

Regulation Z

Truth in Lending

Consumer Non-Real Estate Loans

Community Bankers for Compliance School
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Table of Contents

Section 1: Subpart C: Closed-End Credit Disclosures [12 C.F.R. §1026.17]	1
Introduction	1
Form of Disclosures: [12 C.F.R. §1026.17(a)]	1
Timing of Disclosures: [12 C.F.R. §1026.17(b)]	1
Basis of Disclosures/Use of Estimates: [12 C.F.R. §1026.17(c)].....	2
Estimates	6
Per Diem Interest [12 C.F.R. §1026.17(c)(2)(ii)].....	7
Other Variations [12 C.F.R. §1026.17(c)(3)]	7
Payment Schedule Issues: [12 C.F.R. §1026.17(c)(4)]	8
Demand Loans [12 C.F.R. §1026.17(c)(5)]	8
Multiple Creditors; Multiple Consumers [12 C.F.R. §1026.17(d)]	9
Subsequent Events: [12 C.F.R. §1026.17(e)]	9
Interim Student Loans: [12 C.F.R. §1026.17(i)].....	9
Section 2: Closed-End Disclosure Content [12 C.F.R. §1026.18]	10
Content of Disclosures: [12 C.F.R. §1026.18]	10
Must Be Outside the “Fed Box”	23
May Be Inside (or Out of) the “Fed Box”.....	23
Section 3: Itemization of Amount Financed [12 C.F.R. §1026.18(c)].....	25
Section 4: Other Closed-End Credit Issues	27
Subsequent Disclosure Requirements: [12 C.F.R. §1026.20]	27
Refinancing: [12 C.F.R. §1026.20(a)].....	27
Treatment of Credit Balances: [12 C.F.R. §1026.21].....	29
Section 5: Determination of Annual Percentage Rate: [12 C.F.R. § 1026.22]	30
Accuracy of Annual Percentage Rate.....	30
Section 6: Record Retention: [12 C.F.R. §1026.25] Subpart D Miscellaneous	32
Record Retention: [12 C.F.R. §1026.25]	32
Use of Annual Percentage Rate in Oral Disclosures: [12 C.F.R. §1026.26]	32
Section 7: Subpart F: Special Rules for Private Education Loans.....	33
1026.46(b)(5) Private Education Loan	33
12 C.F.R. §1026.46 Special Disclosure Requirements for Private Education Loans	34

Section 1: Subpart C: Closed-End Credit Disclosures

[12 C.F.R. §1026.17]

Introduction

The main disclosure statement required for closed-end credit is transaction specific, as opposed to the more general disclosures mandated for open-end credit (which can be preprinted). Closed-end credit disclosures present more opportunities for errors in individual computations and completion of individual terms.

Form of Disclosures: [12 C.F.R. §1026.17(a)]

Disclosures for closed-end credit must be made clearly and conspicuously in writing or electronically (if the customer consents), in a form the customer may keep. The disclosures must be segregated from everything else (generally, in the “Fed Box”), and must not contain any information not directly related to the required disclosures.

Some disclosures must be made inside the “Fed Box,” some may be made in or outside the “Fed Box,” and some must be outside the “Fed Box.” We have grouped the disclosures in the following section accordingly.

When the terms “**finance charge**” and “**annual percentage rate**” are disclosed with a corresponding amount or rate, they must be more conspicuous than any other required disclosures. Except for private education loans, the terms “finance charge” and “annual percentage rate” and the corresponding percentage rate must be more conspicuous than any other disclosure except the creditor’s identity.

Timing of Disclosures: [12 C.F.R. §1026.17(b)]

The timing by which disclosures must be provided varies according to the type of loan. For example, basic consumer loans, such as car loans, disclosures must be given to the consumer before consummation of the loan.

Private education loan transactions have special disclosure timing requirements as follows:

(a) Application or solicitation disclosures.

- (1) Provided on or with the application or solicitation.
- (2) In the case of a telephone application or solicitation, the disclosures may be provided orally or provided no later than three business days after the consumer made application.

(b) Approval disclosures. Provided before consummation on or with any notice of approval.

- (1) If notice of approval is mailed, the disclosures must be mailed with the notice.
- (2) If notice of approval is made via telephone, the disclosures must be mailed within three business days of the telephone approval.

(3) If notice of approval is made electronically, the disclosures may be provided in electronic form; otherwise they must be mailed within three business days of the electronic approval.

(4) If notice of approval is made in person, the disclosures must be provided to the consumer at that time.

(c) Final disclosures. Provided after the consumer accepts the loan.

Commentary [12 C.F.R. §1026.17(b)]

Consummation. As a general rule, disclosures must be made before “consummation” of the transaction. The disclosures need not be given by any particular time before consummation, except in certain mortgage transactions and variable-rate transactions secured by the consumer's principal dwelling with a term greater than one year under §1026.19, and in private education loan transactions disclosed in compliance with §§1026.46 and 1026.47. (See the commentary to §1026.2(a)(13) regarding the definition of consummation.)

Converting open-end to closed-end credit. [omitted]

Disclosures provided on credit contracts. [omitted]

Basis of Disclosures/Use of Estimates: [12 C.F.R. §1026.17(c)]

The disclosures must reflect the terms of the legal obligation between the parties.

If any information necessary for an accurate disclosure is unknown to the creditor, the creditor must make the disclosure based on the best information reasonably available at the time the disclosure is provided to the consumer, and must state clearly that the disclosure is an estimate.

For a transaction in which a portion of the interest is determined on a per-diem basis and collected at consummation, any disclosure affected by the per-diem interest shall be considered accurate if the disclosure is based on the information known to the creditor at the time that the disclosure documents are prepared for consummation of the transaction.

The creditor may disregard the effects of the following in making calculations and disclosures:

- That payments must be collected in whole cents;
- That dates of scheduled payments and advances may be changed because the scheduled date is not a business day;
- That months have different numbers of days; and
- The occurrence of leap year.

In making calculations and disclosures, the creditor may disregard any irregularity in the first period that falls within the limits described below and any payment schedule irregularity that results from the irregular first period:

- For transactions in which the term is less than 1 year, a first period not more than 6 days shorter or 13 days longer than a regular period;
- For transactions in which the term is at least 1 year and less than 10 years, a first period not more than 11 days shorter or 21 days longer than a regular period; and
- For transactions in which the term is at least 10 years, a first period shorter than or not more than 32 days longer than a regular period.

If an obligation is payable on demand, the creditor must make the disclosures based on an assumed maturity of one year. If an alternate maturity date is stated in the legal obligation between the parties, the disclosures must be based on that date.

Commentary [12 C.F.R. §1026.17(c)]

- ***Legal obligation.*** The disclosures shall reflect the credit terms to which the parties are legally bound as of the outset of the transaction. In the case of disclosures required under section 1026.20(c), the disclosures shall reflect the credit terms to which the parties are legally bound when the disclosures are provided. The legal obligation is determined by applicable state or other law. (Certain transactions are specifically addressed in this commentary. See, for example, the discussion of buy-down transactions elsewhere in the commentary to this section.)

The fact that a term or contract may later be deemed unenforceable by a court on the basis of equity or other grounds does not, by itself, mean that disclosures based on that term or contract did not reflect the legal obligation.

- ***Modification of obligation.*** The legal obligation normally is presumed to be contained in the note or contract that evidences the agreement. But this presumption is rebutted if another agreement between the parties legally modifies that note or contract. If the parties informally agree to a modification of the legal obligation, the modification should not be reflected in the disclosures unless it rises to the level of a change in the terms of the legal obligation. For example:
 - If the creditor offers a preferential rate, such as an employee preferred rate, the disclosures should reflect the terms of the legal obligation.
 - If the contract provides for a certain monthly payment schedule but payments are made on a voluntary payroll deduction plan or an informal principal-reduction agreement, the disclosures should reflect the schedule in the contract.
- If the contract provides for regular monthly payments but the creditor informally permits the consumer to defer payments from time to time, for instance, to take account of holiday seasons or seasonal employment, the disclosures should reflect the regular monthly payments.
- ***Third-party buy-downs. [omitted]***
- ***Consumer buy-downs. [omitted]***
- ***Split buy-downs. [omitted]***

- **Wrap-around financing. [omitted]**
- **Wrap-around financing with balloon payments. [omitted]**
- **Basis of disclosures in variable-rate transactions.** The disclosures for a variable-rate transaction must be given for the full term of the transaction and must be based on the terms in effect at the time of consummation. Creditors should base the disclosures only on the initial rate and should not assume that this rate will increase. For example, in a loan with an initial rate of 10 percent and a 5 percentage points rate cap, creditors should base the disclosures on the initial rate and should not assume that this rate will increase 5 percentage points. However, in a variable-rate transaction with a seller buy-down that is reflected in the credit contract, a consumer buy-down, or a discounted or premium rate, disclosures should not be based solely on the initial terms. In those transactions, the disclosed annual percentage rate should be a composite rate based on the rate in effect during the initial period and the rate that is the basis of the variable-rate feature for the remainder of the term.
- **Use of estimates in variable-rate transactions.** The variable-rate feature does not, by itself, make the disclosures estimates.
- **Discounted and premium variable-rate transactions.** In some variable-rate transactions, creditors may set an initial interest rate that is not determined by the index or formula used to make later interest rate adjustments. Typically, this initial rate charged to consumers is lower than the rate would be if it were calculated using the index or formula. However, in some cases the initial rate may be higher. In a discounted transaction, for example, a creditor may calculate interest rates according to a formula using the six-month Treasury bill rate plus a 2 percent margin. If the Treasury bill rate at consummation is 10 percent, the creditor may forgo the 2 percent spread and charge only 10 percent for a limited time, instead of setting an initial rate of 12 percent.

When creditors use an initial interest rate that is not calculated using the index or formula for later 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.

The effect of the multiple rates must also be reflected in the calculation and disclosure of the finance charge, total of payments, and payment schedule.

If a loan contains a rate or payment cap that would prevent the initial rate or payment, at the time of the first adjustment, from changing to the rate determined by the index or formula at consummation, the effect of that rate or payment cap should be reflected in the disclosures.

Because these transactions involve irregular payment amounts, an annual percentage rate tolerance of 1/4 of 1 percent applies.

- Examples of discounted variable-rate transactions include:

- A 30-year loan for \$100,000 with no prepaid finance charges and rates determined by the Treasury bill rate plus 2 percent. Rate and payment adjustments are made annually. Although the Treasury bill rate at the time of consummation is 10 percent, the creditor sets the interest rate for one year at 9 percent, instead of 12 percent according to the formula. The disclosures should reflect a composite annual percentage rate of 11.63 percent based on 9 percent for one year and 12 percent for 29 years. Reflecting those two rate levels, the payment schedule should show 12 payments of \$804.62 and 348 payments of \$1,025.31. The finance charge should be \$266,463.32 and the total of payments of \$366,463.32.
- Same loan as above, except with a 2 percent rate cap on periodic adjustments. The disclosure should reflect a composite annual percentage rate of 11.53 percent based on 9 percent for the first year, 11 percent for the second year, and 12 percent for the remaining 28 years. Reflecting those three rate levels, the payment schedule should show 12 payments of \$804.62, 12 payments of \$950.09, and 336 payments of \$1,024.34. The finance charge should be \$265,234.76 and the total of payments \$365,234.76.
- Same loan as above, except with a 7.5 percent cap on payment adjustments. The disclosures should reflect a composite annual percentage rate of 11.64 percent, based on 9 percent for one year and 12 percent for 29 years. Because of the payment cap, five levels of payments should be reflected. The payment schedule should show 12 payments of \$804.62, 12 payments of \$864.97, 12 payments of \$929.84, 12 payments of \$999.58, and 312 payments of \$1,070.04. The finance charge should be \$277,040.60, and the total of payments \$377,040.60.
- A loan in which the initial interest rate is set according to the index or formula used for later adjustments but is not set at the value of the index or formula at consummation is not a discounted variable-rate loan. For example, if a creditor commits to an initial rate based on the formula on a date prior to consummation, but the index has moved during the period between that time and consummation, a creditor should base its disclosures on the initial rate.
- Examples of variable-rate transaction. Variable-rate transactions include:
 - Renewable balloon-payment instruments where the creditor is both unconditionally obligated to renew the balloon-payment loan at the consumer's option (or is obligated to renew subject to conditions within the consumer's control) and has the option of increasing the interest rate at the time of renewal. Disclosures must be based on the payment amortization (unless the specified term of the obligation with renewals is shorter) and on the rate in effect at the time of consummation of the transaction. (Examples of conditions within a consumer's control include requirements that a consumer be current in payments or continue to reside in the mortgaged property. In contrast, setting a limit on the rate at which the creditor would be obligated to renew or reserving the right to change the credit standards at the time of renewal are examples of conditions outside a consumer's control.) If, however, a creditor is not obligated to renew as described above, disclosures must be based on the term of the balloon-payment loan. Disclosures also must be based on the term of the balloon-payment loan in balloon-payment instruments in which the legal obligation provides that the loan will be renewed by a "refinancing" of the obligation, as that term is defined in Section 20 of the regulation. If it cannot be determined from the legal obligation that the loan will be renewed by a "refinancing," disclosures must be based either on the

term of the balloon-payment loan or on the payment amortization, depending on whether the creditor is unconditionally obligated to renew the loan as described above.

- “Shared-equity” or “shared-appreciation” mortgages [omitted] Preferred-rate loans where the terms of the legal obligation provide that the initial underlying rate is fixed but will increase upon the occurrence of some event, such as an employee leaving the employ of the creditor, and the note reflects the preferred rate. The disclosures are to be based on the preferred rate.
- “Price level adjusted mortgages” [omitted] Graduated-payment mortgages [omitted]
- ***Morris Plan transactions. [omitted]***
- ***Number of transactions.*** Creditors have flexibility in handling credit extensions that may be viewed as multiple transactions. For example:
 - When a creditor finances the credit sale of a radio and a television on the same day, the creditor may disclose the sales as either one or two credit sale transactions.
 - When a creditor finances a loan along with a credit sale of health insurance, the creditor may disclose in one of several ways: a single credit sale transaction, a single loan transaction, or a loan and a credit sale transaction.
 - The separate financing of a down payment in a credit sale transaction may, but need not, be disclosed as two transactions (a credit sale and a separate transaction for the financing of the down payment).
- ***Special rules for tax refund anticipation loans. [omitted]***
- ***Pawn Transactions. [omitted]***

Estimates

Basis for estimates. Disclosures may be estimated when the exact information is unknown at the time disclosures are made. Information is unknown if it is not reasonably available to the creditor at the time the disclosures are made. The “reasonably available” standard requires that the creditor, acting in good faith, exercise due diligence in obtaining information. For example, the creditor must at a minimum utilize generally accepted calculation tools, but need not invest in the most sophisticated computer program to make a particular type of calculation. The creditor normally may rely on the representations of other parties in obtaining information. For example, the creditor might look to the consumer for the time of consummation, to insurance companies for the cost of insurance, or to realtors for taxes and escrow fees. The creditor may utilize estimates in making disclosures even though the creditor knows that more precise information will be available by the point of consummation. However, new disclosures may be required under other sections of the regulation.

Labeling estimates. Estimates must be designated as such in the segregated disclosures. Even though other disclosures are based on the same assumption on which a specific estimated disclosure was based, the creditor has some flexibility in labeling the estimates. Generally, only the particular disclosure for which the exact information is unknown is labeled as an estimate. However, when several disclosures are affected because of the unknown information, the creditor has the option of labeling either every affected disclosure or only the disclosure primarily affected. For example, when the finance charge is unknown because the date of consummation is unknown, the creditor must

label the finance charge as an estimate and may also label as estimates the total of payments and the payment schedule. When many disclosures are estimates, the creditor may use a general statement, such as “all numerical disclosures except the late payment disclosure are estimates,” as a method to label those disclosures as estimates.

Simple-interest transactions. If consumers do not make timely payments in a simple-interest transaction, some of the amounts calculated for Truth in Lending disclosures will differ from amounts that consumers will actually pay over the term of the transaction. Creditors may label disclosures as estimates in these transactions. For example, because the finance charge and total of payments may be larger than disclosed if consumers make late payments, creditors may label the finance charge and total of payments as estimates. On the other hand, creditors may choose not to label disclosures as estimates and may base all disclosures on the assumption that payments will be made on time, disregarding any possible inaccuracies resulting from consumers’ payment patterns.

Per Diem Interest [12 C.F.R. §1026.17(c)(2)(ii)]

This paragraph applies to any numerical amount (such as the finance charge, annual percentage rate, or payment amount) that is affected by the amount of the per-diem interest charge that will be collected at consummation. If the amount of per-diem interest used in preparing the disclosures for consummation is based on the information known to the creditor at the time the disclosure document is prepared, the disclosures are considered accurate under this rule, and affected disclosures are also considered accurate, even if the disclosures are not labeled as estimates. For example, if the amount of per-diem interest used to prepare disclosures is less than the amount of per-diem interest charged at consummation, and as a result the finance charge is understated by \$200, the disclosed finance charge is considered accurate even though the understatement is not within the \$100 tolerance required by section 1026.18(d)(1), and the finance charge was not labeled as an estimate. In this example, if in addition to the understatement related to the per-diem interest, a \$90 fee is incorrectly omitted from the finance charge, causing it to be understated by a total of \$290, the finance charge is considered accurate because the \$90 fee is within the \$100 tolerance.

Other Variations [12 C.F.R. §1026.17(c)(3)]

Minor variations. Section 1026.17(c)(3) allows creditors to disregard certain factors in calculating and making disclosures. For example:

- Creditors may ignore the effects of collecting payments in whole cents. Because payments cannot be collected in fractional cents, it is often difficult to amortize exactly an obligation with equal payments; the amount of the last payment may require adjustment to account for the rounding of the other payments to whole cents.
- Creditors may base their disclosures on calculation tools that assume that all months have an equal number of days, even if their practice is to take account of the variations in months for purposes of collecting interest. For example, a creditor may use a calculation tool based on a 360-day year, when it in fact collects interest by applying a factor of 1/365 of the annual rate to 365 days. This rule does not, however, authorize creditors to ignore, for disclosure purposes, the effects of applying 1/360 of an annual rate to 365 days.

Use of special rules. A creditor may utilize the special rules in §1026.17(c)(3) for purposes of calculating and making all disclosures for a transaction or may, at its option, use the special rules for some disclosures and not others.

Payment Schedule Issues: [12 C.F.R. §1026.17(c)(4)]

Payment schedule irregularities. When one or more payments in a transaction differ from the others because of a long or short first period, the variations may be ignored in disclosing the payment schedule, finance charge, annual percentage rate, and other terms. For example:

- A 36-month auto loan might be consummated on June 8 with payments due on July 1 and the first of each succeeding month. The creditor may base its calculations on a payment schedule that assumes 36 equal intervals and 36 equal installment payments, even though a precise computation would produce slightly different amounts because of the shorter first period.
- By contrast, in the same example, if the first payment were not scheduled until August 1, the irregular first period would exceed the limits in §1026.17(c)(4); the creditor could not use the special rule and could not ignore the extra days in the first period in calculating its disclosures.

Measuring odd periods. In determining whether a transaction may take advantage of the rule in §1026.17(c)(4), the creditor must measure the variation against a regular period. For purposes of that rule:

- The first period is the period from the date on which the finance charge begins to be earned to the date of the first payment.
- The term is the period from the date on which the finance charge begins to be earned to the date of the final payment.
- The regular period is the most common interval between payments in the transaction.
- In transactions involving regular periods that are monthly, semimonthly or multiples of a month, the length of the irregular and regular periods may be calculated on the basis of either the actual number of days or an assumed 30-day month. In other transactions, the length of the periods is based on the actual number of days.

Use of special rules. A creditor may utilize the special rules in §1026.17(c)(4) for purposes of calculating and making some disclosures but may elect not to do so for all of the disclosures. For example, the variations may be ignored in calculating and disclosing the annual percentage rate but taken into account in calculating and disclosing the finance charge and payment schedule.

Relation to prepaid finance charges. Prepaid finance charges, including “odd-days” or “per-diem” interest, paid prior to or at closing may not be treated as the first payment on a loan. Thus, creditors may not disregard an irregularity in disclosing such finance charges.

Demand Loans [12 C.F.R. §1026.17(c)(5)]

Demand disclosures. Disclosures for demand obligations are based on an assumed one-year

term, unless an alternate maturity date is stated in the legal obligation. Whether an alternate maturity date is stated in the legal obligation is determined by applicable law. An alternate maturity date is not inferred from an informal principal reduction agreement or a similar understanding between the parties. However, when the note itself specifies a principal reduction schedule (for example, “payable on demand or \$2,000 plus interest quarterly”), an alternate maturity is stated and the disclosures must reflect that date.

Future event as maturity date. An obligation whose maturity date is determined solely by a future event, as for example, a loan payable only on the sale of property, is not a demand obligation. Because no demand feature is contained in the obligation, demand disclosures under §1026.18(i) are inapplicable. The disclosures should be based on the creditor’s estimate of the time at which the specified event will occur, and may indicate the basis for the creditor’s estimate, as noted in the commentary to §1026.17(a).

Demand after stated period. [omitted]

Balloon mortgages. [omitted]

Multiple Creditors; Multiple Consumers [12 C.F.R. §1026.17(d)]

If a transaction involves more than one creditor, only one set of disclosures must be given and the creditors shall agree among themselves which creditor must comply with the requirements that this regulation imposes on any or all of them.

If there is more than one consumer, the disclosures may be made to any consumer who is primarily liable on the obligation. If the transaction is rescindable, however, the disclosures must be made to each consumer who has the right to rescind.

Subsequent Events: [12 C.F.R. §1026.17(e)]

If an early disclosure becomes inaccurate because of an event that occurs after the creditor delivers the required disclosures, the inaccuracy is not a violation of this regulation. However, new disclosures may be required at consummation.

Interim Student Loans: [12 C.F.R. §1026.17(i)]

Omitted from this presentation.

Section 2: Closed-End Disclosure Content

[12 C.F.R. §1026.18]

Annual Percentage Rate <small>The cost of my credit as a yearly rate</small> (1) %	Finance Charge <small>The dollar amount the credit will cost me</small> (2) \$	Amount Financed <small>The amount of credit provided to me or on my behalf</small> (3) \$	Total of Payments <small>The amount I will have paid when I have made all scheduled payments.</small> (4) \$	Total Sale Price <small>The total price of your purchase on credit, including your down payment of \$_____</small> (5) \$
My Payment Schedule will be:				
Number of Payments	Amount of Payments	When Payments are Due		
(6)	\$ (7)	(8)		
(9)	\$ (10)	(11)		
(12)	\$ (13)	(14)		
Variable Rate. <input type="checkbox"/> (15) This note contains a variable rate feature. Disclosures about the variable rate feature have been provided to me earlier. <input type="checkbox"/> (16) The annual percentage rate may increase during the term of this transaction if <u> (17) </u> . The rate may not increase more often than once <u> (18) </u> and may not increase more than <u> (19) </u> % each <u> (20) </u> . Any increase will take the form of <u> (21) </u> . If the rate increases by <u> (22) </u> % in <u> (23) </u> , the <u> (24) </u> will increase to <u> (24) </u> . The rate will not go above <u> (25) </u> %.				
Demand. <input type="checkbox"/> (26) This note has a demand feature. <input type="checkbox"/> (27) This note is payable on demand and all disclosures are based on an assumed maturity of one year.				
Prepayment. <input type="checkbox"/> (28) If I pay off this note early, I <input type="checkbox"/> (29) may <input type="checkbox"/> (30) will not have to pay a penalty. <input type="checkbox"/> (31) If I pay off this note early, I <input type="checkbox"/> (32) may <input type="checkbox"/> (33) will not be entitled to a refund of part of the finance charge.				
Late Charge. If a payment is late more than <u> (34) </u> days after the due date, I will be charged <u> (35) </u> .				
Security. I am giving a security interest in: <input type="checkbox"/> (36) the goods or property being purchased. <input type="checkbox"/> (37) collateral securing other loans with you may also secure this loan. <input type="checkbox"/> (38) other collateral (brief description) <u> (39) </u> .				
Filing Fees. \$ (40)		Non-filing Insurance. \$ (41)		
Required Deposit. <input type="checkbox"/> (42) The annual percentage rate does not take into account my required deposit.				
Assumption. Someone buying the property securing this obligation <input type="checkbox"/> (43) may, subject to conditions, be allowed to <input type="checkbox"/> (44) cannot assume the remainder of the obligation on the original terms				
Contract Documents. (45) I can see my contract documents for any additional information about non-payment, default, and required repayment in full before the scheduled date, and prepayment refunds and penalties.				

“e” means an estimate.

Content of Disclosures: [12 C.F.R. §1026.18]

For each closed-end credit transaction, a creditor must disclose the following information, as applicable, prior to the consummation of the transaction. Any disclosure not relevant to a particular transaction may be eliminated entirely. In addition, the terms “**finance charge**” and “**annual percentage rate**” must be more conspicuous than any other information except a creditor’s identity.

For each transaction, the creditor must disclose a number of items, as applicable. We will discuss each of these disclosures, and locate the proper placement of the disclosure inside or outside the “Fed Box”.

<p>Annual Percentage Rate The cost of my credit as a yearly rate</p> <p>(1)</p> <p>%</p>	<p>Finance Charge The dollar amount the credit will cost me</p> <p>(2)</p> <p>\$</p>	<p>Amount Financed The amount of credit provided to me or on my behalf</p> <p>(3)</p> <p>\$</p>	<p>Total of Payments The amount I will have paid when I have made all scheduled payments.</p> <p>(4)</p> <p>\$</p>	<p>Total Sale Price The total price of your purchase on credit, including your down payment of \$_____</p> <p>(5)</p> <p>\$</p>
-----------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------

[1] Annual Percentage Rate: [12 C.F.R. §1026.18(e)]

This disclosure must be inside the Fed Box.

The “annual percentage rate,” using that term, and a brief description such as “the cost of your credit as a yearly rate” must be shown.

For any transaction involving a finance charge of \$5 or less on an amount financed of \$75 or less, or a finance charge of \$7.50 or less on an amount financed of more than \$75, the creditor need not disclose the annual percentage rate.

Commentary [12 C.F.R. §1026.18(e)]

Disclosure required. The creditor must disclose the cost of the credit as an annual rate, using the term “annual percentage rate,” plus a brief descriptive phrase comparable to that used in the regulation. For variable rate transactions, the descriptor may be further modified with a phrase such as “which is subject to change.” Under the regulation, the terms “annual percentage rate” and “finance charge” must be more conspicuous than the other required disclosures.

[2] Finance Charge: [12 C.F.R. §1026.18(d)]

This disclosure must be inside the Fed Box.

The “finance charge,” using that term, and a brief description such as “the dollar amount the credit will cost you” must be shown.

Commentary [12 C.F.R. §1026.18(d)]

Disclosure required. The creditor must disclose the finance charge as a dollar amount, using the term “finance charge,” and must include a brief description similar to that in §1026.18(d). The creditor may, but need not, further modify the descriptor for variable rate transactions, with a phrase such as “which is subject to change.” The finance charge must be shown on the disclosures only as a total amount; the elements of the finance charge must not be itemized in the segregated disclosures, although the regulation does not prohibit their itemization elsewhere.

[3] Amount Financed: [12 C.F.R. §1026.18(b)]

This disclosure must be inside the Fed Box.

The “amount financed,” using that term, and a brief description such as “the amount of credit provided to you or on your behalf.” The amount financed is calculated by:

- Determining the principal loan amount or the cash price (subtracting any down payment);
- Adding any other amounts that are financed by the creditor and are not part of the finance charge; and
- Subtracting any prepaid finance charge.

Commentary [12 C.F.R. §1026.18(b)]

Paragraph [12 C.F.R. §1026.18(b)(1)]

Down payments. [omitted]

Paragraph [12 C.F.R. §1026.18(b)(2)]

Adding other amounts. Fees or other charges that are not part of the finance charge and that are financed rather than paid separately at consummation of the transaction are included in the amount financed. Typical examples are real estate settlement charges and premiums for voluntary credit life and disability insurance generally excluded from the finance charge. This paragraph does not include any amounts already accounted for such as taxes, tag and title fees, or the costs of accessories or service policies that may be included in the cash price.

Paragraph [12 C.F.R. §1026.18(b)(3)]

Prepaid finance charges. Prepaid finance charges that are paid separately in cash or by check should be deducted in calculating the amount financed. [Commentary illustrations omitted]

Add-on or discount charges. [omitted]

[4] Total of Payments: [12 C.F.R. §1026.18(h)]

This disclosure must be inside the Fed Box.

The “total of payments,” using that term, and a descriptive explanation such as “the amount you will have paid when you have made all scheduled payments” must be included.

In any transaction involving a single payment or a demand loan with no alternate maturity date, the creditor need not disclose the total of payments.

Commentary [12 C.F.R. §1026.18(h)]

Disclosure required. The total of payments must be disclosed using that term, along with a descriptive phrase similar to the one in the regulation. The descriptive explanation may be revised to reflect a variable rate feature with a brief phrase such as “based on the current annual percentage rate which may change.”

Calculation of total of payments. The total of payments is the sum of the payments disclosed under the payment schedule discussed above.

Exception. [omitted]

Demand obligations. In demand obligations with no alternate maturity date, the creditor may omit disclosure of payment amounts. In those transactions, the creditor need not disclose the total of payments.

[5] Total Sale Price: [12 C.F.R. §1026.18(j)]

This disclosure must be inside the Fed Box.

In a credit sale, the “total sale price,” using that term, and a descriptive explanation (including the amount of any down payment) such as “the total price of your purchase on credit, including your down payment of \$_____” must be included. The total sale price is the sum of the cash price, any amounts that are financed and are not part of the finance charge, and the finance charge.

Commentary [12 C.F.R. §1026.18(j)]

Disclosure required. In a credit sale transaction, the “total sale price” must be disclosed using that term, along with a descriptive explanation similar to the one in the regulation. For variable rate transactions, the descriptive phrase may, at the creditor’s option, be modified to reflect the variable rate feature. For example, the descriptor may read: “The total cost of your purchase on credit, which is subject to change, including your down payment of ***.” The reference to a down payment may be eliminated in transactions calling for no down payment.

Calculation of total sale price. The figure to be disclosed is the sum of the cash price, other charges added, and the finance charge disclosed.

Effect of existing liens. [omitted]

My Payment Schedule will be:		
Number of Payments	Amount of Payments	When Payments are Due
(6)	\$ (7)	(8)
(9)	\$ (10)	(11)
(12)	\$ (13)	(14)

[6-14] Payment Schedule: [12 C.F.R. §1026.18(g)]

This disclosure must be inside the Fed Box.

The number, amounts, and timing of payments scheduled to repay the obligation must be shown. The payment schedule must reflect all components of the finance charge, not just interest.

- **Demand Note.** In a demand obligation with no alternate maturity date, the creditor may comply by disclosing the due dates or payment periods of any scheduled interest payments for the first year.
- **Series of Payments.** In a transaction in which a series of payments varies because a finance charge is applied to the unpaid principal balance, the creditor may comply by disclosing the following information:
 - The dollar amounts of the largest and smallest payments in the series;
 - A reference to the variations in the other payments in the series.

Commentary [12 C.F.R. §1026.18(g)]

Amounts included in repayment schedule. The repayment schedule should reflect all components of the finance charge, not merely the portion attributable to interest. A prepaid finance charge, however, should not be shown in the repayment schedule as a separate payment. The payments may include amounts beyond the amount financed and finance charge. For example, the disclosed payments may, at the creditor's option, reflect certain insurance premiums where the premiums are not part of either the amount financed or the finance charge, as well as real estate escrow amounts such as taxes added to the payment in mortgage transactions.

Deferred downpayments. [omitted]

Total number of payments. In disclosing the number of payments for transactions with more than one payment level, creditors may but need not disclose as a single figure the total number of payments for all levels. For example, in a transaction calling for 108 payments of \$350, 240 payments of \$335, and 12 payments of \$330, the creditor need not state that there will be a total of 360 payments.

Timing of payments. This section requires creditors to disclose the timing of payments. To meet this requirement, creditors may list all of the payment due dates. They also have the option of specifying the "period of payments" scheduled to repay the obligation. As a general rule, creditors that choose this option must disclose the payment intervals or frequency, such as "monthly" or "bi-weekly," and the calendar date that the beginning payment is due. For example, a creditor may disclose that payments are due "monthly beginning on July 1, 1998." This information, when combined with the number of payments, is necessary to define the repayment period and enable a consumer to determine all of the payment due dates.

Exception. [omitted]

Mortgage insurance. [omitted]

Demand obligations. In demand obligations with no alternate maturity date, the creditor has the option of disclosing only the due dates or periods of scheduled interest payments in the first year (for example, “interest payable quarterly” or “interest due the first of each month”). The amounts of the interest payments need not be shown.

Abbreviated disclosure. [omitted]

Combined payment schedule disclosures. [omitted]

Effect on other disclosures. This section applies only to the payment schedule disclosure. The actual amounts of payments must be taken into account in calculating and disclosing the finance charge and the annual percentage rate.

Variable Rate.

(15) This note contains a variable rate feature. Disclosures about the variable rate feature have been provided to me earlier.

(16) The annual percentage rate may increase during the term of this transaction if (17) . The rate may not increase more often than once (18) and may not increase more than (19) % each (20) . Any increase will take the form of (21) . If the rate increases by (22) % in (23) , the (24) will increase to (24) . The rate will not go above (25) %.

[15 – 25] Variable Rate: [12 C.F.R. §1026.18(f)]

This disclosure must be inside the Fed Box.

If the annual percentage rate may increase after consummation in a transaction not secured by the consumer’s principal dwelling or in a transaction secured by the consumer’s principal dwelling with a term of one year or less, the following disclosures:

- The circumstances under which the rate may increase;
- Any limitations on the increase;
- The effect of an increase;
- An example of the payment terms that would result from an increase (may be outside the “Fed Box”). [this method uses boxes 16-25]

If the annual percentage rate may increase after consummation in a transaction secured by the consumer’s principal dwelling with a term greater than one year, the following disclosures:

- The fact that the transaction contains a variable rate feature;
- A statement that variable rate disclosures have been provided earlier. [This method uses box 15 only.]

Commentary [12 C.F.R. §1026.18(f)]

Coverage. The requirements of this section apply to all transactions in which the terms of the legal obligation allow the creditor to increase the rate originally disclosed to the consumer. It includes not only increases in the interest rate but also increases in other components, such

as the rate of required credit life insurance. The provisions, however, do not apply to increases resulting from delinquency (including late payment), default, assumption, acceleration or transfer of the collateral.

Section 1026.18(f)(1) applies to variable-rate transactions that are not secured by the consumer's principal dwelling and to those that are secured by the principal dwelling but have a term of one year or less.

Section 1026.18(f)(2) applies to variable-rate transactions that are secured by the consumer's principal dwelling and have a term greater than one year.

Not Principal Dwelling/Loan Less than One Year – [12 C.F.R. §1026.18(f)(1)]

This section only is used in situations when the variable-rate transaction is not secured by the consumer's principal dwelling and to those that are secured by the principal dwelling but have a term of one year or less.

Terms used in disclosure. In describing the variable rate feature, the creditor need not use any prescribed terminology. For example, limitations and hypothetical examples may be described in terms of interest rates rather than annual percentage rates.

Conversion feature. [omitted]

Required Disclosures

Circumstances. The circumstances under which the rate may increase include identification of any index to which the rate is tied, as well as any conditions or events on which the increase is contingent.

- When no specific index is used, any identifiable factors used to determine whether to increase the rate must be disclosed.
- When the increase in the rate is purely discretionary, the fact that any increase is within the creditor's discretion must be disclosed.
- When the index is internally defined (for example, by that creditor's prime rate), the creditor may comply with this requirement by either a brief description of that index or a statement that any increase is in the discretion of the creditor. An externally defined index, however, must be identified.

Limitations. This includes any maximum imposed on the amount of an increase in the rate at any time, as well as any maximum on the total increase over the life of the transaction. When there are no limitations, the creditor may, but need not, disclose that fact. Limitations do not include legal limits in the nature of usury or rate ceilings under state or Federal statutes or regulations. (See §1026.30 for the rule requiring that a maximum interest rate be included in certain variable-rate transactions.)

Effects. Disclosure of the effect of an increase refers to an increase in the number or amount of payments or an increase in the final payment. In addition, the creditor may make a brief reference to negative amortization that may result from a rate increase. (See the commentary to §1026.17(a)(1) regarding directly related information.) If the effect cannot be determined, the creditor must provide a statement of the possible effects. For example, if the exercise of the variable-rate feature may result in either more or larger payments, both possibilities must be noted.

Hypothetical example. The example may, at the creditor's option, appear apart from the other disclosures. The creditor may provide either a standard example that illustrates the terms and conditions of that type of credit offered by that creditor or an example that directly reflects the terms and conditions of the particular transaction. In transactions with more than one variable-rate feature, only one hypothetical example need be provided. (See the commentary to section 1026.17(a)(1) regarding disclosure of more than one hypothetical example as directly related information.)

Hypothetical example not required. The creditor need not provide a hypothetical example in the following transactions with a variable-rate feature:

- Demand obligations with no alternate maturity date.
- Multiple-advance construction loans.

<p>Demand. <input type="checkbox"/> (26) This note has a demand feature. <input type="checkbox"/> (27) This note is payable on demand and all disclosures are based on an assumed maturity of one year.</p>
<p>Prepayment. <input type="checkbox"/> (28) If I pay off this note early, I <input type="checkbox"/> (29) may <input type="checkbox"/> (30) will not have to pay a penalty. <input type="checkbox"/> (31) If I pay off this note early, I <input type="checkbox"/> (32) may <input type="checkbox"/> (33) will not be entitled to a refund of part of the finance charge.</p>
<p>Late Charge. If a payment is late more than <u> (34) </u> days after the due date, I will be charged <u> (35) </u>.</p>

[26-27] Demand Feature: [12 C.F.R. §1026.18(i)]

This disclosure must be inside the Fed Box.

If the obligation has a demand feature, that fact shall be disclosed. When the disclosures are based on an assumed maturity of one year, that fact must also be disclosed.

Commentary [12 C.F.R. §1026.18(i)]

Disclosure requirements. The disclosure requirements of this provision apply not only to transactions payable on demand from the outset, but also to transactions that are not payable on demand at the time of consummation but convert to a demand status after a stated period. In demand obligations in which the disclosures are based on an assumed maturity of one year, that fact must also be stated.

Covered demand features. The type of demand feature triggering the disclosures required includes only those demand features contemplated by the parties as part of the legal obligation. For example, this provision does not apply to transactions that convert to a demand status as a result of the consumer's default. A due-on-sale clause is not considered a demand feature. A creditor may, but need not, treat its contractual right to demand payment of a loan made to its executive officers as a demand feature to the extent that the contractual right is required by Regulation O (12 C.F.R. §1015.5) or other Federal law.

Relationship to payment schedule disclosures. In demand obligations with no alternate maturity date, the creditor need only disclose the due dates or payment periods of any scheduled interest payments for the first year. If the demand obligation states an alternate maturity, however, the disclosed payment schedule must reflect that stated term.

[28-33] Prepayment: [12 C.F.R. §1026.18(k)]

This disclosure must be inside the Fed Box.

When an obligation includes a finance charge computed from time to time by application of a rate to the unpaid principal balance, a statement indicating whether or not a penalty may be imposed if the obligation is prepaid in full is necessary.

When an obligation includes a finance charge other than the finance charge described in the prior paragraph, a statement indicating whether or not the consumer is entitled to a rebate of any finance charge if the obligation is prepaid in full is necessary.

Commentary [12 C.F.R. §1026.18(k)]

Disclosure required. The creditor must give a definitive statement of whether or not a penalty will be imposed or a rebate will be given.

The fact that no penalty will be imposed may not simply be inferred from the absence of a penalty disclosure; the creditor must indicate that prepayment will not result in a penalty.

If a penalty or refund is possible for one type of prepayment, even though not for all, a positive disclosure is required. This applies to any type of prepayment, whether voluntary or involuntary as in the case of prepayments resulting from acceleration.

Any difference in rebate or penalty policy, depending on whether prepayment is voluntary or not, must not be disclosed with the segregated disclosures.

Rebate-penalty disclosure. A single transaction may involve both a precomputed finance charge and a finance charge computed by application of a rate to the unpaid balance (for example, mortgages with mortgage guarantee insurance). In these cases, disclosures about both prepayment rebates and penalties are required.

Prepaid finance charge. The existence of a prepaid finance charge in a transaction does not, by itself, require a disclosure. A prepaid finance charge is not considered a penalty, nor does it require a disclosure. At its option, however, a creditor may consider a prepaid finance charge to be a prepayment penalty. If a disclosure is made with respect to a prepaid finance charge or other finance charge, the creditor may further identify that finance charge. For example, the disclosure may state that the borrower “will not be entitled to a refund of the prepaid finance charge” or some other term that describes the finance charge.

Penalties: [12 C.F.R. §1026.18(k)(1)]

This applies only to those transactions in which the interest calculation takes account of all scheduled reductions in principal, as well as transactions in which interest calculations are made daily. The term “penalty” as used here encompasses only those charges that are assessed strictly because of the prepayment in full of a simple-interest obligation, as an addition to all other amounts. Items which are penalties include, for example:

- Interest charges for any period after prepayment in full is made.
- A minimum finance charge in a simple-interest transaction.

Items which are not penalties include, for example:

- Loan guarantee fees.
- Interim interest on a student loan.

However, a minimum finance charge is a penalty in a simple-interest transaction.

Rebates: [12 C.F.R. §1026.18(k)(2)]

Rebate of finance charge. This applies to any finance charges that do not take account of each reduction in the principal balance of an obligation. This category includes, for example:

- Precomputed finance charges such as add-on charges.
- Charges that take account of some but not all reductions in principal, such as mortgage guarantee insurance assessed on the basis of an annual declining balance, when the principal is reduced on a monthly basis.

No description of the method of computing earned or unearned finance charges is required or permitted as part of the segregated disclosures under this section.

[34-35] Late Payment: [12 C.F.R. §1026.18(l)]

This disclosure must be inside the Fed Box.

Any dollar or percentage charge that may be imposed before maturity due to a late payment, other than a deferral or extension charge must be disclosed.

Commentary [12 C.F.R. §1026.18(l)]

Definition. This paragraph requires a disclosure only if charges are added to individual delinquent installments by a creditor who otherwise considers the transaction ongoing on its original terms. Late payment charges do not include:

- The right of acceleration.
- Fees imposed for actual collection costs, such as repossession charges or attorney's fees.
- Deferral and extension charges.
- The continued accrual of simple interest at the contract rate after the payment due date. However, an increase in the interest rate is a late payment charge to the extent of the increase.

Content of disclosure. Many state laws authorize the calculation of late charges on the basis of either a percentage or a specified dollar amount, and permit imposition of the lesser or greater of the two charges. The disclosure may reflect this alternative. For example, stating that the charge in the event of a late payment is 5 percent of the late amount, not to exceed \$5.00, is sufficient. Many creditors also permit a grace period during which no late charge will be assessed; this fact may be disclosed as directly related information.

Security. I am giving a security interest in:

- (36) the goods or property being purchased.
- (37) collateral securing other loans with you may also secure this loan.
- (38) other collateral (brief description) _____ (39)

[36-39] Security Interest: [12 C.F.R. §1026.18(m)]

This disclosure must be inside the Fed Box.

The fact that the creditor has or will acquire a security interest in the property purchased as part of the transaction, or in other property identified by item or type, must be included.

Commentary [12 C.F.R. §1026.18(m)]

Purchase money transactions. When the collateral is the item purchased as part of, or with the proceeds of, the credit transaction, the regulation requires only a general identification such as “the property purchased in this transaction.” However, the creditor may identify the property by item or type instead of identifying it more generally with a phrase such as “the property purchased in this transaction.” For example, a creditor may identify collateral as “a motor vehicle,” or as “the property purchased in this transaction.”

Any transaction in which the credit is being used to purchase the collateral is considered a purchase money transaction and the abbreviated identification may be used, whether the obligation is treated as a loan or a credit sale.

Non-purchase money transactions. In non-purchase money transactions, the property subject to the security interest must be identified by item or type. This disclosure is satisfied by a general disclosure of the category of property subject to the security interest, such as “motor vehicles,” “securities,” “certain household items,” or “household goods.” (Creditors should be aware, however, that the Federal credit practices rules, as well as some state laws, prohibit certain security interests in household goods.) At the creditor’s option, however, a more precise identification of the property or goods may be provided.

Mixed collateral. In some transactions in which the credit is used to purchase the collateral, the creditor may also take other property of the consumer as security. In those cases, a combined disclosure must be provided, consisting of an identification of the purchase money collateral consistent with paragraphs 1 and 2 above.

After-acquired property. An after-acquired property clause is not a security interest to be disclosed under this section.

Spreader clause. The fact that collateral for pre-existing credit with the institution is being used to secure the present obligation constitutes a security interest and must be disclosed. (Such security interests may be known as “spreader” or “dragnet” clauses, or as “cross-collateralization” clauses.) A specific identification of that collateral is unnecessary but a reminder of the interest arising from the prior indebtedness is required. The disclosure may be made by using language such as “collateral securing other loans with us may also secure this loan.” At the creditor’s option, a more specific description of the property involved may be given.

Terms used in disclosure. No specified terminology is required in disclosing a security interest. Although the disclosure may, at the creditor’s option, use the term “security interest,” the creditor may designate its interest by using, for example, “pledge,” “lien,” or “mortgage.”

Collateral from third-party. In certain transactions, the consumer’s obligation may be secured by collateral belonging to a third-party. For example, a loan to a student may be secured by an interest in the property of the student’s parents. In such cases, the security interest is taken in connection with the transaction and must be disclosed, even though the property encumbered is owned by someone other than the consumer.

Filing Fees. \$ (40)	Non-filing Insurance. \$ (41)
Required Deposit. <input type="checkbox"/> (42) The annual percentage rate does not take into account my required deposit.	
Assumption. Someone buying the property securing this obligation <input type="checkbox"/> (43) may, subject to conditions, be allowed to <input type="checkbox"/> (44) cannot assume the remainder of the obligation on the original terms	
Contract Documents. (45) I can see my contract documents for any additional information about non-payment, default, and required repayment in full before the scheduled date, and prepayment refunds and penalties.	
“e” means an estimate.	

[40-41] Certain Security Interest Charges: [12 C.F.R. §1026.18(o)]

This disclosure may be inside or outside of the Fed Box.

The disclosures required by section 1026.4(e) must be disclosed in order to exclude from the finance charge certain fees prescribed by law or certain premiums for insurance in lieu of perfecting a security interest.

Commentary [12 C.F.R. §1026.18(o)]

Format. No special format is required for these disclosures. Taxes and fees paid to government officials with respect to a security interest may be aggregated, or may be broken down by individual charge. For example, the disclosure could be labeled “filing fees and taxes” and all funds disbursed for such purposes may be aggregated in a single disclosure. This disclosure may appear, at the creditor’s option, apart from the other required disclosures. The inclusion of this information on a statement required under the Real Estate Settlement Procedures Act is sufficient disclosure for purposes of Truth in Lending.

[42] Required Deposit: [12 C.F.R. §1026.18(r)]

This disclosure must be inside the Fed Box.

If the creditor requires the consumer to maintain a deposit as a condition of the specific transaction, a statement that the annual percentage rate does not reflect the effect of the required deposit must be shown.

A required deposit need not include, for example, (1) an escrow account for items such as taxes, insurance, or repairs; (2) a deposit that earns not less than 5.0 percent per year; or (3) payments under a Morris Plan.

Commentary [12 C.F.R. §1026.18(r)]

Disclosure required. The creditor must inform the consumer of the existence of a required deposit. Use of the phrase “need not” permits creditors to include the disclosure even in cases where there is doubt as to whether the deposit constitutes a required deposit.

Pledged account mortgages. In these transactions, a consumer pledges as collateral funds that the consumer deposits in an account held by the creditor. The creditor withdraws sums from that account to supplement the consumer’s periodic payments. Creditors may treat these pledged accounts as required deposits or they may treat them as consumer buy-downs.

Escrow accounts. The escrow exception applies, for example, to accounts for such items as maintenance fees, repairs, or improvements, whether in a realty or a non-realty transaction.

Interest-bearing accounts. When a deposit earns at least five percent interest per year, no disclosure is required. This exception applies whether the deposit is held by the creditor or by a third-party.

Morris Plan transactions. A deposit under a Morris Plan, in which a deposit account is created for the sole purpose of accumulating payments and this is applied to satisfy entirely the consumer’s obligation in the transaction, is not a required deposit.

Examples of amounts excluded. The following are among the types of deposits that need not be treated as required deposits:

- Requirement that a borrower be a customer or a member even if that involves a fee or a minimum balance.
- Required property insurance escrow on a mobile home transaction.
- Refund of interest when the obligation is paid in full.
- Deposits that are immediately available to the consumer.
- Funds deposited with the creditor to be disbursed (for example, for construction) before the loan proceeds are advanced.
- Escrow of condominium fees.
- Escrow of loan proceeds to be released when the repairs are completed.

[43-44] Assumption Policy: [12 C.F.R. §1026.18(q)]

This disclosure must be inside the Fed Box, and is not applicable to a consumer non-real estate loan transaction.

In a residential mortgage transaction, a statement whether or not a subsequent purchaser of the dwelling from the consumer may be permitted to assume the remaining obligation on its original terms is required.

[45] Contract Reference: [12 C.F.R. §1028.18(p)]

This disclosure must be inside the Fed Box.

This is a statement that the consumer should refer to the appropriate contract document for information about non-payment, default, the right to accelerate the maturity of the obligation, and prepayment rebates and penalties. At the creditor's option, the statement may also include a reference to the contract for further information about security interests and, in a residential mortgage transaction, about the creditor's policy regarding assumption of the obligation.

Commentary [12 C.F.R. §1028.18(p)]

Creditors may substitute, for the phrase "appropriate contract document," a reference to specific transaction documents in which the additional information is found, such as "promissory note" or "retail installment sale contract." A creditor may, at its option, delete inapplicable items in the contract reference, as for example when the contract documents contain no information regarding the right of acceleration.

Must Be Outside the "Fed Box"

Itemization of Amount Financed: [12 C.F.R. §1026.18(c)]

A creditor is to provide a separate written itemization of the amount financed in connection with consumer credit. The creditor need not comply with the requirement if the creditor provides a statement that the consumer has the right to receive a written itemization.

May Be Inside (or Out of) the "Fed Box"

Creditor: [12 C.F.R. §1026.18(a)]

The identity of the creditor making the disclosures must be stated.

Commentary [12 C.F.R. §1026.18(a)]

The creditor making the disclosures must be identified. This disclosure may, at the creditor's option, appear apart from the other disclosures. Use of the creditor's name is sufficient, but the creditor may also include an address and/or telephone number. In transactions with multiple creditors, any one of them may make the disclosures; the one doing so must be identified.

Insurance and Debt Cancellation: [12 C.F.R. §1026.18(n)]

The items required by section 1026.4(d) must be disclosed to exclude certain insurance premiums and debt cancellation fees from the finance charge.

Commentary [12 C.F.R. §1026.18(n)]

Location. This disclosure may, at the creditor's option, appear apart from the other disclosures. It may appear with any other information, including the amount financed itemization, any information prescribed by state law, or other supplementary material. When this information is disclosed with the other segregated disclosures, however, no additional explanatory material may be included.

Debt cancellation. Creditors may use the model credit insurance disclosures only if the debt cancellation coverage constitutes insurance under state law. Otherwise, they may provide a parallel disclosure that refers to debt cancellation coverage.

Section 3: Itemization of Amount Financed

[12 C.F.R. §1026.18(c)]

The creditor shall disclose a separate written itemization of the amount financed, including:

- The amount of any proceeds distributed directly to the consumer.
- The amount credited to the consumer's account with the creditor.
- Any amounts paid to other persons by the creditor on the consumer's behalf. The creditor must identify those persons. The following payees may be described using generic or other general terms and need not be further identified: public officials or government agencies, credit reporting agencies, appraisers, and insurance companies.
- The prepaid finance charge.

The creditor need not comply with this section if the creditor provides a statement that the consumer has the right to receive a written itemization of the amount financed, together with a space for the consumer to indicate whether it is desired, and the consumer does not request it.

Commentary [12 C.F.R. §1026.18(c)]

- ***Disclosure required.*** The creditor has two alternatives in complying with this section:
 - The creditor may inform the consumer, on the segregated disclosures, that a written itemization of the amount financed will be provided on request, furnishing the itemization only if the customer in fact requests it.
 - The creditor may provide an itemization as a matter of course, without notifying the consumer of the right to receive it or waiting for a request.

Whether given as a matter of course or only on request, the itemization must be provided at the same time as the other disclosures required by this section, although separate from those disclosures.

- ***Additional information.*** This section establishes only a minimum standard for the material to be included in the itemization of the amount financed. Creditors have considerable flexibility in revising or supplementing the information listed below, although no changes are required. The creditor may, for example, do one or more of the following: [omitted]
- ***Amounts appropriate to more than one category.*** When an amount may appropriately be placed in any of several categories and the creditor does not wish to revise the categories, the creditor has considerable flexibility in determining where to show the amount. For example:
 - In a credit sale, the portion of the purchase price being financed by the creditor may be viewed as either an amount paid to the consumer or an amount paid on the consumer's account.
- ***RESPA transactions. [omitted]***

The disclosures required by Regulation Z may appear on the same page or on the same

document as the good faith estimate or the settlement statement, so long as the clear and conspicuous requirements are met. The following are the general categories required in the itemization:

- **Amounts paid to consumer.** This encompasses funds given to the consumer in the form of cash or a check, including joint proceeds checks, as well as funds placed in an asset account. It may include money in an interest-bearing account even if that amount is considered a required deposit. For example, in a transaction with total loan proceeds of \$500, the consumer receives a check for \$300 and \$200 is required by the creditor to be put into an interest-bearing account. Whether or not the \$200 is a required deposit, it is part of the amount financed. At the creditor's option, it may be broken out and labeled in the itemization of the amount financed.
- **Amounts credited to consumer's account.** The term "consumer's account" refers to an account in the nature of a debt with that creditor. It may include, for example, an unpaid balance on a prior loan, a credit sale balance or other amounts owing to that creditor. It does not include asset accounts of the consumer such as savings or checking accounts.
- **Amounts paid to others.** This includes, for example, tag and title fees; amounts paid to insurance companies for insurance premiums; security interest fees; and amounts paid to credit bureaus, appraisers or public officials. When several types of insurance premiums are financed, they may, at the creditor's option, be combined and listed in one sum, labeled "insurance" or similar term. This includes, but is not limited to, different types of insurance premiums paid to one company and different types of insurance premiums paid to different companies. Except for insurance companies and a few other categories, third-parties must be identified by name.
- **Charges added to amounts paid to others.** A sum is sometimes added to the amount of a fee charged to a consumer for a service provided by a third-party (such as for an extended warranty or a service contract) that is payable in the same amount in comparable cash and credit transactions. In the credit transaction, the amount is retained by the creditor. Given the flexibility permitted in meeting the requirements of the amount financed itemization, the creditor in such cases may reflect that the creditor has retained a portion of the amount paid to others. For example, the creditor could add to the category "amount paid to others" language such as "we may be retaining a portion of this amount."
- **Prepaid finance charge.** Prepaid finance charges that are deducted must be disclosed under this section. The prepaid finance charges must be shown as a total amount but may, at the creditor's option, also be further itemized and described. All amounts must be reflected in this total, even if portions of the prepaid finance charge are also reflected elsewhere. For example, if at consummation the creditor collects interim interest of \$30 and a credit report fee of \$10, a total prepaid finance charge of \$40 must be shown. At the creditor's option, the credit report fee paid to a third-party may also be shown elsewhere as an amount included in "Paid to Others." The creditor may also further describe the two components of the prepaid finance charge, although no itemization of this element is required.

Prepaid mortgage insurance premiums. [omitted]

Section 4: Other Closed-End Credit Issues

Subsequent Disclosure Requirements: [12 C.F.R. §1026.20]

There are several subsequent disclosures that must be made under specific conditions.

Refinancing: [12 C.F.R. §1026.20(a)]

When the creditor refinances an existing credit transaction that was subject to disclosures, new disclosures are required. A refinancing occurs when an existing obligation is satisfied and replaced by a new obligation undertaken by the same consumer. The new finance charge must include any unearned portion of the old finance charge that is not credited to the existing obligation. The following are not treated as a refinancing:

- A renewal of a single payment obligation with no change in original terms;
- A reduction in the annual percentage rate with a corresponding change in the payment schedule;
- An agreement involving a court proceeding;
- A change in payment schedule or collateral requirements as a result of delinquency, unless the rate is increased or the new amount financed exceeds the unpaid balance plus earned finance charge and premium for continuation of insurance;
- The renewal of optional insurance, if initial disclosures were provided.

Commentary [12 C.F.R. §1026.20(a)]

Definition. A refinancing is a new transaction requiring a complete new set of disclosures. Whether a refinancing has occurred is determined by reference to whether the original obligation has been satisfied or extinguished and replaced by a new obligation, based on the parties' contract and applicable law. The refinancing may involve the consolidation of several existing obligations, disbursement of new money to the consumer or on the consumer's behalf, or the rescheduling of payments under an existing obligation. In any form, the new obligation must completely replace the prior one.

Changes in the terms of an existing obligation, such as the deferral of individual installments, will not constitute a refinancing unless accomplished by the cancellation of that obligation and the substitution of a new obligation.

A substitution of agreements that meets the refinancing definition will require new disclosures, even if the substitution does not substantially alter the prior credit terms.

Exceptions. A transaction is subject to this section only if it meets the general definition of a refinancing. This section lists five events that are not treated as refinancings, even if they are accomplished by cancellation of the old obligation and substitution of a new one.

Variable rate. If a variable-rate feature was properly disclosed under the regulation, a rate change in accord with those disclosures is not a refinancing. For example, no new disclosures are required when the variable-rate feature is invoked on a renewable balloon-payment

mortgage that was previously disclosed as a variable-rate transaction.

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 creditor either:

- Increases the rate based on a variable-rate feature that was not previously disclosed; or
- Adds a variable-rate feature to the obligation. A creditor does not add a variable-rate feature by changing the index of a variable-rate transaction to a comparable index, whether the change replaces the existing index or substitutes an index for one that no longer exists.

Unearned finance charge. [omitted] (rule of 78s).

Coverage. This section applies only to refinancings undertaken by the original creditor or a holder or servicer of the original obligation. A “refinancing” by any other person is a new transaction under the regulation, not a refinancing under this section.

Exceptions

Renewal. This exception applies both to obligations with a single payment of principal and interest and to obligations with periodic payments of interest and a final payment of principal. In determining whether a new obligation replacing an old one is a renewal of the original terms or a refinancing, the creditor may consider it a renewal even if:

- Accrued unpaid interest is added to the principal balance.
- Changes are made in the terms of renewal resulting from the factors listed in §1026.17(c)(3).
- The principal at renewal is reduced by a curtailment of the obligation.

Annual percentage rate reduction. A reduction in the annual percentage rate with a corresponding change in the payment schedule is not a refinancing. If the annual percentage rate is subsequently increased (even though it remains below its original level) and the increase is effected in such a way that the old obligation is satisfied and replaced, new disclosures must then be made.

Corresponding change. A corresponding change in the payment schedule to implement a lower annual percentage rate would be a shortening of the maturity, or a reduction in the payment amount or the number of payments of an obligation. The exception does not apply if the maturity is lengthened, or if the payment amount or number of payments is increased beyond that remaining on the existing transaction.

Court agreements. This exception includes, for example, agreements such as reaffirmations of debts discharged in bankruptcy, settlement agreements, and post-judgment agreements.

Workout agreements. A workout agreement is not a refinancing unless the annual percentage rate is increased or additional credit is advanced beyond amounts already accrued plus insurance premiums.

Insurance renewal. The renewal of optional insurance added to an existing credit transaction is not a refinancing, assuming that appropriate Truth in Lending disclosures were provided for the initial purchase of the insurance.

Treatment of Credit Balances: [12 C.F.R. §1026.21]

If a credit balance exceeds \$1.00, then the bank must

- 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.

Section 5: Determination of Annual Percentage Rate: [12 C.F.R. § 1026.22]

Accuracy of Annual Percentage Rate

The annual percentage rate is the cost of credit expressed as a yearly rate. As a general rule, the creditor must calculate the annual percentage rate within 1/8 of 1.0 percent. In irregular transactions, the creditor must calculate the annual percentage rate within 1/4 of 1.0 percent.

An irregular transaction is one that includes one or more of the following features: multiple advances, irregular payment periods, or irregular payment amounts (other than an irregular first period or an irregular first or final payment).

An error in disclosure of the annual percentage rate or finance charge shall not, in itself, be considered a violation of this regulation if:

- The error resulted from a corresponding error in a calculation tool used in good faith by the creditor; and
- Upon discovery of the error the creditor promptly discontinues use of that calculation tool for disclosure purposes and notifies the Bureau in writing of the error in the calculation tool.

Commentary 12 C.F.R. §1026.22]

Calculation method. The regulation recognizes both the actuarial method and the United States Rule Method (U.S. Rule) as measures of an exact annual percentage rate. Both methods yield the same annual percentage rate when payment intervals are equal. They differ in their treatment of unpaid accrued interest.

Actuarial method. When no payment is made, or when the payment is insufficient to pay the accumulated finance charge, the actuarial method requires that the unpaid finance charge be added to the amount financed and thereby capitalized. Interest is computed on interest since in succeeding periods the interest rate is applied to the unpaid balance including the unpaid finance charge. Appendix J provides instructions and examples for calculating the annual percentage rate using the actuarial method.

U.S. Rule. The U.S. Rule produces no compounding of interest in that any unpaid accrued interest is accumulated separately and is not added to principal. In addition, under the U.S. Rule, no interest calculation is made until a payment is received.

Basis for calculations. When a transaction involves “step rates” or “split rates” – that is, different rates applied at different times or to different portions of the principal balance – a single composite annual percentage rate must be calculated and disclosed for the entire transaction. Assume, for example, a step-rate transaction in which a \$10,000 loan is repayable in 5 years at 10 percent interest for the first 2 years, 12 percent for years 3 and 4, and 14 percent for year 5. The monthly payments are \$210.71 during the first 2 years of the term, \$220.25 for years 3 and 4, and \$222.59 for year 5. The composite annual percentage rate, using a calculator with a “discounted cash flow analysis” or “internal rate of return” function, is 10.75 percent.

Good faith reliance on faulty calculation tools. Section 1026.22(a)(1) absolves a creditor of liability for an error in the annual percentage rate or finance charge that resulted from a corresponding error in a calculation tool used in good faith by the creditor. Whether or not the creditor's use of the tool was in good faith must be determined on a case-by-case basis, but the creditor must in any case have taken reasonable steps to verify the accuracy of the tool, including any instructions, before using it. Generally, the creditor is not liable only for errors directly attributable to the calculation tool itself, including software programs; it is not intended to absolve a creditor of liability for its own errors, or for errors arising from improper use of the tool, from incorrect data entry, or from misapplication of the law.

Regular and irregular transactions

Regular transactions. The annual percentage rate for a regular transaction is considered accurate if it varies in either direction by not more than 0.125 percent from the actual annual percentage rate. For example, when the exact annual percentage rate is determined to be 10.125 percent, a disclosed annual percentage rate from 10.00 percent to 10.25 percent, or the decimal equivalent, is deemed to comply with the regulation.

Irregular transactions. The annual percentage rate for an irregular transaction is considered accurate if it varies in either direction by not more than 0.25 percent from the actual annual percentage rate. This tolerance is intended for more complex transactions that do not call for a single advance and a regular series of equal payments at equal intervals. The 0.25 percent tolerance may be used, for example, in a construction loan where advances are made as construction progresses, or in a transaction where payments vary to reflect the consumer's seasonal income. It may also be used in transactions with graduated payment schedules where the contract commits the consumer to several series of payments in different amounts. It does not apply, however, to loans with variable rate features where the initial disclosures are based on a regular amortization schedule over the life of the loan, even though payments may later change because of the variable rate feature.

Computation Tools

Bureau tables. [omitted]

Other calculation tools. Creditors need not use the Bureau tables in calculating the annual percentage rates. Any computation tools may be used, so long as they produce annual percentage rates within the tolerances, of the precise actuarial or U.S. Rule annual percentage rate.

Single add-on rate transactions. [omitted]

Certain transactions involving ranges of balances. [omitted]

Section 6: Record Retention: [12 C.F.R. §1026.25]

Subpart D Miscellaneous

Record Retention: [12 C.F.R. §1026.25]

TIL documents must be retained for a period of two years following the required action or disclosure, unless extended by order from a regulatory agency or court. Typically, most banks keep them for the life of the loan.

Adequate evidence of compliance with the record retention requirements does not mean actual paper copies. Any method that reproduces records accurately may be used. Unless otherwise required, the creditor need retain only enough information to reconstruct the required disclosures or other records.

Use of Annual Percentage Rate in Oral Disclosures: [12 C.F.R. §1026.26]

Closed-End Credit

In an oral response to a consumer's inquiry about the cost of closed-end credit, only the annual percentage rate shall be stated, except that a simple annual rate or periodic rate also may be stated if it is applied to an unpaid balance. If the annual percentage rate cannot be determined in advance, the annual percentage rate for a sample transaction shall be stated, and other cost information for the consumer's specific transaction may be given.

Section 7: Subpart F: Special Rules for Private Education Loans

The private education loan rules are extraordinarily complicated, and we are presenting only the regulatory text in this manual. Those that are actively participating in these loans will need to complete some additional research to assure full compliance. The following is from the Regulation Z commentary:

Coverage. This subpart applies to all private education loans as defined in §1026.46(b)(5). Coverage under this subpart is optional for certain extensions of credit that do not meet the definition of “private education loan” because the credit is not extended, in whole or in part, for “postsecondary educational expenses” defined in §1026.46(b)(3). If a transaction is not covered and a creditor opts to comply with any section of this subpart, the creditor must comply with all applicable sections of this subpart. If a transaction is not covered and a creditor opts not to comply with this subpart, the creditor must comply with all applicable requirements under §§1026.17 and 1026.18. Compliance with this subpart is optional for an extension of credit for expenses incurred after graduation from a law, medical, dental, veterinary, or other graduate school and related to relocation, study for a bar or other examination, participation in an internship or residency program, or similar purposes. However, if any part of such loan is used for postsecondary educational expenses as defined in §1026.46(b)(3), then compliance with Subpart F is mandatory not optional.

1026.46(b)(5) Private Education Loan

Extended expressly for postsecondary educational expenses. A private education loan is one that is extended expressly for postsecondary educational expenses. The term includes loans extended for postsecondary educational expenses incurred while a student is enrolled in a covered educational institution as well as loans extended to consolidate a consumer’s pre-existing private education loans.

Multiple-purpose loans

Definition. A private education loan may include an extension of credit not excluded under §1026.46(b)(5) that the consumer may use for multiple purposes including, but not limited to, postsecondary educational expenses. If the consumer expressly indicates that the proceeds of the loan will be used to pay for postsecondary educational expenses by indicating the loan’s purpose on an application, the loan is a private education loan.

Coverage. A creditor generally will not know before an application is received whether the consumer intends to use the loan for postsecondary educational expenses. For this reason, the creditor need not provide the disclosures required by §1026.47(a) on or with the application or solicitation for a loan that may be used for multiple purposes. (See §1026.47(d)(1)(i).) However, if the consumer expressly indicates that the proceeds of the loan will be used to pay for postsecondary educational expenses, the creditor must comply with §§1026.47(b) and (c) and §1026.48. For purposes of the required disclosures, the creditor must calculate the disclosures based on the entire amount of the loan, even if only a part of the proceeds is intended for

postsecondary educational expenses. The creditor may rely solely on a check-box, or a purpose line, on a loan application to determine whether or not the applicant intends to use loan proceeds for postsecondary educational expenses.

The regulatory text for private education loans is as follows:

12 C.F.R. §1026.46 Special Disclosure Requirements for Private Education Loans

(a) **Coverage.** The requirements of this subpart apply to private education loans as defined in §1026.46(b)(5). A creditor may, at its option, comply with the requirements of this subpart for an extension of credit subject to §§1026.17 and 1026.18 that is extended to a consumer for expenses incurred after graduation from a law, medical, dental, veterinary, or other graduate school and related to relocation, study for a bar or other examination, participation in an internship or residency program, or similar purposes.

(1) Relation to other subparts in this part. Except as otherwise specifically provided, the requirements and limitations of this subpart are in addition to and not in lieu of those contained in other subparts of this Part.

(b) **Definitions.** For purposes of this subpart, the following definitions apply:

(1) Covered educational institution means:

(i) An educational institution that meets the definition of an institution of higher education, as defined in paragraph (b)(2) of this section, without regard to the institution's accreditation status; and

(ii) Includes an agent, officer, or employee of the institution of higher education. An agent means an institution-affiliated organization as defined by section 151 of the Higher Education Act of 1965 (20 U.S.C. 1019) or an officer or employee of an institution-affiliated organization.

(2) Institution of higher education has the same meaning as in sections 101 and 102 of the Higher Education Act of 1965 (20 U.S.C. 1001–1002) and the implementing regulations published by the U.S. Department of Education.

(3) Postsecondary educational expenses means any of the expenses that are listed as part of the cost of attendance, as defined under section 472 of the Higher Education Act of 1965 (20 U.S.C. 1087ll), of a student at a covered educational institution. These expenses include tuition and fees, books, supplies, miscellaneous personal expenses, room and board, and an allowance for any loan fee, origination fee, or insurance premium charged to a student or parent for a loan incurred to cover the cost of the student's attendance.

(4) Preferred lender arrangement has the same meaning as in section 151 of the Higher Education Act of 1965 (20 U.S.C. 1019).

(5) Private education loan means an extension of credit that:

- (i) Is not made, insured, or guaranteed under title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.);
- (ii) Is extended to a consumer expressly, in whole or in part, for postsecondary educational expenses, regardless of whether the loan is provided by the educational institution that the student attends;
- (iii) Does not include open-end credit any loan that is secured by real property or a dwelling; and
- (iv) Does not include an extension of credit in which the covered educational institution is the creditor if:
 - (A) The term of the extension of credit is 90 days or less; or
 - (B) 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.

(c) **Form of disclosures**

- (1) Clear and conspicuous. The disclosures required by this subpart shall be made clearly and conspicuously.
- (2) Transaction disclosures.
 - (i) The disclosures required under §§1026.47(b) and (c) shall be made in writing, in a form that the consumer may keep. The disclosures shall be grouped together, shall be segregated from everything else, and shall not contain any information not directly related to the disclosures required under §§1026.47(b) and (c), which include the disclosures required under §1026.18.
 - (ii) The disclosures may include an acknowledgement of receipt, the date of the transaction, and the consumer's name, address, and account number. The following disclosures may be made together with or separately from other required disclosures: the creditor's identity under §1026.18(a), insurance or debt cancellation under §1026.18(n), and certain security interest charges under §1026.18(o).
 - (iii) The term "finance charge" and corresponding amount, when required to be disclosed under §1026.18(d), and the interest rate required to be disclosed under §§1026.47(b)(1)(i) and (c)(1), shall be more conspicuous than any other disclosure, except the creditor's identity under §1028.18(a).
- (3) *Electronic disclosures.* The disclosures required under §§1026.47(b) and (c) 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 §1026.47(a) may be provided to the consumer in electronic form on or with an application or solicitation that is accessed by the consumer in electronic form without regard to the consumer consent or other provisions of the E-Sign Act. The form required to be received under §1026.48(e) may be accepted by the creditor in electronic form as provided for in that section.

(d) **Timing of disclosures**

(1) Application or solicitation disclosures.

- (i) The disclosures required by §1026.47(a) shall be provided on or with any application or solicitation. For purposes of this subpart, the term solicitation means an offer of credit that does not require the consumer to complete an application. A “firm offer of credit” as defined in section 603(l) of the Fair Credit Reporting Act (15 U.S.C. 1681a(l)) is a solicitation for purposes of this section.
- (ii) The creditor may, at its option, disclose orally the information in §1026.47(a) in a telephone application or solicitation. Alternatively, if the creditor does not disclose orally the information in §1026.47(a), the creditor must provide the disclosures or place them in the mail no later than three business days after the consumer has applied for the credit, except that, if the creditor either denies the consumer’s application or provides or places in the mail the disclosures in §1026.47(b) no later than three business days after the consumer requests the credit, the creditor need not also provide the §1026.47(a) disclosures.
- (iii) Notwithstanding paragraph (d)(1)(i), for a loan that the consumer may use for multiple purposes including, but not limited to, postsecondary educational expenses, the creditor need not provide the disclosures required by §1026.47(a).

(2) **Approval disclosures.** The creditor shall provide the disclosures required by §1026.47(b) before consummation on or with any notice of approval provided to the consumer. If the creditor mails notice of approval, the disclosures must be mailed with the notice. If the creditor communicates notice of approval by telephone, the creditor must mail the disclosures within three business days of providing the notice of approval. If the creditor communicates notice of approval electronically, the creditor may provide the disclosures in electronic form in accordance with §1026.46(d)(3); otherwise the creditor must mail the disclosures within three business days of communicating the notice of approval. If the creditor communicates approval in person, the creditor must provide the disclosures to the consumer at that time.

(3) **Final disclosures.** The disclosures required by §1026.47(c) shall be provided after the consumer accepts the loan in accordance with §1026.48(c)(1).

(4) **Receipt of mailed disclosures.** If the disclosures under paragraphs (d)(1), (d)(2) or (d)(3), are mailed to the consumer, the consumer is considered to have received them three business days after they are mailed.

(e) **Basis of disclosures and use of estimates**

(1) **Legal obligation.** Disclosures shall reflect the terms of the legal obligation between the parties.

(2) **Estimates.** If any information necessary for an accurate disclosure is unknown to the creditor, the creditor shall make the disclosure based on the best information reasonably available at the time the disclosure is provided, and shall state clearly that the disclosure is an estimate.

(f) **Multiple creditors; multiple consumers.** If a transaction involves more than one creditor, only one set of disclosures shall be given and the creditors shall agree among

themselves which creditor will comply with the requirements that this part imposes on any or all of them. If there is more than one consumer, the disclosures may be made to any consumer who is primarily liable on the obligation.

(g) ***Effect of subsequent events***

- (1) ***Approval disclosures.*** If a disclosure under §1026.47(b) becomes inaccurate because of an event that occurs after the creditor delivers the required disclosures, the inaccuracy is not a violation of Regulation Z (12 C.F.R. part 1026), although new disclosures may be required under §1026.48(c).
- (2) ***Final disclosures.*** If a disclosure under §1026.47(c) becomes inaccurate because of an event that occurs after the creditor delivers the required disclosures, the inaccuracy is not a violation of Regulation Z (12 C.F.R. part 1026).

12 C.F.R. §1026.47 Content of Disclosures

(a) ***Application or solicitation disclosures.*** A creditor shall provide the disclosures required under paragraph (a) of this section on or with a solicitation or an application for a private education loan.

(1) Interest Rates.

- (i) The interest rate or range of interest rates applicable to the loan and actually offered by the creditor at the time of application or solicitation. If the rate will depend, in part, on a later determination of the consumer's creditworthiness or other factors, a statement that the rate for which the consumer may qualify will depend on the consumer's creditworthiness and other factors, if applicable.
- (ii) Whether the interest rates applicable to the loan are fixed or variable.
- (iii) If the interest rate may increase after consummation of the transaction, any limitations on the interest rate adjustments, or lack thereof; a statement that the consumer's actual rate could be higher or lower than the rates disclosed under paragraph (a)(1)(i) of this section, if applicable; and, if the limitation is determined by applicable law, that fact.
- (iv) Whether the applicable interest rates typically will be higher if the loan is not co-signed or guaranteed.

(2) Fees and default or late payment costs.

- (i) An itemization of the fees or range of fees required to obtain the private education loan.
- (ii) Any fees, changes to the interest rate, and adjustments to principal based on the consumer's defaults or late payments.

(3) Repayment terms.

- (i) The term of the loan, which is the period during which regularly scheduled payments of principal and interest will be due.

- (ii) A description of any payment deferral options, or, if the consumer does not have the option to defer payments, that fact.
 - (iii) For each payment deferral option applicable while the student is enrolled at a covered educational institution:
 - (A) Whether interest will accrue during the deferral period; and
 - (B) If interest accrues, whether payment of interest may be deferred and added to the principal balance.
 - (iv) A statement that if the consumer files for bankruptcy, the consumer may still be required to pay back the loan.
- (4) Cost estimates. An example of the total cost of the loan calculated as the total of payments over the term of the loan:
- (i) Using the highest rate of interest disclosed under paragraph (a)(1) of this section and including all finance charges applicable to loans at that rate;
 - (ii) Using an amount financed of \$10,000, or \$5000 if the creditor only offers loans of this type for less than \$10,000; and
 - (iii) Calculated for each payment option.
- (5) Eligibility. Any age or school enrollment eligibility requirements relating to the consumer or co-signer.
- (6) Alternatives to private education loans.
- (i) A statement that the consumer may qualify for Federal student financial assistance through a program under title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.).
 - (ii) The interest rates available under each program under title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.) and whether the rates are fixed or variable.
 - (iii) A statement that the consumer may obtain additional information concerning Federal student financial assistance from the institution of higher education that the student attends, or at the Web site of the U.S. Department of Education, including an appropriate Web site address.
 - (iv) A statement that a covered educational institution may have school-specific education loan benefits and terms not detailed on the disclosure form.
- (7) Rights of the consumer. A statement that if the loan is approved, the terms of the loan will be available and will not change for 30 days except as a result of adjustments to the interest rate and other changes permitted by law.
- (8) Self-certification information. A statement that, before the loan may be consummated, the consumer must complete the self-certification form and that the form may be obtained from the institution of higher education that the student attends.

(b) **Approval disclosures.** On or with any notice of approval provided to the consumer, the creditor shall disclose the information required under §1026.18 and the following information:

(1) Interest rate.

- (i) The interest rate applicable to the loan.
- (ii) Whether the interest rate is fixed or variable.
- (iii) If the interest rate may increase after consummation of the transaction, any limitations on the rate adjustments, or lack thereof.

(2) Fees and default or late payment costs.

- (i) An itemization of the fees or range of fees required to obtain the private education loan.
- (ii) Any fees, changes to the interest rate, and adjustments to principal based on the consumer's defaults or late payments.

(3) Repayment terms.

- (i) The principal amount of the loan for which the consumer has been approved.
- (ii) The term of the loan, which is the period during which regularly scheduled payments of principal and interest will be due.
- (iii) 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.
- (iv) Any payments required while the student is enrolled at a covered educational institution, based on the deferral option chosen by the consumer.
- (v) The amount of any unpaid interest that will accrue while the student is enrolled at a covered educational institution, based on the deferral option chosen by the consumer.
- (vi) A statement that if the consumer files for bankruptcy, the consumer may still be required to pay back the loan.
- (vii) An estimate of the total amount of payments calculated based on:
 - (A) The interest rate applicable to the loan. Compliance with §1026.18(h) constitutes compliance with this requirement.
 - (B) The maximum possible rate of interest for the loan or, if a maximum rate cannot be determined, a rate of 25%.
 - (C) 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 under paragraph (b)(3)(vii)(B) of this section is an estimate and will be higher if the applicable interest rate increases.

- (viii) The maximum monthly payment based on the maximum rate of interest for the loan or, if a maximum rate cannot be determined, a rate of 25%. 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.
- (4) Alternatives to private education loans.
- (i) A statement that the consumer may qualify for Federal student financial assistance through a program under title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.).
 - (ii) The interest rates available under each program under title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.), and whether the rates are fixed or variable.
 - (iii) A statement that the consumer may obtain additional information concerning Federal student financial assistance from the institution of higher education that the student attends, or at the Web site of the U.S. Department of Education, including an appropriate Web site address.
- (5) Rights of the consumer.
- (i) A statement that the consumer may accept the terms of the loan until the acceptance period under §1026.48(c)(1) has expired. The statement must include 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. The disclosure must also specify the method or methods by which the consumer may communicate acceptance.
 - (ii) A statement that, except for changes to the interest rate and other changes permitted by law, the rates and terms of the loan may not be changed by the creditor during the period described in paragraph (b)(5)(i) of this section.
- (c) **Final disclosures.** After the consumer has accepted the loan in accordance with §1026.48(c)(1), the creditor shall disclose to the consumer the information required by §1026.18 and the following information:
- (1) Interest rate. Information required to be disclosed under §1026.47(b)(1).
 - (2) Fees and default or late payment costs. Information required to be disclosed under §1026.47(b)(2).
 - (3) Repayment terms. Information required to be disclosed under §1026.47(b)(3).
 - (4) Cancellation right. A statement that:
 - (i) the consumer has the right to cancel the loan, without penalty, at any time before the cancellation period under §1026.48(d) expires, and
 - (ii) loan proceeds will not be disbursed until after the cancellation period under §1026.48(d) expires. The statement must include the specific date on which the cancellation period expires and state that the consumer may cancel by that date. The statement must also specify the method or methods by which the consumer

may cancel. If the creditor permits cancellation by mail, the statement must specify that the consumer's mailed request will be deemed timely if placed in the mail not later than the cancellation date specified on the disclosure. The disclosures required by this paragraph (c)(4) must be made more conspicuous than any other disclosure required under this section, except for the finance charge, the interest rate, and the creditor's identity, which must be disclosed in accordance with the requirements of §1026.46(c)(2)(iii).

12 C.F.R. §1026.48 Limitations on Private Education Loans

(a) *Co-branding prohibited*

- (1) Except as provided in paragraph (b) of this section, a creditor, other than the covered educational institution itself, shall not use the name, emblem, mascot, or logo of a covered educational institution, or other words, pictures, or symbols identified with a covered educational institution, in the marketing of private education loans in a way that implies that the covered education institution endorses the creditor's loans.
- (2) A creditor's marketing of private education loans does not imply that the covered education institution endorses the creditor's loans if the marketing includes a clear and conspicuous disclosure that is equally prominent and closely proximate to the reference to the covered educational institution that the covered educational institution does not endorse the creditor's loans and that the creditor is not affiliated with the covered educational institution.

(b) ***Endorsed lender arrangements.*** If a creditor and a covered educational institution have entered into an arrangement where the covered educational institution agrees to endorse the creditor's private education loans, and such arrangement is not prohibited by other applicable law or regulation, paragraph (a)(1) of this section does not apply if the private education loan marketing includes a clear and conspicuous disclosure that is equally prominent and closely proximate to the reference to the covered educational institution that the creditor's loans are not offered or made by the covered educational institution, but are made by the creditor.

(c) *Consumer's right to accept.*

- (1) The consumer has the right to accept the terms of a private education loan at any time within 30 calendar days following the date on which the consumer receives the disclosures required under §1026.47(b).
- (2) Except for changes permitted under paragraphs (c)(3) and (c)(4), the rate and terms of the private education loan that are required to be disclosed under §§1026.47(b) and (c) may not be changed by the creditor prior to the earlier of:
 - (i) The date of disbursement of the loan; or
 - (ii) The expiration of the 30 calendar day period described in paragraph (c)(1) of this section if the consumer has not accepted the loan within that time.
- (3) Exceptions not requiring re-disclosure.
 - (i) Notwithstanding paragraph (c)(2) of this section, nothing in this section prevents the creditor from:

- (A) Withdrawing an offer before consummation of the transaction if the extension of credit would be prohibited by law or if the creditor has reason to believe that the consumer has committed fraud in connection with the loan application;
 - (B) Changing the interest rate based on adjustments to the index used for a loan;
 - (C) Changing the interest rate and terms if the change will unequivocally benefit the consumer; or
 - (D) Reducing the loan amount based upon a certification or other information received from the covered educational institution, or from the consumer, indicating that the student's cost of attendance has decreased or the consumer's other financial aid has increased. A creditor may make corresponding changes to the rate and other terms only to the extent that the consumer would have received the terms if the consumer had applied for the reduced loan amount.
- (ii) If the creditor changes the rate or terms of the loan under this paragraph (c)(3), the creditor need not provide the disclosures required under §1026.47(b) for the new loan terms, nor need the creditor provide an additional 30-day period to the consumer to accept the new terms of the loan under paragraph (c)(1) of this section.
- (4) Exceptions requiring re-disclosure.
- (i) Notwithstanding paragraphs (c)(2) or (c)(3) of this section, nothing in this section prevents the creditor, at its option, from changing the rate or terms of the loan to accommodate a specific request by the consumer. For example, if the consumer requests a different repayment option, the creditor may, but need not, offer to provide the requested repayment option and make any other changes to the rate and terms.
 - (ii) If the creditor changes the rate or terms of the loan under this paragraph (c)(4), the creditor shall provide the disclosures required under §1026.47(b) and shall provide the consumer the 30-day period to accept the loan under paragraph (c)(1) of this section. The creditor shall not make further changes to the rates and terms of the loan, except as specified in paragraphs (c)(3) and (4) of this section. Except as permitted under §1026.48(c)(3), unless the consumer accepts the loan offered by the creditor in response to the consumer's request, the creditor may not withdraw or change the rates or terms of the loan for which the consumer was approved prior to the consumer's request for a change in loan terms.
- (d) **Consumer's right to cancel.** The consumer may cancel a private education loan, without penalty, until midnight of the third business day following the date on which the consumer receives the disclosures required by §1026.47(c). No funds may be disbursed for a private education loan until the three-business day period has expired.
- (e) **Self-certification form.** For a private education loan intended to be used for the postsecondary educational expenses of a student while the student is attending an institution of higher education, the creditor shall obtain from the consumer or the institution of higher education the form developed by the Secretary of Education under section 155 of the Higher Education Act of 1965, signed by the consumer, in written or electronic form, before consummating the private education loan.

- (f) ***Provision of information by preferred lenders.*** A creditor that has a preferred lender arrangement with a covered educational institution shall provide to the covered educational institution the information required under §§1026.47(a)(1) through (5), for each type of private education loan that the lender plans to offer to consumers for students attending the covered educational institution for the period beginning July 1 of the current year and ending June 30 of the following year. The creditor shall provide the information annually by the later of the 1st day of April, or within 30 days after entering into, or learning the creditor is a party to, a preferred lender arrangement.