Closing Disclosure

Ohio Bankers League

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# Section 21: Form of Disclosures

# 12 CFR § 1026.38(t)

## 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.

## [80] 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) **[84],** the disclosures shall contain only the information required by paragraphs (a) through (s) **[see manual Section 2 through 20]** 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* ***[the Closing Disclosure]*** *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)* ***[82],*** *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)* ***[80].***

*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)* ***[80],*** *creditors may not include any additional information in the disclosures required by § 1026.38* ***[the Closing Disclosure].*** *Thus, the disclosures must show the large final payment as a balloon payment in the projected payments table required by § 1026.38(c)* ***[see manual Section 4]*** *and should not, for example, reflect the other options available to the consumer at maturity.*

## [81] 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* ***[the Loan Estimate].*** *When disclosed as required by § 1026.38* ***[the Closing Disclosure],*** *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* ***[the Closing Disclosure]*** *cross-references a counterpart in § 1026.37* ***[the Loan Estimate].*** *Section 1026.38(t)(2)* ***[81]*** *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)* ***[81]*** *incorporates the* ***“estimated”*** *designations reflected on form H-25 into the requirements of § 1026.38* ***[the Closing Disclosure].*** *See comment 37(o)(2)-1* ***[Loan Estimate [75]].***

## [82] 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) **[84]** 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 a non-federally related mortgage loan, the creditor is not required to use form H-25 of appendix H to this part, although its use as a model form for such transactions, if properly completed with accurate content, constitutes compliance with the clear and conspicuous and segregation requirements of § 1026.38(t)(1)(i)* ***[80].*** *Even when the creditor elects not to use the model form, § 1026.38(t)(1)(ii)* ***[80]*** *requires that the disclosures contain only the information required by § 1026.38(a) through (s)* ***[see manual Sections 2 through 20],*** *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)* ***[see manual Sections 2 through 20]****), 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* ***[the Closing Disclosure]*** *must be provided on letter size (8.5” x 11”) paper.*

## [83] 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) **[see manual Section 3]** of this section that are required to be rounded by § 1026.37(o)(4)(i)(A) **[Loan Estimate [77]]** when disclosed under § 1026.37(b)(6) and (7) **[Loan Estimate [19] and [20]];**

(B) The dollar amounts required to be disclosed by paragraph (c) **[see manual Section 4]** of this section that are required to be rounded by **§ 1026.37(o)(4)(i)(A)** when disclosed under § 1026.37(c)(1)(iii) **[Loan Estimate [22]];**

(C) The dollar amounts required to be disclosed by paragraphs (e) **[see manual Section 6]** and (i) **[see manual Section 10]** of this section under the subheading **“Loan Estimate”**;

(D) The dollar amounts required to be disclosed by paragraph (m) **[see manual Section 14]** of this section; and

(E) The dollar amounts required to be disclosed by paragraph (c) **[see manual Section 4]** of this section that are required to be rounded by § 1026.37(o)(4)(i)(C) **[Loan Estimate [77]]** when disclosed under § 1026.37(c)(2)(iv) **[Loan Estimate [23]].**

(ii) **Percentages.** The percentage amounts required to be disclosed under paragraphs (b) **[see manual Section 3],** (f)(1)(i) **[17],** (g)(2)(iii) **[unknown, assuming Loan Estimate [37]],** (l)(3) **[51],** (n) **[see manual Section 15],** and (o)(5) **[62]** of this section shall not be rounded and shall be disclosed up to two or three decimal places. The percentage amount required to be disclosed under paragraph (o)(4) **[61]** of this section shall not be rounded and shall be disclosed up to three decimal places. If the amount is a whole number then the amount disclosed shall be truncated at the decimal point.

(iii) **Loan amount.** The dollar amount required to be disclosed by paragraph (b) **[see manual Section 3]** of this section as required by § 1026.37(b)(1) **[Loan Estimate [14]]**  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* ***[the Closing Disclosure]*** *and not required to be rounded by § 1026.38(t)(4)* ***[83]*** *must be disclosed as an exact numerical amount using decimal places where applicable, unless otherwise provided. For example, under § 1026.38(t)(4)* ***[83],*** *the principal and interest payment disclosed under § 1026.37(b)(3)* ***[Loan Estimate [16]]*** *and § 1026.38(b)* ***[see manual Section 3]*** *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)* ***[Loan Estimate [14]]*** *and § 1026.38(b)* ***[see manual Section 3].***

*2.* ***Guidance.*** *For guidance regarding the requirements of § 1026.38(t)(4)* ***[83]****, see the commentary to § 1026.37(o)(4)* ***[Loan Estimate [77]].***

## [84] 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) **[9]** 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) **[17] [18] [19]** and (g)(1) through (4) **[22] [23] [24] [25]** 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) **[84]** of this section, does not accommodate an itemization of all information required to be disclosed by paragraphs (f) through (h) **[see manual Sections 7 through 9]** on one page, the information required to be disclosed by paragraphs (f) through (h) **[see manual Sections 7 through 9]** of this section may be disclosed on two pages, provided that the information required by paragraph (f) **[see manual Section 7]** is disclosed on a page separate from the information required by paragraph (g) **[see manual Section 8].** The information required by paragraph (g) **[see manual Section 8],** if disclosed on a page separate from paragraph (f) **[see manual Section 7],** shall be disclosed on the same page as the information required by paragraph (h) **[see manual Section 9].**

(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) **[see manual Sections 11 and 12]** 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) **[see manual Section 11]** of this section must be disclosed on the same page as the information required by paragraph (i) **[see manual Section 10]** of this section.

(B) The information required to be disclosed by paragraphs (f) and (g) **[see manual Sections 7 and 8]** 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) **[2],** (a)(4)(iii) **[4],** (a)(5) **[5],** (b) through (d) **[see manual Sections 3 through 5],** (i) **[see manual Section 10],** (l) through (p) **[see manual Section 13 through 17]**, (r) **[see manual Section 19]** with respect to the creditor and mortgage broker, and (s)(2) **[79]** 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) **[2],** (a)(4)(iii) **[4],** (a)(5) **[5],** (b) through (d) **[see manual Sections 3 through 5],** (f) and (g) **[see manual Sections 7 and 8]** with respect to costs paid by the consumer, (i) **[see manual Section 10],** (j) **[see manual Section 11]**, (l) through (p) **[see manual Sections 13 through 17]**, (q)(1) **[68],** (r) **[see manual Section 19]** with respect to the creditor and mortgage broker, and (s) **[see manual Section 20]** 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.** 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 and for which the alternative tables are disclosed pursuant to paragraphs (d)(2) **[10]** and (e) **[see manual Section 6]** of this section, as illustrated by form H-25 of appendix H to this part:

(A) The information required by paragraph (a)(4)(ii) **[4],** and paragraphs (f), (g), and (h) **[see manual Sections 7 through 9]** 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) **[see manual Section 7]** 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) **[see manual Sections 11 and 12]** 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.

### Commentary

*1.* ***Permissible changes.*** *The changes required and permitted by § 1026.38(t)(5)* ***[84]*** *are permitted for federally related mortgage loans for which the use of form H-25 is required under § 1026.38(t)(3)* ***[82].*** *For non-federally related mortgage loans, the changes required or permitted by § 1026.38(t)(5)* ***[84],*** *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)* ***[84]*** *or not permitted by other provisions of § 1026.38* ***[the Closing Disclosure]*** *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 Closing Disclosure].*** *The creditor or settlement agent may fill in information and amounts required to be disclosed by § 1026.38* ***[the Closing Disclosure]*** *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* ***[the Closing Disclosure],*** *including replicating bold font where required.*

*3.* ***Unit-period.*** *Section 1026.38(t)(5)(i)* ***[84]*** *provides that wherever form H-25 or § 1026.38* ***[the Closing Disclosure]*** *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 Closing Disclosure],*** *the term* ***“unit-period”*** *has the same meaning as in appendix J to Regulation Z.*

*4.* ***Signature lines.*** *Section 1026.38(t)* ***[this manual section]*** *does not restrict the addition of signature lines to the disclosure required by § 1026.38* ***[the Closing Disclosure],*** *provided any signature lines for confirmations of receipt of the disclosure appear only under the* ***“Confirm Receipt”*** *heading required by § 1026.38(s)* ***[see manual Section 20]*** *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)* ***[see manual Section 20]*** *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)* ***[80],*** *not on the same page as the information required by § 1026.38* ***[the Closing Disclosure].***

*5.* ***Additional page.*** *Information required or permitted to be disclosed by § 1026.38* ***[the Closing Disclosure]*** *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* ***[the Closing Disclosure]*** *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)* ***[84]*** *permits the translation of form H-25 into languages other than English, similar to* ***§ 1026.37(o)(5)(ii)*** *[Loan Estimate [78]]. Pursuant § 1026.38(t)(5)(viii)* ***[84]*** *creditors may modify form H-25 to the extent that translation prevents the headings, labels, designations, and required disclosure items under § 1026.38* ***[the Closing Disclosure]*** *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)* ***[84]*** *permits the deletion of unused lines from the disclosures required by § 1026.38(f)(1) through (3)* ***[17] [18] [19]*** *and (g)(1) through (4)* ***[22] [23] [24] [25],*** *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)* ***[17]*** *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)* ***[25],*** *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)* ***[84]*** *permits the disclosure of the information required by § 1026.38(f) through (h)* ***[see manual Sections 7 through 9]*** *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)* ***[84],*** *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)* ***[see manual Sections 7 through 9]*** *to fit on one page, modification pursuant to § 1026.38(t)(5)(iv)(B)* ***[84]*** *is not permissible.*

*3.* ***Separate pages for Loan Costs and Other Costs.*** *The modification permitted by § 1026.38(t)(5)(iv)(B)* ***[84]*** *allows the information required by § 1026.38(f) through (h)* ***[see manual Section 7 through 9]*** *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)* ***[see manual Section 9]*** *must remain on the same page as the information required by § 1026.38(g)* ***[see manual Section 8].*** *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)* ***[84]*** *may be used in conjunction to ensure disclosure of § 1026.38(f)* ***[see manual Section 7]*** *on one page and § 1026.38(g) and (h)* ***[see manual Sections 8 and 9]*** *on a separate page.*

***38(t)(5)(vii) Transaction without a seller.***

*1.* ***Alternative tables.*** *The alternative tables pursuant to § 1026.38(d)(2) and (e) are required to be disclosed to use the modification permitted under § 1026.38(t)(5)(vii)* ***[84].***

*2.* ***Appraised property value.*** *The modifications permitted by § 1026.38(t)(5)(vii)* ***[84]*** *do not specifically refer to the label required by § 1026.38(a)(3)(vii)(B)* ***[3]*** *for transactions that do not involve a seller, because the label is required by that section and is a requirement and not considered a modification. As required by § 1026.38(a)(3)(vii)(B)* ***[3],*** *a form used for a transaction that does not involve a seller and is modified pursuant to § 1026.38(t)(5)(viii)* ***[84]*** *must contain the label* ***“Appraised Prop. Value”*** *or* ***“Estimated Prop. Value”*** *where there is no appraisal, and the information is required by § 1026.38(a)(3)(vii)(B)* ***[3].***

***38(t)(5)(ix) Customary recitals and information.***

*1.* ***Customary recitals and information.*** *Section 1026.38(t)(5)(ix)* ***[84]*** *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.*