § 1026.38(r)(4) unless the other loan officer also has an NMLSR ID, in which case the other loan officer’s name is disclosed. Further, if the sales agent employed by the consumer’s real estate broker disclosed under § 1026.38(r)(1) has a State-issued brokers’ license number, but the consumer meets with an associate sales agent to tour the property being purchased and complete

*the sales contract, the sales agent's name is disclosed under § 1026.38(r)(4) unless the associate sales agent also has a State-issued license number, in which case the associate sales agent's name is disclosed. Moreover, if the closing attorney employed by the settlement agent disclosed under § 1026.38(r)(1) has a State-issued settlement agent license number, but the consumer meets with the attorney's assistant to fill out any necessary documentation prior to the closing and to answer questions, the closing attorney's name is disclosed under § 1026.38(r)(4) because the assistant is only performing clerical functions.*

## **CFPB Guide**

None.

**[73] Contact Person NMLSR (page 5, bottom table)**

For license, list state of issuance here.

NMLS number on this line

Contact Information		Lender	Mortgage Broker	Real Estate Broker (B)	Real Estate Broker (S)	Settlement Agent
Name						
Address						
NMLS ID						
License ID						
Contact						
Contact NMLS ID						
Contact License ID						
Email						
Phone						

License number on this line, if applicable.

**Y&A Completion Instruction**

For the contact personnel listed in this section that have NMLS numbers or state licenses, the processor must include their NMLS number or state license information.

**Regulatory Text § 1026.38(r)(5)**

- (5) **NMLSR ID**, labeled “**Contact NMLS ID,**” or, if none, license number or other unique identifier issued by the applicable jurisdiction or regulating body with which the person is licensed and/or registered, labeled “**Contact License ID,**” with the abbreviation for the State of the applicable jurisdiction or regulatory body stated before the word “**License**” in the label, for the natural person identified in paragraph (r)(4) of this section,

**Regulatory Commentary**

5. **License number or unique identifier.** Section 1026.38(r)(3) and (5) requires the disclosure of a license number or unique identifier for each person (including natural persons) identified in the table who does not have a NMLSR ID if the applicable State, locality, or other regulatory body with responsibility for licensing and/or registering such person’s business activities has

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

**CFPB Guide**

None.

**[74] Contact Person Email Address (page 5, bottom table)**

Contact Information					
	Lender	Mortgage Broker	Real Estate Broker (B)	Real Estate Broker (S)	Settlement Agent
Name					
Address					
NMLS ID					
__ License ID					
Contact					
Contact NMLS ID					
Contact __ License ID					
Email					
Phone					


**Y&A Completion Instruction**

The processor completes the contact person's email address, as stated by the providers. If the contact person does not have a direct email address, a general address will be acceptable, but the direct email address is preferred.

**Regulatory Text § 1026.38(r)(6)**

- (6) **Email address** for the person identified in paragraph (r)(4) of this section, labeled “**Email**”; and

**Regulatory Commentary**


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

**CFPB Guide**

None.

**[75] Telephone Number (page 5, bottom table)**

<b>Contact Information</b>					
	<b>Lender</b>	<b>Mortgage Broker</b>	<b>Real Estate Broker (B)</b>	<b>Real Estate Broker (S)</b>	<b>Settlement Agent</b>
<b>Name</b>					
<b>Address</b>					
<b>NMLS ID</b>					
<b>___ License ID</b>					
<b>Contact</b>					
<b>Contact NMLS ID</b>					
<b>Contact ___ License ID</b>					
<b>Email</b>					
<b>Phone</b>					


**Y&A Completion Instruction**

The processor must enter each contact person's telephone number. If the contact person does not have a direct telephone number, a general telephone number will be acceptable, but the direct telephone number is preferred.

**Regulatory Text § 1026.38(r)(7)**

(7) Telephone number for the person identified in paragraph (r)(4) of this section, labeled "Phone."

**Regulatory Commentary**

*None.*

**CFPB Guide**

*None.*

## Section 20: Signature Statement

### 12 CFR § 1026.38(s)

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#### *General Language*

##### **(s) Signature statement.**

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



**[76] Confirm Receipt (page 5, bottom)**

The signature line is optional. If the disclosure does not contain the signature line, then the warning is included in Other Disclosures

<b>Confirm Receipt</b>			
By signing, you are only confirming that you have received this form. You do not have to accept this loan because you have signed or received this form.			
Applicant Signature		Date	
Co-Applicant Signature		Date	

**Y&A Completion Instruction**

The processor must assure that the signature lines and related information are included on the form only if the institution decides that it wants the signature area to appear. If the institution wishes to have this information appear, the processor should assure that this occurs.

**Regulatory Text § 1026.38(s)(1)**

(1) At the creditor's option, under the heading "**Confirm Receipt**," a line for the signatures of the consumers in the transaction. If the creditor provides a line for the consumer's signature, the creditor must disclose above the signature line the statement required to be disclosed under § 1026.37(n)(1).

**Regulatory Commentary**

*None.*

**CFPB Guide**

The creditor, at its option, may include a line for the signatures of the consumers to Confirm Receipt. If the creditor includes a signature line to Confirm Receipt, the creditor must also include a statement that the signature only signifies receipt of the Closing Disclosure. (§§ 1026.38(s), 1026.37(n)(1))

If the creditor does not include statement line or the consumer's signature, add a statement to the Other Disclosures concerning Loan Acceptance that states: "You do not have to accept this loan because you have received this form or signed a loan application." (§§ 1026.38(s)(2), 1026.37(n)(2))

## ***[77] Other Disclosures Option (page 5, bottom)***

### **Y&A Completion Instruction**

If the signature lines and related information are not included on the Closing Disclosure, the processor should assure that the information that appears directly above the signature line moves to the Other Disclosures portion of the Closing Disclosure.

### **Regulatory Text § 1026.38(s)(1) and § 1026.38(s)(2)**

- (1) At the creditor's option, under the heading **"Confirm Receipt,"** a line for the signatures of the consumers in the transaction. If the creditor provides a line for the consumer's signature, the creditor must disclose above the signature line the statement required to be disclosed under § 1026.37(n)(1).
- (2) If the creditor does not provide a line for the consumer's signature, the statement required to be disclosed under § 1026.37(n)(2) under the heading **"Other Disclosures"** required by paragraph (p) of this section.

### **Regulatory Commentary**

*None.*

### **CFPB Guide**

*None.*

## Section 21: Form of Disclosures

### 12 CFR § 1026.38(t)

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#### *General Language*

§ 1026.38(t) Form of disclosures.

#### **Additional Information**

The requirement that the disclosures be clear and conspicuous and that they be segregated from everything else, does not apply to the integrated disclosures in the same way that the traditional disclosures were completed.

## **[78] General Requirements**

### **Y&A Completion Instruction**

If the institution is using the standard Closing Disclosures, then it has met this standard of clear and conspicuous, proper grouping together, and similar requirements. No processor actions are required.

### **Regulatory Text § 1026.38(t)(1)**

#### **(1) General requirements.**

- (i) The creditor shall make the disclosures required by this section clearly and conspicuously in writing, in a form that the consumer may keep. The disclosures also shall be grouped together and segregated from everything else.
- (ii) Except as provided in paragraph (t)(5), the disclosures shall contain only the information required by paragraphs (a) through (s) of this section and shall be made in the same order, and positioned relative to the master headings, headings, subheadings, labels, and similar designations in the same manner, as shown in form H-25, set forth in appendix H to this part.

### **Regulatory Commentary**

- 1. Clear and conspicuous; segregation.** *The clear and conspicuous standard requires that the disclosures required by § 1026.38 be legible and in a readily understandable form. The disclosures also must be grouped together and segregated from everything else. As required by § 1026.38(t)(3), the disclosures for any transaction that is a federally related mortgage loan under Regulation X, 12 CFR 1024.2, must be made using the standard form H-25 of appendix H to this part. Accordingly, use of that form constitutes compliance with the clear and conspicuous and segregation requirements of § 1026.38(t)(1).*
- 2. Balloon payment financing with leasing characteristics.** *In certain credit sale or loan transactions, a consumer may reduce the dollar amount of the payments to be made during the course of the transaction by agreeing to make, at the end of the loan term, a large final payment based on the expected residual value of the property. The consumer may have a number of options with respect to the final payment, including, among other things, retaining the property and making the final payment, refinancing the final payment, or transferring the property to the creditor in lieu of the final payment. Such transactions may have some of the characteristics of lease transactions subject to Regulation M (12 CFR part 1013), but are considered credit transactions where the consumer assumes the indicia of ownership, including the risks, burdens and benefits of ownership, upon consummation. These transactions are governed by the disclosure requirements of this part instead of Regulation M. Under § 1026.38(t)(1)(ii), creditors may not include any additional information in the disclosures required by § 1026.38. Thus, the disclosures must show the large final payment as a balloon payment in the projected payments table required by § 1026.38(c) and should not, for example, reflect the other options available to the consumer at maturity.*

**CFPB Guide**

None.

## ***[79] Headings and Labels***

### **Y&A Completion Instruction**

If the institution is using the standard Closing Disclosures, then it has met this standard for headings and labels. No processor actions are required.

### **Regulatory Text § 1026.38(t)(2)**

- (2) **Headings and labels.** If a master heading, heading, subheading, label, or similar designation contains the word “**estimated**” or a capital letter designation in form H-25, set forth in appendix H to this part, that heading, label, or similar designation shall contain the word “**estimated**” and the applicable capital letter designation.

### **Regulatory Commentary**

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

### **CFPB Guide**

None.

## **[80] Form**

### **Y&A Completion Instruction**

If the institution is using one of the standard Closing Disclosures, then it has met this standard. No processor actions are required.

### **Regulatory Text § 1026.38(t)(3)**

(3) **Form.** Except as provided in paragraph (t)(5) of this section:

- (i) For a transaction subject to § 1026.19(f) that is a federally related mortgage loan, as defined in Regulation X, 12 CFR 1024.2, the disclosures must be made using form H-25, set forth in appendix H to this part.
- (ii) For any other transaction subject to this section, the disclosures must be made with headings, content, and format substantially similar to form H-25, set forth in appendix H to this part.
- (iii) The disclosures required by this section may be provided to the consumer in electronic form, subject to compliance with the consumer consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (15 U.S.C. 7001 *et seq.*).

### **Regulatory Commentary**

1. **Non-federally related mortgage loans.** *For a transaction that is not a federally related mortgage loan, the creditor is not required to use form H-25 of appendix H to this part, although its use as a model form for such transactions, if properly completed with accurate content, constitutes compliance with the clear and conspicuous and segregation requirements of § 1026.38(t)(1)(i). Even when the creditor elects not to use the model form, § 1026.38(t)(1)(ii) requires that the disclosures contain only the information required by § 1026.38(a) through (s), and that the creditor make the disclosures in the same order as they occur in form H-25, use the same headings, labels, and similar designations as used in the form (many of which also are expressly required by § 1026.38(a) through (s)), and position the disclosures relative to those designations in the same manner as shown in the form. In order to be in a format substantially similar to form H-25, the disclosures required by § 1026.38 must be provided on letter size (8.5" x 11") paper.*

### **CFPB Guide**

None.



## **[81] Rounding**

### **Y&A Completion Instruction**

All rounding issues were included in the completion instructions above. No processor actions are required.

### **Regulation § 1026.38(t)(4)**

#### **(4) Rounding.**

- (i) Nearest dollar.** The following dollar amounts are required to be rounded to the nearest whole dollar:
  - (A) The dollar amounts required to be disclosed by paragraph (b) of this section that are required to be rounded by § 1026.37(o)(4)(i)(A) when disclosed under § 1026.37(b)(6) and (7);
  - (B) The dollar amounts required to be disclosed by paragraph (c) of this section that are required to be rounded by **§ 1026.37(o)(4)(i)(A)** when disclosed under § 1026.37(c)(1)(iii);
  - (C) The dollar amounts required to be disclosed by paragraphs (e) and (i) of this section under the subheading **“Loan Estimate”**;
  - (D) The dollar amounts required to be disclosed by paragraph (m) of this section; and
  - (E) The dollar amounts required to be disclosed by paragraph (c) of this section that are required to be rounded by § 1026.37(o)(4)(i)(C) when disclosed under § 1026.37(c)(2)(iv).
- (ii) Percentages.** The percentage amounts required to be disclosed under paragraphs (b), (f)(1), (n), (o)(4), and (o)(5) of this section shall be disclosed by rounding the exact amounts to three decimal places and then dropping any trailing zeros to the right of the decimal point.
- (iii) Loan amount.** The dollar amount required to be disclosed by paragraph (b) of this section as required by § 1026.37(b)(1) shall be disclosed as an unrounded number, except that if the amount is a whole number then the amount disclosed shall be truncated at the decimal point.

### **Regulatory Commentary**

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

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

## **CFPB Guide**

None.

## **[82] Exceptions**

### **Y&A Completion Instruction**

All exception issues are the province of the programmers more than the institution. No real processor actions are required.

### **Regulation § 1026.38(t)(5)**

#### **(5) Exceptions.**

- (i) **Unit-period.** Wherever the form or this section uses “**monthly**” to describe the frequency of any payments or uses “**month**” to describe the applicable unit-period, the creditor shall substitute the appropriate term to reflect the fact that the transaction’s terms provide for other than monthly periodic payments, such as bi-weekly or quarterly payments.
- (ii) **Lender credits.** The amount required to be disclosed by paragraph (d)(1)(i)(D) of this section may be omitted from the form if the amount is zero.
- (iii) **Administrative information.** The creditor may insert at the bottom of each page under the disclosures required by this section as illustrated by form H-25 of appendix H to this part, any administrative information, text, or codes that assist in identification of the form or the information disclosed on the form, provided that the space provided on form H-25 for any of the information required by this section is not altered.
- (iv) **Closing cost details.**
  - (A) **Additional line numbers.** Line numbers provided on form H-25 of appendix H to this part for the disclosure of the information required by paragraphs (f)(1) through (3) and (g)(1) through (4) of this section that are not used may be deleted and the deleted line numbers added to the space provided for any other of those paragraphs as necessary to accommodate the disclosure of additional items.
  - (B) **Two pages.** To the extent that adding or deleting line numbers provided on form H-25 of appendix H to this part, as permitted by paragraph (t)(5)(iv)(A) of this section, does not accommodate an itemization of all information required to be disclosed by paragraphs (f) through (h) on one page, the information required to be disclosed by paragraphs (f) through (h) of this section may be disclosed on two pages, provided that the information required by paragraph (f) is disclosed on a page separate from the information required by paragraph (g). The information required by paragraph (g), if disclosed on a page separate from paragraph (f), shall be disclosed on the same page as the information required by paragraph (h).
- (v) **Separation of consumer and seller information.** The creditor or settlement agent preparing the form may use form H-25 of appendix H to this part for the disclosure provided to both the consumer and the seller, with the following modifications to separate the information of the consumer and seller, as necessary:

- (A) The information required to be disclosed by paragraphs (j) and (k) of this section may be disclosed on separate pages to the consumer and the seller, respectively, with the information required by the other paragraph left blank. The information disclosed to the consumer pursuant to paragraph (j) of this section must be disclosed on the same page as the information required by paragraph (i) of this section.
- (B) The information required to be disclosed by paragraphs (f) and (g) of this section with respect to costs paid by the consumer may be left blank on the disclosure provided to the seller.
- (C) The information required by paragraphs (a)(2)], (a)(4)(iii), (a)(5), (b) through (d), (i), (l) through (p), (r) with respect to the creditor and mortgage broker, and (s)(2) of this section may be left blank on the disclosure provided to the seller.
- (vi) **Modified version of the form for a seller or third-party.** The information required by paragraphs (a)(2), (a)(4)(iii), (a)(5), (b) through (d), (f) and (g) with respect to costs paid by the consumer, (i), (j), (l) through (p), (q)(1), (r) with respect to the creditor and mortgage broker, and (s) of this section may be deleted from the form provided to the seller or a third-party, as illustrated by form H-25 of appendix H to this part.
- (vii) **Transaction without a seller or simultaneous subordinate financing transaction.** The following modifications to form H-25 of appendix H to this part may be made for a transaction that does not involve a seller or for simultaneous subordinate financing, and for which the alternative tables are disclosed under paragraphs (d)(2) and (e) of this section, as illustrated by form H-25(J) of appendix H to this part:
- (A) The information required by paragraph (a)(4)(ii), and paragraphs (f), (g), and (h) of this section with respect to costs paid by the seller, may be deleted.
- (B) A table under the master heading “**Closing Cost Details**” required by paragraph (f) of this section may be added with the heading “Payoffs and Payments” that itemizes the amounts of payments made at closing to other parties from the credit extended to the consumer or funds provided by the consumer in connection with the transaction, including designees of the consumer; the payees and a description of the purpose of such disbursements under the subheading “**To**”; and the total amount of such payments labeled “**Total Payoffs and Payments.**”
- (C) The tables required to be disclosed by paragraphs (j) and (k) of this section may be deleted.
- (viii) **Translation.** The form may be translated into languages other than English, and creditors may modify form H-25 of appendix H to this part to the extent that translation prevents the headings, labels, designations, and required disclosure items under this section from fitting in the space provided on form H-25.
- (ix) **Customary recitals and information.** An additional page may be attached to the form for the purpose of including customary recitals and information used locally in real estate settlements.

## Regulatory Commentary

1. **Permissible changes.** *The changes required and permitted by § 1026.38(t)(5) are permitted for federally related mortgage loans for which the use of form H-25 is required under § 1026.38(t)(3). For non-federally related mortgage loans, the changes required or permitted by § 1026.38(t)(5), do not affect the substance, clarity, or meaningful sequence of the disclosure and therefore, are permissible. Any changes to the disclosure not specified in § 1026.38(t)(5) or not permitted by other provisions of § 1026.38 are not permissible for federally related mortgage loans. Creditors in non-federally related mortgage loans making any changes that affect the substance, clarity, or meaningful sequence of the disclosure will lose their protection from civil liability under TILA section 130.*
2. **Manual completion.** *The creditor, or settlement agent preparing the form, under § 1026.19(f)(1)(v) is not required to use a computer, typewriter, or other word processor to complete the disclosure required by § 1026.38. The creditor or settlement agent may fill in information and amounts required to be disclosed by § 1026.38 on form H-25 of appendix H to this part by hand printing or using any other method, provided the person produces clear and legible text and uses the formatting required by § 1026.38, including replicating bold font where required.*
3. **Unit-period.** *Section 1026.38(t)(5)(i) provides that wherever form H-25 or § 1026.38 uses “monthly” to describe the frequency of any payments or uses “month” to describe the applicable unit-period, the creditor is required to substitute the appropriate term to reflect the fact that the transaction’s terms provide for other than monthly periodic payments, such as bi-weekly or quarterly payments. For purposes of § 1026.38, the term “unit-period” has the same meaning as in appendix J to Regulation Z.*
4. **Signature lines.** *Section 1026.38(t) does not restrict the addition of signature lines to the disclosure required by § 1026.38, provided any signature lines for confirmations of receipt of the disclosure appear only under the “Confirm Receipt” heading required by § 1026.38(s) as illustrated by form H-25 of appendix H to this part. If the number of signatures requested by the creditor for confirming receipt of the disclosure requires space for signature lines in excess of that provided on form H-25, an additional page may be added to accommodate the additional signature lines with an appropriate reference to the additional page. Such additional page should also contain the heading and statement required by § 1026.38(s) in the format provided on form H-25. Signatures for a purpose other than confirming receipt of the form may be obtained on a separate page, and consistent with § 1026.38(t)(1)(i), not on the same page as the information required by § 1026.38.*
5. **Additional page.** *Information required or permitted to be disclosed by § 1026.38 on a separate page should be formatted similarly to form H-25 of appendix H to this part, so as not to affect the substance, clarity, or meaningful sequence of the disclosure. In addition, information provided on additional pages should be consolidated on as few pages as necessary so as not to affect the substance, clarity, or meaningful sequence of the disclosure.*
6. **Page numbers.** *References required by provisions of § 1026.38 to information disclosed pursuant to other provisions of the section, as illustrated on form H-25 of appendix H, may be altered to refer to the appropriate page number of the form containing such information.*
7. **Translation.** *Section 1026.38(t)(5)(viii) permits the translation of form H-25 into languages other than English, similar to § 1026.37(o)(5)(ii). Pursuant § 1026.38(t)(5)(viii) creditors may modify form H-25 to the extent that translation prevents the headings, labels, designations, and*

required disclosure items under § 1026.38 from fitting in the space provided on form H-25. For example, if the translation of a required label does not fit within the line provided for such label in form H-25, the label may be disclosed over two lines. See form H-28 of appendix H to this part for Spanish translations of form H-25.

### **38(t)(5)(iv) Closing Cost Details.**

1. **Line numbers; closing cost details.** Section 1026.38(t)(5)(iv)(A) permits the deletion of unused lines from the disclosures required by § 1026.38(f)(1) through (3) and (g)(1) through (4), if necessary to allow the addition of lines to other sections that require them for the required disclosures. This provision permits creditors and settlement agents to use the space gained from deleting unused lines for additional lines to accommodate all of the costs that are required to be itemized. For example, if the only origination charge required by § 1026.38(f)(1) is points, the remaining seven lines illustrated on form H-25 of appendix H to this part may be deleted and added to the disclosure required by § 1026.38(g)(4), if seven lines in addition to those provided on form H-25 are necessary to accommodate such disclosure.
2. **Two pages; closing cost details.** Section 1026.38(t)(5)(iv)(B) permits the disclosure of the information required by § 1026.38(f) through (h) over two pages, but only if form H-25 of appendix H to this part, as modified pursuant to § 1026.38(t)(5)(iv)(A), does not accommodate all of the costs required to be disclosed on one page. If the deletion of unused lines and the addition of such lines to other sections permits the disclosures required by § 1026.38(f) through (h) to fit on one page, modification pursuant to § 1026.38(t)(5)(iv)(B) is not permissible.
3. **Separate pages for Loan Costs and Other Costs.** The modification permitted by § 1026.38(t)(5)(iv)(B) allows the information required by § 1026.38(f) through (h) to be disclosed over two pages, numbered as “2a” and “2b.” For an example of such a modification, see form H-25(H) of appendix H to this part. Under this modification, the information required by § 1026.38(h) must remain on the same page as the information required by § 1026.38(g). Accordingly, the Loan Costs section of form H-25 may appear on its own page “2a,” but the Other Costs section must appear on the same page as the Total Closing Costs section on page “2b.” The modifications permitted by § 1026.38(t)(5)(iv)(A) and (B) may be used in conjunction to ensure disclosure of § 1026.38(f) on one page and § 1026.38(g) and (h) on a separate page.

### **38(t)(5)(v) Separation of consumer and seller information.**

1. **Permissible form modifications to separate consumer and seller information.** The modifications to the form permitted by § 1026.38(t)(5)(v) may be made by the creditor in any one of the following ways:
  - i. Leave the applicable disclosure blank concerning the seller or consumer on the form provided to the other party;
  - ii. Omit the table or label, as applicable, for the disclosure concerning the seller or consumer on the form provided to the other party; or
  - iii. Provide to the seller, or assist the settlement agent in providing to the seller, a modified version of the form under § 1026.38(t)(5)(vi), as illustrated by form H-25(I) of appendix H to this part.



2. **Provision of separate disclosure to consumer.** *If applicable State law prohibits sharing with the consumer the information disclosed under § 1026.38(k), a creditor may provide a separate form to the consumer. A creditor may also provide a separate form to the consumer in any other situation where the creditor in its discretion chooses to do so, such as based on the seller's request. For the permissible form modifications to separate consumer and seller information, see comment 38(t)(5)(v)-1.*
3. **Provision of separate disclosure to seller.** *To separate the information of the consumer and seller under § 1026.38(t)(5)(v), a creditor may assist the settlement agent in providing (or provide when acting as a settlement agent) a separate form to the seller where applicable State law prohibits sharing with the seller the information disclosed under § 1026.38(a)(2), (a)(4)(iii), (a)(5), (b) through (d), (f), or (g), with respect to closing costs paid by the consumer, or § 1026.38(i), (j), (l) through (p), or (r), with respect to closing costs paid by the creditor and mortgage broker. A creditor may also assist the settlement agent in providing (or provide when acting as a settlement agent) a separate form to the seller in any other situation where the creditor in its discretion chooses to do so, such as based on the consumer's request. For the permissible form modifications to separate consumer and seller information, see comment 38(t)(5)(v)-1.*

**38(t)(5)(vi) Modified version of the form for a seller or third-party.**

1. **For permissible form modifications to separate consumer and seller information, see comment 38(t)(5)(v)-1.**

**38(t)(5)(vii) Transaction without a seller or simultaneous subordinate financing transaction.**

1. **Alternative tables.** *The alternative tables pursuant to § 1026.38(d)(2) and (e) are required to be disclosed to use the modification permitted under § 1026.38(t)(5)(vii).*
2. **Appraised property value.** *The modifications permitted by § 1026.38(t)(5)(vii) do not specifically refer to the label required by § 1026.38(a)(3)(vii)(B) for transactions that do not involve a seller, because the label is required by that section and therefore is not a modification. As required by § 1026.38(a)(3)(vii)(B), a form used for a transaction that does not involve a seller and is modified under § 1026.38(t)(5)(vii) must contain the label "Appraised Prop. Value" or "Estimated Prop. Value" where there is no appraisal.*

**Paragraph 38(t)(5)(vii)(B).**

1. **Amounts paid by third parties.** *Under § 1026.38(t)(5)(vii)(B), the payoffs and payments table itemizes the amounts of payments made at closing to other parties from the credit extended to the consumer or funds provided by the consumer, including designees of the consumer. Designees of the consumer for purposes of § 1026.38(t)(5)(vii)(B) include third parties who provide funds on behalf of the consumer. Such amounts may be disclosed as credits in the payoffs and payments table. Some examples of amounts paid by third parties that may be disclosed as credits on the payoffs and payments table under § 1026.38(t)(5)(vii)(B) include gift funds, grants, proceeds from loans that satisfy the partial exemption criteria in § 1026.3(h), and, on the Closing Disclosure for a simultaneous subordinate financing transaction, contributions from a seller for costs associated with the subordinate financing.*



## **2. Disclosure of subordinate financing.**

- i. **First-lien Closing Disclosure.** *On the Closing Disclosure for a first-lien transaction disclosed with the alternative tables pursuant to § 1026.38(d)(2) and (e), such as a refinance transaction, that also has simultaneous subordinate financing, the proceeds of the subordinate financing are included in the payoffs and payments table under § 1026.38(t)(5)(vii)(B) by disclosing, as a credit, the principal amount of the subordinate financing, and, if the net proceeds of the subordinate financing are less than the principal amount of the subordinate financing, the net proceeds. The creditor may list the principal amount and net proceeds of the subordinate financing on the same line. For example, the creditor may disclose the principal amount of the subordinate financing under the subheading “To” with a description of the payment, and the net proceeds of the subordinate financing under the subheading “Amount.”*
  - ii. **Simultaneous subordinate financing Closing Disclosure.** *On the Closing Disclosure for a simultaneous subordinate financing transaction disclosed with the alternative tables pursuant to § 1026.38(d)(2) and (e), the proceeds of the subordinate financing applied to the first-lien transaction may be included in the payoffs and payments table under § 1026.38(t)(5)(vii)(B).*
  - iii. **Simultaneous subordinate financing - seller contribution.** *If a creditor discloses the alternative tables pursuant to § 1026.38(d)(2) and (e) on the simultaneous subordinate financing Closing Disclosure, the creditor must also disclose as a credit in the payoffs and payments table on the simultaneous subordinate financing Closing Disclosure, any contributions from the seller toward the simultaneous subordinate financing. For example, assume the subordinate-lien creditor provides the alternative tables pursuant to § 1026.38(d)(2) and (e) on the simultaneous subordinate financing Closing Disclosure and the seller contributes \$200.00 toward the closing costs of the simultaneous subordinate financing. The subordinate-lien creditor must disclose the \$200.00 contribution as a credit on the simultaneous subordinate financing Closing Disclosure in the payoffs and payments table under § 1026.38(t)(5)(vii)(B). See also comments 38(j)-3 and 38(k)(2)(vii)-1 for disclosure requirements applicable to the first-lien transaction when the alternative disclosures are used for a simultaneous subordinate financing transaction and a seller contributes to the costs of the subordinate financing.*
3. **Other examples.** *For additional examples of items disclosed under § 1026.38(t)(5)(vii)(B), see comment 37(h)(2)(iii)-1. See also comment 38-4 for an explanation of how to disclose a principal reduction under § 1026.38(t)(5)(vii)(B).*

## **38(t)(5)(ix) Customary recitals and information.**

1. **Customary recitals and information.** *Section 1026.38(t)(5)(ix) permits an additional page to be added to the disclosure for customary recitals and information used locally in real estate settlements. Examples of such information include a breakdown of payoff figures, a breakdown of the consumer’s total monthly mortgage payments, check disbursements, a statement indicating receipt of funds, applicable special stipulations between buyer and seller, and the date funds are transferred.*

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None.