

CFPB PROPOSED AMENDMENTS TO TRID RULES

On July 29, 2016, the CFPB published proposed amendments to the TRID Rules on its website and on August 15, 2016, the CFPB also published the proposed amendments in the *Federal Register* (81 FR 54318). For ease of reference, the proposed amendments along with the existing text deleted and the existing text not deleted are reproduced below in the following manner: **proposed amendments**; ~~existing text deleted~~; and, existing text not deleted.

Section 1026.1 is amended by revising paragraph (d) (5) to read as follows:

§1026.1 Authority, purpose, coverage, organization, enforcement, and liability.

(d) *Organization.*

(5) Subpart E contains special rules for mortgage transactions. Section 1026.32 requires certain disclosures and provides limitations for closed-end credit transactions and open-end credit plans that have rates or fees above specified amounts or certain prepayment penalties. Section 1026.33 requires special disclosures, including the total annual loan cost rate, for reverse mortgage transactions. Section 1026.34 prohibits specific acts and practices in connection with high-cost mortgages, as defined in §1026.32(a). Section 1026.35 prohibits specific acts and practices in connection with closed-end higher-priced mortgage loans, as defined in § 1026.35(a). Section 1026.36 prohibits specific acts and practices in connection with an extension of credit secured by a dwelling. Sections 1026.37 and 1026.38 set forth special disclosure requirements for certain closed-end transactions secured by real property **or a cooperative unit**, as required by §1026.19(e) and (f).

Section 1026.3 is amended by revising paragraphs (h) (5) and (h) (6) to read as follows:

§1026.3 Exempt transactions.

(h) *Partial exemption for certain mortgage loans.*

(5) (i) The ~~total of~~ costs payable by the consumer in connection with the transaction at consummation ~~is less than one percent of the amount of credit extended and includes no charges other than~~ are limited to:

(A) Recording fees ~~Fees for recordation of security instruments, deeds, and similar documents~~;

(B) Transfer taxes;

(C) A bona fide and reasonable application fee; and

(D) A bona fide and reasonable fee for housing counseling services; and

(ii) The total of costs payable by the consumer **under paragraph (h) (5) (i) (C) and (D) of this section** is less than 1 percent of the amount of credit extended; and

(6) The creditor complies with all other applicable requirements of this part in connection with the transaction, including without limitation **providing** the disclosures required by §1026.18.

Section 1026.19 is amended by revising paragraph (e) heading, paragraph (e)(1)(i), paragraph (e)(3)(iii), (e)(3)(iv)(E) and (e)(3)(iv)(F), paragraph (f) heading, paragraphs (f)(1)(i), (f)(4)(i), and paragraph (g)(1) to read as follows:

§1026.19 Certain mortgage and variable-rate transactions.

(e) *Mortgage loans [secured by real property]—early disclosures—(1) Provision of disclosures—(i) Creditor.* In a closed-end consumer credit transaction secured by real property **or a cooperative unit**, other than a reverse mortgage subject to §1026.33, the creditor shall provide the consumer with good faith estimates of the disclosures in §1026.37.

(3) *Good faith determination for estimates of closing costs*

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

(A) Prepaid interest;

(B) Property insurance premiums;

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

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

(E) **Property taxes and other** charges paid for third-party services not required by the creditor. ~~[These charges may be paid to affiliates of the creditor.]~~

(iv) *Revised estimates.*

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

(F) *Delayed settlement date on a construction loan.* In transactions involving new construction, where the creditor reasonably expects that settlement will occur more than 60 days after the disclosures required

under paragraph (e)(1)(i) of this section are provided pursuant to paragraph (e)(1)(iii) of this section, the creditor may provide revised disclosures to the consumer if the original disclosures required under paragraph (e)(1)(i) of this section state clearly and conspicuously that at any time prior to 60 days before consummation, the creditor may issue revised disclosures. If no such statement is provided, the creditor may not issue revised disclosures, except as otherwise provided in paragraph [≠] (e)(3)(iv) of this section.

(f) *Mortgage loans [secured by real property]-final disclosures-*(1) *Provision of disclosures-*(i) *Scope.* [~~In a closed end consumer credit transaction secured by real property, other than a reverse mortgage subject to §1026.33~~] 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.

(4) *Transactions involving a seller-*(i) *Provision to seller.* [~~In a closed end consumer credit transaction secured by real property that involves a seller, other than a reverse mortgage subject to §1026.33~~] In a transaction subject to paragraph (e)(1)(i) of this section, 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.

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

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

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

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

- (A) Refinancing transactions;
- (B) Closed-end loans secured by a subordinate lien; and
- (C) Reverse mortgages.

Section 1026.23 is amended by revising paragraphs (g) (1), (g) (2), and (h) (2) to read as follows:

§1026.23 Right of rescission.

(g) *Tolerances for accuracy*—(1) *One-half of 1 percent tolerance.* Except as provided in paragraphs (g) (2) and (h) (2) of this section:

(i) The finance charge and other disclosures affected by the finance charge (such as the amount financed and the annual percentage rate) shall be considered accurate for purposes of this section if the disclosed finance charge:

(A) Is understated by no more than 1/2 of 1 percent of the face amount of the note or \$100, whichever is greater; or

(B) Is greater than the amount required to be disclosed.

(ii) The total of payments for each transaction subject to § 1026.19(e) and (f) shall be considered accurate for purposes of this section if the disclosed total of payments:

(A) Is understated by no more than 1/2 of 1 percent of the face amount of the note or \$100, whichever is greater; or

(B) Is greater than the amount required to be disclosed.

(2) *One percent tolerance.* In a refinancing of a residential mortgage transaction with a new creditor (other than a transaction covered by §1026.32), if there is no new advance and no consolidation of existing loans:

(i) The finance charge and other disclosures affected by the finance charge (such as the amount financed and the annual percentage rate) shall be considered accurate for purposes of this section if the disclosed finance charge:

(A) Is understated by no more than 1 percent of the face amount of the note or \$100, whichever is greater; or

(B) Is greater than the amount required to be disclosed.

(ii) The total of payments for each transaction subject to § 1026.19(e) and (f) shall be considered accurate for purposes of this section if the disclosed total of payments:

(A) Is understated by no more than 1 percent of the face amount of the note or \$100, whichever is greater; or

(B) Is greater than the amount required to be disclosed.

(h) *Special rules for foreclosures*—(1) *Right to rescind.*

(2) *Tolerance for disclosures.* After the initiation of foreclosure on the consumer's principal dwelling that secures the credit obligation:

(i) The finance charge and other disclosures affected by the finance charge (such as the amount financed and the annual percentage rate) shall be considered accurate for purposes of this section if the disclosed finance charge:

(A) Is understated by no more than \$35; or

(B) Is greater than the amount required to be disclosed.

(ii) The total of payments for each transaction subject to § 1026.19(e) and (f) shall be considered accurate for purposes of this section if the disclosed total of payments:

(A) Is understated by no more than \$35; or

(B) Is greater than the amount required to be disclosed.

Section 1026.25 is amended by revising paragraph (c) (1) heading to read as follows:

§1026.25 Record retention.

(c) *Records related to certain requirements for mortgage loans* (1) *Records related to requirements for loans secured by real property* or a cooperative unit—

Section 1026.37 is amended by revising paragraph (b) introductory text, paragraphs (b) (1), (c) (5) (i), (d) (2), (h) (1) (iii), (h) (1) (v), and (h) (1) (vii), paragraph (h) (2) heading and introductory text, and paragraphs (h) (2) (iii) and (o) (4) to read as follows:

§1026.37 Content of disclosures for certain mortgage transactions (Loan Estimate).

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

(1) *Loan amount.* ~~【The amount of credit to be extended under the terms of the legal obligation】~~ The total amount the consumer will borrow, as reflected by the face amount of the note, labeled "Loan Amount."

(c) *Projected payments.*

(5) *Calculation of taxes and insurance.*

(i) The taxable assessed value of the ~~real~~ property securing the transaction after consummation, including the value of any improvements on the property or to be constructed on the property, if known, whether or not such construction will be financed from the proceeds of the transaction, for property taxes; and

(d) *Costs at closing*

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

(i) The amount calculated in accordance with (h)(2)(iv) of this section;

(ii) A statement of whether the disclosed estimated amount is due from or to the consumer; and

(iii) A statement referring the consumer to the alternative table disclosed ~~pursuant to~~ under paragraph(h)(2) of this section for details.

(h) *Calculating cash to close*

(1) *For all transactions.*

(iii) *Down payment and other funds from borrower.* Labeled "Down Payment/Funds from Borrower":

(A) (1) In a purchase transaction as defined in paragraph (a)(9)(i) of this section, ~~[the amount of the difference between the purchase price of the property and the principal amount of the loan, disclosed as a positive number]~~ the amount determined by subtracting the sum of the loan amount disclosed under paragraph (b)(1) of this section and any amount of existing loans assumed or taken subject to that will be disclosed under §1026.38(j)(2)(iv) from the sale price of the property disclosed under paragraph (a)(7) of this section, except as required by paragraph (h)(1)(iii)(A)(2) of this section;

(2) In a purchase transaction as defined in paragraph (a)(9)(i) of this section, when the sum of the loan amount disclosed under paragraph (b)(1) of this section and any amount of existing loans assumed or taken subject to that will be disclosed under §1026.38(j)(2)(iv) exceeds the sale price of the property disclosed under paragraph (a)(7) of this section, the amount of estimated funds from the consumer as determined in accordance with paragraph (h)(1)(v) of this section; or

(B) In all transactions ~~[other than purchase transactions as defined in paragraph (a)(9)(i)]~~ not subject to paragraph (h)(1)(iii)(A) of this section, the estimated funds from the consumer as determined in accordance with paragraph (h)(1)(v) of this section;

(v) *Funds for borrower.* The amount of funds for the consumer, labeled "Funds for Borrower." The amount of funds from the consumer disclosed

under paragraph (h) (1) (iii) (A) (2) or (h) (1) (iii) (B) of this section, as applicable, and of funds for the consumer disclosed under this paragraph (h) (1) (v) ~~[of this section]~~, are determined by subtracting ~~[the principal amount of the credit extended]~~ the sum of the loan amount disclosed under paragraph (b) (1) of this section and any amount of existing loans assumed or taken subject to that will be disclosed under §1026.38(j) (2) (iv) (~~[excluding]~~ less any amount disclosed ~~[pursuant to]~~ under paragraph (h) (1) (ii) of this section) from the total amount of all existing debt being satisfied in the transaction ~~[(except to the extent the satisfaction of such existing debt is disclosed under paragraph (g) of this section)]~~;

(A) If the calculation under this paragraph (h) (1) (v) yields an amount that is a positive number, such amount is disclosed under paragraph (h) (1) (iii) (A) (2) or (h) (1) (iii) (B) of this section, as applicable, and \$0 is disclosed under this paragraph (h) (1) (v);

(B) If the calculation under this paragraph (h) (1) (v) yields an amount that is a negative number, such amount is disclosed under this paragraph (h) (1) (v) as a negative number, and \$0 is disclosed under paragraph (h) (1) (iii) (A) (2) or (h) (1) (iii) (B) of this section, as applicable;

(C) If the calculation under this paragraph (h) (1) (v) yields \$0, then \$0 is disclosed under paragraph (h) (1) (iii) (A) (2) or (h) (1) (iii) (B) of this section, as applicable, and under this paragraph (h) (1) (v);

(vii) *Adjustments and other credits.* The amount of all loan costs determined ~~[pursuant to]~~ under paragraph (f) and other costs determined ~~[pursuant to]~~ under paragraph (g) that are paid by persons other than the loan originator, creditor, consumer, or seller, together with any other amounts that are required to be paid by the consumer at closing pursuant to a purchase and sale contract, ~~[disclosed as a negative number,]~~ labeled "Adjustments and Other Credits"; and

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

(iii) *Payoffs and payments.* The total amount of payoffs and payments to be made to third parties not otherwise disclosed ~~[pursuant to]~~ under paragraphs (f) and (g) of this section, labeled "Total Payoffs and Payments";

(o) *Form of disclosures*

(4) *Rounding*—(i) *Nearest dollar.* (A) The dollar amounts required to be disclosed by paragraphs (b) (6) and (7), (c) (1) (iii), (c) (2) (ii) and (iii), (c) (4) (ii), (f), (g), (h), (i), and (l) of this section shall be rounded to the nearest whole dollar, except that the per diem amount required to

be disclosed by paragraph (g)(2)(iii) of this section and the monthly amounts required to be disclosed by paragraphs (g)(3)(i) through (iii) and (g)(3)(v) of this section shall ~~not~~ be rounded to the nearest cent and disclosed to two decimal points.

(B) The dollar amount required to be disclosed by paragraph (b)(1) of this section shall not be rounded, and if the amount is a whole number then the amount disclosed shall be truncated at the decimal point.

(C) The dollar amounts required to be disclosed by paragraph (c)(2)(iv) of this section shall be rounded to the nearest whole dollar, if any of the component amounts are required by paragraph (o)(4)(i)(A) of this section to be rounded to the nearest whole dollar.

(ii) Percentages. The percentage amounts required to be disclosed under paragraphs (b)(2) and (6), (f)(1)(i), (g)(2)(iii), (j), (l)(2), and (l)(3) of this section ~~shall not be rounded and~~ shall be disclosed by rounding the exact amounts to ~~up to two or~~ three decimal places and then dropping any trailing zeros that occur to the right of the decimal place. ~~[The percentage amount required to be disclosed under paragraph (l)(2) of this section shall be disclosed up to three decimal places. If the amount is a whole number then the amount disclosed shall be truncated at the decimal point.]~~

Section 1026.38 is amended by revising paragraph (a)(3)(iii), paragraphs (d)(2) and (e) heading and introductory text, and paragraphs (e)(2)(ii), (e)(2)(iii)(A)(3), (e)(4)(ii), (g)(1), (i)(1)(iii)(A)(3), (i)(4)(ii), (i)(6)(iv), (i)(7)(iii), (i)(8), (j)(2)(i), (j)(2)(vi), (l)(7)(i), (o)(1), (t)(4)(ii), and t)(5)(vii) to read as follows:

§1026.38 Content of disclosures for certain mortgage transactions (Closing Disclosure).

(a) *General information*

(3) *Closing information.*

(iii) Disbursement date. The date the amounts disclosed under paragraphs (j)(3)(iii) (cash to close from or to borrower) and (k)(3)(iii) (cash from or to seller) of this section are expected to be paid in a purchase transaction under §1026.37(a)(9)(i) to the consumer and seller, respectively, as applicable, or the date ~~[the amounts disclosed pursuant to paragraphs (j)(2)(iii) or (t)(5)(vii)(B) of this section are]~~ some or all of the loan amount disclosed under §1026.38(b) is expected to be paid to the consumer or a third party in a transaction that is not a purchase transaction under §1026.37(a)(9)(i), labeled "Disbursement Date."

(d) *Costs at closing*

(2) *Alternative table for transactions without a seller and simultaneous loans for subordinate financing.* For transactions that do not involve a seller and simultaneous loans for subordinate financing, ~~[and where]~~ if the creditor disclosed the optional alternative table ~~[pursuant to]~~ 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]~~ under paragraph (e) of this section for details.

(e) Alternative calculating cash to close table for transactions without a seller and simultaneous loans for subordinate financing. For transactions that do not involve a seller and simultaneous loans for subordinate financing, ~~[and where]~~ if the creditor disclosed the optional alternative table ~~[pursuant to]~~ 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":

(2) *Total closing costs.*

(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) * * *

(2) * * *

(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 ~~[pursuant to]~~ 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 disclosure of the reduction in principal balance (principal curtailment) disclosed under paragraph (g) (4) or (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).

(4) *Payoffs and payments.*

(ii) Under the subheading "Final," the total amount of payoffs and payments made to third parties disclosed ~~[pursuant to]~~ under paragraph (t)(5)(vii)(B) of this section, to the extent known, disclosed as a negative number if the amount disclosed under paragraph (t)(5)(vii)(B) of this section is a positive number and disclosed as a positive number if the amount disclosed under paragraph (t)(5)(vii)(B) of this section is a negative number;

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

(1) *Taxes and other government fees.* Under the subheading "Taxes and Other Government Fees," ~~[and in the applicable column as described in paragraph (g) of this section,]~~ 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) ~~[Recording fees and the amounts paid in the applicable columns]~~ 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.

(i) *Calculating cash to close.*

(1) *Total closing costs.*

(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) * * *

(2) * * *

(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 ~~[pursuant to]~~ 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

reduction in principal balance (principal curtailment) is used to provide the refund, a statement directing the consumer to the disclosure required under paragraph (g) (4), (j) (4) (i), or (t) (5) (ix) 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).

(4) Down payment/funds from borrower.

(ii) Under the subheading "Final":

(A) (1) In a purchase transaction 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]~~ 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 disclosed under paragraph (j) (2) (iv) of this section from the sale price of the property disclosed under paragraph (j) (1) (ii) 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), 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 disclosed under paragraph (j) (2) (iv) of this section exceeds the sale price disclosed under paragraph (j) (1) (ii) 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 a transaction other than the type described in]~~ In all transactions not subject to paragraph (i) (4) (ii) (A) of this section, the "Funds from Borrower" as determined in accordance with paragraph (i) (6) (iv) of this section, labeled "Down Payment/Funds from Borrower."

(6) Funds for borrower.

(iv) The "Funds from Borrower" to be disclosed under paragraph (i) (4) (ii) (A) (2) or (i) (4) (ii) (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 principal amount of the credit extended (excluding any amount)]~~ the sum of the loan amount disclosed under paragraph (b) of this section and any amount for existing loans assumed or taken subject to disclosed under paragraph (j) (2) (iv) of this section (less any closing costs financed disclosed ~~[pursuant to]~~ under paragraph (i) (3) (ii) of this section) from the total amount of all existing debt being satisfied in the real estate closing ~~[and]~~ disclosed under paragraphs (j) (1) (ii), (iii), and (v) of this section ~~[(except to the extent the satisfaction of such existing debt is disclosed under paragraph (g) 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 (i) (4) (ii) (B) of this section, as applicable, and \$0.00 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 \$0.00 shall be disclosed under paragraph (i) (4) (ii) (A) (2) or (i) (4) (ii) (B) of this section, as applicable.

(C) If the calculation under this paragraph (i) (6) (iv) yields \$0, \$0.00 shall be disclosed under paragraph (i) (4) (ii) (A) (2) or (i) (4) (ii) (B) of this section, as applicable, and under paragraph (i) (6) (ii) of this section.

(7) *Seller credits.*

(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 under paragraph (j) (2) (v) of this section and, as applicable, in the seller-paid column under paragraphs (f) and (g) of this section; 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.

(8) *Adjustments and other credits.* (i) Under the subheading "Loan Estimate," the amount disclosed on the Loan Estimate under §1026.37(h) (1) (vii) ~~rounded to the nearest whole dollar~~, 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) ~~through (x)~~ 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.

(j) *Summary of borrower's transaction.*

(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";

(vi) ~~*[The description "Other Credits," together with a]*~~ Descriptions and amounts of other items paid by or on behalf of the consumer and not otherwise disclosed ~~*[pursuant to]*~~ 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";

(1) *Loan disclosures.*

(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 ~~*[7]*~~ (at or before consummation) ~~*[7]*~~ an escrow account in connection with the transaction ~~*[for the costs that will be paid using escrow account funds described in],*~~ and the information required under paragraph (1) (7) (i) (A) ~~*[(1)]*~~ 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 ~~*[following:]*~~ amounts listed in this paragraph (1) (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 ~~*[for payment of the charges described in §1026.37(c)(4)(ii)],*~~ 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 (1) (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 charges described in §1026.37(c)(4)(ii)]*~~ 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 ~~[pursuant to]~~ 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 ~~[pursuant to]~~ 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 ~~[for payment of the charges described in §1026.37(c)(4)(ii)]~~, labeled "Monthly Escrow Payment."

(5) A creditor complies with the requirements of paragraphs (1)(7)(i)(A)(1) and (1)(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 ~~[charges described in §1026.37(c)(4)(ii)]~~ 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."

(o) *Loan calculations.*

(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.

(t) *Form of disclosures*

(4) *Rounding*

(ii) *Percentages.* The percentage amounts required to be disclosed under paragraphs (b), (f) (1), (n), **(o) (4)**, and (o) (5) of this section ~~[shall not be rounded and]~~ shall be disclosed ~~[up to two or]~~ **by rounding to** three decimal places **and then dropping any trailing zeros to the right of the decimal point.** ~~[The percentage amount required to be disclosed under paragraph (o) (4) of this section shall not be rounded and shall be disclosed up to three decimal places. If the amount is a whole number then the amount disclosed shall be truncated at the decimal point.]~~

(5) *Exceptions*

(vii) *Transaction without a seller* **and simultaneous loans for subordinate financing.** 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 loans for subordinate financing,** and for which the alternative tables are disclosed ~~[pursuant to]~~ **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.

* * * * *

Supplement I to Part 1026—Official Interpretations

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

1(d) *Organization.*

Paragraph 1(d) (5).

1. *Effective date.* **i. General.** The Bureau's revisions to Regulation X and Regulation Z published on December 31, 2013, (the TILA-RESPA Final Rule) apply to covered loans (closed-end credit transactions, **other than reverse mortgages,** that are secured by real property **or a cooperative unit,** **whether or not treated as real property under State or other applicable**

law) for which the creditor or mortgage broker receives an application on or after October 3, 2015 (the effective date), except that ~~[new]~~ §1026.19(e)(2), the amendments to §1026.28(a)(1), and the amendments to the commentary to §1026.29 became effective on October 3, 2015, without respect to whether an application ~~[has been]~~ was received as of that date. ~~[The provisions of §1026.19(e)(2) apply prior to a consumer's receipt of the disclosures required by §1026.19(e)(1)(i), and therefore, restrict activity that may occur prior to receipt of an application by a creditor or mortgage broker under §1026.19(e). These provisions include §1026.19(e)(2)(i), which restricts the fees that may be imposed on a consumer, §1026.19(e)(2)(ii), which requires a statement to be included on written estimates of terms or costs specific to a consumer, and §1026.19(e)(2)(iii), which prohibits creditors from requiring the submission of documents verifying information related to the consumer's application. Accordingly, the provisions under §1026.19(e)(2) are effective on October 3, 2015, without respect to whether an application has been received on that date. (Note: The above text is moved to paragraph ii. Pre-application activities below.) In addition, the amendments to §1026.28 and the commentary to §1026.29 govern the preemption of State laws and thus, the amendments to those provisions and associated commentary made by the TILA-RESPA Final Rule are effective on October 3, 2015, without respect to whether an application has been received on that date. (Note: The above text is moved to paragraph iii. Determination of preemption below.) The following examples illustrate the application of the effective date for the TILA-RESPA Final Rule.] Additionally, §§1026.20(e) and 1026.39(d)(5), as amended or adopted by the TILA-RESPA Final Rule, took effect on October 3, 2015, for transactions for which the creditor or mortgage broker received an application on or after October 3, 2015, and take effect October 1, 2017, with respect to transactions for which a creditor or mortgage broker received an application prior to October 3, 2015.~~

{Note: The examples in existing text i. General, ii. Predisclosure written estimates, and iii. Request for preemption determination are moved to proposed paragraphs v. A., B., C. and D. below.}

ii. Pre-application activities. The provisions of §1026.19(e)(2) apply prior to a consumer's receipt of the disclosures required by §1026.19(e)(1)(i) and therefore restrict activity that may occur prior to receipt of an application by a creditor or mortgage broker ~~[under §1026.19(e)]~~. These provisions include §1026.19(e)(2)(i), which restricts the fees that may be imposed on a consumer, §1026.19(e)(2)(ii), which requires a statement to be included on written estimates of terms or costs specific to a consumer, and §1026.19(e)(2)(iii), which prohibits creditors from requiring the submission of documents verifying information related to the consumer's application. Accordingly, the provisions of §1026.19(e)(2) are effective on October 3, 2015, without respect to whether an application has been received on that date.

iii. Determination of preemption. ~~[In addition]~~ The amendments to §1026.28 and the commentary to §1026.29 govern the preemption of State laws, and thus the amendments to those provisions and associated commentary made by the TILA-RESPA Final Rule are effective on October 3, 2015, without respect to whether an application has been received on that date.

iv. *Post-consummation escrow cancellation disclosure and partial payment disclosure.* A creditor, servicer, or covered person, as applicable, must provide the disclosures required by §§1026.20(e) and 1026.39(d)(5) for transactions for which the conditions in §1026.20(e) or §1026.39(d)(5), as applicable, exist on or after October 1, 2017, regardless of when the corresponding applications were received. For transactions in which such conditions exist on or after October 3, 2015, through September 30, 2017, a creditor, servicer, or covered person, as applicable, complies with §§1026.20(e) and 1026.39(d)(5) if it provides the mandated disclosures in all cases or if it provides them only in cases where the corresponding applications were received on or after October 3, 2015.

v. *Examples.* For purposes of the following examples, an application received before or after the effective date is any submission for the purpose of obtaining an extension of credit that satisfies the definition in §1026.2(a)(3), as adopted by the TILA-RESPA Final Rule, even if that definition was not yet in effect on the date in question. Cross-references in the following examples to provisions of Regulation Z refer to those provisions as adopted or amended by the TILA-RESPA Final Rule, together with any subsequent amendments, unless noted otherwise.

~~[i. General]~~ **A. Application received on or after effective date of the TILA-RESPA Final Rule.** Assume a creditor receives an application ~~for, as defined under §1026.2(a)(3) of the TILA-RESPA Final Rule, for a transaction subject to §1026.19(e) and (f)]~~ on October 3, 2015, and that consummation of the transaction occurs on October 31, 2015. The amendments of the TILA-RESPA Final Rule, including the requirement to provide the Loan Estimate and Closing Disclosure under §1026.19(e) and (f), apply to the transaction. The creditor ~~would~~ **is** also ~~be~~ required to provide the special information booklet under §1026.19(g) ~~[of the TILA-RESPA Final Rule, as applicable]~~.

~~[i. General]~~ **B. Application received before effective date.** Assume a creditor receives an application ~~for, as defined under §1026.2(a)(3) of the TILA-RESPA Final Rule, for a transaction subject to §1026.19(e) and (f)]~~ on September 30, 2015, and that consummation of the transaction occurs on October 30, 2015. The ~~amendments of the TILA-RESPA Final Rule, including the~~ requirement to provide the Loan Estimate and Closing Disclosure under §1026.19(e) and (f) ~~do~~ **does** not apply to the transaction ~~for, except that the provisions of §1026.19(e)(2), specifically §1026.19(e)(2)(i), (e)(2)(ii), and (e)(2)(iii), do apply to the transaction beginning on October 3, 2015, because they become effective on October 3, 2015, without respect to whether an application, as defined under §1026.2(a)(3) of the TILA-RESPA Final Rule, has been received by the creditor or mortgage broker on that date. The creditor does not provide the Closing Disclosure so that it is received by the consumer at least three business days before consummation;]~~. **I**nstead, the creditor and the settlement agent **must** provide the disclosures ~~under §1026.19(a)(2)(ii) and §1024.8, as applicable, under the Truth in Lending Act and the Real Estate Settlement Procedures Act, respectively]~~ **required** by §1026.19, as it existed prior to the effective date, and by Regulation X, 12 CFR 1024.8. ~~[The requirement to provide]~~ **Similarly, the creditor must provide** the special information booklet ~~under §1026.19(g) of the TILA-RESPA Final Rule would also not apply to the transaction]~~ **required** by Regulation X, 12 CFR 1024.6. ~~[But the~~

~~creditor would provide the special information booklet under §1024.6, as applicable.]~~ However, the provisions of §1026.19(e)(2) apply to the transaction beginning on October 3, 2015, because they became effective on October 3, 2015, without respect to whether an application was received by the creditor or mortgage broker on that date.

~~[ii.]~~ C. *Predisclosure written estimates.* Assume a creditor receives a request from a consumer for a written estimate of terms or costs specific to the consumer on October 3, 2015, before the consumer submits an application to the creditor and thus before the consumer has received the disclosures required by §1026.19(e)(1)(i). The creditor, if it provides such a written estimate to the consumer, must comply with §1026.19(e)(2)(ii) and provide the required statement on the written estimate, even though the creditor has not received an application ~~[for a transaction subject to §1026.19(e) and (f)]~~ on that date.

~~[iii.]~~ D. *Request for preemption determination.* Assume a creditor submits a request to the Bureau under §1026.28(a)(1) for a determination of whether a State law is inconsistent with the disclosure requirements ~~[the TILA-RESPA Final Rule]~~ in Regulation Z on October 3, 2015. Because the amendments to §1026.28(a)(1) are effective on that date and do not depend on whether the creditor has received an application ~~[as defined under §1026.2(a)(3) of the TILA-RESPA Final Rule]~~, §1026.28(a)(1) ~~[, as amended by the TILA-RESPA Final Rule]~~ is applicable to the request on that date, and the Bureau would make a determination based on the ~~[amendments of the TILA-RESPA Final Rule]~~ provisions of Regulation Z in effect on that date, including ~~[, for example,]~~ the requirements of ~~[§1026.37]~~ §1026.19(e) and (f).

E. *Application of the effective dates for the post-consummation escrow cancellation disclosure and partial payment disclosure.* Assume a creditor receives an application for a mortgage loan on October 10, 2010, and the loan was consummated. Assume further that, on December 18, 2016, the escrow account established in connection with the mortgage loan is canceled or the loan is sold to another covered person. A creditor, servicer, or covered person, as applicable, complies with §§1026.20(e) and 1026.39(d)(5) if it provides the disclosures required by those provisions to the consumer, but the creditor, servicer, or covered person, as applicable, is not required to provide the disclosures in this case. Assume the same circumstances, except that the escrow account established in connection with the loan is canceled or the mortgage loan is sold to another covered person on April 14, 2018. A creditor, servicer, or covered person, as applicable, must provide the disclosures in §1026.20(e) or 1026.39(d)(5), as applicable, because a condition requiring these disclosures occurred after October 1, 2017 (thus the date the application was received is irrelevant).

Section 1026.2—Definitions and Rules of Construction

2(a)(11) Consumer

3. ~~[Land]~~ *Trusts.* Credit extended to trusts established for taxation or estate planning purposes or to land trusts, as described in ~~[the~~

~~commentary to §1026.3(a)]~~ **comment 3(a)-10**, is considered to be extended to a natural person for purposes of the definition of consumer.

Section 1026.3—Exempt Transactions

3(h) Partial exemption for certain mortgage loans.

2. *Requirements of exemption.* The conditions that the transaction not require the payment of interest under §1026.3(h)(3) and that repayment of the amount of credit extended be forgiven or deferred in accordance with §1026.3(h)(4) ~~is~~ are determined by the terms of the credit contract. The other requirements of §1026.3(h) need not be reflected in the credit contract, but the creditor must retain evidence of compliance with those provisions, as required by §1026.25(a). In particular, because the exemption from §1026.19(e), (f), and (g) means the consumer will not receive the disclosures of closing costs under §1026.37 or § 1026.38, the creditor must ~~have information reflecting that the total of closing costs imposed in connection with the transaction is less than one percent of the amount of credit extended and include no charges other than recordation, application, and housing counseling fees]~~ **retain evidence reflecting that the costs payable by the consumer in connection with the transaction at consummation are limited to recording fees, transfer taxes, application fees, and housing counseling fees, and that the total of application and housing counseling fees is less than 1 percent of the amount of credit extended**, in accordance with §1026.3(h)(5). Unless the itemization of the amount financed **provided to the consumer** sufficiently details this requirement, the creditor must establish compliance with §1026.3(h)(5) by some other written document and retain it in accordance with §1026.25(a).

3. Recording fees. See comment 37(g)(1)-1 for a discussion of what constitutes a recording fee.

4. Transfer taxes. See comment 37(g)(1)-3 for a discussion of what constitutes a transfer tax.

Section 1026.17—General Disclosure Requirements

17(c) Basis of Disclosures and Use of Estimates

Paragraph 17(c)(6)

5. *Allocation of [points] costs.* When a creditor utilizes the special rule in §1026.17(c)(6) to disclose credit extensions as multiple transactions, ~~buyers points or similar amounts imposed on the consumer]~~ **all costs of the transactions** must be allocated for purposes of calculating disclosures. ~~While such amounts should not be taken into account more than once in making calculations, they may be allocated between the transactions in any manner the creditor chooses. For example, if a construction permanent loan is subject to 5 points imposed on the consumer and the creditor chooses to disclose the 2 phases separately, the 5 points may be allocated entirely to the construction loan, entirely to the permanent loan, or divided in any manner between the two. However, the entire 5 points may not be applied twice, that is, to both the construction and the permanent phases.]~~ **If a creditor chooses to disclose**

the credit as multiple transactions, the creditor must allocate to the construction phase all amounts that would not be imposed but for the construction financing. All other amounts must be allocated to the permanent financing. For example, inspection and handling fees for the staged disbursement of construction loan proceeds must be included in the disclosures for the construction phase and may not be included in the disclosures for the permanent phase. If a creditor charges separate application or origination fees for the construction phase and the permanent phase, such fees must be allocated to the phase for which they are charged. If a creditor charges an application or origination fee for construction financing only but charges a greater application or origination fee for construction-permanent financing, the difference between the two fees must be allocated to the permanent phase.

6. *May be permanently financed by the same creditor.* For purposes of determining whether a creditor may treat a construction-permanent loan as one transaction or more than one transaction under §1026.17(c)(6)(ii), a loan to finance the construction of a dwelling may be permanently financed by the same creditor, within the meaning of §1026.17(c)(6)(ii), if the creditor generally makes both construction financing and permanent financing available to qualifying consumers, unless a consumer expressly states that the consumer will not obtain permanent financing from the creditor.

17(f) Early Disclosures

1. *Change in rate or other terms.* Redislosure is required for changes that occur between the time disclosures are made and consummation if the annual percentage rate in the consummated transaction exceeds the limits prescribed in §1026.17(f) even if the prior disclosures would be considered accurate under the tolerances in §1026.18(d) or 1026.22(a). To illustrate:

i. *Transactions not secured by real property or a cooperative unit.* A. For transactions not secured by real property or a cooperative unit, if disclosures are made in a regular transaction on July 1, the transaction is consummated on July 15, and the actual annual percentage rate varies by more than 1/8 of 1 percentage point from the disclosed annual percentage rate, the creditor must either redisclose the changed terms or furnish a complete set of new disclosures before consummation. Redislosure is required even if the disclosures made on July 1 are based on estimates and marked as such.

B. In a regular transaction not secured by real property or a cooperative unit, if early disclosures are marked as estimates and the disclosed annual percentage rate is within 1/8 of 1 percentage point of the rate at consummation, the creditor need not redisclose the changed terms (including the annual percentage rate).

C. If disclosures for transactions not secured by real property or a cooperative unit are made on July 1, the transaction is consummated on July 15, and the finance charge increased by \$35 but the disclosed annual percentage rate is within the permitted tolerance, the creditor must at

least redisclose the changed terms that were not marked as estimates. See §1026.18(d)(2).

ii. *Reverse mortgages.* In a transaction subject to §1026.19(a) and not §1026.19(e) and (f), assume that, at the time the disclosures required by § 1026.19(a) are prepared in July, the loan closing is scheduled for July 31 and the creditor does not plan to collect per-diem interest at consummation. Assume further that consummation actually occurs on August 5, and per-diem interest for the remainder of August is collected as a prepaid finance charge. The creditor may rely on the disclosures prepared in July that were accurate when they were prepared. However, if the creditor prepares new disclosures in August that will be provided at consummation, the new disclosures must take into account the amount of the per-diem interest known to the creditor at that time.

iii. ~~[Mortgages other than reverse mortgages and mortgage loans not secured by real property]~~ **Transactions secured by real property or a cooperative unit** other than reverse mortgages. For transactions secured by real property or a cooperative unit other than reverse mortgages, assume that, at the time the disclosures required by § 1026.19(e) are prepared in July, the loan closing is scheduled for July 31 and the creditor does not plan to collect per-diem interest at consummation. Assume further that consummation actually occurs on August 5, and per-diem interest for the remainder of August is collected as a prepaid finance charge. The creditor must make the disclosures required by §1026.19(f) three days **{Note: This is a mistake; it should state business days}** before consummation, and the disclosures required by §1026.19(f) must take into account the amount of per-diem interest that will be collected at consummation.

2. *Variable rate.* The addition of a variable rate feature to the credit terms, after early disclosures are given, requires new disclosures. See §1026.19(e) and (f) to determine when new disclosures are required for transactions secured by real property **or a cooperative unit**, other than reverse mortgages.

Section 1026.18—Content of Disclosures

3. *Scope of coverage.* i. Section 1026.18 applies to closed-end consumer credit transactions, other than transactions that are subject to §1026.19(e) and (f). Section 1026.19(e) and (f) applies to closed-end consumer credit transactions that are secured by real property **or a cooperative unit**, other than reverse mortgages subject to §1026.33. Accordingly, the disclosures required by §1026.18 apply only to closed-end consumer credit transactions that are:

- A. Unsecured;
- B. Secured by personal property that is not a dwelling;
- C. Secured by personal property **(other than a cooperative unit)** that is a dwelling and ~~is~~ **are** not also secured by real property; or
- D. Reverse mortgages subject to §1026.33.

ii. Of the foregoing transactions that are subject to §1026.18, the creditor discloses a payment schedule ~~[pursuant to]~~ under §1026.18(g) for those described in paragraphs i.A and i.B of this comment. For transactions described in paragraphs i.C and i.D of this comment, the creditor discloses an interest rate and payment summary table under §1026.18(s). See also comments 18(g)-6 and 18(s)-4 for additional guidance on the applicability to different transaction types of §§1026.18(g) or (s) and 1026.19(e) and (f).

iii. Because §1026.18 does not apply to transactions secured by real property or a cooperative unit, other than reverse mortgages, references in the section and its commentary to "mortgages" refer only to transactions described in paragraphs i.C and i.D of this comment, as applicable.

18(g) Payment Schedule

6. *Mortgage transactions.* Section 1026.18(g) applies to closed-end transactions, other than transactions that are subject to §1026.18(s) or §1026.19(e) and (f). Section 1026.18(s) applies to closed-end transactions secured by real property or a dwelling, unless they are subject to §1026.19(e) and (f). Section 1026.19(e) and (f) applies to closed-end transactions secured by real property or a cooperative unit, other than reverse mortgages. Thus, if a closed-end consumer credit transaction is secured by real property, a cooperative unit, or a dwelling and the transaction is a reverse mortgage or the dwelling is personal property but not a cooperative unit, then the creditor discloses an interest rate and payment summary table in accordance with §1026.18(s). See comment 18(s)-4. If a closed-end consumer credit transaction is secured by real property or a cooperative unit and is not a reverse mortgage, the creditor discloses a projected payments table in accordance with §§1026.37(c) and 1026.38(c), as required by §1026.19(e) and (f). In all such cases, the creditor is not subject to the requirements of §1026.18(g). On the other hand, if a closed-end consumer credit transaction is not secured by real property or a dwelling (for example, if it is unsecured or secured by an automobile), the creditor discloses a payment schedule in accordance with §1026.18(g) and is not subject to the requirements of §1026.18(s) or §§1026.37(c) and 1026.38(c).

18(s) Interest Rate and Payment Summary for Mortgage Transactions

1. *In general.* Section 1026.18(s) prescribes format and content for disclosure of interest rates and monthly (or other periodic) payments for reverse mortgages and certain transactions secured by dwellings that are personal property but not cooperative units. The information in §1026.18(s)(2) through (4) is required to be in the form of a table, except as otherwise provided, with headings and format substantially similar to model clause H-4(E), H-4(F), H-4(G), or H-4(H) in appendix H to this part. A disclosure that does not include the shading shown in a model clause but otherwise follows the model clause's headings and format is substantially similar to that model clause. Where §1026.18(s)(2) through (4) or the applicable model clause requires that a column or row of the table be labeled using the word "monthly" but the periodic payments are not due monthly, the creditor should use the appropriate term, such as

"bi-weekly" or "quarterly." In all cases, the table should have no more than five vertical columns corresponding to applicable interest rates at various times during the loan's term; corresponding payments would be shown in horizontal rows. Certain loan types and terms are defined for purposes of §1026.18(s) in §1026.18(s) (7).

4. *Scope of coverage in relation to §1026.19(e) and (f).* Section 1026.18(s) applies to transactions secured by real property or a dwelling, other than transactions that are subject to §1026.19(e) and (f). Those provisions apply to closed-end transactions secured by real property **or a cooperative unit**, other than reverse mortgages. Accordingly, §1026.18(s) governs only closed-end reverse mortgages and closed-end transactions secured by a dwelling, **other than a cooperative**, that is personal property (such as a mobile home that is not deemed real property under State or other applicable law).

Section 1026.19—Certain Mortgage and Variable-Rate Transactions

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

19(e) (1) Provision of disclosures.

19(e) (1) (i) Creditor.

1. *Requirements.* Section 1026.19(e) (1) (i) requires early disclosure of credit terms in closed-end credit transactions that are secured by real property **or a cooperative unit**, other than reverse mortgages. These disclosures must be provided in good faith. Except as otherwise provided in §1026.19(e), a disclosure is in good faith if it is consistent with §1026.17(c) (2) (i). Section 1026.17(c) (2) (i) provides that if any information necessary for an accurate disclosure is unknown to the creditor, the creditor shall make the disclosure based on the best information reasonably available to the creditor at the time the disclosure is provided to the consumer. The "reasonably available" standard requires that the creditor, acting in good faith, exercise due diligence in obtaining information. See comment 17(c) (2) (i)-1 for an explanation of the standard set forth in §1026.17(c) (2) (i). See comment 17(c) (2) (i)-2 for labeling disclosures required under §1026.19(e) that are estimates.

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

19(e) (1) (iii) Timing.

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

creditor, §1026.17(c)(6)(ii) and comment 17(c)(6)-2 permit creditors to treat the construction phase and the permanent phase as either one transaction, with one combined disclosure, or more than one transaction, with a separate disclosure for each transaction. Comment 17(c)(6)-6 explains that a loan to finance the construction of a dwelling meets the condition that it "may be permanently financed by the same creditor" if the creditor generally makes both construction and permanent financing available to qualifying consumers, unless the consumer expressly states that the consumer will not obtain permanent financing from the creditor. Therefore, a creditor that generally makes both construction and permanent financing available, upon receiving a consumer's application for either construction financing only without the consumer expressly stating that the consumer will not obtain permanent financing from the creditor or combined construction-permanent financing, complies with §1026.19(e)(1)(iii) by delivering or placing in the mail the disclosures required by §1026.19(e)(1)(i) for both the construction financing and the permanent financing, disclosed as either one or more than one transaction, not later than the third business day after the creditor receives the application and not later than the seventh business day before consummation. To illustrate:

i. Assume a creditor receives a consumer's application for construction financing only on Monday, June 1. Assume further that the creditor generally makes both construction and permanent financing available to qualifying consumers and that the consumer does not expressly state that the consumer will not obtain permanent financing from the creditor. In these circumstances, the construction loan that the consumer applied for is a loan to finance construction of a dwelling that may be permanently financed by the same creditor under comment 17(c)(6)-6. The creditor therefore must deliver or place in the mail the disclosures required by §1026.19(e)(1)(i) for both the construction financing and the permanent financing, either disclosed as one or more than one transaction, not later than Thursday, June 4, the third business day after the creditor received the consumer's application, and not later than the seventh business day before consummation of the transaction, even though the application is for construction financing only.

ii. Assume a creditor receives a consumer's application for construction financing only on Monday, June 1. Assume further that the creditor generally makes only construction financing available to qualifying consumers. In these circumstances, the construction loan for which the consumer applied is not a loan to finance construction of a dwelling that may be permanently financed by the same creditor under comment 17(c)(6)-6. The creditor therefore must deliver or place in the mail the disclosures required by §1026.19(e)(1)(i) for the construction financing only not later than Thursday, June 4, the third business day after the creditor received the consumer's application, and not later than the seventh business day before consummation of the transaction.

iii. Assume a creditor receives a consumer's application for construction financing only on Monday, June 1. Assume further that the creditor generally makes both construction and permanent financing available to qualifying consumers and that the consumer expressly states that the consumer will not obtain permanent financing from the creditor. In these

circumstances, the construction loan for which the consumer applied is not a loan to finance construction of a dwelling that may be permanently financed by the same creditor under comment 17(c)(6)-6. The creditor therefore must deliver or place in the mail the disclosures required by §1026.19(e)(1)(i) for the construction financing only not later than Thursday, June 4, the third business day after the creditor received the consumer's application, and not later than the seventh business day before consummation of the transaction.

iv. Assume the same facts as in comment 19(e)(1)(iii)-5.i, under which the creditor provides the disclosures required by §1026.19(e)(1)(i) for both construction financing and permanent financing. If the creditor generally conducts separate closings for the construction financing and the permanent financing or expects that the construction financing and the permanent financing may have separate closings, providing separate Loan Estimates for the construction financing and for the permanent financing allows the creditor to deliver separate Closing Disclosures for the separate phases. For example, assume further that the consumer has requested permanent financing after receiving separate Loan Estimates for the construction financing and for the permanent financing, that consummation of the construction financing is scheduled for July 1, and that consummation of the permanent financing is scheduled on or about June 1 of the following year. The creditor may provide the construction financing Closing Disclosure at least three business days before consummation of that transaction on July 1 and delay providing the permanent financing Closing Disclosure until three business days before consummation of that transaction on or about June 1 of the following year, in accordance with §1026.19(f)(1)(ii). The creditor may also issue a revised Loan Estimate for the permanent financing at any time prior to 60 days before consummation, following the procedures under §1026.19(e)(3)(iv)(F).

v. If a consumer expressly states that the consumer will not obtain permanent financing from the creditor after a combined construction-permanent financing disclosure already has been provided, the creditor complies with §1026.17(c)(6)(ii) by issuing a revised disclosure for construction financing only in accordance with the timing requirements of §1026.19(e)(4).

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

2. *Disclosure of services for which the consumer may shop.* Section 1026.19(e)(1)(vi)(B) requires the creditor to identify the services for which the consumer is permitted to shop in the disclosures provided ~~pursuant to~~ under §1026.19(e)(1)(i). If the charge for a particular service for which the consumer is permitted to shop is payable by the consumer, the creditor must specifically identify that service unless, based on the best information reasonably available to the creditor when the disclosure is provided, the creditor knows that the service is provided as part of a package (or combination of settlement services) offered by a single service provider. Specific identification of each service in such a package is not required provided all such services are services for which the consumer is permitted to shop. See §1026.37(f)(3)

regarding the content and format for disclosure of services for which the consumer may shop.

3. *Written list of providers.* If the creditor permits the consumer to shop for a settlement service, §1026.19(e)(1)(vi)(C) requires the creditor to provide the consumer with a written list identifying at least one available provider of that service and stating that the consumer may choose a different provider for that service. The settlement service providers identified on the written list required by §1026.19(e)(1)(vi)(C) must correspond to the settlement services for which the consumer may shop, disclosed ~~[pursuant to]~~ under §1026.37(f)(3). See form H-27 in appendix H to this part for a model list. Although use of the model form H-27 in appendix H to this part is not required, creditors using it properly will be deemed to be in compliance with §1026.19(e)(1)(vi)(C).

4. *Identification of available providers.* Section 1026.19(e)(1)(vi)(C) provides that the creditor must identify settlement service providers that are available to the consumer. A creditor does not comply with the identification requirement in §1026.19(e)(1)(vi)(C) unless it provides sufficient information to allow the consumer to contact the provider, such as the name under which the provider does business and the provider's address and telephone number. Similarly, a creditor does not comply with the availability requirement in §1026.19(e)(1)(vi)(C) if it provides a written list consisting of only settlement service providers that are no longer in business or that do not provide services where the consumer or property is located. If the charge for a particular service for which the consumer is permitted to shop is payable by the consumer, the creditor must specifically identify that service and an available provider of that service on the written list of providers unless, based on the best information reasonably available to the creditor at the time the disclosure is provided, the creditor knows that the service is provided as part of a package (or combination of settlement services) offered by a single service provider. Specific identification of each service in such a package is not required provided they all are services for which the consumer is permitted to shop.

19(e)(3) Good faith determination for estimates of closing costs.

19(e)(3)(i) General rule.

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

i. Fees paid to the creditor.

ii. Fees paid to a mortgage broker.

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

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

v. Transfer taxes.

8. "Paid by or imposed on" and "payable." The term "paid by or imposed on," as used in §§1026.19(e)(3)(i) and 1026.19(e)(3)(ii)(A), has the same meaning as the term "payable," as used elsewhere in this part.

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

2. Aggregate increase limited to ten percent. ~~【Pursuant to】~~ Under §1026.19(e)(3)(ii)(A), whether an individual estimated charge subject to §1026.19(e)(3)(ii) is in good faith depends on whether the sum of all charges subject to §1026.19(e)(3)(ii) increases by more than 10 percent, ~~【even if】~~ regardless of whether a particular charge ~~【does not increase】~~ increases by more than 10 percent. ~~【For example, if, in the disclosures provided pursuant to §1026.19(e)(1)(i), the creditor includes a \$300 estimated fee for a settlement agent, the settlement agent fee is included in the category of charges subject to §1026.19(e)(3)(ii), and the sum of all charges subject to §1026.19(e)(3)(ii) (including the settlement agent fee) equals \$1,000 then the creditor does not violate §1026.19(e)(3)(ii) if the actual settlement agent fee exceeds 10 percent (i.e., exceeds \$330), provided that the sum of all such charges does not exceed 10 percent (i.e., \$1,100). {Note: The above text is amended and moved to paragraph i. below.} Section 1026.19(e)(3)(ii) also provides flexibility in disclosing individual fees by focusing on aggregate amounts. For example, assume that, in the disclosures provided pursuant to §1026.19(e)(1)(i), the sum of all estimated charges subject to §1026.19(e)(3)(ii) equals \$1,000. If the creditor does not include an estimated charge for a notary fee but a \$10 notary fee is charged to the consumer, and the notary fee is subject to §1026.19(e)(3)(ii), then the creditor does not violate §1026.19(e)(1)(i) if the sum of all amounts charged to the consumer subject to §1026.19(e)(3)(ii) does not exceed \$1,100, even though an individual notary fee was not included in the estimated disclosures provided pursuant to §1026.19(e)(1)(i). {Note: The above text is amended and moved to paragraph ii. below.}】~~ This is true even if an individual charge was omitted from the estimates entirely and then imposed at consummation. In all cases, however, the creditor must also comply with the requirements in §1026.19(e)(3)(ii)(B) and (C) to satisfy the good faith standard under §1026.19(e)(3)(ii). If the creditor permits the consumer to shop consistent with §1026.19(e)(1)(vi)(A) but fails to provide the list required by §1026.19(e)(1)(vi)(C) or the list does not comply with the requirements of §1026.19(e)(1)(vi)(B) and (C), good faith is determined under §1026.19(e)(3)(i) instead of §1026.19(e)(3)(ii) or (iii) regardless of the provider selected by the consumer. The following examples illustrate this principle (and also assume the requirements in §1026.19(e)(3)(ii)(B) and (C) are satisfied):

i. ~~【For example, if】~~ Assume that, in the disclosures provided ~~【pursuant to】~~ under §1026.19(e)(1)(i), the creditor includes a \$300 estimated fee for a settlement agent, the settlement agent fee is included in the category of charges subject to §1026.19(e)(3)(ii), and the sum of all

charges subject to §1026.19(e)(3)(ii) (including the settlement agent fee) equals \$1,000 ~~[then]~~. **In this case,** the creditor does not violate §1026.19(e)(3)(ii) if the actual settlement agent fee exceeds **the estimated settlement agent fee by more than** 10 percent (i.e., **the fee exceeds** \$330), provided that the sum of all such **actual** charges does not exceed **the sum of all such estimated charges by more than** 10 percent (i.e., **the sum of all such charges does not exceed** \$1,100). ~~[Section 1026.19(e)(3)(ii) also provides flexibility in disclosing individual fees by focusing on aggregate amounts.]~~

ii. ~~[For example,]~~ Assume that, in the disclosures provided ~~[pursuant to]~~ **under** §1026.19(e)(1)(i), the sum of all estimated charges subject to §1026.19(e)(3)(ii) equals \$1,000. If the creditor does not include an estimated charge for a notary fee but a \$10 notary fee is charged to the consumer, and the notary fee is subject to §1026.19(e)(3)(ii), then the creditor does not violate §1026.19(e)(1)(i) if the sum of all amounts charged to the consumer subject to §1026.19(e)(3)(ii) does not exceed \$1,100, even though an individual notary fee was not included in the estimated disclosures provided under §1026.19(e)(1)(i).

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

2. *Good faith requirement for required services chosen by the consumer.* If a service is required by the creditor, the creditor permits the consumer to shop for that service consistent with §1026.19(e)(1)(vi)(A), the creditor provides the list required by §1026.19(e)(1)(vi)(C), and the consumer chooses a service provider that is not on that list to perform that service, then the actual amounts of such fees need not be compared to the original estimates for such fees to perform the good faith analysis required by §1026.19(e)(3)(i) or (ii). Differences between the amounts of such charges disclosed ~~[pursuant to]~~ **under** §1026.19(e)(1)(i) and the amounts of such charges paid by or imposed on the consumer do not constitute a lack of good faith, so long as the original estimated charge, or lack of an estimated charge for a particular service, was based on the best information reasonably available to the creditor at the time the disclosure was provided. For example, if the consumer informs the creditor that the consumer will choose a settlement agent not identified by the creditor on the written list provided ~~[pursuant to]~~ **under** §1026.19(e)(1)(vi)(C), and the creditor subsequently discloses an unreasonably low estimated settlement agent fee, then the under-disclosure does not comply with §1026.19(e)(3)(iii) **and good faith is determined under §1026.19(e)(3)(i)**. If the creditor permits the consumer to shop consistent with §1026.19(e)(1)(vi)(A) but fails to provide the list required by §1026.19(e)(1)(vi)(C) **or the list does not comply with the requirements of § 1026.19(e)(1)(vi)(B) and (C)**, good faith is determined ~~[pursuant to]~~ **under** ~~§1026.19(e)(3)(ii)]~~ **§1026.19(e)(3)(i)** instead of §1026.19(e)(3)(iii) regardless of the provider selected by the consumer ~~[unless the provider is an affiliate of the creditor in which case good faith is determined pursuant to §1026.19(e)(3)(i)]~~.

3. *Good faith requirement for* **property taxes or** *non-required services chosen by the consumer.* Differences between the amounts of estimated charges for **property taxes or** services not required by the creditor disclosed ~~[pursuant to]~~ **under** § 1026.19(e)(1)(i) and the amounts of such

charges paid by or imposed on the consumer do not constitute a lack of good faith, so long as the original estimated charge, or lack of an estimated charge for a particular service, was based on the best information reasonably available to the creditor at the time the disclosure was provided. For example, if the consumer informs the creditor that the consumer will obtain a type of inspection not required by the creditor, the creditor must include the charge for that item in the disclosures provided under §1026.19(e)(1)(i), but the actual amount of the inspection fee need not be compared to the original estimate for the inspection fee to perform the good faith analysis required by §1026.19(e)(3)(iii). The original estimated charge, or lack of an estimated charge for a particular service, complies with §1026.19(e)(3)(iii) if it is made based on the best information reasonably available to the creditor at the time that the estimate was provided. But, for example, if the subject property is located in a jurisdiction where consumers are customarily represented at closing by their own attorney, even though it is not a requirement, and the creditor fails to include a fee for the consumer's attorney, or includes an unreasonably low estimate for such fee, on the original estimates provided ~~pursuant to~~ under §1026.19(e)(1)(i), then the creditor's failure to disclose, or unreasonably low estimation, does not comply with §1026.19(e)(3)(iii). Similarly, the amount disclosed for property taxes must be based on the best information reasonably available to the creditor at the time the disclosure was provided. For example, if the creditor fails to include a charge for property taxes, or includes an unreasonably low estimate for that charge, on the original estimates provided under §1026.19(e)(1)(i), then the creditor's failure to disclose, or unreasonably low estimation, does not comply with §1026.19(e)(3)(iii).

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

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

2. *Actual increase.* ~~The revised disclosures may reflect increased charges~~ A creditor may determine good faith under §1026.19(e)(3)(i) and (ii) based on the increased charges reflected on revised disclosures only to the extent that the reason for revision, as identified in §1026.19(e)(3)(iv)(A) through (F), actually increased the particular charge. For example, if a consumer requests a rate lock extension, then the revised disclosures on which a creditor relies for purposes of determining good faith under §1026.19(e)(3)(i) may reflect a new rate lock extension fee, but the fee may be no more than the rate lock extension fee charged by the creditor in its usual course of business, and the creditor may not rely on changes to other charges unrelated to the rate lock

extension ~~[may not change]~~ for purposes of determining good faith under §1026.19(e)(3)(i) and (ii).

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

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

19(e)(3)(iv)(D) Interest rate dependent charges.

1. *Requirements.* If the interest rate is not locked when the disclosures required by §1026.19(e)(1)(i) are provided, ~~[a valid reason for revision exists when]~~ then, no later than three business days after the date the interest rate is subsequently locked ~~[. No later than three business days after the date the interest rate is locked]~~, §1026.19(e)(3)(iv)(D) requires the creditor to provide a revised version of the disclosures required ~~[pursuant to]~~ under §1026.19(e)(1)(i) reflecting the revised interest rate, the points disclosed under § 1026.37(f)(1), lender credits, and any other interest rate dependent charges and terms. The following example illustrates this requirement:

i. Assume a creditor sets the interest rate by executing a rate lock agreement with the consumer. If such an agreement exists when the original disclosures required under §1026.19(e)(1)(i) are provided, then the actual points and lender credits are compared to the estimated points disclosed ~~[pursuant to]~~ under §1026.37(f)(1) and lender credits included in the original disclosures provided under §1026.19(e)(1)(i) for the purpose of determining good faith ~~[pursuant to]~~ under §1026.19(e)(3)(i). If the consumer enters into a rate lock agreement with the creditor after the disclosures required under §1026.19(e)(1)(i) were provided, then §1026.19(e)(3)(iv)(D) requires the creditor to provide, no later than three business days after the date that the consumer and the creditor enter into a rate lock agreement, a revised version of the disclosures required under §1026.19(e)(1)(i) reflecting the revised interest rate, the

points disclosed ~~[pursuant to]~~ under §1026.37(f)(1), lender credits, and any other interest rate dependent charges and terms. Provided that the revised version of the disclosures required under §1026.19(e)(1)(i) reflect any revised points disclosed ~~[pursuant to]~~ under §1026.37(f)(1) and lender credits, the actual points and lender credits are compared to the revised points and lender credits for the purpose of determining good faith ~~[pursuant to]~~ under §1026.19(e)(3)(i).

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

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

1. *Requirements.* If the consumer indicates an intent to proceed with the transaction more than 10 business days after the disclosures were originally provided ~~[pursuant to]~~ under §1026.19(e)(1)(iii), for the purpose of determining good faith under §1026.19(e)(3)(i) and (ii), a creditor may use a revised estimate of a charge instead of the amount originally disclosed under §1026.19(e)(1)(i). Section 1026.19(e)(3)(iv)(E) requires no justification for the change to the original estimate other than the lapse of 10 business days. For example, assume a creditor includes a \$500 underwriting fee on the disclosures provided ~~[pursuant to]~~ under §1026.19(e)(1)(i) and the creditor delivers those disclosures on a Monday. If the consumer indicates intent to proceed 11 business days later, the creditor may provide new disclosures with a \$700 underwriting fee. In this example, §1026.19(e) and §1026.25 require the creditor to document that a new disclosure was provided ~~[pursuant to]~~ under §1026.19(e)(3)(iv)(E) but do not require the creditor to document a reason for the increase in the underwriting fee.

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

determining good faith under §1026.19(e)(3)(i) and (ii) under §1026.19(e)(3)(iv)(E) until after the longer time period has expired. A creditor establishes such a period greater than 10 business days by communicating the greater time period to the consumer, including through oral communication.

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

19(e)(4)(ii) Relationship to disclosures required under §1026.19(f) ~~[-(f)-]~~.

2. *Corrected disclosures provided under §1026.19(f)(2)(i) or (2)(ii).* If there are fewer than four business days between the time the revised version of the disclosures is required to be provided under §1026.19(e)(4)(i) and consummation or the Closing Disclosure required by §1026.19(f)(1) has already been provided to the consumer, creditors comply with the requirements of §1026.19(e)(4) (to provide a revised estimate under § 1026.19(e)(3)(iv) for the purpose of determining good faith under §1026.19(e)(3)(i) and (ii)) if the revised disclosures are reflected in the corrected disclosures provided under §1026.19(f)(2)(i) or (2)(ii), subject to the other requirements of §1026.19(e)(4)(i).

19(f) Mortgage loans ~~[secured by real property]~~-Final disclosures.

19(f)(1) Provision of disclosures.

19(f)(1)(i) Scope.

1. *Requirements.* Section 1026.19(f)(1)(i) requires disclosure of the actual terms of the credit transaction, and the actual costs associated with the settlement of that transaction, for closed-end credit transactions that are secured by real property 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 ~~[pursuant to]~~ 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, ~~[pursuant to]~~ under §1026.19(f)(2)(i).

19(f)(2) Subsequent changes.

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

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. Under §1026.17(c)(2)(ii), for a transaction in which a portion of the interest is determined on a per-diem basis and collected at consummation, any disclosure affected by the per-diem interest is considered accurate if the disclosure is based on the information known to the creditor at the time that the disclosure documents are prepared for consummation of the transaction. A creditor is not required to provide to the consumer corrected disclosures under §1026.19(f)(2)(iii) for any disclosure affected by the per-diem interest that is considered accurate under §1026.17(c)(2)(ii), even if the amount actually paid by the consumer differs from the amount disclosed under §1026.38(g)(2) and (o). See also comment 17(c)(2)(ii)-1.

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

1. *Requirements.* Section 1026.19(f)(2)(v) provides that, if amounts paid at ~~[closing]~~ **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~~ed~~ their respective estimates on the disclosures required under §1026.19(e)(1)(i) by \$30, \$25, \$25, and ~~[\$10]~~ **\$15**, then ~~[there would be a \$90 excess amount above]~~ **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 ~~[there would be a \$90 excess amount above]~~ **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 ~~[the excess]~~ **\$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 ~~[\$180]~~ **\$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 ~~[such as these]~~.

19(f)(3) Charges disclosed.

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

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.

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

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

1. *Requirement.* Section 1026.19(f) (4) (i) ~~[provides that, in a closed-end consumer credit transaction secured by real property that involves a seller, other than a reverse mortgage subject to §1026.33,]~~ **requires** the settlement agent ~~[shall]~~ **to** provide the seller with the disclosures ~~[in]~~ **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 loans for subordinate financing. In a purchase transaction with a simultaneous loan for subordinate financing, the settlement agent complies with §1026.19(f) (4) (i) by providing the seller with only the Closing Disclosure on the first-lien transaction if that 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 Closing Disclosure for the simultaneous loan for subordinate financing must be provided to the seller and reflect the seller's transaction as applicable to the subordinate financing. In this case, the settlement agent complies with §1026.19(f) (4) (i) by providing the seller with a copy of the Closing Disclosure for both the first lien and the simultaneous loan for subordinate financing, if they also contain the information under §1026.38 relating to the seller's transaction, or by providing the disclosures under §1026.38(t) (5) (v) or (vi), as applicable.

Section 1026.23—Right of Rescission

23(g) Tolerances for Accuracy

1. Example. See comment 38(o)-1 for examples illustrating the interaction of the finance charge and total of payments accuracy requirements for each transaction subject to §1026.19(e) and (f).

23(h) Special Rules for Foreclosures

23(h) (2) Tolerance for Disclosures

1. *General.* This section is based on the accuracy of the total finance charge rather than its component charges. For each transaction subject to §1026.19(e) and (f), this section is also based on the accuracy of the total of payments, taken as a whole, rather than its components.

2. Example. See comment 38(o)-1 for examples illustrating the interaction of the finance charge and total of payments accuracy requirements for each transaction subject to §1026.19(e) and (f).

Section 1026.25—Record Retention

25(c) Records Related to Certain Requirements for Mortgage Loans.

25(c) (1) Records related to requirements for loans secured by real property or a cooperative unit.

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

37(a) General information.

37(a) (7) Sale price.

1. *Estimated property value.* In transactions where there is no seller, such as in a refinancing, §1026.37(a) (7) (ii) requires the creditor to disclose the estimated value of the property identified in §1026.37(a) (6) at the time the disclosure is issued to the consumer. The creditor may use the estimate provided by the consumer at application ~~[, or if]~~ unless it has performed its own estimate of the property value by the time the disclosure is provided to the consumer, in which case it must use ~~[that]~~ its own estimate. If the creditor has obtained any appraisals or valuations of the property for the application at the time the disclosure is issued to the consumer, the value determined by the appraisal or valuation to be used during underwriting for the application is disclosed as the estimated property value. If the creditor has obtained multiple appraisals or valuations and has not yet determined which one will be used during underwriting, it may disclose the value from any appraisal or valuation it reasonably believes it may use in underwriting the transaction. In a transaction that involves a seller, if the sale price is not yet known, the creditor complies with §1026.37(a) (7) if it discloses the estimated value of the property that it used as the basis for the disclosures in the Loan Estimate.

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

37(a)(8) Loan term.

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.

37(a)(9) Purpose.

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

i. *Purchase.* The consumer intends to use the proceeds from the transaction to purchase the property that will secure the extension of credit. In a purchase transaction with a simultaneous loan for subordinate financing, the simultaneous 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-to-permanent~~ construction-permanent loans, see §1026.17(c)(6)(ii), comments 17(c)(6)-2 and -3, and appendix D to this part.

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

37(a)(10) Product.

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) requires the disclosure of only the first applicable feature in the order of §1026.37(a)(10)(ii) and that it be preceded by the time period or the length of the introductory period and the frequency of the first adjustment period, as applicable, followed by a description of the loan product and its time period as provided for in §1026.37(a)(10)(i). For example:

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

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

37(a)(13) Rate lock.

2. *Expiration date.* The disclosure required by §1026.37(a)(13)(ii) related to estimated closing costs is required regardless of whether the interest rate is locked for a specific period of time or whether the terms and costs are otherwise accepted or extended. If the consumer fails to indicate an intent to proceed with the transaction within 10 business days after the disclosures were originally provided under §1026.19(e)(1)(iii) (or within any longer time period established by the creditor), then for determining good faith under §1026.19(e)(3)(i) and (ii) a creditor may use a revised estimate of a charge instead of the amount originally disclosed under §1026.19(e)(1)(i). See comment 19(e)(3)(iv)(E)-2.

4. *Revised Disclosures.* Once the consumer indicates an intent to proceed within the time specified by the creditor under §1026.37(a)(13)(ii), the date and time at which estimated closing costs expire are left blank on subsequent revised disclosures, if any. The creditor may extend the period of availability to expire beyond the time disclosed under §1026.37(a)(13)(ii). If the consumer indicates an intent to proceed within that longer time period, the date and time at which estimated closing costs expire are left blank on subsequent revised disclosures, if any. See comment 19(e)(3)(iv)-5.

37(b) Loan terms.

37(b)(2) Interest rate.

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

37(b) (3) Principal and interest payment.

2. *Initial periodic payment if not known.* ~~[Pursuant to]~~ 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. See comment app. D-7.iv for an explanation of the disclosure of the initial periodic payment for a construction or construction-permanent loan.

37(b) (6) Adjustments after consummation.

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.v for an explanation of the disclosure of an increase in the periodic payment for a construction or construction-permanent loan.

37(c) Projected payments.

2. Construction loans. See comment app. D-7.vi for an explanation of the projected payments disclosure for a construction or construction-permanent loan.

37(c) (1) Periodic payment or range of payments.

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

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

1. *Multiple events occurring in a single year.* If changes to periodic principal and interest payments would result in more than one separate periodic payment or range of payments in a single year, §1026.37(c) (1) (iii) (B) requires the creditor to disclose the range of payments that would apply during the year in which the events occur. For example:

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 ~~[and would]~~, 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. ~~[Pursuant to]~~ Under §1026.37(c) (1) (i) (D), the creditor also discloses as an additional separate periodic payment or range of payments, the principal and interest payment that would apply on the ~~[one-year]~~ 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 ~~[would]~~ discloses the same single range of payments for year one. ~~[Pursuant to]~~ Under ~~[\$1026.37(c) (1) (iii) (B)]~~ §1026.37(c) (1) (i) (D), the creditor ~~[also]~~ separately discloses the principal and interest payment that would apply on the ~~[one-year]~~ first anniversary of the due date of the initial periodic payment ~~[-(as required by §1026.37(c) (1) (i) (D)) and the periodic payment that would apply after the payment adjustment that occurs at 18 months as a single range of payments]~~ in year

two. ~~[Pursuant to §1026.37(c)(1)(i)(D), the creditor also discloses as an additional separate periodic payment or range of payments, the principal and interest payment that would apply on the two year anniversary of the due date of the initial periodic payment or range of payments, because that is the anniversary that immediately follows the occurrence of the multiple payments or ranges of payments that occurred during the second year of the loan.]~~ Under §1026.37(c)(1)(i)(A), the creditor also 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.

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

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

2. Amounts paid by the creditor using escrow account funds. Section 1026.37(c)(4)(iv) requires the creditor to disclose an indication of whether the amounts disclosed ~~[pursuant to]~~ under §1026.37(c)(4)(ii) will be paid by the creditor using escrow account funds. If only a portion of the amounts disclosed ~~[pursuant to]~~ under §1026.37(c)(4)(ii) ~~[requires the creditor to disclose a description of more than one amount and only some of those amounts]~~, 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 ~~[some of those]~~ a portion of the amounts disclosed will be paid using escrow account funds, such as by using the word "some."

37(d) Costs at closing.

37(d)(2) Optional alternative table for transactions without a seller and simultaneous loans for subordinate financing.

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

37(f) Closing cost details; loan costs.

3. Construction loan inspection and handling fees. Inspection and handling fees for the staged disbursement of construction loan proceeds are loan costs associated with the transaction for purposes of §1026.37(f). If such fees are collected at or before consummation, they are disclosed in the loan costs table. If such fees will be collected after consummation, they are disclosed in a separate addendum and are not counted for purposes of the calculating cash to close table. See comment 37(f)(6)-3 for an explanation of an addendum used to disclose inspection and handling fees

that will be collected after consummation. See also comments 38(f)-2 and app. D-7.viii. If the number of inspections and disbursements is not known at the time the disclosures are provided, the creditor discloses the fees that will be collected based on the best information reasonably available to the creditor at the time the disclosure is provided. See comment 19(e) (1) (i)-1. See §1026.17(e) and its commentary for an explanation of the effect of subsequent events that cause inaccuracies in disclosures.

37(f) (6) Use of addenda.

3. *Addendum for post-consummation inspection and handling fees.* A creditor makes the disclosures required by §1026.37(f) and comment 37(f)-3 of post-consummation charges for construction loan inspection and handling fees by disclosing the total of such fees under the heading "Inspection and Handling Fees Collected After Closing" in an addendum. If the amount of such fees is not known at the time the disclosures are provided, the disclosures in the addendum are based upon the best information reasonably available to the creditor at the time the disclosure is provided. See comment 19(e) (1) (i)-1. For example, such information could include amounts the creditor has previously charged in similar transactions.

37(g) Closing cost details; other costs.

37(g) (4) Other.

4. *Examples.* Examples of other items that are disclosed under §1026.37(g) (4) if the creditor is aware of those items when it issues the Loan Estimate include commissions of real estate brokers or agents, additional payments to the seller to purchase personal property ~~[pursuant to]~~ under the ~~[property]~~ real estate purchase and sale contract, homeowner's association and condominium charges associated with the transfer of ownership, and fees for inspections not required by the creditor but paid by the consumer ~~[pursuant to]~~ under the ~~[property]~~ real estate purchase and sale contract. ~~[Although the consumer is obligated for these costs, they are not imposed upon the consumer by the creditor or loan originator. Therefore, they are not disclosed with the parenthetical description "(optional)" at the end of the label for the item, and they are disclosed pursuant to §1026.37(g) rather than §1026.37(f). Even if such items are not required to be disclosed on the Loan Estimate under §1026.37(g) (4), however, they may be required to be disclosed on the Closing Disclosure pursuant to §1026.38. Comment 19(e) (3) (iii) 3 discusses application of the good faith requirement for services chosen by the consumer that are not required by the creditor.]~~ The creditor must also disclose the following amounts under §1026.37(g) (4) unless the optional alternative calculating cash to close table for transactions without a seller and simultaneous loans for subordinate financing is used and such amounts are disclosed under §1026.37(h) (2) (iii) on that table: construction costs in connection with the transaction that the consumer will be obligated to pay, payoff of existing liens secured by the property identified under §1026.37(a) (6), and payoff of unsecured debt. These costs are disclosed under §1026.37(g) rather than §1026.37(f) even when they are payable directly or indirectly to the creditor. For example, if a builder is also the creditor, the bona fide cost of construction is disclosed under §1026.37(g) (4) and not §1026.37(f). See comment 19(e) (3) (iii)-3

~~[discusses application]~~ for a discussion of the good faith requirement for these services chosen by the consumer that are not required by the creditor. See also comment app. D-7.vii for an explanation of the disclosure of construction costs for a construction or construction-permanent loan and comment app. D-7.viii for an explanation of the disclosure of construction loan inspection and handling fees.

37(g) (6) Total closing costs.

Paragraph 37(g) (6) (ii).

1. *Lender credits.* Section 1026.19(e) (1) (i) requires disclosure of lender credits as provided in §1026.37(g) (6) (ii). ~~[Comment 19(e) (3) (i)-5 describes such lender credits as payments from the creditor to the consumer that do not pay for a particular fee on the disclosures provided under §1026.37.]~~ Such lender credits include non-specific lender credits as well as specific lender credits. See comment 19(e) (3) (i)-5.

37(h) Calculating cash to close.

37(h) (1) For all transactions.

2. *Simultaneous loans for subordinate financing.* The sale price disclosed ~~[sic]~~ §1026.37(a) (7) is not used under §1026.37(h) (1) in the calculating cash to close table calculations on the Loan Estimate for a simultaneous loan for subordinate financing disclosed.

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

1. ~~[Calculating]~~ Calculation of amount. The amount of closing costs financed disclosed under §1026.37(h) (1) (ii) is determined by subtracting the estimated total amount of payments to third parties not otherwise disclosed ~~[pursuant to]~~ under §1026.37(f) and (g) from the ~~[total]~~ loan amount disclosed under §1026.37(b) (1). The estimated total amount of payments to third parties may include the sale price disclosed under §1026.37(a) (7), if applicable. If the result of the calculation is a positive number, that amount is disclosed as a negative number under §1026.37(h) (1) (ii), but only to the extent that ~~[it]~~ the absolute value of the amount disclosed under §1026.37(h) (1) (ii) does not exceed the total amount of closing costs disclosed under §1026.37(g) (6). If the result of the calculation is zero or negative, the amount of \$0 is disclosed under §1026.37(h) (1) (ii).

2. *Loan amount.* The loan amount disclosed under §1026.37(b) (1), which is 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. Financed closing costs, such as mortgage insurance premiums payable at or before consummation, do not reduce the loan amount.

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

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

calculation. For purposes of §1026.37(h)(1)(iii)(A)(1), the down payment is calculated as the difference between the sale price of the property and the sum of the loan amount and any amount of existing loans assumed or taken subject to that will be disclosed on the Closing Disclosure under §1026.38(j)(2)(iv). Minimum cash investments required of consumers under some loan programs are not necessarily reflected, and accurate disclosure of the down payment under §1026.37(h)(1)(iii)(A)(1) does not affect compliance or non-compliance with such loan programs' requirements.

2. *Funds for [sic] borrower.* Section 1026.37(h)(1)(iii)(A)(2) requires that, when the sum of the loan amount disclosed under §1026.37(b)(1) and any amount of existing loans assumed or taken subject to that will be disclosed under §1026.38(j)(2)(iv) exceeds the sale price disclosed under §1026.37(a)(7), the amount of funds from the consumer is determined in accordance with §1026.37(h)(1)(v). Section 1026.37(h)(1)(iii)(B) requires that, for all non-purchase transactions, the amount of funds from the consumer is determined in accordance with §1026.37(h)(1)(v). Under §1026.37(h)(1)(v), the amount to be disclosed under §1026.37(h)(1)(iii)(A)(2) or (h)(1)(iii)(B) is determined by subtracting the sum of the loan amount and any amount of existing loans assumed or taken subject to that will be disclosed under §1026.38(j)(2)(iv) (less any closing costs financed disclosed under §1026.37(h)(1)(ii)) from the total amount of all existing debt being satisfied in the real estate closing.

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

1. ~~*[Use of calculation non-purchase transactions. The calculation described in §1026.37(h)(1)(v) is only used to determine the amounts disclosed under §1026.37(h)(1)(iii) and (h)(1)(v) in a transaction that is not described as a purchase transaction under §1026.37(a)(9)(i), in accordance with the provisions of §1026.37(h)(1)(iii)(A). In a purchase transaction (other than a construction loan), the amount disclosed under §1026.37(h)(1)(v) will be \$0, in accordance with §1026.37(h)(1)(v)(A).]*~~ *No funds for borrower.* When the down payment is determined in accordance with §1026.37(h)(1)(iii)(A)(1), the amount disclosed under §1026.37(h)(1)(v) as funds for the borrower is \$0.

2. *Total amount of existing debt satisfied in the transaction.* The amounts disclosed under §1026.37(h)(1)(iii)(A)(2) or (h)(1)(iii)(B), as applicable, and (h)(1)(v) are determined by subtracting the sum of the loan amount disclosed under § 1026.37(b)(1) and any amount of existing loans assumed or taken subject to that will be disclosed on the Closing Disclosure under §1026.38(j)(2)(iv) (less any closing costs financed disclosed under § 1026.37(h)(1)(ii)) from the total amount of all existing debt being satisfied in the transaction. The total amount of all existing debt being satisfied in the transaction includes amounts that will be disclosed on the Closing Disclosure in the summaries of transactions table under §1026.38(j)(1)(ii), (iii), and (v), as applicable.

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

1. *Non-specific seller credits to be disclosed.* ~~*[The]*~~ *Non-specific* seller credits, i.e., general payments from the seller to the consumer that do not pay for a particular fee on the disclosures provided under

§1026.19(e)(1), known to the creditor at the time of delivery of the Loan Estimate, are disclosed under §1026.37(h)(1)(vi). For example, a creditor may learn the amount of seller credits that will be paid in the transaction from information obtained [verbally] from the consumer, from a review of the purchase and sale contract, or from information obtained from a real estate agent in the transaction.

2. *Seller credits for specific charges.* To the extent known by the creditor at the time of delivery of the Loan Estimate, specific seller credits, i.e., seller credits for specific items disclosed under §1026.37(f) and (g) [are represented by the total amount disclosed for those items], may be either disclosed under §1026.37(h)(1)(vi) or reflected in the amounts disclosed for those specific items under §1026.37(f) and (g). For example, if the creditor knows at the time of the delivery of the Loan Estimate that the seller has agreed to pay half of a \$100 required pest inspection fee, the creditor may either disclose the required pest inspection fee as \$100 under §1026.37(f) with a \$50 seller credit disclosed under §1026.37(h)(1)(vi) or disclose the required pest inspection fee as \$50 under §1026.37(f), reflecting the specific seller credit in the amount disclosed for the pest inspection fee.

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

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

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

6. *Reduction in amounts for adjustments.* Adjustments that require additional funds from the consumer pursuant to the real estate purchase and sale contract, such as for additional personal property that will be disclosed on the Closing Disclosure under §1026.38(j)(1)(iii) or adjustments that will be disclosed on the Closing Disclosure under §1026.38(j)(1)(v), [can] may be included in the amount disclosed under §1026.37(h)(1)(vii), [and because the amount disclosed is a sum of adjustments and other credits, such amount would reduce the total amount disclosed] provided such amounts are not included in the calculation under § 1026.37(h)(1)(iii) or (v) as debt being satisfied in the real estate transaction. Additional examples of such adjustments for additional funds from the consumer include prorations for property taxes and homeowner's association dues. The total amount disclosed under §1026.37(h)(1)(vii) is a sum of adjustments requiring additional funds from the consumer,

calculated as positive amounts, and other credits, such as those provided for in comment 37(h)(1)(vii)-1, calculated as negative amounts.

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

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

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

1. *Examples.* ~~[Examples of]~~ The amounts incorporated in the total amount disclosed under §1026.37(h)(2)(iii), **unless disclosed under §1026.37(g)(4),** include, but are not limited to: payoffs of existing liens secured by the property identified under §1026.37(a)(6) such as existing mortgages, deeds of trust, judgments that have attached to the real property, mechanics' and materialmen's liens, and local, State and Federal tax liens; payments of unsecured outstanding debts of the consumer; **if the loan purpose is construction in accordance with §1026.37(a)(9)(iii), construction costs the consumer will be obligated to pay;** and payments to other third parties for outstanding debts of the consumer ~~[(but not for settlement services) as required to be paid as a condition for the extension of credit]~~, **excluding settlement services. Amounts that will be paid with funds provided by the consumer, including partial payments, such as a portion of construction costs, or by third parties and disclosed on the Closing Disclosure under §1026.38(t)(5)(vii)(B) are calculated as credits, using positive numbers, in the total amount disclosed under §1026.37(h)(2)(iii).**

2. *Disclosure of subordinate financing.* On the Loan Estimate for a first-lien transaction disclosed under §1026.37(h)(2) that also has a simultaneous loan for subordinate financing, the proceeds of the subordinate financing are included, as a positive number, in the total amount disclosed under §1026.37(h)(2)(iii). The total amount disclosed under § 1026.37(h)(2)(iii) will be a negative number unless the proceeds from subordinate financing and any amounts entered as credits as discussed in comment 37(h)(2)(iii)-1 equal or exceed the total amount of other payoffs and payments that are included in the calculation for the amount disclosed under §1026.37(h)(2)(iii), in which case the total amount disclosed under § 1026.37(h)(2)(iii) is disclosed as \$0 or a positive number.

37(k) Contact information.

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

37(l) Comparisons.

37(l)(1) In five years.

Paragraph 37(l)(1)(i).

1. *Calculation of total payments in five years.* The amount disclosed ~~["pursuant to"]~~ under §1026.37(l)(1)(i) is the sum of principal, interest, mortgage insurance, and loan costs scheduled to be paid through the end of the 60th month after the due date of the first periodic payment. For guidance on how to calculate interest for mortgage loans that are Adjustable Rate products under §1026.37(a)(10)(i)(A) for purposes of §1026.37(l)(1)(i), see comment 17(c)(1)-10. In addition, for purposes of §1026.37(l)(1)(i), the creditor should assume that the consumer makes payments as scheduled and on time. For purposes of §1026.37(l)(1)(i), mortgage insurance means "mortgage insurance or any ~~["fractional"]~~ **functional** equivalent" as defined ~~["pursuant to"]~~ under comment 37(c)(1)(i)(C)-1 and includes prepaid or escrowed mortgage insurance. Loan costs are those costs disclosed ~~["pursuant to"]~~ under §1026.37(f).

37(l)(3) Total interest percentage.

1. *General.* When calculating the total interest percentage, the creditor assumes that the consumer will make each payment in full and on time and will not make any additional payments. **The creditor includes prepaid interest when calculating the total interest percentage.**

37(o) Form of disclosures.

37(o)(4) Rounding.

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

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

1. *Rounding of dollar amounts.* Section 1026.37(o)(4)(i)(A) requires that certain dollar amounts be rounded to the nearest whole dollar. For example, ~~["pursuant to"]~~ under §1026.37(o)(4)(i)(A), periodic mortgage insurance payments ~~["of \$164.50"]~~ **are rounded and disclosed to the nearest dollar, such that a periodic mortgage insurance payment** of \$164.50 ~~["are required to be"]~~ **is** disclosed under §1026.37(c)(2)(ii) as \$165, but payments of \$164.49 are disclosed as \$164. ~~["However, if the periodic mortgage insurance payment equaled \$164.49, the creditor would disclose \$164."]~~ **The prepaid per diem amounts disclosed under §1026.37(g)(2)(iii)**

and the monthly amounts for the initial escrow payment at closing disclosed pursuant to §1026.37(g)(3)(i) through (iii) and (v) are rounded to the nearest cent and are disclosed to two decimal places. For example, under §1026.37(g)(2)(iii), per diem interest of \$68 is disclosed as \$68.00, with the two zeros disclosed. See form H-24(B) in appendix H to this part for an illustration of per diem amounts for homeowner's insurance disclosed pursuant to §1026.37(g)(3)(i).

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

1. *Decimal places.* Section 1026.37(o)(4)(ii) requires the percentage amounts disclosed to be ~~[truncated at the decimal point, if the amount is a whole number]~~ exact amounts rounded to three decimal places, but the creditor does not disclose trailing zeros to the right of the decimal point. For example, a ~~[7.005]~~ 2.4999 percent annual percentage rate, when rounded as an exact amount to three decimal places, becomes 2.500% but is disclosed ~~[in compliance with §1026.37(o)(4)(ii) as "7.005%," but a 7.000 percent annual percentage rate would be disclosed as "7%."] as "2.5%"~~ under §1026.37(o)(4)(ii). Similarly, a 7.005 percent annual percentage rate is disclosed as "7.005%," and a 7.000 percent annual percentage rate is disclosed as "7%." ~~[If any percentage amounts required to be disclosed contain more than three decimal places, they shall be rounded to three decimal places.]~~

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

4. *Tolerance cures necessitating principal curtailments.* Where a contractual or other legal obligation of the creditor, such as the requirements of a government loan program or the purchase criteria of an investor, prevent the creditor from refunding cash to the consumer, the creditor may provide a reduction in principal balance (principal curtailment) to satisfy the requirements of §1026.19(f)(2)(v).

i. A principal curtailment to provide a tolerance refund under §1026.19(f)(2)(v) may be disclosed under §1026.38(g)(4), (j)(4)(i), or (t)(5)(vii)(B) marked with the phrase "Paid Outside of Closing," or the abbreviation "P.O.C.," a statement that this amount includes a refund for an amount that exceeds the limitations on increases in closing costs under §1026.19(e)(3), and the amount of such refund under § 1026.19(f)(2)(v).

ii. A principal curtailment to provide a tolerance refund under §1026.19(f)(2)(v) may also be disclosed under §1026.38(t)(5)(ix) with a statement that this amount includes a refund for an amount that exceeds the limitations on increases in closing costs under § 1026.19(e)(3), and the amount of such refund under § 1026.19(f)(2)(v).

38(a) General information.

38(a)(3) Closing information.

38(a)(3)(iii) Disbursement date.

1. Simultaneous loans for subordinate financing disbursement date. The disbursement date on the Closing Disclosure for a simultaneous loan for subordinate financing is the date some or all of the loan amount disclosed under §1026.38(b) is expected to be paid to the consumer or a third party.

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, ~~or~~ 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 ~~[that]~~ the estimate ~~[provided that it was the estimate the creditor used to determine approval of]~~ it used for purposes of approving the credit transaction.

38(a)(4) Transaction information.

2. *No seller* transactions or simultaneous loans for subordinate financing. In transactions where there is no seller, such as in a refinancing or home equity loan, or for simultaneous loans for subordinate financing in 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).

4. Consumers for purposes of rescission. Section 1026.38(a)(4)(i) requires disclosure of the consumer's name and mailing address, labeled "Borrower." In rescindable transactions, §1026.38(a)(4)(i) requires disclosing the name and mailing address of each natural person in whose principal dwelling a security interest is or will be retained or acquired, if that person's ownership interest in the dwelling is or will be subject to the security interest and regardless of whether that person is an obligor. For guidance on how to disclose multiple consumers, see comment 38(a)(4)-1.

38(d) Costs at closing.

38(d)(2) Alternative table for transactions without a seller and simultaneous loans for 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 loan for subordinate financing. In a purchase transaction, the optional 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 and simultaneous loans for subordinate financing is required if the

Loan Estimate provided to the consumer disclosed the optional alternative table ~~[pursuant to]~~ 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).

38(e) Alternative calculating cash to close table for transactions without a seller and simultaneous loans for 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 loan for subordinate financing. In a purchase transaction, the optional 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 and simultaneous loans for subordinate financing is required for transactions in which the Loan Estimate provided to the consumer disclosed the optional alternative table pursuant to §1026.37(h)(2), and must be used in conjunction with the alternative disclosure under §1026.38(d)(2).

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).

38(e)(2) Total closing costs.

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

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 reduction in principal balance (principal curtailment) under § 1026.38(g)(4) or (t)(5)(vii)(B), if ~~[a credit is]~~ 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.

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

Paragraph 38(e)(3)(iii)(B).

1. *Equal amount.* Under §1026.38(e)(3)(iii)(B), the creditor ~~[or settlement agent]~~ gives a statement that the "Final" amount disclosed under §1026.38(e)(3)(ii) is equal to the "Loan Estimate" amount disclosed under §1026.38(e)(3)(i), only if the "Final" amount is \$0.00, because the "Loan Estimate" amount is always disclosed as \$0 ~~[pursuant to]~~ under §1026.38(e)(3)(i). See comment 38(e)(3)(i)-1.

38(f) Closing cost details; loan costs.

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.viii. See §1026.17(e) and its commentary concerning the effect of subsequent events that cause inaccuracies in disclosures.

38(g) Closing costs details; other costs.

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

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.

38(g) (2) Prepaids.

3. No prepaid interest. If interest is not collected for a portion of a month or other period between closing and the date from which interest will be collected with the first monthly payment, then [~~\$0~~] **\$0.00** must be disclosed under §1026.38(g)(2).

38(g) (4) Other.

1. Costs disclosed. The costs disclosed under §1026.38(g)(4) include all real estate brokerage fees, homeowner's or condominium association charges paid at consummation, home warranties, **pre-consummation** inspection fees, and other fees that are part of the real estate [~~closing~~] **transaction** but not required by the creditor or not disclosed elsewhere under §1026.38. The creditor also must disclose the following amounts under §1026.38(g)(4) unless the optional alternative tables for transactions without a seller and simultaneous loans for subordinate financing are used and such amounts are disclosed under §1026.38(t)(5)(vii)(B): construction costs in connection with the transaction that the consumer will be obligated to pay, payoff of existing liens secured by the property identified under §1026.38(a)(3)(vi), and payoff of unsecured debt.

i. *General.* The amounts disclosed under §1026.38(g)(4) must be placed in either the paid "Before Closing" or paid "At Closing" column under the subheading "H. Other" of the heading "Other Costs."

ii. *Construction Costs.* If amounts for construction costs are contracted to be paid at closing, they are disclosed in the paid "At Closing" column. See comment app. D-7.vii for an explanation of the disclosure of construction costs for a construction or construction-permanent loan and comment app. D-7.viii for an explanation of the disclosure of construction loan inspection and handling fees.

iii. *Disclosing refunds.* See also comment 38-4 for an explanation of how to disclose a reduction in principal balance (principal curtailment) under §1026.38(g)(4) to provide a refund under §1026.19(f)(2)(v).

38(i) Calculating cash to close.

2. *Statements of differences.* The dollar amounts disclosed under §1026.38 generally are shown to two decimal places unless otherwise required. See comment 38(t)(4)-1. ~~As a result,~~ Any ["Final"] amount ~~[that is disclosed]~~ in the Final column of the ["Calculating Cash to Close"] calculating cash to close table under §1026.38(i) is shown to two decimal places ~~[unless otherwise required]~~. ~~Pursuant to~~ Under §1026.38(t)(4)(i)(C), however, any ["Loan Estimate"] amount ~~[that is disclosed]~~ in the Loan Estimate column of the ["Calculating Cash to Close"] calculating cash to close table under §1026.38(i) is ~~[shown]~~ rounded to the nearest dollar amount ~~[, and thus]~~ to match the corresponding estimated amount disclosed on the Loan Estimate's ["Calculating Cash to Close"] calculating cash to close table under §1026.37(h) ~~[, which is shown rounded to the nearest whole dollar pursuant to §1026.37(o)(4)(i)(A)]~~. ~~For this reason, a "Final" amount shown to two decimal places could be a larger number than its corresponding "Loan Estimate" amount shown rounded to the nearest whole dollar, when, in fact, the apparent increase is due solely to rounding. Therefore,~~ For purposes of §1026.38(i)(1)(iii), ~~[-(2)(iii),]~~ (3)(iii), (4)(iii), (5)(iii), (6)(iii), (7)(iii), and (8)(iii), each statement of a change between the amounts disclosed on the Loan Estimate and the Closing Disclosure is based on the actual, non-rounded estimate that would have been disclosed on the Loan Estimate under §1026.37(h) if it had been shown to two decimal places rather than a whole dollar amount. For example, if the amount in the ["Loan Estimate"] ~~amount~~ column of the ["Total Closing Costs"] row disclosed under §1026.38(i)(1)(i) is \$12,500, ~~[and the "Final" amount of "Total Closing Costs" disclosed under §1026.38(i)(1)(ii) is \$12,500.35]~~ 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) [so long as the actual, non-rounded estimate (i.e., the estimated amount of "Total Closing Costs" that would have been shown on the Loan Estimate to two decimal places) is equal to \$12,500.35].~~

3. *Statements that the consumer should see details.* The provisions of §1026.38(i)(4)(iii)(A), (i)(5)(iii)(A), (i)(7)(iii)(A), and (i)(8)(iii)(A)

each require a statement that the consumer should see certain details of the closing costs disclosed under §1026.38(j). Form H-25 of appendix H to this part contains examples of these statements. For example, §1026.38(i)(7)(iii)(A) requires a statement that the consumer should see the details disclosed ~~[pursuant to]~~ under §1026.38(j)(2)(v) ~~[,]~~ and, ~~[as shown on form H-25(B) of appendix H to this part, the statement, "See Seller Credits in Section L," in which the words "Section L" are in boldface font, complies with this provision~~ {Note: The above text is amended and moved to the "For example" paragraph below.} as applicable, in the seller-paid column under § 1026.38(f) and (g). For example, form H-25(B) of appendix H to this part's statement "See Seller Credits in Section L," in which the words "Section L" are in boldface font, complies with this provision. In addition, for example, §1026.38(i)(5)(iii)(A) requires a statement that the consumer should see the details disclosed ~~[pursuant to]~~ under §1026.38(j)(2)(ii) ~~[, and]~~. For example, 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).

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.

38(i)(1) Total closing costs.

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

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 reduction in principal balance (principal curtailment) under § 1026.38(g)(4), (j)(4)(i), or (t)(5)(ix), if [a credit is] provided under § 1026.19(f)(2)(v). See form H-25(F) of appendix H to this part for examples of such statements under § 1026.38(h)(3). See also comments 38-4 and 38(h)(3)-2.

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

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]~~ \$0.00, because the "Loan Estimate" amount is always disclosed as \$0 under § 1026.38(i)(2)(i). See comment 38(i)(2)(i)-1.

38(i)(3) Closing costs financed.

1. *Calculation of amount.* 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). If the result of the calculation is zero or negative, the amount of \$0.00 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). (The total amount of closing costs disclosed under §1026.38(h)(1) will never be less than zero because, if the total amount of closing costs disclosed under §1026.38(h)(1) is a negative number, the amount of \$0.00 is disclosed under §1026.38(i)(3).)

2. *Loan amount.* The loan amount disclosed under §1026.38(b), which is used in the closing costs financed calculation, is the total amount the consumer will borrow, as reflected by the face amount of the note. Financed closing costs, such as mortgage insurance premiums payable at or before consummation, do not reduce the loan amount.

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

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

1. *Down payment.* Under §1026.38(i)(4)(ii)(A) (1), ~~[in a transaction that is a purchase as defined in §1026.37(a)(9)(i),]~~ the down payment is calculated as the difference between the sale price of the property and the sum of the loan amount disclosed under § 1026.38(b) and any amount of existing loans assumed or taken subject to disclosed under §1026.38(j)(2)(iv). Minimum cash investments required of borrowers under some loan programs are not necessarily reflected, and accurate disclosure of the down payment under §1026.38(i)(4)(ii)(A)(1) does not affect compliance or non-compliance with such loan programs' 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 required of the consumer. This change might result, for example, from an increase in the purchase price of the property.

2. *Funds for [sic?] borrower.* Section 1026.38(i)(4)(ii)(A)(2) requires that, when the sum of the loan amount disclosed under §1026.38(b), and any amount of existing loans assumed or taken subject to disclosed under §1026.38(j)(2)(iv) exceeds the sale price disclosed under § 1026.38(j)(1)(ii), the amount of funds from the consumer is determined in accordance with §1026.38(i)(6)(iv). Under §1026.38(i)(6)(iv), the "Final" amount of "Funds from Borrower" to be disclosed under §1026.38(i)(4)(ii)(A)(2) is determined by subtracting the sum of the loan amount and any amount of existing loans assumed or taken subject to disclosed under §1026.38(j)(2)(iv) (less any closing costs financed disclosed under §1026.38(i)(3)(ii)) from the total amount of all existing debt being satisfied in the real estate closing disclosed under

\$1026.38(j)(1)(ii), (iii), and (v). The amount of "Funds from Borrower" under the subheading "Final" is disclosed either as a positive number or \$0.00, depending on the result of the calculation. An increase in the amount of "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 real estate closing. 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 from borrower. Section 1026.38(i)(4)(ii)(B) ~~[provides]~~ requires that, in ~~[a]~~ all transactions ~~[other than a purchase as defined in §1026.37(a)(9)(i)]~~ not subject to §1026.38(i)(4)(ii)(A), the "Final" amount disclosed for "Down Payment/Funds from Borrower" is the amount of "Funds from Borrower" determined in accordance with §1026.38(i)(6)(iv). Under §1026.38(i)(6)(iv), the "Final" amount of "Funds from Borrower" to be disclosed under §1026.38(i)(4)(ii)(B) is determined by subtracting the sum of the loan amount disclosed under §1026.38(b) and any amount of existing loans assumed or taken subject to disclosed under §1026.38(j)(2)(iv) (less any closing costs financed disclosed under §1026.38(i)(3)(ii)) from the total amount of all existing debt being satisfied in the real estate closing ~~[and]~~ disclosed under §1026.38(j)(1)(ii), (iii), and (v) [(except to the extent the satisfaction of such existing debt is disclosed under §1026.38(g)) the principal amount of the credit extended, and]. The "Final" amount of "Funds from Borrower" is disclosed either as a positive number or ~~[\$0]~~ \$0.00, depending on the result of the calculation. An increase in the "Final" amount of "Funds from Borrower" ~~[compared]~~ relative to the corresponding "Loan Estimate" amount might result, for example, from a decrease in the ~~[amount of the credit extended]~~ loan amount or an increase in the ~~[payoff amount for the consumer's existing debt that is secured by the property]~~ amount of existing debt being satisfied in the real estate closing. For additional ~~[guidance regarding]~~ 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, as applicable, along with a statement that the consumer should see the details disclosed under §1026.38(j)(1) or ~~[,]~~ (2), as applicable. The ~~[applicable disclosure to be referenced corresponds to the]~~ creditor makes this disclosure by referencing the corresponding 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)]~~ when the calculation is determined in accordance with §1026.38(i)(4)(ii)(A)(1), if the purchase price of the property has increased and therefore caused the "Down Payment" amount to increase, the statement, "You increased this payment. See details in Section K," with the words "increased" and "Section K" in boldface, complies with this requirement. ~~[In a purchase or refinancing transaction]~~ In addition, in the

event the amount of the credit extended by the creditor has decreased and therefore caused the "Funds from Borrower" amount to increase, the statement ~~[can read, for example]~~, "You increased this payment. See details in Section L," with the ~~[same]~~ words "increased" and "Section L" in boldface complies with this requirement.

38(i)(5) Deposit.

1. ~~When no deposit [in a purchase transaction].~~ Section 1026.38(i)(5) requires the disclosure in the calculating cash to close table of the deposit required to be disclosed under §1026.37(h)(1)(iv) and under §1026.38(j)(2)(ii), ~~[and]~~ under the subheadings "Loan Estimate" and "Final," respectively. Under §1026.37(h)(1)(iv), ~~[in]~~ 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, and under §1026.38(i)(5)(ii) the amount required to be disclosed is \$0.00.

38(i)(6) Funds for borrower.

Paragraph 38(i)(6)(ii).

1. *Final funds for borrower.* Section 1026.38(i)(6)(ii) provides that the "Final" amount for "Funds for Borrower" is determined in accordance with §1026.38(i)(6)(iv). Under §1026.38(i)(6)(iv), the "Final" amount of "Funds for Borrower" to be disclosed under §1026.38(i)(6)(ii) is determined by subtracting the sum of the loan amount disclosed under §1026.38(b) and any amount of existing loans assumed or taken subject to disclosed under §1026.38(j)(2)(iv) (less any closing costs financed disclosed under §1026.38(i)(3)(ii)) from the total amount of all existing debt being satisfied in the transaction ~~[and]~~ disclosed under §1026.38(j)(1) (ii), (iii), and (v) [(except to the extent the satisfaction of such existing debt is disclosed under §1026.38(g)) the principal amount of the credit extended (excluding any amount disclosed under §1026.38(i)(3)(ii)), and]. The amount is disclosed under §1026.38(i)(6)(ii) either as a negative number or as \$0.00, depending on the result of the calculation. The "Final" amount of "Funds for Borrower" disclosed under §1026.38(i)(6)(ii) is the amount to be disbursed to the consumer or a designee of the consumer at consummation, if any.

2. No funds for borrower. When the down payment is determined in accordance with §1026.38(i)(4)(ii)(A)(1), the transaction is a purchase transaction in which the sale price is greater than the sum of the loan amount and any amount of existing loans assumed or taken subject to. Because there is no remaining amount to be disbursed to the consumer or third party at consummation, the amount disclosed under §1026.38(i)(6)(iv) as "Funds for Borrower" will be \$0.00.

38(i)(7) Seller credits.

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 under §1026.38(j)(2)(v) in the summaries of transactions table, regardless of whether the difference in the "Seller Credits" in the calculating cash to close table is attributable to general or specific seller credits. However, the creditor may not disclose a statement that the consumer should see the seller-paid column disclosed in the closing cost details table under §1026.38(f) and (g), unless the difference in the "Seller Credits" in the calculating cash to close table is attributable at least in part to specific seller credits. If, for example, a decrease in the "Seller Credits" 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 **[sic]** table 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; 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" is attributable in whole or in part to specific seller credits, 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 disclosed in 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.

38(i)(8) Adjustments and other credits.

Paragraph 38(i)(8)(ii).

1. *Adjustments and other credits.* Under §1026.38(i)(8)(ii), the "Final" amount for "Adjustments and Other Credits" would include, for example, prorations of taxes or 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)** ~~1026.37(h)(7)~~ 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.

38(j) Summary of borrower's transaction.

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

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

38(j)(1) Itemization of amounts due from borrower.

Paragraph 38(j)(1)(ii).

1. *Contract sales price and personal property.* Section 1026.38(j)(1)(ii) requires disclosure of the contract sales price of the property being sold, excluding the price of any tangible personal property if the consumer and seller have agreed to a separate price for such items. On the Closing Disclosure for a simultaneous loan for subordinate financing, 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 ~~[owed by the consumer that are]~~ not otherwise disclosed [pursuant to] 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 ~~[pursuant to]~~ 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 existing holders of liens on the property in a refinance transaction, and]~~ any outstanding real estate property taxes are disclosed under §1026.38(j)(1)(v) without a corresponding credit in the summary of the seller's transaction under §1026.38(k)(1)(iv).

38(j)(2) Itemization of amounts already paid by or on behalf of borrower.

Paragraph 38(j) (2) (vi).

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 ~~[also]~~ be disclosed ~~[pursuant to]~~ under §1026.38(j) (2) (vi) on the first-lien Closing Disclosure. For example, if the consumer is using a second mortgage ~~[or note]~~ 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 second loan 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 ~~[a second loan]~~ the subordinate financing are less than the principal amount of the ~~[second loan]~~ subordinate financing, the net proceeds may be listed on the same line as the principal amount of the ~~[second loan]~~ subordinate financing on the first-lien Closing Disclosure. For an example, see form H-25(C) of appendix H to this part.

5. *Gift funds.* A credit must be disclosed only for any money or other payments made at closing by third parties, including family members ~~[or third parties]~~, not otherwise associated with the transaction, along with a description of the nature of the funds provided under §1026.38(j) (2) (vi). 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 a description and the amount 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. 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 under §1026.38(j) (2) (vi) and under the heading "Adjustments."

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. Rent collected in advance by the seller from a tenant for a period extending beyond the closing date; and]~~

~~[iii]~~ ii. Interest on loan assumptions.

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

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

1. *Charges not paid with closing funds.* Section 1026.38(j)(4)(i) requires that any charges not paid from closing funds but that otherwise are disclosed ~~[pursuant to]~~ under §1026.38(j) be marked as "paid outside of closing" or "P.O.C." The disclosure must ~~[include a statement of]~~ 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 reduction in principal balance (principal curtailment) to provide a refund under §1026.19(f)(2)(v).

38(k) Summary of seller's transaction.

1. Transactions with no seller and simultaneous loans for subordinate financing. Section 1026.38(k) does not apply in a transaction where there is no seller, such as a refinance transaction, a transaction with a construction purpose as defined in §1026.37(a)(9)(iii), or a simultaneous loan for subordinate financing transaction if the first-lien Closing Disclosure records the entirety of the seller's transaction.

38(l) Loan disclosures.

38(l)(7) Escrow account.

Paragraph 38(l)(7)(i)(A)(2).

1. *Estimated costs not paid by escrow account funds.* Section 1026.38(l)(7)(i)(A)(2) requires the creditor to estimate the amount the consumer is likely to pay during the first year after consummation for the ~~[charges described in §1026.37(e)(4)(ii)]~~ 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 ~~[for the payment of any amounts described in §1026.37(e)(4)(ii). The creditor complies with this provision by disclosing the amount of such charges used to calculate the estimated taxes, insurance, and assessments disclosed pursuant to §1026.38(e)(1) as the total amount scheduled to be paid during the first year after consummation.].~~

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 (1)(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 ~~[pursuant to]~~ under §1026.38(1)(7)(i)(A)(4) is equal to the sum of the amount of estimated escrow payments disclosed ~~[pursuant to]~~ 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(1)(7)(i)(A)(5).

1. *During the first year.* Section 1026.38(1)(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(1)(7)(i)(A)(1) requires a disclosure, labeled "Escrowed Property Costs over Year 1," calculated as the amount disclosed under §1026.38(1)(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(1)(7)(i)(A)(5) permits the creditor to base the disclosures required by §1026.38(1)(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(1)(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(1)(7)(i)(B)(1).

1. *Estimated costs paid directly by the consumer.* ~~[The estimated total amount the consumer will pay directly for charges described in §1026.37(c)(4)(ii) that are known to the creditor in the absence of an escrow account during the first year after consummation pursuant to §1026.38(1)(7)(i)(B)(1) is the amount of estimated taxes, insurance, and assessments disclosed pursuant to §1026.38(c)(1) as the estimated total amount scheduled to be paid during the first year after consummation.]~~ The creditor discloses ~~[this]~~ an amount under §1026.38(1)(7)(i)(B)(1) only if no escrow account will be established ~~[for the payment of amounts described in §1026.37(c)(4)(ii)].~~

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).

38(o)(1) Total of payments.

1. *Calculation of total of payments.* The total of payments is calculated in the same manner as the "In 5 Years" disclosure ~~[pursuant to]~~ under §1026.37(1)(1)(i), except that the disclosed amount reflects the total payments through the end of the loan term and excludes charges for loan costs disclosed under §1026.38(f) that are designated on the Closing Disclosure as paid by seller or paid by others. A seller or other party, such as a lender, may agree to offset a loan cost, whether in whole or in part, through a specific credit, for example through a specific seller or lender credit. Because these loan costs are not paid by the consumer, the amounts of such loan costs offset by specific credits 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 loan costs for purposes of the total of payments calculation. For guidance on the amounts included in the total of payments calculation, see comment 37(1)(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.

38(t) Form of disclosures.

38(t)(3) Form.

1. *Non-federally related mortgage loans.* For a transaction that **is not** a ~~[non-]~~ federally related mortgage loan, the creditor is not required to use form H-25 of appendix H to this part, although its use as a model form for such transactions, if properly completed with accurate content, constitutes compliance with the clear and conspicuous and segregation requirements of §1026.38(t)(1)(i). Even when the creditor elects not to use the model form, § 1026.38(t)(1)(ii) requires that the disclosures contain only the information required by §1026.38(a) through (s), and that the creditor make the disclosures in the same order as they occur in form H-25, use the same headings, labels, and similar designations as used in the form (many of which also are expressly required by §1026.38(a) through (s)), and position the disclosures relative to those designations in the same manner as shown in the form. In order to be in a format substantially similar to form H-25, the disclosures required by §1026.38 must be provided on letter size (8.5" x 11") paper.

38(t) (5) Exceptions.

Paragraph 38(t) (5) (v).

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 provide (or assist the settlement agent in providing) 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 provide (or assist the settlement agent in providing) 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.

Paragraph 38(t) (5) (vi).

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 and simultaneous loans for subordinate financing.

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 ~~["a requirement—and"]~~ not ~~["considered"]~~ a modification. As required by §1026.38(a) (3) (vii) (B), a form used for a transaction that does not

involve a seller and is modified [~~pursuant to~~ **under** §1026.38(t)(5)(vii) must contain the label "Appraised Prop. Value" or "Estimated Prop. Value" where there is no appraisal [~~, and the information is required by §1026.38(a)(3)(vii)(B)~~].

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 using negative numbers. 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, and proceeds from loans exempt from the disclosure requirements in §1026.19(e), (f), and (g) under § 1026.3(h).

2. Disclosure of subordinate financing. On the Closing Disclosure for a first-lien transaction that also has a simultaneous loan for subordinate financing, the proceeds of the subordinate financing are included in the payoffs and payments table under §1026.38(t)(5)(vii)(B) as a negative number.

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 reduction in principal balance (principal curtailment) under §1026.38(t)(5)(vii)(B) to provide a refund under §1026.19(f)(2)(v).

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. See also comment 38-4 for an explanation of how to disclose a reduction in principal balance (principal curtailment) under §1026.38(t)(5)(ix) to provide a refund under §1026.19(f)(2)(v).

Appendix D-Multiple-Advance Construction Loans

7. *Relation to §§1026.37 and 1026.38.* Creditors may use, at their option, the following methods to estimate and disclose the terms of multiple-advance construction loans pursuant to §§1026.37 and 1026.38. As stated in comment app. D-1, appendix D may also be used in multiple-advance transactions other than construction loans, when the amounts or timing of advances is unknown at consummation.

i. *Loan term.* A. *Disclosure as single transaction.* If the construction and permanent financing are disclosed as a single transaction, the loan term disclosed is the total combined term of the construction period and the permanent period. For example, if the term of the construction financing is 12 months and the term of the permanent financing is 30 years, and both phases are disclosed as a single transaction, the loan term disclosed is 31 years. See comment 37(a)(8)-3 for an explanation of the effect on disclosure of the loan term of minor variations in the number of days counted for the final month or year of a loan.

B. *Term of permanent financing.* Consistent with comment 37(a)(8)-3, the loan term of the permanent financing is counted from the date that interest for the first scheduled periodic payment of the permanent financing begins to accrue, regardless of when the permanent phase is disclosed.

ii. *Product.* A. *Separate construction loan disclosure.* If the construction financing is disclosed separately and has payments of interest only, the time period of the "Interest Only" feature that is disclosed as part of the product disclosure under §§1026.37(a)(10) and 1026.38(a)(5)(iii) is the period during which interest-only payments are actually made and excludes any final balloon payment of principal and interest. For example, the product disclosure for a fixed rate, interest-only construction loan with a term of 12 months in which there will be 11 monthly interest payments and a final balloon payment of principal and interest is "11 mo. Interest Only, Fixed Rate."

B. *Combined construction-permanent disclosure.* If a single, combined construction-permanent disclosure is provided, the time period of the "Interest Only" feature that is disclosed as part of the product disclosure under §§1026.37(a)(10) and 1026.38(a)(5)(iii) is the full term of the interest-only construction financing. For example, the product disclosure for a fixed rate, construction-permanent loan with an interest-only construction phase of 12 months is "1 Year Interest Only, Fixed Rate."

iii. *Interest rate.* If the permanent financing has an adjustable rate and separate disclosures are provided, the rate disclosed for the permanent financing is the fully-indexed rate pursuant to §1026.37(b)(2) and its commentary. If the permanent financing has a fixed rate, the rate disclosed is based on the best information reasonably available at the time the disclosures are made. See comments 19(e)(1)(i)-1 and 19(f)(1)(i)-2. If the creditor may modify the rate for permanent financing when the construction financing converts to permanent financing, and such adjustment to the interest rate results in a corresponding adjustment to the payment, the creditor provides the disclosures pursuant to §1026.20(c) regardless of whether the permanent financing has a fixed, adjustable, or step rate.

iv. *Initial periodic payment.* In calculating the initial payment amount disclosed pursuant to §1026.37(b)(3) and using appendix D, the creditor may disregard the effect of certain minor variations, such as that months have different numbers of days, in making the calculation. See §1026.17(c)(3).

v. *Increase in periodic payment.* A. Calculation of the construction financing periodic payments using the assumptions in appendix D produces interest-only periodic payments that are equal in amount. If a creditor provides a separate disclosure for fixed-rate construction financing, although a technically correct answer to "Can this amount increase after closing?" pursuant to §1026.37(b)(6) is "NO" because appendix D produces interest-only periodic payments that are equal in amount, a creditor may disclose the answer as "YES" to reflect the fact that actual payments may be more than the amount calculated using appendix D.

B. If separate disclosures are provided for fixed-rate construction financing and appendix D is used to calculate the periodic payment, a creditor may omit the disclosures pursuant to § 1026.37(b)(6)(iii) and the disclosure of a range of payments under §1026.37(c)(2)(i) in the construction financing disclosure.

C. If separate disclosures are provided for adjustable-rate construction financing and a creditor uses appendix D to calculate the periodic payment, a creditor provides disclosures reflecting changes that are due to changes in the interest rate but may omit disclosures reflecting changes that are due to changes in the total amount advanced. For example, a creditor would disclose "YES" as the answer to "Can this amount increase after closing?" pursuant to §1026.37(b)(6), because the initial periodic payment may increase based upon an increase in the interest rate. A creditor may omit a reference to the Adjustable Payment table required by §1026.37(i) because that disclosure would reflect a change due to a change in the total amount advanced.

vi. *Projected payments table.* A creditor must disclose a projected payments table for certain transactions secured by real property or a cooperative unit, pursuant to §§1026.37(c) and 1026.38(c), instead of the general payment schedule required by §1026.18(g) or the interest rate and payments summary table required by §1026.18(s). Accordingly, some home construction loans that are secured by real property or a cooperative unit are subject to §§1026.37(c) and 1026.38(c) and not §1026.18(g). See comment app. D-6 for a discussion of transactions that are subject to §1026.18(s). ~~[Under §1026.17(c)(6)(ii), when a multiple advance construction loan may be permanently financed by the same creditor, the construction phase and the permanent phase may be treated as either one transaction or more than one transaction.]~~ Following are illustrations of the application of appendix D to transactions subject to §§1026.37(c) and 1026.38(c), under each of these two alternatives:

[±] A. If a creditor uses appendix D and elects pursuant to §1026.17(c)(6)(ii) to disclose the construction and permanent phases as separate transactions, the construction phase must be disclosed according to the rules in §§1026.37(c) and 1026.38(c). Under §§1026.37(c) and 1026.38(c), the creditor must disclose the periodic payments during the construction phase in a projected payments table. The provision in appendix D, part I.A.3, which allows the creditor to omit the number and amounts of any interest payments "in disclosing the payment schedule under §1026.18(g)" does not apply because the transaction is governed by §§1026.37(c) and 1026.38(c) rather than §1026.18(g). If interest is payable only on the amount actually advanced for the time it is

outstanding, the creditor determines the amount of the interest-only payment to be made during the construction phase using the assumption in appendix D, part I.A.1. Also, because the construction phase is being disclosed as a separate transaction and its terms do not repay all principal, the creditor must disclose the construction phase transaction as a product with a balloon payment feature, pursuant to §§1026.37(a)(10)(ii)(D) and 1026.38(a)(5)(iii), ~~in addition to reflecting~~ unless the transaction has negative amortization, interest only, or step payment features, consistent with the requirement at §1026.37(a)(10)(iii). In addition, the creditor must provide the balloon payment disclosures pursuant to §§1026.37(b)(5), 1026.37(b)(7)(ii), and 1026.38(b) and disclose the balloon payment in the projected payments table.

[#] B. If the creditor elects to disclose the construction and permanent phases as a single transaction, the repayment schedule must be disclosed pursuant to appendix D, part II.C.2. Under appendix D, part II.C.2, the projected payments table must reflect the interest-only payments during the construction phase in a first column, which also reflects the amortizing payments for the permanent phase if the term of the construction phase is not a full year, followed by the appropriate column(s) reflecting the amortizing payments for the permanent phase. If interest is payable only on the amount actually advanced for the time it is outstanding, the creditor determines the amount of the interest-only payment to be made during the construction phase using the assumption in appendix D, part II.A.1.

vii. *Construction costs as "Other" costs.* A. Construction costs are costs that the consumer contracts, at or before the real estate closing, to pay in whole or in part with loan proceeds. The amount of construction costs is disclosed under the subheading "Other" pursuant to §1026.37(g)(4).

B. A creditor in some cases places a portion of a construction loan's proceeds in a reserve or other account at consummation. The amount of such an account, at the creditor's option, may be disclosed separately from other construction costs or may be included in the amount disclosed for construction costs for purposes of the disclosures and calculations under §§ 1026.37 and 1026.38. If the creditor chooses to disclose separately the amount of loan proceeds placed in a reserve or other account at consummation, the creditor may disclose the amount as a separate itemized cost, along with a separate itemized cost for the balance of the construction costs, in accordance with §1026.37(g)(4). The amount may be labeled with any accurate term, so long as any label the creditor uses is in accordance with the "clear and conspicuous" standard explained at comment 37(f)(5)-1. If the amount is disclosed separately, the balance of construction costs must exclude the amount to avoid double counting.

viii. *Construction loan inspection and handling fees.* Comment 4(a)-1.ii.A provides that inspection and handling fees for the staged disbursement of construction loan proceeds are part of the finance charge. Comment 37(f)-3 states that such inspection and handling fees are loan costs associated with the transaction for purposes of §1026.37(f) and, as such, must be disclosed accurately as part of the Loan Estimate. These fees must also be disclosed accurately as part of the Closing Disclosure, and comment 38(f)-

2 refers to explanations under comments 37(f)-3 and 37(f)(6)-3 for making these disclosures. Comment 37(f)-3 provides that, if such fees are collected at or before consummation, they are disclosed in the loan costs table. If such fees will be collected after consummation, they are disclosed in a separate addendum and are not counted for purposes of the calculating cash to close table. Comment 37(f)(6)-3 provides an explanation of how to disclose inspection and handling fees that will be collected after consummation in an addendum attached as an additional page after the last page of the Loan Estimate. Under comment 38(f)-2, the same explanation applies to an addendum used for disclosing such fees in the Closing Disclosure.

Appendix H—Closed-End Forms and Clauses

30. *Standard Loan Estimate and Closing Disclosure forms.* Forms H-24(A) [~~through~~] and (G), H-25(A) and (H) through (J), and H-28(A) [~~through~~], (F), (I), and (J) are model forms for the disclosures required under §§1026.37 and 1026.38. [~~However, pursuant to~~] Under §§1026.37(o)(3) and 1026.38(t)(3), for federally related mortgage loans, forms H-24(A) [~~through (G)~~] (or, alternatively, H-24(G)) and H-25(A) [~~through (J)~~] (or, alternatively, H-25(H), (I) or (J)) are standard forms required to be used for the disclosures required under §§1026.37 and 1026.38, respectively.

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