

Regulation Z

Auditing the Closing Disclosure

Community Bankers for Compliance (CBC)
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General Requirements

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

Provision of Closing Disclosure – Actual Terms - 12 CFR § 1026.19(f)(1)(i)

Regulatory Discussion

The Closing Disclosure must contain the actual terms of the loan and the actual costs associated with the loan, using the best information reasonably available.

If certain amounts are not known at the time of issuance, the creditor must insert their very best estimate of what those costs will be. This may be a challenge, as some information may not yet be available. The commentary allows for a “best guess,” which in almost all cases will result in another Closing Disclosure at closing with the correct amounts.

A Closing Disclosure is not required for denied or withdrawn applications, although it is possible that the denial or withdrawal could occur after issuance of the Closing Disclosure.

Any settlement agent that prepares any part of this disclosures is bound by the same rules as the creditor.

Regulatory Text

(f) Mortgage loans - final disclosures

(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.

Regulatory Commentary

- 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.

Provision of Closing Disclosure – Timing - 12 CFR § 1026.19(f)(1)(ii)

Regulatory Discussion

The Closing Disclosure must be issued at least three business days prior to consummation. The issue date is day zero, and the loan may close on the third day. In all cases except for snail mailing, which adds an additional automatic 3 days (unless the bank can prove delivery earlier), there needs to be proof of delivery. This is discussed further below.

Regulatory Text

(f) Mortgage loans - final disclosures

(1) Provision of disclosures

(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.

Regulatory Commentary

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.** *[Omitted]*

Provision of Closing Disclosure – Receipt of Disclosures - 12 CFR § 1026.19(f)(1)(iii)

Regulatory Discussion

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 (add additional days for 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).

Regulatory Text

(f) Mortgage loans - final disclosures

(1) Provision of disclosures

- (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.

Regulatory Commentary

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).

Provision of Closing Disclosure – Waiver of Waiting Period - 12 CFR § 1026.19(f)(1)(iv)

Regulatory Discussion

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.

Regulatory Text

(f) Mortgage loans - final disclosures

(1) Provision of disclosures

- (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.

Regulatory Commentary

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.*

Provision of Closing Disclosure – Settlement Agent - 12 CFR § 1026.19(f)(1)(v)

Regulatory Discussion

The Closing Disclosure may be delivered by the institution or the closing agent. The same timing rules apply to both. See the responsibilities section in the commentary below.

Regulatory Text

(f) Mortgage loans - final disclosures

(1) Provision of disclosures

- (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

- 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.
- 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.
- 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

[Omitted.]

10.7 Page 2: Loan costs and other costs

[Omitted]

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

[Omitted.]

10.9 Page 4: Additional information about this loan

[Omitted.]

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

[Omitted.]

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 2:

Closing Disclosure - Subsequent Changes

12 CFR § 1026.19(f)(2)

Subsequent Changes – Changes Before Consummation not Requiring a New Waiting Period - 12 CFR § 1026.19(f)(2)(i)

Regulatory Discussion

If any item is not known at the time of the initial issuance of the Closing Disclosure, it may be estimated. This was discussed above. But estimating will result in a corrected Closing Disclosure at the closing table. There are three situations in which a new Closing Disclosure will result in a new waiting period (discussed below).

Regulatory Text

(f) Mortgage loans - final disclosures

(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.

Regulatory Commentary

- 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).

Subsequent Changes – Changes Before Consummation Requiring a New Waiting Period - 12 CFR § 1026.19(f)(2)(ii)

Regulatory Discussion

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 (at the last minute)

Regulatory Text

(f) Mortgage loans - final disclosures

(2) Subsequent changes.

- (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.

Regulatory Commentary

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.

Subsequent Changes – Changes Due to Events Occurring After Consummation - 12 CFR § 1026.19(f)(2)(iii)

Regulatory Discussion

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.

Note the exception in the commentary for per diem interest.

Regulatory Text

(f) Mortgage loans - final disclosures

(2) Subsequent changes.

- (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.

Regulatory Commentary

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.

Subsequent Changes – Changes Due to Clerical Errors – 12 CFR § 1026.19(f)(2)(iv)

Regulatory Discussion

If clerical errors are discovered after closing, a new Closing Disclosure must be issued. 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 (discussed above), 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.

Regulatory Text

(f) Mortgage loans - final disclosures

(2) Subsequent changes.

- (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.

Regulatory Commentary

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.

Subsequent Changes – Refunds Related to the Good Faith Analysis - 12 CFR § 1026.19(f)(2)(v)

Regulatory Discussion

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

(f) Mortgage loans - final disclosures

(2) Subsequent changes.

- (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

1. **Requirements.** Section 1026.19(f)(2)(v) provides that, if amounts paid at consummation exceed the amounts specified under § 1026.19(e)(3)(i) or (ii), the creditor does not violate § 1026.19(e)(1)(i) if the creditor refunds the excess to the consumer no later than 60 days after consummation, and the creditor does not violate § 1026.19(f)(1)(i) if the creditor delivers or places in the mail disclosures corrected to reflect the refund of such excess no later than 60 days after consummation. For example, assume that at consummation the consumer must pay four itemized charges that are subject to the good faith determination under § 1026.19(e)(3)(i). If the actual amounts paid by the consumer for the four itemized charges subject to § 1026.19(e)(3)(i) exceed their respective estimates on the disclosures required under § 1026.19(e)(1)(i) by \$30, \$25, \$25, and \$15, then the total would exceed the limitations prescribed by § 1026.19(e)(3)(i) by \$95. If, further, the amounts paid by the consumer for services that are subject to the good faith determination under § 1026.19(e)(3)(ii) totaled \$1,190, but the respective estimates on the disclosures required under § 1026.19(e)(1)(i) totaled only \$1,000, then the total would exceed the limitations prescribed by § 1026.19(e)(3)(ii) by \$90. The creditor does not violate § 1026.19(e)(1)(i) if the creditor refunds \$185 to the consumer no later than 60 days after consummation. The creditor does not violate § 1026.19(f)(1)(i) if the creditor delivers or places in the mail corrected disclosures reflecting the \$185 refund of the excess amount collected no later than 60 days after consummation. See comments 38-4 and 38(h)(3)-2 for additional guidance on disclosing refunds.

Small Entity Compliance Guide – Subsequent Disclosures**7.14 What must creditors do when the amounts paid at closing exceed the amounts disclosed on the Loan Estimate beyond the applicable tolerance thresholds? (§ 1026.19(f)(2)(v))**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

For any other changes before consummation that do not fall under the three categories in § 1026.19(f)(2)(ii) (*i.e.*, related to the APR, loan product, or the addition of a prepayment penalty), the creditor still must provide a corrected Closing Disclosure with any terms or costs that have changed and ensure that the consumer receives it.

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

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

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

If a consumer asks to inspect the Closing Disclosure the business day before consummation, the Closing Disclosure presented to the consumer must reflect any adjustments to the costs or

terms that are known to the creditor at the time the consumer inspects it. (§ 1026.19(f)(2)(i))

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

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

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

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

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

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

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

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

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

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

Yes. Creditors also must provide a corrected **Closing Disclosure** to correct non-numerical **clerical errors** and document **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 3: Closing Disclosure Charges 12 CFR § 1026.19(f)(3)

Actual Charge - 12 CFR § 1026.19(f)(3)(i)

Regulatory Discussion

The actual charge for each item must generally be disclosed as well as the final recipient of that fee.

Regulatory Text

(f) Mortgage loans - final disclosures

(3) Charges Disclosed

- (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.

Regulatory Commentary

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.*

Average Charge - 12 CFR § 1026.19(f)(3)(ii)

Regulatory Discussion

The regulation permits 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 to use an average charge, the reader is directed to the regulatory text and commentary below for further information.

Regulatory Text

(f) Mortgage loans - final disclosures

(3) Charges Disclosed

- (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

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 4:

Closing Disclosure – Seller

12 CFR § 1026.19(f)(4) and (5)

Provision to Seller - 12 CFR § 1026.19(f)(4)(i)

Regulatory Discussion

The seller receives the Closing Disclosure. All charges and other disclosures must be correct.

Regulatory Text

(f) Mortgage loans - final disclosures

(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.

Regulatory Commentary

- 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.*

Timing for Seller - 12 CFR § 1026.19(f)(4)(ii)

Regulatory Discussion

The seller receives the Closing Disclosure (seller side only) at consummation. If any errors are noted, 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.

Regulatory Text

(f) Mortgage loans - final disclosures

(4) Transactions involving a seller

- (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.

Regulatory Commentary

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.

Charges Disclosed and Creditor's Copy - 12 CFR § 1026.19(f)(4)(iii) and (iv)

Regulatory Discussion

All charges must be correct.

The institution must retain a copy of the seller's side of the Closing Disclosure.

Regulatory Text

(f) Mortgage loans - final disclosures

(4) Transactions involving a seller

(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.

Regulatory Commentary

None.

No Fee - 12 CFR § 1026.19(f)(5)

Regulatory Discussion

The seller may not be charged a fee for completion of the Closing Disclosure.

Regulatory Text

(f) Mortgage loans - final disclosures

- (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

None.

Small Entity Compliance Guide – 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))

Closing Disclosure Completion and Audit Instructions

Section 5: Manual Notes and Introduction

Manual Notes

Introduction

Each field on the Closing Disclosure form has been numbered, at our discretion. Each instruction begins on a new page. 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 read 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 read in finding items on the page. **Bold** has no other implication.

Also included in this manual are relevant portions of the **Regulatory Text and Regulatory Commentary as they appear in § 1026.37 (Loan Estimate)**. Several sections of the Regulatory Text and/or Regulatory Commentary for the Closing Disclosure simply refer to the Loan Estimate portion of the regulation. We have included the Loan Estimate text and commentary in this manual for ease in auditing the Closing Disclosure. The Loan Estimate text is shaded to differentiate between the Closing Disclosure and Loan Estimate regulatory text and commentary.

Y&A Audit Instructions

Included in the manual are audit instructions created by Young & Associates, Inc. They are intended to assist you in completing the audit.

CFPB Guide

Included are sections from the CFPB's TILA-RESPA Integrated Disclosure Guide to the Closing Disclosure form as additional guidance for completion of the forms.

Case Studies

Case studies are included where appropriate, to enhance your understanding of what may constitute a finding or comment for your audit report.

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.

Note that this commentary also discusses any immediate principal reduction.

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.

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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 6: Closing Disclosure General

12 CFR § 1026.38(a)

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.

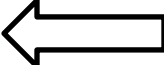
Regulatory Commentary

None.

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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.		
Closing Information	Transaction Information	Loan Information
Date Issued	Borrower	Loan Term
Closing Date		Purpose
Disbursement Date		Product
Settlement Agent	Seller	
File #		Loan Type ☐ Conventional ☐ FHA
Property		☐ VA ☐ _____
	Lender	Loan ID #
Sale Price		MIC #

Y&A Completion Instruction

Title the document “Closing Disclosure.” This is boilerplate and should require no processor action.

Audit: What You are Looking For

The document is titled “Closing Disclosure” and appears in the appropriate location on the form. It is very unlikely that this will ever be a finding in an audit.

Regulatory Text § 1026.38(a)(1)

(1) **Form title.** The title of the form, “Closing Disclosure,” using that term.

Regulatory Commentary

None.

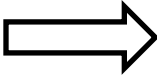
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None.

Case Studies

As this is a “boilerplate” portion of the disclosure, no violations are likely, and no case studies are included here.

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

Closing Disclosure 		
<i>This form is a statement of final loan terms and closing costs. Compare this document with your Loan Estimate.</i>		
Closing Information	Transaction Information	Loan Information
Date Issued	Borrower	Loan Term
Closing Date		Purpose
Disbursement Date		Product
Settlement Agent	Seller	
File #		Loan Type ☐ Conventional ☐ FHA
Property		☐ VA ☐ _____
	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.

Audit: What You are Looking For

The document indicates "Save this Loan Estimate to compare with your Closing Disclosure." and appears in the appropriate location on the form. It is unlikely that this will ever be a finding in an audit.

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.

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None..

Case Studies

As this is a “boilerplate” portion of the disclosure, no violations are likely, and no case studies are included here.

[3] Closing Information (page 1, top left)

This form is a statement of final loan terms and closing costs. Compare this document with your Loan Estimate.

Closing Information	Transaction Information	Loan Information
Date Issued	Borrower	Loan Term
Closing Date		Purpose
Disbursement Date		Product
Settlement Agent	Seller	Loan Type ☐ Conventional ☐ FHA
File #		☐ VA ☐ _____
Property	Lender	Loan ID #
Sale Price		MIC #

There are 3 required dates that must be modified with every new version of the Closing Disclosure

There are 2 fields specific to the loan: Property Address and the Sale Price or other value (Sale Price is a dynamic title).

Information regarding the settlement agent and the settlement agent's case number, if any, is inserted here.

Y&A Completion Instruction

Much of the information in this instruction is discussed in greater detail in the Auditing the Loan Estimate manual. Refer to that manual for additional information.

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.

Audit: What You are Looking For

All dates are correct: There are three dates – the issue date, the closing date, and the disbursement date.

- The Date Issued is the date the closing disclosure is delivered to the consumer, regardless of 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 paid in a purchase transaction or the date the amounts are expected to be paid to the consumer or a third party in a non-purchase transaction.
- Depending upon the circumstances, all three dates can be different or the same.

The auditor must review the file to determine the accuracy of all dates.

The auditor must also determine that the settlement agent data is completed and correct.

The auditor must determine that the property address(es), including the zip code, are included and correct. If the property does not have an address, the auditor must determine that a sufficient description to identify the property is inserted, including the zip code. Personal property is not required to be included on this portion of the form. If the addresses of all properties securing the transaction cannot be included in the space allocated, an additional page with the real property's information must be appended to the end of the form.

And finally, the auditor must determine that the appraised value/sale price of the property is correct and has the correct heading. See the regulatory text below for the different heading possibilities.

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.*

Relevant Loan Estimate Regulatory Text and Commentary

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.*

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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)

Case Studies

Case Study 1

Date Issued is missing.

This is a finding.

Case Study 2

The Date Issued is dated the same date as the initial Loan Estimate.

This is a finding. In theory, the first Closing Disclosure issue date can be the day after the Loan Estimate issue date, but that circumstance is rare.

Case Study 3

The Closing Disclosure was sent on June 8. A new Loan Estimate was sent June 10.

This is a finding. A new Loan Estimate cannot be issued after issuance of the Closing Disclosure. Once the Closing Disclosure is issued, all changes must take place on the Closing Disclosure.

Case Study 4

On a loan subject to rescission, the closing date and disbursement date are identical.

In some states, it is acceptable to collect interest from the note date even though there is a delay in disbursement due to a rescission. If the state involved allows this, it is theoretically possible that this date pattern is accurate. The auditor must determine if this is the case. In all other cases, this is likely a finding due to the 3-day disbursement delay required for rescission.

Case Study 5

The closing date, disbursement date and issue date are identical.

This is certainly possible. If the Closing Disclosure is being reissued on the closing date and the loan is being disbursed immediately, this would be accurate. Otherwise, this is a finding.

Case Study 6

A new Closing Disclosure was issued as of the closing date, even though the initial Closing Disclosure was accurate.

The regulation does not require this, however many banks do it out of “habit.” It is extra work, but not a finding.

Case Study 7

The purpose of the loan is to purchase the property. The street address, city, and state are correct but the zip code is incorrect.

This is a finding. The regulation is very clear that zip codes are an important portion of the address.

Case Study 8

The property being used as collateral is not the same property as the property being purchased. The address listed on the Closing Disclosure is the address of the property being purchased.

This is a finding. The property being used as collateral is the address that should appear in this location. The fact that the money is being used to purchase a property at a different location is not material for the purpose of the Closing Disclosure.

Case Study 9

The loan was for the purchase of a home and a motor home. The motor home is not listed as part of the property on the Closing Disclosure.

This is not a finding. The Closing Disclosure focuses on real estate. There is no requirement that the other items being purchased appear on the Closing Disclosure. If other items are being taken as collateral, there are other documents that will need to be completed, including security interest documents. This will not impact the Closing Disclosure.

Case Study 10

The applicant is buying a parcel of land that does not yet have a mailing address. The address field lists “5 acres on Some Street, Somewhere, Some State.”

This is a finding, as the regulation requires a zip code. The rest of the address is acceptable.

[4] Transaction Information (page 1, top middle)

The diagram shows a sample Closing Disclosure form with three callout boxes pointing to specific sections:

- Borrower information here. Name(s) and address(es).** Points to the **Borrower** field under the **Transaction Information** heading.
- Seller information here. Name(s) and address(es).** Points to the **Seller** field under the **Transaction Information** heading.
- Lender information here. Name only.** 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 (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 all the information cannot be shown in the space provided. If there are multiple lenders, the lender making this disclosure is the name that appears in the Lender portion of the form. If there is no seller, the seller area must be left blank.

Audit: What You are Looking For

The auditor must ensure that all borrowers and sellers, as appropriate, with their appropriate addresses are listed. This may require the review of the purchase agreement or other documents to ensure that all names and addresses are present. Some names/addresses may appear on an additional page. The lender making this disclosure is also named.

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)

Case Studies

None.

[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.		
Closing Information	Transaction Information	Loan Information
Date Issued	Borrower	Loan Term
Closing Date		Purpose
Disbursement Date	Seller	Product
Settlement Agent		Loan Type ☐ Conventional ☐ FHA
File #	Lender	☐ VA ☐ _____
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.

Audit: What You are Looking For

Ensure the Loan Term, Purpose, Product, Loan Type, loan ID and Mortgage Insurance Case Number (if applicable) are all correct. This may require the review of the note and other

documents to ensure that all items are accurate. Use the information above and below to help make the appropriate determination.

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 #.**”

Regulatory 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.

Relevant Loan Estimate Regulatory Text and Commentary

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.

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.

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.”**

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.”**

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)

Case Studies

Case Study 1

On the initial Loan Estimate, the purchase price listed was correct. However, the appraisal arrived prior to the issuance of the Closing Disclosure and the appraised value is actually \$20,000 more than the purchase price. The processor changed the purchase price number to reflect the appraised value on the Closing Disclosure.

This is a finding. For transactions that involve a seller, the contract sale price is required to be disclosed. When the purchase price is the amount disclosed, it does not change on any subsequent Loan Estimate or Closing Disclosure.

Case Study 2

The loan is for purchasing and rehab of a home. The purchase price is \$100,000. The loan is for \$150,000. The Closing Disclosure shows a purchase price of \$150,000.

This is a finding. The purchase price was \$100,000.

Case Study 3

The loan is for construction and includes the lot purchase. The sale price for the lot is \$35,000 and the total loan is \$350,000. The processor has listed \$385,000 as the purchase price.

This is a finding. The purchase price was \$35,000 for the land. That is the amount to be shown as Purchase Price.

Case Study 4

The property is owned free and clear. The proceeds are anticipated to be used to pay off credit cards. The processor marked the purpose as refinance.

This is a finding. In order for there to be a refinance, the proceeds must be used for paying off an existing lien and loan against the property. This is a home equity loan.

Case Study 5

The purpose of the money is to buy a lot and construct a home on that lot. The purpose listed on the Loan Estimate was purchase.

This is not a finding. The proceeds are being used for purchasing the land as well as construction of a dwelling. Therefore, it is disclosed as a purchase, even though the majority of the money will probably be going to build the home.

Case Study 6

The use of the money is anticipated to be a refinance of the current mortgage and to pay off credit cards. The purpose of the loan was listed as home equity.

This is a finding, as the loan is anticipated to pay off an existing mortgage secured by the property disclosed on the Closing Disclosure. The loan is a refinance regardless of the use of the new money.

Case Study 7

The land is free and clear, and the anticipated proceeds will be used to build a home on the property. The purpose listed on the Closing Disclosure was construction.

This is not a finding. As the real estate was free and clear, you can use a construction loan in this case. Neither purchase nor refinance is appropriate.

Case Study 8

The terms of the notes are anticipated to be a 12-month construction loan that is interest only, followed by a 30 year repayment. For the repayment period, the initial five years is fixed rate (no introductory rate), followed by an annual change in the interest rate. The product was described as “12 months interest only, 5/1 Variable Rate, 30 years.”

This is a finding. The regulation is quite clear that the word “variable” should not be used. It should be “adjustable.” The correct “Product” is: “12-Month Interest Only, 5/1 Adjustable Rate.”

Case Study 9

The Closing Disclosure is for a loan that is a fixed rate loan for 30 years with a 20 year balloon. The loan product was described as a “20-year balloon, fixed rate.”

This is not a finding. Everything appears as it should, in the proper order.

Case Study 10

The loan is going to be sold to Freddie Mac. The loan type is listed as “Other” with Freddie Mac listed on the line.

This is a finding. As Freddie Mac does not insure the loan, it is a conventional loan under the definition. “Other” is a choice that would rarely be used.

Case Study 11

The original loan request was for an in-house loan. As an in-house loan, the original Loan Estimate listed the loan as conventional, which was accurate. During the application process, the applicant chose to change to an FHA loan. This field was not changed to reflect an FHA loan on the subsequent Loan Estimate or the Closing Disclosure.

This is a finding. Auditors need to be careful to understand the sequence of events as loan types do change from time to time. When loan types change, this field may or may not have to change.

Case Study 12

On the Closing Disclosure, the processor changed the Loan ID # to the loan number.

This is a finding. The original Loan ID # cannot change.

Alternate Versions of this Section of the Closing Disclosure

Closing Disclosure		
This form is a statement of final loan terms and closing costs. Compare this document with your Loan Estimate.		
Closing Information	Transaction Information	Loan Information
Date Issued	Borrower	Loan Term
Closing Date		Purpose
Disbursement Date		Product
Settlement Agent	Seller	
File #		Loan Type ☐ Conventional ☐ FHA
Property		☐ VA ☐ _____
	Lender	Loan ID #
Appraised Prop. Value		MIC #

This version indicates “**Appraised Prop. Value**” rather than “**Sale Price**” in the bottom left corner.

Closing Disclosure		
This form is a statement of final loan terms and closing costs. Compare this document with your Loan Estimate.		
Closing Information	Transaction Information	Loan Information
Date Issued	Borrower	Loan Term
Closing Date		Purpose
Disbursement Date		Product
Settlement Agent	Seller	
File #		Loan Type ☐ Conventional ☐ FHA
Property		☐ VA ☐ _____
	Lender	Loan ID #
Estimated Prop. Value		MIC #

This version indicates “**Estimated Prop. Value**” rather than “**Sale Price**” in the bottom left corner.

Section 7: Loan Terms

12 CFR § 1026.38(b)

[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 <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

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.

Audit: What You are Looking For

The auditor must determine that all items are correct and all amounts are properly rounded. Most of the information can be verified by a review of the note. All required completion instructions here mirror the Loan Estimate. The following information is provided to assist the auditor:

Loan Amount

The loan amount is correct and properly rounded.

Interest Rate

The initial interest rate is appropriately entered. There can be no more than three decimal places.

First Payment Amount

The first payment amount is appropriately entered. 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. The amount will be rounded.

Prepayment Penalty

The prepayment question was properly answered. 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). The amount will be rounded.

Balloon Payment

The balloon payment question was properly answered. 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. The amount will be rounded.

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,” then no additional information is completed 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 auditor must determine that the processor disclosed the maximum amount that the loan amount can reach and whether the increase is scheduled or only potential.

For the interest rate increases, the auditor must determine that the frequency of changes is correct, 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 auditor must determine that what is scheduled and when it can occur is correct, including all triggers and any interest only payments.

All amounts will be rounded.

Amount of Prepayment Penalty or Balloon Payment

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

For the prepayment penalty disclosure, the auditor must determine that the disclosure of the maximum prepayment penalty amount and the date that the prepayment penalty will end are correct. For this calculation, the system must assume that all payments are timely and there are no other issues that might change this amount. The amount will be rounded.

For the balloon payment disclosure, the disclosure must indicate the maximum amount for the balloon amount and the due date for the balloon. The amount will be rounded.

Note

The Regulatory Text and Regulatory Commentary only refer back to the requirements as presented for the Loan Estimate. If review of that material is necessary, it appears below.

Regulatory Text

- (b) **Loan terms.** A separate table under the heading “Loan Terms” that includes the information required by § 1026.37(b).

Regulatory Commentary

1. **Guidance.** See the commentary to § 1026.37(b) for guidance on the content of the disclosures required by § 1026.38(b).

Relevant Loan Estimate Regulatory Text and Commentary

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.

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.

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.

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.*

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.*

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.

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.

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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))

Case Studies

Case Study 1

The loan has an interest rate of 7% during construction. The rate will change to a fixed rate of 6% during the repayment period. The rate shown is 6%.

This is a finding. The initial interest rate is 7%, and this field calls for the initial interest rate.

Case Study 2

Management has decided to add a prepayment penalty if the customer pays off the loan in the first four years. It is properly disclosed as prepayment penalty “yes” on the Closing Disclosure.

This is a finding. A prepayment penalty can only exist for the first three years.

Case Study 3

Management has decided to offer mortgage loans with an incentive – if the applicant obtains the loan from your bank, the bank will pay the appraisal fee. However, if the loan is paid off in the first three years, the customer must pay the appraisal fee money back to the bank. It is disclosed as prepayment penalty “yes” on the Closing Disclosure.

This is a finding. Requiring a reimbursement of funds for services that were legitimately paid by the bank is not a prepayment penalty, and the correct response would be “no.”

Case Study 4

The loan is a fixed rate loan with a payment of \$495 per month. The final payment is \$1,000. The Loan Estimate states there is a balloon payment.

This is correct, and there is no finding. The final payment is more than twice the lowest regular payment. If the final payment was \$900, there would be a finding, as the increased final payment does not meet the definition of a balloon payment.

Case Study 5

A loan does not have negative amortization. However, the loan officer believes that the customer will not pay flood insurance, and the bank will have to add it to the loan balance. Negative amortization was marked yes.

This is a finding. The disclosure is based on the note requirements, not human judgement. While the loan officer may be correct in their assessment, that does not change the completion of the disclosure.

Case Study 6

The loan being audited is an ARM loan with an initial interest rate of 5%, and the maximum rate of 11% with adjustments of 2% annually. It is a 0/1 ARM. The maximum rate can be reached, at least according to the interest rate disclosure, at the beginning of year three.

This is a finding. 5%, 7%, 9%, 11%. The maximum interest rate could occur at the beginning of year 4. Note: The regulation describes this loan as a 0/1 ARM. Most bankers would identify the loan as a 1/1 ARM.

Case Study 7

On an ARM loan with an initial interest rate of 4%, the disclosure states that the payment maximum will be reached in year four. 2% annual cap, 10% maximum interest rate. Assuming this is true, what rates will be used to calculate this amount, with a 10% maximum interest rate increase over the term of a loan? Are you going to do the work to see if the payment is correct?

The rates will be 4%, 6%, 8%, 10%. The second question is for discussion/review.

Section 8: Projected Payments

12 CFR § 1026.38(c)

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.

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None.

[7] Projected Payments or Range of Payments (page 1, Projected Payments)

Projected Payments	
Payment Calculation	
Principal & Interest	Up to four payment schedules can appear here.
Mortgage Insurance	
Estimated Escrow <i>Amount can increase over time</i>	
Estimated Total Monthly Payment	

Y&A Completion Instruction

There is the potential for four payment schedules, following the same pattern as the Loan Estimate. The only change is 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.*

Relevant Loan Estimate Regulatory Text and Commentary

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 arrange 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.*

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).*

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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.

Case Studies

Case Study 1

The payment schedule on a fixed rate loan only contains one payment stream.

This is correct, no finding.

Case Study 2

The payment schedule for a fixed rate loan with PMI contains two payment streams.

This is correct as the disclosure must show the payment schedule with PMI and without PMI. This answer assumes that the loan length will exceed the PMI period.

Case Study 3

The loan is for 20 years with a balloon. It is a fixed rate loan. It contains 2 payment schedules.

There is no finding. The balloon payment must always be shown. Therefore, there are two payment schedules, one for the regular payments and one for the balloon payment.

Case Study 4

The loan is for 30 years and the rate changes every 10 years. There are three payment streams.

There is no finding. The rate and payment will change twice during the 30-year term.

Case Study 5

The payment disclosure is for a construction loan with a one-year interest only period. It is a fixed rate loan. There are two payment streams - the first is for the interest only period which conforms with Appendix D of the regulation. The second payment stream is for the repayment period of 30 years.

This is correct. There is no finding. This is exactly the way this loan should be disclosed.

Case Study 6

When reviewing the case study 5 information, the construction period is only for nine months. In the year 1 portion of the disclosure it shows 2 payment amounts. One is the interest only payment as set forth under Appendix D, and the second amount is the payment for the repayment portion of the loan.

This is correct - there is no finding. With a 9-month construction period, both the interest-only payment and the repayment amount will be due during the first year. So the proper way to disclose this is to show both amounts in the first column of the disclosure.

Case Study 7

You are reviewing a variable rate loan that is a 0/1 ARM. The LTV is 95%, so the PMI will last 7.5 years. How does PMI get shown on the payment schedule?

There are 4 total payment streams. As this loan is a 0/1 ARM, the fourth payment stream will occur long before PMI is cancelled. In this circumstance, the payment schedule will appear as if PMI will exist for the life of the loan.

Case Study 8

Do you think it is reasonable to verify all payment schedules in an ARM loan? If so, how will we go about doing it?

A discussion.

[8] Estimated Taxes, Insurance, and Assessments (page 1, Projected Payments)

Estimated Taxes, Insurance & Assessments Amount can increase over time See page 4 for details	This estimate includes ☐ Property Taxes ☐ Homeowner's Insurance ☐ Other: See Escrow Account on page 4 for details. You must pay other property costs separately.	In escrow?
--	--	-------------------

Total of all other property costs here (per month).

What is included in the other property costs.

Is the item being escrowed?

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.”

Audit: What You are Looking For

This instruction requires that the consumer be informed regarding all amounts due for taxes, insurance, homeowners association dues, etc. These amounts are expressed as a monthly amount due. Note: If this section only contains taxes and insurance, and the applicant has elected to escrow, the total monthly amount in Section G and the total monthly dollar amount listed in this location must match. Some amounts may still be estimates, especially for construction and similar loan types. This section is often not updated for subsequent Closing Disclosures. If you are auditing a subsequent Closing Disclosure, examine this section closely for accuracy.

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.

Relevant Loan Estimate Regulatory Text and Commentary

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.

Case Studies

Case Study 1

The only items that are included in this portion of the Closing Disclosure are taxes and insurance. The taxes amount appears accurate, or at least reasonable.

Note: Some states do not change the real estate taxes upon sale of the property, allowing the processor to disclose the taxes accurately. Some states change the taxes (probably an increase) upon sale of the property, requiring the processor to estimate the taxes. The auditor needs to know the state involved, so that they understand whether taxes are available or are estimated. The same issue may arise in some states where senior citizens with lower incomes receive a real estate tax discount. Assuming the new owners cannot receive that discount, taxes will likely have to be estimated.

Returning to the case study: The real estate tax estimate seems reasonable. However, the insurance amount is very low compared to what is normal for the community.

This is a finding. All amounts used to calculate this particular portion of the form have to be reasonable. While this is a judgment call, using a number like \$300 for an annual insurance premium is totally unrealistic and needs to be discussed in the audit report. If this occurs, hopefully the auditor will find a corrected Closing Disclosure in the file with actual amounts listed. If this section was not adjusted when the actual amounts were entered, it still is a finding.

Case Study 2

It is obvious in the file that the processor discovered the existence of the homeowners association and the HOA monthly fees a couple of days after issuing the Loan Estimate under review. There was no additional loan estimate done to correct this portion of the form of the disclosure, however, it appears correctly on the Closing Disclosure.

This is not a finding.

Section 9: Costs at Closing

12 CFR § 1026.38(d)

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

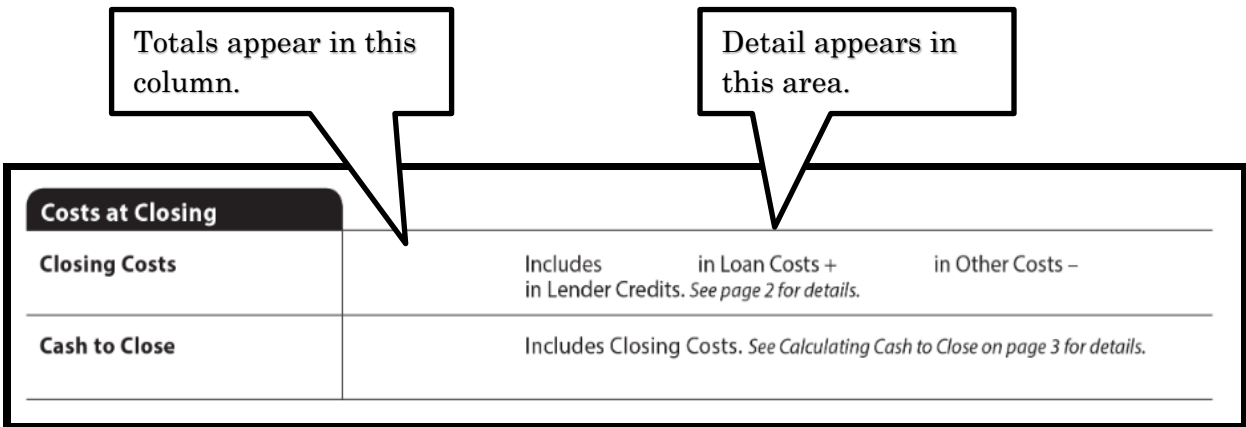
(d) Costs at closing.

Regulatory Commentary

None.

CFPB Guide

None.

[9] Costs at Closing Table (page 1, bottom)


Costs at Closing	
Closing Costs	Includes in Loan Costs + in Lender Credits. See page 2 for details. in Other Costs –
Cash to Close	Includes Closing Costs. See Calculating Cash to Close on page 3 for details.

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.

Audit: What You are Looking For

This instruction requires that certain amounts from later pages of the Closing disclosure be shown on page one for the purpose of being more prominent. The auditor determines the correctness of these amounts by assuring that the appropriate amounts from other pages are correctly placed in this section. As the software completes this portion of the document, auditors may choose to ignore this section and assure that the information in later parts of the document are correct, making these amounts correct as well.

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))

Case Studies

As all amounts that appear here come from somewhere else on the form, no case studies are included here.

[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. It is virtually identical to the version shown in [9] above. 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.

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)

Case Studies

As all amounts that appear here come from somewhere else on the form, no case studies are included here.

Section 10: Alternative Calculating Cash to Close Table 12 CFR § 1026.38(e)

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 later in this manual, and this version, which is used for non-purchase transactions.

Payoffs and Payments		Use this table to see a summary of your payoffs and payments to others from your loan amount.
TO	AMOUNT	
01		
02		
03		
04		
05		
06		
07		
08		
09		
10		
11		
12		
13		
14		
15		
K. TOTAL PAYOFFS AND PAYMENTS		

This table is in non-purchase situations for payoffs and payments. It can also be used for non-purchase construction loans. 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, the processor will likely 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.

Audit: What You are Looking For

All payoffs and payments are appropriately shown, and this section does not contain items such as miscellaneous credits. The auditor determines the correctness of these amounts by viewing other documents that indicate what was paid (perhaps copies of checks). Negative amounts are not permitted.

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).

Case Studies

Case Study 1

When looking at this portion of the document, the auditor notices that all amounts for the credit cards that are being paid off are only to the nearest dollar. Clearly, it is unlikely that that is exactly what is owed on the credit card accounts. Should the auditor make a comment regarding this?

Generally, this portion of the form is supposed to match the disbursements exactly. If a review of the actual disbursement does not match the disbursements exactly, the document is deficient. As a result, the auditor should probably tell the bank that they need to redo this portion of the form, and resend it to the customer. The problem is that the error has to be found within 30 days and the restitution or correction needs to be made within 30 days of finding the error. If the loan is 6 months old, clearly those time periods have long since passed. At that point, the bank needs to make a decision as to whether to redo the Closing Disclosure late or pray they don't get caught. Of course, this will appear in the report, and examiners will probably see it.

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	☐ From ☐ To Borrower Borrower	☐ From ☐ To Borrower 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 bold font as described below in the regulatory text and commentary.

Audit: What You are Looking For

The auditor must determine that both the final Loan Estimate loan amount is shown and the actual note amount is shown. Also, “Did this Change” is properly completed, with the required language in bold (see regulatory text and commentary below for details). The auditor determines the correctness of these amounts by viewing the final Loan Estimate and the note.

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

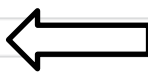
Loan Amount should have the same amount disclosed, as a positive number, in the Final column as the Loan Amount in the Loan Terms table on page 1 of the Closing Disclosure. (§ 1026.38(e)(1)(ii))

Case Studies

As this is the Loan Amount, errors are unlikely, and we offer no case studies for this field.

[12] Total Closing Costs (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	☐ From ☐ To Borrower Borrower	☐ From ☐ To Borrower 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.

Audit: What You are Looking For

The auditor must determine that both the final Loan Estimate line J is correct and the Closing Disclosure line J is correct. Also, “Did this Change” is properly completed, with the required language in bold (see regulatory text and commentary below for details). The auditor determines the correctness of these amounts by viewing line J of the final Loan Estimate and the final Closing Disclosure.

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)

Case Studies

As this field is mostly a transfer of information from other portions of the form, we have elected not to include any case studies for this instruction.

[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	☐ From ☐ To Borrower Borrower	☐ From ☐ To Borrower 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 bold font as described below in the regulatory text and commentary.

Audit: What You are Looking For

The auditor must determine that both the final Loan Estimate (which should always reflect \$0) and Closing Disclosure amounts for items that were paid prior to closing are correct. Also, “Did this Change” is properly completed, with the required language in bold (see regulatory text and commentary below for details). The auditor determines the correctness of these amounts by viewing the totals for items paid prior to closing as it appears on page 2 of the Closing Disclosure.

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))

Case Studies

We have elected not to include any case studies for this instruction.

[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	☐ From ☐ To Borrower Borrower	☐ From ☐ 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. 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 bold font as described below in the regulatory text and commentary.

Audit: What You are Looking For

The auditor must determine that both the final Loan Estimate and Closing Disclosure amounts for payoffs and payments (see section K) are correct. Also, “Did this Change” is properly completed, with the required language in bold (see regulatory text and commentary below for details). The auditor determines the correctness of these amounts by viewing the totals for Section K of the Closing Disclosure.

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.

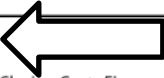
CFPB Guide

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))

Case Studies

We have elected not to include any case studies for this instruction.

[15] Cash to/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	☐ From ☐ To Borrower	☐ From ☐ To Borrower	
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.

Audit: What You are Looking For

Ensure both the final Loan Estimate and Closing Disclosure amounts for cash from or to the borrower are correct. This is a calculated field, and the auditor should assure that the calculation is correct.

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

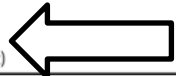
Cash to Close discloses the sum of Loan Amount, Total Closing Costs, Closing Costs Paid Before Closing, and Total Payoffs and Payments in the Loan Estimate and Final columns, with indications of whether the totals are due to or from the consumer. (§ 1026.38(e)(5)(ii))

Case Studies

As this is a calculated field, we have elected not to include any case studies for this instruction.

[16] Closing Costs Financed (page 3, Alternative Cash to Close Table)

Y&A Completion Instruction

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	☐ From ☐ To Borrower	☐ From ☐ To Borrower	Closing Costs Financed (Paid from your Loan Amount) 

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.

Audit: What You are Looking For

Ensure the Closing Disclosure amounts for closing costs financed are correct. This is a calculated field, and the auditor should assure that the calculation is correct.

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))

Case Studies

As this is a calculated field, we have elected not to include any case studies for this instruction.

Section 11: Closing Cost Details; Loan Costs

12 CFR § 1026.38(f)

General Language

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])**Closing Cost Details**

Loan Costs		Borrower-Paid		Seller-Paid		Paid by Others
		At Closing	Before Closing	At Closing	Before Closing	
A. Origination Charges						
01	% of Loan Amount (Points)					
02						
03						
04						
05						
06						
07						
08						

This section is for items paid to the creditor, broker, or loan level price adjustments. Further information is in the synopsis below. We are showing only 8 lines. There is a version of the Closing Disclosure that allows for 21 lines.

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.

Audit: What You are Looking For

The auditor must determine that all charges paid to the creditor and/or mortgage broker are included and correct, with the amounts appearing in the appropriate column, based upon who paid what portion of that line-item amount. 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. The titles for fees must match the Loan Estimate in a manner that avoids consumer misunderstandings. Any line item that does not contain a dollar amount, other than the points line, must remain blank.

As part of this process, the auditor must begin to tally any tolerance refund money that is due to the customer. This section has a \$0 tolerance, therefore, any amount that the consumer paid

that is in excess of the Loan Estimate amount for any individual item is not permitted and must be returned.

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.

Relevant Loan Estimate Regulatory Text and Commentary

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)

Case Studies

Case Study 1

The following items appear in Section A of the Closing Disclosure. Review for accuracy.

	Loan Estimate	Closing Disclosure
% of Loan Amount (Points):	\$2,000.00	\$ 0
Documentation Fee:	\$ 200.00	\$ 200.00
Underwriting Fee:	\$ 600.00	\$ 800.00
Broker Fee:	\$3,000.00	\$3,000.00
Processing Fee:	\$1,000.00	\$ 900.00

What is the Finance Charge stated on Section A?

\$6,600.00, as the Documentation Fee is not a Finance Charge. All other fees, including the Broker's Fee are Finance Charges.

Other errors noted?

Not listed in alphabetical order. This is unlikely to occur in real life, as the software takes care of this.

The Broker Fee should indicate the name of the Broker.

The Underwriting Fee increased by \$200.00. Not permitted, and a rebate of \$200.00 is required.

The Processing Fee decreased by \$100.00. The net rebate of Underwriting Fee and Processing fee is \$100.00

Result

The audit report must require a corrected Closing Disclosure and a rebate to the customer of \$100. If it is beyond the time frames for new Closing Disclosures and rebates it still must be done.

[18] Services Borrower Did Not Shop For (page 2, Section [B])**Closing Cost Details**

Loan Costs	Borrower-Paid		Seller-Paid		Paid by Others
	At Closing	Before Closing	At Closing	Before Closing	
B. Services Borrower Did Not Shop For					
01					
02					
03					
04					
05					
06					
07					
08					
09					
10					

This section details services for which the borrower ultimately did not shop. Additional information in the synopsis below. We are showing 10 lines. The regulation has a version of the Closing Disclosure that allows 21 lines.

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.

Audit: What You are Looking For

The auditor must determine that all charges paid to third parties for services for which the consumer either was not permitted to shop or chose not to shop. The amounts must be included and correct, with the amounts appearing in the appropriate column, based upon who paid what portion of that line item amount. 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 -." The recipient of the funds must be included. Any line item that does not contain a dollar amount must remain blank. The auditor may have to view a wide assortment of documents

(such as invoices) to determine if the amounts are correct.

As part of this process, the auditor must continue to tally any tolerance refund money that is due to the customer. Many items here will be a \$0 tolerance item, making any increase in what the consumer paid over the Loan Estimate returnable to the consumer. However, if a service/fee was included in Section C on the Loan Estimate and is moved to Section B because the consumer used a provider that was on the provider list, those items, along with the filing fees, are subject to a 10% tolerance in total. The auditor must review all amounts in Section B to determine which items are subject to which tolerance amount, and add any amounts calculated to the total from Section A.

There is a longer version of this form which permits up to 13 items in Section B. If all lines are filled, the 13th item is a “catch all” and additional items appear on an additional page. In the alternative, the last line can just be a catch-all without an addendum.

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.

Relevant Loan Estimate Regulatory Text and Commentary

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.

Case Studies

Case Study 1

The customer shopped for the title company. It was not the title company that was included in the list of providers that was given at the time of the Loan Estimate. The processor still moved the Title Fees to Section B, which is an error. They should have remained in Section C. What remediation is required?

A corrected Closing Disclosure is required. There are no financial repercussions for the bank and no rebates to the customer.

Case Study 2

The customer did not shop for a title company, and used the company that appeared on the provider list given with Loan Estimate. The total title costs were \$2,500.00. The title costs provided on the Loan Estimate stated total title costs of \$2,550.00. Is there a violation?

When the customer is given the right to shop and chooses not to shop, the charges involved are placed in the 10% tolerance category. Unless there are extraordinary circumstances, this should not be an issue. If the auditor sees a pattern, the auditor might wish to include this in the report as a comment, suggesting that they may wish to improve accuracy.

Case Study 3

The flood determination fee was \$20. \$15.00 of that fee was for the actual determination, the remainder of \$5.00 was for life of loan. The \$5 is a finance charge, however, it was not included in the finance charge calculation. What remediation, if any, is required?

Alternatively, the entire \$20 was considered finance charge by the bank and was included in the finance charge calculation. What remediation, if any, is required?

In both cases, no remediation is required.

In the first case, the Finance Charge is understated by \$5. The rules permit understatement of Finance Charge by as much as \$100. The \$5 would have no impact on the on the APR. This would be a finding, but no remediation is required.

In the second situation, the Finance Charge is overstated by \$15. The regulation permits any amount of Finance Charge overstatement without violating the regulation. Once again, you might wish to mention this in the report. However, many banks routinely follow this method because it makes the entire process simpler. If your bank has chosen this path, you probably should not even mention it in the report.

[19] Services Borrower Did Shop For (page 2, Section [C])**Closing Cost Details**

Loan Costs	Borrower-Paid		Seller-Paid		Paid by Others
	At Closing	Before Closing	At Closing	Before Closing	
C. Services Borrower Did Shop For					
01					
02					
03					
04					
05					
06					
07					
08					

This section details services for which the borrower shopped. Additional information is in the synopsis below. We are only showing 8 lines here. The appendix has an example of this section with 22 lines.

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.

Audit: What You are Looking For

The auditor must determine that all charges paid to third parties for services for which the consumer did shop appear in this section. All services listed here must appear on the service provider list. The amounts must be correct, with the amounts appearing in the appropriate column, based upon who paid what portion of that line item amount. This section has no tolerance restrictions, so there is no need for the auditor to determine a tolerance violation. Any line item that does not contain a dollar amount must remain blank. The auditor may have to view a wide variety of documents (such as invoices) to determine if the amounts are correct.

There is a longer version of this form which permits up to 14 items in Section C. If all lines are filled, the 14th item is a "catch all" and additional items appear on an additional page. In the alternative, the last line can just be a catch-all without an addendum.

Relevant Loan Estimate Regulatory Text and Commentary

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.

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).*

CFPB Guide

None.

Case Studies

Case Study 1

The customer elected to shop for Title insurance and other title charges. However, in the description of the fee, there is no mention of “title-,” nor is there any mention of the actual company that did the work. What steps need to be taken?

This is a clerical error. However, clerical errors require redisclosure. If it is past the 60 day window, and the bank chooses not to redisclose, that may create a problem. The regulators will read your audit report. Therefore, we believe it would be in everyone's best interest if your report required a redisclosure document be sent to the customer.

[20] Total Loan Costs (Borrower Paid) (page 2, Section [D])**Closing Cost Details**

Loan Costs	Borrower-Paid		Seller-Paid		Paid by Others
	At Closing	Before Closing	At Closing	Before Closing	
D. TOTAL LOAN COSTS (Borrower-Paid)					
Loan Costs Subtotals (A + B + C)					

Totals for A+B+C here. Borrower's side only.

Y&A Completion Instruction

This disclosure should require no processor action, and is the total of Sections A+B+C.

Audit: What You are Looking For

Ensure the addition was done correctly.

Regulatory Text § 1026.38(f)(4)

- (4) **Total loan costs.** Under the subheading “**Total Loan Costs (Borrower-Paid)**,” the sum of the amounts disclosed as borrower-paid pursuant to paragraph (f)(5) of this section.

Regulatory Commentary

None.

CFPB Guide

The amounts that are designated as Borrower-Paid At or Before Closing are subtotaled as Total Loan Costs (Borrower-Paid). (§ 1026.38(f)(5)) The amounts that are designated Seller-Paid At or Before Closing and Paid by Others are not subtotaled as Total Loan Costs (Borrower-Paid). (Comment 38(f)(5)-1)

Case Studies

Generally, the computer software makes these totals for the bank. Therefore, we have chosen not to include any case studies, as it is unlikely that there will be a mistake.

[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.

Audit: What You are Looking For

The subtotals under instruction 20 were completed only for the borrower, and not for the seller. Ensure it was done correctly.

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.

Case Studies

This is once again a software issue. Therefore, it is unlikely that there will be any mistake and we've chosen to include no case studies.

Section 12: Closing Costs Detail; Other Costs

12 CFR § 1026.38(g)

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])**Closing Cost Details**

Loan Costs		Borrower-Paid		Seller-Paid		Paid by Others
		At Closing	Before Closing	At Closing	Before Closing	
Other Costs						
E. Taxes and Other Government Fees						
01	Recording Fees Deed: Mortgage:					
02						

Taxes, recording fees and transfer taxes appear here. More information in the regulation and commentary. The appendix to the regulation does contain an example with 10 lines.

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.

Audit: What You are Looking For

The auditor must determine that all charges paid for taxes and other government fees as well as transfer taxes appear in this section. The amounts must be included and correct, with the amounts appearing in the appropriate column, based upon who paid what portion of that line item amount. Any line item that does not contain a dollar amount must remain blank.

As part of this process, the auditor must continue the process of calculating any tolerance refund money that is due to the customer. The filing fees are part of the 10% tolerance category, and must be aggregated with any other 10% tolerance amounts located in Section B. The 10% tolerance is based on the totals for all 10% items, and is not calculated on each individual item. After completing this calculation, all tolerance issues should have been addressed.

There is a longer version of this form which permits up to 10 items in Section E.

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 paragraph(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)

Case Studies

Case Study 1

The deed filing cost is \$50. And the mortgage filing cost is \$100. These are properly placed on the document. However, the total out of the columns is \$200. If the additional \$50 is the responsibility of the seller, then obviously there is no issue. What steps should you take as an auditor if the \$50 is the responsibility of the buyer?

The auditor needs to determine what was filed using that additional \$50. Remember that filing fee increases are part of the 10% tolerance requirement. Therefore, this \$50 needs to be added to any tolerance issues that were discovered in Section B of the Closing Disclosure to assure that all of the overage remained within the 10% tolerance. If the fees increases from Section B plus these filing fees exceed the 10% tolerance, then a new Closing Disclosure needs to be sent with a rebate to the customer for whatever the overage might have been.

[23] Prepaids (page 2, Section [F])**Closing Cost Details**

Loan Costs	Borrower-Paid		Seller-Paid		Paid by Others
	At Closing	Before Closing	At Closing	Before Closing	
Other Costs					
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					

This section details items that were paid in advance. More detail in the synopsis. The appendix to the regulation has a sample form that has 14 lines. We are only showing 5 in this example.

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 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.

Audit: What You are Looking For

The auditor must determine that all charges that the creditor required to be paid in advance are included in this section. This section is limited to items that the consumer was required to pay in order to induce the creditor to make the loan. The amounts must be included and correct, with the amounts appearing in the appropriate column, based upon who paid what portion of that line item amount. The titles for fees must match the Loan Estimate in a manner that avoids consumer misunderstandings. Any line item that does not contain a dollar amount must remain blank. There are no tolerance issues involved in this section.

Regulatory Text § 1026.38(g)(2)

- (2) **Prepays.** Under the subheading “**Prepays**” 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

1. **Guidance.** For additional guidance on prepaids, see comments 37(g)(2)-1 and -2.
2. **Negative prepaid interest.** The prepaid interest amount is disclosed as a negative number if the calculation of prepaid interest results in a negative number.
3. **No prepaid interest.** If interest is not collected for 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.

Relevant Loan Estimate Regulatory Text and Commentary**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)

Case Studies

Case Study 1

Closing was actually delayed by one day. This changed the amount of prepaid interest owed. The bank chose not to redisclose the Closing disclosure for that one day's worth of interest. How should the auditor respond?

The CFPB has stated that prepaid interest being incorrect is not a redisclosure issue. It is unlikely to change the APR in any way. Therefore, the auditor can ignore this discrepancy, as long as the difference is not significant.

Case Study 2

The loan being reviewed is a refinance. Insurance is next due in 4 months. It is listed as a prepaid on the Closing Disclosure.

Insurance has a requirement when it reaches 60 days from the due date on the Loan Estimate. Banks would uniformly not requirement payment of insurance 4 months early, so it should not appear on the Closing Disclosure. This is a finding.

[24] Initial Escrow Payment at Closing (page 2, Section [G])**Closing Cost Details**

Loan Costs			Borrower-Paid		Seller-Paid		Paid by Others
			At Closing	Before Closing	At Closing	Before Closing	
Other Costs							
G. Initial Escrow Payment at Closing							
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							
08	Aggregate Adjustment						

Monthly amount due for item.

Number of months appears here

NOTE: This version has the Aggregate Adjustment on line 8. The appendix to the regulation has a version of this section where the Aggregate Adjustment is on line 14.

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.

Audit: What You are Looking For

The auditor must determine that all appropriate amounts appear in this section, based on the escrow requirements for the loan. This may require the review of several documents, including tax statements, insurance dec pages, etc. to assure that all amounts are correct. The aggregate adjustment should be less than one month's escrow payment. Any items that are N/A must be blank.

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)

Case Studies

Case Study 1

The aggregate adjustment is a negative number equal to about 4 months of escrow payments.

The aggregate adjustment should be as small as possible – generally under one payment. This is a finding, as it does not give the customer a clear picture of their escrow account.

[25] Other (page 2, Section [H])**Closing Cost Details**

Loan Costs		Borrower-Paid		Seller-Paid		Paid by Others
		At Closing	Before Closing	At Closing	Before Closing	
Other Costs						
H. Other						
01						
02						
03						
04						
05						
06						
07						
08						

This section is for all other charges. We are only showing 8 lines here. The appendix to the regulation has a version with 15 lines.

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.

Audit: What You are Looking For

The auditor must determine that all appropriate amounts appear in this section, based on the requirements for the loan and/or the purchase agreement. This may require the review of several documents to assure that all amounts are correct. The titles for fees must match the Loan Estimate in a manner that avoids consumer misunderstandings. Any line item that does not contain a dollar amount must remain blank. In a purchase transaction, one of the line items must be "Title – Owner's Title Insurance (optional) if it was purchased.

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)

Case Studies

As this area of the form is based on information from other sources, we have elected not to include any case studies.

[26] Total Other Costs (page 2, Section [I])**Closing Cost Details**

Loan Costs	Borrower-Paid		Seller-Paid		Paid by Others
	At Closing	Before Closing	At Closing	Before Closing	
Other Costs					
I. TOTAL OTHER COSTS (Borrower-Paid)					
Other Costs Subtotals (E + F + G + H)					

Total costs for E+F+G+H appear here.
Borrower's side only.

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.

Audit: What You are Looking For

Ensure the subtotals under instruction were completed only for the borrower, and not for the seller. Ensure the math is correct.

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))

Case Studies

As this field is completed by the software, we have elected not to include case studies.

[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.

Audit: What You are Looking For

The subtotals under instruction were completed only for the borrower, and not for the seller.

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))

Case Studies

As this field is completed by the software, we have elected not to include case studies.

Section 13: Closing Cost Subtotals, Totals, and Lender Credits 12 CFR § 1026.38(h)

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 [J])**Closing Cost Details**

Loan Costs	Borrower-Paid		Seller-Paid		Paid by Others
	At Closing	Before Closing	At Closing	Before Closing	
Other Costs					

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.

Audit: What You are Looking For

Ensure the math was done correctly.

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))

Case Studies

As this field is completed by the software, we have elected not to include case studies.

[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.

Audit: What You are Looking For

The subtotals under instruction were completed only for the borrower, and not for the seller.

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))

Case Studies

As this field is completed by the software, we have elected not to include case studies.

[30] Lender Credits (page 2, 2 lines under [J])**Closing Cost Details**

Loan Costs	Borrower-Paid		Seller-Paid		Paid by Others
	At Closing	Before Closing	At Closing	Before Closing	
Other Costs					
J. TOTAL CLOSING COSTS (Borrower-Paid)					
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. Your software may do this automatically. 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).

Audit: What You are Looking For

The Lender Credits have been properly entered and have not been reduced compared to previous representations to the consumer.

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.

Relevant Loan Estimate Regulatory Text and Commentary

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.

Case Studies

Case Study 1

The lender credit was reduced as part of a change in the interest rate on the loan.

This is not a finding, as the change was directly related to the loan pricing. In virtually all other situations, this is a finding.

[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.

Audit: What You are Looking For

The audit instructions have included alphabetical order as part of each section. If the auditor chooses, this portion of the instructions for the sections can be omitted from each section's audit and included here. The lack of alphabetical order should not be counted as two violations.

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.*

CFPB Guide

None.

Case Studies

None.

Section 14: Closing Cost (Cash to Close)

12 CFR § 1026.38(i)

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.

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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.

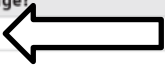
The table has three columns to disclose the amount for each item as it was disclosed on the Loan Estimate (see section 2.3.3 above), the Final amount for the item, and an answer to the question Did this change? (§ 1026.38(i))

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)

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			
Cash to Close			

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).

Audit: What You are Looking For

Both the final Loan Estimate Line J total is shown and the Closing Disclosure Line J total is shown. “Did this Change” is properly completed, with the required language in bold (see regulatory text and commentary below for details). The auditor determines the correctness of these amounts by viewing the final Loan Estimate and the Closing Disclosure.

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)

Case Studies

As this field is completed by the software, we have elected not to include case studies.

[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			
Cash to Close			

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).

Audit: What You are Looking For

Ensure the Loan Estimate amount is shown as \$0. The Closing Disclosure amount was properly transferred from page 2 of the Closing Disclosure. The auditor determines the correctness of these amounts by viewing the Closing Disclosure. "Did this Change" is properly completed, with the required language in bold (see regulatory text and commentary below for details).

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.

CFPB Guide

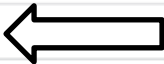
The amount disclosed in the Loan Estimate column for the Closing Costs Paid Before Closing item is \$0. (§ 1026.38(i)(2)(i)) The Final column should disclose the same amount designated as Borrower-Paid Before Closing in the Closing Costs Subtotals of the Closing Cost Details table on Closing Disclosure page 2, as a positive number. (§ 1026.38(e)(3)(ii))

Case Studies

None.

[34] Closing Costs Financed (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			
Cash to Close			


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).

Audit: What You are Looking For

The final Loan Estimate amount and the Closing Disclosure amount is properly indicated. The auditor determines the correctness of these amounts by viewing other documents, based on the approach that the institution uses to calculate this number. “Did this Change” is properly completed, with the required language in bold (see regulatory text and commentary below for details).

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

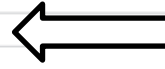
None.

Case Studies

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			
Cash to Close			



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).

Audit: What You are Looking For

The final Loan Estimate amount and the Closing Disclosure amount is properly indicated. The auditor determines the correctness of these amounts by viewing other documents, based on the approach that the institution uses to calculate this number. The documentation will change based on whether this loan is a purchase or a refinance. "Did this Change" is properly completed, with the required language in bold (see regulatory text and commentary below for details).

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.

Case Studies

None.

[36] Deposit (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			
Cash to Close			

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).

Audit: What You are Looking For

The final Loan Estimate amount and the Closing Disclosure amount is properly indicated. The auditor determines the correctness of these amounts by viewing other documents, mostly likely the purchase agreement. "Did this Change" is properly completed, with the required language in bold (see regulatory text and commentary below for details).

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)

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			
Cash to Close			


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).

Audit: What You are Looking For

The final Loan Estimate amount and the Closing Disclosure amount for Funds for Borrower is properly indicated. The auditor determines the correctness of these amounts by viewing other documents, which could vary depending upon the institution's calculation method. "Did this Change" is properly completed, with the required language in bold (see regulatory text and commentary below for details).

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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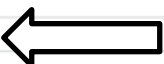
None.

Case Studies

None.

[38] Seller Credits (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			
Cash to Close			


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).

Audit: What You are Looking For

The final Loan Estimate amount and the Closing Disclosure amount for Seller Credits is properly indicated. The auditor determines the correctness of these amounts by viewing other documents. The most likely document is the sales contract. “Did this Change” is properly completed, with the required language in bold (see regulatory text and commentary below for details).

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.

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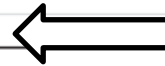
None.

Case Studies

None.

[39] Adjustments and Other Credits (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			
Cash to Close			



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).

Audit: What You are Looking For

The final Loan Estimate amount and the Closing Disclosure amount for Adjustments and Other Credits is properly indicated. The auditor determines the correctness of these amounts by viewing other documents and/or Section L (discussed below). "Did this Change" is properly completed, with the required language in bold (see regulatory text and commentary below for details).

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.

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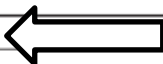
None.

Case Studies

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			
Cash to Close			


Y&A Completion Instruction

The processor should not have to input any amounts here. This line totals both the Loan Estimate and Final columns.

Audit: What You are Looking For

The final Loan Estimate amount and the Closing Disclosure amount totals for Cash to Close are properly indicated. The auditor determines the correctness of the Closing Disclosure amount by viewing the cash to close amount in the bottom left corner of this page. If the Cash to Close amount in this table is a positive number, the lower left hand corner should indicate cash from the borrower. If the Cash to Close amount in this table is a negative number, the lower left hand corner should indicate cash to the borrower.

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.

Case Studies

None.

Section 15: Summary of Borrower's Transaction

12 CFR § 1026.38(j)

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])**Summaries of Transactions**

Use this table to see a summary of your transaction.

BORROWER'S TRANSACTION		
K. Due from Borrower at Closing		
01	Sale Price of Property	
02	Sale Price of Any Personal Property Included in Sale	
03	Closing Costs Paid at Closing (J)	
04		
Adjustments		
05		
06		
07		
Adjustments for Items Paid by Seller in Advance		
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 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.

Audit: What You are Looking For

The final Closing Disclosure amount totals for what the borrower owes is correct. The auditor determines the correctness of the Closing Disclosure amount by viewing various documents, depending on how the institution makes the calculations. This would include assuring that the Section J total is accurate, the sales price (based on the purchase agreement) is accurate, etc.

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)

Case Studies

None.

[42] Itemization of Amounts Already Paid by or on Behalf of Borrower (page 3, Section [L])

Summaries of Transactions

Use this table to see a summary of your transaction.

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 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.

Audit: What You are Looking For

The final Closing Disclosure amount totals for what the borrower is receiving in credits is correct. The auditor determines the correctness of the Closing Disclosure amount by viewing various documents, depending on how the institution makes the calculations. This would include assuring the deposit (based on the purchase agreement) is accurate, etc.

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 taking 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)

Case Studies

None.

[43] Calculation of Borrower's Transaction (page 3, bottom left)

Summaries of Transactions Use this table to see a summary of your transaction.

CALCULATION
Total Due from Borrower at Closing (K)
Total Paid Already by or on Behalf of Borrower at Closing (L)
Cash to Close ☐ From ☐ 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. 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.

Audit: What You are Looking For

The final Closing Disclosure amount totals for what the borrower is either receiving or must pay is correct. The auditor determines the correctness of the Closing Disclosure by assuring that the math is accurate, and the correct “from” or “to” amount is accurate.

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)

Case Studies

None.

[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.

Audit: What You are Looking For

All P.O.C. items appear in the appropriate category, are marked as P.O.C., and have no impact on any totals. The auditor determines the correctness of the Closing Disclosure by a review of numerous documents within the loan file, to assure that any amounts that are paid outside of closing are correct.

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.

Case Studies

None.

Section 16: Summary of Seller's Transaction

12 CFR § 1026.38(k)

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)

Case Studies

None.

[45] Itemization of Amounts Due Seller (page 3, Section [M])**Summaries of Transactions**

Use this table to see a summary of your transaction.

SELLER'S TRANSACTION	
M. Due to Seller at Closing	
01	Sale Price of Property
02	Sale Price of Any Personal Property Included in Sale
03	
04	
05	
06	
07	
08	
Adjustments for Items Paid by Seller in Advance	
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 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.

Audit: What You are Looking For

The final Closing Disclosure amount totals for what the seller is receiving in credits is correct. The auditor determines the correctness of the Closing Disclosure amount by viewing various documents, depending on how the institution makes the calculations. This would include assuring that the purchase price is accurate, etc.

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)

Case Studies

None.

[46] Itemization of Amounts due From Seller (page 3, Section [N])**Summaries of Transactions**

Use this table to see a summary of your transaction.

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 contains information regarding what amounts the seller must pay in order to complete this transaction. This includes the payoffs of existing loans, tax proration 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.

Audit: What You are Looking For

The final Closing Disclosure amount totals for what the seller is receiving in credits is correct. The auditor determines the correctness of the Closing Disclosure amount by viewing various documents, depending on how the institution makes the calculations. This would include assuring that the payoff amounts are accurate, the seller credits are appropriate, etc.

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)

Case Studies

None.

[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 ☐ From ☐ To Seller	

Calculation of the amount that the seller will receive or 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. 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.

Audit: What You are Looking For

The final Closing Disclosure amount totals for what the seller is either receiving or must pay is correct. The auditor determines the correctness of the Closing Disclosure by assuring that the math is accurate, and the correct “from” or “to” amount is accurate.

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)

Case Studies

None.

[48] Items Paid Outside of Closing Funds (page 3, Sections [M] and [N])

Y&A Completion Instruction

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. How to achieve this changes depending on the software being used.

Audit: What You are Looking For

All P.O.C. items appear in the appropriate category, are marked as P.O.C., and have no impact on any totals. The auditor determines the correctness of the Closing Disclosure by a review of numerous documents within the loan file, to assure that any amounts that are paid outside of closing are correct.

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.

Case Studies

None.

Section 17: Loan Disclosures

12 CFR § 1026.38(1)

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.

Audit: What You are Looking For

The Closing Disclosure answered the question appropriately. The auditor must know what the institution’s policy is on assumptions in order to review this disclosure.

Regulatory Text § 1026.38(l)(1)

- (1) **Assumption.** Under the subheading “**Assumption,**” the information required by § 1026.37(m)(2).

Regulatory Commentary

None.

Relevant Loan Estimate Regulatory Text and Commentary**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.

Case Studies

None.

[50] Demand Feature (page 4, Loan Disclosures)

Loan Disclosures

Demand Feature
Your loan

☐ has a demand feature, which permits your lender to require early repayment of the loan. You should review your note for details.

☐ does not have a demand feature.

Creditor should mark the appropriate check box as to whether the loan has a demand feature.

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.

Audit: What You are Looking For

The Closing Disclosure contains the appropriate answer. The auditor must review the note to determine if the question was answered appropriately.

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.

Case Studies

None.

[51] Late Payment (page 4, Loan Disclosures)**Loan Disclosures****Late Payment**

If your payment is more than ____ days late, your lender will charge a late fee of _____

Creditor should complete the late payment information based on the note.

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.

Audit: What You are Looking For

The Closing Disclosure information was appropriately completed. The auditor must review the note to determine if this disclosure is accurate.

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).

Relevant Loan Estimate Regulatory Text and Commentary**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.

Case Studies

None.

[52] Negative Amortization (page 4, Loan Disclosures)**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.

Audit: What You are Looking For

The Closing Disclosure information was appropriately completed. The auditor must review the note to determine if this disclosure is accurate.

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.

Case Studies

None.

[53] Partial Payment Policy (page 4, Loan Disclosures)**Loan Disclosures****Partial Payments**

Your lender

- ☐ may accept payments that are less than the full amount due (partial payments) and apply them to your loan.
- ☐ may hold them in a separate account until you pay the rest of the payment, and then apply the full payment to your loan.
- ☐ does not accept any partial payments.

If this loan is sold, your new lender may have a different policy.

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.

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.

Audit: What You are Looking For

The Closing Disclosure information was appropriately completed. The auditor must know the institution's policy and/or review the note to determine if this disclosure is accurate.

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.

Case Studies

None.

[54] Security Interest (page 4, Loan Disclosures)

Loan Disclosures	
Security Interest You are granting a security interest in _____ _____ _____ You may lose this property if you do not make your payments or satisfy other obligations for this loan.	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.

Audit: What You are Looking For

The Closing Disclosure information was appropriately completed. The auditor must review the application, mortgage, appraisal, or other documents to determine if this disclosure is accurate.

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

- 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.*
- 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.

Case Studies

None.

[55] Escrow Account (page 4, right column)**Loan Disclosures****Escrow Account****For now,** your loan

- ☐ 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.

Escrow		
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.

Audit: What You are Looking For

See the end of this section.

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)(1) 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).

Audit: What You are Looking For

See the end of this section.

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.

Audit: What You are Looking For

See the end of this section.

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))

Audit: What You are Looking For

The Closing Disclosure amounts were appropriately completed, as applicable. The auditor must review Section F of the Closing Disclosure, other information such as tax bills or insurance dec pages, etc. the application, or other escrow documents to determine if these disclosures are accurate.

Case Studies

None.

Section 18: Adjustable Payment Table

12 CFR § 1026.38(m)

[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	

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.

Audit: What You are Looking For

One of the first four questions must be answered “yes.” If the answers are all “no,” this table does not appear, and the auditor should indicate an error. For any questions that are answered yes, the auditor should review the note and other supporting documentation to determine if the answers were correct, including the time frames. For the principal and interest information, the auditor should review the front page of the Closing Disclosure to assure that the amounts match the initial portion of the disclosure.

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.

Relevant Loan Estimate Regulatory Text and Commentary

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 12th payment, the disclosure should state: “Every year.” If the frequency of adjustments to the periodic payment may change under the terms of the legal obligation, the disclosure should state the smallest period of adjustments that may occur. For example, if an increase in the periodic payment is scheduled every sixth payment for 36 payments, and then every 12th payment for the next 24 payments, the disclosure should state: **“Every 6th payment.”**

4. Maximum payment. The disclosure required by § 1026.37(i)(5) must state the larger of the maximum scheduled or maximum potential amount of a regular periodic principal and interest payment under the terms of the legal obligation, as well as the payment number of the first periodic principal and interest payment that can reach such amount. If the disclosed payment is scheduled, § 1026.37(i)(5) requires that the disclosure state the payment number when such payment is reached with the preceding text, “starting at.” If the disclosed payment is only potential, as may be the case for a loan that permits optional payments, the disclosure states the earliest payment number when such payment can be reached with the preceding text, “as early as.” Section 1026.37(i)(5) requires that the first possible periodic principal and interest payment that can reach the maximum be disclosed. For example, for a fixed interest rate optional-payment loan with scheduled payments that result in negative amortization under the terms of the legal obligation, the maximum periodic payment disclosed should be based on the consumer having elected to make the periodic payments that would increase the principal balance to the maximum amount at the latest time possible before the loan begins to fully amortize, which would cause the periodic principal and interest payment to be the maximum possible. For example, if the earliest payment that could reach the maximum principal balance was the 41st payment at which time the loan would begin to amortize and the periodic principal and interest payment would be recalculated, but the last payment that permitted the principal balance to increase was the 60th payment, the disclosure required by § 1026.37(i)(5) must assume the consumer only reaches the maximum principal balance at the 60th payment because this would result in the maximum possible principal and interest payment under the terms of the legal obligation. The disclosure must state the maximum periodic principal and interest payment based on this assumption and state **“as early as the 61st payment.”**

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

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)

Case Studies

None.

Section 19: Adjustable Interest Rate Table

12 CFR § 1026.38(n)

[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.

Audit: What You are Looking For

This table does not appear unless the interest rate can change. To determine if all items are correct, the auditor should determine that all of the terms set forth in this table match the terms set forth in the note.

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).

Relevant Loan Estimate Regulatory Text and Commentary

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&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.

Audit: What You are Looking For

The auditor should determine that the margin and index is correct, based on the note.

If it is a step rate loan not based on an index, the auditor should determine that this is a step rate product, and the amounts quoted are correct, based on the loan product type standards set by the institution.

Relevant Loan Estimate Regulatory Text and Commentary

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.

Audit: What You are Looking For

The auditor should determine that the appropriate initial interest rate was inserted. This field should match the initial interest rate quoted on the first page of the Loan Estimate.

Relevant Loan Estimate Regulatory Text and Commentary

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. Minimum is optional, Maximum is required.

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.

Audit: What You are Looking For

The auditor should determine that the appropriate floor and ceiling rates were inserted. This information is available in the note.

Relevant Loan Estimate Regulatory Text and Commentary

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	
Change Frequency	
First Change	
Subsequent Changes	
Limits on Interest Rate Changes	
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.

Audit: What You are Looking For

The auditor should determine that the appropriate time periods for the first and subsequent rate changes are inserted, based on the note.

Relevant Loan Estimate Regulatory Text and Commentary

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.

Audit: What You are Looking For

The auditor should determine that the appropriate rate change maximums are inserted for the first and subsequent rate changes. These limits are most likely on the note.

Relevant Loan Estimate Regulatory Text and Commentary

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)

Case Studies

None.

Section 20: Loan Calculations

12 CFR § 1026.38(o)

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	
Total of Payments. Total you will have paid after you make all payments of principal, interest, mortgage insurance, and loan costs, as scheduled.	
Finance Charge. The dollar amount the loan will cost you.	
Amount Financed. The loan amount available after paying your upfront finance charge.	
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.	

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.

Audit: What You are Looking For

The auditor should determine that the total of payments equals the number of loan payments multiplied by the payment amount. This total is then added to the loan cost total on the Closing Disclosure.

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.

Case Studies

None.

[59] Finance Charge (page 5, Loan Calculations)

Loan Calculations	
Total of Payments. Total you will have paid after you make all payments of principal, interest, mortgage insurance, and loan costs, as scheduled.	
Finance Charge. The dollar amount the loan will cost you.	
Amount Financed. The loan amount available after paying your upfront finance charge.	
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.	

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.

Audit: What You are Looking For

The auditor must ensure that this number includes the total of interest earned during the life of the loan plus prepaid finance charge.

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

1. **Calculation of finance charge.** *The finance charge is calculated in accordance with the requirements of § 1026.4 and its commentary and is expressed as a dollar amount.*

2. Disclosure. *The finance charge is disclosed as a total amount; the components of the finance charge are not itemized.*

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.

Case Studies

None – discussed earlier.

[60] Amount Financed (page 5, Loan Calculations)

Loan Calculations	
Total of Payments. Total you will have paid after you make all payments of principal, interest, mortgage insurance, and loan costs, as scheduled.	
Finance Charge. The dollar amount the loan will cost you.	
Amount Financed. The loan amount available after paying your upfront finance charge.	
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.	

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.

Audit: What You are Looking For

The auditor should determine that the total Amount Financed is accurate. The Amount Financed is equal to the note amount less any prepaid finance charge.

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.

Case Studies

None.

[61] Annual Percentage Rate (page 5, Loan Calculations)

Loan Calculations	
Total of Payments. Total you will have paid after you make all payments of principal, interest, mortgage insurance, and loan costs, as scheduled.	
Finance Charge. The dollar amount the loan will cost you.	
Amount Financed. The loan amount available after paying your upfront finance charge.	
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.	

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.

Audit: What You are Looking For

The auditor should determine that the APR is accurate. It is likely that the auditor will have to rely on documentation that is at least in part separate from the Closing Disclosure in order to properly recalculate the APR using the FFIEC APR software.

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.

Case Studies

None.

[62] Total Interest Percentage (page 5, Loan Calculations)

Loan Calculations	
Total of Payments. Total you will have paid after you make all payments of principal, interest, mortgage insurance, and loan costs, as scheduled.	
Finance Charge. The dollar amount the loan will cost you.	
Amount Financed. The loan amount available after paying your upfront finance charge.	
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.	

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.

Audit: What You are Looking For

The auditor should determine that the TIP is accurate by dividing the amount of interest being paid over the life of the loan by the loan amount.

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.

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.

Case Studies

None.

Section 21: Other Disclosures

12 CFR § 1026.38(p)

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)**Other Disclosures****Appraisal**

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 listed below.

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.

Audit: What You are Looking For

The auditor must determine that the disclosure was required and appears, or was not required and does not appear, based on loan type and lien position.

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.”

Case Studies

None.

[64] Contract Details (page 5, Other Disclosures)

Other Disclosures

Contract Details
 See your note and security instrument for information about

- what happens if you fail to make your payments,
- what is a default on the loan,
- situations in which your lender can require early repayment of the loan, and
- the rules for making payments before they are due.

This always appears, and it is boilerplate.

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.

Audit: What You are Looking For

The disclosure was required and appears. Unless there is a system failure, this instruction is always likely to be correct.

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.

Case Studies

None.

[65] Liability after Foreclosure (page 5, Other Disclosures)**Other Disclosures****Liability after Foreclosure**

If your lender forecloses on this property and the foreclosure does not cover the amount of unpaid balance on this loan,

- ☐ 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.
- ☐ state law does not protect you from liability for the unpaid balance.

Creditors must check the correct box based on state law. Discuss this with your attorney.

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.

Audit: What You are Looking For

The disclosure was required and is correct, based on the appropriate state law.

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 time frame 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)

Case Studies

None.

[66] Refinance (page 5, Other Disclosures)

Other Disclosures

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.

This always appears and is boilerplate.

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.

Audit: What You are Looking For

The disclosure was required and appears. Unless there is a system failure, this instruction is always likely to be correct.

Regulatory Text § 1026.38(p)(4)

(4) **Refinance.** Under the subheading “**Refinance**,” the statement required by § 1026.37(m)(5).

Regulatory Commentary

None.

CFPB Guide

None.

Case Studies

None.

[67] Tax Deductions (page 5, Other Disclosures)

Other Disclosures

Tax Deductions

If you borrow more than this property is worth, the interest on the loan amount above this property's fair market value is not deductible from your federal income taxes. You should consult a tax advisor for more information.

This appears automatically and is boilerplate.

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.

Audit: What You are Looking For

The disclosure was required and appears. Unless there is a system failure, this instruction is always likely to be correct.

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.

Case Studies

None.

Section 22: Questions Notice

12 CFR § 1026.38(q)

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?”:

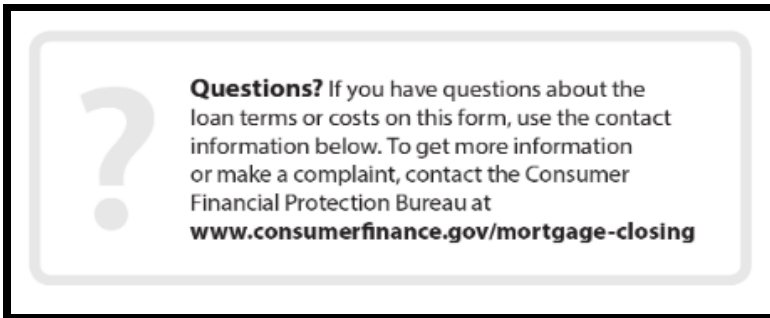
Regulatory Commentary

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.

Audit: What You are Looking For

The disclosure was required and appears. Unless there is a system failure, this instruction is always likely to be correct.

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; 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.

Case Studies

None.

Section 23: Contact Information

12 CFR § 1026.38(r)

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

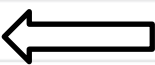
In the Contact Information table, disclose the following information for the Lender, the Mortgage Broker, the consumer's Real Estate Brokerage, the seller's Real Estate Brokerage, and the Settlement Agent in a columnar format:

- 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.

Audit: What You are Looking For

The disclosure includes all relevant names of the companies involved. The auditor must view a variety of documents to assure that all names are properly 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).

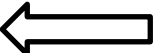
CFPB Guide

None.

Case Studies

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.

Audit: What You are Looking For

The disclosure includes all relevant addresses for the companies involved. The auditor must view a variety of documents to assure that all addresses are properly listed.

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.

Case Studies

None.

[71] NMLSR Number (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					

NMLS number on this line, if applicable.

License number and state 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.

Audit: What You are Looking For

The disclosure includes all relevant NMLS numbers and/or state and state license numbers for the companies involved. The auditor may not have access to information to verify all entries, but should be able to verify the institution's information.

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

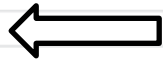
None.

Case Studies

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.

Audit: What You are Looking For

The disclosure includes all contact individuals for all companies involved. The auditor may not have access to information to verify all entries, but should be able to verify the institution's information.

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.

Case Studies

None.

[73] Contact Person NMLSR (page 5, bottom table)

Contact Information			(B)	Real Estate Broker (S)	Settlement Agent
Name	Lender				
Address					
NMLS ID					
__ License ID					
Contact					
Contact NMLS ID					
Contact __ License ID					
Email					
Phone					

NMLS number on this line

License number and state 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.

Audit: What You are Looking For

The disclosure includes all contact individuals' NMLS number or state and state license number. The auditor may not have access to information to verify all entries, but should be able to verify the institution's 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.

Case Studies

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.

Audit: What You are Looking For

The disclosure includes all contact individuals' email addresses, or an email address at which the contact person may be reached. The auditor may not have access to information to verify all entries, but should be able to verify the institution's information.

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.

Case Studies

None.

[75] Telephone Number (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 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.

Audit: What You are Looking For

The disclosure includes all contact individuals' telephone numbers, or a telephone number at which the contact person may be reached. The auditor may not have access to information to verify all entries, but should be able to verify the institution's information.

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.

Case Studies

None.

Section 24: Signature Statement

12 CFR § 1026.38(s)

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

Confirm Receipt

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.

Audit: What You are Looking For

The signature lines and related information appear on the Closing Disclosure per the institution's requirements.

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))

Case Studies

None. This is an optional portion of the form.

[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.

Audit: What You are Looking For

The signature lines and related information do not appear on the Closing Disclosure and the appropriate language does appear in 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.

Case Studies

None.

Section 25: 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.

[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.

Audit: What You are Looking For

The institution is using one of the standard Closing Disclosure documents.

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.

Case Studies

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.

Audit: What You are Looking For

The institution is using one of the standard Closing Disclosure documents, and headings and labels are accurate.

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.

Case Studies

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.

Audit: What You are Looking For

The institution is using one of the standard Closing Disclosure documents.

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.

Case Studies

None.

[81] Rounding

Y&A Completion Instruction

All rounding issues were included in the completion instructions above. No processor actions are required.

Audit: What You are Looking For

The institution is rounding amounts as required by the regulation. This is actually included in each instruction above, so the auditor may not choose to answer this question.

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.

Case Studies

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.

Audit: What You are Looking For

The institution meeting all standards required by the regulation. It is likely that the auditor will not review this issue.

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.*

CFPB Guide

None.

Case Studies

None.