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# Truth in Lending Act[1]

The Truth in Lending Act (TILA), 15 U.S.C. 1601 *et seq*., was enacted on May 29, 1968, as title I of the Consumer Credit Protection Act (Pub. L. 90-321). TILA, implemented by Regulation Z (12 CFR 1026), became effective July 1, 1969.

TILA was first amended in 1970 to prohibit unsolicited credit cards. Additional major amendments to TILA and Regulation Z were made by the Fair Credit Billing Act of 1974, the Consumer Leasing Act of 1976, the Truth in Lending Simplification and Reform Act of 1980, the Fair Credit and Charge Card Disclosure Act of 1988, and the Home Equity Loan Consumer Protection Act of 1988.

Regulation Z also was amended to implement Section 1204 of the Competitive Equality Banking Act of 1987, and in 1988, to include adjustable-rate mortgage loan disclosure requirements. All consumer leasing provisions were deleted from Regulation Z in 1981 and transferred to Regulation M (12 CFR 1013).

The Home Ownership and Equity Protection Act of 1994 (HOEPA) amended TILA. The law imposed new disclosure requirements and substantive limitations on certain closed-end mortgage loans bearing rates or fees above a certain percentage or amount. The law also included new disclosure requirements to assist consumers in comparing the costs and other material considerations involved in a reverse mortgage transaction and authorized the Board of Governors of the Federal Reserve System (Board) to prohibit specific acts and practices in connection with mortgage transactions.

The TILA amendments of 1995 dealt primarily with tolerances for real estate secured credit. Regulation Z was amended on September 14, 1996, to incorporate changes to TILA. Specifically, the revisions limit lenders' liability for disclosure errors in real estate secured loans consummated after September 30, 1995. The Economic Growth and Regulatory Paperwork Reduction Act of 1996 further amended TILA. The amendments were made to simplify and improve disclosures related to credit transactions.

The Electronic Signatures in Global and National Commerce Act (the E-Sign Act), 15 U.S.C. 7001 *et seq*., was enacted in 2000 and did not require implementing regulations. On November 9, 2007, amendments to Regulation Z and the official commentary were issued to simplify the regulation and provide guidance on the electronic delivery of disclosures consistent with the E-Sign Act.

[1] These procedures reflect changes to TILA and Regulation Z through May 2018, including applicable provisions of the Economic Growth, Regulatory Relief, and Consumer Protection Act, P.L 115-174 (May 24, 2018) that do not require rulemaking to be effective.

In July 2008, Regulation Z was amended to protect consumers in the mortgage market from unfair, abusive, or deceptive lending and servicing practices. Specifically, the change applied protections to a newly defined category of "higher-priced mortgage loans" (HPML) that includes virtually all closed-end subprime loans secured by a consumer's principal dwelling. The revisions also applied new protections to mortgage loans secured by a dwelling, regardless of loan price, and required the delivery of early disclosures for more types of transactions. The revisions also banned several advertising practices deemed deceptive or misleading. The Mortgage Disclosure Improvement Act of 2008 (MDIA) broadened and added to the requirements of the Board's July 2008 final rule by requiring early Truth in Lending disclosures for more types of transactions and by adding a waiting period between the time when disclosures are given and consummation of the transaction. In 2009, Regulation Z was amended to address those provisions. The MDIA also requires disclosure of payment examples if the loan's interest rate or payments can change, as well as disclosure of a statement that there is no guarantee the consumer will be able to refinance in the future. In 2010, Regulation Z was amended to address these provisions, which became effective on January 30, 2011.

In December 2008, the Board adopted two final rules pertaining to open-end (not home-secured) credit. The first rule involved Regulation Z revisions and made comprehensive changes applicable to several disclosures required for: applications and solicitations, new accounts, periodic statements, change in terms notifications, and advertisements. The second was a rule published under the Federal Trade Commission (FTC) Act and was issued jointly with the Office of Thrift Supervision (OTS) and the National Credit Union Administration (NCUA)), which sought to protect consumers from unfair acts or practices with respect to consumer credit card accounts. Before these rules became effective, however, the Credit Card Accountability Responsibility and Disclosure Act of 2009 (Credit CARD Act) amended TILA and established a number of new requirements for open-end consumer credit plans. Several provisions of the Credit CARD Act are similar to provisions in the Board's December 2008 TILA revisions and the joint FTC Act rule, but other portions of the Credit CARD Act address practices or mandate disclosures that were not addressed in these rules. In light of the Credit CARD Act, the Board, the NCUA, and the OTS withdrew the substantive requirements of the joint FTC Act rule. On July 1, 2010, compliance with the provisions of the Board's rule that were not impacted by the Credit CARD Act became effective.

The Credit CARD Act provisions became effective in three stages. The provisions effective first (August 20, 2009) required creditors to increase the amount of notice consumers receive before the rate on a credit card account is increased or a significant change is made to the account's terms. These amendments also allowed consumers to reject such increases and changes by informing the creditor before the increase or change goes into effect. The provisions effective next (February 22, 2010) involved rules regarding interest rate increases, over-the-limit transactions, and student cards. Finally, the provisions effective last (August 22, 2010) addressed the reasonableness and proportionality of penalty fees and charges and reevaluation of rate increases.

In 2009, Regulation Z was amended following the passage of the Higher Education Opportunity Act (HEOA) by adding disclosure and timing requirements that apply to lenders making private education loans.

In 2009, the Helping Families Save Their Homes Act amended TILA to establish a new requirement for notifying consumers of the sale or transfer of their mortgage loans. The purchaser or assignee that acquires the loan must provide the required disclosures no later than 30 days after the date on which it acquired the loan.

In 2010, the Board further amended Regulation Z to prohibit payment to a loan originator that is based on the terms or conditions of the loan, other than the amount of credit extended. The amendment applies to mortgage brokers and the companies that employ them, as well as to mortgage loan officers employed by depository institutions and other lenders. In addition, the amendment prohibits a loan originator from directing or "steering" a consumer to a loan that is not in the consumer's interest to increase the loan originator's compensation.

The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act) amended TILA to include several provisions that protect the integrity of the appraisal process when a consumer's home is securing the loan. The rule also requires that appraisers receive customary and reasonable payments for their services. The appraiser and loan originator compensation requirements had a mandatory compliance date of April 6, 2011.

The Dodd-Frank Act generally granted rulemaking authority under TILA to the Consumer Financial Protection Bureau (CFPB or Bureau). Title XIV of the Dodd-Frank Act included a number of amendments to TILA, and in 2013, the CFPB issued rules to implement them. Prohibitions on mandatory arbitration and waivers of consumer rights, as well as requirements that lengthen the time creditors must maintain an escrow account for higher-priced mortgage loans, were generally effective June 1, 2013. Most of the remaining amendments to Regulation Z were effective in January 2014.[2] These amendments include ability-to-repay requirements for mortgage loans, appraisal requirements for higher-priced mortgage loans, a revised and expanded test for high-cost mortgages, as well as additional restrictions on those loans, expanded requirements for servicers of mortgage loans, refined loan originator compensation rules and loan origination qualification standards, and a prohibition on financing credit insurance for mortgage loans. The amendments also established new record retention requirements for certain provisions of TILA. On October 22, 2014, the CFPB issued a final rule providing an alternative small servicer definition for nonprofit entities and amended the ability-to-repay exemption for nonprofit entities. The final rule also provided a cure mechanism for the points and fees limit that applies to qualified mortgages. The final rule was effective on November 3, 2014, except for one provision that became effective on October 3, 2015. On October 2, 2015, the CFPB revised the definitions of small creditor and rural and underserved areas, which affect the availability of some special provisions and exemptions to Regulation Z's Ability-to-Repay, high-cost mortgage, and HPML escrow requirements. The final rule was effective January 1, 2016.[3] In March 2016, the CFPB issued an interim final rule exercising the expanded authority granted to the Bureau by the

[2] The amendment to 12 CFR 1026.35(e) was effective July 24, 2013; the amendments to 12 CFR 1026.35(b)(2)(iii), 1026.36(a), (b), and (j), and commentary to 12 CFR 1026.25(c)(2), 1026.35, and 1026.36(a), (b), (d), and (f) in Supp. I to Part 1026, were effective January 1, 2014.

[3] 80 FR 59944 (October 2, 2015).

Helping Expand Lending Practices in Rural Communities Act to exempt small creditors that operate in rural or underserved areas.[4] The interim final rule was effective March 31, 2016.

In 2013, the CFPB also revised several open-end credit provisions in Regulation Z. The Bureau revised the general limitation on the total amount of account fees that a credit card issuer may require a consumer to pay. Effective March 28, 2013, the limit is 25 percent of the credit limit in effect when the account is opened and applies only during the first year after account opening. The CFPB also amended Regulation Z to remove the requirement that card issuers consider the consumer's independent ability to pay for applicants who are 21 or older and to permit issuers to consider income and assets to which such consumers have a reasonable expectation of access. This change was effective May 3, 2013, with a mandatory compliance date of November 4, 2013.

In 2013, the CFPB further amended Regulation Z as well as Regulation X, the regulation implementing the Real Estate Settlement Procedures Act (RESPA), to fulfill the mandate in the Dodd-Frank Act to integrate the mortgage disclosures under TILA and RESPA Sections 4 and 5 (the TILA-RESPA Integrated Disclosure (TRID) Rule). Regulation Z now contains two new forms required for most closed-end consumer mortgage loans. The Loan Estimate is provided within three business days from application, and the Closing Disclosure is provided to consumers three business days before loan consummation. These disclosures must be used for mortgage loans for which the creditor or mortgage broker receives an application on or after October 3, 2015[5].

In 2016, the CFPB amended Regulation Z as well as Regulation E, the regulation implementing the Electronic Fund Transfer Act (EFTA), to extend protections to prepaid accounts. In Regulation E, tailored provisions governing disclosures, limited liability and error resolution, and periodic statements were adopted for prepaid accounts, along with new requirements regarding the posting and submission of prepaid account agreements. In Regulation Z, coverage of the term "credit card" was expanded to include "hybrid prepaid-credit card" as defined in 12 CFR 1026.61. The amendments to Regulation Z further regulate credit features that may be offered in conjunction with prepaid accounts. Together these amendments are known as the "Prepaid Rule". The Bureau further amended the Prepaid Rule in January 2018 to modify the definition of "business partner", in addition to making other changes, and extend the effective date of the Prepaid Rule, as amended, to April 1, 2019.

In 2017, the Bureau amended and clarified several provisions of Regulation Z[6], including creating tolerances for the total of payments disclosure, amending and clarifying the application of the good faith standard under 12 CFR 1026.19(e)(3) and related tolerances, and clarifying disclosure provisions related to construction loans. Mandatory compliance with most provisions of the amended rule began on October 1, 2018. In 2018, the Bureau further amended the rule to

[4] 81 FR 16074 (March 25, 2016).

[5] The effective date for the TILA-RESPA Integrated Disclosure Rule was extended to October 3, 2015, by a final rule published in the Federal Register on July 24, 2015 (80 Fed. Reg. 43911). Other provisions of the rule were effective on October 3, 2015, regardless of whether an application was received on that date.

[6] 82 Fed. Reg. 37656 (August 11, 2017)

address when Closing Disclosures may be used to reset tolerances[7]. These provisions became effective June 1, 2018. On August 4, 2016, the CFPB issued a final rule to further clarify, revise, and amend provisions of Regulation Z and Regulation X[8]. The amendments in the final rule are referenced in this document as the "2016 Servicing Rule". The 2016 Servicing Rule establishes definitions of successor in interest and confirmed successor in interest in 12 CFR 1026.2(a)(27), and provides that a confirmed successor in interest is a "consumer" for purposes of the mortgage servicing provisions in Regulation Z (12 CFR 1026.2(a)(11)).[9] The 2016 Servicing Rule also adopts a general definition of delinquency that applies to all of the servicing provisions in Regulation X and the provisions regarding periodic statements for mortgage loans in Regulation Z. Furthermore, the 2016 Servicing Rule clarifies, revises, or amends provisions of Regulation Z relating to:

- Interest rate adjustment notices for adjustable-rate mortgages (ARMs) (12 CFR 1026.20);
- Prompt crediting of mortgage payments and responses to requests for payoff amounts (12 CFR 1026.36(c));
- Periodic statements for mortgage loans (12 CFR 1026.41), including requiring servicers to provide certain consumers in bankruptcy a modified periodic statement or coupon book; and
- Small servicers (12 CFR 1026.41(e)(4)).

The 2016 Servicing Rule took effect on October 19, 2017, except the provisions related to successors in interest and periodic statements for consumers in bankruptcy, which took effect on April 19, 2018.

The CFPB concurrently issued an interpretive rule under the Fair Debt Collection Practices Act (FDCPA) to clarify the interaction of FDCPA and specified mortgage servicing rules in Regulations X and Z.[10] This 2016 FDCPA Interpretive Rule constitutes an advisory opinion for purposes of FDCPA and provides safe harbors from liability for servicers acting in compliance with it.

In 2018, the Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA)[11] amended several provisions of TILA, including: (1) the addition of a new qualified mortgage

[7] 83 Fed. Reg. 19159 (May 2, 2018).

[8] 81 Fed. Reg. 72160 (October 19, 2016) .

[9] The 2016 Servicing Rule included the following changes to Regulation Z for successors in interest: 12 CFR 1026.2(a)(11) and (27), 1026.20(f), 1026.39(f), and 1026.41(g). The 2016 Servicing Rule also changed several sections of the Official Interpretations of Regulation X, published in commentary.

[10] *See* Safe Harbors from Liability under the Fair Debt Collection Practices Act for Certain Actions Taken in Compliance with Mortgage Servicing Rules under the Real Estate Settlement Procedures Act (Regulation X) and the Truth in Lending Act (Regulation Z) (81 Fed. Reg. 71977) (Oct. 19, 2016). The interpretations in this interpretive rule are included in Regulation X comments 30(d)-1 and 39(d)-2; Regulation Z comment 2(a)(11)-4.ii.

[11] These procedures do not contain references to other EGRRCPA amendments that require rulemakings to be effective. Those provisions relate to exemptions for certain creditors from certain mortgage escrow requirements and to Property Assessed Clean Energy (PACE) financing.

category for portfolio mortgages of certain insured depository institutions and insured credit unions with under $10 billion in assets; (2) modification of the waiting period requirements for high-cost mortgage loan consummation under certain conditions; (3) clarification of "customary and reasonable" as they pertain to fee appraisers who voluntarily donate appraisal services to certain charitable organizations; and (4) student loan protections in the event of bankruptcy or death of the student or non-student obligor. The EGRRCPA also amended TILA to modify an exemption for manufactured or modular home retailers and their employees from loan originator compensation requirements when specific conditions are met, and amended the Secure and Fair Enforcement for Mortgage Licensing Act (SAFE Act) regarding employment transition of certain loan originators. These provisions were generally effective on May 24, 2018, except for the student loan protections, which became effective on November 24, 2018, and the SAFE Act changes, which became effective on November 24, 2019. On November 16, 2019, the Bureau issued an interpretive rule on the SAFE Act changes, with an effective date of November 24, 2019.[12]

## Format of Regulation Z

The rules creditors must follow differ depending on whether the creditor is offering open-end credit, such as credit cards or home-equity lines, or closed-end credit, such as car loans or mortgages.

**Subpart A (12 CFR 1026.1 through 1026.4)** of the regulation provides general information that applies to open-end and closed-end credit transactions. It sets forth definitions (12 CFR 1026.2) and stipulates which transactions are covered and which are exempt from the regulation (12 CFR 1026.3). It also contains the rules for determining which fees are finance charges (12 CFR 1026.4).

**Subpart B (12 CFR 1026.5 through 1026.16)** relates to open-end credit. It contains rules on account-opening disclosures (12 CFR 1026.6) and periodic statements (12 CFR 1026.7-8). It also describes special rules that apply to credit card transactions, treatment of payments (12 CFR 1026.10) and credit balances (12 CFR 1026.11), procedures for resolving credit billing errors (12 CFR 1026.13), annual percentage rate (APR) calculations (12 CFR 1026.14), rescission rights (12 CFR 1026.15), and advertising (12 CFR 1026.16).

**Subpart C (12 CFR 1026.17 through 1026.24)** relates to closed-end credit. It contains rules on disclosures (12 CFR 1026.17-20), treatment of credit balances (12 CFR 1026.21), annual percentage rate calculations (12 CFR 1026.22), rescission right (12 CFR 1026.23), and advertising (12 CFR 1026.24).

**Subpart D (12 CFR 1026.25 through 1026.30)** contains rules on record retention (12 CFR 1026.25), oral disclosures (12 CFR 1026.26), disclosures in languages other than English (12

[12] Truth in Lending (Regulation Z); Screening and Training Requirements for Mortgage Loan Originators with Temporary Authority, 84 Fed. Reg. 63791 (November 19, 2019).

CFR 1026.27), effect on state laws (12 CFR 1026.28), state exemptions (12 CFR 1026.29), and rate limitations (12 CFR 1026.30).

**Subpart E (12 CFR 1026.31 through 1026.45)** contains special rules for mortgage transactions. The rules require certain disclosures and provide limitations for closed-end credit transactions and open-end credit plans that have rates or fees above specified amounts or certain prepayment penalties (12 CFR 1026.32). Special disclosures are also required, including the total annual loan cost rate, for reverse mortgage transactions (12 CFR 1026.33). The rules also prohibit specific acts and practices in connection with high-cost mortgages, as defined in 12 CFR 1026.32(a), (12 CFR 1026.34); in connection with closed-end higher-priced mortgage loans, as defined in 12 CFR 1026.35(a), (12 CFR 1026.35); and in connection with an extension of credit secured by a dwelling (12 CFR 1026.36). This subpart also sets forth disclosure requirements, effective October 3, 2015, for certain closed-end transactions secured by real property, or a cooperative unit, as required by 12 CFR 1026.19(e) and (f), 12 CFR 1026.37-38, disclosures for mortgage transfers (12 CFR 1026.39),, and disclosure requirements for periodic statements for residential mortgage loans (12 CFR 1026.41). In addition, it contains minimum standards for transactions secured by a dwelling, including provisions relating to ability to repay and qualified mortgages (12 CFR 1026.43). This subpart includes the small servicer exemption found in 12 CFR 1026.41(e)(4).

**Subpart F (12 CFR 1026.46 through 1026.48)** relates to private education loans. It contains rules on disclosures (12 CFR 1026.46), limitations on changes in terms after approval (12 CFR 1026.48), the right to cancel the loan (12 CFR 1026.47), and limitations on co-branding in the marketing of private education loans (12 CFR 1026.48).

**Subpart G (12 CFR 1026.51 through 1026.61)** relates to credit card accounts, including covered separate credit features accessible by hybrid prepaid-credit cards, under an open-end (not home-secured) consumer credit plan (except for 12 CFR 1026.57(c), which applies to all open-end credit plans). This subpart contains rules regarding disclosures provided on or with credit and charge card applications and solicitations (12 CFR 1026.60). It also contains rules regarding hybrid prepaid-credit cards (12 CFR 1026.61). Subpart G contains rules on evaluation of a consumer's ability to make the required payments under the terms of an account (12 CFR 1026.51), limits the fees that a consumer can be required to pay (12 CFR 1026.52), and contains rules on allocation of payments in excess of the minimum payment (12 CFR 1026.53). It also sets forth certain limitations on the imposition of finance charges as the result of a loss of a grace period (12 CFR 1026.54), and on increases in annual percentage rates, fees, and charges for credit card accounts (12 CFR 1026.55), including the reevaluation of rate increases (12 CFR 1026.59). This subpart prohibits the assessment of fees or charges for over-the-limit transactions unless the consumer affirmatively consents to the creditor's payment of over-the-limit transactions (12 CFR 1026.56). This subpart also sets forth rules for reporting and marketing of college student open-end credit (12 CFR 1026.57). Finally, it sets forth requirements for the Internet posting of credit card accounts under an open-end (not home-secured) consumer credit plan (12 CFR 1026.58).

Several appendices contain information such as the procedures for determinations about state laws, state exemptions and issuance of official interpretations, special rules for certain kinds of

credit plans, model disclosure forms, standards for determining ability to pay, and the rules for computing annual percentage rates in closed-end credit transactions and total-annual-loan-cost rates for reverse mortgage transactions.

Official interpretations of the regulation are published in a commentary. Good faith compliance with the commentary protects creditors from civil liability under TILA. In addition, the commentary includes more detailed information on disclosures or other actions required of creditors. It is virtually impossible to comply with Regulation Z without reference to and reliance on the commentary.

NOTE: The following narrative does not discuss all the sections of Regulation Z but rather highlights only certain sections of the regulation and TILA.

# Truth in Lending Act Narrative

## Subpart A – General

This subpart contains general information regarding both open-end and closed-end credit transactions. It sets forth definitions (12 CFR 1026.2) and sets out which transactions are covered and which are exempt from the regulation (12 CFR 1026.3). It also contains the rules for determining which fees are finance charges (12 CFR 1026.4).

### Purpose of the TILA and Regulation Z

TILA is intended to ensure that credit terms are disclosed in a meaningful way so consumers can compare credit terms more readily and knowledgeably. Before its enactment, consumers were faced with a bewildering array of credit terms and rates. It was difficult to compare loans because they were seldom presented in the same format. Now, all creditors must use the same credit terminology and expressions of rates. In addition to providing a uniform system for disclosures, TILA:

- Protects consumers against inaccurate and unfair credit billing and credit card practices;
- Provides ability to repay requirements and other limitations applicable to credit cards;
- Provides consumers with rescission rights;
- Provides for rate caps on certain dwelling-secured loans;
- Imposes limitations on home equity lines of credit and certain closed-end home mortgages;
- Provides minimum standards for most dwelling-secured loans; and
- Delineates and prohibits unfair or deceptive mortgage lending practices.

TILA and Regulation Z do not, however, tell financial institutions how much interest they may charge or whether they must grant a consumer a loan.

### Summary of Coverage Considerations – 12 CFR 1026.1 and 1026.2

Lenders must carefully consider several factors when deciding whether a loan is subject to Truth in Lending disclosures or other Regulation Z requirements. The coverage considerations under Regulation Z are addressed in more detail in the commentary to Regulation Z. For example, broad coverage considerations are included under 12 CFR 1026.1(c) of the regulation, and relevant definitions appear in 12 CFR 1026.2.

The 2016 Servicing Rule adds a definition of successor in interest. Successor in interest means a person to whom an ownership interest in a dwelling securing a closed-end consumer credit transaction is transferred from a consumer, provided that the transfer is:

- A transfer by devise, descent, or operation of law on the death of a joint tenant or tenant by the entirety;
- A transfer to a relative resulting from the death of the consumer;
- A transfer where the spouse or children of the consumer become an owner of the property;
- A transfer resulting from a decree of a dissolution of marriage, a legal separation agreement, or an incidental property settlement agreement, by which the spouse of the consumer becomes an owner of the property; or
- A transfer into an *inter vivos* trust in which the consumer is and remains a beneficiary and which does not relate to a transfer of rights of occupancy in the property.

### 12 CFR 1026.2(a)(27)(i)

Confirmed successor in interest means a successor in interest once a servicer has confirmed the successor in interest's identity and ownership interest in the dwelling (12 CFR 1026.2(a)(27)(ii)).

Under 12 CFR 1026.2(a)(11), a confirmed successor in interest is a consumer for purposes of 12 CFR 1026.20(c) through (e), 1026.36(c), 1026.39, and 1026.41.

Further, a servicer that is debt collector under FDCPA with respect to a mortgage loan does not violate the prohibition in FDCPA Section 805(b) on communicating with third parties by communicating with a confirmed successor in interest in compliance with the mortgage servicing rules because "consumer" for purposes of FDCPA Section 805 includes any person who meets the definition in this part of confirmed successor in interest (Comment 2(a)(11)-4.ii).[13]

## Exempt Transactions – 12 CFR 1026.3

The following transactions are exempt from Regulation Z:

- Credit extended primarily for a business, commercial, or agricultural purpose;
- Credit extended to other than a natural person (including credit to government agencies or instrumentalities);

  NOTE: Credit extended to trusts established for tax or estate planning purposes or to land trusts is considered to be extended to a natural person for purposes of the definition of "consumer" (12 CFR 1026.2(a)(11), Comment 2(a)(11)-3).

[13] *See also* the 2016 FDCPA Interpretive Rule (81 Fed. Reg. 71977, 71979).

- Credit in excess of an annually adjusted threshold not secured by real property or by personal property used or expected to be used as the principal dwelling of the consumer;[14]
- Public utility credit;
- Credit extended by a broker-dealer registered with the Securities and Exchange Commission or the Commodity Futures Trading Commission, involving securities or commodities accounts;
- Home fuel budget plans not subject to a finance charge; and
- Certain student loan programs.

However, when a credit card is involved, generally exempt credit (e.g., business purpose credit) is subject to the requirements that govern the issuance of credit cards and liability for their unauthorized use. Credit cards must not be issued on an unsolicited basis and, if a credit card is lost or stolen, the cardholder must not be held liable for more than $50 for the unauthorized use of the card (Comment 3-1).

When determining whether credit is for consumer purposes, the creditor must evaluate all of the following:

- Any statement obtained from the consumer describing the purpose of the proceeds.
    - For example, a statement that the proceeds will be used for a vacation trip would indicate a consumer purpose.
    - If the loan has a mixed purpose (e.g., proceeds will be used to buy a car that will be used for personal and business purposes), the lender must look to the primary purpose of the loan to decide whether disclosures are necessary. A statement of purpose from the consumer will help the lender make that decision.
    - A checked box indicating that the loan is for a business purpose, absent any documentation showing the intended use of the proceeds could be insufficient evidence that the loan did not have a consumer purpose.
- The consumer's primary occupation and how it relates to the use of the proceeds. The higher the correlation between the consumer's occupation and the property purchased from the loan proceeds, the greater the likelihood that the loan has a business purpose. For example, proceeds used to purchase dental supplies for a dentist would indicate a business purpose.
- Personal management of the assets purchased from proceeds. The lower the degree of the borrower's personal involvement in the management of the investment or enterprise purchased by the loan proceeds, the less likely the loan will have a business purpose. For example, money borrowed to purchase stock in an automobile company by an individual who

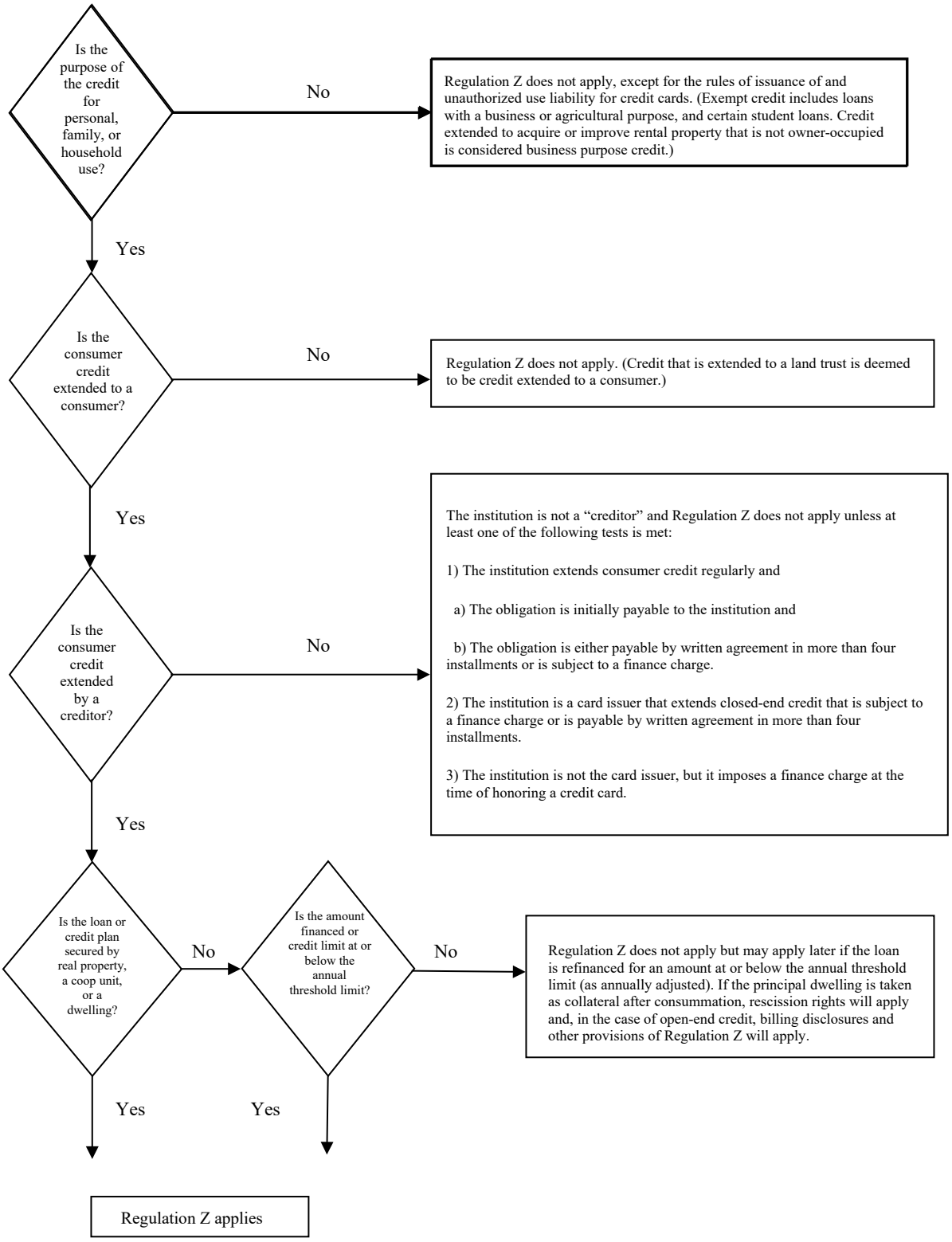
[14] The Dodd-Frank Act requires that this threshold be adjusted annually by any annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W). For the current threshold, *see* 12 CFR 1026.3(b)(ii).

does not work for that company would indicate a personal investment and a consumer purpose.

- The size of the transaction. The larger the size of the transaction, the more likely the loan will have a business purpose. For example, if the loan is for a $5 million real estate transaction, that might indicate a business purpose.
- The amount of income derived from the property acquired by the loan proceeds relative to the borrower's total income. The lesser the income derived from the acquired property, the more likely the loan will have a consumer purpose. For example, if the borrower has an annual salary of $100,000 and receives about $500 in annual dividends from the acquired property, that would indicate a consumer purpose.

Creditors must consider all five factors before determining that disclosures are not necessary. Normally, no one factor by itself is sufficient reason to determine the applicability of Regulation Z. In any event, the financial institution may routinely furnish disclosures to the consumer. Disclosure under such circumstances does not control whether the transaction is covered but can assure protection to the financial institution and compliance with the law.

## Coverage Considerations under Regulation Z



## Determination of Finance Charge and Annual Percentage Rate (APR)

### Finance Charge (Open-End and Closed-End Credit) – 12 CFR 1026.4

The finance charge is a measure of the cost of consumer credit represented in dollars and cents. Along with APR disclosures, the disclosure of the finance charge is central to the uniform credit cost disclosure envisioned by TILA.

The finance charge does not include any charge of a type payable in a comparable cash transaction. Examples of charges payable in a comparable cash transaction may include taxes, title, license fees, or registration fees paid in connection with an automobile purchase. In addition, with respect to a covered separate credit feature and an asset feature on a prepaid account that are both accessible by a hybrid prepaid-credit card, the finance charge does not include a charge imposed on the asset feature of the prepaid account to the extent the amount of the charge does not exceed comparable charges imposed on prepaid accounts in the same prepaid account program that do not have a covered separate credit feature accessible by a hybrid prepaid-credit card.

Finance charges include any charges or fees payable directly or indirectly by the consumer and imposed directly or indirectly by the financial institution either as an incident to or as a condition of an extension of consumer credit. The finance charge on a loan always includes any interest charges and often, other charges. Regulation Z includes examples, applicable both to open-end and closed-end credit transactions, of what must, must not, or need not be included in the disclosed finance charge (12 CFR 1026.4(b)).

### Accuracy Tolerances (Closed-End Credit) – 12 CFR 1026.18(d) and 1026.23(g) and (h)

Regulation Z provides finance charge tolerances for legal accuracy that should not be confused with those provided in TILA for reimbursement under regulatory agency orders. As with disclosed APRs, if a disclosed finance charge were legally accurate, it would not be subject to reimbursement.

Under TILA and Regulation Z, finance charge disclosures for open-end credit must be accurate since there is no tolerance for finance charge errors. However, both TILA and Regulation Z permit various finance charge accuracy tolerances for closed-end credit.

Tolerances for the finance charge in a closed-end transaction, other than a mortgage loan, are generally $5 if the amount financed is less than or equal to $1,000, and $10 if the amount financed exceeds $1,000 (12 CFR 1026.18(d)(2)). For transactions that are subject to 12 CFR 1026.19(e) and (f) (i.e., transactions subject to the TILA-RESPA Integrated Disclosure Rule), the tolerances applicable to finance charges are also applicable to the total of payments disclosure. Tolerances for certain transactions consummated on or after September 30, 1995, are noted below.

- Credit secured by real property or a dwelling (closed-end credit only) (12 CFR 1026.18(d)(1)):
  - The disclosed finance charge is considered accurate if it is not understated by more than $100.
  - Overstatements are not violations.
- Rescission rights after the three-business-day rescission period (closed-end credit only) (12 CFR 1026.23(g)):
  - Tolerances for accuracy, General Rule – One-half of 1 percent tolerance:
    - The disclosed finance charge is considered accurate if it is not understated by more than one-half of 1 percent of the face amount of the note or $100, whichever is greater.
    - The total of payments for transactions subject to 12 CFR 1026.19(e) and (f) is considered accurate for purposes of this section if it is understated by no more than one-half of 1 percent of the face amount of the note or $100, whichever is greater.
    - The disclosed finance charge and the total payments are considered accurate if the amount disclosed was greater than the amount required to be disclosed (i.e., the amount disclosed overstated the actual finance charge or total of payments).
  - Tolerances for accuracy, Refinancings – One percent tolerance, for the initial and subsequent refinancings of residential mortgage transactions when the new loan is made at a different financial institution. (Excludes high-cost mortgage loans subject to 12 CFR 1026.32, transactions in which there are new advances, and new consolidations.):
    - The disclosed finance charge is considered accurate if it is not understated by more than 1 percent of the face amount of the note or $100, whichever is greater,
    - The total of payments for transactions subject to 12 CFR 1026.19(e) and (f) is considered accurate for purposes of this section if it is understated by no more than 1 percent of the face amount of the note or $100, whichever is greater.
    - The disclosed finance charge and the total of payments (for transactions subject to 12 CFR 1026.19(e) and (f)) are considered accurate if the amount disclosed was greater than the amount required to be disclosed (i.e., the amount disclosed overstated the actual finance charge or total of payments).
- Rescission rights in foreclosure (12 CFR 1026.23(h)):

- Right to rescind. After the initiation of foreclosure on the consumer's principal dwelling that secures the obligation, the consumer can rescind if:
    - A mortgage broker fee that should have been included in the finance charge was not included; or
    - The creditor did not provide the properly completed appropriate model form in Appendix H, or a substantially similar notice of rescission.
- Tolerance for disclosures. After the initiation of foreclosure on the consumer's principal dwelling that secures the credit obligation:
    - The disclosed finance charge is considered accurate if it is understated by no more than $35.
    - The total of payments for transactions subject to 12 CFR 1026.19(e) and (f) is considered accurate for purposes of this section if it is understated by no more than $35.
    - The disclosed finance charge and the total of payments (for transactions subject to 12 CFR 1026.19(e) and (f)) are considered accurate if the amount disclosed was greater than the amount required to be disclosed (i.e., the amount disclosed overstated the actual finance charge or total of payments)

NOTES:

- Normally, the finance charge tolerance for a rescindable transaction is either 0.5 percent of the credit transaction or, for certain refinancings, 1 percent of the credit transaction. However, in the event of a foreclosure, the consumer may exercise the right of rescission if the disclosed finance charge is understated by more than $35.
- Tolerances for the total of payments disclosure as discussed in 12 CFR 1026.38(o)(1) are similar to the tolerances applicable to the finance charge. Special tolerances apply to the disclosure of the total of payments for purposes of the right of rescission, for transactions subject to 12 CFR 1026.19(e) and (f). (12 CFR 1026.23(g)(1)(ii), (g)(2)(ii)).
- *See* the "Finance Charge Tolerances" charts within these examination procedures for help in determining appropriate finance charge tolerances.

## Calculating the Finance Charge (Closed-End Credit)

One of the more complex tasks under Regulation Z is determining whether a charge associated with an extension of credit must be included in, or excluded from, the disclosed finance charge. The finance charge initially includes any charge that is, or will be, connected with a specific loan. Charges imposed by third parties are finance charges if the financial institution requires use of the third party. Charges imposed by settlement or closing agents are finance charges if the

bank requires the specific service that gave rise to the charge and the charge is not otherwise excluded. The "Finance Charge" charts within this document briefly summarize the rules that must be considered under (12 CFR 1026.4).

## Prepaid Finance Charges – 12 CFR 1026.18(b)(3)

A prepaid finance charge is any finance charge paid separately to the financial institution or to a third party, in cash or by check before or at closing, settlement, or consummation of a transaction, or withheld from the proceeds of the credit at any time.

Prepaid finance charges effectively reduce the amount of funds available for the consumer's use, usually before or at the time the transaction is consummated.

Examples of finance charges frequently prepaid by consumers are borrower's points, loan origination fees, real estate/construction inspection fees, odd days' interest (interest attributable to part of the first payment period when that period is longer than a regular payment period), mortgage guarantee insurance fees paid to the Federal Housing Administration (FHA), private mortgage insurance (PMI) paid to such companies as the Mortgage Guaranty Insurance Corporation (MGIC), and, in non-real-estate transactions, credit report fees.

## Precomputed Finance Charges

A precomputed finance charge includes, for example, interest added to the note amount that is computed by the add-on, discount, or simple interest methods. If reflected in the face amount of the debt instrument as part of the consumer's obligation, finance charges that are not viewed as prepaid finance charges are treated as precomputed finance charges that are earned over the life of the loan.

## Finance Charge Chart

FINANCE CHARGE = DOLLAR COST OF CONSUMER CREDIT: It includes any charge payable directly or indirectly by the consumer and imposed directly or indirectly by the creditor as a condition of or incident to the extension of credit.

**CHARGES ALWAYS INCLUDED**

- Interest
- Transaction fees
- Loan origination fees
  Consumer points
- Credit guarantee insurance premiums
- Charges imposed on the creditor for purchasing the loan, which are passed on to the consumer
- Discounts for inducing payment by means other than credit
- Mortgage broker fees
- Other examples: Fee for preparing TILA disclosures; real estate construction loan inspection fees; fees for post-consummation tax or flood service policy; required credit life insurance charges

**CHARGES INCLUDED UNLESS CONDITIONS ARE MET**

**CONDITIONS** (Any loan)

| | |
|---|---|
| Premiums for credit life, A&H, or loss of income insurance | Insurance not required, disclosures are made, and consumer authorizes |
| Debt cancellation fees | Coverage not required, disclosures are made, and consumer authorizes |
| Premiums for property or liability insurance | Consumer selects insurance company and disclosures are made |
| Premiums for vendor's single interest (VSI) insurance | Insurer waives right of subrogation, consumer selects insurance company, and disclosures are made |
| Security interest charges (filing fees), insurance in lieu of filing fees and certain notary fees | The fee is for lien purposes, prescribed by law, payable to a third public official and is itemized and disclosed |
| Charges imposed by third parties | Use of the third party is not required to obtain loan and creditor does not retain the charge |
| Charges imposed by third-party closing agents | Creditor does not require and does not retain the fee for the particular service |
| Appraisal and credit report fees | Application fees, if charged to all applicants, are not finance charges. Application fees may include appraisal or credit report fees. |

**CHARGES NOT INCLUDED** IF BONA FIDE AND REASONABLE IN AMOUNT (Residential mortgage transactions and loans secured by real estate)

- Fees for title insurance, title examination, property survey, etc.
- Fees for preparing loan documents, mortgages, and other settlement documents
- Amounts required to be paid into escrow, if not otherwise included in the finance charge
- Notary fees
- Pre-consummation flood and pest inspection fees
- Appraisal and credit report fees

**CHARGES NEVER INCLUDED**

- Charges payable in a comparable cash transaction.
- Fees for unanticipated late payments
- Overdraft fees not agreed to in writing
- Seller's points
- Participation or membership fees
- Discount offered by the seller to induce payment by cash or other means not involving the use of a credit card
- Interest forfeited as a result of interest reduction required by law
- Charges absorbed by the creditor as a cost of doing business

## Instructions for the Finance Charge Chart

The finance charge initially includes any charge that is, or will be, connected with a specific loan. Charges imposed by third parties are finance charges if the creditor requires use of the third party. Charges imposed on the consumer by a settlement agent are finance charges only if the creditor requires the particular services for which the settlement agent is charging the borrower and the charge is not otherwise excluded from the finance charge.

Immediately below the finance charge definition, the chart presents five captions applicable to determining whether a loan-related charge is a finance charge.

The first caption is "charges always included." This category focuses on specific charges given in the regulation or commentary as examples of finance charges.

The second caption, "charges included unless conditions are met," focuses on charges that must be included in the finance charge unless the creditor meets specific disclosure or other conditions to exclude the charges from the finance charge.

The third caption, "conditions," focuses on the conditions that need to be met if the charges identified to the left of the conditions are permitted to be excluded from the finance charge. Although most charges under the second caption may be included in the finance charge at the creditor's option, third-party charges and application fees (listed last under the third caption) must be excluded from the finance charge if the relevant conditions are met. However, inclusion of appraisal and credit report charges as part of the application fee is optional.

The fourth caption, "charges not included," identifies fees or charges that are not included in the finance charge under conditions identified by the caption. If the credit transaction is secured by real property or the loan is a residential mortgage transaction, the charges identified in the column, if they are bona fide and reasonable in amount, must be excluded from the finance charge. For example, if a consumer loan is secured by a vacant lot or commercial real estate, any appraisal fees connected with the loan must not be included in the finance charge.

The fifth caption, "charges never included," lists specific charges provided by the regulation as examples of those that automatically are not finance charges (e.g., fees for unanticipated late payments).

## Annual Percentage Rate Definition – 12 CFR 1026.22 (Closed-End Credit)

Credit costs may vary depending on the interest rate, the amount of the loan and other charges, the timing and amounts of advances, and the repayment schedule. The APR, which must be disclosed in nearly all consumer credit transactions, is designed to take into account all relevant factors and to provide a uniform measure for comparing the cost of various credit transactions.

The APR is a measure of the cost of credit, expressed as a nominal yearly rate. It relates the amount and timing of value received by the consumer to the amount and timing of payments made. The disclosure of the APR is central to the uniform credit cost disclosure envisioned by TILA.

The value of a closed-end credit APR must be disclosed as a single rate only, whether the loan has a single interest rate, a variable interest rate, a discounted variable interest rate, or graduated payments based on separate interest rates (step rates), and it must appear with the segregated disclosures. Segregated disclosures are grouped together and do not contain any information not directly related to the disclosures required under (12 CFR 1026.18).

Since an APR measures the total cost of credit, including costs such as transaction charges or premiums for credit guarantee insurance, it is not an "interest" rate, as that term is generally used. APR calculations do not rely on definitions of interest in state law and often include charges, such as a commitment fee paid by the consumer, that are not viewed by some state usury statutes as interest. Conversely, an APR might not include a charge, such as a credit report fee in a real property transaction, which some state laws might view as interest for usury purposes. Furthermore, measuring the timing of value received and of payments made, which is essential if APR calculations are to be accurate, must be consistent with parameters under Regulation Z.

The APR is often considered to be the finance charge expressed as a percentage. However, two loans could require the same finance charge and still have different APRs because of differing values of the amount financed or of payment schedules. For example, the APR is 12 percent on a loan with an amount financed of $5,000 and 36 equal monthly payments of $166.07 each. It is 13.26 percent on a loan with an amount financed of $4,500 and 35 equal monthly payments of $152.18 each and final payment of $152.22. In both cases the finance charge is $978.52. The APRs on these example loans are not the same because an APR does not only reflect the finance charge, it relates the amount and timing of value received by the consumer to the amount and timing of payments made.

The APR is a function of:

- The amount financed, which is not necessarily equivalent to the loan amount. For example, if the consumer must pay at closing a separate 1 percent loan origination fee (prepaid finance charge) on a $100,000 residential mortgage loan, the loan amount is $100,000, but the amount financed would be $100,000 less the $1,000 loan fee, or $99,000.

- The finance charge, which is not necessarily equivalent to the total interest amount (interest is not defined by Regulation Z but rather by state or other federal law). For example:

    - If the consumer must pay a $25 credit report fee for an auto loan, the fee must be included in the finance charge. The finance charge in that case is the sum of the interest on the loan (i.e., interest generated by the application of a percentage rate against the loan amount) plus the $25 credit report fee.

    - If the consumer must pay a $25 credit report fee for a home improvement loan secured by real property, the credit report fee must be excluded from the finance charge. The finance charge in that case would be only the interest on the loan.

- The payment schedule, which does not necessarily include only principal and interest (P + I) payments. For example:
  - If the consumer borrows $2,500 for a vacation trip at 14 percent simple interest per annum and repays that amount with 25 equal monthly payments beginning one month from consummation of the transaction, the monthly P + I payment will be $115.87, if all months are considered equal, and the amount financed would be $2,500. If the consumer's payments are increased by $2 a month to pay a non-financed $50 loan fee during the life of the loan, the amount financed would remain at $2,500, but the payment schedule would be increased to $117.87 a month; the finance charge would increase by $50; and there would be a corresponding increase in the APR. This would be the case whether or not state law defines the $50 loan fee as interest.
  - If the loan above has 55 days to the first payment and the consumer prepays interest at consummation ($24.31 to cover the first 25 days), the amount financed would be $2,500 - $24.31, or $2,475.69. Although the amount financed has been reduced to reflect the consumer's reduced use of available funds at consummation, the time interval during which the consumer has use of the $2,475.69, 55 days to the first payment, has not changed. Since the first payment period exceeds the limitations of the regulation's minor irregularities provisions (*See* 12 CFR 1026.17(c)(4)), it may not be treated as regular. In calculating the APR, the first payment period must not be reduced by 25 days (i.e., the first payment period may not be treated as one month).

Financial institutions may, if permitted by state or other law, precompute interest by applying a rate against a loan balance using a simple interest, add-on, discount or some other method, and may earn interest using a simple interest accrual system, the Rule of 78s (if permitted by law) or some other method. Unless the financial institution's internal interest earnings and accrual methods involve a simple interest rate based on a 360-day year that is applied over actual days (even that is important only for determining the accuracy of the payment schedule), it is not relevant in calculating an APR, since an APR is not an interest rate (as that term is commonly used under state or other law). Since the APR normally need not rely on the internal accrual systems of a bank, it always may be computed after the loan terms have been agreed upon (as long as it is disclosed before actual consummation of the transaction).

### *Special Requirements for Calculating the Finance Charge and APR*

Proper calculation of the finance charge and APR are of primary importance. The regulation requires that the terms "finance charge" and "annual percentage rate" be disclosed more conspicuously than any other required disclosure, subject to limited exceptions. The finance charge and APR, more than any other disclosures, enable consumers to understand the cost of the credit and to comparison shop for credit. A creditor's failure to disclose those values accurately can result in significant monetary damages to the creditor, either from a class action lawsuit or from a regulatory agency's order to reimburse consumers for violations of law.

If an APR or finance charge is disclosed incorrectly, the error is not, in itself, a violation of the regulation if:

- The error resulted from a corresponding error in a calculation tool used in good faith by the financial institution.
- Upon discovery of the error, the financial institution promptly discontinues use of that calculation tool for disclosure purposes.
- The financial institution notifies the CFPB in writing of the error in the calculation tool (12 CFR 1026.22).

When a financial institution claims a calculation, tool was used in good faith, the financial institution assumes a reasonable degree of responsibility for ensuring that the tool in question provides the accuracy required by the regulation (15 U.S.C. 1640(c)). For example, the financial institution might verify the results obtained using the tool by comparing those results to the figures obtained by using another calculation tool. The financial institution might also verify that the tool, if it is designed to operate under the actuarial method, produces figures similar to those provided by the examples in Appendix J to the regulation. The calculation tool should be checked for accuracy before it is first used and periodically thereafter.

# Subpart B – Open-End Credit

Subpart B relates to open-end credit. It contains rules on account-opening disclosures 12 CFR 1026.6 and periodic statements (12 CFR 1026.7-.8). It also describes special rules that apply to credit card transactions, treatment of payments 12 CFR 1026.10 and credit balances 12 CFR 1026.11, procedures for resolving credit billing errors 12 CFR 1026.13, annual percentage rate calculations 12 CFR 1026.14, rescission requirements 12 CFR 1026.15 and advertising (12 CFR 1026.16).

## Time of Disclosures (Periodic Statements) – 12 CFR 1026.5(b)

For credit card accounts under an open-end (not home-secured) consumer credit plan, creditors must adopt reasonable procedures designed to ensure that periodic statements are mailed or delivered at least 21 days prior to the payment due date disclosed on the periodic statement and that payments are not treated as late for any purpose if they are received within 21 days after mailing or delivery of the statement. In addition, for all open-end consumer credit accounts with grace periods, creditors must adopt reasonable procedures designed to ensure that periodic statements are mailed or delivered at least 21 days prior to the date on which a grace period (if any) expires and that finance charges are not imposed as a result of the loss of a grace period if a payment is received within 21 days after mailing or delivery of a statement. For purposes of this requirement, a “grace period” is defined as a period within which any credit extended may be repaid without incurring a finance charge due to a periodic interest rate. For non-credit card open-end consumer plans without a grace period, creditors must adopt reasonable policies and procedures designed to ensure that periodic statements are mailed or delivered at least 14 days prior to the date on which the required minimum periodic payment is due. Moreover, the creditor must adopt reasonable policies and procedures to ensure that it does not treat as late, a required

minimum periodic payment received by the creditor within 14 days after it has mailed or delivered the periodic statement.

## Subsequent Disclosures (Open-End Credit) – 12 CFR 1026.9

For open-end, not home-secured credit, the following applies:

Creditors are required to provide consumers with 45 days' advance written notice of rate increases and other significant changes to the terms of their credit card account agreements. The list of "significant changes" includes most fees and other terms that a consumer should be aware of before use of the account. Examples of such fees and terms include:

- Penalty fees,
- Transaction fees,
- Fees imposed for the issuance or availability of the open-end plan,
- Grace period, and
- Balance computation method.

Changes that do not require advance notice include:

- Reductions of finance charges;
- Termination of account privileges resulting from an agreement involving a court proceeding;
- Increase in an APR upon expiration of a specified period of time previously disclosed in writing;
- Increases in variable APRs that change according to an index not under the card issuer's control; and
- Rate increases due to the completion of, or failure of a consumer to comply with, the terms of a workout or temporary hardship arrangement, if those terms are disclosed prior to commencement of the arrangement.

A creditor may suspend account privileges, terminate an account, or lower the credit limit without notice. However, a creditor that lowers the credit limit may not impose an over-limit fee or penalty rate as a result of exceeding the new credit limit without a 45-day advance notice that the credit limit has been reduced.

For significant changes in terms (with the exception of rate changes, increases in the minimum payment, certain changes in the balance computation method, and when the change results from the consumer's failure to make a required minimum periodic payment within 60 days after the due date), a creditor must also provide consumers the right to reject the change. If the consumer

does reject the change prior to the effective date, the creditor may not apply the change to the account (12 CFR 1026.9(h)(2)(i)).

In addition, when a consumer rejects a change or increase, the creditor must not:

- Impose a fee or charge, or treat the account as in default solely as a result of the rejection; or
- Require repayment of the balance on the account using a method that is less beneficial to the consumer than one of the following methods: (1) the method of repayment prior to the rejection; (2) an amortization period of not less than five years from the date of rejection; or (3) a minimum periodic payment that includes a percentage of the balance that is not more than twice the percentage included prior to the date of rejection.

## Finance Charge (Open-End Credit) – 12 CFR 1026.6(a)(1) & 1026.6(b)(3)

Each finance charge imposed must be individually itemized. The aggregate total amount of the finance charge need not be disclosed.

### Determining the Balance and Computing the Finance Charge

There are three common methods to determine the balance to which the periodic rate is applied: the previous balance method, the daily balance method, and the average daily balance method, which are described as follows:

- **Previous balance method.** The balance on which the periodic finance charge is computed is based on the balance outstanding at the start of the billing cycle. The periodic rate is multiplied by this balance to compute the finance charge.
- **Daily balance method.** A daily periodic rate is applied to either the balance on each day in the cycle or the sum of the balances on each of the days in the cycle. If a daily periodic rate is multiplied by the balance on each day in the billing cycle, the finance charge is the sum of the products. If the daily periodic rate is multiplied by the sum of all the daily balances, the result is the finance charge.
- **Average daily balance method.** The average daily balance is the sum of the daily balances (either including or excluding current transactions) divided by the number of days in the billing cycle. A periodic rate is then multiplied by the average daily balance to determine the finance charge. If the periodic rate is a daily one, the product of the rate multiplied by the average balance is multiplied by the number of days in the cycle.

In addition to those common methods, financial institutions have other ways of calculating the balance to which the periodic rate is applied. By reading the financial institution's explanation, the examiner should be able to calculate the balance to which the periodic rate was applied. In some cases, the examiner may need to obtain additional information from the financial institution to verify the explanation disclosed. If the examiner is unable to understand the disclosed

explanation, he or she should discuss the explanation with management, and should remind management of Regulation Z's requirement that disclosures be clear and conspicuous.

When a balance is determined without first deducting all credits and payments made during the billing cycle, that fact and the amount of the credits and payments must be disclosed.

If the financial institution uses the daily balance method and applies a single daily periodic rate, disclosure of the balance to which the rate was applied may be stated as any of the following:

- **A balance for each day in the billing cycle.** The daily periodic rate is multiplied by the balance on each day and the sum of the products is the finance charge.
- **A balance for each day in the billing cycle on which the balance in the account changes.** The finance charge is figured by the same method as discussed previously, but the statement shows the balance only for those days on which the balance changed.
- **The sum of the daily balances during the billing cycle.** The balance on which the finance charge is computed is the sum of all the daily balances in the billing cycle. The daily periodic rate is multiplied by that balance to determine the finance charge.
- **The average daily balance during the billing cycle.** If this is stated, the financial institution may, at its option, explain that the average daily balance is or can be multiplied by the number of days in the billing cycle and the periodic rate applied to the product to determine the amount of interest.

If the financial institution uses the daily balance method but applies two or more daily periodic rates, the sum of the daily balances may not be used. Acceptable ways of disclosing the balances include:

- A balance for each day in the billing cycle;
- A balance for each day in the billing cycle on which the balance in the account changes; or
- Two or more average daily balances. If the average daily balances are stated, the financial institution may, at its option, explain that interest is or may be determined by 1) multiplying each of the average daily balances by the number of days in the billing cycle (or if the daily rate varied during the cycle, by multiplying the number of days that the applicable rate was in effect); 2) by multiplying each of the results by the applicable daily periodic rate; and 3) adding these products together.

In explaining the method used to find the balance on which the finance charge is computed, the financial institution need not reveal how it allocates payments or credits. That information may be disclosed as additional information, but all required information must be clear and conspicuous.

NOTE: 12 CFR 1026.54 prohibits a credit card issuer from calculating finance charges based on balances for days in previous billing cycles as a result of the loss of a grace period (a practice sometimes referred to as "double-cycle billing").

### Finance Charge Resulting from Two or More Periodic Rates

Some financial institutions use more than one periodic rate in computing the finance charge. For example, one rate may apply to balances up to a certain amount and another rate to balances more than that amount. If two or more periodic rates apply, the financial institution must disclose all rates and conditions. The range of balances to which each rate applies also must be disclosed (12 CFR 1026.6(a)(1)). It is not necessary, however, to break the finance charge into separate components based on the different rates.

## Annual Percentage Rate (Open-End Credit)

The disclosed APR on an open-end credit account is accurate if it is within one-eighth of one percentage point of the APR calculated under Regulation Z.

### Determination of APR – 12 CFR 1026.14

The basic method for determining the APR in open-end credit transactions involves multiplying each periodic rate by the number of periods in a year. This method is used in all types of open-end disclosures, including:

- The corresponding APR in the initial disclosures,
- The corresponding APR on periodic statements,
- The APR in early disclosures for credit card accounts,
- The APR in early disclosures for home-equity plans,
- The APR in advertising, and
- The APR in oral disclosures.

The corresponding APR is prospective, and it does not involve any particular finance charge or periodic balance.

A second method of calculating the APR is the quotient method. At a creditor's option, the quotient method may be disclosed on periodic statements for home-equity plans subject to 12 CFR 1026.40 (home-equity lines of credit, or HELOCs).[15] The quotient method reflects the annualized equivalent of the rate that was actually applied during a cycle. This rate, also known as the effective APR, will differ from the corresponding APR if the creditor applies minimum, fixed, or transaction charges to the account during the cycle (12 CFR 1026.14(c)).

[15] If a creditor does not disclose the effective (or quotient method) APR on a HELOC periodic statement, it must instead disclose the charges (fees and interest) imposed as provided in 12 CFR 1026.7(a).

### *Brief Outline for Open-End Credit APR Calculations on Periodic Statements*

NOTE: Assume monthly billing cycles for each of the calculations below.

I. Basic method for determining the APR in an open-end credit transaction. This is the corresponding APR (12 CFR 1026.14(b)).

   A. Monthly rate x 12 = APR

II. Optional effective APR that may be disclosed on HELOC periodic statements.

   A. APR when only periodic rates are imposed (12 CFR 1026.14(c)(1)).

      1. Monthly rate x 12 = APR

         Or

      2. (Total finance charge / sum of the balances) x 12 = APR

   B. APR when minimum or fixed charge but not transaction charge imposed (12 CFR 1026.14(c)(2)).

      1. (Total finance charge / amount of applicable balance[16]) x 12 = APR[17]

   C. APR when the finance charge includes a charge related to a specific transaction (such as a cash advance fee), even if the total finance charge also includes any other minimum, fixed, or other charge not calculated using a periodic rate (12 CFR 1026.14(c)(3)).

      1. (Total finance charge / (all balances + other amounts on which a finance charge was imposed during the billing cycle without duplication[18]) x 12 = APR[19]

   D. APR when the finance charge imposed during the billing cycle includes a minimum or fixed charge that does not exceed 50 cents for a monthly or longer billing cycle (or pro rata part of 50 cents for a billing cycle shorter than monthly) (12 CFR 1026.14(c)(4)).

      1. Monthly rate x 12 = APR

[16] For the following formulas, the APR cannot be determined if the applicable balance is zero. (12 CFR 1026.14(c)(2))

[17] Loan fees, points, or similar finance charges that relate to the opening of the account must not be included in the calculation of the APR.

[18] The sum of the balances may include the average daily balance, adjusted balance, or previous balance method. When a portion of the finance charge is determined by application of one or more daily periodic rates, the sum of the balances also means the average of daily balances. *See* Appendix F to Regulation Z.

[19] Cannot be less than the highest periodic rate applied, expressed as an APR. Loan fees, points, or similar finance charges that relate to the opening of the account must not be included in the calculation of the APR.

E. APR calculation when daily periodic rates are applicable if only the periodic rate is imposed or when a minimum or fixed charge but not a transactional charge is imposed (12 CFR 1026.14(d)).

1. (Total finance charge / average daily balance) x 12 = APR

Or

2. (Total finance charge / sum of daily balances) x 365 = APR

## Change in Terms Notices for Home-Equity Plans Subject to 12 CFR 1026.40 – 12 CFR 1026.9(c)

Servicers are required to provide consumers with 15 days' advance written notice of a change to any term required to be disclosed under 12 CFR 1026.6(a) or where the required minimum periodic payment is increased. Notice is not required when the change involves a reduction of any component of a finance charge or other charge or when the change results from an agreement involving a court proceeding. If the creditor prohibits additional extensions of credit or reduces the credit limit in certain circumstances (if permitted by contract), a written notice must be provided no later than three business days after the action is taken and must include the specific reasons for the action. If the creditor requires the consumer to request reinstatement of credit privileges, the notice also must state that fact.

## Payments – 12 CFR 1026.10 (Open-End Credit)

Creditors are required to credit a payment to the consumer's account as of the date of receipt, except when a delay in crediting does not result in a finance or other charge. If a creditor fails to credit a payment, as required by 12 CFR 1026.10(a) or (b), in time to avoid the imposition of finance or other charges, the creditor shall adjust the consumer's account so that the charges imposed are credited to the consumer's account during the next billing cycle.

If a card issuer makes a material change in the address for receiving payments or procedures for handling payments, and such change causes a material delay in the crediting of a payment to the consumer's account during the 60-day period following the date on which such change took effect, the card issuer may not impose any late fee or finance charge for a late payment on the credit card account during the 60-day period following the date on which the change took effect.

## Timely Settlement of Estates – 12 CFR 1026.11(c)

Issuers are required to establish procedures to ensure that any administrator of an estate can resolve the outstanding credit card balance of a deceased account holder in a timely manner. If an administrator requests the amount of the balance:

- The issuer is prohibited from imposing additional fees on the account;
- The issuer is required to disclose the amount of the balance to the administrator in a timely manner (safe harbor of 30 days); and

- If the balance is paid in full within 30 days after disclosure of the balance, the issuer must waive or rebate any trailing or residual interest charges that accrued on the balance following the disclosure.

## Billing Error Resolution – 12 CFR 1026.13 (Open-End Credit)

A billing error notice is a written notice from a consumer that:

- Is received by a creditor at the address disclosed under 12 CFR 1026.7(a)(9) or (b)(9), as applicable, no later than 60 days after the creditor transmitted the first periodic statement that reflects the alleged billing error;
- Enables the creditor to identify the consumer's name and account number; and
- To the extent possible, indicates the consumer's belief and the reasons for the belief that a billing error exists, and the type, date, and amount of the error.

The creditor shall mail or deliver written acknowledgment to the consumer within 30 days of receiving a billing error notice, unless the creditor has complied with the appropriate resolution procedures of 12 CFR 1026.13(e) and (f), as applicable, within the 30-day period. Furthermore, the creditor credit must comply with the appropriate resolution procedures provided by 12 CFR 1026.13(e) and (f), as applicable, within two complete billing cycles (but in no event later than 90 days) after receiving a billing error notice.

Until a billing error is resolved, the following rules apply:

- The consumer need not pay (and the creditor may not try to collect) any portion of any required payment that the consumer believes is related to the disputed amount (including related finance or other charges).
- The creditor or its agent is also prohibited from making or threatening to make an adverse report to any person about the consumer's credit standing, or report that an amount or account is delinquent, because the consumer failed to pay the disputed amount or related finance or other charges.
- A creditor shall not accelerate any part of the consumer's indebtedness or restrict or close a consumer's account solely because the consumer has exercised in good faith rights provided by this section.

A creditor is not prohibited, however, from taking action to collect any undisputed portion of the item or bill; from deducting any disputed amount and related finance or other charges from the consumer's credit limit on the account; or from reflecting a disputed amount and related finance or other charges on a periodic statement, provided that the creditor indicates on or with the periodic statement that payment of any disputed amount and related finance or other charges is not required pending the creditor's compliance with this section.

If a creditor determines that a billing error occurred as asserted, it must within the applicable time limits:

- Correct the billing error and credit the consumer's account with any disputed amount and related finance or other charges, as applicable; and
- Mail or deliver notification of the correction to the consumer.

If, after conducting a reasonable investigation, a creditor determines that no billing error occurred or that a different billing error occurred from that asserted, the creditor must within the applicable time limits:

- Mail or deliver to the consumer an explanation that sets forth the reasons for the creditor's belief that the billing error alleged by the consumer is incorrect in whole or in part;
- Furnish copies of documentary evidence of the consumer's indebtedness, if the consumer so requests; and
- If a different billing error occurred, correct the billing error, and credit the consumer's account with any disputed amount and related finance or other charges, as applicable.

If a creditor determines that a consumer owes all or part of the disputed amount and related finance or other charges, determine whether the credit complied with the requirements provided in 12 CFR 1026.13(g).

A creditor that has fully complied with the requirements of 12 CFR 1026.13 has no further responsibilities under this section (other than as provided in 12 CFR 1026.13(g)(4)) if a consumer reasserts substantially the same billing error.

NOTE: Special credit card provisions provide additional protections for consumers, including provisions relating to unauthorized use (12 CFR 1026.12).

## Minimum Payments – 12 CFR 1026.7(b)(12)

For credit card accounts under an open-end credit plan, card issuers generally must disclose on periodic statements an estimate of the amount of time and the total cost (principal and interest) involved in paying the balance in full by making only the minimum payments, an estimate of the monthly payment amount required to pay off the balance in 36 months and the total cost (principal and interest) of repaying the balance in 36 months. Card issuers also must disclose a minimum payment warning and an estimate of the total interest that a consumer would save if that consumer repaid the balance in 36 months, instead of making minimum payments.

## Advertising for Open-End Plans – 12 CFR 1026.16

The regulation requires that loan product advertisements provide accurate and balanced information, in a clear and conspicuous manner, about rates, monthly payments, and other loan

features. The advertising rules ban several deceptive or misleading advertising practices, including representations that a rate or payment is "fixed" when in fact it can change.

If an advertisement for credit states specific credit terms, it must state only those terms that actually are or will be arranged or offered by the creditor. If any finance charges or other charges are set forth in an advertisement, the advertisement must also clearly and conspicuously state the following:

- Any minimum, fixed, transaction, activity or similar charge that is a finance charge under 12 CFR 1026.4 that could be imposed;
- Any periodic rate that may be applied expressed as an APR as determined under 12 CFR 1026.14(b). If the plan provides for a variable periodic rate, that fact must be disclosed; and
- Any membership or participation fee that could be imposed.

If any finance charges or other charge or payment terms are set forth, affirmatively or negatively, in an advertisement for a home-equity plan subject to the requirements of 12 CFR 1026.40, the advertisement also must clearly and conspicuously set forth the following:

- Any loan fee that is a percentage of the credit limit under the plan and an estimate of any other fees imposed for opening the plan, stated as a single dollar amount or a reasonable range;
- Any periodic rate used to compute the finance charge, expressed as an APR as determined under 12 CFR 1026.14(b); and
- The maximum APR that may be imposed in a variable-rate plan.

Regulation Z's open-end home-equity plan advertising rules include a clear and conspicuous standard for home-equity plan advertisements, consistent with the approach taken in the advertising rules for consumer leases under Regulation M. Commentary provisions clarify how the clear and conspicuous standard applies to advertisements of home-equity plans with promotional rates or payments, and to Internet, television, and oral advertisements of home-equity plans. The regulation allows alternative disclosures for television and radio advertisements for home-equity plans. The regulation also requires that advertisements adequately disclose not only promotional plan terms, but also the rates or payments that will apply over the term of the plan.

Regulation Z also contains provisions implementing the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, which requires disclosure of the tax implications of certain home-equity plans.

# Subpart C – Closed-End Credit

Subpart C relates to closed-end credit. It contains rules on disclosures (12 CFR 1026.17-.20), treatment of credit balances (12 CFR 1026.21), annual percentage rate calculations (12 CFR 1026.22), rescission rights (12 CFR 1026.23), and advertising (12 CFR 1026.24).

The TILA-RESPA Integrated Disclosures must be given for most closed-end transactions secured by real property or a cooperative unit, other than a reverse mortgage subject to 12 CFR 1026.33. The TILA-RESPA Integrated Disclosures do not apply to HELOCs, reverse mortgages, or mortgages secured by a mobile home or by a dwelling that is not attached to real property. Truth in Lending disclosures (TIL disclosures) and the Consumer Handbook on Adjustable Rate Mortgages (CHARM) booklet must still be provided for certain closed-end loan transactions.

## I. Disclosures, Generally

### A. Timing

Generally, all disclosures provided to consumers must be made clearly and conspicuously in writing, in a form that the consumer may keep (12 CFR 1026.17(a), 1026.37(o), 1026.38(t)). However, the timing of the disclosures may change depending on the transaction (12 CFR 1026.19(a), 1026.19(e)(1)(iii), 1026.19(f)(1)(ii), 1026.19(g)).

Disclosures in connection with non-mortgage closed-end loans and specified housing assistance loan programs for low- and moderate-income consumers must be provided before consummation of the transaction (12 CFR 1026.3).

For most closed-end transactions secured by real property or a cooperative unit, other than a reverse mortgage subject to 12 CFR 1026.33 (including construction-only loans, loans secured by vacant land or by 25 or more acres, and credit extended to certain trusts for tax or estate planning purposes), disclosures must be provided in accordance with the timing requirements outlined in 12 CFR 1026.19(e), (f) and (g). Generally, a creditor is required to mail or deliver the Loan Estimate within three business days of receipt of the consumer's loan application and to ensure that the consumer receives the Closing Disclosure no later than three business days before loan consummation (12 CFR 1026.19(e)(iii), 1026.19(f)(1)(ii)). If the loan is a purchase transaction, the special information booklet must also be provided within three business days of receipt of the consumer's application (12 CFR 1026.19(g)). The specifics of these disclosure timing requirements are further discussed below, including a discussion about revised disclosures.

Mortgage loans not subject to 12 CFR 1026.19(e) and (f) (e.g., reverse mortgages, and chattel-dwelling loans) have different disclosure requirements. For reverse mortgages, disclosures must be delivered or mailed to the consumer no later than the third business day after a creditor receives the consumer's written application (12 CFR 1026.19(a)). For chattel-dwelling mortgage loans, disclosures must be provided to the consumer prior to consummation of the loan (12 CFR 1026.17(b)). Revised disclosures are also required within three business days of consummation if certain mortgage loan terms change (12 CFR 1026.19(a)(2)). For loans like reverse mortgages,

the consumer will receive the Good Faith Estimate (GFE), HUD-1 Settlement Statement (HUD-1), and TIL disclosures as required under the applicable sections of both TILA and RESPA. Consumers receive TIL disclosures for chattel-dwelling loans that are not secured by land, but the GFE and the HUD-1 are not required. Finally, certain variable-rate transactions secured by a dwelling have additional disclosure obligations with specific timing requirements both prior to and after consummation (*see* 12 CFR 1026.20(c) and (d) below).

## B. Basis for Disclosures

### *1. Generally*

Disclosures provided for closed-end transactions must reflect the credit terms to which the parties will be legally bound as of the outset of the credit transaction. If information required for the disclosures is unknown, the creditor may provide the consumer with an estimate, using the best information reasonably available. The disclosure must be clearly marked as an estimate.

**Variable and Adjustable Rate**

If the terms of the legal obligation allow the financial institution, after consummation of the transaction, to increase the APR, the financial institution must furnish the consumer with certain information on variable rates. Variable-rate disclosures are not applicable to rate increases resulting from delinquency, default, assumption, acceleration, or transfer of the collateral.

Some of the more important transaction-specific variable-rate disclosure requirements follow.

- Disclosures for variable-rate loans must be given for the full term of the transaction and must be based on the terms in effect at the time of consummation.
- If the variable-rate transaction includes either a seller buy-down that is reflected in a contract or a consumer buy-down, the disclosed APR should be a composite rate based on the lower rate for the buy-down period and the rate that is the basis for the variable-rate feature for the remainder of the term.
- If the initial rate is not determined by the index or formula used to make later interest rate adjustments, as in a discounted variable-rate transaction, the disclosed APR must reflect a composite rate based on the initial rate for as long as it is applied and, for the remainder of the term, the rate that would have been applied using the index or formula at the time of consummation (i.e., the fully indexed rate).
    - If a loan contains a rate or payment cap that would prevent the initial rate or payment, at the time of the adjustment, from changing to the fully indexed rate, the effect of that rate or payment cap needs to be reflected in the disclosures.
    - The index at consummation need not be used if the contract provides a delay in the implementation of changes in an index value (e.g., the contract indicates that future rate changes are based on the index value in effect for some specified period, such as 45 days before the change date). Instead, the financial institution may use any rate from the date

of consummation back to the beginning of the specified period (e.g., during the previous 45-day period).

- If the initial interest rate is set according to the index or formula used for later adjustments but is set at a value as of a date before consummation, disclosures should be based on the initial interest rate, even though the index may have changed by the consummation date.

# II. Finance Charge, Amount Financed and APRs

## A. Finance Charge – 12 CFR 1026.18(d), 1026.38(o)(2)

The total amount of the finance charge must be disclosed for all loans.

In a transaction secured by real property or a dwelling, the disclosed finance charge and other disclosures affected by the disclosed finance charge (including the amount financed and the annual percentage rate) must be treated as accurate if the amount disclosed as the finance charge (1) is understated by no more than $100 or (2) is greater than the amount required to be disclosed.

## B. Amount Financed – 12 CFR 1026.18(b), 1026.18(c), 1026.38(o)(3)

### 1. Definition

The amount financed is the net amount of credit extended for the consumer's use. It should not be assumed that the amount financed under the regulation is equivalent to the note amount, proceeds, or principal amount of the loan. The amount financed normally equals the total of payments less the finance charge.

To calculate the amount financed, all amounts and charges connected with the transaction, either paid separately or included in the note amount, must first be identified. Any prepaid, precomputed, or other finance charge must then be determined.

The amount financed must not include any finance charges. If finance charges have been included in the obligation (either prepaid or precomputed), they must be subtracted from the face amount of the obligation when determining the amount financed. The resulting value must be reduced further by an amount equal to any prepaid finance charge paid separately. The final resulting value is the amount financed.

When calculating the amount financed, finance charges (whether in the note amount or paid separately) should not be subtracted more than once from the total amount of an obligation. Charges not in the note amount and not included in the finance charge (e.g., an appraisal fee paid separately in cash on a real estate loan) are not required to be disclosed under Regulation Z and must not be included in the amount financed. An itemization of the amount financed is required

(except as provided in 12 CFR 1026.18(c)(2) or (c)(3)), unless the loan is subject to 12 CFR 1026.19(e) and (f) (i.e., most closed-end mortgage loans).

2. **Calculating the Amount Financed**

A consumer signs a note secured by real property in the amount of $5,435. The note amount includes $5,000 in proceeds disbursed to the consumer, $400 in precomputed interest, $25 paid to a credit reporting agency for a credit report, and a $10 service charge. Additionally, the consumer pays a $50 loan fee separately in cash at consummation. The consumer has no other debt with the financial institution. The amount financed is $4,975.

The amount financed may be calculated by first subtracting all finance charges included in the note amount ($5,435 - $400 - $10 = $5,025). The $25 credit report fee is not a finance charge because the loan is secured by real property. The $5,025 is further reduced by the amount of prepaid finance charges paid separately, for an amount financed of $5,025 - $50 = $4,975. The answer is the same whether finance charges included in the obligation are considered prepaid or precomputed finance charges.

The financial institution may treat the $10 service charge as an addition to the loan amount and not as a prepaid finance charge. If it does, the loan principal would be $5,000. The $5,000 loan principal does not include either the $400 or the $10 precomputed finance charge in the note. The loan principal is increased by other amounts that are financed that are not part of the finance charge (the $25 credit report fee) and reduced by any prepaid finance charges (the $50 loan fee, not the $10 service charge) to arrive at the amount financed of $5,000 + $25 - $50 = $4,975.

Conversely, the financial institution may treat the $10 service charge as a prepaid finance charge. If it does, the loan principal would be $5,010. The $5,010 loan principal does not include the $400 precomputed finance charge. The loan principal is increased by other amounts that are financed that are not part of the finance charge (the $25 credit report fee) and reduced by any prepaid finance charges (the $50 loan fee and the $10 service charge withheld from loan proceeds) to arrive at the same amount financed of $5,010 + $25 - $50 - $10 = $4,975.

## C. Payment Schedule – 12 CFR 1026.18(g)

For transactions that are not subject to 12 CFR 1026.19(e) and (f), the disclosed payment schedule must reflect all components of the finance charge. It includes all payments scheduled to repay loan principal, interest on the loan, and any other finance charge payable by the consumer after consummation of the transaction.

However, any finance charge paid separately before or at consummation (e.g., odd days' interest) is not part of the payment schedule. It is a prepaid finance charge that must be reflected as a reduction in the value of the amount financed.

At the creditor's option, the payment schedule may include amounts beyond the amount financed and finance charge (e.g., certain insurance premiums or real estate escrow amounts such as taxes added to payments). However, when calculating the APR, the creditor must disregard such amounts.

If the obligation is a renewable balloon payment instrument that unconditionally obligates the financial institution to renew the short-term loan at the consumer's option or to renew the loan subject to conditions within the consumer's control, the payment schedule must be disclosed using the longer term of the renewal period or periods. The long-term loan must be disclosed with a variable-rate feature.

If there are no renewal conditions or if the financial institution guarantees to renew the obligation in a refinancing, the payment schedule must be disclosed using the shorter balloon payment term. The short-term loan must be disclosed as a fixed-rate loan, unless it contains a variable-rate feature during the initial loan term.

## D. Annual Percentage Rate (Closed-End Credit) – 12 CFR 1026.22

### *1. Calculating the Annual Percentage Rate – 12 CFR 1026.22*

The APR must be determined under one of the following:

- The actuarial method, which is defined by Regulation Z and explained in Appendix J to the regulation.
- The U.S. Rule, which is permitted by Regulation Z and briefly explained in Appendix J to the regulation. The U.S. Rule is an accrual method that seems to have first surfaced officially in an early 19th-century U.S. Supreme Court case, *Story v. Livingston*, 38 U.S. 359 (1839).

Whichever method is used by the financial institution, the rate calculated will be accurate if it is able to "amortize" the amount financed while it generates the finance charge under the accrual method selected. Financial institutions also may rely on minor irregularities and accuracy tolerances in the regulation, both of which effectively permit somewhat imprecise, but still legal, APRs to be disclosed.

### *2. Accuracy Tolerances*

The disclosed APR on a closed-end transaction is accurate for:

- Regular transactions (which include any single advance transaction with equal payments and equal payment periods, or an irregular first payment period and/or a first or last irregular payment), if the disclosed APR is within one-eighth of one percentage point of the APR calculated under Regulation Z (12 CFR 1026.22(a)(2));
- Irregular transactions (which include multiple advance transactions and other transactions not considered regular), if the disclosed APR is within one-quarter of one percentage point of the APR calculated under Regulation Z (12 CFR 1026.22(a)(3));
- Mortgage transactions, if the disclosed APR is within one-eighth of one percentage point for regular transactions or one-quarter of one percentage point for irregular transactions **or if**:

  i. The rate results from the disclosed finance charge, and:

(A) The disclosed finance charge is considered accurate under 12 CFR 1026.18(d)(1) or 1026.38(o)(2), as applicable; or

(B) The disclosed finance charge is calculated incorrectly but is considered accurate for purposes of rescission, under 12 CFR 1026.23(g) or (h), whichever applies (12 CFR 1026.22(a)(4)).

ii. The disclosed finance charge is calculated incorrectly but is considered accurate under 12 CFR 1026.18(d)(1) or 1026.38(o)(2), as applicable, or 12 CFR 1026.23 (g) or (h), and either:

(A) The finance charge is understated, and the disclosed APR is also understated but is closer to the actual APR than the APR that would be considered accurate under 12 CFR 1026.22(a)(4); or

(B) The disclosed finance charge is overstated, and the disclosed APR is also overstated but is closer to the actual APR than the APR that would be considered accurate under (12 CFR 1026.22(a)(4)).

For example, in an irregular transaction subject to a tolerance of one-fourth of one percentage point, if the actual APR is 9.00 percent and a $75 omission from the finance charge corresponds to a rate of 8.50 percent that is considered accurate under 12 CFR 1026.22(a)(4), a disclosed APR of 8.65 percent is considered accurate under (12 CFR 1026.22(a)(5)). However, a disclosed APR below 8.50 percent or above 9.25 percent would not be considered accurate.

### *3. Construction-Only and Construction-Permanent Loans – 12 CFR 1026.17(c) ((6), 12 CFR 1026.37 & .38, and Appendix D*

Due to the structure of construction-permanent and certain other multiple-advance loans, Regulation Z includes certain optional provisions to help a creditor estimate the components of the APR and finance charge computations for these loans. In many instances, the amount and dates of advances are not predictable with certainty since they depend on the progress of the work. Regulation Z provides that the APR and finance charge for such loans may be estimated for disclosure based on the best information reasonably available at the time of disclosure (12 CFR 1026.17(c)(2)(i)). Further, a creditor has optionality as to whether it discloses the advances separate or together as one transaction in certain circumstances. First, a series of advances under an agreement to extend credit up to a certain amount may be considered as one transaction or disclosed as separate transactions (12 CFR 1026.17(c)(6)(i)). Second, when a multiple-advance loan to finance the construction of a dwelling 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 (12 CFR 1026.17(c)(6)(ii)). Because construction loans or construction-permanent loans may be disclosed as one transaction, or as multiple transactions, computations can be impacted by this decision.

If the actual schedule of advances is not known, the methods set forth in Appendix D may be used to estimate the interest portion of the finance charge and the annual percentage rate and to make disclosures (12 CFR Part 1026 App. D).

At its option, the financial institution may rely on the representations of other parties to acquire necessary information (for example, it might look to the consumer for the dates of advances). In addition, if either the amounts or dates of advances are unknown (even if some of them are known), the financial institution may, at its option, use Appendix D to the regulation (and its associated commentary) to make calculations and disclosures. The finance charge and payment schedule obtained through Appendix D may be used with volume one of the Bureau's APR tables or with any other appropriate computation tool to determine the APR. If the financial institution elects not to use Appendix D, or if Appendix D cannot be applied to a loan (e.g., Appendix D does not apply to a combined construction-permanent loan if the payments for the permanent loan begin during the construction period), the financial institution must make its estimates under 12 CFR 1026.17(c)(2) and calculate the APR using multiple-advance formulas.

**Interest Reserves**

In a multiple-advance construction loan, a creditor may establish an "interest reserve" to ensure that interest is paid as it accrues by designating a portion of the loan amount for that interest payment purpose. If the creditor requires interest reserves for construction loans, Appendix D provides further guidance. Among other things, the amount of interest reserves included in the commitment amount is not treated as a prepaid finance charge, whether the interest reserve is the same as or different from the estimated interest figure calculated under Appendix D (Comment App. D-5).

If a creditor permits a consumer to make interest payments as they become due, the interest reserve should be disregarded in the disclosures and calculations under Appendix D (Comment App. D-5.i).

If a creditor requires the establishment of an interest reserve and automatically deducts interest payments from the reserve amount rather than allow the consumer to make interest payments as they become due, the fact that interest will accrue on those interest payments as well as the other loan proceeds must be reflected in the calculations and disclosures. To reflect the effects of such compounding, the creditor should use the formula in Appendix D (Comment App. D-5.ii).

**Fees and Charges**

In the case of a construction-permanent loan that a creditor chooses to disclose as multiple transactions, the creditor must allocate to the construction transaction finance charges and points and fees that would not be imposed but for the construction financing. Those amounts must be in disclosures for the construction phase and may not be included in the disclosures for the permanent phase. If a creditor charges separate amounts for the finance charges and points and fees for the construction phase and the permanent phase, such amounts must be allocated to the phase for which they are charged. If a creditor charges an origination fee for construction financing only but charges a greater origination fee for construction-permanent financing, the

difference between the two fees must be allocated to the permanent phase. All other finance charges and points and fees must be allocated to permanent financing. Fees and charges that are not used to compute the finance charge or points and fees may be allocated between the transactions in any manner the creditor chooses (Comment 17(c)(6)-5).

### *4. 360-Day and 365-Day Years – 12 CFR 1026.17(c)(3)*

Confusion often arises over whether to use the 360-day or 365-day year in computing interest, particularly when the finance charge is computed by applying a daily rate to an unpaid balance. Many single-payment loans or loans payable on demand are in this category. There are also loans in this category that call for periodic installment payments. Regulation Z does not require the use of one method of interest computation in preference to another (although state law may). It does, however, permit financial institutions to disregard the fact that months have different numbers of days when calculating and making disclosures. This means financial institutions may base their disclosures on calculation tools that assume all months have an equal number of days, even if their practice is to take account of the variations in months to collect interest.

For example, a financial institution may calculate disclosures using a financial calculator based on a 360-day year with 30-day months, when, in fact, it collects interest by applying a factor of 1/365 of the annual interest rate to actual days.

Disclosure violations may occur, however, when a financial institution applies a daily interest factor based on a 360-day year to the actual number of days between payments. In those situations, the financial institution must disclose the higher values of the finance charge, the APR, and the payment schedule resulting from this practice.

For example, a 12 percent simple interest rate divided by 360 days results in a daily rate of .033333 percent. If no charges are imposed except interest, and the amount financed is the same as the loan amount, applying the daily rate on a daily basis for a 365-day year on a $10,000 one-year, single-payment, unsecured loan results in an APR of 12.17 percent (0.033333 percent x 365 = 12.17 percent), and a finance charge of $1,216.67. There would be a violation if the APR were disclosed as 12 percent or if the finance charge were disclosed as $1,200 (12 percent x $10,000).

However, if there are no other charges except interest, the application of a 360-day year daily rate over 365 days on a regular loan would not result in an APR in excess of the one-eighth of one percentage point APR tolerance unless the nominal interest rate is greater than 9 percent. For irregular loans, with one-quarter of one percentage point APR tolerance, the nominal interest rate would have to be greater than 18 percent to exceed the tolerance.

NOTE: Notwithstanding the APR tolerance, a creditor's disclosures must reflect the terms of the legal obligation between the parties (12 CFR 1026.17(c)(1)), and the APR must be determined in accordance with either the actuarial method or the U.S. Rule method (12 CFR 1026.22(a)(1)). A creditor may not ignore, for disclosure purposes, the effects of applying a 360-day year daily rate over 365 days (Comment 17(c)(3)-1.ii).

## E. Required Deposit – 12 CFR 1026.18(r)

A required deposit, with certain exceptions, is one that the financial institution requires the consumer to maintain as a condition of the specific credit transaction. It can include a compensating balance or a deposit balance that secures the loan. The effect of a required deposit is not reflected in the APR. Also, a required deposit is not a finance charge since it is eventually released to the consumer. A deposit that earns at least 5 percent per year need not be considered a required deposit.

## III. Transactions with TILA-RESPA Integrated Disclosures – Generally

On December 31, 2013, the CFPB published a final rule implementing Sections 1098(2) and 1100A(5) of the Dodd-Frank Act, which directed the CFPB to publish a single, integrated disclosure for mortgage loan transactions, which includes mortgage loan disclosure requirements under TILA and Sections 4 and 5 of RESPA. The amendments in the final rule, referred to as the TILA-RESPA Integrated Disclosure Rule, or TRID, are applicable to covered closed-end mortgage loans for which a creditor or mortgage broker received an application on or after October 3, 2015. As a result, Regulation Z now houses the integrated forms, timing, and related disclosure requirements for most closed-end consumer mortgage loans.

The integrated disclosures are not used to disclose information about reverse mortgages, HELOCs, chattel-dwelling loans such as loans secured by a mobile home or by a dwelling that is not attached to real property (i.e., land), or other transactions not covered by the TILA-RESPA Integrated Disclosure Rule. The final rule also does not apply to loans made by a creditor who makes five or fewer mortgages in a year. Creditors originating these types of mortgages use, as applicable, the GFE, HUD-1, and TIL disclosures.

Most closed-end mortgage loans are exempt from the requirement to provide the GFE, HUD-1, and servicing disclosure requirements of (12 CFR 1024.6, 1024.7, 1024.8, 1024.10, and 1024.33(a)). Instead, these loans are subject to disclosure, timing, and other requirements under TILA and Regulation Z. Specifically, the provisions mentioned in the first sentence of this paragraph do not apply to the following federally related mortgage loans:

- Loans subject to the TILA-RESPA Integrated Disclosure requirements for certain closed-end consumer credit transactions secured by real property or a cooperative unit set forth in 12 CFR 1026.19(e), (f), and (g); or

- Certain no-interest loans secured by subordinate liens made for the purpose of down payment or similar home buyer assistance, property rehabilitation assistance, energy efficiency assistance, or foreclosure avoidance or prevention (12 CFR 1026.3(h)).

NOTE: A creditor may not use the TILA-RESPA Integrated Disclosure forms instead of the GFE, HUD-1, and TIL forms for transactions that continue to be covered by TILA or RESPA that require those disclosures (e.g., reverse mortgages).

**Summary of Applicable Disclosure Requirements**:

| Use TILA-RESPA Integrated Disclosures (see Regulation Z): | Continue to use TIL[20] and RESPA disclosures (as applicable): |
|---|---|
| • Most closed-end mortgage loans, including:<br>  o Construction-only loans<br>  o Loans secured by vacant land or by 25 or more acres | • HELOCs (subject to disclosure requirements under 12 CFR 1026.40)<br>• Reverse mortgages[21] (subject to existing TIL and GFE disclosures)<br>• Chattel-secured mortgages (i.e., mortgages secured by a mobile home or by a dwelling that is not attached to real property, such as land) (subject to existing TIL disclosures, and not RESPA) |
| NOTE: In both cases, there is a partial exemption from these disclosures under 12 CFR 1026.3(h) for loans secured by subordinate liens and associated with certain housing assistance loan programs for low- and moderate-income persons. | |

Creditors making closed-end consumer credit transactions secured by real property or a cooperative unit, other than a reverse mortgage subject to 12 CFR 1026.33, and subject to the provisions of 12 CFR 1026.19(e) and (f), must provide consumers with a Loan Estimate under 12 CFR 1026.37, Closing Disclosure under 12 CFR 1026.38, the special information booklet as required, under 12 CFR 1026.19(g), and, as applicable for ARM transactions, the CHARM booklet. The special information booklet is described in further detail below.

## A. Early disclosures (Loan Estimate) – 12 CFR 1026.19(e)

12 CFR 1026.19(e) requires the creditor to provide good faith estimates of the Loan Estimate disclosures (*see* 12 CFR 1026.37 for information on the content, form, and format of the disclosure). The creditor generally must deliver or place in the mail the Loan Estimate no later than three business days after receiving the consumer's application, and no later than seven business days before consummation (12 CFR 1026.19(e)(1)(i) and (iii)).

Generally, the creditor is responsible for ensuring that the Loan Estimate and its delivery meet the rule's content, delivery, and timing requirements. (*See* 12 CFR 1026.19(e) and 1026.37.) If a mortgage broker receives a consumer's application, the mortgage broker may provide the Loan Estimate to the consumer on the creditor's behalf. If it does so, the mortgage broker must comply with all requirements of 12 CFR 1026.19(e), as well as the three-year record retention

[20] See Appendix H-2.

[21] An open-end reverse mortgage receives open-end disclosures, not a GFE or HUD-1.

requirements in 12 CFR 1026.25(c) (12 CFR 1026.19(e)(1)(ii)). The creditor is expected to maintain communication with mortgage brokers to ensure that the Loan Estimate and its delivery satisfy the rule's requirements, and the creditor is legally responsible for any errors or defects (12 CFR 1026.19(e)(1)(ii); Comment 19(e)(1)(ii) -1 and -2).

***Timing- Loan Estimate-early disclosures.*** The Loan Estimate must be delivered or placed in the mail to the consumer no later than the third business day after the creditor or mortgage broker receives the consumer's application for a mortgage loan (12 CFR 1026.19(e)(1)(iii)(A)). If the Loan Estimate is not provided to the consumer in person, the consumer is considered to have received the Loan Estimate three business days after it is delivered or placed in the mail (this applies to electronic delivery as well) (12 CFR 1026.19(e)(1)(iv); Comment 19(e)(1)(iv)-2). Other than for transactions secured by a consumer's interest in a timeshare plan, the Loan Estimate must be delivered or placed in the mail no later than the seventh business day before consummation (12 CFR 1026.19(e)(1)(iii)(B) and (C)).

For purposes of the TILA-RESPA Integrated Disclosures rule, an "application" is defined in 12 CFR 1026.2(a)(3)(ii). For transactions subject to 12 CFR 1026.19(e), (f), or (g), an application consists of the submission of the following six pieces of information:

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

This definition of application is similar to the definition under Regulation X (12 CFR 1024.2(b)), except that it does not include the seventh "catch-all" element of that definition, that is, "any other information deemed necessary by the loan originator."

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

This definition of application does not prevent a creditor from collecting whatever additional information it deems necessary in connection with the request for the extension of credit. However, once a consumer has submitted[22] the six pieces of information discussed above to the creditor for purposes of obtaining an extension of credit, the creditor has an application for

[22] When a consumer uses an online application system that allows the information to be saved, the application must be submitted before the Loan Estimate timing requirements are triggered.

purposes of the requirement for delivery of the Loan Estimate to the consumer and must abide by the three business day timing requirement (Comment 2(a)(3)-1).

If the creditor determines, within the three business-day period, that the consumer's application will not or cannot be approved on the terms requested by the consumer, or if the consumer withdraws the application within that period, the creditor does not have to provide the Loan Estimate. However, if the creditor does not provide the Loan Estimate, it will not have complied with the Loan Estimate requirements if it later consummates the transaction on the terms originally applied for by the consumer. If a consumer amends an application and a creditor determines the amended application may proceed, then the creditor is required to comply with the Loan Estimate requirements, including delivering or mailing a Loan Estimate within three business days of receiving the amended or resubmitted application (Comment 19(e)(1)(iii)-3).

A "business day" for purposes of providing the Loan Estimate is a day on which the creditor's offices are open to the public for carrying out substantially all of its business functions (Comment 19(e)(1)(iii)-1, 12 CFR 1026.2(a)(6)).

NOTE: The term "business day" is defined differently for other purposes, including counting days to ensure the consumer receives the Closing Disclosure on time (12 CFR 1026.2(a)(6), 1026.19(e)(1)(iii)(B) and (e)(1)(iv), and 1026.19(f)(1)(ii)(A) and (f)(1)(iii)). For these other purposes, business day means all calendar days except Sundays and the legal public holidays specified in 5 U.S.C. 6103(a) (12 CFR 1026.2(a)(6); Comment 2(a)(6)-2; Comments 19(e)(1)(iii)-1 and 19(f)(1)(ii)-1).

Creditors are required to act in good faith and exercise due diligence in obtaining information necessary to complete the Loan Estimate (Comment 17(c)(2)(i)-1). Normally, creditors may rely on the representations of other parties in obtaining information (12 CFR 1026.17(c)(2)(i)).

NOTE: There may be some information that is not reasonably available to the creditor at the time the Loan Estimate is made. In these instances, except as otherwise provided in 12 CFR 1026.19, 1026.37, and 1026.38, the creditor may use estimates even though it knows that more precise information will be available by the point of consummation. However, new disclosures may be required under 12 CFR 1026.17(f) or 1026.19 (Comment 17(c)(2)(i)-1). When estimated figures are used, they must be designated as such on the Loan Estimate (Comment 17(c)(2)(i)-2)).

The consumer may modify or waive the seven business-day waiting period after receiving the Loan Estimate if the consumer determines that the mortgage loan is needed to meet a bona fide personal financial emergency that necessitates consummating the credit transaction before the end of the waiting period (12 CFR 1026.19(e)(1)(v)). Whether a consumer has a bona fide personal financial emergency is determined by the facts surrounding the consumer's individual situation. One example is the imminent sale of the consumer's home at foreclosure, where the foreclosure sale will proceed unless loan proceeds are made available to the consumer during the waiting period (12 CFR 1026.19(e)(1)(v); Comment 19(e)(1)(v)-1)). To modify or waive the waiting period, the consumer must give the creditor a dated written statement that describes the emergency, specifically modifies or waives the waiting period, and is signed by all consumers

primarily liable on the legal obligation (12 CFR 1026.19(e)(1)(v)). The creditor may not provide the consumer with a pre-printed waiver form (12 CFR 1026.19(e)(1)(v)).

***Good faith requirement and tolerances.*** Creditors are responsible for ensuring that the figures stated in the Loan Estimate are made in good faith and consistent with the best information reasonably available to the creditor at the time they are disclosed (12 CFR 1026.19(e)(3); Comment 19(e)(3)(iii)-1 through -3)). Whether or not a Loan Estimate was made in good faith is determined by calculating the difference between the estimated charges originally provided in the Loan Estimate and the actual charges paid by or imposed on the consumer in the Closing Disclosure (12 CFR 1026.19(e)(3)(i) and (ii)). Generally, if the charge paid by or imposed on the consumer exceeds the amount originally disclosed on the Loan Estimate, it is not in good faith (12 CFR 1026.19(e)(3)(i)). As long as the creditor's estimate is consistent with the best information reasonably available, and the creditor charges the consumer *less* than the amount disclosed on the Loan Estimate, the Loan Estimate is considered to be in good faith (12 CFR 1026.19(e)(3)(i)).

The general rule is that the estimated closing cost is in good faith if the charge does not exceed the amount disclosed in the Loan Estimate. Unless there is an exception, depending on the specific circumstances, the creditor may not charge more than the amounts disclosed on the Loan Estimate (12 CFR 1026.19(e)(3)(i)). For certain charges, there are different tolerances when charges exceed the amounts disclosed.

***Zero tolerance.*** For charges other than those that are specifically excepted, as noted below, creditors may not charge consumers more than the amount disclosed on the Loan Estimate, other than for changed circumstances that permit a revised Loan Estimate (12 CFR 1026.19(e)(3)(i) and (iv)). The zero tolerance charges include but are not limited to the following:

- Fees for required services paid to the creditor, mortgage broker, or an affiliate of either (12 CFR 1026.19(e)(3)(i), Comment 19(e)(3)(i)-1(i)-(iii));
- 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 or transfer taxes (12 CFR 1026.19(e)(3)(i)), Comment 19(e)(3)(i)-1.iv-v)).

***10 percent cumulative tolerance.*** Charges for third-party services and recording fees paid by or imposed on the consumer are grouped together and are subject to a 10 percent cumulative tolerance. This means the creditor may charge the consumer more than the amount disclosed on the Loan Estimate for any of these charges so long as the total sum of the charges does not exceed the sum of all such charges disclosed on the Loan Estimate by more than 10 percent (12 CFR 1026.19(e)(3)(ii)(A)). These charges are:

- Recording fees (Comments 19(e)(3)(ii)-1.ii and -4);
- Charges for required third-party services if:
    - The charge is not paid to the creditor or the creditor's affiliate (12 CFR 1026.19(e)(3)(ii)(B)); and

- The consumer is permitted by the creditor to shop for the third-party service (12 CFR 1026.19(e)(3)(ii)(C); 12 CFR 1026.19(e)(1)(vi); Comment 19(e)(1)(vi)-1 through -7).

  NOTE: If a creditor has failed to issue the written list of providers or failed to disclose a specific settlement service on the written list, the creditor may still be determined, based on all the relevant facts and circumstances, to have permitted a consumer to shop for purposes of determining good faith (Comment 19(e)(3)(iii)-2).

***Variances permitted without tolerance limits.*** Creditors may charge consumers more than the amount disclosed on the Loan Estimate without any tolerance limitation for certain costs or terms, but only if 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. These charges may be paid to the creditor or the creditor's affiliates as long as the charges are bona fide (12 CFR 1026.19(e)(3)(iii)). These charges are:

- Prepaid interest; property insurance premiums; amounts placed into an escrow, impound, reserve, or similar account (12 CFR 1026.19(e)(3)(iii)(A)-(C)).
- Charges paid to third-party service providers for services required by the creditor if the creditor permits the consumer to shop and the consumer selects a third-party service provider not on the creditor's written list of service providers (12 CFR 1026.19(e)(3)(iii)(D); Comment 19(e)(3)(iii)-2).
- Property taxes and other charges paid to third-party service providers for services not required by the creditor (12 CFR 1026.19(e)(3)(iii)(E)).

***List of services for which a consumer may shop.*** In addition to the Loan Estimate, if the consumer is permitted to shop for a settlement service, the creditor, no later than three business days after receiving the application, must provide the consumer with a written list of settlement services for which the consumer can shop. This list must:

- Identify at least one available settlement service provider for each service; and
- State that the consumer may choose a different provider of that service (12 CFR 1026.19(e)(1)(vi)(C)).[23]

  NOTE: The use of Model Form H-27 in Appendix H is not required. However, creditors who use that form properly are deemed to be in compliance with 12 CFR 1026.19(e)(1)(vi)(C) (Comment 19(e)(1)(vi)-3).

  Regardless of whether a creditor provides a revised written list of providers, determining whether the charges for required services were disclosed in good faith will depend on whether the creditor permitted the consumer to shop for those services,

[23] The Preamble to the 2017 Amendments explained that creditors may issue a revised written list of providers when a settlement service is added as a result of a reason provided for under 12 CFR 1026.19(e)(3)((iv). (*See* Preamble, 82 FR 37,677 (Aug. 11, 2017))

and is based on all relevant facts and circumstances (Comments 19(e)(1)(vi)-1 and 19(e)(3)(ii)-6).

***Refunds within 60 days of consummation.*** If the amounts paid by the consumer at closing exceed the amounts disclosed on the Loan Estimate beyond the applicable tolerance threshold, the creditor must refund the excess to the consumer no later than 60 calendar days after consummation (12 CFR 1026.19(f)(2)(v)).

- For charges subject to zero tolerance, any amount charged beyond the amount disclosed on the Loan Estimate must be refunded to the consumer (12 CFR 1026.19(e)(3)(i)).
- For charges subject to a 10 percent cumulative tolerance, to the extent the total sum of the charges exceeds the sum of all such charges disclosed on the Loan Estimate by more than 10 percent, the difference must be refunded to the consumer (12 CFR 1026.19(e)(3)(ii)).

***Loan Estimate- revisions and corrections.*** Creditors are generally bound by the original Loan Estimate and must determine the estimate's good faith by calculating the difference between the estimated charges originally provided and the actual charges paid by the consumer. Creditors may provide a revised Loan Estimate for informational purposes. Regardless of whether a creditor provides a revised Loan Estimate to reset tolerances or for informational purposes only, any disclosures on the revised Loan Estimate disclosure must be based on the best information reasonably available to the creditor at the time the revised disclosures are provided (Comment 19(e)(3)(iv)-1-2, 4-5).

For purposes of determining whether the estimates are in good faith, the creditor may use a revised estimate of a charge instead of the amount originally disclosed if the revision is due to one of the specific circumstances set out in 12 CFR 1026.19(e)(3)(iv)(A) through (F). The specific circumstances "(A)" and "(B)" relate to "changed circumstances", as described below:

**(A): Changed circumstances – increased settlement charges.** Changed circumstances that occur after the Loan Estimate is provided to the consumer that cause estimated settlement charges to increase more than is permitted under the TILA-RESPA Integrated Disclosure rule (12 CFR 1026.19(e)(3)(iv)(A)).

- A creditor may provide and use a revised Loan Estimate redisclosing a settlement charge and compare that revised estimate to the amount imposed on the consumer for purposes of determining good faith if changed circumstances cause the estimated charge to increase or, in the case of charges subject to the 10 percent cumulative tolerance under 12 CFR 1026.19(e)(3)(ii), cause the sum of those charges to increase by more than the 10 percent tolerance (12 CFR 1026.19(e)(3)(iv)(A); Comment 19(e)(3)(iv)(A)-1). Examples of changed circumstances affecting settlement costs include (Comment 19(e)(3)(iv)(A)-2):
    - A natural disaster that damages the property or otherwise results in additional closing costs;
    - A creditor's estimate of title insurance is no longer valid because the title insurer goes out of business; or

- New information not relied on when the Loan Estimate was provided is discovered, such as a neighbor of the seller filing a claim contesting the property boundary.

**(B): Changed circumstances – consumer eligibility.** Changed circumstances that occur after the Loan Estimate is provided to the consumer that affect the consumer's eligibility for the terms for which the consumer applied or the value of the security for the loan (12 CFR 1026.19(e)(3)(iv)(B)).

For both (A) Changed circumstances – increased settlement charges, and (B) Changed circumstances – consumer eligibility:

- A creditor also may provide and use a revised Loan Estimate if a changed circumstance affected the consumer's creditworthiness or the value of the security for the loan and resulted in the consumer being ineligible for an estimated loan term previously disclosed (12 CFR 1026.19(e)(3)(iv)(B) and Comment 19(e)(3)(iv)(B)-1). This may occur when a changed circumstance causes a change in the consumer's eligibility for specific loan terms disclosed on the Loan Estimate, which in turn results in increased cost for a settlement service beyond the applicable tolerance threshold (Comment 19(e)(3)(iv)(A)-2). For example:

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

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

NOTE on Changed Circumstances: A changed circumstance permitting a revised Loan Estimate under 12 CFR 1026.19(e)(3)(iv)(A) and (B) is:

- An extraordinary event beyond the control of any interested party or other unexpected event specific to the consumer or transaction (12 CFR 1026.19(e)(3)(iv)(A)(1));

- Information specific to the consumer or transaction that the creditor relied upon when providing the original Loan Estimate and that was inaccurate or changed after the disclosures were provided (12 CFR 1026.19(e)(3)(iv)(A)(2)); or

- New information specific to the consumer or transaction that the creditor did not rely on when providing the original Loan Estimate (12 CFR 1026.19(e)(3)(iv)(A)(3)).

**(C): Revisions requested by the consumer.** The consumer requests revisions to the credit terms or the settlement that cause the estimated charge to increase. For example, a consumer grants a power of attorney authorizing a family member to consummate the transaction on the consumer's behalf, and the creditor provides revised disclosures reflecting the fee to record the power of attorney (Comment 19(e)(3)(iv)(C)-1).

**(D): Rate locks after initial Loan Estimate.** If the interest rate for the loan was not locked when the Loan Estimate was provided and, upon being locked at some later time, points or lender credits for the mortgage loan change, the creditor is required to provide a revised Loan Estimate no later than three business days after the interest rate is locked and may use the revised Loan Estimate to compare to points and lender credits charged. The revised Loan Estimate must reflect the revised interest rate as well as any revisions to the points disclosed on the Loan Estimate pursuant to 12 CFR 1026.37(f)(1), lender credits, and any other interest rate-dependent charges and terms that have changed due to the new interest rate (12 CFR 1026.19(e)(3)(iv)(D); Comment 19(e)(3)(iv)(D)-1). 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 (Comment 19(e)(3)(iv)(D)-2).

**(E): Expiration of Loan Estimate.** If the consumer indicates an intent to proceed with the transaction more than 10 business days (or any additional number of days as extended by the creditor orally or in writing) after the Loan Estimate was delivered or placed in the mail to the consumer, a creditor may use a revised Loan Estimate. No justification is required for the change to the original estimate of a charge other than the lapse of 10 business days or the additional number of days as extended by the creditor (12 CFR 1026.19(e)(3)(iv)(E); Comment 19(e)(3)(iv)(E)-1 and -2).

**(F): Construction loans.** Creditors also may use a revised Loan Estimate where the transaction involves financing of new construction and the creditor reasonably expects that settlement will occur more than 60 calendar days after the original Loan Estimate has been provided if the original Loan Estimate clearly and conspicuously stated that at any time prior to 60 days before consummation, the creditor may issue revised disclosures (12 CFR 1026.19(e)(3)(iv)(F)).

NOTE: 12 CFR 1026.19(e)(3) does not include technical errors, miscalculations, or underestimations of charges as reasons for which creditors are permitted to provide revised Loan Estimates.

***Timing- Loan Estimate- revised disclosures.*** The general rule is that the creditor must deliver or place in the mail the revised Loan Estimate to the consumer no later than three business days after receiving the information sufficient to establish that one of the reasons for the revision has occurred (12 CFR 1026.19(e)(4)(i); Comment 19(e)(4)(i)-1).

The creditor may not provide a revised Loan Estimate on or after the date the creditor provides the consumer with the Closing Disclosure (12 CFR 1026.19(e)(4)(ii); Comment 19(e)(4)(ii)-1.ii). Instead, the creditor may use the initial or a corrected Closing Disclosure to reset tolerances for purposes of determining good faith *provided* one of the specific circumstances under the rule is present. Any such revised Loan Estimate or Closing Disclosure must be provided to the consumer within three business days of receiving information sufficient to establish a reason for a revised estimate (12 CFR 1026.19(e)(4)(i)).

***Predisclosure activity.*** A creditor or other person generally may not impose any fee on a consumer in connection with the consumer's application for a mortgage transaction until the

consumer has received the Loan Estimate and has indicated intent to proceed with the transaction (12 CFR 1026.19(e)(2)(i)(A)). This restriction includes limits on imposing:

- Application fees,
- Appraisal fees,
- Underwriting fees, and
- Other fees imposed on the consumer.

The only exception to this exclusion is for a bona fide and reasonable fee for obtaining a consumer's credit report (12 CFR 1026.19(e)(2)(i)(B); Comment 19(e)(2)(i)(A)-1 through -5 and Comment 19(e)(2)(i)(B)-1)).

***Documentation of intent to proceed.*** To satisfy the record retention requirements of 12 CFR 1026.25, the creditor must document the consumer's communication of the intent to proceed (12 CFR 1026.19(e)(2)(i)(A)). A consumer indicates intent to proceed with the transaction when the consumer communicates, in any manner, that the consumer chooses to proceed after the Loan Estimate has been delivered, unless a particular manner of communication is required by the creditor (12 CFR 1026.19(e)(2)(i)(A)). This may include:

- Oral communication in person immediately upon delivery of the Loan Estimate; or
- Oral communication over the phone, written communication via email, or signing a pre-printed form after receipt of the Loan Estimate.

A consumer's silence is not indicative of intent to proceed (Comment 19(e)(2)(i)(A)-2).

***Written information for consumers before the Loan Estimate is provided*** (12 CFR 1026.19(e)(2)(ii)). A creditor or other person may provide a consumer with estimated terms or costs prior to the consumer receiving the Loan Estimate, if the person clearly and conspicuously states at the top of the front of the first page of the written estimate and in font size no smaller than 12-point font "Your actual rate, payment, and costs could be higher. Get an official Loan Estimate before choosing the loan" (12 CFR 1026.19(e)(2)(ii); Comment 19(e)(2)(ii)-1). In addition, the written estimate may not have headings, content, and format substantially similar to the Loan Estimate or the Closing Disclosure (12 CFR 1026.19(e)(2)(ii); Comment 19(e)(2)(ii)-1).

The CFPB has provided a model of the required statement in Form H-26 of Appendix H to Regulation Z.

***Verification of information before the Loan Estimate is provided.*** A creditor or other person may not condition providing the Loan Estimate on a consumer submitting documents verifying information related to the consumer's mortgage loan application before providing the Loan Estimate (12 CFR 1026.19(e)(2)(iii); Comment 19(e)(2)(iii)-1).

## B. Final Disclosures (Closing Disclosure) – 12 CFR 1026.19(f)

For loans that require a Loan Estimate (i.e., most closed-end mortgage loans secured by real property or a cooperative unit) and that proceed to closing, creditors must provide a new final disclosure reflecting the actual terms of the transaction; it is called the Closing Disclosure. The form integrates and replaces the HUD-1 and the final TIL disclosure for these transactions. The creditor is generally required to ensure that the consumer receives the Closing Disclosure no later than three business days before consummation of the loan (12 CFR 1026.19(f)(1)(ii)).

NOTE: If the creditor mails the disclosure six business days prior to consummation, it can assume that it was received three business days after sending (12 CFR 1026.19(f)(1)(iii); Comment 19(f)(1)(iii)).

- The Closing Disclosure generally must contain the actual terms and costs of the transaction (12 CFR 1026.19(f)(1)(i)). Creditors may estimate disclosures using the best information reasonably available when the actual term or cost is not reasonably available to the creditor at the time the disclosure is made. However, creditors must act in good faith and use due diligence in obtaining the information. The creditor normally may rely on the representations of other parties in obtaining the information, including, for example, the settlement agent. The creditor is required to provide corrected disclosures containing the actual terms of the transaction at or before consummation (Comments 19(f)(1)(i)-2, -2.i, and -2.ii).

- The Closing Disclosure must be in writing and contain the information prescribed in 12 CFR 1026.38. The creditor must disclose only the specific information set forth in 12 CFR 1026.38(a) through (s), as shown in the Bureau's form in Appendix H-25 (12 CFR 1026.38(t)).

- If the actual terms or costs of the transaction change prior to consummation, the creditor must provide a corrected disclosure that contains the actual terms of the transaction and complies with the other requirements of 12 CFR 1026.19(f), including the timing requirements, and requirements for providing corrected disclosures due to subsequent changes (Comment 19(f)(1)(i)-1).

- New three-day waiting period. If the creditor provides a corrected disclosure, it must provide the consumer with an additional three-business-day waiting period prior to consummation if the annual percentage rate becomes inaccurate, the loan product changes, or a prepayment penalty is added to the transaction (12 CFR 1026.19(f)(2)(ii)).

"Consummation" occurs when the consumer becomes contractually obligated to the creditor on the loan, not, for example, when the consumer becomes contractually obligated to a seller on a real estate transaction. The time when a consumer becomes contractually obligated to the creditor on the loan depends on applicable state law (12 CFR 1026.2(a)(13); Comment 2(a)(13)-1).

***Timing and Delivery – Closing Disclosure.*** Generally, the creditor is responsible for ensuring that the consumer receives the Closing Disclosure form no later than three business days before

consummation (12 CFR 1026.19(f)(1)(ii)(A); Comment 19(f)(1)(v)-3). The creditor also is responsible for ensuring that the Closing Disclosure meets the content, delivery, and timing requirements (12 CFR 1026.19(f) and 1026.38). For timeshare transactions, the creditor must ensure that the consumer receives the Closing Disclosure no later than consummation (12 CFR 1026.19(f)(1)(ii)(B)).

If the Closing Disclosure is provided in person, it is considered received by the consumer on the day it is provided. If it is mailed or delivered electronically, the consumer is considered to have received the Closing Disclosure three business days after it is delivered or placed in the mail (12 CFR 1026.19(f)(1)(iii); Comment 19(f)(1)(ii)-2).

However, if the creditor has evidence that the consumer received the Closing Disclosure earlier than three business days after it is mailed or delivered, the creditor may rely on that evidence and consider the Closing Disclosure to be received on that date (Comments 19(f)(1)(iii)-1 and -2).

***Multiple consumers.*** In transactions that are not rescindable, the Closing Disclosure may be provided to any consumer with primary liability on the obligation (12 CFR 1026.17(d)). In rescindable transactions, the creditor must provide the Closing Disclosure separately and meet the timing requirements for each consumer who has the right to rescind under TILA (*See* 12 CFR 1026.23).

***Settlement agents.*** Creditors may contract with settlement agents to have the settlement agent provide the Closing Disclosure to consumers on the creditor's behalf, provided that the settlement agent complies with all relevant requirements of 12 CFR 1026.19(f) (12 CFR 1026.19(f)(1)(v)). Creditors and settlement agents also may agree to divide responsibility with regard to completing the Closing Disclosure, with the settlement agent assuming responsibility to complete some or all of the Closing Disclosure (Comment 19(f)(1)(v)-4). Any such creditor must maintain communication with the settlement agent to ensure that the Closing Disclosure and its delivery satisfy the requirements described above, and the creditor is legally responsible for any errors or defects (12 CFR 1026.19(f)(1)(v); Comment 19(f)(1)(v)-3)). In transactions involving a seller, the settlement agent is required to provide the seller with the Closing Disclosure reflecting the actual terms of the seller's transaction no later than the day of consummation (12 CFR 1026.19(f)(4)(i) and (ii)).

NOTE: "Business day" has a different meaning for purposes of providing the Closing Disclosure than it is for purposes of providing the Loan Estimate after receiving a consumer's application. For purposes of providing the Closing Disclosure, the term business day means all calendar days except Sundays and the legal public holidays specified in 5 U.S.C. 6103(a) (*See* 12 CFR 1026.2(a)(6), 1026.19(f)(1)(ii)(A) and (f)(1)(iii)).

***Three-business-day waiting period.*** The loan may not be consummated less than three business days after the Closing Disclosure is received by the consumer. If a settlement is scheduled during the waiting period, the creditor generally must postpone settlement, unless the consumer determines that the extension of credit is necessary to meet a bona fide personal financial emergency and waives the waiting period. The written waiver describes the emergency, specifically modifies, or waives the waiting period, and bears the signature of all consumers who

are primarily liable on the legal obligation. Pre-printed forms for this purpose are prohibited (12 CFR 1026.19(f)(1)(iv)).

***Average charges.*** In general, the amount imposed on the consumer for any settlement service must not exceed the amount the settlement service provider actually received for that service. However, an average charge may be imposed instead of the actual amount received for a particular service, as long as the average charge satisfies the following conditions (12 CFR 1026.19(f)(3)(i)-(ii); Comment 19(f)(3)(i)-1):

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

***Closing Disclosures – Revisions and Corrections (12 CFR 1026.19(f)(2)).*** Creditors must re-disclose terms or costs on the Closing Disclosure if certain changes occur to the transaction after the Closing Disclosure was first provided that cause the disclosures to become inaccurate. There are three categories of changes that require a corrected Closing Disclosure containing all changed terms (12 CFR 1026.19(f)(2)):

- Changes that occur before consummation that require a new three-business-day waiting period (12 CFR 1026.19(f)(2)(ii));
- Changes that occur before consummation and do not require a new three-business-day waiting period (12 CFR 1026.19(f)(2)(i)); and
- Changes that occur after consummation (12 CFR 1026.19(f)(2)(iii)).

***Changes before consummation requiring new waiting period.*** If one of the following occurs after delivery of the Closing Disclosure and before consummation, the creditor must provide a corrected Closing Disclosure containing all changed terms and ensure that the consumer receives it no later than three business days before consummation (12 CFR 1026.19(f)(2)(ii); Comment 19(f)(2)(ii)-1).

- The disclosed APR becomes inaccurate. If the APR previously disclosed becomes inaccurate, the creditor must provide a corrected Closing Disclosure with the corrected

APR disclosure and all other terms that have changed. The APR's accuracy is determined according to 12 CFR 1026.22 (12 CFR 1026.19(f)(2)(ii)(A)). Generally, if the APR and finance charges are overstated because the interest rate has decreased, the APR is considered accurate and no new waiting period is required (12 CFR 1026.22).

- The loan product changes. If the loan product is changed, causing the product description disclosed to become inaccurate, the creditor must provide a corrected Closing Disclosure with the corrected loan product and all other terms that have changed (12 CFR 1026.19(f)(2)(ii)(B)).
- A prepayment penalty is added. If a prepayment penalty is added to the transaction, the creditor must provide a corrected Closing Disclosure with the prepayment penalty provision disclosed and all other terms that have changed (12 CFR 1026.19(f)(2)(ii)(C)).

The consumer may waive this period if the consumer is facing a bona fide personal financial emergency (12 CFR 1026.19(f)(1)(iv)).

***Changes before consummation not requiring new waiting period; consumer's right to inspect.*** For any other changes before consummation that do not fall under the three categories above (i.e., related to the APR, the loan product, or the addition of a prepayment penalty), the creditor still must provide a corrected Closing Disclosure with any terms or costs that have changed and ensure that the consumer receives it. For these changes, there is no additional three-business-day waiting period required. The creditor must ensure only that the consumer receives the corrected Closing Disclosure at or before consummation (12 CFR 1026.19(f)(2)(i); Comments 19(f)(2)(i)-1 and -2).

However, a consumer has the right to inspect the Closing Disclosure during the business day before consummation (12 CFR 1026.19(f)(2)(i)). If a consumer asks to inspect the Closing Disclosure the business day before consummation, the Closing Disclosure presented to the consumer must reflect any adjustments to the costs or terms that are known to the creditor at the time the consumer inspects it (12 CFR 1026.19(f)(2)(i)).

A creditor may satisfy the obligation to provide the Closing Disclosure by ensuring that a settlement agent that provides a consumer with the disclosures complies with the requirements of 12 CFR 1026.19(f) (12 CFR 1026.19(f)(1)(v); Comment 19(f)(2)(i)-2.

***Changes due to events occurring after consummation.*** Creditors must provide a corrected Closing Disclosure if an event in connection with the settlement occurs during the 30-calendar-day period after consummation that causes the Closing Disclosure to become inaccurate and results in a change to an amount paid by the consumer from what was previously disclosed (12 CFR 1026.19(f)(2)(iii); Comment 19(f)(2)(iii)-1).

NOTE: A creditor is not required to provide a corrected Closing Disclosure under this provision if the only changes that would be required to be disclosed in the corrected Closing Disclosure are changes to per-diem interest and any disclosures affected by the change in per-diem interest, even if the amount of per-diem interest actually paid by the consumer differs from the amount

disclosed under 12 CFR 1026.38(g)(2) and (o). Nonetheless, if a creditor is providing a corrected Closing Disclosure under 12 CFR 1026.19(f)(2)(iii) for reasons other than changes in per-diem interest and the per-diem interest has changed as well, the creditor must disclose in the corrected Closing Disclosure under 12 CFR 1026.19(f)(2)(iii) the correct amount of the per-diem interest and provide the corrected Closing Disclosure for any disclosures that are affected by the change in per-diem interest (12 CFR 1026.19(f)(2)(iii); Comment 19(f)(2)(iii)-2).

When a post-consummation event requires a corrected Closing Disclosure, the creditor must deliver or place in the mail a corrected Closing Disclosure not later than 30 calendar days after receiving information sufficient to establish that such an event has occurred (12 CFR 1026.19(f)(2)(iii); Comment 19(f)(2)(iii)-1). In transactions involving a seller, the settlement agent must provide the seller with a corrected Closing Disclosure if an event occurs within 30 days of consummation that makes the disclosures inaccurate as they relate to the amount actually paid by the seller. The settlement agent must deliver or mail a corrected Closing Disclosure no later than 30 days from receiving information that establishes the Closing Disclosure is inaccurate and results in a change to an amount actually paid by the seller from what was previously disclosed (12 CFR 1026.19(f)(4)(ii)).

***Changes due to clerical errors.*** The creditor must provide a corrected Closing Disclosure to correct non-numerical clerical errors no later than 60 calendar days after consummation (12 CFR 1026.19(f)(2)(iv)). An error is clerical if it does not affect a numerical disclosure and does not affect the timing, delivery, or other requirements imposed by 12 CFR 1026.19(e) or (f) (Comment 19(f)(2)(iv)-1).

***Refunds related to the good faith analysis.*** The creditor can cure a tolerance violation of 12 CFR 1026.19(e)(3)(i) or (ii) by providing a refund to the consumer and delivering or placing in the mail a corrected Closing Disclosure that reflects the refund no later than 60 calendar days after consummation (12 CFR 1026.19(f)(2)(v)).

## C. Special Information Booklet – 12 CFR 1026.19(g)

Creditors generally must provide a copy of the special information booklet, otherwise known as the home buying information booklet, to consumers who apply for a consumer credit transaction secured by real property or a cooperative unit. For loans using the Loan Estimate and Closing Disclosure forms, creditors provide the "Your Home Loan Toolkit," designed by the CFPB to replace the "Shopping for Your Home Loan: Settlement Cost Booklet" as the special information booklet. This requirement is not limited to closed-end transactions and applies to most consumer credit transactions secured by real property or a cooperative unit, except in a few circumstances (see below). The special information booklet is required pursuant to Regulation Z (12 CFR 1026.19(g)(1)) as well as Section 5 of RESPA (12 U.S.C. 2604) and 12 CFR 1024.6 of Regulation X. The booklet is published by the CFPB to help consumers applying for federally related mortgage loans understand the nature and cost of real estate settlement services.

- If the consumer is applying for a HELOC subject to 12 CFR 1026.40, the creditor (or mortgage broker) can provide a copy of the brochure titled "What You Should Know About

Home Equity Lines of Credit" instead of the special information booklet (12 CFR 1026.19(g)(1)(ii)).

- The creditor need not provide the special information booklet if the consumer is applying for a real property-secured consumer credit transaction that does not have the purpose of purchasing a one-to-four family residential property, such as a refinancing, a closed-end loan secured by a subordinate lien, or a reverse mortgage (12 CFR 1026.19(g)(1)( iii)).

Creditors must deliver or place in the mail the special information booklet not later than three business days after receiving the consumer's loan application (12 CFR 1026.19(g)(1)(i)).

If the creditor denies the consumer's application or if the consumer withdraws the application before the end of the three-business-day period, the creditor need not provide the special information booklet (12 CFR 1026.19(g)(1)(i); Comment 19(g)(1)(i)-3).

When two or more persons apply together for a loan, the creditor may provide a copy of the special information booklet to just one of them (Comment 19(g)(1)-2).

If the consumer uses a mortgage broker, the mortgage broker must provide the special information booklet, and the creditor need not do so (12 CFR 1026.19(g)(1)(i)).

Creditors generally are required to use the booklets designed by the CFPB and may make only limited changes to the special information booklet (12 CFR 1026.19(g)(2)). The Bureau may issue revised or alternative versions of the special information booklet from time to time in the future. Creditors should monitor the *Federal Register* for notice of revisions (Comment 19(g)(1)-1).

## IV. Construction Loan Disclosures

Creditors are required to comply with the TILA/RESPA Integrated Disclosure requirements for disclosure of construction loans and construction-permanent loans that are closed-end consumer credit transactions secured by real property or a cooperative unit (12 CFR 1026.19(e)(1) and .19(f)(1)). These transactions have two distinct phases. First, the construction phase usually involves several disbursements of funds at times and in amounts that are unknown at the beginning of that period, with the consumer generally paying only accrued interest until construction is completed. Unless the obligation is paid when construction is completed (i.e., a construction-only loan), it is a construction-permanent loan and the construction period converts to the second phase, the permanent financing in which the loan amount is amortized just as in a standard mortgage transaction. The longstanding provisions of 12 CFR 1026.17(c)(6)(ii) apply to construction and construction-permanent loans, as well as the option to use Appendix D. Appendix D provides an optional method of calculating the annual percentage rate and other disclosures for construction loans in disclosing construction financing (Comment 17(c)(6)-2). While the 2017 TRID amendments provide additional guidance on how a creditor may use Appendix D to disclose construction loans and construction-permanent loans, the 2017 TRID amendments *do not* require the use of Appendix D or its corresponding official commentary when disclosing the terms of construction loans or construction-permanent loans. Specific regulatory provisions and official commentary applicable to construction loan disclosures are discussed below.

### A. Disclosure Methods for Construction Loans – 12 CFR 1026.17(c)(6)

Regulation Z provides a flexible rule for disclosure of construction loans and construction-permanent loans (12 CFR 1026.17(c)(6)). First, it provides that a series of advances under an agreement to extend credit up to a certain amount may be considered as one transaction (12 CFR 1026.17(c)(6)(i)).

This means that for construction-only loans, a creditor may treat all of the advances as a single transaction or disclose each advance as a separate transaction. If these advances are treated as one transaction and the timing and amounts of advances are unknown, creditors must make disclosures based on estimates, based on the best information reasonably available at the time the disclosure is provided to the consumer, as provided in 12 CFR 1026.17(c)(2).

Second, when a multiple-advance loan to finance the construction of a dwelling may be permanently financed by the same creditor, the construction phase and the permanent phase may be treated as either one or more than one transaction (12 CFR 1026.17(c)(6)(ii)).

In addition to disclosure options described above for multiple advance loans, for construction-permanent loans where the permanent phase may be financed by the same creditor, the creditor also has the option to provide either one combined disclosure for both the construction financing and the permanent financing, or separate disclosures for the two phases (12 CFR

1026.17(c)(6)(ii); Comment 17(c)(6)-2).

Thus, in a transaction that finances the construction of a dwelling that may be permanently financed by the same creditor, the construction financing phase and the permanent financing phases may be disclosed in one of three ways listed below.

- As a single transaction, with one disclosure combining both phases.
- As two separate transactions, with one disclosure for each phase.
- As more than two transactions, with one disclosure for each advance and one for the permanent financing phase (Comment 17(c)(6)-3).

## B. Delivery of Disclosures – 12 CFR 1026.19(e)(1)(iii)

Regulation Z clarifies the timing requirements for providing the Loan Estimate for construction and construction-permanent loans based on when the creditor receives an application (12 CFR 1026.19(e)(1)(iii)). Comment 19(e)(1)(iii)-5 provides examples of different scenarios, illustrating how the timing requirements would apply. For example, where a creditor receives an application for both the construction and permanent phases of a transaction, the creditor must deliver or place in the mail either a single Loan Estimate (if the phases are treated as one transaction) or two or more Loan Estimates (if the phases are treated separately) within three business days of receiving the application and not later than seven business days before consummation.

## C. Completion of Loan Estimate and Closing Disclosure

Generally, a financial institution will make disclosures for construction loans in the same manner as it discloses terms for non-construction loans, following the guidance of applicable regulations (*See* 12 CFR 1026.37 and 1026.38). The financial institution may, at its option, use Appendix D to Regulation Z to estimate and disclose the terms of multiple-advance construction and construction-permanent loans (12 CFR Part 1026, App. D). This appendix reflects the approach taken in 12 CFR 1026.17(c)(6)(ii), which permits creditors to provide separate or combined disclosures for the construction period and for the permanent financing, as discussed above.

The financial institution may, at its option, use Appendix D to the regulation to assist in estimating and disclosing the terms of multiple-advance construction loans when the amounts or timing of advances is unknown at consummation of the transaction. Appendix D may also be used in multiple-advance transactions other than construction loans, when the amounts or timing of advances are unknown at consummation (Comment App. D-1).

Appendix D and its associated commentary provide additional guidance and clarification on how to complete various portions of the Loan Estimate and Closing Disclosure. Additional guidance and examples are intended to inform the accurate disclosure of information related to Loan Term (Comment App. D. 7.i), Loan Product (Comment App. D 7.ii), Interest Rate (Comment App. D. 7.iii), Increases in Periodic Payment (Comment App. D. 7.iv), Projected Payments Table (Comment App. D. 7.v), Disclosure of Construction Costs (Comment App. D. 7.vi), and Inspection and Handling Fees (Comment App. D. 7.vii).

## V. Loans Receiving Non-TILA-RESPA Integrated Disclosures, Generally

Creditors making closed-end loans to consumers not subject to the TILA-RESPA Integrated Disclosures Rule (i.e., other than loans where 12 CFR 1026.19(e) and (f) require the Loan Estimate and the Closing Disclosure) must provide the consumer with the Truth in Lending (TIL) disclosure, as outlined in 12 CFR 1026.17 and 1026.18. Creditors engaged in specified housing assistance programs for low- and moderate-income consumers would also provide their consumers with the TIL Disclosure (12 CFR 1026.3(h)).

***TIL Disclosure.*** The TIL disclosure provided for these loans includes a payment schedule (12 CFR 1026.18(g)). The disclosed payment schedule must reflect all components of the finance charge. It includes all payments scheduled to repay loan principal, interest on the loan, and any other finance charge payable by the consumer after consummation of the transaction.

However, any finance charge paid separately before or at consummation (e.g., odd days' interest) is not part of the payment schedule. It is a prepaid finance charge that must be reflected as a reduction in the value of the amount financed.

At the creditor's option, the payment schedule may include amounts beyond the amount financed and finance charge (e.g., certain insurance premiums or real estate escrow amounts such as taxes added to payments). However, when calculating the APR, the creditor must disregard such amounts.

If the obligation is a renewable balloon payment instrument that unconditionally obligates the financial institution to renew the short-term loan at the consumer's option or to renew the loan subject to conditions within the consumer's control, the payment schedule must be disclosed using the longer term of the renewal period or periods. The long-term loan must be disclosed with a variable-rate feature.

If there are no renewal conditions or if the financial institution guarantees to renew the obligation in a refinancing, the payment schedule must be disclosed using the shorter balloon payment term. The short-term loan must be disclosed as a fixed-rate loan, unless it contains a variable-rate feature during the initial loan term.

## VI. Variable and Adjustable Rate Transactions – 12 CFR 1026.18(f), 1026.20(c) and (d)

### A. Closed-end transactions generally

If the terms of the legal obligation allow the financial institution, after consummation of the transaction, to increase the APR, the financial institution must furnish the consumer with certain information on variable rates. In addition, variable-rate disclosures are not applicable to rate increases resulting from delinquency, default, assumption, acceleration, or transfer of the collateral.

Some of the more important transaction-specific variable-rate disclosure requirements follow.

- Disclosures for variable-rate loans must be given for the full term of the transaction and must be based on the terms in effect at the time of consummation.
- If the variable-rate transaction includes either a seller buy-down that is reflected in a contract or a consumer buy-down, the disclosed APR should be a composite rate based on the lower rate for the buy-down period and the rate that is the basis for the variable-rate feature for the remainder of the term.
- If the initial rate is not determined by the index or formula used to make later interest rate adjustments, as in a discounted variable-rate transaction, the disclosed APR must reflect a composite rate based on the initial rate for as long as it is applied and, for the remainder of the term, the rate that would have been applied using the index or formula at the time of consummation (i.e., the fully indexed rate).
    - If a loan contains a rate or payment cap that would prevent the initial rate or payment, at the time of the adjustment, from changing to the fully indexed rate, the effect of that rate or payment cap needs to be reflected in the disclosures.
    - The index at consummation need not be used if the contract provides a delay in the implementation of changes in an index value (e.g., the contract indicates that future rate changes are based on the index value in effect for some specified period, such as 45 days before the change date). Instead, the financial institution may use any rate from the date of consummation back to the beginning of the specified period (e.g., during the previous 45-day period).
- If the initial interest rate is set according to the index or formula used for later adjustments but is set at a value as of a date before consummation, disclosures should be based on the initial interest rate, even though the index may have changed by the consummation date.

## B. Adjustable Rate Mortgage Disclosures

### *1. Disclosure of Post-Consummation Events – Initial Rate Change for Adjustable Rate Mortgages – 12 CFR 1026.20(d)*

Creditors, assignees, or servicers[24] (referred to collectively as creditors) of adjustable rate mortgages, or ARMs, secured by the consumer's principal dwelling and with terms of more than one year are generally required to provide consumers with certain information pertaining to the ARM's initial rate change.[25] This information must be provided in a disclosure that is separate from all other documents, and the disclosure must be provided between 210 and 240 days before the first payment at the adjusted rate is due. If the first payment at a new rate is

[24] Creditors, assignees, and servicers are all subject to the requirements of this 12 CFR 1026.20(d). Creditors, assignees, and servicers may decide among themselves which of them will provide the required disclosures. However, establishing a business relationship where one party agrees to provide disclosures on behalf of the other parties does not absolve all other parties from their legal obligations.

[25] Exemptions to disclosure requirements are covered in the section titled "Exemptions to the Adjustable Rate Mortgage Disclosure Requirements – 12 CFR 1026.20(c)(1)(ii) and (d)(1)(ii)" below.

due within the first 210 days after consummation, the creditor must provide the rate change disclosure at consummation.

Disclosures required under this section must provide consumers with information related to the timing and nature of the rate change. If the new rate pursuant to the change disclosed is not known and the creditor provides an estimate, the rate must be identified as an estimate. If the creditor is using an estimate, it must be based on the index within 15 business days prior to the date of the disclosure. The calculation is made using the index reported in the source of information that the creditor uses in the explanation of how the interest rate is determined.

Disclosures required under 12 CFR 1026.20(d) must also include, among others:

- The date of the disclosure.
- A statement explaining that the time period that the current rate has been in effect is ending, that the current rate is expiring, and that a change in the rate may result in a change in the required payment; providing the effective date of the change and a schedule of any future changes; and describing any other changes to the loan terms, features, or options taking effect on the same date (including expiration of interest-only or payment-option features).
- A table containing the current and new interest rates, the current and new payments, including the date the new payment is due, and for interest-only or negative amortization loans, the amount of the current and new payment allocated to principal, interest, and escrow (if applicable).

  NOTE: The new payment allocation disclosed is the expected payment allocation for the first payment for which the new interest rate will apply.
- An explanation of how the interest rate is determined, including (among other things) an explanation of the index or formula used to determine the new rate and the margin.
- Any limitations on the interest rate or payment increase for each scheduled increase and over the life of the loan. Creditors must also include a statement regarding the extent to which such limitations result in foregone interest rate increases and the earliest date such foregone interest rate increases may apply to future interest rate adjustments.
- An explanation of how the new payment is determined, including an explanation of the index or formula used to determine the new rate, including the margin, the expected loan balance on the date of the rate adjustment, and the remaining loan term or any changes to the term caused by the rate change.
- If the creditor is using an estimated rate or payment, a statement that the actual new interest rate and new payment will be provided to the consumer between two and four months prior to the first payment at the new rate.
- For negative amortization loans, creditors must provide a statement indicating that the new payment will not be allocated to pay loan principal and will not reduce the balance of the

loan; instead, the payment will only apply to part of the interest, thereby increasing the amount of principal.

- A statement indicating the circumstances under which any prepayment penalty may be imposed, the time period during which it may be imposed, and a statement that the consumer may contact the servicer for additional information, including the maximum amount of the penalty that may be charged to the consumer.
- The telephone number of the creditor, assignee, or servicer for use if the consumer anticipates that he or she may not be able to make the new payments.
- A statement providing specified alternatives (which include refinancing, selling the property, loan modification, and forbearance) available if the consumer anticipates not being able to make the new payment.
- A website address for either the CFPB's or the Department of Housing and Urban Development's (HUD) list of homeownership counselors and counseling organizations, the HUD toll-free telephone number to access the HUD list of homeownership counselors and counseling organizations, and the CFPB's website address for state housing finance authorities contact information.
- For more information pertaining to the required format of the disclosures required under 12 CFR 1026.20(d), please see 12 CFR 1026.20(d)(3) and the model and sample Forms H-4(D)(3) and (4) in Appendix H.

### *2. Disclosure of Post-Consummation Events – Rate Adjustments Resulting in Payment Changes – 12 CFR 1026.20(c)*

Creditors, assignees, or servicers[26] (referred to collectively as creditors) of ARMs secured by a consumer's principal dwelling with a term greater than one year are generally required to provide consumers with disclosures prior to the adjustment of the interest rate on the mortgage,[27] if the interest rate change will result in a payment change as follows:

- For ARMs where the payment changes along with a rate change, disclosures must be provided to consumers between 60 and 120 days before the first payment at the new amount is due.
- For ARMs where the payment changes in connection with a uniformly scheduled interest rate adjustment occurring every 60 days (or more frequently), the disclosures must be provided between 25 and 120 days before the first payment at the new amount is due.

[26] Creditors, assignees, and servicers are all subject to the requirements of 12 CFR 1026.20(c). Creditors, assignees, and servicers may decide among themselves which of them will provide the required disclosures. However, establishing a business relationship where one party agrees to provide disclosures on behalf of the other parties does not absolve all other parties from their legal obligations.

[27] Exemptions to disclosure requirements are covered in the section titled "Exemptions to the Adjustable Rate Mortgage Disclosure Requirements – 12 CFR 1026.20(c)(1)(ii) and (d)(1)(ii)" below.

- For ARMs originated prior to January 10, 2015, in which the contract requires the adjusted interest and payment to be calculated based on an index that is available on a date less than 45 days prior to the adjustment date, disclosures must be provided between 25 and 120 days before the first payment at the new amount is required.

- For ARMs where the first adjustment occurs within 60 days of consummation and the new interest rate disclosed at the time was an estimate, the disclosures must be provided as soon as practicable, but no less than 25 days before the first payment at the new amount is due.

Disclosures required under 12 CFR 1026.20(c) must contain specific information, which includes, among others:

- A statement explaining that the time period during which the consumer's current rate has been in effect is ending and that the rate and payment will change; when the interest rate will change; dates when additional interest rate adjustments are scheduled to occur; and any other change in loan terms or features that take effect on the same date that the interest rate and payment change, such as an expiration of interest-only treatment or payment-option feature;

- A table explaining the current and new interest rates; the current and new payments, including the date the new payment is due; and for interest-only or negative amortizing loans, the amount of the current and new payment allocated to principal, interest, and amounts for escrow (if applicable);

- An explanation of how the new interest rate is determined, including (among other things) the index or formula used to determine the new rate and the margin, and any application of previously foregone interest rate increases from past adjustments;

- Any limitations on the interest rate and payment increase for each scheduled increase for the duration of the loan. Creditors must also include a statement regarding the extent to which such limitations result in foregone interest rate increases and the earliest date such foregone interest rate increases may apply to future interest rate adjustments;

- An explanation of how the new payment is determined, including an explanation of the index or formula used to determine the new rate, including the margin, the expected loan balance on the date of the rate adjustment, and the remaining loan term or any changes to the term caused by the rate change;

- For negative amortization loans, creditors must provide a statement indicating that the new payment will not reduce the balance of the loan, rather, the payment will only apply to part of the interest, thereby increasing the amount of principal; and

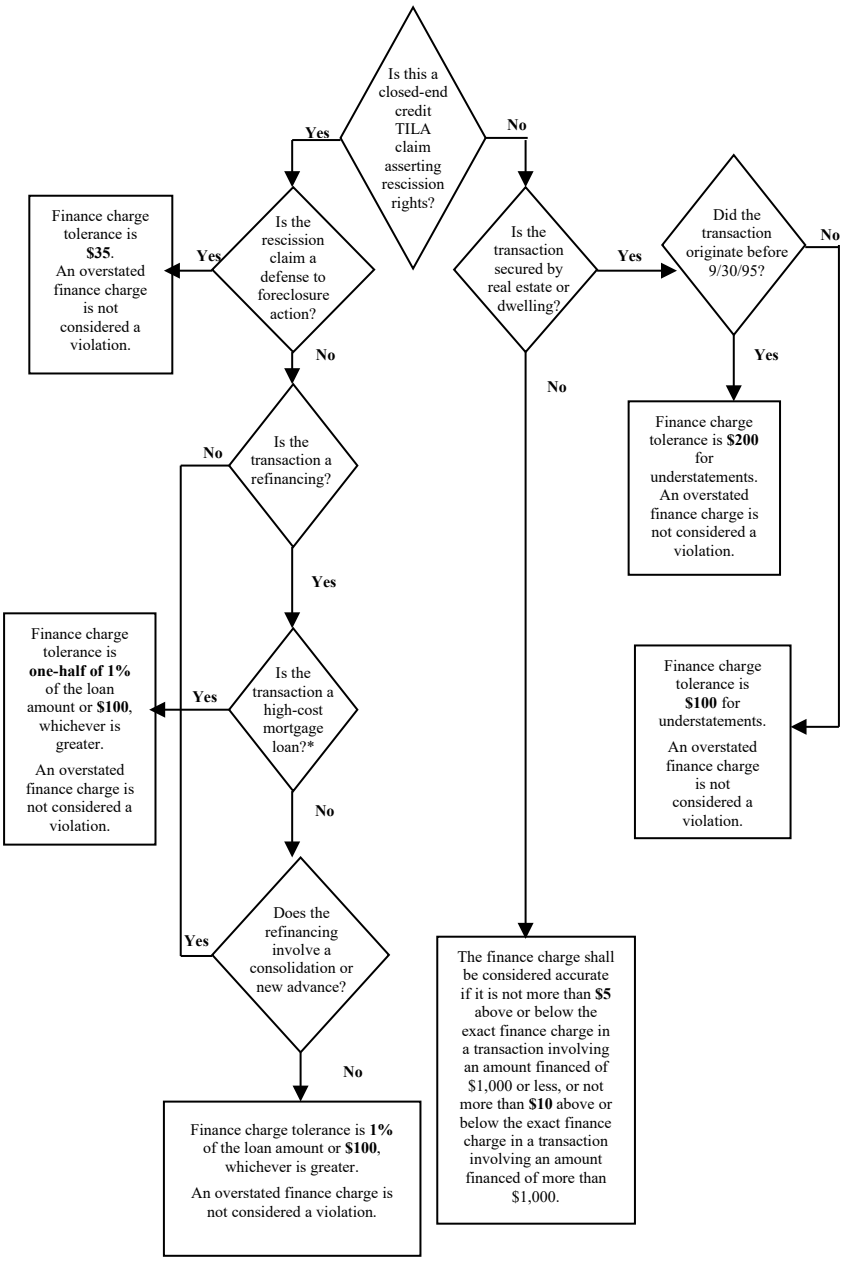
- A statement indicating the circumstances under which any prepayment penalty may be imposed, the time period during which it may be imposed, and a statement that the consumer may contact the servicer for additional information, including the maximum amount of the penalty that may be charged to the consumer.

For more information pertaining to the required format of the disclosures required under 12 CFR 1026.20(c), please see 12 CFR 1026.20(c)(3) and the model and sample Forms H-4(D)(1) and (2) in Appendix H.

### *3. Exemptions to the Adjustable Rate Mortgage Disclosure Requirements – 12 CFR 1026.20(c)(1)(ii) and (d)(1)(ii)*

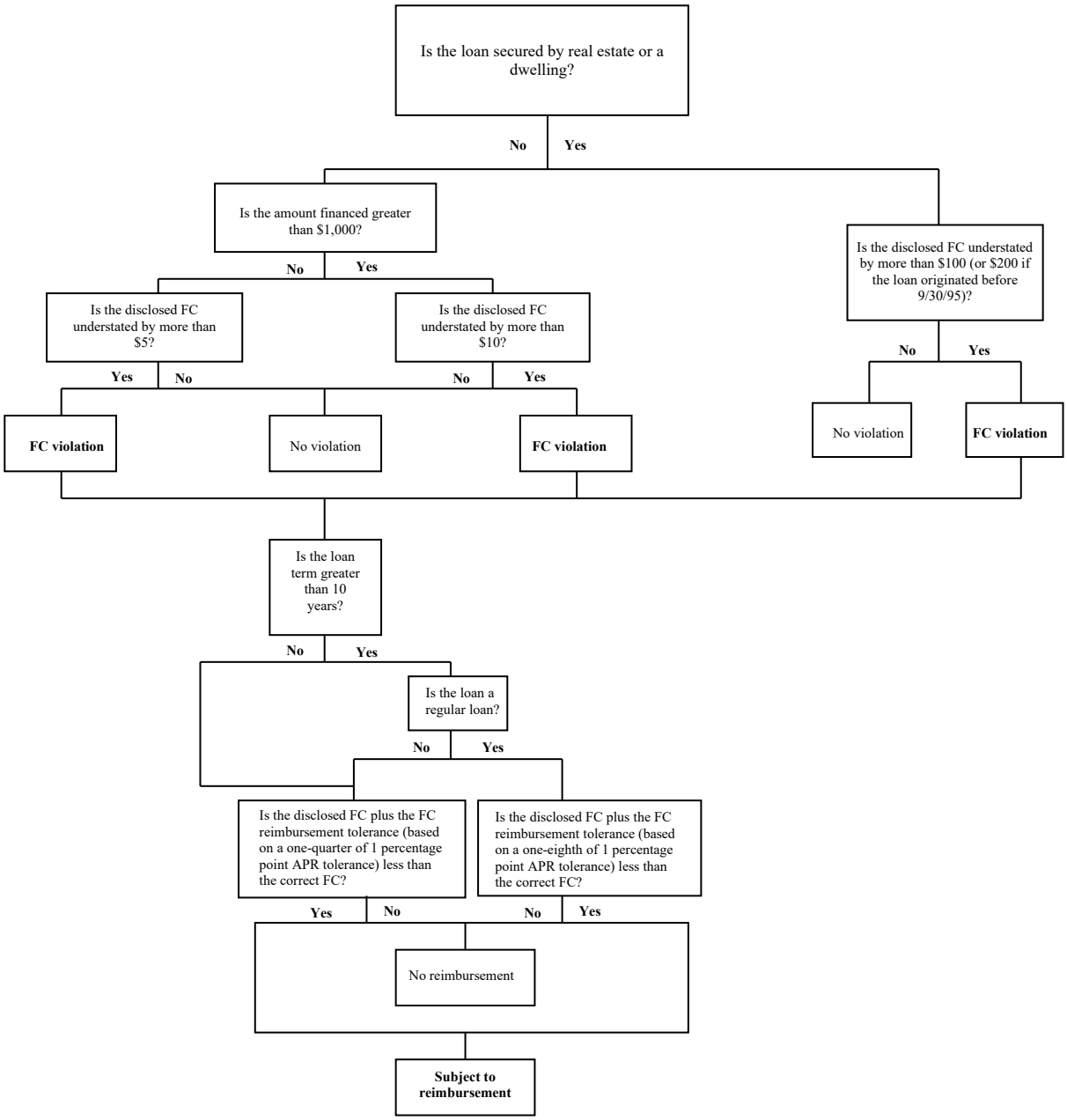
Disclosures under 12 CFR 1026.20(c) and (d) are not required for ARMs with a term of one year or less. Likewise, disclosures under 12 CFR 1026.20(c) are not required if the first interest rate and payment adjustment occurs within the first 210 days and the new rate disclosed at consummation pursuant to 12 CFR 1026.20(d) was not an estimate. ARM disclosures for payment changes are exempt under 12 CFR 1026.20(c)(1)(ii)(C) where the servicer is a debt collector under the FDCPA and a consumer has exercised the right under FDCPA Section 805(c) to prohibit debt collector communications regarding the debt.

## Closed-End Credit: Finance Charge Accuracy Tolerances

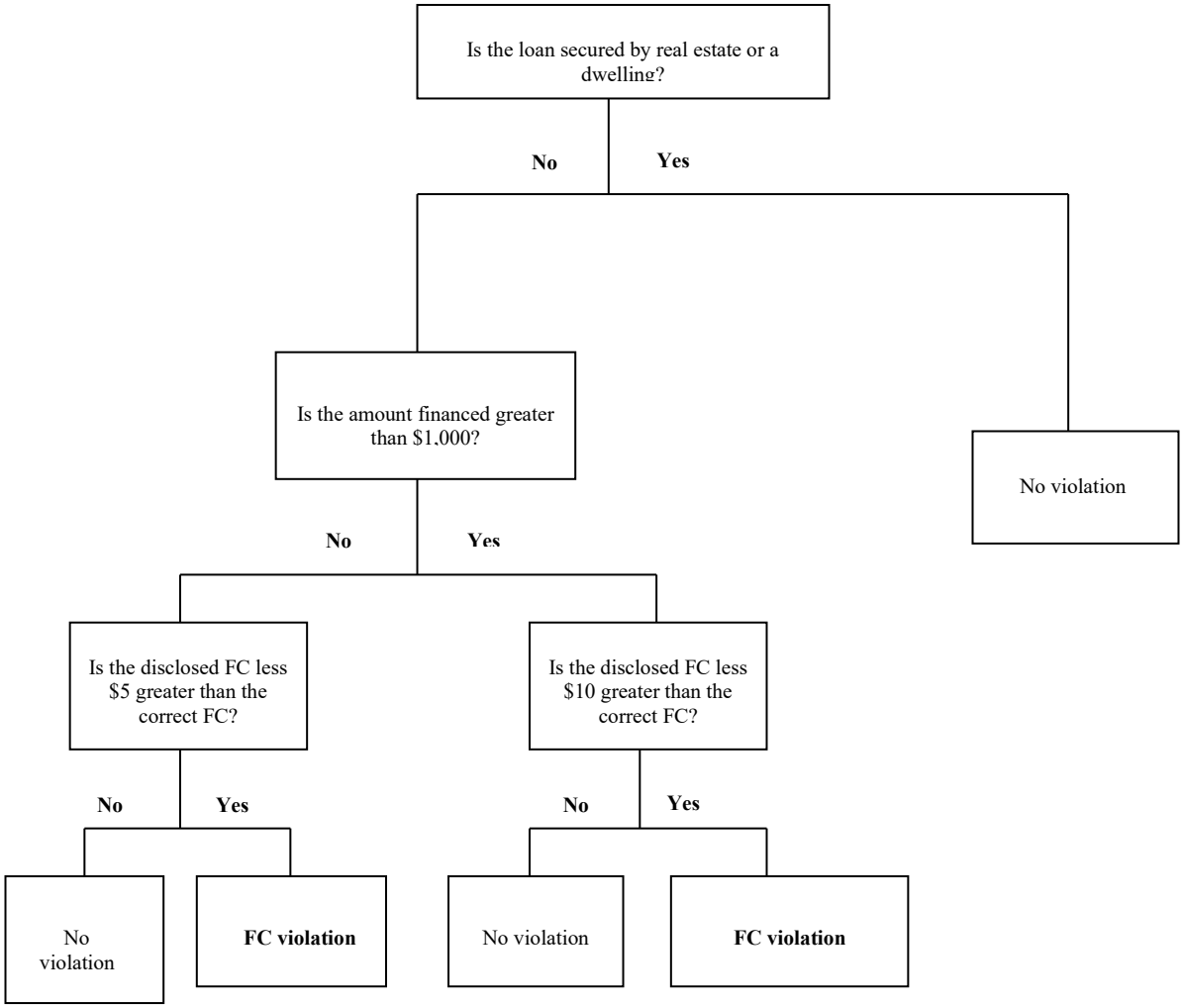



* See 15 U.S.C. 1602(bb)

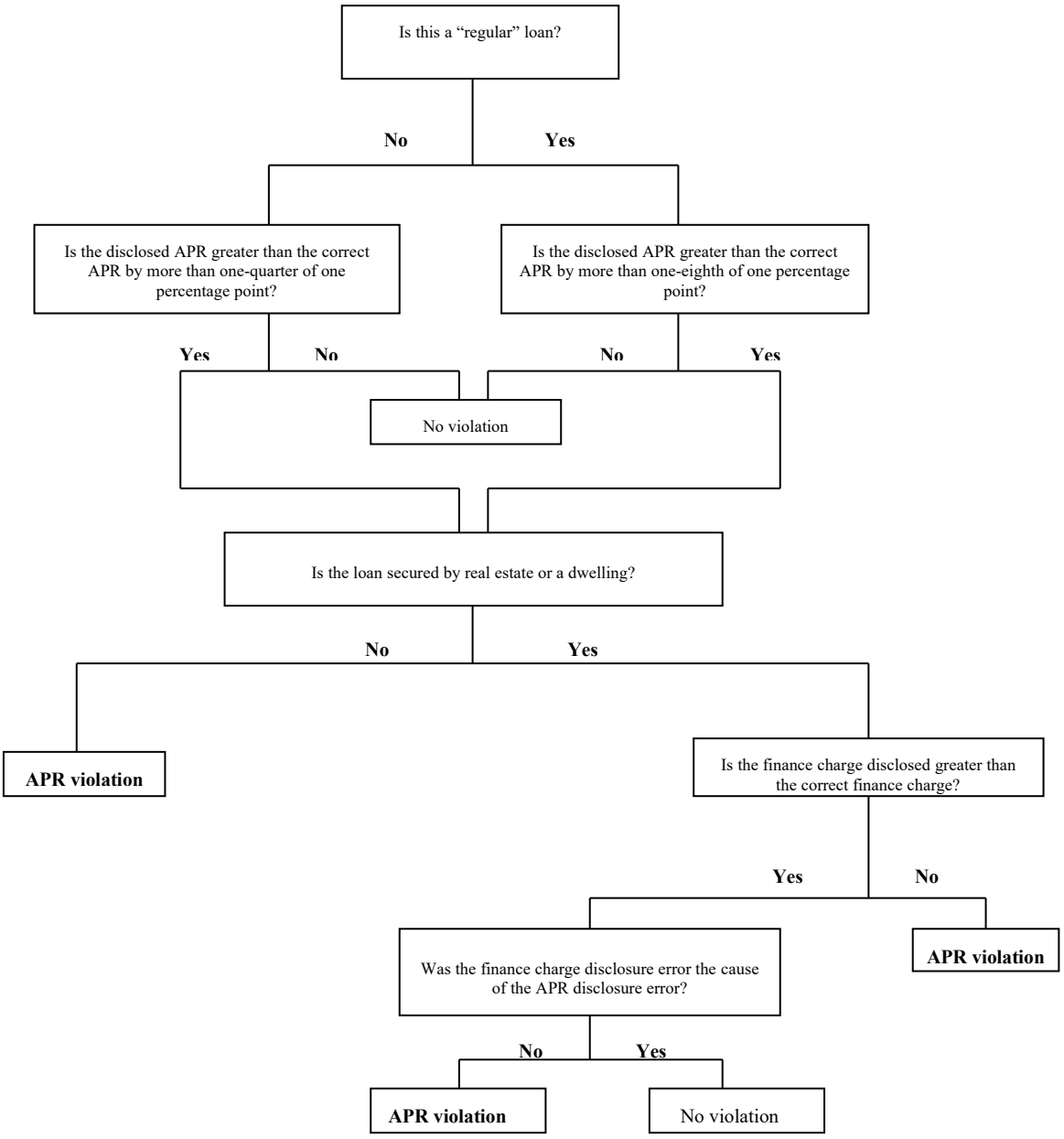
## Closed-End Credit: Accuracy and Reimbursement Tolerances for UNDERSTATED FINANCE CHARGES



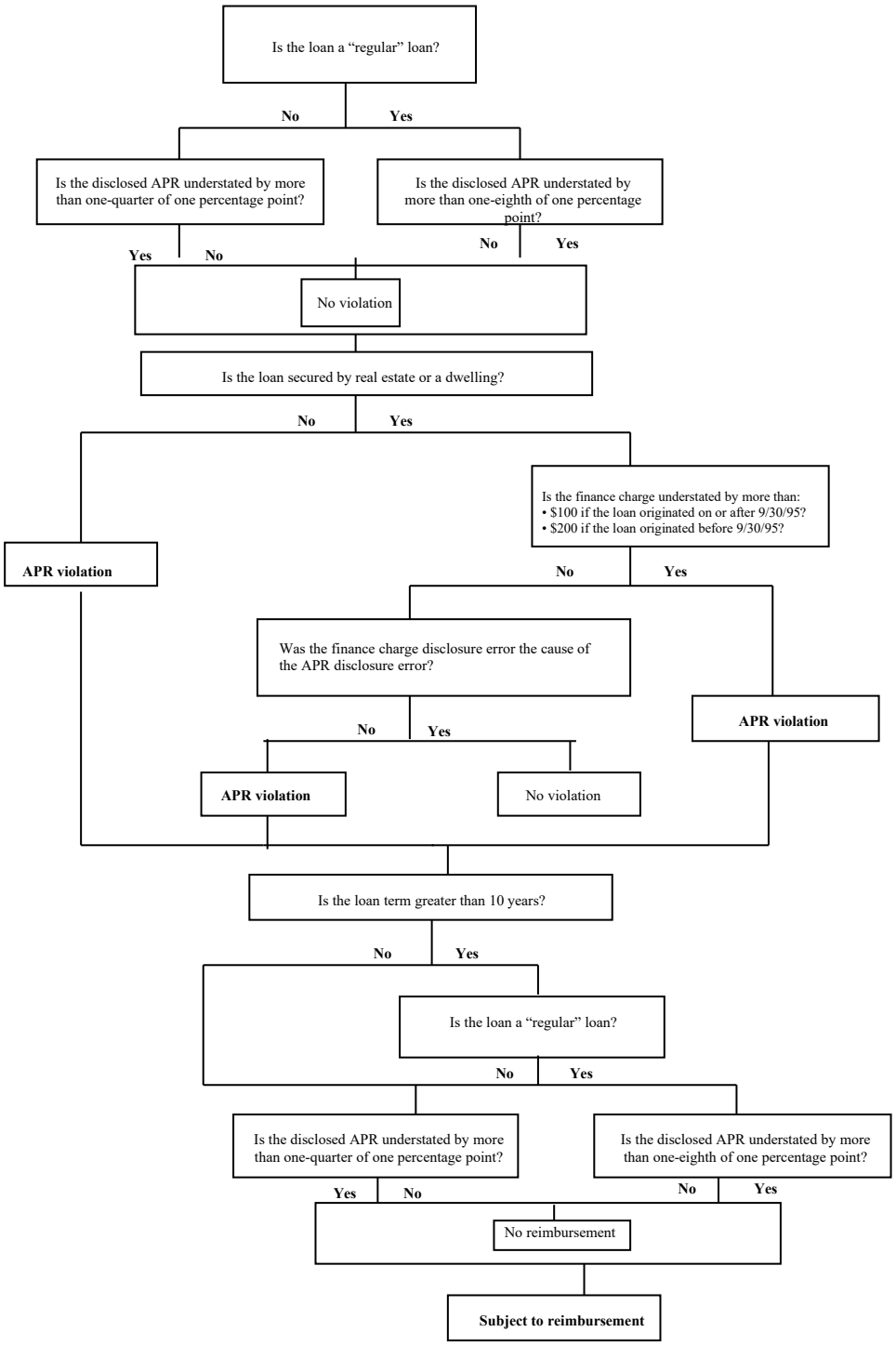
## Closed-End Credit: Accuracy Tolerances for OVERSTATED FINANCE CHARGES



## Closed-End Credit: Accuracy Tolerances for OVERSTATED APRs



## Closed-End Credit: Accuracy and Reimbursement Tolerances for UNDERSTATED APRs



## VII. Refinancings – 12 CFR 1026.20(a)

When an obligation is satisfied and replaced by a new obligation to the original financial institution (or a holder or servicer of the original obligation) and is undertaken by the same consumer, it must be treated as a refinancing for which a complete set of new disclosures must be furnished. A refinancing may involve the consolidation of several existing obligations, disbursement of new money to the consumer, or the rescheduling of payments under an existing obligation. In any form, the new obligation must completely replace the earlier one to be considered a refinancing under the regulation. The finance charge on the new disclosure must include any unearned portion of the old finance charge that is not credited to the existing obligation (12 CFR 1026.20(a)).

The following transactions are not considered refinancings even if the existing obligation is satisfied and replaced by a new obligation undertaken by the same consumer:

- A renewal of an obligation with a single payment of principal and interest or with periodic interest payments and a final payment of principal with no change in the original terms.
- An APR reduction with a corresponding change in the payment schedule.
- An agreement involving a court proceeding.
- Changes in credit terms arising from the consumer's default or delinquency.
- The renewal of optional insurance purchased by the consumer and added to an existing transaction, if required disclosures were provided for the initial purchase of the insurance.

However, even if it is not accomplished by the cancellation of the old obligation and substitution of a new one, a new transaction subject to new disclosures results if the financial institution:

- Increases the rate based on a variable-rate feature that was not previously disclosed; or
- Adds a variable-rate feature to the obligation.

If, at the time a loan is renewed, the rate is increased, the increase is not considered a variable-rate feature. It is the cost of renewal, similar to a flat fee, as long as the new rate remains fixed during the remaining life of the loan. If the original debt is not canceled in connection with such a renewal, the regulation does not require new disclosures. Also, changing the index of a variable-rate transaction to a comparable index is not considered adding a variable-rate feature to the obligation.

## VIII. Escrow Cancellation Disclosures – 12 CFR 1026.20(e)

***Escrow Closing Notice.*** Before cancelling an escrow account, an Escrow Closing Notice must be provided to any consumers for whom an escrow account was established in connection with a closed-end consumer credit transaction secured by a first lien on real property or a dwelling, except for reverse mortgages (12 CFR 1026.20(e)(1)). For this purpose, the term escrow account has the same meaning given to it as under Regulation X, 12 CFR 1024.17(b), and the term servicer has the same meaning given to it as under Regulation X, 12 CFR 1024.2(b). There are two exceptions to the requirement to provide the notice:

- Creditors and servicers are not required to provide the notice if the escrow account that is being canceled was established solely in connection with the consumer's delinquency or default on the underlying debt obligation (Comment 20(e)(1)-2).
- Creditors and servicers are not required to provide the notice when the underlying debt obligation for which an escrow account was established is terminated, including by repayment, refinancing, rescission, and foreclosure (Comment 20(e)(1)-3).

For loans subject to the Escrow Closing Notice requirement, if the creditor or servicer cancels the escrow account at the consumer's request, the creditor or servicer must ensure that the consumers receive the notice no later than three business days (i.e., all calendar days except Sundays and the legal public holidays (*See* 12 CFR 1026.2(a)(6), 1026.19(f)(1)(ii)(A) and (f)(1)(iii)) before the consumer's escrow account is canceled (12 CFR 1026.20(e)(5)(i)). If the creditor or servicer cancels the escrow account and the cancellation is not at the consumer's request, the creditor or servicer must ensure that the consumer receives the notice no later than 30 business days before the closure of the consumer's escrow account (12 CFR 1026.20(e)(5)(ii). If the Escrow Closing Notice is not provided to the consumer in person, the consumer is considered to have received the notice three business days after it is delivered or placed in the mail (12 CFR 1026.20(e)(5)(iii)).

The creditor or servicer must disclose (12 CFR 1026.20(e)(1)-(2)):

- The date on which the account will be closed;
- That an escrow account may also be called an impound or trust account;
- The reason that the escrow account will be closed;
- That without an escrow account, the consumer must pay all property costs, such as taxes and homeowner's insurance, directly, possibly in one or two large payments a year;
- A table, titled "Cost to you," that contains an itemization of the amount of any fee the creditor or servicer imposes on the consumer in connection with the closure of the consumer's escrow account, labeled "Escrow Closing Fee," and a statement that the fee is for closing the escrow account;
- Under the reference "In the future":

- The consequences if the consumer fails to pay property costs, including the actions that a state or local government may take if property taxes are not paid and the actions the creditor or servicer may take if the consumer does not pay some or all property costs, such as adding amounts to the loan balance, adding an escrow account to the loan, or purchasing a property insurance policy on the consumer's behalf that may be more expensive and provide fewer benefits than a policy that the consumer could obtain directly;
- A telephone number that the consumer can use to request additional information about the cancellation of the escrow account;
- Whether the creditor or servicer offers the option of keeping the escrow account open and, as applicable, a telephone number the consumer can use to request that the account be kept open; and
- Whether there is a cutoff date by which the consumer can request that the account be kept open.

The creditor or servicer may also, at its option, disclose (12 CFR 1026.20(e)(3)):

- The creditor or servicer's name or logo;
- The consumer's name, phone number, mailing address, and property address;
- The issue date of the notice;
- The loan number; or
- The consumer's account number.

In addition, the disclosures must:

- Contain a required heading that is more conspicuous than and precedes the required disclosures discussed above (12 CFR 1026.20(e)(4)).
- Be clear and conspicuous. This standard generally requires that the disclosures in the Escrow Closing Notice be in a reasonably understandable form and readily noticeable to the consumer (Comment 20(e)(2)-1).
- Be written in 10-point font, at a minimum (12 CFR 1026.20(e)(4)).
- Be grouped together on the front side of a one-page document. The disclosures must be separate from all other materials, with the headings, content, order, and format substantially similar to Model Form H-29 in Appendix H to Regulation Z (12 CFR 1026.20(e)(4)). This requirement, however, does not preclude creditors and servicers from modifying the disclosures to accommodate particular consumer circumstances or transactions not addressed by the form or from adjusting the statement required by 12 CFR 1026.20(e)(2)(ii)(A),

concerning consequences if the consumer fails to pay property costs, to the circumstances of the particular consumer (Comment 20(e)(4)-3).

## IX. Successors in Interest – 12 CFR 1026.20(f)

If, upon confirmation, a servicer provides a confirmed successor in interest who is not liable on the mortgage loan obligation with an optional notice and acknowledgment form in accordance with Regulation X, 12 CFR 1024.32(c)(1), the servicer is not required to provide to the confirmed successor in interest any written disclosure required by 12 CFR 1026.20(c) (rate adjustments with corresponding change in payment), 12 CFR 1026.20(d) (initial rate adjustment), and 12 CFR 1026.20(e) (escrow account cancellation notice), unless and until the confirmed successor in interest either assumes the mortgage loan obligation under state law or has provided the servicer an executed acknowledgement form in accordance with Regulation X, 12 CFR 1024.32(c)(1)(iv), and the confirmed successor in interest has not revoked such acknowledgement form.

## X. Treatment of Credit Balances – 12 CFR 1026.21

When a credit balance in excess of $1 is created in connection with a transaction (through transmittal of funds to a creditor in excess of the total balance due on an account, through rebates of unearned finance charges or insurance premiums, or through amounts otherwise owed to or held for the benefit of a consumer), the creditor is required to:

- Credit the amount of the credit balance to the consumer's account;
- Refund any part of the remaining credit balance, upon the written request of the consumer; and
- Make a good faith effort to refund to the consumer by cash, check, or money order, or credit to a deposit account of the consumer, any part of the credit balance remaining in the account for more than six months, except that no further action is required if the consumer's current location is not known to the creditor and cannot be traced through the consumer's last known address or telephone number.

## XI. Closed-End Advertising – 12 CFR 1026.24

If an advertisement for credit states specific credit terms, it must state only those terms that actually are or will be arranged or offered by the creditor.

Disclosures required by this section must be made "clearly and conspicuously." To meet this standard in general, credit terms need not be printed in a certain type size nor appear in any particular place in the advertisement. For advertisements for credit secured by a dwelling, a clear and conspicuous disclosure means that the required information is disclosed with equal prominence and in close proximity to the advertised rates or payments triggering the required disclosures.

If an advertisement states a rate of finance charge, it must state the rate as an "annual percentage rate," using that term. If the APR may be increased after consummation, the advertisement must state that fact.

If an advertisement is for credit *not* secured by a dwelling, the advertisement must not state any other rate, except that a simple annual rate or periodic rate that is applied to an unpaid balance may be stated in conjunction with, but not more conspicuously than, the APR.

If an advertisement is for credit secured by a dwelling, the advertisement must not state any other rate, except that a simple annual rate that is applied to an unpaid balance may be stated in conjunction with, but not more conspicuously than, the APR. That is, an advertisement for credit secured by a dwelling may not state a periodic rate, other than a simple annual rate, that is applied to an unpaid balance.

"Triggering terms" – The following are triggering terms that require additional disclosures:

- The amount or percentage of any down payment,
- The number of payments or period of repayment,
- The amount of any payment, and
- The amount of any finance charge.

An advertisement stating a triggering term must also state the following terms as applicable:

- The amount or percentage of any down payment;
- The terms of repayment, which reflect the repayment obligations over the full term of the loan, including any balloon payment; and
- The "annual percentage rate," using that term, and, if the rate may be increased after consummation, that fact.

For any advertisement secured by a dwelling, other than television or radio advertisements, that states a simple annual rate of interest, and more than one simple annual rate of interest will apply over the term of the advertised loan, the advertisement must state in a clear and conspicuous manner:

- Each simple rate of interest that will apply. In variable-rate transactions, a rate determined by adding an index and margin must be disclosed based on a reasonably current index and margin.
- The period of time during which each simple annual rate of interest will apply.
- The APR for the loan.

The regulation prohibits the following seven deceptive or misleading acts or practices in advertisements for closed-end mortgage loans:

- Stating that rates or payments for loans are "fixed" when those rates or payments can vary without adequately disclosing that the interest rate or payment amounts are "fixed" only for a limited period of time, rather than for the full term of the loan;
- Making comparisons between actual or hypothetical credit payments or rates and any payment or rate available under the advertised product that are not available for the full term of the loan, with certain exceptions for advertisements for variable-rate products;
- Characterizing the products offered as "government loan programs," "government-supported loans," or otherwise endorsed or sponsored by a federal or state government entity even though the advertised products are not government-supported or sponsored loans;
- Displaying the name of the consumer's current mortgage lender, unless the advertisement also prominently discloses that the advertisement is from a mortgage lender not affiliated with the consumer's current lender;
- Making claims of debt elimination if the product advertised would merely replace one debt obligation with another;
- Creating a false impression that the mortgage broker or lender is a "counselor" for the consumer; and
- In foreign-language advertisements, providing certain information, such as a low introductory "teaser" rate, in a foreign language, while providing required disclosures only in English.

## Subpart D – Miscellaneous

Subpart D contains rules on oral disclosures 12 CFR 1026.26, disclosures in languages other than English 12 CFR 1026.27, record retention 12 CFR 1026.25, effect on state laws 12 CFR 1026.28, state exemptions 12 CFR 1026.29, and rate limitations (12 CFR 1026.30).

### Record Retention – 12 CFR 1026.25

As a general rule, the creditor must retain evidence of compliance with Regulation Z (other than advertising requirements under 12 CFR 1026.16 and 1026.24, and other than certain requirements for mortgage loans) for two years after the date disclosures are required to be made or action is required to be taken (12 CFR 1026.25(a)). This includes, for example, evidence that the creditor properly handled adverse credit reports in connection with amounts subject to a billing dispute under 12 CFR 1026.13, and properly handled the refunding of credit balances under 12 CFR 1026.11 and 1026.21. The creditor may retain the evidence by any method that reproduces records accurately (including computer programs) (Comment 25(a)-2). A creditor

must permit the enforcing agency to inspect its relevant records for compliance (12 CFR 1026.25(b)).

The record retention period for mortgage loans is generally three years (12 CFR 1026.25(c)). A creditor must retain evidence of compliance with the requirements of 12 CFR 1026.19(e) and (f) for three years after the later of the date of consummation, the date disclosures are required to be made, or the date the action is required to be taken (12 CFR 1026.25(c)(1)(i)).

For Closing Disclosures, the record retention period is five years. The creditor must retain completed closing disclosures required by 12 CFR 1026.19(f)(1)(i) or (f)(4)(i), and all documents related to such disclosures, for five years after consummation (12 CFR 1026.25(c)(1)(ii)(A)). If a creditor sells, transfers, or otherwise disposes of its interest in a mortgage loan subject to 12 CFR 1026.19(f) and does not service the mortgage loan, the creditor must provide a copy of the closing disclosures to the owner or servicer of the mortgage, and the new owner or servicer must retain such disclosures for the remainder of the five-year period.

For loan originator compensation, creditors and loan originator organizations must retain records-related requirements for mortgage loan originator compensation and the compensation agreement that governs those payments for three years after the date of payment (12 CFR 1026.25(c)(2)).

A creditor must retain evidence to show compliance with the minimum standards for loans secured by a dwelling in 12 CFR 1026.43 for three years after consummation of a transaction covered by that section (12 CFR 1026.25(c)(3)).

## Relationship to State Law – TILA 111 and 12 CFR 1026.28, 1026.29

State laws providing rights, responsibilities, or procedures for consumers or financial institutions for consumer credit contracts may be:

- Preempted by federal law,
- Not preempted by federal law, or
- Substituted in lieu of TILA and Regulation Z requirements.

State law provisions are preempted to the extent that they contradict the requirements in the following chapters of TILA and the implementing sections of Regulation Z:

- Chapter 1, General Provisions, which contains definitions and acceptable methods for determining finance charges and annual percentage rates.
- Chapter 2, Credit Transactions, which contains disclosure requirements, rescission rights, and certain credit card provisions.

- Chapter 3, Credit Advertising, which contains consumer credit advertising rules and APR oral disclosure requirements.

For example, a state law would be preempted if it required a financial institution to use the terms "nominal annual interest rate" in lieu of "annual percentage rate."

Conversely, state law provisions are generally not preempted under federal law if they call for, without contradicting Chapters 1, 2, or 3 of TILA or the implementing sections of Regulation Z, either of the following:

- Disclosure of information not otherwise required. A state law that requires disclosure of the minimum periodic payment for open-end credit, for example, would not be preempted because it does not contradict federal law.

- Disclosures more detailed than those required. A state law that requires itemization of the amount financed, for example, would not be preempted, unless it contradicts federal law by requiring the itemization to appear with the disclosure of the amount financed in the segregated closed-end credit disclosures.

The relationship between state law and Chapter 4 of TILA (Credit Billing) involves two parts. The first part is concerned with Sections 161 (correction of billing errors) and 162 (regulation of credit reports) of the TILA; the second part addresses the remaining sections of Chapter 4.

State law provisions are preempted if they differ from the rights, responsibilities, or procedures contained in Sections 161 or 162. An exception is made, however, for state law that allows a consumer to inquire about an account and requires the bank to respond to such inquiry beyond the time limits provided by federal law. Such a state law would not be preempted for the extra time period.

State law provisions are preempted if they result in violations of Sections 163 through 171 of Chapter 4. For example, a state law that allows the card issuer to offset the consumer's credit-card indebtedness against funds held by the card issuer would be preempted, since it would violate (12 CFR 1026.12(d)). Conversely, a state law that requires periodic statements to be sent more than 14 days before the end of a free-ride period would not be preempted, since no violation of federal law is involved.

A financial institution, state, or other interested party may ask the CFPB to determine whether state law contradicts Chapters 1 through 3 of TILA or Regulation Z. The party also may ask if the state law is different from, or would result in violations of, Chapter 4 of TILA and the implementing provisions of Regulation Z. If the Bureau determines that a disclosure required by state law (other than a requirement relating to the finance charge, APR, or the disclosures required under 12 CFR 1026.32 is substantially the same in meaning as a disclosure required under TILA or Regulation Z, generally creditors in that state may make the state disclosure in lieu of the federal disclosure.

# Subpart E – Special Rules for Certain Home Mortgage Transactions

Subpart E contains special rules for mortgage transactions. 12 CFR 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. 12 CFR 1026.33 requires special disclosures, including the total annual loan cost rate, for reverse mortgage transactions. 12 CFR 1026.34 prohibits specific acts and practices in connection with high-cost mortgages, as defined in 12 CFR 1026.32(a). 12 CFR 1026.35 provides requirements for higher-priced mortgage loans. 12 CFR 1026.36 prohibits specific acts and practices in connection with an extension of credit secured by a dwelling. 12 CFR 1026.37 and 1026.38 set forth disclosure requirements for certain closed-end transactions secured by real property or cooperative unit, as required by 12 CFR 1026.19(e) and (f).

## General Rules – 12 CFR 1026.31

The requirements and limitations of this subpart are in addition to, and not in lieu of, those contained in other subparts of Regulation Z. The disclosures for high-cost, reverse mortgage, and higher-priced mortgage transactions must be made clearly and conspicuously in writing, in a form that the consumer may keep and in compliance with specific timing requirements.

## Requirements for High-Cost Mortgages – 12 CFR 1026.32

The requirements of this section generally apply to a high-cost mortgage, which is a consumer credit transaction secured by the consumer's principal dwelling (subject to the exemptions discussed below) that meets any one of the following three coverage tests.

- The APR will exceed the average prime offer rate (APOR), as defined in 12 CFR 1026.35(a)(2), applicable for a comparable transaction as of the date the interest rate is set by:
    - More than 6.5 percentage points for first-lien transactions (other than as described below);
    - More than 8.5 percentage points for first-lien transactions where the dwelling is personal property and the loan amount is less than $50,000; or
    - More than 8.5 percentage points for subordinate-lien transactions.
- The total points and fees (see definition below) for the transaction will exceed:
    - For transactions with a loan amount of $20,000 or more, 5 percent of the total loan amount, with the loan amount to be adjusted annually on January 1 by the annual percentage change in the Consumer Price Index reported on the preceding June 1; or
    - For transactions with a loan amount of less than $20,000, the lesser of 8 percent of the total transaction amount or $1,000, with the loan amount to be adjusted annually on

January 1 by the annual percentage change in the Consumer Price Index reported on the preceding June 1.

The adjusted loan amounts will be reflected in official interpretations of 12 CFR 1026.32(a)(1)(ii). The official interpretation of 12 CFR 1026.32(a)(1)(ii) also contains a historical list of dollar amount adjustments for transactions originated prior to January 10, 2014.

NOTE: The "total loan amount" (using the face amount of the note) for closed-end credit is calculated by taking the amount financed (*See* 12 CFR 1026.18(b)) and deducting any cost listed in 12 CFR 1026.32(b)(1)(iii), (iv), or (vi) that is both included in points and fees and financed by the creditor. The "total loan amount" for open-end credit is the credit plan limit when the account is opened.

- The terms of the loan contract or open-end credit agreement permit the creditor to charge a prepayment penalty (see definition below) more than 36 months after consummation or account opening, or prepayment penalties that exceed more than 2 percent of the amount prepaid (12 CFR 1026.32(a)(1)(iii)).

NOTE: 12 CFR 1026.32(d)(6) prohibits prepayment penalties for high-cost mortgages. However, if a mortgage loan has a prepayment penalty that may be imposed more than 36 months after consummation or account opening or that is greater than 2 percent of the amount prepaid, the loan is a high-cost mortgage regardless of interest rate or fees. Therefore, the prepayment penalty coverage test above effectively bans transactions of the types subject to HOEPA coverage that permit creditors to charge prepayment penalties that exceed the prescribed limits.

## Exemptions from HOEPA Coverage – 12 CFR 1026.32(a)(2)

- Reverse mortgage transactions subject to 12 CFR 1026.33;
- A transaction that finances the initial construction of a dwelling;
- A transaction originated by a Housing Finance Agency, where the Housing Finance Agency is the creditor for the transaction; or
- A transaction originated pursuant to the U.S. Department of Agriculture's (USDA) Rural Development Section 502 Direct Loan Program.

## Determination of APR for High-Cost Mortgages – 12 CFR 1026.32(a)(3)

The APR used to determine whether a mortgage is a high-cost mortgage is calculated differently from the APR that is used on TILA disclosures. Specifically, the APR for HOEPA coverage is based on the following:

- If the APR will not vary during the length of the loan or credit plan (i.e., for fixed-rate transactions), the interest rate in effect as of the date the interest rate for the transaction is set (12 CFR 1026.32(a)(3)(i));

- If the interest rate may vary during the term of the loan or credit plan in accordance with an index, the interest rate that results from adding the maximum margin permitted at any time during the term of the loan or credit plan to the index rate in effect as of the date the interest rate for the transaction is set, or to the introductory interest rate, whichever is greater (12 CFR 1026.32(a)(3)(ii)); or

- If the interest rate may or will vary during the term of the loan or credit plan other than as described above (i.e., as in a step-rate transaction), the maximum interest rate that may be imposed during the life of the loan or credit plan (12 CFR 1026.32(a)(3)(iii)).

## Points and Fees for High-Cost Mortgages – 12 CFR 1026.32(b)

NOTE: Points and fees calculations for high-cost mortgages depend upon whether the transaction is closed-end or open-end.

For a **closed-end transaction**, calculate the points and fees by including the following charges (12 CFR 1026.32(b)(1)):

- All items included in the finance charge under 12 CFR 1026.4(a) and (b), except that the following items are excluded:
  - Interest or the time-price differential;
  - Any premiums or other charges imposed in connection with a federal or state agency program for any guaranty or insurance that protects the creditor against the consumer's default or other credit loss (i.e., up-front and annual Federal Housing Administration (FHA) premiums, U.S. Department of Veterans Affairs (VA) funding fees, and USDA guarantee fees);
  - Premiums or other charges for any guaranty or insurance that protects creditors against the consumer's default or other credit loss and *is not* in connection with a federal or state agency program (i.e., private mortgage insurance (PMI) premiums) as follows:
    - The entire amount of any premiums or other charges payable after consummation (i.e., monthly or annual PMI premiums); or
    - If the premium or other charge is payable at or before consummation, the portion of any such premium or other charge that is not in excess of the permissible up-front mortgage insurance premium for FHA loans, but only if the premium or charge is refundable on a pro rata basis and the refund is automatically issued upon the notification of the satisfaction of the underlying mortgage loan. The permissible up-front mortgage insurance premiums for FHA loans are published in HUD Mortgagee Letters, available online at: http://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/hudclips/letters/mortgagee.

- Bona fide third-party charges not retained by the creditor, loan originator, or an affiliate of either, unless the charge is required to be included under 12 CFR 1026.32(b)(1)(i)(C), (iii), or (v);
- Up to two bona fide discount points payable by the consumer in connection with the transaction, provided that the interest rate without any discount does not exceed:
  - The APOR for a comparable transaction by more than one percentage point; or
  - If the transaction is secured by personal property, the average rate for a loan insured under Title I of the National Housing Act by more than one percentage point; or
- If no discount points have been excluded above, then up to one bona fide discount point payable by the consumer in connection with the transaction, provided that the interest rate without any discount does not exceed:
  - The APOR for a comparable transaction by more than two percentage points; or
  - If the transaction is secured by personal property, the average rate for a loan insured under Title I of the National Housing Act by more than two percentage points.

NOTE: In the case of a closed-end plan, a bona fide discount point means an amount equal to 1 percent of the loan amount paid by the consumer that reduces the interest rate or time-price differential applicable to the transaction based on a calculation that is consistent with established industry practices for determining the amount of reduction in the interest rate or time-price differential appropriate for the amount of discount points paid by the consumer (12 CFR 1026.32(b)(3)).

- All compensation paid directly or indirectly by a consumer or creditor to a loan originator (as defined in 12 CFR 1026.36(a)(1)) that can be attributed to the transaction at the time the interest rate is set unless:
  - That compensation is paid by a consumer to a mortgage broker, as defined in 12 CFR 1026.36(a)(2), and already has been included in points and fees under 12 CFR 1026.32(b)(1)(i);
  - That compensation is paid by a mortgage broker, as defined in 12 CFR 1026.36(a)(2), to a loan originator that is an employee of the mortgage broker;
  - That compensation is paid by a creditor to a loan originator that is an employee of the creditor; or
- All items listed in 12 CFR 1026.4(c)(7), other than amounts held for future taxes, unless *all* of the following conditions are met:
  - The charge is reasonable,

  - The creditor receives no direct or indirect compensation in connection with the charge, and
  - The charge is not paid to an affiliate of the creditor.
- Premiums or other charges paid at or before consummation, whether paid in cash or financed, for any credit life, credit disability, credit unemployment, or credit property insurance, or for any other life, accident, health, or loss-of-income insurance for which the creditor is a beneficiary, or any payments directly or indirectly for any debt cancellation or suspension agreement or contract.
- The maximum prepayment penalty that may be charged or collected under the terms of the mortgage or credit plan.
- The total prepayment penalty incurred by the consumer if the consumer refinances an existing mortgage loan, or terminates an existing open-end credit plan in connection with obtaining a new mortgage loan, with a new mortgage transaction extended by the current holder of the existing loan, a servicer acting on behalf of the current holder, or an affiliate of either.

For an **open-end credit plan,** points and fees mean the following charges that are known at or before account opening (12 CFR 1026.32(b)(2)):

- All items included in the finance charge under 12 CFR 1026.4(a) and (b), except that the following items are excluded:
  - Interest or the time-price differential;
  - Any premiums or other charges imposed in connection with a federal or state agency program for any guaranty or insurance that protects the creditor against the consumer's default or other credit loss (i.e., up-front and annual FHA premiums, VA funding fees, and USDA guarantee fees);
  - Premiums or other charges for any guaranty or insurance that protects creditors against the consumer's default or other credit loss and *is not* in connection with a federal or state agency program (i.e., PMI premiums) as follows:
    - If the premium or other charge is payable after account opening, the entire amount of such premium or other charge; or
    - If the premium or other charge is payable at or before account opening, the portion of any such premium or other charge that is not in excess of the permissible up-front mortgage insurance premium for FHA loans, but only if the premium or charge is refundable on a pro rata basis and the refund is automatically issued upon the notification of the satisfaction of the underlying mortgage loan. The permissible up-front mortgage insurance premiums for FHA loans are published in HUD Mortgagee

Letters, available online at: https://www.hud.gov/program_offices/administration/hudclips/letters/mortgagee

- Bona fide third-party charges not retained by the creditor, loan originator, or an affiliate of either, unless the charge is required to be included under 12 CFR 1026.32(b)(2)(i)(C), (iii), or (iv);
- Up to two bona fide discount points payable by the consumer in connection with the transaction, provided that the interest rate without any discount does not exceed:
  - The APOR by more than one percentage point; or
  - If the transaction is secured by personal property, the average rate for a loan insured under Title I of the National Housing Act by more than one percentage point; or
- If no discount points have been excluded above, then up to one bona fide discount point payable by the consumer in connection with the transaction, provided that the interest rate without any discount does not exceed:
  - The APOR by more than two percentage points; or
  - If the transaction is secured by personal property, the average rate for a loan insured under Title I of the National Housing Act by more than two percentage points.

  NOTE: A bona fide discount point means an amount equal to 1 percent of the credit limit when the account is opened, paid by the consumer, that reduces the interest rate or time-price differential applicable to the transaction based on a calculation that is consistent with established industry practices for determining the amount of reduction in the interest rate or time-price differential appropriate for the amount of discount points paid by the consumer (12 CFR 1026.32(b)(3)(ii)).

- All compensation paid directly or indirectly by a consumer or creditor to a loan originator (as defined in 12 CFR 1026.36(a)(1)) that can be attributed to the transaction at the time the interest rate is set unless:
  - That compensation is paid by a consumer to a mortgage broker, as defined in 12 CFR 1026.36(a)(2), and already has been included in points and fees under 12 CFR 1026.36(b)(2)(i)); or
  - That compensation is paid by a mortgage broker as defined in 12 CFR 1026.36(a)(2) to a loan originator that is an employee of the mortgage broker; or
  - That compensation is paid by a creditor to a loan originator that is an employee of the creditor; or
  - That compensation is paid by a retailer of manufactured homes to its employee.

NOTES:

- A person is not a loan originator if the person does not take a consumer credit application or offer or negotiate credit terms available from a creditor to that consumer based on the consumer's financial characteristics, but the person performs purely administrative or clerical tasks on behalf of a person who does engage in such activities. For purposes of 12 CFR 1026.36, "credit terms" include rates, fees, or other costs, and a consumer's financial characteristics include any factors that may influence a credit decision, such as debts, income, assets, or credit history (12 CFR 1026.36(a)(6)).
- A retailer of manufactured or modular homes, or an employee of such a retailer, who does not receive compensation or gain for engaging in loan originator activities *in excess* of any compensation or gain received in a comparable cash transaction, and who does not directly negotiate with the consumer or lender on loan terms, is not a mortgage originator, provided the retailer or employee (as applicable) discloses to the consumer in writing any corporate affiliation with any creditor. Where the retailer has a corporate affiliation with any creditor, at least one unaffiliated creditor must also be disclosed (15 U.S.C. 1602(dd)(2)(C)(ii)).

All items listed in 12 CFR 1026.4(c)(7), other than amounts held for future taxes, unless *all* of the following conditions are met:

- The charge is reasonable,
- The creditor receives no direct or indirect compensation in connection with the charge, and
- The charge is not paid to an affiliate of the creditor.

- Premiums or other charges paid at or before account opening for any credit life, credit disability, credit unemployment, or credit property insurance, or for any other life, accident, health, or loss-of-income insurance for which the creditor is a beneficiary, or any payments directly or indirectly for any debt cancellation or suspension agreement or contract.
- The maximum prepayment penalty that may be charged or collected under the terms of the credit plan.
- The total prepayment penalty incurred by the consumer if the consumer refinances an existing closed-end credit transaction with an open-end credit plan, or terminates an existing open-end credit plan in connection with obtaining a new open-end credit with the current holder of the existing transaction or plan, a servicer acting on behalf of the current holder, or an affiliate of either.

In addition to the charges listed above, points and fees for open-end credit plans include the following items:

- Fees charged for participation in the credit plan, payable at or before account opening, as described in 12 CFR 1026.4(c)(4), and

- Any transaction fee that will be charged to draw funds on the credit line, as described in (12 CFR 1026.32(b)(2)(viii)).

## Prepayment Penalty Definition – 12 CFR 1026.32(b)(6)

For closed-end credit transactions, a prepayment penalty is a charge imposed for paying all or part of the transaction's principal before the date on which the principal is due, with limited exceptions.

For open-end credit plans, a prepayment penalty is a charge imposed by the creditor if the consumer terminates the credit plan prior to the end of its term.

NOTE: Waived, bona fide third-party charges that are later imposed if the closed-end transaction is prepaid or the consumer terminates the open-end credit plan sooner than 36 months after consummation or account opening are not considered prepayment penalties.

NOTE: For closed-end transactions insured by the Federal Housing Administration and consummated before January 21, 2015, interest charged consistent with the monthly interest accrual amortization method is not a prepayment penalty, so long as the interest is charged consistent with the monthly interest accrual amortization method used for those loans (*See* Comment 32(b)(6)-1(iv)).

## High-Cost Mortgage Disclosures – 12 CFR 1026.32(c)

In addition to the other disclosure requirements of Regulation Z, high-cost mortgages require certain additional information to be disclosed in conspicuous type size to consumers before consummation of the transaction or account opening. These disclosures include:

- Notice to the consumer using the required language in 12 CFR 1026.32(c)(1);
- The annual percentage rate (12 CFR 1026.32(c)(2));
- Specified information concerning the regular or minimum periodic payment and the amount of any balloon payment, if permitted under the high-cost mortgage limitations in 12 CFR 1026.32(d) (12 CFR 1026.32(c)(3)).
- For variable-rate transactions, a statement that the interest and monthly payment may increase, and the amount of the single maximum monthly payment based on the maximum interest rate required to be included in the contract (12 CFR 1026.32(c)(4)); and
- The total amount borrowed for closed-end credit transactions or the credit limit for the plan when the account is opened for an open-end credit plan (12 CFR 1026.32(c)(5)).

  NOTE: For closed-end credit transactions, if the amount borrowed includes charges to be financed under 12 CFR 1026.34(a)(10), this fact must be stated, grouped together with the disclosure of amount borrowed. The disclosure of the amount borrowed will be treated as accurate if it is not more than $100 above or below the amount required to be disclosed.

### High-Cost Mortgage Limitations – 12 CFR 1026.32(d)

Certain loan terms, including negative amortization, interest rate increases after default, and prepayment penalties are prohibited for high-cost mortgages. Others, including balloon payments and due-on-demand clauses, are restricted.

- Balloon payments, defined as payments that are more than two times a regular periodic payment, are generally prohibited for high-cost mortgages (12 CFR 1026.32(d)(1)(i)). However, balloon payments are allowed in certain limited circumstances.
    - For closed-end transactions, balloon payments are permitted when (a) the loan has a payment schedule that is adjusted to seasonal or irregular income of the consumer; (b) the loan is a "bridge" loan made in connection with the purchase of a new dwelling and matures in 12 months or less; (c) the creditor is a small creditor operating in a rural or underserved area that meets the criteria set forth in 12 CFR 1026.43(f) for small creditor rural or underserved balloon-payment qualified mortgages; or, (d) until April 1, 2016, the creditor is a small creditor that meets the criteria set forth in 1026.43(e)(6)) for temporary balloon-payment qualified mortgages (12 CFR 1026.32(d)(1)(ii)).
    - For an open-end credit plan where the terms of the plan provide for a draw period where no payment is required, followed by a repayment period where no further draws may be taken, the initial payment required after conversion to the repayment phase of the credit plan is not considered a "balloon" payment. However, if the terms of an open-end credit plan do not provide for a separate draw period and repayment period, the balloon payment limitation applies (12 CFR 1026.32(d)(1)(iii)).
- Acceleration clauses or demand features are limited and may only permit creditors to accelerate and demand repayment of the entire outstanding balance of a high-cost mortgage if:
    - There is fraud or material misrepresentation by the consumer in connection with the loan (12 CFR 1026.32(d)(8)(i));
    - The consumer fails to meet the repayment terms of the agreement for any outstanding balance that results in a default on the loan (12 CFR 1026.32(d)(8)(ii)); or
    - There is any action (or inaction) by the consumer that adversely affects the rights of the creditor's security interest for the loan, such as the consumer failing to pay required taxes on the property (12 CFR 1026.32(d)(8)(iii) and Comments 32(d)(8)(iii)-1 and -2).

## Prohibited Acts or Practices in Connection with High-Cost Mortgages – 12 CFR 1026.34

In addition to the requirements in 12 CFR 1026.32, Regulation Z imposes additional requirements for high-cost mortgages, several of which are discussed below.

## Refinancing Within One Year – 12 CFR 1026.34(a)(3)

A creditor or assignee cannot refinance a consumer's high-cost mortgage into a second high-cost mortgage within the first year of the origination of the first loan, unless the second high-cost mortgage is in the consumer's interest.

## Repayment Ability for High-Cost Mortgages – 12 CFR 1026.34(a)(4)

Among other requirements, a creditor extending high-cost mortgage credit subject to 12 CFR 1026.32 must not make such loans without regard to the consumer's repayment ability as of consummation or account opening as applicable (12 CFR 1026.34(a)(4)).

For closed-end credit transactions that are high-cost mortgages, 12 CFR 1026.34(a)(4) requires a creditor to comply with the repayment ability requirements set forth in 12 CFR 1026.43.

For open-end credit plans that are high-cost mortgages, a creditor may not open a credit plan for a consumer where credit is or will be extended without regard to the consumer's repayment ability as of account opening, including the consumer's current and reasonably expected income, employment, assets other than the collateral, and current obligations, including any mortgage-related obligations.

- For the purposes of these open-end requirements, mortgage-related obligations include, among other things, property taxes, premiums and fees for mortgage-related insurance that are required by the creditor, fees and special assessments such as those imposed by a condominium association, and similar expenses required by another credit obligation undertaken prior to or at account opening and secured by the same dwelling that secures the high-cost mortgage transaction (12 CFR 1026.34(a)(4)(i)).
- A creditor must also verify both current obligations and the amounts of income or assets that it relies on to determine repayment ability using W-2s, tax returns, payroll receipts, financial institution records, or other third-party documents that provide reasonably reliable evidence of the consumer's income or assets (12 CFR 1026.34(a)(4)(ii)).

For open-end high-cost mortgages, a presumption of compliance is available, but only if the creditor:

- Verifies the consumer's repayment ability as required under 12 CFR 1026.34(a)(4)(ii));
- Determines the consumer's repayment ability taking into account current obligations and mortgage-related obligations, using the largest required minimum periodic payment based on the assumptions that:
    - The consumer borrows the full credit line at account opening with no additional extensions of credit;
    - The consumer makes only required minimum periodic payments during the draw period and any repayment period; and

- If the APR can increase, the maximum APR that is included in the contract applies to the plan at account opening and will apply during the draw and any repayment period (12 CFR 1026.34(a)(4)(iii)(B)).

- Assesses the consumer's repayment ability, taking into account either the ratio of total debts to income or the income the consumer will have after paying current obligations (12 CFR 1026.34(a)(4)(iii)(C)).

NOTE: No presumption of compliance will be available for an open-end high-cost mortgage transaction in which the regular periodic payments, when aggregated, do not fully amortize the outstanding principal balance except for transactions with balloon payments permitted under (12 CFR 1026.32(d)(1)(ii)).

## High-Cost Mortgage Pre-Loan Counseling – 12 CFR 1026.34(a)(5)

Creditors that originate high-cost mortgages must receive written certification that the consumer has obtained counseling on the advisability of the mortgage from a counselor approved by HUD, or if permitted by HUD, a state housing finance authority (specific content for the certifications can be found in (12 CFR 1026.34(a)(5)(iv)). Counseling must occur after the consumer receives a good faith estimate or initial TILA disclosure required by 12 CFR 1026.40 (or, for transactions where neither of those disclosures are provided, the disclosures required by (12 CFR 1026.32(c)). Additionally, counseling cannot be provided by a counselor who is employed by, or affiliated with, the creditor. A creditor may pay the fees for counseling but is prohibited from conditioning the payment of fees upon the consummation of the mortgage transaction or, if the consumer withdraws his or her application, upon receipt of the certification. However, a creditor may confirm that a counselor provided counseling to the consumer prior to paying these fees. Finally, a creditor is prohibited from steering a consumer to a particular counselor.

## Recommended Default – 12 CFR 1026.34(a)(6)

Creditors (and mortgage brokers) are prohibited from recommending or encouraging a consumer to default on an existing loan or other debt prior to, and in connection with, the consummation or account opening of a high-cost mortgage that refinances all or any portion of the existing loan or debt.

## Loan Modification and Deferral Fees – 12 CFR 1026.34(a)(7)

Creditors, successors in interest, assignees, or any agents of these parties may not charge a consumer any fee to modify, renew, extend, or amend a high-cost mortgage, or to defer any payment due under the terms of the mortgage.

## Late Fees – 12 CFR 1026.34(a)(8)

Late payment charges for a high-cost mortgage must be permitted by the terms of the loan contract or open-end agreement and may not exceed 4 percent of the amount of the payment that is past due. Late payment charges are permitted only if payment is not received by the end of the

15-day period beginning on the day the payment is due or, where interest on each installment is paid in advance, by the end of the 30-day period beginning on the day the payment is due.

Creditors are also prohibited from "pyramiding" late fees – that is, charging late payments if any delinquency is attributable only to a late payment charge that was imposed due to a previous late payment, and the payment otherwise is considered a full payment for the applicable period (and any allowable grace period). If a consumer fails to make a timely payment by the due date then subsequently resumes making payments but has not paid all past due payments, the creditor can continue to impose late payment charges for the payments outstanding until the default is cured.

### Fees for Payoff Statements – 12 CFR 1026.34(a)(9)

A creditor or servicer may not charge a fee for providing consumers (or authorized representatives) with a payoff statement on a high-cost mortgage. Payoff statements must be provided to consumers within **five** business days after receiving the request for a statement. A creditor or servicer may charge a processing fee to cover the cost of providing the payoff statement by fax or courier only, provided that such fee may not exceed an amount that is comparable to fees imposed for similar services provided in connection with a non-high-cost mortgage and that a payoff statement be made available to the consumer by an alternative method without charge. If a creditor charges a fee for providing a payoff statement by fax or courier, the creditor must disclose the fee prior to charging the consumer and must disclose to the consumer that other methods for providing the payoff statement are available at no cost. Finally, a creditor is permitted to charge a consumer a reasonable fee for additional payoff statements during a calendar year in which four payoff statements have already been provided without charge other than permitted processing fees.

## Reverse Mortgages – 12 CFR 1026.33

A reverse mortgage is a non-recourse transaction secured by the consumer's principal dwelling that ties repayment (other than upon default) to the homeowner's death or permanent move from, or transfer of the title of, the home. Special disclosure requirements apply to reverse mortgages.

## Higher-Priced Mortgage Loans – 12 CFR 1026.35(a)

A mortgage loan subject to 12 CFR 1026.35 (*higher-priced mortgage loan*) is a closed-end consumer credit transaction secured by the consumer's principal dwelling with an APR that exceeds the *average prime offer rate* for a comparable transaction as of the date the interest rate is set by:

- 1.5 or more percentage points for loans secured by a first lien on a dwelling where the amount of the principal obligation at the time of consummation does not exceed the maximum principal obligation eligible for purchase by Freddie Mac;
- 2.5 or more percentage points for loans secured by a first lien on a dwelling, where the amount of the principal obligation at the time of consummation exceeds the maximum principal obligation eligible for purchase by Freddie Mac; or

- 3.5 or more percentage points for loans secured by a subordinate lien on a dwelling.

*Average prime offer* rate means an APR that is derived from average interest rates, points, and other loan pricing terms currently offered to consumers by a representative sample of creditors for mortgage transactions that have low-risk pricing characteristics. The CFPB publishes average prime offer rates for a broad range of types of transactions in a table updated at least weekly, as well as the methodology it uses to derive these rates. These rates are available on the website of the Federal Financial Institutions Examination Council (FFIEC).
http://www.ffiec.gov/ratespread/newcalchelp.aspx

Additionally, creditors extending mortgage loans subject to 12 CFR 1026.43(c) must verify a consumer's ability to repay as required by (12 CFR 1026.43(c)).

Finally, the regulation prohibits creditors from structuring a home-secured loan that does not meet the definition of open-end credit as an open-end plan to evade these requirements.

## Higher-Priced Mortgage Loans Escrow Requirement – 12 CFR 1026.35(b)

In general, a creditor may not extend a higher-priced mortgage loan (including high-cost mortgages that also meet the definition of a higher-priced mortgage loan), secured by a first lien on a principal dwelling unless an escrow account is established before consummation for payment of property taxes and premiums for mortgage-related insurance required by the creditor.

An escrow account for a higher-priced mortgage loan need not be established for:

- A transaction secured by shares in a cooperative,
- A transaction to finance the initial construction of a dwelling,
- A temporary or "bridge" loan with a term of 12 months or less, or
- A reverse mortgage subject to 12 CFR 1026.33.

There is also a limited exemption that allows creditors to establish escrow accounts for property taxes only (rather than for both property taxes and insurance) for loans secured by dwellings in a "common interest community" under 12 CFR 1026.35(b)(2)(ii), where dwelling ownership requires participation in a governing association that is obligated to maintain a master insurance policy insuring all dwellings (12 CFR 1026.35(b)(2)(ii)).

An exemption to the higher-priced mortgage loan escrow requirement is available for first-lien higher-priced mortgage loans made by certain creditors that operate in a "rural" or "underserved" area (12 CFR 1026.35(b)(2)(iii) and its associated commentary). To make use of this exemption, a creditor:

1. Must have made, during the preceding calendar year (or if the application for the transaction was received before April 1 of the current calendar year, during either of the two preceding

calendar years), a covered transaction secured by a first lien on a property that is located in an area that meets the definition of either "rural" or "underserved" as set forth in (12 CFR 1026.35(b)(2)(iv));[28]

2. Together with its affiliates, must not have extended more than 2,000 covered transactions (secured by first liens, that were sold, assigned, or otherwise transferred to another person or subject at the time of consummation to a commitment to be acquired by another person) in the preceding calendar year (or if the application for the transaction was received before April 1 of the current calendar year, during either of the two preceding calendar years);

3. Together, with its affiliates that regularly extended[29] covered transactions (secured by first liens), must have had less than $2 billion in total assets[30] as of the preceding December 31 (or if an application was received before April 1 of the current year, as of either of the two preceding December 31sts); and

4. The creditor and its affiliates must not maintain escrow accounts for any extensions of consumer credit secured by real property or a dwelling that the creditor or its affiliate currently services. However, such creditors (and their affiliates) are permitted to maintain escrow accounts established to comply with the rule for applications received on or after April 1, 2010, and before May 1, 2016, without losing the exemption and to offer an escrow account to accommodate distressed borrowers.

For first-lien higher-priced mortgage loans originated by a creditor that would not be required to establish an escrow account based on the above exemption, if that creditor has obtained a commitment for a higher-priced mortgage loan to be acquired by another company that is not eligible for the exemption, an escrow account must be established. Since an escrow account will be established for this loan, however, note that if the creditor that has obtained a commitment for the higher-priced mortgage loan to be acquired by a non-exempt company would like to remain eligible for the exemption above, neither the creditor nor its affiliates can service the loan on or beyond the second periodic payment under the terms of the loan.

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[28] The regulation defines these two terms in 12 CFR 1026.35(b)(2)(iv)(A) and (B). A rural area is a county that is neither in a metropolitan statistical area or a micropolitan statistical area that is adjacent to a metropolitan statistical area; or a census block that is not in an urban area, as defined by the U.S. Census Bureau using the latest decennial census of the United States; or a county or a census block that has been designated as "rural" by the CFPB pursuant to the application process established in 2016. *See* Application Process for Designation of Rural Area under Federal Consumer Financial Law; Procedural Rule, 81 FR 11099 (March 3, 2016). The provisions related to the application process ceased to have any force or effect on December 4, 2017 (12 CFR 1026.35(b)(2)(iv)(A)(3)). An underserved area is a county defined by using Home Mortgage Disclosure Act data for the preceding year to determine whether it is a county in which no more than two creditors extended covered transactions secured by first liens on properties in the county five or more times. A property is in a rural or underserved area for a particular year if it is listed as a rural or underserved county by the CFPB, is identified as in a rural or underserved area by any automated tool on the Bureau's website or is not designated as located in an urban area in the most recent delineation of urban areas announced by the Census Bureau by any automated address search tool that the Census Bureau provides on its public website for that purpose.

[29] *See* Comment 35(b)(2)(iii)-1.iii for discussion of "regularly extended" as it applies to affiliates in 12 CFR 1026.35(b)(2)(iii)(C).

[30] The asset threshold is adjusted automatically each year, based on the year-to-year change in the average of the Consumer Price Index for Urban Wage Earners and Clerical Workers.

A creditor or servicer may cancel an escrow account only upon the earlier of termination of the underlying loan, or a cancellation request from the consumer five years or later after consummation. However, a creditor or servicer is not permitted to cancel an escrow account, even upon request from the consumer, unless the unpaid principal balance of the higher-priced mortgage loan is less than 80 percent of the original value of the property securing the loan and the consumer is not currently delinquent or in default on the loan (12 CFR 1026.35(b)(3)).

## Higher-Priced Mortgage Loans Appraisal Requirement – 12 CFR 1026.35(c)[31]

### *General Requirements, Exception, and Safe Harbor*

A creditor may not extend a higher-priced mortgage loan without first obtaining a written appraisal of the property to be mortgaged. The appraisal must be performed by a state-certified or licensed appraiser (defined in part as an appraiser who conducts the appraisal in conformity with the Uniform Standards of Professional Appraisal Practice (USPAP) and the requirements applicable to appraisers in Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) and its implementing regulations). The appraisal must include a physical visit of the interior of the dwelling. The appraisal requirements do **not** apply to:

- Qualified mortgages (QM) under 12 CFR 1026.43 or under rules on qualified mortgages adopted by HUD or VA, or, if promulgated, by USDA or Rural Housing Service (RHS), including mortgages that meet the QM criteria for these rules and are insured, guaranteed, or administered by those agencies;
- An extension of credit equal to or less than the applicable threshold amount that is published in the official staff commentary to the regulation, which is adjusted every year as applicable to reflect increases in the Consumer Price Index for Urban Wage Earners and Clerical Workers;[32]
- A transaction secured by a mobile home, boat, or trailer;
- A transaction to finance the initial construction of a dwelling;
- A loan with maturity of 12 months or less, if the purpose of the loan is a "bridge" loan connected with the acquisition of a dwelling intended to become the consumer's principal dwelling;
- A reverse mortgage transaction subject to 12 CFR 1026.33;

[31] The higher-priced mortgage loans appraisal requirement was adopted pursuant to an interagency rulemaking conducted by the Board of Governors of the Federal Reserve System (Board), the CFPB, the Federal Deposit Insurance Corporation (FDIC), the FHFA, the NCUA, and the Office of Comptroller of the Currency (OCC). The Board codified the rule at 12 CFR 226.43, and the OCC codified the rule at 12 CFR Part 34. There is no substantive difference among these three sets of rules.
[32] From January 1, 2015, through December 31, 2015, the threshold amount was $25,500. *See* Comment 35(c)(2)(ii) – 3. Effective January 1, 2020, to December 31, 2020, the threshold is $27,200; 84 Fed. Reg. 58013 (October 30, 2019).

- A refinancing secured by a first lien, as defined in 12 CFR 1026.20(a) (except that the creditor need not be the original creditor or a holder or servicer of the original obligation), provided that the refinancing meets the following criteria:
  - The credit risk of the refinancing is retained by the person who held the credit risk of the existing obligation and there is no commitment, at consummation, to transfer the credit risk to another person; or, the refinancing is insured or guaranteed by the same federal government agency that insured or guaranteed the existing obligation;
  - The regular periodic payments under the refinance loan do not:
    - Cause the principal balance to increase,
    - Allow the consumer to defer repayment of principal, or
    - Result in a balloon payment, as defined in (12 CFR 1026.18(s)(5)(i)).
  - The proceeds from the refinancing are used solely to satisfy the existing obligation and amounts attributed solely to the costs of the refinancing.
- A transaction secured by a manufactured home under the following conditions:[33]
  - If the transaction is for a new manufactured home and land, the exemption shall only apply to the requirement that the appraiser conduct a physical visit of the interior of the new manufactured home.
  - If the transaction is for a manufactured home and not land, for which the creditor obtains one of the following and provides a copy to the consumer no later than three business days prior to consummation of the transaction:
    - For a new manufactured home, the manufacturer's invoice for the manufactured home securing the transaction, provided that the date of manufacture is no earlier than 18 months prior to the creditor's receipt of the consumer's application for credit;
    - A cost estimate of the value of the manufactured home securing the transaction obtained from an independent cost service provider; or
    - A valuation, as defined in 12 CFR 1026.42(b)(3), of the manufactured home performed by a person who has no direct or indirect interest, financial or otherwise, in the property or transaction for which the valuation is performed and has training in valuing manufactured homes.
  - Transactions secured by an existing (used) manufactured home and land are *not* exempt from the appraisal requirement.

[33] Prior to July 18, 2015, appraisal requirements do not apply to transactions secured in whole or in part by a manufactured home (12 CFR 1026.35(c)(2)). This section describes how the exemption will work under an amendment to the rule that takes effect on July 18, 2015.

A creditor may obtain a safe harbor for compliance with 12 CFR 1026.35(c)(3)(i) by ordering that the appraisal be completed in conformity with USPAP and the requirements applicable to appraisers in Title XI of FIRREA and its implementing regulations, verifying that the appraiser is certified or licensed through the National Registry; and confirming that the written appraisal contains the elements listed in Appendix N of Regulation Z. In addition, the creditor must have no actual knowledge that the facts or certifications contained in the appraisal are inaccurate (12 CFR 1026.35(c)(3)(ii)).

### *Additional Appraisals*

The appraisal provisions in 12 CFR 1026.35(c) also require creditors to obtain an additional written appraisal before extending a higher-priced mortgage loan in two instances:

- First, when the dwelling that is securing the higher-priced mortgage loan was acquired by the seller 90 or fewer days prior to the consumer's agreement to purchase the property and the price of the property has increased by more than 10 percent.
- Additionally, when the dwelling was acquired by the seller between 91 and 180 days prior to the consumer's agreement to purchase the property, and the price of the property has increased by more than 20 percent.

A creditor must obtain an additional interior appraisal meeting the same requirements as the first appraisal (written report by a certified or licensed appraiser in compliance with USPAP and the FIRREA based upon an interior property visit), unless the creditor can demonstrate, by exercising reasonable diligence, that the circumstances necessitating an additional appraisal do not apply. A creditor can meet the reasonable diligence requirement if it bases its determination on information contained in certain written source documents (such as a copy of the seller's recorded deed or a copy of a property tax bill) (*See* Appendix O of Regulation Z). If, after exercising reasonable diligence, the creditor is unable to determine whether the circumstances necessitating an additional appraisal apply, the creditor must obtain an additional appraisal.

If the creditor is required to obtain an additional written appraisal, the two required appraisals must be conducted by different appraisers. Each appraisal obtained must include a physical visit of the interior of the dwelling. In instances where two appraisals are required, creditors are allowed to charge for only one of the two appraisals.

One of the two required written appraisals must contain an analysis of the difference between the price at which the seller obtained the property and the price the consumer agreed to pay to acquire the property, an analysis of changes in market conditions between when the seller acquired the property and when the consumer agreed to purchase the property, and a review of improvements made to the property between the two dates.

The higher-priced mortgage loan additional appraisal requirements do not apply to the extension of credit that finances the acquisition of a property:

- From a local, state, or federal government agency;

- From a person who acquired title to the property through foreclosure, deed-in-lieu of foreclosure, or other similar judicial or non-judicial procedures as a result of the person's exercise of rights as the holder of a defaulted mortgage;
- From a nonprofit entity as part of a local, state, or federal government program permitted to acquire single-family properties for resale from a person who acquired title through foreclosure, deed-in-lieu of foreclosure, or other similar judicial or non-judicial procedures;
- From a person who acquired title to the property by inheritance or by court order as a result of a dissolution of marriage, civil union, or domestic partnership, or of partition of joint or marital assets;
- From an employer or relocation agency in connection with the relocation of an employee;
- From a servicemember who received a deployment or permanent change-of-station order after the servicemember purchased the property;
- Located in a federal disaster area if the requirements of Title XI of FIRREA have been waived by the federal financial institutions regulatory agencies for as long as that waiver would apply; or
- Located in a rural county as defined by the CFPB in 12 CFR 1026.35(b)(2)(iv)(A).

## Application Disclosures and Copy of Appraisal

Finally, creditors must provide consumers who apply for a loan covered by the appraisal requirements in 12 CFR 1026.35(c) with a disclosure providing information relating to appraisals. A creditor must provide consumers with disclosures no later than the third business day after the creditor receives an application for a higher-priced mortgage loan, or no later than the third business day after the loan requested becomes a higher-priced mortgage loan. Additionally, a creditor must provide, at no cost to the consumer, a copy of each written appraisal performed in connection with a loan covered by the appraisal requirements in 12 CFR 1026.35(c) no later than three business days prior to consummation or, if the loan will not be consummated, no later than 30 days after the creditor determines that the loan will not be consummated. [34]

[34] Creditors may use the disclosure required under the Equal Credit Opportunity Act (ECOA) valuations rule to satisfy the disclosure requirements of the higher-priced mortgage loans appraisal rule for loans covered by both. After October 3, 2015, the new Loan Estimate model form appraisal language required by the TILA-RESPA Integrated Disclosure Rule (12 CFR 1026.37(m)(1)(iii)) will meet the requirements of both the ECOA valuations rule (12 CFR 1002.14(a)(2)) and the higher-priced mortgage loans appraisal rule.

## Prohibited Acts or Practices in Connection with Credit Secured by a Consumer's Dwelling – 12 CFR 1026.36

### Loan Originator – 12 CFR 1026.36(a)

The term "loan originator" means a person who, in expectation of direct or indirect compensation or other monetary gain or for direct or indirect compensation or other monetary gain, performs any of the following activities:

- Takes an application, offers, arranges, assists a consumer in obtaining or applying to obtain, negotiates, or otherwise obtains or makes an extension of consumer credit for another person; or
- Through advertising or other means of communication represents to the public that such person can or will perform any of these activities.

The term "loan originator" includes an employee, agent, or contractor of the creditor or loan originator organization if the employee, agent, or contractor meets this definition. The term "loan originator" also includes a creditor that engages in loan origination activities if the creditor does not finance the transaction at consummation out of the creditor's own resources, including by drawing on a bona fide warehouse line of credit or out of deposits held by the creditor.

The term "loan originator" does not include:

- A person who performs purely administrative or clerical tasks on behalf of a person who takes applications or offers or negotiates credit terms;
- A retailer of manufactured or modular homes, or an employee of such a retailer, who does not receive compensation or gain for engaging in loan originator activities *in excess* of any compensation or gain received in a comparable cash transaction, and who does not directly negotiate with the consumer or lender on loan terms (including rates, fees, and other costs), if such retailer or employee (as applicable) discloses to the consumer in writing any corporate affiliation with any creditor. Where the retailer has a corporate affiliation with any creditor, at least one unaffiliated creditor must also be disclosed (15 U.S.C. 1602(dd)(2)(C)(ii));
- A person who performs only real estate brokerage activity and is licensed or registered in accordance with applicable state law, unless that person is compensated by a creditor or loan originator for a consumer credit transaction subject to (12 CFR 1026.36);
- A seller financer that meets the criteria established in (12 CFR 1026.36(a)(4) or (a)(5)); or
- A servicer, or a servicer's employees, agents, and contractors who offer or negotiate the terms of a mortgage for the purpose of renegotiating, modifying, replacing, or subordinating principal of an existing mortgage where consumers are behind in their payments, in default, or have a reasonable likelihood of becoming delinquent or defaulting. This exception does

not, however, apply to such persons if they refinance a mortgage or assign a mortgage to a different consumer.

An "individual loan originator" is a natural person who meets the definition of "loan originator". Finally, a "loan originator organization" is any loan originator that is not an individual loan originator. A loan originator organization would include banks, thrifts, finance companies, credit unions, and mortgage brokers.

## Prohibited Loan Originator Compensation: Payments Based on a Term of a Transaction – 12 CFR 1026.36(d)(1)

With limited exceptions, loan originators cannot receive (and no person can pay directly or indirectly), compensation in connection with closed-end consumer credit transactions secured by a dwelling based on a term of a transaction, the terms of multiple transactions, or the terms of multiple transactions by multiple individual loan originators. The loan originator compensation provisions do not apply to open-end home-equity lines of credit or to credit secured by a consumer's interest in a timeshare plan described in 11 U.S.C. 101(53D).

A "term of a transaction" is any right or obligation of the parities to a credit transaction. The amount of credit extended is not a term of a transaction, provided that such compensation is based on a fixed percentage of the amount of credit extended (but may be subject to a minimum or maximum dollar amount).

NOTE: A review of whether compensation, which includes salaries, commissions, and any financial or similar incentive, is based on the terms of a transaction requires an objective analysis. If compensation would have been different if a transaction term had been different, then the compensation is prohibited. The regulation does not prevent compensating loan originators differently on different transactions, provided the difference is not based on a term of a transaction or on a proxy for a term of a transaction (a factor that consistently varies with a term or terms of the transaction over a significant number of transactions and which the loan originator has the ability to manipulate).

An individual loan originator may receive (and a person may pay):

- Compensation in the form of a contribution to a defined contribution plan that is a designated tax-advantage plan unless the contribution is tied to the terms of the individual's transaction(s) (12 CFR 1026.36.(d)(1)(iii));
- Compensation in the form of a benefit under a defined benefit plan that is a designated tax-advantaged plan (12 CFR 1026.36(d)(1)(iii));
- Compensation under a non-deferred profits-based compensation plan provided that:
  - The compensation paid to an individual loan originator is not directly or indirectly based on the terms of the individual's transaction(s); and
  - Either:

- The compensation paid to the individual loan originator does not exceed 10 percent (in aggregate) of the individual loan originator's total compensation corresponding to the time period for which the compensation under the non-deferred profits-based compensation plan is paid; or
- The individual loan originator was the loan originator of 10 or fewer transactions during the 12 months preceding the date that the compensation was determined (12 CFR 1026.36(d)(1)(iv)).

For more information pertaining to permissible compensation, see the commentary to (12 CFR 1026.36(d)).[35]

## Prohibited Loan Originator Compensation: Dual Compensation – 12 CFR 1026.36(d)(2)

Loan originators that receive compensation directly from consumers in consumer credit transactions secured by a dwelling (except for open-end home-equity lines of credit or to loans secured by a consumer's interest in a timeshare plan) may not receive additional compensation directly or indirectly from any other person in connection with that transaction (12 CFR 1026.36(d)(1)(i)(A)(*1*)). This prohibition includes compensation received from a third party to the transaction to pay for some or all of the consumer's costs (12 CFR 1026.36(d)(1)(i)(B)). Further, a person is prohibited from compensating a loan originator when that person "knows or has reason to know" that the consumer has paid compensation to the loan originator (12 CFR 1026.36(d)(2)(i)(A)(*2*)).

However, even if a loan originator organization receives compensation directly from a consumer, the organization can compensate the individual loan originator, subject to 12 CFR 1026.36(d)(1) (12 CFR 1026.36(d)(2)(i)(C)).

## Prohibition on Steering – 12 CFR 1026.36(e)

Loan originators are prohibited from directing or "steering" consumers to loans based on the fact that the originator will receive greater compensation for the loan from the creditor than in other transactions that the originator offered or could have offered to the consumer, unless the consummated transaction is in the consumer's interest. A loan originator complies with the prohibition on steering (but not the loan originator compensation provisions) by obtaining loan options from a significant number of the creditors with which the loan originator regularly does business and, for each loan type in which the consumer has expressed interest, presenting the consumer with loan options for which the loan originator believes in good faith the consumer likely qualifies, provided that the presented loan options include all of the following:

- The loan with the lowest interest rate;

[35] In addition to the requirements listed here, 12 CFR 1026.25(c) imposes specific record retention requirements for creditors and loan originator organizations that compensate loan originators.

- The loan with the lowest interest rate without certain enumerated risky features (such as prepayment penalties, negative amortization, or a balloon payment in the first seven years); and

- The loan with the lowest total dollar amount of discount points, origination points or origination fees (or, if two or more loans have the same total dollar amount of discount points, origination points or origination fees, the loan with the lowest interest rate that has the lowest total dollar amount of discount points, origination points or origination fees).

The anti-steering provisions do not apply to open-end home-equity lines of credit or to loans secured by a consumer's interest in a timeshare plan.

## Loan Originator Qualification Requirements – 12 CFR 1026.36(f)

Individual loan originators and loan originator organizations must, when required under state or federal law, be registered and licensed under those laws, including the Safe and Fair Enforcement for Mortgage Licensing Action of 2008 (SAFE Act).[36] Loan originator organizations other than government agencies or state housing finance agencies must:

- Comply with all applicable state law requirements for legal existence and foreign qualification (12 CFR 1026.36(f)(1)); and

- Ensure that each individual loan originator who works for the loan originator organization (e.g., an employee, under a brokerage agreement) is licensed or registered to the extent that the individual is required to be licensed or registered under the SAFE Act or excluded from those requirements because the individual is authorized to act with temporary authority pursuant to 12 U.S.C. 5117 prior to acting as a loan originator in a consumer credit transaction secured by a dwelling (12 CFR 1026.36(f)(2)).

The requirements are different for loan originator organizations whose employees are not required to be licensed and are not licensed pursuant to 12 CFR 1008.103 or state SAFE Act implementing laws (including employees of depository institutions and bona fide nonprofits). For their employees hired on or after January 1, 2014 (or hired before this date but not subject to any statutory or regulatory background standards at the time, or for any individual loan originators regardless of when hired that the organization believes, based on reliable information do not meet the qualification standards), loan originator employers must obtain before the individual acts as a loan originator in a consumer credit transaction secured by a dwelling:

- A criminal background check through the Nationwide Mortgage Licensing System and Registry (NMLSR) or, in the case of an individual loan originator who is not a registered loan originator under NMLSR, a criminal background check from a law enforcement agency or commercial service (12 CFR 1026.36(f)(3)(i)(A));

[36] 12 CFR 1026.36(f) applies to closed-end consumer credit transactions secured by a dwelling except a loan that is secured by a consumer's interest in a timeshare plan described in 11 U.S.C. 101(53D). For purposes of 12 CFR 1026.36(f), a loan originator includes all creditors that engage in loan origination activities, not just those who table fund.

- A credit report from a consumer reporting agency (as defined in section 603(p) of the Fair Credit Reporting Act (FCRA)) secured, where applicable, in compliance with section 604(b) of FCRA (12 CFR 1026.36(f)(3)(i)(B)); and

- Information from the NMLSR about any administrative, civil, or criminal findings by any government jurisdiction or, in the case of an individual loan originator who is not a registered loan originator under the NMLSR, such information from the individual loan originator (12 CFR 1026.36(f)(3)(i)(C)).

Based on the information obtained above and any other information reasonably available, the loan originator employer must determine for such an employee prior to allowing the individual to act as a loan originator in a consumer credit transaction secured by a dwelling:

- That the individual has not been convicted of, or pleaded guilty or nolo contendere to, a felony in a domestic or military court during the preceding seven-year period or, in the case of a felony involving an act of fraud, dishonesty, a breach of trust, or money laundering, at any time (12 CFR 1026.36(f)(3)(ii)(A)(*1*)); and

  NOTE: Whether the conviction of a crime is considered a felony is determined by whether the conviction was classified as a felony under the law of the jurisdiction under which the individual is convicted. Additionally, a loan originator organization may employ an individual with a felony conviction (or a plea of nolo contendere) as a loan originator if that individual has received consent from the FDIC or the Board, as applicable, the NCUA, or the Farm Credit Administration (FCA) under their own applicable statutory authority (12 CFR 1026.36(f)(3)(iii)).

- Has demonstrated financial responsibility, character, and general fitness such as to warrant a determination that the individual loan originator will operate honestly, fairly, and efficiently.

The loan originator organization must also provide periodic training to each such employee that covers federal and state legal requirements that apply to the individual loan originator's loan origination activities.

The SAFE Act provides certain loan originators with temporary authority to act as loan originators while applying for a state-loan originator license (12 U.S.C. 5117). If an individual loan originator may act as a loan originator with temporary authority under 12 U.S.C. 5117, the loan originator organization is not required to comply with the screening and training requirements described in (12 CFR 1026.36(f)(3)).[37]

[37] Truth in Lending (Regulation Z); Screening and Training Requirements for Mortgage Loan Originators with Temporary Authority, 84 Fed. Reg. 63791 (November 19, 2019).

## Name and NMLSR ID on Loan Documentation – 12 CFR 1026.36(g)

12 CFR 1026.36(g) applies to closed-end consumer credit transactions secured by a dwelling except a loan that is secured by a consumer's interest in a timeshare plan described in (11 U.S.C. 101(53D)). For purposes of 12 CFR 1026.36(g), a loan originator includes all creditors that engage in loan origination activities, not just those who table fund.

For consumer credit transactions secured by a dwelling, loan originator organizations must include certain identifying information on loan documentation provided to consumers. The loan documents must include the loan originator organization's name, NMLSR ID (if applicable), and the name of the individual loan originator that is primarily responsible for the origination as it appears in the NMLSR, as well as the individual's NMLSR ID. This information is required on credit applications, the Loan Estimate, the Closing Disclosure, the note or loan contract, and the documents securing an interest in the property.

## Policies and Procedures to Ensure and Monitor Compliance – 12 CFR 1026.36(j)

Depository institutions (including credit unions) must establish and maintain written policies and procedures reasonably designed to ensure and monitor compliance of the depository institution, its employees, and its subsidiaries and their employees with the requirements of 12 CFR 1026.36(d) (prohibited payments to loan originators), 12 CFR 1026.36(e) (prohibition on steering), 12 CFR 1026.36(f) (loan originator qualifications), and 12 CFR 1026.36(g) (name and NMLSR ID on loan documents). The written policies and procedures must be appropriate to the nature, size, complexity, and scope of the mortgage lending activities of the depository and its subsidiaries (12 CFR 1026.36(j)).

## Prohibition on Mandatory Arbitration or Waivers of Certain Consumer Rights – 12 CFR 1026.36(h)

A contract or other agreement for a consumer credit transaction secured by a dwelling (including a home equity line of credit secured by the consumer's principal dwelling) may not include terms that require mandatory arbitration or any other non-judicial procedure to resolve any controversy arising out of the transaction. Also, a contract or other agreement relating to such a consumer credit transaction may not be applied or interpreted to bar a consumer from bringing a claim in court under any provision of law for damages or other relief in connection with an alleged violation of any federal law. However, a creditor and a consumer could agree, after a dispute or claim under the transaction arises, to settle or use arbitration or other non-judicial procedure to resolve that dispute or claim.

## Prohibition on Financing Credit Insurance – 12 CFR 1026.36(i)

Creditors are prohibited from "financing" (i.e., providing a consumer the right to defer payment beyond the monthly period in which the premium or fee is due), either directly or indirectly, premiums or fees for credit insurance in connection with a consumer credit transaction secured by a dwelling (including a home equity line of credit secured by the consumer's principal

dwelling). This prohibition includes financing fees for credit life, credit disability, credit unemployment, credit property insurance, or any other accident, loss-of-income, life, or health insurance or payment for debt cancellation or suspension. This prohibition does not apply to credit unemployment insurance where the premiums are reasonable, the creditor receives no direct or indirect compensation in connection with the premiums, and the premiums are paid under a separate insurance contract and not to an affiliate of the creditor. This prohibition also does not apply to credit insurance where premiums or fees are "calculated" and paid in full "on a monthly basis" (i.e., determined mathematically by multiplying a rate by the actual monthly outstanding balance).

### Negative Amortization Counseling – 12 CFR 1026.36(k)

A creditor may not extend a negative amortizing mortgage loan to a first-time borrower in connection with a closed-end transaction secured by a dwelling, other than a reverse mortgage or a transaction secured by a timeshare, unless the creditor receives documentation that the consumer has obtained homeownership counseling from a HUD-certified or approved counselor. Additionally, a creditor extending a negative amortizing mortgage loan to a first-time borrower may not steer, direct, or require the consumer to use a particular counselor.

## Loan Servicing Practices

Servicers of mortgage loans are prohibited from engaging in certain practices, such as pyramiding late fees. In addition, servicers are required to credit consumers' loan payments as of the date of receipt and provide a payoff statement within a reasonable time, not to exceed seven business days of a written request.

### Payment Processing – 12 CFR 1026.36(c)(1)

For a closed-end consumer credit transaction secured by a consumer's principal dwelling, a loan servicer:

- Cannot fail to credit a periodic payment to the consumer's loan account as of the date of receipt, except in instances where the delay will not result in a charge to the consumer or in the reporting of negative information to a consumer reporting agency.

  NOTE: For the purposes of 12 CFR 1026.36(c) a periodic payment is "an amount sufficient to cover principal, interest, and escrow for any given billing cycle". If the consumer owes late fees, other fees, or non-escrow payments but makes a full periodic payment, the servicer must credit the periodic payment as of the date of receipt.

- Cannot retain a partial payment (any amount less than a periodic payment) in a suspense or unapplied payment account without disclosing to the consumer in the periodic statement (if required) the total amount(s) held in the suspense account and applying the payment to the balance upon accumulation of sufficient funds to equal a periodic payment.

If a servicer has provided written requirements for accepting payments in writing but then accepts payments that do not conform to the written requirements, the servicer must credit the payment as of five days after receipt.

If a loan contract has not been permanently modified but the consumer has agreed to a temporary loss mitigation program, a periodic payment under 12 CFR 1026.36(c)(1)(i) is the amount sufficient to cover principal, interest, and escrow (if applicable) for a given billing cycle under the loan contract, regardless of the payment due under the temporary loss mitigation program (Comment .36(c)(1)(i)-4). If a loan contract has been permanently modified, a periodic payment under 12 CFR 1026.36(c)(1)(i) is an amount sufficient to cover principal, interest, and escrow (if applicable) for a given billing cycle under the modified loan contract (Comment .36(c)(1)(i)-5).

### Pyramiding of Late Fees – 12 CFR 1026.36(c)(2)

In connection with a closed-end consumer credit transaction secured by a consumer's principal dwelling, a servicer may not impose on the consumer any late fee or delinquency charge in connection with a payment, when the only delinquency is attributable to late fees or delinquency charges assessed on an earlier payment, and the payment is otherwise a periodic payment for the applicable period and is received on its due date or within any applicable courtesy period.

### Providing Payoff Statements – 12 CFR 1026.36(c)(3)

For consumer credit transactions secured by a consumer's dwelling, including home equity lines of credit under 12 CFR 1026.40(a), a creditor, assignee, or servicer may not fail to provide, within a reasonable time but no more than seven business days, after receiving a written request from the consumer or person acting on behalf of the consumer, an accurate statement of the total outstanding balance that would be required to pay the consumer's obligation in full as of a specific date.

NOTE: For purposes of 12 CFR 1026.36(c)(3), when a creditor, assignee, or servicer is not able to provide the statement within seven business days because a loan is in bankruptcy or foreclosure, because the loan is a reverse mortgage or shared appreciation mortgage, or because of natural disasters or similar circumstances, the payoff statement must be provided within a reasonable time.

## TILA-RESPA Integrated Disclosures – 12 CFR 1026.37 and 1026.38

For most closed-end consumer mortgages, creditors must provide two disclosures, the Loan Estimate and the Closing Disclosure, to consumers for mortgage applications received on or after October 3, 2015. The Loan Estimate is a three-page form that provides disclosures to help consumers understand the key features, costs, and risks of the mortgage loan for which they are applying. This form must be delivered or placed in the mail no later than three business days after the creditor receives a consumer's mortgage loan application. The Closing Disclosure is a five-page form that helps consumers understand all of the costs of the transaction. This form generally must be received by the consumer at least three business days before consummation.

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

The Loan Estimate form replaces the Good Faith Estimate designed by HUD under RESPA, and the "early" Truth in Lending disclosure designed by the Board under TILA. The regulation and the Official Interpretations contain detailed instructions as to how each line on the Loan Estimate form should be completed. There are sample forms for different types of loan products. The Loan Estimate form also incorporates new disclosures required by Congress under the Dodd-Frank Act.

The Closing Disclosure form replaces the HUD-1 for loan closing, which was designed by HUD under RESPA. The Closing Disclosure form also replaces the revised Truth in Lending disclosure designed by the Board under TILA. The rule and the Official Interpretations contain detailed instructions as to how each line on the Closing Disclosure form should be completed. The Closing Disclosure form contains additional new disclosures required by the Dodd-Frank Act and a detailed accounting of the settlement transaction. Refer to CFPB's TILA-RESPA Guide to Forms for a detailed, step-by-step walk-through for completing the Loan Estimate and the Closing Disclosure.

The rules on who provides the disclosures, timing, limits on when fees can be charged, early estimates, and limits on increases in charges are in 12 CFR 1026.19(e) and (f), described in Subpart A.

## Loan Estimate – Content of Disclosures for Certain Mortgage Transactions – 12 CFR 1026.37

### *Loan Estimate Form Required (12 CFR 1026.37(o))*

The Loan Estimate generally must provide consumers with a good faith estimate of credit costs and transaction terms and satisfy timing and delivery requirements set forth in the rule.

For any transactions subject to 12 CFR 1026.19(e) that are federally related mortgage loans subject to RESPA (which will include most mortgages), creditors must use Form H-24, set forth in Appendix H (12 CFR 1026.37(o)(3)(i)). (*See also* 12 CFR 1024.2(b) for definition of federally related mortgage loan.)

For other loans subject to 12 CFR 1026.19(e) that are not federally related mortgage loans, the disclosures must be made with headings, content, and format substantially similar to Form H-24 (12 CFR 1026.37(o)(3)(ii)).

The disclosures may be provided to the consumer in electronic form, subject to compliance with the consumer consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (15 U.S.C. 7001 *et seq*.) (12 CFR 1026.37(o)(3)(iii)).

***Information required on the Loan Estimate form.*** Most disclosures on the Loan Estimate form are required to be labeled using specific nomenclature, headings, and formatting. For example, the regulation requires that the form disclose the contract sale price, labeled "Sale Price" (or if

there is no seller, the estimated value of the property, labeled "Prop. Value"). Further, in some instances, the regulation directs lines on the disclosure to be left blank where there is no charge (*See*, e.g., 12 CFR 1026.37(g)(2)(v)) or sets forth the maximum number of items that may be disclosed (*See*, e.g., 12 CFR 1026.37(g)(3)(v)). See the regulation, Form H-24, and the Regulation Z procedures for specific obligations regarding each required disclosure.

***Rounding.*** Dollar amounts must be rounded to the nearest whole dollar where noted in the regulation, including adjustments after consummation for loan amount, interest rate, and periodic payment; and details about prepayment penalties and balloon payments, minimum and maximum amounts for principal and interest payments and range of payments, maximum mortgage insurance premiums, escrows, taxes and insurance and assessments, closing costs (loan costs and other costs), cash to close, and adjustable payment and comparisons (12 CFR 1026.37(o)(4)(i)(A)).

The amount for prepaid interest paid per day and the monthly amounts required to be disclosed for escrows of homeowner's insurance, mortgage insurance, or property taxes must not be rounded (12 CFR 1026.37(o)(4)(i)(A)).

The loan amount (the total amount the consumer will borrow, as reflected by the face amount of the note) must not be rounded, and if the amount is a whole number, must be truncated at the decimal point (12 CFR 1026.37(o)(4)(i)(B)).

If an amount is required to be rounded but is composed of other amounts that are **not** required or permitted to be rounded, the unrounded amounts should be used to calculate the total, and the final sum should be rounded. Conversely, if an amount is required to be rounded and is composed of rounded amounts, the rounded amounts should be used to calculate the total (Comment 37(o)(4)-2).

Percentage amounts must be rounded where noted in the regulation to three decimal places, but trailing zeros to the right of the decimal place must be dropped (e.g., 2.49999 percent APR is disclosed as 2.5 percent, and 7.005 percent APR is disclosed as 7.005 percent). The items rounded include the interest rate, adjustments after consummation (to the loan amount, interest rate, or periodic payment), points itemized under origination charges, prepaid interest rate, adjustable interest rate, annual percentage rate, and total interest percentage, or TIP (12 CFR 1026.37(o)(4)(ii); Comment 37(o)(4)(ii)-1).

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

Page 1 of the Loan Estimate discloses general information about the creditor, the applicant(s), and the loan. It also includes a Loan Terms table with descriptions of applicable information about the loan, a Projected Payments table, a summary Costs at Closing table, and a link for consumers to obtain more information about loans secured by real property or cooperative unit at a website maintained by the CFPB (12 CFR 1026.37(a)-(e)).

### General information

Page 1 of the Loan Estimate requires the title "Loan Estimate" and the statement "Save this Loan Estimate to compare with your Closing Disclosure" (12 CFR 1026.37(a)(1), (2)). The top of page 1 also requires the name and address of the creditor (12 CFR 1026.37(a)(3)). A logo can be used for, and a slogan included along with, the creditor's name and address, so long as the logo or slogan does not cause this information to exceed the space provided on Form H-24 for that information (12 CFR 1026.37(o)(5)(iii)). If there are multiple creditors, only the name of the creditor completing the Loan Estimate should be used (Comment 37(a)(3)-1). If a mortgage broker is completing the Loan Estimate, the mortgage broker should make a good faith effort to disclose the name and address of the creditor as required by 12 CFR 1026.19(e)(1)(i). However, if the name of the creditor is not yet known, this space may be left blank (Comment 37(a)(3)-2).

Below the creditor information, the form requires the date that the creditor mails or delivers the disclosures to the consumer; the name and mailing address of the consumer(s) applying for the credit; the address, including the ZIP code, of the property that secures or will secure the transaction, or if the address is unavailable, the location of such property, including a ZIP code; and the contract sale price (or if there is no seller, the estimated value of the property) (12 CFR 1026.37(a)(4)-(6)).

On the top right side of the first page, the form requires the loan term to maturity (stated in years or months, or both, as applicable); and loan purpose (purchase, refinance, construction, or home equity loan) (12 CFR 1026.37(a)(8)-(9)). This section of the form also requires the product type (adjustable rate, step rate, or fixed rate) and, preceding the type, any features that may change the periodic payment, including negative amortization, interest only, step payment, balloon payment, or seasonal payment features, as applicable. If the product has an adjustable or step rate, or a feature that may change the periodic payment, the product disclosure must also be preceded by a disclosure of the duration of any introductory rate or payment period, and the first adjustment period, as applicable (12 CFR 1026.37(a)(10)). This section of the form also requires the loan type (conventional, FHA, VA, or other), and loan ID number (12 CFR 1026.37(a)(11)-(12)). Further, there must be a statement of whether the interest rate is locked for a specific time, and if so, the date and time when that period ends. The form must also include a statement that the interest rate, any points, and any lender credits may change unless the interest rate has been locked, and the date and time (including the applicable time zone) at which estimated closing costs expire (12 CFR 1026.37(a)(13)).

**Loan Terms table**

The Loan Terms table follows the general information requirements on page 1 of the Loan Estimate. For the Loan Terms table, the creditor must disclose the loan amount (the total amount the consumer will borrow, as reflected by the face amount of the note), interest rate applicable to the transaction at consummation, and specified principal and interest payments (12 CFR 1026.37(b)(1)-(3)). For each such element, the disclosure must answer the question, either affirmatively or negatively, whether the amount can increase after consummation. If the amount can increase, the loan must disclose additional information (12 CFR 1026.37(b)(6)). The Loan Terms table must also include information about prepayment penalties and balloon payments.

***Loan amount.*** The loan amount is disclosed in accordance with the face amount of the note. If the loan amount may increase after consummation, the disclosure must include the maximum principal balance for the transaction and the due date of the last payment that may cause the principal balance to increase. The disclosure must also indicate whether the maximum principal balance is potential or is scheduled to occur under the terms of the legal obligation (12 CFR 1026.37(b)(1); 12 CFR 1026.37(b)(6)(i)).

***Interest rate.*** If it is an adjustable rate transaction where the interest rate at consummation is not known, the disclosed rate is the fully indexed rate (which means the index value and margin at the time of consummation) (12 CFR 1026.37(b)(2)). If the interest may increase after consummation, the creditor must disclose the frequency of interest rate adjustments, the date when the interest rate may first adjust, the maximum interest rate, and the first date when the interest rate can reach the maximum interest rate, followed by a reference to the adjustable rate table required by 12 CFR 1026.37(j) in the Closing Cost Details section of the Loan Estimate. If the loan term may increase based on an interest rate adjustment, that fact must be included, as well as the maximum possible loan term determined in accordance with 12 CFR 1026.37(a)(8) (12 CFR 1026.37(b)(6)(ii)).

***Principal and interest payment.*** The creditor must disclose the initial periodic payment that will be due under the terms of the legal obligation, immediately preceded by the applicable unit period, and a statement referring to the payment amount that includes any mortgage insurance and escrow payments that are required to be disclosed in the Projected Payments table (12 CFR 1026.37(b)(3)). If the monthly principal and interest payment can increase after closing, the creditor must also disclose: the scheduled frequency of adjustments to the periodic principal and interest payment; the due date of the first adjusted principal and interest payment; the maximum possible periodic principal and interest payment; and the date when the periodic principal and interest payment may first equal the maximum principal and interest payment. (12 CFR 1026.37(b)(6)(iii)). If any adjustments to the principal and interest payment are not the result of a change to the interest rate, the creditor must reference the adjustable payment table disclosure required by 12 CFR 1026.37(i). If there is a period during which only interest is required to be paid, the disclosure must also state that fact and the due date of the last periodic payment of such period (12 CFR 1026.37(b)(6)(iii)).

***Prepayment penalties and balloon payments.*** The Loan Terms table must also state affirmatively or negatively whether the transaction includes a prepayment penalty (for these purposes, a charge imposed for paying all or part of a transaction's principal before the date on which the principal is due, other than a waived, bona fide third-party charge that the creditor imposes if the consumer prepays all of the transaction's principal sooner than 36 months after consummation) or a balloon payment (for these purposes, a payment that is more than two times a regular periodic payment) (12 CFR 1026.37(b)(4) and (5)).

**Projected Payments table**

The Projected Payments table is located directly below the Loan Terms table on page 1 of the Loan Estimate. The Projected Payments table shows estimates of the periodic payments that the consumer will make over the life of the loan. Creditors must disclose estimates of the following

periodic payment amounts in the Projected Payments table: periodic principal and interest (or range of periodic payments); mortgage insurance; estimated escrow; and estimated total monthly payment (12 CFR 1026.37(c)(2)). Creditors must also disclose estimated taxes, insurance, and assessments, even if not paid with escrow funds (and whether these items will be paid with funds from the consumer's escrow account) (12 CFR 1026.37(c)(4)).

Generally, the creditor will show in one column the initial periodic payment (or range of payments if required). Depending on the features of the loan, subsequent periodic payments also may be required to be disclosed. However, no more than four separate periodic payments or ranges of payments may be disclosed, beginning with the initial periodic payment. Events that require disclosure of separate periodic payments or ranges include: changes to the periodic principal and interest payment; a scheduled balloon payment; an automatic termination of mortgage insurance or its equivalent; and the anniversary of the due date of the initial periodic payment or range of payments that immediately follows the occurrence of multiple events that change the periodic principal and interest. The regulation addresses how to disclose these events when the event occurs after the third separate periodic payment or range of payments disclosed (12 CFR 1026.37(c)(1)).

Each separate payment or range of payments must be itemized according to the regulation, including the amount payable for principal and interest. The regulation provides instructions for itemizing payments that include an interest-only payment, payments on loans with an adjustable interest rate, and payments on a loan that has both an adjustable interest rate and a negative amortization feature. Additionally, the regulation requires that each separate periodic payment or range of payments itemizes the maximum amount payable for mortgage insurance premiums corresponding to the principal and interest payment and the amount payable into escrow (with a statement that the amount disclosed can increase over time and a calculation of the total monthly payment) (12 CFR 1026.37(c)(2)).

Below the estimated total monthly payment, the Projected Payments table discloses estimated taxes, insurance, and assessments. These are stated as a monthly amount and include a statement that the amount may increase over time. The creditor provides these estimates even if there will be no escrow account established for these costs. The table also requires a statement of whether the amount disclosed includes payments for property taxes or other amounts; a description of any such other amounts; and an indication of whether such amounts will be paid by the creditor using escrow account funds. The table also includes a statement that the consumer must separately pay the taxes, insurance, and assessments that are not paid by the creditor using escrow account funds; and a reference to the information disclosed under the subheading on the Loan Estimate titled "Initial Escrow Payment at Closing" (12 CFR 1026.37(c)(4)).

The creditor estimates property taxes and homeowner's insurance using the taxable assessed value of the real property or cooperative unit securing the transaction after consummation, including the value of any improvements on the property or to be constructed on the property, if known, whether or not such construction will be financed from the proceeds of the transaction, for property taxes, and the replacement costs of the property during the initial year after the

transaction, for premiums or other charges for insurance against loss of or damage to property identified in 12 CFR 1026.4(b)(8) (12 CFR 1026.37(c)(5)).

**Costs at Closing table**

This table, located at the bottom of page 1, provides disclosures on estimated Closing Costs and estimated Cash to Close (12 CFR 1026.37(d)(1)). These disclosures offer the consumer a high-level summary of estimated closing costs and cash required to close (including closing costs) and reference the more detailed itemizations found on page 2 of the Loan Estimate (12 CFR 1026.37(d)(1)(i)(E) and 12 CFR 1026.37(d)(1)(ii)(B)).

Items that are disclosed include an estimate of Total Closing Costs, as well as the key inputs making up this total: Loan Costs, Other Costs, and Lender Credits (and the fact that total closing costs include these amounts) (12 CFR 1026.37(d)(1)(i)). These disclosures also provide a high-level summary of the estimated amount of cash required to close, which is also itemized more specifically on page 2 of the Loan Estimate (12 CFR 1026.37(d)(1)(ii)). The regulation provides an optional alternative Cash to Close table for transactions that do not involve a seller or for simultaneous subordinate financing. The creditor may alternatively disclose, using the label "Cash to Close," the cash to or from the consumer (pursuant to 12 CFR 1026.37(h)(2)(iv)), a statement of whether the disclosed estimated amount is due from or to the consumer, and a statement referring the consumer to the alternative Calculating Cash to Close table for transactions without a seller or for simultaneous subordinate financing (pursuant to 12 CFR 1026.37(h)(2)) (12 CFR 1026.37(d)(2)).

## *Page 2: Closing cost details*

Page 2 of the Loan Estimate contains a good faith itemization of the "Loan Costs" and "Other Costs" associated with the loan (12 CFR 1026.37(f) and (g)). Generally, Loan Costs are those costs paid by the consumer to the creditor and third-party providers of services that the creditor requires to be obtained by the consumer during the origination of the loan (12 CFR 1026.37(f)). Other Costs include taxes, governmental recording fees, and certain other payments involved in the real estate closing process (12 CFR 1026.37(g)). Page 2 also includes an itemized "Calculating Cash to Close" table to show the consumer how the amount of cash needed at closing is calculated (12 CFR 1026.37(h)). In addition, for transactions with adjustable monthly payments not based on changes to the interest rate, or if the transaction is a seasonal payment product (as described in 12 CFR 1026.37(a)(10)(ii)(E)), page 2 must include an Adjustable Payment (AP) table with relevant information about how the monthly payments will change (12 CFR 1026.37(i)). Further, for transactions with adjustable interest rates, page 2 must include an Adjustable Interest Rate (AIR) table with relevant information about how the interest rate will change (12 CFR 1026.37(j)).

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

**Loan Costs table**

This table includes all loan costs associated with the transaction, broken down into an itemization of three types of costs:

- Origination charges that the consumer will pay to each creditor and loan originator for originating and extending credit (including separate itemization for points paid to the creditor to reduce the interest rate as both a percentage of the amount of credit extended and dollar amount) (up to 13 line items); the following items should be itemized separately in the Origination Charges subheading:
    - Compensation paid directly by a consumer to a loan originator that is **not** also the creditor (Comments 37(f)(1)-2 and -5); or
    - Any charge imposed to pay for a loan level pricing adjustment assessed on the creditor that is passed on to the consumer as a cost at consummation and **not** as an adjustment to the interest rate (Comment 37(f)(1)-5).
- Services the consumer cannot shop for (items provided by persons other than the creditor or mortgage broker that the consumer cannot shop for and will pay for at settlement, such as appraisal fees and credit report fees) (up to 13 line items); and
- Services the consumer can shop for (such as a pest inspection fee, survey fee, or closing agent fee) (up to 14 line items) (12 CFR 1026.37(f)(2) and (3)).

Regarding origination fees, only charges paid directly by the consumer to compensate a loan originator are included in the itemization. Compensation of a loan originator paid indirectly by the creditor through the interest rate is not itemized (but is itemized on the Closing Disclosure; see below) (Comment 37(f)(1)-2).

NOTE: Items that are a component of title insurance must include the introductory description of "Title -" (12 CFR 1026.37(f)(2)(i) and (g)(4)(i)).

NOTE: The disclosure of "lender credits," as identified in 12 CFR 1026.37(g)(6)(ii), is required by 12 CFR 1026.19(e)(1)(i). "Lender credits," as identified in 12 CFR 1026.37(g)(6)(ii), represent the sum of non-specific lender credits and specific lender credits. Non-specific lender credits are generalized payments from the creditor to the consumer that do not pay for a particular fee on the disclosures provided pursuant to 12 CFR 1026.19(e)(1). Specific lender credits are specific payments, such as a credit, rebate, or reimbursement, from a creditor to the consumer to pay for a specific fee. Non-specific lender credits and specific lender credits are negative charges to the consumer (Comment 19(e)(3)(i) -5).

The sum of these amounts must be disclosed as Total Loan Costs. The regulation includes a required order and terminology for each item (12 CFR 1026.37(f)(1)-(5)). If the creditor does not have enough lines for each subheading, it must disclose the remaining items as an aggregate number (12 CFR 1026.37(f)(6)(i)). An addendum is not permitted for origination charges or charges the consumer cannot shop for that exceed the maximum number of lines but is permitted for services the consumer can shop for, provided the creditor appropriately references the addendum (12 CFR 1026.37(f)(6)(ii)).

**Other Costs table**

The Other Costs table captures costs established by government action, determined by standard calculations applied to ongoing fixed costs, or based on an obligation incurred by the consumer independently of any requirement imposed by the creditor (Comment 37(g)-1). The table includes:

- Taxes and other governmental fees (recording fees and other taxes, and transfer taxes paid by the consumer, separately itemized);
- Prepaids (amounts paid by the consumer before the first scheduled payment, such as homeowner's insurance premiums, mortgage insurance premiums, prepaid interest, and property taxes, plus up to three additional line items);
- Initial escrow payment at closing (items that the consumer will be expected to place into a reserve or escrow account at consummation to be applied to recurring periodic charges; these include homeowner's insurance, mortgage insurance, and property taxes, plus up to five additional line items); and
- Other amounts the consumer is likely to pay (such as real estate agent commissions, up to five line items) (12 CFR 1026.37(g)(1)-(4); Comment 37(g)(4)-4).

NOTE: Items that disclose any premiums paid for separate insurance, warranty, guarantee, or event-coverage products not required by the creditor must include the parenthetical description (optional) at the end of the label (12 CFR 1026.37(g)(4)(ii)).

As with Loan Costs, the regulation includes a required order, terminology, and specific information regarding each Other Costs line item, such as the applicable time period covered by the amount paid at consummation and the total amount to be paid. Items that disclose any premiums paid for separate insurance, warranty, guarantee, or event-coverage products not required by the creditor must include the parenthetical description (optional) at the end of the label (12 CFR 1026.37(g)(4)(ii)). An addendum is not permitted; if the creditor does not have enough lines for each subheading, it must disclose the remaining items as an aggregate number (12 CFR 1026.37(g)(8)). The sum of these amounts must be disclosed as a line item as Total Other Costs (12 CFR 1026.37(g)(5)). Below this total, the sum of Total Loan Costs and Total Other Costs, less any lender credits (separately itemized), must be disclosed as a line item as Total Closing Costs (12 CFR 1026.37(g)(6)).

**Calculating Cash to Close table**

The Calculating Cash to Close table shows the consumer how the amount of cash needed at closing is calculated (12 CFR 1026.37(h)(1)). The creditor must itemize the total amount of cash or other funds that the consumer must provide at consummation. The itemization includes:

- **Total closing costs.** The amount disclosed under 12 CFR 1026.37(g)(6), labeled "Total Closing Costs" (12 CFR 1026.37(h)(1)(i));

- **Closing costs to be financed.** The amount of any closing costs to be paid out of loan proceeds, disclosed as a negative number, labeled "Closing Costs Financed (Paid from your Loan Amount)" (12 CFR 1026.37(h)(1)(ii));

  NOTE: The formula for calculating the amount of closing costs financed can be found in (Comment 37(h)(1)(ii)-1).

- **Down payment and other funds from the borrower**, labeled "Down Payment/Funds from Borrower". The formula for determining this disclosure depends on the type of purchase transaction. (*See* 12 CFR 1026.37(h)(1)(iii)(A).. For a non-purchase transaction, use the Funds from Borrower formula in 12 CFR 1026.37(h)(1)(v) as provided for in 12 CFR 1026.37(h)(1)(iii)(B).

- **Deposit**, labeled "Deposit." In a purchase transaction as defined in 12 CFR 1026.37(a)(9)(i), the amount that is paid to the seller or held in trust or escrow by an attorney or other party under the terms of the agreement for the sale of the property, disclosed as a negative number; in all other transactions, the amount of zero dollars (12 CFR 1026.37(h)(1)(iv));

- **Funds for the borrower**, labeled "Funds for Borrower". The formula for calculating this disclosure is set forth in (12 CFR 1026.37(h)(1)(v));

- **Seller credits**, labeled "Seller Credits". The amount the seller will pay for total loan costs and total other costs, to the extent known, disclosed as a negative number (12 CFR 1026.37(h)(1)(vi)).

- **Adjustments and other credits**, labeled "Adjustments and Other Credits". Determined in accordance with (12 CFR 1026.37(h)(1)(vii)); and

- **Estimated Cash to Close**, labeled "Cash to Close". The sum of the amounts disclosed under 12 CFR 1026.37(h)(1)(i) to (vii) (12 CFR 1026.37(h)(1)(viii)).

***For transactions without a seller or for simultaneous subordinate financing transactions***, the creditor can use the optional alternative table and provide, under the heading Closing Cost Details, the total amount of cash or other funds that must be provided by the consumer at consummation with an itemization of the following component amounts (12 CFR 1026.37(h)(2)):

- **Loan amount.** The amount disclosed under 12 CFR 1026.37(b)(1), labeled "Loan Amount" (12 CFR 1026.37(h)(2)(i));

- **Total closing costs.** The amount disclosed under 12 CFR 1026.37(g)(6), disclosed as a negative number if the amount is a positive number and disclosed as a positive number if the amount is a negative number, and labeled "Total Closing Costs" (12 CFR 1026.37(h)(2)(ii));

- **Payoffs and payments.** The total amount of payoffs and payments to third parties not otherwise disclosed under 12 CFR 1026.37(f) and (g), labeled "Total Payoffs and Payments" (12 CFR 1026.37(h)(2)(iii));

- **Cash to or from consumer.** The amount of cash or other funds due from or to the consumer and a statement of whether the disclosed estimated amount is due from or to the consumer, calculated by the sum of the loan amount, total closing costs and payoffs and payments under 12 CFR 1026.37(h)(2)(i)-(iii)), labeled "Cash to Close" (12 CFR 1026.37(h)(2)(iv));

- **Closing costs financed.** The sum of the amounts disclosed under 12 CFR 1026.37(h)(2)(i) and (iii) (loan amount and payoffs and payments) but only to the extent that the sum is greater than zero and less than the total closing costs (12 CFR 1026.37(g)(6)), labeled "Closing Costs Financed (Paid from your Loan Amount)" (12 CFR 1026.37(h)(2)(v)).

**Adjustable Payment (AP) table**

This table is for transactions with adjustable monthly payments for reasons other than adjustments to the interest rate, or if the transaction is a seasonal payment product. The table provides consumers with relevant information about how the monthly payments will change. If the transaction does not contain such terms, the table may not be on the Loan Estimate (12 CFR 1026.37(i); Comment 37(i)-1).

The AP table requires answers to the following questions:

- Whether there are interest-only payments and, if so, the period during which the interest-only payment would apply (12 CFR 1026.37(i)(1));

- Whether the amount of any periodic payment can be selected by the consumer as an optional payment and, if so, the period during which the consumer can select optional payments (12 CFR 1026.37(i)(2));

- Whether the loan is a step payment product and, if so, the period during which the regular periodic payments are scheduled to increase (12 CFR 1026.37(i)(3));

- Whether the loan is a seasonal payment product and, if so, the period during which the periodic payments are not scheduled (12 CFR 1026.37(i)(4)); and

- A subheading of monthly principal and interest payments, with specified information about the first payment change and amount; frequency of subsequent changes; and maximum periodic payment that may occur during the loan term (and first date the maximum is possible) (12 CFR 1026.37(i)(5).

**Adjustable Interest Rate (AIR) table**

For transactions with adjustable interest rates, an AIR table provides consumers with relevant information about how the interest rate will change (12 CFR 1026.37(j)). The adjustable interest rate table must be completed if the interest rate may increase after consummation. However, if the legal obligation does not permit the interest rate to adjust after consummation, this table is not permitted to appear on the Loan Estimate (12 CFR 1026.37(j)(1); Comment 37(j)-1)).

The AIR table includes the following information (12 CFR 1026.37(j)):

- For non-step-rate products, the index upon which adjustments to the interest rate will be based and the margin that is added to the index to determine the interest rate (12 CFR 1026.37(j)(1));
- For step-rate products, the maximum amount of any adjustments to the interest rate that are scheduled and predetermined (12 CFR 1026.37(j)(2));
- The initial interest rate at consummation (12 CFR 1026.37(j)(3));
- The minimum/maximum interest rate for the loan, after any introductory period expires (12 CFR 1026.37(j)(4));
- The frequency of adjustments (first and subsequent adjustments) (12 CFR 1026.37(j)(5)); and
- Any limits on interest rate changes (12 CFR 1026.37(j)(6)).

### *Page 3: Additional information about the loan*

Page 3 of the Loan Estimate contains contact information, a Comparisons table, an Other Considerations table, and, if desired, a Signature Statement for the consumer to sign to acknowledge receipt (*See* 12 CFR 1026.37(k), (l), (m), and (n)).

**Contact information**

The top of page 3 includes the name and NMLSR or License ID number for the creditor and mortgage broker, if any; and name and NMLSR or License ID of individual loan officer who is the primary contact for the consumer, along with that person's email address and phone number (12 CFR 1026.37(k)).

**Comparisons table**

The Comparisons table follows the contact information and allows consumers to compare loans. Each of these disclosures must be accompanied by a specified descriptive statement (12 CFR 1026.37(l)).

The creditor must provide the:

- Total dollar amount 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;
- Total dollar amount of principal scheduled to be paid through the end of the 60th month after the due date of the first periodic payment;
- Annual percentage rate using that term and the abbreviation "APR" and expressed as a percentage; and

- Total interest percentage that the consumer will pay over the life of the loan, expressed as a percentage of the amount of credit extended, using the term "Total Interest Percentage" and the abbreviation "TIP".

The TIP calculation is the same for the Loan Estimate and for the Closing Disclosure: Total interest (including prepaid interest) that the consumer will pay over the life of the loan is divided by the loan amount to arrive at the total interest percentage (TIP) (12 CFR 1026.37(l)(3); 12 CFR 1026.38(o)(5)). The TIP is computed assuming that the consumer makes each monthly payment in full and on time and does not make any overpayments (15 U.S.C. 1638(a)(19); 12 CFR 1026.37(l)(3); Comment 37(l)(3)-1).

To calculate the TIP for fixed-rate loans add the sum of interest payments for the full term of the loan to the amount of prepaid interest and divide that total by the loan amount. To calculate the TIP for a variable-rate loan, compute the amount of interest that the consumer will pay according to the terms of the loan. If the loan has an index and margin, use the index existing at consummation (12 CFR 1026.37(b)(2); Comment 17(c)(1)-10). For Adjustable Rate products under 12 CFR 1026.37(a)(10)(i)(A), compute the TIP in accordance with Comment 17(c)(1)-10 (Comment 37(l)(3)-2). Comment 17(c)(1)-10 provides guidance and examples for adjustable mortgages with discounted and premium variable-rate terms. Where the initial rate is not based upon the index or formula used for later interest rate adjustments, the disclosures should reflect a composite annual percentage rate based on the initial rate for as long as it is charged and, for the remainder of the term, the rate that would have been applied using the index or formula at the time of consummation. The rate at consummation need not be used if a 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-day period before consummation in calculating a composite annual percentage rate (Comment 17(c)(1)-10)). For step-rate products under 12 CFR 1026.37(a)(10)(i)(B), compute the TIP in accordance with 12 CFR 1026.17(c)(1) and its associated commentary (Comment 37(l)(3)-2). For loans that have a negative amortization feature under 12 CFR 1026.37(a)(10)(ii)(A), compute the TIP using the scheduled payment, even if it is a negatively amortizing payment amount, until the consumer must begin making fully amortizing payments under the terms of the legal obligation (Comment 37(l)(3)-3).

NOTE: Prepaid interest that is paid by someone other than the consumer is not included in the calculation. Further, if prepaid interest was disclosed as a negative number on the Loan Estimate or the Closing Disclosure, the negative value is used in the TIP calculation (Comment 37(l)(3)-1).

### Other Considerations

Below the Comparisons table is a section regarding "other considerations" about the loan. This section includes disclosures on appraisals, assumptions, whether homeowner's insurance is required, applicable late payment fees, a warning about refinancing, whether the creditor intends to service the loan or transfer servicing, liability after foreclosure. The section also provides for

an optional, clear and conspicuous statement, if applicable, that the creditor may issue a revised Loan Estimate any time prior to 60 days before consummation pursuant to 12 CFR 1026.19(e)(3)(iv)(F) for transactions involving new construction where the creditor reasonably expects that settlement will occur more than 60 days after the provision of the Loan Estimate (12 CFR 1026.37(m)).

The consumer is not required to sign the Loan Estimate. If the creditor adds a signature statement on page 3 of the Loan Estimate to confirm receipt by the consumer, it must use the model form language. If the creditor chooses not to use the confirm receipt table, it must include a statement that "You do not have to accept this loan because you have received this form or signed a loan application" (12 CFR 1026.37(n)).

## Closing Disclosure – Content of Disclosures for Certain Mortgage Transactions – 12 CFR 1026.38

### *Closing Disclosure form required – 12 CFR 1026.38(t)(3)(i)*

The Closing Disclosure generally must contain the actual terms and costs of the transaction and must satisfy timing and delivery requirements set forth in the rule.

For any loans subject to 12 CFR 1026.19(f) that are federally related mortgage loans subject to RESPA (which will include most mortgages), creditors must use Form H-25, set forth in Appendix H (12 CFR 1026.38(t)(3)(i) (*See also* 12 CFR 1024.2(b) for definition of federally related mortgage loan).

For other loans subject to 12 CFR 1026.19(f) that are not federally related mortgage loans, the disclosures must contain the exact same information and be made with headings, content, and format substantially similar to Form H-25 (12 CFR 1026.38(t)(3)(ii)).

***Information required on the Closing Disclosure.*** As with the Loan Estimate, most disclosures on the Closing Disclosure form are required to be labeled using specific nomenclature, headings, and formatting. Similarly, in some instances, the regulation directs lines on the disclosure to be left blank where there is no charge or sets forth the maximum number of items that may be disclosed. See the regulation, Form H-25, and the Regulation Z procedures for specific obligations regarding each required disclosure.

***Rounding.*** Dollar amounts generally must **not** be rounded except where noted in the regulation (12 CFR 1026.38(t)(4)(i)). If an amount must be rounded but is composed of other amounts that are **not** required or permitted to be rounded, the unrounded amounts should be used to calculate the total, and the final sum should be rounded. Conversely, if an amount is required to be rounded and is composed of rounded amounts, the rounded amounts should be used to calculate the total (Comment 38(t)(4)-2). Percentage amounts should not be rounded and are disclosed up to three decimals, as needed, except where noted in the regulation. If a percentage amount is a whole number, only the whole number should be disclosed, with no decimals (12 CFR 1026.38(t)(4)(ii)).

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

General information, the Loan Terms table, the Projected Payments table, and the Costs at Closing table are disclosed on the first page of the Closing Disclosure (12 CFR 1026.38(a), (b), (c), and (d)). These disclosures mirror the disclosures in the Loan Estimate, and there is a required statement to compare the document with the Loan Estimate (12 CFR 1026.38(a)(2)).

Page 1 of the Closing Disclosure is similar, but not identical, to the Loan Estimate. Page 1 of the Closing Disclosure provides general closing, transaction, and loan information. It also includes a Loan Terms table with descriptions of applicable information about the loan, a Projected Payments table, and a summary Costs at Closing table (12 CFR 1026.38(a)-(d)).

**General information**

The top of page 1 of the Closing Disclosure requires the title "Closing Disclosure" and a specified statement to compare the disclosure with the Loan Estimate (12 CFR 1026.38(a)(1) and (2)). The top of page 1 also requires general closing, transaction, and loan information.

Closing information includes the date that the Closing Disclosure was delivered to the consumer, closing date (i.e., the date of consummation), the disbursement date, settlement agent conducting the closing, file number assigned by the settlement agent, property address or location, and sale price (or appraised property value if there is no seller) (12 CFR 1026.38(a)(3)). For transactions without a seller for which the creditor has not obtained an appraisal, the creditor may disclose the estimated value of the property, using the estimate provided by the consumer at application or the estimate the creditor used to determine approval of the credit transaction (Comment 38(a)(3)(vii)-1).

Transaction information includes the borrower's name and mailing address, the seller's name and mailing address, and the name of the creditor making the disclosure (12 CFR 1026.38(a)(4)).

Loan information includes the loan term, purpose, product, loan type, loan ID number (using the same number as on the Loan Estimate), and mortgage insurance case number (MIC #), if required by the creditor (12 CFR 1026.38(a)(5)). Other than the MIC #, this information is determined by the same definitions for those items on the Loan Estimate, updated to reflect the terms of the legal obligation at consummation (Comment 38(a)(5)-1).

**Loan Terms table**

The Loan Terms table is located under the above-described general information disclosures. The information for this table is the same as that required in the Loan Estimate under 12 CFR 1026.37(b), updated to reflect the terms of the legal obligation at consummation (12 CFR 1026.38(b)).

**Projected Payments table**

The Projected Payments table is located directly below the Loan Terms table on page 1 of the Closing Disclosure. The information for this table is generally the same as that required in the Loan Estimate under 12 CFR 1026.37(c)(1) through (4), updated to reflect the terms of the legal obligation at consummation (other than the reference to closing cost details required by 12 CFR 1026.37(c)(4)(vi)). The estimated escrow payments disclosed on the Closing Disclosure for transactions subject to RESPA are determined under the escrow account analysis described in Regulation X, 12 CFR 1024.17. For transactions not subject to RESPA, estimated escrow payments may be determined under the escrow account analysis described in Regulation X, 12 CFR 1024.17 or in the manner set forth in 12 CFR 1026.37(c)(5). There is also a required reference to the detailed escrow account disclosures on page 4 of the Closing Disclosure (12 CFR 1026.38(c)).

**Costs at Closing table**

This table, located at the bottom of page 1, provides disclosures on Closing Costs and Cash to Close (12 CFR 1026.38(d)). These disclosures offer the consumer a high-level summary of closing costs and reference the more detailed itemizations found on pages 2 and 3 of the Closing Disclosure 12 CFR 1026.38(d)(1)(i)(E); (12 CFR 1026.38(d)(1)(ii)(B)).

Items that are disclosed on the Cash at Closing table include Total Closing Costs, as well as the key inputs making up this total: Loan Costs and Other Costs, less Lender Credits (and the fact that total closing costs include these amounts) (12 CFR 1026.38(d)(1)(i)). The table also discloses Cash Required to Close (12 CFR 1026.38(d)(1)(ii)). For transactions without a seller or simultaneous subordinate financing transactions, the creditor must use the alternative Calculating Cash to Close table when the alternative costs at closing table was used on the Loan Estimate (12 CFR 1026.38(d)(2)).

## *Page 2: Closing Cost Details; Loan costs and other costs*

Page 2 of the Closing Disclosure contains an itemization of the “Loan Costs” and “Other Costs” associated with the loan (12 CFR 1026.38(f), (g), and (h)). In each case, the amounts paid by the consumer, seller, and others are separately disclosed. For items paid by the consumer or seller, amounts that are paid at closing are disclosed in a column separately from amounts paid before closing (12 CFR 1026.38(f)).

The number of items in the Loan Costs and Other Costs tables can be expanded and deleted to accommodate the disclosure of additional line items and to keep the Loan Costs and Other Costs tables on page 2 of the Closing Disclosure (12 CFR 1026.38(t)(5)(iv)(A); Comment 38(t)(5)(iv)-2). However, items that are required to be disclosed even if they are not charged to the consumer (such as Points in the Origination Charges subheading) cannot be deleted (Comment 38(t)(5)(iv)-1).

Further, the Loan Costs and Other Costs tables can be disclosed on two separate pages of the Closing Disclosure but only if the page cannot accommodate all of the costs required to be disclosed on one page (12 CFR 1026.38(t)(5)(iv)(B); Comment 38(t)(5)(iv)-2). When used, these

pages are numbered page 2a and 2b (Comment 38(t)(5)(iv)-3). For an example of this permissible change to the Closing Disclosure, see Form H-25(H) of Appendix H to Regulation Z.

**Loan Costs table**

All loan costs associated with the transaction are listed in a table under the heading "Loan Costs", with the items and amounts listed under four subheadings:

- Origination charges,
- Services borrower did not shop for,
- Services borrower did shop for, and
- Total loan costs (12 CFR 1026.38(f)(1) through (f)(5).

Items should generally be the same as disclosed on the Loan Estimate, updated to reflect the terms of the legal obligation at consummation, except as discussed below (12 CFR 1026.38(f)).

***Origination Charges.*** All loan originator compensation is disclosed as an origination charge, including compensation from the creditor to a third-party loan originator (which was not disclosed on the Loan Estimate). Compensation from the consumer to a third-party loan originator is designated as Borrower-Paid at Closing or before closing on the Closing Disclosure (12 CFR 1026.38(f)(1); Comment 38(f)(1)-2). Compensation from the creditor to a third-party loan originator is designated as Paid by Others on the Closing Disclosure (Comment 38(f)(1)-2). This line item must also disclose the name of the loan originator ultimately receiving the payment (12 CFR 1026.38(f)(1)). A designation of "(L)" can be listed with the amount to indicate that the creditor pays the compensation at consummation. This is the same as the amount of third-party compensation included in points and fees for purposes of determining the consumer's ability to repay the loan. Compensation to individual loan originators is not calculated or disclosed on the Closing Disclosure (Comment 38(f)(1)-3).

***Services the consumer did or did not shop for.*** The following are disclosed under "Services Borrower Did Not Shop For," regardless of where it was located on the Loan Estimate:

- Items that the consumer could have shopped for but did not.
- When a consumer chooses a provider that is on the written list of providers for a service on the Loan Estimate (12 CFR 1026.38(f)(2)).

Items are re-alphabetized when an item is added to or removed from a particular subheading.

The amounts that are designated as Borrower-Paid at or before closing are subtotaled as Total Loan Costs (Borrower-Paid) (12 CFR 1026.38(f)(5)). Amounts designated as Seller-Paid or Paid by Others are not included in this subtotal (rather, they are included elsewhere in the Closing Cost Subtotal) (Comment 38(f)(5)-1; 12 CFR 1026.38(h)(2)).

**Other Costs Table**

Items should generally be the same as disclosed on the Loan Estimate, updated to reflect the terms of the legal obligation at consummation, except as discussed below (12 CFR 1026.38(g)).

***Taxes and other government fees.*** Itemized transfer taxes paid by the consumer and by the seller are disclosed, instead of just the sum total of transfer taxes to be paid by the consumer (12 CFR 1026.38(g)(1)).

***Prepaids.*** An itemization of homeowner's insurance premiums, mortgage insurance premiums, prepaid interest, property taxes and a maximum of three additional items (*See* 12 CFR 1026.37(g)(2)), the name of the person ultimately receiving the payment or government entity assessing the property tax, and the total of all such itemized amounts that are designated Borrower-Paid at or before closing. If no interest is collected prior to the interest collected with the first monthly payment, zero dollars should be disclosed (12 CFR 1026.38(g)(2); Comment 38(g)(2)-3).

***Initial escrow payment at closing.*** Property taxes paid during different time periods may be disclosed as separate items (12 CFR 1026.38(g)(3)).

This section of the table also includes, as the last item disclosed, an Aggregate Adjustment calculated pursuant to Regulation X, 12 CFR 1024.17(d)(2) (12 CFR 1026.38(g)(3)).

***Other.*** This section of the table includes charges for services that are required or obtained in the real estate closing by the consumer, the seller, or other party, and the name of the person ultimately receiving the payment, even if not initially disclosed on the Loan Estimate (12 CFR 1026.38(g)(4)). This includes all real estate brokerage fees, homeowner's or condominium association charges paid at consummation, home warranties, inspection fees, and other fees that are part of the real estate closing but not required by the creditor or not disclosed elsewhere on the Closing Disclosure (Comment 38(g)(4)-1). The amount of real estate commissions paid must be the total amount paid to any real estate brokerage as a commission, regardless of the identity of the party holding any earnest money deposit (Comment 38(g)(4)-4).

If there are costs that are a component of title insurance services, their label must begin with "Title -" and, if there are costs designated Borrower-Paid at or before closing for any premiums paid for separate insurance, warranty, guarantee, or event-coverage products, they must be labeled "(optional)" (12 CFR 1026.38(g)(4)(i) and (ii)).

The sum of any of these amounts that are Borrower-Paid must be disclosed as a line item as Total Other Costs (Borrower-Paid) (12 CFR 1026.38(g)(5)). Below this total, the sum of Total Loan Costs and Total Other Costs (Borrower-Paid), less any lender credits (separately itemized), must be disclosed as a line item as Total Closing Costs (Borrower-Paid) (12 CFR 1026.38(g) and (h)).

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

Page 3 of the Closing Disclosure contains the Calculating Cash to Close table and Summaries of Transactions tables (12 CFR 1026.38(i), (j), and (k)).

**Calculating Cash to Close**

The Calculating Cash to Close table permits the consumer to see what costs have changed from the Loan Estimate. This table contains nine items:

- Total Closing Costs,
- Closing Costs Paid before Closing,
- Closing Costs Financed,
- Down Payment/Funds from Borrower,
- Deposit,
- Funds for Borrower,
- Seller Credits,
- Adjustments and other Credits, and
- Total Cash to Close (12 CFR 1026.38(i)).

The table has three columns that disclose (1) the amount for each item as it was disclosed on the most recent Loan Estimate provided to the consumer, (2) the final amount for the item, and (3) an answer to the question "Did this change?" (12 CFR 1026.38(i)). The amounts disclosed in the Loan Estimate column will be the amounts disclosed on the most recent Loan Estimate (or revised Loan Estimate) provided to the consumer (12 CFR 1026.38(i)(1)(i), (3)(i), (4)(i), (5)(i), (6)(i), (7)(i), (8)(i), (9)(i).

When amounts have changed, the disclosure must indicate where the consumer can find the amounts that have changed since being provided the Loan Estimate. For example, if the Seller Credit amount changed, the creditor can indicate that the consumer should "See Seller Credits in Section L" (Comment 38(i)-3). Other examples of language for these items are found in example Form H-25(B) in Appendix H to Regulation Z.

***Increases in total closing costs that exceed legal limits.*** When the increase in Total Closing Costs exceeds the legal limits on closing costs set forth in 12 CFR 1026.19(e)(3), the form must disclose a statement that an increase in closing costs exceeds the legal limits by the dollar amount of the excess in the "Did this change?" column (12 CFR 1026.38(i)(1)(iii)(A)(3)). A statement directing the consumer to the Lender Credit on page 2 or a principal reduction must also be included if either is provided as a refund for the excess amount (Comment 38(i)(1)(iii)(A)-3). The dollar amount must be the sum of all excess amounts, taking into account the different methods of calculating excesses of the limitations on increases in closing costs under 12 CFR 1026.19(e)(3)(i) and (ii) (12 CFR 1026.38(i)(1)(iii)(A)(3)).

***Closing Costs Paid Before Closing.*** The amount disclosed in the Loan Estimate column for the "Closing Costs Paid Before Closing" item is zero dollars (12 CFR 1026.38(i)(2)(i)). The Final column should disclose the same amount designated as Borrower-Paid Before Closing in the Closing Costs Subtotals of the Other Costs table on page 2 of the Closing Disclosure. Under the subheading "Did this change?" if the amount disclosed here is different from the amount disclosed in the Loan Estimate, include a statement of that fact; and if it is equal to the amount disclosed on the Loan Estimate, include a statement of that fact (12 CFR 1026.38(i)(2)(iii)).

**Alternative Calculating Cash to Close table**

For transactions without a seller or for simultaneous subordinate financing where the alternative Calculating Cash to Close table was used on the Loan Estimate, the Closing Disclosure must also use the alternative Calculating Cash to Close table under (12 CFR 1026.38(e)). These items include:

- Loan amount,
- Total closing costs,
- Closing costs paid before closing,
- Payoffs and payments,
- Cash to or from consumer, and
- Closing costs financed.

The table has three columns that disclose (1) the amount for each item as it was disclosed on the most recent Loan Estimate provided to the consumer, (2) the final amount for the item, and (3) an answer to the question "Did this change?" along with a statement of whether the amount increased, decreased, or is equal to the amount disclosed in the Loan Estimate (12 CFR 1026.38(e), Comment 38(e)-6). Generally, the amounts disclosed in the Loan Estimate column will be the Loan Amount, Total Closing Costs, Closing Costs Paid before Closing, and the Total Payoffs and Payments (12 CFR 1026.38(e)(1)(i), (2)(i), (3)(i), (4)(i)).

Cash to or from the consumer is disclosed in the first two columns of the row labeled Cash to Close. The first column contains amounts disclosed in the most recent Loan Estimate provided to the consumer. The second column discloses the final amount due from or to the consumer, calculated by the sum of the amounts disclosed (pursuant to 12 CFR 1026.38(e)(1)(i), (2)(i), (3)(i), (4)(i)) as final Loan Amount, Total Closing Costs, Closing Costs Paid before Closing, and the Total Payoffs and Payments, disclosed as a positive number with the statement of whether the funds are due from or to the consumer (12 CFR 1026.38(e)(5)).

Closing Costs Financed are disclosed in the third column of the row labeled Cash to Close in the Calculating Cash to Close table. This amount is calculated by the sum of the final Loan Amount (12 CFR 1026.38(e)(1)(ii)) and the final Total Payoffs and Payments (12 CFR 1026.38(e)(4)(ii)), but only to the extent that the sum is greater than zero and less than or equal to the sum of

borrower-paid closing costs (disclosed under 12 CFR 1026.38(h)(2)), designated Borrower-Paid Before Closing (12 CFR 1026.38(e)(6)).

**Summaries of Transactions table**

The Summaries of Transactions table contains required itemizations of the borrower's and the seller's transactions (12 CFR 1026.38(j)-(k)). The table discloses amounts due from or payable to the consumer and seller at closing, as applicable (12 CFR 1026.38(k)(1) and (2)). A separate Closing Disclosure can be provided to the consumer and the seller that does not reflect the other party's costs and credits by omitting specified disclosures on each separate Closing Disclosure (12 CFR 1026.38(t)(5)(v), (vi), (ix)).

Additional pages may be attached to the Closing Disclosure to add lines to provide a complete listing of all items required to be shown on the Closing Disclosure and for customary recitals and information used locally in real estate closings (for example, breakdown of payoff figures, a breakdown of the consumer's total monthly mortgage payments, an accounting of debits received and check disbursements, a statement stating receipt of funds, applicable special stipulations between consumer and seller, and the date funds are transferred) (Comment 38(j)-6).

Generally, the Summaries of Transactions table is similar to the Summary of Borrower's Transaction and Summary of Seller's Transaction tables on the HUD-1 Settlement Statement provided under Regulation X prior to the TILA-RESPA Integrated Disclosure rule taking effect. There are some modifications to the Closing Disclosure related to the handling of the disclosure of the consumer's deposit, the disclosure of credits, and specific guidance on other matters that may not have been clear in the HUD-1 instructions.

In transactions without a seller, the Seller-Paid column for Closing Costs may be deleted on page 2, and a Payoffs and Payments table may be substituted for the Summaries of Transactions table and placed before the alternative Calculating Cash to Close table on page 3 of the closing Disclosure (12 CFR 1026.38(t)(5)(vii)(B)). For an example, see page 3 of Form H-25(J) of Appendix H to Regulation Z.

In some transactions, there are contractual or legal limits on what refunds may be provided to the consumer, and, instead, principal is reduced. Principal reductions may also be utilized in circumstances where refunds do not need to be provided. In transactions with a principal reduction that occurs immediately or very soon after closing, the principal reduction must be disclosed in the Summaries of Transactions table on the standard Closing Disclosure pursuant to (12 CFR 1026.38(j)(1)(v)).

**Borrower's Transaction**

***Amounts due from the borrower.*** The sale price of the property, sale price of any personal property included in the sale, and total amount of closing costs designated Borrower-Paid at Closing, calculated with lender credits as a negative number pursuant to 12 CFR 1026.38(h)(2) and (h)(3) (12 CFR 1026.38(j)(1)(ii)-(iv)). The contract sale price of the property does not include the price of tangible personal property if the buyer and seller have agreed to a separate

price for such items. Manufactured homes are not considered personal property for this disclosure (Comment 38(j)(1)(ii)-1).

***Adjustments.*** This includes a description and the amount of any additional items that the seller has paid prior to the real estate closing but reimbursed by the consumer at closing, and a description and the amount of any other items owed by the consumer at the real estate closing not otherwise disclosed pursuant to 12 CFR 1026.38(f), (g), or (j) (12 CFR 1026.38(j)(1)(v)). Amounts not otherwise disclosed under 12 CFR 1026.38(j) that are owed to the seller but payable to the consumer after the real estate closing must be disclosed under the heading "Adjustments," including rent that the consumer will collect after closing for a period of time prior to the real estate closing, and a tenant's security deposit (Comment 38(j)(1)(v)-1). Other consumer charges owed by the consumer at the real estate closing and not otherwise disclosed under 12 CFR 1026.38(f), (g), and (j) will not have a corresponding credit in the summary of the seller's transaction under 12 CFR 1026.38(k)(1)(iv) (Comments 38(j)(1)(v)-1 and -2).

***Adjustments for items paid by seller in advance.*** The prorated amount of prepaid taxes due from the consumer to reimburse the seller, and the time periods. The taxes are labeled city/town taxes, county taxes, and/or assessments as appropriate (12 CFR 1026.38(j)(1)(vi)-(ix)). If there are additional items paid by the seller and due from the consumer, they are also itemized. Examples include taxes paid in advance, flood or insurance premiums if the insurance is under the same policy, mortgage insurance for assumed loans, condominium assessments, fuel or supplies on hand, and ground rent paid in advance (Comment 38(j)(1)(x)-1).

***Itemization of amounts already paid by or on behalf of borrower.*** These amounts are itemized in the second part of the Summary of Transactions table. These include the following:

- Deposits, and if there is no deposit, this line is left blank. If the deposit was reduced to pay closing charges prior to closing, the reduction should be shown in the Closing Cost Detail table designated as Borrower-Paid Before Closing (Comments 38(j)(2)(ii)-1 and -2).

- The loan amount is the construction or purchase loan amount for a structure or purchase of a new manufactured home that is real property. For construction loans or loans for manufactured homes that are real property under state law, the loan amount for the current transaction must be disclosed, and the sales price of the land and the construction cost or the price of the manufactured home should be disclosed separately (Comment 38(j)(2)(iii)-1).

- Existing loans assumed or taken subject to are itemized with the outstanding amount of any loans that the consumer is assuming or taking title subject to (Comment 38(j)(2)(iv)-1)

- If the seller is providing a lump sum at closing that is not otherwise itemized, to pay for loan costs and any other obligations of the seller to be paid directly to the consumer, this amount is labeled Seller Credit (12 CFR 1026.38(j)(2)(v)). When the consumer receives a generalized credit from the seller for closing costs or where the seller (typically a builder) is making an allowance to the consumer for items to purchase separately, the amount of the credit must be disclosed. However, if the Seller Credit is attributable to a specific loan cost or

other cost listed in the Closing Cost Details tables, that amount should be reflected in the Seller-Paid column in the Closing Cost Details tables.

- Any other obligations of the seller to be paid directly to the consumer, such as for issues identified at a walk-through of the property prior to closing, are disclosed here (Comments 38(j)(2)(v)-1 and-2).
- Other credits are itemized with a description and the amounts paid by or on behalf of the consumer, and not otherwise disclosed. Examples of other credits include credits from a real estate agent not attributable to a specific closing cost, subordinate financing proceeds, satisfaction of existing subordinate liens by consumer, transferred escrow balances, gift funds provided at closing, and any additional amounts not already disclosed under 12 CFR 1026.38(f), (g), and (j)(2) that are owed to the consumer but payable to the seller before the real estate closing ("Adjustments"), including rent paid to the seller from a tenant before the real estate closing for a period extending beyond the closing (Comments 38(j)(2)(vi)-1 through -6).

***Adjustments for items unpaid by seller*** include prorated unpaid taxes due from the seller to reimburse the consumer at closing, along with the time period and labeled city/town taxes, county taxes, and/or assessments as appropriate (12 CFR 1026.38(j)(2)(vii)-(x)). If there are additional items that have not been paid and that the consumer is expected to pay after closing but which are attributable to the time prior to closing, they are itemized here (12 CFR 1026.38(j)(2)(xi)). Examples include utilities used but not paid for by the seller, or interest on a loan assumption (Comment 38(j)(2)(xi)-1).

***Calculation of the borrower's transaction*** is disclosed by including the Total Due from Borrower at Closing, the amount labeled Total Paid Already by or on Behalf of Borrower at Closing, if any, disclosed as a negative number, and a statement that the resulting amount is due from or to the consumer, and labeled Cash to Close (12 CFR 1026.38(j)(3)).

***Items paid outside of closing*** are costs that are not paid from closing funds but would otherwise be part of the borrower's transaction table should be marked as "P.O.C." for paid outside of closing. There must also be a statement of the party making the payment, such as the consumer, seller, loan originator, real estate agent, or any other person. For an example, see Form H-25(D) of Appendix H (Comment 38(j)(4)(i)-1).

**Seller's Transaction**

***Amounts due to the seller*** include the sale price of the property, sale price of any personal property included in the sale, and a description and the amount of other items paid to the seller by the consumer pursuant to a contract, such as charges that were not disclosed on the Loan Estimate, or items paid by the seller prior to closing but reimbursed by the consumer at closing (12 CFR 1026.38(k)(1)(ii)-(iv)).

***Adjustments for items paid by seller in advance*** include the prorated amount of prepaid taxes due from the consumer to reimburse the seller, and the time periods. The taxes are labeled

city/town taxes, county taxes, and/or assessments as appropriate (12 CFR 1026.38(k)(1)(v)-(viii)). If there are additional items paid by the seller and due from the consumer, they are also itemized (12 CFR 1026.38(k)(1)(ix)).

***Itemization of amounts due from seller at closing*** are itemized in the second part of the Summary of Transactions table. These include the amount of any deposits disbursed to the seller prior to closing and seller-paid closing costs. The itemization also includes the amount of any existing loans that the consumer is assuming and the amounts of any loan secured by a first lien or a second lien on the property that will be paid off. In addition, the itemization includes seller credits, an amount that the seller will provide at the closing as a lump sum, not otherwise itemized, to pay for loan costs and other costs and any other obligations of the seller to be paid directly to the consumer. The amounts and a description of any and all other obligations required to be paid by the seller at closing are disclosed, including any lien-related payoffs, fees, or obligations (12 CFR 1026.38(k)(2)(ii)-(vii)).

***Adjustments for items unpaid by seller*** include prorated unpaid taxes due from the seller to reimburse the consumer at closing, along with the time period and labeled city/town taxes, county taxes, and/or assessments as appropriate (12 CFR 1026.38(k)(2)(x)-(xii)). If there are additional items that have not been paid and that the consumer is expected to pay after closing but which are attributable to the time prior to closing, they are itemized here (12 CFR 1026.38(k)(2)(xiii)).

***Calculation of the seller's transaction*** is disclosed by including the Total Due to Seller at Closing, the amount labeled Total Due from Seller at Closing, if any, disclosed as a negative number, and a statement that the resulting amount is due from or to the seller, and labeled Cash (12 CFR 1026.38(k)(3)).

***Items paid outside of closing*** are costs that are not paid from closing funds but that would otherwise be part of the seller's transaction table should be marked as "P.O.C." for paid outside of closing. There must also be a statement of the party making the payment (12 CFR 1026.38(k)(4)).

### *Page 4: Additional information about this loan*

Page 4 of the Closing Disclosure groups several required loan disclosures together, generally using specified language, including:

- Information concerning future assumption of the loan by a subsequent purchaser required by 12 CFR 1026.37(m)(2) (12 CFR 1026.38(l)(1));
- Whether the legal obligation contains a demand feature that can require early payment of the loan (12 CFR 1026.38(l)(2));
- The terms of the legal obligation that impose a fee for a late payment, including the amount of time that passes before a fee is imposed and the amount of such fee or how it is calculated (as required by 12 CFR 1026.37(m)(4) (12 CFR 1026.38(l)(3));

- Whether the regular periodic payments can cause the principal balance of the loan to increase (i.e., whether there could be negative amortization) (12 CFR 1026.38(l)(4));
- The creditor's policy regarding partial payments by the consumer (12 CFR 1026.38(l)(5));
- A statement that the consumer is granting a security interest in the property (along with an identification of the property) (12 CFR 1026.38(l)(6)); and
- Specified information related to any escrow account held by the servicer, including specified estimated escrow costs over the first year after consummation (or a statement that an escrow account has not been established, with a description of specified estimated property costs during the first year after consummation) (12 CFR 1026.38(l)(7)).

If the periodic principal and interest payment may change after consummation, other than due to a change in interest rate or where the loan is a seasonal payment product, page 4 of the Closing Disclosure must also include an Adjustable Payment (AP) table (12 CFR 1026.38(m)). If the loan's interest rate may increase after consummation, page 4 of the Closing Disclosure must also include the Adjustable Interest Rate (AIR) table (12 CFR 1026.38(n)). These are the tables required in the Loan Estimate at 12 CFR 1026.37(i) and (j), respectively, updated to reflect the terms of the loan at consummation.

### *Page 5: Loan calculations, other disclosures, and contact information*

Page 5 of the Closing Disclosure includes a Loan Calculations table, as well as specified other disclosures, contact information for the CFPB for questions, contact information for participants in the transaction, and if desired by the creditor, a signature table to confirm receipt of the Closing Disclosure (12 CFR 1026.38(o)-(s)).

**Loan Calculations table**

The Loan Calculations table discloses:

- Total of Payments (total paid by the consumer after all scheduled payments of principal, interest, mortgage insurance, and loan costs are made);
- Finance Charge;
- Amount Financed;
- Annual Percentage Rate (APR); and
- Total Interest Percentage (TIP) (the total amount of interest paid over the loan term as a percentage of the loan amount) (12 CFR 1026.38(o); 12 CFR 1026.37(l)(3) and its commentary).

  The APR and TIP amounts should be updated from the amounts disclosed on the Loan Estimate to reflect the terms of the legal obligation at consummation. The TIP calculation is set forth in 12 CFR 1026.37(l)(3) and its commentary.

NOTE: *See* the discussion on calculating the TIP for the comparison table on page 3 of the Loan Estimate.

**Other Disclosures table**

The Other Disclosures table requires a notice regarding the lender's obligation to provide a free copy of the appraisal (for higher-priced mortgage loans under 12 CFR 1026.35 and loans covered by the Equal Credit Opportunity Act); a specified warning about consequences of nonpayment under the contract, whether state law provides for continued consumer liability after foreclosure, a statement concerning the consumer's ability to refinance the loan, and a statement concerning the extent that the interest on the loan can be included as a tax deduction by the consumer (12 CFR 1026.38(p)).

**Contact information table**

For each lender, mortgage broker, real estate broker (buyer and seller), and settlement agent, the contact information table discloses the name, address, NMLS or state license ID (as applicable), contact name of an individual primary contact for the consumer (and NMLS ID or license ID for that person), email, and phone number (12 CFR 1026.38(r)).

## Mortgage Transfer Disclosures– 12 CFR 1026.39

Notice of new owner – No later than 30 calendar days after the date on which a mortgage loan is acquired by or otherwise sold, assigned, or otherwise transferred[38] to a third party, the "covered person"[39] shall notify the consumer clearly and conspicuously in writing, in a form that the consumer may keep, of such transfer and include:

- Identification of the loan that was sold, assigned, or otherwise transferred;
- Name, address, and telephone number of the covered person;
- Date of transfer;
- Name, address, and telephone number of an agent or party having authority, on behalf of the covered person, to receive notice of the right to rescind and resolve issues concerning the consumer's payments on the mortgage loan;
- Location where transfer of ownership of the debt to the covered person is or may be recorded in public records or, alternatively, that the transfer of ownership has not been recorded in public records at the time the disclosure is provided; and
- At the option of the covered person, any other information regarding the transaction.

[38] The date of transfer to the covered person may, at the covered person's option, be either the date of acquisition recognized in the books and records of the acquiring party or the date of transfer recognized in the books and records of the transferring party.

[39] A "covered person" means any person, as defined in 12 CFR 1026.2(a)(22), who becomes the owner of an existing mortgage loan by acquiring legal title to the debt obligation, whether through a purchase, assignment, or other transfer, and who acquires more than one mortgage loan in any 12-month period. For purposes of this section, a servicer of a mortgage loan shall not be treated as the owner of the obligation if the servicer holds title to the loan or it is assigned to the servicer solely for the administrative convenience of the servicer in servicing the obligation. *See* 12 CFR 1026.39(a)(1).

This notice of sale or transfer must be provided for any consumer credit transaction that is secured by the principal dwelling of a consumer, as well as a closed-end consumer credit transaction secured by a dwelling or real property. Thus, it applies to both closed-end mortgage loans and open-end home equity lines of credit. This notification is required of the covered person even if the loan servicer remains the same.

Regulation Z also establishes special rules regarding the delivery of the notice when there is more than one covered person. In a joint acquisition of a loan, the covered persons must provide a single disclosure that lists the contact information for all covered persons. However, if one of the covered persons is authorized to receive a notice of rescission and to resolve issues concerning the consumer's payments, the disclosure may state contact information only for that covered person. In addition, if the multiple covered persons each acquire a partial interest in the loan pursuant to separate and unrelated agreements, they may provide either a single notice or separate notices. Finally, if a covered person acquires a loan and subsequently transfers it to another covered person, a single notice may be provided on behalf of both of them, as long as the notice satisfies the timing and content requirements with respect to each of them.

In addition, there are three exceptions to the notice requirement to provide the notice of sale or transfer:

- The covered person sells, assigns, or otherwise transfers legal title to the mortgage loan on or before the 30th calendar day following the date of transfer on which it acquired the mortgage loan;
- The mortgage loan is transferred to the covered person in connection with a repurchase agreement that obligates the transferring party to repurchase the mortgage loan (unless the transferring party does not repurchase the mortgage loan); or
- The covered person acquires only a partial interest in the mortgage loan and the agent or party authorized to receive the consumer's rescission notice and resolve issues concerning the consumer's payments on the mortgage loan does not change as a result of that transfer.

If, upon confirmation, a servicer provides a confirmed successor in interest who is not liable on the mortgage loan obligation with an optional notice and acknowledgment form in accordance with Regulation X, 12 CFR 1024.32(c)(1), the servicer is not required to provide to the confirmed successor in interest the notice of sale or transfer unless and until the confirmed successor in interest either assumes the mortgage loan obligation under state law or has provided the servicer an executed acknowledgment in accordance with Regulation X, 12 CFR 1024.32(c)(1)(iv), that the confirmed successor in interest has not revoked (12 CFR 1026.39(f)).

## Mortgage transfer notices – partial payment policies

If a creditor or servicer is required by Regulation Z to provide mortgage transfer notices when the ownership of a mortgage loan is being transferred, the notice must include information related to the partial payment policy that will apply to the mortgage loan. This post-consummation partial payment disclosure is required for a closed-end consumer credit

transaction secured by a dwelling or real property, other than a reverse mortgage (12 CFR 1026.39(a) and (d)).

The partial payment disclosure must include (12 CFR 1026.39(d)(5)):

- The heading "Partial Payment" over all of the following additional information:
  - If periodic payments that are less than the full amount due are accepted, a statement that the covered person, using the term "lender," may accept partial payments and apply such payments to the consumer's loan;
  - If periodic payments that are less than the full amount due are accepted but not applied to a consumer's loan until the consumer pays the remainder of the full amount due, a statement that the covered person, using the term "lender," may hold partial payments in a separate account until the consumer pays the remainder of the payment and then apply the full periodic payment to the consumer's loan;
  - If periodic payments that are less than the full amount due are not accepted, a statement that the covered person, using the term "lender," does not accept any partial payments; and
  - A statement that, if the loan is sold, the new covered person, using the term "lender," may have a different policy.

The text illustrating the disclosure in Form H-25 may be modified to suit the format of the mortgage transfer notice. Any modifications must be appropriate and not affect the substance, clarity, or meaningful sequence of the disclosure (Comment 39(d)(5)-1).

## Periodic Statements for Residential Mortgage Loans – 12 CFR 1026.41

Creditors, assignees, or servicers[40] of closed-end mortgages are generally required to provide consumers with periodic statements for each billing cycle unless the loan is a fixed-rate loan and the servicer provides the consumer with a coupon book meeting certain conditions. Periodic statements must be provided by the servicer within a reasonably prompt time after the payment is due, or at the end of any courtesy period provided by the servicer for the previous billing cycle. Delivering, emailing or placing the periodic statements in the mail within four days of the close of the courtesy period of the previous billing cycle is generally acceptable. However, periodic statements are not required for:

[40] Creditors, assignees, and servicers are all subject to the requirements of 12 CFR 1026.41, as applicable. Creditors, assignees, or servicers may decide among themselves which of them will provide the required disclosures. However, establishing a business relationship where one party agrees to provide disclosures on behalf of the other parties does not absolve all other parties from their legal obligations. However, a creditor or assignee that currently does not own the mortgage loan or mortgage servicing rights is not subject to the periodic statement requirement.

- Reverse mortgage transactions covered under 12 CFR 1026.33;
- Mortgage loans secured by a consumer's interest in a timeshare plan;
- Fixed-rate loans where the servicer currently provides consumers with coupon books that contain certain specified account information, contact information for the servicer, delinquency information (if applicable), and information that consumers can use to obtain more information about their account;
- Creditors, assignees, or servicers that meet the "small servicer" exemption;

  NOTE: 12 CFR 1026.41(e)(4)(ii) and (iii) define a "small servicer" and provide clarification how a small servicer will be determined. A small servicer is a servicer that: (1) services, together with any affiliates, 5,000 or fewer mortgage loans, for all of which it or an affiliate is the creditor or assignee, (2) meets the definition of a Housing Finance Agency under 24 CFR 266.5, or (3) is a nonprofit entity (defined in 12 CFR 1026.41(e)(4)(ii)(C)(1)) that services 5,000 or fewer mortgage loans, including any mortgage loans serviced on behalf of associated nonprofit entities (defined in 12 CFR 1026.41(e)(4)(ii)(C)(2)), for all of which the servicer or an associated nonprofit entity is the creditor. To determine whether a servicer is a small servicer, generally, a servicer should be evaluated based on the mortgage loans serviced by the servicer and any affiliate as of January 1 for the remainder of the calendar year. However, to determine small servicer status under the nonprofit small servicer definition, a nonprofit servicer should be evaluated based on the mortgage loans serviced by the servicer (and not those serviced by associated nonprofit entities) as of January 1 for the remainder of the calendar year. A servicer that ceases to qualify as a small servicer has the later of six months from the time it ceases to qualify or until the next January 1 to come into compliance with the requirements of 12 CFR 1026.41. Under 12 CFR 1026.41(e)(4)(iii), the following mortgage loans are not considered in determining whether a servicer qualifies as a small servicer: (a) mortgage loans voluntarily serviced by the servicer for a non-affiliate of the servicer and for which the servicer does not receive any compensation or fees; (b) reverse mortgage transactions; (c) mortgage loans secured by consumers' interests in timeshare plans; and (d) certain seller-financed transactions that meet the criteria identified in (12 CFR 1026.36(a)(5)).

- A mortgage loan while the consumer is a debtor in bankruptcy under Title 11 of the U.S. Code. Servicers, however, are required to send modified periodic statements (or coupon books) to consumers who have filed for bankruptcy, subject to certain exceptions (*See* the Certain Consumers in Bankruptcy discussion below);
- Charged-off loans, if the servicer will not charge any additional fees or interest on the account and provides a periodic statement including additional disclosures related to the effects of charge-off in accordance with (12 CFR 1026.41(e)(6));
- A successor in interest under certain conditions: if, upon confirmation, a servicer provides a confirmed successor in interest who is not liable on the mortgage loan obligation with an optional notice and acknowledgment form in accordance with Regulation X, 12 CFR

1024.32(c)(1), the servicer is not required to provide to the confirmed successor in interest a periodic statement unless and until the confirmed successor in interest either assumes the mortgage loan obligation under state law or has provided the servicer an executed acknowledgment in accordance with Regulation X, 12 CFR1024.32(c)(1)(iv), that the confirmed successor in interest has not revoked (12 CFR 1026.41(g)).

Servicers must provide consumers with the following information in the specified format on the periodic statements:

### Amount Due

- The payment due date, the amount of any late payment fee, the date that late payment fees will be assessed to the consumer's account if timely payment is not made, and the amount due, which must be shown more prominently than other disclosures on the page;

  NOTE: If the transaction has multiple payment options, the amount due under each of the payment options must be provided.

The commentary to Regulation Z clarifies how servicers must disclose the amount due on periodic statements when the mortgage loan has been accelerated, is in a temporary loss mitigation program, or has been permanently modified. The commentary states the following:

- ***Acceleration.*** If the balance of a mortgage loan has been accelerated but the servicer will accept a lesser amount to reinstate the loan, the amount due must identify only the lesser amount that will be accepted to reinstate the loan. The periodic statement must be accurate when provided and should indicate, if applicable, that the amount due is accurate only for a specified period of time. For example, the statement may include language such as "as of [date]" or "good through [date]" and provide an amount due that will reinstate the loan as of that date or good through that date, respectively (Comment 41(d)(1)-1).

- ***Temporary loss mitigation programs.*** If the consumer has agreed to a temporary loss mitigation program, the amount due may identify either the payment due under the temporary loss mitigation program or the amount due according to the loan contract (Comment 41(d)(1)-2).

  - ***Permanent loan modifications.*** If the loan contract has been permanently modified, the amount due must identify only the amount due under the modified loan contract (Comment 41(d)(1)-3).

### Explanation of Amount Due

- An explanation of the amount due, including the monthly payment amount with a breakdown of how much will be applied to principal, interest, and escrow, the total sum of any fees/charges imposed since the last statement, and any payment amount past due. Mortgage loans with multiple payment options must also have a breakdown of each payment option, along with information regarding how each payment option will impact the principal;

NOTE: The commentary to Regulation Z clarifies the explanation of amount due disclosures that must be included on periodic statements when mortgage loans have been accelerated or are in temporary loss mitigation programs. The commentary states the following:

- ***Acceleration.*** If the balance of a mortgage loan has been accelerated but the servicer will accept a lesser amount to reinstate the loan, the explanation of amount due must list both the reinstatement amount that is disclosed as the amount due and the accelerated amount. The servicer is not required to list the monthly payment amount that would otherwise be required under (12 CFR 1026.41(d)(2)(i)).

  The periodic statement must also include an explanation that the reinstatement amount will be accepted to reinstate the loan through the "as of [date]" or "good through [date]," as applicable, along with any special instructions for submitting the payment. The explanation should be on the front page of the statement or, alternatively, may be included on a separate page enclosed with the periodic statement. The explanation may include related information, such as a statement that the amount disclosed is "not a payoff amount" (Comment 41(d)(2)-1).

- ***Temporary loss mitigation programs.*** If the consumer has agreed to a temporary loss mitigation program and the amount due identifies the payment due under the temporary loss mitigation program, the explanation of amount due must include both the amount due according to the loan contract and the payment due under the temporary loss mitigation program. The statement must also include an explanation that the amount due is being disclosed as a different amount because of the temporary loss mitigation program. The explanation should be on the front page of the statement or, alternatively, may be included on a separate page enclosed with the periodic statement or in a separate letter (Comment 41(d)(2)-2).

### Past Payment Breakdown

- The total of all payments received since the last statement and the total of all payments received since the start of the calendar year, including, for each payment, a breakdown of how the payment(s) was applied to principal, interest, escrow, and/or fees and charges, and any amount held in a suspense or unapplied funds account (if applicable);

### Transaction Activity

- A list of transaction activity (including dates, a brief description, and amount) for the current billing cycle, including any credits or debits that affect the current amount due, with the date, amount, and brief description of each transaction;

### Partial Payment Information

- If a statement reflects a past partial payment held in a suspense or unapplied funds account, information explaining what the consumer must do to have the payment applied to the

mortgage. Information must be on the front page or a separate page of the statement or separate letter;

### Contact Information

- Contact information for the servicer, including a toll-free telephone number and email address (if applicable) that the consumer may use to obtain information regarding the account. Contact information must be on the front page of the statement; and

### Account Information

- Account information, including the outstanding principal balance, the current interest rate, the date after which the interest rate may change if the loan is an ARM, and any prepayment penalty, as well as the web address for CFPB's or HUD's list of homeownership counselors or counseling organizations and the HUD toll-free telephone number to contact the counselors or counseling organizations.

### Delinquency Information

Servicers must provide consumers that are more than 45 days delinquent on past payments additional information regarding their accounts on their periodic statements. For purposes of 12 CFR 1026.41(d)(8), the length of a consumer's delinquency is measured as of the date of the periodic statement or the date of the written notice provided under (12 CFR 1026.41(e)(3)(iv)). A consumer's delinquency begins on the date an amount sufficient to cover a periodic payment of principal, interest, and escrow, if applicable, becomes due and unpaid, even if the consumer is afforded a period after the due date to pay before the servicer assesses a late fee. A consumer is delinquent if one or more periodic payments of principal, interest, and escrow, if applicable, are due and unpaid (Comment 41(d)(8)-1).

These items must be grouped together in close proximity to one another. To meet this requirement, the items to be provided in close proximity must be grouped together, and set off from other groupings of items. Items in close proximity may not have an unrelated text between them. Text is unrelated if it does not explain or expand upon the required disclosures. This may be accomplished in a variety of ways, for example, by presenting the information in boxes, or by arranging the items on the document and including spacing between the groupings (Comment 41(d)-1). Furthermore, the additional information must include:

- The length of the consumer's delinquency;
- A notification of the possible risks of being delinquent, such as foreclosure and related expenses;
- An account history for either the previous six months or the period since the last time the account was current (whichever is shorter), which details the amount past due from each billing cycle and the date on which payments were credited to the account as fully paid;
- A notice stating any loss mitigation program that the consumer has agreed to (if applicable);

- A notice stating whether the servicer has initiated a foreclosure process;
- Total payments necessary to bring the account current; and
- A reference to homeownership counseling information (*See* Account Information above).

The regulation does not prohibit adding to the required disclosures, as long as the additional information does not overwhelm or obscure the required disclosures. For example, while certain information about the escrow account (such as the account balance) is not required on the periodic statement, this information may be included.

The periodic statement may be provided electronically if the consumer agrees. The consumer must give affirmative consent to receive statements electronically.

For sample periodic statements, see Appendix H-30.

NOTE: Servicers may modify the sample forms for periodic statements provided in Appendix H-30 to remove language that could suggest liability under the mortgage loan agreement if such language is not applicable (Comment 41(c)-5). For example, in the case of a confirmed successor in interest who has not assumed the mortgage loan obligation under state law and is not otherwise liable on the mortgage loan obligation, a servicer may modify the forms to:

- Use "this mortgage" or "the mortgage" instead of "your mortgage".
- Use "The payments on this mortgage are late" instead of "You are late on your mortgage payments".
- Use "This is the amount needed to bring the loan current" instead of "You must pay this amount to bring your loan current".

(Comment 41(c)-5)

## Certain Consumers in Bankruptcy – 12 CFR 1026.41(e)(5) and 12 CFR 1026.41(f)

Servicers must send modified periodic statements (or coupon books) to certain consumers while any consumer on a mortgage loan is a debtor in a bankruptcy under Title 11 of the U.S. Code, or if such consumer has discharged personal liability for the mortgage loan under Chapter 7, 11, 12, or 13 bankruptcy (12 CFR 1026.41(f)). The modified periodic statement requirements, however, are subject to certain exemptions.

Under 12 CFR 1026.41(e)(5)(i), a servicer is exempt from the periodic statement requirements with regard to a mortgage loan if:

- Any consumer on the loan is a debtor in bankruptcy under Title 11 of the U.S. Code, or if such consumer has discharged personal liability for the mortgage loan under Chapter 7, 11, 12, or 13 bankruptcy or the consumer has discharged personal liability for the mortgage loan through bankruptcy; *and*

- With regard to any consumer on the mortgage loan:
  - The consumer requests in writing that the servicer cease providing a periodic statement or coupon book;
  - The consumer's bankruptcy plan provides that the consumer will surrender the dwelling securing the mortgage loan, provides for the avoidance of the lien securing the mortgage loan, or otherwise does not provide for the payment of the pre-bankruptcy arrearage or the maintenance of payments due under the mortgage loan;
  - A court enters an order in the bankruptcy case providing for the avoidance of the lien securing the mortgage loan, lifting the automatic stay pursuant to 11 U.S.C. 362 with regard to the dwelling securing the mortgage loan, or requiring the servicer to cease providing a periodic statement or coupon book; or
  - The consumer files with the bankruptcy court a statement of intention pursuant to 11 U.S.C. 521(a) identifying an intent to surrender the dwelling and the consumer has not made any partial or periodic payment on the mortgage loan after the commencement of the bankruptcy case.

The bankruptcy exemption will no longer apply, however, if the consumer reaffirms personal liability for the loan, or any consumer on the loan requests in writing that the servicer provide a periodic statement or coupon book, unless a court enters an order in the bankruptcy case requiring the servicer to cease providing a periodic statement or coupon book.

Servicers not meeting the above exemption must send modified periodic statements or coupon books with regard to a mortgage loan as required by 12 CFR 1026.41(f) while any consumer on a mortgage loan is a debtor in a bankruptcy under Title 11 of the U.S. Code, or if such consumer has discharged personal liability for the mortgage loan under Chapter 7, 11, 12, or 13 bankruptcy. The content of the periodic statements will vary depending on whether the consumer is a debtor in a Chapter 7 or 11 bankruptcy case, or a Chapter 12 or 13 bankruptcy case. Appendix H includes a Sample Form of Periodic Statement for Consumer in Chapter 7 or Chapter 11 Bankruptcy (*See* H-30(E)) and a Sample Form of Periodic Statement for Consumer in Chapter 12 or Chapter 13 Bankruptcy (*See* H-30(F)) that servicers may use for consumers in bankruptcy to ensure compliance with (12 CFR 1026.41).

Servicers not meeting the above exemption must send modified periodic statements or coupon books as required by (12 CFR 1026.41(f)).

## Valuation Independence – 12 CFR 1026.42

Regulation Z seeks to ensure that real estate appraisers, and others preparing valuations, are free to use their independent professional judgment in assigning home values without influence or pressure from those with interests in the transactions. Regulation Z also seeks to ensure that appraisers receive customary and reasonable payments for their services. Regulation Z's valuation rules apply to creditors and settlement services providers for consumer credit

transactions secured by the consumer's principal dwelling (covered transaction) and includes several provisions that protect the integrity of the appraisal process when a consumer's principal dwelling is securing the loan. In general, the rule prohibits "covered persons" from engaging in coercion, bribery, and other similar actions designed to cause anyone who prepares a valuation to base the value of the property on factors other than the person's independent judgment.[41] More specifically, Regulation Z:

- Prohibits coercion and other similar actions designed to cause appraisers to base the appraised value of properties on factors other than their independent judgment;
- Prohibits appraisers and appraisal management companies hired by lenders from having financial or other interests in the properties or the credit transactions;
- Prohibits creditors from extending credit based on appraisals if they know beforehand of violations involving appraiser coercion or conflicts of interest, unless the creditors determine that the values of the properties are not materially misstated;
- Prohibits a person who prepares a valuation from materially misrepresenting the value of the consumer's principal dwelling, and prohibits a covered person other than the person who prepares valuations from materially altering a valuation. A misrepresentation or alteration is material if it is likely to significantly affect the value assigned to the consumer's principal dwelling;
- Prohibits any covered person from falsifying a valuation or inducing a misrepresentation, falsification, or alteration of value;
- Requires that creditors or settlement service providers that have information about appraiser misconduct file reports with the appropriate state licensing authorities if the misconduct is material (i.e., likely to significantly affect the value assigned to the consumer's principal dwelling; and
- Requires the payment of customary and reasonable compensation to appraisers who are not employees of the creditors or of the appraisal management companies hired by the creditors.

NOTE: Voluntary donation of appraisal services by a fee appraiser[42] to an organization eligible to receive tax-deductible charitable contributions meets the customary-and-reasonable requirements (15 U.S.C.1639e(i)(2)(B)).

[41] This section applies to any consumer credit transaction secured by a dwelling. A "covered person" means a creditor with respect to a covered transaction. A "covered transaction" means an extension of consumer credit that is or will be secured by a dwelling, as defined in 12 CFR 1026.2(a)(19).

[42] A fee appraiser is a state-licensed or certified appraiser, or a company using their services who receives a fee for performing appraisals.

# Minimum Standards for Transactions Secured by a Dwelling (Ability to Repay and Qualified Mortgages) – 12 CFR 1026.43

## Minimum standards for transactions secured by a dwelling – 12 CFR 1026.43(a), (g), (h)

Creditors originating certain mortgage loans are required to make a reasonable and good faith determination at or before consummation that a consumer will have the ability to repay the loan. The ability-to-repay requirement applies to most closed-end mortgage loans; however, there are some exclusions, including:

- Home equity lines of credit;[43]
- Mortgages secured by an interest in a timeshare plan;
- Reverse mortgages;
- A temporary bridge loan with a term of 12 months or less, such as a loan to finance the purchase of a new dwelling where the consumer plans to sell a current dwelling within 12 months or a loan to finance the initial construction of a dwelling;
- A construction phase of 12 months or less of a construction-to-permanent loan; and
- An extension of credit made pursuant to a program authorized by Sections 101 and 109 of the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5211; 5219).

NOTE: There are additional exclusions under 12 CFR 1026.43(a) that generally include extensions of credit by various state or federal government agencies or programs or by creditors with specific designations under such programs or extensions of credit that meet certain criteria and are extended by certain creditors that the Internal Revenue Service (IRS) has determined are 501(c)(3) nonprofits. For a full list and criteria, (*see* 12 CFR 1026.43(a)(3)(iv)–(vii)).

Generally, loans covered under this section (which, for purposes of the prepayment penalty provisions in 12 CFR 1026.43(g), includes reverse mortgages and temporary loans otherwise excluded[44] from the ability-to-repay provisions) may not have prepayment penalties; however, there are exceptions for certain fixed-rate and step-rate qualified mortgages that are not higher-priced mortgage loans (as defined in 12 CFR 1026.35(a)), and only if otherwise permitted by law. For such mortgages, the prepayment penalties must be limited to the first three years of the loan and may not exceed 2 percent for the first two years and 1 percent for the third year. The

[43] For open-end credit transactions that are high-cost mortgages as defined in 12 CFR 1026.32, creditors are required to determine a borrower's ability to repay under 12 CFR 1026.34.

[44] These include a temporary or "bridge" loan with a term of 12 months or less; a construction phase of 12 months or less of a construction-to-permanent loan; or an extension of credit made pursuant to a program administered by a housing finance agency; by certain community development or nonprofit lenders, as specified in 12 CFR 1026.43(a)(3)(v); or in connection with certain federal emergency economic stabilization programs (12 CFR 1026.43(a)(3)).

creditor must offer the consumer an alternative loan without such penalties that the creditor has a good faith belief that the consumer likely qualifies for, with the same term, a fixed rate or step rate, substantially equal payments, and limited points and fees (*See* 12 CFR 1026.43(g)).

## Ability to Repay – 12 CFR 1026.43(c)

Except as provided under 12 CFR 1026.43(d) (refinancing of non-standard mortgages), (e) (qualified mortgages), and (f) (balloon payment qualified mortgages by certain creditors), creditors must consider the following eight underwriting factors when making a determination of the consumer's ability to repay:

- The consumer's current or reasonably expected income or assets (excluding the value of the dwelling and any attached real property);
- The consumer's current employment status if the creditor relies on the consumer's income in determining repayment ability;
- The consumer's monthly payment for the mortgage loan;
- The consumer's monthly payment on any simultaneous loan (i.e., a covered transaction or HELOC that is being consummated generally at the same or similar time) secured by the same dwelling that the creditor knows or has reason to know will be made, calculated in accordance with 12 CFR 1026.43(c)(6);
- The consumer's monthly payment for mortgage-related obligations, including property taxes;
- The consumer's current debt obligations, alimony, and child support;
- The consumer's monthly debt-to-income ratio or residual income, calculated in accordance with 12 CFR 1026.43(c)(7); and
- The consumer's credit history.

Creditors are required to verify this information using reasonably reliable third-party records, with specific rules for verification of income or assets and employment status. In the case of the consumer's income or assets, the creditor must use third-party records that provide reasonably reliable evidence of such income or assets. Creditors may verify the information considered using the consumer's income tax return transcripts issued by the IRS, copies of tax returns filed by the consumer, W-2s or similar documentation, payroll statements, financial institution records, receipts from check-cashing or fund transfer services, and records from the consumer's employer or other specified records (12 CFR 1026.43(c)(4)).

Regulation Z also provides rules for how creditors must apply certain underwriting factors when determining whether a consumer has the ability to repay the mortgage. For example, creditors must calculate the monthly payment for the covered transaction using the greater of the fully indexed rate or any introductory interest rate, and the monthly, fully amortizing payments that are substantially equal during the loan term. However, special rules apply to mortgages with a

balloon payment, interest-only loans, and negative amortization loans due to the unique characteristics of the mortgage (12 CFR 1026.43(c)(5)).

Finally, creditors may not evade the ability-to-repay requirements by structuring a closed-end loan secured by a dwelling as open-end credit that does not meet the definition of open-end credit plan.

## Exemption from ATR Requirements for Refinancing of Non-Standard Mortgages – 12 CFR 1026.43(d)

12 CFR 1026.43(d) provides special rules for refinancing a "non-standard mortgage" into a "standard mortgage".

A "non-standard mortgage" is a covered transaction[45] as defined under 12 CFR 1026.43(a) that is:

- An adjustable rate mortgage with an introductory fixed interest rate for a period of one year or longer;
- An interest-only loan; or
- A negative amortization loan.

A "standard mortgage" is a covered transaction as defined under 12 CFR 1026.43(a) with:

- Periodic payments that do not cause the principal balance to increase, do not allow the consumer to defer repayment of the principal, or do not result in balloon payments;
- Total points and fees that are not more than those allowed in 12 CFR 1026.43(e)(3);
- A term that does not exceed 40 years;
- An interest rate that is fixed for the first five years of the loan; and
- Proceeds that are used solely to pay off the outstanding principal on the non-standard mortgage and closing or settlement costs (that are required to be disclosed under RESPA).

Current holders of non-standard mortgages or their servicers (collectively referred to here as "holders") can refinance non-standard mortgages into standard mortgages without considering a consumer's ability to repay under 12 CFR 1026.43(c), if certain conditions are met.

To qualify for the exemption from the ability-to-repay requirements:

[45] A covered transaction is a consumer credit transaction that is secured by a dwelling, including any real property attached to the dwelling. A covered transaction is not a home equity line of credit under 12 CFR 1026.40; a mortgage secured by a consumer's interest in a timeshare plan; a reverse mortgage under 12 CFR 1026.33; a temporary or "bridge" loan with a term of 12 months or less; a construction phase of 12 months or less of a construction-to-permanent loan; or an extension of credit made pursuant to a program administered by a housing finance agency; by certain community development or nonprofit lenders, as specified in 12 CFR 1026.43(a)(3)(v); or in connection with certain federal emergency economic stabilization programs.

- The standard mortgage must have a monthly payment that is "materially lower"[46] than the non-standard mortgage;
- The creditor must receive a written application from the consumer for the standard mortgage no later than two months after the non-standard mortgage is recast; and
- On the non-standard mortgage, consumers must have made no more than one payment more than 30 days late during the preceding 12 months and must have made no late payments more than 30 days late in the preceding six months of the holder receiving the application for a standard mortgage.

For non-standard loans consummated on or after January 10, 2014, that are refinanced into standard mortgages, the exemption from the ability-to-repay requirements for the refinancing is available only if the non-standard mortgage met the repayment ability requirements under 12 CFR 1026.43(c) or the qualified mortgage requirements under 12 CFR 1026.43(e) as applicable.

If these conditions are satisfied and if the holder has considered whether the standard mortgage is likely to prevent the consumer from defaulting on the non-standard mortgage once the loan terms are recast, the holder is not required to meet the ability-to-repay requirements in 12 CFR 1026.43(c). Finally, holders refinancing a non-standard mortgage to a standard mortgage may offer consumers rate discounts and terms that are the same as (or better than) rate discounts and terms that the holder offers to new consumers, consistent with the holder's documented underwriting practices and to the extent not prohibited by applicable laws. For example, a holder would comply with this requirement if it has documented underwriting practices that provide for offering rate discounts to consumers with credit scores above a certain threshold, even though the consumer would not normally qualify for that discounted rate.

## Qualified Mortgages: Rebuttable Presumption and Safe Harbor – 12 CFR 1026.43(e)

The rule provides a presumption of compliance with the ability-to-repay requirements for creditors that originate certain types of loans called "qualified mortgages." There are several categories of qualified mortgages, which are discussed below. Qualified mortgages afford creditors and assignees greater protection against liability under the ability-to-repay provisions. Qualified mortgages that are not higher-priced covered transactions receive a safe harbor under the ability-to-repay provisions, which means the presumption of compliance cannot be rebutted. A qualified mortgage is higher priced if the loan's APR exceeds the APOR by 1.5 percentage

[46] When comparing the payments, the holder must calculate the payment for the standard mortgage based on substantially equal, monthly, fully amortizing payments based on the maximum interest rate that may apply in the first five years. The holder must calculate the non-standard mortgage payment based on substantially equal, monthly, fully amortizing payments of principal and interest using:

- The fully indexed rate as of a reasonable period of time before or after the date on which the creditor receives the consumer's application for the standard mortgage;
- The term of the loan remaining as of the date on which the recast occurs, assuming all scheduled payments have been made up to the recast date, and the payment due on the recast date is made and credited as of that date; and
- The remaining loan amount, which is calculated differently depending on whether the loan is an adjustable rate mortgage, interest-only loan, or negative amortization loan (12 CFR 1026.43(d)(5)).

points or more for first-lien loans that either fall within the general qualified mortgage definition or the temporary qualified mortgage definition for loans that are eligible to be purchased, guaranteed, or insured by government-sponsored enterprises (GSEs) or federal agencies, and 3.5 percentage points for first-lien loans that fall within the small creditor balloon payment, temporary small creditor balloon payment, or small creditor portfolio qualified mortgage definitions, or for second-lien loans.

Generally, the safe harbor provides a conclusive presumption that the creditor made a good faith and reasonable determination of the consumer's ability to repay. Qualified mortgages that are higher priced receive a rebuttable presumption of compliance rather than a safe harbor with the ability-to-repay provisions. This means that the loan is presumed to comply with the ability-to-repay provisions, but, for example, the consumer would have the opportunity to rebut that presumption in future ability-to-repay litigation.

For a qualified mortgage that is a higher-priced covered transaction, the presumption of compliance is rebuttable by showing that at consummation, the consumer's income, debt obligations, alimony, child support, and monthly payments on the loan and mortgage-related obligations and simultaneous loans of which the creditor was aware at consummation would leave the consumer with insufficient residual income or assets (other than the value of the dwelling and real property) to meet living expenses (including recurring and material non-debt obligations that the creditor was aware of at consummation).

## Requirements for Qualified Mortgages – Generally – 12 CFR 1026.43(e)(2) and (3)

Loans that are qualified mortgages under the general definition may not have negative amortization, interest-only payments, balloon payments, or terms exceeding 30 years. A qualified mortgage for loans greater than or equal to $100,000 may not have points and fees paid by the consumer that exceed 3 percent of the total loan amount (although certain "bona fide discount points" are excluded for certain loans with pricing within prescribed ranges of APOR – the average prime offer rate). The rule provides guidance on calculating points and fees and thresholds for smaller loans.[47]

The rule also provides a period of time for a creditor or assignee to review a transaction's points and fees, and, if points and fees exceed the applicable threshold, to pay the consumer the excess points and fees, along with interest on the excess points and fees (calculated using the contract interest rate). This cure is generally allowed within 210 days after consummation unless the consumer has instituted an action in connection with the loan, or notified the creditor, assignee, or servicer in writing that the points and fees exceed the applicable threshold, or the consumer is 60 days past due. To be eligible for a points and fees cure, the loan must meet all other applicable requirements to be a qualified mortgage, and the creditor or assignee, as applicable, must maintain and follow policies and procedures for post-consummation review of points and

[47] The definition and calculation rules for points and fees are the same as those used to determine whether a closed-end mortgage is a HOEPA loan, discussed above at 12 CFR 1026.32(b)(2).

fees and for making cure payments to consumers. This cure provision applies to the points and fees limits for all of the qualified mortgage types defined in Regulation Z.

The rule also provides underwriting criteria for qualified mortgages. Generally, the rule requires that monthly payments be calculated based on the highest payment that will apply in the first five years of the loan after the date on which the first periodic payment is due and that the consumer has a total (or "back-end") debt-to-income ratio that is less than or equal to 43 percent. Appendix Q, drawing upon Federal Housing Administration guidelines, details the calculation of debt-to-income for these purposes. The rule also requires that the creditor consider and verify the consumer's current or reasonably expected income or assets and current debt obligations, alimony, and child support, also in accordance with Appendix Q.

## Temporary Category of Qualified Mortgages – 12 CFR 1026.43(e)(4)

Regulation Z provides a temporary category of qualified mortgages that – except with regard to matters that are wholly unrelated to ability to repay – satisfy the underwriting requirements of, and are therefore eligible to be purchased, guaranteed, or insured by, either (1) the government-sponsored enterprises (Fannie Mae and Freddie Mac) while they operate under federal conservatorship or receivership; or (2) HUD, the U.S. Department of Veterans Affairs, the U.S. Department of Agriculture, or the Rural Housing Service. This temporary provision will phase out over time as the various federal agencies issue their own qualified mortgage rules[48] or if GSE conservatorship ends, and in any event after seven years (January 10, 2021). These mortgages must satisfy certain requirements applicable to qualified mortgages, including prohibitions on negative-amortization, interest-only, and balloon payment features; maximum loan terms of 30 years; and points-and-fees restrictions. However, the flat 43 percent debt-to-income threshold for qualified mortgages does not apply.

## Qualified Mortgage – Small Creditor Portfolio Loans – 12 CFR 1026.43(e)(5)

Mortgages that are originated and held in portfolio by certain small creditors are also qualified mortgages if they meet certain requirements.

These mortgages must generally satisfy the requirements applicable to qualified mortgages, including prohibitions on negative-amortization, balloon-payment, and interest-only features; maximum loan terms of 30 years; and points-and-fees restrictions. However, while the creditor must consider and verify the consumer's current or reasonably expected income or assets and current debt obligations, alimony, and child support, it may do so without regard to the standards in Appendix Q. In addition, debt-to-income ratios must be considered and verified, but the 43 percent threshold for qualified mortgages under the general definition does not apply.

[48] This temporary QM rule does not apply to HUD loans or to VA loans because HUD issued its final QM rule, effective January 10, 2014 (78 Fed. Reg. 75215, December 11, 2013), and VA issued its interim final QM rule, effective May 9, 2014 (79 Fed. Reg. 26620, May 9, 2014).

A small creditor that satisfies the exemption criteria in 12 CFR 1026.35(b)(2)(iii)(B) and (C) is eligible to make small creditor portfolio qualified mortgages. (In contrast to 12 CFR 1026.43(f), below, eligibility for this qualified mortgage category is not conditioned on the small creditor operating in a rural or underserved area.) For a period of three years after consummation, the creditor may not transfer the loan, or the loan will lose its status as a qualified mortgage. The qualified mortgage status continues under 12 CFR 1026.43(e)(5)(ii), however, if the creditor transfers the loan to another creditor that meets the requirements to be a small lender, or when the loan is transferred due to a capital restoration plan, bankruptcy, or state or federal governmental agency order, or if the mortgage is transferred pursuant to a merger or acquisition of the creditor. A qualified mortgage can be transferred after three years without losing its status.

### Small Creditor Rural or Underserved Balloon-Payment Qualified Mortgages and Temporary Balloon-Payment Qualified Mortgages – 12 CFR 1026.43(f) and 1026.43(e)(6)

Balloon-payment mortgages are qualified mortgages if they are originated and held in portfolio by small creditors operating in a rural or underserved area (*See* 12 CFR 1026.43(f)) and meet certain other requirements. These mortgages must satisfy certain requirements applicable to qualified mortgages, including prohibitions on negative-amortization and interest-only features; maximum loan terms of 30 years; and points-and-fees restrictions. These loans must have a term of at least five years and a fixed interest rate and meet certain basic underwriting standards; debt-to-income ratios must be considered and verified, but the 43 percent threshold for qualified mortgages under the general definition does not apply. The rule also requires that the creditor consider and verify the consumer's current or reasonably expected income or assets and current debt obligations, alimony, and child support, but without regard to the standards in Appendix Q. This category of qualified mortgage is not available for a loan that, at origination, is subject to a forward commitment to be acquired by a person that does not itself qualify for the category (under the requirements outlined in the next paragraph).

A small creditor that satisfies the exemption criteria in 12 CFR 1026.35(b)(2)(iii)) (A), (B), and (C) (higher-priced mortgage escrow requirements) is eligible to make rural or underserved balloon-payment qualified mortgages. For a period of three years after consummation, the creditor may not transfer the loan, or it will lose its status as a qualified mortgage. The qualified mortgage status continues under 12 CFR 1026.43(f)(2), however, if the creditor transfers the loan to another creditor that meets the requirements to be a small rural lender, or when the loan is transferred due to a capital restoration plan, bankruptcy, or state or federal governmental agency order, or if the mortgage is transferred pursuant to a merger or acquisition of the creditor. A qualified mortgage can be transferred after three years without losing its status.

There is also a temporary qualified mortgage category for balloon-payment mortgages that would otherwise meet the requirements of 12 CFR 1026.43(f) but that are originated by small creditors that do not operate in a rural or underserved area. This category is applicable to covered transactions for which the application was received before April 1, 2016 (12 CFR 1026.43(e)(6)(ii)).

### Qualified Mortgage – Insured depository institution or insured credit union that, together with its affiliates, has less than $10 billion in total consolidated assets (covered institution): Portfolio loans – 15 U.S.C. 1639c(b)(2)(F)[49]

Under EGRRCPA, residential mortgages that are originated and held in portfolio by covered institutions (insured depository institutions or insured credit unions with less than $10 billion in total consolidated assets, together with their affiliates) are qualified mortgages if they meet certain statutory requirements. Such loans are subject to prepayment penalty limitations and must not have negative amortization or interest-only features, have points and fees within applicable limits, and the creditor must consider and document debt, income and assets. The creditor must consider and document (as described in the statute) debt, income, and financial resources of the consumer in underwriting the loan. The loan loses its qualified mortgage status upon sale, assignment, or transfer, except in the case of a transfer (1) due to bankruptcy or failure; (2) to another covered institution that also retains the loan in portfolio; (3) pursuant to a merger or acquisition by or to another person who retains the loan in portfolio; or (4) to a wholly owned subsidiary, provided that the loan is considered an asset by the covered institution for regulatory accounting purposes.

# Subpart F – Special Rules for Private Education Loans

Subpart F relates to private education loans. It contains rules on disclosures 12 CFR 1026.46, the right to cancel the loan 12 CFR 1026.47, and limitations on changes in terms after approval and on co-branding in the marketing of private education loans (12 CFR 1026.48).

## Special Disclosure Requirements for Private Education Loans – 12 CFR 1026.46

The disclosures required under Subpart F apply only to private education loans. Except where specifically provided otherwise, the requirements and limitations of Subpart F are in addition to the requirements of the other subparts of Regulation Z.

A private education loan means an extension of credit that:

- Is not made, insured, or guaranteed under Title IV of the Higher Education Act of 1965;
- Is extended to a consumer expressly, in whole or part, for postsecondary educational expenses, regardless of whether the loan is provided by the educational institution that the student attends; and

[49] This statutory provision is effective without any requirement to adopt regulations, and Regulation Z has not been amended to incorporate this provision as of the date of these procedures.

- Does not include open-end credit or any loan that is secured by real property or a dwelling.

A private education loan does not include an extension of credit in which the covered educational institution is the creditor if:

- The term of the extension of credit is 90 days or less; or
- An interest rate will not be applied to the credit balance, and the term of the extension of credit is one year or less, even if the credit is payable in more than four installments.

## Content of Disclosures – 12 CFR 1026.47

### Disclosure Requirements

This section establishes the content that a creditor must include in its disclosures to a consumer at three different stages in the private education loan origination process:

- Application or Solicitation Disclosures – With any application or solicitation;
- Approval Disclosures – With any notice of approval of the private education loan; and
- Final Disclosures – After the consumer accepts the loan. In addition, 12 CFR 1026.48(d) requires that the disclosures must be provided at least three business days prior to disbursement of the loan funds.

### Rights of the Consumer

The creditor must disclose that, if approved for the loan, the consumer has the right to accept the loan on the terms approved for up to 30 calendar days. The disclosure must inform the consumer that the rate and terms of the loan will not change during this period, except for changes to the rate based on adjustments to the index used for the loan and other changes permitted by law. The creditor must disclose that the consumer also has the right to cancel the loan, without penalty, until midnight of the third business day following the date on which the consumer receives the final disclosures.

## Limitations on Private Education Loans – 12 CFR 1026.48

This section contains rules and limitations on private education loans, including:

1. A prohibition on co-branding in the marketing of private education loans;
2. Rules governing the 30-day acceptance period and three business-day cancellation period and prohibition on disbursement of loan proceeds until the cancellation period has expired;
3. The requirement that the creditor obtain a self-certification form from the consumer before consummation; and

4. The requirement that creditors in preferred lender arrangements provide certain information to covered educational institutions.

### Co-Branding Prohibited

Regulation Z prohibits creditors from using the name, emblem, mascot, or logo of a covered institution (or other words, pictures, or symbols readily identified with a covered institution) in the marketing of private education loans in a way that implies endorsement by the educational institution. Marketing that refers to an educational institution does not imply endorsement if the marketing includes a clear and conspicuous disclosure that is equally prominent and closely proximate to the reference to the institution that the educational institution does not endorse the creditor's loans, and that the creditor is not affiliated with the educational institution. There is also an exception in cases where the educational institution actually does endorse the creditor's loans, but the marketing must make a clear and conspicuous disclosure that is equally prominent and closely proximate to the reference to the institution that the creditor, and not the educational institution, is making the loan.

## Private Education Loan Protections in the Event of Death or Bankruptcy – 15 U.S.C. 1650

TILA defines a cosigner with respect to a private education loan as any individual who is liable for the obligation of another without compensation regardless of how designated in the contract or instrument, and includes any person whose signature is requested as a condition to grant credit or to forbear on collection of the private education loan. This definition does not extend to obligations intended to consolidate a consumer's pre-existing private education loan. A cosigner does not include a spouse whose signature is required to perfect a security interest in the loan.

EGRRCPA amended TILA to enhance consumer protections for student borrowers and cosigners of private education loans. Specifically, a private education loan creditor may not declare a default or accelerate a debt against a student obligor on the sole basis of bankruptcy or death of a cosigner. Additionally, the holder of a private education loan must release, within a reasonable time frame, any cosigner of their obligations related to the loan, when the holder is notified of the death of a student obligor. The holder or servicer of the private education loan, as applicable, must notify, within a reasonable time frame, a cosigner who is released of their obligations. A private education loan creditor also must provide a student obligor the option to designate an individual to have the legal authority to act on behalf of the student obligor in the event of death of the obligor. These protections apply only to private education loan agreements entered into on or after November 24, 2018.

# Subpart G – Special Rules Applicable to Credit Card Accounts and Open-End Credit Offered to College Students

Subpart G relates to credit card accounts under an open-end (not home-secured) consumer credit plan (except for 12 CFR 1026.57(c)), which applies to all open-end credit plans). This subpart contains rules regarding credit and charge card application and solicitation disclosures 12 CFR 1026.60, as well as hybrid prepaid-credit cards (12 CFR 1026.61). It also contains rules on evaluation of a consumer's ability to make the required payments under the terms of an account 12 CFR 1026.51, limits the fees that a consumer can be required to pay 12 CFR 1026.52, and contains rules on allocation of payments in excess of the minimum payment (12 CFR 1026.53). The subpart also sets forth certain limitations on the imposition of finance charges as the result of a loss of a grace period 12 CFR 1026.54 and on increases in annual percentage rates, fees, and charges for credit card accounts (12 CFR 1026.55), including the reevaluation of rate increases (12 CFR 1026.59). This subpart prohibits the assessment of fees or charges for over-the-limit transactions unless the consumer affirmatively consents to the creditor's payment of over-the-limit transactions (12 CFR 1026.56). This subpart also sets forth rules for reporting and marketing of college student open-end credit (12 CFR 1026.57). Finally, it sets forth requirements for the Internet posting of credit card accounts under an open-end (not home-secured) consumer credit plan (12 CFR 1026.58).

## Evaluation of the Consumer's Ability to Pay – 12 CFR 1026.51

Regulation Z requires credit card issuers to consider a consumer's ability to pay before opening a new credit card account or increasing the credit limit for an existing credit card account. Additionally, the rule provides specific requirements that must be met before opening a new credit card account or increasing the credit limit on an existing account when the consumer is under the age of 21.

When evaluating a consumer's ability to pay, credit card issuers must perform a review of a consumer's income or assets and current obligations. Card issuers are permitted, however, to rely on information provided by the consumer. The rule does not require card issuers to verify a consumer's statements; a card issuer may base its determination of ability to repay on facts and circumstances known to the card issuer (Comment 51(a)(1)(i)-2). A card issuer may also consider information obtained through any empirically derived, demonstrably, and statistically sound model that reasonably estimates a consumer's income or assets.

Card issuers may consider any income and assets to which the consumer has a reasonable expectation of access or may limit their consideration to the consumer's independent income and assets. The rule also requires that issuers consider at least one of the following:

- The ratio of debt obligations to income,

- The ratio of debt obligations to assets, or
- The income the consumer will have after paying debt obligations (i.e., residual income).

The rule also provides that it would be unreasonable for a card issuer not to review any information about a consumer's income, assets, or current obligations, or to issue a credit card to a consumer who does not have any income or assets.

Because credit card accounts typically require consumers to make a minimum monthly payment that is a percentage of the total balance (plus, in some cases, accrued interest and fees), card issuers are required to consider the consumer's ability to make the required minimum payments. Card issuers must also establish and maintain reasonable written policies and procedures to consider a consumer's income or assets and current obligations. Because the minimum payment is unknown at account opening, the rule requires that card issuers use a reasonable method to estimate a consumer's minimum payment. The regulation provides a safe harbor for card issuers to estimate the required minimum periodic payment if the card issuer:

1. Assumes utilization, from the first day of the billing cycle, of the full credit line that the card issuer is considering offering to the consumer; and
2. Uses a minimum payment formula employed by the card issuer for the product that the card issuer is considering offering to the consumer or, in the case of an existing account, the minimum payment formula that currently applies to that account, provided:
    a. If the minimum payment formula includes interest charges, the card issuer estimates those charges using an interest rate that the card issuer is considering offering to the consumer for purchases or, in the case of an existing account, the interest rate that currently applies to purchases; and
    b. If the applicable minimum payment formula includes mandatory fees, the card issuer must assume that such fees have been charged to the account.

## Specific Requirements for Underage Consumers – 12 CFR 1026.51(b)(1)

Regulation Z prohibits the issuance of a credit card to a consumer who has not attained the age of 21 unless the consumer has submitted a written application and the creditor has:

- Information indicating that the underage consumer has an independent ability to make the required minimum payments on the account; or
- The signature of a cosigner, guarantor, or joint applicant who has attained the age of 21, who has the ability to repay debts (based on 12 CFR 1026.51) incurred by the underage consumer in connection with the account, and who assumes joint liability for all debts or secondary liability for any debts incurred before the underage consumer attains 21 years of age.
- For credit line increases:

- If an account was opened based on the underage consumer's independent ability to repay, in order to increase the consumer's credit line before he or she turns 21, the issuer either must determine that the consumer has an independent ability to make the required minimum payments at the time of the contemplated increase, or must obtain an agreement from a cosigner, guarantor, or joint applicant who is 21 or older and who has the ability to repay debts to assume liability for any debt incurred on the account.
- If the account was opened based on the ability of a cosigner over the age of 21 to pay, the issuer must obtain written consent from that cosigner before increasing the credit limit.

## Limitations of Fees – 12 CFR 1026.52

### Limitations on Fees During First Year After Account Opening – 12 CFR 1026.52(a)

During the first year after account opening, issuers are prohibited from requiring consumers to pay fees (other than fees for late payments, returned payments, and exceeding the credit limit) that in the aggregate exceed 25 percent of the initial credit limit in effect when the account is opened. An account is considered open no earlier than the date on which the account may first be used by the consumer to engage in transactions. With regard to a covered separate credit feature and an asset feature on a prepaid account that are both accessible by a hybrid prepaid-credit card, where the credit feature is a credit card account under an open-end (not home-secured) consumer credit plan, this restriction also applies to fees or charges imposed on the asset feature of the prepaid account that are charges imposed as part of the plan under 12 CFR 1026.6(b)(3) (Comments 6(b)(3)(iii)(D)-1 and 52(a)(2)-2).

NOTE: The 25 percent limitation on fees does not apply to fees assessed prior to opening the account.

### Limitations on Penalty Fees – 12 CFR 1026.52(b)

TILA requires that penalty fees imposed by card issuers be reasonable and proportional to the violation of the account terms. Among other things, the regulation prohibits credit card issuers from charging a penalty fee of more than $28 for paying late or otherwise violating the account's terms for the first violation, $39 for an additional violation of the same type during the same billing cycle or one of the next six billing cycles, or 3 percent of the delinquent balance on the charge card account that requires payment of outstanding balances in full at the end of each billing cycle if payment has not been received for two or more consecutive billing cycles unless the issuer determines that a higher fee represents a reasonable proportion of the costs it incurs as a result of that type of violation and reevaluates that determination at least once every 12 months.[50] With regard to a covered separate credit feature and an asset feature on a

[50] The dollar amounts in this paragraph may be adjusted annually by the CFPB to reflect changes in the Consumer Price Index that warrant an increase or decrease of a whole dollar. The amounts were increased to $28 and $39, respectively, effective January 1, 2019. Further adjustments may be made in subsequent years. (*See* 12 CFR 1026.52(b)(1)(ii)(D); Comment 52(b)(1)(ii) – 2.)

prepaid account that are both accessible by a hybrid prepaid-credit card, where the credit feature is a credit card account under an open-end (not home-secured) consumer credit plan, this provision also applies to any fee for violating the terms or other requirements of the credit feature, regardless of whether those fees are imposed on the credit or asset feature of the prepaid account (Comment 52(b)-3).

Credit card issuers are not permitted to charge penalty fees that exceed the dollar amount associated with the consumer's violation of the terms or other requirements of the credit card account. For example, card issuers are not permitted to charge a $39 fee when a consumer is late making a $20 minimum payment. Instead, in this example, the fee cannot exceed $20. The regulation also bans imposition of penalty fees when there is no dollar amount associated with the violation, such as fees based on "inactivity" fees based on the consumer's failure to use the account to make new purchases, or declined transaction fees for credit transactions that the card issuer declines to authorize. With regard to a covered separate credit feature and an asset feature on a prepaid account that are both accessible by a hybrid prepaid-credit card where the credit feature is a credit card account under an open-end (not home-secured) consumer credit plan, the regulation prohibits a card issuer from imposing declined transaction fees in connection with the credit feature, regardless of whether the declined transaction fee is imposed on the credit feature or on the asset feature of the prepaid account (Comment 52(b)(2)(i)-7). The regulation also prohibits issuers from charging multiple penalty fees based on a single late payment or other violation of the account terms.

## Payment Allocation – 12 CFR 1026.53

When different rates apply to different balances on a credit card account, issuers are generally required to allocate payments in excess of the minimum payment first to the balance with the highest APR and then to any remaining portion to the other balances in descending order based on the applicable APR.

For deferred interest programs, however, issuers must allocate excess payments first to the deferred interest balance during the last two billing cycles of the deferred interest period. In addition, during a deferred interest period, issuers are permitted (but not required) to allocate excess payments in the manner requested by the consumer.

For accounts with secured balances, issuers are permitted (but not required) to allocate excess payments to the secured balance if requested by the consumer.

## Double-Cycle Billing and Partial Grace Period – 12 CFR 1026.54

Issuers are generally prohibited from imposing finance charges on balances for days in previous billing cycles as a result of the loss of a grace period. In addition, when a consumer pays some, but not all, of a balance prior to the expiration of a grace period, an issuer is prohibited from imposing finance charges on the portion of the balance that has been repaid.

## Restrictions on Applying Increased Rates to Existing Balances and Increasing Certain Fees and Charges – 12 CFR 1026.55

Unless an exception applies, a card issuer must not increase an annual percentage rate or a fee or charge required to be disclosed under 12 CFR 1026.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii) on a credit card account. With regard to a covered separate credit feature and an asset feature on a prepaid account that are both accessible by a hybrid prepaid-credit card where the credit feature is a credit card account under an open-end (not home-secured) consumer credit plan, this restriction applies regardless of whether these fees or annual percentage rates are imposed on the asset feature of the prepaid account or on the credit feature (Comment 55(a)-3). There are some general exceptions to the prohibition against applying increased rates to existing balances and increasing certain fees or charges:

- A temporary or promotional rate or temporary fee or charge that lasts at least six months, and that is required to be disclosed under 12 CFR 1026.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii), provided that the card issuer complied with applicable disclosure requirements. Fees and charges required to be disclosed under 12 CFR 1026.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii) are periodic fees for issuance or availability of an open-end plan (such as an annual fee); a fixed finance charge (and any minimum interest charge) that exceeds $1; or a charge for required insurance, debt cancellation, or debt suspension;

- The rate is increased due to the operation of an index available to the general public and not under the card issuer's control (i.e., the rate is a variable rate);

- The minimum payment has not been received within 60 days after the due date, provided that the card issuer complied with applicable disclosure requirements and adheres to certain requirements when a series of on-time payments are received;

- The consumer successfully completes or fails to comply with the terms of a workout arrangement, provided that card issuer complied with applicable disclosure requirements and adheres to certain requirements upon the completion or failure of the arrangement; and

- The APR on an existing balance or a fee or charge required to be disclosed under 12 CFR 1026.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii) has been reduced pursuant to the Servicemembers Civil Relief Act (SCRA) or a similar federal or state statute or regulation. The creditor is permitted to increase the rate, fee, or charge once the SCRA ceases to apply, but only to the rate, fee, or charge that applied prior to the reduction.

Regulation Z's limitations on the application of increased rates and certain fees and charges to existing balances continue to apply when the account is closed, acquired by another institution through a merger or the sale of a credit card portfolio, or when the balance is transferred to another credit account issued by the same creditor (or its affiliate or subsidiary).

Issuers are generally prevented from increasing the APR applicable to new transactions or a fee or charge subject to 12 CFR 1026.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii) during the first year after an account is opened. After the first year, issuers are permitted to increase the APRs that apply to new transactions or a fee or charge subject to 12 CFR 1026.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii) so long as the creditor complies with the regulation's 45-day advance notice requirement (12 CFR 1026.9).

Regulation Z's limitations on the application of increased rates to existing balances and limitations on the increase of certain fees or charges apply upon cessation of a waiver or rebate of interest, fees, or charges if the issuer promotes the waiver or rebate.

## Fees for Transactions that Exceed the Credit Limit – 12 CFR 1026.56

*Consumer consent requirement* – Regulation Z requires an issuer to obtain a consumer's express consent (or opt in) before the issuer may impose any fees on a consumer's credit card account for making an extension of credit that exceeds the account's credit limit. Prior to providing such consent, the consumer must be notified by the issuer of any fees that may be assessed for an over-the-limit transaction. If the consumer consents, the issuer is also required to provide written confirmation (or electronic confirmation if the consumer agrees) of the consumer's consent and a notice of the consumer's right to revoke that consent on the front page of any periodic statement that reflects the imposition of an over-the-limit fee.

Prior to obtaining a consumer's consent to the payment of over-the-limit transactions, the issuer must provide the consumer with a notice disclosing, among other things, the dollar amount of any charges that will be assessed for an over-the-limit transaction, as well as any increased rate that may apply if the consumer exceeds the credit limit. Issuers are prevented from assessing any over-the-limit fee or charge on an account unless the consumer consents to the payment of transactions that exceed the credit limit.

*Prohibited practices* – Even if the consumer has affirmatively consented to the issuer's payment of over-the-limit transactions, Regulation Z prohibits certain issuer practices in connection with the assessment of over-the-limit fees or charges. An issuer can only charge one over-the-limit fee or charge per billing cycle. In addition, an issuer cannot impose an over-the-limit fee on the account for the same transaction in more than three billing cycles. Furthermore, fees may not be imposed for the same transaction in the second or third billing cycle unless the consumer has failed to reduce the account balance below the credit limit by the payment due date in that cycle.

Regulation Z also prohibits unfair or deceptive acts or practices in connection with the manipulation of credit limits in order to increase over-the-limit fees or other penalty charges. Specifically, issuers are prohibited from engaging in three practices:

- Assessing an over-the-limit fee because the creditor failed to promptly replenish the consumer's available credit;

- Conditioning the amount of available credit on the consumer's consent to the payment of over-the-limit transactions (e.g., opting in to an over-the-limit service to obtain a higher credit limit); and
- Imposing any over-the-limit fee if the credit limit is exceeded solely because of the issuer's assessment of accrued interest charges or fees on the consumer's account.

## Special Rules for Marketing to Students – 12 CFR 1026.57

Regulation Z establishes several requirements related to the marketing of credit cards and other open-end consumer credit plans to students at an institution of higher education, including the marketing of a covered separate credit feature accessible by a hybrid prepaid-credit card and prepaid account and a prepaid account where a covered separate credit feature accessible by a hybrid prepaid-credit card may be added in the future, to students at an institution of higher education (Comments 57(a)(1)-1, 57(a)(5)-1, and 57(c)-7). The regulation limits a creditor's ability to offer a college student any tangible item to induce the student to apply for or participate in an open-end consumer credit plan offered by the creditor. Specifically, Regulation Z prohibits a card issuer from offering tangible items as an inducement:

- On the campus of an institution of higher education;
- Near the campus of an institution of higher education; or
- At an event sponsored by or related to an institution of higher education.

A tangible item means physical items, such as gift cards, T-shirts, or magazine subscriptions, but does not include nonphysical items such as discounts, reward points, or promotional credit terms. With respect to offers "near" the campus, the commentary to the regulation states that a location that is within 1,000 feet of the border of the campus is considered near the campus.

Regulation Z also requires card issuers to submit an annual report to the CFPB containing the terms and conditions of business, marketing, or promotional agreements with an institution of higher education or an alumni organization or foundation affiliated with an institution of higher education.

## Online Disclosure of Credit Card Agreements – 12 CFR 1026.58

The regulation requires that issuers post credit card agreements on their websites and to submit those agreements to the CFPB for posting on a website maintained by the Bureau. There are three exceptions for when issuers are not required to provide statements to the Bureau:

- The issuer has fewer than 10,000 open credit card accounts; or
- The agreement currently is not offered to the public and the agreement is used only for one or more private label credit card plans with credit cards usable only at a single merchant or group of affiliated merchants and that involves fewer than 10,000 open accounts; or

- The agreement currently is not offered to the public and the agreement is for one or more plans offered to test a new product offered only to a limited group of consumers for a limited time that involves fewer than 10,000 open accounts.

## Reevaluation of Rate Increases – 12 CFR 1026.59

For any rate increase imposed on or after January 1, 2009, that requires 45 days advance notice, the regulation requires card issuers to review the account no less frequently than once each six months and, if appropriate based on that review, reduce the annual percentage rate. The requirement to reevaluate rate increases applies both to increases in annual percentage rates based on consumer-specific factors, such as changes in the consumer's creditworthiness, and to increases in annual percentage rates imposed based on factors that are not specific to the consumer, such as changes in market conditions or the issuer's cost of funds. If, based on its review, a card issuer is required to reduce the rate applicable to an account, the final regulation requires that the rate be reduced within 45 days after completion of the evaluation.

This review must consider either the same factors on which the increase was originally based or the factors the card issuer currently considers in determining the annual percentage rate applicable to similar new credit card accounts.

## Hybrid Prepaid-Credit Cards – 12 CFR 1026.61

Generally, this section applies to credit offered in connection with a prepaid account. A prepaid card is a hybrid prepaid-credit card when it has a separate accessible credit feature, or a credit feature structured as a negative balance on the asset feature of the prepaid account (except as described below). Further, a hybrid prepaid-credit card is a credit card for the purposes of this regulation with respect to those credit features.

A prepaid card is a hybrid prepaid-credit card with respect to a separate credit feature when it is a single device that can be used from time to time to access the separate credit feature where the following two conditions are both satisfied: (1) The card can be used to draw, transfer, or authorize the draw or transfer of credit from the separate credit feature in the course of authorizing, settling, or otherwise completing transactions conducted with the card to obtain goods or services, obtain cash, or conduct person-to-person transfers; and (2) the separate credit feature is offered by the prepaid account issuer, its affiliate, or its business partner. A separate credit feature that is accessed by a hybrid prepaid-credit card is described as a "covered separate credit feature". A prepaid card is not a hybrid prepaid-credit card with respect to a separate credit feature if it does not meet the two conditions discussed above, although that separate credit feature may be subject to other provisions of Regulation Z depending on its own terms and conditions, independent of the connection to the prepaid account.

Generally, the regulation prohibits structuring a hybrid prepaid-credit card to access credit through a negative balance on the asset feature of a prepaid account. However, a prepaid card is not a hybrid prepaid-credit card with respect to credit extended through a negative balance on the asset feature of a prepaid account if several conditions are met. One condition is that the prepaid card cannot access credit from a covered separate credit feature that is offered by a prepaid

account issuer or its affiliate. In addition, the prepaid account issuer must have an established policy and practice of either: declining to authorize any transaction for which it reasonably believes a consumer has insufficient or unavailable funds in the asset feature of the prepaid account at the time the transaction is authorized to cover the amount of the transaction; or declining to authorize such transactions except when (1) the amount of the transaction will not cause the asset feature balance to become negative by more than $10 at the time of the authorization, or (2) the issuer has received an instruction, confirmation, or request to load funds from a separate asset account to the prepaid account, but the funds have not yet settled and the amount of the transaction will not cause the asset balance to become negative at the time of the authorization by more than the incoming or requested load amount. Furthermore, under this exception, the issuer may not impose any of the following fees or charges on the asset feature of the prepaid account:

- Fees or charges for opening, issuing, or holding a negative balance on the asset feature, or for the availability of credit, whether imposed on a one-time or periodic basis;[51]
- Fees or charges that will be imposed only when credit is extended on the asset feature or when there is a negative balance on the asset feature;[52] and
- Fees or charges where the amount of the fee or charge is higher when credit is extended on the asset feature or when there is a negative balance on the asset feature.

Issuers must wait at least 30 days after a prepaid account is registered before opening a covered separate credit feature accessible by a hybrid prepaid-credit card, making a solicitation or providing an application to open a covered separate credit feature that could be accessible by the hybrid prepaid-credit card, or allowing an existing credit feature opened prior to the consumer obtaining the prepaid account to become a covered separate credit feature accessible by the hybrid prepaid-credit card. Issuers must obtain an application or specific request from the consumer to link such a credit feature to a prepaid account (Comment 12(a)(1)-7.ii).

# Liability and Defenses

## Civil Liability – TILA Sections 129B, 129C, 130, and 131

If a creditor fails to comply with any requirements of TILA, other than with the advertising provisions of Chapter 3, it may be held liable to the consumer for:

- Actual damage, and

[51] This provision does not prohibit fees or charges to open, issue, or hold the prepaid account generally, where the amount of the fee or charge imposed on the asset feature is not higher based on whether credit might be offered or has been accepted, whether or how much credit the consumer has accessed, or the amount of credit available.

[52] This provision does not prohibit fees or charges for the actual costs of collecting the credit extended, if otherwise permitted by law.

- Cost of any successful legal action together with reasonable attorney's fees.

The creditor also may be held liable for any of the following:

- In an individual action, twice the amount of the finance charge involved.
- In an individual action relating to an open-end credit transaction that is not secured by real property or a dwelling, twice the amount of the finance charge involved, with a minimum of $500 and a maximum of $5,000 or such higher amount as may be appropriate in the case of an established pattern or practice of such failure.
- In an individual action relating to a closed-end credit transaction secured by real property or a dwelling, not less than $400 and not more than $4,000.
- In a class action, such amount as the court may allow (with no minimum recovery for each class member). However, the total amount of recovery in any class actions arising out of the same failure to comply by the same creditor cannot be more than $1 million or 1 percent of the creditor's net worth, whichever is less.

A creditor that fails to comply with TILA Section 129, 15 U.S.C. Section 1639 (requirements for certain mortgages), may be held liable to the consumer for all finance charges and fees paid by the consumer unless the creditor demonstrates that the failure was not material. A mortgage originator that is not a creditor and that fails to comply with TILA Section 129B (requirements for mortgage loan originators) also may be liable to consumers for the greater of actual damages or an amount equal to three times the total amount of direct and indirect compensation or gain to the mortgage originator in connection with the loan, plus costs, including reasonable attorney's fees. In addition, TILA Section 130(a) provides that a creditor may be liable for failure to comply with the ability-to-repay requirements of TILA Section 129C(a) unless the creditor demonstrates that failure to comply was not material.

Generally, civil actions that may be brought against a creditor may be maintained against any assignee of the creditor only if the violation is apparent on the face of the disclosure statement or other documents assigned, except where the assignment was involuntary. For high-cost mortgage loans (under 12 CFR 1026.32(a)), any subsequent purchaser or assignee is subject to all claims and defenses that the consumer could assert against the creditor, unless the assignee demonstrates that it could not reasonably have determined that the loan was a high-cost mortgage loan subject to (12 CFR 1026.32).

In specified circumstances, the creditor or assignee has no liability if it corrects identified errors within 60 days of discovering the errors and prior to the institution of a civil action or the receipt of written notice of the error from the obligor. Additionally, a creditor and assignee will not be liable for bona fide errors that occurred despite the maintenance of procedures reasonably adapted to avoid any such error.

Moreover, TILA also provides consumers with the right to assert a violation of TILA's anti-steering provisions or the ability-to-repay standards for residential mortgage loan requirements

"as a matter of defense by recoupment or setoff" against a foreclosure action. In general, the amount of recoupment or setoff shall be equal to the amount that the consumer would be entitled to generally under 15 U.S.C. 1640(a) for a valid claim, plus the cost to the consumer of the action (including reasonable attorney's fees).

Refer to Sections 129B, 129C, 130, and 131 of TILA for more information.

## Criminal Liability – TILA Section 112

Anyone who willingly and knowingly fails to comply with any requirement of TILA will be fined not more than $5,000 or imprisoned not more than one year, or both.

## Administrative Actions – TILA Section 108

TILA authorizes federal regulatory agencies,[53] when carrying out enforcement activities, to require financial institutions to make monetary and other adjustments to the consumers' accounts when the true finance charge or APR exceeds the disclosed finance charge or APR by more than a specified accuracy tolerance. That authorization extends to unintentional errors, including isolated violations (e.g., an error that occurred only once or errors, often without a common cause, that occurred infrequently and randomly).

Under certain circumstances, TILA requires federal regulatory agencies to order financial institutions to reimburse consumers when understatement of the APR or finance charge involves:

- Patterns or practices of violations (e.g., errors that occurred, often with a common cause, consistently or frequently, reflecting a pattern with a specific type or types of consumer credit);
- Gross negligence; or
- Willful noncompliance intended to mislead the person to whom the credit was extended.

Any administrative enforcement proceeding that may be brought by a regulatory agency against a creditor may be maintained against any assignee of the creditor if the violation is apparent on the face of the disclosure statement or other documents assigned, except where the assignment was involuntary under Section 131 (15 U.S.C. 1641).

## Specific Defenses – TILA Section 108

### *Defense Against Civil, Criminal, and Administrative Actions*

A financial institution in violation of TILA may avoid liability by:

[53] For FFIEC guidance on how agencies implement this provision, *see* FFIEC, Administrative Enforcement of the Truth in Lending Act, 63 Fed. Reg. 47495 (Sept. 8, 1998).

- Discovering the error before an action is brought against the financial institution, or before the consumer notifies the financial institution, in writing, of the error;
- Notifying the consumer of the error within 60 days of discovery; and
- Making the necessary adjustments to the consumer's account, also within 60 days of discovery. (The consumer will pay no more than the lesser of the finance charge actually disclosed or the dollar equivalent of the APR actually disclosed.)

The above three actions also may allow the financial institution to avoid a regulatory order to reimburse the customer.

An error is "discovered" if it is:

- Discussed in a final, written report of examination;
- Identified through the financial institution's own procedures; or
- An inaccurately disclosed APR or finance charge included in a regulatory agency notification to the financial institution.

When a disclosure error occurs, the financial institution is not required to re-disclose after a loan has been consummated or an account has been opened. If the financial institution corrects a disclosure error by merely re-disclosing required information accurately, without adjusting the consumer's account, the financial institution may still be subject to civil liability and an order to reimburse from its regulator.

The circumstances under which a financial institution may avoid liability under TILA do not apply to violations of the Fair Credit Billing Act (Chapter 4 of TILA).

### *Additional Defenses Against Civil Actions*

The financial institution may avoid liability in a civil action if it shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error that occurred despite the maintenance of procedures to avoid the error.

A bona fide error may include a clerical, calculation, computer malfunction, programming, or printing error. It does not include an error of legal judgment.

Showing that a violation occurred unintentionally could be difficult if the financial institution is unable to produce evidence that explicitly indicates it has an internal controls program designed to ensure compliance. The financial institution's demonstrated commitment to compliance and its adoption of policies and procedures to detect errors before disclosures are furnished to consumers could strengthen its defense.

## Statute of Limitations – TILA Sections 108, 129, 129B, 129C, 129D, 129E, 129F, 129G, 129H, and 130

In general, civil actions may be brought within one year after the violation occurred. For private education loans, civil actions may be brought within one year from the date on which the first regular payment of principal and interest is due. After that time, and if allowed by state law, the consumer may still assert the violation as a defense if a financial institution were to bring an action to collect the consumer's debt.

A civil action for a violation of TILA Section 129 (requirements for certain mortgages), 129B (residential mortgage loan origination), or 129C (minimum standards for residential mortgage loans) may be brought three years from the date of the occurrence of the violation (as compared with one year for most other TILA violations) (TILA Section 130(e)).

Moreover, TILA provides that when a creditor, assignee, other holder, or anyone acting on such a person's behalf initiates a foreclosure action on, or any other action to collect the debt in connection with a residential mortgage loan, a consumer may assert a violation of TILA Section 129B(c)(1) or (2) or 129C(a) "as a matter of defense by recoupment or setoff" (TILA Section 130(k)). There is no time limit on the use of this defense, and the amount of recoupment or setoff is limited, with respect to the special statutory damages, to no more than three years of finance charges and fees.

Criminal actions and actions brought by regulators[54] are not subject to the general one-year statute of limitations. Actions brought by a state attorney general to enforce a violation of Sections 129, 129B, 129C, 129D, 129E, 129F, 129G, or 129H may be brought not later than three years after the date on which the violation occurs.

However, administrative enforcement actions under the policy guide involving erroneously disclosed APRs and finance charges may be subject to time limitations by TILA. Those limitations range from the date of the last regulatory examination of the financial institution, to as far back as 1969, depending on when loans were made, when violations were identified, whether the violations were repeat violations, and other factors.

There is no time limitation on willful violations intended to mislead the consumer. A general summary of the various time limitations that otherwise apply follows.

- For open-end credit, reimbursement applies to violations not older than two years.
- For closed-end credit, reimbursement is generally directed for loans with violations occurring since the immediately preceding examination.

[54] However, reimbursement required by regulatory action may be limited to the last examination conducted at the institution.

## Rescission Rights (Open-End and Closed-End Credit) – 12 CFR 1026.15 and 1026.23

TILA provides that for certain transactions secured by the consumer's principal dwelling, a consumer has three business days after becoming obligated on the debt to rescind the transaction. The right of rescission allows consumer(s) time to reexamine their credit agreements and cost disclosures and to reconsider whether they want to place their homes at risk by offering them as security for the credit. A higher-priced mortgage loan (whether or not it is a HOEPA loan) having a prepayment penalty that does not conform to the prepayment penalty limitations (12 CFR 1026.32(c) and (d) and 12 CFR 1026.43(g) (subject to certain exclusions)), is also subject to a three-year right of rescission. Transactions exempt from the right of rescission include residential mortgage transactions (12 CFR 1026.2(a)(24)) and refinancings or consolidations with the original creditor where no "new money" is advanced.

If a transaction is rescindable, consumers must be given a notice explaining that the creditor has a security interest in the consumer's home, that the consumer may rescind, how the consumer may rescind, the effects of rescission, and the date the rescission period expires.

To rescind a transaction, a consumer must notify the creditor in writing by midnight of the third business day after the latest of three events:

- Consummation of the transaction;
- Delivery of material TILA disclosures; or
- Receipt[55] of the required notice of the right to rescind.

For purposes of rescission, business day means every calendar day except Sundays and the legal public holidays (12 CFR 1026.2(a)(6)). The term "material disclosures" is defined in 12 CFR 1026.23(a)(3) to mean the required disclosures of the APR, the finance charge, the amount financed, the total of payments, the payment schedule, and the disclosures and limitations referred to in 12 CFR 1026.32(c) and (d) and 1026.43(g).

The creditor may not disburse any monies (except into an escrow account) and may not provide services or materials until the three-day rescission period has elapsed and the creditor is reasonably satisfied that the consumer has not rescinded. If the consumer rescinds the transaction, the creditor must refund all amounts paid by the consumer (even amounts disbursed to third parties) and terminate its security interest in the consumer's home.

A consumer may waive the three-day rescission period and receive immediate access to loan proceeds if the consumer has a "bona fide personal financial emergency." The consumer must give the creditor a signed and dated waiver statement that describes the emergency, specifically

[55] 12 CFR 1026.15(b) and 1026.23(b)(1) were amended to include the electronic delivery of the notice of the right to rescind. If a paper notice of the right to rescind is used, a creditor must deliver two copies of the notice to each consumer entitled to rescind. However, under the final rule on electronic delivery of disclosures, if the notice is in electronic form, in accordance with the consumer consent and other applicable provisions of the E-Sign Act, only one copy to each customer is required.

waives the right, and bears the signatures of all consumers entitled to rescind the transaction. The consumer provides the explanation for the bona fide personal financial emergency, but the creditor decides the sufficiency of the emergency.

If the required rescission notice or material TILA disclosures are not delivered or if they are inaccurate, the consumer's right to rescind may be extended from three days after becoming obligated on a loan to up to three years.

# REFERENCES

## Laws

12 U.S.C. 5101 *et seq*. Secure and Fair Enforcement for Mortgage Licensing Act (SAFE Act)

15 U.S.C. 1601 *et seq*. Truth in Lending Act (TILA)

15 U.S.C. 1666 *et seq*. Fair Credit Billing Act

15 U.S.C. 7001 *et seq*. Electronic Signatures in Global and National Commerce Act

## Regulations

Consumer Financial Protection Bureau Regulation 12 CFR Part 1026, Truth in Lending (Regulation Z)

## Guides

CFPB compliance guides

TILA-RESPA Integrated Disclosure Guide to Loan Estimate and Closing Disclosure Forms

# Truth in Lending Act Examination Procedures[56]

## Examination Objectives

1. To determine the financial institution's compliance with the Truth in Lending Act (TILA) and Regulation Z.

2. To initiate corrective action when policies or internal controls are deficient, or when violations of law or regulation are identified.

## General Procedures

1. Obtain information pertinent to the area of examination from the financial institution's compliance management system program (historical examination findings, complaint information, and significant findings from compliance review and audit).

2. Through discussions with management and review of the following documents, determine whether the financial institution's internal controls are adequate to ensure compliance in the area under review. Identify procedures used daily to detect errors/violations promptly. Also, review the procedures used to ensure compliance when changes occur (e.g., changes in interest rates, service charges, computation methods, and software programs).

   - Organizational charts
   - Process flowcharts
   - Policies and procedures
   - Loan documentation and disclosures
   - Checklists/worksheets and review documents
   - Computer programs

3. Review compliance review and audit workpapers and determine whether:

   a. The procedures used address all regulatory provisions (*See* Transactional Testing section).

   b. Steps are taken to follow up on previously identified deficiencies.

[56] These procedures reflect changes to TILA and Regulation Z through May 2018, including applicable provisions of the Economic Growth, Regulatory Relief, and Consumer Protection Act P.L 115-174 (May 24, 2018) that do not require rulemaking to be effective.

c. The procedures used include samples that cover all product types and decision centers.

d. The work performed is accurate (through a review of some transactions).

e. Significant deficiencies, and the root cause of the deficiencies, are included in reports to management/board.

f. Corrective actions are timely and appropriate.

g. The area is reviewed at an appropriate interval, based upon appropriate risks.

4. Review the financial institution's record retention practices to determine whether the required documentation or evidence of compliance is retained for at least:

Two years after the disclosures were required to be made or other action was required to be taken, other than for the advertising requirements, requirements for mortgages subject to 12 CFR 1026.19(e) and (f), and certain requirements for mortgages, which are described below (12 CFR 1026.25(a)).

Three years after the later of the date of consummation, the date disclosures are required to be made, or the date action is required to be taken, for evidence of compliance with 12 CFR 1026.19(e)-(f) (regarding closed-end loans that are secured by real property or a cooperative unit and subject to those sections) other than as set forth in 4.c below (12 CFR 1026.25(c)(1)(i)).

Five years after consummation for completed Closing Disclosure forms, and all documents related to these disclosures, as required by 12 CFR 1026.19(f)(1)(i) or (f)(4)(i). If the loan is sold, transferred, or otherwise disposed of during that time, the creditor must provide a copy of the Closing Disclosure to the owner or servicer as part of the loan file transfer, who must retain the disclosure for the remainder of the five-year period (12 CFR 1026.25(c)(1)(ii)).

Three years after the date of receipt of payment to show compliance with loan originator compensation requirements (12 CFR 1026.25(c)(2)).

Three years after consummation to show compliance with ability-to-repay minimum standards (12 CFR 1026.43(c)-(f)) and prepayment penalty restrictions (12 CFR 1026.43(g)) for loans secured by a dwelling (12 CFR 1026.25(c)(3)).

## Disclosure Forms

1. Determine if the financial institution has changed any TILA disclosure forms or if there are forms that have not been previously reviewed for accuracy. If so:

   Verify the accuracy of each disclosure by reviewing the following (as applicable):

   - Credit card application/solicitation disclosures (12 CFR 1026.60(b)-(e))
   - HELOC disclosures (12 CFR 1026.40(d) and (e))

- Initial disclosures 12 CFR 1026.6 and, if applicable, additional HELOC disclosures (12 CFR 1026.40)
- Periodic statement disclosures (12 CFR 1026.7 and 12 CFR 1026.41)
- Statement of billing rights and change in terms notice (12 CFR 1026.9(a), (b), (c) or (g))
- Note and/or contract forms (including those furnished to dealers)
- Notice of Right to Rescind/Cancel (12 CFR 1026.15(b), 1026.23(b)(1)) and 1026.47(c)(4))
- Loan Estimate (12 CFR 1026.19(e) and 1026.37)
- Closing Disclosure (12 CFR 1026.19(f) and 1026.38)
- Special information booklet (12 CFR 1026.19(g))
- Other closed-end credit transaction disclosures not subject to 12 CFR 1026.19(e) or (f) (12 CFR 1026.17(a) and 1026.18)
- ARM disclosures (12 CFR 1026.19(b) and 12 CFR 1026.20(c)-(d))
- High-cost mortgage disclosures (12 CFR 1026.32(c))
- Reverse mortgage disclosures (12 CFR 1026.33(b))
- Payoff statement disclosures (12 CFR 1026.36(c)(3))
- Private education loan disclosures (12 CFR 1026.47)

## Closed-End Credit Disclosure Forms Review Procedures

Closed-end consumer credit transactions secured by real property or a cooperative unit, other than a reverse mortgage subject to 12 CFR 1026.33, are subject to the disclosure, timing, and other requirements under the TILA-RESPA Integrated Disclosure rule. Thus, for most closed-end mortgages, including construction-only loans and loans secured by vacant land or by 25 or more acres, creditors must provide the Loan Estimate and the Closing Disclosure. There is a partial exemption in 12 CFR 1026.3(h) from the requirement to provide the Loan Estimate and Closing Disclosure if the transaction meets all of the following criteria: (i) The transaction is secured by a subordinate lien; (ii) the transaction is for the purpose of home buyer assistance, such as down payments or closing costs, rehabilitation loans, energy efficiency assistance, or foreclosure prevention; (iii) the credit contract does not require the payment of interest; (iv) the credit contract provides for repayment that is forgiven, deferred for 20 years, or deferred until the property is sold or is no longer the consumer's principal dwelling; and (v) the total costs payable by the consumer in connection with the transaction at consummation are limited to (A) recording fees, (B) transfer taxes, (C) a bona fide and reasonable application fee, and (D) a bona fide and reasonable fee for housing counseling services; and the total of costs payable by the consumer

for the application fee and housing counseling services is less than 1 percent of the amount of credit extended. For those transactions meeting the criteria for a partial exemption, creditors may provide either a compliant disclosure of the cost of credit under 12 CFR 1026.18 or a compliant Loan Estimate and Closing Disclosure, and do not need to provide the special information booklet, Good Faith Estimate, or HUD-1 settlement statement (12 CFR 1024.5(d)).

NOTE: The GFE, HUD-1, and Truth in Lending forms continue to be used for transactions covered by the other disclosure requirements of TILA or RESPA (e.g., reverse mortgages) or before the effective date of the TILA-RESPA Integrated Disclosure Rule (October 3, 2015) (12 CFR 1026.19(e), (f)).

## Closed-End Credit Disclosure Forms – For Transactions Under 12 CFR 1026.19(e) and (f)

NOTE: The 2017 TILA-RESPA rule includes an optional compliance period, which began on October 10, 2017, and is for transactions for which a creditor or mortgage broker received an application prior to October 1, 2018. During this period, early compliance with the 2017 rule was allowed but not required.

1. For a closed-end credit transaction subject to 12 CFR 1026.19(e) and (f), determine whether the creditor provides disclosures required under 12 CFR 1026.37 (Loan Estimate) and 12 CFR 1026.38 (Closing Disclosure) (12 CFR 1026.19(e) and 1026.19(f)).

    a. For loans subject to 12 CFR 1026.19(e), determine whether the creditor provides the good faith disclosures in the form required by 12 CFR 1026.37 and conforming to the Loan Estimate in Appendix H (12 CFR 1026.19(e), 1026.37(o)).

    b. For loans subject to 12 CFR 1026.19(f), determine whether the creditor provides the Closing Disclosure in the form required by 12 CFR 1026.38 and conforming to the Closing Disclosure in Appendix H (12 CFR 1026.19(f), 1026.38(t)).

    NOTE: Use of the Loan Estimate and Closing Disclosure is mandatory for RESPA-covered transactions. For transactions not covered by RESPA, the Loan Estimate and Closing Disclosure may be considered a model form.

## Loan Estimate – 12 CFR 1026.37(a) (Page 1 of the Loan Estimate)

1. *Loan Estimate.* Determine whether the disclosures required for the Loan Estimate are accurately completed and include the following disclosures on the first page (12 CFR 1026.37(a)). Disclosures are detailed below according to the designations made on the Loan Estimate form:

    a. The statement: "Save this Loan Estimate to compare with your Closing Disclosure" (12 CFR 1026.37(a)(2));

    b. *Name and address of creditor* (12 CFR 1026.37(a)(3));

c. *Date Issued* (12 CFR 1026.37(a)(4));

d. *Applicants* (12 CFR 1026.37(a)(5));

e. *Property.* The property address, including ZIP code (12 CFR 1026.37(a)(6));

f. *Sale Price* (12 CFR 1026.37(a)(7):

- For transactions with a seller, the contract sale price of the property identified in 12 CFR 1026.37(a)(6), labeled "Sale Price".
- For transactions that do not have a seller, the estimated value of the property identified in 12 CFR 1026.37(a)(6), labeled "Prop. Value".

g. *Loan Term.* Stated in years, months, or both, as applicable (12 CFR 1026.37(a)(8));

h. *Purpose.* Loan purpose, categorized as "Purchase", "Refinance", or "Construction". All other loan purposes must be categorized as "Home Equity Loan" (12 CFR 1026.37(a)(9));

i. *Product.* Product type, including the type of interest rate categorized as "Adjustable Rate", "Step Rate," or "Fixed Rate." This disclosure must be preceded by the type of feature that may change the consumer's periodic payment, such as "Negative Amortization," "Interest Only," "Step Payment," "Balloon Payment," or "Seasonal Payment," with the duration of any introductory rate or payment period and the first adjustment period if applicable (12 CFR 1026.37(a)(10));

j. *Loan Type.* Categorized as "Conventional", "FHA", "VA", or "Other" (12 CFR 1026.37(a)(11));

k. *Loan ID #* (12 CFR 1026.37(a)(12)); and

l. *Rate Lock.* A statement of whether the disclosed interest rate is locked for a specific period. If so, the date and time (including time zone) that the lock will expire, along with an accompanying statement that the interest rate, any points, and any lender credits may change unless the interest rate has been locked (12 CFR 1026.37(a)(13)).

## Loan Terms – 12 CFR 1026.37(b) (Page 1 of the Loan Estimate)

2. *Loan Terms.* Determine whether, under the heading "Loan Terms", all disclosures are completed and accurate (12 CFR 1026.37(b)):

   a. *Loan Amount* (12 CFR 1026.37(b)(1));

   b. *Interest Rate* (12 CFR 1026.37(b)(2));

c. *Principal and Interest.* The applicable unit period (i.e., biweekly, monthly, yearly) must precede the initial periodic payment amount that will be due under the terms of the legal obligation, labeled "Principal & Interest" (12 CFR 1026.37(b)(3));

d. *Prepayment Penalty.* A statement of whether the loan contains a prepayment penalty, an affirmative or negative response to the question, the maximum amount of the prepayment penalty that may be imposed, and the date on which the penalty may no longer be applied (12 CFR 1026.37(b)(4), 1026.37(b)(7)(i)). If the date is disclosed (for an affirmative response), determine whether it is disclosed as the year in which the event occurs, counting from the date of consummation (12 CFR 1026.37(b)(8)(iii));

e. *Balloon Payment.* A statement of whether the loan contains a balloon payment, an affirmative or negative response to the question, the maximum amount of the balloon payment, and the due date of such payment (12 CFR 1026.37(b)(5), 1026.37(b)(7)(ii)). If the date is disclosed (for an affirmative response), determine whether it is disclosed as the year in which the event occurs, counting from the due date of the initial periodic payment (12 CFR 1026.37(b)(8)(ii)); and

f. Whether the loan amount, interest rate, or monthly principal and interest can increase after closing (12 CFR 1026.37(b)(6)) and, if so, the information required by 12 CFR 1026.37(b)(6)(i) -(iii) and 1026.37(b)(8)(i)-(ii).

## Projected Payments – 12 CFR 1026.37(c) (Page 1 of the Loan Estimate)

3. *Projected Payments.* Determine whether, under the heading "Projected Payments" (12 CFR 1026.37(c)):

   a. All required fields in the table are completed, follow the formatting and statement requirements, are accurate, and itemize the periodic payments or range of payments together with an itemized estimate of taxes, insurance, assessments, and payments to be made with escrow account funds (12 CFR 1026.37(c)(1) – (5));

   NOTE: If accurate, a creditor can indicate that a portion of taxes, insurance, and assessments will be paid with escrow account funds, such as by using the word "some" (Comment 37(c)(4)(iv)-2);

   b. Each separate periodic payment or range of payments is itemized as follows (12 CFR 1026.37(c)(2)):

      i. *Principal and Interest.* The amount payable for principal and interest labeled "Principal & Interest", including the term "only interest" if the payment or range of payments includes any interest-only payment (12 CFR 1026.37(c)(2)(i));

A. *Adjustable Rate Loans.* The maximum principal and interest payment must be determined by assuming that the interest rate in effect throughout the loan term is the maximum possible interest rate. The minimum amounts must be determined by assuming that the interest rate in effect throughout the loan term is the minimum possible interest rate (12 CFR 1026.37(c)(2)(i)(A));

B. *Adjustable Rate and Negative Amortization Loans.* The maximum principal and interest amounts (after the loan term period for which the loan principal balance may increase) must be determined by assuming the maximum principal amount permitted under the terms of the legal obligation at the end of the loan term period. The minimum amounts must be determined by assuming that the interest rate in effect throughout the loan term is the minimum possible interest rate (12 CFR 1026.37(c)(2)(i)(B)).

ii. *Mortgage Insurance.* The maximum amount payable for mortgage insurance premiums corresponding to the principal and interest payment disclosed, labeled "Mortgage Insurance" (12 CFR 1026.37(c)(2)(ii));

iii. *Escrow.* The amount payable into an escrow account to pay some or all of the charges described in 12 CFR 1026.37(c)(4)(ii), as applicable, labeled "Escrow," together with a statement that the amount disclosed can increase over time (12 CFR 1026.37(c)(2)(iii); and

iv. *Total Monthly Payment.* The total periodic payment, calculated as the sums disclosed as the "Principal &Interest", "Mortgage Insurance," and "Escrow," labeled "Total Monthly Payment" (12 CFR 1026.37(c)(2)(iv)).

NOTE: The labels required pursuant to 12 CFR 1026.37(c)(2) must be listed under the subheading "Payment Calculation" (12 CFR 1026.37(c)(3)(i)).

c. If the amount of a periodic monthly payment may change, additional, separate periodic payments, or range of payments have been disclosed. Events requiring additional disclosure(s) include: (i) the change of the periodic principal and interest payment or range of such payments, (ii) a scheduled balloon payment, (iii) the automatic termination of mortgage insurance, or (iv) the anniversary of the due date of the initial periodic payment or range of payments immediately following the occurrence of a change in the principal and interest payment or range of such payments (12 CFR 1026.37(c)(1)(i));

d. The creditor has met the following in disclosing a range of payments (12 CFR 1026.37(c)(1)(iii)):

i. The creditor has disclosed both the minimum and maximum amount for both the principal and interest payment and the total periodic payment (12 CFR 1026.37(c)(1)(iii));

ii. The creditor has accurately disclosed a range of payments where multiple events are combined into a single range of payments in order to meet the requirement that only four disclosures may be made (12 CFR 1026.37(c)(1)(iii)(A));

iii. The creditor has accurately disclosed a range of payments where multiple events occur during a single year or an event occurs during the same year as the initial periodic payment or range of payments. If the event occurs during the same year as the initial periodic payment or range of payments, the creditor has disclosed the range that would apply during the year in which the events will occur (12 CFR 1026.37(c)(1)(iii)(B));

NOTE: If multiple changes to periodic principal and interest payments would result in more than one separate periodic payment or range of payments in a single year, the creditor must combine the changes and disclose them as a single range of payments (Comment 37(c)(1)(iii)(B)-1); and

iv. The creditor has accurately disclosed a range of payments if the periodic principal and interest payment may adjust based on index rates at the time an interest rate adjustment may occur (12 CFR 1026.37(c)(1)(iii)(C)).

e. The creditor has not disclosed more than four separate periodic payments or ranges of payments (12 CFR 1026.37(c)(1)(ii)):

i. If additional separate periodic payments or range of payments disclosures are required after the third separate periodic payment or range of payment disclosure, and the transaction does not involve a balloon payment, determine whether the creditor has disclosed the additional separate periodic payment or range of payments as a single fourth range of payments disclosure (12 CFR 1026.37(c)(1)(ii));

ii. If additional separate periodic payments or range of payments disclosures are required and the transaction involves a final balloon payment, determine whether the creditor has disclosed the additional separate periodic payment or range of payments as a single range of payments after the second separate periodic payment disclosure. Disclosure of the final balloon payment must appear as the final disclosure, under the heading *"Final Payment"* (12 CFR 1026.37(c)(1)(ii)(A), 1026.37(c)(3)(iii));

iii. The automatic termination of mortgage insurance requires disclosure of an additional separate periodic payment or range of payments only if the total number of separate periodic payments or ranges of payments does not exceed three (12 CFR 1026.37(c)(1)(ii)(B)); and

iv. Each separate periodic payment or range of payments must be disclosed under a subheading stating the years of the loan during which that payment or range of

payments will apply. The years must be disclosed in sequence of whole years from the due date of the initial periodic payment (12 CFR 1026.37(c)(3)(ii)).

NOTE: *See* the Narrative for further discussion of requirements related to the Projected Payments table.

f. *Taxes, Insurance, and Assessments.* Determine whether the creditor accurately discloses (12 CFR 1026.37(c)(4)):

i. The sum of all mortgage-related obligations, expressed as a monthly amount, even if no escrow account for the payment of some or any of such charges will be established, labeled "Taxes, Insurance & Assessments" (12 CFR 1026.37(c)(4)(i-ii));

NOTE: The term "mortgage-related obligations," as used here, takes the definition used in 12 CFR 1026.43(b)(8); however, it does not include amounts identified in 12 CFR 1026.4(b)(5). Amounts that must be disclosed as "Taxes, Insurance & Assessments" include premiums or other charges for credit life, accident, health, or loss-of-income insurance; premiums or other charges for insurance against loss of or damage to property, or against liability arising out of the ownership or use of property; or premiums or charges paid for debt cancellation or debt suspension coverage (12 CFR 1026.43(b)(8)).

ii. A statement that the mortgage-related obligations disclosed can increase over time (12 CFR 1026.37(c)(4)(iii)). If estimates are used for property taxes and homeowner's insurance, they must reflect (12 CFR 1026.37(c)(5)):

A. The taxable assessed value of the real property or cooperative unit securing the transaction after consummation, including the value of any improvements on the property or to be constructed on the property if known. The disclosure must be made whether or not such construction will be financed from the proceeds of the transaction for property taxes (12 CFR 1026.37(c)(5)(i)); and

B. The replacement costs of the property during the initial year after the transaction for premiums or other charges for insurance against loss of or damage to property, or against liability arising out of the ownership or use of property (12 CFR 1026.37(c)(5)(ii)).

iii. A statement of whether the mortgage-related obligations include payments for property taxes; premiums or other charges for insurance against loss of or damage to property, or against liability arising out of the ownership or use of property; or as otherwise identified by 12 CFR 1026.43(b)(8). The creditor must disclose whether the amounts will be paid by the creditor using escrow account funds (12 CFR 1026.37(c)(4)(iv));

NOTE: If only a portion of such amounts are to be paid with escrow account funds, a creditor may so indicate, such as by using the word "some" (Comment 37(c)(4)(iv)-2).

iv. A statement that the consumer must pay separately any mortgage-related obligations that are not paid by the creditor using escrow account funds (12 CFR 1026.37(c)(4)(v)); and

v. A reference to the escrow account information contained on page 2 of the Loan Estimate, captioned "Initial Escrow Payment at Closing" (12 CFR 1026.37(c)(4)(vi)).

## Costs at Closing – 12 CFR 1026.37(d) (Page 1 of the Loan Estimate)

4. *Costs at Closing.* Determine whether, under the heading "Costs at Closing," the creditor discloses the Estimated Closing Costs (including Loan Costs and Other Costs, less Lender Credits) and the Estimated Cash to Close (including Closing Costs), based upon the calculations required by 12 CFR 1026.37(f), (g), and (h) (and found on page 2 of the Loan Estimate) (12 CFR 1026.37(d)(1)).

5. *Optional Alternative Table for Transactions without a Seller or for simultaneous subordinate financing.* Determine whether, for transactions that do not involve a seller or for simultaneous subordinate financing, the creditor chose to use the alternative "Cash to Close" table. If so, determine whether the amount is calculated in accordance with 12 CFR 1026.37(h)(2)(iv) (Calculating Cash to Close), includes a statement of whether the disclosed estimated amount is due from or to the consumer; and includes a statement referring the consumer to the alternative "Calculating Cash to Close" table pursuant to 12 CFR 1026.37(h)(2) (12 CFR 1026.37(d)(2)).

   NOTES:

   - 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. (Comment 37(d)(2)-1) Creditors may only use this alternative estimated cash to close disclosure in conjunction with the alternative disclosure under 12 CFR 1026.37(h)(2) (Comment 37(d)(2)-1).

   - *See* the Narrative for further discussion of requirements related to the Costs at Closing table.

Website Disclosure – 12 CFR 1026.37(e) (Page 1 of the Loan Estimate)

6. *Website Reference.* Determine whether the creditor discloses that the consumer may obtain general information and tools on the CFPB's website and has included a link to the site specified in 12 CFR 1026.37(e) (12 CFR 1026.37(e)).

## Closing Cost Details: Loan Costs – 12 CFR 1026.37(f) (Page 2 of the Loan Estimate)

7. *Loan Costs.* Determine on page 2 whether, under the heading "Loan Costs", the creditor makes the following disclosures (12 CFR 1026.37(f)):

    a. *Origination charges.* Accurately itemized to reflect each amount and a subtotal of all amounts that the consumer will pay to each creditor and loan originator for originating and extending the credit. Determine whether the points paid to the creditor to reduce the interest rate are itemized separately, as both a percentage of the amount of credit extended and a dollar amount and using the label "__% of Loan Amount (Points)." Determine whether points paid is the first item listed. If points to reduce the interest rate are not paid, this disclosure must be left blank (12 CFR 1026.37(f)(1));

    b. *Services You Cannot Shop For.* An accurate itemization, limited to 13 items, of each amount and subtotal of all amounts that the consumer will pay for settlement services that the consumer cannot shop for and that are provided by persons other than the creditor or mortgage broker. Determine whether the terms related to title insurance include "Title" as an introductory description (12 CFR 1026.37)(f)(2));

    c. *Services You Can Shop For.* An accurate itemization, limited to 14 items, of each amount and subtotal of all amounts that the consumer will pay for settlement services that the consumer can shop for and that are provided by persons other than the creditor or mortgage broker. Determine whether the terms related to title insurance include "Title" as an introductory description (12 CFR 1026.37)(f)(3));

    d. *Total Loan Costs.* An accurate sum of the subtotals required to be disclosed under 1026.37(f) as Origination Charges, Services You Cannot Shop for and Services You Can Shop For (12 CFR 1026.37(f)(4)); and

    e. Other than as noted in item 1.a above, determine that items are ordered alphabetically by label under the applicable subheading. If there are more than the maximum allowable number of line items, determine that the remaining charges are disclosed in the aggregate in the last line as *"Additional Charges"* (12 CFR 1026.37(f)(5) and (f)(6)).

## Closing Cost Details: Other Costs – 12 CFR 1026.37(g) (Page 2 of the Loan Estimate)

8. *Other Costs.* Determine whether the creditor makes the following disclosures (12 CFR 1026.37(g)):

    a. *Taxes and Other Government Fees.* Accurately itemized to reflect amounts to be paid to state and local governments for taxes and other government fees, including subtotals for recording fees and other taxes. A separate line must be included for

transfer taxes paid by the consumer. If not charged to the consumer, these fields must be left blank (12 CFR 1026.37(g)(1));

b. *Prepaids.* Accurately itemized to reflect amounts to be paid by the consumer in advance of the first scheduled payment and the subtotals of all such amounts. The disclosures must follow the required order and include the number of months and the total dollar amount to be paid at consummation for homeowner's insurance and mortgage insurance premiums; the prepaid interest to be paid at consummation, based on daily interest, number of days, interest rate, and the total to be collected; the number of months for which property taxes are to be paid; and the amount the consumer will pay at consummation. If any of these items are not charged to the consumer, the field must be left blank. A maximum of three additional items may be disclosed (including applicable time period covered by the payment at consummation and total to be paid) as Prepaids (12 CFR 1026.37(g)(2));

c. *Initial Escrow Payment at Closing.* Accurately itemized to reflect the amounts that the consumer will be expected to place into an escrow account at consummation to be applied to recurring periodic charges and subtotals of all amounts. The disclosure must provide the amount escrowed each month, the number of months of escrow, and the total amount to be paid into the escrow account by the consumer at consummation. Homeowner's insurance premiums, mortgage insurance premiums, and property taxes must be separately subtotaled. If any of these items are not charged to the consumer, that field must be left blank. A maximum of five additional items may be disclosed as part of Initial Escrow Payment at Closing (12 CFR 1026.37(g)(3));

d. *Other.* An accurate itemization of costs that the consumer is likely to pay or has contracted with a person other than the creditor or loan originator to pay, at closing and of which the creditor is aware at the time of issuing the Loan Estimate. Determine whether the creditor has used a descriptive label for each such amount and provided the subtotal of all such amounts. Determine whether the terms related to title insurance include "Title" as an introductory description and whether the parenthetical description "(optional)" is used at the end of the label for items disclosing any premiums paid for separate insurance, warranty, guarantee, or event-coverage products. A maximum of five items may be disclosed as "Other" (12 CFR 1026.37(g)(4));

e. *Total Other Costs.* An accurate sum of the subtotals for Taxes and Other Government Fees, Prepaids, Initial Escrow Payment at Closing, and Other disclosed pursuant to 12 CFR 1026.37(g)(1) through (4) (12 CFR 1026.37(g)(5));

f. *Total Closing Costs.* Accurate component amounts and sum of the following (12 CFR 1026.37(g)(6)):

i. *D+I.* A sum of the Total Loan Costs and Total Other Costs (12 CFR 1026.37(g)(6)(i)); and

ii. *Lender Credits.* The amount of any lender credits, disclosed as a negative number. If no such amount is disclosed, this line must be left blank (12 CFR 1026.37(g)(6)(ii)); and

NOTE: The disclosure of "lender credits", as identified in 12 CFR 1026.37(g)(6)(ii), is required by (12 CFR 1026.19(e)(1)(i)). "Lender credits", as identified in 12 CFR 1026.37(g)(6)(ii), represent the sum of non-specific lender credits and specific lender credits. Non-specific lender credits are generalized payments from the creditor to the consumer that do not pay for a particular fee on the disclosures provided pursuant to (12 CFR 1026.19(e)(1)). Specific lender credits are specific payments, such as a credit, rebate, or reimbursement, from a creditor to the consumer to pay for a specific fee. Non-specific lender credits and specific lender credits are negative charges to the consumer (Comment 19(e)(3)(i)-5)).

g. Determine that items follow the alphabetical ordering and addenda restrictions of 12 CFR 1026.37(g)(7) and (g)(8).

## Closing Cost Details: Calculating Cash to Close – 12 CFR 1026.37(h) (Page 2 of the Loan Estimate)

9. *Calculating Cash to Close.* Determine whether, under the heading "Calculating Cash to Close," the creditor has accurately disclosed the total amount of cash or other funds that must be provided by the consumer at consummation, itemized into the following component amounts (12 CFR 1026.37(h)(1)):

a. *Total Closing Costs.* The amount disclosed as the sum of the loan costs, other costs, and lender credits, labeled "Total Closing Costs" (12 CFR 1026.37(h)(1)(i));

b. *Closing Costs Financed (Paid from your Loan Amount).* The amount of any closing costs to be paid out of loan proceeds, disclosed as a negative number, labeled "Closing Costs Financed (Paid from your Loan Amount)" (12 CFR 1026.37(h)(1)(ii). Determined by subtracting the estimated total amount of payments to third parties not otherwise disclosed under 12 CFR 1026.37(f) and (g) from the loan amount disclosed under 12 CFR 1026.37(b)(1);

NOTE: (1) If the result of the calculation is zero or negative, the amount of zero dollars is disclosed. (2) If the result of the calculation is a positive number, the amount is disclosed as a negative number but only to the extent that the absolute value of the number does not exceed the total amount of closing costs (Comment 37(h)(1)(ii)-1).

c. *Down payment/Funds from Borrower.* Labeled "Down Payment/Funds from Borrower":

i. In a purchase transaction as defined in 12 CFR 1026.37(a)(9)(i), disclosed as the amount determined by subtracting the sum of the loan amount disclosed under 12 CFR 1026.37(b)(1) and any amount of existing loans assumed or taken subject to that will be disclosed under 12 CFR 1026.38(j)(2)(iv), from the sale price of the property disclosed under 12 CFR 1026.37(a)(7)(i), except as required by 12 CFR 1026.37(h)(1)(iii)(A)(*2*) (12 CFR 1026.37(h)(1)(iii)(A)(*1*));

ii. For a purchase transaction as defined in 12 CFR 1026.37(a)(9)(i) that is a simultaneous subordinate financing transaction, a transaction involving improvements to be made on the property, or when the sum of the loan amount disclosed under 12 CFR 1026.37(b)(1) and any amount of existing loans assumed or taken subject to on the Closing Disclosure under 12 CFR 1026.38(j)(2)(iv) exceeds the sale price of the property disclosed under 12 CFR 1026.37(a)(7)(i), disclosed as the amount of estimated funds from the consumer determined in accordance with 12 CFR 1026.37(h)(1)(v) (12 CFR 1026.37(h)(1)(iii)(A)(*2*)); and

iii. For all other transactions, disclosed as the amount of estimated funds from the consumer determined in accordance with 12 CFR 1026.37(h)(1)(v) (12 CFR 1026.37(h)(1)(iii)(B)).

d. *Deposit.*

i. For a purchase transaction, disclosed as the amount that is paid to the seller or held in trust or escrow by an attorney or other party under the terms of the agreement for the sale of the property, as a negative number, labeled "Deposit"; and

ii. For all other transactions, disclosed as zero dollars, labeled "Deposit" (12 CFR 1026.37(h)(1)(iv)).

e. *Funds for Borrower.* Disclosed as the amount of funds for the consumer, labeled "Funds for Borrower". Determined in accordance with 12 CFR 1026.37(h)(1)(v) by subtracting the sum of the loan amount disclosed under 12 CFR 1026.37(b)(1) and any amount of existing loans assumed or taken subject to that will be disclosed on the Closing Disclosure under 12 CFR 1026.38(j)(2)(iv) (excluding any closing costs financed disclosed under 12 CFR 1026.37(h)(1)(ii)) from the total amount of all existing debt being satisfied in the transaction. The total amount of all existing debt being satisfied in the transaction is the sum of the amounts that will be disclosed on the Closing Disclosure in the summaries of transactions table under 12 CFR 1026.38(j)(1)(ii), (iii), and (v), as applicable:

i. If the calculation yields a positive number, that amount is disclosed under the heading "Down Payment/Funds from Borrower" (12 CFR 1026.37(h)(1)(iii)(A)(*2*) or (B), as applicable), and zero dollars are disclosed

under the heading "Funds for Borrower," under 12 CFR 1026.37(h)(1)(v) (12 CFR 1026.37(h)(1)(v)(A));

ii. If the calculation yields a negative amount, the creditor discloses that amount as a negative number under the heading "Funds for Borrower" (12 CFR 1026.37(h)(1)(v)), and as zero dollars under the heading "Down Payment/Funds from Borrower under 12 CFR 1026.37(h)(1)(iii)(A)(*2*) or (B), as applicable) (12 CFR 1026.37(h)(1)(v)(B)); and

iii. If the calculation yields "0," then zero dollars are disclosed under both headings under 12 CFR 1026.37(h)(1)(iii)(A)(*2*) or (B), as applicable, and (h)(1)(v) (12 CFR 1026.37(h)(1)(v)(C)).

f. *Seller Credits.* Determined by totaling the amount that the seller will pay for Total Loan Costs under 1026.37(f)(4) and Total Other Costs under 12 CFR 1026.37(g)(5)), disclosed as a negative number, to the extent known by the creditor at the time of the delivery of the Loan Estimate, labeled "Seller Credits" (12 CFR 1026.37(h)(1)(vi));

NOTES:

- Non-specific seller credits. Determine whether general payments from the seller to the consumer that do not pay for a particular fee are disclosed in the seller credits row of the Calculating Cash to Close table (Comment 37(h)(1)(vi)-1));
- Seller credits for specific charges. Determine whether credits for specific items disclosed under 12 CFR 1026.37(f) and (g) are disclosed, at the creditor's option either:

  A. In the seller credits row of the Calculating Cash to Close table together with any non-specific seller credits; or

  B. By reducing the amount of the specific charge in the Loan Costs or Other Costs table (Comment 37(h)(1)(vi)-2).

g. *Adjustments and Other Credits.* Determined by combining the Total Loan Costs (determined under 12 CFR 1026.37(f)) and Total Other Costs (determined under 12 CFR 1026.37(g)) that are paid by persons other than the loan originator, creditor, consumer, or seller, together with any other amounts not otherwise disclosed under 12 CFR 1026.37(f) or (g) that are required to be paid by the consumer at closing in a transaction using the "Down Payment/Funds from Borrower" calculation under 12 CFR 1026.37(h)(1)(iii)(A)(*1*) or pursuant to a purchase and sale contract, labeled "Adjustments and Other Credits" (12 CFR 1026.37(h)(1)(vii)).

NOTE: This includes amounts known at the time the Loan Estimate is issued that are expected to be paid at closing by third parties not otherwise associated with the transaction, such as gifts from family members, or others not associated with the

transaction, as well as proceeds from subordinate financing or other sources (Comment 37(h)(1)(vii)-1 and -5).

h. *Estimated Cash to Close.* The sum of the amounts of the components required for Calculating Cash to Close disclosed as under 12 CFR 1026.37(h)(1)(i) through (vii) (12 CFR 1026.37(h)(1)(viii)).

## Closing Cost Details: Optional Alternative Calculating Cash to Close Table for Transactions without a Seller or for Simultaneous Subordinate Financing – 12 CFR 1026.37(h)(2) (Page 2 of the Loan Estimate)

10. *Optional Alternative Calculating Cash to Close Table for Transactions Without a Seller or for Simultaneous Subordinate Financing.* If the transaction does not involve a seller or for simultaneous subordinate financing, and the creditor has chosen to provide the optional Alternative Calculating Cash to Close table modeled in Form H-24(G) in Appendix H, determine whether the creditor accurately discloses the total amount of cash or other funds that must be provided by the consumer at consummation, itemized into the following component amounts (12 CFR 1026.37(h)(2)):

    a. *Loan Amount* (12 CFR 1026.37(h)(2)(i));

    b. *Total Closing Costs.* Disclosed as a negative number if the amount disclosed under 12 CFR 1026.37(g)(6) is a positive number, and disclosed as a positive number if the amount disclosed under 12 CFR 1026.37(g)(6) is a negative number (12 CFR 1026.37(h)(2)(ii));

    c. *Total Payoffs and Payments.* Disclosed as the total amount of payoffs and payments to be made to third parties that are not otherwise disclosed (12 CFR 1026.37(h)(2)(iii));

    d. *Cash to Close.* Disclosed as the amount of cash or other funds due from or to the consumer and a statement of whether the disclosed estimated amount is due from or to the consumer. The amount must be calculated as the sum of the amounts disclosed under "Loan Amount", "Total Closing Costs", and "Total Payoffs and Payments" (12 CFR 1026.37(h)(2)(iv)); and

    e. *Closing Costs Financed (Paid from your Loan Amount).* Disclosed as the sum of the amounts under "Loan Amount", and "Total Payoffs and Payments." The sum is disclosed only to the extent it is greater than "0," and it is less than or equal to the amount disclosed under "Total Closing Costs" (12 CFR 1026.37(h)(2)(v)).

    NOTE: The optional Alternative Calculating Cash to Close table may only be provided in transactions without a seller or for simultaneous subordinate financing. In a purchase transaction, the optional alternative disclosure may be used for the simultaneous subordinate financing Loan Estimate only if the first lien Closing Disclosure will record the entirety of the transaction. The

use of the alternative table for transactions without a seller or for simultaneous subordinate financing is optional, but creditors may only use this alternative estimated cash to close disclosure in conjunction with the alternative disclosure under 12 CFR 1026.37(d)(2) (Comment 37(h)(2)-1).

## Closing Cost Details: Adjustable Payment (AP) Table – 12 CFR 1026.37(i) (Page 2 of the Loan Estimate)

11. *Adjustable Payment (AP) Table.* For loans where the periodic principal and interest payment may change after consummation based on a factor other than an interest rate adjustment, or for seasonal payment products as described in 12 CFR 1026.37(a)(10)(ii)(E), determine whether the creditor discloses a separate table under the master headings "Closing Cost Details" and "Adjustable Payment (AP) Table" that contains the following information and satisfies the following requirements:

    a. *Interest-Only Payments.* The disclosure states yes or no to the question of whether the transaction is an interest-only product under 12 CFR 1026.37(a)(10)(ii)(B), and if the answer is yes, the disclosure states the period during which interest-only periodic payments are scheduled (12 CFR 1026.37(i)(1));

    b. *Optional Payments.* The disclosure states yes or no to the question whether the terms of the legal obligation expressly provide that the consumer may elect to pay a specified periodic principal and interest payment in an amount other than the scheduled amount of the payment, and if the answer is yes, the disclosure states the period during which the consumer may elect to make such payments (12 CFR 1026.37(i)(2));

    c. *Step Payments.* The disclosure states yes or no to the question whether the transaction is a step payment product under 12 CFR 1026.37(a)(10)(ii)(C), and if the answer is yes, the disclosure states the period during which the regular periodic payments are scheduled to increase (12 CFR 1026.37(i)(3));

    d. *Seasonal Payments.* The disclosure states yes or no to the question whether the transaction is a seasonal payment product under 12 CFR 1026.37(a)(10)(ii)(E), and if the answer is yes, the disclosure states the period during which periodic payments are not scheduled (12 CFR 1026.37(i)(4)); and

    e. *Principal and Interest Payments.* This label is immediately preceded by the applicable unit period, and the disclosures must contain the following information:

        i. The number of the payment of the first periodic principal and interest payment that may change under the terms of the legal obligation (counting from the first periodic payment due after consummation), and the amount or range of the periodic principal and interest payment for such payment, labeled *"First Change/Amount"* (12 CFR 1026.37(i)(5)(i));

ii. The frequency of subsequent changes to the periodic principal and interest payment, labeled *"Subsequent Changes"* (12 CFR 1026.37(i)(5)(ii)); and

iii. The maximum periodic principal and interest payment that may occur during the term of the transaction, and the first periodic principal and interest payment that can reach such maximum, counting from the first periodic payment due after consummation, labeled *"Maximum Payment"* (12 CFR 1026.37(i)(5)(iii)).

NOTE: The AP table is required only if the periodic principal and interest payment may change after consummation based on a loan term other than a change to the interest rate, or the transaction contains a seasonal payment product feature as described in (12 CFR 1026.37(a)(10)(ii)(E)). If the transaction does not contain such loan terms, this table may not appear on the Loan Estimate (Comment 37(i)-1).

## Closing Cost Details: Adjustable Interest Rate (AIR) Table – 12 CFR 1026.37(j) (Page 2 of the Loan Estimate)

12. *Adjustable Interest Rate (AIR) Table.* If the interest rate may increase after consummation, determine whether the creditor discloses, as a separate table under the master headings "Closing Cost Details" and "Adjustable Interest Rate (AIR) Table," the following information and satisfies the following requirements (12 CFR 1026.37(j)):

    a. *Index + Margin.* Disclosed if the interest rate may adjust and the product type is not a "Step Rate" under 12 CFR 1026.37(a)(10)(i)(B). The disclosure must show the index upon which the adjustments to the interest rate are based and the margin that is added to the index to determine the interest rate, if any, labeled "Index + Margin." (12 CFR 1026.37(j)(1));

    b. *Interest Rate Adjustments.* If the product type is a "Step Rate" and not also an "Adjustable Rate" under 12 CFR 1026.37(a)(10)(i)(A), the disclosure must show the maximum amount of any adjustments to the interest rate that are scheduled and predetermined, labeled "Interest Rate Adjustments" (12 CFR 1026.37(j)(2));

    c. *Initial Interest Rate.* The disclosure must show the initial interest rate at consummation of the loan transaction, labeled "Initial Interest Rate" (12 CFR 1026.37(j)(3));

    d. *Minimum and Maximum Interest Rates.* The disclosure must show the minimum and maximum interest rates for the loan, after any introductory period expires, labeled "Minimum/Maximum Interest Rate" (12 CFR 1026.37(j)(4));

    e. *Frequency of Adjustments.* The following information, under the subheading "Change Frequency", is disclosed:

i. The month when the interest rate after consummation may first change, calculated from the date that interest for the first scheduled periodic payment begins to accrue, labeled "First Change"; and

ii. The frequency of interest rate adjustments after the initial adjustment to the interest rate, labeled "Subsequent Changes" (12 CFR 1026.37(j)(5)); and

f. *Limits on Interest Rate Changes.* The following information, under the subheading "Limits on Interest Rate Changes", is disclosed:

i. The maximum possible change for the first adjustment of the interest rate after consummation, labeled "First Change"; and

ii. The maximum possible change for subsequent adjustments of the interest rate after consummation, labeled "Subsequent Changes" (12 CFR 1026.37(j)(6)).

NOTE: If the legal obligation does not permit the interest rate to adjust after consummation, the AIR table is not permitted to appear on the Loan Estimate. The creditor may not disclose a blank table or a table with "N/A" inserted within each row (Comment 37(j)-1).

## Additional Information About This Loan: Contact information – 12 CFR 1026.37(k) (Page 3 of the Loan Estimate)

13. Determine whether the creditor accurately discloses, under the master heading, "Additional Information About This Loan", the following information:

a. *Lender/Mortgage Broker.* The name and "NMLS ID/License ID" for the creditor (labeled "Lender") and the mortgage broker (labeled "Mortgage Broker"), if any. If the creditor or mortgage broker has not been assigned an NMLS ID, the license number or other unique identifier issued to the creditor or mortgage broker by the applicable jurisdiction or regulating body must be disclosed, with the abbreviation for the state of the applicable jurisdiction or regulatory body stated before the word "License" in the label, if any (12 CFR 1026.37(k)(1));

b. *Loan Officer.* The name and NMLS ID of the individual loan officer (labeled "Loan Officer" and "NMLS ID/License ID", respectively) of the creditor and the mortgage broker, if any, who is the primary contact for the consumer. If the individual loan officer has not been assigned an NMLS ID, the license number or other unique identifier issued by the applicable jurisdiction or regulating body with which the loan officer is licensed and/or registered shall be disclosed, with the abbreviation for the state of the applicable jurisdiction or regulatory body before the word "License" in the label, if any (12 CFR 1026.37(k)(2)); and

c. *Email/Phone (respectively).* The email address and telephone number of the loan officer (12 CFR 1026.37(k)(3)).

## Additional Information About This Loan: Comparisons – 12 CFR 1026.37(l) (Page 3 of the Loan Estimate)

14. *Comparisons.* Determine whether the creditor accurately discloses the following information for comparison purposes and includes the statement "Use these measures to compare this loan with other loans" (12 CFR 1026.37(l)):

    a. *In five years* (12 CFR 1026.37(l)(l)):

        i. The total principal, interest, mortgage insurance, and loan costs scheduled to be paid through the end of the 60th month after the due date of the first periodic payment, expressed as a dollar amount, along with the statement "Total you will have paid in principal, interest, mortgage insurance, and loan costs"; and

        ii. The principal scheduled to be paid through the end of the 60th month after the due date of the first periodic payment, expressed as a dollar amount, along with the statement "Principal you will have paid off".

    b. *Annual Percentage Rate (APR).* Expressed as a percentage, and the statement "Your costs over the loan term expressed as a rate. This is not your interest rate" (12 CFR 1026.37(l)(2)); and

    c. *Total Interest Percentage (TIP).* The total amount of interest that the consumer will pay over the life of the loan, expressed as a percentage of the amount of credit extended, using the term "Total Interest Percentage," the abbreviation "TIP," and the statement "The total amount of interest that you will pay over the loan term as a percentage of your loan amount" (12 CFR 1026.37(l)(3)).

    NOTE: The Total Interest Percentage includes prepaid interest that the consumer will pay but does not include prepaid interest that someone other than the consumer will pay (Comment 37(l)(3)-1).

## Additional Information About This Loan: Other Considerations – 12 CFR 1026.37(m) (Page 3 of the Loan Estimate)

15. *Other Considerations.* Determine whether the creditor accurately discloses the following (12 CFR 1026.37(m)):

    a. *Appraisal.* For transactions subject to 15 U.S.C. 1639h or 1691(e), as implemented in this part or Regulation B, 12 CFR Part 1002, respectively, a statement, labeled "Appraisal," that explains (12 CFR 1026.37(m)(1)):

i. The creditor may order an appraisal to determine the value of the property identified in 12 CFR 1026.37(a)(6) and may charge the consumer for that appraisal;

ii. The creditor will promptly provide the consumer a copy of any appraisal, even if the transaction is not consummated; and

iii. The consumer may choose to pay for an additional appraisal of the property for the consumer's use.

b. *Assumption.* A statement of whether a subsequent purchaser of the property may be permitted to assume the remaining loan obligation on its original terms (12 CFR 1026.37(m)(2);

c. *Homeowner's Insurance.* At the option of the creditor, a statement that homeowner's insurance is required on the property and that the consumer may choose the insurance provider (12 CFR 1026.37(m)(3);

d. *Late Payment.* A statement detailing any charge that may be imposed for a late payment, stated as a dollar amount or percentage charge of the late payment amount, and the number of days that a payment must be late to trigger the late payment fee (12 CFR 1026.37(m)(4));

e. *Refinance.* With the statement "Refinancing this loan will depend on your future financial situation, the property value, and market conditions. You may not be able to refinance this loan" (12 CFR 1026.37(m)(5));

f. *Servicing.* A statement of whether the creditor intends to service the loan or transfer the loan to another servicer (12 CFR 1026.37(m)(6));

g. *Liability after Foreclosure.* If the purpose of the credit transaction is to refinance an extension of credit as described in 12 CFR 1026.37(a)(9)(ii), a brief statement that certain state law protections against liability for any deficiency after foreclosure may be lost, the potential consequences of the loss of such protections, and a statement that the consumer should consult an attorney for additional information (12 CFR 1026.37(m)(7)); and

h. *Construction Loans.* In a transaction that involves a new construction, if the creditor reasonably expects settlement will occur more than 60 days after the Loan Estimate is issued and wishes to retain the option to provide a revised disclosure, a clear and conspicuous statement that a revised disclosure may be issued any time prior to 60 days before consummation pursuant to 12 CFR 1026.19(e)(3)(iv)(F) (12 CFR 1026.37(m)(8)).

## Additional Information About This Loan: Confirm Receipt – 12 CFR 1026.37(n) (Page 3 of the Loan Estimate)

16. *Confirm Receipt.* If the creditor chooses to provide a signature statement, determine whether the creditor accurately provides the following: "By signing, you are only confirming that you have received this form. You do not have to accept this loan because you have signed or received this form." If the creditor does not include a line for the consumer's signature, the creditor discloses the following statement (labeled "Loan Acceptance"): "You do not have to accept this loan because you have received this form or signed a loan application" (12 CFR 1026.37(n)).

## Form of Disclosures – 12 CFR 1026.37(o)

17. *Form of disclosures.*[57] Determine whether the creditor made the disclosures required by 12 CFR 1026.37 clearly and conspicuously in writing, in a form that the consumer may keep, with disclosures grouped together and segregated from everything else, containing only the information required by 12 CFR 1026.37 (a) through (n), made in the same order, and positioned relative to the master headings, headings, subheadings, labels, and similar designations in the same manner, as shown in Form H-24, set forth in Appendix H (12 CFR 1026.37(o)(1) and (2)):

    a. *Form H-24 required.* Determine whether, for a transaction subject to 12 CFR 1026.19(e) that is a federally related mortgage loan, as defined in Regulation X, 12 CFR 1024.2, the creditor uses Form H-24, set forth in Appendix H (12 CFR 1026.37(o)(3)(i));

    b. *Substantially similar disclosures.* Determine whether the creditor makes the disclosures with headings, content, and format substantially similar to Form H-24, set forth in Appendix H for any other transaction subject to 12 CFR 1026.37 (12 CFR 1026.37(o)(3)(ii)).

    c. *Rounding – nearest dollar*. Determine whether the creditor accurately rounds the following figures to the nearest whole dollar disclosed pursuant to (12 CFR 1026.37(o)(4)(i)(A)):

        i. The dollar amounts for Loan Terms required by 12 CFR 1026.37(b)(6)-(7), (i.e., adjustments after consummation and details about prepayment penalty and balloon payments);

        ii. The dollar amounts for Projected Payments or range of payments required by 12 CFR 1026.37(c)(1)(iii) (i.e., minimum and maximum amounts of principal and interest for projected periodic payments or range of payments);

[57] Limited changes to the disclosure forms are permitted, including substitution of "monthly" with the applicable unit period, making disclosures in languages other than English, and using the creditor's logo in the space allotted for the identification of the creditor (12 CFR 1026.37(o)(5)).

iii. The dollar amounts for Mortgage Insurance required to be disclosed by 12 CFR 1026.37(c)(2)(ii) (i.e., itemization of maximum amount of mortgage insurance premiums);

iv. The dollar amounts for Escrow required to be disclosed by 12 CFR 1026.37(c)(2)(iii);

v. The dollar amounts for Taxes, Insurance, and Assessments required to be disclosed by 12 CFR 1026.37(c)(4)(ii);

vi. The dollar amounts for Loan Costs required to be disclosed by 12 CFR 1026.37(f) (i.e., Origination Charges, Services You Cannot Shop For, Services You Can Shop For, and Total Loan Costs);

vii. The dollar amounts for Other Costs required by 12 CFR 1026.37(g) (i.e., Taxes and Other Government Fees, Prepaids (other than per diem prepaid interest), Initial Escrow Payment at Closing (other than monthly amounts of initial escrow payments), Other, Total Other Costs, and Total Closing Costs) except as noted for percentages;

viii. The dollar amounts for Calculating Cash to Close required to be disclosed by (12 CFR 1026.37(h));

ix. The dollar amounts for the Adjustable Payment (AP) Table required to be disclosed by (12 CFR 1026.37(i)); and

x. The dollar amounts for Comparisons required to be disclosed by (12 CFR 1026.37(l)).

d. *Rounding – nearest whole cent.* Determine that the creditor rounds or truncates the following to the nearest whole cent pursuant to (12 CFR 1026.37(o)(4)(i)(A)):

i. The per diem amount required by 12 CFR 1026.37(g)(2)(iii) (prepaid interest paid per day); and

ii. The figures disclosed pursuant to 12 CFR 1026.37(g)(3)(i)-(iii) (initial escrow payment at closing for homeowner's insurance, mortgage insurance, and property taxes) and 12 CFR 1026.37(g)(3)(v) (additional escrow items).

e. *Loan amount.* Determine that the creditor did not round the loan amount disclosed pursuant to 12 CFR 1026.37(b)(1) and truncated whole numbers at the decimal point (12 CFR 1026.37(o)(4)(i)(B)).

f. *Total periodic payment*. Determine that the creditor accurately rounds the total periodic payment disclosed pursuant to 12 CFR 1026.37(c)(2)(iv), if any of the component amounts of the figures disclosed pursuant to 12 CFR 1026.37(o)(4)(i)(A) are rounded to the nearest whole dollar (12 CFR 1026.37(o)(4)(i)(C)).

*Percentages*. Determine that the creditor discloses the following percentages by rounding the exact amounts to three decimal places and then dropping any trailing zeros that occur to the right of the decimal point (12 CFR 1026.37(o)(4)(ii)). This procedure applies to the following:

A. Interest rate and adjustments after consummation, disclosed pursuant to (12 CFR 1026.37(b)(2) and (6));

B. Points as a percentage of the loan amount, disclosed pursuant to (12 CFR 1026.37(f)(1)(i));

C. Percentage of prepaid interest to be paid per day, disclosed pursuant to (12 CFR 1026.37(g)(2)(iii));

D. Index + Margin, Initial Interest Rate, Minimum/Maximum Interest Rate, and Limits on Interest Rate Changes (as disclosed on the Adjustable Interest Rate (AIR) Table), disclosed pursuant to (12 CFR 1026.37(j));

E. Annual percentage rate, disclosed pursuant to (12 CFR 1026.37(l)(2)); and

F. Total interest percentage, disclosed pursuant to 12 CFR 1026.37(l)(3) (12 CFR 1026.37(o)(4)(ii)).

## Closing Disclosure – 12 CFR 1026.38(a)

1. Determine whether the disclosures required for the Closing Disclosure are accurately completed and include the statement "This form is a statement of final loan terms and closing costs. Compare this document with your Loan Estimate" (12 CFR 1026.38(a)(2)).

## Closing Information – 12 CFR 1026.38(a)(3) (Page 1 of the Closing Disclosure)

2. *Closing Information.* Determine whether all fields required by 12 CFR 1026.38(a)(3) are complete and accurate:

   a. *Date Issued.* Indicating the date disclosures are delivered (12 CFR 1026.38(a)(3)(i));

   b. *Closing Date* (12 CFR 1026.38(a)(3)(ii));

   c. *Disbursement Date* (12 CFR 1026.38(a)(3)(iii));

   d. *Settlement Agent* (12 CFR 1026.38(a)(3)(iv));

   e. *File #.* Disclosing the identification number assigned to the transaction by the settlement agent (12 CFR 1026.38(a)(3)(v));

   f. *Property.* The address or location of the property as disclosed in the Loan Estimate (12 CFR 1026.38(a)(3)(vi)); and

g. *Sale Price.* For transactions where there is a seller, the sale price, labeled "Sale Price", and where there is no seller, the appraised property value, labeled "Appraised Prop. Value" (12 CFR 1026.38(a)(3)(vii)(A)-(B)).

NOTE: If the creditor has not obtained an appraisal, the creditor may disclose the estimated value of the property, using the label "Estimated Prop. Value" (Comment 38. (a)(3)(vii)-1).

## Transaction Information – 12 CFR 1026.38(a)(4) (Page 1 of the Closing Disclosure)

3. *Transaction information.* Determine whether all fields required by 12 CFR 1026.38(a)(4) are complete and accurate:

   a. *Borrower.* The consumer's name and mailing address, labeled "Borrower" (12 CFR 1026.38(a)(4)(i));

   b. *Seller.* Where applicable, the seller's name and mailing address, labeled "Seller" (12 CFR 1026.38(a)(4)(ii)); and

   c. *Lender.* The name of the creditor making the disclosure, labeled "Lender" (12 CFR 1026.38(a)(4)(iii)).

## Loan Information – 12 CFR 1026.38(a)(5) (Page 1 of the Closing Disclosure)

4. *Loan Information.* Determine whether all fields required by 1026.38(5) are complete and accurate:

   a. *Loan Term* (12 CFR 1026.38(a)(5)(i));

   b. *Purpose* (12 CFR 1026.38(a)(5)(ii));

   c. *Product* (12 CFR 1026.38(a)(5)(iii));

   d. *Loan Type* (12 CFR 1026.38(a)(5)(iv));

   e. *Loan ID #* (12 CFR 1026.38(a)(5)(v)); and

   f. *MIC #.* The case number for any mortgage insurance policy, if required by the creditor (12 CFR 1026.38(a)(5)(vi)).

## Loan Terms – 12 CFR 1026.38(b) (Page 1 of the Closing Disclosure)

5. *Loan Terms.* Determine whether the creditor discloses, in a separate table labeled "Loan Terms", the information required to be disclosed on the Loan Estimate under 12 CFR 1026.37(b) reflecting the terms of the legal obligation at consummation (12 CFR 1026.38(b)).

## Projected Payments – 12 CFR 1026.38(c) (Page 1 of the Closing Disclosure)

6. *Projected Payments.* Determine whether the creditor discloses, in a separate table labeled "Projected Payments," the projected payments or range of payments (in the same manner as required on the Loan Estimate under 12 CFR 1026.37(c)(1) through (4)(v)) reflecting the terms of the legal obligation at consummation. Determine whether the creditor referred to the Escrow Account disclosure required by 12 CFR 1026.38(l)(7) and calculated the estimated escrow payments (12 CFR 1026.38(c)(1)-(2)):

    a. For transactions subject to RESPA, under the escrow account analysis described in Regulation X, 12 CFR 1024.17 (12 CFR 1026.38(c)(1)(i)); and

    b. For transactions not subject to RESPA, either calculated under the escrow account analysis described in Regulation X, 12 CFR 1024.17, or in the manner set forth in 12 CFR 1026.37(c)(5) (12 CFR 1026.38(c)(1)(ii)).

## Costs at Closing – 12 CFR 1026.38(d) (Page 1 of the Closing Disclosure)

7. *Costs at Closing*. Determine whether the creditor discloses:

    a. *Closing Costs.* Disclosed as the sum of the dollar amounts disclosed on page 2 of the Closing Disclosure, pursuant to 12 CFR1026.38(f)(4) (Loan Costs), 1026.38(g)(5) (Other Costs), and 1026.38(h)(3) (Lender Credits), together with a statement referring the consumer to the disclosures on page 2 (12 CFR 1026.38(d)(i)(A)-(E));

    b. *Cash to Close*. Disclosed as the sum of the dollar amounts calculated in accordance with the Calculating Cash to Close table (12 CFR 1026.38(i)(9)(ii)), together with a statement referring the consumer to the disclosures on page 2 (12 CFR 1026.38(d)(ii)(A)-(B)); or

    c. *Cash to close – Alternative for transactions without a seller or for a simultaneous subordinate financing transaction.* Disclosed as the amount calculated according to 12 CFR 1026.38(e)(5)(ii), together with a statement of whether the amount is due from or to the consumer and a reference to the Alternative Calculating Cash to Close table required pursuant to 12 CFR 1026.38(e) (12 CFR 1026.38(d)(2)(i)-(iii)).

## Closing Cost Details: Loan Costs – 12 CFR 1026.38(f) (Page 2 of the Closing Disclosure)

8. *Loan Costs.* Determine whether the creditor disclosed all costs associated with the transaction, with columns stating whether the charge was borrower-paid at or before closing, seller-paid at or before closing, or paid by others, under the following subheadings:

a. *Origination Charges.* Itemized amounts paid for charges disclosed on the Loan Estimate (12 CFR 1026.37(f)(1)) and the total of Borrower-Paid amounts paid at or before closing, together with:

   i. The compensation paid by the creditor to a third-party loan originator; and

   ii. The name of the third-party loan originator receiving payment (12 CFR 1026.38(f)(1)).

b. *Services Borrower Did Not Shop For.* Itemized costs for each settlement service the creditor required but did not allow the consumer to shop for, with name of recipient, amount, and total costs designated Borrower-Paid at or before closing. Items listed in the Loan Estimate (12 CFR 1026.37(f)(3)) are disclosed here if the consumer was provided a written list of settlement service providers under 12 CFR 1026.19(e)(1)(vi)(C), and the consumer selected a settlement service provider from that written list (12 CFR 1026.38(f)(2));

c. *Services Borrower Did Shop For.* Itemized costs for each service required by the creditor, that the consumer shopped for in accordance with 12 CFR 1026.19(e)(1)(vi)(A), with the amount, the name of recipient, and the total costs designated as Borrower-Paid at or before closing. If these items were disclosed on the Loan Estimate pursuant to 12 CFR 1026.37(f)(3), they are disclosed here if the consumer was provided a written list of settlement service providers and did not select a settlement service provider from that written list (12 CFR 1026.38(f)(3));

d. *Total Loan Costs (Borrower-Paid).* The sum of the amounts disclosed under 12 CFR 1026.38(f)(5) as Borrower-Paid for the origination charge, services the borrower did not shop for, and services the borrower did shop for (12 CFR 1026.38(f)(4)); and

e. *Loan Costs Subtotals.* Calculation of the total borrower-paid costs at or before closing, showing each subtotal for the origination charge, services the borrower did not shop for, and services the borrower did shop for (12 CFR 1026.38(f)(5)).

## Closing Cost Details: Other Costs – 12 CFR 1026.38(g) (Page 2 of the Closing Disclosure)

9. *Other Costs.* Determine whether the creditor disclosed all costs associated with the transaction (other than those disclosed in the "Loan Costs" table) with columns stating whether the charge was borrower-paid at or before closing, seller-paid at or before closing, or paid by others, including:

   a. *Taxes and Other Government Fees.* All taxes and government fees to be paid by the borrower at or before closing, including recording fees and transfer taxes, accurately itemized. Determine that the itemized transfer tax is accompanied by the name of the government entity assessing the transfer tax (12 CFR 1026.38(g)(1)(i)-(ii));

NOTE: For additional guidance on taxes and other government fees, *see* Comments 37(g)(1)-1, -2, -3, and -4).

b. *Prepaids.* Accurately itemized prepaid charges described in the borrower's Loan Estimate as required by 12 CFR 1026.37(g)(2); the name of the person ultimately receiving the prepaid payment or the government entity assessing the property tax charged; and the total of all amounts designated as Borrower-Paid at or before closing. If prepaid interest is not collected for any period between closing and the date from which interest will be collected with the first monthly payment, then zero dollars are disclosed (12 CFR 1026.38(g)(2));

c. *Initial Escrow Payment at Closing.* Accurate itemizations of each escrow amount required at closing as described on the borrower's Loan Estimate pursuant to 12 CFR 1026.37(g)(3) (e.g., homeowner's insurance, mortgage insurance, property taxes, etc.); applicable aggregate adjustments pursuant to 12 CFR 1024.17(d)(2); and the total of all amounts designated as Borrower-Paid at or before closing (12 CFR 1026.38(g)(3));

d. *Other.* All charges, accurately itemized, for services required or related to the borrower's transaction that are in addition to the charges disclosed in the Loan Costs table (12 CFR 1026.38(f)) and in the Other Costs table (12 CFR 1026.38(g)(1)-(3)), for services required or obtained in the real estate closing by the consumer, the seller, or other party and the name of the person ultimately receiving the payment; and the total of all such itemized amounts that are designated Borrower-Paid at or before closing, with the applicable designations for items that are optional or are components of title insurance services (12 CFR 1026.38(g)(4)(i)-(ii));

e. *Total Other Costs (Borrower-Paid).* Accurately totaled and disclosed sum of all amounts disclosed as Borrower-Paid (12 CFR 1026.38(g)(5)); and

f. *Other Costs Subtotals.* Accurately added individual subtotals in the "Closing Cost Details – Other Costs" table disclosed under 12 CFR 1026.38(g)(1)-(4) to produce the total (12 CFR 1026.38(g)(6)).

## Closing Cost Details: Total Closing Costs – 12 CFR 1026.38(h) (Page 2 of the Closing Disclosure)

10. *Total Closing Costs (Borrower-Paid).* Determine whether the creditor:

a. Follows the description, labeling, and ordering requirements for this table (12 CFR 1026.38(h)(4)); and

b. Accurately discloses the following closing costs totals:

i. *Total Closing Costs (Borrower-Paid).* The sum of subtotals for Closing Costs (12 CFR 1026.38(h)(2)) and Lender Credits (12 CFR 1026.38(h)(3)) (i.e., the following two items in this list) (12 CFR 1026.38(h)(1));

ii. *Closing Costs Subtotals.* Consisting of the sum of "Loan Cost Subtotals" (12 CFR 1026.38(f)(5) and the "Other Costs Subtotals" (12 CFR 1026.38(g)(6)), designated as Borrower-Paid at or before closing; and the sum of costs paid at and before closing by the seller or other parties (as disclosed pursuant to 12 CFR 1026.38(f) and (g)) (12 CFR 1026.38(h)(2)); and

iii. *Lender Credits.* For general credits from the creditor for closing costs (as described in 12 CFR 1026.37(g)(6)(ii), shown as a negative number, and designated as Borrower-Paid at closing (12 CFR 1026.38(h)(3)).

NOTES:

- Credits that are for specific charges should be reflected in the Paid by Others column in the Closing Cost Details table (with a notation of "(L)" for lender permitted) under 12 CFR 1026.38(f) and (g) (Comment 38(h)(3)-1).
- If a refund is provided pursuant to 12 CFR 1026.19(f)(2)(v), determine whether the creditor has provided a statement explaining that the refund (the amount described in the Loan Estimate under 12 CFR 1026.37(g)(6)(ii)) includes a credit for the amount that exceeds the limitations on increases in closing costs under 12 CFR 1026.19(e)(3), and the amount of such credit (Comment 38(h)(3)-2).

## Calculating Cash to Close – 12 CFR 1026.38(i) (Page 3 of the Closing Disclosure)

11. *Calculating Cash to Close.* Determine whether the creditor, for each of the following items, accurately includes the amount from the most recent Loan Estimate provided to the consumer, compared with the amount disclosed in the "Final" column, and provides the necessary answer to the question "Did This Change?" (with items in the latter column disclosed more prominently than other disclosures) (12 CFR 1026.38(i)(1)(i)-(iii)):

    a. *Total Closing Costs.* The Total Closing Costs on the Calculating Cash to Close table of the most recent Loan Estimate disclosed under 12 CFR 1026.37(h)(1)(i) compared with the final "Total Closing Costs" disclosed under 12 CFR 1026.38(h)(1), and:

    i. If the amounts are different (unless due to rounding), the creditor has provided (12 CFR 1026.38(i)(1)(i)-(ii)):

    A. A statement of that fact (12 CFR 1026.38(i)(1)(iii)(A)(*1*));

    B. If the difference in the "Total Closing Costs" is attributable to differences in itemized charges that are included in either or both subtotals, a statement that the consumer should see the Total Loan Costs (under 12 CFR 1026.38(f)(4)) and

Total Other Costs (under 12 CFR 1026.38(g)(5)) subtotals (together with references to such disclosures), as applicable (12 CFR 1026.38(i)(1)(A)(*2*)); and

C. If the increase exceeds the limitations on increases in closing costs under 12 CFR 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 12 CFR 1026.19(f)(2)(v), a statement directing the consumer to the disclosure required under 12 CFR 1026.38(h)(3), or, if a principal reduction is used to provide the refund, a statement directing the consumer to the principal reduction disclosure under 12 CFR 1026.38(j)(1)(v). The dollar amount must equal the sum total of all excesses of the limitations on increases in closing costs under 12 CFR 1026.19(e)(3), taking into account the different methods of calculating excesses of the limitations on increases in closing costs under 12 CFR 1026.19(e)(3)(i) and (ii) (12 CFR 1026.38(i)(1)(iii)(A)(3)).

ii. If the amount disclosed under 12 CFR 1026.38(i)(1)(ii) (i.e., amount in the Final column) is equal to the amount disclosed under 12 CFR 1026.38(i)(1)(i) (i.e., amount copied over from the most recent Loan Estimate), a statement of that fact (12 CFR 1026.38(i)(1)(iii)(B)).

b. *Closing Costs Paid Before Closing.* Under the subheading "Loan Estimate," the dollar amount "$0," compared with the final amount of "Total Closing Costs" disclosed under 12 CFR 1026.38(h)(2) and designated as Borrower-Paid before closing, stated as a negative number, and (12 CFR 1026.38(i)(2)(i)-(iii)):

i. If these amounts are different (unless the difference is due to rounding), the creditor has provided a statement of that fact, along with a statement that the consumer paid such amounts prior to consummation of the transaction (12 CFR 1026.38(i)(2)(iii)(A)); or if the amount disclosed under 12 CFR 1026.38(i)(2)(ii) (i.e., amount in the Final column) is equal to the amount disclosed under 12 CFR 1026.38(i)(2)(i) (i.e., zero dollars), a statement of that fact (12 CFR 1026.38(i)(2)(iii)(B)).

c. *Closing Costs Financed (Paid from your Loan Amount).* Under the subheading "Loan Estimate," the amount disclosed on Calculating Cash to Close table on the most recent Loan Estimate under 12 CFR 1026.37(h)(1)(ii), compared with the actual amount of the closing costs that are to be paid out of loan proceeds, if any, stated as a negative number, under the subheading "Final" (12 CFR 1026.38(i)(3)(i)-(iii)), and:

i. If the amounts are different (unless the difference is due to rounding), a statement of that fact, along with a statement that the consumer included the closing costs in the loan amount, which increased the loan amount (12 CFR 1026.38(i)(3)(iii)(A)); or

ii. If the amount disclosed under 12 CFR 1026.38(i)(3)(ii) (i.e., amount in the Final column) is equal to the amount disclosed pursuant to 12 CFR 1026.38(i)(3)(i)

(i.e., amount copied over from the most recent Loan Estimate), a statement of that fact (12 CFR 1026.38(i)(3)(iii)(B)).

NOTE: *Simultaneous subordinate financing.* For simultaneous subordinate financing transactions, regardless of whether a sale price was disclosed under 12 CFR 106.38(j)(1)(ii), no sale price will be included in the closing costs financed calculation as payment to third parties (Comment 38(i)(3)-1.ii).

d. *Down Payment/Funds from Borrower* (12 CFR 1026.38(i)(4)).

i. Under the subheading "Loan Estimate," the amount disclosed on the most recent Loan Estimate in the Calculating Cash to Close table under 12 CFR 1026.37(h)(1)(iii), labeled "Down Payment/Funds from Borrower" (12 CFR 1026.38(i)(4)(i)).

ii. Under the subheading "Final" (12 CFR 1026.38(i)(4)(ii)):

(A)

(1) In a purchase transaction as defined in 12 CFR 1026.37(a)(9)(i), the amount determined by subtracting the sum of the loan amount disclosed under 12 CFR 1026.38(b) and any amount of existing loans assumed or taken subject to that is disclosed under 12 CFR 1026.38(j)(2)(iv) from the sale price of the property disclosed under 12 CFR 1026.38(a)(3)(vii)(A), labeled "Down Payment/Funds from Borrower," except as required by 12 CFR 1026.38(i)(4)(ii)(A)(2);

(2) In a purchase transaction that is a simultaneous subordinate financing or that involves improvements to be made on the property, or when the sum of the loan amount disclosed under 12 CFR 1026.38(b) and any amount of existing loans assumed or taken subject to that is disclosed under 12 CFR 1026.38(j)(2)(iv) exceeds the sale price disclosed under 12 CFR 1026.38(a)(3)(vii)(A), the amount of funds from the consumer as determined in accordance with 12 CFR 1026.38(i)(6)(iv), labeled "Down Payment/Funds from Borrower."

(B) In all transactions not subject to 12 CFR 1026.38(i)(4)(ii)(A), the amount of funds from the consumer as determined in accordance with 12 CFR 1026.38(i)(6)(iv), labeled "Down Payment/Funds from Borrower".

iii Under the subheading "Did this change?", disclosed more prominently than the other disclosures under (12 CFR 1026.38(i)(4)):

A. If the amount disclosed under 12 CFR 1026.38(i)(4)(ii) (i.e., amount in the Final column) is different, unless due to rounding, from the

amount disclosed under 12 CFR 1026.38(i)(4)(i) (i.e., amount copied over from the most recent Loan Estimate), a statement of that fact, along with a statement that the consumer increased or decreased this payment and can see further details in the "Summaries of Transactions" table (12 CFR 1026.38(i)(4)(iii)(A)); or

B. If the amount disclosed under 12 CFR 1026.38(i)(4)(ii) is equal to the amount disclosed under 12 CFR 1026.38(i)(4)(i), a statement of that fact (12 CFR 1026.38(i)(4)(iii)(B)).

e. *Deposit* (12 CFR 1026.38(i)(5)).

i. Under the subheading "Loan Estimate", the Deposit amount disclosed on the Calculating Cash to Close table on the most recent Loan Estimate under 12 CFR 1026.37(h)(1)(iv), labeled "Deposit";

ii. Under the subheading "Final", on the Summaries of Transactions table on the Closing Document, the amount under 12 CFR 1026.38(j)(2)(ii), stated as a negative number; and

iii. Under the subheading "Did this Change?", disclosed more prominently than the other disclosures under 12 CFR 1026.38(i)(5):

A. If the amounts are different, unless due to rounding, a statement of that fact, along with a statement that the consumer increased or decreased this payment, as applicable, and that the consumer should see the details disclosed under 12 CFR 1026.38(j)(2)(ii) (i.e., in Section L in the Summaries of Transactions table); or

B. If the amount disclosed under 12 CFR 1026.38(i)(5)(ii) (i.e., amount in the Final column) is equal to the amount disclosed under 12 CFR 1026.38(i)(5)(i) (i.e., amount copied over from the most recent Loan Estimate), a statement of that fact (12 CFR 1026.38(i)(5)(iii)(B)).

NOTE: Under 12 CFR 1026.37(h)(1)(iv), for all transactions other than a purchase transaction as defined in 12 CFR 1026.37(a)(9)(i), the amount required to be disclosed is zero dollars. In a purchase transaction in which no deposit is paid in connection with the transaction, the amount to be disclosed is zero dollars (Comment 38(i)(5)-1).

f. *Funds for Borrower* (12 CFR 1026.38(i)(6)).

i. Under the subheading "Loan Estimate", the amount disclosed on the Calculating Cash to Close table on the most recent Loan Estimate under 12 CFR 1026.37(h)(1)(v), labeled "Funds for Borrower".

ii. Under the subheading "Final", the "Funds for Borrower", labeled using that term, as determined in accordance with (12 CFR 1026.38(i)(6)(iv)).

NOTES:

- The "Final" amount of "Funds for Borrower" to be disclosed under 12 CFR 1026.38(i)(6)(ii) is calculated pursuant to 12 CFR 1026.38(i)(6)(iv) by subtracting the sum of the loan amount disclosed under 12 CFR 1026.38(b) and any amount of existing loans assumed or taken subject to that is disclosed under 12 CFR 1026.38(j)(2)(iv) (excluding any closing costs financed disclosed under 12 CFR 1026.38(i)(3)(ii)) from the total amount of all existing debt being satisfied in the transaction. The "Final" amount is disclosed either as a negative number or as zero dollars, depending on the result of the calculation, and is an amount to be disbursed to the consumer or a designee of the consumer at consummation, if any (Comment 38(i)(6)(ii)-1).
- When the down payment and funds from the borrower are determined in accordance with 12 CFR 1026.38(i)(4)(ii)(A)(*1*), the amount disclosed as "Funds for Borrower" is zero dollars (Comment 38(i)(6)(ii)-2).

iii. Under the subheading "Did this Change?", disclosed more prominently than the other disclosures under (12 CFR 1026.38(i)(6): Changes between the "Loan Estimate" and "Final" column amounts are noted in the "Did this Change?" column in accordance with the requirements of 12 CFR 1026.38(i)(6)(iii). If the amounts are different, unless due to rounding, a statement of that fact, along with a statement that the consumer's available funds from the loan amount have increased or decreased, as applicable (12 CFR 1026.38(i)(6)(iii)(A)); or

A. If the amount disclosed under 12 CFR 1026.38(i)(6)(ii) (i.e., amount in the Final column) is equal to the amount disclosed under 12 CFR 1026.38(i)(6)(i) (i.e., amount copied over from the most recent Loan Estimate), a statement of that fact (12 CFR 1026.38(i)(6)(iii)(B)).

g. *Seller Credits* (12 CFR 1026.38(i)(7)).

i. Under the subheading "Loan Estimate", the amount disclosed on the Calculating Cash to Close table on the most recent Loan Estimate under 12 CFR 1026.37(h)(1)(vi), labeled "Seller Credits".

ii. Under the subheading "Final", the amount disclosed pursuant to 12 CFR 1026.38(j)(2)(v), stated as a negative number.

iii. Under the subheading "Did this Change?", disclosed more prominently than the other disclosures under 12 CFR 1026.38(i)(7):

A. If the amounts are different, unless due to rounding, determine whether the creditor discloses a statement that the consumer should see the details disclosed either: (1) under 12 CFR 1026.38(j)(2)(v) in the summaries of transactions table and the seller-paid column of the closing cost details table under 12 CFR 1026.38(f) or (g); or (2) if the difference is attributable only to general seller credits disclosed under 12 CFR 1026.38(j)(2)(v), or only to specific seller credits disclosed in the seller-paid column of the closing cost details table under 12 CFR 1026.38(f) or (g), under only the applicable provision (12 CFR 1026.38(i)(7)(iii)(A)(1) and (2)); or

B. If the amount disclosed under 12 CFR 1026.38(i)(7)(ii) (i.e., amount in the Final column) is equal to the amount disclosed under 12 CFR 1026.38(i)(7)(i) (i.e., amount copied over from the most recent Loan Estimate), a statement of that fact (12 CFR 1026.38(i)(7)(iii)(B)).

h. *Adjustments and Other Credits.* Under the subheading "Loan Estimate," the amount disclosed on the Calculating Cash to Close table on the most recent Loan Estimate under 12 CFR 1026.37(h)(1)(vii), compared with the total of the amounts disclosed under 12 CFR 1026.38(j)(1)(iii) and (v) (to the extent these amounts were not included in the calculation required by 12 CFR 1026.38(i)(4) or (6) and 12 CFR 1026.38(j)(1)(vi) through (x) (*See* exam procedures below on Itemization of Amounts Due From Borrower) reduced by the total of the amounts disclosed under 12 CFR 1026.38(j)(2)(vi) through (xi) (*See* exam procedures below on Itemization of Amounts Already Paid By or On Behalf of Borrower) (12 CFR 1026.38(i)(8)(i)-(ii)).

NOTE: If the calculation yields a negative number, the amount is disclosed as a negative number (Comment 38(i)(8)(ii)-1).

i. If the amounts are different, unless due to rounding, statement of that fact, along with a statement that the consumer should see the details disclosed under 12 CFR 1026.38(j)(1)(iii) and (v) through (x) and (j)(2)(vi) through (xi) (i.e., in Sections K and L in the Summaries of Transactions table) (12 CFR 1026.38(i)(8)(iii)(A)); or

ii. If the amount disclosed under 12 CFR 1026.38(i)(8)(ii) (i.e., amount in the Final column) is equal to the amount disclosed under 12 CFR 1026.38(i)(8)(i) (i.e., amount copied over from the most recent Loan Estimate), a statement of that fact (12 CFR 1026.38(i)(8)(iii)(B)).

i. *Cash to Close.* Under the subheading "Loan Estimate," the amount disclosed on the Calculating Cash to Close table on the most recent Loan Estimate under 12 CFR 1026.37(h)(1)(viii), compared with the "Final" amount listed pursuant to 12 CFR 1026.38(i)(1) through (i)(8), and each disclosed more prominently than the other disclosures in this section (12 CFR 1026.38(i)(9)(i)-(ii)).

## Alternative Cash to Close Table for Transactions Without a Seller or for Simultaneous Subordinate Financing – 12 CFR 1026.38(e) (Page 3 of the Closing Disclosure)

12. Determine whether the creditor properly uses the optional Alternative Cash to Close table (12 CFR 1026.38(e)).

    NOTE: This table may be used only in a transaction without a seller or for a simultaneous subordinate financing transaction (Comment 38(e)-1). In a purchase transaction, the alternative disclosure may be used for the simultaneous subordinate financing Closing Disclosure only if the first-lien Closing Disclosure records the entirety of the seller's transaction. The use of this alternative calculating cash to close table for transactions without a seller or for simultaneous subordinate transactions is required if the Loan Estimate provided to the consumer disclosed the optional alternative table under 12 CR 1026.37(h)(2) (*See* Comments 38(e)-1, 38(j)-3, 38(k)(2)(vii)-1, and 38(t)(5)(vii)(B)-1 and -2 for further information regarding related disclosure requirements).

13. Determine whether the table is disclosed under the heading "Calculating Cash to Close," together with the statement "Use this table to see what has changed from your Loan Estimate" (12 CFR 1026.38(e)).

14. Determine whether the table includes:

    a. Loan Amount. Labeled "Loan Amount":
       i. Under the subheading "Loan Estimate," the loan amount disclosed on the most recent Loan Estimate under 12 CFR 1026.37(b)(1);
       ii. Under the subheading "Final," the loan amount disclosed under 12 CFR 1026.38(b); and
       iii. Disclosed more prominently than other disclosures in this section, under the subheading "Did this change?":
          A. If the amounts are different (unless due to rounding), a statement of that fact along with a statement of whether this amount increased or decreased.
          B. If there is no change, a statement of that fact (12 CFR 1026.38(e)(1)(i)-(iii)).

    b. *Total Closing Costs.* Labeled "Total Closing Costs" (12 CFR 1026.38(e)(2)):

       i. Under the subheading "Loan Estimate," the amount disclosed on the most recent Loan Estimate under 12 CFR 1026.37(h)(2)(ii);

       ii. Under the subheading "Final," the final Total Closing Costs disclosed under 12 CFR 1026.38(h)(1), disclosed as a negative number if the amount disclosed under 12 CFR 1026.38(h)(1) is a positive number, and disclosed as a positive number if the amount disclosed under 12 CFR 1026.38(h)(1) is a negative number; and

iii. Disclosed more prominently than other disclosures, with the question "Did this change?":

A. If the amounts are different (unless due to rounding):

i. A statement of that fact (12 CFR 1026.38(e)(2)(iii)(A)(*1*));

ii. If there is a change because of differences in itemized charges that are included in either or both subtotals, a statement that the consumer should look at the Total Loan Costs and Total Other Costs subtotals disclosed below, together with references to those disclosures (12 CFR 1026.38(e)(2)(iii)(A)(2)); and

iii. If the increase exceeds the legal limits for increases in closing costs under 12 CFR 1026.19(e)(3), a statement of that fact, the dollar amount of the excess, and, if any refund is provided, a reference to the disclosure required for including the refund in a lender credit under 12 CFR 1026.38(h)(3), or if applicable, a statement directing the consumer to the principal reduction disclosure under 12 CFR 1026.38(t)(5)(vii)(B) (12 CFR 1026.38(e)(2)(iii)(A)(3)).

B. If there is no change and the amount disclosed under 12 CFR 1026.38(e)(2)(i) is equal to the amount disclosed under 12 CFR 1026.38(e)(2)(ii), a statement of that fact.

c. *Closing Costs Paid before Closing.* Labeled "Closing Costs Paid Before Closing" (12 CFR 1026.38(e)(3)):

i. Under the subheading "Loan Estimate", the amount of zero dollars;

ii. Under the subheading "Final", any amount designated as Borrower-Paid before closing under 12 CFR 1026.38(h)(2), disclosed as a positive number;

iii. Disclosed more prominently than other disclosures, under the subheading "Did This Change?" (12 CFR 1026.38(e)(3)):

A. If the amount disclosed under 12 CFR 1026.38(e)(3)(ii) is different from the amount disclosed under 12 CFR 1026.38(e)(3)(i), unless due to rounding, a statement of that fact along with a statement that the consumer paid such amounts prior to consummation (12 CFR 1026.38(e)(3)(iii)(A)); or

B. If the amount disclosed under 12 CFR 1026.38(e)(3)(ii) is equal to the amount disclosed under 12 CFR 1026.38(e)(3)(i), a statement of that fact (12 CFR 1026.38(e)(3)(iii)(B)).

d. *Total Payoffs and Payments.* Labeled "Total Payoffs and Payments" (12 CFR 1026.38(e)(4)).

i. Under the subheading "Loan Estimate", the amount disclosed on the most recent Loan Estimate under (12 CFR 1026.37(h)(2)(iii));

ii. Under the subheading "Final," the total amount of payoffs and payments made to third parties not otherwise disclosed under 12 CFR 1026.38(t)(5)(vii)(B), to the extent known, disclosed as a negative number if the total amount disclosed under 12 CFR 1026.38(t)(5)(vii)(B) is a positive number, and disclosed as a positive number if the total amount disclosed under 12 CFR 1026.38(t)(5)(vii)(B) is a negative number; and

iii. Determine whether these disclosures are disclosed more prominently than other disclosures under this paragraph under the subheading "Did This Change?":

A. If the amount disclosed under 12 CFR 1026.38(e)(4)(ii) is different from the amount disclosed under 12 CFR 1026.38(e)(4)(i) (unless the difference is due to rounding), a statement of that fact, along with a reference to the "Payoffs and Payments" table that may be added pursuant to 12 CFR 1026.38(t)(5)(viii)(B) (12 CFR 1026.38(e)(4)); or

B. If the amount disclosed under 12 CFR 1026.38(e)(4)(ii) is equal to the amount disclosed under 12 CFR 1026.38(e)(4)(i), a statement of that fact (12 CFR 1026.38(e)(4)(iii)(B)).

e. *Cash to or from consumer.* Labeled "Cash to Close" (12 CFR 1026.38(e)(5)):

i. Under the subheading "Loan Estimate", a statement of whether the estimated amount is due from or to the consumer, as disclosed under 12 CFR 1026.37(h)(2)(iv) on the most recent Loan Estimate; and

ii. Under the subheading "Final", a disclosure of the final amount due from or to the consumer, disclosed as a positive number (12 CFR 1026.38(e)(5)(i)-(ii)).

f. *Closing Costs Financed (Paid from your Loan Amount).* Labeled "Closing Costs Financed (Paid from your Loan Amount)". Disclosed as the sum of the amounts disclosed under 12 CFR 1026.38(e)(1)(ii) and (e)(4)(ii) (i.e., the amounts in the Final Column of the Loan Amount and Total Payoffs and Payments). However, the amount is disclosed only to the extent that the sum is greater than zero and less than or equal to the sum disclosed under 12 CFR 1026.38(h)(1) (Total Closing Costs) minus the sum disclosed under 12 CFR 1026.38(h)(2) designated as Borrower-Paid before closing (12 CFR 1026.38(e)(6)).

## Summaries of Transactions: Borrower's Transaction – 12 CFR 1026.38(j) (Page 3 of the Closing Disclosure)

## Borrower's Transaction – Itemization of Amounts Due from Borrower at Closing (Page 3 of the Closing Disclosure)

15. Due from Borrower at Closing. Determine whether the creditor accurately discloses the total amount due from the consumer at closing, calculated as the sum of items required to be disclosed by 12 CFR 1026.38(j)(1)(ii) through (x) (i.e., the items described in this procedure), excluding items paid from funds other than closing funds as described in 12 CFR 1026.38(j)(4)(i). Determine whether the creditor completes the summary of the borrower's transaction as follows (12 CFR 1026.38(j)(1)):

    a. *Sale Price of Property.* The amount of the contract sales price of the property being sold in a purchase real estate transaction, excluding the price of any tangible personal property if the consumer and seller have agreed to a separate price for such items (12 CFR 1026.38(j)(1)(ii));

    NOTE: On the simultaneous subordinate financing Closing Disclosure, no contract sales price is disclosed under 1026.38(j)(1)(ii) (Comment 38(j)(1)(ii)-1).

    b. *Sale Price of Any Personal Property Included in Sale.* The amount of the sales price of any tangible personal property excluded from the contract sales price pursuant to 12 CFR 1026.38(j)(1)(ii) (12 CFR 1026.38(j)(1)(iii));

    c. *Closing Costs Paid at Closing.* The total amount of closing costs disclosed that are designated Borrower-Paid at closing, calculated pursuant to 12 CFR 1026.38(h)(2) and (h)(3) (*See* procedure above regarding Closing Costs Subtotals (12 CFR 1026.38(j)(1)(iv));

    d. *Contractual Adjustments and Other Consumer Charges.* A description and the amount of any additional items that the seller has paid prior to the real estate closing, but reimbursed by the consumer at the real estate closing, and a description and the amount of any other items owed by the consumer at the real estate closing not otherwise disclosed pursuant to 12 CFR 1026.38(f), (g), or (j) (12 CFR 1026.38(j)(1)(v));

    NOTES:

    - *Contractual Adjustments.* This section requires disclosure of amounts not otherwise disclosed under 12 CFR 1026.38(j) that are owed to the seller but payable to the consumer after the transaction closing (Comment 38(j)(1)(v)-1).

    - *Other Consumer Charges.* The amounts disclosed under 12 CFR 1026.38(j)(1)(v) that are for charges owed by the consumer at the real estate closing not otherwise disclosed under 12 CFR 1026.38(f), (g), and (j) will not have a corresponding credit in the summary of the seller's transaction under 12 CFR 1026.38(k)(1)(iv) (Comment 38(j)(1)(v)-2).

- *Simultaneous Subordinate Financing Closing Disclosure.* On the simultaneous subordinate financing Closing Disclosure, the proceeds of the subordinate financing applied to the first-lien transaction may be included in the summaries of transactions table under 12 CFR 1026.38(j)(1)(v). *See also* Comments 37(h)(1)(v)-2 and 37(h)(1)(vii)-6 for an explanation of how to disclose on the Loan Estimate amounts that will be disclosed on the Closing Disclosure under 12 CFR 1026.38(j)(1)(v) (Comment 38(j)(1)(v)-3).

e. The description "Adjustments for Items Paid by Seller in Advance" (12 CFR 1026.38(j)(1)(vi));

f. *City/Town Taxes.* The prorated amount of any prepaid taxes due from the consumer to reimburse the seller at the real estate closing, and the time period corresponding to that amount (12 CFR 1026.38(j)(1)(vii));

g. *County Taxes.* The prorated amount of any prepaid taxes due from the consumer to reimburse the seller at the real estate closing, and the time period corresponding to that amount (12 CFR 1026.38(j)(1)(viii));

h. *Assessments.* The prorated amount of any prepaid assessments due from the consumer to reimburse the seller at the real estate closing, and the time period corresponding to that amount (12 CFR 1026.38(j)(1)(ix)); and

i. A description and the amount of any additional items paid by the seller prior to the real estate closing that are due from the consumer at the real estate closing (12 CFR 1026.38(j)(1)(x)).

## Borrower's Transaction – Itemization of Amounts Paid Already by or on Behalf of Borrower at Closing (Page 3 of the Closing Disclosure)

16. *Paid Already by or on Behalf of Borrower at Closing.* Determine whether the creditor accurately discloses the sum of the amounts disclosed in 12 CFR 1026.38(j)(2)(ii) through (xi) (i.e., the items described in this procedure), excluding items paid from funds other than closing funds as described in 12 CFR 1026.38(j)(4)(i). Determine whether the creditor accurately completes the summary of borrower's transaction as follows (12 CFR 1026.38(j)(2)(i)):

    a. *Deposit.* Any amount that is paid to the seller or held in trust or escrow by an attorney or other party under the terms of the agreement for the sale of the property (12 CFR 1026.38(j)(2)(ii));

    b. *Loan Amount.* The amount of the consumer's new loan amount or first user loan as disclosed pursuant to 12 CFR 1026.38(b) (12 CFR 1026.38(j)(2)(iii));

c. *Existing Loan(s) Assumed or Taken Subject To*. The amount of any existing loans that the consumer is assuming, or any loans subject to which the consumer is talking title to the property (12 CFR 1026.38(j)(2)(iv));

d. *Seller Credit.* The total amount of money that the seller will provide at the real estate closing as a lump sum not otherwise itemized to pay for loan costs as determined by 12 CFR 1026.38(f) and other costs as determined by 12 CFR 1026.38(g) and any other obligations of the seller to be paid directly to the consumer (12 CFR 1026.38(j)(2)(v));

e. *Other Credits.* A description and amount of other items paid by or on behalf of the consumer and not otherwise disclosed pursuant to 12 CFR 1026.38(f), (g), (h), and (j)(2) labeled "Other Credits"; and amounts and descriptions of any additional amounts owed to the consumer but payable to the seller before the real estate closing, under the heading "Adjustments" (12 CFR 1026.38(j)(2)(vi));

NOTE: Any financing arrangements or other new loans not otherwise disclosed under 1026.38(j)(2)(iii) or (iv) must be disclosed under 12 CFR 1026.38(j)(2)(vi) on the first-lien Closing Disclosure. The principal amount of subordinate financing is disclosed on the summaries of transactions table for the borrower's transaction either on line 04 under the subheading "L. Paid Already by or on Behalf of Borrower at Closing," or under the subheading "Other Credits" (Comment 38(j)(2)(vi)-2).

f. The description "Adjustments for Items Unpaid by Seller" (12 CFR 1026.38(j)(2)(vii));

g. *City/Town Taxes.* The prorated amount of any unpaid taxes due from the seller to reimburse the consumer at the real estate closing, and the time period corresponding to that amount (12 CFR 1026.38(j)(2)(viii));

h. *County Taxes.* The prorated amount of any unpaid taxes due from the seller to reimburse the consumer at the real estate closing, and the time period corresponding to that amount (12 CFR 1026.38(j)(2)(ix);

i. *Assessments.* The prorated amount of any unpaid assessments due from the seller to reimburse the consumer at the real estate closing, and the time period corresponding that amount (12 CFR 1026.38(j)(2)(x)); and

j. A description and the amount of any additional items that have not yet been paid and that the consumer is expected to pay after the real estate closing but that are attributable in part to a period of time prior to the real estate closing (12 CFR 1026.38(j)(2)(xi)).

### Borrower's Transaction – Calculation of Borrower's Transaction (Page 3 of the Closing Disclosure)

17. *Calculation.* Determine whether the creditor accurately discloses the total amount due from, and already paid by, the consumer at closing by the following calculation (12 CFR 1026.38(j)(3)):

    a. *Total Due from Borrower at Closing*. The amount disclosed in the Closing Disclosure, on the line captioned "Due from Borrower at Closing" (12 CFR 1026.38(j)(3)(i));

    b. *Total Paid Already by or on Behalf of Borrower at Closing.* The amount disclosed in the Closing Disclosure, on the line captioned "Paid Already by or on Behalf of Borrower at Closing", if any, disclosed as a negative number (12 CFR 1026.38(j)(3)(ii)); and

    c. *Cash to Close.* A statement that the disclosed amount is due from or to the consumer, and the amount due from or to the consumer at the real estate closing, calculated by the sum of the amounts disclosed as the "Total Due from Borrower at Closing" and "Total Paid Already by or on Behalf of Borrower at Closing" (12 CFR 1026.38(j)(3)(iii)).

18. *Paid Outside of Closing.* Determine whether the creditor discloses costs that are not paid from closing funds but would otherwise be disclosed; describes the funds as "Paid Outside of Closing" or the abbreviation "P.O.C."; and includes the name of the party making the payment (12 CFR 1026.38(j)(4)(i)).

    NOTE: For purposes of 12 CFR 1026.38(j), "closing funds" means funds collected and disbursed at real estate closing (12 CFR 1026.38(j)(4)(ii)).

## Summaries of Transactions: Seller's Transaction – 12 CFR 1026.38(k) (Page 3 of the Closing Disclosure)

## Seller's Transaction – Itemization of Amounts Due to Seller at Closing (Page 3 of the Closing Disclosure)

19. *Due to Seller at Closing.* Determine whether the creditor accurately discloses the total amount due to the seller at the real estate closing, calculated as the sum of items required to be disclosed pursuant to 12 CFR 1026.38(k)(1)(ii) through (ix) (i.e., the items in this procedure), excluding items paid from funds other than closing funds as described in 12 CFR 1026.38(k)(4)(i). Determine whether the creditor accurately completes the summary of seller's transaction as follows (12 CFR 1026.38) (k)(1)(i)):

    a. *Sale Price of Property.* The amount of the contract sales price of the property being sold, excluding the price of any tangible personal property if the consumer and seller have agreed to a separate price for such items (12 CFR 1026.38(k)(1)(ii));

b. *Sale Price of Any Personal Property Included in Sale*. The amount of the sales price of any tangible personal property excluded from the contract sales price pursuant to 12 CFR 1026.38(k)(1)(ii) (12 CFR 1026.38(k)(1)(iii));

c. A description and the amount of other items paid to the seller by the consumer pursuant to the contract of sale or other agreement, such as charges that were not disclosed pursuant to 12 CFR 1026.37 on the Loan Estimate or items paid by the seller prior to the real estate closing but reimbursed by the consumer at the real estate closing (12 CFR 1026.38(k)(1)(iv));

d. The description "Adjustments for Items Paid by Seller in Advance" (12 CFR 1026.38(k)(1)(v));

e. *City/Town Taxes.* The prorated amount of any prepaid taxes due from the consumer to reimburse the seller at the real estate closing, and the time period corresponding to that amount (12 CFR 1026.38(k)(1)(vi);

f. *County Taxes.* The prorated amount of any prepaid taxes due from the consumer to reimburse the seller at the real estate closing, and the time period corresponding to that amount (12 CFR 1026.38(k)(1)(vii));

g. *Assessments.* The prorated amount of any unpaid assessments due from the consumer to reimburse the seller at the real estate closing, and the time period corresponding that amount (12 CFR 1026.38(k)(1)(viii)); and

h. A description and the amount of additional items paid by the seller prior to the real estate closing that are reimbursed by the consumer at the real estate closing (12 CFR 1026.38(k)(1)(ix)).

## Seller's Transaction – Itemization of Amounts Due from Seller at Closing (Page 3 of the Closing Disclosure)

20. *Due from Seller at Closing.* Determine whether the creditor accurately discloses the sum of the amounts disclosed in 12 CFR 1026.38(k)(2)(ii) through 1026.38(k)(2)(xiii) (i.e., the items in this procedure), excluding items paid from funds other than closing funds described in 12 CFR 1026.38(k)(4)(i). Determine whether the creditor accurately completes the summary of the seller's transaction as follows (12 CFR 1026.38(k)(2)(i)):

    a. *Excess Deposit.* The amount of any excess deposit disbursed prior to closing (12 CFR 1026.38(k)(2)(ii));

    b. *Closing Costs Paid at Closing.* The amount of closing costs designated Seller-Paid at closing and disclosed pursuant to 12 CFR 1026.38(h)(2) (12 CFR 1026.38(k)(2)(iii));

    c. *Existing Loan(s) Assumed or Taken Subject To.* The amount of any existing loans assumed or taken subject to by the consumer (12 CFR 1026.38(k)(2)(iv));

d. *Payoff of First Mortgage Loan.* The amount of a first-lien loan secured by the property being sold that will be paid off at closing (12 CFR 1026.38(k)(2)(v));

e. *Payoff of Second Mortgage Loan.* The amount of any loan secured by a second lien on the property that will be paid off as part of the real estate closing (12 CFR 1026.38(k)(2)(vi));

f. *Seller Credit.* The total amount of seller funds to be provided at closing as a lump sum that has not otherwise been itemized to pay for loan costs as determined by 12 CFR 1026.38(f) and other costs as determined by 12 CFR 1026.38(g) and any other obligations of the seller to be paid directly to the consumer (12 CFR 1026.38(k)(2)(vii);

g. A description and amount of all other items to be paid by the seller at closing, including any lien-related payoffs, fees, or obligations (12 CFR 1026.38(k)(2)(viii));

h. The description "Adjustments for Items Unpaid by Seller" (12 CFR 1026.38(k)(2)(ix));

i. *City/Town Taxes.* The prorated amount of unpaid taxes due from the seller to reimburse the consumer at the real estate closing, and the time period corresponding to that amount (12 CFR 1026.38(k)(2)(x);

j. *County Taxes.* The prorated amount of any unpaid taxes due from the seller to the consumer at the real estate closing, and the time period corresponding to that amount (12 CFR 1026.38(k)(2)(xi));

k. *Assessments.* The prorated amount of any unpaid assessments due from the seller to reimburse the consumer at the real estate closing, and the time period corresponding to that amount (12 CFR 1026.38(k)(2)(xii)); and

l. A description and the amount of any additional items that have not yet been paid and that the consumer is expected to pay after the real estate closing but that are attributable in part to a period of time prior to the real estate closing (12 CFR 1026.38(k)(2)(xiii)).

## Seller's Transaction – Calculation of Seller's Transaction (Page 3 of the Closing Disclosure)

21. *Calculation.* Determine whether the creditor accurately discloses the total amount due to and from the seller at closing by the following calculation (12 CFR 1026.38(k)(3)):

    a. *Total Due to Seller at Closing.* The amount disclosed in the Closing Disclosure, on the line captioned "Due to Seller at Closing" (12 CFR 1026.38(k)(3)(i));

b. *Total Due from Seller at Closing.* The amount disclosed in the Closing Disclosure on the line captioned "Due from Seller at Closing," disclosed as a negative number (12 CFR 1026.38(k)(3)(ii));

c. *Cash.* A statement that the disclosed amount is due from or to the seller and the amount due, calculated by the sum of the amounts disclosed as the "Total Due to Seller at Closing" and "Total Due from Seller at Closing" (12 CFR 1026.38(k)(3)(iii)).

## Seller's Transaction – Items Paid Outside of Closing Funds (Page 3 of Closing Disclosure)

22. Determine whether the creditor discloses other costs that are not paid out of closing funds but would otherwise be disclosed in the Summaries of Transactions: Seller's Transaction table; describing the funds as "Paid Outside of Closing" or the abbreviation "P.O.C.," and including the name of the party making the payment (12 CFR 1026.38(k)(4)(i)).

NOTES:

- For purposes of 12 CFR 1026.38(k), "closing funds" means funds collected and disbursed at real estate closing (12 CFR 1026.38(k)(4)(ii)).
- 12 CFR 1026.38(k) does not apply in a transaction where there is no seller, for example, in a refinance transaction, or a transaction with a construction purpose as defined in 12 CFR 1026.37(a)(9)(iii), or a simultaneous subordinate financing purchase transaction if the first-lien Closing Disclosure records the entirety of the seller's transaction (Comment 38(k)-1). If 12 CFR 1026.38(k) applies to a simultaneous subordinate financing transaction, 12 CFR 1026.38(k) is completed based only on the terms and conditions of the simultaneous subordinate financing transaction and no contract sales price is disclosed under 12 CFR 1026.38(k)(1)(ii) on the Closing Disclosure for the simultaneous subordinate financing. (Comment 38(k)(1)-1)

## Payoffs and Payments Table for Transactions Without a Seller or Simultaneous Subordinate Financing Transaction – 12 CFR 1026.38(t)(5)(vii)(B) (Page 3 of the Closing Disclosure)

The following modifications to Form H-25 of Appendix H may be made for a transaction that does not involve a seller or for simultaneous subordinate financing, and for which the alternative tables are disclosed under 12 CFR 1026.38(d)(2) and (e), as illustrated by Form H-25(J).

23. *Payoff and Payments.* For transactions without a seller, determine whether a creditor, using an optional modified Closing Disclosure (as illustrated by Form H-25(J) in Appendix H), has provided alternative tables for Cash to Close, pursuant to 12 CFR 1026.38(d)(2), and for

Calculating Cash to Close pursuant to 12 CFR 1026.38(e), and that the creditor itemizes the amounts of payments made at consummation 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."

NOTE: Funds provided by designees of the consumer may include gift funds, grants, proceeds from loans that satisfy the partial exemption criteria in 12 CFR 1026.3(h), and, on the Closing Disclosure for a simultaneous subordinate financing transaction, contributions from a seller for costs associated with the subordinate financing (Comment 38(t)(5)(vii)(B)-1).

24. *Disclosure of Subordinate Financing*. For a transaction without a seller, or for a simultaneous subordinate financing transaction, if a creditor chose to disclose the alternative tables under 12 CFR 1026.38(d)(2) and (e), determine whether a creditor's modifications to form H-25 of Appendix H, if any, were permissible pursuant to the requirements of 12 CFR 1026.38(t)(5)(vii).

    A. The information required by 12 CFR 1026.38(a)(4)(ii), and 12 CFR 1026.38(f), (g), and (h) with respect to loan costs, other costs, and closing costs paid by the seller, may be deleted (12 CFR 1026.38(t)(5)(vii)(A)).

    B. A table under the master heading "Closing Cost Details" required by 12 CFR 1026.38(f) 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" (12 CFR 1026.38(t)(5)(vii)(B)).

    C. The tables required to be disclosed by 12 CFR 1026.38(j) and (k) may be deleted (12 CFR 1026.38(t)(5)(vii)(C)).

    NOTE: The commentary to 12 CFR 1026.38(t)(5)(vii)(B) provides guidance as follows:

    - *First-lien Closing Disclosure.* On the Closing Disclosure for a first-lien transaction disclosed with the alternative tables pursuant to 12 CFR 1026.38(d)(2) and (e) that also has simultaneous subordinate financing, the proceeds of the subordinate financing are included in the payoff and payments table under 12 CFR 1026.38(t)(5)(vii)(B) by disclosing, as a credit, the principal amount of the subordinate financing, and if the net proceeds of the subordinate financing are less than the principal amount of the subordinate financing, the net proceeds (Comment 38(t)(5)(vii)(B)-2.i).

- *Simultaneous subordinate financing – Closing Disclosure*. On the Closing Disclosure for a simultaneous subordinate financing transaction disclosed with the alternative tables pursuant to 12 CFR 1026.38(d)(2) and (e), the proceeds of the subordinate financing applied to the first-lien transaction may be included in the payoffs and payments table under 12 CFR 1026.38(t)(5)(vii)(B) (Comment 38(t)(5)(vii)(B)-2.ii).

- *Simultaneous subordinate financing – Seller contribution*. If a creditor discloses the alternative tables pursuant 12 CFR 1026.38(d)(2) and (e) on the simultaneous subordinate financing Closing Disclosure, the creditor also discloses as a credit in the payoffs and payments table on the simultaneous subordinate financing Closing Disclosure, any contributions from the seller toward the simultaneous subordinate financing. (*See also* Comments 38(j)-3 and 38(k)(2)(vii)-1 for disclosure requirements applicable to the first-lien transaction when the alternative disclosures are used for a simultaneous subordinate financing transaction and a seller contributes to the costs of the subordinate financing.) (Comment 38(t)(5)(vii)(B)-2.iii).

NOTE: As required by 12 CFR 1026.38(a)(3)(vii)(B), a form used for a transaction that does not involve a seller and is modified under 12 CFR 1026.38(t)(5)(vii) must contain the label "Appraised Prop. Value". Where an estimate is disclosed, rather than an appraisal, the label for the disclosure is changed to "Estimated Prop. Value" (Comment 38(a)(3)(vii)-1).

## Additional Information About This Loan: Loan Disclosures – 12 CFR 1026.38(l) (Page 4 of the Closing Disclosure)

25. *Loan Disclosures.* Determine whether the creditor accurately provides the required disclosures (12 CFR 1026.38(l)):

    a. *Assumption*. Whether the loan obligations may be assumed by a subsequent purchaser (12 CFR 1026.38(l)(1));

    b. *Demand Feature.* Whether the legal obligation includes a demand feature, and, if it does, a reference to the note or other loan contract for details (12 CFR 1026.38(l)(2));

    c. *Late Payment.* The dollar amount or percentage charge of any fee designated as a late payment (information required on the Loan Estimate by 12 CFR 1026.37(m)(4)) and the number of days after which such a charge will be triggered (12 CFR 1026.38(l)(3));

    d. *Negative Amortization (Increase in Loan Amount).* Whether the regular period payments may cause the principal balance to increase, and:

i. If the regular periodic payments do not cover all of the interest due, the creditor provides a statement that the borrower's principal balance will increase, such balance will likely become larger than the original loan amount, and increases in such balance lower the consumer's equity in the property; and

ii. If the consumer may make regular periodic payments that do not cover all of the interest due, the creditor provides a statement that, if the consumer chooses a monthly payment option that does not cover all of the interest due, the principal balance may become larger than the original loan amount and the increases in the principal balance lower the consumer's equity in the property (12 CFR 1026.38(l)(4)(i)-(ii)).

e. *Partial Payments.* Whether the creditor that accepts less than the full amount due has provided a statement that the "lender" (using that label) may accept partial payments and apply such payments to the consumer's loan, and:

i. If periodic payments that are less than the full amount due are accepted but not applied to a consumer's loan until the consumer pays the remainder of the full amount due, a statement that the lender may hold partial payments in a separate account until the consumer pays the remainder of the payment and then apply the full periodic payment to the consumer's loan;

ii. If periodic payments that are less than the full amount due are not accepted, the lender does not accept any partial payments; and

iii. A statement that, if the loan is sold, the new lender may have a different policy (12 CFR 1026.38(l)(5)(i)-(iv)).

f. *Security Interest.* Whether the creditor states that the consumer is granting a security interest in the property securing the transaction, and that the borrower may lose the property if required payments are not made or otherwise fails to satisfy the requirements of the legal obligation. Determine that the creditor has included the property address and ZIP code (12 CFR 1026.38(l)(6));

g. *Escrow Account.* Under the subheading "Escrow Account" (12 CFR 1026.38(l)(7)), whether the creditor provides:

(i) Under the reference "For now," a statement that an escrow account may also be called an impound or trust account; a statement of whether the creditor has established or will establish (at or before consummation) an escrow account in connection with the transaction; and the following information required under 12 CFR 1026.38(l)(7)(i)(A) and (B);

(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, entitled "Escrow," that contains, if an escrow account is or will be established, an itemization of the following:.

1) The total amount that the consumer will be required to pay into the account over the first year after consummation, labeled "Escrowed Property Costs over Year 1," together with a descriptive name of each charge to be paid (in whole or in part) from the escrow account, calculated as the Monthly Escrow Payment multiplied by the number of periodic payments scheduled to be made to the escrow account during the first year after consummation (12 CFR 1026.38(l)(7)(i)(A)(*1*)).

2) The estimated amount that the consumer is likely to pay during the first year after consummation for the mortgage-related obligations described in 12 CFR 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 (12 CFR 1026.38(l)(7)(i)(A)(*2*)).

NOTE: The creditor discloses this amount only if an escrow account will be established. The disclosure is based on payments during the first year after consummation. If the creditor elects to make disclosures required by 12 CFR 1026.38(l)(7)(i)(A)(*1*) and (*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 12 CFR 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) (Comment 38(l)(7)(i)(A)(*2*)-2; Comment 38(l)(7)(i)(A)(*5*)-1).

3) The total amount disclosed and a reference to the disclosure made on the Closing Disclosure under the heading "Other Costs, Initial Escrow Payment at Closing," pursuant to 12 CFR 1026.38(g)(3), and a statement that the payment is a cushion for the escrow account, labeled "Initial Escrow Payment" (12 CFR 1026.38(l)(7)(i)(A)(3)).

4) The amount the consumer will be required to pay into an escrow account with each periodic payment during the first year after consummation, labeled "Monthly Escrow Payment" (12 CFR 1026.38(l)(7)(i)(A)(4)).

(ii) *No Escrow.* If an escrow account will not be established for the consumer, determine whether there is a statement that the consumer will not have an escrow account; the reason that 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 itemizes:

(1) The estimated total amount the consumer will pay directly for the mortgage-related obligations described in 12 CFR 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" (12 CFR 1026.38(l)(7)(i)(B)).

NOTE: 12 CFR 1026.38(l)(7)(i)(B)(*1*) requires disclosure based on payments during the first year after consummation. A creditor may comply with this requirement by basing the disclosure on a 12-month period beginning with the borrower's initial payment date or on a 12-month period beginning with consummation (Comment 38(l)(7)(i)(B)(*1*)-2).

(A) Under the reference "In the future", determine whether the creditor has disclosed under the reference "In the future" (12 CFR 1026.38(l)(7)(ii)):

1) A statement that the consumer's property costs may change and that, as a result, the consumer's escrow payment may change (12 CFR 1026.38(l)(7)(ii)(A));

2) A statement that the consumer may be able to cancel any escrow account that has been established, but that the consumer is responsible for directly paying all property costs in the absence of an escrow account (12 CFR 1026.38(l)(7)(ii)(B)); and

3) A description of the consequences if the consumer fails to pay property costs, including the actions that a state or local government may take if property taxes are not paid, and the actions that the creditor may take if the consumer does not pay some or all property costs, such as adding amounts to the loan balance, adding an escrow account to the loan, or purchasing a property insurance policy on the consumer's behalf that may be more expensive and provide fewer benefits than what the consumer could obtain directly (12 CFR 1026.38(l)(7)(ii)(C)).

## Additional Information About This Loan: Adjustable Payment (AP) Table – 12 CFR 1026.38(m) (Page 4 of the Closing Disclosure)

26. *Adjustable Payment (AP) Table.* Determine whether the creditor provides the AP disclosure required for the Loan Estimate under 12 CFR 1026.37(i) (12 CFR 1026.38(m)).

## Additional Information About This Loan: Adjustable Interest Rate (AIR) Table – 12 CFR 1026.38(n) (Page 4 of the Closing Disclosure)

27. *Adjustable Interest Rate (AIR) Table.* Determine whether the creditor provides the AIR disclosures required for the Loan Estimate by 12 CFR 1026.37(j) (12 CFR 1026.38(n)).

## Loan Calculations – 12 CFR 1026.38(o) (Page 5 of the Closing Disclosure)

28. *Loan Calculations.* Determine whether the creditor provides a separate table and accurately discloses the following information (12 CFR 1026.38(o)):

    a. *Total of Payments.* 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 for each transaction 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 (12 CFR 1026.38(o)(1)).

    NOTE: For transactions subject to 12 CFR 1026.19(e) and (f), special tolerances apply to the disclosure of the total of payments for purposes of the right of rescission and foreclosure (12 CFR 1026.23(g)(1)(ii), (g)(2)(ii) and (h)(2)(ii)).

    b. *Finance Charge.* Expressed as a dollar amount, and including the statement "The dollar amount the loan will cost you." The finance charge and other disclosures affected by the disclosed finance charge (including the amount financed and the APR) is accurately calculated if the amount disclosed as the finance charge:

        i. Is understated by no more than $100, or

        ii. Is greater than the amount required to be disclosed (12 CFR 1026.38(o)(2)).

    c. *Amount Financed.* Expressed as a dollar amount, with the following statement: "The loan amount available after paying your up-front finance charge" (12 CFR 1026.38(o)(3));

    d. *Annual Percentage Rate (APR).* Expressed as a percentage, with the following statement: "Your costs over the loan term expressed as a rate. This is not your interest rate" (12 CFR 1026.38(o)(4)); and

    e. *Total Interest Percentage (TIP).* Expressed as a percentage, with the following statement: "The total amount of interest that you will pay over the loan term as a percentage of your loan amount" (12 CFR 1026.38(o)(5)).

## Other Disclosures – 12 CFR 1026.38(p) (Page 5 of the Closing Disclosure)

29. *Other Disclosures.* Determine whether the creditor accurately provides the following disclosures:

    a. *Appraisal.* For transactions subject to 15 U.S.C. 1639h or 1691(e), as implemented in this part or Regulation B, 12 CFR Part 1002, respectively, under the subheading "Appraisal" (12 CFR 1026.38(p)(1)):

        i. If there was an appraisal of the property in connection with the loan, the creditor is required to provide the consumer with a copy at no additional cost to the consumer at least three days prior to consummation (12 CFR 1026.38(p)(1)(i)); and

        ii. If the consumer has not yet received a copy of the appraisal, the consumer should contact the creditor using the information disclosed in the Closing Disclosure (12 CFR 1026.38(p)(1)(ii)).

    b. *Contract Details*. A statement that the consumer should refer to the appropriate loan document and security instrument for information about nonpayment, what constitutes a default under the legal obligation, circumstances under which the creditor may accelerate the maturity of the obligation, and prepayment rebates and penalties (12 CFR 1026.38(p)(2)).

    c. *Liability after Foreclosure.* A brief statement of whether, and the conditions under which, the consumer may remain responsible for any deficiency after foreclosure under applicable state law, a brief statement that certain protections may be lost if the consumer refinances or incurs additional debt on the property, and a statement that the consumer should consult an attorney for additional information (12 CFR 1026.38(p)(3)).

    d. *Refinance*. The statement required on the Loan Estimate by 12 CFR 1026.37(m)(5) that "Refinancing this loan will depend on your future financial situation, the property value, and market conditions. You may not be able to refinance this loan" (12 CFR 1026.38(p)(4)).

    e. *Tax Deductions.* A statement that, if the extension of credit exceeds the fair market value of the property, the interest on the portion of the credit extension that is greater than the fair market value of the property is not tax deductible for federal income tax purposes and a statement that the consumer should consult a tax advisor for further information (12 CFR 1026.38(p)(5)).

    f. *Loan Acceptance.* If the creditor does not provide a line for the consumer's signature, the creditor must include with the other disclosures the same statement required in the Loan Estimate (pursuant to 12 CFR 1026.37(n)(2)) that "You do not have to accept

this loan because you have received this form or signed a loan application" (12 CFR 1026.38(s)(2)).

## Questions Notice – 12 CFR 1026.38(q) (Page 5 of the Closing Disclosure)

30. *Questions.* Determine whether the creditor provides a separate questions notice. The creditor must include a prominent question mark, a statement directing the consumer to use the contact information for questions, and a reference to CFPB's website for more information and to submit a complaint, and a link to http://www.consumerfinance.gov/mortgage-closing/ (12 CFR 1026.38(q)(1)-(3)).

## Contact Information – 12 CFR 1026.38(r) (Page 5 of the Closing Disclosure)

31. *Contact Information.* Determine whether the creditor provides the required contact information for each lender, mortgage broker, consumer's real estate broker, seller's real estate broker, and settlement agent participating in the transaction; the name of the person, address, NMLS ID number, or if none, state and License ID; the name of the natural person who is the primary contact for the consumer at each entity, identified as "Contact," along with that person's Contact NMLS ID or Contact License ID, email address, and phone number (12 CFR 1026.38(r)(1)-(7)).

## Confirm Receipt – 12 CFR 1026.38(s) (Page 5 of the Closing Disclosure)

32. *Confirm Receipt.* Determine whether, if the creditor chooses to provide a signature statement, the creditor discloses, above the signature line, the statement "By signing, you are only confirming that you have received this form. You do not have to accept this loan because you have signed or received this form" (12 CFR 1026.38(s)(1)).

    NOTE: If the creditor does not provide a line for the consumer's signature, the creditor must include the following statement, labeled "Loan Acceptance": "You do not have to accept this loan because you have received this form or signed a loan application" (12 CFR 1026.38(s)(2)).

## Form of Disclosures – 12 CFR 1026.38(t)

33. Determine whether the creditor follows the format and content of Form H-25, set forth in Appendix H (12 CFR 1026.38(t)(1) and (3)), changes formatting only if there is an exception, including acceptable modifications in Appendix H for transactions without a seller (12 CFR 1026.38(t)(5)), and complies with the following rounding rules for dollar amounts and percentages:

    a. *Rounding – nearest dollar*. The following dollar amounts are rounded to the nearest whole dollar (12 CFR 1026.38(t)(4)(i)):

i. The dollar amounts for Loan Terms (required to be disclosed by 12 CFR 1026.38(b)) that are required to be rounded by 12 CFR 1026.37(o)(4)(i)(A) when disclosed under 12 CFR 1026.37(b)(6) and (7) (i.e., adjustments after consummation and details about prepayment penalty and balloon payments);

ii. The dollar amounts for projected payments or range of payments required by 12 CFR 1026.38(c) that are required to be rounded by 12 CFR 1026.37(o)(4)(i)(A) when disclosed under 12 CFR 1026.37(c)(1)(iii) (i.e., minimum and maximum amounts of principal and interest for projected periodic payments or range of payments);

iii. The dollar amounts required to be disclosed by 12 CFR 1026.38(e) (Alternative Calculating Cash to Close table for transactions without a seller) and 12 CFR 1026.38(i) (Calculating Cash to Close table) under the subheading "Loan Estimate;"

iv. The dollar amounts required to be disclosed by 12 CFR 1026.38(m) (adjustable payment table); and

v. The dollar amounts required to be disclosed by 12 CFR 1026.38(c) (projected payments) that are required to be rounded by 12 CFR 1026.37(o)(4)(i)(C) when disclosed under 12 CFR 1026.37(c)(2)(iv) (i.e., total monthly payment).

b. *Percentages.* The percentage amounts required to be disclosed under 12 CFR 1026.38(b), (f)(1), (n), and (o)(4) and (5) must be disclosed by rounding the exact amounts to three decimal places and then dropping any trailing zeros to the right of the decimal point (12 CFR 1026.38(t)(4)(ii)).

c. *Loan amount.* The dollar amount required to be disclosed by 12 CFR 1026.38(b) as required by 12 CFR 1026.37(b)(1) is disclosed as an unrounded number, except that if the amount is a whole number, then the amount disclosed is truncated at the decimal point (12 CFR 1026.38(t)(4)(iii)).

d. *Use of Form H-25 not required in certain circumstances.* For a transaction that is not a federally related mortgage loan, the creditor is not required to use Form H-25 of Appendix H, but the disclosures must be made with headings, content, and format substantially similar to Form H-25 (12 CFR 1026.38(t)(3)(ii)).

NOTE: For such loans, the use of Form H-25, if properly completed with accurate content, constitutes compliance with the clear and conspicuous and segregation requirement of 12 CFR 1026.38(t)(1)(i) (Comment 38(t)(3)-1).

e. *Exceptions.* The changes required and permitted by 12 CFR 1026.38(t)(5) are permitted for federally related mortgage loans for which the use of form H-25 is required under (12 CFR 1026.38(t)(3)). For non-federally related mortgage loans, the changes required or permitted by 12 CFR 1026.38(t)(5) do not affect the substance,

clarity, or meaningful sequence of the disclosure, and therefore, are permissible. Any changes to the disclosure not specified in 12 CFR 1026.38(t)(5) or not permitted by other provisions of 12 CFR 1026.38 are not permissible for federally related mortgage loans. Creditors in non-federally related mortgage loans making any changes that affect the substance, clarity, or meaningful sequence of the disclosure will lose their protection from civil liability under TILA section 130 (Comment 38(t)(5)-1). 12 CFR 1026.38(t)(5) contains important exceptions. For example, modifications of Form H-25 are permitted to separate consumer and seller information, if modifications comply with the requirements of (12 CFR 1026.38(t)(5)(v)).

## Construction or Construction-Permanent Loan Disclosures (12 CFR 1026.17(c)(2), (c)(6); .19(e)(1); .37-.38; and Appendix D to Part 1026)

Regulation Z permits treating: (1) a series of advances under an agreement to extend credit up to a certain amount as one transaction, and (2) the construction and permanent phases of a multiple-advance construction loan that may be permanently financed by the same creditor as either one or more than one transaction 12 CFR 1026.17(c)(6); (Comments 17(c)(6)-1 through -5).

NOTE: A creditor has the option to use the methods provided in Appendix D to part 1026 to calculate the annual percentage rate and other disclosures for construction loans in disclosing construction financing (Comment 17(c)(6)-2). Further, creditors may use, at their discretion, methods in Appendix D to estimate and disclose the terms of multiple-advance construction loans pursuant to 12 CFR 1026.37 and .38 (Comment App. D-7).

The following provisions of Regulation Z and associated commentary apply to (1) construction-only, (2) construction-permanent combined (CP Loan-Combined), and/or (3) construction-permanent separate (CP Loan-Separate) disclosures, or some combination of these loan disclosures, as noted.

NOTE: Citations for violations are to be made to the appropriate regulatory provision, not to the Commentary. References below to Comments are provided for informational purposes.

Determine:

1. Timing of Loan Estimate (12 CFR 1026.19(e)(1)(iii); Comment 19(e)(1)(iii)-1 and -5)
    a. Whether the creditor has delivered or placed in the mail the Loan Estimate not later than the third business day after receiving the consumer's application and not later than the seventh business day before consummation of the transaction (12 CFR 1026.19(e)(1)(iii)); *See also* Comment 17(c)(6)-2 discussing disclosures for construction loans).

        NOTES:

- For a *CP Loan-Combined*, the creditor delivers or places in the mail one combined disclosure within these time frames (Comment 19(e)(1)(iii)-5).

- For a *CP Loan-Separate* for which an application for the construction and permanent financing has been received (either as one application or as a separate application), the creditor delivers or places in the mail the separate Loan Estimates for each phase within these time frames (Comment 19(e)(1)(iii)-5). If the creditor receives the application at separate times, the creditor must provide the Loan Estimate for each phase no later than the time frames applicable to the date it received the specific phase's application (i.e., if the creditor received the application for the permanent phase three days after the construction phase, it must deliver or place in the mail the permanent phase disclosure not later than the third day after receiving that application, not the construction phase application) (Comment 19(e)(1)(iii)-5).

- A creditor may also provide a separate Loan Estimate for the permanent phase before receiving an application for permanent financing at any time not later than the seventh business day before consummation (Comment 19(e)(1)(iii)-5).

- For a *Construction-only* transaction for which an application has been received and the creditor is separately disclosing the advances, the creditor delivers or places in the mail separate Loan Estimates for each advance no later than three business days after receiving the consumer's application (Comment 19(e)(1)(iii)-1).

2. Allocation of fees and charges when disclosing multiple transactions
   a. Whether fees and charges are allocated in construction-permanent loan or multiple-advance construction-only loan disclosures for purposes of calculating disclosures (12 CFR 1026.17(c)(6)).

      NOTES (Comment 17(c)(6)-5):

      - If the creditor has charged separate amounts for finance charges under 12 CFR 1026.4, and points and fees under 12 CFR 1026.32(b)(1), such amounts are allocated to the phase for which they are charged.
      - For a *CP Loan-Separate*, the finance charges and points and fees that would not be imposed but for the construction financing are allocated to the construction phase, and all other finance charges and points and fees are allocated to the permanent financing.
      - For a *CP Loan-Separate,* if a creditor charges a greater origination fee for construction-permanent financing than for construction-only financing, the fee difference is allocated to the permanent phase.

- For a *CP Loan-Separate*, fees and charges that are not used to compute the finance charge under 12 CFR 1026.4 or points and fees under 12 CFR 1026.32(b)(1) may be allocated between the transactions in any manner the creditor chooses.

3. Sale Price
   a. Loan Estimate (12 CFR 1026.37(a)(7)).
      i. For transactions that involve a seller, whether the contract sale price of the property is disclosed (12 CFR 1026.37(a)(7)(i)).
      ii. For transactions that do not involve a seller, whether the estimated value of the property is disclosed as "Prop. Value" (12 CFR 1026.37(a)(7)(ii)).

      NOTES:

      - For transactions that do not involve a seller and transactions that involve a seller where the sale price is not yet known, the creditor discloses the estimated value of the property based on the best information reasonably available to the creditor at the time the disclosure is provided to the consumer (Comment 37(a)(7)-1. See also 12 CFR 1026.17(c)(2)(i), Comment 17(c)(2)(i)-1, and Comment 19(e)(1)(i)-1).
      - For transactions involving construction where there is no seller, the creditor has the option to include the estimated value of the improvements to be made on the property (Comment 37(a)(7)-1).

   b. Closing Disclosure (12 CFR 1026.38(a)(3)(vii)).

      i. If there is a seller, whether the creditor has disclosed the contract sale price of the property (12 CFR 1026.38(a)(3)(vii)(A)).
      ii. Where there is no seller, whether the creditor has disclosed the appraised value of the property (12 CFR 1026.38(a)(3)(vii)(B)).

      NOTES:

      - The value disclosed is 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, labeled "Estimated Prop. Value" (Comment 38(a)(3)(vii)-1).
      - For transactions involving construction where there is no seller, this disclosure must be the value of the property that is used to determine the approval of the credit transaction. That disclosure includes any improvements to be made on the property if those

improvements were considered when approving the loan (Comment 38(a)(3)(vii)-1).

4. Loan Term (12 CFR 1026.37(a)(8); .38(a)(5)(i))

   a. Whether the term to maturity of the credit transaction is disclosed (12 CFR 1026.37(a)(8); .38(a)(5)(i)).

      NOTES:

      - For a *CP Loan-Combined*, the loan term is the total combined term of the construction and permanent periods (Comment App. D-7.i.A).
      - For a *CP Loan-Separate (Permanent Phase)*, the loan term of the permanent financing is counted from the date that interest for the permanent financing periodic payments begins to accrue, regardless of when the permanent phase is disclosed (Comment App. D-7.i.B)).

5. Product Type (12 CFR 1026.37(a)(10); .38(a)(5)(iii))

   a. Whether the loan product description includes "Adjustable rate," "Step rate," or "Fixed rate," as applicable, and the features that may change the periodic payment (Negative amortization, Interest only, Step payment, Balloon payment, Seasonal payment) (12 CFR 1026.37(a)(10); .38(a)(5)(iii)).

   b. "Interest Only" feature is disclosed if one or more regular periodic payments may be applied only to interest accrued and not to the loan principal (12 CFR 1026.37(a)(10)(ii)(B); .38(a)(5)(iii)).

      NOTES:

      - If there is a final balloon payment that includes principal (typically construction-only and separate construction phase disclosures), the final balloon payment is excluded for purposes of determining the duration of the "Interest Only" payment period (Comment App. D-7.ii.A).
      - For a *CP Loan-Combined,* the "Interest Only" payment period is the full term of the interest-only construction phase, plus any interest-only period in the permanent phase (Comment App. D-7.ii.B).

   c. "Adjustable Rate" product is disclosed if the interest rate may increase after consummation, but the rates that will apply or the periods for which they will apply are not known at consummation (12 CFR 1026.37(a)(10)(i)(A)).

NOTES:

- For a *CP Loan-Combined and CP Loan-Separate (Permanent Phase*), if the interest rate for the permanent phase is not known at consummation for a construction-permanent loan using a single, combined construction-permanent disclosure or using separate disclosures for the permanent phase, the creditor shall disclose the loan product under 12 CFR 1026.37(a)(10) and 12 CFR 1026.38(a)(5)(iii) as "Adjustable Rate" (Comment App. D-7.ii.C).
- For a *CP Loan-Combined and CP Loan-Separate (Permanent Phase)*, if the interest rate may increase under the terms of the legal obligation from the disclosures provided at consummation, the product is disclosed as "Adjustable Rate," even if the interest rate will be fixed for the term of the permanent phase once it is set (Comment App. D-7.ii.C).

d. "Step Rate" product is disclosed if the interest rate will change after consummation, and the rates that will apply and the periods for which they will apply are known at consummation (12 CFR 1026.37(a)(10)(i)(B)).

NOTE: For a *CP Loan-Combined* transaction, if the interest rates for both phases are fixed at consummation but are different rates, and the creditor does not reserve the right to modify the rate after consummation so that the interest rate for the permanent phase is known at consummation but different from the construction phase interest rate, the product is disclosed as "Step Rate" (12 CFR 1026.37(a)(10)(i)(B)).

6. Interest Rate (12 CFR 1026.37(b)(2))

a. Whether the interest rate that will be applicable to the transaction at consummation is disclosed, and if the interest rate at consummation is not known for an adjustable rate transaction, whether the fully indexed rate (i.e., the interest rate calculated using the index value and margin at the time of consummation) is disclosed (12 CFR 1026.37(b)(2)).

NOTES for *CP Loan-Combined and CP Loan-Separate (Permanent Phase):*

- If the permanent phase has an adjustable rate at consummation and separate disclosures are provided, the rate disclosed for the permanent financing is the fully indexed rate pursuant to 12 CFR 1026.37(b)(2) at the time of consummation (Comment App. D-7.iii).

- If the permanent phase has a rate that is not known at consummation, the creditor discloses the best information reasonably available at the time the disclosure is provided to the consumer (Comment 19(e)(1)(i)-1; 12 CFR 1026.17(c)(2)(i); Comment 17(c)(2)(i)-1).
- If the permanent phase has a fixed rate that will not be adjusted when the construction phase converts to the permanent phase, that fixed rate is used for disclosures (Comment App. D-7.iii)._
- If the loan contract secured by a principal dwelling provides that the permanent loan interest rate may adjust at conversion, and such rate adjustment results in a corresponding payment adjustment, and if the interest rate for the permanent phase will be fixed after the conversion, the adjustable rate disclosures in 12 CFR 1026.20(c), but not (d), are provided (Comment App. D-7.iii); however, if the loan contract secured by a principal dwelling provides that the permanent loan interest rate may adjust at conversion, and such rate adjustment results in a corresponding payment adjustment, and if the interest rate for the permanent phase is adjustable, the creditor provides the adjustable rate disclosures in 12 CFR1026.20(c) and (d) (Comment App. D-7.iii).

7. Projected Payments (12 CFR 1026.37(c); .38(c))

   a. Whether a separate table itemizes each separate periodic payment (or range), together with estimated taxes, insurance and assessments, and escrow account payments (12 CFR 1026.37(c) and 12 CFR 1026.38(c)).

      NOTES:

      - For a *Construction-Only and CP Loan-Separate (Construction Phase),* the construction phase is disclosed according to the requirements for the Projected Payments table, including disclosure of the amounts of any interest-only payments. If the terms of the construction phase do not account for repayment of the entire principal, the creditor must disclose a balloon payment feature (unless the transaction has negative amortization, interest-only, or step payment features) in a separate column, and balloon payment disclosures are provided (Comment App. D-7.v.A).
      - For a *CP Loan-Combined,* the Projected Payments table reflects the interest-only payments during the construction phase in the first column, which also reflects the amortizing payments, and mortgage insurance and escrow payments, if any, for the permanent phase if the term of the construction phase is not a full year (Comment App. D-7.v.B).
      - For a *CP Loan-Combined* when only the terms of the permanent phase require mortgage insurance or escrow, the disclosure of such amounts depends on whether the first column of the table exclusively discloses the

construction phase. If the first column of the Projected Payment table exclusively discloses the construction phase, the creditor discloses "0" mortgage insurance and or a "-" for escrow in the first column if the construction phase does not include mortgage insurance or escrow. If payments for both phases are disclosed in the first column, the amount of the mortgage insurance premium or any escrow payment for the permanent phase is disclosed in the first column (Comment App. D-7.v.C).

8. Disclosure of Construction Costs (12 CFR 1026.37(h)(1)(v); 12 CFR 1026.37(h)(2)(iii); 12 CFR 1026.38(j)(1)(v); 12 CFR 1026.38(t)(5)(vii)(B)) *(Construction-only; CP-Combined; CP-Separate (Construction Phase)*

   NOTE: Construction costs are the costs of improvements to be made to the property that the consumer contracts for in connection with the financing transaction and that will be paid in whole or in part with loan proceeds (Comment App. D-7.vi.A).

   a. *Loan Estimate.* Whether on the Loan Estimate, a creditor factors construction costs into the "funds for borrower" calculation in the Calculating Cash to Close table under 12 CFR 1026.37(h)(1)(v) or the "Payoffs and Payments" calculation in the optional alternative Calculating Cash to Close table under 12 CFR 1026.37(h)(2)(iii) for transactions without a seller or for simultaneous subordinate financing (12 CFR 1026.37(h)); Comment App. D-7.vi.B).

   b. *Closing Disclosure.* Whether on the Closing Disclosure, a creditor includes construction costs in the "Itemization of amounts due from borrower" in the "Summary of Borrower's Transaction" under 12 CFR 1026.38(j)(1)(v) and factors them into the "Down payment/funds from borrower" and "Funds for borrower" calculations of the Calculating Cash to Close table under 12 CFR 1026.38(i)(4) and (6) or in the "Payoffs and Payments" section of the Closing Cost details in the optional alternative Calculating Cash to Close table for transactions without a seller or for simultaneous subordinate financing 12 CFR 1026.38(e) as modified under (12 CFR 1026.38(t)(5)(vii)(B)). (*See also* Comment App. D-7.vi.C).

      NOTE: If a creditor places a portion of a construction loan's proceeds in a reserve or other account at consummation, the creditor may separately disclose this from the other construction costs disclosed in the "Itemization of amounts due from borrower" in the Summary of Borrower's Transaction under 12 CFR 1026.38(j)(1)(v), if space permits (Comment App. D-7.vi.D). The creditor may disclose the amount of such reserve or other account as a separate itemized cost, along with an itemized cost for the balance of the construction costs, under disclosure and calculation options described in Comments App. D-7.vi.B and C (Comment App. D-7.vi.D).

9. Inspection and Handling fees (12 CFR 1026.37(f) and .38(f))
   *(Construction-only; CP-Combined; CP-Separate (Construction Phase))*
   a. Whether inspection and handling fees, which are Loan Costs (12 CFR 1026.37(f) and .38(f)), are included in the Loan Costs table (or an addendum) and certain disclosures, including "In 5 Years" (12 CFR 1026.37(l)(1)) and "Total of Payments" (12 CFR 1026.38(o)(1)).

      NOTES:
      - Inspection and handling fees for the staged disbursement of construction loan proceeds, including draw fees, are part of the finance charge (Comment 4(a)-1.ii.A and Comment App. D-7.vii).
      - If inspection and handling fees are collected before or at consummation, the total of such fees is disclosed in the Loan Costs table (Comment 37(f)-3 and Comment App. D-7.vii).
      - If inspection and handling fees will be collected after consummation, the total of such fees is disclosed in a separate addendum under the heading "Inspection and Handling Fees Collected After Closing" and the fees are not counted for purposes of the Calculating Cash to Close table (Comment 37(f)-3, Comment 37(f)(6)-3, Comment 38(f)-2, and Comment App. D-7.vii).
      - If inspection and handling costs are collected, such costs are included in the sum of the "In 5 Years" disclosure (Loan Estimate) and the "Total of Payments" (Closing Disclosure), even when disclosed on an addendum (Comment App. D-7.vii).

## Content of Forms Not Subject to 12 CFR 1026.19(e)-(f) – Forms Review and Timing Requirements

## Content of Forms Not Subject to 12 CFR 1026.19(e)-(f) – General (12 CFR 1026.18)

1. Determine that the disclosures are clear, conspicuous, and grouped together or segregated as required, in a form the consumer may keep.

   a. For loans subject to 12 CFR 1026.18(s), the terms "Finance Charge" and "Annual Percentage Rate" and corresponding rates or amounts should be more conspicuous than other terms, except for the creditor's identity (12 CFR 1026.17(a)(2)).

   b. For reverse mortgages subject to 12 CFR 1026.33, the disclosures required under 12 CFR 1026.33(b).

   c. For private student loans, the term "Annual Percentage Rate" and corresponding rate must be less conspicuous than the term "finance charge" and the corresponding

amount, as well as less conspicuous than the interest rate, the notice of the right to cancel, and creditor's identity (12 CFR 1026.17(a)(2)).

2. For a closed-end transaction not subject to 12 CFR 1026.19(e) and (f), determine whether the disclosures are accurately completed and include the following disclosures as applicable.

    a. Identity of the creditor (12 CFR 1026.18(a))

    b. Amount financed (12 CFR 1026.18(b))

    c. Itemization of amount financed (12 CFR 1026.18(c))

    d. Brief description of the APR (12 CFR 1026.18(e))

    e. Variable rate information (12 CFR 1026.18(f)(1) or (2))

    f. Payment schedule (12 CFR 1026.18(g))

    g. Brief description of the total of payments (12 CFR 1026.18(h))

    h. Demand feature (12 CFR 1026.18(i))

    i. Description of total sales price in a credit sale (12 CFR 1026.18(j))

    j. Prepayment penalties or rebates (12 CFR 1026.18(k))

    k. Late payment amount or percentage (12 CFR 1026.18(l))

    l. Description for security interest (12 CFR 1026.18(m))

    m. Insurance conditions for finance charge exclusions (12 CFR 1026.4(d) and 1026.18(n))

    n. Statement concerning certain security interest charges (12 CFR 1026.4(e) and 1026.18(o))

    o. Statement referring to the contract (12 CFR 1026.18(p))

    p. Statement regarding assumption of the note (12 CFR 1026.18(q))

    q. Statement regarding required deposits (12 CFR 1026.18(r))

    r. Interest rate and payment summary for mortgage transactions (12 CFR 1026.18(s))

3. Determine that for transactions other than transactions subject to 12 CFR 1026.19(e) and (f), the creditor discloses the number, amounts, and timing of payments scheduled to repay the

obligation (other than for a transaction that is subject to 12 CFR 1026.18(s)[58] (12 CFR 1026.18(g)).

4. For a closed-end transaction secured by real property or a dwelling (other than a transaction subject to 12 CFR 1026.19(e) and (f)), determine that the creditor discloses the following information about the interest rate and payments, as applicable (12 CFR 1026.18(s)):

   a. Interest Rates

      i. *For a fixed-rate mortgage*, the interest rate at consummation (12 CFR 1026.18(s)(2)(i)(A)).

      ii. *For an adjustable-rate or step-rate mortgage* (12 CFR 1026.18(s)(2)(i)(B)):

         A. The interest rate at consummation and the period of time until the first interest rate adjustment may occur, labeled as the "introductory rate and monthly payment";

         NOTE: As set forth in Comment 18(s)-1, if periodic payments are not due monthly, the creditor should use the appropriate term, such as "quarterly" or "annually".

         B. The maximum interest rate that may apply during the first five years after the date on which the first regular periodic payment will be due and the earliest date on which that rate may apply, labeled as "maximum during first five years"; and

         C. The maximum interest rate that may apply during the life of the loan and the earliest date on which that rate may apply, labeled as "maximum ever".

      iii. *For a loan that provides for payment increases occurring without regard to an interest rate adjustment*[59] (as described in 12 CFR 1026.18(s)(3)(i)(B)), the interest rate in effect at the time the first such payment increase is scheduled to occur and the date on which the increase will occur, labeled as "first adjustment" if the loan is an adjustable-rate mortgage or, otherwise, labeled as "first increase"[60] (12 CFR 1026.18(s)(2)(i)(C)).

      iv. *For a negative amortization loan*[61] (12 CFR 1026.18(s)(2)(ii)):

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[58] For example, some home construction loans that are secured by real property or a dwelling are subject to 12 CFR 1026.18(s) and not 12 CFR 1026.18 (g). *See* Comment App. D-6 of Regulation Z. *See also* Comment App. D-7 for transactions subject to 12 CFR 1026.37 – .38.

[59] This category includes interest-only loans, as set forth in Comment 18(s)(2)(i)(C)-1.

[60] Because model forms and clauses published by the CFPB are safe harbors, this rate may also be labeled "maximum ever," pursuant to 12 CFR 1026.18(s)(2)(i)(B)(3).

[61] The term "negative amortization loan" means a loan, other than a reverse mortgage subject to 12 CFR 1026.33 that provides for a minimum periodic payment that covers only a portion of the accrued interest, resulting in negative amortization (12 CFR 1026.18(s)(7)(v)).

A. The interest rate at consummation and, if it will adjust after consummation, the length of time until it will adjust, and the label "introductory" or "intro";

B. The maximum interest rate that could apply when the consumer must begin making fully amortizing payments under the terms of the legal obligation;

C. If the minimum required payment will increase before the consumer must begin making fully amortizing payments, the maximum interest rate that could apply at the time of the first payment increase and the date the increase is scheduled to occur; and

D. If a second increase in the minimum required payment may occur before the consumer must begin making fully amortizing payments, the maximum interest rate that could apply at the time of the second payment increase and the date the increase is scheduled to occur.

v. *Introductory rate for an amortizing adjustable-rate mortgage*, if the interest rate at consummation is less than the fully indexed rate, the following (placed in a box directly beneath the table required by 12 CFR 1026.18(s)(1), in a format substantially similar to Model Clause H-4(I) in the regulation's Appendix H):

A. The interest rate that applies at consummation and the period of time for which it applies;

B. A statement that, even if market rates do not change, the interest rate will increase at the first adjustment and a designation of the place in sequence of the month or year, as applicable, of such rate adjustment (e.g., "in the third year"); and

C. The fully indexed rate.

b. Payments for Amortizing Loans

i. *Principal and interest payments.* If all periodic payments will be applied to accrued interest and principal, for each interest rate disclosed under 12 CFR 1026.18(s)(2)(i) (12 CFR 1026.18(s)(3)(i)):

A. The corresponding periodic principal and interest payment, labeled as "principal and interest";

B. If the periodic payment may increase without regard to an interest rate adjustment, the payment that corresponds to the first such increase and the earliest date on which the increase could occur;

C. If an escrow account is established, an estimate of the amount of taxes and insurance, including any mortgage insurance payable with each periodic payment; and

D. The sum of the amounts disclosed under 12 CFR 1026.18(s)(3)(i)(A) and (C) or (s)(3)(i)(B) and (C), as applicable, labeled as "total estimated monthly payment."

ii. *Interest-only payments.* If the loan is an interest-only loan, for each interest rate disclosed under 12 CFR 1026.18(s)(2)(i), the corresponding periodic payment and (12 CFR 1026.18(s)(3)(ii)):

A. If the payment will be applied to only accrued interest, the amount applied to interest, labeled as "interest payment," and a statement that none of the payment is being applied to principal;

B. If the payment will be applied to accrued interest and principal, an itemization of the amount of the first such payment applied to accrued interest and to principal, labeled as "interest payment" and "principal payment", respectively;

C. The escrow information described in 12 CFR 1026.18(s)(3)(i)(C); and

D. The sum of all amounts required to be disclosed under 12 CFR 1026.18(s)(3)(ii)(A) and (C) or (s)(3)(ii)(B) and (C), as applicable, labeled as "total estimated monthly payment".

iii. *Payments for negative amortization loans.* If the loan is a negative amortization loan (12 CFR 1026.18(s)(4)):

A. The minimum periodic payment required until the first payment increase or interest rate increase, corresponding to the interest rate disclosed under 12 CFR 1026.18(s)(2)(ii)(A);

B. The minimum periodic payment that would be due at the first payment increase and the second, if any, corresponding to the interest rates described in 12 CFR 1026.18(s)(2)(ii)(C) and (D);

C. A statement that the minimum payment pays only some interest, does not repay any principal, and will cause the loan amount to increase;

D. The fully amortizing periodic payment amount at the earliest time when such a payment must be made, corresponding to the interest rate disclosed under 12 CFR 1026.18(s)(2)(ii)(B); and

E. If applicable, in addition to the payments in 12 CFR 1026.18(s)(4)(i) and (ii), for each interest rate disclosed under 12 CFR 1026.18(s)(2)(ii), the amount of the fully amortizing periodic payment, labeled as the "full payment option," and a statement that these payments pay all principal and all accrued interest.

NOTE: The information in 12 CFR 1026.18(s)(2)-(4) must be disclosed in the form of a table with no more than five columns, and 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 of the regulation. The table should contain only the information required in 12 CFR 1026.18(s)(2)-(4), be placed in a prominent location, and be in a minimum 10-point font (12 CFR 1026.18(s)(1)).

iv. *Balloon payments.* For loans with balloon payments (defined as a payment that is more than two times a regular periodic payment) (12 CFR 1026.18(s)(5)):

A. Except as provided below, the balloon payment is disclosed separately from other periodic payments disclosed in the table (i.e., is outside the table and in a manner substantially similar to Model Clause H-4(J) in Appendix H to the regulation); and

B. If the balloon payment is scheduled to occur at the same time as another payment required to be disclosed in the table, the balloon payment must be disclosed in the table.

5. For a closed-end transaction secured by real property or a dwelling (other than a transaction that is subject to 12 CFR 1026.19(e) and (f)) that is a negative amortization loan, determine that the following information is disclosed (in close proximity to the table required in 12 CFR 1026.18(s)(1), with headings, content, and format substantially similar to Model Clause H-4(G) in Appendix H to this part) (12 CFR 1026.18(s)(6)):

   a. The maximum interest rate, the shortest period of time in which such interest rate could be reached, the amount of estimated taxes and insurance included in each payment disclosed, and a statement that the loan offers payment options, two of which are shown; and

   b. The dollar amount of the increase in the loan's principal balance if the consumer makes only the minimum required payments for the maximum possible time and the earliest date on which the consumer must begin making fully amortizing payments, assuming that the maximum interest rate is reached at the earliest possible time.

6. For a closed-end transaction secured by real property or a dwelling (other than a transaction that is subject to 12 CFR 1026.19(e) and (f)), determine that the creditor disclosed a statement that there is no guarantee the consumer can refinance the transaction to lower the interest rate or periodic payments (12 CFR 1026.18(t)(1)).

   NOTE: The statement required by 12 CFR 1026.18(t)(1) should be in a form substantially similar to Model Clause H-4(K) in Appendix H to the regulation (12 CFR 1026.18(t)(2)).

7. Determine all variable-rate loans with a maturity greater than one year, secured by a principal dwelling, are given the following disclosures at the time of application (12 CFR 1026.19(b)).

   a. Consumer Handbook on Adjustable Rate Mortgages or substitute

   b. Statement that interest rate payments and or terms can change

   c. The index/formula and a source of information

   d. Explanation of the interest rate/payment determination and margin

e. Statement that the consumer should ask for the current interest rate and margin

f. Statement that the interest rate is discounted, if applicable

g. Frequency of interest rate and payment changes

h. Rules relating to all changes

i. Either a historical example based on 15 years, or the initial rate and payment with a statement that the periodic payment may substantially increase or decrease together with a maximum interest rate and payment

j. Explanation of how to compute the loan payment, giving an example

k. Demand feature, if applicable

l. Statement of content and timing of adjustment notices

m. Statement that other variable-rate loan program disclosures are available, if applicable

## Disclosure of Post-Consummation Events – Rate Adjustments – 12 CFR 1026.20(c)-(d)

1. Determine that for any closed-end adjustable-rate mortgage with a maturity date greater than one year and secured by a principal dwelling, the creditor, assignee, or servicer provides the following initial rate adjustment disclosures (for disclosure timing requirements, *see* Timing Requirements below) (12 CFR 1026.20(d)(2)):

    a. The date of the disclosure;

    b. An explanation that under the terms of the consumer's adjustable rate mortgage, the time frame that the current rate has been in effect, when the current rate is scheduled to expire, the effective date of the new rate, when additional future interest rate adjustments are scheduled to occur and any other changes to loan terms, features, and options taking effect on the same date, and how the rate change may affect the payment and other loan terms;

    c. A table explaining the current interest rate and payment, the new interest rate and payment, and the date the first new payment is due;

    NOTE: For interest-only and negative amortization adjustable-rate mortgages, the table must include how the current and new rates and payment will be allocated to interest, principal, and escrow (if applicable). *See* 12 CFR 1026.20(d)(2)(iii)(C) for more on payment allocation disclosure requirements.

    d. An explanation of how the interest rate is determined, including the specific index or formula used and a source of information about that index or formula, and the type

and amount of any adjustment, including a margin and an explanation that a margin is the addition of a certain number of percentage points to the index;

e. Any limits on the interest rate or payment increases at each interest rate adjustment and over the life of the loan (as applicable), including the extent to which such limits result in the creditor, assignee, or servicer foregoing any increase in the interest rate and the earliest date that such foregone interest rate increases may apply to future interest rate adjustments, subject to those limits;

f. An explanation of how the new payment was determined, including the index or formula used to determine the new interest rate;

g. Any adjustments to the index or formula used to determine the new payment, such as the addition of a margin;

h. The expected loan balance on the date of the interest rate adjustment;

i. The remaining loan term expected on the date of the interest rate adjustment and any changes to the term that may have occurred due to the interest rate change;

j. If an estimated rate payment is provided, a statement that another disclosure with the actual interest rate will be provided to the consumer between two and four months prior to the first payment at the adjusted level is due, and that the creditor is using an estimated rate;

k. If applicable, a statement that the new payment will not be allocated to pay loan principal and will not reduce the loan balance. If the new payment will result in negative amortization, a statement that the new payment will not be allocated to pay loan principal and that only part of the interest will be paid, which will add to the loan balance. If the new payment will result in negative amortization as a result of the interest rate adjustment, the statement must set forth the payment required to fully amortize the remaining balance at the new interest rate over the remainder of the loan term;

l. A statement indicating the circumstances under which any prepayment penalty may be imposed, the time period during which it may be imposed, and a statement that the consumer may contact the servicer for additional information, including the maximum amount of the penalty that may be charged to the consumer;

m. A telephone number of the creditor, assignee, or servicer to call if the consumer anticipates not being able to make the new payment;

n. A statement listing alternatives that consumers may pursue if they anticipate not being able to make the new payment; and

o. A web address to access either the CFPB or the Department of Housing and Urban Development's (HUD) approved list of homeownership counselors and counseling

organizations, the HUD toll-free number to access the HUD list of homeownership counselors and counseling organizations, and the CFPB website to access state housing finance authorities' contact information.

2. Determine that for any closed-end adjustable-rate mortgage with a maturity date greater than one year, secured by a principal dwelling, the creditor, assignee, or servicer provides the following rate adjustment disclosures for rate adjustments with a corresponding payment change (for disclosure timing requirements, *see* Timing Requirements below) (12 CFR 1026.20(c)):

   NOTE: A creditor, assignee, or servicer subject to the Fair Debt Collection Practices Act (FDCPA) that has received the consumer's notification to cease communication pursuant to FDCPA Section 805(c) is exempt from this requirement.

   a. An explanation that under the terms of the consumer's adjustable rate mortgage, the time frame that the current rate has been in effect is ending and the interest rate and payment will change, the effective date of the new rate, when additional future interest rate adjustments are scheduled to occur and any other changes to loan terms, features, and options taking effect on the same date, such as the expiration of interest-only or payment-option features; and a table explaining the current interest rate and payment, the new interest rate and payment, and the date the first new payment is due;

   NOTE: For interest-only and negatively amortizing payments, the table must include how the current and new rates and payment will be allocated to interest, principal, and escrow (if applicable). *See* 12 CFR 1026.20(d)(2)(iii)(C) for more on payment allocation disclosure requirements.

   b. An explanation of how the interest rate is determined, including the specific index or formula used and a source of information about that index or formula, and the type and amount of any adjustment, including a margin and an explanation that a margin is the addition of a certain number of percentage points to the index, and any application of previously foregone interest rate increases from past rate adjustments;

   c. Any limits on the interest rate or payment increases at each interest rate adjustment and over the life of the loan (as applicable), including the extent to which such limits result in the creditor, assignee, or servicer foregoing any increase in the interest rate and the earliest date that such foregone interest rate increases may apply to future interest rate adjustments, subject to those limits;

   d. An explanation of how the new payment is determined, including the index or formula used to determine the new interest rate;

   e. Any adjustments to the index or formula used to determine the new payment, such as the addition of a margin or the application of any previously foregone interest rate increases from past interest rate adjustments;

f. The expected loan balance on the date of the interest rate adjustment;

g. The remaining loan term expected on the date of the interest rate adjustment and any changes to the term that may have occurred due to the interest rate change;

h. If applicable, a statement that the new payment will not be allocated to pay loan principal and will not reduce the loan balance. If the new payment will result in negative amortization, a statement that the new payment will not be allocated to pay loan principal and that only part of the interest will be paid, which will add to the loan balance. If the new payment will result in negative amortization as a result of the interest rate adjustment, the statement must set forth the payment required to fully amortize the remaining balance at the new interest rate over the remainder of the loan term; and

i. A statement indicating the circumstances under which any prepayment penalty may be imposed, the time period during which it may be imposed, and a statement that the consumer may contact the servicer for additional information, including the maximum amount of the penalty that may be charged to the consumer.

NOTES:

- Model and sample disclosures H-4(D)(1) through (4) containing all necessary information can be found in Appendix H. The disclosures required under 12 CFR 1026.20(c) and (d) generally should be in the form of a table and in the same order as, and with headings and format substantially similar to, the model disclosures (12 CFR 1026.20(c)(3) and (d)(3)).
- When examining a creditor, an assignee, or a servicer that continues to own the loan, if the entity states that another entity has the obligation to provide the disclosures, examiners should determine whether the entity takes steps to ensure that the other party (the creditor, assignee, or servicer, as applicable) is complying with the obligation to provide the disclosures.

## Escrow Cancellation Notice – 12 CFR 1026.20(e)(1)

1. *Escrow cancellation notice.* For a closed-end loan secured by a first lien on real property or a dwelling (other than a reverse mortgage) where an escrow account (as defined under 12 CFR 1024.17(b)) is canceled, determine whether (12 CFR 1026.20(e)):

   a. The creditor or servicer provided an Escrow Closing Notice with the following clearly and conspicuously disclosed (12 CFR 1026.20(e)(1)):

      i. A statement informing the consumer of the date on which the consumer will no longer have an escrow account;

      ii. A statement that an escrow account may also be called an impound or trust account;

iii. A statement of the reason that the escrow account will be closed;

iv. A statement that without an escrow account, the consumer must pay all property costs, such as taxes and homeowner's insurance, directly, possibly in one or two large payments a year;

v. A table, titled "Cost to you," that contains an itemization of the amount of any fee the creditor or servicer imposes on the consumer in connection with the closure of the consumer's escrow account, labeled "Escrow Closing Fee," and a statement that the fee is for closing the escrow account (12 CFR 1026.20(e)(2)(i)); and

vi. Information under the reference "In the future" that includes (12 CFR 1026.20(e)(2)(ii)):

A. A statement of the consequences if the consumer fails to pay property costs, including the actions that a state or local government may take if property taxes are not paid and the actions the creditor or servicer may take if the consumer does not pay some or all property costs, such as adding amounts to the loan balance, adding an escrow account to the loan, or purchasing a property insurance policy on the consumer's behalf that may be more expensive and provide fewer benefits than a policy that the consumer could obtain directly (12 CFR 1026.20(e)(2)(ii)(A));

B. A statement with a telephone number that the consumer can use to request additional information about the cancellation of the escrow account (12 CFR 1026.20(e)(2)(ii)(B));

C. A statement of whether the creditor or servicer offers the option of keeping the escrow account open and, as applicable, a telephone number the consumer can use to request that the account be kept open (12 CFR 1026.20(e)(2)(ii)(C)); and

D. A statement of whether there is a cut-off date by which the consumer can request that the account be kept open (12 CFR 1026.20(e)(2)(ii)(D)).

2. *Form.* The disclosure meets the formatting requirements of 12 CFR 1026.20(e)(4) and is substantially similar to Model Form H-29 in Appendix H (12 CFR 1026.20(e)(4)).

3. *Timing.* The creditor or servicer ensures that the consumer receives the Escrow Closing Notice in the following time periods:

i. If the cancellation is upon the consumer's request, no later than three business days before the closure of the consumer's escrow account (12 CFR 1026.20(e)(5)(i)); or

ii. If cancellation is other than upon the consumer's request, no later than 30 business days before the closure of the consumer's escrow account (12 CFR 1026.20(e)(5)(ii)).

NOTE: If the disclosures are not provided in person, the consumer is considered to have received the disclosures three business days after they are delivered or placed in the mail (12 CFR 1026.20(e)(5)(iii)).

## Successors in Interest – 12 CFR 1026.20(f)

1. If, upon confirmation, a servicer provided a confirmed successor in interest who is not liable on the mortgage loan obligation with an optional notice and acknowledgement form in accordance with Regulation X, 12 CFR 1024.32(c)(1), determine whether the servicer provided to a confirmed successor in interest any written disclosure required by the following (if applicable): 12 CFR 1026.20(c) (rate adjustments with corresponding change in payment), 12 CFR 1026.20(d) (initial rate adjustment), or 12 CFR 1026.20(e) (escrow account cancellation notice), once the confirmed successor in interest either assumed the mortgage loan obligation under state law or provided the servicer an executed acknowledgement form in accordance with Regulation X, 12 CFR 1024.32(c)(1)(iv), that the confirmed successor in interest has not revoked.

## High-Cost Mortgages – 12 CFR 1026.32

1. Determine that the disclosures required for high-cost mortgage transactions (12 CFR 1026.32) clearly and conspicuously include the items below (12 CFR 1026.32(c), *see* Form H-16 in Appendix H).

    a. The required statement "You are not required to complete this agreement merely because you have received these disclosures or have signed a loan application. If you obtain this loan, the lender will have a mortgage on your home. You could lose your home, and any money you have put into it, if you do not meet your obligations under the loan".

    b. The APR.

    c. Amount of the regular monthly (or other periodic) payment and the amount of any balloon payment. The regular payment should include amounts for voluntary items, such as credit life insurance or debt-cancellation coverage, only if the consumer has previously agreed to the amount (*See* the commentary to 12 CFR 1026.32(c)(3)).

    d. Statement that the interest rate may increase and that the monthly payment may increase, and the amount of the single maximum monthly payment, based on the maximum interest rate allowed under the contract, if applicable.

    e. The amount borrowed. For a closed-end mortgage, the amount borrowed is the total amount borrowed, as reflected by the face amount of the note; and where the amount

borrowed includes premiums or other charges for optional credit insurance or debt-cancellation coverage (grouped together with the amount borrowed), that fact shall be stated. For an open-end credit plan, the amount borrowed is the credit limit for the plan when the account is opened.

## Notice of Transfer – 12 CFR 1026.39

1. For any open-end loan secured by a principal dwelling or for any closed-end mortgage loan secured by a dwelling or real property that was sold, assigned, or otherwise transferred to the covered person, determine that the covered person notifies the borrower clearly and conspicuously in writing, in a form that the consumer may keep of such transfer, including (12 CFR 1026.39):

    a. An identification of the loan that was sold, assigned, or otherwise transferred;

    b. The name, address, and telephone number of the covered person who owns the mortgage loan;

    c. The date of transfer (either the date of acquisition recognized in the books and records of the covered person or that of the transferring party) identified by the covered person;

    d. The name, address, and telephone number of an agent or party having authority, on behalf of the covered person, to receive notice of the right to rescind and resolve issues concerning the consumer's payments on the mortgage loan;

    e. Where transfer of ownership of the debt to the covered person is or may be recorded in public records or, alternatively, that the transfer of ownership has not been recorded in public records at the time the disclosure is provided; and,

    f. At the option of the covered person, any other relevant information regarding the transaction.

    g. If there are multiple covered persons, contact information for each of them, unless one of them has been authorized to receive the consumer's notice of the right to rescind and resolve issues concerning the consumer's payments on the loan.

If the loan is a closed-end consumer mortgage loan secured by a dwelling or real property, other than a reverse mortgage transaction subject to 12 CFR 1026.33 of this part, the following information about the covered person's partial payment policy, under the subheading "Partial Payment":

    i. If periodic payments that are less than the full amount due are accepted, a statement that the covered person, using the term "lender," may accept partial payments and apply such payments to the consumer's loan;

ii. If periodic payments that are less than the full amount due are accepted but not applied to a consumer's loan until the consumer pays the remainder of the full amount due, a statement that the covered person, using the term "lender," may hold partial payments in a separate account until the consumer pays the remainder of the payment and then apply the full periodic payment to the consumer's loan;

iii. If periodic payments that are less than the full amount due are not accepted, a statement that the covered person, using the term "lender", does not accept any partial payments; and

iv. A statement that, if the loan is sold, the new covered person, using the term "lender", may have a different policy.

NOTES:

- The format of the disclosure illustrated by Form H-25 of Appendix H may be used (for the information required to be disclosed by 12 CFR 1026.38(l)(5)). The text on that form may be modified to suit the format of the covered person's disclosure under 12 CFR 1026.39. Any modifications must be appropriate and not affect the substance, clarity, or meaningful sequence of the disclosure (Comment 39(d)(5)-1).
- This notice of sale or transfer must be provided for any consumer credit transaction that is secured by the principal dwelling of a consumer, except as noted above. This notification is required of the covered person even if the loan servicer remains the same. In addition, if more than one consumer is liable on the obligation, the covered person may mail or deliver the disclosure notice to any consumer who is primarily liable. And, if an acquisition involves multiple covered persons who each acquire a partial interest in the loan pursuant to separate and unrelated agreements, each covered person has a duty to ensure that disclosures related to its acquisition are accurate and provided in a timely manner unless an exception in 12 CFR 1026.39(c) applies. The parties may, but are not required to, provide a single notice that satisfies the timing and content requirements applicable to each covered person (Comment 39(b)(5)-2).
- Each covered person must provide the notice of transfer or sale to confirmed successors in interest unless the exemption under 12 CFR 1026.39(f) applies.

## Treatment of Credit Balances – 12 CFR 1026.21

1. If an account's credit balance is in excess of $1, determine whether the creditor:

   a. Credited the amount of the credit balance to the consumer's account;

   b. Refunded any part of the remaining credit balance, upon the written request of the consumer; and

c. Made a good faith effort to refund to the consumer by cash, check, or money order, or credit to a deposit account of the consumer, any part of the credit balance remaining in the account for more than six months, unless the consumer's location was not known to the creditor and could not be traced through the consumer's last known address or telephone number.

## Private Education Loans – 12 CFR 1026.46 – 1026.48

1. For private education loans subject to Subpart F, ensure that the required disclosures are accurate (12 CFR 1026.47) and contain the following information:

   a. Application or solicitation disclosures disclose the following:

      i. Interest rate, including:

         A. Rate or range, and if the rate depends in part on a determination of the borrower's creditworthiness or other factors, a statement to that effect;

         B. Whether rate is fixed or variable;

         C. If rate may increase after consummation, any limitations, or lack thereof, and if the limitation is imposed by law, that fact. Also, the creditor must state that the consumer's actual rate may be higher or lower than that disclosed, if applicable; and

         D. Whether the rate will typically be higher if the loan is not co-signed or guaranteed.

      ii. Fees and default or late payment costs.

      iii. Repayment terms, including:

         A. Term of the loan, which is the period during which regularly scheduled payments of principal and interest will be due.

         B. Deferral options, or if consumer does not have the option to defer, that fact.

         C. For each available deferral option applicable, information as to:

            1) Whether interest will accrue during deferral period; and

            2) If interest accrues, whether payment of interest may be deferred and added to the principal balance; and

         D. A statement that, if the consumer files bankruptcy, the consumer may still be required to repay the loan.

      iv. Cost estimates, based on an example of the total cost of the loan, calculated using:

A. The highest interest rate and including all applicable finance charges,

B. An amount financed of $10,000, or $5,000, if the creditor offers loans less than $10,000; and

C. Calculated for each payment option.

v. Eligibility (e.g., any age or school enrollment eligibility requirements).

vi. Alternatives to private education loans, including:

A. A statement that the consumer may qualify for federal student loans;

B. The interest rates available for each program available under Title IV of the Higher Education Act of 1965, and whether the rate is variable or fixed;

C. A statement that the consumer may obtain additional information regarding student federal financial assistance from his or her school or the U.S. Department of Education, including an appropriate website; and

D. A statement that a covered educational institution may have school-specific educational loan benefits and terms not detailed in the loan disclosure forms.

vii. A statement that if the loan is approved, that the loan will be available for 30 days and the terms will not change, except for changes to the interest rate in the case of a variable rate and other changes permitted by law.

viii. A statement that before consummation, the borrower must complete a self-certification form obtained from the student's institution of higher education.

b. For approval disclosures, the following information is required under (12 CFR 1026.47(b)):

i. Interest rate information, including:

A. Interest rate applicable to the loan;

B. Whether the interest rate is variable or fixed; and

C. If the interest rate may increase after consummation, any limitations on the rate adjustments, or lack thereof.

ii. Fees and default or late payment costs, including:

A. An itemization of the fees or range of fees required to obtain the loan; and

B. Any fees, changes to the interest rate, and adjustments to principal based on the consumer's defaults or late payments.

iii. Repayment terms, including:

A. Principal amount;

B. Term of the loan;

C. A description of the payment deferral option chosen by the consumer, if applicable, and any other payment deferral options that the consumer may elect at a later time;

D. Any payments required while the student is enrolled at the educational institution, based on the deferral option chosen by the consumer;

E. Amount of any unpaid interest that will accrue while the student is enrolled in school, based upon the deferral option chosen by the consumer;

F. A statement that if the consumer files for bankruptcy, that the consumer may still be required to pay back the loan;

G. An estimate of the total amount of payments calculated based upon:

1) The interest rate applicable to the loan (compliance with 12 CFR 1026.18(h) constitutes compliance with this requirement);

2) The maximum possible rate of interest for the loan, or, if a maximum rate cannot be determined, a rate of 25 percent; and

3) If a maximum rate cannot be determined, the estimate of the total amount for repayment must include a statement that there is no maximum rate and that the total amount for repayment disclosed is an estimate.

H. The maximum monthly payment based on the maximum rate of interest for the loan, or, if a maximum rate of interest cannot be determined, a rate of 25 percent. If a maximum cannot be determined, a statement that there is no maximum rate and that the monthly payment amount disclosed is an estimate and will be higher if the applicable interest rate increases.

iv. Alternatives to private education loans, including:

A. A statement that the consumer may qualify for federal student loans;

B. The interest rates available for each program available under Title IV of the Higher Education Act of 1965, and whether the rate is variable or fixed; and

C. A statement that the consumer may obtain additional information regarding student federal financial assistance from his or her school or the U.S. Department of Education, including an appropriate website.

v. A statement that the consumer may accept the terms of the loan until the acceptance period under 12 CFR 1026.48(c)(1) has expired. The statement must include:

A. The specific date on which the acceptance period expires, based on the date upon which the consumer receives the disclosures required under this subsection for the loan;

B. The method or methods by which the consumer may communicate the acceptance (written, oral, or by electronic means); and

C. A statement that except for changes to the interest rate and other changes permitted by law, the rates and the terms of the loan may not be changed by the creditor during the 30-day acceptance period.

c. After the consumer has accepted the loan in accordance with 12 CFR 1026.48(c)(1), final disclosures must disclose the information required under 12 CFR 1026.47(c) and the following:

i. Interest rate, including:

A. Interest rate applicable to the loan;

B. Whether the interest rate is variable or fixed; and

C. If the interest rate may increase after consummation, any limitations on the rate adjustments, or lack thereof.

ii. Fees and default or late payment costs, including:

A. An itemization of the fees or range of fees required to obtain the loan; and

B. Any fees, changes to the interest rate, and adjustments to principal based on the consumer's defaults or late payments.

iii. Repayment terms, including:

A. Principal amount;

B. Term of the loan;

C. A description of the payment deferral option chosen by the consumer, if applicable, and any other payment deferral options that the consumer may elect at a later time;

D. Any payments required while the student is enrolled at the educational institution, based on the deferral option chosen by the consumer;

E. Amount of any unpaid interest that will accrue while the student is enrolled in school, based upon the deferral option chosen by the consumer;

F. A statement that if the consumer files for bankruptcy, that the consumer may still be required to pay back the loan;

G. An estimate of the total amount of payments calculated based upon:

1) The interest rate applicable to the loan (compliance with 12 CFR 1026.18(h) constitutes compliance with this requirement);

2) The maximum possible rate of interest for the loan, or, if a maximum rate cannot be determined, a rate of 25 percent; and

3) If a maximum rate cannot be determined, the estimate of the total amount for repayment must include a statement that there is no maximum rate and that the total amount for repayment disclosed is an estimate.

H. The maximum monthly payment based on the maximum rate of interest for the loan, or, if a maximum rate of interest cannot be determined, a rate of 25 percent. If a maximum cannot be determined, a statement that there is no maximum rate and that the monthly payment amount disclosed is an estimate and will be higher if the applicable interest rate increases.

iv. In a text more conspicuous than any other required disclosure, except for the finance charge, the interest rate, and the creditor's identity, the following disclosures:

A. A statement that the consumer has the right to cancel the loan, without penalty, at any time before midnight of the third business day following the date on which the consumer receives the final loan disclosures. The statement must include the specific date on which the cancellation period expires and that the consumer may cancel by that date (12 CFR 1026.47(c)(4)(i));

B. A statement that the loan proceeds will not be disbursed until the cancellation period expires (12 CFR 1026.47(c)(4)(ii));

C. The method or methods by which the consumer may cancel (12 CFR 1026.47(c)(4)(ii)); and

D. If the creditor permits cancellation by mail, the statement specifying that the consumer's mailed request will be deemed timely if placed in the mail not later than the cancellation date specified on the disclosures (12 CFR 1026.47(c)(4)(ii)).

## Open-End Credit Forms Review Procedures

NOTE: 12 CFR 1026.61(a) sets forth the definition of hybrid prepaid-credit card. A covered separate credit feature accessible by a hybrid prepaid-credit card is a credit card account under an open-end (not home-secured) consumer credit plan as defined in 12 CFR 1026.2(a)(15)(ii) if the covered separate credit feature is an open-end credit plan that is not home-secured.

1. Determine that the creditor made the disclosures clearly and conspicuously (12 CFR 1026.5(a)).

2. Determine that the creditor made the applicable disclosures in writing, in a form that the consumer may keep, except (12 CFR 1026.5(a)(1)(ii)):

    a. The following disclosures need not be written: Disclosures under 12 CFR 1026.6(b)(3) of charges that are imposed as part of an open-end (not home-secured) plan that are not required to be disclosed under 12 CFR 1026.6(b)(2) and related disclosures of charges under 12 CFR 1026.9(c)(2)(iii)(B); disclosures under 12 CFR 1026.9(c)(2)(vi); disclosures under 12 CFR 1026.9(d) when a finance charge is imposed at the time of the transaction; and disclosures under 12 CFR 1026.56(b)(1)(i).

    b. The following disclosures need not be in a retainable form: Disclosures that need not be written under 12 CFR 1026.5(a)(1)(ii)(A); the alternative summary billing-rights statement under 12 CFR 1026.9(a)(2); the credit and charge card renewal disclosures required under 12 CFR 1026.9(e); the payment requirements under 12 CFR 1026.10(b), except as provided in 12 CFR 1026.7(b)(13); home-equity disclosures under 12 CFR 1026.40(d); and disclosures for credit and charge card applications and solicitations under 12 CFR 1026.60.

    c. The disclosures required by this subpart may be provided to the consumer in electronic form, subject to compliance with the consumer consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. 7001 *et seq.*). The disclosures required by 12 CFR 1026.60, 1026.40, and 1026.16 may be provided to the consumer in electronic form without regard to the consumer consent or other provisions of the E-Sign Act in the circumstances set forth in those sections.

3. Determine that the terminology used in providing the disclosures required by 12 CFR 1026.5 is consistent (12 CFR 1026.5(a)(2)(i)).

4. Determine that, for home-equity plans subject to 12 CFR 1026.40, the terms *finance charge* and *annual percentage rate (APR)*, when required to be disclosed with a corresponding amount or percentage rate, shall be more conspicuous than any other required disclosure. The terms need not be more conspicuous when used for periodic statement disclosures under 12 CFR 1026.7(a)(4) and for advertisements under 12 CFR 1026.16 (12 CFR 1026.5(a)(2)(ii)).

5. Determine that, if disclosures are required to be presented in a tabular format pursuant to 12 CFR 1026.5(a)(3), that the term *penalty APR* shall be used, as applicable (12 CFR 1026.5(a)(2)(iii)).

   NOTE: The term *penalty APR* need not be used in reference to the annual percentage rate that applies with the loss of a promotional rate, assuming the annual percentage rate that applies is not greater than the annual percentage rate that would have applied at the end of the promotional period; or if the annual percentage rate that applies with the loss of a promotional rate is a variable rate, the annual percentage rate is calculated using the same index and margin as would have been used to calculate the annual percentage rate that would have applied at the end of the promotional period. If credit insurance or debt cancellation or debt suspension coverage is required as part of the plan, the term *required* shall be used and the program shall be identified by its name. If an annual percentage rate is required to be presented in a tabular format pursuant to paragraph (a)(3)(i) or (a)(3)(iii) of this section, the term *fixed*, or a similar term, may not be used to describe such rate unless the creditor also specifies a time period that the rate will be fixed and the rate will not increase during that period, or if no such time period is provided, the rate will not increase while the plan is open.

6. Determine whether the credit offered in connection with a prepaid account is subject of this regulation as set forth in 12 CFR 1026.61(a)(2)(i) (12 CFR 1026.61(a)(2)(i)).

## Credit and Charge Card Application and Solicitation Disclosures – 12 CFR 1026.60

1. Determine that the credit card solicitation or application disclosures were made clearly and conspicuously on or with a solicitation or an application (12 CFR 1026.60).

2. For the disclosures in 12 CFR 1026.60(b)(1) through (5) (except for (b)(1)(iv)(B) and (b)(7) through (15)), determine that the creditor made the disclosures required for 12 CFR 1026.60(c), (d)(2), (e)(1), and (f) in the form of a table with headings, content, and format substantially similar to the applicable tables found in G-10 in Appendix G (12 CFR 1026.60(a)(2)(i)).

   NOTE: Review any fees or charges imposed on the asset feature of a prepaid account that are charges imposed as part of the plan under 12 CFR 1026.6(b)(3). Those fees or charges must be included in the disclosures on or with an application or solicitation to the extent those fees or charges fall within the categories of fees or charges required to be disclosed under (12 CFR 1026.60(b)).

3. Determine that the table required by 12 CFR 1026.60(a)(2)(i) contains only the information required or permitted by that section. If the creditor provides other information, determine that such information appears outside the table (12 CFR 1026.60(a)(2)(ii)).

4. Determine that the disclosures required by 12 CFR 1026.60(b)(1)(iv)(B), (b)(1)(iv)(C), and (b)(6) are placed directly beneath the table required by 12 CFR 1026.60(a)(2)(i) (12 CFR 1026.60(a)(2)(iii)).

5. When a tabular format is required, determine that the following disclosures are disclosed in bold text (12 CFR 1026.60(a)(2)(iv)):

    a. APR required to be disclosed pursuant to paragraph (b)(1) of this section;

    b. Introductory rate required to be disclosed pursuant to paragraph (b)(1)(ii) of this section;

    c. Rate that will apply after a premium initial rate expires required to be disclosed under paragraph (b)(1)(iii) of this section; and

    d. Fee or percentage amounts or maximum limits on fee amounts required to be disclosed pursuant to paragraphs (b)(2), (b)(4), (b)(8) through (b)(13).

    NOTE: Bold text shall not be used for the amount of any periodic fee disclosed pursuant to paragraph (b)(2) of this section that is not an annualized amount, and other APRs or fee amounts disclosed in the table (12 CFR 1026.60(a)(2)(iv)).

6. Determine that the card issuer discloses, on or with a solicitation or application (12 CFR 1026.60(b)):

    a. APR. Each periodic rate that may be used to compute the finance charge on an outstanding balance for purchases, a cash advance, or a balance transfer, expressed as an APR. When more than one rate applies for a category of transactions, determine that the range of balances to which each rate is applicable is also disclosed (12 CFR 1026.60(b)(1)).

    NOTE: The APR for purchases disclosed pursuant to 12 CFR 1026.60(b)(1) shall be in at least 16-point type, except for the following: oral disclosures of the APR for purchases, or a penalty rate that may apply upon the occurrence of one or more specific events.

        i. *Variable rate information*. If a rate is a variable rate, determine that the card issuer discloses the fact that the rate may vary and how the rate is determined. Determine that the card issuer identifies the type of index or formula that is used in setting the rate. Determine that the value of the index and the amount of the margin that are used to calculate the variable rate are not disclosed in the table. Determine further that any applicable limitations on rate increases are not included in the table (12 CFR 1026.60(b)(1)(i)).

        ii. *Discounted initial rate.* If the initial rate is an introductory rate, determine that the card issuer discloses in the table the introductory rate, the time period during which the introductory rate will remain in effect, and the term "introductory" or "intro" in immediate proximity to the introductory rate. Determine further that the card issuer discloses, as applicable, either the variable or fixed rate that would otherwise apply to the account (12 CFR 1026.60(b)(1)(ii)).

iii. *Premium initial rate*. If the initial rate is temporary and is higher than the rate that will apply after the temporary rate expires, determine that the card issuer discloses the premium initial rate and the time period during which the premium initial rate will remain in effect. Determine that the premium initial rate for purchases is in at least 16-point type. Determine that the issuer discloses in the table the rate that will apply after the premium initial rate expires, in at least 16-point type (12 CFR 1026.60(b)(1)(iii)).

iv. *Penalty rates.* Except as for provided introductory rate or employee preferential rate requirements (discussed below), if a rate may increase as a penalty for one or more events specified in the account agreement, such as a late payment or an extension of credit that exceeds the credit limit, determine that the card issuer discloses the increased rate that may apply, a brief description of the event or events that may result in the increased rate, and a brief description of how long the increased rate will remain in effect (12 CFR 1026.60(b)(1)(iv)(A)).

v. *Introductory rate.* If the issuer discloses an introductory rate in the table or in any written or electronic promotional materials accompanying applications or solicitations (and subject to paragraph (c) or (e) of 12 CFR 1026.60), determine that the issuer briefly discloses, directly beneath the table, the circumstances, if any, under which the introductory rate may be revoked, and the type of rate that will apply after the introductory rate is revoked. (12 CFR 1026.60(b)(1)(iv)(B))

vi. *Employee preferential rates.* If the issuer discloses in the table a preferential APR for which only employees of the card issuer, employees of a third party, or other individuals with similar affiliations with the card issuer or third party are eligible, determine that the issuer briefly discloses directly beneath the table the circumstances under which such preferential rate may be revoked and the rate that will apply after such preferential rate is revoked (12 CFR 1026.60(b)(1)(iv)(C)).

vii. *Rates that depend on consumer's creditworthiness.* If a rate cannot be determined at the time disclosures are given because the rate depends, at least in part, on a later determination of the consumer's creditworthiness, determine that the card issuer discloses the specific rates or the range of rates that could apply and a statement that the rate for which the consumer may qualify at account opening will depend on the consumer's creditworthiness, and other factors if applicable (12 CFR 1026.60(b)(1)(v)).

NOTE: If the rate that depends, at least in part, on a later determination of the consumer's creditworthiness is a penalty rate, as described in 12 CFR 1026.60(b)(1)(iv), the card issuer at its option may disclose the highest rate that could apply, instead of disclosing the specific rates or the range of rates that could apply (12 CFR 1026.60(b)(1)(v)).

viii. *APRs that vary by state.* Determine that the card issuer does not list APRs for multiple states in the table. Note, however, that issuers imposing APRs that vary by state may, at the issuer's option, disclose in the table: the specific APR applicable to the consumer's account; or the range of the annual percentage rates, if the disclosure includes a statement that the APR varies by state and refers the consumer to a disclosure provided with the table where the APR applicable to the consumer's account is disclosed (12 CFR 1026.60(b)(1)(vi)).

b. *Fees for issuance or availability.* Determine that the card issuer discloses any annual or other periodic fee, expressed as an annualized amount, or any other fee that may be imposed for the issuance or availability of a credit or charge card, including any fee based on account activity or inactivity (12 CFR 1026.60(b)(2)).

NOTE: A charge card issuer must disclose the applicable items in 12 CFR 1026.60(b)(2), (4), (7) through (12), and (15). For a covered separate credit feature that is a charge card account accessible by a hybrid prepaid-credit card, as defined in 12 CFR 1026.61, a charge card issuer also must disclose the applicable items in 12 CFR 1026.60(b)(3), (13), and (14).

c. *Fixed finance charge; minimum interest charge.* Determine that the creditor discloses any fixed finance charge that could be imposed during a billing cycle, as well as a brief description of that charge. Determine that the creditor discloses any minimum interest charge if it exceeds $1 that could be imposed during a billing cycle, and a brief description of the charge (12 CFR 1026.60(b)(3)).

d. *Transaction charge.* Determine that the creditor discloses any transaction charge imposed for the use of the card for purchases (12 CFR 1026.60(b)(4)).

e. *Grace period.* Determine that the issuer discloses the date by which or the period within which any credit extended for purchases may be repaid without incurring a finance charge due to a periodic interest rate and any conditions on the availability of the grace period. If no grace period is provided, determine that this fact is disclosed. In disclosing in the tabular format, a grace period that applies to all types of purchases, determine that the issuer uses the phrase "How to Avoid Paying Interest on Purchases" as the heading for the row describing the grace period. If a grace period is not offered on all types of purchases, in disclosing this fact in the tabular format, determine that the issuer uses the phrase "Paying Interest" as the heading for the row describing this fact.

NOTE: If the length of the grace period varies, the card issuer may disclose the range of days, the minimum number of days, or the average number of days in the grace period, if the disclosure is identified as a range, minimum, or average (12 CFR 1026.60(b)(5)).

f. *Balance computation method.* Determine that the creditor disclosed the name of the balance computation method that is used to determine the balance on which the finance charge is computed, or an explanation of the method used if it is not listed. In

determining which balance computation method to disclose, the creditor should have assumed that the credit extended will not be repaid within any grace period (12 CFR 1026.60(b)(6)).

NOTE: Disclosures required by 12 CFR 1026.60(b)(6) must be placed directly beneath the table.

g. *Statement on charge card payments.* Determine that the creditor discloses a statement that charges incurred by use of the charge card are due when the periodic statement is received (12 CFR 1026.60(b)(7)).

h. *Cash advance fee.* Determine that the creditor disclosed any fee imposed for an extension of credit in the form of cash or its equivalent (12 CFR 1026.60(b)(8)).

i. *Late payment fee*. Determine that the creditor disclosed any fee imposed for a late payment (12 CFR 1026.60(b)(9)).

j. *Over-the-limit fee.* Determine that the creditor disclosed any fee imposed for exceeding the credit limit (12 CFR 1026.60(b)(10)).

k. *Balance transfer fee*. Determine that the creditor disclosed any fee imposed to transfer a balance (12 CFR 1026.60(b)(11)).

l. *Returned payment fee*. Determine that the creditor disclosed any fee imposed for a returned payment (12 CFR 1026.60(b)(12)).

m. *Required insurance, debt cancellation, or debt suspension coverage*. Determine that the fee imposed required insurance, debt cancellation or suspension coverage is disclosed if the insurance, debt cancellation or coverage is required as part of the plan (12 CFR 1026.60(b)(13)).

n. *Available credit.* Determine whether total of required fees for the issuance or availability of credit and/or security deposit debited to the account at account opening equal or exceed 15 percent of minimum credit limit for the account. If so, determine that the creditor disclosed, as applicable, the available credit remaining after the fees and/or security deposit are debited to the account (12 CFR 1026.60(b)(14)).

o. *Website reference*. Determine that the creditor disclosed a reference to the website established by the CFPB and a statement that the consumers may obtain on the website information about shopping for and using credit cards (12 CFR 1026.60(b)(15)).

## Requirements for Home-Equity Plans – 12 CFR 1026.40

1. Determine that the following home equity disclosures were made clearly and conspicuously, at the time of application (12 CFR 1026.40).

a. Home equity brochure

b. Statement that the consumer should retain a copy of the disclosure

c. Statement of the time that the specific terms are available

d. Statement that terms are subject to change before the plan opens

e. Statement that the consumer may receive a full refund of all fees

f. Statement that the consumer's dwelling secures the credit

g. Statement that the consumer could lose the dwelling

h. Creditors' right to change, freeze, or terminate the account

i. Statement that information about conditions for adverse action is available upon request

j. Payment terms including the length of the draw and repayment periods, how the minimum payment is determined, the timing of payments, and an example based on $10,000 and a recent APR

k. A recent APR imposed under the plan and a statement that the rate does not include costs other than interest (fixed rate plans only)

l. Itemization of all fees paid to creditor

m. Estimate of any fees payable to third parties to open the account and a statement that the consumer may receive a good faith itemization of third-party fees

n. Statement regarding negative amortization, as applicable

o. Transaction requirements

p. Statement that the consumer should consult a tax advisor regarding the deductibility of interest and charges under the plan

q. For variable rate home equity plans, disclose the following:

   i. That the APR, payment, or term may change;

   ii. The APR excludes costs other than interest;

   iii. Identify the index and its source;

   iv. How the APR will be determined;

   v. Statement that the consumer should request information on the current index value, margin, discount, premium, or APR;

vi. Statement that the initial rate is discounted and the duration of the discount, if applicable; and

vii. Frequency of APR changes.

r. Rules relating to changes in the index, APR, and payment amount:

i. Lifetime rate cap and any annual caps, or a statement that there is no annual limitation;

ii. The minimum payment requirement, using the maximum APR, and when the maximum APR may be imposed;

iii. A historical example, based on a $10,000 balance, reflecting all significant plan terms; and

iv. Statement that rate information will be provided on or with each periodic statement.

2. For home-equity plans subject to 12 CFR 1026.40, determine that the terms finance charge and annual percentage rate, when required to be disclosed with a corresponding amount or percentage rate, are more conspicuous than any other required disclosure.

NOTE: The terms need not be more conspicuous when used for periodic statement disclosures under 12 CFR 1026.7(a)(4) and for advertisements under 12 CFR 1026.16 (12 CFR 1026.5(a)(2)(ii)).

## Account Opening Initial Disclosures – 12 CFR 1026.6

1. The following requirements apply only to home-equity plans subject to the requirements of 12 CFR 1026.40. Determine that the creditor discloses, as applicable (12 CFR 1026.6(a)):

a. *Finance charge.* The circumstances under which a finance charge will be imposed and an explanation of how it will be determined, including: a statement of when finance charges begin to accrue, and an explanation of whether or not any time period exists within which any credit extended may be repaid without incurring a finance charge; a disclosure of each periodic rate that may be used to compute the finance charge, the range of balances to which it is applicable, and the corresponding annual percentage rate; an explanation of the method used to determine the balance on which the finance charge may be computed; and, an explanation of how the amount of any finance charge will be determined, including a description of how any finance charge other than the periodic rate will be determined (12 CFR 1026.6(a)(1)).

If a creditor offers a variable-rate plan, determine that the creditor discloses: the circumstances under which the rate(s) may increase; any limitations on the increase; and the effect(s) of an increase. When different periodic rates apply to different types of

transactions, determine that the types of transactions to which the periodic rates shall apply shall also be disclosed (12 CFR 1026.6(a)(1)).

b. *Other charges.* The amount of any charge other than a finance charge that may be imposed as part of the plan, or an explanation of how the charge will be determined (12 CFR 1026.6(a)(2)).

c. *Home-equity plan information.* The following disclosures, as applicable (12 CFR 1026.6(a)(3)):

i. A statement of the conditions under which the creditor may take certain action, as described in 12 CFR 1026.40(d)(4)(i), such as terminating the plan or changing the terms.

ii. The payment information described in 12 CFR 1026.40(d)(5)(i) and (ii) for both the draw period and any repayment period.

iii. A statement that negative amortization may occur as described in (12 CFR 1026.40(d)(9)).

iv. A statement of any transaction requirements as described in (12 CFR 1026.40(d)(10)).

v. A statement regarding the tax implications as described in (12 CFR 1026.40(d)(11)).

vi. A statement that the APR imposed under the plan does not include costs other than interest as described in 12 CFR 1026.40(d)(6) and (d)(12)(ii).

vii. The variable-rate disclosures described in 12 CFR 1026.40(d)(12)(viii), (d)(12)(x), (d)(12)(xi), and (d)(12)(xii), as well as the disclosure described in 12 CFR 1026.40(d)(5)(iii), unless the disclosures provided with the application were in a form that the consumer could keep and included a representative payment example for the category of payment option chosen by the consumer.

d. *Security interests*. The fact that the creditor has or will acquire a security interest in the property purchased under the plan, or in other property identified by item or type (12 CFR 1026.6(a)(4)).

e. *Statement of billing rights.* A statement that outlines the consumer's rights and the creditor's responsibilities under 12 CFR 1026.12(c) and 1026.13 and that is substantially similar to the statement found in Model Form G-3 or, at the creditor's option, G-3(A), in Appendix G to this part (12 CFR 1026.6(a)(5)).

2. For open-end (not home-secured) plans, determine that the creditor provided the account-opening disclosures specified in 12 CFR 1026.6(b)(2)(i) through (b)(2)(v) (except for 12 CFR 1026.6 (b)(2)(i)(D)(2) and 12 CFR 1026.6 (b)(2)(vii) through (b)(2)(xiv)) in the form of

a table with the headings, content, and format substantially similar to any of the applicable tables in G-17 in Appendix G (12 CFR 1026.6(b)(1)).

3. For open-end (not home-secured) plans, determine that the following disclosures are disclosed in bold text (12 CFR 1026.6(b)(1)(i)):

    a. Any APR required to be disclosed pursuant to (12 CFR 1026.6(b)(2)(i));

    b. Any introductory rate permitted to be disclosed pursuant to paragraph (b)(2)(i)(B) or required to be disclosed under paragraph (b)(2)(i)(F) of this section;

    c. Any rate that will apply after a premium initial rate expires, permitted to be disclosed pursuant to paragraph (b)(2)(i)(C) or required to be disclosed pursuant to paragraph (b)(2)(i)(F); and

    d. Any fee or percentage amounts or maximum limits on fee amounts disclosed pursuant to paragraphs (b)(2)(ii), (b)(2)(iv), (b)(2)(vii) through (b)(2)(xii).

4. Determine that bold text is not used for: The amount of any periodic fee disclosed pursuant to paragraph (b)(2) of this section that is not an annualized amount, and other APRs or fee amounts disclosed in the table (12 CFR 1026.6(b)(1)(i)).

5. Determine that only the information required or permitted by 12 CFR 1026.6(b)(2)(i) through (b)(2)(v) (except for (b)(2)(i)(D)(2)) and (b)(2)(vii) through (b)(2)(xiv)) are provided in the table. Disclosures required by paragraphs (b)(2)(i)(D)(2), (b)(2)(i)(D)(3), (b)(2)(vi), and (b)(2)(xv) of this section shall be placed directly below the table required by 12 CFR 1026.6(b)(1) (12 CFR 1026.6(b)(1)(ii)).

    NOTE: Disclosures required by 12 CFR 1026.6(b)(3) through (b)(5) that are not otherwise required to be in the table, and other information may be presented with the account agreement or account-opening disclosure statement, provided such information appears outside the required table.

6. For creditors that impose fees referred to in 12 CFR 1026.6(b)(2)(vii) through (b)(2)(xi) that vary by state and that provide the disclosures required by 12 CFR 1026.6(b) in person at the time the open-end (not home-secured) plan is established in connection with financing the purchase of goods or services, determine that the creditor discloses in the account-opening table either:

    a. The specific fee applicable to the consumer's account, or

    b. The range of fees, a statement that the amount of the fee varies by state, and a reference to the account agreement or other disclosure provided with the account-opening table where the amount of the fee applicable to the consumer's account is disclosed (12 CFR 1026.6(b)(1)(iii)).

NOTE: A creditor is not permitted to list fees for multiple states in the account-opening summary table (12 CFR 1026.6(b)(1)(iii)).

c. If the amount of any fee required to be disclosed under this section is determined on the basis of a percentage of another amount, the percentage used and the identification of the amount against which the percentage is applied may be disclosed instead of the amount of the fee (12 CFR 1026.6(b)(1)(iv)).

7. The following requirements apply to open-end (not home-secured). Determine that the creditor discloses in the appropriate format, as applicable:

Review any fees or charges imposed on a covered separate credit feature and an asset feature on a prepaid account that are both accessible by a hybrid prepaid-credit card as defined in 12 CFR 1026.61. A creditor is required to disclose under 12 CFR 1026.6(b)(2) any fees or charges imposed on the asset feature that are charges imposed as part of the plan under 12 CFR 1026.6(b)(3) to the extent those fees fall within the categories of fees or charges required to be disclosed under (12 CFR 1026.6(b)(2)).

a. *Annual percentage rate.* Each periodic rate that may be used to compute the finance charge on an outstanding balance for purchases, a cash advance, or a balance transfer, expressed as an APR. When more than one rate applies for a category of transactions, determine that the creditor discloses the range of balances to which each rate is applicable. Ensure that the APR for purchases disclosed pursuant to this paragraph is in at least 16-point type, except for a penalty rate that may apply upon the occurrence of one or more specific events (12 CFR 1026.6(b)(2)(i)).

b. *Variable rate information.* If the rate is a variable rate, determine that the creditor also disclosed the fact that the rate may vary and how the rate is determined (i.e., identify the type of index or formula used in setting the rate) (12 CFR 1026.6(b)(2)(i)(A)).

c. *Discounted initial rate.* If the initial rate is an introductory rate, determine that the creditor disclosed that the rate would otherwise apply to the account. Where the rate is not tied to an index or formula, determine that the creditor disclosed the rate that will apply after the introductory rate expires. For a variable rate account, determine that the creditor disclosed a rate based on the applicable index or formula in accordance with the accuracy requirements (12 CFR 1026.6(b)(2)(i)(B)).

d. *Premium initial rate.* If the initial rate is temporary and is higher than the rate that will apply after the temporary rate expires, determine that the creditor disclosed the premium initial rate. Determine that the premium rate for purchases is in at least 16-point type (12 CFR 1026.6(b)(2)(i)(C)).

e. *Penalty rates.* Except for introductory rates and employee preferential rates (discussed below), if the rate is a penalty rate, determine that the creditor disclosed as part of the APR disclosure the increased rate that may apply, a brief description of the

event or events that may result in the increased rate, and a brief description of how long the increased rate will remain in effect (12 CFR 1026.6(b)(2)(i)(D)(1)).

f. *Introductory rates.* If the creditor discloses in the table an introductory rate, as that term is defined in 12 CFR 1026.16(g)(2)(ii), determine that the creditor briefly disclosed directly beneath the table the circumstances under which the introductory rate may be revoked, and the rate that will apply after the introductory rate is revoked (12 CFR 1026.6(b)(2)(i)(D)(2)).

g. *Employee preferential rates.* If the creditor discloses in the table a preferential APR for which only employees of the creditor, employees of a third party, or other individuals with similar affiliations with the creditor or third party are eligible, determine that the creditor briefly disclosed directly beneath the table the circumstances under which the preferential rate may be revoked, and the rate that will apply after the preferential rate is revoked (12 CFR 1026.6(b)(2)(i)(D)(3)).

h. *Point of sale where APRs vary by state or based on creditworthiness.* If the creditor imposes an APR that varies by state or based on the consumer's creditworthiness and provides required disclosures in person at the time the open-end (not home-secured) plan is established in connection with financing the purchase of goods or services, determine that the creditor discloses either (12 CFR 1026.6(b)(2)(i)(E)):

   i. The specific APR applicable to the consumer's account; or

   ii. The range of the APRs, if the disclosure includes a statement that the APR varies by state or will be determined based on the consumer's creditworthiness and refers the consumer to the account agreement or other disclosure provided with the account-opening table where the AP applicable to the consumer's account is disclosed. Determine that the creditor does not list APRs for multiple states in the account opening table.

i. *Credit card accounts under an open-end (not home-secured) consumer credit plan.* Determine that the issuer discloses in the table (12 CFR 1026.6(b)(2)(i)(F)):

   i. Any introductory rate, and

   ii. Any rate that would apply upon expiration of a premium initial rate.

j. *Fees for issuance or availability.* Determine that the creditor disclosed any annual or periodic fee that may be imposed for the issuance or availability of an open-end plan (including any fee based on account activity or inactivity); how frequently the fee will be imposed; and the annualized amount of the fee (12 CFR 1026.6(b)(2)(ii)).

k. *Fixed finance charge and minimum interest charge.* Determine that the creditor disclosed any fixed finance charge and any minimum interest charge if it exceeds $1

that could be imposed during a billing cycle, and a brief description of the charge (12 CFR 1026.6(b)(2)(iii)).

l. Determine that the creditor disclosed any non-periodic fee that relates to opening the plan. A creditor must disclose that the fee is a one-time fee (12 CFR 1026.6(b)(2)(ii)(B)).

m. *Transaction charges.* Determine that the creditor discloses any transaction charge imposed by the creditor for use of the open-end plan for purchases (12 CFR 1026.6(b)(2)(iv)).

n. *Grace period.* The date by which or the period within which any credit extended may be repaid without incurring a finance charge due to a periodic interest rate and any conditions on the availability of the grace period. If no grace period is provided, that fact must be disclosed. If the length of the grace period varies, the creditor may disclose the range of days, the minimum number of days, or the average number of days in the grace period, if the disclosure is identified as a range, minimum, or average. In disclosing in the tabular format a grace period that applies to all features on the account, the phrase "How to Avoid Paying Interest" shall be used as the heading for the row describing the grace period. If a grace period is not offered on all features of the account, in disclosing this fact in the tabular format, the phrase "Paying Interest" shall be used as the heading for the row describing this fact (12 CFR 1026.6(b)(2)(v)).

o. *Balance computation method.* Determine that the creditor disclosed in the account opening disclosures the name of the balance computation method that is used to determine the balance on which the finance charge is computed for each feature, or an explanation of the method used if it is not listed, along with a statement that an explanation of the methods required by 12 CFR 1026.6(b)(4)(i)(D) is provided with the account opening disclosures. In determining which balance computation method to disclose, the creditor should have assumed that the credit extended will not be repaid within any grace period (12 CFR 1026.6(b)(2)(vi)).

p. *Cash advance fee.* Determine that the creditor disclosed any fee imposed for an extension of credit in the form of cash or its equivalent (12 CFR 1026.6(b)(2)(vii)).

q. *Late payment fee*. Determine that the creditor disclosed any fee imposed for a late payment (12 CFR 1026.6(b)(2)(viii)).

r. *Over-the-limit fee.* Determine that the creditor disclosed any fee imposed for exceeding the credit limit (12 CFR 1026.6(b)(2)(ix)).

s. *Balance transfer fee*. Determine that the creditor disclosed any fee imposed to transfer a balance (12 CFR 1026.6(b)(2)(x)).

t. *Returned payment fee.* Determine that the creditor disclosed any fee imposed for a returned payment (12 CFR 1026.6(b)(2)(xi)).

u. *Required insurance, debt cancellation, or debt suspension coverage.* Determine that the fee imposed for required insurance, debt cancellation or suspension coverage is disclosed if the insurance, debt cancellation or coverage is required as part of the plan. Creditors must also cross reference additional information about the insurance or coverage as applicable (12 CFR 1026.6(b)(2)(xii)).

v. *Available credit.* Determine whether total of required fees for the issuance or availability of credit and/or security deposit debited to the account at account opening equal or exceed 15 percent of the credit limit for the account. If so, determine that the creditor disclosed, as applicable, the available credit remaining after the fees and/or security deposit are debited to the account (12 CFR 1026.6(b)(2)(xiii)).

w. *Website reference.* For issuers of credit cards that are not charge cards, determine that the creditor disclosed a reference to the website established by the CFPB and a statement that the consumers may obtain on the website information about shopping for and using credit cards (12 CFR 1026.6(b)(2)(xiv)).

x. *Billing error rights reference.* Determine that the creditor disclosed a statement that information about consumers' right to dispute transactions is included in the account-opening disclosures (12 CFR 1026.6(b)(2)(xv)).

y. *Charges and finance charges.* For charges imposed as part of open-end (not home-secured) plan, the circumstances under which the charge may be imposed, including the amount of the charge or explanation of how the charge is determined. For finance charges, a statement of when finance charges begin to accrue, including an explanation of whether or not any time period exists within which any credit extended may be repaid without incurring a finance charge. If such a time period is provided, a creditor may, at its option and without disclosure, impose no finance charge when payment is received after the time period's expiration (12 CFR 1026.6(b)(3)(i)).

z. *Disclosure of rates for open-end (not home-secured) plans.* Determine that the creditor disclosed, as applicable, for each periodic rate that may be used to calculate interest (12 CFR 1026.6(b)(4)(i)):

   i. The rate (expressed as a periodic rate and a corresponding APR),

   ii. The range of balances to which the rate is applicable,

   iii. The type of transaction to which the periodic rate applies, and

   iv. An explanation of the method used to determine the balance to which the rate is applied.

aa. *Variable-rate Accounts.* For interest rate changes that are tied to increases in an index or formula (variable-rate accounts) determine that the following are specifically set forth in the account agreement (12 CFR 1026.6(b)(4)(ii)):

i. The fact that the APR may increase,

ii. How the rate is determined, including the margin,

iii. The circumstances under which the rate may increase,

iv. The frequency with which the rate may increase,

v. Any limitation on the amount that the rate may change,

vi. The effect(s) of an increase, and

vii. Except as specified in paragraph (b)(4)(ii)(H) of this section, a rate is accurate if it is a rate as of a specified date and this rate was in effect within the last 30 days before the disclosures are provided.

bb. *Rate changes not due to index or formula.* For interest rate changes that are specifically set forth in the account agreement and not tied to increases in an index or formula, determine that the creditor discloses (12 CFR 1026.6(b)(4)(iii)):

i. The initial rate (expressed as a periodic rate and a corresponding APR);

ii. How long the initial rate will remain in effect and the specific events that cause the initial rate to change;

iii. The rate (expressed as a periodic rate and a corresponding APR) that will apply when the initial rate is no longer in effect, and any limitation on the time period that the new rate will remain in effect;

iv. The balances to which the new rate will apply;

v. The balances to which the current rate at the time of the change will apply.

cc. *Voluntary credit insurance, debt cancellation, or debt suspension.* Determine that the creditor disclosed the applicable disclosures if the creditor offers optional credit insurance, or debt cancellation or debt suspension coverage (12 CFR 1026.6(b)(5)(i)).

dd. *Security interests.* Determine that the creditor disclosed the fact that the creditor has or will acquire a security interest in the property purchased under the plan, or in other property identified by item or type (12 CFR 1026.6(b)(5)(ii)).

ee. *Statement of billing rights.* Determine that the creditor disclosed a statement that outlines the consumer's rights and the creditor's responsibilities (12 CFR 1026.6(b)(5)(iii)).

## Periodic Statement Disclosures – 12 CFR 1026.7

1. Rules affecting home-equity plans. For home-equity plans subject to the requirements of 12 CFR 1026.40, determine that the creditor disclosed on the periodic statement items *a* through *j* below (12 CFR 1026.7(a)):

NOTE: The requirements of 12 CFR 1026.7(a) apply only to home-equity plans subject to the requirements of 12 CFR 1026.40. Alternatively, a creditor subject to the rules affecting home-equity plans may, at its option, comply with any of the requirements of 12 CFR 1026.7(b); however, any creditor that chooses not to provide a disclosure under 12 CFR 1026.7(a)(7) must comply with (12 CFR 1026.7(b)(6)).

a. *Previous balance.* The account balance outstanding at the beginning of the billing cycle (12 CFR 1026.7(a)(1)).

b. *Identification of transactions.* An identification of each credit transaction in accordance with 12 CFR 1026.8 (12 CFR 1026.7(a)(2)).

c. *Credits.* Any credit to the account during the billing cycle, including the amount and the date of crediting. The date need not be provided if a delay in accounting does not result in any finance or other charge (12 CFR 1026.7(a)(3)).

d. *Periodic rates.* Each periodic rate that may be used to compute the finance charge, the range of balances to which it is applicable, and the corresponding APR. If different periodic rates apply to different types of transactions, the types of transactions to which the periodic rates apply shall also be disclosed and for variable-rate plans, the fact that the periodic rate(s) may vary (12 CFR 1026.7(a)(4)).

NOTES:

- If no finance charge is imposed when the outstanding balance is less than a certain amount, the creditor is not required to disclose that fact, or the balance below which no finance charge will be imposed.
- Further, an APR that differs from the rate that would otherwise apply and is offered only for a promotional period need not be disclosed except in periods in which the offered rate is actually applied.

e. *Balance on which finance charge computed.* The amount of the balance to which a periodic rate was applied and an explanation of how that balance was determined. When a balance is determined without first deducting all credits and payments made during the billing cycle, the fact and the amount of the credits and payments shall be disclosed (12 CFR 1026.7(a)(5)).

f. *Amount of finance charge and other charges* (12 CFR 1026.7(a)(6)).

i. *Finance charges.* The amount of any finance charge debited or added to the account during the billing cycle, using the term finance charge. Determine that the components of the finance charge are individually itemized and identified to show the amount(s) due to the application of any periodic rates and the amount(s) of any other type of finance charge.

NOTE: If there is more than one periodic rate, the amount of the finance charge attributable to each rate need not be separately itemized and identified (12 CFR 1026.7(a)(6)(i)).

ii. *Other charges.* The amounts itemized and identified by type, of any charges other than finance charges debited to the account during the billing cycle (12 CFR 1026.7(a)(6)(ii)).

NOTE: Creditors may comply with paragraphs (a)(6) of 12 CFR 1026.7, or with paragraph (b)(6) of 12 CFR 1026.7, at their option.

g. *Annual percentage rate.* At a creditor's option, when a finance charge is imposed during the billing cycle, the APR(s) determined under 12 CFR 1026.14(c) using the term annual percentage rate (12 CFR 1026.7(a)(7)).

h. *Grace period.* The date by which or the time period within which the new balance or any portion of the new balance must be paid to avoid additional finance charges (12 CFR 1026.7(a)(8)).

i. *Address for notice of billing errors.* The address to be used for notice of billing errors. Alternatively, the address may be provided on the billing rights statement permitted by 12 CFR 1026.9(a)(2) (12 CFR 1026.7(a)(9)).

j. *Closing date of billing cycle; new balance.* The closing date of the billing cycle and the account balance outstanding on that date (12 CFR 1026.7(a)(10)).

2. *Rules affecting open-end (not home-secured) plans.* The requirements of paragraph (b) of this section (*a* through *n* below) apply only to plans other than home-equity plans subject to the requirements of 12 CFR 1026.40. For applicable plans, determine that the creditor discloses on the periodic statement (12 CFR 1026.7(b)):

a. *Previous balance.* The account balance outstanding at the beginning of the billing cycle (12 CFR 1026.7(b)(1)).

b. *Identification of transactions*. An identification of each credit transaction in accordance with 12 CFR 1026.8 (12 CFR 1026.7(b)(2)).

c. *Credits.* Any credit to the account during the billing cycle, including the amount and the date of crediting. The date need not be provided if a delay in crediting does not result in any finance or other charge (12 CFR 1026.7(b)(3)).

d. *Periodic rates.* Each periodic rate that may be used to compute the interest charge expressed as an APR and using the term Annual Percentage Rate, along with the range of balances to which it is applicable (12 CFR 1026.7(b)(4)).

NOTE: If no interest charge is imposed when the outstanding balance is less than a certain amount, the creditor is not required to disclose that fact, or the balance below which no interest charge will be imposed. The types of transactions to which the periodic rates apply shall also be disclosed. For variable-rate plans, the fact that the APR may vary; and a promotional rate, as that term is defined in 12 CFR 1026.16(g)(2)(i), is required to be disclosed only in periods in which the offered rate is actually applied.

e. *Balance on which finance charge computed.* The amount of the balance to which a periodic rate was applied and an explanation of how that balance was determined, using the term *Balance Subject to Interest Rate* (12 CFR 1026.7(b)(5)).

f. *Charges imposed.* The amounts of any charges imposed as part of a plan as stated in 12 CFR 1026.6(b)(3), grouped together, in proximity to transactions identified under paragraph (b)(2) of this section, substantially similar to Sample G-18(A) in Appendix G to this part (12 CFR 1026.7(b)(6)).

   i. *Interest.* Finance charges attributable to periodic interest rates, using the term Interest Charge, must be grouped together under the heading *Interest Charged*, itemized and totaled by type of transaction, and a total of finance charges attributable to periodic interest rates, using the term *Total Interest*, must be disclosed for the statement period and calendar year to date, using a format substantially similar to Sample G-18(A).

   ii. *Fees.* Charges imposed as part of the plan other than charges attributable to periodic interest rates must be grouped together under the heading Fees, identified consistent with the feature or type, and itemized, and a total of charges, using the term Fees, must be disclosed for the statement period and calendar year to date, using a format substantially similar to Sample G-18(A).

g. *Change-in-terms and increased penalty rate summary for open-end (not home-secured) plans.* Creditors that provide a change-in-terms notice required by 12 CFR 1026.9(c), or a rate increase notice required by 12 CFR 1026.9(g), on or with the periodic statement, must disclose the information in 12 CFR 1026.9(c)(2)(iv)(A) and (c)(2)(iv)(B) (if applicable) or 12 CFR 1026.9(g)(3)(i) on the periodic statement in accordance with the format requirements in 12 CFR 1026.9(c)(2)(iv)(D), and 12 CFR 1026.9(g)(3)(ii). (*See* Forms G-18(F) and G-18(G)) (12 CFR 1026.7(b)(7)).

h. *Grace period*. The date by which or the time period within which the new balance or any portion of the new balance must be paid to avoid additional finance charges. If such a time period is provided, a creditor may, at its option and without disclosure, impose no finance charge if payment is received after the time period's expiration (12 CFR 1026.7(b)(8)).

i. *Address for notice of billing errors.* The address to be used for notice of billing errors. Alternatively, the address may be provided on the billing rights statement permitted by 12 CFR 1026.9(a)(2) (12 CFR 1026.7(b)(9)).

j. *Closing date of billing cycle; new balance.* The closing date of the billing cycle and the account balance outstanding on that date disclosed in accordance with 12 CFR 1026.7(b)(13) (12 CFR 1026.7(b)(10)).

k. *Due date; late payment costs.* With the exception of periodic statements provided solely for charge cards, other than covered separate credit features that are charge card accounts accessible by hybrid prepaid-credit cards as defined in 12 CFR 1026.61, and periodic statements provided for a charged-off account where payment of the entire account balance is due immediately, determine that the creditor disclosed (in accordance with 12 CFR 1026.7(b)(13)) for a credit card account under an open-end (not home-secured) consumer credit plan:

i. The due date for a payment (the due date must be the same day of the month for each billing cycle) (12 CFR 1026.7(b)(11)(i)(A)).

ii. The amount of any late payment fee and any increased periodic rate(s) (expressed as APR(s)) that may be imposed on the account as a result of a late payment. If a range of late payment fees may be assessed, verify that the card issuer either states a range of fees or the highest fee and an indication that the fee imposed could be lower (12 CFR 1026.7(b)(11)(i)(B)).

NOTES:

- If the rate may be increased for more than one feature or balance, the card issuer may state the range of rates or the highest rate that could apply and at the issuer's option an indication that the rate imposed could be lower.
- Further, with the exception of the negative or no amortization disclosures required by 12 CFR 1026.7(b)(12)(ii), the repayment disclosures in 12 CFR 1026.7(b)(12) (as listed in step 12 below) are not required for:

iii. Charge card accounts that require payment of outstanding balances in full at the end of each billing cycle;

iv. A billing cycle immediately following two consecutive billing cycles in which the consumer paid the entire balance in full, had a zero outstanding balance or had a credit balance; and

v. A billing cycle where paying the minimum payment due for that billing cycle will pay the entire outstanding balance on the account for that billing cycle.

l. Given those exceptions above, determine that the card issuer disclosed on the periodic statement (12 CFR 1026.7(b)(12)):

i. The following statement with a bold heading: "**Minimum Payment Warning:** If you make only the minimum payment each period, you will pay more in interest and it will take you longer to pay off your balance" (12 CFR 1026.7(b)(12)(i)(A)); and

ii. The minimum payment repayment estimate, as described in Appendix M1 to this part.

NOTE: If the minimum payment repayment estimate is less than two years, determine that the card issuer disclosed the estimate in months. Otherwise, the estimate must be disclosed in years and rounded to the nearest whole year (12 CFR 1026.7(b)(12)(i)(B)).

iii. The minimum payment total cost estimate, as described in Appendix M1 to this part, rounded to the nearest whole dollar or to the nearest cent, at the card issuer's option (12 CFR 1026.7(b)(12)(i)(C));

iv. A statement that the minimum payment repayment estimate, and the minimum payment total cost estimate are based on the current outstanding balance shown on the periodic statement. A statement that the minimum payment repayment estimate, and the minimum payment total cost estimate are based on the assumption that only minimum payments are made and no other amounts are added to the balance (12 CFR 1026.7(b)(12)(i)(D));

v. A toll-free telephone number where the consumer may obtain from the card issuer information about credit counseling services (12 CFR 1026.7(b)(12)(i)(E)); and

vi. The disclosures required for (12 CFR 1026.7(b)(12)(i)(F)(1)):

A. The estimated monthly payment for repayment in 36 months, as described in Appendix M1 to this part. The estimated monthly payment for repayment in 36 months must be rounded to the nearest whole dollar or to the nearest cent, at the card issuer's option (12 CFR 1026.7(b)(12)(i)(F)(1)(i));

B. A statement that the card issuer estimates that the consumer will repay the outstanding balance shown on the periodic statement in three years if the consumer pays the estimated monthly payment for three years (12 CFR 1026.7(b)(12)(i)(F)(1)(ii));

C. The total cost estimate for repayment in 36 months, as described in Appendix M1 to this part. The total cost estimate for repayment in 36 months must be rounded to the nearest whole dollar or to the nearest cent, at the card issuer's option (12 CFR 1026.7(b)(12)(i)(F)(1)(iii)); and

D. The savings estimate for repayment in 36 months, as described in Appendix M1 to this part. The savings estimate for repayment in 36 months must be rounded to the nearest whole dollar or to the nearest cent, at the card issuer's option (12 CFR 1026.7(b)(12)(i)(F)(1)(iv)).

NOTE: The disclosures (A through D above) required for 12 CFR 1026.7(b)(12)(i)(F)(1) do not apply to a periodic statement in any of the following circumstances:

1) The minimum payment repayment estimate that is disclosed on the periodic statement pursuant to paragraph (b)(12)(i)(B) of this section after rounding is three years or less;

2) The estimated monthly payment for repayment in 36 months, as described in Appendix M1 to this part, rounded to the nearest whole dollar or nearest cent that is calculated for a particular billing cycle is less than the minimum payment required for the plan for that billing cycle; and

3) A billing cycle where an account has both a balance in a revolving feature where the required minimum payments for this feature will not amortize that balance in a fixed amount of time specified in the account agreement, and a balance in a fixed repayment feature where the required minimum payment for this fixed repayment feature will amortize that balance in a fixed amount of time specified in the account agreement, which is less than 36 months.

vii. If negative or no amortization occurs when calculating the minimum payment estimate as described in Appendix M1, determine that the card issuer provides the following disclosures on each periodic statement instead of the disclosures set forth in 12 CFR 1026.7(b)(12)(i) (12 CFR 1026.7(b)(12)(ii)):

A. "**Minimum Payment Warning:** Even if you make no more charges using this card, if you make only the minimum payment each month we estimate **you will never pay off the balance shown on this statement** because your payment will be less than the interest charged each month" (12 CFR 1026.7(b)(12)(ii)(A));

B. "If you make more than the minimum payment each period, you will pay less in interest and pay off your balance sooner" (12 CFR 1026.7(b)(12)(ii)(B));

C. The estimated monthly payment for repayment in 36 months rounded to the nearest whole dollar or to the nearest cent, at the creditor's option (12 CFR 1026.7(b)(12)(ii)(C));

D. A statement that the card issuer estimates that the consumer will repay the outstanding balance shown on the periodic statement in three years if the consumer pays the estimated monthly payment each month for three years (12 CFR 1026.7(b)(12)(ii)(D)); and

E. A toll-free telephone number where the consumer may obtain from the card issuer information about credit counseling services consistent with 12 CFR 1026.7(b)(12)(iv) (12 CFR 1026.7(b)(12)(ii)(E)).

viii. Verify that the items required to be disclosed, as addressed in the procedures in step 12 above (required by 12 CFR 1026.7(b)(12)) are disclosed in accordance with the

format requirements of 12 CFR 1026.7(b)(13) and are substantially similar to the samples provided in Appendix G of Regulation Z.

ix. Determine that a card issuer provides (to the extent available from the U.S. trustee or a bankruptcy administrator), through the disclosed toll-free telephone number, the name, street address, telephone number, and website address for at least three organizations that have been approved by the U.S. trustee or a bankruptcy administrator to provide credit counseling services in either the state in which the billing address for the account is located or the state specified by the consumer (12 CFR 1026.7(b)(12)(iv)(A)).

x. Determine that the card issuer at least annually updates the credit counseling information it discloses for consistency with the information available from the U.S. trustee or a bankruptcy administrator (12 CFR 1026.7(b)(12)(iv)(B)).

m. Determine that the card issuer provided periodic statement disclosures according to the following format requirements (12 CFR 1026.7(b)(13)):

i. The due date is disclosed on the front of the first page of the periodic statement and that the amount of the late payment fee and the APR(s) are stated in close proximity thereto.

ii. The ending balance and the repayment disclosures (required by paragraph (b)(12) of 12 CFR 1026.7) are disclosed closely proximate to the minimum payment due.

iii. The due date, late payment fee and APR, ending balance, minimum payment due, and repayment disclosures are grouped together.

NOTE: Sample G-18(D) in Appendix G of Regulation Z sets forth an example of how these terms may be grouped.

n. For accounts with an outstanding balance subject to a deferred interest or similar program, determine that the creditor disclosed the date by which that outstanding balance must be paid in full, in order to avoid the obligation to pay finance charges on such balance, on the front of any page of each periodic statement issued during the deferred interest period, beginning with the first periodic statement issued during the deferred interest period that reflects the deferred interest or similar transaction. The disclosure provided pursuant to this paragraph must be substantially similar to Sample G-18(H) in Appendix G to this part (12 CFR 1026.7(b)(14)).

## Subsequent Disclosure Requirements – 12 CFR 1026.9

1. Determine whether the creditor mailed or delivered the billing rights statement at least once per calendar year, at intervals of not less than six months or more than 18 months, to

customers and whether the institution used the short form notice with each periodic statement (12 CFR 1026.9(a)(1)).

NOTE: As an alternative to the annual billing rights statement 12 CFR 1026.9(a)(1), the creditor may mail or deliver, on or with each periodic statement, a statement substantially similar to Model Form G-4 or Model Form G-4(A) in Appendix G to this part, as applicable. Creditors offering home-equity plans subject to the requirements of 12 CFR 1026.40 may use either Model Form, at their option (12 CFR 1026.9(a)(2)).

2. If, 30 days after mailing or delivering the account-opening disclosures under 12 CFR 1026.6(a)(1) or (b)(3)(ii)(A), the creditor adds a credit feature or furnishes a credit access device (other than as a renewal, resupply, or the original issuance of a credit card, or except with regard to checks that access a credit card account) on the same finance charge terms, determine that the creditor discloses, before the consumer uses the feature or device for the first time, that it is for use in obtaining credit under the terms previously disclosed (12 CFR 1026.9(b)(1)).

3. Determine that, except with regard to checks that access a credit card account, whenever a credit feature is added or a credit access device is mailed or delivered to the consumer, and the finance charge terms for the feature or device differ from disclosures previously given, the disclosures required by 12 CFR 1026.6(a)(1) or (b)(3)(ii)(A) that are applicable to the added feature or device are given before the consumer uses the feature or device for the first time (12 CFR 1026.9(b)(2)).

4. *Checks that access a credit card account.* For open-end plans not subject to the requirements of 12 CFR 1026.40, if checks that can be used to access a credit card account are provided more than 30 days after account-opening disclosures under 12 CFR 1026.6(b) are mailed or delivered, or are provided within 30 days of the account-opening disclosures, and the finance charge terms for the checks differ from the finance charge terms previously disclosed, determine that the creditor discloses on the front of the page containing the checks the following terms in the form of a table with the headings, content, and form substantially similar to Sample G–19 in Appendix G to this part (12 CFR 1026.9(b)(3)):

    a. If a promotional rate applies to the checks, determine that the creditor discloses:

        i. The promotional rate and the time period during which the promotional rate will remain in effect (12 CFR 1026.9(b)(3)(i)(A)(1));

        ii. The type of rate that will apply (such as whether the purchase or cash advance rate applies) after the promotional rate expires, and the annual percentage rate that will apply after the promotional rate expires. For a variable-rate account, a creditor must disclose an annual percentage rate based on the applicable index or formula in accordance with the accuracy requirements set forth in paragraph (b)(3)(ii) of this section (12 CFR 1026.9(b)(3)(i)(A)(2)); and

iii. The date, if any, by which the consumer must use the checks in order to qualify for the promotional rate. If the creditor will honor checks used after such date but will apply an annual percentage rate other than the promotional rate, the creditor must disclose this fact and the type of annual percentage rate that will apply if the consumer uses the checks after such date (12 CFR 1026.9(b)(3)(i)(A)(3)).

b. If any APR required to be disclosed pursuant to 12 CFR 1026.9(b)(3)(i) is a variable rate, determine that the creditor also disclosed the fact that the rate may vary and how the rate is determined. Determine that the creditor identified the type of index or formula used in setting the rate. Determine that the creditor does not disclose the value of the index and the amount of the margin that are used to calculate the variable rate in the table, and that any applicable limitations on rate increases are not included in the table (12 CFR 1026.9(b)(3)(iii)).

c. If no promotional rate applies to the checks, determine that the creditor discloses:

i. The type of rate that will apply to the checks and the applicable annual percentage rate. For a variable-rate account, a creditor must disclose an annual percentage rate based on the applicable index or formula in accordance with the accuracy requirements set forth in 12 CFR 1026.9(b)(3)(ii) (12 CFR 1026.9(b)(3)(i)(B)(1)).

d. Determine that the creditor discloses:

i. Any transaction fees applicable to the checks disclosed under 12 CFR 1026.6(b)(2)(iv) (12 CFR 1026.9(b)(3)(i)(C)).

ii. Whether or not a grace period is given within which any credit extended by use of the checks may be repaid without incurring a finance charge due to a periodic interest rate. When disclosing whether there is a grace period, the phrase "How to Avoid Paying Interest on Check Transactions" shall be used as the row heading when a grace period applies to credit extended by the use of the checks. When disclosing the fact that no grace period exists for credit extended by use of the checks, the phrase "Paying Interest" shall be used as the row heading (12 CFR 1026.9(b)(3)(i)(D)).

NOTE: The disclosures in 12 CFR 1026.9(b)(3)(i) must be accurate as of the time the disclosures are mailed or delivered. A variable APR is accurate if it was in effect within 60 days of when the disclosures are mailed or delivered (12 CFR 1026.9(b)(3)(ii)).

5. Determine, for home-equity plans subject to the requirements of (12 CFR 1026.40):

a. Whenever any term required to be disclosed under 12 CFR 1026.6(a) is changed or the required minimum periodic payment is increased, the creditor mailed or delivered written notice of the change at least 15 days prior to the effective date of the change.

If the consumer agreed to the change, determine that notice was provided before the change went into effect (12 CFR 1026.9(c)(1)(i)).

b. If the creditor prohibits additional extensions of credit or reduces the credit limit that the creditor mailed or delivered notice of the action not later than three business days after such action is taken. The notice must contain the specific reasons for the action (12 CFR 1026.9(c)(1)(iii)).

NOTE: Notice is not required when the change involves a reduction of any component of a finance charge or other charge or when the change results from an agreement involving a court proceeding (12 CFR 1026.9(c)(1)(ii)).

6. For plans other than home-equity plans subject to the requirements of 12 CFR 1026.40, except as provided in 12 CFR 1026.9(c)(2)(i)(B), (c)(2)(iii) and (c)(2)(v), when a significant change in account terms as described in 12 CFR 1026.9(c)(2)(ii) is made, determine that the creditor provides a written notice of the change at least 45 days prior to the effective date of the change to each consumer who may be affected (12 CFR 1026.9(c)(2)(i)(A)).

7. The 45-day timing requirement, however, does not apply if the consumer has agreed to a particular change as described in 12 CFR 1026.9(c)(2)(i)(B). For these instances, however, determine that the creditor provided a notice in accordance with the timing requirements of 12 CFR 1026.9(c)(2)(i)(B) (12 CFR 1026.9(c)(2)(i)(A)).

8. For open-end (not home-secured) plans, determine that increases in the rate applicable to a consumer's account due to delinquency, default or as a penalty described in 12 CFR 1026.9(g) that are not due to a change in the contractual terms of the consumer's account are disclosed pursuant to 12 CFR 1026.9(g) instead of 12 CFR 1026.9(c)(2) (12 CFR 1026.9(c)(2)(i)(A)).

9. When a notice of change in terms is required, determine that it is mailed or delivered no later than the effective date of the change, if the consumer agrees to the particular change. 12 CFR 1026.9(c)(2)(i)(B) applies only when a consumer substitutes collateral or when the creditor can advance additional credit only if a change relatively unique to that consumer is made, such as the consumer's providing additional security or paying an increased minimum payment amount (12 CFR 1026.9(c)(2)(i)(B)).

NOTE: The 45-day timing requirements discussed in step *f* above does not apply in certain narrow circumstances, as described in 12 CFR 1026.9(c)(2)(i)(B). The following are not considered agreements between the consumer and the creditor for purposes of (12 CFR 1026.9(c)(2)(i)(B)):

a. The consumer's general acceptance of the creditor's contract reservation of the right to change terms;

b. The consumer's use of the account (which might imply acceptance of its terms under state law);

c. The consumer's acceptance of a unilateral term change that is not particular to that consumer, but rather is of general applicability to consumers with that type of account; and

d. The consumer's request to reopen a closed account or to upgrade an existing account to another account offered by the creditor with different credit or other features (12 CFR 1026.9(c)(2)(i)(B)).

10. The 45-day advance notice requirement applies to changes to the following terms (12 CFR 1026.9(c)(2)(ii)):

    a. APR increases (including each periodic rate that may be used to compute the finance charge on outstanding balances for purchases, a cash advance, or a balance transfer) and other APR changes (including variable rate information, discounted or premium initial rates, or penalty rates that may be applied to the account);

    b. Fees for issuance or availability, including any fee based upon account activity or inactivity;

    c. Fixed finance charge or minimum interest charge, if it exceeds $1;

    d. Transaction charge for purchases;

    e. Grace period;

    f. Balance computation method;

    g. Cash advance fee;

    h. Late payment fee;

    i. Over-the-limit fee;

    j. Balance transfer fee;

    k. Returned payment fee;

    l. Required insurance, debt cancellation, or debt suspension coverage; and

    m. Increase in required minimum periodic payment, or the acquisition of a security interest.

11. Except as provided in 12 CFR 1026.9(c)(2)(vi), if a creditor increases any component of a charge, or introduces a new charge, required to be disclosed under 12 CFR 1026.6(b)(3) that is not a significant change in account terms as described in paragraph (c)(2)(ii) of this section, determine that the creditor either (12 CFR 1026.9(c)(2)(iii)):

    a. Complies with the requirements of 12 CFR 1026.9(c)(2)(i), or

b. Provides notice of the amount of the charge before the consumer agrees to or becomes obligated to pay the charge, at a time and in a manner that a consumer would be likely to notice the disclosure of the charge, either in writing or orally.

12. Ensure that the written change-in-terms notice contains the following disclosures (12 CFR 1026.9(c)(2)(iv)(A)):

    a. A summary of the changes made to terms required by 12 CFR 1026.6(b)(1) and (b)(2) or 12 CFR 1026.6(b)(4), a description of any increase in the required minimum payment, and a description of any security interests being acquired by the creditor;

    b. A statement that changes are being made to the account;

    c. For accounts other than credit card accounts under an open-end (not home-secured) consumer credit plan subject to 12 CFR 1026.9(c)(2)(iv)(B), a statement indicating that the consumer has the right to opt out of the changes, if applicable, and a reference to the opt-out right provided in the notice, if applicable;

    d. The date the changes will become effective;

    e. If applicable, a statement that the consumer may find additional information about the summarized changes, and other changes, in the notice;

    f. In the case of a rate change, other than a penalty rate, a statement that if a penalty rate currently applies to the consumer's account, the new rate described in the notice will not apply to the consumer's account until the consumer's account balances are no longer subject to the penalty rate;

    g. If the change in terms being disclosed is an increase in the APR, the balances to which the increased rate will apply. If applicable, creditors should disclose a statement identifying the balances to which the current rate will apply as of the effective date of the change; and

    h. If the change in terms being disclosed is an increase in an annual percentage rate for a credit card account under an open-end (not home-secured) consumer credit plan, a statement of no more than four principal reasons for the rate increase, listed in their order of importance.

    NOTE: The disclosed reasons must accurately describe the principal factors actually considered by the card issuer in increasing the rate (Comment 9(c)(2)(iv)-11).

13. In addition to the disclosures in 12 CFR 1026.9(c)(2)(iv)(A), if a card issuer makes a significant change in account terms on a credit card account under an open-end (not home-secured) consumer credit plan, determine that the creditor provides the following information on the notice provided pursuant to 12 CFR 1026.9(c)(2)(i) (12 CFR 1026.9(c)(2)(iv)(B)):

NOTE: This information is not required to be provided in the case of an increase in the required minimum periodic payment, an increase in a fee as a result of a reevaluation of a determination made under 12 CFR 1026.52(b)(1)(i) or an adjustment to the safe harbors in 12 CFR 1026.52(b)(1)(ii) to reflect changes in the Consumer Price Index, a change in an annual percentage rate applicable to a consumer's account, an increase in a fee previously reduced consistent with 50 U.S.C. 3937 (Servicemembers Civil Relief Act) or similar federal or state statute or regulation if the amount of the increased fee does not exceed the amount of that fee prior to the reduction, or when the change results from the creditor not receiving the consumer's required minimum periodic payment within 60 days after the due date for that payment.

a. A statement that the consumer has the right to reject the change or changes prior to the effective date of the changes, unless the consumer fails to make a required minimum periodic payment within 60 days after the due date for that payment;

b. Instructions for rejecting the change or changes, and a toll-free telephone number that the consumer may use to notify the creditor of the rejection; and

c. If applicable, a statement that if the consumer rejects the change or changes, the consumer's ability to use the account for further advances will be terminated or suspended.

14. *Changes resulting from failure to make minimum periodic payment within 60 days from due date for credit card accounts under an open-end (not home-secured) consumer credit plan.* For a credit card account under an open-end (not home-secured) consumer credit plan (12 CFR 1026.9(c)(2)(iv)(C)):

a. If the significant change required to be disclosed pursuant to 12 CFR 1026.9(c)(2)(i) of this section is an increase in an annual percentage rate or a fee or charge required to be disclosed under 12 CFR 1026.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii) based on the consumer's failure to make a minimum periodic payment within 60 days from the due date for that payment, determine that the notice provided pursuant to paragraph (c)(2)(i) of this section states that the increase will cease to apply to transactions that occurred prior to or within 14 days of provision of the notice, if the creditor receives six consecutive required minimum periodic payments on or before the payment due date, beginning with the first payment due following the effective date of the increase.

b. If the significant change required to be disclosed pursuant to 12 CFR 1026.9(c)(2)(i) is an increase in a fee or charge required to be disclosed under 12 CFR 1026.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii) based on the consumer's failure to make a minimum periodic payment within 60 days from the due date for that payment, determine that the notice provided pursuant to 12 CFR 1026.9(c)(2)(i) also states the reason for the increase.

15. Determine that the summary of changes described in 12 CFR 1026.9(c)(2)(iv)(A)(1) is in a tabular format (except for a summary of any increase in the required minimum periodic payment, a summary of a term required to be disclosed under 12 CFR 1026.6(b)(4) that is not required to be disclosed under 12 CFR 1026.6(b)(1) and (b)(2), or a description of any security interest being acquired by the creditor), with headings and format substantially similar to any of the account-opening tables found in G-17 in Appendix G. Determine that the table discloses the changed term and information relevant to the change, if that relevant information is required by 12 CFR 1026.6(b)(1) and (b)(2). Determine that the new terms are described in the same level of detail as required when disclosing the terms under 12 CFR 1026.6(b)(2) (12 CFR 1026.9(c)(2)(iv)(D)(1)).

16. If a notice required by 12 CFR 1026.9(c)(2)(i) (change in terms) is included on or with a periodic statement, determine that the information described in 12 CFR 1026.6(c)(2)(iv)(A)(1) is disclosed on the front of any page of the statement. Determine that the summary of changes described in 12 CFR 1026.9(c)(2)(iv)(A)(1) immediately follows the information described in 12 CFR 1026.9(c)(2)(iv)(A)(2) through 12 CFR 1026.9(c)(2)(iv)(A)(7) and, if applicable, 12 CFR 1026.9(c)(2)(iv)(A)(8), 1026.9(c)(2)(iv)(B), and 1026.9(c)(2)(iv)(C), and is substantially similar to the format shown in Sample G-20 or G-21 in Appendix G to this part (12 CFR 1026.9(c)(2)(iv)(D)(2)).

17. If a notice required by 12 CFR 1026.9(c)(2)(i) is not included on or with a periodic statement, determine that the information described in 12 CFR 1026.9(c)(2)(iv)(A)(1) is disclosed on the front of the first page of the notice or segregated on a separate page from other information given with the notice (12 CFR 1026.9(c)(2)(iv)(D)(3)).

    NOTE: The summary of changes required to be in a table pursuant to paragraph (c)(2)(iv)(A)(1) of this section may be on more than one page, and may use both the front and reverse sides, so long as the table begins on the front of the first page of the notice and there is a reference on the first page indicating that the table continues on the following page.

18. Determine that the summary of changes described in 12 CFR 1026.9(c)(2)(iv)(A)(1) immediately follows the information described in 12 CFR 1026.9(c)(2)(iv)(A)(2) through 12 CFR 1026.9(c)(2)(iv)(A)(7) and, if applicable, 12 CFR 1026.9(c)(2)(iv)(A)(8), (c)(2)(iv)(B), and (c)(2)(iv)(C), of this section, and is substantially similar to the format shown in Sample G-20 or G-21 in Appendix G to this part (12 CFR 1026.9(c)(2)(iv)(D)(3)).

19. For open-end plans (other than home equity plans subject to the requirements of 12 CFR 1026.40), note that a creditor is not required to provide notice under this section if (12 CFR 1026.9(c)(2)(v)):

    a. The change involves:

        i. Charges for documentary evidence;

        ii. A reduction of any component of a finance or other charge;

iii. A suspension of future credit privileges (except as provided in 12 CFR 1026.9(c)(2)(vi) of this section) or termination of an account or plan;

iv. When the change results from an agreement involving a court proceeding;

v. When the change is an extension of the grace period; or

vi. The change is applicable only to checks that access a credit card account and the changed terms are disclosed on or with the checks in accordance with 12 CFR 1026.9(b)(3) (12 CFR 1026.9(c)(2)(v)(A)).

b. The change is an increase in an APR upon the expiration of a specified period of time, provided that (12 CFR 1026.9(c)(2)(v)(B)):

i. Prior to commencement of that period, the creditor disclosed in writing to the consumer, in a clear and conspicuous manner, the length of the period and the APR or fee that would apply after expiration of the period;

ii. The disclosure of the length of the period and the APR or fee that would apply after expiration of the period are set forth in close proximity and in equal prominence to the first listing of the disclosure of the rate or fee that applies during the specified period of time; and

iii. The APR or fee that applies after that period does not exceed the rate disclosed pursuant to 12 CFR 1026.9(c)(2)(v)(B)(1) or, if the rate disclosed pursuant to 12 CFR 1026.9(c)(2)(v)(B)(1) was a variable rate, the rate following any such increase is a variable rate determined by the same formula (index and margin) that was used to calculate the variable rate disclosed pursuant to (12 CFR 1026.9(c)(2)(v)(B)(1));

c. The change is an increase in a variable APR in accordance with a credit card or other account agreement that provides for changes in the rate according to operation of an index that is not under the control of the creditor and is available to the general public (12 CFR 1026.9(c)(2)(v)(C)); or

d. The change is an increase in an APR, a fee or charge required to be disclosed under 12 CFR 1026.6(b)(2)(ii), (b)(2)(iii), (b)(2)(viii), (b)(2)(ix), or (b)(2)(xii), or the required minimum periodic payment due to the completion of a workout or temporary hardship arrangement by the consumer or the consumer's failure to comply with the terms of such an arrangement, provided that (12 CFR 1026.9(c)(2)(v)(D)):

i. The APR or fee or charge applicable to a category of transactions or the required minimum periodic payment following any such increase does not exceed the rate or fee or charge or required minimum periodic payment that applied to that category of transactions prior to commencement of the arrangement or, if the rate that applied to a category of transactions prior to the commencement of the

workout or temporary hardship arrangement was a variable rate, the rate following any such increase is a variable rate determined by the same formula (index and margin) that applied to the category of transactions prior to commencement of the workout or temporary hardship arrangement; and

ii. The creditor has provided the consumer, prior to the commencement of such arrangement, with a clear and conspicuous disclosure of the terms of the arrangement (including any increases due to such completion or failure). This disclosure must generally be provided in writing. However, a creditor may provide the disclosure of the terms of the arrangement orally by telephone, provided that the creditor mails or delivers a written disclosure of the terms of the arrangement to the consumer as soon as reasonably practicable after the oral disclosure is provided.

20. For open-end plans that are not subject to the requirements of 12 CFR 1026.40, if a creditor decreases the credit limit on the account, determine that advance notice of the decrease is provided before an over-the-limit fee or a penalty rate can be imposed solely as a result of the consumer exceeding the newly decreased credit limit. Determine that notice is provided in writing or orally at least 45 days prior to imposing the over-the-limit fee or penalty rate and that it states that the credit limit on the account has been or will be decreased (12 CFR 1026.9(c)(2)(vi)).

21. Determine that the disclosures contained in 12 CFR 1026.60(b)(1) through (b)(7) are provided if the account is renewed and (1) the card issuer imposes an annual or other periodic fee for the renewal or (2) the card issuer has changed or amended any term of the account required to be disclosed under 12 CFR 1026.6(b)(1) and (b)(2) that has not previously been disclosed to the consumer. Additionally, the disclosure provided upon renewal must disclose how and when the cardholder may terminate the credit to avoid paying the renewal fee, if any (12 CFR 1026.9(e)).

22. For plans other than home-equity plans subject to the requirements of 12 CFR 1026.40 (except as provided in 12 CFR 1026.9(g)(4)), determine that the creditor provides a written notice to each consumer who may be affected when (12 CFR 1026.9(g)(1)):

    a. A rate is increased due to the consumer's delinquency or default; or

    b. A rate is increased as a penalty for one or more events specified in the account agreement, such as making a late payment or obtaining an extension of credit that exceeds the credit limit.

23. Whenever any notice is required to be given pursuant to paragraph (g)(1) of this section, determine that the creditor provided written notice of the increase in rates at least 45 days prior to the effective date of the increase. The notice must be provided after the occurrence of the events described in 12 CFR 1026.9(g)(1)(i) and (g)(1)(ii) that trigger the imposition of the rate increase (12 CFR 1026.9(g)(2)).

24. If a creditor is increasing the rate due to delinquency or default or as a penalty, determine that the creditor provided the following information on the notice sent pursuant to 12 CFR 1026.9(g)(1) (12 CFR 1026.9(g)(3)(i)(A)):

    a. A statement that the delinquency or default rate or penalty rate, as applicable, has been triggered;

    b. The date on which the delinquency or default rate or penalty rate will apply;

    c. The circumstances under which the delinquency or default rate or penalty rate, as applicable, will cease to apply to the consumer's account, or that the delinquency or default rate or penalty rate will remain in effect for a potentially indefinite time period;

    d. A statement indicating to which balances the delinquency or default rate or penalty rate will be applied;

    e. If applicable, a description of any balances to which the current rate will continue to apply as of the effective date of the rate increase, unless a consumer fails to make a minimum periodic payment within 60 days from the due date for that payment; and

    f. For a credit card account under an open-end (not home-secured) consumer credit plan, a statement of no more than four principal reasons for the rate increase, listed in their order of importance.

    NOTE: The disclosed reasons must accurately describe the principal factors actually considered by the card issuer in increasing the rate (Comment 9(g)-7)).

25. For a credit card account under an open-end (not home-secured) consumer credit plan, if the rate increase required to be disclosed pursuant to paragraph (g)(1) of this section is an increase pursuant to 12 CFR 1026.55(b)(4) based on the consumer's failure to make a minimum periodic payment within 60 days from the due date for that payment, determine that the notice provided pursuant to paragraph (g)(1) of this section also states that the increase will cease to apply to transactions that occurred prior to or within 14 days of provision of the notice, if the creditor receives six consecutive required minimum periodic payments on or before the payment due date, beginning with the first payment due following the effective date of the increase (12 CFR 1026.9(g)(3)(i)(B)).

26. If a notice required by 12 CFR 1026.9(g)(1) *(Increase in rates due to delinquency or default or as a penalty)* is included on or with a periodic statement, determine that the disclosure described in paragraph (g)(3)(i) is in the form of a table and provided on the front of any page of the periodic statement, above the notice described in paragraph (c)(2)(iv) of this section if that notice is provided on the same statement (12 CFR 1026.9(g)(3)(ii)(A)).

27. If a notice required by 12 CFR 1026.9(g)(1) (increase in rates) is not included on or with a periodic statement, determine that the information described in 12 CFR 1026.9(g)(3)(i) is

disclosed on the front of the first page of the notice. Ensure that only information related to the increase in the rate to a penalty rate is included with the notice.

NOTE: This notice may be combined with a notice described in 12 CFR 1026.9(c)(2)(iv) or (g)(4) (A statement indicating to which balances the delinquency or default rate or penalty rate will be applied) of this section (12 CFR 1026.9(g)(3)(ii)(B)).

28. *Exception for Decreases in the Credit Limit*. If a creditor does not provide the 45-day notice under 12 CFR 1026.9(g)(1) prior to increasing the rate for obtaining an extension of credit that exceeds the credit limit, determine that the creditor provides at least 45 days in advance of imposing the penalty rate a notice, in writing, that includes (12 CFR 1026.9(g)(4)):

    a. A statement that the credit limit on the account has or will be decreased;

    b. The date on which the penalty rate will apply, if the outstanding balance exceeds the credit limit as of that date;

    c. A statement that the penalty rate will not be imposed on that date, if the outstanding balance does not exceed the credit limit as of that date;

    d. The circumstances under which the penalty rate, if applied, will cease to apply to the account, or that the penalty rate, if applied, will remain in effect for a potentially indefinite period of time;

    e. A statement indicating to which balances the penalty rate may be applied; and

    f. If applicable, a description of any balances to which the current rate will continue to apply as of the effective date of the rate increase, unless the consumer fails to make a minimum periodic payment within 60 days from the due date for that payment.

    In addition to this notice, determine that the creditor does not increase the applicable rate to the penalty rate if the outstanding balance does not exceed the credit limit on the date set forth in the notice (12 CFR 1026.9(g)(4)(ii)).

29. If a notice provided pursuant to 12 CFR 1026.9(g)(4)(i) is included on or with a periodic statement, determine that the information described in 12 CFR 1026.9(g)(4)(i) is in the form of a table and provided on the front of any page of the periodic statement (12 CFR 1026.9(g)(4)(iii)(A)); or,

30. If a notice required by 12 CFR 1026.9(g)(4)(i) is not included on or with a periodic statement, determine that the information described in 12 CFR 1026.9(g)(4)(i) is disclosed on the front of the first page of the notice. Determine that only information related to the reduction in credit limit is included with the notice, except that this notice may be combined with a notice described in 12 CFR 1026.9(c)(2)(iv) or (g)(1) (12 CFR 1026.9(g)(4)(iii)(B)).

31. When the consumer is given the right to reject a significant change to an account term prior to the effective date of the change, determine whether the consumer was given the option to

reject the change by notifying the creditor of the rejection before the effective date of the change (12 CFR 1026.9(h)(1)).

32. If the creditor was notified of the rejection of a significant change to an account term, determine that the creditor did not:

    a. Apply the charge to the account;

    b. Impose a fee or charge or treat the account as in default solely as a result of the rejection; or

    c. Require repayment of the balance on the account using a method that is LESS beneficial to the consumer than one of the following methods:

        i. The method of repayment for the account on the date on which the creditor was notified of the rejection;

        ii. An amortization period of not less than five years, beginning no earlier than the date on which the creditor was notified of the rejection; or

        iii. A required minimum periodic payment that includes a percentage of the balance that is equal to no more than twice the percentage required on the date on which the creditor was notified of the rejection (12 CFR 1026.9(h)(2)).

    NOTE: These requirements do not apply if the creditor has not received the consumer's required minimum periodic payment within 60 days after the due date for that payment and the creditor has provided timely change in terms disclosures (12 CFR 1026.9(h)(3)).

33. Determine that a statement of the maximum interest rate that may be imposed during the term of the obligation is made for any dwelling-secured loan in which the APR may increase during the plan (12 CFR 1026.30(b)).

34. For any open-end mortgage loan (credit transaction that is secured by the principal dwelling of a consumer) that was sold, assigned, or otherwise transferred to the covered person, determine that the covered person notifies the borrower in writing of such transfer, including (12 CFR 1026.39):

    a. An identification of the loan that was sold, assigned, or otherwise transferred;

    b. The name, address, and telephone number of the covered person who owns the mortgage loan;

    c. The date of transfer (either the date of acquisition recognized in the books and records of the covered person or that of the transferring party) identified by the covered person;

d. The name, address, and telephone number of an agent or party having authority, on behalf of the covered person, to receive notice of the right to rescind and resolve issues concerning the consumer's payments on the mortgage loan;

e. Where transfer of ownership of the debt to the covered person is or may be recorded in public records or, alternatively, that the transfer of ownership has not been recorded in public records at the time the disclosure is provided; and

f. At the option of the covered person, any other relevant information regarding the transaction.

g. If there are multiple covered persons, contact information for each of them, unless one of them has been authorized to receive the consumer's notice of the right to rescind and resolve issues concerning the consumer's payments on the loan (12 CFR 1026.39(d)-(e)).

NOTE: This notice of sale or transfer must be provided for any consumer credit transaction that is secured by the principal dwelling of a consumer. This notification is required by the covered person even if the loan servicer remains the same. In addition, if more than one consumer is liable on the obligation, the covered person may mail or deliver the disclosure notice to any consumer who is primarily liable. And, if an acquisition involves multiple covered persons who each acquire a partial interest in the loan pursuant to separate and unrelated agreements, each covered person has a duty to ensure that disclosures related to its acquisition are accurate and provided in a timely manner unless an exception in 12 CFR 1026.39(c) applies. The parties may, but are not required to, provide a single notice that satisfies the timing and content requirements applicable to each covered person (Comment 39(b)(5)-2)).

## Disclosure Requirements for Over-the-Limit Transactions – 12 CFR 1026.56

1. Determine that the oral, written, or electronic "opt-in" notice includes all of the following applicable items (and not any information not specified in or otherwise permitted) (12 CFR 1026.56(e)(1)):

    a. *Fees.* The dollar amount of any fees or charges assessed by the card issuer on a consumer's account for an over-the-limit transaction;

    b. *APR(s)*. Any increased periodic rate(s) (expressed as an APR(s)) that may be imposed on the account as a result of an over-the-limit transaction; and

    c. *Disclosure of opt-in right.* An explanation of the consumer's right to affirmatively consent to the card issuer's payment of over-the-limit transactions, including the method(s) by which the consumer may consent.

2. Determine that the written notice informing the consumer of the right to revoke consent following the assessment of an over-the-limit fee or charge describes that right, including the method(s) by which the consumer may revoke consent (12 CFR 1026.56(e)(2)).

## Reverse Mortgage Forms Review Procedures (Both Open- and Closed-End)

1. Determine that the disclosures required for reverse mortgage transactions are substantially similar to the model form in Appendix K and include the items below (12 CFR 1026.33):

    a. A statement that the consumer is not obligated to complete the reverse mortgage transaction merely because he or she has received the disclosures or signed an application.

    b. A good faith projection of the total cost of the credit expressed as a table of "total annual loan cost rates" including payments to the consumer, additional creditor compensation, limitations on consumer liability, assumed annual appreciation, and the assumed loan period.

    c. An itemization of loan terms, charges, the age of the youngest borrower, and the appraised property value.

    d. An explanation of the table of total annual loan costs rates.

    NOTE: Forms that include or involve current transactions, such as change in terms notices, periodic billing statements, rescission notices, and billing error communications, are verified for accuracy when the file review worksheets are completed.

### Timing Requirements

1. **Timing Requirements – Open-End Credit.** Review financial institution policies, procedures, and systems to determine, either separately or when completing the actual file review, whether the applicable disclosures listed below are furnished when required by Regulation Z. Take into account products that have different features, such as closed-end loans or credit card accounts that are fixed or variable rate.

    a. *Credit card application and solicitation disclosures* on or with the application (12 CFR 1026.60(b)).

    b. *Adding a covered separate credit feature accessible by a hybrid prepaid-credit card to a prepaid account*. Ensure that a card issuer does not do any of the following until 30 days after the prepaid account has been registered: (1) open a covered separate credit feature that could be accessible by the hybrid prepaid-credit card; (2) make a solicitation or provide an application to open a covered separate credit feature that could be accessible by the hybrid prepaid-credit card; or (3) allow an existing credit feature that was opened prior to the consumer obtaining the prepaid account to

become a covered separate credit feature accessible by the hybrid prepaid-credit card (12 CFR 1026.61(c)).

c. *HELOC disclosures.* At the time the application is provided or within three business days under certain circumstances (12 CFR 1026.40(b)).

d. *Open-end credit initial disclosures.* Before the first transaction is made under the plan (12 CFR 1026.5(b)(1)).

e. *Card holder agreement.* Verify that the card issuer sends to the cardholder or otherwise make available to the cardholder a copy of the cardholder's agreement in electronic or paper form no later than 30 days after the issuer receives the cardholder's request (12 CFR 1026.58(e)(1)(ii)). Determine that the issuer has adequate procedures for ensuring that this requirement is met.

f. *Periodic statement disclosures for open-end credit under 12 CFR 1026.7.* Required if at the end of a billing cycle, the account has a debit or credit balance of one dollar or more or if a finance charge has been imposed (12 CFR 1026.5(b)(2)(i)). Also, the creditor must adopt reasonable procedures designed to ensure that periodic statements for credit card accounts are mailed or delivered at least 21 days prior to the payment due date and the date on which any grace period expires (for non-credit card open-end credit, there is a 21 day rule if there is a grace period and a 14-day rule if there is no grace period) (12 CFR 1026.5(b)(2)(ii)(B)(2)).

g. *Statement of billing rights*. At least once per year (12 CFR 1026.9(a)).

h. *Supplemental credit devices.* Before the first transaction under the plan (12 CFR 1026.9(b)).

i. *Open-end credit change in significant terms as a result of a change in contractual terms.* 45 days prior to the effective change date. (12 CFR 1026.9(c)(2))

j. *Open-end change in terms or rates due to delinquency or default or as a penalty.* 45 days prior to the effective change date (12 CFR 1026.9(g)).

k. *Finance charge imposed at time of transaction.* Prior to imposing any fee (12 CFR 1026.9(d)).

l. *Disclosures upon renewal of credit or charge card*. 30 days or one billing cycle, whichever is less before the delivery of the periodic statement on which the renewal fee is charged, or at least 30 days prior to the scheduled renewal date if the creditor has changed or amended any term required to be disclosed under 12 CFR 1026.6(b)(1) and (b)(2) that has not previously been disclosed to the consumer 12 CFR 1026.9(e)).

m. *Change in credit account insurance provider* – Certain information 30 days before the change in provider occurs and certain information 30 days after the change in

provider occurs. The institution may provide a combined disclosure 30 days before the change in provider occurs (12 CFR 1026.9(f)).

2. **Timing Requirements – Closed-End Credit Secured by a Dwelling**

   a. Closed-end credit disclosures for transactions not subject to 12 CFR 1026.19(e) and (f) must be made before consummation (12 CFR 1026.17(b)).

   b. Disclosures for reverse mortgages. Several disclosure timing requirements apply to reverse mortgages subject to 12 CFR 1026.33 and RESPA:

      i. Determine whether the creditor provides early TIL disclosures within three business days after receiving the consumer's written application. The creditor is required to deliver or mail the early disclosures no later than three business days after receiving the consumer's application and at least seven business days before consummation (12 CFR 1026.19(a)(1)(i) and (iii) and 1026.19(a)(2)(i)). No fees may be charged before the consumer receives the early disclosures except for credit report fees (12 CFR 1026.19(a)). If the APR stated in the early disclosures is not considered accurate under 12 CFR 1026.22 when compared to the APR at consummation, determine whether the creditor provided corrected disclosures of all changed terms, including the APR, that the consumer received no later than the third business day before consummation and that the creditor delivered or placed in the mail the corrected disclosures not later than the seventh business day before consummation (12 CFR 1026.19(a)(2)(i)and (ii)).

      ii. Determine whether the creditor provides the disclosures required pursuant to 12 CFR 1026.33 (and found in paragraph d of the model form in Appendix K) either three days prior to consummation (for a closed-end transaction) or prior to the first transaction (for an open-end credit plan) (12 CFR 1026.31(c)(2)).

   NOTE: For closed-end credit transactions secured by a dwelling not subject to the TILA-RESPA rule, the prohibition on charging fees (other than credit report fees) before the consumer receives the early TIL disclosure is more limited than the prohibition for closed-end credit transactions secured by a dwelling that are subject to TILA-RESPA (12 CFR 1026.19(a)). For TILA-RESPA closed-end transactions, creditors are prohibited from charging fees (other than credit report fees) prior to receipt of disclosures **<u>and</u>** an intent to proceed with the transaction (12 CFR 1026.19(e)(2)).

   c. *Disclosures for high-cost mortgages* – Three business days prior to consummation or account opening. If such disclosures became inaccurate due to a change by the creditor, ensure that the creditor provided new, accurate disclosures no later than three business days prior to consummation or account opening (12 CFR 1026.31(c)(1)).

NOTE: For a high-cost mortgage, the three-business day waiting period requirement does not apply to a second offer of credit with a lower annual percentage rate consummated by the consumer (15 U.S.C. 1639(b)(3)).

d. Disclosures for initial rate change to an adjustable-rate mortgage securing a principal dwelling with terms of more than one year:

   i. For adjustable-rate mortgages, creditors, assignees, or servicers are generally required to provide information regarding the first interest rate change to consumers between 210 and 240 days prior to the date the first payment at the new rate is due 12 CFR 1026.20(d)).

   NOTE: If the first payment change occurs within the first 210 days, creditors, assignees, or servicers are required to provide the disclosure at consummation (12 CFR 1026.20(d)).

   NOTE: When examining a creditor that continues to own the loan, an assignee, or a servicer, if the entity states that another entity has the obligation to provide the disclosures, examiners should determine whether the entity takes steps to ensure that the other party (the creditor, assignee, or servicer, as applicable) is complying with the obligation to provide the disclosures.

e. Additional disclosures for adjustable-rate mortgages securing a principal dwelling (other than a transaction with a term of more than one year, where a rate change affects the amount of payment:

   i. For adjustable-rate mortgages where the payment changes with a rate change, disclosures must be provided to consumers between 60 and 120 days before the first payment at the new rate is due;

   ii. For adjustable-rate mortgages where the payment change is caused by a rate change that is uniformly scheduled every 60 days (or more frequently), disclosures must be provided to consumers between 25 and 120 days before the first payment at the new rate;

   iii. For adjustable-rate mortgages originated prior to January 10, 2015, where the interest rate and payment are calculated based on an index that is available less than 45 days prior to the change, disclosures must be provided between 25 and 120 days before the first payment at the new rate is due; and

   iv. For adjustable-rate mortgages where the payment adjustment occurs within 60 days of consummation and the new interest rate after adjustment provided at consummation was an estimate, disclosures are required as soon as practicable, but no later than 25 days prior to the first payment at the new rate is due. (12 CFR 1026.20(c))

NOTE: The requirements of 12 CFR 1026.20(c) do not apply to: ARMS with terms of one year or less; first interest rate adjustments to an ARM if the first adjusted payment is due within 210 days after consummation and the new interest rate disclosed at consummation was not an estimate; or the creditor, assignee or servicer when the servicer is subject to FDCPA and the consumer has notified the servicer to cease communication under Section 805(c) of FDCPA (12 CFR 1026.20(c)(1)(ii)).

f. *Notice of new creditor* – On or before the 30th calendar day following the acquisition (12 CFR 1026.39).

g. For private education loans subject to Subpart F (12 CFR 1026.46), determine that:

   i. Application or solicitation disclosures were provided on or with any application or solicitation (12 CFR 1026.46(d)(1)(i));

   ii. Approval disclosures were provided before consummation on or with any notice of approval provided to the consumer (12 CFR 1026.46(d)(2)); and

   iii. Final disclosures were provided after the consumer accepts the loan and at least three business days prior to disbursing the private education loan funds (12 CFR 1026.46(d)(3)).

h. Determine that the issuer provides a written over-the-limit notice prior to the assessment of any over-the-limit fee or charge on a consumer's account (12 CFR 1026.56(d)(1)(i)).

i. Determine that, if a consumer consents to the card issuer's payment of any over-the-limit transaction by oral or electronic means, the card issuer provides the required written notice immediately prior to obtaining that consent (12 CFR 1026.56(d)(1)(ii)).

j. Determine that the notice confirming the consumer's consent is provided no later than the first periodic statement sent after the consumer has consented to the card issuer's payment of over-the-limit transactions. The creditor must not assess an over-the-limit fee on the consumer's account without first providing written confirmation (12 CFR 1026.56(d)(2))

k. Determine that the notice providing the consumer notice in writing of the right to revoke consent following the assessment of an over-the-limit fee or charge is provided on the front of any page of each periodic statement that reflects the assessment of an over-the-limit fee or charge on a consumer's account. (12 CFR 1026.56(d)(3))

l. For home-equity plans subject to the requirements of 12 CFR 1026.40, whenever any term required to be disclosed under 12 CFR 1026.6(a) is changed or the required minimum periodic payment is increased, determine that the creditor mails or delivers written notice of the change to each consumer who may be affected. Determine that

the notice is mailed or delivered at least 15 days prior to the effective date of the change. If the change has been agreed to by the consumer, determine that the notice is given before the effective date of the change (12 CFR 1026.9(c)(1)(i)).

m. *Notice to restrict credit.* For home-equity plans subject to the requirements of 12 CFR 1026.40, if the creditor prohibits additional extensions of credit or reduces the credit limit pursuant to 12 CFR 1026.40(f)(3)(i) or (f)(3)(vi), determine that the creditor mails or delivers written notice of the action to each consumer who will be affected not later than three business days after the action is taken and contains specific reasons for the action. If the creditor requires the consumer to request reinstatement of credit privileges, determine that the notice states that fact (12 CFR 1026.9(c)(1)(iii)).

## Mortgage Loans Secured by Real Property or a Cooperative Unit—Early Disclosures (Loan Estimates) – 12 CFR 1026.19(e)

### Provision of Disclosures

1. For closed-end consumer loans secured by real property or a cooperative unit, other than a reverse mortgage subject to 12 CFR 1026.33, determine whether the creditor provides the consumer with good faith estimates on the Loan Estimate (12 CFR 1026.37) or if the creditor satisfies its obligation by ensuring that a mortgage broker providing the Loan Estimate complied with all requirements of (12 CFR 1026.19(e)).

   NOTE: *Partial exemption.* The special disclosure requirements of 12 CFR 1026.19(e) do not apply if the following criteria are met:

   (i) the transaction is secured by a subordinate lien;

   (ii) the transaction is for buyer assistance such as down payments or closing costs, rehabilitation loans, energy efficiency assistance, or foreclosure prevention;

   (iii) the credit contract does not require the payment of interest;

   (iv) the credit contract provides for repayment that is forgiven, deferred for 20 years, or deferred until the property is sold or is no longer the consumer's principal dwelling;

   (v) the costs payable by the consumer in connection with the transaction at consummation are limited to recording fees, transfer taxes, a reasonable application fee, and a reasonable fee for housing counseling services; and the total of costs payable by the consumer for the application and housing counseling services is less than 1percent of the amount of credit extended; and

   (vi) the creditor complies with the disclosure requirements in 12 CFR 1026.18. However, the creditor is permitted to provide the integrated disclosures (Loan Estimate and Closing Disclosure) as an alternative to providing the disclosure of the cost of credit under 12 CFR 1026.18, and does not need to provide the special

information booklet, Good Faith Estimate, or HUD-1 settlement statement (12 CFR 1026.3(h); Comment 3(h)-1).

### *Timing*

2. Determine whether the creditor delivers or places in the mail the Loan Estimate not later than the third business day after receiving the consumer's application. As defined in 12 CFR 1026.2(a)(3), an application consists of the submission for purposes of obtaining an extension of credit of the consumer's name, income, social security number to obtain a credit report, the property address, an estimate of the value of the property, and the mortgage loan amount sought (12 CFR 1026.19(e)(1)(iii)(A)).

   NOTE: When a consumer uses an online application system that allows the information to be saved, the timing requirements for the Loan Estimate are not triggered until the application is submitted.

3. Determine whether the creditor delivers or places in the mail the Loan Estimate not later than the seventh business day before consummation (other than for transactions secured by a consumer's interest in a timeshare plan) (12 CFR 1026.19(e)(1)(iii)(B)).

   NOTE: Business day is defined differently for purposes of 12 CFR 1026.19(e)(1)(iii)(A) and (B). For 12 CFR 1026.19(e)(1)(iii)(A), business day is defined based on whether the creditor's offices are open to the public for carrying on substantially all of its business functions on that day. For 12 CFR 1026.19(e)(1)(iii)(B), a business day is all days except Sundays and federal holidays (12 CFR 1026.2(a)(6)).

4. Determine whether the consumer waived the waiting period before consummation under 12 CFR 1026.19(e)(1)(iii)(B) by providing a dated written statement describing a bona fide personal financial emergency, specifically modifying or waiving the waiting period, and signed by all the consumers who are primarily liable on the obligation (12 CFR 1026.19(e)(1)(v)).

   NOTE: Preprinted forms for this purpose are prohibited (12 CFR 1026.19(a)(3)).

### *Shopping for Settlement Service Providers*

5. Determine whether a creditor permits a consumer to shop for a settlement service and, if so, identifies the settlement services the consumer is permitted to shop for (12 CFR 1026.19(e)(1)(vi)).

6. If so, determine whether the creditor provides a written list identifying at least one available provider for each settlement service for which the consumer may shop and stating that the consumer may choose a different provider for that service. Determine that the creditor provides the written list separately from the initial Loan Estimate but in accordance with the same timing requirements. The settlement service providers identified on the written list must correspond to required settlement services for which the consumer may shop, disclosed under 12 CFR 1026.37(f)(3) (12 CFR 1026.19(e)(1)(vi); Comment 19(e)(1)(vi)-3).

### *Pre-Disclosure Activity*

7. *Fee restriction.* Determine that the creditor does not charge any fees before the consumer receives the Loan Estimate and before the consumer indicated to the creditor an intent to proceed with the transaction, except for bona fide and reasonable credit report fees 12 CFR 1026.19(e)(2)(i)(A)).

8. *Disclaimer on early estimates*. Determine whether a creditor that provides a consumer with a written estimate of terms or costs specific to that consumer before the consumer receives the Loan Estimate clearly and conspicuously states on the first page in no smaller than 12-point font "Your actual rate, payment, and costs could be higher. Get an official Loan Estimate before choosing a loan," and that the estimate does not use a format or content substantially similar to the Loan Estimate (Form H-24 or H-25 of Appendix H) (12 CFR 1026.19(e)(2)(ii)).

9. *Verification of information.* Determine whether the creditor requires a consumer to submit documents verifying information related to the consumer's application before providing the creditor provides the Loan Estimate (12 CFR 1026.19(e)(2)(iii)).

### *Permissible Variations*

10. Determine whether the creditor disclosed estimated closing costs in good faith and consistent with the best information reasonably available to the creditor at the time the disclosures are provided. The estimated closing costs are in good faith if the amount charged to the consumer at closing does not exceed the estimated closing costs disclosed on the Loan Estimate, unless the following exceptions apply. (12 CFR 1026.19(e)(3))

### *10 Percent Cumulative Increase Permitted*

11. Determine whether the creditor has appropriately increased estimated third party costs or recording fees in good faith. Estimates for third party services or a recording fee are in good faith if:

    a. The aggregate charges do not exceed the aggregate estimate for those charges by more than 10 percent (12 CFR 1026.19(e)(3)(ii)(A); Comment 19(e)(3)(ii)-2);

    b. The third party service charge is not paid to the creditor or affiliate of the creditor (12 CFR 1026.19(e)(3)(ii)(B)); and

    c. The creditor permits the consumer to shop for the third party service (12 CFR 1026.19(e)(3)(ii)(C)).

        i. A creditor may permit a consumer to shop even if a creditor fails to issue the written list of providers required by (12 CFR 1026.19(e)(1)(vi)(C)).

        ii. Determine whether the creditor permits the consumer to shop

consistent with 12 CFR 1026.19(e)(1)(vi)(A) based on all the relevant facts and circumstances.

### *Variations Permitted for Certain Charges*

12. For the following, determine whether the estimate has been made in good faith. An estimate 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 in the Loan Estimate, even if such charges are paid to the creditor or affiliates of the creditor, as long as the charges are bona fide; (12 CFR 1026.19(e)(3)(iii)):

    a. Prepaid interest (12 CFR 1026.19(e)(3)(iii)(A));

    b. Property insurance premiums (12 CFR 1026.19(e)(3)(iii)(B));

    c. Amounts placed into an escrow, impound, reserve, or similar account (12 CFR 1026.19(e)(3)(iii)(C));

    d. Charges paid to third-party service providers the consumer selected that are not on the list provided by the creditor (12 CFR 1026.19(e)(3)(iii)(D)); and

    e. Property taxes and other charges paid for third-party services not required by the creditor (12 CFR 1026.19(e)(3)(iii)(E)).

### *Revised Loan Estimates*

13. Determine whether the creditor may use a revised estimate of charges, instead of the estimate of charges originally disclosed to the consumer, to compare charges actually paid by or imposed on the consumer for purposes of determining good faith (12 CFR 1026.19(e)(3)(iv)). Creditors are permitted to use a revised estimate for this purpose (i.e., to reset tolerances) for any of the following reasons (12 CFR 1026.19(e)(3)(iv)):

    a. *Changed circumstances affecting settlement charge.* Changed circumstances that cause the estimated settlement charges to increase or, in the case of estimated charges identified in 12 CFR 1026.19(e)(3)(ii), cause the aggregate amount of such charges to increase by more than 10 percent. (12 CFR 1026.19(e)(3)(iv)(A)) For purposes of this and the following procedure (12 CFR 1026.19(e)(3)(iv)(A) and (B)), *"changed circumstance"* means:

        i. An extraordinary event beyond the control of any interested party or other unexpected event specific to the consumer or transaction (12 CFR 1026.19(e)(3)(iv)(A)(1));

        ii. Information specific to the consumer or transaction that the creditor relied upon when providing the Loan Estimate and that was inaccurate or changed after the disclosures were provided (12 CFR 1026.19(e)(3)(iv)(A)(2)); or

iii. New information specific to the consumer or transaction that the creditor did not rely on when providing the original Loan Estimate (12 CFR 1026.19(e)(3)(iv)(A)(3)).

b. *Changed circumstance affecting eligibility.* The consumer is ineligible for an estimated charge previously disclosed because a changed circumstance affected the consumer's creditworthiness or the value of the security for the loan (12 CFR 1026.19(e)(3)(iv)(B)).

c. *Revisions requested by the consumer.* The consumer requests revisions to the credit terms or the settlement that cause an estimated charge to increase (12 CFR 1026.19(e)(3)(iv)(C)).

d. *Interest rate dependent charges.* The points or lender credits change because the interest rate was not locked when the Loan Estimate was provided (12 CFR 1026.19(e)(3)(iv)(D)).

e. *Intent to Proceed*. The consumer indicates an intent to proceed with the transaction more than 10 business days after the Loan Estimate is provided or within an extended period of time if the creditor has voluntarily extended the expiration date either orally or in writing (12 CFR 1026.19(e)(3)(iv)(E)).

f. *Construction loan*. The loan involves new construction where settlement is not expected to occur until more than 60 days after the Loan Estimate has been provided to the consumer and the creditor states clearly and conspicuously that a revised disclosure may be used at any time prior to 60 days before consummation, unless otherwise provided by 12 CFR 1026.19(e)(3)(iv) (12 CFR 1026.19(e)(3)(iv)(F)).

NOTE: A loan involves "new construction" if it is a loan for the purchase of a home that has yet to be constructed, or a loan to purchase a home under construction (i.e., construction is currently underway) (Comment 19(e)(3)(iv)(F)-1).

NOTE: A creditor may issue a revised disclosure for informational purposes, even if the revised disclosure may not be used for purposes of determining good faith under 12 CFR 1026.19(e)(3)(i) and (ii) (Comment 19(e)(3)(iv)-4).

14. Determine whether the revised disclosures, even those provided only for informational purposes (i.e., not to reset tolerances), were based on the best information reasonably available to the creditor at the time the disclosure was provided to the consumer (12 CFR 1026.17(c)(2)(i)).

### *Provision and Receipt of Revised Disclosures*

15. Determine whether the creditor has already provided a Closing Disclosure in accordance with 12 CFR 1026.19(f)(1)(i).

NOTE: If the creditor has provided a Closing Disclosure, the creditor may not provide a revised version of the Loan Estimate on or after the date on which it provided the Closing Disclosure (12 CFR 1026.19(e)(4)(ii)). Instead, the creditor may use the initial or a corrected Closing Disclosure to reset tolerances for purposes of determining good faith if one of the reasons for a revised estimate is present (12 CFR 1026.19(e)(4)(i)).

16. Determine whether the creditor provides revised disclosures within three business days of receiving information sufficient to establish a reason for a revised disclosure, such as a changed circumstance or other reason pursuant to 12 CFR 1026.19(e)(3)(iv) (12 CFR 1026.19(e)(4)(i)).

    NOTE: If not provided to the consumer in person, the revised disclosure is considered to have been received three business days after the creditor delivers or places the revised disclosure in the mail (12 CFR 1026.19(e)(4)).

### *Special Information Booklet at Time of Application*

17. For purchase loans using the Loan Estimate and Closing Disclosure, determine whether the creditor mailed or delivered a copy of the special information booklet titled "Your Home Loan Toolkit – A Step-by-Step Guide," which was designed by the CFPB to replace the "Shopping for Your **Home Loan**: Settlement Cost **Booklet**." The booklet is required by Regulation Z 12 CFR 1026.19(g) as well as Section 5 of RESPA and Section 12 CFR 1024.6 of Regulation X. The booklet must be delivered or placed in the mail within three business days after receiving the consumer's application for a purchase transaction, unless the creditor denies the application before the end of the three-business-day period.

    NOTE: If the consumer uses a mortgage broker, the mortgage broker must provide the special information booklet and the creditor need not do so (12 CFR 1026.19(g)).

## Mortgage Loans Secured by Real Property or a Cooperative Unit—Final Disclosures (Closing Disclosures) – 12 CFR 1026.19(f)

### *Provision of Closing Disclosures*

1. Determine whether, for closed-end consumer loans secured by real property or a cooperative unit, other than a reverse mortgage subject to 12 CFR 1026.33 or loans otherwise excepted under 1026.3(h), the creditor provides the consumer with the Closing Disclosure (12 CFR 1026.38), reflecting the actual terms of the transaction (12 CFR 1026.19(f)(1)(i)).

    NOTE: There is a partial exemption in 12 CFR 1026.3(h) from the requirement to provide the Loan Estimate and Closing Disclosure if is (i) the transaction is secured by a subordinate lien, (ii) the loan is for buyer assistance such as down payments or closing costs, rehabilitation loans, energy efficiency assistance, or foreclosure prevention, (iii) the loan does not require the payment of interest, (iv) the loan provides for repayment that is forgiven, deferred for 20 years, or deferred until the property is sold or is no longer the consumer's principal dwelling, and (v) the costs payable by the consumer in connection with the

transaction at consummation are limited to recording fees, transfer taxes, a reasonable application fee, and a reasonable fee for housing counseling services, and fees for the application and housing counseling are less than 1percent of the amount of credit extended. For those transactions, creditors must comply with all Regulation Z requirements pertaining to disclosures. They may do so by complying with the disclosure requirements of 12 CFR 1026.18, or in the alternative, where criteria for the partial exemption are satisfied, they may provide a compliant Loan Estimate and Closing Disclosure, and do not need to provide a Good Faith Estimate or HUD-1 settlement statement (12 CFR 1026.3(h)).

2. Determine whether the creditor ensures that the consumer receives the Closing Disclosure no later than three business days before consummation (except for transactions secured by a timeshare, which the creditor must ensure the consumer receives no later than consummation) (12 CFR 1026.19(f)(1)(ii)).

   NOTE: If the creditor mails the disclosure six business days prior to consummation, it can assume that it was received three business days after sending, and therefore three business days prior to consummation. (12 CFR 1026.19(f)(1)(iii); see Comment 19(f)(1)(iii)) "Business day" for purposes of the Closing Disclosure is the rescission-based business day definition, and means all calendar days except Sundays and legal public holidays 12 CFR 1026.2(a)(6), (12 CFR1026.19(f)(1)(ii)(A)) .

3. Determine whether the consumer waived the waiting period before consummation by providing a dated written statement describing a bona fide personal financial emergency, specifically modifying or waiving the waiting period and signed by all the consumers who are primarily liable on the obligation (12 CFR 1026.19(f)(1)(iv)).

   NOTE: Preprinted forms for this purpose are prohibited (12 CFR 1026.19(f)(1)(iv)).

4. If a settlement agent provides the consumer with the Closing Disclosure, determine whether the creditor ensures that the disclosures were provided in accordance with 12 CFR 1026.19(f) (12 CFR 1026.19(f)(1)(v)).

5. Determine whether the creditor is relying on the Closing Disclosure to reset tolerances for purposes of determining good faith under 12 CFR 1026.19(e)(3). If so, confirm:

   a. A changed circumstance or other reason set forth in 12 CFR 1026.19(e)(3)(iv) is present;

   b. The revised disclosures were based on the best information reasonably available to the creditor at the time the disclosure was provided to the consumer (12 CFR 1026.17(c)(2)(i)); and

   c. The creditor provided the revised disclosures within three business days of receiving information sufficient to establish a reason for a revised estimate (12 CFR 1026.19(e)(4)).

### *Subsequent Changes*

1. Determine whether the creditor provides a corrected Closing Disclosure where a disclosure has become inaccurate before consummation, so that the consumer receives a corrected Closing Disclosure at or before consummation. Determine whether the creditor permits the consumer to inspect the corrected disclosure during the business day prior to consummation.

   NOTE: The corrected Closing Disclosure must be completed to set forth items known to the creditor at the time of this inspection but may omit from inspection items related only to the seller's transaction (12 CFR 1026.19(f)(2)(i)).

2. Determine whether the creditor provides a corrected Closing Disclosure and a new three-business-day waiting period before consummation if:

   a. The APR disclosed in the Loan Estimate under 12 CFR 1026.38(o)(4) becomes inaccurate, as defined in 12 CFR1026.22 (12 CFR 1026.19(f)(2)(ii)(A));

   NOTE: Generally, if the APR and finance charges are overstated because the interest rate has decreased, the APR is considered accurate and no new waiting period is required. (12 CFR 1026.22)).

   b. The loan product is changed, causing the information disclosed in the Loan Estimate under 12 CFR1026.38(a)(5)(iii) to become inaccurate (12 CFR 1026.19(f)(2)(ii)(B)); or

   c. A prepayment penalty is added, causing the statement regarding a prepayment penalty required under 12 CFR 1026.38(b) to become inaccurate. (12 CFR 1026.19(f)(2)(ii)(C)).

3. Determine whether the creditor is relying on the corrected Closing Disclosure to reset tolerances for purposes of determining good faith under 12 CFR 1026.19(e)(3). If so, confirm:

   a. A changed circumstance or other reason set forth in 12 CFR 1026.19(e)(3)(iv) is present;

   b. The revised disclosures were based on the best information reasonably available to the creditor at the time the disclosure was provided to the consumer (12 CFR 1026.17(c)(2)(i)); and

   c. The creditor provided the revised disclosures within three business days of receiving information sufficient to establish a reason for a revised estimate (12 CFR 1026.19(e)(4)).

NOTE: Corrected Closing Disclosures require a new three-day waiting period only if one of the following is present: an inaccurate APR, a change in loan product, or the addition of a prepayment penalty (12 CFR 1026.19(f)(2)(ii)).

4. Determine whether, when an event in connection with the settlement causes the Closing Disclosure to become inaccurate during the 30-day period following consummation, and that inaccuracy results in a change to an amount actually paid by the consumer from the amount disclosed, the creditor delivers or places in the mail corrected disclosures not later than 30 days from receiving the information to establish that the event occurred (12 CFR 1026.19(f)(2)(iii)).

   NOTE: A creditor does not violate 12 CFR 1026.19(f)(1)(i) if the disclosures contain non-numeric clerical errors, provided the creditor delivers or places in the mail corrected disclosures no later than 60 days after consummation (12 CFR 1026.19(f)(2)(iv)).

5. Determine whether the creditor charged the consumer for any amounts that exceeded the estimated charges beyond the applicable permissible variations set forth in 12 CFR 1026.19(e)(3)(i) (no variation permitted for the charge) and (ii) (charge subject to a 10 percent aggregate limit). For any such charges, determine if the creditor refunds the excess amounts no later than 60 days after consummation and delivers or places in the mail corrected disclosures reflecting the refund no later than 60 days after consummation (12 CFR 1026.19(f)(2)(v)).

### *Charges Disclosed*

1. Determine whether the creditor or settlement service provider imposes a charge on the consumer for more than the settlement service provider actually received. If the creditor charges the average charge for settlement services, determine whether the creditor meets the following:

   a. The average charge is no more than the average amount paid for that service by or on behalf of all consumers and sellers for a class of transactions (12 CFR 1026.19(f)(3)(ii)(A));

   b. The class of transactions is defined by appropriate period of time, geographic area, and type of loan (12 CFR 1026.19(f)(3)(ii)(B));

   c. The same average charge is used for every transaction within the class (12 CFR 1026.19(f)(3)(ii)(C)); and

   d. The average charge is not used for any type of insurance or any charge based on the loan amount or property value, and is not otherwise prohibited by law 12 CFR 1026.19(f)(3)(ii)(D)).

### *Transactions Involving a Seller*

1. Determine whether the settlement agent provides the seller with the Closing Disclosure no later than the day of consummation. If during the 30-day period following consummation, an event in connection with the settlement of the transaction occurs that causes disclosures to become inaccurate and the inaccuracy results in a change to the amount actually paid by the seller from that previously disclosed, determine whether the settlement agent has delivered or placed in the mail corrected disclosures not later than 30 days after receiving information sufficient to establish that such an event has occurred (12 CFR 1026.19(f)(4)).

### *No Fee*

1. Determine whether a creditor or servicer imposes a fee on any person as part of settlement costs or otherwise for preparing or delivering Closing Disclosures (12 CFR 1026.19(f)(5))

### *Electronic Disclosures*

1. Assess compliance for an institution's electronic disclosure requirements.

### *E-Sign Act*

1. Disclosures may be provided to the consumer in electronic form, subject to compliance with the consumer consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. 7001 *et seq.*). The E-Sign Act does not mandate that institutions or consumers use or accept electronic records or signatures. It permits institutions to satisfy any statutory or regulatory requirements by providing the information electronically after obtaining the consumer's affirmative consent. Before consent can be given, consumers must be provided with the following information:

    a. Any right or option to have the information provided in paper or non-electronic form;

    b. The right to withdraw the consent to receive information electronically and the consequences, including fees, of doing so;

    c. The scope of the consent (for example, whether the consent applies only to a particular transaction or to identified categories of records that may be provided during the course of the parties' relationship);

    d. The procedures to withdraw consent and to update information needed to contact the consumer electronically; and

    e. The methods by which a consumer may obtain, upon request, a paper copy of an electronic record after consent has been given to receive the information electronically and whether any fee will be charged (15 U.S.C. 7001(c)(1)(B)).

        i. The consumer must consent electronically or confirm consent electronically in a manner that "reasonably demonstrates that the consumer can access information in the electronic form that will be used to provide the information that is the subject of the consent". After the consent, if an institution changes

the hardware or software requirements such that a consumer may be prevented from accessing and retaining information electronically, the institution must notify the consumer of the new requirements and must allow the consumer to withdraw consent without charge. (15 U.S.C. 7001(c)(1)(C) and (D)).

ii. If the financial institution makes its disclosures available to consumers in electronic form, determine that the forms comply with the appropriate 12 CFR – 1026.5(a)(1); 1026.15(b); 1026.16(c); 1026.17(a)(1); 1026.17(g); 1026.19(c); 1026.23(b)(1); 1026.24(d); 1026.31(b); 1026.40(a)(3); and 1026.60(a)(2)(v).

iii. Card issuers may provide credit card agreements in electronic form under 12 CFR 1026.58(d) and (e) without regard to the consumer notice and consent requirements of section 101(c) of the E-Sign Act (12 CFR 1026.58(f)).

## Annual Report to the Consumer Financial Protection Bureau – 12 CFR 1026.57(d)

1. If the card issuer was a party to one or more college credit card agreements in effect at any time during a calendar year, verify that the card issuer submits to the CFPB an annual report regarding those agreements in the form and manner prescribed by the Bureau (12 CFR 1026.57(d)(1)).

   NOTE: A college credit card agreement is any business, marketing, or promotional agreement between a card issuer and an institution of higher education (or an affiliated alumni organization or foundation) in connection with which credit cards are issued to college students at that institution of higher education (12 CFR 1026.57(a)(5)). (See Comment 57(a)(5)-1) for specifics on where a covered separate credit feature may be added.

2. The annual report to the CFPB must include the following (12 CFR 1026.57(d)(2)):

   a. Identifying information about the card issuer and the agreements submitted, including the issuer's name, address, and identifying number (such as an RSSD ID number or tax identification number);

   b. A copy of any college credit card agreement to which the card issuer was a party that was in effect at any time during the period covered by the report;

   c. A copy of any memorandum of understanding in effect at any time during the period covered by the report between the card issuer and an institution of higher education or affiliated organization that directly or indirectly relates to the college credit card agreement or that controls or directs any obligations or distribution of benefits between any such entities;

   d. The total dollar amount of any payments pursuant to a college credit card agreement from the card issuer to an institution of higher education or affiliated organization

during the period covered by the report, and the method or formula used to determine such amounts;

e. The total number of credit card accounts opened pursuant to any college credit card agreement during the period covered by the report; and

f. The total number of credit card accounts opened pursuant to any such agreement that were open at the end of the period covered by the report.

3. If the card issuer is subject to reporting, determine if the card issuer submits its annual report for each calendar year to the CFPB by the first business day on or after March 31 of the following calendar year (12 CFR 1026.57(d)(3)).

## The Submission of Agreements to the Consumer Financial Protection Bureau – 12 CFR 1026.58(c)

1. For card issuers that issue credit cards under a credit card account under an open-end (not home-secured) consumer credit plan, determine that the card issuer makes quarterly submissions to the CFPB in the form and manner specified by the Bureau that contain:

   a. Identifying information about the card issuer and the agreements submitted, including the issuer's name, address, and identifying number (such as an RSSD ID number or tax identification number) (12 CFR 1026.58(c)(1)(i));

   b. The credit card agreements that the card issuer offered to the public as of the last business day of the preceding calendar quarter that the card issuer has not previously submitted to the CFPB (12 CFR 1026.58(c)(1)(ii));

   c. Any credit card agreement previously submitted to the CFPB that was amended during the preceding calendar quarter and that the card issuer offered to the public as of the last business day of the preceding calendar quarter as described in 12 CFR 1026.58(c)(3) (12 CFR 1026.58(c)(1)(iii)); and

   d. Notification regarding any credit card agreement previously submitted to the CFPB that the issuer is withdrawing, as described in 12 CFR 1026.58(c)(4), (c)(5), (c)(6), and (c)(7) (12 CFR 1026.58(c)(1)(iv)).

2. Verify that quarterly submissions were sent to the CFPB no later than the first business day on or after January 31, April 30, July 31, and October 31, of each year 12 CFR 1026.58(c)(1)).

3. If a credit card agreement that previously has been submitted to the CFPB is amended, verify that the card issuer submits the entire amended agreement to the CFPB, in the form and manner specified by the Bureau, by the first quarterly submission deadline after the last day of the calendar quarter in which the change became effective (12 CFR 1026.58(c)(3)).

NOTE: If a credit card agreement has been submitted to the CFPB, the agreement has not been amended and the card issuer continues to offer the agreement to the public, no additional submission regarding that agreement is required.

4. If a card issuer no longer offers to the public a credit card agreement that previously has been submitted to the CFPB, ensure that the card issuer notifies the Bureau by the first quarterly submission deadline after the last day of the calendar quarter in which the issuer ceased to offer the agreement (12 CFR 1026.58(c)(4)).

   NOTE: A card issuer is not required to submit any credit card agreements to the CFPB if the card issuer had fewer than 10,000 open credit card accounts as of the last business day of the calendar quarter (12 CFR 1026.58(c)(5)(i)).

5. If an issuer that previously qualified for the *de minimis* exception ceases to qualify, determine that the card issuer begins making quarterly submissions to the CFPB no later than the first quarterly submission deadline after the date as of which the issuer ceased to qualify (12 CFR 1026.58(c)(5)(ii)).

6. If a card issuer that did not previously qualify for the *de minimis* exception qualifies for the *de minimis* exception, determine that the card issuer continues to make quarterly submissions to the CFPB until the issuer notifies the Bureau that the card issuer is withdrawing all agreements it previously submitted to the CFPB (12 CFR 1026.58(c)(5)(iii)).

7. A card issuer is not required to submit to the CFPB a credit card agreement if, as of the last business day of the calendar quarter, the agreement is offered for accounts under one or more private label credit card plans each of which has fewer than 10,000 open accounts and is not offered to the public other than for accounts under such a plan (12 CFR 1026.58(c)(6)(i))

   NOTE: A private label credit card is one that is usable only at a single merchant or affiliated group of merchants. A private label credit card plan is all private label credit card accounts issued by a particular issuer with credit cards usable at the same single merchant or affiliated group of merchants (12 CFR 1026.58(b)(8)).

8. If an agreement that previously qualified for the private label credit card exception ceases to qualify, determine that the card issuer submits the agreement to the CFPB no later than the first quarterly submission deadline after the date as of which the agreement ceased to qualify (12 CFR 1026.58(c)(6)(ii)).

9. If an agreement that did not previously qualify for the private label credit card exception qualifies for the exception, determine that the card issuer continues to make quarterly submissions to the Bureau with respect to that agreement until the issuer notifies the CFPB that the agreement is being withdrawn (12 CFR 1026.58(c)(6)(iii)).

   NOTE: A card issuer is not required to submit to the CFPB a credit card agreement if, as of the last business day of the calendar quarter, the agreement is offered as part of a product test offered to only a limited group of consumers for a limited period of time, is used for fewer

than 10,000 open accounts, and is not offered to the public other than in connection with such a product test (12 CFR 1026.58(c)(7)(i)).

10. If an agreement that previously qualified for the product testing exception ceases to qualify, determine that the card issuer submits the agreement to the CFPB no later than the first quarterly submission deadline after the date as of which the agreement ceased to qualify (12 CFR 1026.58(c)(7)(ii)).

11. If an agreement that did not previously qualify for the product testing exception qualifies for the exception, determine that the card issuer continues to make quarterly submissions to the CFPB with respect to that agreement until the issuer notifies the Bureau that the agreement is being withdrawn. (12 CFR 1026.58(c)(7)(iii)).

12. Verify that each agreement contains the provisions of the agreement and the pricing information in effect as of the last business day of the preceding calendar quarter (12 CFR 1026.58(c)(8)(i)(A)).

13. Verify that agreements do not include any personally identifiable information relating to any cardholder, such as name, address, telephone number, or account number (12 CFR 1026.58(c)(8)(i)(B)).

14. Verify that agreements are presented in a clear and legible font (12 CFR 1026.58(c)(8)(i)(D)).

15. Verify that pricing information is set forth in a single addendum to the agreement that contains only the pricing information (12 CFR 1026.58(c)(8)(ii)(A)).

    NOTE: With respect to information other than the pricing information that may vary between cardholders depending on creditworthiness, state of residence, or other factors, issuers may, but are not required to, include that information in a single addendum (the optional variable terms addendum) to the agreement separate from the pricing addendum (12 CFR 1026.58(c)(8)(iii)).

16. If pricing information varies from one cardholder to another depending on the cardholder's creditworthiness or state of residence or other factors, verify that the pricing information is disclosed either by setting forth all the possible variations (such as purchase APRs of 13 percent, 15 percent, 17 percent, and 19 percent) or by providing a range of possible variations (such as purchase APRs ranging from 13 percent to 19 percent) (12 CFR 1026.58(c)(8)(ii)(B)).

17. If a rate included in the pricing information is a variable rate, verify that the issuer identifies the index or formula used in setting the rate and the margin (12 CFR 1026.58(c)(8)(ii)(C)).

18. If rates vary from one cardholder to another, verify that the issuer discloses such rates by providing the index and the possible margins (such as the prime rate plus five percent, eight

percent, 10 percent, or 12 percent) or range of margins (such as the prime rate plus from five to 12 percent) (12 CFR 1026.58(c)(8)(ii)(C)).

NOTE: The value of the rate and the value of the index are not required to be disclosed.

19. Determine that issuers do not provide provisions of the agreement or pricing information in the form of change-in-terms notices or riders (other than the pricing information addendum and the optional variable terms addendum) (12 CFR 1026.58(c)(8)(iv)).

20. Determine that changes in provisions or pricing information are integrated into the text of the agreement, the pricing information addendum, or the optional variable terms addendum, as appropriate (12 CFR 1026.58(c)(8)(iv)).

## The Posting of Agreements Offered to the Public – 12 CFR 1026.58(d)

1. Determine that the card issuer posts and maintains on its publicly available website the credit card agreements that the issuer is required to submit to the CFPB under 12 CFR 1026.58(c) (12 CFR 1026.58(d)(1)).

2. With respect to an agreement offered solely for accounts under one or more private label credit card plans (and the issuer does not post and maintain the agreements on its publicly available website), determine that the issuer posts and maintains the agreement on the publicly available website of at least one of the merchants where cards issued under each private label credit card plan with 10,000 or more open accounts may be used (12 CFR 1026.58(d)(1)).

3. Verify that agreements posted pursuant to 12 CFR 1026.58(d) conform to the form and content requirements for agreements submitted to the CFPB specified in 12 CFR 1026.58(c)(8) (12 CFR 1026.58(d)(2)).

4. Determine that agreements are posted in an electronic format that is readily usable by the general public (12 CFR 1026.58(d)(3)).

5. Verify that agreements are placed in a location on its website that is prominent and readily accessible by the public and accessible without submission of personally identifiable information (12 CFR 1026.58(d)(3)).

6. Determine that the card issuer updates the agreements posted on its website at least as frequently as the quarterly schedule required for submission of agreements to the CFPB under 12 CFR 1026.58(c) (12 CFR 1026.58(d)(4)).

   NOTE: If the issuer chooses to update the agreements on its website more frequently, the agreements posted on the issuer's website may contain the provisions of the agreement and the pricing information in effect as of a date other than the last business day of the preceding calendar quarter.

## The Posting of Agreements for "Open" Accounts – 12 CFR 1026.58(e)

1. With respect to any open (i.e., the cardholder can obtain extensions or there is an outstanding balance on the account that has not been charged off) credit card account, determine that the card issuer either:

    a. Posts and maintains the cardholder's agreement on its website; or

    b. Promptly provides a copy of the cardholder's agreement to the cardholder upon the cardholder's request (12 CFR 1026.58(e)(1)(i) and (ii)).

2. If the card issuer makes an agreement available upon request, ensure that the issuer provides the cardholder with the ability to request a copy of the agreement both by:

    a. Using the issuer's website, such as by clicking on a clearly identified box to make the request (12 CFR 1026.58(e)(1)(ii)), and

    b. Calling a readily available telephone line the number for which is displayed on the issuer's website and clearly identified as to purpose (12 CFR 1026.58(e)(1)(ii) and (e)(2)).

3. If an issuer does not maintain a website from which cardholders can access specific information about their individual accounts determine that the issuer makes agreements available upon request by providing the cardholder with the ability to request a copy of the agreement by calling a readily available telephone line the number for which is (12 CFR 1026.58(e)(2)):

    a. Displayed on the issuer's website and clearly identified as to purpose; or

    b. Included on each periodic statement sent to the cardholder and clearly identified as to purpose.

4. Verify that the card issuer sends to the cardholder or otherwise make available to the cardholder a copy of the cardholder's agreement in electronic or paper form no later than 30 days after the issuer receives the cardholder's request (12 CFR 1026.58(e)(1)(ii)).

5. Determine that agreements posted on the card issuer's website or made available upon the cardholder's request conform to the form and content requirements for agreements submitted to the CFPB specified in 12 CFR 1026.58(c)(8) (12 CFR 1026.58(e)(3)(i)).

6. If the card issuer posts an agreement on its website or otherwise provides an agreement to a cardholder electronically, verify that the agreement is posted or provided in an electronic format that is readily usable by the general public and is placed in a location that is prominent and readily accessible to the cardholder (12 CFR 1026.58(e)(3)(ii)).

7. If agreements posted or otherwise provided contain personally identifiable information relating to the cardholder, such as name, address, telephone number, or account number, ensure that the issuer takes appropriate measures to make the agreement accessible only to the cardholder or other authorized persons (12 CFR 1026.58(e)(3)(iii)).

8. Determine that agreements posted or otherwise provided set forth the specific provisions and pricing information applicable to the particular cardholder (12 CFR 1026.58(e)(3)(iv)).

9. Determine that provisions and pricing information are complete and accurate as of a date no more than 60 days prior to (12 CFR 1026.58(e)(3)(iv)):

    a. The date on which the agreement is posted on the card issuer's website under 12 CFR 1026.58(e)(1)(i);

    b. The date the cardholder's request is received under 12 CFR 1026.58(e)(1)(ii) or (e)(2).

    NOTE: Card issuers may provide credit card agreements in electronic form under 12 CFR 1026.58(d) and (e) without regard to the consumer notice and consent requirements of section 101(c) of the Electronic Signatures in Global and National Commerce Act (E Sign Act) (15 U.S.C. 7001 *et seq.*) (12 CFR 1026.58(f)).

## Advertising (Open- and Closed-End)

1. For open- and closed-end loans, sample advertising copy, including any electronic advertising, since the previous examination and verify that the terms of credit are accurate, clear, balanced, and conspicuous. If triggering terms are used, determine that the required disclosures are made (12 CFR 1026.16 and 1026.24).

    a. For advertisements for closed-end credit:

        i. If a rate of finance charge was stated, determine that it was stated as an APR.

        ii. If an APR will increase after consummation, verify that a statement to that fact is made.

        iii. Determine whether there are deceptive or misleading statements or practices.

    b. Determine that the creditor does not offer college students any tangible item to induce such students to apply for or open an open-end consumer credit plan offered by such creditor, if such offer is made:

        i. On the campus of an institution of higher education;

        ii. Near the campus of an institution of higher education; or

        iii. At an event sponsored by or related to an institution of higher education (12 CFR 1026.57(c)).

c. If an open-end credit advertisement refers to an APR as "fixed" (or similar term), determine 1) that the advertisement also specifies a time period that the rate will be fixed and 2) that the rate will not increase during that period. (12 CFR 1026.16(f))

d. If an open-end credit advertisement used the word "fixed" or a similar word and no time period is specified in which the rate will be fixed, determine that the rate will not increase while the plan is open (12 CFR 1026.16(f)).

e. For any advertisement of an open-end (not home-secured) plan, if an APR or fee that may be applied to the account is an introductory rate or introductory fee, determine that the term *introductory* or *intro* is in immediate proximity to each listing of the introductory rate or introductory fee in a written or electronic advertisement. [[(12 CFR 1026.16(g)(3))

f. For any advertisement of an open-end (not home-secured) plan, if any APR or fee that may be applied to the account is a promotional rate under 12 CFR 1026.16(g)(2)(i) or any fee that may be applied to the account is a promotional fee under 12 CFR 1026.16(g)(2)(iv), determine that the following information is stated in a clear and conspicuous manner in the advertisement (12 CFR 1026.16(g)(4)):

   i. When the promotional rate or promotional fee will end; and

   ii. The annual percentage rate that will apply after the end of the promotional period.

NOTE: If such rate is variable, determine that the annual percentage rate complies with the accuracy standards in 12 CFR 1026.60(c)(2), 1026.60(d)(3), 1026.60(e)(4), or 1026.16(b)(1)(ii), as applicable. If such rate cannot be determined at the time disclosures are given because the rate depends at least in part on a later determination of the consumer's creditworthiness, determine that the advertisement discloses the specific rates or the range of rates that might apply (12 CFR 1026.16(g)(4)(ii)). Further, if the promotional rate or fee is stated in a written or electronic advertisement, determine that the information in 12 CFR 1026.16 (g)(4)(i), and, as applicable, (g)(4)(ii), or (g)(4)(iii) are also stated in a prominent location closely proximate to the first listing of the promotional rate or promotional fee.

g. If a deferred interest offer is advertised for an open-end account not subject to 12 CFR 1026.40, determine that the deferred interest period is stated in a clear and conspicuous manner in the advertisement. If the phrase "no interest" or similar term regarding the possible avoidance of interest obligations under the deferred interest program is stated, determine that the term "if paid in full" is also stated in a clear and conspicuous manner preceding the disclosure of the deferred interest period in the advertisement. If the deferred interest offer is included in a written or electronic advertisement, determine that the deferred interest period and, if applicable, the term "if paid in full" are stated in immediate proximity to each statement of "no interest,"

"no payments," "deferred interest," "same as cash," or similar term regarding interest or payments during the deferred interest period (12 CFR 1026.16(h)(3)).

h. If any deferred interest offer is advertised for an open-end account not subject to 12 CFR 1026.40, determine that the (h)(4)(i) and (h)(4)(ii) language of 12 CFR 1026.16(h)(4) is stated in the advertisement and is similar to Sample G-24 in Appendix G. If the deferred interest offer is included in a written or electronic advertisement, determine that this information is stated in a prominent location closely proximate to the first statement of "no interest," "no payments," "deferred interest," "same as cash," or similar term regarding interest or payments during the deferred interest period (12 CFR 1026.16(h)(4)).

NOTE: The requirements in 12 CFR 1026.16(h)(4) apply to any advertisement of an open-end credit plan not subject to 12 CFR 1026.40 (requirements for home equity plans) (12 CFR 1026.16(h)(1)). However, the requirements do not apply to an envelope or other enclosure in which an application or solicitation is mailed, or to a banner advertisement or pop-up advertisement linked to an application or solicitation provided electronically (12 CFR 1026.16(h)(5)).

## Transactional Testing

NOTE: When verifying APR accuracies, use the the FFIEC Federal Computational Tool or other calculation tool acceptable to your regulatory agency.

1. Review the financial institution's closed-end and open-end transactions to ensure accuracy and completeness.

## Closed-End Credit Transactional Testing Procedures

1. For each type of closed-end loan being tested, determine the accuracy of the disclosures by comparing the disclosures to the contract and other financial institution documents (12 CFR 1026.17).

2. Determine whether the required disclosures were made before consummation of the transaction and ensure the presence and accuracy of the items below, as applicable (12 CFR 1026.18).

    a. Creditor and loan originator name with Nationwide Mortgage Licensing System and Registry (NMLSR) IDs on required documents as required under (12 CFR 1026.36).

    b. Amount financed.

    c. Itemization of the amount financed (RESPA GFE may substitute).

    d. Finance charge.

e. APR.

f. Variable rate information as follows for loans not secured by a principal dwelling or secured by a principal dwelling with terms of one year or less:

   i. Circumstances which permit rate increase,

   ii. Limitations on the increase (periodic or lifetime),

   iii. Effect of the increase, and

   iv. Hypothetical example of new payment terms that would result from an increase.

g. Payment schedule including the number, amount, and timing of payments.

h. Total of payments.

i. Demand feature.

j. Total sale price (credit sale).

k. Prepayment.

l. Late payment.

m. Security interest.

n. Insurance and debt cancellation.

o. Certain security interest charges.

p. Contract reference.

q. Assumption policy.

r. Required deposit.

s. Interest rate and payment summary for mortgage transactions.

t. No-guarantee-to-refinance statement.

3. For adjustable-rate mortgages, verify that the creditor, assignee, or servicer provides disclosures in connection with the initial interest rate adjustment pursuant to the contract and for rate changes that result in corresponding changes in payment.

4. For adjustable-rate mortgages, verify that the creditor, assignee, or servicer includes the appropriate content (as identified in the Closed-End Credit Disclosure Forms Review Procedures section above).

5. For adjustable-rate mortgages, verify that the creditor, assignee, or servicer provides the disclosures consistent with timing requirements (see **Timing Requirements** section of the procedures above).

   NOTE: The accuracy of the adjusted interest rates and indexes should be verified by comparing them with the contract and early disclosures. Refer to the Additional Variable Rate Testing section of these examination procedures.

6. Determine, for each type of closed-end rescindable loan being tested, the appropriate number of copies of the rescission notice are provided to each person whose ownership interest is or will be subject to the security interest. The creditor must deliver two copies of the notice of right to rescind to each consumer entitled to rescind. The rescission notice must disclose the items below (12 CFR 1026.23(b)(1)).

   a. Security interest taken in the consumer's principal dwelling

   b. Consumer's right to rescind the transaction

   c. How to exercise the right to rescind, with a form for that purpose, designating the address of the creditor's place of business

   d. Effects of rescission

   e. Date the rescission period expires.

7. Ensure funding was delayed until the rescission period expired (12 CFR 1026.23(c)).

8. Determine if the consumer has waived the three-day right to rescind since the previous examination. If applicable, test rescission waivers (12 CFR 1026.23(e)).

9. Determine whether the maximum interest rate in the contract is disclosed for any consumer credit contract secured by a dwelling if the APR may increase after consummation (12 CFR 1026.30(a)).

10. For private student loans with a right to cancel, review cancellation requests to determine if they were properly handled (12 CFR 1026.47(c)).

## Minimum Standards for Transactions Secured by a Dwelling – 12 CFR 1026.43

1. Determine whether the financial institution is a creditor that originates covered transactions. Covered transactions are transactions secured by a dwelling, including any real property attached to a dwelling. They do not include: home equity lines of credit; timeshare loans, or for purposes of 12 CFR 1026.43(c)-(f): reverse mortgages; temporary or bridge or construction loans of 12 months or less; renewable or non-renewable construction loans of 12 months or less that are a part of a construction-to-permanent transaction; or an extension of credit under a program administered by a Housing Finance Agency (defined in 24 CFR

266.5), by community development or non-profit lenders specified in 12 CFR 1026.43(a)(3)(v), or in connection with certain federal emergency economic stabilization programs (12 CFR 1026.43(a)).

2. Determine if a loan is a streamline refinance under 12 CFR 1026.20(a) and Commentary 1026.20(a) and whether it qualifies under 12 CFR 1026.43(d), below.

### Refinancing Non-Standard Mortgages – 12 CFR 1026.43(d)

1. Determine whether a creditor that has refinanced a non-standard mortgage defined in 12 CFR 1026.43(d)(i) (an ARM with an introductory rate fixed for a year or more, an interest-only loan, or a negative amortization loan) into a standard mortgage as defined in 12 CFR 1026.43(d)(ii) has considered whether the standard mortgage likely will prevent a default by the consumer once the loan is recast. In addition, determine that the following conditions are met (12 CFR 1026.43(d)(3)):

    a. At the time of the refinance, the creditor for the standard mortgage is the current holder of the existing non-standard mortgage or the servicer acting on behalf of the current holder (12 CFR 1026.43(d)(2)(i));

    b. The monthly payment for the standard mortgage is materially lower (a payment reduction of 10 percent or more is sufficient) than the monthly payment for the non-standard mortgage using the payment calculation rules in 12 CFR 1026.43(d)(5) (12 CFR 1026.43(d)(2)(ii));

    c. The creditor received the consumer's written application for the standard mortgage no later than two months after the non-standard mortgage had recast (12 CFR 1026.43(d)(2)(iii));

    d. The consumer had made no more than one payment more than 30 days late on the non-standard mortgage during the 12 months immediately before the creditor receives the consumer's written application for the standard mortgage (12 CFR 1026.43(d)(2)(iv));

    e. The consumer had made no payments more than 30 days late during the six months immediately before the creditor received the consumer's written application for the standard mortgage (12 CFR 1026.43(d)(2)(v)); and

    f. If the non-standard mortgage was consummated on or after January 10, 2014, the non-standard mortgage was made in accordance with the ability to repay or the qualified mortgage requirements 12 CFR 1026.43(c) or (e) (12 CFR 1026.43(d)(vi)).

## Ability to Repay – 12 CFR 1026.43(c)

NOTE: For all covered transactions, except streamline refinances, creditors must make a good faith determination that the consumer will have a reasonable ability to repay the loan, and must verify the information upon which it relied. A creditor can meet this obligation by complying

with the ability-to-repay requirement in 12 CFR 1026.43(c), by making qualified mortgages under 12 CFR 1026.43(e) and (f), or qualified mortgages under the safe harbor standard in 15 U.S.C. 1639c(b)(2)(F). Qualified mortgages, which limit certain loan features and practices, are presumed to satisfy the ability-to-repay requirements (12 CFR 1026.43(c)(1) and (2)).

Except as otherwise provided where a loan is a non-standard mortgage refinanced into a standard mortgage under 12 CFR 1026.43(d), or is a qualified mortgage under 12 CFR 1026.43(e), (f), or pursuant to 15 U.S.C. 1639c(b)(2)(F) (all of which are covered by procedures below), determine whether the creditor makes a reasonable and good faith determination at or before consummation that the consumer will have a reasonable ability to repay the loan according to its terms, based, at a minimum, on the criteria that follow (12 CFR 1026.43(c)(1)).

1. Determine whether the creditor considered the following, at a minimum, in determining the consumer's ability to repay (12 CFR 1026.43(c)(2)):

    a. The consumer's current or reasonably expected income or assets (other than the value of the dwelling, including any real property attached to the dwelling, that secures the loan) (12 CFR 1026.43(c)(2)(i));

    b. If the creditor relies on employment income, the consumer's current employment status (12 CFR 1026.43(c)(2)(ii));

    c. The consumer's monthly payment on the covered transaction, calculated in accordance with 12 CFR 1026.43(c)(5) (12 CFR 1026.43(c)(2)(iii));

    d. The consumer's monthly payment on any simultaneous loan that the creditor knows or has reason to know will be made, calculated in accordance with 12 CFR 1026.43(c)(6) (12 CFR 1026.43(c)(2)(iv));

    e. The consumer's monthly payment for mortgage-related obligations (12 CFR 1026.43(c)(2)(v));

    f. The consumer's current debt obligations, alimony, and child support (12 CFR 1026.43(c)(2)(vi));

    g. The consumer's monthly debt-to-income ratio or residual income in accordance with 12 CFR 1026.43(c)(7) and 12 CFR 1026.43(c)(2)(vii) and (viii)); and

    h. The consumer's credit history (12 CFR 1026.43(c)(2)(viii)).

2. Determine whether the creditor verified the information it relied upon when considering the eight factors listed above using reasonably reliable third-party records, except that special rules apply for verification of income or assets, employment, and current debt obligations that are not shown on the consumer's credit report. (12 CFR 1026.43(c)(3))

## Income and Assets, Employment and Debt Obligations

1. Determine that the creditor verified the information that it relied on using reliable third-party records except that:

    a. A creditor may verify a consumer's employment status orally if the creditor prepares a written record of the information obtained orally (12 CFR 1026.43(c)(3)(ii)); and

    b. A creditor that relies on a credit report to verify a consumer's current obligations need not independently verify obligations that the consumer lists on the application that are not in the consumer's credit report (12 CFR 1026.43(c)(3)(iii)).

2. Determine whether the creditor verified the income or assets it relied upon, by using third-party records that provide reasonably reliable evidence, (12 CFR 1026.43(c)(4)) such as:

    a. A tax-return transcript issued by the Internal Revenue Service (IRS) (12 CFR 1026.43(c)(4));

    b. Copies of tax returns the consumer filed with the IRS or a state taxing authority (12 CFR 1026.43(c)(4)(i));

    c. IRS Form W-2s or similar IRS forms used for reporting wages or tax withholding (12 CFR 1026.43(c)(4)(ii));

    d. Payroll statements, including military Leave and Earnings Statements (12 CFR 1026.43(c)(4)(iii));

    e. Financial institution records (12 CFR 1026.43(c)(4)(iv));

    f. Records from the consumer's employer or a third party that obtained information from the employer (12 CFR 1026.43(c)(4)(v));

    g. Records from a federal, state, or local government agency stating the consumer's income from benefits or entitlements (12 CFR 1026.43(c)(4)(vi));

    h. Receipts from the consumer's use of check cashing services (12 CFR 1026.43(c)(4)(vii)); and

    i. Receipts from the consumer's use of a funds transfer service 12 CFR 1026.43(c)(4)(viii)).

3. For employment status, if the creditor orally verified employment status, determine whether the creditor prepared a written record of the information obtained orally (12 CFR 1026.43(c)(3)(ii)).

## Monthly Payment Calculation

1. Determine whether the creditor calculated the monthly payment (except for balloon payment, interest-only and negative amortization loans) by using:

a. The fully indexed rate or any introductory interest rate, whichever is greater; and monthly, fully amortizing payments that are substantially equal (12 CFR 1026.43(c)(5)).

b. For a loan with a balloon payment:

   i. The maximum payment scheduled during the first five years after the date on which the first regular periodic payment will be due for a loan that is not a higher-priced covered transaction as defined under 12 CFR 1026.43(b)(4) (12 CFR 1026.43(c)(5)(ii)(A)(1)); or

   ii. The maximum payment in the payment schedule, including any balloon payment, for a higher-priced covered transaction (12 CFR 1026.43(c)(5)(ii)(A)(2)).

c. For an interest-only loan:

   i. The fully indexed rate or any introductory interest rate, whichever is greater; and

   ii. Substantially equal, monthly payments of principal and interest that will repay the loan amount over the term of the loan remaining as of the date the loan is recast (12 CFR 1026.43(c)(5)(ii)(B)).

d. For a negative amortization loan:

   i. The fully indexed rate or any introductory interest rate, whichever is greater; and

   ii. Substantially equal, monthly payments of principal and interest that will repay the maximum loan amount as defined in 12 CFR 1026.43(b)(7) over the term of the loan remaining as of the date the loan is recast (12 CFR 1026.43(c)(5)(ii)(C)).

## Monthly Payment Calculation for Simultaneous Loans

1. Determine whether the creditor calculated the monthly payment on any simultaneous loan that was used to determine the consumer's repayment ability, including any mortgage-related obligations, as follows:

   a. For a simultaneous loan that is a covered transaction, using the payment calculation rules for covered transactions, described above (12 CFR 1026.43(c)(6)(i)); or

   b. For a home equity line of credit, by using the periodic payment required under the terms of the plan and the amount of credit drawn at or before consummation of the covered transaction (12 CFR 1026.43(c)(6)(ii)).

## Monthly Debt-to-Income Ratio or Residual Income

1. When a creditor considers the consumer's monthly debt-to-income ratio, determine whether the creditor considered the ratio of the consumer's total monthly debt obligations to the consumer's total monthly income (12 CFR 1026.43(c)(7)(ii)(A)).

    a. Total monthly debt obligations means the total of: the monthly payment on the covered transaction (as required by 12 CFR1026.43(c)(2)(iii) and (c)(5)), simultaneous loans (as required by 12 CFR1026.43(c)(2)(iv) and (c)(6)), mortgage-related obligations (as required by 12 CFR1026.43(c)(2)(v)), and current debt obligations, alimony, and child support (as required by (12 CFR1026.43(c)(2)(vi)).

    b. Total monthly income means the total of the consumer's current or reasonably expected income, including any income from assets (as required by 12 CFR1026.43(c)(2)(i) and (4)).

2. If a creditor considers the consumer's monthly residual income, determine whether the creditor considered the consumer's remaining income after subtracting the consumer's total monthly debt obligations from the consumer's total monthly income (12 CFR 1026.43(c)(7)(ii)(B)). Total monthly debt obligations and total monthly income are defined in (12 CFR 1026.43(c)(7)(i)(A) and (B)).

    NOTE: In cases where the loan does not meet the requirements to be a qualified mortgage, the loan should be analyzed under ability to repay requirements as outlined in (12 CFR 1026.43(c)).

## Qualified Mortgages – 12 CFR 1026.43(e)

1. Determine whether the creditor has complied with the ability-to-repay requirements of 12 CFR 1026.43(c) by making a loan that is a qualified mortgage, including a higher-priced qualified mortgage, under the general qualified mortgage definition in 12 CFR 1026.43(e) or by making loans that are qualified mortgages because they are made pursuant to rules promulgated by HUD or VA pursuant to 15 U.S.C. section 1639c(b) for loans insured or guaranteed loans by those agencies[62] (12 CFR 1026.43(e)).

2. Except as provided in 12 CFR 1026.43(e)(4), (5), (6), or (f) (all discussed below), a qualified mortgage is a covered transaction:

    a. That provides for regular, substantially equal, periodic payments, except for the effect any interest rate change after consummation has on adjustable-rate mortgages or step-rate mortgages 12 CFR 1026.43(e)(2)(i) that do not:

        i. Result in an increase of the principal balance (12 CFR 1026.43(e)(2)(i)(A)), or

[62] HUD issued its final QM rule, effective January 10, 2014 (78 Fed. Reg. 75215, December 11, 2013), and VA issued its interim final QM rule, effective May 9, 2014 (79 Fed. Reg. 26620, May 9, 2014).

ii. Allow balloon payments or deferment of principal payments (except for balloon-payment qualified mortgages described in 12 CFR 1026.43(f) and (e)(6) (12 CFR 1026.43(e)(2)(i)(B) and (C)).

b. For which the loan term does not exceed 30 years (12 CFR 1026.43(e)(2)(ii));

c. For which the total points and fees (as defined in (12 CFR1026.32(b)(1)(i)):

i. Do not exceed the applicable thresholds of (12 CFR 1026.43(e)(2)(iii) and (3)):

A. $100,000 or over: 3 percent of the total loan amount (*See* 12 CFR1026.32(b)(4)(i));

B. $60,000 or over but less than $100,000: $3,000;

C. $20,000 or over but less than $60,000: 5 percent of the total loan amount;

D. $12,500 or over but less than $20,000: $1,000; or

E. Less than $12,500: 8 percent of the total loan amount.

NOTE: These numbers are annually adjusted for inflation on January 1.[63]

ii. For transactions consummated on or before January 10, 2021, if the creditor or assignee determined after consummation that the points and fees exceeded the applicable threshold, the loan is not precluded from being a qualified mortgage if:

A. The loan otherwise meets the requirements of 12 CFR 1026.43(e)(2), (e)(4), (e)(5), (e)(6), or (f), as applicable;

B. The creditor or assignee paid to the consumer certain amounts, described below, within 210 days after consummation and prior to any of the following events:

1) The consumer institutes an action in connection with the loan;

2) The consumer provides a written notice to the creditor, assignee, or servicer that the transaction's total points and fees exceed the applicable threshold; or

3) The consumer becomes 60 days past due on the legal obligation; and

C. The amount paid to the consumer is not less than the sum of the following:

1) The dollar amount by which the transaction's total points and fees exceeds the applicable limit, and

[63] The most recent updates can be found at: https://www.consumerfinance.gov/policy-compliance/rulemaking/final-rules/truth-lending-regulation-z-annual-threshold-adjustments-card-act-hoepa/

2) Interest on the amount of excess points and fees, calculated using the contract interest rate applicable during the period from consummation until the payment is made to the consumer; and

D. The creditor or assignee, as applicable, maintains and follows policies and procedures for post-consummation review of points and fees for making the above-described payments to consumers (12 CFR 1026.43(e)(3)(iii) and (iv)).

NOTE: The points and fees cure provision applies to the points and fees limits for all of the qualified mortgage types defined in Regulation Z.

d. For which the creditor underwrites the loan, taking into account the monthly payment for mortgage-related obligations, using (12 CFR 1026.43(e)(2)(iv)):

i. The maximum interest rate that may apply during the first 5 years after the date on which the first regular periodic payment will be due; and

ii. Periodic payments of principal and interest that will repay either:

A. The outstanding principal balance over the remaining term of the loan. This should be calculated as of the date the interest rate adjusts to the maximum interest rate that may apply during the first five years after the date on which the first regular periodic payment will be due, assuming the consumer will have made all required payments as due prior to that date; or

B. The loan amount over the loan term;

e. For which the creditor considers and verifies at or before consummation the following (12 CFR 1026.43(e)(2)(v)):

i. The consumer's current or reasonably expected income or assets other than the value of the dwelling (including any real property attached to the dwelling) that secures the loan, in accordance with Appendix Q and (12 CFR 1026.43(c)(2)(i) and (c)(4)); and

ii. The consumer's current debt obligations, alimony, and child support in accordance with Appendix Q and (12 CFR 1026.43(c)(2)(vi) and (c)(3)); and

f. For which the ratio of the consumer's total monthly debt to total monthly income at the time of consummation does not exceed 43 percent. For purposes of 12 CFR 1026.43(e)(2)(vi), the ratio of the consumer's total monthly debt to total monthly income is determined (12 CFR 1026.43(e)(2)(vi)):

i. In accordance with the standards in Appendix Q (12 CFR 1026.43(e)(2)(vi)(A)); except

ii. The creditor calculates the consumer's monthly payment on (12 CFR 1026.43(e)(2)(vi)(B)):

A. The covered transaction, including the monthly payment for mortgage-related obligations, in accordance with 12 CFR 1026.43(e)(2)(iv) (*See* also a.4 above); and

B. Any simultaneous loan that the creditor knows or has reason to know will be made, in accordance with 12 CFR 1026.43 (c)(2)(iv) and (c)(6) (*See* also h. in "Ability to Repay" above).

## Temporary Category of Qualified Mortgages[64] – 12 CFR 1026.43(e)(4)

1. Determine whether the creditor has complied with the ability-to-repay requirements of 12 CFR 1026.43(c) by making loans that

   a. Meet the requirements of 12 CFR 1026.43(e)(2)(i) through (iii) (i.e., have substantially equal, periodic payments; restrictions on loan features; a maximum 30-year term; and points and fees— generally limited to a 3 percent threshold); and are

   b. Eligible (except with regard to matters wholly unrelated to ability to repay) to be purchased, guaranteed, or insured by the listed federal government sponsored entities or agencies.[65]

## Small Creditor Portfolio Loan Qualified Mortgages – 12 CFR 1026.43(e)(5)

1. Determine whether a creditor has complied with the ability-to-repay requirements of 12 CFR 1026.43(c) by making a qualified mortgage as follows:

   a. The creditor satisfies the creditor requirements of 12 CFR 1026.35(b)(2)(iii)(B), and (C), which require that (12 CFR 1026.43(e)(5)(i)(D)):

[64] The temporary QM rule is available for transactions consummated on or before January 10, 2021. The rule does not apply to HUD loans or to VA loans because they are qualified mortgages pursuant to 12 U.S.C. 1639c(b)(3)(B)(ii)(I)-(II), which authorizes HUD and VA to promulgate QM rules. HUD issued its final QM rule, effective January 10, 2014 (78 Fed. Reg. 75215, December 11, 2013), and VA issued its interim final QM rule, effective May 9, 2014 (79 Fed. Reg. 26620, May 9, 2014).

[65] Federal National Mortgage Association (Fannie Mae) or the Federal Home Loan Mortgage Corporation (Freddie Mac), operating under the conservatorship or receivership of the Federal Housing Finance Agency pursuant to section 1367(a) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4617(a)); or any limited-life regulatory entity succeeding the charter of either the Fannie Mae or Freddie Mac pursuant to section 1367(i) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4617(i)); the U.S. Department of Agriculture pursuant to 42 U.S.C. 1472(h); or the Rural Housing Service. These special rules in 12 CFR 1026.43(e)(4) are available only for covered transactions consummated on or before January 10, 2021. This provision expires on the effective date of a rule issued by each respective agency pursuant to its authority under TILA Section 129C(b)(3)(ii) to define a qualified mortgage. The U.S. Department of Housing and Urban Development and the U.S. Department of Veterans Affairs have issued final rules governing qualified mortgages under their programs and therefore the temporary provisions of 12 CFR 1026.43(e)(4) do not apply to FHA and VA loans.

i. During the preceding calendar year (or, if the application was received before April 1 of the current calendar year, during either of the two preceding calendar years), the creditor and its affiliates together extended no more than 2,000 first-lien covered transactions that were sold, assigned or otherwise transferred to another person or subject at the time of consummation to a commitment to be acquired by another person; and

ii. As of the end of the preceding calendar year (or if the application was received before April 1 of the current calendar year, as of either of the two preceding December 31sts), the creditor and its affiliates that regularly extended first-lien covered transactions, together had total assets of less than $2 billion (this threshold will adjust annually).

NOTE: This category of qualified mortgages does not require a small creditor to operate in a rural or underserved area.

b. The creditor makes a loan that meets the requirements for a qualified mortgage in 12 CFR 1026.43(e)(2), other than 12 CFR 1026.43(e)(2)(vi), and without regard to the standards in Appendix Q (12 CFR 1026.43(e)(5)(i)(A)), and

NOTE: This means, among other things, that the loan does not have negative amortization, interest-only, or balloon payment features (12 CFR 1026.43(e)(2)(i)); has a loan term of 30 years or less (12 CFR 1026.43(e)(2)(ii)); points and fees are under certain thresholds (generally 3 percent) (12 CFR 1026.43(e)(2)(iii)); and the creditor underwrites the loan, taking into account the monthly payment for mortgage related obligations (12 CFR 1026.43(e)(2)(iv)).

Further, the creditor considers and verifies at or before consummation: the consumer's current or reasonably expected income or assets other than the value of the dwelling (including any real property attached to the dwelling) that secures the loan, in accordance with the general repayment ability standards; and the consumer's current debt obligations, alimony, and child support in accordance with the general repayment ability standards (12 CFR 1026.43(e)(5)(B)):

c. Considers at or before consummation, the consumer's monthly debt-to-income ratio or residual income and verifies the debt obligations and income used to determine that ratio in accordance with the repayment ability requirements of 12 CFR 1026.43(c)(7), except that the calculation of the payment for determining the consumer's total monthly debt obligations in 12 CFR 1026.43(c)(7)(i)(A) is determined in accordance with 12 CFR 1026.43(e)(2)(iv) (based on the maximum interest rate in the first five years after the date the first periodic payment is due) instead of 12 CFR 1026.43(c)(5) (fully indexed rate) (12 CFR 1026.43(e)(5)(i)(B));

d. The loan was not subject to a forward commitment at consummation, except to a person that satisfies the requirements of 12 CFR 1026.35(b)(2)(iii)(B) and (C) (i.e., small creditors) (12 CFR 1026.43(e)(5)(i)(C)).

2. Determine whether the small creditor portfolio mortgage does not have a qualified mortgage status because it was subject to a forward commitment at consummation, or the creditor has transferred it in any circumstances other than where the transfer was:

    a. Three years or more after consummation;

    b. To a creditor that satisfies the requirements of 12 CFR 1026.43(e)(5)(i)(D) of this section (i.e., small creditors under 12 CFR 1026.35(b)(2)(iii)(B) and (C));

    c. Made pursuant to a capital restoration plan or other action under 12 U.S.C. 1831o, or to actions or instructions of a conservator, receiver, or bankruptcy trustee, or to orders by or agreements with a state or federal governmental agency with jurisdiction to examine the creditor; or

    d. Made pursuant to a merger of the creditor and another person or the acquisition of the creditor by another person, or the creditor's acquisition of another person (12 CFR 1026.43(e)(5)(ii)).

    NOTE: If a small creditor portfolio qualified mortgage has lost its qualified mortgage status, the creditor must have complied with the general ability-to-repay requirements under (12 CFR 1026.43(c)).

## Balloon-Payment Qualified Mortgages Made by Certain Small Creditors – 12 CFR 1026.43(f)

1. Determine whether a creditor has complied with the ability-to-repay requirements of 12 CFR 1026.43(c) by making a qualified mortgage that provides for a balloon payment as follows:

    a. The creditor satisfies the creditor requirements of 12 CFR 1026.35(b)(2)(iii)(A), (B), and (C), which require that (12 CFR 1026.43(f)(1)(vi)):

        i. During the preceding calendar year (or if the application for the transaction was received before April 1 of the current calendar year, during either of the two preceding calendar years), the creditor extended a first-lien covered transaction on a property that is located in a "rural" or "underserved" area;

        ii. During the preceding calendar year (or if the application for the transaction was received before April 1 of the current calendar year, during either of the two preceding calendar years), the creditor, together with its affiliates, extended no more than 2,000 first-lien covered transactions (that were sold, assigned, or otherwise transferred to another person or subject at the time of consummation to a commitment to be acquired by another person); and

        iii. As of the preceding December 31 (or if an application was received before April 1 of the current calendar year, as of either of the two preceding December 31sts), the creditor and its affiliates that regularly extended first-lien covered

transactions, together had total assets of less than $2 billion (this threshold will adjust annually).

b. The creditor makes a loan that meets the requirements for a qualified mortgage in 12 CFR 1026.43(e)(2)(i)(A) (substantially equal payments or ARMs or step-rate mortgages that do not increase the principal balance), (e)(2)(ii) (loan term 30 years or less), (e)(2)(iii) (points and fees under certain thresholds), and (e)(2)(v) (income, assets, and obligations are considered and verified), but without regard to the standards in Appendix Q (12 CFR 1026.43(f)(1)(iv)(A));

c. The creditor determines that the consumer can make all of the scheduled payments under the loan and the monthly payments for all mortgage-related obligations (excluding the balloon payment) from the consumer's current or reasonably expected income or assets (other than the dwelling that secures the loan) (12 CFR 1026.43(f)(1)(ii));

d. The creditor considers at or before consummation, the consumer's monthly debt-to-income ratio or residual income and verifies the debt obligations and income used to determine that ratio in accordance with the repayment ability requirements of 12 CFR 1026.43(c)(7), except that the calculation of the payment for determining the consumer's total monthly debt obligations in 12 CFR 1026.43(c)(7)(i)(A) is based on the scheduled payments for the balloon-payment qualified mortgage in accordance with 12 CFR 1026.43(f)(1)(iv)(A), together with the consumer's monthly payments for all mortgage-related obligations other than the balloon payment (12 CFR 1026.43(f)(1)(iii));

e. The legal obligation provides for:

   i. Scheduled payments that are substantially equal, calculated using an amortization period that does not exceed 30 years, with

   ii. An interest rate that does not increase over the term of the loan, and

   iii. A loan term of five years or longer (12 CFR 1026.43(f)(1)(iv)(A)-(C));

f. The loan was not subject to a forward commitment at consummation, except to a person that satisfies the requirements of 12 CFR 1026.35(b)(2)(iii)(A), (B), and (C) (i.e., small creditors operating in rural or underserved counties).

2. Determine whether the balloon-payment qualified mortgage does not have qualified mortgage status because it was subject to a forward commitment at consummation, or the creditor has transferred it in any circumstances other than where the transfer was:

   a. Three years or more after consummation;

b. To a creditor that satisfies the requirements of 12 CFR 1026.43(f)(1)(vi) of this section (i.e., meets the definition of 12 CFR 1026.35(b)(2)(iii)(A)-(C), establishing criteria for small creditors operating in rural or underserved counties);

c. Made pursuant to a capital restoration plan or other action under 12 U.S.C. 1831o, or to actions or instructions of a conservator, receiver, or bankruptcy trustee, or to orders by or agreements with a state or federal governmental agency with jurisdiction to examine the creditor; or

d. Due to a merger of the creditor with another person or the acquisition of the creditor by another person or another person by the creditor. (12 CFR 1026.43(f)(2)(i) and (iv)).

NOTE: If a balloon-payment qualified mortgage has lost its qualified mortgage status, the creditor must have complied with the general ability-to-repay requirements under (12 CFR 1026.43(c)).

## Temporary Balloon-Payment Qualified Mortgages Made by Small Creditors – 12 CFR 1026.43(e)(6)

1. Determine whether a creditor has complied with the ability-to-repay requirements of 12 CFR 1026.43(c) by making a qualified mortgage that meets the requirements of the small creditor balloon-payment qualified mortgage definition in 12 CFR 1026.43(f) (above), except that the creditor requirement in 12 CFR 1026.35(b)(2)(iii)(A) (operate in a rural or underserved area) does not apply.

   NOTE: This temporary qualified mortgage category applies only to loans for which the application was received before April 1, 2016.

## Qualified Mortgage— Covered Institution Portfolio Loans–15 U.S.C. 1639c(b)(2)(F)[66]

1. Determine whether a creditor has complied with the ability-to-repay requirements of 15 U.S.C. 1639c(a) by making a qualified mortgage as follows:

   a.The creditor is a covered institution under 15 U.S.C. 1639c(b)(2)(F), which requires that the creditor is an insured depository institution or insured credit union that, together with its affiliates, has less than $10 billion in total consolidated assets;

[66] This statutory provision is effective without any requirement to adopt regulations, and Regulation Z has not been amended to incorporate this provision as of the date of these procedures.

b. The covered institution originates and retains the loan in portfolio;

c. The loan has total points and fees that comply with applicable limits

d. The loan does not contain terms under the legal obligation for:

i. Prepayment penalties for paying all or part of the principal following consummation, pursuant to the limitations as set forth in 15 U.S.C. 1639c(c)(1) and (c)(3);

ii. Negative amortization (periodic payments that will result in an increase in the principal balance);

iii. Interest-only payments (one or more of the periodic payments may be applied solely to accrued interest and not to loan principal);

e. The creditor considers and documents the debt, income, and financial resources of the consumer.

NOTE: Consideration and documentation need not comply with Appendix Q to Part 1026 (12 CFR Part 1026); multiple methods of documentation are permitted.

2. Determine whether a qualified mortgage originated pursuant to 15 U.S.C. 1639c(b)(2)(F) no longer retains its qualified mortgage status because the creditor has sold, assigned, or transferred the legal title in any circumstances other than where the transfer was:

a. Due to bankruptcy or failure of the covered institution;

b. To another covered institution, so long as that transferee institution retains the loan in portfolio;

c. Made pursuant to a merger or acquisition to or by another person, so long as the loan is retained in portfolio by the transferee; or

d. To a wholly owned subsidiary of the covered institution, so long as the loan is considered to be an asset of the covered institution for regulatory accounting purposes.

## Prepayment Penalties – 12 CFR 1026.43(g)

1. Determine whether a mortgage is a covered transaction (which excludes HELOCs and timeshares but, for purposes of the prepayment penalty provisions, includes reverse mortgages, temporary loans, and loans made by certain community development, non-profit, and other lenders otherwise excluded from ability-to-repay provisions under 12 CFR 1026.43(a)). If yes, then the loan may not have a prepayment penalty unless:

a. It is a qualified mortgage under (12 CFR 1026.43(e)(2), (e)(4), (e)(5), (e)(6), or (f));

b. The prepayment penalty is otherwise allowed by law;

c. The mortgage has an APR that cannot increase after consummation; and

d. The loan is not a higher-priced mortgage loan, as defined in 12 CFR 1026.35(a) (12 CFR 1026.43(g)(1)).

NOTE: Covered transactions are generally prohibited from having prepayment penalties unless certain conditions are met.

NOTE: A member of a federal credit union may repay a loan prior to maturity in whole or in part on any business day without penalty (12 U.S.C. 1757(5)(A)(viii) 12 CFR 701.21(c)(6));

2. Determine if the prepayment penalty improperly exceeds the following percentages of the outstanding balance prepaid:

   a. 2 percent during the first two years following consummation;

   b. 1 percent during the third year following consummation; and

   c. 0 percent thereafter (12 CFR 1026.43(g)(2)).

3. Determine whether a creditor offering a consumer a mortgage with a prepayment penalty has also offered the consumer an alternative without a prepayment penalty and the alternative (12 CFR 1026.43(g)(3)):

   a. Has an APR that cannot increase after consummation and has the same type of interest rate (fixed or step rate) as the loan with a prepayment penalty;

   b. Has the same loan term as the loan with a prepayment penalty;

   c. Satisfies the periodic payment conditions under (12 CFR 1026.43(e)(2)(i));

   d. Satisfies the points and fees conditions under 12 CFR 1026.43(e)(2)(iii), based on the information known to the creditor at the time of the offer; and

   e. Is a loan for which the creditor has a good faith belief that the consumer likely qualifies, based on the information known to the creditor at the time the creditor offers the loan without a prepayment penalty (12 CFR 1026.43(g)(3)).

4. Determine whether a creditor offering a loan with a prepayment penalty through a mortgage broker:

   a. Presents the mortgage broker an alternative covered transaction without a prepayment penalty that satisfies the requirements of (12 CFR 1026.43(g)(3)); and

b. Establishes by agreement that the mortgage broker must present to the consumer an alternative covered transaction without a prepayment penalty offered by the creditor that satisfies the requirements of (12 CFR 1026.43(g)); or another creditor, if the other creditor offers a lower interest rate or a lower total dollar amount of discount points and origination points or fees (12 CFR 1026.43(g)(4)).

5. Determine whether a creditor that is a loan originator, as defined in 12 CFR 1026.36(a)(1), who presents a covered transaction with a prepayment penalty offered by another person to whom the loan would be assigned after consummation also presents the consumer an alternative covered transaction without a prepayment penalty that satisfies the requirements of 12 CFR 1026.43(g), offered by the assignee; or another person offering a lower interest rate or a lower total dollar amount of origination discount points and points or fees (12 CFR 1026.43(g)(5)).

### Evasion of Minimum Standards for Loans Secured by a Dwelling – 12 CFR 1026.43(h)

1. Determine whether the creditor has structured credit secured by a dwelling that does not meet the definition of open-end credit in 12 CFR 1026.2(a)(20) as an open-end plan to evade the requirements for minimum standards for loans secured by a dwelling.

## High-Cost Mortgages, Reverse Mortgages, and Higher-Priced Mortgages Loans – 12 CFR 1026.32, 1026.33, and 1026.35

1. Determine whether the financial institution originates consumer credit transactions subject to Subpart E of Regulation Z; specifically, high-cost mortgages 12 CFR 1026.32, reverse mortgages 12 CFR 1026.33, and "higher-priced mortgage loans" (12 CFR 1026.35).

2. In addition to reviewing high-cost mortgages, reverse mortgages, and higher-priced mortgage loans for compliance with requirements in other subparts of Regulation Z (for example, disclosure timing requirements under 12 CFR 1026.19(a)), review such mortgages to ensure the following:

   a. Required disclosures are provided to consumers in addition to, not in lieu of, the disclosures contained in other subparts of Regulation Z (12 CFR 1026.31(a)).

   b. Disclosures are clear and conspicuous, in writing, and in a form that the consumer may keep (12 CFR 1026.31(b)).

   c. Disclosures are furnished at least three business days prior to consummation or account opening of a high-cost mortgage or a closed-end reverse mortgage transaction (or at least three business days prior to the first transaction under an open-end reverse mortgage) (12 CFR 1026.31(c)).

   NOTE: For a high-cost mortgage, the three business day waiting period requirement

does not apply where a second offer of credit with a lower annual percentage rate is consummated by the consumer (15 U.S.C. 1639(b)(3)).

d. Disclosures reflect the terms of the legal obligation between the parties (12 CFR 1026.31(d)).

e. If the transaction involves more than one creditor, that only one creditor provided the disclosures. Where the obligation involves multiple consumers, ensure that the disclosures were provided to any consumer who is primarily liable on the obligation. Further, for rescindable transactions, verify that the disclosures were provided to each consumer who has the right to rescind (12 CFR 1026.31(e)).

f. The APR is accurately calculated and disclosed in accordance with the requirements and within the tolerances allowed in 12 CFR 1026.22 for closed-end credit transactions and 12 CFR 1026.6(a) for open-end credit plans (12 CFR 1026.31(g)).

3. For high-cost mortgages 12 CFR 1026.32, ensure that, in addition to other required disclosures, the creditor discloses the following at least three business days prior to consummation or account opening (See model disclosure at H-16 in Appendix H):

a. Notice containing the prescribed language (12 CFR 1026.32(c)(1));

b. The APR (12 CFR 1026.32(c)(2));

NOTE: For a high-cost mortgage, the three business day waiting period requirement does not apply where a second offer of credit with a lower annual percentage rate is consummated by the consumer (15 U.S.C. 1639(b)(3)).

c. Regular payment and balloon payment (12 CFR 1026.32(c)(3));

d. For a closed-end credit transaction, the amount of regular loan payment and the amount of any balloon payment. The disclosed regular payment should be treated as accurate if it is based on an amount borrowed that is deemed accurate under 12 CFR 1026.32(c)(5) (12 CFR 1026.32(c)(3));

e. For an open-end credit plan:

i. An example showing the first minimum periodic payment for the draw period, the first minimum periodic payment for any repayment period, and the balance outstanding at the beginning of any repayment period (12 CFR 1026.32(c)(3)(ii)(A));

NOTE: The example must be based on the assumption that the consumer borrows the full credit line at account opening and does not obtain any additional extensions of credit, that the consumer makes only the minimum periodic payments during the draw period and any repayment period, and that the APR used to calculate the example payments remains

the same during the draw period and any repayment period. Creditors must provide the minimum period payment example based on the APR, except that if an introductory APR applies, the creditor must use the rate that will apply to the plan after the introductory rate expires (12 CFR 1026.32(c)(3)(ii)(A)-(C)).

ii. If the credit contract provides for a balloon payment, a disclosure of that fact and an example showing the amount of the balloon payment based on the assumptions described in the note above (12 CFR 1026.32(c)(3)(ii)(B));

iii. A statement that the example payments show the first minimum periodic payments at the current annual percentage rate if the consumer borrows the maximum credit available when the account is opened and does not obtain any additional extensions of credit, or substantially similar statement (12 CFR 1026.32(c)(3)(ii)(C));

iv. A statement that the example payments are not the consumer's actual payments and that the actual minimum periodic payments will depend on the amount the consumer borrows, the interest rate applicable to that period, and whether the consumer pays more than the required minimum periodic payment, or a substantially similar statement (12 CFR 1026.32(c)(3)(ii)(D));

f. For variable-rate transactions, a statement that the interest rate and monthly payment may increase, and the amount of the single maximum monthly payment allowed under the contract based on the maximum rate required to be disclosed under 12 CFR 1026.30 (12 CFR 1026.32(c)(4));

g. For a closed-end credit transaction, the total amount the consumer will borrow (the face amount of the note) and if this amount includes financed charges that are not prohibited under 12 CFR 1026.34(a)(10), that fact. This disclosure should be treated as accurate if within $100 of the actual amount borrowed. For an open-end credit plan, the credit limit for the plan when the account is opened (12 CFR 1026.32(c)(5));

4. For high-cost mortgages 12 CFR 1026.32, ensure that the creditor follows these additional rules concerning the disclosures required by (12 CFR 1026.32(c)):

a. Determine if a new disclosure is required if, subsequent to providing the additional disclosure but prior to consummation or account opening, the creditor changes any terms that make the disclosures inaccurate. For example, if a consumer finances the payment of premiums or other charges as permitted under 12 CFR 1026.34(a)(10) and, as a result, the monthly payment differs from the payment previously disclosed, re-disclosure is required and a new three-day waiting period applies (12 CFR 1026.31(c)(1)(i)).

b. Determine if a creditor provides new disclosures by telephone when the consumer initiates a change in terms, then prior to or at consummation or account opening the creditor must provide new written disclosures and both parties must sign a statement

that these new disclosures were provided by telephone at least three days prior to consummation or account opening (12 CFR 1026.31(c)(1)(ii)).

c. If a consumer waives the right to a three-day waiting period to meet a bona fide personal financial emergency, the consumer's waiver must be a dated written statement (not a pre-printed form) describing the emergency and bearing the signature of all the consumers entitled to the waiting period (a consumer can waive only after receiving the required disclosures and prior to consummation or account opening) (12 CFR 1026.31(c)(1)(iii)).

5. For high-cost mortgages 12 CFR 1026.32 determine that the creditor has not included any of the following loan terms:

   a. A payment schedule that provides for a balloon payment (with exceptions) (12 CFR 1026.32(d)(1)(i)-(iii)).

   b. Negative amortization (12 CFR 1026.32(d)(2)).

   c. Advance payments from the proceeds of more than two periodic payments (12 CFR 1026.32(d)(3)).

   d. Increased interest rate after default (12 CFR 1026.32(d)(4)).

   e. A rebate of interest, arising from a loan acceleration due to default, calculated by a method less favorable than the actuarial method (12 CFR 1026.32(d)(5)).

   f. Prepayment penalty as defined in (12 CFR 1026.32(b)(6)).

   g. A due-on-demand clause that permits the creditor to terminate the loan in advance of maturity and accelerate the balance, except in cases of fraud or material misrepresentation by the consumer, failure by the consumer to meet the repayment terms of the agreement for any outstanding balance, or action or inaction by the consumer that adversely affects the creditor's security interest in the loan (12 CFR 1026.32(d)(8)).

6. For high-cost mortgages under 12 CFR 1026.32, determine that the creditor is not engaged in the following acts and practices:

   a. Home improvement contracts – Paying a contractor under a home improvement contract from the proceeds of a mortgage unless certain conditions are met (12 CFR 1026.34(a)(1)).

   b. Notice to assignee – Selling or otherwise assigning a high-cost mortgage without furnishing the required statement to the purchaser or assignee (12 CFR 1026.34(a)(2)).

c. Refinancing within one year of extending credit – Within one year of making a high-cost mortgage, a creditor may not refinance any high-cost mortgage to the same consumer into another high-cost mortgage that is not in the consumer's interest. This also applies to assignees that hold or service the high-cost mortgage. Commentary to 12 CFR 1026.34(a)(3) has examples applying the refinancing prohibition and addressing "consumer's interest" (12 CFR 1026.34(a)(3)).

d. Extending high-cost mortgage credit without regard to the consumer's repayment ability (temporary or bridge loans with a term of 12 months or less are exempt from this requirement) (12 CFR 1026.34(a)(4)):

i. For closed-end credit transactions that are high-cost mortgages, ensure the creditor is complying with the repayment ability requirements set forth in (12 CFR 1026.43).

ii. For open-end credit plans that are high-cost mortgages, ensure the creditor is not extending credit without regard to the consumer's repayment ability as of account opening, including the consumer's current and reasonably expected income, current obligations, assets other than collateral, and employment. A creditor must determine repayment ability for open-end high-cost mortgages by:

A. Verifying amounts of income or assets that it relies on to determine repayment ability, including expected income or assets, by the consumer's Internal Revenue Service Form W-2, tax returns, payroll receipts, financial institution records, or other third-party documents that provide reasonably reliable evidence of the consumer's income or assets.

B. Verifying the consumer's current obligations, including any mortgage-related obligations that are required by another credit obligation undertaken prior to or at account opening and secured by the same dwelling that secures the high-cost mortgage.

iii. Alternatively, determine whether the creditor complies with the repayment ability requirement by:

A. Verifying repayment ability as described above;

B. Determining the consumer's repayment ability by using the largest required minimum periodic payment based on the assumptions that:

1) The consumer borrows the full credit line at account opening with no additional extensions of credit;

2) The consumer makes only required minimum periodic payments during the draw period and any repayment period;

3) If the annual percentage rate can increase during the plan, the maximum percentage rate that is included in the contract; and

C. Assessing the consumer's repayment ability, taking into account at least one of the following: the ratio of total debt obligations to income (including any mortgage-related obligations that are required by another credit obligation undertaken prior to or at account opening, and are secured by the same dwelling that secures the high-cost mortgage transaction, or the income the consumer will have after paying debt obligations (12 CFR 1026.34(a)(4)).

e. Pre-loan counseling – Determine whether the creditor extending a high-cost mortgage received written certification confirming that the consumer received approved home ownership counseling after receiving the initial Loan Estimate or, for open-end credit plans, the initial TILA disclosure required by 12 CFR 1026.40, or if neither of those disclosures are provided, after receiving the disclosures required by 12 CFR 1026.32(c) (12 CFR 1026.34(a)(5)). Requirements include:

i. Verify that home ownership counseling was not provided by an employee or affiliate of the creditor.

ii. If the creditor paid fees associated with homeownership counseling, confirm that the payment was not contingent upon the consumer obtaining the high-cost mortgage or receipt of a counseling certification.

iii. Verify that the counseling certificate contains the name of the consumer, date of counseling, name and address of the counselor, and statements required by (12 CFR 1026.34(a)(5)(iv)).

7. Late fees – For high-cost mortgages, confirm that late payment charges are disclosed in the terms of the loan contract or open-end credit agreement and that such fees do not exceed 4 percent of the amount past due. No such charge may be imposed more than once for a single late payment (12 CFR 1026.34(a)(8)).

## Higher-Priced Mortgage Loans: Appraisals[67]

1. For higher-priced mortgage loans secured by principal dwelling that are not exempt under 12 CFR 1026.35(c)(2), determine whether, before consummation, the creditor obtained a written appraisal from a state-licensed or certified appraiser that included a physical visit to the interior of the dwelling (12 CFR 1026.35(c)(3)).

   NOTE: 12 CFR 1026.35(c)(2) exempts several types of loans from the appraisal requirements, including qualified mortgages under (12 CFR 1026.43).

[67] The higher-priced mortgage loans appraisal requirement was adopted pursuant to an interagency rulemaking conducted by the Board, the CFPB, the FDIC, FHFA, NCUA and OCC. The Board codified the rule at 12 CFR 226.43, and the OCC codified the rule at 12 CFR Part 34. There is no substantive difference among these three sets of rules.

2. Determine whether the creditor is deemed to comply with the requirement by:

    a. Ordering that the appraiser performs the appraisal in conformity with the Uniform Standards of Professional Appraisal Practice and Title XI of FIRREA and any implementing regulations (12 CFR 1026.35(c)(3)(ii)(A)).

    b. Verifying through the National Registry that the appraiser who signed the appraiser's certification was a certified or licensed appraiser in the state in which the appraised property is located as of the date the appraiser signed the appraiser's certification (12 CFR 1026.35(c) (3)(ii)(B)).

    c. Confirming that the appraisal includes elements set forth in Appendix N (12 CFR 1026.35(c)(ii)(3)(C)).

    d. Having no actual knowledge contrary to the facts or certifications contained in the written appraisal.

3. Assess whether the creditor exercised reasonable diligence in determining if a second interior appraisal was necessary. A creditor can exercise reasonable diligence by basing its determination on written source documents such as:

    a. A copy of the recorded deed from the seller,

    b. A copy of a property tax bill,

    c. A copy of any owner's title insurance policy obtained by the seller,

    d. A copy of the RESPA settlement statement from the seller's acquisition,

    e. A property sales history report or title report from a third-party reporting service,

    f. Sales price data recorded in multiple listing services,

    g. Tax assessment records or transfer tax records obtained from local governments,

    h. A written appraisal performed in compliance with 12 CFR 1026.35(c)(3)(i) for the same transaction,

    i. A copy of a title commitment report detailing the seller's ownership of the property, and

    j. A property abstract 12 CFR 1026.35(c)(4)(i) and (vi); *See* Appendix O).

4. For higher-priced mortgage loans that are not exempt under 12 CFR 1026.35(c)(2) or 12 CFR 1026.35(c)(4)(vii), determine whether an additional written interior appraisal from a state certified or licensed appraiser was both required and performed because the seller acquired the property 180 days or less before the consumer's purchase agreement, and the sales price increased:

a. Greater than 10 percent over the previous purchase price, if acquired 90 or fewer days prior to the consumer's purchase agreement; or (12 CFR 1026.35(c)(4)(i)(A)) or

b. Greater than 20 percent over the previous purchase price, if acquired 91 to 180 days prior to the consumer's purchase agreement (12 CFR 1026.35(C)(4)(i)(B)).

NOTE: 12 CFR 1026.35(c)(4)(vii) provides for eight exemptions from the second appraisal requirement, such as for extensions of credit to finance the acquisition of property from a local, state, or federal government agency.

5. For higher-priced mortgage loans (that are not exempt under 12 CFR 1026.35(c)(2) or 12 CFR 1026.35(c)(4)(vii) where the creditor is required to obtain a second interior appraisal:

a. Confirm that the creditor obtained an appraisal from a different state certified or licensed appraiser than the one who conducted the first appraisal (12 CFR 1026.35(c)(4)(ii)).

b. Confirm that the creditor charged the consumer for only one of the appraisals (12 CFR 1026.35(c)(4)(v)).

NOTE: Reviewing the Closing Disclosure or HUD-1 may assist in identifying whether a second appraisal fee was charged to the consumer.

c. For higher-priced mortgage loans that are not exempt under 12 CFR 1026.35(c)(2), determine that the creditor provided a written disclosure in a timely manner informing consumers that an appraisal may be necessary and that there is a cost associated with the appraisal, as specified in (12 CFR 1026.35(c)(5)).

i. Disclosures must be provided to consumers within three business days after receipt of an application for a higher-priced mortgage loan. A creditor can meet this requirement by placing the disclosure in the mail within three business days after receipt of the application for a higher-priced mortgage loan (12 CFR 1026.35(c)(5)(ii)).

ii. If the loan becomes a higher-priced mortgage loan during the application process, but after initial receipt of the application, a creditor has three business days from the time the loan became a higher priced mortgage loan to provide the necessary disclosure (12 CFR 1026.35(c)(5)(ii)).

d. Confirm that the creditor provided consumers with a free copy of any written appraisal performed in connection with a higher-priced mortgage loan that is not exempt under 12 CFR 1026.35(c)(2) (12 CFR 1026.35(c)(6)).

i. Determine whether the creditor is providing consumers with a copy of their appraisal(s) no later than three business days prior to consummation of the loan (12 CFR 1026.35(c)(6)(ii)(A)); or

ii. If the loan is not consummated, determine whether the creditor is providing consumers with a copy of the appraisal(s) within 30 days after determining that the loan will not be consummated (12 CFR 1026.35(c)(6)(ii)(B)).

NOTE: The creditor can satisfy this disclosure requirement by providing the disclosure required in Regulation B, 12 CFR 1002.14(a)(2), related to a free copy of the appraisal (12 CFR 1026.35(c)(5)). However, unlike the waiver provision in Regulation B, a consumer may not waive the timing requirement to receive a copy of the appraisal under (12 CFR 1026.35(c)(6)(i)). In addition, the creditor must use the earliest applicable timing requirement to comply with each regulation's appraisal/valuation disclosure requirements.

## Higher-Priced Mortgage Loans: Escrow Accounts

1. For most higher-priced mortgage loans secured by a first lien on a principal dwelling escrow accounts must be established before consummation for property taxes and premiums for mortgage-related insurance required by the creditor (12 CFR 1026.35(b)(1)).

2. For higher-priced mortgage loans where the creditor did not establish an escrow account, determine whether the transaction or the creditor would fall into an exemption (12 CFR 1026.35(b)(2)).

   a. Is the transaction secured by shares in a cooperative (12 CFR 1026.35(b)(2)(i)(A));

   b. Is the transaction to finance the initial construction of the dwelling (12 CFR 1026.35(b)(2)(i)(B));

   c. Is the transaction a temporary or "bridge" loan with a term less than 12 months (12 CFR 1026.35(b)(2)(i)(C));

   d. Is the transaction a reverse mortgage transaction under 12 CFR 1026.33 (12 CFR 1026.35(b)(2)(i)(D));

   NOTE: There is a limited exemption for transactions secured by a dwelling in a condominium, planned unit development, or other "common interest community" where a dwelling ownership requires participation in a governing association that is obligated to maintain a master insurance policy insuring all dwellings. In these common interest communities, creditors must maintain an escrow account for the payment of taxes only (12 CFR 1026.35(b)(2)(ii)).

   e. Does the creditor, or loan originator, qualify for an exemption under (12 CFR 1026.35(b)(2)(iii)(A)-(D)):

      i. During the preceding calendar year (or if the application for the transaction was received before April 1 of the current calendar year, during either of the two preceding calendar years), it extended a covered transaction (defined in section 1026.43(b)(1)) secured by a first lien on a property located in an area that meets

the definition of "rural" or "underserved" as laid out in (12 CFR 1026.35(b)(2)(iv));

ii. Together with any affiliates, it did not extend more than 2,000 covered transactions (secured by first liens, that were sold, assigned, or otherwise transferred to another person or subject at the time of consummation to a commitment to be acquired by another person) in the preceding calendar year (or if the application for the transaction was received before April 1 of the current calendar year, during either of the two preceding calendar years);

iii. It and its affiliates that regularly extended covered transactions together had less than the annually adjusted $2 billion threshold in total assets as of the preceding December 31, or if the application for the transaction was received before April 1 of the current calendar year, of either of the two proceeding December 31sts ; and

iv. Neither the creditor nor its affiliate maintains an escrow account of the type described in 12 CFR 1026.35(b)(1) for any extension of consumer credit secured by real property or a dwelling that the creditor or its affiliate currently services, other than:

A. Escrow accounts established for first-lien higher-priced mortgage loans on or after April 1, 2010, and before May 1, 2016; or

B. Escrow accounts established after consummation as an accommodation to distressed consumers to assist such consumers in avoiding default or foreclosure.

NOTE: The asset threshold will adjust automatically each year, based on the year-to-year change in the average of the Consumer Price Index for Urban Wage Earners and Clerical Workers, not seasonally adjusted, for each 12-month period ending in November, with rounding to the nearest million dollars (*See* Comment 35(b)(2)(iii)-1.iii for the current threshold).

3. Evasion of requirements: Ensure that the creditor does not structure a higher-priced mortgage loan as an open-end plan ("spurious open-end credit") to evade the requirements of Regulation Z (12 CFR 1026.35(d)).

## Prohibited Payments to Loan Originators – 12 CFR 1026.36(d) and (e)

1. Determine that, in connection with a closed-end consumer credit transaction secured by a dwelling,[68] no loan originator receives, and no person pays to a loan originator, directly or indirectly, compensation[69] that is based on:

   NOTE: The term "loan originator" means, a person who, in expectation of direct or indirect compensation or other monetary gain or for direct or indirect compensation or other monetary gain: takes an application, offers, arranges, assists a consumer in obtaining or applying to obtain, negotiates, or otherwise obtains or makes an extension of consumer credit for another person; or through advertising or other means of communication represents to the public that such person can or will perform any of these activities. The term "loan originator" includes an employee, agent, or contractor of the creditor or loan originator organization if the employee, agent, or contractor meets this definition. The term "loan originator" also includes a creditor that engages in loan origination activities if the creditor does not finance the transaction at consummation out of the creditor's own resources, including by drawing on a *bona fide* warehouse line of credit or out of deposits held by the creditor (12 CFR 1026.36(a)(1)).

   NOTES:

   - A person is not a loan originator who does not take a consumer credit application or offer or negotiate credit terms available from a creditor to that consumer based on the consumer's financial characteristics, but who performs purely administrative or clerical tasks on behalf of a person who does engage in such activities. For purposes of 12 CFR 1026.36, "credit terms" include rates, fees or other costs, and a consumer's financial characteristics include any factors that may influence a credit decision, such as debts, income, assets, or credit history (12 CFR 1026.36(a)(6)).

   - A retailer of manufactured or modular homes, or an employee of such a retailer, who does not receive compensation or gain for engaging in loan originator activities *in excess* of any compensation or gain received in a comparable cash transaction, and who does not directly negotiate with the consumer or lender on credit terms, is not a mortgage originator if such retailer or employee (as applicable) discloses to the consumer in writing, any corporate affiliation with any creditor. Where the retailer has a corporate affiliation with any creditor, at least one unaffiliated creditor must also be disclosed (15 U.S.C. 1602(dd)(2)(C)(ii)).

   a. A term of a transaction, the terms of multiple transactions by an individual loan originator, or the terms of multiple transactions by multiple individual loan originators; (12 CFR 1026.36(d)(1)(i)) or

[68] 12 CFR 1026.36(d) and (e) do not apply to a home-equity line of credit subject to 12 CFR 1026.40 or to a loan that is secured by a consumer's interest in a timeshare plan described in 11 U.S.C. 101(53D) (12 CFR 1026.36(b)).

[69] Compensation includes salaries, commissions, and any financial or similar incentive, such as an annual or periodic bonus or awards of merchandise, services, trips, or similar prizes. See 12 CFR 1026.36(a)(3) and Comment 36(a)-5.

- For purposes of 12 CFR 1026.36(d)(1) only, a "term of a transaction" is any right or obligation of the parties to a credit transaction. The amount of credit extended is not a term of a transaction or a proxy for a term of a transaction, provided that compensation received by or paid to a loan originator, directly or indirectly, is based on a fixed percentage of the amount of credit extended; however, such compensation may be subject to a minimum or maximum dollar amount (12 CFR 1026.36(d)(1)(ii)).

b. A proxy[70] for a term of a transaction (12 CFR 1026.36(d)(1)(i)).

2. Determine that a loan originator that receives a contribution to a defined contribution, tax-advantaged plan that meets the applicable requirements of the Internal Revenue Code does not receive a contribution that is directly or indirectly based on the terms of the individual loan originator's transactions (12 CFR 1026.36(d)(1)(iii)).

3. Determine whether an individual loan originator receives compensation pursuant to a non-deferred, profits-based compensation plan only if:

   a. The compensation paid to an individual loan originator is not directly or indirectly based on the terms of that individual loan originator's transactions that are subject to (12 CFR 1026.36(d)); and

   b. At least one of the following conditions is satisfied:

      i. The compensation paid to an individual loan originator does not, in the aggregate, exceed 10 percent of the individual loan originator's total compensation corresponding to the time period for which the compensation under the non-deferred profits-based compensation plan is paid; or

      ii. The individual loan originator was a loan originator for ten or fewer transactions consummated during the 12-month period preceding the date of the compensation determination (12 CFR 1026.36(d)(1)(iv)).

## Prohibition on Dual Compensation

1. If any loan originator receives compensation directly from a consumer in a closed-end consumer credit transaction secured by a dwelling, determine that (12 CFR 1026.36(d)(2)):

   a. No loan originator receives compensation, directly or indirectly, from any person other than the consumer in connection with the transaction 12 CFR 1026.36(d)(2)(i)(A)(1) except that a loan originator organization may receive compensation from a consumer and pay compensation to its individual loan originator; and

[70] A factor that is not itself a term of a transaction is a proxy for a term of the transaction if the factor consistently varies with that term over a significant number of transactions, and the loan originator has the ability, directly or indirectly, to add, drop, or change the factor in originating the transaction (12 CFR 1026.36(d)(1)(i)).

b. No person who knows or has reason to know of the consumer-paid compensation to the loan originator (other than the consumer) pays any compensation to a loan originator, directly or indirectly, in connection with the transaction (12 CFR 1026.36(d)(2)(i)(A)(2)).

NOTE: Loan originator organizations are permitted to compensate their employees if the organization receives compensation directly from a consumer, subject to the prohibition on payments to loan originators in (12 CFR 1026.36(d)(1)).

## Prohibition on Steering

1. Determine that, in connection with a consumer credit transaction secured by a dwelling, a loan originator does not direct or "steer" a consumer to consummate a transaction based on the fact that the originator will receive greater compensation from the creditor in that transaction than in other transactions the originator offered or could have offered to the consumer, unless the consummated transaction is in the consumer's interest (12 CFR 1026.36(e)(1)).

   NOTE: The rule provides a safe harbor to facilitate compliance with the prohibition on steering in (12 CFR 1026.36(e)(1)). The loan originator is deemed to comply with the anti-steering prohibition if the consumer is presented with loan options that meet all of the following conditions for each type of transaction in which the consumer expressed an interest:[71]

   a. The loan originator obtains loan options from a significant number of the creditors with which the originator regularly does business and, for each type of transaction in which the consumer expressed an interest, presents the consumer with loan options that include (12 CFR 1026.36(e)(3)(i)):

      i. The loan with the lowest interest rate (12 CFR 1026.36(e)(3)(i)(A));

      ii. The loan with the lowest interest rate without negative amortization, a prepayment penalty, interest-only payments, a balloon payment in the first seven years of the life of the loan, a demand feature, shared equity, or shared appreciation; or, in the case of a reverse mortgage, a loan without a prepayment penalty, or shared equity or shared appreciation (12 CFR 1026.36(e)(3)(i)(B)); and

      iii. The loan with the lowest total dollar amount of discount points, origination points or origination fees (or, if two or more loans have the same total dollar amount of discount points, origination points or origination fees, the loan with the lowest interest rate that has the lowest total dollar amount of discount points, origination points or origination fees) (12 CFR 1026.36(e)(3)(i)(C)).

[71] The term ''type of transaction'' refers to whether: (i) A loan has an APR that cannot increase after consummation; (ii) A loan has an APR that may increase after consummation; or (iii) A loan is a reverse mortgage. (12 CFR 1026.36(e)(2))

b. The loan originator has a good faith belief that the options (presented to the consumer that are set forth, above) are loans for which the consumer likely qualifies (12 CFR 1026.36(e)(3)(ii)).

c. For each type of transaction, if the originator presents to the consumer more than three loans, the originator highlights the loans that satisfy options 1.i, 1.ii, and 1.iii above (12 CFR 1026.36(e)(3)(iii)).

NOTE: If the requirements set forth in 12 CFR 1026.36(e) are met, the loan originator can, without steering, present fewer than three loans (12 CFR 1026.36(e)(4)).

## Loan Originator Qualifications[72] and Documentation – 12 CFR 1026.36(f) and (g)

1. Determine whether the loan originator organization complies with all applicable state law requirements for legal existence and foreign qualification (12 CFR 1026.36(f)(1)).

2. Determine whether the loan originator organization ensures that individual loan originators who work for it (e.g., employees, under a brokerage agreement) are licensed or registered (or excluded from those requirements because the individual is authorized to act with temporary authority pursuant to 12 U.S.C. 5117,as required by the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (SAFE Act), its implementing regulations (12 CFR 1007 and 1008), and any state SAFE Act law (12 CFR 1026.36(f)(2)).

NOTE: The SAFE Act provides certain loan originators with temporary authority to act as loan originators, while applying for a state-loan originator license (12 U.S.C. 5117). If an individual loan originator may act as a loan originator with temporary authority under 12 U.S.C. 5117, the loan originator organization is not required to comply with the screening and training requirements described in 12 CFR 1026.36(f)(3).[73]

3. For individual loan originators who are its employees and who are not required to be licensed and are not licensed as a loan originator under 12 CFR 1008.103 or state SAFE Act implementing law, determine whether the loan originator organization, prior to allowing the individual to act as a loan originator:

   a. Obtained a copy of the individual's background check through the Nationwide Mortgage Licensing System and Registry (NMLSR) or a criminal background check from a law enforcement agency or commercial service (12 CFR 1026.36(f)(3)(i)(A));

[72] For the purposes of 12 CFR 1026.36(f) and (g), all creditors are loan originators.

[73] Truth in Lending (Regulation Z); Screening and Training Requirements for Mortgage Loan Originators with Temporary Authority, 84 Fed. Reg. 63791 (Nov. 19, 2019).

b. Obtained a credit report from a consumer reporting agency in compliance with FCRA Section 604(b) (12 CFR 1026.36(f)(3)(i)(B));

c. Obtained information from the NMLSR, or from the individual as applicable, about administrative, civil, or criminal findings against the individual (12 CFR 1026.36(f)(3)(i)(C));

d. Determined on the basis of obtained information or any other information reasonably available that the individual has not been convicted of, plead guilty or *nolo contendere* to a felony in a domestic or military court during the preceding seven year period (12 CFR 1026.36(f)(3)(ii)(A)(*1*));

e. Determined on the basis of obtained information or any other information reasonably available that the individual has not been convicted of, plead guilty or *nolo contendere* to a felony involving an act of fraud, dishonesty, breach of trust, or money laundering, at any time (12 CFR 1026.36(f)(3)(ii)(A)(*1*));

f. Confirmed that if the individual has a felony conviction and is employed as an individual loan originator, that the FDIC (or FRB, as applicable), NCUA, or Farm Credit Administration has provided consent to employ the individual under their own statutory authorities (12 CFR 1026.36(f)(3)(ii)(A)(*2*)*(iii))*;

g. Confirmed that the individual demonstrated financial responsibility, character, and general fitness such as to warrant a determination that the individual loan originator will operate honestly, fairly, and efficiently (12 CFR 1026(f)(3)(ii)(B));

h. Provides periodic training covering federal and state law requirements that apply to the individual loan originator's loan origination activities (12 CFR 1026.36(f)(3)(iii)).

NOTE: Paragraph (c) only applies to an individual loan originator hired on after January 1, 2014 (or an individual loan originator the loan originator organization hired before this date but for whom there were no applicable statutory or regulatory background standards in effect at the time of hire or used to screen the individual) or an individual loan originator regardless of when hired who, based on reliable information known to the loan originator organization, likely does not meet the qualification standards.

4. Verify that the loan originator organization and individual loan originator include their names and NMLSR IDs on all required loan documentation, including (12 CFR 1026.36(g)):

   a. The credit application,

   b. The disclosures required by 12 CFR 1026.19(e) and (f),

   c. The note or loan contract, and

   d. The security instrument.

## Policies and Procedures for Depository Institutions to Ensure and Monitor Compliance – 12 CFR 1026.36(j)

1. Verify that loan originator organizations that are depositories (including credit unions) have established and maintain written policies and procedures reasonably designed (i.e., appropriate to the nature, size, complexity and scope of the mortgage lending activities of the depository and its subsidiaries) to ensure that the depository, its subsidiaries and their collective employees comply with the loan originator requirements of 12 CFR 1026.36(d)-(g) (12 CFR 1026.36(j)).

## Prohibition on Mandatory Arbitration Clauses and Waiver of Certain Consumer Rights – 12 CFR 1026.36(h)

1. Verify that the contract or other agreement for a consumer credit transaction secured by a dwelling (including a home equity line of credit secured by the consumer's principal dwelling) does not include terms that require arbitration or any other non-judicial procedure to resolve any controversy or settle any claims arising out of the transaction (12 CFR 1026.36(h)(1)).

2. Verify that the contract or other agreement relating to a consumer credit transaction secured by a dwelling (including a home equity line of credit secured by the consumer's principal dwelling) has not been applied or interpreted to bar a consumer from bringing a claim in court pursuant to any provision of law for damages or other relief in connection with any alleged violation of any federal law (12 CFR 1026.36(h)(2)).

## Prohibition on Financing Credit Insurance – 12 CFR 1026.36(i)

1. Determine that the creditor does not finance, directly or indirectly, premiums or fees for credit insurance (including credit life, credit disability, credit unemployment, or credit property insurance, or any other accident, loss-of-income, life, or health insurance or direct or indirect payment for debt cancellation/suspension) on the transaction secured by a dwelling (including a home equity line of credit secured by a principal dwelling) (12 CFR 1026.36(i)).

   NOTE: Credit unemployment insurance is not subject to this prohibition where the premiums are reasonable, the creditor receives no direct or indirect compensation in connection with the premiums, and the premiums are paid under a separate insurance contract and are not paid to an affiliate of the creditor. Additionally, this prohibition does not apply to credit insurance that is paid in full monthly.

## Negative Amortization Counseling – 12 CFR 1026.36(k)

1. Verify that the creditor received documentation that first-time borrowers received pre-loan counseling from a HUD certified or approved counselor on each negative amortizing mortgage loan to prior to originating the loan (12 CFR 1026.36(k)).

NOTE: This restriction does not apply to reverse mortgages covered under 12 CFR 1026.33 or transactions secured by a timeshare plan. For more information, please see the commentary to (12 CFR 1026.36(k)).

## Servicing Requirements for Certain Home Mortgages Subject to Subpart E

1. Determine if the servicer is a small servicer under (12 CFR 1026.41(e)(4)(ii)). The following steps two through five regarding periodic statements for closed-end loans secured by a dwelling are not applicable if the servicer is a small servicer.

   NOTE: A small servicer is defined as (1) a servicer that, together with any affiliates, services 5,000 or fewer loans, for all of which the servicer or any affiliate is the creditor or assignee; (2) a servicer that is a housing finance agency under 24 CFR 226.5; or (3) a nonprofit entity (defined in 12 CFR 1026.41(e)(4)(ii)(C)(1)) that services 5,000 or fewer mortgage loans, including any mortgage loans serviced on behalf of associated nonprofit entities (defined in 12 CFR 1026.41(e)(4)(ii)(C)(2)), for all of which the servicer or an associated nonprofit is the creditor. Small servicer status is generally based on the loans serviced by the servicer and any affiliates as of January 1 for the remainder of the year. However, to determine small servicer status under the nonprofit small servicer definition, a nonprofit servicer should be evaluated based on the mortgage loans serviced by the servicer (and not those serviced by associated nonprofit entities) as of January 1 for the remainder of the calendar year. Servicers that cease to qualify as a small servicer will have the later of six months after the date they ceased to qualify, or until the next January 1 to come into compliance. Under 12 CFR 1026.41(e)(4)(iii), the following mortgage loans are not considered in determining whether a servicer qualifies as a small servicer: (a) mortgage loans voluntarily serviced by the servicer for a non-affiliate of the servicer and for which the servicer does not receive any compensation or fees; (b) reverse mortgage transactions; (c) mortgage loans secured by consumers' interests in timeshare plans; and (d) certain seller-financed transactions that meet the criteria identified in (12 CFR 1026.36(a)(5)).

2. Determine whether the creditor, assignee, or servicer provides consumers with reasonably prompt periodic statements for closed-end loans secured by a dwelling (12 CFR 1026.41).

   NOTES:

   - "Consumer" includes a confirmed successor in interest as defined in 12 CFR 1026.2(a)(27) (12 CFR 1026.2(a)(11)). If there is a confirmed successor in interest, determine whether the exemption from the requirement to provide a periodic statement to the confirmed successor in interest applies as specified in (12 CFR 1026.41(g)).

   - This requirement does not apply to reverse mortgages under 12 CFR 1026.33; timeshare plans; fixed-rate loans where the servicer currently provides consumers with coupon books that contain account payment, fees, and contact information specified under 12 CFR 1026.41(e)(3); small servicers under 12 CFR 1026.41(e)(4); or, as specified in 12

CFR 1026.41(e)(5), for mortgages while the consumer is a debtor in bankruptcy under Title 11 of the US Code. Servicers, however, must provide modified periodic statements and coupon books to certain consumers in bankruptcy as specified in 12 CFR 1026.41(f) (see questions below). Servicers are exempt from providing periodic statements for charged-off mortgage loans if the requirements of 12 CFR 1026.41(e)(6) are met (see questions below).

- When examining a creditor or assignee that continues to own the loan, or a servicer, if the entity states that another entity has the obligation to provide the disclosures, examiners should determine whether the examined entity takes steps to ensure that the other party (a creditor, assignee, or servicer) is complying with the obligation to provide the disclosures.

3. Verify that the periodic statements contain:

   a. The payment due date; the amount of any late payment fee, and the date on which that fee will be imposed; and the amount due (the latter shown more prominently than other disclosures on the page and, if the transaction has multiple payment options, the amount due under each of the payment options), grouped together in close proximity to each other and located at the top of the first page (12 CFR 1026.41(d)(1));

      i. If the balance of a mortgage loan was accelerated but the servicer was willing to accept a lesser amount to reinstate the loan, verify that the amount due on the periodic statement identified only the lesser amount that the servicer would have accepted to reinstate the loan (Comment 41(d)(1)-1);

      ii. If the consumer had agreed to a temporary loss mitigation program, verify that the amount due identified either the payment due under the temporary loss mitigation program or the amount due according to the loan contract (Comment 41(d)(1)-2).

      iii. If the loan contract had been permanently modified, verify that the amount due identified only the amount due under the modified loan contract (Comment 41(d)(1)-3).

   NOTE: Servicers may modify the sample forms for periodic statements provided in Appendix H, Sample forms H-30(A) through H-30(F), to remove language that could suggest liability under the mortgage loan agreement if such language is not applicable. For example, in the case of a confirmed successor in interest who has not assumed the mortgage loan obligation under State law and is not otherwise liable on the mortgage loan obligation, a servicer may modify the forms to:

   - Use “this mortgage” or “the mortgage” instead of “your mortgage”.
   - Use “The payments on this mortgage are late” instead of “You are late on your mortgage payments”.

- Use "This is the amount needed to bring the loan current" instead of "You must pay this amount to bring your loan current".

(Comment 41(c)-5)

b. The monthly payment amount, including a breakdown of how it will be applied to principal, interest, and escrow, and if a mortgage loan has multiple payment options along with information regarding how each payment will affect the principal, a breakdown of each of the payment options; the total sum of any fees or charges imposed since the last statement; and any payment amount past due, grouped together in close proximity to each other and located at the top of the first page (12 CFR 1026.41(d)(2)).

i. If the balance of a mortgage loan was accelerated but the servicer was willing to accept a lesser amount to reinstate the loan, verify that the explanation of amount due on the periodic statement listed both the reinstatement amount and the accelerated amount. Verify that the periodic statement also included an explanation that the reinstatement amount would be accepted through the "as of [date]", as applicable along with any special instructions for submitting the payment. The explanation should be on the front page of the statement or, alternatively, may be included on a separate page enclosed with the periodic statement (Comment 41(d)(2)-1).

- NOTE: The servicer is not required to list the monthly payment amount that would otherwise be required under 12 CFR 1026.41(d)(2)(i) (Comment 41(d)(2)-1).

ii. If the consumer had agreed to a temporary loss mitigation program and the amount due identified the payment due under the temporary loss mitigation program, verify that the explanation of amount due included both the amount due according to the loan contract and the payment due under the temporary loss mitigation program. Also verify that the statement included an explanation that the amount due was being disclosed as a different amount because of the temporary loss mitigation program. The explanation should be on the front page of the statement or, alternatively, may be included on a separate page enclosed with the periodic statement or in a separate letter (Comment 41(d)(2)-2).

c. The total of all payments received since the last statement, including a breakdown showing how the payment was applied to principal, interests, escrow, fees, and charges, and any amount sent to a suspense or unapplied funds account grouped together in close proximity to each other and located at the top of the first page (12 CFR 1026.41(d)(3)(i));

d. The total of all payments received for the calendar year, including a breakdown of how those payments were applied to principal, interest, escrow, fees. and charges and any amount currently held in a suspense or unapplied funds account, grouped together

in close proximity to each other and located at the top of the first page (12 CFR 1026.41(d)(3)(ii));

e. A list of transaction activity that occurred since the last statement, including the date, amount, and brief description of the transaction. Transaction activity includes any activity that caused a credit or debit to the amount currently due (12 CFR 1026.41(d)(4));

f. For statements where a partial payment was received and the creditor or servicer held the partial payment in a suspense or unapplied funds account, information explaining what must be done for the funds to be applied to the balance, located on the front page or a separate page of the statement or in a separate letter (12 CFR 1026.41(d)(5));

g. A toll-free number, and if applicable, an email address, that consumers may use to obtain account information located on the front page (12 CFR 1026.41(d)(6));

h. The amount of the outstanding principal balance (12 CFR 1026.41(d)(7)(i));

i. The current interest rate for the mortgage (12 CFR 1026.41(d)(7)(ii));

j. The date that the interest may change (if applicable) (12 CFR 1026.41(d)(7)(iii));

k. Information regarding whether the loan contains a prepayment penalty (12 CFR 1026.41(d)(7)(iv));

l. The web address to the CFPB's or HUD's list of homeownership counselors or counseling organizations and HUD's toll-free telephone number to obtain contact information for counselors or counseling organizations (12 CFR 1026.41(d)(7)(v));

m. For consumers more than 45 days delinquent, determine that the creditor, assignee, or servicer provides on the first page, on a separate page of the statement, or in a separate letter:

   i. The length of the consumer's delinquency (12 CFR 1026.41(d)(8)(i));

   ii. A notification of the possible risks, such as foreclosure, and expenses that may occur if the consumer does not become current (12 CFR 1026.41(d)(8)(ii));

   iii. An account history showing the shorter of the previous six months or from the time the account was last current, the amount of payment that is past due from each billing cycle (12 CFR 1026.41(d)(8)(iii));

   NOTE: If any payment was accepted as a full payment, the creditor or servicer must show that the payment was credited to the consumer's account and the date that the payment was credited.

iv. A notice indicating any loss mitigation program that the consumer has agreed to (12 CFR 1026.41(d)(8)(iv));

v. A notice of whether the servicer has initiated foreclosure proceedings (12 CFR 1026.41(d)(8)(v));

vi. The total payment amount needed to bring the account current (12 CFR 1026.41(d)(8)(vi)); and

vii. A reference to homeownership counseling information required under 12 CFR 1026.41(d)(7)(v) (12 CFR 1026.41(d)(8)(vii)).

4. Unless the servicer is otherwise exempt as noted below, while any consumer on a mortgage loan is a debtor in bankruptcy under Title 11 of the United States Code, or if such consumer had discharged personal liability for the mortgage loan pursuant Chapter 7, 11, 12, or 13, determine whether the servicer provided a modified periodic statement or coupon book in compliance with (12 CFR 1026.41(f)). Specifically, the periodic statement:

   a. May omit the information set forth in 12 CFR 1026.41(d)(1)(ii) and (d)(8)(i), (ii), and (v). The requirement in 12 CFR 1026.41(d)(1)(iii) of this section that the amount due must be shown more prominently than other disclosures on the page shall not apply (12 CFR 1026.41(f)(1));

   b. Must include the following bankruptcy notices:

      i. A statement identifying the consumer's status as a debtor in bankruptcy or the discharged status of the mortgage loan; and

      ii. A statement that the periodic statement is for informational purposes only (12 CFR 1026.41(f)(2));

   c. For Chapter 12 and Chapter 13 consumers:

      i. May omit (in addition to information listed in 12 CFR 1026.41(f)(1)) the information in 12 CFR 1026.41(d)(8)(iii), (iv), (vi), and (vii) (12 CFR 1026.41(f)(3)(i));

      ii. May limit the amount due information set forth in 12 CFR 1026.41(d)(1) to the date and amount of the post-petition payments due and any post-petition fees and charges imposed by the servicer (12 CFR 1026.41(f)(3)(ii));

      iii. May limit the explanation of amount due information set forth in 12 CFR 1026.41(d)(2) to:

         A. The monthly post-petition payment amount, including a breakdown showing how much, if any, would be applied to principal, interest, and escrow;

B. The total sum of any post-petition fees or charges imposed since the last statement; and

C. Any post-petition payment amount past due (12 CFR 1026.41(f)(3)(iii)).

iv. Must include all payments that the servicer received since the last statement, including all post-petition and pre-petition payments, payments of post-petition fees and charges, and all post-petition fees and charges that the servicer imposed since the last statement. The brief description of the activity need not identify the source of any payments (12 CFR 1026.41(f)(3)(iv));

v. Must disclose the following pre-petition arrearage information, if applicable, grouped in close proximity to each other and located on the first page of the statement or on a separate page enclosed with the periodic statement or in a separate letter:

A. The total of all pre-petition payments received since the last statement;

B. The total of all pre-petition payments received since the beginning of the consumer's pre-petition arrearage; and

C. The current balance of the consumer's pre-petition arrearage (12 CFR 1026.41(f)(3)(v)).

vi. Must include, as applicable:

A. A statement that the amount due includes only post-petition payments and does not include other payments that may be due under the terms of the consumer's bankruptcy plan;

B. If the consumer's bankruptcy plan requires the consumer to make the post-petition mortgage payments directly to a bankruptcy trustee, a statement that the consumer should send the payment to the trustee and not to the servicer;

C. A statement that the information disclosed on the periodic statement may not include payments the consumer has made to the trustee and may not be consistent with the trustee's records;

D. A statement that encourages the consumer to contact the consumer's attorney or the trustee with questions regarding the application of payments; and

E. If the consumer is more than 45 days delinquent on post-petition payments, a statement that the servicer has not received all the payments that became due since the consumer filed for bankruptcy (12 CFR 1026.41(f)(3)(vi)).

NOTES:

- Multiple obligors. The servicer may provide the modified statement to any or all of the primary obligors, even if a primary obligor to whom the servicer provides the modified statement is not a debtor in bankruptcy (12 CFR 1026.41(f)(4)).

- Coupon books. A servicer that provides a coupon book instead of a periodic statement must include in the coupon book (or on a separate page enclosed with the coupon book) the disclosures set forth in 12 CFR 1026.41(f)(2) and (f)(3)(vi), as applicable (12 CFR 1026.41(f)(5)).

- Under 12 CFR 1026.41(e)(5)(i), a servicer is exempt from providing a periodic statement to certain consumers in bankruptcy if:

  - Any consumer on the mortgage loan is a debtor in bankruptcy under Title 11 of the United States Code or has discharged personal liability for the mortgage loan pursuant to Chapter 7 (11 U.S.C. 727), Chapter 11 (11 U.S.C. 1141), Chapter 12 (11 U.S.C. 1228), or Chapter 12 (11 U.S.C. 1328); and

  - With regard to any consumer on the mortgage loan:

    - The consumer requests in writing that the servicer cease providing a periodic statement or coupon book;

    - The consumer's bankruptcy plan provides that the consumer will surrender the dwelling securing the mortgage loan, provides for the avoidance of the lien securing the mortgage loan, or otherwise does not provide for, as applicable, the payment of pre-bankruptcy arrearage or the maintenance of payments due under the mortgage loan;

    - A court enters an order in the bankruptcy case providing for the avoidance of the lien securing the mortgage loan, lifting the automatic stay pursuant to 11 U.S.C. 362 with regard to the dwelling securing the mortgage loan, or requiring the servicer to cease providing a periodic statement or coupon book; or

    - The consumer files with the court overseeing the bankruptcy case a statement of intention pursuant to 11 U.S.C. 521(a) identifying an intent to surrender the dwelling securing the mortgage loan and a consumer has not made any partial or periodic payment on the mortgage loan after the commencement of the consumer's bankruptcy case.

  A servicer ceases to qualify for the exemption pursuant to 12 CFR 1026.41(e)(5)(i) with respect to a mortgage loan if the consumer reaffirms personal liability for the loan or any consumer on the loan requests in writing that the servicer provide a periodic statement or coupon book, unless a court enters an order in the bankruptcy case requiring the servicer to cease providing a periodic statement or coupon book (12 CFR 1026.41(e)(5)(ii)).

5. If the servicer has ceased providing periodic statements for charged-off mortgage loans, determine whether the following exemption requirements of 12 CFR 1026.41(e)(6)(i) are met:

    a. The servicer charged off the loan in accordance with loan-loss provisions and has not charged any additional fees or interest on the account; and

    b. The servicer provided, within 30 days of charge-off or the most recent periodic statement, a periodic statement, clearly and conspicuously labeled "Suspension of Statements & Notice of Charge Off—Retain This Copy for Your Records." The periodic statement clearly and conspicuously explained the following (as applicable):

        i. The mortgage loan was charged off and the servicer will not charge any additional fees or interest on the account;

        ii. The servicer will no longer provide the consumer a periodic statement for each billing cycle;

        iii. The lien on the property remains in place and the consumer remains liable for the mortgage loan obligation and any obligations arising from or related to the property, which may include property taxes;

        iv. The consumer may be required to pay the balance on the account in the future, for example, upon sale of the property;

        v. The balance on the account is not being canceled or forgiven; and

        vi. The loan may be purchased, assigned, or transferred.

    NOTE:

    If a servicer fails at any time to treat a mortgage loan that is exempt under 12 CFR 1026.41(e)(6)(i) as charged off or charges any additional fees or interest on the account, the servicer must resume providing a periodic statement. (12 CFR 1026.41(e)(6)(ii)(A)). A servicer may not retroactively assess fees or interest on the account for the period of time during which the exemption in paragraph 12 CFR 1026.41(e)(6)(i) applied (12 CFR 1026.41(e)(6)(ii)(B)).

6. For high-cost mortgages, ensure the creditor or servicer does not charge any fee to modify, renew, extend, or amend a high-cost mortgage, or to defer any payment due under the terms of the mortgage (12 CFR 1026.34(a)(7)).

7. For high-cost mortgages, determine whether the creditor or servicer charged a late payment greater than four percent of the payment past due (12 CFR 1026.34(a)(8)(i)).

8. For high-cost mortgages, determine that the creditor or servicer did not impose any late fee or delinquency charge in connection with a payment, when the only delinquency was

attributable to late fees or delinquency charges assessed on an earlier payment, and the payment is otherwise a full payment for the applicable period and is paid on its due date or within any applicable grace period (12 CFR 1026.34(a)(8)(iii)).

9. For high-cost mortgages, determine whether the creditor or servicer assessed any fees for providing consumers with a payoff statement related to the high-cost mortgage (12 CFR 1026.34(a)(9)).

   NOTE: Creditors or servicers are permitted to assess a processing fee if the payoff statement is provided by courier or by fax, the fee is comparable to fees for similar services provided for non-high-cost mortgages, and the creditor or servicer discloses that payoff statements are available by an alternative method free of charge. Additionally, within a calendar year, if the creditor or servicer has already provided four payoff statements in compliance with 12 CFR 1026.34(a)(9), it may assess fees for additional statements.

10. For high-cost mortgages, determine that the creditor or servicer is providing payoff statements within five business days after receiving a request from the consumer (or consumer's authorized representative) (12 CFR 1026.34(a)(9)(v)).

11. For higher-priced mortgage loans that are subject to the escrow account requirements, ensure the creditor or servicer maintains the consumer's escrow account for a minimum of five years after consummation of the loan, unless (12 CFR 1026.35(b)(3)):

    a. The creditor or servicer terminated the escrow account upon termination of the underlying debt obligation (12 CFR 1026.35(b)(3)(i)(A)); or

    b. The creditor or servicer terminated the escrow account upon request from the consumer, no earlier than five years after consummation of the loan (12 CFR 1026.35(b)(3)(i)(B)).

    NOTE: Upon request from the consumer, the creditor or servicer must verify that the unpaid principal balance of the higher-priced mortgage loan is less than 80 percent of the original value of the property securing the loan and that the consumer is not delinquent or in default on the loan, prior to cancelling the escrow account (12 CFR 1026.35(b)(3)(ii)).

12. For consumer credit transactions secured by a consumer's principal dwelling, determine that the creditor or servicer credited consumer's periodic payments as of the date the payment was received or ensured that any delay in crediting did not result in any charge to the consumer or in the reporting of any negative information to a consumer reporting agency 12 CFR 1026.34(a)(8)-(9) and (1026.36(c)(1)(i)).

13. For consumers performing under a permanent loan modification of a consumer credit transaction secured by a consumer's principal dwelling, determine whether the creditor or servicer credited the payments according to the terms of the modified loan contract (Comment 36(c)(1)(i)-5).

NOTE: For consumers performing under temporary loss mitigation programs, a creditor must continue to credit payments according to the loan contract and could, if appropriate, credit the payments as partial payments (Comment 36(c)(1)(i)-4).

14. For consumer credit transactions secured by a consumer's principal dwelling, determine whether the creditor or servicer uses a suspense or unapplied payment account for partial payments.

    a. For creditors or servicers that use suspense or unapplied payment accounts for consumers' partial payments, verify that the creditor or servicer discloses to consumers that amount held in the suspense account on the periodic statement required by 12 CFR 1026.41(d)(3) if one is required (12 CFR 1026.36(c)(1)(ii)(A)); and

    b. Verify that creditors or servicers credit a periodic payment to the consumer's account once the amount in the suspense account equals a periodic payment (12 CFR 1026.36(c)(1)(ii)(B)).

15. For consumer credit transactions secured by a consumer's principal dwelling, and for creditors or servicers that accept non-conforming payments from consumers, verify that the creditor or servicer credited the non-conforming payment to the consumer's account as of five days after receipt of the payment (12 CFR 1026.36(c)(1)(iii)).

16. Determine whether there were any of the following prohibited acts or practices in connection with credit secured by a consumer's principal dwelling (12 CFR 1026.36(c)):

    a. Imposing on the consumer any late fee or delinquency charge in connection with a payment, when the only delinquency was attributable to late fees or delinquency charges assessed on an earlier payment, and the payment is otherwise a periodic payment for the applicable period and is received on its due date or within any applicable courtesy period (12 CFR 1026.36(c)(2)); or

17. For consumer credit transactions secured by a dwelling (including a home equity line of credit secured by a dwelling), verify that the creditor, assignee, or servicer provided, within a reasonable time, but no later than seven business days after receiving a written request from the consumer or person acting on behalf of the consumer, an accurate statement of the total outstanding balance that would be required to pay the consumer's obligation in full as of a specific date except when a delay is because a loan is in bankruptcy or foreclosure, the loan is a reverse or shared appreciation mortgage, or because of a natural disaster, in which case the payoff statement must be provided within a reasonable period of time (12 CFR 1026.36(b) and (c)(3)).

## Valuation Independence

1. Determine that the covered person did not attempt to directly or indirectly cause the value assigned to the consumer's principal dwelling to be based on any factor other than the

independent judgment of a person that prepares valuations. Examples of such attempts include (12 CFR 1026.42(c)):

a. Seeking to influence a person that prepares a valuation to report a minimum or maximum value for the consumer's principal dwelling;

b. Withholding or threatening to withhold timely payment to a person that prepares a valuation or performs valuation management functions because the person does not value the consumer's principal dwelling at or above a certain amount;

c. Implying to a person that prepares valuations that current or future retention of the person depends on the amount at which the person estimates the value of the consumer's principal dwelling;

d. Excluding a person that prepares a valuation from consideration for future engagement because the person reports a value for the consumer's principal dwelling that does not meet or exceed a predetermined threshold; and

e. Conditioning the compensation paid to a person that prepares a valuation on consummation of the covered transaction.

2. Determine that the valuation does not materially misrepresent the value of the consumer's principal dwelling (12 CFR 1026.42(c)(2)(i)).

   NOTE: A misrepresentation is material if it is likely to significantly affect the value assigned to the consumer's principal dwelling. A bona fide error shall not be a misrepresentation.

3. Determine that a valuation was not falsified or materially altered (12 CFR 1026.42(c)(2)(ii)).

   NOTE: An alteration is material if it is likely to significantly affect the value assigned to the consumer's principal dwelling.

4. Determine that the covered person does not induce a person to materially misrepresent or falsify the value of a consumer's principal dwelling (in violation of 12 CFR 1026.42(c)(2)(i) or (ii) (12 CFR 1026.42(c)(2)(iii))

5. Prohibition on conflicts of interest. To the extent applicable, determine that the person who prepared the valuations or performed the valuation management functions for a covered transaction did not have a direct or indirect interest, financial or otherwise, in the property or transaction for which the valuation is or will be performed (12 CFR 1026.42(d)(1)(i)).

   NOTE: No person violates this section solely because that the person is an employee or affiliate of the creditor, or provides a settlement service in addition to preparing valuations or performing valuation management functions, or based solely on the fact that the person's affiliate performs another settlement service, as long as the conditions discussed below ((f), (g), and (h)) are met. If they are not met, whether the conflicts of interest provisions are

violated by the above persons or entities depends on all of the facts and circumstances. In other words, the conditions in (f), (g), and (h) are a safe harbor, but not required.

6. For any consumer credit transaction secured by the consumer's principal dwelling in which the creditor had assets of more than $250 million as of December 31 for both of the past two calendar years, determine that a person subject to 12 CFR 1026.42(d)(1)(i) who is employed by or affiliated with the creditor does not have a conflict of interest in violation of 12 CFR 1026.42(d)(1)(i) based solely on the person's employment or affiliate relationship with the creditor if (12 CFR 1026.42(d)(2)):

    a. The compensation of the person preparing a valuation or performing valuation management functions is not based on the value arrived at in any valuation;

    b. The person preparing a valuation or performing valuation management functions reports to a person who is not part of the creditor's loan production function, as defined in 12 CFR 1026.42(d)(5)(i), and whose compensation is not based on the closing of the transaction to which the valuation relates; and

    c. No employee, officer or director in the creditor's loan production function, as defined in 12 CFR 1026.42(d)(5)(i), is directly or indirectly involved in selecting, retaining, recommending or influencing the selection of the person to prepare a valuation or perform valuation management functions, or to be included in or excluded from a list of approved persons who prepare valuations or perform valuation management functions.

7. For any covered transaction in which the creditor had assets of $250 million or less as of December 31st for either of the past two calendar years, determine that a person subject to 12 CFR 1026.42(d)(1)(i) who is employed by or affiliated with the creditor does not have a conflict of interest in violation of 12 CFR 1026.42(d)(1)(i) based solely on the person's employment or affiliate relationship with the creditor if (12 CFR 1026.42(d)(3)):

    a. The compensation of the person preparing a valuation or performing valuation management functions is not based the value arrived at in any valuation; and

    b. The creditor requires that any employee, officer or director of the creditor who orders, performs, or reviews a valuation for a covered transaction abstain from participating in any decision to approve, not approve, or set the terms of that transaction.

8. For any covered transaction, determine that a person who prepares a valuation or performs valuation management functions in addition to performing another settlement service for the transaction, or whose affiliate performs another settlement service for the transaction, does not have a conflict of interest in violation of 12 CFR 1026.42(d)(1)(i) as a result of the person or the person's affiliate performing another settlement service for the transaction if (12 CFR 1026.42(d)(4)):

a. The creditor had assets of more than $250 million as of December 31 for both of the past two calendar years and the conditions in paragraph (d)(2)(i)-(iii) are met; or

b. The creditor had assets of $250 million or less as of December 31 for either of the past two calendar years and the conditions in paragraph (d)(3)(i)-(ii) are met.

9. If the creditor did know at or before consummation of a violation of 12 CFR 1026.42(c) or (d) in connection with a valuation, determine that the creditor did not extend credit based on the valuation, unless the creditor documented that it acted with reasonable diligence to determine that the valuation did not materially misstate or misrepresent the value of the consumer's principal dwelling (12 CFR 1026.42(e)).

   NOTE: For purposes of 12 CFR 1026.42(e), a valuation materially misstates or misrepresents the value of the consumer's principal dwelling if the valuation contains a misstatement or misrepresentation that affects the credit decision or the terms on which credit is extended.

10. Customary and reasonable compensation. For any covered transaction, determine that the creditor and its agents compensated a fee appraiser (as defined in 12 CFR 1026.42(f)(4)(i) for performing appraisal services at a rate that is customary and reasonable for comparable appraisal services performed in the geographic market of the property being appraised (12 CFR 1026.42(f)(1)).

NOTE: Voluntary donation of appraisal services by a fee appraiser (as defined in 15 U.S.C. 1639e(i)(2)) to an organization eligible to receive tax-deductible charitable contributions meets the requirement to be customary-and-reasonable for purposes of 15 U.S.C. 1639e(i)(1) (15 U.S.C. 1639e(i)(2)(B)).

For purposes of 12 CFR 1026.42(f), "agents" of the creditor do not include any fee appraiser as defined in (12 CFR 1026.42(f)(4)(i)). An "agent" could be an appraisal management company to which the creditor has outsourced the valuation function.

11. If the creditor reasonably believes an appraiser has not complied with the Uniform Standards of Professional Appraisal Practice or ethical or professional requirements for appraisers under applicable state or federal statutes or regulations, determine that the creditor referred the matter within a reasonable period of time to the appropriate state agency if the failure to comply is material (12 CFR 1026.42(g)(1)).

    NOTE: For purposes of 12 CFR 1026.42(g), a failure to comply is material if it is likely to significantly affect the value assigned to the consumer's principal dwelling.

## Open-End Credit Transactional Testing Procedures

1. For each open-end credit product tested, determine the accuracy of the disclosures by comparing the disclosure with the contract and other financial institution documents (12 CFR 1026.5(c)).

2. Review the financial institution's policies, procedures, and practices to determine whether it provides appropriate disclosures for creditor-initiated direct mail applications and solicitations to open charge card accounts, telephone applications and solicitations to open charge card accounts, and applications and solicitations made available to the general public to open charge card accounts (12 CFR 1026.60(b), (c), and (d)).

3. Determine for all home-equity plans with a variable rate that the APR is based on an independent index. Further, ensure home-equity plans are terminated or terms changed only if certain conditions exist (12 CFR 1026.40(f)).

4. Determine that, if any consumer rejected a home-equity plan because a disclosed term changed before the plan was opened, all fees were refunded. Verify that non-refundable fees were not imposed until three business days after the consumer received the required disclosures and brochure (12 CFR 1026.40(g) and (h)).

5. Review consecutive periodic billing statements for each major type of open-end credit activity offered (overdraft and home-equity lines of credit, credit card programs, etc.). Determine whether disclosures were calculated accurately and are consistent with the initial disclosure statement furnished in connection with the accounts (or any subsequent change in terms notice) and the underlying contractual terms governing the plan(s).

6. Determine whether the consumer was given notice of the right to reject the significant change, with the exception of:

    a. An increase in the required minimum periodic payment (12 CFR 1026.9(c)(2)(iv)(B));

    b. A change in the APR (12 CFR 1026.9(c)(2)(iv)(B));

    c. A change in the balance computation method necessary to comply with 12 CFR 1026.54, which sets forth certain limitations on the imposition of finance charges as a result of a loss of a grace period;

    d. Increase in fee pursuant to evaluation under 12 CFR 1026.52 or adjustment to safe harbors;

    e. Increase in fees previously reduced under Servicemembers Civil Relief Act; or

    f. When the change results from the creditor not receiving the required minimum periodic payment within 60 days after the due date for that payment (12 CFR 1026.9(c)(2)(iv)(B)).

7. Determine that the creditor did not increase the rate applicable to the consumer's account to the penalty rate if the outstanding balance did not exceed the credit limit on the date set forth in the notice (12 CFR 1026.9(g)(4)).

8. Determine, for each type of open-end rescindable loan being tested, the appropriate number of copies of the rescission notice are provided to each person whose ownership interest is or will be subject to the security interest and perform the procedures 12, 13, and 14 under Closed-End Credit section (12 CFR 1026.15(b), (c) and (e)).

9. Additional variable-rate testing: Verify that when accounts were opened or loans were consummated that loan contract terms were recorded correctly in the financial institution's calculation systems (e.g., its computer). Determine the accuracy of the following recorded information:

    a. Index value,

    b. Margin and method of calculating rate changes,

    c. Rounding method, and

    d. Adjustment caps (periodic and lifetime).

10. Using a sample of periodic disclosures for open-end variable-rate accounts (e.g., home equity accounts) and closed-end rate change notices for adjustable rate mortgage loans:

    a. Compare the rate-change date and rate on the credit obligation to the actual rate-change date and rate imposed.

    b. Determine that the index disclosed and imposed is based on the terms of the contract (example: the weekly average of one-year Treasury constant maturities, taken as of 45 days before the change date) (12 CFR 1026.7(a) and 1026.20(c)(2)).

    c. Determine that the new interest rate is correctly disclosed by adding the correct index value with the margin stated in the note, plus or minus any contractual fractional adjustment (12 CFR 1026.7(g) and 1026.20 (c)(1)).

    d. Determine that the new payment disclosed 12 CFR 1026.20(c)(4) was based on an interest rate and loan balance in effect at least 25 days before the payment change date (consistent with the contract) (12 CFR 1026.20(c)).

## Crediting a Consumer's Account – 12 CFR 1026.10

1. Ensure that the creditor credits payment to a consumer's account as of the date of receipt, except when a delay in crediting does not result in a finance charge or other charge (12 CFR 1026.10(a)).

2. If a creditor specifies requirements for payments, determine that they are reasonable and enable most consumers to make conforming payments (12 CFR 1026.10(b)).

3. Except as provided by 12 CFR 1026.10(b)(4)(ii), if a creditor specifies, on or with the periodic statement, requirements for the consumer to follow in making payments as permitted under 12 CFR 1026.10, but accepts a payment that does not conform to the

requirements, determine that the payment is credited within five days of receipt (12 CFR 1026.10(b)(4)(i)).

4. If the creditor promotes a method for making payments, determine that the creditor considers such payments conforming payments in accordance with 12 CFR 1026.10(b) and that they are credited to the consumer's account as of the date of receipt, except when a delay in crediting does not result in a finance charge or other charge (12 CFR 1026.10(b)(4)(ii)).

5. If the creditor sets a cut-off time for payments to be received by mail, by electronic means, by telephone, or in person, verify that the cut-off time is 5 p.m. or later on the payment due date at the location specified by the creditor for the receipt of such payments (12 CFR 1026.10(b)(2)(ii)).

6. For in-person payments on a credit card account under an open-end (not home-secured) consumer credit plan at a financial institution branch or office that accepts such payments, a card issuer shall not impose a cut-off time earlier than the close of business for any such payments made in person at any branch or office of the card issuer at which such payments are accepted. However, a card issuer may impose a cut-off time earlier than 5 p.m. for such payments, if the close of business of the branch or office is earlier than 5 p.m. (12 CFR 1026.10(b)(3)(i)).

7. If a creditor fails to credit a payment as required and imposes a finance or other charge, ensure that the creditor credits the charge(s) to the consumer's account during the next billing cycle (12 CFR 1026.10(c)).

8. If (due to a weekend or holiday, for example) a creditor does not receive or accept payments by mail on the due date for payments, determine that the creditor treats as timely a payment received on the next business day (12 CFR 1026.10(d)(1)).

   NOTE: If a creditor accepts or receives payments made on the due date by a method other than mail, such as electronic or telephone payments, the creditor is not required to treat a payment made by that method on the next business day as timely.

9. For credit card accounts under an open-end (not home-secured) consumer credit plan, determine that the creditor does not impose a separate fee to allow consumers to make a payment by any method, such as mail, electronic, or telephone payments, unless such payment method involves an expedited service by a customer service representative of the creditor (12 CFR 1026.10(e)).

   NOTE: For purposes of 12 CFR 1026.10(e), the term "creditor" includes a third party that collects, receives, or processes payments on behalf of a creditor.

10. If a card issuer makes a material change in the address for receiving payments or procedures for handling payments, and such change causes a material delay in the crediting of a payment to a consumer's account during the 60-day period following the date on which such change took effect, ensure that the card issuer does not impose any late fee or finance charge for a

late payment on the credit card account during the 60-day period following the date on which the change took effect (12 CFR 1026.10(f)).

## Treatment of Credit Balances, Account Termination – 12 CFR 1026.11

1. Determine institution's treatment of credit balances. Specifically, if the account's credit balance is in excess of one dollar, the institution must take the actions listed below (12 CFR 1026.11):

    a. Credit the amount to the consumer's account; and

    b. Either:

        i. Refund any part of the remaining credit balance within seven business days from receiving a written request from the consumer; or

        ii. If no written request is received and the credit remains for more than six months, make a good faith effort to refund the amount of the credit to the consumer by cash, check, money order, or credit to a deposit account of the consumer. No further action is required if the consumer's current location is not known to the creditor and cannot be traced through the consumer's last known address or telephone number.

2. Determine that institution has not terminated an account prior to its expiration date solely because the consumer did not incur a finance charge. However, a creditor is not prohibited from closing an account that, for three consecutive months, no credit has been extended (such as by purchase, cash advance, or balance transfer) and the account has had no outstanding balance (12 CFR 1026.11(b)).

3. Determine that, for credit card accounts under an open-end (not home-secured) consumer credit plan, the card issuer has adopted reasonable written policies and procedures designed to ensure that an administrator of an estate of a deceased account holder can determine the amount of and pay any balance on the account in a timely manner (12 CFR 1026.11(c)(1)(i)).

    NOTE: This does not apply to the account of a deceased consumer if a joint account holder remains on the account.

4. Ensure that, upon request by the administrator of an estate, the card issuer provides the administrator with the amount of the balance on a deceased consumer's account in a timely manner (12 CFR 1026.11(c)(2)(i)).

    NOTE: Providing the amount of the balance on the account within 30 days of receiving the request is deemed to be timely.

5. Verify that, after receiving a request from the administrator of an estate for the amount of the balance on a deceased consumer's account, the card issuer does not impose any fees on the

account (such as a late fee, annual fee, or over the-limit fee) or increase any annual percentage rate, except as provided by 12 CFR 1026.55(b)(2) (i.e., due to the operation of an index) (12 CFR 1026.11(c)(3)(i)).

6. Determine that, if payment in full of the disclosed balance, pursuant to 12 CFR 1026.11(c)(2), is received within 30 days after disclosure, the card issuer waives or rebates any additional finance charge due to a periodic interest rate (12 CFR 1026.11(c)(3)(ii)).

## Billing Error Resolution – 12 CFR 1026.13 (Open-End Credit)

1. Determine whether the creditor mailed or delivered a written acknowledgment to the consumer within 30 days of receiving a billing error notice in accordance with 12 CFR 1026.13(c)(1) if it has not complied with the appropriate resolution procedures provided in 12 CFR 1026.13(e) and (f), as applicable.

2. Determine whether the creditor complied with the appropriate resolution procedures provided in 12 CFR 1026.13(e) and (f), as applicable, within two complete billing cycles (but in no event later than 90 days) after receiving a billing error notice.

3. Determine if the institution engaged in any of the prohibited conduct provided in 12 CFR 1026.13(d) while a billing error resolution was pending.

4. If the creditor determined that a consumer owed all or part of the disputed amount and related finance or other charges, determine whether the creditor complied with the requirements provided in (12 CFR 1026.13(g)).

## Special Credit Card Provisions and Billing Error Resolution – 12 CFR 1026.12 and 13

1. Review a sample of billing error resolution files and a sample of consumers who have asserted a claim or defense against the financial institution for a credit card dispute regarding property or services. Verify the following (12 CFR 1026.12 and 1026.13):

    a. Credit cards are issued only upon request;

    b. Liability for unauthorized credit card use is limited to $50;

    c. Disputed amounts are not reported delinquent unless remaining unpaid after the dispute has been settled;

    d. Offsetting credit card indebtedness is prohibited; and

    e. Errors are resolved within two complete billing cycles.

## Ability to Make the Required Minimum Payments – 12 CFR 1026.51

1. Determine that the card issuer does not open a credit card account for a consumer under an open-end (not home-secured) consumer credit plan, or increase any credit limit applicable to such account, unless the card issuer considers the ability of the consumer to make the required minimum periodic payments under the terms of the account based on the consumer's income or assets and current obligations (12 CFR 1026.51(a)(1)(i)).

2. Verify that the card issuer establishes and maintains reasonable written policies and procedures to consider a consumer's income or assets and current obligations. Reasonable policies and procedures to consider a consumer's ability to make the required payments include a consideration of at least one of the following (12 CFR 1026.51(a)(1)(ii)):

    a. The ratio of debt obligations to income,

    b. The ratio of debt obligations to assets, or

    c. The income the consumer will have after paying debt obligations.

    NOTE: Reasonable written policies and procedures may include treating any income and assets to which the consumer has a reasonable expectation of access as the consumer's income or assets or may be limited to consideration to the consumer's independent income and assets.

3. Confirm that the card issuer does not issue a credit card to a consumer who does not have any income or assets, and that the credit does not issue a credit card without reviewing any information about a consumer's income, assets, or current obligations (12 CFR 1026.51(a)(1)(ii)).

    NOTE: A card issuer may consider the consumer's income or assets based on information provided by the consumer, in connection with the credit card account or any other financial relationship the card issuer or its affiliates has with the consumer, subject to any applicable information-sharing rules, and information obtained through third parties, subject to any applicable information-sharing rules. A card issuer may also consider information obtained through any empirically derived, demonstrably, and statistically sound model that reasonably estimates a consumer's income or assets (Comment 51(a)-5).

4. Determine that the card issuer uses a reasonable method for estimating the minimum periodic payments the consumer would be required to pay under the terms of the account (12 CFR 1026.51(a)(2)(i)).

5. A card issuer's estimate of the minimum periodic payment is compliant (i.e., receives the benefit of a safe harbor) if it uses the following method (12 CFR 1026.51(a)(2)(ii)):

    a. The card issuer assumes utilization, from the first day of the billing cycle, of the full credit line that the issuer is considering offering to the consumer; and

    b. The card issuer uses a minimum payment formula employed by the issuer for the product the issuer is considering offering to the consumer or, in the case of an

existing account, the minimum payment formula that currently applies to that account, provided that:

i. If the applicable minimum payment formula includes interest charges, the card issuer estimates those charges using an interest rate that the issuer is considering offering to the consumer for purchases or, in the case of an existing account, the interest rate that currently applies to purchases; and

ii. If the applicable minimum payment formula includes mandatory fees, the card issuer must assume that such fees have been charged to the account.

6. Rules affecting young consumers: If the card issuer opens a credit card account under an open-end (not home-secured) consumer credit plan for a consumer less than 21 years old, verify that the issuer requires that such consumers:

   a. Submit a written application; and

   b. Either possess an independent ability to make the required minimum periodic payments on the proposed extension of credit in connection with the account under 12 CFR 1026.51(b)(1)(i) or provide a signed agreement of a cosigner, guarantor, or joint applicant who is at least 21 years old who has the ability to make the required minimum periodic payments on such debts, and be either jointly liable with the consumer for any debt on the account, or secondarily liable for any debt on the account incurred by the consumer before the consumer has attained the age of 21 pursuant to 12 CFR 1026.51(b)(1)(ii)(A) and (B)).

7. If a credit card account was opened for such consumer without a cosigner, guarantor, or joint applicant pursuant to 12 CFR 1026.51(b)(1), determine that the issuer does not increase the credit limit on the account before the consumer turns 21 unless:

   a. At the time of the contemplated increase, the consumer has an independent ability to make the required minimum periodic payments; or

   b. A cosigner, guarantor, or joint accountholder who is at least 21 years old and has the ability to make the required minimum periodic payments agrees in writing to assume liability for any debt incurred on the account (12 CFR 1026.51(b)(2)(i)).

8. If a credit card account was opened for such a consumer with a cosigner, guarantor, or joint applicant pursuant to 12 CFR 1026.51(b)(1)(ii), determine that the issuer does not increase the credit limit on such account before the consumer attains the age of 21 unless the cosigner, guarantor, or joint accountholder who assumed liability at account opening agrees in writing to assume liability on the increase (12 CFR 1026.51(b)(2)).

## Limitations on Fees – 12 CFR 1026.52

1. During the first year after the opening of a credit card account under an open-end (not home-secured) consumer credit plan, determine whether the card issuer required the consumer to

pay covered fees in excess of the 25 percent of the credit limit in effect when the account is opened (12 CFR 1026.52(a)(1)).

NOTES:

- The 25 percent limitation on fees does not apply to fees assessed prior to opening the account.
- An account is considered opened no earlier than the date on which the account may first be used by the consumer to engage in transactions.

Covered fees include fees (Comment 52(a)(2)-1):

a. For the issuance or availability of credit, including any fees based on account activity or inactivity;

b. For insurance, debt cancellation or debt suspension coverage, if the insurance or debt cancellation or suspension coverage is required by the terms of the account;

c. The consumer is required to pay to engage in transactions using the account, such as:

   i. Cash advance fees,

   ii. Balance transfer fees,

   iii. Foreign transaction fees, and

   iv. Fees for using the account for purchases.

d. The consumer is required to pay for violating the terms of the account, except to the extent they are specifically excluded (see below);

e. Fixed finance charges; and

f. Minimum charges imposed if a charge would otherwise have been determined by applying a periodic interest rate to a balance except for the fact that such charge is smaller than the minimum.

g. *Prepaid Cards:* For fees in connection with a covered separate credit feature and an asset feature of the prepaid card account that are both accessible by a hybrid prepaid-credit card, except as provided in (12 CFR 1026.52(a)(2)):

   i. Any fee or charge imposed on the covered separate credit feature, other than a charge attributable to a periodic interest rate, during the first year after account opening that the card issuer will or may require the consumer to pay in connection with the credit feature; and

ii. Any fee or charge imposed on the asset feature of the prepaid account, other than a charge attributable to a periodic interest rate, during the first year after account opening that the card issuer will or may require the consumer to pay where that fee or charge is imposed as part of the plan under (12 CFR 1026.6(b)(3)).

NOTE: 12 CFR 1026.52(a) does not authorize the imposition or payment of fees or charges otherwise prohibited by law (12 CFR 1026.52(a)(3)).

2. Fees not covered by this limitation include (12 CFR 1026.52(a)(2)(i)):

   a. Late payment fees, over-the-limit fees, and returned-payment fees; or

   b. Fees that the consumer is not required to pay with respect to the account, such as:

      i. An expedited payment fee,

      ii. Fees for optional services like travel insurance,

      iii. Fees for reissuing a lost or stolen card, or

      iv. Statement reproduction fees.

3. Review penetration rates of various optional services to determine if they are truly optional and therefore not covered by the 25 percent limitation.

4. Ensure that the card issuer does not impose a fee for violating the terms or other requirements of a credit card account, regardless of where the fee is imposed, under an open-end (not home-secured) consumer credit plan unless the dollar amount of the fee is consistent with 12 CFR 1026.52(b)(1) and (b)(2) (12 CFR 1026.52(b)).

5. Determine that a card issuer imposes a fee for violating the terms or other requirements of a credit card account under an open-end (not home-secured) consumer credit plan only if the dollar amount of the fee is consistent with either 12 CFR 1026.52(b)(1)(i) or 12 CFR 1026.52(b)(1)(ii) (12 CFR 1026.52(b)(1)).

6. *Cost determination.* A card issuer may impose a fee for a particular violation (e.g., late payment) if the card issuer has determined that the fee represents a reasonable proportion of the total costs incurred by the issuer as a result of that type of violation. If a card issuer is relying on a cost determination instead of the safe harbors (see below), review (12 CFR 1026.52(b)(1)(i)):

   a. The number of violations of a particular type experienced by the card issuer during a prior period of reasonable length (e.g., a 12-month period).

   b. The costs incurred by the card issuer during that period as a result of those violations. Losses and associated costs (including the cost of holding reserves against potential losses and the cost of funding delinquent accounts) must be excluded from this analysis.

c. If used by the card issuer when making its determination:

i. The number of fees imposed by the card issuer *as a result* of the type of violation during the period that the issuer reasonably estimates it will be unable to collect.

ii. Reasonable estimates for an upcoming period of changes in the number of violations of the relevant type, the resulting costs, and the number of fees that the card issuer will be unable to collect.

d. If applicable, whether the items in 1–3 above have been reevaluated by the card issuer at least once during the prior 12 months. If as a result of the reevaluation the card issuer determines that a lower fee represents a reasonable proportion of the total costs incurred by the card issuer as a result of that type of violation, determine that the card issuer begins imposing the lower fee within 45 days after completing the reevaluation.

NOTE: If as a result of the reevaluation the card issuer determines that a higher fee represents a reasonable proportion of the total costs incurred by the card issuer as a result of that type of violation, the card issuer may begin imposing the higher fee after complying with the notice requirements in 12 CFR 1026.9 (12 CFR 1026.52(b)(1)(i)) .

7. *Safe harbors.* A card issuer may impose a fee for violating the terms or other requirements of the account if the dollar amount of the fee does not exceed, as applicable (12 CFR 1026.52(b)(1)(ii)(A)-(C)):

a. $28.00,

b. $39.00 if the card issuer previously imposed a fee pursuant to 12 CFR 1026.52(b)(1)(ii)(A) for a violation of the same type that occurred during the same billing cycle or one of the next six billing cycles, or

c. Three percent of the delinquent balance on a charge card account that requires payment of outstanding balances in full at the end of each billing cycle if the card issuer has not received the required payment for two or more consecutive billing cycles.

NOTE: The dollar amounts in the subparagraphs above may be adjusted annually by the CFPB to the extent that changes in the Consumer Price Index warrant an increase or decrease of a whole dollar. The amounts were increased to $28 and $39, respectively, effective January 1, 2019, as reflected here. Further adjustments may be made in subsequent years

8. Determine that the card issuer does not impose a fee for violating the terms or other requirements of a credit card account under an open-end (not home-secured) consumer credit plan that exceeds the dollar amount associated with the violation (12 CFR 1026.52(b)(2)(i)(A)).

9. Determine that a card issuer does not impose a fee for violating the terms or other requirements of a credit card account under an open end (not home-secured) consumer credit plan when there is no dollar amount associated with the violation. For purposes of 12 CFR 1026.52(b)(2)(i), there is no dollar amount associated with the following violations (12 CFR 1026.52(b)(2)(i)(B)):

    a. Transactions that the card issuer declines to authorize,

    b. Account inactivity, and

    c. The closure or termination of an account.

10. Determine that the card issuer does not impose more than one fee for violating the terms or other requirements of a credit card account under an open-end (not home-secured) consumer credit plan based on a single event or transaction (12 CFR 1026.52(b)(2)(ii)).

## Allocation of Payments – 12 CFR 1026.53

1. Determine whether, when a consumer makes a payment in excess of the required minimum periodic payment, the card issuer allocates the excess amount:

    a. First to the balance with the highest APR, and

    b. Any remaining portion to the other balances in descending order based on the applicable APR (12 CFR 1026.53(a)).

2. For balances on a credit card account subject to a deferred interest or similar program, determine whether the card issuer allocated any amount paid by the consumer in excess of the required minimum periodic payment:

    a. Consistent with the general requirement discussed in (a) above, except that, during the two billing cycles immediately preceding expiration of the deferred interest period, the excess amount must have been allocated first to the balance subject to the deferred interest or similar program and any remaining portion allocated to any other balances consistent with 12 CFR 1026.53(a) (12 CFR 1026.53(b)(1)(i)), or

    b. In the manner requested by the consumer (12 CFR 1026.53(b)(1)(ii)).

3. When a balance on a credit card account is secured, the card issuer may at its option allocate any amount paid by the consumer in excess of the required minimum periodic payment to that balance if requested by the consumer (12 CFR 1026.53(b)(2)).

## Loss of a Grace Period – 12 CFR 1026.54

1. Determine whether the card issuer imposed finance charges as a result of the loss of a grace period on a credit card account under an open-end (not home-secured) consumer credit plan based on:

a. Balances for days in billing cycles that precede the most recent billing cycle, a prohibited practice; or

b. Any portion of a balance subject to a grace period that was repaid prior to the expiration of the grace period (12 CFR 1026.54).

2. With respect to the prohibition above, issuers are not required to follow any specific methodology, but an issuer is in compliance if it applies the consumer's payment to the balance subject to the grace period and calculates interest charges on the amount of the balance that remains unpaid (Comment 54(a)(1)-5).

   Exceptions: This rule does not apply to adjustments to the finance charge as a result of:

   a. The resolution of a dispute under 12 CFR 1026.12, unauthorized use, or 12 CFR 1026.13, billing error; or

   b. The return of a payment.

## Limitations on Increasing Annual Percentage Rates, Fees, and Charges – 12 CFR 1026.55

1. With respect to a credit card account under an open-end (not home-secured) consumer credit plan, determine that the card issuer did not increase an APR or fee or charge required to be disclosed under 12 CFR 1026.6(b)(2)(ii) (fee for issuance or availability (e.g., an annual fee)), (b)(2)(iii) (fixed finance charge or minimum interest charge), or (b)(2)(xii) (fee for required insurance, debt cancellation, or debt suspension coverage), unless as permitted by one of the six exceptions:

   a. Temporary rate, fee, or charge exception;

   b. Variable rate exception;

   c. Advance notice exception;

   d. Delinquency exception;

   e. Workout and temporary hardship arrangement; and

   f. Servicemembers Civil Relief Act exception (12 CFR 1026.55(a)-(b)).

2. To assess whether the temporary rate, fee, or charge exception applies 12 CFR 1026.55(b)(1), determine whether:

   a. The card issuer increased the APR, fee, or charge upon the expiration of a specified period of six months or longer and

b. Prior to the commencement of that period, the card issuer disclosed in writing to the consumer, in a clear and conspicuous manner, the length of the period and the APR, fee, or charge that would apply after expiration of the period.

3. If the temporary rate exception applies, determine that the card issuer:

   a. Did not apply an APR, fee, or charge to transactions that occurred prior to the period that exceeds the APR, fee, or charge that applied to those transactions prior to the period;

   b. Provided the required notice, but did not apply an APR, fee, or charge (to transactions that occurred within 14 days after provision of the notice) that exceeds the APR, fee, or charge that applied to that category of transactions prior to provision of the notice; and

   c. Did not apply an annual percentage rate to transactions that occurred during the period that exceeds the increased APR, fee, or charge.

4. If the variable-rate exception applies 12 CFR 1026.55(b)(2), determine that the card issuer did not increase an APR unless:

   a. The increase in the APR is due to an increase in the index; and

   b. The annual percentage rate varies according to an index that is not under the card issuer's control and is available to the general public.

   NOTE: For purposes of qualifying under this exception, an index is considered under the card issuer's control if the card issuer applies a minimum rate or floor below which the rate cannot decrease. However, because there is no disadvantage to consumers, issuers are not prevented from setting a maximum rate or ceiling (Comment 1026.55(b)(2)-2(ii)).

5. If the advance notice exception applies 12 CFR 1026.55(b)(3), determine that the card issuer:

   a. Did not apply that increased APR, fee, or charge to transactions that occurred prior to provision of the notice;

   b. Did not apply the increased APR, fee, or charge to transactions that occurred prior to or within 14 days after provision of the notice; and

   c. Did not increase the APR, fee, or charge during the first year after the account is opened.

6. If the delinquency exception applies 12 CFR 1026.55(b)(4), determine that the card issuer:

   a. Disclosed in a clear and conspicuous manner in the required notice a statement of the reason for the increase, and

b. Will cease the increase if the card issuer receives six consecutive required minimum periodic payments on or before the payment due date, beginning with the first payment due following the effective date of the increase.

7. If the delinquency exception applies and the card issuer received six consecutive required minimum periodic payments on or before the payment due date beginning with the first payment due following the effective date of the increase, determine that the card issuer reduces any APR, fee, or charge (increased pursuant to the delinquency exception) to the original APR, fee, or charge that applied prior to the increase with respect to transactions that occurred prior to or within 14 days after provision of the required notice 12 CFR 1026.55(b)(4)(ii)).

8. If the workout and temporary hardship arrangement exception applies 12 CFR 1026.55(b)(5), determine that:

   a. Prior to commencement of the arrangement (except as provided in 12 CFR 1026.9(c)(2)(v)(D)) the card issuer provided the consumer with a clear and conspicuous written disclosure of the terms of the arrangement (including any increases due to the completion or failure of the arrangement); and

   b. Upon the completion or failure of the arrangement, the card issuer did not apply to any transactions that occurred prior to commencement of the arrangement an APR, fee, or charge that exceeds the APR, fee, or charge that applied to those transactions prior to commencement of the arrangement.

9. If the Servicemembers Civil Relief Act exception applies 12 CFR 1026.55(b)(6), determine that the card issuer increased the APR, fee, or charge only after 50 U.S.C. 3937, or a similar federal or state statute or regulation no longer applied. Further, determine that the issuer did not apply to any transactions that occurred prior to the decrease an APR, fee, or charge that exceeded the APR, fee, or charge that applied to those transactions prior to the decrease.

10. For protected balances 12 CFR 1026.55(c), determine that the card issuer did not require repayment using a method that is less beneficial to the consumer than one of the following methods:

    a. The method of repayment for the account before the effective date of the increase;

    b. An amortization period of not less than five years, beginning no earlier than the effective date of the increase; or

    c. A required minimum periodic payment that includes a percentage of the balance that is equal to no more than twice the percentage required before the effective date of the increase.

11. If a card issuer promotes the waiver or rebate of finance charges due to a periodic interest rate or fees or charges 12 CFR 1026.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii)) and applies the

waiver or rebate to a credit card account under an open-end (not home-secured) consumer credit plan, any cessation of the waiver or rebate on that account constitutes an increase in an annual percentage rate, fee, or charge for purposes of (12 CFR 1026.55).

## Requirements for Over-the-Limit Transactions – 12 CFR 1026.56

1. *Joint Relationships*. Determine that, if two or more consumers are jointly liable on a credit card account under an open-end (not home-secured) consumer credit plan, the card issuer treats the affirmative consent of any of the joint consumers as affirmative consent for that account. Similarly, determine that the card issuer treats a revocation of consent by any of the joint consumers as revocation of consent for that account (12 CFR 1026.56(f)).

2. Notwithstanding a consumer's affirmative consent to a card issuer's payment of over-the-limit transactions, determine that the card issuer does not (12 CFR 1026.56(j)):

    a. Impose more than one over-the-limit fee or charge on a consumer's credit card account per billing cycle, and, in any event, only if the credit limit was exceeded during the billing cycle. In addition, the card issuer may not impose an over-the-limit fee or charge on the consumer's credit card account for more than three billing cycles for the same over-the-limit transaction where the consumer has not reduced the account balance below the credit limit by the payment due date for either of the last two billing cycles.

    NOTE: There is an exception to the latter prohibition if another over-the-limit transaction occurred in the last two billing cycles.

    b. Impose an over-the-limit fee or charge solely because of the card issuer's failure to promptly replenish the consumer's available credit following the crediting of the consumer's payment following the crediting of the consumer's payment under (12 CFR 1026.10).

    c. Condition the amount of a consumer's credit limit on the consumer affirmatively consenting to the card issuer's payment of over-the-limit transactions if the card issuer assesses a fee or charge for such service.

    d. Impose an over-the-limit fee or charge for a billing cycle if a consumer exceeds a credit limit solely because of fees or interest charged by the card issuer (defined as charges imposed as part of the plan under 12 CFR 1026.6(b)(3) to the consumer's account during that billing cycle.

## Reevaluation of Rate Increases – 12 CFR 1026.59

1. If a card issuer increases an APR that applies to a credit card account under an open-end (not home-secured) consumer credit plan, based on the credit risk of the consumer, market conditions, or other factors, or increased such a rate on or after January 1, 2009, and 45 days'

advance notice of the rate increase is required pursuant to 12 CFR 1026.9(c)(2) or (g), determine that the card issuer (12 CFR 1026.59(a)(1)):

a. Evaluates the factors described in 12 CFR 1026.59(d); and

b. Based on its review of such factors, reduces the APR applicable to the consumer's account, as appropriate.

2. If a card issuer is required to reduce the rate applicable to an account pursuant to 12 CFR 1026.59(a)(1), determine that the card issuer reduces the rate not later than 45 days after completion of the evaluation described in 12 CFR 1026.59(a)(1) 12 CFR 1026.59(a)(2)(i)).

   NOTE: Any reduction in an APR required pursuant to 12 CFR 1026.59(a)(1) shall apply to (12 CFR 1026.59(a)(2)(ii)):

   a. Any outstanding balances to which the increased rate described in 12 CFR 1026.59(a)(1) has been applied; and

   b. New transactions that occur after the effective date of the rate reduction that would otherwise have been subject to the increased rate.

3. Determine that the card issuer has reasonable written policies and procedures in place to conduct the review described in 12 CFR 1026.59(a) (12 CFR 1026.59(b)).

4. Determine that a card issuer that is subject to 12 CFR 1026.59(a) conducts the review described in 12 CFR 1026.59(a)(1) not less frequently than once every six months after the rate increase 12 CFR 1026.59(c)).

5. Except as provided in 12 CFR 1026.59(d)(2), determine that the card issuer reviews either (12 CFR 1026.59(d)(1)):

   a. The factors on which the increase in an APR was originally based; or

   b. The factors that the card issuer currently considers when determining the APRs applicable to similar new credit card accounts under an open-end (not home-secured) consumer credit plan.

6. For rate increases imposed between January 1, 2009, and February 21, 2010, determine that an issuer considered the factors described in 12 CFR 1026.59(d)(1)(ii) when conducting the first two reviews required under 12 CFR 1026.59(a), unless the rate increase subject to 12 CFR 1026.59(a) was based solely upon factors specific to the consumer, such as a decline in the consumer's credit risk, the consumer's delinquency or default, or a violation of the terms of the account (12 CFR 1026.59(d)(2)).

7. If an issuer increases a rate applicable to a consumer's account pursuant to 12 CFR 1026.55(b)(4) based on the card issuer not receiving the consumer's required minimum periodic payment within 60 days after the due date, note that the issuer is not required to

perform the review described in 12 CFR 1026.59(a) prior to the sixth payment due date after the effective date of the increase. However, if the APR applicable to the consumer's account is not reduced pursuant to 12 CFR 1026.55(b)(4)(ii), determine that the card issuer performs the review described in 12 CFR 1026.59(a). Determine that the first such review occurs no later than six months after the sixth payment due following the effective date of the rate increase (12 CFR 1026.59(e)).

8. The obligation to review factors described in 12 CFR 1026.59(a) and (d) ceases to apply (12 CFR 1026.59(f)):

    a. If the issuer reduces the APR applicable to a credit card account under an open-end (not home-secured) consumer credit plan to the rate applicable immediately prior to the increase, or, if the rate applicable immediately prior to the increase was a variable rate, to a variable rate determined by the same formula (index and margin) that was used to calculate the rate applicable immediately prior to the increase; or

    b. If the issuer reduces the APR to a rate that is lower than the rate described in 12 CFR 1026.59(f)(1) of this section.

9. Except as provided in 12 CFR 1026.59(g)(2), 12 CFR 1026.59 applies to credit card accounts that have been acquired by the card issuer from another card issuer (12 CFR 1026.59(g)).

10. Determine that a card issuer that complies with this section by reviewing the factors described in 12 CFR 1026.59(d)(1)(i) reviews the factors considered by the card issuer from which it acquired the accounts in connection with the rate increase (12 CFR 1026.59(g)(1)).

11. If, not later than six months after the acquisition of such accounts, a card issuer reviews all of the credit card accounts it acquires in accordance with the factors that it currently considers in determining the rates applicable to its similar new credit card accounts (12 CFR 1026.59(g)(2)):

    a. Except as provided in 12 CFR 1026.59(g)(2)(iii), determine that the card issuer conducts reviews described in 12 CFR 1026.59(a) for rate increases that are imposed as a result of its review under this paragraph.

    b. Except as provided in 12 CFR 1026.59(g)(2)(iii), note that the card issuer is not required to conduct reviews in accordance with 12 CFR 1026.59(a) for any rate increases made prior to the card issuer's acquisition of such accounts.

    c. Note that if as a result of the card issuer's review, an account is subject to, or continues to be subject to, an increased rate as a penalty, or due to the consumer's delinquency or default, the requirements of 12 CFR 1026.59(a) apply.

*Servicemembers Civil Relief Act exception:* Note that the requirements of 12 CFR 1026.59 do not apply to increases in an APR that was previously decreased pursuant to the

Servicemembers Civil Relief Act (50 U.S.C. 3937,), provided that such a rate increase is made in accordance with 12 CFR 1026.55(b)(6) (12 CFR 1026.59(h)(1)).

*Charged off accounts exception:* Note that the requirements of 12 CFR 1026.59 do not apply to accounts that the card issuer has charged off in accordance with loan-loss provisions (12 CFR 1026.59(h)(2)).

NOTE: Appendix G to Part 1026 is amended by revising Forms G-10(B), G-10(C), G-10(E), G-17(B), G-17(C), G-18(B), G-18(D), G-18(F), G-18(G), G-20, G-21, G-22, G- 25(A), and G-25(B).

## Administrative Enforcement

1. If there is non-compliance involving understated finance charges or understated APRs subject to reimbursement under TILA Section 108:

    a. Determine the date of the preceding examination.

    b. If the non-compliance involves indirect (third-party paper) disclosure errors and affected consumers have not been reimbursed:

        i. Prepare comments, discussing the need for improved internal controls to be included in the report of examination.

        ii. Notify your supervisory office for follow up with the regulator that has primary responsibility for the original creditor.

    c. If the non-compliance involves direct credit:

        i. Make an initial determination whether the violation is a pattern or practice.

        ii. Calculate the reimbursement for the loans or accounts in an expanded sample of the identified population.

        iii. Estimate the total impact on the population based on the expanded sample.

        iv. Inform management that reimbursement may be necessary under TILA Section 108, and discuss all substantive facts including the sample loans and calculations.

        v. Inform management of the financial institution's options under Section 130 of TILA for avoiding civil liability and of its option under Section 108 (e)(6) of TILA for avoiding a regulatory agency's order to reimburse affected customers.

| HIGH-COST MORTGAGE (12 CFR 1026.32) WORKSHEET | |
|---|---|
| Borrower's Name: | Loan Number: |

| COVERAGE | | |
|---|---|---|
| | **Yes** | **No** |
| Is the transaction secured by the consumer's principal dwelling?<br>[12 CFR 1026.2(a)(19), 12 CFR 1026.32(a)(1)] | | |
| **If the answer is No, STOP HERE. The transaction is not a high-cost mortgage.** | | |
| Is the transaction: | | |
| 1. A reverse mortgage transaction [12 CFR 1026.32(a)(2)(i)]<br>2. A transaction to finance the initial construction of a dwelling [12 CFR 1026.32(a)(2)(ii)]<br>3. A transaction originated and financed by a Housing Finance Agency [12 CFR 1026.32(a)(2)(iii)]<br>4. A transaction originated under the USDA's rural development Section 502 direct loan program [12 CFR 1026.32(a)(2)(iv)] | | |
| **If the answer is Yes to Box 1, 2, 3 or 4, STOP HERE. If No, continue to Test 1, APR.** | | |

| TEST 1 – APR | | |
|---|---|---|
| **A. Determine the APR for testing high-cost mortgage coverage:**<br>1. For fixed-rate transactions, calculate the APR using the interest rate in effect on the date the interest rate for the transaction was set.<br>2. For transactions where the interest rate varies with an index, use the greater of the introductory interest rate (if any) or the fully-indexed rate (i.e., the interest rate that results from adding the maximum margin permitted at any time during the term of the transaction to the value of the index rate in effect on the date the interest rate for the transaction was set).<br>3. For transactions where the interest rate may or will vary other than in accordance with an index, such as in a step-rate loan, use the maximum rate that the applicant may pay during the term of the transaction.<br>[12 CFR 1026.32(a)(3)] | | |
| **B. Determine the Average Prime Offer Rate (APOR):**<br>Determine the APOR for a comparable transaction as of the last rate lock on the transaction. Determine the APOR for a HELOC by identifying the most closely comparable closed-end transaction. APOR tables are published at http://www.ffiec.gov/ratespread/aportables.htm.<br>[12 CFR 1026.32(a)(1)(i) and comments 32(a)(1)(i)-1 through -3] | | |
| **C. Add one of the following amounts to APOR (Box B), as applicable:**<br>1. 6.5 percentage points for most first-lien transactions;<br>2. 8.5 percentage points for first-lien transactions secured by personal property (e.g., manufactured housing titled as personal property, RVs, houseboats) where the loan amount is less than $50,000; or<br>3. 8.5 percentage points for subordinate-lien transactions<br>[12 CFR 1026.32(a)(1)(i)(A)-(C)] | | |
| | **Yes** | **No** |
| **D. Is Box A greater than Box C?** | | |
| **If Yes, the transaction is a high-cost mortgage. If No, continue to Test 2, Points and Fees.** | | |

**HIGH-COST MORTGAGE (12 CFR 1026.32) WORKSHEET**

**TEST 2 – POINTS AND FEES[74]**

**STEP 1: Identify all charges payable in connection with the transaction and known at or before consummation or account opening.**

**A. Items included in the finance charge (12 CFR 1026.4(a) and (b)), except for the following:**

- Interest, including per-diem interest, and time-price differential;
- All federal or state government-sponsored MIPs, e.g., up-front and annual FHA premiums, VA funding fees, and USDA guarantee fees;
- All monthly or annual PMI premiums;
- Up-front PMI premiums *if* the premiums are refundable on a prorated basis and the refund is automatically issued upon loan satisfaction. *However,* include any portion of the PMI premium that exceeds the up-front MIP for FHA loans;
- Bona fide third-party charges not retained by the creditor, loan originator, or an affiliate of either, unless specifically required to be included under Boxes A-H[75]; and
- Up to 1 or 2 bona fide discount points, if eligible.[76]

[12 CFR 1026.32(b)(1)(i) (closed-end); 12 CFR 1026.32(b)(2)(i) (open-end)]

| Finance Charge Items | Amount | Subtotals |
|---|---|---|
| Origination Charge/Points (unless excluded as bona fide) | | |
| Mortgage Broker Fee | | |
| Application Fee (if not charged to all applicants) | | |
| Loan Administration Fee | | |
| Rate-Lock Fee | | |

[74] Test 2, Step 1, Boxes A-F and I (i.e., calculating points and fees for closed-end transactions) and Test 2, Step 2, Box A (i.e., calculating total loan amount for closed-end transactions) are the same tests used for the points and fees calculation for qualified mortgages.

[75] Bona fide third-party charges not retained by creditor or loan originator, or an affiliate of either are excluded, unless these charges are included as PMI premiums, real estate-related fees, or credit-related insurance premiums. (12 CFR 1026.32(b)(1)(i)(D))

[76] Discount points are bona fide if two conditions are met: 1) They must buy down the interest rate from the pre-discount rate, and 2) they must do so by an amount consistent with industry norms. The number of bona fide discount points that may be excluded depends on the pre-discount rate on the loan. Up to two bona fide discount points may be excluded if the interest rate before payment of those discount points did not exceed APOR by more than one percentage point. Up to one bona fide discount point may be excluded if the interest rate before payment of the discount point did not exceed APOR by more than two percentage points. (12 CFR 1026.32(b)(1)(i)(E)-(F); 1026.32(b)(3).)

| | | |
|---|---|---|
| Commitment Fee | | |
| Underwriting Fee | | |
| Loan-Level Price Adjustments (LLPAs) (if paid upfront) | | |
| Non-Refundable Up-front PMI Premiums in Excess of Up-front MIP for FHA loans | | |
| Other Fees Included in the Finance Charge | | |
| **Subtotal** | | |
| **B. Loan originator compensation –** Include all compensation paid directly or indirectly by a consumer or creditor to a loan originator (12 CFR 1026.36(a)(1)) that can be attributed to the transaction at the time the rate is set, but exclude:<br>• payments by consumers to mortgage brokers that were counted under Box A;<br>• compensation paid by a creditor or mortgage broker to a loan originator employee; and<br>• compensation paid by a manufactured home retailer to its employee.<br>[12 CFR 1026.32(b)(1)(ii) (closed-end); 12 CFR 1026.32(b)(2)(ii) (open-end)] | | |
| **Subtotal** | | |
| **C. Certain non-finance charges under 12 CFR 1026.4(c)(7) –** Include fees only if the amount of the fee is unreasonable, or the creditor receives direct or indirect compensation from the charge, or the charge is paid to an affiliate of the creditor.<br>[12 CFR 1026.32(b)(1)(iii) (closed-end); 12 CFR 1026.32(b)(2)(iii) (open-end)] | | |
| Title Examination | | |
| Title Insurance | | |
| Property Survey | | |
| Document Preparation Charge | | |
| Notary and Credit Report | | |
| Appraisal | | |
| Fee for "Initial" Flood Hazard Determination | | |
| Pest Inspection | | |
| Any Other Fees Under 12 CFR 1026.4(c)(7) | | |
| **Subtotal** | | |

| | | |
|---|---|---|
| **D. Premiums or other charges for optional or required insurance payable at or before consummation or account opening**<br>[12 CFR 1026.32(b)(1)(iv) (closed-end); 12 CFR 1026.32(b)(2)(iv) (open-end)] | | |
| Credit life | | |
| Credit disability | | |
| Credit unemployment | | |
| Credit property | | |
| Any other life, accident, health, loss-of-income insurance (if creditor is a beneficiary) | | |
| Debt cancellation or suspension | | |
| **Subtotal** | | |
| **E. Maximum prepayment penalty**<br>[12 CFR 1026.32(b)(1)(v) (closed-end); 12 CFR 1026.32(b)(2)(v) (open-end)] | | |
| **Subtotal** | | |
| **F. For a refinance transaction with the current holder, its servicer, or an affiliate of either, prepayment penalty paid in connection with terminating prior transaction**<br>[12 CFR 1026.32(b)(1)(vi) (closed-end); 12 CFR 1026.32(b)(2)(vi) (open-end)] | | |
| **Subtotal** | | |
| **G. For open-end transactions, participation fees payable at or before account opening**<br>[12 CFR 1026.32(b)(2)(vii)] | | |
| **Subtotal** | | |
| **H. For open-end transactions, per-transaction fee charged for drawing on credit line (assume at least one)**<br>[12 CFR 1026.32(b)(2)(viii)] | | |
| **Subtotal** | | |
| **I. Total Points & Fees:** Add Subtotals for A-F (Closed-End) or A-H (Open-End) | | |

| TEST 2 – POINTS AND FEES (continued) | |
|---|---|
| **STEP 2: Determine the Total Loan Amount** (12 CFR 1026.32(b)(4)) | |
| **A. Closed-End Transaction**<br>1. Determine the Amount Financed (12 CFR 1026.18(b))<br>o The full amount of principal repayable under the terms of the note or other loan contract<br>o Minus: Prepaid finance charges (12 CFR 1026.2(a)(23))<br>o Equals: Amount Financed<br>2. Deduct from the Amount Financed costs that are included in points and fees under Step 1, Boxes C, D, or F<br>3. Total Loan Amount (1 minus 2) | |
| **B. Open-End Transaction**<br>1. Credit limit for the plan when the account is opened | |

| TEST 2 – POINTS AND FEES (continued) | | |
|---|---|---|
| **STEP 3: Perform High-Cost Fee Calculation** | | |
| Determine which points and fees threshold applies according to the note amount (threshold cut-offs are adjusted annually for inflation) (12 CFR 1026.32(a)(1)(ii)(A)-(B))<br>*(use the dollar amount corresponding to the year of origination or account opening)* | | |
| **Transactions for $20,000 or more (2014)** | | |
| **A. Calculate 5 percent of the total loan amount** (Step 2, Box A (closed-end) or Box B (open-end)) | | |
| **B. Total Points & Fees** (Step 1, Box I) | | |
| **C. Does Box B exceed Box A?** | **Yes** | **No** |
| | | |
| **Transactions for less than $20,000 (2014)** | | |
| **A. A. Calculate 8 percent of the total loan amount** (Step 2, Box A (closed-end) or Box B (open-end)) | | |
| **B. Annually adjusted dollar amount** (12 CFR 1026.32(a)(1)(ii)(B))<br>*2014: $1,000 (use the dollar amount corresponding to the year of origination or account opening)* | | |
| **C. Total Points & Fees** (Step 1, Box I) | | |
| **D. Does Box C exceed the lesser of Box A or Box B?** | **Yes** | **No** |
| | | |

| If Yes, the transaction is a high-cost mortgage. If No, continue to Test 3, Prepayment Penalty. | | |
|---|---|---|
| **TEST 3 – Prepayment Penalty** | | |
| **STEP 1: Determine whether the transaction has a prepayment penalty** (12 CFR 1026.32(b)(6)(i)-(ii)) | **Yes** | **No** |
| | | |
| **If No, STOP HERE, the transaction is not a high-cost mortgage. If Yes, continue to Step 2.** | | |
| **STEP 2: Determine the amount and duration of any prepayment penalty**[77] | | |
| **A. Can prepayment penalties be imposed for longer than 36 months after consummation or account opening?** | | |
| **B. Can prepayment penalties exceed two percent of the amount prepaid?** | | |
| **If Yes, the transaction is a high-cost mortgage and is in violation of the prohibition against prepayment penalties for high-cost mortgages (12 CFR 1026.32(d)(6)). If No, the transaction is not a high-cost mortgage.** | | |

[77] If the creditor used an accounting method whereby it kept unearned interest charged for any period between payoff and the end of the month, this would be a prepayment penalty under the rule. In this case, the maximum prepayment penalty would be the maximum amount of interest that could be charged for the "phantom" (post-payoff) accrual period. For this purpose, the examiner would need to assume that the consumer makes the final payoff on the day of the month that yields the longest period of post-payoff interest that could be charged under the terms of the credit contract and is charged interest for the entire month, and that amount would be the maximum unearned interest prepayment penalty.