# Regulation Z
# and Mortgage Loans

## Community Bankers for Compliance School
## LENDING
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# Section 1: Subpart C: General Disclosure Requirements [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.

The regulatory text has been altered for clarity. The commentary to the regulatory text has been reformatted, is generally quoted with slight alterations for clarity, is in *italics,* and indented.

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

Except for the TRID disclosures, 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. There are other requirements for disclosures, however, these requirements are discussed in other manuals. 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 term "annual percentage rate" and the corresponding percentage rate must be less conspicuous than the term "finance charge."

**Commentary**

- ***Clear and conspicuous.*** *This standard requires that disclosures be in a reasonably understandable form. For example, while the regulation requires no mathematical progression or format, the disclosures must be presented in a way that does not obscure the relationship of the terms to each other. In addition, although no minimum type size is mandated (except for the interest rate and payment summary for mortgage transactions required by §1026.18(s)), the disclosures must be legible, whether typewritten, handwritten, or printed by computer.*

- ***Segregation of disclosures.*** *(Omitted)*

- ***Location.*** *(Omitted).*

- ***Content of segregated disclosures.*** *(Omitted)*

- ***Directly related.*** *(Omitted)*

- ***Multiple-purpose forms.*** *(Omitted)*
- ***Balloon payment financing with leasing characteristics.*** *(Omitted)*
- ***When disclosures must be more conspicuous.*** *(Omitted)*
- ***Making disclosures more conspicuous.*** *(Omitted)*

## *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. If the loan is a residential mortgage transaction, then disclosures must be provided at application or within three business days from the date of application. If a variable-rate feature exists, then the variable-rate disclosures must be given at application or before the consumer pays a non-refundable fee, whichever is earlier. There are exceptions for TRID disclosures as well.

**Commentary - Timing of Disclosures**

- ***Consummation.*** *(Omitted)*
- *Converting open-end to closed-end credit. Except for home equity plans subject to §1026.40 in which the agreement provides for a repayment phase, if an open-end credit account is converted to a closed-end transaction under a written agreement with the consumer, the creditor must provide a set of closed-end credit disclosures before consummation of the closed-end transaction. (See the commentary to §1026.19(b) for the timing rules for additional disclosures required upon the conversion to a variable-rate transaction secured by a consumer's principal dwelling with a term greater than one year.) If consummation of the closed-end transaction occurs at the same time as the consumer enters into the open-end agreement, the closed-end credit disclosures may be given at the time of conversion. If disclosures are delayed until conversion and the closed-end transaction has a variable-rate feature, disclosures should be based on the rate in effect at the time of conversion. (See the commentary to §1026.5 regarding conversion of closed-end to open-end credit.)*
- ***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.

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.

A series of advances under an agreement to extend credit up to a certain amount may be considered as one transaction.

When a multiple-advance loan to finance the construction of a dwelling may be permanently financed by the same creditor, the construction phase and the permanent phase may be treated as either one transaction or more than one transaction.

**Commentary**

- ***Legal obligation.*** *The disclosures shall reflect the terms to which the consumer and creditor are legally bound as of the outset of the transaction. In the case of disclosures required under § 1026.20(c), (d), and (e), the disclosures shall reflect the credit terms to which the consumer and creditor are legally bound when the disclosures are provided. The legal obligation is determined by applicable State law or other law. Disclosures based on the assumption that the consumer will abide by the terms of the legal obligation throughout the term of the transaction comply with § 1026.17(c)(1). (Certain transactions are specifically addressed in this commentary. See, for example, the discussion of buydown transactions elsewhere in the commentary to § 1026.17(c).) 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 between the consumer and the creditor. But this presumption is rebutted if another agreement between the consumer and creditor legally modifies that note or contract. If the consumer and creditor 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.*** *Except as otherwise provided in §§ 1026.18(s), 1026.37 and 1026.38, as applicable, 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, except as otherwise provided in §§ 1026.18(s), 1026.37 and 1026.38. 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 buydown that is reflected in the credit contract, a consumer buydown, 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. See the commentary to § 1026.17(c) for a discussion of buydown, discounted, and premium transactions and the commentary to § 1026.19(a)(2), (e), and (f) for a discussion of the redisclosure in certain mortgage transactions with a variable-rate feature. See §§ 1026.37(c) and 1026.38(c) for rules regarding disclosure of variable-rate transactions in the projected payments table for transactions subject to § 1026.19(e) and (f).*
- ***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 the disclosures required under §§ 1026.18(g) and (s), 1026.37(c), 1026.37(l)(1) and (3), 1026.38(c), and 1026.38(o)(5), as applicable.*

  *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 two 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 disclosed pursuant to § 1026.18(g) should show 12 payments of $804.62 and 348 payments of $1,025.31. Similarly, the disclosures required by §§ 1026.18(s), 1026.37(c), 1026.37(l)(1) and (3), 1026.38(c), and 1026.38(o)(5) should reflect the effect of this calculation. The finance charge should be $266,463.32 and, for transactions subject to § 1026.18, the total of payments should be $366,463.32.*
  - *Same loan as above, except with a two-percent rate cap on periodic adjustments. The disclosures 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 disclosed pursuant to § 1026.18(g) should show 12 payments of $804.62, 12 payments of $950.09,*

*and 336 payments of $1,024.34. Similarly, the disclosures required by §§ 1026.18(s), 1026.37(c), 1026.37(l)(1) and (3), 1026.38(c), and 1026.38(o)(5) should reflect the effect of this calculation. The finance charge should be $265,234.76 and, for transactions subject to § 1026.18, the total of payments should be $365,234.76.*

   - *Same loan as above, except with a 7 ½ 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 disclosed pursuant to § 1026.18(g) 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. Similarly, the disclosures required by §§ 1026.18(s), 1026.37(c), 1026.37(l)(1) and (3), 1026.38(c), and 1026.38(o)(5) should reflect the effect of this calculation. The finance charge should be $277,040.60, and, for transactions subject to § 1026.18, the total of payments should be $377,040.60.*

- *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 that have a fixed rate of interest and an appreciation share based on the consumer's equity in the mortgaged property. The appreciation share is payable in a lump sum at a specified time. Disclosures must be based on the fixed interest rate. (As discussed in the commentary to section 1026.2, other types of shared-equity arrangements are not considered "credit" and are not subject to Regulation Z.)*
   - *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" or other indexed mortgages that have a fixed rate of interest but provide for periodic adjustments to payments and the loan balance to reflect changes in an index measuring prices or inflation. Disclosures are to be based on the fixed interest rate, except as otherwise provided in §§ 1026.18(s), 1026.37, and 1026.38, as applicable.*

- *Graduated-payment mortgages and step-rate transactions without a variable-rate feature are not considered variable-rate transactions.*

- ***Graduated payment adjustable rate mortgages.** These mortgages involve both a variable interest rate and scheduled variations in payment amounts during the loan term. For example, under these plans, a series of graduated payments may be scheduled before rate adjustments affect payment amounts, or the initial scheduled payment may remain constant for a set period before rate adjustments affect the payment amount. In any case, the initial payment amount may be insufficient to cover the scheduled interest, causing negative amortization from the outset of the transaction. In these transactions, except as otherwise provided in §§ 1026.18(s), 1026.37(c), and 1026.38(c), the disclosures should treat these features as follows:*
  - *The finance charge includes the amount of negative amortization based on the assumption that the rate in effect at consummation remains unchanged.*
  - *The amount financed does not include the amount of negative amortization.*
  - *As in any variable-rate transaction, the annual percentage rate is based on the terms in effect at consummation.*
  - *The schedule of payments discloses the amount of any scheduled initial payments followed by an adjusted level of payments based on the initial interest rate. Since some mortgage plans contain limits on the amount of the payment adjustment, the payment schedule may require several different levels of payments, even with the assumption that the original interest rate does not increase.*
- ***Growth-equity mortgages. [omitted]***
- ***Reverse 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 disclosures required by § 1026.18(g) and (s) reflect the amount of any scheduled initial payments followed by an adjusted level of payments based on the initial interest rate. Since some mortgage plans contain limits on the amount of the payment adjustment, the disclosures required by § 1026.18(g) and (s) may require several different levels of payments, even with the assumption that the original interest rate does*

*not increase. For transactions subject to § 1026.19(e) and (f), see § 1026.37(c) and its commentary for a discussion of different rules for graduated payment adjustable rate mortgages.*

- o *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]***

## *Unknown Information/Use of Estimates: [12 C.F.R. §1026.17(c)(i)]*

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

**Commentary**

- ***Basis for estimates.*** *Except as otherwise provided in §§ 1026.19, 1026.37, and 1026.38, 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 § 1026.17(f) or § 1026.19. For purposes of § 1026.17(c)(2)(i), creditors must provide the actual amounts of the information required to be disclosed under §§ 1026.37 and 1026.38, pursuant to § 1026.19(e) and (f), subject to the estimation and redisclosure rules in those provisions.*

- ***Labeling estimates.*** *Estimates must be designated as such in the segregated disclosures. For the disclosures required by § 1026.19(e) and (f), use of the Loan Estimate form H-24 of appendix H to this part pursuant to § 1026.37(o) or the Closing Disclosure form H-25 of appendix H to this part pursuant to § 1026.38(t), respectively, satisfies the requirement that the disclosure state clearly that the disclosure is an estimate. For all other disclosures, even though they are based on the same assumption on which a specific estimated disclosure was based, the creditor has 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, except as otherwise provided by § 1026.19. 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. In all cases, creditors comply with § 1026.17(c)(2)(i) by basing disclosures on the assumption that payments will be made on time and in the amounts required by the terms of the legal obligation, disregarding any possible differences resulting from consumers' payment patterns.*

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

If 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.

**Commentary**

- *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 of § 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 tolerance in § 1026.18(d)(1). For purposes of transactions subject to § 1026.19(e) and (f), the creditor shall disclose the actual amount of per diem interest that will be collected at consummation, subject only to the disclosure rules in those sections.*

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

When making disclosures, the creditor may disregard the fact 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.

**Commentary**

- ***Minor variations.*** *This section 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)]*

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:

(i) 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;

(ii) 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

(iii) 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.

**Commentary**

- ***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 pursuant to § 1026.18(g), the disclosures required pursuant* *to §§ 1026.18(s), 1026.37(c), or 1026.38(c), or the 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 and Balloon Loans [12 C.F.R. §1026.17(c)(5)]*

If an obligation is payable on demand, the creditor shall make the disclosures based on an assumed maturity of 1 year. If an alternate maturity date is stated in the legal obligation between the parties, the disclosures shall be based on that date.

**Commentary**

- ***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 and demand disclosures under § 1026.38(l)(2) are answered in the negative. The disclosures should be based on the creditor's estimate of the time at which the specified event will occur and, except as otherwise provided in § 1026.19(e) and (f), 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.*** *Balloon payment mortgages, with payments based on a long-term amortization schedule and a large final payment due after a shorter term, are not demand obligations unless a demand feature is specifically contained in the contract. For example, a mortgage with a term of five years and a payment schedule based on 20 years would not be treated as a mortgage with a demand feature, in the absence of any contractual demand provisions. In this type of mortgage, disclosures should be based on the five-year term. See §§ 1026.37(c) and 1026.38(c) and their commentary for projected payment disclosures for balloon payment mortgages.*

## *Multiple Advance Loans/Construction Loans [12 C.F.R. §1026.17(c)(6)]*

A series of advances under an agreement to extend credit up to a certain amount may be considered as one transaction. For instance, when a multiple-advance loan to finance the construction of a dwelling may be permanently financed by the same creditor, the construction phase and the permanent phase may be treated as either one transaction or more than one transaction.

### Commentary

- ***Series of advances.*** *This section deals with a series of advances under an agreement to extend credit up to a certain amount. A creditor may treat all of the advances as a single transaction or disclose each advance as a separate transaction. If these advances are treated as one transaction and the timing and amounts of advances are unknown, creditors must make disclosures based on estimates. If the advances are disclosed separately, disclosures must be provided before each advance occurs, with the disclosures for the first advance provided by consummation.*
- ***Construction loans.*** *This section also provides a flexible rule for disclosure of construction loans that may be permanently financed. These transactions have two distinct phases, similar to two separate transactions. The construction loan may be for initial construction or subsequent construction, such as rehabilitation or remodeling. The construction period*

*usually involves several disbursements of funds at times and in amounts that are unknown at the beginning of that period, with the consumer paying only accrued interest until construction is completed. Unless the obligation is paid at that time, the loan then converts to permanent financing in which the loan amount is amortized just as in a standard mortgage transaction. This section permits the creditor to give either one combined disclosure for both the construction financing and the permanent financing, or a separate set of disclosures for the two phases. This rule is available whether the consumer is initially obligated to accept construction financing only or is obligated to accept both construction and permanent financing from the outset. If the consumer is obligated on both phases and the creditor chooses to give two sets of disclosures, both sets must be given to the consumer initially, because both transactions would be consummated at that time. (Appendix D provides a method of calculating the annual percentage rate and other disclosures for construction loans, which may be used, at the creditor's option, in disclosing construction financing.)*

- ***Multiple-advance construction loans.*** *The sections discussed above are not mutually exclusive. For example, in a transaction that finances the construction of a dwelling that may be permanently financed by the same creditor, the construction phase may consist of a series of advances under an agreement to extend credit up to a certain amount. In these cases, the creditor may disclose the construction phase as either one or more than one transaction and also disclose the permanent financing as a separate transaction.*
- ***Residential mortgage transaction.*** *See the commentary to §1026.2(a)(24) for a discussion of the effect of §1026.17(c)(6) on the definition of a residential mortgage transaction.*
- ***Allocation of points.*** *When a creditor utilizes the special rule to disclose credit extensions as multiple transactions, buyers points or similar amounts imposed on the consumer must be allocated for purposes of calculating disclosures. While such amounts should not be taken into account more than once in making calculations, they may be allocated between the transactions in any manner the creditor chooses. For example, if a construction-permanent loan is subject to five points imposed on the consumer and the creditor chooses to disclose the two phases separately, the five points may be allocated entirely to the construction loan, entirely to the permanent loan, or divided in any manner between the two. However, the entire five points may not be applied twice, that is, to both the construction and the permanent phases.*

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

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 give the disclosures.

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 shall be made to each consumer who has the right to rescind.

**Commentary**

- ***Multiple creditors.*** *If a credit transaction involves more than one creditor:*

- *The creditors must choose which of them will make the disclosures.*
- *A single, complete set of disclosures must be provided, rather than partial disclosures from several creditors.*

- *All disclosures for the transaction must be given, even if the disclosing creditor would not otherwise have been obligated to make a particular disclosure. For example, if one of the creditors is the seller, the total sale price disclosure under §1026.18(j) must be made, even though the disclosing creditor is not the seller.*
- *When two consumers are joint obligors with primary liability on an obligation, the disclosures may be given to either one of them. If one consumer is merely a surety or guarantor, the disclosures must be given to the principal debtor. In rescindable transactions, however, separate disclosures must be given to each consumer who has the right to rescind under § 1026.23, although the disclosures required under § 1026.19(b) need only be provided to the consumer who expresses an interest in a variable-rate loan program. When two consumers are joint obligors with primary liability on an obligation, the early disclosures required by § 1026.19(a), (e), or (g), as applicable, may be provided to any one of them. In rescindable transactions, the disclosures required by § 1026.19(f) must be given separately to each consumer who has the right to rescind under § 1026.23. In transactions that are not rescindable, the disclosures required by § 1026.19(f) may be provided to any consumer with primary liability on the obligation.*

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

If a disclosure becomes inaccurate because of an event that occurs after the creditor delivers the required disclosures, the inaccuracy is not a violation, although new disclosures may be required under paragraph (f) of this section or other sections of the regulation.

**Commentary**

- ***Events causing inaccuracies.*** *Subject to § 1026.19(e) and (f), inaccuracies in disclosures are not violations if attributable to events occurring after the disclosures are made. For example, when the consumer fails to fulfill a prior commitment to keep the collateral insured and the creditor then provides the coverage and charges the consumer for it, such a change does not make the original disclosures inaccurate. The creditor may, however, be required to make new disclosures under § 1026.17(f) or § 1026.19 if the events occurred between disclosure and consummation, in some cases after consummation under § 1026.19(f), or under § 1026.20 if the events occurred after consummation. For rules regarding permissible changes to the information required to be disclosed by § 1026.19(e) and (f), see § 1026.19(e)(3) and (f)(2) and their commentary.*

## *Early Disclosures: [12 C.F.R. §1026.17(f)]*

If required closed-end disclosures are given before the date of consummation of a transaction and a subsequent event makes them inaccurate, the creditor must disclose the following before consummation (subject to the provisions of § 1026.19(a)(2), (e), and (f)):

- Any changed term unless the term was based on an estimate in accordance with the regulation and was labeled an estimate;
- All changed terms, if the annual percentage rate at the time of consummation varies from the annual percentage rate disclosed earlier by more than 1/8 of 1 percentage point in a regular transaction, or more than 1/4 of 1 percentage point in an irregular transaction

**Commentary**

- ***Change in rate or other terms.*** *Redisclosure is required for changes that occur between the time disclosures are made and consummation if the annual percentage rate in the consummated transaction exceeds the limits prescribed in § 1026.17(f) even if the prior disclosures would be considered accurate under the tolerances in § 1026.18(d) or 1026.22(a). To illustrate:*
    - ***General.***
        - *For transactions not secured by real property, if disclosures are made in a regular transaction on July 1, the transaction is consummated on July 15, and the actual annual percentage rate varies by more than 1/8 of 1 percentage point from the disclosed annual percentage rate, the creditor must either redisclose the changed terms or furnish a complete set of new disclosures before consummation. Redisclosure is required even if the disclosures made on July 1 are based on estimates and marked as such.*
        - *B. In a regular transaction not secured by real property, if early disclosures are marked as estimates and the disclosed annual percentage rate is within 1/8 of 1 percentage point of the rate at consummation, the creditor need not redisclose the changed terms (including the annual percentage rate).*
        - *C. If disclosures for transactions not secured by real property are made on July 1, the transaction is consummated on July 15, and the finance charge increased by $35 but the disclosed annual percentage rate is within the permitted tolerance, the creditor must at least redisclose the changed terms that were not marked as estimates. See § 1026.18(d)(2).*
- ***Mortgages other than reverse mortgages and mortgage loans not secured by real property****. For transactions secured by real property other than reverse mortgages, assume that, at the time the disclosures required by § 1026.19(e) are prepared in July, the loan closing is scheduled for July 31 and the creditor does not plan to collect per-diem interest at consummation. Assume further that consummation actually occurs on August 5, and per-diem interest for the remainder of August is collected as a prepaid finance charge. The creditor must make the disclosures required by § 1026.19(f) three days before consummation, and the disclosures required by § 1026.19(f) must take into account the amount of per-diem interest that will be collected at consummation.*
- ***Variable rate****. The addition of a variable rate feature to the credit terms, after early disclosures are given, requires new disclosures. See § 1026.19(e) and (f) to determine when new disclosures are required for transactions secured by real property, other than reverse mortgages.*

- ***Content of new disclosures***. *Except as provided by § 1026.19(e) and (f), if redisclosure is required, the creditor has the option of either providing a complete set of new disclosures, or providing disclosures of only the terms that vary from those originally disclosed.*
- ***Special rules***. *In residential mortgage transactions subject to §1026.19(a), the creditor must redisclose if, between the delivery of the required early disclosures and consummation, the annual percentage rate changes by more than a stated tolerance. When subsequent events occur after consummation, new disclosures are required only if there is a refinancing or an assumption within the meaning of the regulation.*
- ***Irregular transactions***. *For purposes of this paragraph, a transaction is deemed to be "irregular" according to the definition in §1026.22(a)(3).*

## *Mail or telephone orders—delay in disclosures: [12 C.F.R. §1026.17(g)]*

Omitted.

## *Series of sales—delay in disclosures: [12 C.F.R. §1026.17(h)]*

Omitted.

## *Interim student credit extensions: [12 C.F.R. §1026.17(i)]*

Omitted.

# Section 2: Certain Mortgage and Variable-Rate Transactions [12 C.F.R. §1026.19]

## *Variable-Rate Mortgage Disclosures: [12 C.F.R. §1026.19(b)]*

Variable-rate mortgage disclosures are required at application or before the consumer pays a non-refundable fee, whichever is earlier. For applications received by telephone or through an intermediary agent or broker, these disclosures may be delivered or mailed not later than three business days after receipt of the consumer's application.

**Commentary**

- ***Coverage.*** *This section applies to all closed-end variable-rate transactions that are secured by the consumer's principal dwelling and have a term greater than one year. The requirements of this section apply not only to transactions financing the initial acquisition of the consumer's principal dwelling, but also to any other closed-end variable-rate transaction secured by the principal dwelling. In determining whether a construction loan that may be permanently financed by the same creditor is covered under this section, the creditor may treat the construction and the permanent phases as separate transactions with distinct terms to maturity or as a single combined transaction. In any assumption of a variable-rate transaction secured by the consumer's principal dwelling with a term greater than one year, new disclosures normally required by this section are not required.*
- ***Timing.*** *A creditor must give the disclosures required under this section at the time an application form is provided or before the consumer pays a non-refundable fee, whichever is earlier.*
    - ***Intermediary agent or broker.*** *In cases where a creditor receives a written application through an intermediary agent or broker, however, the creditor must deliver the disclosures or place them in the mail not later than three business days after the creditor receives the consumer's written application. This three-day rule also applies where the creditor takes an application over the telephone.*
    - ***Telephone request.*** *In cases where the consumer merely requests an application over the telephone, the creditor must include the early disclosures required under this section with the application that is sent to the consumer.*
    - ***Mail solicitations.*** *In cases where the creditor solicits applications through the mail, the creditor must also send the disclosures required under this section if an application form is included with the solicitation.*
    - ***Conversion.*** *In cases where an open-end credit account will convert to a closed-end transaction subject to this section under a written agreement with the consumer, disclosures under this section may be given at the time of conversion.*
    - ***Electronic applications.*** *In all cases, a consumer must be able to access the disclosures (including the brochure) at the time the blank application form is made available by electronic communication, such as on a creditor's Internet Web site. Creditors have flexibility in satisfying this requirement. For example, if a link is not used, the application form must clearly and conspicuously refer the consumer to the fact*

*that rate, fee, and other cost information either precedes or follows the application or reply form. Alternatively, creditors may provide a link to electronic disclosures as long as consumers cannot bypass the disclosure before submitting the application form. Or the disclosures could automatically appear on the screen when the application form appears. A creditor need not confirm that the consumer has read the disclosures or brochure.*

- ***Intermediary agent or broker*. *[omitted]***
- ***Other variable-rate regulations.*** *Transactions in which the creditor is required to comply with and has complied with the disclosure requirements of the variable-rate regulations of other Federal agencies are exempt from the requirements of this section. Those variable-rate regulations include the regulations issued by the Federal Home Loan Bank Board and those issued by the Department of Housing and Urban Development. This exception is also available to creditors that are required by state law to comply with the Federal variable-rate regulations noted above and to creditors that are authorized by title VIII of the Depository Institutions Act of 1982 to make loans in accordance with those regulations.*
- ***Examples of variable-rate transactions.*** *The following transactions, if they have a term greater than one year and are secured by the consumer's principal dwelling, constitute variable-rate transactions subject to the disclosure requirements of this section:*
    - *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.*
    - *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.*
    - *"Price–level–adjusted mortgages" – [omitted]*

## *CHARM Booklet: [12 C.F.R. §1026.19(b)(1)]*

Each applicant must receive The Consumer Handbook on Adjustable Rate Mortgages with all other disclosures required by this section. Banks should use the January 2014 version issued by the CFPB.

### Commentary

- ***Substitutes.*** *Creditors who wish to use publications other than the Consumer Handbook on Adjustable Rate Mortgages must make a good faith determination that their brochures are suitable substitutes to the Consumer Handbook. A substitute is suitable if it is, at a minimum, comparable to the Consumer Handbook in substance and comprehensiveness. Creditors are permitted to provide more detailed information than is contained in the Consumer Handbook.*

- ***Applicability.*** *The Consumer Handbook need not be given for variable-rate transactions subject to this section in which the underlying interest rate is fixed.*

## *Loan Program Disclosures: [12 C.F.R. §1026.19(b)(2)]*

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 must be provided at the time an application form is provided or before the consumer pays a non-refundable fee, whichever is earlier. The disclosures may be delivered or placed in the mail not later than three business days following receipt of a consumer's application when the application is not in person to the bank. They must include:

- ***Change in Terms****:* The fact that the interest rate, payment, or term of the loan can change.
- ***Index/Formula and Source:*** The index or formula used in making adjustments, and a source of information about the index or formula.
- ***Explanation of Interest Rate, Payment, and Index Adjustments:*** An explanation of how interest rate and payment will be determined, including an explanation of how the index is adjusted, such as by the addition of a margin.
- ***Request for Margin Value and Interest Rate*****:** A statement that the consumer should ask about the current margin value and current interest rate.
- ***Interest Rate Discounts:*** The fact that the interest rate will be discounted and a statement that the consumer should ask about the amount of interest rate discount.
- ***Frequency of Change*****:** The frequency of interest rate and payment changes.
- ***Rules Relating to Changes in Terms*****:** Any rules relating to changes in the index, interest rate, payment amount, and outstanding balance, including, for example, an explanation of interest rate or payment limitations, negative amortization, and interest rate carryover.
- ***Historical Example:*** A historical example, based on a $10,000 loan amount, illustrating how payments and the loan balance would have been affected by interest rate changes implemented according to the terms of the loan program. The example shall reflect the most recent 15 years of index values. The example shall reflect all significant loan program terms, such as negative amortization, interest rate carryover, interest rate discounts, and interest rate and payment limitations that would have been affected by the index movement during that period.

  OR

- ***Maximum Interest Rate and Payment*****:** The maximum interest rate and payment for a $10,000 loan originated at the initial interest rate (index value plus margin, adjusted by the amount of any discount or premium) in effect as of an identified month and year for the loan program disclosure assuming the maximum periodic increases in rates and payments under the program; and the initial interest rate and payment for that loan and a statement that the periodic payment may increase or decrease substantially depending on changes in the rate.

- ***Explanation of Payment Calculation:*** An explanation of how the consumer may calculate the payments for the loan amount to be borrowed based on either the most recent payment shown in the historical example or the initial interest rate used to calculate the maximum interest rate and payment, depending on which option the lender chose.
- ***Demand Feature*:** The fact that the loan program contains a demand feature, if applicable.
- ***Details of Adjustments:*** The type of information that will be provided in notices of adjustments and the timing of such notices.
- ***Other ARM Programs Available*:** A statement that disclosure forms are available for the bank's other variable-rate loan programs, if applicable.

**Commentary**

- ***Disclosure for each variable-rate program.*** *A creditor must provide disclosures to the consumer that fully describe each of the creditor's variable-rate loan programs in which the consumer expresses an interest. If a program is made available only to certain customers of an institution, a creditor need not provide disclosures for that program to other consumers who express a general interest in a creditor's ARM programs. Disclosures must be given at the time an application form is provided or before the consumer pays a non-refundable fee, whichever is earlier. If program disclosures cannot be provided because a consumer expresses an interest in individually negotiating loan terms that are not generally offered, disclosures reflecting those terms may be provided as soon as reasonably possible after the terms have been decided upon, but not later than the time a non-refundable fee is paid. If a consumer who has received program disclosures subsequently expresses an interest in other available variable-rate programs, or the creditor and consumer decide on a program for which the consumer has not received disclosures, the creditor must provide appropriate disclosures as soon as reasonably possible.*
- ***Variable-rate loan program defined****. Generally, if the identification, the presence or absence, or the exact value of a loan feature must be disclosed under this section, variable-rate loans that differ as to such features constitute separate loan programs. For example, separate loan programs would exist based on differences in any of the following loan features:*
    - *The index or other formula used to calculate interest rate adjustments.*
    - *The rules relating to changes in the index value, interest rate, payments, and loan balance.*
    - *The presence or absence of, and the amount of, rate or payment caps.*
    - *The presence of a demand feature.*
    - *The possibility of negative amortization.*
    - *The possibility of interest rate carryover.*
    - *The frequency of interest rate and payment adjustments.*
    - *The presence of a discount feature.*

- *In addition, if a loan feature must be taken into account in preparing the disclosures required by §1026.19(b)(2)(viii), variable-rate loans that differ as to that feature constitute separate programs under §1026.19(b)(2).*
- *If, however, a representative value may be given for a loan feature or the feature need not be disclosed under §1026.19(b)(2), variable-rate loans that differ as to such features do not constitute separate loan programs. For example, separate programs would not exist based on differences in the following loan features:*
  - *The amount of a discount.*
  - *The amount of a margin.*

- ***Form of program disclosures.*** *A creditor may provide separate program disclosure forms for each ARM program it offers or a single disclosure form that describes multiple programs. A disclosure form may consist of more than one page. For example, a creditor may attach a separate page containing the historical payment example for a particular program. A disclosure form describing more than one program need not repeat information applicable to each program that is described. For example, a form describing multiple programs may disclose the information applicable to all of the programs in one place with the various program features (such as options permitting conversion to a fixed rate) disclosed separately. The form, however, must state if any program feature that is described is available only in conjunction with certain other program features. Both the separate and multiple program disclosures may illustrate more than one loan maturity or payment amortization – for example, by including multiple payment and loan balance columns in the historical payment example. Disclosures may be inserted or printed in the Consumer Handbook (or a suitable substitute) as long as they are identified as the creditor's loan program disclosures.*
- ***As applicable.*** *The disclosures required by this section need only be made as applicable. Any disclosure not relevant to a particular transaction may be eliminated. For example, if the transaction does not contain a demand feature, the disclosure required under §1026.19(b)(2)(x) need not be given. As used in this section, ``payment" refers only to a payment based on the interest rate, loan balance and loan term, and does not refer to payment of other elements such as mortgage insurance premiums.*
- ***Revisions.*** *A creditor must revise the disclosures required under this section once a year as soon as reasonably possible after the new index value becomes available. Revisions to the disclosures also are required when the loan program changes.*

The balance of the commentary describes in more detail the contents of the disclosure(s). If more information is needed regarding these issues, see the Regulation Z Commentary, Paragraph 19(b)(2).

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# Section 3: Variable-Rate Mortgage Adjustments [12 C.F.R. §1026.20(c)]

## *Introduction*

Whenever the bank makes adjustments to the interest rates which result in adjustments to the payment amount, new disclosures are required. A rate adjustment notice is required between 60 and 120 days before the first payment at the new level is due.

The CFPB altered the timing rules for ARMs adjusting for the first time within 60 days of consummation, where the new interest rate disclosed at consummation was an estimate, rather than the actual rate. The payment change notice in these cases must be provided to consumers as soon as practicable, but not less than 25 days before the first payment at a new level is due.

A grandfather provision was instituted for creditors originating loans insured by FHA and VA with look back periods of less than 45 days. Notices must be provided at least 25 days before the adjusted payment is due for ARMs originated prior to January 10, 2015 in which the loan contract requires the adjusted interest rate and payment to be calculated based on the index figure available as of a date that is less than 45 days prior to the adjustment date.

## *Rate Adjustments: [12 C.F.R. §1026.20(c)]*

The creditor, assignee, or servicer of an adjustable-rate mortgage shall provide consumers with disclosures in connection with the adjustment of interest rates pursuant to the loan contract that results in a corresponding adjustment to the payment. The disclosures required also shall be provided for an interest rate adjustment resulting from the conversion of an adjustable-rate mortgage to a fixed-rate transaction, if that interest rate adjustment results in a corresponding payment change.

**Commentary**

- ***Creditors, assignees, and servicers.*** *Creditors, assignees, and servicers that own either the applicable adjustable-rate mortgage or the applicable mortgage servicing rights or both are subject to the requirements of §1026.20(c). Creditors, assignees, and servicers are also subject to the requirements of any provision of subpart C that governs §1026.20(c). For example, the form requirements of §1026.17(a) apply to §1026.20(c) disclosures and thus, assignees and servicers, as well as creditors, are subject to those requirements. While creditors, assignees, and servicers are all subject to the requirements of §1026.20(c), they may decide among themselves which of them will provide the required disclosures.*

- ***Loan modifications.*** *Under §1026.20(c), the interest rate adjustment disclosures are required only for interest rate adjustments occurring pursuant to the loan contract. Accordingly, creditors, assignees, and servicers need not provide the disclosures for interest rate adjustments occurring in loan modifications made for loss mitigation purposes. Subsequent interest rate adjustments resulting in a corresponding payment change occurring pursuant to the modified loan contract, however, are subject to the requirements of §1026.20(c).*

- ***Conversions.*** *In addition to the disclosures required for interest rate adjustments under an adjustable-rate mortgage, §1026.20(c) also requires the disclosures for an ARM converting to a fixed-rate transaction when the conversion changes the interest rate and results in a corresponding payment change. When an open-end account converts to a closed-end adjustable-rate mortgage, the §1026.20(c) disclosure is not required until the implementation of an interest rate adjustment post-conversion that results in a corresponding payment change. For example, for an open-end account that converts to a closed-end 3/1 hybrid ARM, i.e., an ARM with a fixed rate of interest for the first three years after which the interest rate adjusts annually, the first §1026.20(c) disclosure would not be required until three years after the conversion, and only if that first adjustment resulted in a payment change.*

## *Coverage: [12 C.F.R. §1026.20(c)]*

An adjustable-rate mortgage or "ARM" is a closed-end consumer credit transaction secured by the consumer's principal dwelling in which the annual percentage rate may increase after consummation.

The requirements of this paragraph (c) do not apply to:

(A) ARMs with terms of one year or less;

(B) The first interest rate adjustment to an ARM if the first payment at the adjusted level is due within 210 days after consummation and the new interest rate disclosed at consummation was not an estimate; or

(C) The servicer on the loan is subject to the Fair Debt Collections Practices Act (FDCPA), and the consumer has sent a notification pursuant to FDCPA section 805(c) (15 U.S.C. 1692c(c)).

**Commentary**

- ***In general.*** *An adjustable-rate mortgage is a variable-rate transaction as that term is used in subpart C, except as distinguished by comment §1026.20(c)(1)(ii)-3. The requirements of this section are not limited to transactions financing the initial acquisition of the consumer's principal dwelling.*

- ***Short-term ARMs.*** *Construction, home improvement, bridge, and other loans with terms of one year or less are not subject to these requirements. In determining the term of a construction loan that may be permanently financed by the same creditor or assignee, the creditor or assignee may treat the construction and the permanent phases as separate transactions with distinct terms to maturity or as a single combined transaction.*

- ***First new payment due within 210 days after consummation.*** *Section 1026.20(c) disclosures are not required if the first payment at the adjusted level is due within 210 days after consummation, when the new interest rate disclosed at consummation pursuant to*

*§1026.20(d) is not an estimate. For example, the creditor, assignee, or servicer would not be required to provide the disclosures required by §1026.20(c) for the first time an ARM interest rate adjusts if the first payment at the adjusted level was due 120 days after consummation and the adjusted interest rate disclosed at consummation pursuant to §1026.20(d) was not an estimate.*

- ***Non-adjustable-rate mortgages.*** *The following transactions, if structured as fixed-rate and not as adjustable-rate mortgages based on an index or formula, are not subject to §1026.20(c)*
  - *Shared-equity or shared-appreciation mortgages;*
  - *Price-level adjusted or other indexed mortgages that have a fixed rate of interest but provide for periodic adjustments to payments and the loan balance to reflect changes in an index measuring prices or inflation;*
  - *Graduated-payment mortgages or step-rate transactions;*
  - *Renewable balloon-payment instruments; and*
  - *Preferred-rate loans.*

## *Content of Disclosures: [12 C.F.R. §1026.20(c)(2)]*

The rate adjustment disclosure shall include:

- An explanation that under the terms of the consumer's adjustable-rate mortgage, the specific time period in which the current interest rate has been in effect is ending and the interest rate and mortgage payment will change;
- The effective date of the interest rate adjustment and when additional future interest rate adjustments are scheduled to occur; and
- Any other changes to loan terms, features, or options taking effect on the same date as the interest rate adjustment, such as the expiration of interest-only or payment-option features.

The disclosures must also contain the following in the form of a table:

- The current and new interest rates;
- The current and new periodic payment amounts and the date the first new payment is due; and
- For interest only or negatively-amortizing payments, the amount of the current and new payment allocated to interest, principal, and property taxes and mortgage-related insurance, as applicable.

The rate adjustment disclosures shall include an explanation of how the interest rate is determined, including:

- The specific index or formula used in making interest rate adjustments, and a source of information about the index or formula, and
- The type any amount of any adjustment to the index, including any margin and an explanation that the margin is the addition of a certain number of percentage points to the index, and any application of previously foregone interest rate increases from past interest rate adjustments.

In addition to the interest rate information, the rate disclosures must include an explanation of how the new payment is determined, including:

- The index or formula used;
- Any adjustment to the index or formula, such as the addition of a margin or the application of any previously foregone interest rate increases from past interest rate adjustments;
- The loan balance expected on the date of the interest rate adjustment; and
- The length of the remaining loan term expected on the date of the interest rate adjustment and any change in the term of the loan caused by the adjustment.

If applicable, the rate adjustment disclosures must include a statement that the new payment will not be allocated to pay loan principal and will not reduce the loan balance. If the new payment will result in negative amortization, a statement that the new payment will not be allocated to pay loan principal and will pay only part of the loan interest, thereby adding to the balance of the loan. If the new payment will result in negative amortization as a result of the interest rate adjustment, the statement shall set forth the payment required to amortize fully the remaining balance at the new interest rate over the remainder of the loan term.

Finally, the rate adjustment notice shall describe the circumstances under which any prepayment penalty may be imposed, such as when paying the loan in full or selling or refinancing the principal dwelling; the time period during which such a penalty may be imposed, and a statement that the consumer may contact the servicer for additional information, including the maximum amount of the penalty.

**Commentary**

***Timing.*** *The requirement that § 1026.20(c) disclosures be provided to consumers within a certain timeframe means that the creditor, assignee, or servicer must deliver the notice or place it in the mail within that timeframe, excluding any grace or courtesy periods. The requirement that the § 1026.20(c) disclosures must be provided between 25 and 120 days before the first payment at the adjusted level is due for frequently-adjusting ARMs, applies to ARMs that adjust regularly at a maximum of every 60 days.*

***Short-term ARMs.*** *Under § 1026.(c)(1)(ii), construction, home improvement, bridge, and other loans with terms of one year or less are not subject to the requirements in § 1026.20(c). In determining the term of a construction loan that may be permanently financed by the same creditor or assignee, the creditor or assignee may treat the construction and the permanent phases as separate transactions with distinct terms to maturity or as a single combined transaction.*

***First new payment due within 210 days after consummation.*** *Section 1026.20(c) disclosures are not required if the first payment at the adjusted level is due within 210 days after the consummation, when the new interest rate disclosed at consummation pursuant to § 1026.20(d) is not an estimate. For example, the creditor, assignee, or servicer would not be required to provide the disclosures required by § 1026.20(c) for the first time an ARM interest rate adjusts if the first payment at the adjusted level was due 120 days after consummation and the adjusted interest rate disclosed at consummation pursuant to § 1026.20(d) was not an estimate.*

***Non-adjustable-rate mortgages.*** *The following transactions, if structured as fixed-rate and not as adjustable rate mortgages based on an index or formula, are not subject to § 1026.20(c):*

*i. Shared-equity or shared-appreciation mortgages;*

*ii. Price-level adjusted or other indexed mortgages that have a fixed rate of interest but provide for periodic adjustments to payments and the loan balance to reflect changes in an index measuring prices or inflation;*

*iii. Graduated-payment mortgages or step-rate transactions'*

*iv. Renewable balloon-payment instruments; and*

*v. Preferred-rate loans.*

## *Discounting Initial Interest Rates: Comments 17(c)(1)-1 and 19(b)(2)(v)-1*

Special rules apply when a lender uses an initial interest rate that is discounted from (or higher than) the rate resulting from the bank's selected index or formula for setting interest rates on a variable-rate loan.

Discounting occurs when the bank chooses not to use the index or formula cited in the loan documents and disclosures for the initial rate period (e.g., one year, three years, etc.). Typically, this reduces the interest rate. For example, suppose the going market rate is 10 percent and the bank uses an index of 10 percent plus a 2.0 percent margin to set its interest rates. If the bank sets the initial rate of interest at 9 percent, it has discounted the loan by 3.0 percent.

Discounting requires the bank to provide a blended set of disclosures; for example:

| **Index** | **+** | **Margin** | **=** | **Rate -** | **Discount** | **=** | **Discounted Rate** |
|---|---|---|---|---|---|---|---|
| 10% | | 2% | | 12% | 3% | | 9% for one year |

The blended set of disclosures would include the following:

| **Year(s)** | **Annual Percentage Rate** |
|---|---|
| 1 | 9.00% |
| 19 | 12.00% |
| Blended | 11.90% (approximate) |

## *Regulation Z Discounting Rules*

When the bank uses 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 the contract provides for a delay in the implementation of changes in an index value. For example, if the contract specifies that rate changes are based on the index value in effect 45 days before the change date, the bank may use the index value in effect not more than 45 days 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 discounted transactions involve irregular payment amounts, an annual percentage rate tolerance of 1/4 of 1.0 percent applies.

# Section 4: Subsequent Disclosure Requirements and Miscellaneous Items

# [12 C.F.R. §1026.20 and § 1026.21]

## *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. 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**

***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.*

*If either of the events in paragraph 20(a) – 3 ii.A. or ii.B. occurs in a transaction secured by a principal dwelling with a term longer than one year, the disclosures required under §1026.19(b) also must be given at that time.*

***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.*

## *Assumptions: [12 C.F.R. §1026.20(b)]*

An assumption occurs when a creditor expressly agrees in writing with a subsequent consumer to accept that consumer as a primary obligor on an existing residential mortgage transaction. Before an assumption occurs, the creditor must provide new disclosures to the new consumer based on the remaining obligation. If the original finance charge was an add-on or discount finance charge, the creditor need only disclose:

- The unpaid balance of the assumed obligation;
- The total charges imposed by the creditor for the assumption;
- The prepayment terms, late payments, security interest, and insurance, as required under 1026.18;
- The original annual percentage rate; and
- The payment schedule and total of payments as required under the disclosure rules.

**Commentary**

*As few attendees permit assumptions, we have elected to eliminate the commentary from the manual.*

## *Escrow account cancellation notice for certain mortgage transactions [12 C.F.R. §1026.20(e)]*

***Scope.*** In a closed-end consumer credit transaction secured by a first lien on real property or a dwelling for which an escrow account was established in connection with the transaction and will be cancelled, the creditor or servicer shall disclose the information specified below in accordance with the form requirements and the timing requirements of this section.

***Content requirements***. If an escrow account was established in connection with a transaction and the escrow account will be cancelled, the creditor or servicer shall clearly and conspicuously disclose, under the heading “Escrow Closing Notice,” the following information:

- A statement informing the consumer of the date on which the consumer will no longer have an escrow account; a statement that an escrow account may also be called an impound or trust account; a statement of the reason why the escrow account will be closed; a statement that without an escrow account, the consumer must pay all property costs, such as taxes and homeowner’s insurance, directly, possibly in one or two large payments a year; and a table, titled “Cost to you,” that contains an itemization of the amount of any fee the creditor or servicer imposes on the consumer in connection with the closure of the consumer’s escrow account, labeled “Escrow Closing Fee,” and a statement that the fee is for closing the escrow account.

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

***Optional information.*** The creditor or servicer may, at its option, include its name or logo, the consumer's name, phone number, mailing address and property address, the issue date of the notice, the loan number, or the consumer's account number on the notice required by this paragraph (e). Except for the name and logo of the creditor or servicer, the information described in this paragraph may be placed between the heading required by paragraph (e)(2) of this section and the disclosures required by paragraphs (e)(2)(i) and (ii) of this section. The name and logo may be placed above the heading required by paragraph (e)(2) of this section.

***Form of disclosures.*** The disclosures required by paragraph (e)(2) of this section shall be provided in a minimum 10-point font, grouped together on the front side of a one-page document, separate from all other materials, with the headings, content, order, and format substantially similar to model form H-29 in appendix H to this part. The disclosure of the heading required by paragraph (e)(2) of this section shall be more conspicuous than, and shall precede, the other disclosures required by paragraph (e)(2) of this section.

***Timing***

***Cancellation upon consumer's request***. If the creditor or servicer cancels the escrow account at the consumer's request, the creditor or servicer shall ensure that the consumer receives the disclosures required by paragraph (e)(2) of this section no later than three business days before the closure of the consumer's escrow account.

***Cancellations other than upon the consumer's request.*** If the creditor or servicer cancels the escrow account and the cancellation is not at the consumer's request, the creditor or servicer shall ensure that the consumer receives the disclosures required by paragraph (e)(2) of this section no later than 30 business days before the closure of the consumer's escrow account.

***Receipt of disclosure.*** If the disclosures required by paragraph (e)(2) of this section are not provided to the consumer in person, the consumer is considered to have received the disclosures three business days after they are delivered or placed in the mail.

**Commentary**

- ***Real property or dwelling.*** *For purposes of §1026.20(e)(1), the term "real property" includes vacant and unimproved land. The term "dwelling" includes vacation and second homes and mobile homes, boats, and trailers used as residences. See §1026.2(a)(19) and related commentary for additional guidance regarding the term "dwelling."*

- ***Escrow account established in connection with the consumer's delinquency or default.*** *Neither creditors nor servicers are required to provide the disclosures required by §1026.20(e)(2) when an escrow account that was established solely in connection with the consumer's delinquency or default on the underlying debt obligation will be cancelled.*

- ***Termination of the underlying debt obligation****. Neither creditors nor servicers are required to provide disclosures required by §1026.20(e)(2) when the underlying debt obligation for which an escrow account was established is terminated, including by repayment, refinancing, rescission, and foreclosure.*

- ***Clear and conspicuous standard.*** *The clear and conspicuous standard generally requires that disclosures be in a reasonably understandable form and readily noticeable to the consumer.*

- ***Escrow closing fee.*** *Section 1026.20(e)(2)(i) requires the creditor to itemize the amount of any fee the creditor or servicer imposes on the consumer in connection with the closure of the consumer's escrow account, labeled "Escrow Closing Fee." If the creditor or servicer independently decides to cancel the escrow account, rather than agreeing to close it at the request of the consumer, and does not charge a fee in connection with the cancellation, the creditor or service complies with §1026.20(e)(2) by leaving the disclosure blank on the front-side of the one-page document described in §1026.20(e)(4).*

- ***Optional information permitted.*** *Section 1026.20(e)(3) lists information that the creditor or servicer may, at its option, include on the notice required by §1026.20(e). To comply with §1026.20(e)(3), the creditor or servicer may place the information required by §1026.20(e)(3), other than the name and logo of the creditor or servicer, between the heading required by §1026.20(e)(2) and the disclosures required by §1026.20(e)(2)(i) and (ii). The name and logo may be placed above the heading required §1026.20(e)(2).*

- ***Grouped and separate.*** *The disclosures required by §1026.20(e)(2) must be grouped together on the front side of a separate one-page document that contains no other material.*

- ***Notice must be in writing in a form that the consumer may keep.*** *The notice containing the disclosures required by §1026.20(e)(2) must be in writing in a form that the consumer may keep. See also §1026.17(a) and related commentary for additional guidance on the form requirements applicable to the disclosures required by §1026.20(e)(2).*

- ***Timing requirements*** *Section 1026.20(e)(5)(i) provides that if the creditor or servicer cancels the escrow account at the consumer's request, the creditor or servicer shall ensure that the consumer receives the disclosures required by § 1026.20(e)(2) no later than three business days before closure of the consumer's escrow account. For example, for closure to occur on Thursday, the consumer must receive the disclosures on or before Monday, assuming each weekday is a business day. For purposes of § 1026.20(e)(5), the term "business day" means all calendar days except Sundays and legal public holidays referred to in § 1026.2(a)(6). See comment 2(a)(6)-2.*

- ***Timing of receipt.*** *Section 1026.20(e)(5)(iii) provides that if the disclosures required under § 1026.20(e)(2) are not provided to the consumer in person, the consumer is considered to have received the disclosures three business days after they are delivered or placed in the mail. If the creditor or servicer provides the disclosures required by § 1026.20(e)(2) by mail, the consumer is considered to have received them three business days after they are placed in the mail for purposes of determining when the waiting periods required by § 1026.20(e)(5)(i) and (ii) begins. Creditors and servicers that use electronic mail or a courier to provide disclosures may also follow this approach. If, however, the creditor or servicer delivers the disclosures required by § 1026.20(e)(2) to the consumer in person, the escrow account may be closed any time on the third or 30th business day following the date of delivery, as applicable. Whatever method is used to provide disclosures, creditors and servicers may rely on documentation of receipt in determining when the waiting periods required by § 1026.20(e)(5)(i) and (ii) begin.*

H-29 Escrow Cancellation Notice Model Form (§ 1026.20(e))

*Description:* This is a blank model form of the disclosures required by § 1026.20(e).

[Logo] [Name of Creditor or Servicer]

## Escrow Closing Notice

BORROWER
MAILING ADDRESS

PROPERTY ADDRESS

ISSUE DATE
LENDER
ACCOUNT #/LOAN #

PHONE

As of ___[date]___, you will no longer have an escrow account (also called an "impound" or "trust" account) because

☐ you asked us to close it.

☐ we are closing it.

After this date, you must directly pay your property costs, such as taxes and homeowner's insurance, possibly in one or two large payments a year.

| Cost to You | |
|---|---|
| **Escrow Closing Fee**<br>*For closing your escrow account* | [dollar amount] |

***In the future,***

If you fail to pay your property taxes, your state or local government may (1) impose fines and penalties or (2) place a tax lien on this property.

If you fail to pay any of your property costs, we may (1) add the amounts to your loan balance, (2) add an escrow account to your loan, or (3) require you to pay for property insurance that we buy on your behalf, which likely would cost more and provide fewer benefits than what you could buy on your own.

Call ___[phone number]___ with any questions about the closing of your escrow account.

☐ We do not offer you the option of keeping the escrow account on your loan.

☐ Contact us at ___[phone number]___ by ___[date]___ if you want to keep the escrow account on your loan.

## *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.

**Mortgage Loans**

If the annual percentage rate disclosed in a transaction secured by real property or a dwelling varies from the actual rate, the disclosed annual percentage rate shall also be considered accurate if:

- The rate results from the disclosed finance charge; and
- The disclosed finance charge would be considered accurate under the finance charge disclosure guidelines (Section 1026.18(d)(1)) or, for purposes of rescission, if the disclosed finance charge would be considered accurate under Section 1026.23(g) or (h), whichever applies.

## *Additional Tolerance for Mortgage Loans*

In a transaction secured by real property or a dwelling (consummated on or after September 30, 1995), if the disclosed finance charge is calculated incorrectly but is considered accurate under the finance charge disclosure guidelines (Section 1026.18(d)(1)) or the right of rescission notification finance charge accuracy guidelines (Section 1026.23(g) or (h)), the disclosed annual percentage rate shall be considered accurate:

- If the disclosed finance charge is understated, and the disclosed annual percentage rate is also understated but it is closer to the actual annual percentage rate than the rate that would result from a disclosed finance charge that would be considered accurate under the finance charge disclosure guidelines (Section1026.18(d)(1)) or rescission notification finance charge guidelines (Section 1026.23(g) or (h)), whichever applies.

- If the disclosed finance charge is overstated, and the disclosed annual percentage rate is also overstated but it is closer to the actual annual percentage rate than the rate that would result from a disclosed finance charge that would be considered accurate under the finance charge disclosure guidelines (Section 1026.18(d)(1)) or rescission notification finance charge guidelines (Section 1026.23(g) or (h)), whichever applies.

**Commentary**

- ***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 or 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.

### Mortgage Loans

***Example.*** If a creditor improperly omits a $75 fee from the finance charge on a regular transaction, the understated finance charge is considered accurate, and the annual percentage rate corresponding to that understated finance charge also is considered accurate even if it falls outside the tolerance of 0.125 percent provided above. Because a $75 error was made, an annual percentage rate corresponding to a $100 understatement of the finance charge would not be considered accurate.

***Example.*** This paragraph contains an additional tolerance for a disclosed annual percentage rate that is incorrect but is closer to the actual annual percentage rate than the rate that would be considered accurate under the tolerance rules. To illustrate: in an irregular transaction subject to a 0.25 percent tolerance, if the actual annual percentage rate is 9.00 percent and a $75 omission from the finance charge corresponds to a rate of 8.50 percent that is considered accurate, a disclosed APR of 8.65 percent is within the tolerance. In this example of an understated finance charge, a disclosed annual percentage rate below 8.50 percent or above 9.25 percent will not be considered accurate.

### 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: Closed End Right of Rescission [12 C.F.R. § 1026.23]

## *Consumer's Right to Rescind: [12 C.F.R. §1026.23(a)]*

The right of rescission applies to loans that take a security interest in the principal residence. Each person having an ownership interest in the dwelling, and for whom it is his principal dwelling, has the right to rescind the transaction. It includes individuals who have established family trusts.

To exercise the right to rescind, the consumer shall notify the creditor of the rescission by mail, telegram or other means of written communication. Notice is considered given when mailed, when filed for telegraphic transmission or, if sent by other means, when delivered to the creditor's designated place of business.

The consumer may exercise the right to rescind until midnight of the third business day following consummation, delivery of the notice required by paragraph (b) of this section, or delivery of all material disclosures, whichever occurs last. If the required notice or material disclosures are not delivered, the right to rescind shall expire three years after consummation, upon transfer of all of the consumer's interest in the property, or upon sale of the property, whichever occurs first. In the case of certain administrative proceedings, the rescission period shall be extended in accordance with § 125(f) of the Act.

The term "material disclosures" means the required disclosures of the annual percentage rate, the finance charge, the amount financed, the total payments, the payment schedule, and the disclosures and limitations for "high-cost" mortgages (Section 32 loans), and information on prepayment penalties as outlined in § 1026.43(g).

When more than one consumer in a transaction has the right to rescind, the exercise of the right by one consumer shall be effective as to all consumers.

### Commentary

*Credit extensions that are not subject to the regulation are not covered by rescission even if a customer's principal dwelling is the collateral securing the credit. For example, the right of rescission does not apply to a business purpose loan, even though the loan is secured by the customer's principal dwelling.*

***Security interest arising from transaction.*** *In order for the right of rescission to apply, the security interest must be retained as part of the credit transaction. For example:*

- *A security interest that is acquired by a contractor who is also extending the credit in the transaction.*
- *A mechanic's or material-man's lien that is retained by a subcontractor or supplier of the contractor-creditor, even when the latter has waived its own security interest in the consumer's home.*

*The security interest is not part of the credit transaction and therefore the transaction is not subject to the right of rescission when, for example:*

- *A mechanic's or material-man's lien is obtained by a contractor who is not a party to the credit transaction but is merely paid with the proceeds of the consumer's unsecured bank loan.*
- *All security interests that may arise in connection with the credit transaction are validly waived.*
- *The creditor obtains a lien and completion bond that in effect satisfies all liens against the consumer's principal dwelling as a result of the credit transaction.*

*Although liens arising by operation of law are not considered security interests for purposes of disclosure under § 1026.2, that section specifically includes them in the definition for purposes of the right of rescission. Thus, even though an interest in the consumer's principal dwelling is not a required disclosure, it may still give rise to the right of rescission.*

***Consumer.*** *To be a consumer, that person must at least have an ownership interest in the dwelling that is encumbered by the creditor's security interest, although that person need not be a signatory to the credit agreement. For example, if only one spouse signs a credit contract, the other spouse is a consumer if the ownership interest of that spouse is subject to the security interest.*

***Principal dwelling.*** *A consumer can only have one principal dwelling at a time. A vacation or other second home would not be a principal dwelling. A transaction secured by a second home (such as a vacation home) that is not currently being used as the consumer's principal dwelling is not rescindable, even if the consumer intends to reside there in the future. When a consumer buys or builds a new dwelling that will become the consumer's principal dwelling within one year or upon completion of construction, the new dwelling is considered the principal dwelling if it secures the acquisition or construction loan. In that case, the transaction secured by the new dwelling is a residential mortgage transaction and is not rescindable. For example, if a consumer whose principal dwelling is currently A builds B, to be occupied by the consumer upon completion of construction, a construction loan to finance B and secured by B is a residential mortgage transaction. "Dwelling," includes structures that are classified as personal under state law. For example, a transaction secured by a mobile home, trailer, or houseboat used as the consumer's principal dwelling may be rescindable.*

***Special rule for principal dwelling.*** *Notwithstanding the general rule that consumers may have only one principal dwelling, when the consumer is acquiring or constructing a new principal dwelling, any loan subject to Regulation Z and secured by the equity in the consumer's current principal dwelling (for example, a bridge loan) is subject to the right of rescission regardless of the purpose of that loan. For example, if a consumer whose principal dwelling is currently A builds B, to be occupied by the consumer upon completion of construction, a construction loan to finance B and secured by A is subject to the right of rescission. A loan secured by both A and B is, likewise, rescindable.*

***Addition of a security interest.*** *The addition of a security interest in a consumer's principal dwelling to an existing obligation is rescindable even if the existing obligation is not satisfied and replaced by a new obligation, and even if the existing obligation was previously exempt (because it was credit over the current threshold amount not secured by real property or a consumer's principal dwelling). The right of rescission applies only to the added security* *interest, however, and not to the original obligation. In those situations, only the rescission notice need be delivered, not new material disclosures; the rescission period will begin to run from the delivery of the notice.*

***Consumer's exercise of right**. The consumer must exercise the right of rescission in writing but not necessarily on the rescission notice. Whatever the means of sending the notification of rescission–mail, telegram or other written means–the time period for the creditor's performance does not begin to run until the notification has been received. The creditor may designate an agent to receive the notification so long as the agent's name and address appear on the rescission notice.*

***Rescission period.** The period within which the consumer may exercise the right to rescind runs for three business days from the last of three events:*

- *Consummation of the transaction.*
- *Delivery of all material disclosures.*
- *Delivery to the consumer of the required rescission notice.*

*For example, if a transaction is consummated on Friday, June 1, and the disclosures and notice of the right to rescind were given on Thursday, May 31, the rescission period will expire at midnight of the third business day after June 1. In another example, if the disclosures are given and the transaction consummated on Friday, June 1, and the rescission notice is given on Monday, June 4, the rescission period expires at midnight of the third business day after June 4 – that is, Thursday, June 7. The consumer must place the rescission notice in the mail, file it for telegraphic transmission, or deliver it to the creditor's place of business within that period in order to exercise the right.*

***Material disclosures.** Section 1026.23(a)(3)(ii) sets forth the material disclosures that must be provided before the rescission period can begin to run. Failure to provide information regarding the annual percentage rate also includes failure to inform the consumer of the existence of a variable rate feature. Failure to give the other required disclosures does not prevent the running of the rescission period, although that failure may result in civil liability or administrative sanctions.*

***Unexpired right of rescission.** When the creditor has failed to take the action necessary to start the three-business day rescission period running, the right to rescind automatically lapses on the occurrence of the earliest of the following three events:*

- *The expiration of three years after consummation of the transaction.*
- *Transfer of all the consumer's interest in the property.*
- *Sale of the consumer's interest in the property, including a transaction in which the consumer sells the dwelling and takes back a purchase money note and mortgage or retains legal title through a device such as an installment sale contract.*

***Transfer of all the consumer's interest includes such transfers as bequests and gifts**. A sale or transfer of the property need not be voluntary to terminate the right to rescind. For example, a foreclosure sale would terminate an unexpired right to rescind. As provided in section 125 of the Act, the three-year limit may be extended by an administrative proceeding to enforce the provisions of this section. A partial transfer of the consumer's interest, such as a transfer bestowing co-ownership on a spouse, does not terminate the right of rescission.*

***Joint owners.*** *When more than one consumer has the right to rescind a transaction, any of them may exercise that right and cancel the transaction on behalf of all. For example, if both husband and wife have the right to rescind a transaction, either spouse acting alone may exercise the right and both are bound by the rescission.*

## *Notice of Right to Rescind: [12 C.F.R. §1026.23(b)]*

The bank must inform the customer that he or she has the right to rescind by issuing a right of rescission or right to cancel form at the time of closing. In a transaction subject to rescission, a creditor must deliver two copies of the notice of the right to rescind (one copy to each if the notice is delivered electronically in compliance with the E-Sign Act) and one copy of the material TIL disclosures to each consumer entitled to rescind. The notice must be on a separate document that identifies the transaction and shall clearly and conspicuously disclose the following:

- The retention or acquisition of a security interest in the consumer's principal dwelling;
- The consumer's right to rescind the transaction;
- How to exercise the right to rescind, with a form for that purpose, designating the street address of the creditor's place of business;
- The effects of rescission, as described in paragraph (d) of this section;
- The date the rescission period expires.

The right to rescind lasts for three business days following loan closing. At the end of the three business days, the bank may then disburse the funds to the customer.

**Commentary**

- ***Who receives notice***. *Each consumer entitled to rescind must be given:*
  - *Two copies of the rescission notice.*
  - *The material disclosures.*

  *In a transaction involving joint owners, both of whom are entitled to rescind, both must receive the notice of the right to rescind and disclosures. For example, if both spouses are entitled to rescind a transaction, each must receive two copies of the rescission notice and one copy of the disclosures. If e-mail is used, the creditor complies with this section if one notice is sent to each co-owner. Each co-owner must consent to receive electronic disclosures and each must designate an electronic address for receiving the disclosure.*

- ***Format.*** *The notice must be on a separate piece of paper, but may appear with other information such as the itemization of the amount financed. The material must be clear and conspicuous, but no minimum type size or other technical requirements are imposed. The notices in Appendix H provide models that creditors may use in giving the notice.*

- ***Content.*** *The notice must include all of the information outlined in this section. The requirement that the transaction be identified may be met by providing the date of the transaction. The creditor may provide a separate form that the consumer may use to exercise the right of rescission, or that form may be combined with the other rescission disclosures,* *as illustrated in Appendix H. The notice may include additional information related to the required information, such as:*

- o *A description of the property subject to the security interest.*
- o *A statement that joint owners may have the right to rescind and that a rescission by one is effective for all.*
- o *The name and address of an agent of the creditor to receive notice of rescission.*

- ***Time of providing notice.*** *The notice required by this section need not be given before consummation of the transaction. The creditor may deliver the notice after the transaction is consummated, but the rescission period will not begin to run until the notice is given. For example, if the creditor provides the notice on May 15, but disclosures were given and the transaction was consummated on May 10, the three-business day rescission period will run from May 15.*

## *Delay of Creditor's Performance: [12 C.F.R. §1026.23(c)]*

Unless the consumer waives the right to rescind:

- No money may be disbursed other than in escrow;
- No services can be performed; and
- No materials can be delivered until after the rescission period has expired and the creditor is reasonably satisfied that the consumer has not rescinded.

### Commentary

***General rule.*** *Until the rescission period has expired and the creditor is reasonably satisfied that the consumer has not rescinded, the creditor must not, either directly or through a third-party:*

- *Disburse loan proceeds to the consumer;*
- *Begin performing services for the consumer;*
- *Deliver materials to the consumer.*

***Escrow***. *The creditor may disburse loan proceeds during the rescission period in a valid escrow arrangement. The creditor may not, however, appoint the consumer as "trustee" or "escrow agent" and distribute funds to the consumer in that capacity during the delay period.*

***Actions during the delay period***. *This section does not prevent the creditor from taking other steps during the delay, short of beginning actual performance. Unless otherwise prohibited, such as by state law, the creditor may, for example:*

- *Prepare the loan check;*
- *Perfect the security interest;*
- *Prepare to discount or assign the contract to a third-party;*

- *Accrue finance charges during the delay period.*

***Delay beyond rescission period.*** *The creditor must wait until it is reasonably satisfied that the consumer has not rescinded. For example, the creditor may satisfy itself by doing one of the following:*

- *Waiting a reasonable time after expiration of the rescission period to allow for delivery of a mailed notice.*
- *Obtaining a written statement from the consumer that the right has not been exercised.*

*When more than one consumer has the right to rescind, the creditor cannot reasonably rely on the assurance of only one consumer, because other consumers may exercise the right.*

## *Effects of Rescission: [12 C.F.R. §1026.23(d)]*

If a consumer rescinds a transaction, the security interest giving rise to the right of rescission becomes void and the consumer shall not be liable for any amount including any finance charge(s).

Within 20 calendar days after receipt of notice of right of rescission, the creditor shall return any money or property that has been given in connection with the transaction and must take any action necessary to reflect the termination of the security interest.

If the creditor has delivered any money or property, the consumer may retain it until the creditor satisfies the above paragraph. If the creditor does not take possession of the property or money within 20 calendar days after the consumer's tender, the consumer may keep it without further obligation.

**Commentary**

- ***Termination of security interest.*** *Any security interest giving rise to the right of rescission becomes void when the consumer exercises the right of rescission. The security interest is automatically negated regardless of its status and whether or not it was recorded or perfected. However, the creditor must take any action necessary to reflect the fact that the security interest no longer exists.*
- ***Refunds to consumer.*** *The consumer cannot be required to pay any amount in the form of money or property either to the creditor or to a third-party as part of the credit transaction. Any amounts of this nature already paid by the consumer must be refunded. "Any amount" includes finance charges already accrued, as well as other charges, such as broker fees, application and commitment fees, or fees for a title search or appraisal, whether paid to the creditor, paid directly to a third-party, or passed on from the creditor to the third-party. It is irrelevant that these amounts may not represent profit to the creditor.*
- ***Amounts not refundable to consumer.*** *Creditors need not return any money given by the consumer to a third-party outside of the credit transaction, such as costs incurred for a building permit or for a zoning variance. Similarly, the term "any amount" does not apply to any money or property given by the creditor to the consumer; those amounts must be tendered by the consumer to the creditor.*

- ***Reflection of security interest termination.*** *The creditor must take whatever steps are necessary to indicate that the security interest is terminated. Those steps include the cancellation of documents creating the security interest, and the filing of release or termination statements in the public record. In a transaction involving subcontractors or suppliers that also hold security interests related to the credit transaction, the creditor must insure that the termination of their security interests is also reflected. The 20-day period for the creditor's action refers to the time within which the creditor must begin the process. It does not require all necessary steps to have been completed within that time, but the creditor is responsible for seeing the process through to completion.*
- ***Property exchange.*** *Once the creditor has fulfilled its obligations under §1026.23(d)(2), the consumer must tender to the creditor any property or money the creditor has already delivered to the consumer. At the consumer's option, property may be tendered at the location of the property. For example, if lumber or fixtures have been delivered to the consumer's home, the consumer may tender them to the creditor by making them available for pick-up at the home, rather than physically returning them to the creditor's premises. Money already given to the consumer must be tendered at the creditor's place of business.*
- ***Reasonable value.*** *If returning the property would be extremely burdensome to the consumer, the consumer may offer the creditor its reasonable value rather than returning the property itself. For example, if building materials have already been incorporated into the consumer's dwelling, the consumer may pay their reasonable value.*
- ***Modifications.*** *The procedures outlined above may be modified by a court. For example, when a consumer is in bankruptcy proceedings and prohibited from returning anything to the creditor, or when the equities dictate, a modification might be made.*

## *Consumer's Waiver of Right to Rescind: [12 C.F.R. §1026.23(e)]*

The consumer may modify or waive the right to rescind if the consumer determines that a bona fide financial emergency exists. To modify or waive the right, the consumer must give the creditor a dated written statement that:

- Describes the emergency;
- Specifically modifies or waives the right to rescind, and
- Bears the signatures of all consumers entitled to rescind.

Printed forms for this purpose are prohibited.

### Commentary

- ***Need for waiver.*** *To waive the right to rescind, the consumer must have a bona fide personal financial emergency that must be met before the end of the rescission period. The existence of the consumer's waiver will not, of itself, automatically insulate the creditor from liability for failing to provide the right of rescission.*

- ***Procedure.*** *To waive or modify the right to rescind, the consumer must give a written statement that specifically waives or modifies the right, and also includes a brief description of the emergency. Each consumer entitled to rescind must sign the waiver statement. In a transaction involving multiple consumers, such as a husband and wife using their home as collateral, the waiver must bear the signatures of both spouses.*

## *Exemptions: [12 C.F.R. §1029.23(f)]*

The right of rescission does not apply to the following loans:

- Residential mortgage transactions (purchase or construction loans).
- Refinancing or consolidation by the same lender of an extension of credit already secured by the consumer's principal dwelling, except for any amount of new money (other than earned finance charges on the existing debt and costs of the refinancing or consolidation).
- An advance, other than an initial advance, in a series of advances or a series of single payment loans treated as one transaction, if the rescission notice and material disclosures have been given to the consumer.
- Renewal of optional insurance that is not considered a refinancing.
- A transaction where a state agency is a creditor.

**Commentary**

- ***Residential mortgage transaction.*** *Any transaction to construct or acquire a principal dwelling, whether considered real or personal property, is exempt. For example, a credit transaction to acquire a mobile home or houseboat to be used as the consumer's principal dwelling would not be rescindable.*
- ***Lien status.*** *The lien status of the mortgage is irrelevant for purposes of the exemption; the fact that a loan has junior lien status does not by itself preclude application of this exemption. For example, a home buyer may assume the existing first mortgage and create a second mortgage to finance the balance of the purchase price. Such a transaction would not be rescindable.*
- ***Combined-purpose transaction.*** *A loan to acquire a principal dwelling and make improvements to that dwelling is exempt if treated as one transaction. If, on the other hand, the loan for the acquisition of the principal dwelling and the subsequent advances for improvements are treated as more than one transaction, then only the transaction that finances the acquisition of that dwelling is exempt.*
- ***New advances.*** *The exemption applies only to refinancings (including consolidations) by the original creditor. The original creditor is the creditor to whom the written agreement was initially made payable. In a merger, consolidation or acquisition, the successor institution is considered the original creditor for purposes of the exemption. If the refinancing involves a new advance of money, the amount of the new advance is rescindable. In determining whether there is a new advance, a creditor may rely on the amount financed, refinancing costs, and other figures stated in the latest Truth in Lending disclosures provided to the consumer and is not required to use, for example, more precise information*

*that may only become available when the loan is closed. For purposes of the right of rescission, a new advance does not include amounts attributed solely to the costs of the refinancing. These amounts would include charges (such as attorneys' fees and title examination and insurance fees, if bona fide and reasonable in amount), as well as insurance premiums and other charges that are not finance charges. Finance charges on the new transaction – points, for example – would not be considered in determining whether there is a new advance of money in a refinancing since finance charges are not part of the amount financed.*

- ***State creditors. [omitted]***
- ***Multiple advances.*** *Just as new disclosures need not be made for subsequent advances when treated as one transaction, no new rescission rights arise so long as the appropriate notice and disclosures are given at the outset of the transaction. For example, the creditor extends credit for home improvements secured by the consumer's principal dwelling, with advances made as repairs progress. As permitted by the regulation, the creditor makes a single set of disclosures at the beginning of the construction period, rather than separate disclosures for each advance. The right of rescission does not arise with each advance. However, if the advances are treated as separate transactions, the right of rescission applies to each advance.*
- ***Spreader clauses.*** *When the creditor holds a mortgage or deed of trust on the consumer's principal dwelling and that mortgage or deed of trust contains a "spreader clause," subsequent loans made are separate transactions and are subject to the right of rescission. Those loans are rescindable unless the creditor effectively waives its security interest under the spreader clause with respect to the subsequent transactions.*
- ***Converting open-end to closed-end credit.*** *Under certain state laws, consummation of a closed-end credit transaction may occur at the time a consumer enters into the initial open-end credit agreement. As provided earlier, closed-end credit disclosures may be delayed under these circumstances until the conversion of the open-end account to a closed-end transaction. In accounts secured by the consumer's principal dwelling, no new right of rescission arises at the time of conversion.*

## *Tolerances for Accuracy: [12 C.F.R. §1026.23(g)]*

***One-half of 1.0 percent tolerance.*** Generally, the finance charge and other disclosures affected by the finance charge (such as the amount financed and the annual percentage rate) will be considered accurate for purposes of providing adequate material disclosures for the right of rescission if the disclosed finance charge is:

- Understated by no more than one-half of 1.0 percent of the face amount of the note or $100, whichever is greater, or
- Greater than the amount required to be disclosed.

***One percent tolerance.*** In a refinancing of a residential mortgage transaction with a new creditor (other than a transaction covered by Section 1026.32), if there is no new advance and no consolidation of existing loans, the finance charge and other disclosures affected by the finance charge (such as the amount financed and the annual percentage rate) will be considered accurate for purposes of providing adequate material disclosures for the right of rescission if the disclosed finance charge is:

- Understated by no more than 1.0 percent of the face amount of the note or $100, whichever is greater, or
- Greater than the amount required to be disclosed.

## *Special Rules for Foreclosures: [12 C.F.R. §1026.23(h)]*

***Right to rescind.*** After the initiation of foreclosure on the consumer's principal dwelling that secures a credit obligation, the consumer shall have the right to rescind the transaction:

- If a mortgage broker fee that should have been included in the finance charge was not included; or
- The creditor did not provide the properly completed appropriate notice of rescission.

***Tolerance for disclosures.*** After the initiation of foreclosure on the consumer's principal dwelling that secures the credit obligation, the finance charge and other disclosures affected by the finance charge (such as the amount financed and the annual percentage rate) will be considered accurate for purposes of providing adequate material disclosures for the right of rescission if the disclosed finance charge is:

- Understated by no more than $35; or
- Greater than the amount required to be disclosed.

**Commentary**

- ***Rescission.*** *This section applies only to transactions that are subject to rescission.*
- ***Mortgage broker fees.*** *A consumer may rescind a loan in foreclosure if a mortgage broker fee that should have been included in the finance charge was omitted, without regard to the dollar amount involved. If the amount of the mortgage broker fee is included but misstated the rule in Section 1026.23(h)(2) applies.*
- ***General.*** *This section is based on the accuracy of the total finance charge rather than its component charges.*

## H – 8 – RESCISSION MODEL FORM (GENERAL)

**NOTICE OF RIGHT TO CANCEL**

**Your Right to Cancel**

You are entering into a transaction that will result in a [mortgage/lien/security interest] [on/in] your home. You have a legal right under Federal law to cancel this transaction, without cost, within three business days from whichever of the following events occurs last:

(1) the date of the transaction, which is ________; or

(2) the date you received your Truth in Lending disclosures; or

(3) the date you received this notice of your right to cancel.

If you cancel the transaction, the [mortgage/lien/security interest] is also cancelled. Within 20 calendar days after we receive your notice, we must take the steps necessary to reflect the fact that the [mortgage/lien/security interest] [on/in] your home has been cancelled, and we must return to you any money or property you have given to us or to anyone else in connection with this transaction. You may keep any money or property we have given you until we have done the things mentioned above, but you must then offer to return the money or property. If it is impractical or unfair for you to return the property, you must offer its reasonable value. You may offer to return the property at your home or at the location of the property. Money must be returned to the address below. If we do not take possession of the money or property within 20 calendar days of your offer, you may keep it without further obligation.

**How to Cancel**

If you decide to cancel this transaction, you may do so by notifying us in writing, at (creditor's name and business address).

You may use any written statement that is signed and dated by you and states your intention to cancel, or you may use this notice by dating and signing below. Keep one copy of this notice because it contains important information about your rights.

If you cancel by mail or telegram, you must send the notice no later than midnight of (date) (or midnight of the third business day following the latest of the three events listed above). If you send or deliver your written notice to cancel some other way, it must be delivered to the above address no later than that time.

**I WISH TO CANCEL**

________________________________________ ______________________

Consumer's Signature Date

## H – 9 – RESCISSION MODEL FORM (REFINANCING WITH ORIGINAL CREDITOR)

### NOTICE OF RIGHT TO CANCEL

**Your Right to Cancel**

You are entering into a new transaction to increase the amount of credit previously provided to you.

Your home is the security for this new transaction. You have a legal right under Federal law to cancel this new transaction, without cost, within three business days from whichever of the following events occurs last:

(1) the date of this new transaction, which is ________; or

(2) the date you received your new Truth in Lending disclosures; or

(3) the date you received this notice of your right to cancel.

If you cancel this new transaction, it will not affect any amount that you presently owe. Your home is the security for that amount. Within 20 calendar days after we receive your notice of cancellation of this new transaction, we must take the steps necessary to reflect the fact that your home does not secure the increase of credit. We must also return any money you have given to us or anyone else in connection with this new transaction.

You may keep any money we have given you in this new transaction until we have done the things mentioned above, but you must then offer to return the money at the address below.

If we do not take possession of the money within 20 calendar days of your offer, you may keep it without further obligation.

**How To Cancel**

If you decide to cancel this new transaction, you may do so by notifying us in writing, at

______________________________________________________________

(Creditor's name and business address).

You may use any written statement that is signed and dated by you and state your intention to cancel, or you may use this notice by dating and signing below. Keep one copy of this notice because it contains important information about your rights.

If you cancel by mail or telegram, you must send the notice no later than midnight of

______________________________________________________________

(Date)

______________________________________________________________

(or midnight of the third business day following the latest of the three events listed above).

If you send or deliver your written notice to cancel some other way, it must be delivered to the above address no later than that time.

**I WISH TO CANCEL**

________________________________________ ____________________

Consumer's Signature Date

# Section 7: Record Retention: [12 C.F.R. §1026.25] Subpart D Miscellaneous

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

A creditor shall retain evidence of compliance with this part (other than advertising requirements under §§ 1026.16 and 1026.24, and other than the requirements under § 1026.19(e) and (f)) for two years after the date disclosures are required to be made or action is required to be taken. The administrative agencies responsible for enforcing the regulation may require creditors under their jurisdictions to retain records for a longer period if necessary to carry out their enforcement responsibilities under section 108 of the Act.

## *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.

## *Limitation on Rates: [12 C.F.R. §1026.30]*

Any consumer credit contract secured by a "dwelling" and subject to the Truth in Lending Act and Regulation Z shall include the maximum interest rate that may be imposed during the term of the obligation when the annual percentage rate may increase after consummation (closed-end credit) or during the life of the plan (open-end credit).

The definition of "dwelling" is a residential structure that contains one-to-four units, whether or not that structure is attached to real property. The term includes an individual condominium unit, cooperative unit, mobile home, and trailer, if it is used as a residence.

# Section 8: Subpart E: Special Rules for Certain Home Mortgage Transactions [12 C.F.R. §1026.31]

## *Relation to Other Subparts: [12 C.F.R. §1026.31(a)]*

The requirements and limitations of this subpart are in addition to and not in lieu of those contained in other subparts of Regulation Z.

## *Form of Disclosures: [12 C.F.R. §1026.31(b)]*

The creditor must make the disclosures required by this subpart clearly and conspicuously in writing, in a form that the consumer may keep.

## *Timing of Disclosure: [12 C.F.R. §1026.31(c)]*

***Disclosures for high-cost mortgages.*** The creditor must furnish the disclosures required by section 1026.32 at least three business days before consummation of a mortgage transaction covered by that section.

***Change in terms.*** After giving the early disclosures for high-cost mortgages, and before consummation, if the creditor changes any term that makes the disclosures inaccurate, new disclosures must be provided in accordance with the requirements of this subpart.

***Telephone disclosures.*** A creditor may provide new disclosures by telephone if the consumer initiates the change and if, at consummation:

- The creditor provides new written disclosures; and
- The consumer and creditor sign a statement that the new disclosures were provided by telephone at least three days before consummation.

***Consumer's waiver of waiting period before consummation.*** The consumer may, after receiving the early disclosures, modify or waive the three-day waiting period between delivery of those disclosures and consummation if the consumer determines that the extension of credit is needed to meet a bona fide personal financial emergency. To modify or waive the right, the consumer must give the creditor a dated written statement that describes the emergency, specifically modifies or waives the waiting period, and bears the signature of all the consumers entitled to the waiting period. Printed forms for this purpose are prohibited, except when creditors are permitted to use printed forms for declared emergencies under the rescission rules.

***Disclosures for reverse mortgages.*** The creditor must furnish the disclosures required by section 1026.33 at least three business days before consummation of a closed-end credit transaction.

## *Basis of Disclosures and Use of Estimates: [12 C.F.R. §1026.31(d)]*

***Legal obligation.*** Disclosures must reflect the terms of the legal obligation between the parties.

***Estimates.*** 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, and must state clearly that the disclosure is an estimate.

***Per-diem interest.*** 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.

## *Multiple Creditors; Multiple Consumers: [12 C.F.R. §1026.31(e)]*

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 must 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. If the transaction is rescindable, however, the disclosures must be made to each consumer who has the right to rescind.

## *Effect of subsequent events: [12 C.F.R. §1026.31(f)]*

If a disclosure becomes inaccurate because of an event that occurs after the creditor delivers the required disclosures, the inaccuracy is not a violation of Regulation Z, although new disclosures may be required.

## *Accuracy of Annual Percentage Rate: [12 C.F.R. §1026.31(g)]*

For purposes of section 1026.32, the annual percentage rate shall be considered accurate, and may be used in determining whether a transaction is covered by this section, if it is accurate according to the requirements and within the tolerances under section 1026.22. The finance charge tolerances for rescission under section 1026.23(g) or (h) shall not apply for this purpose.

## *Requirements for High-cost Mortgages: [12 C.F.R. §1026.32]*

## *Coverage: [12 C.F.R. §1026.32(a)]*

Certain requirements apply to consumer credit transactions that are secured by the consumer's principal dwelling and in which:

- The APR at consummation will exceed the average prime offer rate (APOR) for a comparable transaction by more than:

- 6.5 percentage points for a first-lien transaction
- 8.5 percentage points for a first-lien transaction if the dwelling is personal property and the loan amount is less than $50,000; or
- 8.5 percentage points for a subordinate-lien transaction; or

- The transaction's total points and fees will exceed:
  - 5 percent of the total loan amount for a transaction with a loan amount of $20,000 or more (adjusted annually on January 1 by the annual percentage change in the Consumer Price Index that was reported on the preceding June 1; or
  - The lesser of 8 percent of the total loan amount or $1,000 for a transaction with a loan amount of less than $20,000, adjusted annually as indicated above.

**Exceptions**

The above requirements do not apply to the following:

- A transaction to finance the initial construction of a dwelling
- A reverse-mortgage transaction subject to §1026.33

The chart below shows the history of the changes. The acronym TLA means Total Loan Amount.

| 2014 Loan Amount | 2014 Maximum Points and Fees | 2016 Loan Amount | 2016 Maximum Points and Fees | 2017 Loan Amount | 2017 Maximum Points and Fees |
|---|---|---|---|---|---|
| **$100,000 and higher** | 3% of TLA | $101,749 and higher | 3% of TLA | $102,894 and higher | 3% of TLA |
| **$60,000 to $99,999.99** | $3,000 | $61,050 to $101,748.99 | $3,052 | $61,737 to $102,893.99 | $3,087 |
| **$20,000 to $59,999.99** | 5% of TLA | $20,350 to $61,049.99 | 5% of TLA | $20,579 to $61,736.99 | 5% of TLA |
| **$12,500 to $19,999.99** | $1,000 | $12,719 to $20,349.99 | $1,017 | $12,862 to $20,578.99 | $1,029 |
| **Under $12,500** | 8% of TLA | Under $12,719 | 8% of TLA | Under $12,862 | 8% of TLA |

## Definitions: [12 C.F.R. §1026.32(b)]

For the purposes of this section, certain definitions must be understood:

***Points and fees*** mean the following that are known at or before consummation:

- All items required to be disclosed under §§1026.4(a) and (b), except that the following items are excluded:
  - Interest or the time-price differential;
  - Any premium or other charge imposed in connection with any Federal or state agency program for guaranty or insurance that protects the creditor against the consumer's default or other credit loss;
  - For any guaranty or insurance that protects the creditor against the consumer's default or other credit loss that is not a Federal or state agency program, the entire premium if payable after consummation;
  - Any bona fie third-party charge not retained by the creditor, loan originator, or an affiliate of either, unless the charge is required to be included in points and fees elsewhere in this section;
  - Up to two bona fide discount points paid by the consumer in connection with the transaction, if the interest rate without any discount does not exceed APOR by more than one percentage point
  - If no discount points have been excluded, then up to one bona fide discount point paid by the consumer in connection with the transaction, if the interest rate without any discount does not exceed APOR by more than two percentage points;
- All compensation paid to loan originators, unless paid to a mortgage broker and already included in points and fees, the compensation is paid by a mortgage broker to an employee of the mortgage broker, the compensation is paid by a creditor to a loan originator that is the creditor's employee, or the compensation is paid by a retailer of manufactured homes to its employee;
- All single premium insurance amounts; and
- All items listed in §1026.4(c)(7) (other than monies held for future payment of taxes) unless:
  - The charge is reasonable;
  - The creditor receives no direct or indirect compensation in connection with the charge; and
  - The charge is not paid to an affiliate of the creditor.
- The maximum prepayment penalty that may be charged or collected under the terms of the mortgage loan; and
- The total prepayment penalty incurred by the consumer if the consumer refinances the existing mortgage loan, or terminates an existing open-end credit plan in connection with obtaining a new mortgage loan, with the current holder of the existing loan, a servicer acting on behalf of the current holder, or an affiliate of either.

***Bona Fide Discount Point*** means an amount equal to 1 percent of the loan amount paid by the consumer that reduces the interest rate or time-price differential applicable to the transaction based on a calculation that is consistent with established industry practices for determining the amount of reduction in the interest rate or time-price differential appropriate for the amount of discount points paid by the consumer.

***Total Loan Amount*** is calculated by taking the amount financed and deducting any of the items listed in § 1026.4(c)(7), premiums for credit life or other insurances, and the total prepayment penalty, if they are both included as points and fees and financed by the creditor.

***Affiliate*** means any company that controls, is controlled by, or is under common control with another company.

***Prepayment Penalty*** means a charge imposed for paying all or part of the transaction's principal before the date on which the principal is due, other than a waived, bona fide third-party charge that the creditor imposes if the consumer prepays all of the transaction's principal sooner than 36 months after consummation, provided, however, that interest charged consistent with the monthly interest accrual amortization method is not a prepayment penalty for FHA extensions of credit consummated before January 21, 2015.

## *Disclosures: [12 C.F.R. §1026.32(c)]*

In a mortgage loan covered by this section, the creditor must disclose the following, three days before loan closing (consummation) in a conspicuous type size:

- *Notice.* "You are not required to complete this agreement merely because you have received these disclosures or have signed a loan application. If you obtain this loan, the lender will have a mortgage on your home. You could lose your home, and any money you have put into it, if you do not meet your obligations under the loan."
- Annual percentage rate
- Amount of regular monthly (or other periodic) payment and the amount of any balloon payment
- Note amount
- *Variable rate.* For variable loans, the disclosure must contain a statement indicating that the monthly payment may increase, and the amount of the single maximum monthly payment, based on the maximum interest rate required to be disclosed under §1026.30.

## *Limitations: [12 C.F.R. §1026.32(d)]*

The following limitations also apply. A mortgage subject to this section may not provide for the following:

- Balloon payment, if the loan has a term less than five years (except for bridge loans with maturities of less than one year);
- Negative amortization;

- Advance payments (consolidating more than two periodic payments and paying them in advance from loan proceeds);
- Increased interest rates after default;
- Rebates (calculated less favorably than actuarial method) of interest arising from a loan acceleration due to default;
- Prepayment penalties, other than one otherwise permitted by law (including a refund calculated according to the rule of 78s) if all the following conditions are met:
  - The penalty can be exercised only for the first five years following consummation.
  - The source of the prepayment funds is not a refinancing by the creditor or an affiliate of the creditor.
  - At consummation, the consumer's total monthly debts (including amounts owed under the mortgage) do not exceed 50 percent of the customer's monthly gross income, as verified by the consumer's signed financial statement, a credit report, and payment records for employment income; and
- Due-on-demand clause. A demand feature that permits the creditor to terminate the loan in advance of the original maturity date and to demand repayment of the entire outstanding balance, except in the following circumstances:
  - There is fraud or material misrepresentation by the consumer in connection with the loan;
  - The consumer fails to meet the repayment terms of the agreement for any outstanding balance; or
  - There is any action or inaction by the consumer that adversely affects the creditor's security for the loan, or any right of the creditor in such security.

## *Reverse Mortgages: [12 C.F.R. §1026.33]*

**Omitted from this presentation.**

## *Prohibited Acts or Practices in Connection with High-Cost Mortgages: [12 C.F.R. §1026.34]*

## *High-Cost Mortgage Loans: [12 C.F.R. §1026.34(a)]*

A creditor extending mortgage credit subject to §1026.32 must not—

***Home improvement contracts.*** Pay a contractor under a home improvement contract from the proceeds of a Section 32 mortgage loan, other than:

- By an instrument payable to the consumer or jointly to the consumer and the contractor; or
- At the election of the consumer, through a third-party escrow agent in accordance with terms established in a written agreement signed by the consumer, the creditor, and the contractor before the disbursement.

***Notice to assignee.*** Sell or otherwise assign a high-cost mortgage loan without furnishing the following statement to the purchaser or assignee: "Notice: This is a mortgage subject to special rules under the Federal Truth in Lending Act. Purchasers or assignees of this mortgage could be liable for all claims and defenses with respect to the mortgage that the borrower could assert against the creditor."

***Refinancings within one-year period.*** Within one year of having extended a high-cost loan, refinance any high-cost loan to the same borrower into another high-costloan, unless the refinancing is in the borrower's interest. An assignee holding or servicing an extension of high-cost mortgage credit, must not, for the remainder of the one-year period following the date of origination of the credit, refinance any high-cost loan to the same borrower into another high-cost loan, unless the refinancing is in the borrower's interest. A creditor (or assignee) is prohibited from engaging in acts or practices to evade this provision, including a pattern or practice of arranging for the refinancing of its own loans by affiliated or unaffiliated creditors, or modifying a loan agreement (whether or not the existing loan is satisfied and replaced by the new loan) and charging a fee.

***Repayment ability.*** Engage in a pattern or practice of extending high-cost credit to a consumer based on the consumer's collateral without regard to the consumer's repayment ability. A creditor must comply with the repayment ability requirements set forth in § 1026.43.for closed-end credit transactions. Temporary or bridge loans with terms of twelve months or less are exempt from the repayment ability requirement.

***Pre-loan counseling.*** A creditor must not extend a high-cost mortgage unless certain pre-counseling requirements are met:

- The creditor must receive written certification that the consumer has obtained counseling on the advisability of the mortgage from a counselor that is approved by HUD and shown on the list compiled by the CFPB;
- The counseling must occur after the consumer receives the early RESPA disclosure;
- The counselor may not be employed by or affiliated with the creditor;
- The certification form must include the name of the consumer who obtained counseling, the date(s) of the counseling, the name and address of the counselor, a statement that the

consumer(s) received counseling on the advisability of the high-cost mortgage based on the terms shown in the early RESPA disclosure, and a statement that the counselor has verified that the consumer received the appropriate high-cost mortgage disclosures or early RESPA disclosures.

- A creditor may pay the fees of a counselor but may not condition the payment of such fees on the consummation of a mortgage transaction. If the consumer withdraws the application that would result in the extension of a high-cost mortgage, a creditor may not condition the payment of such fees on the receipt of certification from the counselor. A creditor may, however, confirm that a counselor has provided the counseling to the consumer prior to paying the fee to the counselor or counseling organization.
- A creditor may not steer or otherwise direct a consumer to choose a particular counselor.

***Recommended default.*** A creditor may not recommend or encourage default on an existing loan or other debt prior to and in connection with the consummation of a high-cost mortgage that refinances all or any portion of such existing loan or debt.

***Modification and deferral fees.*** A creditor, successor-in-interest, assignee, or any agent of such parties may not charge a consumer any fee to modify, renew, extend or amend a high-cost mortgage, or to defer any payment due under the terms of such mortgage.

***Late fees.*** Any late fee charge imposed in connection with a high-cost mortgage must be specifically permitted by the terms of the loan contract and may not exceed 4 percent of the amount of the payment past due. No such charge may be imposed more than once for a single late payment. The late charge may only be imposed if the payment is not received by the end of the 15-day period beginning on the date the payment is due. The late charge may not be imposed if the delinquency is attributable only to a late payment charge not paid with an otherwise full payment by its due date.

***Payoff statements.*** In general, a creditor may not charge a fee for providing a consumer with a statement of the amount due to pay off the outstanding balance of a high-cost mortgage. A processing fee may be charged to cover the cost of providing the payoff statement by fax or courier provided the fee does not exceed an amount charged in a non-high-cost mortgage loan. The payoff statement must be made available by a method other than fax or courier without charge to the consumer.

A creditor that provides a payoff statement on a high-cost mortgage loan four times during a calendar year may thereafter charge a reasonable fee for providing such statements during the remainder of the calendar year.

A payoff statement for a high-cost mortgage must be provided by a creditor or servicer within five business days after receiving a request for such statement by a consumer or a person authorized by the consumer to obtain such a statement.

***Financing of points and fees.*** A creditor that extends a high-cost mortgage may not finance charges that are required to be included in the points and fees calculation.

## *Dwelling-Secured Loans; Open-End Credit: [12 C.F.R. §1026.34(b)]*

In connection with credit secured by the consumer's dwelling that does not meet the definition of "open-end credit" [12 C.F.R. §1026.2(a)(20)], a creditor must not structure a home-secured loan as an open-end plan to evade the requirements of section 1026.32.

# Section 9: Higher Priced Mortgage Loans [12 C.F.R. §1026.35]

## *Higher-Priced Mortgage Loans Defined - [12 C.F.R. §1026.35(a)]*

For purposes of this section, a higher-priced mortgage loan is a consumer closed-end credit transaction secured by the consumer's principal dwelling with an annual percentage rate that exceeds the average prime offer rate for a comparable transaction as of the date the interest rate is set:

- By 1.5 or more percentage points for loans secured by a first lien with a principal obligation at consummation that does not exceed the limit in effect as of the date the transaction's interest rate is set for the maximum principal obligation for purchase by Freddie Mac
- By 2.5 or more percentage points for loans secured by a first lien with a principal obligation at consummation that exceeds the limit in effect as of the date the transaction's interest rate is set for the maximum principal obligation eligible for purchase by Freddie Mac; or
- By 3.5 or more percentage points for loans secured by a subordinate lien.

"Average prime offer rate" means an annual percentage rate that is derived from average interest rates, points, and other loan pricing terms currently offered to consumers by a representative sample of creditors for mortgage transactions that have low-risk pricing characteristics. The CFPB publishes average prime offer rates for a broad range of types of transactions in a table updated at least weekly as well as the methodology the CFPB uses to derive these rates.

Notwithstanding paragraph (a)(1) of this section, the term "higher-priced mortgage loan" does not include a transaction to finance the initial construction of a dwelling, a temporary or "bridge" loan with a term of twelve months or less, such as a loan to purchase a new dwelling where the consumer plans to sell a current dwelling within twelve months, a reverse-mortgage transaction subject to §1026.33, or a home equity line of credit subject to §1026.40.

**Commentary**

- ***Threshold for "jumbo" loans**. Section 1026.35(a)(1)(ii) provides a separate threshold for determining whether a transaction is a higher-priced mortgage loan subject to § 1026.35 when the principal balance exceeds the limit in effect as of the date the transaction's rate is set for the maximum principal obligation eligible for purchase by Freddie Mac (a "jumbo" loan). The Federal Housing Finance Agency (FHFA) establishes and adjusts the maximum principal obligation pursuant to rules under 12 U.S.C. 1454(a)(2) and other provisions of Federal law. Adjustments to the maximum principal obligation made by FHFA apply in determining whether a mortgage loan is a "jumbo" loan to which the separate coverage threshold in §1026.35(a)(1)(ii) applies.*
- ***Average prime offer rate.** Average prime offer rates are annual percentage rates derived from average interest rates, points, and other loan pricing terms currently offered to consumers by a representative sample of creditors for mortgage transactions that have low-risk pricing characteristics. Other pricing terms include commonly used indices, margins, and initial fixed-rate periods for variable-rate transactions. Relevant pricing characteristics*

*include a consumer's credit history and transaction characteristics such as the loan-to-value ratio, owner-occupant status, and purpose of the transaction. To obtain average prime offer rates, the Bureau uses a survey of creditors that both meets the criteria of §1026.35(a)(2) and provides pricing terms for at least two types of variable-rate transactions and at least two types of non-variable-rate transactions. An example of such a survey is the Freddie Mac Primary Mortgage Market Survey®.*

- ***Comparable transaction.*** *A higher-priced mortgage loan is a consumer credit transaction secured by the consumer's principal dwelling with an annual percentage rate that exceeds the average prime offer rate for a comparable transaction as of the date the interest rate is set by the specified margin. The table of average prime offer rates published by the Bureau indicates how to identify the comparable transaction.*
- ***Rate set.*** *A transaction's annual percentage rate is compared to the average prime offer rate as of the date the transaction's interest rate is set (or "locked") before consummation. Sometimes a creditor sets the interest rate initially and then re-sets it at a different level before consummation. The creditor should use the last date the interest rate is set before consummation.*
- ***Bureau table.*** *The Bureau publishes on the Internet, in table form, average prime offer rates for a wide variety of transaction types. The Bureau calculates an annual percentage rate, consistent with Regulation Z (see §1026.22 and Appendix J), for each transaction type for which pricing terms are available from a survey. The Bureau estimates annual percentage rates for other types of transactions for which direct survey data are not available based on the loan pricing terms available in the survey and other information. The Bureau publishes on the Internet the methodology it uses to arrive at these estimates.*

## *Escrow accounts for higher-priced mortgage loans. [12 C.F.R. §1026.35(b)]*

***Failure to escrow for property taxes and insurance.*** Except as provided in paragraph (b)(2) of this section, a creditor may not extend a loan secured by a first lien on a principal dwelling unless an escrow account is established before consummation for payment of property taxes and premiums for mortgage-related insurance required by the creditor, such as insurance against loss of or damage to property, or against liability arising out of the ownership or use of the property, or insurance protecting the creditor against the consumer's default or other credit loss.

***Exemptions.*** An escrow account need not be established for:

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

Insurance premiums described in paragraph (b)(1) of this section need not be included in escrow accounts for loans secured by condominium units, where the condominium association has an obligation to the condominium unit owners to maintain a master policy insuring condominium units.

***Small Creditor Exception.*** Regulation Z creates an exception from the HPML escrow requirement for small creditors that operate primarily in rural and underserved areas. To be eligible for the exemption, a creditor must:

- Make more than half of its first-lien mortgages in rural or underserved areas;
- Have an asset size less than $2 billion;
- Together with its affiliates, have originated 500 or fewer first-lien mortgages during the preceding calendar year; and
- Together with its affiliates, not escrow for any mortgage it or its affiliates currently services, other than escrow accounts established for first-lien HPMLs on or after April 1, 2010 and before January 1, 2014, or escrows established as an accommodation to distressed borrowers..

***Cancellation.*** A creditor or servicer may cancel the escrow account required in paragraph (b)(1) of this section only upon the earlier of:

- Termination of the underlying debt obligation, or
- Receipt no earlier than five years after consummation of a consumer's request to cancel the escrow account.

***Delayed cancellation.*** Notwithstanding paragraph (b)(3)(i) of this section, a creditor shall not cancel an escrow account pursuant to a consumer's request unless the following conditions are met:

- The unpaid principal balance is less than 80 percent of the original value of the property securing the underlying debt obligation; and
- The consumer currently is not delinquent or in default on the underlying debt obligation.

## Commentary

### *35(b) Escrows*

### *Paragraph 35(b)(1)*

*Section 1026.35(b)(1) applies to principal dwellings, including structures that are classified as personal property under state law. For example, an escrow account must be established on a higher-priced mortgage loan secured by a first-lien on a mobile home, boat or a trailer used as the consumer's principal dwelling. (See the commentary under §§1026.2(a)(19), 1026.2(a)(24), 1026.15 and 1026.23.) Section 1026.35(b)(1) also applies to higher-priced mortgage loans secured by a first lien on a condominium or a cooperative unit if it is in fact used as principal residence.*

***Administration of escrow accounts.*** *Section 1026.35(b)(1) requires creditors to establish before the consummation of a loan secured by a first lien on a principal dwelling an escrow account for payment of property taxes and premiums for mortgage-related insurance required by creditor. Section 6 of RESPA, 12 U.S.C. 2605, and Regulation X address how escrow accounts must be administered.*

***Optional insurance items.*** *Section 1026.35(b)(1) does not require that escrow accounts be established for premiums for mortgage-related insurance that the creditor does not require in connection with the credit transaction, such as an earthquake insurance or debt-protection insurance.*

***Transactions no subject to § 1026.35(b)(1).*** *Section 1026.35(b)(1) requires a creditor to establish an escrow account before consummation of a first-lien higher-priced mortgage loan. This requirement does not affect a creditor's ability, right, or obligation, pursuant to the terms of the legal obligation or applicable law, to offer or require an escrow account for a transaction that is not subject to § 1026.35(b)(1).*

***Paragraph 35(b)(2)(ii)***

***Limited exception.*** *A creditor is required to escrow for payment of property taxes for all first lien loans secured by condominium units regardless of whether the creditor escrows insurance premiums for condominium units.*

## *Appraisals for Higher-Priced Mortgage Loans [12 C.F.R. § 1026.35(c)*

***Requirements.*** In general, a creditor may not extend an HPML to a consumer without obtaining, prior to consummation, a written appraisal of the property to be mortgaged. The appraisal must be performed by a certified or licensed appraiser who conducts a physical visit of the interior of the property that will secured the transaction.

***Safe harbor.*** A creditor obtains a safe harbor and meets the requirement of this section if the creditor:

- Orders that the appraiser perform the appraisal in conformity with the Uniform Standards of Professional Appraisal Practice (USPAP) and title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), as amended (12 U.S.C. 3331 et seq.)and any implementing regulations in effect at the time the appraiser signs the appraiser's certification;
- Verifies through the National Registry that the appraiser who signed the appraiser's certification was a certified or licensed appraiser in the State in which the appraised property is located as of the date the appraiser signed the appraiser's certification;
- Confirms that the elements set forth in Appendix N to this part are addressed in the written appraisal; and
- Has no actual knowledge contrary to the facts or certifications contained in the written appraisal.

***Additional appraisal for certain higher-priced mortgage loans.*** A creditor shall no extend an HPML to a consumer to finance the acquisition of the consumer's principal dwelling without obtaining, prior to consummation, two written appraisals, if:

- The seller acquired the property 90 or fewer days prior to the date of the consumer's agreement to acquire the property and the price in the consumer's agreement to acquire the property exceeds the seller's acquisition price by more than 10 percent; or

- The seller acquired the property 91 to 180 days prior to the date of the consumer's agreement to acquire the property and the price in the consumer's agreement to acquire the property exceeds the seller's acquisition price by more than 20 percent.

The two appraisals may not be performed by the same certified or licensed appraiser. Each of the two appraisals must meet the requirements shown above.

One of the two required appraisals must include an analysis of:

- The difference between the price at which the seller acquired the property and the price that the consumer is obligated to pay to acquire the property, as specified in the consumer's agreement to acquire the property from the seller;
- Changes in market conditions between the date the seller acquired the property and the date of the consumer's agreement to acquire the property; and
- Any improvements made to the property between the date the seller acquired the property and the date of the consumer's agreement to acquire the property.

A creditor required to obtain two written appraisals may only charge the consumer for one of the appraisals

A creditor must obtain two written appraisals unless the creditor can demonstrate by exercising reasonable diligence that the requirement to obtain two appraisals does not apply. This may be accomplished by the creditor basing its determination on information contained in written source documents, such as the documents listed in Appendix O to this part

The regulation provides for exceptions to the "two appraisal" requirement in limited circumstances, such as a consumer's acquisition of property through foreclosure, inheritance, or divorce proceedings.

***Required disclosure.*** A creditor shall disclose the following statement, in writing, to a consumer who applies for a higher-priced mortgage loan: *"We may order an appraisal to determine the property's value and charge you for this appraisal. We will give you a copy of any appraisal, even if your loan does not close. You can pay for an additional appraisal for your own use at your own cost."* Compliance with the Regulation B disclosure requirement regarding appraisals satisfies this requirement.

The disclosure must be delivered or placed in the mail no later than the third business day after the creditor receives the consumer's application for an HPML. In the case of a loan that is not a higher-priced mortgage loan at the time of application, but later becomes an HPML subject to the two appraisal requirement, the disclosure must be delivered or placed in the mail not later than the third business day after the creditor determines that the loan is a higher-priced mortgage loan.

***Copy of appraisals.*** A creditor shall p0rovide the consumer a copy of any written appraisal performed in connection with a HPML no later than three business days prior to consummation of the loan, or in the case of a loan that is not consummated, no later than 30 days after the creditor determines that the loan will not close.

Any appraisal copies may be provided in electronic form in compliance with the E-Sign Act. No charge may be imposed on the consumer for the copies of any appraisals.

## *Evasion; Open-End Credit [12 C.F.R. § 1026.35(d)*

In connection with credit secured by a consumer's principal dwelling that does not meet the definition of open-end credit in §1026.2(a)(20), a creditor shall not structure a home-secured loan as an open-end plan to evade the requirements of this section.

# Section 10: Prohibited Acts or Practices and Certain Requirements for Credit Secured by a Dwelling [12 C.F.R. §1026.36]

## *Definitions [12 C.F.R. §1026.36(a)]*

**Loan originator defined. [12 C.F.R. §1026.36(a)(1)]**

For purposes of this section, the term "loan originator" means with respect to a particular transaction, a person who for compensation or other monetary gain, or in expectation of compensation or other monetary gain, arranges, negotiates, or otherwise obtains an extension of consumer credit for another person. The term "loan originator" includes an employee of the creditor if the employee meets this definition. The term "loan originator" includes the creditor only if the creditor does not provide the funds for the transaction at consummation out of the creditor's own resources, including drawing on a bona fide warehouse line of credit, or out of deposits held by the creditor.

**Mortgage broker defined. [12 C.F.R. §1026.36(a)(2)]**

For purposes of this section, a mortgage broker with respect to a particular transaction is any loan originator that is not an employee of the creditor.

## *Servicing practices. [12 C.F.R. §1026.36(c)]*

In connection with a consumer credit transaction secured by a consumer's principal dwelling, no servicer shall:

- Fail to credit a payment to the consumer's loan account as of the date of receipt, except when a delay in crediting does not result in any charge to the consumer or in the reporting of negative information to a consumer reporting agency, or except as provided in paragraph (c)(1)(iii) of this section;
- Impose on the consumer any late fee or delinquency charge in connection with a payment, when the only delinquency is attributable to late fees or delinquency charges assessed on an earlier payment, and the payment is otherwise a full payment for the applicable period and is paid on its due date or within any applicable grace period; or
- Fail to provide, within a reasonable time after receiving a request from the consumer or any person acting on behalf of the consumer, an accurate statement of the total outstanding balance that would be required to satisfy the consumer's obligation in full as of a specified date.

If a servicer specifies in writing requirements for the consumer to follow in making payments, but accepts a payment that does not conform to the requirements, the servicer shall credit the payment as of 5 days after receipt.

For purposes of this paragraph (c), the terms "servicer" and "servicing" have the same meanings as provided in 12 C.F.R. §1024.2(b).

## *Prohibited payments to loan originators. [12 C.F.R. §1026.36(d)]*

**Payments based on transaction terms or conditions. [12 C.F.R. §1026.36(d)(1)]**

- In connection with a consumer credit transaction secured by a dwelling, no loan originator shall receive and no person shall pay to a loan originator, directly or indirectly, compensation in an amount that is based on any of the transaction's terms or conditions.
- For purposes of this paragraph (d)(1), the amount of credit extended is not deemed to be a transaction term or condition, provided compensation received by or paid to a loan originator, directly or indirectly, is based on a fixed percentage of the amount of credit extended; however, such compensation may be subject to a minimum or maximum dollar amount.
- This paragraph (d)(1) shall not apply to any transaction in which paragraph (d)(2) of this section applies.

**Payments by persons other than consumer. [12 C.F.R. §1026.36(d)(2)]**

If any loan originator receives compensation directly from a consumer in a consumer credit transaction secured by a dwelling:

- No loan originator shall receive compensation, directly or indirectly, from any person other than the consumer in connection with the transaction; and
- No person who knows or has reason to know of the consumer-paid compensation to the loan originator (other than the consumer) shall pay any compensation to a loan originator, directly or indirectly, in connection with the transaction.

**Affiliates. [12 C.F.R. §1026.36(d)(3)]**

For purposes of this paragraph (d), affiliates shall be treated as a single "person."

## *Prohibition on steering. [12 C.F.R. §1026.36(e)]*

**General. [12 C.F.R. §1026.36(e)(1)]**

In connection with a consumer credit transaction secured by a dwelling, a loan originator shall not direct or "steer" a consumer to consummate a transaction based on the fact that the originator will receive greater compensation from the creditor in that transaction than in other transactions the originator offered or could have offered to the consumer, unless the consummated transaction is in the consumer's interest.

**Permissible transactions. [12 C.F.R. §1026.36(e)(2)]**

A transaction does not violate paragraph (e)(1) of this section if the consumer is presented with loan options that meet the conditions in paragraph (e)(3) of this section for each type of transaction in which the consumer expressed an interest. For purposes of paragraph (e) of this section, the term "type of transaction" refers to whether:

- A loan has an annual percentage rate that cannot increase after consummation;

- A loan has an annual percentage rate that may increase after consummation; or
- A loan is a reverse mortgage.

**Loan options presented. [12 C.F.R. §1026.36(e)(3)]**

A transaction satisfies paragraph (e)(2) of this section only if the loan originator presents the loan options required by that paragraph and all of the following conditions are met:

- The loan originator must obtain loan options from a significant number of the creditors with which the originator regularly does business and, for each type of transaction in which the consumer expressed an interest, must present the consumer with loan options that include:
  - The loan with the lowest interest rate;
  - The loan with the lowest interest rate without negative amortization, a prepayment penalty, interest-only payments, a balloon payment in the first 7 years of the life of the loan, a demand feature, shared equity, or shared appreciation; or, in the case of a reverse mortgage, a loan without a prepayment penalty, or shared equity or shared appreciation; and
  - The loan with the lowest total dollar amount for origination points or fees and discount points.
- The loan originator must have a good faith belief that the options presented to the consumer pursuant to paragraph (e)(3)(i) of this section are loans for which the consumer likely qualifies.
- For each type of transaction, if the originator presents to the consumer more than three loans, the originator must highlight the loans that satisfy the criteria specified in paragraph (e)(3)(i) of this section.

**Number of loan options presented. [12 C.F.R. §1026.36(e)(4)]**

The loan originator can present fewer than three loans and satisfy paragraphs (e)(2) and (e)(3)(i) of this section if the loan(s) presented to the consumer satisfy the criteria of the options in paragraph (e)(3)(i) of this section and the provisions of paragraph (e)(3) of this section are otherwise met.

## *Loan originator qualification requirements. [12 C.F.R. §1026.36(f)]*

A loan originator for a consumer credit transaction secured by a dwelling must, if required by State or Federal law, be registered and licensed, including in accordance with the SAFE Act.

## *Name and NMLSR ID on loan documents. [12 C.F.R. §1026.36(g)]*

For a consumer credit transaction secured by a dwelling, a loan originator organization must include on the specified loan documents the loan originator organization name and NMLSR ID, and the name of the individual loan originator with primary responsibility for the originator and his/her NMLSR ID.

The loan documents that must include the names and NMLSR IDs are:

- The credit application
- The note or loan contract
- The security agreement

## *Prohibition on financing credit insurance. [12 C.F.R. §1026.36(i)*

A creditor may not finance, directly or indirectly, any premiums or fees for credit insurance in connection with a consumer credit transaction secured by a dwelling. The prohibition does not apply to credit insurance for which premiums or fees are calculated and paid in full on a monthly basis.

## *Policies and procedures to ensure and monitor compliance. [12 C.F.R. §1026.36(j)*

A depository institution must establish and maintain written policies and procedures reasonably designed to ensure and monitor the compliance of the depository institution, its employees, and its subsidiaries. The policies and procedures must be commensurate with the nature, size, complexity and scope of the institution's mortgage lending activities.

## *Negative amortization counseling. [12 C.F.R. §1026.36(k)]*

A creditor shall not extend credit to a first-time borrower in connection with a closed-end transaction secured by a dwelling (other than a reverse mortgage or a timeshare plan) that may result in negative amortization, unless the creditor receives documentation that the consumer has obtained homeownership counseling from a counseling organization or individual certified or approved by HUD to provide such counseling.

**Commentary**

***Meaning of loan originator.***

***General.*** *Section 1026.36(a) defines the set of activities or services any one of which, if done for or in the expectation of compensation or gain, makes the person doing such activities or performing such services a loan originator, unless otherwise excluded. The scope of activities covered by the term loan originator includes:*

1. *Referring a consumer to any person who participates in the origination process as a loan originator. Referring is an activity included under each of the activities of offering, arranging, or assisting a consumer in obtaining or applying to obtain an extension of credit. Referring includes any oral or written action directed to a consumer that can affirmatively influence the consumer to select a particular loan originator or creditor to obtain an extension of credit when the consumer will pay for such credit. See comment 36(a)-4 with respect to certain activities that do not constitute referring.*

2. *Arranging a credit transaction, including initially contacting and orienting the consumer to a particular loan originator's or creditor's origination process or particular credit terms that are or may be available to that consumer selected based on the consumer's financial characteristics, assisting the consumer to apply for credit, taking an application, offering particular credit terms to the consumer selected based on the consumer's financial characteristics, negotiating credit terms, or otherwise obtaining or making an extension of credit.*

3. *Assisting a consumer in obtaining or applying for consumer credit by advising on particular credit terms that are or may be available to that consumer based on the consumer's financial characteristics, filling out an application form, preparing application packages (such as a credit application or pre-approval application or supporting documentation), or collecting application and supporting information on behalf of the consumer to submit to a loan originator or creditor. A person who, acting on behalf of a loan originator or creditor, collects information or verifies information provided by the consumer, such as by asking the consumer for documentation to support the information the consumer provided or for the consumer's authorization to obtain supporting documents from third parties, is not collecting information on behalf of the consumer. See also comment 36(a)-4.i through iv with respect to application related administrative and clerical tasks and comment 36(a)-1.v with respect to third-party advisors.*

4. *Presenting particular credit terms for the consumer's consideration that are selected based on the consumer's financial characteristics, or communicating with a consumer for the purpose of reaching a mutual understanding about prospective credit terms.*

5. *Advertising or communicating to the public that one can or will perform any loan origination services. Advertising the services of a third party that engages or intends to engage in loan origination activities does not make the advertiser a loan originator.*

*The term "loan originator" includes employees, agents, and contractors of a creditor as well as employees, agents, and contractors of a mortgage broker that satisfy this definition.*

*The term "loan originator" includes any creditor that satisfies the definition of loan originator but makes use of "table funding" by a third party. See comment 36(a)-1.ii discussing table funding. Solely for purposes of § 1026.36(f) and (g) concerning loan originator qualifications, the term loan originator includes any creditor that satisfies the definition of loan originator, even if the creditor does not make use of table funding. Such a person is a creditor, not a loan originator, for general purposes of this part, including the provisions of § 1026.36 other than § 1026.36(f) and (g).*

*A "loan originator organization" is a loan originator other than a natural person. The term includes any legal person or organization such as a sole proprietorship, trust, partnership, limited liability partnership, limited partnership, limited liability company, corporation, bank, thrift, finance company, or credit union. An "individual loan originator" is limited to a natural person. (Under § 1026.2(a)(22), the term "person" means a natural person or an organization.)*

*The term "loan originator" does not include consumers who obtain extensions of consumer credit on their own behalf.*

***Table funding.*** *Table funding occurs when the creditor does not provide the funds for the transaction at consummation out of the creditor's own resources, including, for example,* *drawing on a bona fide warehouse line of credit, or out of deposits held by the creditor. Accordingly, a table-funded transaction is consummated with the debt obligation initially payable by its terms to one person, but another person provides the funds for the transaction at consummation and receives an immediate assignment of the note, loan contract, or other evidence of the debt obligation. Although §1026.2(a)(17)(i)(B) provides that a person to whom a debt obligation is initially payable on its face generally is a creditor, §1026.36(a)(1) provides that, solely for the purposes of §1026.36, such a person is also considered a loan originator. For example, if a person closes a loan in its own name but does not fund the loan from its own resources or deposits held by it because it assigns the loan at consummation, it is considered a creditor for purposes of Regulation Z and also a loan originator for purposes of §1026.36. However, if a person closes in its own name and finances a consumer credit transaction from the person's own resources, including drawing on a bona fide warehouse line of credit or out of deposits held by the person, and does not assign the loan at closing, the person is a creditor not making use of table funding but is included in the definition of loan originator for the purposes of § 1026.36(f) and (g) concerning loan originator qualifications.*

***Servicing**. The definition of "loan originator" does not apply to a loan servicer when the servicer modifies an existing loan on behalf of the current owner of the loan. The rule only applies to extensions of consumer credit and does not apply if a modification of an existing obligation's terms does not constitute a refinancing under §1026.20(a).*

***Meaning of mortgage broker.** For purposes of §1026.36, with respect to a particular transaction, the term "mortgage broker" refers to a loan originator who is not an employee of the creditor. Accordingly, the term "mortgage broker" includes companies that engage in the activities described in §1026.36(a) and also includes employees of such companies that engage in these activities. Section 1026.36(d) prohibits certain payments to a loan originator. These prohibitions apply to payments made to all loan originators, including payments made to mortgage brokers, and payments made by a company acting as a mortgage broker to its employees who are loan originators.*

***Meaning of creditor.** For purposes of §1026.36(d) and (e), a creditor means a creditor that is not deemed to be a loan originator on the transaction under this section. Thus, a person that closes a loan in its own name (but another person provides the funds for the transaction at consummation and receives an immediate assignment of the note, loan contract, or other evidence of the debt obligation) is deemed a loan originator, not a creditor, for purposes of §1026.36. However, that person is still a creditor for all other purposes of Regulation Z.*

***Managers and administrative staff.** For purposes of §1026.36, managers, administrative staff, and similar individuals who are employed by a creditor or loan originator but do not arrange, negotiate, or otherwise obtain an extension of credit for a consumer, and whose compensation is not based on whether any particular loan is originated, are not loan originators.*

***Compensation.***

***General.** For purposes of §1026.36, the term "compensation" is defined in §1026.36(a)(3) as salaries, commissions, and any financial or similar incentive. For example, the term "compensation" includes:*

*A. An annual or other periodic bonus; or*

*B. Awards of merchandise, services, trips, or similar prizes.*

***Name of fee.*** *Compensation includes amounts the loan originator retains and is not dependent on the label or name of any fee imposed in connection with the transaction. For example, if a loan originator imposes a "processing fee" in connection with the transaction and retains such fee, it is compensation for purposes of §1026.36(d) and (e), whether the originator expends the time to process the consumer's application or uses the fee for other expenses, such as overhead.*

***Amounts for third-party charges.*** *Compensation does not include amounts the loan originator receives as payment for bona fide and reasonable charges, such as credit reports, where those amounts are passed on to a third party that is not the creditor, its affiliate, or the affiliate of the loan originator.*

***36(c) Servicing practices.***

***Paragraph 36(c)(1)(i).***

***Crediting of payments.*** *Under §1026.36(c)(1)(i), a mortgage servicer must credit a payment to a consumer's loan account as of the date of receipt. This does not require that a mortgage servicer post the payment to the consumer's loan account on a particular date; the servicer is only required to credit the payment as of the date of receipt. Accordingly, a servicer that receives a payment on or before its due date (or within any grace period), and does not enter the payment on its books or in its system until after the payment's due date (or expiration of any grace period), does not violate this rule as long as the entry does not result in the imposition of a late charge, additional interest, or similar penalty to the consumer, or in the reporting of negative information to a consumer reporting agency.*

***Method of crediting periodic payments.*** *Payments should be credited based on the legal obligation between the creditor and consumer. The legal obligation is determined by applicable law.*

***Date of receipt.*** *The "date of receipt" is the date that the payment instrument or other means of payment reaches the mortgage servicer. For example, payment by check is received when the mortgage servicer receives it, not when the funds are collected. If the consumer elects to have payment made by a third-party payor such as a financial institution, through a preauthorized payment or telephone bill-payment arrangement, payment is received when the mortgage servicer receives the third-party payor's check or other transfer medium, such as an electronic fund transfer.*

***Paragraph 36(c)(1)(ii)***

***Handing of partial payments.*** *If a servicer receives a partial payment from a consumer, the servicer may take any of the following actions: (1) credit the partial payment upon receipt; (2) return the partial payment to the consumer; or (3) hold the payment in a suspense or unapplied funds account, which must be reflected on future periodic statements. When sufficient funds accumulate to cover a periodic payment, they must be credited accordingly.*

***Paragraph 36(c)(1)(iii)***

***Payment requirements.*** *The servicer may specify reasonable requirements for making payments in writing, such as requiring that payments be accompanied by the account number or payment coupon; setting a cut-off hour for payment to be received, or setting different hours for payment by mail and payments made in person; specifying that only checks or money orders should be sent by mail; specifying that payment is to be made in U.S. dollars; or specifying one particular address for receiving payments, such as a post office box. The servicer may be prohibited, however, from requiring payment solely by preauthorized electronic fund transfer. See section 913 of the Electronic Fund Transfer Act, 15 U.S.C. 1693k.*

***Payment requirements—limitations.*** *Requirements for making payments must be reasonable; it should not be difficult for most consumers to make conforming payments. For example, it would be reasonable to require a cut-off time of 5 p.m. for receipt of a mailed check at the location specified by the servicer for receipt of such check.*

***Implied guidelines for payments.*** *In the absence of specified requirements for making payments, payments may be made at any location where the servicer conducts business; any time during the servicer's normal business hours; and by cash, money order, draft, or other similar instrument in properly negotiable form, or by electronic fund transfer if the servicer and consumer have so agreed.*

***Paragraph 36(c)(2).***

***Pyramiding of late fees.*** *The prohibition on pyramiding of late fees in § 1026.36(c)(2) should be construed consistently with the "credit practices rule" of the Federal Trade Commission, 16 CFR 444.4.*

***Paragraph 36(c)(3).***

***Person acting on behalf of the consumer.*** *For purposes of §1026.36(c)(3), a person acting on behalf of the consumer may include the consumer's representative, such as an attorney representing the individual, a non-profit consumer counseling or similar organization, or a creditor with which the consumer is refinancing and which requires the payoff statement to complete the refinancing. A creditor, assignee, or servicer may take reasonable measures to verify the identity of any person acting on behalf of the consumer and to obtain the consumer's authorization to release information to any such person before the "reasonable time" period begins to run.*

***Payment requirements.*** *The creditor, assignee, or servicer may specify reasonable requirements for making payoff requests, such as requiring requests to be in writing and directed to a mailing address, e-mail address or fax number specified by the creditor, assignee, or servicer or any other reasonable requirement or method. If the consumer does not follow these requirements, a longer time frame for responding to the request would be reasonable.*

***Accuracy of payoff statements.*** *Payoff statements must be accurate when issued.*

***36(d) Prohibited payments to loan originators.***

***Persons covered.*** *Section 1026.36(d) prohibits any person (including the creditor) from paying compensation to a loan originator in connection with a covered credit transaction, if the amount of the payment is based on a term of a transaction. For example, a person that purchases an extension of credit from the creditor after consummation may not compensate the loan originator in a manner that violates §1026.36(d).*

***Mortgage brokers.*** *The payments made by a company acting as a mortgage broker to its employees who are loan originators are subject to the section's prohibitions. For example, a mortgage broker may not pay its employee more for a transaction with a 7 percent interest rate than for a transaction with a 6 percent interest rate.*

***36(d)(1) Payments based on a term of a transaction.***

***Compensation that is "based on" a term of a transaction.*** *Whether compensation is "based on" a term of a transaction does not require a comparison of multiple transactions or proof that any person subjectively intended that there be a relationship between the amount of the compensation paid and a transaction term. Instead, the determination is based on the objective facts and circumstances indicating that compensation would have been different if a transaction term had been different. Generally, when there is a compensation policy in place and the objective facts and circumstances indicate the policy was followed, the determination of whether compensation would have been different if a transaction term had been different is made by analysis of the policy. In the absence of a compensation policy, or when a compensation policy is not followed, the determination may be made based on a comparison of transactions originated and the amounts of compensation paid.*

***Examples of compensation not based on a term of a transaction.*** *The following are only illustrative examples of compensation methods that are permissible (unless otherwise prohibited by applicable law), and not an exhaustive list. Compensation is not based on the transaction's terms or conditions if it is based on, for example:*

- *The loan originator's overall loan volume (i.e., total dollar amount of credit extended or total number of loans originated), delivered to the creditor.*
- *The long-term performance of the originator's loans.*
- *An hourly rate of pay to compensate the originator for the actual number of hours worked.*
- *Whether the consumer is an existing customer of the creditor or a new customer.*
- *A payment that is fixed in advance for every loan the originator arranges for the creditor (e.g., $600 for every loan arranged for the creditor, or $1,000 for the first 1,000 loans arranged and $500 for each additional loan arranged).*
- *The percentage of applications submitted by the loan originator to the creditor that result in consummated transactions.*
- *The quality of the loan originator's loan files (e.g., accuracy and completeness of the loan documentation) submitted to the creditor.*

***Creditor's flexibility in setting loan terms.*** *Section 1026.36(d) does not limit a creditor from offering or providing different loan terms to the consumer based on the creditor's assessment of the credit and other transactional risks involved. If a creditor pays compensation* *to a loan originator in compliance with this section, the creditor may recover the costs of the loan originator's compensation and other costs of the transaction by charging the consumer points or fees or a higher interest rate or a combination of these. Thus, in these transactions, a creditor may charge a higher interest rate to a consumer who will pay fewer of the costs of the transaction at or before closing or it may offer the consumer a lower rate if the consumer pays more of the transaction costs at or before closing. For example, if the consumer pays half of the transaction costs at or before closing, a creditor may charge an interest rate of 6 percent but, if the consumer pays none of the transaction costs at or before closing, the creditor may charge an interest rate of 6.5 percent. A creditor could also offer different consumers varying interest rates that include a constant interest rate premium to recoup the loan originator's compensation through increased interest paid by the consumer (such as by adding a constant 0.25 percent to the interest rate on each loan).*

***Effect of modification of loan terms.*** *Under §1026.36(d)(1), a loan originator's compensation may not vary based on any of a credit transaction's terms or conditions. Thus, a creditor and originator may not agree to set the originator's compensation at a certain level and then subsequently lower it in selective cases (such as where the consumer is able to obtain a lower rate from another creditor). When the creditor offers to extend a loan with specified terms and conditions (such as the rate and points), the amount of the originator's compensation for that transaction is not subject to change (increase or decrease) based on whether different loan terms are negotiated. For example, if the creditor agrees to lower the rate that was initially offered, the new offer may not be accompanied by a reduction in the loan originator's compensation.*

***Periodic changes in loan originator compensation and transactions' terms and conditions.*** *This section does not limit a creditor or other person from periodically revising the compensation it agrees to pay a loan originator. However, the revised compensation arrangement must result in payments to the loan originator that do not vary based on the terms or conditions of a credit transaction. A creditor or other person might periodically review factors such as loan performance, transaction volume, as well as current market conditions for originator compensation, and prospectively revise the compensation it agrees to pay to a loan originator. For example, assume that during the first 6 months of the year, a creditor pays $3,000 to a particular loan originator for each loan delivered, regardless of the loan terms or conditions. After considering the volume of business produced by that originator, the creditor could decide that as of July 1, it will pay $3,250 for each loan delivered by that particular originator, regardless of the loan terms or conditions. No violation occurs even if the loans made by the creditor after July 1 generally carry a higher interest rate than loans made before that date, to reflect the higher compensation.*

***Record retention.*** *(See comment 25(c)(2)–1 for guidance on complying with the record retention requirements of §1026.25(c)(2) as they apply to §1026.36(d)(1).)*

***Amount of credit extended.*** *A loan originator's compensation may be based on the amount of credit extended, subject to certain conditions. Section 1026.36(d)(1) does not prohibit an arrangement under which a loan originator is paid compensation based on a percentage of the amount of credit extended, provided the percentage is fixed and does not vary with the amount of credit extended. However, compensation that is based on a fixed percentage of the amount of credit extended may be subject to a minimum and/or maximum dollar amount, as long as the minimum and maximum dollar amounts do not vary with each credit transaction. For example:*

- *A creditor may offer a loan originator 1 percent of the amount of credit extended for all loans* *the originator arranges for the creditor, but not less than $1,000 or greater than $5,000 for each loan.*

- *A creditor may not offer a loan originator 1 percent of the amount of credit extended for loans of $300,000 or more, 2 percent of the amount of credit extended for loans between $200,000 and $300,000, and 3 percent of the amount of credit extended for loans of $200,000 or less.*

***36(d)(2) Payments by persons other than consumer.***

***Compensation in connection with a particular transaction.*** *Under §1026.36(d)(2)(i)(A), if any loan originator receives compensation directly from a consumer in a transaction, no other person may provide any compensation to a loan originator, directly or indirectly, in connection with that particular credit transaction whether before, at, or after conusmmation. (See comment 36(d)(2)(i)–2 discussing compensation received directly from the consumer.) The restrictions imposed under §1026.36(d)(2)(i) relate only to payments, such as commissions, that are specific to, and paid solely in connection with, the transaction in which the consumer has paid compensation directly to a loan originator. Thus, payments by a mortgage broker company to an employee in the form of a salary or hourly wage, which is not tied to a specific transaction, do not violate §1026.36(d)(2) even if the consumer directly pays a loan originator a fee in connection with a specific credit transaction. However, if any loan originator receives compensation directly from the consumer in connection with a specific credit transaction, neither the mortgage broker company nor an employee of the mortgage broker company can receive compensation from the creditor in connection with that particular credit transaction.*

***Compensation received directly from a consumer.*** *Under Regulation X, which implements the Real Estate Settlement Procedures Act (RESPA), a yield spread premium paid by a creditor to the loan originator may be characterized on the RESPA disclosures as a "credit" that will be applied to reduce the consumer's settlement charges, including origination fees. A yield spread premium disclosed in this manner is not considered to be received by the loan originator directly from the consumer for purposes of §1026.36(d)(2)(i).*

***36(d)(3) Affiliates.***

*For purposes of §1026.36(d), affiliates are treated as a single "person." The term "affiliate" is defined in §1026.32(b)(2). For example, assume a parent company has two mortgage lending subsidiaries. Under §1026.36(d)(1), subsidiary "A" could not pay a loan originator greater compensation for a loan with an interest rate of 8 percent than it would pay for a loan with an interest rate of 7 percent. If the loan originator may deliver loans to both subsidiaries, they must compensate the loan originator in the same manner. Accordingly, if the loan originator delivers the loan to subsidiary "B" and the interest rate is 8 percent, the originator must receive the same compensation that would have been paid by subsidiary "A" for a loan with a rate of either 7 or 8 percent.*

***36(e) Prohibition on steering.***

***Compensation.*** *(See comment 36(d)(1)–1 for guidance on compensation that is subject to §1026.36(e).)*

***Paragraph 36(e)(1).***

***Steering.*** *For purposes of §1026.36(e), directing or "steering" a consumer to consummate a particular credit transaction means advising, counseling, or otherwise influencing a consumer to accept that transaction. For such actions to constitute steering, the consumer must actually consummate the transaction in question. Thus, §1026.36(e)(1) does not address the actions of a loan originator if the consumer does not actually obtain a loan through that loan originator.*

***Prohibited conduct.*** *Under §1026.36(e)(1), a loan originator may not direct or steer a consumer to consummate a transaction based on the fact that the loan originator would increase the amount of compensation that the loan originator would receive for that transaction compared to other transactions, unless the consummated transaction is in the consumer's interest.*

- *In determining whether a consummated transaction is in the consumer's interest, that transaction must be compared to other possible loan offers available through the originator, if any, and for which the consumer was likely to qualify, at the time that transaction was offered to the consumer. Possible loan offers are available through the loan originator if they could be obtained from a creditor with which the loan originator regularly does business. Section 1026.36(e)(1) does not require a loan originator to establish a business relationship with any creditor with which the loan originator does not already do business. To be considered a possible loan offer available through the loan originator, an offer need not be extended by the creditor; it need only be an offer that the creditor likely would extend upon receiving an application from the applicant, based on the creditor's current credit standards and its current rate sheets or other similar means of communicating its current credit terms to the loan originator. An originator need not inform the consumer about a potential transaction if the originator makes a good faith determination that the consumer is not likely to qualify for it.*

- *Section 1026.36(e)(1) does not require a loan originator to direct a consumer to the transaction that will result in a creditor paying the least amount of compensation to the originator. However, if the loan originator reviews possible loan offers available from a significant number of the creditors with which the originator regularly does business, and the originator directs the consumer to the transaction that will result in the least amount of creditor-paid compensation for the loan originator, the requirements of §1026.36(e)(1) are deemed to be satisfied. In the case where a loan originator directs the consumer to the transaction that will result in a greater amount of creditor-paid compensation for the loan originator, §1026.36(e)(1) is not violated if the terms and conditions on that transaction compared to the other possible loan offers available through the originator, and for which the consumer likely qualifies, are the same. A loan originator who is an employee of the creditor on a transaction may not obtain compensation that is based on the transaction's terms or conditions pursuant to §1026.36(d)(1), and compliance with that provision by such a loan originator also satisfies the requirements of §1026.36(e)(1) for that transaction with the creditor. However, if a creditor's employee acts as a broker by forwarding a consumer's application to a creditor other than the loan originator's employer, such as when the* *employer does not offer any loan products for which the consumer would qualify, the loan originator is not an employee of the creditor in that transaction and is subject to §1026.36(e)(1) if the originator is compensated for arranging the loan with the other creditor.*

- *(See the commentary under §1026.36(e)(3) for additional guidance on what constitutes a "significant number of creditors with which a loan originator regularly does business" and guidance on the determination about transactions for which "the consumer likely qualifies.")*

***Examples.*** *Assume a loan originator determines that a consumer likely qualifies for a loan from Creditor A that has a fixed interest rate of 7 percent, but the loan originator directs the consumer to a loan from Creditor B having a rate of 7.5 percent. If the loan originator receives more in compensation from Creditor B than the amount that would have been paid by Creditor A, the prohibition in §1026.36(e) is violated unless the higher-rate loan is in the consumer's interest. For example, a higher-rate loan might be in the consumer's interest if the lower-rate loan has a prepayment penalty, or if the lower-rate loan requires the consumer to pay more in up-front charges that the consumer is unable or unwilling to pay or finance as part of the loan amount.*

***36(e)(2) Permissible transactions.***

***Safe harbors****. A loan originator that satisfies §1026.36(e)(2) is deemed to comply with §1026.36(e)(1). A loan originator that does not satisfy §1026.36(e)(2) is not subject to any presumption regarding the originator's compliance or noncompliance with §1026.36(e)(1).*

***Minimum number of loan options.*** *To obtain the safe harbor, §1026.36(e)(2) requires that the loan originator present loan options that meet the criteria in §1026.36(e)(3)(i) for each type of transaction in which the consumer expressed an interest. As required by §1026.36(e)(3)(ii), the loan originator must have a good faith belief that the options presented are loans for which the consumer likely qualifies. If the loan originator is not able to form such a good faith belief for loan options that meet the criteria in §1026.36(e)(3)(i) for a given type of transaction, the loan originator may satisfy §1026.36(e)(2) by presenting all loans for which the consumer likely qualifies and that meet the other requirements in §1026.36(e)(3) for that given type of transaction. A loan originator may present to the consumer any number of loan options, but presenting a consumer more than four loan options for each type of transaction in which the consumer expressed an interest and for which the consumer likely qualifies would not likely help the consumer make a meaningful choice.*

***36(e)(3) Loan options presented.***

***Significant number of creditors.*** *A significant number of the creditors with which a loan originator regularly does business is three or more of those creditors. If the loan originator regularly does business with fewer than three creditors, the originator is deemed to comply by obtaining loan options from all the creditors with which it regularly does business. Under §1026.36(e)(3)(i), the loan originator must obtain loan options from a significant number of creditors with which the loan originator regularly does business, but the loan originator need not present loan options from all such creditors to the consumer. For example, if three loans available from one of the creditors with which the loan originator regularly does business satisfy* *the criteria in §1026.36(e)(3)(i), presenting those and no options from any other creditor satisfies that section.*

***Creditors with which loan originator regularly does business.*** *To qualify for the safe harbor in §1026.36(e)(2), the loan originator must obtain and review loan options from a significant number of the creditors with which the loan originator regularly does business. For this purpose, a loan originator regularly does business with a creditor if:*

- *There is a written agreement between the originator and the creditor governing the originator's submission of mortgage loan applications to the creditor;*
- *The creditor has extended credit secured by a dwelling to one or more consumers during the current or previous calendar month based on an application submitted by the loan originator; or*
- *The creditor has extended credit secured by a dwelling twenty-five or more times during the previous twelve calendar months based on applications submitted by the loan originator. For this purpose, the previous twelve calendar months begin with the calendar month that precedes the month in which the loan originator accepted the consumer's application.*

***Lowest interest rate.*** *To qualify under the safe harbor in §1026.36(e)(2), for each type of transaction in which the consumer has expressed an interest, the loan originator must present the consumer with loan options that meet the criteria in §1026.36(e)(3)(i) for which the loan originator has a good faith belief that the consumer is likely to qualify. The criteria are: the loan with the lowest interest rate; the loan with the lowest total dollar amount for discount points and origination points or fees; and a loan with the lowest interest rate without negative amortization, a prepayment penalty, a balloon payment in the first seven years of the loan term, shared equity, or shared appreciation, or, in the case of a reverse mortgage, a loan without a prepayment penalty, shared equity, or shared appreciation. To identify the loan with the lowest interest rate, for any loan that has an initial rate that is fixed for at least five years, the loan originator shall use the initial rate that would be in effect at consummation. For a loan with an initial rate that is not fixed for at least five years:*

- *If the interest rate varies based on changes to an index, the originator shall use the fully-indexed rate that would be in effect at consummation without regard to any initial discount or premium.*
- *For a step-rate loan, the originator shall use the highest rate that would apply during the first five years.*

***Transactions for which the consumer likely qualifies.*** *To qualify under the safe harbor in §1026.36(e)(2), the loan originator must have a good faith belief that the loan options presented to the consumer pursuant to §1026.36(e)(3) are transactions for which the consumer likely qualifies. The loan originator's belief that the consumer likely qualifies should be based on information reasonably available to the loan originator at the time the loan options are presented. In making this determination, the loan originator may rely on information provided by the consumer, even if it subsequently is determined to be inaccurate. For purposes of §1026.36(e)(3), a loan originator is not expected to know all aspects of each creditor's underwriting criteria. But pricing or other information that is routinely communicated by creditors to loan originators is considered to be reasonably available to the loan originator, for example, rate sheets showing creditors' current pricing and the required minimum credit score or other eligibility criteria.*

### *36(f) Loan originator qualification requirements*

***Criminal and credit histories.*** *Section 1026.36(f)(3)(i) requires the loan originator organization to obtain, for any of its individual loan originator employees who is not required to be licensed and is not licensed as a loan originator pursuant to the SAFE Act, a criminal background check, a credit report, and information related to any administrative, civil, or criminal determinations by any government jurisdiction. The requirement applies to individual loan originator employees who were hired on or after January 1, 2014 (or whom the loan originator organization hired before this date but for whom there were no applicable statutory or regulatory background standards in effect at the time of hire or before January 1, 2014, used to screen the individual). A credit report may be obtained directly from a consumer reporting agency or through a commercial service. A loan originator organization with access to the NMLSR can meet the requirement for the criminal background check by reviewing any criminal background check it receives upon compliance with the requirement in 12 CFR 1007.103(d)(1) and can meet the requirement to obtain information related to any administrative, civil, or criminal determinations by any government jurisdiction by obtaining the information through the NMLSR. Loan originator organizations that do not have access to these items through the NMLSR may obtain them by other means. For example, a criminal background check may be obtained from a law enforcement agency or commercial service. Information on any past administrative, civil, or criminal findings (such as from disciplinary or enforcement actions) may be obtained from the individual loan originator.*

***Retroactive obtaining of information not required.*** *Section 1026.36(f)(3)(i) does not require the loan originator organization to obtain the covered information for an individual whom the loan originator organization hired as a loan originator before January 1, 2014, and screened under applicable statutory or regulatory background standards in effect at the time of hire. However, if the individual subsequently ceases to be employed as a loan originator by that loan originator organization, and later resumes employment as a loan originator by that loan originator organization (or any other loan originator organization), the loan originator organization is subject to the requirements of § 1026.36(f)(3)(i).*

# Section 11: Valuation Independence [12 C.F.R. §1026.42]

## *Coverage. [12 C.F.R. §1026.42(a)]*

This section applies to any consumer credit transaction secured by the consumer's principal dwelling.

**Commentary**

1. ***Open- and closed-end credit.*** Section 1026.42 applies to both open-end and closed-end transactions secured by the consumer's principal dwelling.
2. ***Consumer's principal dwelling.*** Section 1026.42 applies only if the dwelling that will secure a consumer credit transaction is the principal dwelling of the consumer who obtains credit.

## *Definitions. [12 C.F.R. §1026.42(b)]*

### Covered person

A creditor with respect to a covered transaction or a person that provides "settlement services," as defined in 12 U.S.C. 2602(3) and implementing regulations, in connection with a covered transaction.

### Covered transaction

An extension of consumer credit that is or will be secured by the consumer's principal dwelling, as defined in §1026.2(a)(19).

### Valuation

An estimate of the value of the consumer's principal dwelling in written or electronic form, other than one produced solely by an automated model or system.

### Valuation management functions means

- Recruiting, selecting, or retaining a person to prepare a valuation;
- Contracting with or employing a person to prepare a valuation;
- Managing or overseeing the process of preparing a valuation, including by providing administrative services such as receiving orders for and receiving a valuation, submitting a completed valuation to creditors and underwriters, collecting fees from creditors and underwriters for services provided in connection with a valuation, and compensating a person that prepares valuations; or
- Reviewing or verifying the work of a person that prepares valuations.

**Commentary**

*Paragraph 42(b)(1).*

1. ***Examples of covered persons.*** *"Covered persons" include creditors, mortgage brokers, appraisers, appraisal management companies, real estate agents, and other persons that provide "settlement services" as defined under the Real Estate Settlement Procedures Act and implementing regulations. (See 12 U.S.C. 2602(3).)*

2. ***Examples of persons not covered****. The following persons are not "covered persons" (unless, of course, they are creditors with respect to a covered transaction or perform "settlement services" in connection with a covered transaction):*

   *i. The consumer who obtains credit through a covered transaction.*

   *ii. A person secondarily liable for a covered transaction, such as a guarantor.*

   *iii. A person that resides in or will reside in the consumer's principal dwelling but will not be liable on the covered transaction, such as a non-obligor spouse.*

***Paragraph 42(b)(2).***

1. ***Principal dwelling****. The term "principal dwelling" has the same meaning under §1026.42(b) as under §§1026.2(a)(24), 1026.15(a), and 1026.23(a). (See comments 2(a)(24)–3, 15(a)–5, and 23(a)–3.)*

***Paragraph 42(b)(3).***

1. ***Valuation.*** *A "valuation" is an estimate of value prepared by a natural person, such as an appraisal report prepared by an appraiser or an estimate of market value prepared by a real estate agent. The term includes photographic or other information included with a written estimate of value. A "valuation" includes an estimate provided or viewed electronically, such as an estimate transmitted via electronic mail or viewed using a computer.*

2. ***Automated model or system.*** *A "valuation" does not include an estimate of value produced exclusively using an automated model or system. However, a "valuation" includes an estimate of value developed by a natural person based in part on an estimate of value produced using an automated model or system.*

3. ***Estimate.*** *An estimate of the value of the consumer's principal dwelling includes an estimate of a range of values for the consumer's principal dwelling.*

## *Valuation of consumer's principal dwelling. [12 C.F.R. §1026.42(c)]*

### *Coercion. [12 C.F.R. §1026.42(c)(1)]*

In connection with a covered transaction, no covered person shall or shall attempt to directly or indirectly cause the value assigned to the consumer's principal dwelling to be based on any factor other than the independent judgment of a person that prepares valuations, through coercion, extortion, inducement, bribery, or intimidation of, compensation or instruction to, or collusion with a person that prepares valuations or performs valuation management functions. Examples of actions that violate this paragraph include:

- Seeking to influence a person that prepares a valuation to report a minimum or maximum value for the consumer's principal dwelling;
- Withholding or threatening to withhold timely payment to a person that prepares a valuation or performs valuation management functions because the person does not value the consumer's principal dwelling at or above a certain amount;
- Implying to a person that prepares valuations that current or future retention of the person depends on the amount at which the person estimates the value of the consumer's principal dwelling;
- Excluding a person that prepares a valuation from consideration for future engagement because the person reports a value for the consumer's principal dwelling that does not meet or exceed a predetermined threshold; and
- Conditioning the compensation paid to a person that prepares a valuation on consummation of the covered transaction.

**Mischaracterization of value. [12 C.F.R. §1026.42(c)(2)]**

***Misrepresentation***. In connection with a covered transaction, no person that prepares valuations shall materially misrepresent the value of the consumer's principal dwelling in a valuation. A misrepresentation is material for purposes of this paragraph (c)(2)(i) if it is likely to significantly affect the value assigned to the consumer's principal dwelling. A bona fide error shall not be a misrepresentation.

***Falsification or alteration.*** In connection with a covered transaction, no covered person shall falsify and no covered person other than a person that prepares valuations shall materially alter a valuation. An alteration is material for purposes of this paragraph (c)(2)(ii) if it is likely to significantly affect the value assigned to the consumer's principal dwelling.

***Inducement of mischaracterization.*** In connection with a covered transaction, no covered person shall induce a person to violate paragraph (c)(2)(i) or (ii) of this section.

**Permitted actions. [12 C.F.R. §1026.42(c)(3)]**

Examples of actions that do not violate coercion and mischaracterization of value as stated above include:

- Asking a person that prepares a valuation to consider additional, appropriate property information, including information about comparable properties, to make or support a valuation;
- Requesting that a person that prepares a valuation provide further detail, substantiation, or explanation for the person's conclusion about the value of the consumer's principal dwelling;
- Asking a person that prepares a valuation to correct errors in the valuation;

- Obtaining multiple valuations for the consumer's principal dwelling to select the most reliable valuation;
- Withholding compensation due to breach of contract or substandard performance of services; and
- Taking action permitted or required by applicable Federal or state statute, regulation, or agency guidance.

**Commentary**

*42(c)(1) Coercion.*

*1. **State law.** The terms “coercion,” “extortion,” “inducement,” “bribery,” “intimidation,” “compensation,” “instruction,” and “collusion” have the meanings given to them by applicable state law or contract. (See §1026.2(b)(3).)*

*2. **Purpose.** A covered person does not violate §1026.42(c)(1) if the person does not engage in an act or practice set forth in §1026.42(c)(1) for the purpose of causing the value assigned to the consumer's principal dwelling to be based on a factor other than the independent judgment of a person that prepares valuations. For example, requesting that a person that prepares a valuation take certain actions, such as consider additional, appropriate property information, does not violate §1026.42(c), because such request does not supplant the independent judgment of the person that prepares a valuation. (See §1026.42(c)(3)(i).) A covered person also may provide incentives, such as additional compensation, to a person that prepares valuations or performs valuation management functions under §1026.42(c)(1), as long as the covered person does not cause or attempt to cause the value assigned to the consumer's principal dwelling to be based on a factor other than the independent judgment of the person that prepares valuations.*

*3. **Person that prepares valuations**. For purposes of §1026.42, the term “valuation” includes an estimate of value regardless of whether it is an appraisal prepared by a state-certified or -licensed appraiser. (See comment 42(b)(3)–1.) A person that prepares valuations may or may not be a state-licensed or state-certified appraiser. Thus a person violates §1026.42(c)(1) by engaging in prohibited acts or practices directed towards any person that prepares or may prepare a valuation of the consumer's principal dwelling for a covered transaction. For example, a person violates §1026.42(c)(1) by seeking to coerce a real estate agent to assign a value to the consumer's principal dwelling based on a factor other than the independent judgment of the real estate agent, in connection with a covered transaction.*

*4. **Indirect acts or practices**. Section 1026.42(c)(1) prohibits both direct and indirect attempts to cause the value assigned to the consumer's principal dwelling to be based on a factor other than the independent judgment of the person that prepares the valuation, through coercion and certain other acts and practices. For example, a creditor violates §1026.42(c)(1) if the creditor attempts to cause the value an appraiser engaged by an appraisal management company assigns to the consumer's principal dwelling to be based on a factor other than the appraiser's independent judgment, by threatening to withhold future business from a title company affiliated with the appraisal management company unless the appraiser assigns a value to the dwelling that meets or exceeds a minimum threshold.*

***Paragraph 42(c)(1)(i).***

*1.* ***Applicability of examples.*** *Section 1026.42(c)(1)(i) provides examples of coercion of a person that prepares valuations. However, §1026.42(c)(1)(i) also applies to coercion of a person that performs valuation management functions or its affiliate. (See §1026.42(c)(1); comment 42(c)(1)–4.)*

*2.* ***Specific value or predetermined threshold.*** *As used in the examples of actions prohibited under §1026.42(c)(1), a "specific value" and a "predetermined threshold" include a predetermined minimum, maximum, or range of values. Further, although the examples assume a covered person's prohibited actions are designed to cause the value assigned to the consumer's principal dwelling to equal or exceed a certain amount, the rule applies equally to cases where a covered person's prohibited actions are designed to cause the value assigned to the dwelling to be below a certain amount.*

***42(c)(2) Mischaracterization of value.***

***42(c)(2)(i) Misrepresentation****.*

*1.* ***Opinion of value.*** *Section 1026.42(c)(2)(i) prohibits a person that performs valuations from misrepresenting the value of the consumer's principal dwelling in a valuation. Such person misrepresents the value of the consumer's principal dwelling by assigning a value to such dwelling that does not reflect the person's opinion of the value of such dwelling. For example, an appraiser misrepresents the value of the consumer's principal dwelling if the appraiser estimates that the value of such dwelling is $250,000 applying the standards required by the Uniform Standards of Professional Appraisal Standards but assigns a value of $300,000 to such dwelling in a Uniform Residential Appraisal Report.*

***42(c)(2)(iii) Inducement of mischaracterization.***

*1.* ***Inducement.*** *A covered person may not induce a person to materially misrepresent the value of the consumer's principal dwelling in a valuation or to falsify or alter a valuation. For example, a loan originator may not coerce a loan underwriter to alter an appraisal report to increase the value assigned to the consumer's principal dwelling.*

## *Prohibition on conflicts of interest. [12 C.F.R. §1026.42(d)]*

### General.[12 C.F.R. §1026.42(d)(1)]

- No person preparing a valuation or performing valuation management functions for a covered transaction may have a direct or indirect interest, financial or otherwise, in the property or transaction for which the valuation is or will be performed.
- Employees and affiliates of creditors; providers of multiple settlement services. In any covered transaction, no person violates paragraph (d)(1)(i) of this section based solely on the fact that the person:
    - Is an employee or affiliate of the creditor; or
    - Provides a settlement service in addition to preparing valuations or performing valuation management functions, or based solely on the fact that the person's affiliate performs another settlement service.

**Employees and affiliates of creditors with assets of more than $250 million for both of the past two calendar years. [12 C.F.R. §1026.42(d)(2)]**

- For any covered transaction in which the creditor had assets of more than $250 million as of December 31st for both of the past two calendar years, a person subject to paragraph (d)(1)(i) of this section who is employed by or affiliated with the creditor does not have a conflict of interest in violation of said paragraph based on the person's employment or affiliate relationship with the creditor if:
  - The compensation of the person preparing a valuation or performing valuation management functions is not based on the value arrived at in any valuation;
  - The person preparing a valuation or performing valuation management functions reports to a person who is not part of the creditor's loan production function, as defined below and whose compensation is not based on the closing of the transaction to which the valuation relates; and
  - No employee, officer or director in the creditor's loan production function, as defined below, is directly or indirectly involved in selecting, retaining, recommending or influencing the selection of the person to prepare a valuation or perform valuation management functions, or to be included in or excluded from a list of approved persons who prepare valuations or perform valuation management functions.

**Employees and affiliates of creditors with assets of $250 million or less for either of the past two calendar years. [12 C.F.R. §1026.42(d)(3)]**

- For any covered transaction in which the creditor had assets of $250 million or less as of December 31st for either of the past two calendar years, a person subject to paragraph (d)(1)(i) of this section who is employed by or affiliated with the creditor does not have a conflict of interest in violation of paragraph (d)(1)(i) of this section based on the person's employment or affiliate relationship with the creditor if:
  - The compensation of the person preparing a valuation or performing valuation management functions is not based on the value arrived at in any valuation; and
  - The creditor requires that any employee, officer or director of the creditor who orders, performs, or reviews a valuation for a covered transaction abstain from participating in any decision to approve, not approve, or set the terms of that transaction.

**Providers of multiple settlement services. [12 C.F.R. §1026.42(d)(4)]**

- For any covered transaction, a person who prepares a valuation or performs valuation management functions in addition to performing another settlement service for the transaction, or whose affiliate performs another settlement service for the transaction, does not have a conflict of interest in violation of paragraph (d)(1)(i) of this section as a result of the person or the person's affiliate performing another settlement service for the transaction if:
  - The creditor had assets of more than $250 million as of December 31st for both of the past two calendar years and the conditions in paragraph (d)(2)(i)–(iii) are met; or
  - The creditor had assets of $250 million or less as of December 31st for either of the past two calendar years and the conditions in paragraph (d)(3)(i)–(ii) are met.

**Definitions. For purposes of this paragraph. [12 C.F.R. §1026.42(d)(5)]**

**Loan production function**

An employee, officer, director, department, division, or other unit of a creditor with responsibility for generating covered transactions, approving covered transactions, or both.

**Settlement service**

Has the same meaning as in the Real Estate Settlement Procedures Act, 12 U.S.C. 2601 et seq.

**Affiliate**

Has the same meaning as in the Federal Reserve's Regulation Y, 12 C.F.R. §225.2(a).

*42(d)(1)(ii) Employees and affiliates of creditors; providers of multiple settlement services.*

1. ***Employees and affiliates of creditors.*** In general, a creditor may use employees or affiliates to prepare a valuation or perform valuation management functions without violating paragraph (d)(1)(i). However, whether an employee or affiliate has a direct or indirect interest in the property or transaction that creates a prohibited conflict of interest under paragraph (d)(1)(i) depends on the facts and circumstances of a particular case, including the structure of the employment or affiliate relationship.

2. ***Providers of multiple settlement services***. In general, a person who prepares a valuation or perform valuation management functions for a covered transaction may perform another settlement service for the same transaction, or the person's affiliate may perform another settlement service, without violating paragraph (d)(1)(i). However, whether the person has a direct or indirect interest in the property or transaction that creates a prohibited conflict of interest under paragraph (d)(1)(i) depends on the facts and circumstances of a particular case.

***Commentary - 42(d)(2) Employees and affiliates of creditors with assets of more than $250 million for both of the past two calendar years.***

1. ***Safe harbor.*** A person who a prepares valuation or performs valuation management functions for a covered transaction and is an employee or affiliate of the creditor will not be deemed to have an interest prohibited under paragraph (d)(1)(i) on the basis of the employment or affiliate relationship with the creditor if the conditions in paragraph (d)(2) are satisfied. Even if the conditions in paragraph (d)(2) are satisfied, however, the person may have a prohibited conflict of interest on other grounds, such as if the person performs a valuation for a purchase-money mortgage transaction in which the person is the buyer or seller of the subject property. Thus, in general, in any covered transaction in which the creditor had assets of more than $250 million for both of the past two years, the creditor may use its own employee or affiliate to prepare a valuation or perform valuation management functions for a particular transaction, as long as the conditions described in paragraph (d)(2) are satisfied. If the conditions in paragraph (d)(2) are not satisfied,

whether a person preparing a valuation or performing valuation management functions has violated paragraph (d)(1)(i) depends on all of the facts and circumstances.

***Paragraph 42(d)(2)(ii).***

1. ***Prohibition on reporting to a person who is part of the creditor's loan production function***. To qualify for the safe harbor under paragraph (d)(2), the person preparing a valuation or performing valuation management functions may not report to a person who is part of the creditor's loan production function (as defined in paragraph (d)(5)(i) and comment 42(d)(5)(i)–1). For example, if a person preparing a valuation is directly supervised or managed by a loan officer or other person in the creditor's loan production function, or by a person who is directly supervised or managed by a loan officer, the condition under paragraph (d)(2)(ii) is not met.
2. ***Prohibition on reporting to a person whose compensation is based on the transaction closing***. To qualify for the safe harbor under paragraph (d)(2), the person preparing a valuation or performing valuation management functions may not report to a person whose compensation is based on the closing of the transaction to which the valuation relates. For example, assume an appraisal management company performs valuation management functions for a transaction in which the creditor is an affiliate of the appraisal management company. If the employee of the appraisal management company who is in charge of valuation management functions for that transaction is supervised by a person who earns a commission or bonus based on the percentage of closed transactions for which the appraisal management company provides valuation management functions, the condition under paragraph (d)(2)(ii) is not met.

***Paragraph 42(d)(2)(iii).***

1. ***Direct or indirect involvement in selection of person who prepares a valuation.*** In any covered transaction, the safe harbor under paragraph (d)(2) is available if, among other things, no employee, officer or director in the creditor's loan production function (as defined in paragraph (d)(4)(ii) and comment 42(d)(4)(ii)–1) is directly or indirectly involved in selecting, retaining, recommending or influencing the selection of the person to prepare a valuation or perform valuation management functions, or to be included in or excluded from a list or panel of approved persons who prepare valuations or perform valuation management functions. For example, if the person who selects the person to prepare the valuation for a covered transaction is supervised by an employee of the creditor who also supervises loan officers, the condition in paragraph (d)(2)(iii) is not met.

***42(d)(3) Employees and affiliates of creditors with assets of $250 million or less for either of the past two calendar years.***

1. ***Safe harbor***. A person who prepares a valuation or performs valuation management functions for a covered transaction and is an employee or affiliate of the creditor will not be deemed to have interest prohibited under paragraph (d)(1)(i) on the basis of the employment or affiliate relationship with the creditor if the conditions in paragraph (d)(3) are satisfied. Even if the conditions in paragraph (d)(3) are satisfied, however, the person may have a prohibited conflict of interest on other grounds, such as if the person performs a valuation

for a purchase-money mortgage transaction in which the person is the buyer or seller of the subject property. Thus, in general, in any covered transaction in which the creditor had assets of $250 million or less for either of the past two calendar years, the creditor may use its own employee or affiliate to prepare a valuation or perform valuation management functions for a particular transaction, as long as the conditions described in paragraph (d)(3) are satisfied. If the conditions in paragraph (d)(3) are not satisfied, whether a person preparing valuations or performing valuation management functions has violated paragraph (d)(1)(i) depends on all of the facts and circumstances.

***42(d)(4) Providers of multiple settlement services.***

***Paragraph 42(d)(4)(i).***

1. ***Safe harbor in transactions in which the creditor had assets of more than $250 million for both of the past two calendar years.*** A person preparing a valuation or performing valuation management functions in addition to performing another settlement service for the same transaction, or whose affiliate performs another settlement service for the transaction, will not be deemed to have interest prohibited under paragraph (d)(1)(i) as a result of the person or the person's affiliate performing another settlement service if the conditions in paragraph (d)(4)(i) are satisfied. Even if the conditions in paragraph (d)(4)(i) are satisfied, however, the person may have a prohibited conflict of interest on other grounds, such as if the person performs a valuation for a purchase-money mortgage transaction in which the person is the buyer or seller of the subject property. Thus, in general, in any covered transaction with a creditor that had assets of more than $250 million for the past two years, a person preparing a valuation or performing valuation management functions, or its affiliate, may provide another settlement service for the same transaction, as long as the conditions described in paragraph (d)(4)(i) are satisfied. If the conditions in paragraph (d)(4)(i) are not satisfied, whether a person preparing valuations or performing valuation management functions has violated paragraph (d)(1)(i) depends on all of the facts and circumstances.
2. ***Reporting.*** The safe harbor under paragraph (d)(4)(i) is available if the condition specified in paragraph (d)(2)(ii), among others, is met. Paragraph (d)(2)(ii) prohibits a person preparing a valuation or performing valuation management functions from reporting to a person whose compensation is based on the closing of the transaction to which the valuation relates. For example, assume an appraisal management company performs both valuation management functions and title services, including providing title insurance, for the same covered transaction. If the appraisal management company employee in charge of valuation management functions for the transaction is supervised by the title insurance agent in the transaction, whose compensation depends in whole or in part on whether title insurance is sold at the loan closing, the condition in paragraph (d)(2)(ii) is not met.

***Paragraph 42(d)(4)(ii).***

1. ***Safe harbor in transactions in which the creditor had assets of $250 million or less for either of the past two calendar years.*** A person preparing a valuation or performing valuation management functions in addition to performing another settlement service for the same transaction, or whose affiliate performs another settlement service for the

transaction, will not be deemed to have an interest prohibited under paragraph (d)(1)(i) as a result of the person or the person's affiliate performing another settlement service if the conditions in paragraph (d)(4)(ii) are satisfied. Even if the conditions in paragraph (d)(4)(ii) are satisfied, however, the person may have a prohibited conflict of interest on other grounds, such as if the person performs a valuation for a purchase-money mortgage transaction in which the person is the buyer or seller of the subject property. Thus, in general, in any covered transaction in which the creditor had assets of $250 million or less for either of the past two years, a person preparing a valuation or performing valuation management functions, or its affiliate, may provide other settlement services for the same transaction, as long as the conditions described in paragraph (d)(4)(ii) are satisfied. If the conditions in paragraph (d)(4)(ii) are not satisfied, whether a person preparing valuations or performing valuation management functions has violated paragraph (d)(1)(i) depends on all of the facts and circumstances.

***42(d)(5) Definitions.***

***Paragraph 42(d)(5)(i).***

1. ***Loan production function***. One condition of the safe harbors under paragraphs (d)(2) and (d)(4)(i), involving transactions in which the creditor had assets of more than $250 million for both of the past two calendar years, is that the person who prepares a valuation or performs valuation management functions must report to a person who is not part of the creditor's "loan production function." A creditor's "loan production function" includes retail sales staff, loan officers, and any other employee of the creditor with responsibility for taking a loan application, offering or negotiating loan terms or whose compensation is based on loan processing volume. A person is not considered part of a creditor's loan production function solely because part of the person's compensation includes a general bonus not tied to specific transactions or a specific percentage of transactions closing, or a profit sharing plan that benefits all employees. A person solely responsible for credit administration or risk management is also not considered part of a creditor's loan production function. Credit administration and risk management includes, for example, loan underwriting, loan closing functions (e.g., loan documentation), disbursing funds, collecting mortgage payments and otherwise servicing the loan (e.g., escrow management and payment of taxes), monitoring loan performance, and foreclosure processing.

## *When extension of credit prohibited. [12 C.F.R. §1026.42(e)]*

In connection with a covered transaction, a creditor that knows, at or before consummation, of a violation of paragraph (c) or (d) of this section in connection with a valuation shall not extend credit based on the valuation, unless the creditor documents that it has acted with reasonable diligence to determine that the valuation does not materially misstate or misrepresent the value of the consumer's principal dwelling. For purposes of this paragraph, a valuation materially misstates or misrepresents the value of the consumer's principal dwelling if the valuation contains a misstatement or misrepresentation that affects the credit decision or the terms on which credit is extended.

**Commentary**

1. ***Reasonable diligence***. *A creditor will be deemed to have acted with reasonable diligence under §1026.42(e) if the creditor extends credit based on a valuation other than the valuation subject to the restriction in §1026.42(e). A creditor need not obtain a second valuation to document that the creditor has acted with reasonable diligence to determine that the valuation does not materially misstate or misrepresent the value of the consumer's principal dwelling, however. For example, assume an appraiser notifies a creditor before consummation that a loan originator attempted to cause the value assigned to the consumer's principal dwelling to be based on a factor other than the appraiser's independent judgment, through coercion. If the creditor reasonably determines and documents that the appraisal does not materially misstate or misrepresent the value of the consumer's principal dwelling, for purposes of §1026.42(e), the creditor may extend credit based on the appraisal.*

## *Customary and reasonable compensation [12 C.F.R. §1026.42(f)]*

**Requirement to provide customary and reasonable compensation to fee appraisers. [12 C.F.R. §1026.42(f)(1)]**

In any covered transaction, the creditor and its agents shall compensate a fee appraiser for performing appraisal services at a rate that is customary and reasonable for comparable appraisal services performed in the geographic market of the property being appraised. For purposes of this section, "agents" of the creditor do not include any fee appraiser as defined in paragraph (f)(4)(i) of this section.

**Presumption of compliance. [12 C.F.R. §1026.42(f)(2)]**

A creditor and its agents shall be presumed to comply with paragraph (f)(1) if:

- The creditor or its agents compensate the fee appraiser in an amount that is reasonably related to recent rates paid for comparable appraisal services performed in the geographic market of the property being appraised. In determining this amount, a creditor or its agents shall review the factors below and make any adjustments to recent rates paid in the relevant geographic market necessary to ensure that the amount of compensation is reasonable:
  - The type of property,
  - The scope of work,
  - The time in which the appraisal services are required to be performed,
  - Fee appraiser qualifications,
  - Fee appraiser experience and professional record, and
  - Fee appraiser work quality; and
- The creditor and its agents do not engage in any anticompetitive acts in violation of state or Federal law that affect the compensation paid to fee appraisers, including:

- o Entering into any contracts or engaging in any conspiracies to restrain trade through methods such as price fixing or market allocation, as prohibited under section 1 of the Sherman Antitrust Act, 15 U.S.C. 1, or any other relevant antitrust laws; or
- o Engaging in any acts of monopolization such as restricting any person from entering the relevant geographic market or causing any person to leave the relevant geographic market, as prohibited under section 2 of the Sherman Antitrust Act, 15 U.S.C. 2, or any other relevant antitrust laws.

**Alternative presumption of compliance. [12 C.F.R. §1026.42(f)(3)]**

A creditor and its agents shall be presumed to comply with paragraph (f)(1) if the creditor or its agents determine the amount of compensation paid to the fee appraiser by relying on information about rates that:

- Is based on objective third-party information, including fee schedules, studies, and surveys prepared by independent third parties such as government agencies, academic institutions, and private research firms;
- Is based on recent rates paid to a representative sample of providers of appraisal services in the geographic market of the property being appraised or the fee schedules of those providers; and
- In the case of information based on fee schedules, studies, and surveys, such fee schedules, studies, or surveys, or the information derived therefrom, excludes compensation paid to fee appraisers for appraisals ordered by appraisal management companies, as defined in paragraph (f)(4)(iii) of this section.

**Definitions. For purposes of this paragraph. [12 C.F.R. §1026.42(f)(4)]**

**Fee appraiser means**

- A natural person who is a state-licensed or state-certified appraiser and receives a fee for performing an appraisal, but who is not an employee of the person engaging the appraiser; or
- An organization that, in the ordinary course of business, employs state-licensed or state-certified appraisers to perform appraisals, receives a fee for performing appraisals, and is not subject to the requirements of section 1124 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3331 et seq.).

**Appraisal services**

The services required to perform an appraisal, including defining the scope of work, inspecting the property, reviewing necessary and appropriate public and private data sources (for example, multiple listing services, tax assessment records and public land records), developing and rendering an opinion of value, and preparing and submitting the appraisal report.

**Appraisal management company**

Any person authorized to perform one or more of the following actions on behalf of the creditor:

- Recruit, select, and retain fee appraisers;
- Contract with fee appraisers to perform appraisal services;
- Manage the process of having an appraisal performed, including providing administrative services such as receiving appraisal orders and appraisal reports, submitting completed appraisal reports to creditors and underwriters, collecting fees from creditors and underwriters for services provided, and compensating fee appraisers for services performed; or
- Review and verify the work of fee appraisers.

***42(f) Customary and reasonable compensation.***

***42(f)(1) Requirement to provide customary and reasonable compensation to fee appraisers.***

1. ***Agents of the creditor.*** Whether a person is an agent of the creditor is determined by applicable law; however, a "fee appraiser" as defined in paragraph (f)(4)(i) is not an agent of the creditor for purposes of paragraph (f), and therefore is not required to pay other fee appraisers customary and reasonable compensation under paragraph (f).
2. ***Geographic market***. For purposes of paragraph (f), the "geographic market of the property being appraised" means the geographic market relevant to compensation levels for appraisal services. Depending on the facts and circumstances, the relevant geographic market may be a state, metropolitan statistical area (MSA), metropolitan division, area outside of an MSA, county, or other geographic area. For example, assume that fee appraisers who normally work only in County A generally accept $400 to appraise an attached single-family property in County A. Assume also that *very few or no* fee appraisers who work only in contiguous County B will accept a rate comparable to $400 to appraise an attached single-family property in County A. The relevant geographic market for an attached single-family property in County A may reasonably be defined as County A. On the other hand, assume that fee appraisers who normally work only in County A generally accept $400 to appraise an attached single-family property in County A. Assume also that *many* fee appraisers who normally work only in contiguous County B will accept a rate comparable to $400 to appraise an attached single-family property in County A. The relevant geographic market for an attached single-family property in County A may reasonably be defined to include both County A and County B.
3. ***Failure to perform contractual obligations***. Paragraph (f)(1) does not prohibit a creditor or its agent from withholding compensation from a fee appraiser for failing to meet contractual obligations, such as failing to provide the appraisal report or violating state or Federal appraisal laws in performing the appraisal.
4. ***Agreement that fee is "customary and reasonable."*** A document signed by a fee appraiser indicating that the appraiser agrees that the fee paid to the appraiser is "customary and reasonable" does not by itself create a presumption of compliance with §1026.42(f) or otherwise satisfy the requirement to pay a fee appraiser at a customary and reasonable rate.

5. ***Volume-based discounts.*** Section 1026.42(f)(1) does not prohibit a fee appraiser and a creditor (or its agent) from agreeing to compensation based on transaction volume, so long as the compensation is customary and reasonable. For example, assume that a fee appraiser typically receives $300 for appraisals from creditors with whom it does business; the fee appraiser, however, agrees to reduce the fee to $280 for a particular creditor, in exchange for a minimum number of assignments from the creditor.

***42(f)(2) Presumption of compliance*.**

1. ***In general*.** A creditor and its agent are presumed to comply with paragraph (f)(1) if the creditor or its agent meets the conditions specified in paragraph (f)(2) in determining the compensation paid to a fee appraiser. These conditions are not requirements for compliance but, if met, create a presumption that the creditor or its agent has complied with §1026.42(f)(1). A person may rebut this presumption with evidence that the amount of compensation paid to a fee appraiser was not customary and reasonable for reasons unrelated to the conditions in paragraph (f)(2)(i) or (f)(2)(ii). If a creditor or its agent does not meet one of the non-required conditions set forth in paragraph (f)(2), the creditor's and its agent's compliance with paragraph (f)(1) is determined based on all of the facts and circumstances without a presumption of either compliance or violation.

***42(f)(2)(i) Presumption of compliance*.**

1. ***Two-step process for determining customary and reasonable rates*.** Paragraph (f)(2)(i) sets forth a two-step process for a creditor or its agent to determine the amount of compensation that is customary and reasonable in a given transaction. First, the creditor or its agent must identify recent rates paid for comparable appraisal services in the relevant geographic market. Second, once recent rates have been identified, the creditor or its agent must review the factors listed in paragraph (f)(2)(i)(A)–(F) and make any appropriate adjustments to the rates to ensure that the amount of compensation is reasonable.

2. ***Identifying recent rates*.** Whether rates may reasonably be considered “recent” depends on the facts and circumstances. Generally, “recent” rates would include rates charged within one year of the creditor's or its agent's reliance on this information to qualify for the presumption of compliance under paragraph (f)(2). For purposes of the presumption of compliance under paragraph (f)(2), a creditor or its agent may gather information about recent rates by using a reasonable method that provides information about rates for appraisal services in the geographic market of the relevant property; a creditor or its agent may, but is not required to, use or perform a fee survey.

3. ***Accounting for factors*.** Once recent rates in the relevant geographic market have been identified, the creditor or its agent must review the factors listed in paragraph (f)(2)(i)(A)–(F) to determine the appropriate rate for the current transaction. For example, if the recent rates identified by the creditor or its agent were solely for appraisal assignments in which the scope of work required consideration of two comparable properties, but the current transaction required an appraisal that considered three comparable properties, the creditor or its agent might reasonably adjust the rate by an amount that accounts for the

increased scope of work, in addition to making any other appropriate adjustments based on the remaining factors.

***Paragraph 42(f)(2)(i)(A).***

1. ***Type of property***. The type of property may include, for example, detached or attached single-family property, condominium or cooperative unit, or manufactured home.

***Paragraph 42(f)(2)(i)(B).***

1. ***Scope of work***. The scope of work may include, for example, the type of inspection (such as exterior only or both interior and exterior) or number of comparables required for the appraisal.

***Paragraph 42(f)(2)(i)(D).***

1. ***Fee appraiser qualifications***. The fee appraiser qualifications may include, for example, a state license or certification in accordance with the minimum criteria issued by the Appraisal Qualifications Board of the Appraisal Foundation, or completion of continuing education courses on effective appraisal methods and related topics.
2. ***Membership in professional appraisal organization.*** Paragraph 42(f)(2)(i)(D) does not override state or Federal laws prohibiting the exclusion of an appraiser from consideration for an assignment solely by virtue of membership or lack of membership in any particular appraisal organization. (*See, e.g.,* 12 C.F.R. §1025.66(a).)

***Paragraph 42(f)(2)(i)(E).***

1. ***Fee appraiser experience and professional record***. The fee appraiser's level of experience may include, for example, the fee appraiser's years of service as a state-licensed or state-certified appraiser, or years of service appraising properties in a particular geographical area or of a particular type. The fee appraiser's professional record may include, for example, whether the fee appraiser has a past record of suspensions, disqualifications, debarments, or judgments for waste, fraud, abuse or breach of legal or professional standards.

***Paragraph 42(f)(2)(i)(F).***

1. ***Fee appraiser work quality***. The fee appraiser's work quality may include, for example, the past quality of appraisals performed by the appraiser based on the written performance and review criteria of the creditor or agent of the creditor.

### *Paragraph 42(f)(2)(ii).*

1. ***Restraining trade***. Under §1026.42(f)(2)(ii)(A), creditor or its agent would not qualify for the presumption of compliance under paragraph (f)(2) if it engaged in any acts to restrain trade such as entering into a price fixing or market allocation agreement that affect the compensation of fee appraisers. For example, if appraisal management company A and appraisal management company B agreed to compensate fee appraisers at no more than a specific rate or range of rates, neither appraisal management company would qualify for the presumption of compliance. Likewise, if appraisal management company A and appraisal management company B agreed that appraisal management company A would limit its business to a certain portion of the relevant geographic market and appraisal management company B would limit its business to a different portion of the relevant geographic market, and as a result each appraisal management company unilaterally set the fees paid to fee appraisers in their respective portions of the market, neither appraisal management company would qualify for the presumption of compliance under paragraph (f)(2).

2. ***Acts of monopolization***. Under §1026.42(f)(2)(ii)(B), a creditor or its agent would not qualify for the presumption of compliance under paragraph (f)(2) if it engaged in any act of monopolization such as restricting entry into the relevant geographic market or causing any person to leave the relevant geographic market, resulting in anticompetitive effects that affect the compensation paid to fee appraisers. For example, if only one appraisal management company exists or is predominant in a particular market area, that appraisal management company might not qualify for the presumption of compliance if it entered into exclusivity agreements with all creditors in the market or all fee appraisers in the market, such that other appraisal management companies had to leave or could not enter the market. Whether this behavior would be considered an anticompetitive act that affects the compensation paid to fee appraisers depends on all of the facts and circumstances, including applicable law.

### *42(f)(3) Alternative presumption of compliance.*

1. ***In general***. A creditor and its agent are presumed to comply with paragraph (f)(1) if the creditor or its agent determine the compensation paid to a fee appraiser based on information about customary and reasonable rates that satisfies the conditions in paragraph (f)(3) for that information. Reliance on information satisfying the conditions in paragraph (f)(3) is not a requirement for compliance with paragraph (f)(1), but creates a presumption that the creditor or its agent has complied. A person may rebut this presumption with evidence that the rate of compensation paid to a fee appraiser by the creditor or its agent is not customary and reasonable based on facts or information other than third-party information satisfying the conditions of this paragraph (f)(3). If a creditor or its agent does not rely on information that meets the conditions in paragraph (f)(3), the creditor's and its agent's compliance with paragraph (f)(1) is determined based on all of the facts and circumstances without a presumption of either compliance or violation.

2. ***Geographic market***. The meaning of "geographic market" for purposes of paragraph (f) is explained in comment (f)(1)–1.

3. ***Recent rates.*** Whether rates may reasonably be considered "recent" depends on the facts and circumstances. Generally, "recent" rates would include rates charged within one year

of the creditor's or its agent's reliance on this information to qualify for the presumption of compliance under paragraph (f)(3).

## *Mandatory Reporting [12 C.F.R. §1026.42(g)]*

**Reporting required. [12 C.F.R. §1026.42(g)(1)]**

Any covered person that reasonably believes an appraiser has not complied with the Uniform Standards of Professional Appraisal Practice or ethical or professional requirements for appraisers under applicable state or Federal statutes or regulations shall refer the matter to the appropriate state agency if the failure to comply is material. A failure to comply is material if it is likely to significantly affect the value assigned to the consumer's principal dwelling.

**Timing of reporting. [12 C.F.R. §1026.42(g)(2)]**

A covered person shall notify the appropriate state agency within a reasonable period of time after the person determines that there is a reasonable basis to believe that a failure to comply required to be reported under paragraph (g)(1) of this section has occurred.

**Definition. [12 C.F.R. §1026.42(g)(3)]**

For purposes of this paragraph, “state agency” means “state appraiser certifying and licensing agency” under 12 U.S.C. 3350(1) and any implementing regulations. The appropriate state agency to which a covered person must refer a matter under paragraph (g)(1) of this section is the agency for the state in which the consumer's principal dwelling is located.

***42(d) Prohibition on conflicts of interest.***

***42(d)(1)(i) In general.***

1. ***Prohibited interest in the property.*** A person preparing a valuation or performing valuation management functions for a covered transaction has a prohibited interest in the property under paragraph (d)(1)(i) if the person has any ownership or reasonably foreseeable ownership interest in the property. For example, a person who seeks a mortgage to purchase a home has a reasonably foreseeable ownership interest in the property securing the mortgage, and therefore is not permitted to prepare the valuation or perform valuation management functions for that mortgage transaction under paragraph (d)(1)(i).
2. ***Prohibited interest in the transaction.*** A person preparing a valuation or performing valuation management functions has a prohibited interest in the transaction under paragraph (d)(1)(i) if that person or an affiliate of that person also serves as a loan officer of the creditor, mortgage broker, real estate broker, or other settlement service provider for the transaction and the conditions under paragraph (d)(4) are not satisfied. A person also has a prohibited interest in the transaction if the person is compensated or otherwise receives financial or other benefits based on whether the transaction is consummated. Under these circumstances, the person is not permitted to prepare the valuation or perform valuation management functions for that transaction under paragraph (d)(1)(i).

***42(g) Mandatory reporting.***

***42(g)(1) Reporting required.***

1. ***Reasonable basis***. A person reasonably believes that an appraiser has materially failed to comply with the Uniform Standards of Professional Appraisal Practice (USPAP) established by the Appraisal Standards Board of the Appraisal Foundation (as defined in 12 U.S.C. 3350(9)) or ethical or professional requirements for appraisers under applicable state or Federal statutes or regulations if the person possesses knowledge or information that would lead a reasonable person in the same circumstances to conclude that the appraiser has materially failed to comply with USPAP or such statutory or regulatory requirements.
2. ***Material failure to comply***. For purposes of §1026.42(g)(1), a material failure to comply is one that is likely to affect the value assigned to the consumer's principal dwelling. The following are examples of a material failure to comply with USPAP or ethical or professional requirements:
   i. Mischaracterizing the value of the consumer's principal dwelling in violation of §1026.42(c)(2)(i).
   ii. Performing an assignment in a grossly negligent manner, in violation of a rule under USPAP.
   iii. Accepting an appraisal assignment on the condition that the appraiser will report a value equal to or greater than the purchase price for the consumer's principal dwelling, in violation of a rule under USPAP.
3. ***Other matters***. Section 1026.42(g)(1) does not require reporting of a matter that is not material under §1026.42(g)(1), for example:
   i. An appraiser's disclosure of confidential information in violation of applicable state law.
   ii. An appraiser's failure to maintain errors and omissions insurance in violation of applicable state law.
4. ***Examples of covered persons***. "Covered persons" include creditors, mortgage brokers, appraisers, appraisal management companies, real estate agents, and other persons that provide "settlement services" as defined under the Real Estate Settlement Procedures Act and implementing regulations. (*See* 12 U.S.C. 2602(3); §1026.42(b)(1).)
5. ***Examples of persons not covered.*** The following persons are not "covered persons" (unless, of course, they are creditors with respect to a covered transaction or perform "settlement services" in connection with a covered transaction):
   i. The consumer who obtains credit through a covered transaction.
   ii. A person secondarily liable for a covered transaction, such as a guarantor.
   iii. A person that resides in or will reside in the consumer's principal dwelling but will not be liable on the covered transaction, such as a non-obligor spouse.

6. ***Appraiser.*** For purposes of §1026.42(g)(1), an "appraiser" is a natural person who provides opinions of the value of dwellings and is required to be licensed or certified under the laws of the state in which the consumer's principal dwelling is located or otherwise is subject to the jurisdiction of the appraiser certifying and licensing agency for that state. (*See* 12 U.S.C. 3350(1).)

# Section 12: Mortgage Transfer Disclosures [12 C.F.R. §1026.39]

## *Mortgage Transfer Disclosures [12 C.F.R. §1026.39]*

A creditor who becomes the owner of a mortgage loan secured by the consumer's principal dwelling shall mail or deliver the disclosures required by this section to the consumer on or before the 30th calendar day following the date of transfer.

**Form of Disclosures**

The required disclosures shall be provided clearly and conspicuously in writing, and in a form that the consumer may keep. The disclosures may be provided to the consumer in electronic form, subject to compliance with the consumer consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. 7001 et seq.).

**The Date of Transfer**

The date of transfer to the creditor may, at the creditor's option, be either the date of acquisition or the date of transfer.

**Multiple Consumers**

If more than one consumer is liable on the obligation, the creditor may mail or deliver the disclosures to any consumer who is primarily liable.

**Multiple Transfers**

If a mortgage loan is acquired by a creditor and subsequently sold, assigned, or otherwise transferred to another creditor, a single disclosure may be provided on behalf of both creditors if the disclosure satisfies the timing and content requirements applicable to each creditor.

**Multiple Creditors**

If an acquisition involves multiple creditors who jointly acquire the loan, a single disclosure must be provided on behalf of all creditors.

**Exceptions**

A creditor is not subject to the requirements of this section if:

- The creditor sells, or otherwise transfers or assigns legal title to the mortgage loan on or before the 30th calendar day following the date that the creditor acquired the mortgage loan which shall be the date of transfer;

- The mortgage loan is transferred to the creditor in connection with a repurchase agreement that obligates the transferor to repurchase the loan. However, if the transferor does not repurchase the loan, the creditor must provide the disclosures required by this section within 30 days after the date that the transaction is recognized as an acquisition; or
- The creditor acquires only a partial interest in the loan and the party authorized to receive the consumer's notice of the right to rescind and resolve issues concerning the consumer's payments on the loan does not change as a result of the transfer of the partial interest.

**Content of Required Disclosures**

The disclosures required by this section shall identify the loan that was sold, assigned or otherwise transferred, and state the following:

- The name, address, and telephone number of the creditor.
  - o If a single disclosure is provided on behalf of more than one creditor, the information required by this paragraph shall be provided for each of them unless paragraph (d)(1)(ii) of this section applies.
  - o If a single disclosure is provided on behalf of more than one creditor and one of them has been authorized in accordance with paragraph (d)(3) of this section to receive the consumer's notice of the right to rescind and resolve issues concerning the consumer's payments on the loan, the information required by paragraph (d)(1) of this section may be provided only for that creditor.
- The date of transfer.
- The name, address and telephone number of an agent or party authorized to receive notice of the right to rescind and resolve issues concerning the consumer's payments on the loan. However, no information is required to be provided under this paragraph if the consumer can use the information provided under paragraph (d)(1) of this section for these purposes.
- Where transfer of ownership of the debt to the creditor is or may be recorded in public records, or, alternatively, that the transfer of ownership has not been recorded in public records at the time the disclosure is provided.

**Optional Disclosures**

In addition to the information required to be disclosed above, a creditor may, at its option, provide any other information regarding the transaction.

**Commentary**

***Section 1026.39—Mortgage transfer disclosures***.

***39(a) Scope.***

***Paragraph 39(a)(1).***

1. ***Covered persons.*** *The disclosure requirements of this section apply to any "covered person" that becomes the legal owner of an existing mortgage loan, whether through a purchase, or other transfer or assignment, regardless of whether the person also meets the definition of a "creditor" in Regulation Z. The fact that a person purchases or acquires mortgage loans and provides the disclosures under this section does not by itself make that person a "creditor" as defined in the regulation.*

2. ***Acquisition of legal title.*** *To become a "covered person" subject to this section, a person must become the owner of an existing mortgage loan by acquiring legal title to the debt obligation.*

   i. ***Partial interest.*** *A person may become a covered person by acquiring a partial interest in the mortgage loan. If the original creditor transfers a partial interest in the loan to one or more persons, all such transferees are covered persons under this section.*

   ii. ***Joint acquisitions.*** *All persons that jointly acquire legal title to the loan are covered persons under this section, and under §1026.39(b)(5), a single disclosure must be provided on behalf of all such covered persons. Multiple persons are deemed to jointly acquire legal title to the loan if each acquires a partial interest in the loan pursuant to the same agreement or by otherwise acting in concert. (See comments 39(b)(5)–1 and 39(d)(1)(ii)–1 regarding the disclosure requirements for multiple persons that jointly acquire a loan.)*

   iii. ***Affiliates.*** *An acquiring party that is a separate legal entity from the transferor must provide the disclosures required by this section even if the parties are affiliated entities.*

3. *Exclusions.*

   i. ***Beneficial interest.*** *Section 1026.39 does not apply to a party that acquires only a beneficial interest or a security interest in the loan, or to a party that assumes the credit risk without acquiring legal title to the loan. For example, an investor that acquires mortgage-backed securities, pass-through certificates, or participation interests and does not acquire legal title in the underlying mortgage loans is not covered by this section.*

   ii. ***Loan servicers.*** *Pursuant to TILA Section 131(f)(2), the servicer of a mortgage loan is not the owner of the obligation for purposes of this section if the servicer holds title to the loan as a result of the assignment of the obligation to the servicer solely for the administrative convenience of the servicer in servicing the obligation.*

4. ***Mergers, corporate acquisitions, or reorganizations.*** *Disclosures are required under this section when, as a result of a merger, corporate acquisition, or reorganization, the ownership of a mortgage loan is transferred to a different legal entity.*

***Paragraph 39(a)(2).***

1. ***Mortgage transactions covered.*** *Section 1026.39 applies to closed-end or open-end consumer credit transactions secured by the principal dwelling of a consumer.*

***39(b) Disclosure required.***

1. ***Generally.*** *A covered person must mail or deliver the disclosures required by this section on or before the 30th calendar day following the date of transfer, unless an exception in §1026.39(c) applies. For example, if a covered person acquires a mortgage loan on March 15, the disclosure must be mailed or delivered on or before April 14.*

***39(b)(1) Form of disclosure.***

1. ***Combining disclosures.*** *The disclosures under this section can be combined with other materials or disclosures, including the transfer of servicing notices required by the Real Estate Settlement Procedure Act (12 U.S.C. 2601 et seq.) so long as the combined disclosure satisfies the timing and other requirements of this section.*

***39(b)(4) Multiple transfers.***

1. ***Single disclosure for multiple transfers.*** *A mortgage loan might be acquired by a covered person and subsequently transferred to another entity that is also a covered person required to provide the disclosures under this section. In such cases, a single disclosure may be provided on behalf of both covered persons instead of providing two separate disclosures if the disclosure satisfies the timing and content requirements applicable to each covered person. For example, if a covered person acquires a loan on March 15 with the intent to assign the loan to another entity on April 30, the covered person could mail the disclosure on or before April 14 to provide the required information for both entities and indicate when the subsequent transfer is expected to occur.*

2. ***Estimating the date.*** *When a covered person provides the disclosure required by this section that also describes a subsequent transfer, the date of the subsequent transfer may be estimated when the exact date is unknown at the time the disclosure is made. Information is unknown if it is not reasonably available to the covered person at the time the disclosure is made. The "reasonably available" standard requires that the covered person, acting in good faith, exercise due diligence in obtaining information. The covered person normally may rely on the representations of other parties in obtaining information. The covered person might make the disclosure using an estimated date even though the covered person knows that more precise information will be available in the future. For example, a covered person may provide a disclosure on March 31 stating that it acquired the loan on March 15 and that a transfer to another entity is expected to occur "on or around" April 30, even if more precise information will be available by April 14.*

3. ***Duty to comply.*** *Even though one covered person provides the disclosures for another covered person, each has a duty to ensure that disclosures related to its acquisition are accurate and provided in a timely manner unless an exception in §1026.39(c) applies.*

***39(b)(5) Multiple covered person.***

1. ***Single disclosure required.*** *If multiple covered persons jointly acquire the loan, a single disclosure must be provided on behalf of all covered persons instead of providing separate*

*disclosures. (See comment 39(a)(1)–2(ii) regarding a joint acquisition of legal title, and comment 39(d)(1)(ii)–1 regarding the disclosure requirements for multiple persons that jointly acquire a loan.) If multiple covered persons jointly acquire the loan and complete the acquisition on separate dates, a single disclosure must be provided on behalf of all persons on or before the 30th day following the earliest acquisition date. For example, if covered persons A and B enter into an agreement with the original creditor to jointly acquire the loan, and complete the acquisition on March 15 and March 25, respectively, a single disclosure must be provided on behalf of both persons on or before April 14. If the two acquisition dates are more than 30 days apart, a single disclosure must be provided on behalf of both persons on or before the 30th day following the earlier acquisition date, even though one person has not completed its acquisition. (See comment 39(b)(4)–2 regarding use of an estimated date of transfer.)*

2. ***Single disclosure not required.*** *If multiple covered persons each acquire a partial interest in the loan pursuant to separate and unrelated agreements and not jointly, each covered person has a duty to ensure that disclosures related to its acquisition are accurate and provided in a timely manner unless an exception in §1026.39(c) applies. The parties may, but are not required to, provide a single disclosure that satisfies the timing and content requirements applicable to each covered person.*

3. ***Timing requirements.*** *A single disclosure provided on behalf of multiple covered persons must satisfy the timing and content requirements applicable to each covered person unless an exception in §1026.39(c) applies.*

4. ***Duty to comply***. *Even though one covered person provides the disclosures for another covered person, each has a duty to ensure that disclosures related to its acquisition are accurate and provided in a timely manner unless an exception in §1026.39(c) applies. (See comments 39(c)(1)–2, 39(c)(3)–1 and 39(c)(3)–2 regarding transfers of a partial interest in the mortgage loan.)*

***39(c) Exceptions.***

***Paragraph 39(c)(1).***

1. ***Transfer of all interest.*** *A covered person is not required to provide the disclosures required by this section if it sells, assigns or otherwise transfers all of its interest in the mortgage loan on or before the 30th calendar day following the date that it acquired the loan. For example, if covered person A acquires the loan on March 15 and subsequently transfers all of its interest in the loan to covered person B on April 1, person A is not required to provide the disclosures required by this section. Person B, however, must provide the disclosures required by this section unless an exception in §1026.39(c) applies.*

2. ***Transfer of partial interests***. *A covered person that subsequently transfers a partial interest in the loan is required to provide the disclosures required by this section if the covered person retains a partial interest in the loan on the 30th calendar day after it acquired the loan, unless an exception in §1026.39(c) applies. For example, if covered person A acquires the loan on March 15 and subsequently transfers fifty percent of its interest in the loan to covered person B on April 1, person A is required to provide the disclosures under this section if it retains a partial interest in the loan on April 14. Person B in this example must also provide the disclosures required under this section unless an exception in*

*§1026.39(c) applies. Either person A or person B could provide the disclosure on behalf of both of them if the disclosure satisfies the timing and content requirements applicable to each of them. In this example, a single disclosure for both covered persons would have to be provided on or before April 14 to satisfy the timing requirements for person A's acquisition of the loan on March 15. (See comment 39(b)(4)–1 regarding a single disclosure for multiple transfers.)*

### *Paragraph 39(c)(2).*

1. ***Repurchase agreements.*** *The original creditor or owner of the mortgage loan might sell, assign or otherwise transfer legal title to the loan to secure temporary business financing under an agreement that obligates the original creditor or owner to repurchase the loan. The covered person that acquires the loan in connection with such a repurchase agreement is not required to provide disclosures under this section. However, if the transferor does not repurchase the mortgage loan, the acquiring party must provide the disclosures required by this section within 30 days after the date that the transaction is recognized as an acquisition on its books and records.*

2. ***Intermediary parties****. The exception in §1026.39(c)(2) applies regardless of whether the repurchase arrangement involves an intermediary party. For example, legal title to the loan may transfer from the original creditor to party A through party B as an intermediary. If the original creditor is obligated to repurchase the loan, neither party A nor party B is required to provide the disclosures under this section. However, if the original creditor does not repurchase the loan, party A must provide the disclosures required by this section within 30 days after the date that the transaction is recognized as an acquisition on its books and records unless another exception in §1026.39(c) applies.*

### *Paragraph 39(c)(3).*

1. ***Acquisition of partial interests****. This exception applies if the covered person acquires only a partial interest in the loan, and there is no change in the agent or person authorized to receive notice of the right to rescind and resolve issues concerning the consumer's payments. If, as a result of the transfer of a partial interest in the loan, a different agent or party is authorized to receive notice of the right to rescind and resolve issues concerning the consumer's payments, the disclosures under this section must be provided.*

2. ***Examples.***

   i. *A covered person is not required to provide the disclosures under this section if it acquires a partial interest in the loan from the original creditor who remains authorized to receive the notice of the right to rescind and resolve issues concerning the consumer's payments after the transfer.*

   ii. *The original creditor transfers fifty percent of its interest in the loan to covered person A. Person A does not provide the disclosures under this section because the exception in §1026.39(c)(3) applies. The creditor then transfers the remaining fifty percent of its interest in the loan to covered person B and does not retain any interest in the loan. Person B must provide the disclosures under this section.*

*iii. The original creditor transfers fifty percent of its interest in the loan to covered person A and also authorizes party X as its agent to receive notice of the right to rescind and resolve issues concerning the consumer's payments on the loan. Since there is a change in an agent or party authorized to receive notice of the right to rescind and resolve issues concerning the consumer's payments, person A is required to provide the disclosures under this section. Person A then transfers all of its interest in the loan to covered person B. Person B is not required to provide the disclosures under this section if the original creditor retains a partial interest in the loan and party X retains the same authority.*

*iv. The original creditor transfers all of its interest in the loan to covered person A. Person A provides the disclosures under this section and notifies the consumer that party X is authorized to receive notice of the right to rescind and resolve issues concerning the consumer's payments on the loan. Person A then transfers fifty percent of its interest in the loan to covered person B. Person B is not required to provide the disclosures under this section if person A retains a partial interest in the loan and party X retains the same authority.*

***39(d) Content of required disclosures.***

1. ***Identifying the loan**. The disclosures required by this section must identify the loan that was acquired or transferred. The covered person has flexibility in determining what information to provide for this purpose and may use any information that would reasonably inform a consumer which loan was acquired or transferred. For example, the covered person may identify the loan by stating:*

   *i. The address of the mortgaged property along with the account number or loan number previously disclosed to the consumer, which may appear in a truncated format;*

   ii. *The account number alone, or other identifying number, if that number has been previously provided to the consumer, such as on a statement that the consumer receives monthly; or*

   *iii. The date on which the credit was extended and the original amount of the loan or credit line.*

***Paragraph 39(d)(1).***

1. ***Identification of covered person**. Section 1026.39(d)(1) requires a covered person to provide its name, address, and telephone number. The party identified must be the covered person who owns the mortgage loan, regardless of whether another party services the loan or is the covered person's agent. In addition to providing its name, address and telephone number, the covered person may, at its option, provide an address for receiving electronic mail or an Internet Web site address, but is not required to do so.*

### *39(d)(1)(i)*

1. ***Multiple transfers, single disclosure***. *If a mortgage loan is acquired by a covered person and subsequently transferred to another covered person, a single disclosure may be provided on behalf of both covered persons instead of providing two separate disclosures as long as the disclosure satisfies the timing and content requirements applicable to each covered person. (See comment 39(b)(4)–1 regarding multiple transfers.) A single disclosure for multiple transfers must state the name, address, and telephone number of each covered person unless §1026.39(d)(1)(ii) applies.*

### *39(d)(1)(ii)*

1. ***Multiple covered persons, single disclosure***. *If multiple covered persons jointly acquire the loan, a single disclosure must be provided on behalf of all covered persons instead of providing separate disclosures. The single disclosure must provide the name, address, and telephone number of each covered person unless §1026.39(d)(1)(ii) applies and one of the covered persons has been authorized in accordance with §1026.39(d)(3) of this section to receive the consumer's notice of the right to rescind and resolve issues concerning the consumer's payments on the loan. In such cases, the information required by §1026.39(d)(1) may be provided only for that covered person.*

2. ***Multiple covered persons, multiple disclosures***. *If multiple covered persons each acquire a partial interest in the loan in separate transactions and not jointly, each covered person must comply with the disclosure requirements of this section unless an exception in §1026.39(c) applies. (See comment 39(a)(1)–2(ii) regarding a joint acquisition of legal title, and comment 39(b)(5)–2 regarding the disclosure requirements for multiple covered persons.)*

### *Paragraph 39(d)(3).*

1. ***Identifying agents***. *Under §1026.39(d)(3), the covered person must provide the name, address and telephone number for the agent or other party having authority to receive the notice of the right to rescind and resolve issues concerning the consumer's payments on the loan. If multiple persons are identified under this paragraph, the disclosure shall provide the name, address and telephone number for each and indicate the extent to which the authority of each person differs. Section 1026.39(d)(3) does not require that a covered person designate an agent or other party, but if the consumer cannot contact the covered person for these purposes, the disclosure must provide the name, address and telephone number for an agent or other party that can address these matters. If an agent or other party is authorized to receive the notice of the right to rescind and resolve issues concerning the consumer's payments on the loan, the disclosure can state that the consumer may contact that agent regarding any questions concerning the consumer's account without specifically mentioning rescission or payment issues. However, if multiple agents are listed on the disclosure, the disclosure shall state the extent to which the authority of each agent differs by indicating if only one of the agents is authorized to receive notice of the right to rescind, or only one of the agents is authorized to resolve issues concerning payments.*

2. ***Other contact information***. *The covered person may also provide an agent's electronic mail address or Internet Web site address, but is not required to do so.*

***Paragraph 39(d)(4).***

1. ***Where recorded***. *Section 1026.39(d)(4) requires the covered person to disclose where transfer of ownership of the debt to the covered person is recorded if it has been recorded in public records. Alternatively, the disclosure can state that the transfer of ownership of the debt has not been recorded in public records at the time the disclosure is provided, if that is the case, or the disclosure can state where the transfer may later be recorded. An exact address is not required and it would be sufficient, for example, to state that the transfer of ownership is recorded in the office of public land records or the recorder of deeds office for the county or local jurisdiction where the property is located.*

***39(e) Optional disclosures***.

1. ***Generally.*** *Section 1026.39(e) provides that covered persons may, at their option, include additional information about the mortgage transaction that they consider relevant or helpful to consumers. For example, the covered person may choose to inform consumers that the location where they should send mortgage payments has not changed. (See comment 39(b)(1)–1 regarding combined disclosures.)*

*(5) Partial payment policy. Under the subheading "Partial Payment":*

*(i) If periodic payments that are less than the full amount due are accepted, a statement that the covered person, using the term "lender," may accept partial payments and apply such payments to the consumer's loan;*

*(ii) If periodic payments that are less than the full amount due are accepted but not applied to a consumer's loan until the consumer pays the remainder of the full amount due, a statement that the covered person, using the term "lender," may hold partial payments in a separate account until the consumer pays the remainder of the payment and then apply the full periodic payment to the consumer's loan;*

*(iii) If periodic payments that are less than the full amount due are not accepted, a statement that the covered person, using the term "lender," does not accept any partial payments; and*

*(iv) A statement that, if the loan is sold, the new covered person, using the term "lender," may have a different policy.*

## Partial Payment Policy

***Partial payment policy.*** The disclosures required by § 1026.39(d)(5) must identify whether the covered person accepts periodic payments from the consumer that are less than the full amount due and whether the covered person applies the payments to a consumer's loan or holds the payments in a separate account until the consumer pays the remainder of the full amount due. The disclosures required by § 1026.39(d)(5) apply only to a mortgage loan that is a closed-end consumer credit transaction secured by a dwelling or real property and that is not a reverse mortgage transaction subject to § 1026.33. In an open-end consumer credit transaction secured by the consumer's principal dwelling, § 1026.39(d) requires a covered person to provide the disclosures required by § 1026.39(d)(1) through (4), but not the partial payment policy disclosure required by § 1026.39(d)(5). If, however, the dwelling in the open-end consumer credit transaction is not the consumer's principal dwelling (*e.g.*, it is used solely for vacation purposes), none of the disclosures required by § 1026.39(d) is required because the transaction is not a mortgage loan for purposes of § 1026.39. *See* § 1026.39(a)(2). In contrast, a closed-end consumer credit transaction secured by the consumer's dwelling that is not the consumer's principal dwelling is considered a mortgage loan for purposes of § 1026.39. Assuming that the transaction is not a reverse mortgage transaction subject to § 1026.33, § 1026.39(d) requires a covered person to provide the disclosures under § 1026.39(d)(1) through (5). But if the transaction is a reverse mortgage transaction subject to § 1026.33, § 1026.39(d) requires a covered person to provide only the disclosures under § 1026.39(d)(1) through (4).

***Format of disclosure***. Section 1026.39(d)(5) requires disclosure of the partial payment policy of covered persons for closed-end consumer credit transactions secured by a dwelling or real property, other than a reverse mortgage transaction subject to § 1026.33. A covered person may utilize the format of the disclosure illustrated by form H-25 of appendix H to this part for the information required to be disclosed by § 1026.38(l)(5). For example, the statement required § 1026.39(d)(5)(iii) that a new covered person may have a different partial payment policy may be disclosed using the language illustrated by form H-25, which states, "If this loan is sold, your new lender may have a different policy." The text illustrated by form H-25 may be modified to suit the format of the covered person's disclosure under § 1026.39. For example, the format illustrated by form H-25 begins with the text, "Your lender may" or "Your lender does not," which may not be suitable to the format of the covered person's other disclosures under § 1026.39. This text may be modified to suit the format of the covered person's integrated disclosure, using a phrase such as "We will" or "We are your new lender and have a different Partial Payment Policy than your previous lender. Under our policy we will." Any modifications must be appropriate and not affect the substance, clarity, or meaningful sequence of the disclosure.

# Section 13: Periodic Statements for Residential Mortgage Loans [§ 1026.41]

Most attendees will not be issuing periodic statements for payment. We have elected to omit this section in this printed manual and in the presentation.

# Section 14: Minimum Standards for Transactions Secured by a Dwelling [12 C.F.R. §1026.43]

## *Introduction*

The Bureau of Consumer Financial Protection (CFPB) amended Regulation Z, which implements the Truth in Lending Act (TILA). Regulation Z currently prohibits a creditor from making an HPML without regard to the consumer's ability to repay the loan. The final rule requires creditors to make a reasonable, good faith determination of a consumer's ability to repay any consumer credit transaction secured by a dwelling (with some exclusions) and establishes protections from liability under this requirement for "qualified mortgages."

## *Ability-to-Repay Determinations*

The rule describes the minimum requirements for creditors making ability-to-repay (ATR) determinations, but does not dictate that they follow particular underwriting models. However, the CFPB has included an appendix that is very specific, and we strongly suggest compliance with the appendix material.

At a minimum, creditors generally must consider eight underwriting factors:

- current or reasonably expected income or assets;
- current employment status;
- the monthly payment on the covered transaction;
- the monthly payment on any simultaneous loan;
- the monthly payment for mortgage-related obligations;
- current debt obligations, alimony, and child support;
- the monthly debt-to-income ratio or residual income; and
- credit history.

The rule provides guidance as to the application of these factors.

The rule also provides special rules to encourage creditors to refinance "nonstandard mortgages," which include various mortgages which can lead to payment shock that can result in default, into "standard mortgages" with fixed rates for at least five years that reduce consumers' monthly payments.

## *Safe Harbor and Presumption of Compliance for Qualified Mortgages*

The regulation provides a safe harbor for loans that satisfy the definition of a qualified mortgage and are not HPMLs. For small creditors (discussed later in this manual), it also provides a safe harbor if the loan is an HPML, but exceeds the APOR by less than three and one half percent.

Small creditors can receive a rebuttable presumption of compliance for HMPL loans that equal or exceed three and one half percent above the APOR, as described later in this manual.

Large creditors receive a safe harbor for non-HPML loans and a presumption of compliance for HPML loans.

# Section 15: General Qualified Mortgage Rules

## *Background*

The ATR provisions do not directly restrict features, term, or costs of the loan. However, TILA provides that loans that meet certain requirements shall be deemed "qualified mortgages," which are entitled to a presumption of compliance with the ability-to-repay requirements. This section sets forth a number of qualified mortgage requirements.

The only underwriting provisions in the statutory definition of qualified mortgage are a requirement that "income and financial resources relied upon to qualify the [borrowers] be verified and documented" and a further requirement that underwriting be based upon a fully amortizing schedule using the maximum rate permitted during the first five years of the loan.

## *Safe Harbor and Presumption of Compliance*

The Dodd-Frank Act provides a presumption of compliance with the ATR requirements for qualified mortgages. The regulation changed this, and qualified mortgages receive a safe harbor should the bank be sued. Some qualified mortgages may only receive a rebuttable presumption of compliance, a lesser protection, but better than no protection at all.

Theses protections afforded to qualified mortgages balances consumers' ability to invoke the protections of the Dodd-Frank Act scheme with the need to create sufficient certainty to promote access to credit in all parts of the market. The final rule provides a safe harbor with the ATR requirements for loans that meet the qualified mortgage criteria and pose the least risk, while providing a rebuttable presumption for some "higher-priced" mortgage loans.

## *Qualified Mortgage (QM) Defined—General*

Qualified mortgages are loans that satisfy all of the qualified mortgage criteria required by the statute, for which the creditor considers and verifies the consumer's current debt obligations, alimony, and child support, and that have a total ("back-end") monthly debt-to-income ratio of no greater than 43 percent, following the standards for "debt" and "income" set forth in Appendix Q.

### QM Restrictions

The regular periodic payments of a qualified mortgage may not result in an increase of the principal balance or allow the consumer to defer repayment of principal. The terms of a qualified mortgage may not include a balloon payment (subject to an exception for certain smaller creditors.

### QM - Maximum Term

TILA requires that a qualified mortgage must not provide for a loan term that exceeds 30 years. If a balloon payment is permitted, the amortization period also cannot exceed 30 years.

## QM – Maximum Points and Fees

TILA defines a qualified mortgage as a loan for which the total points and fees payable in connection with the loan do not exceed three percent of the total loan amount. This limit is adjusted for smaller loan amounts.

## QM - Underwriting

As a condition to meeting the definition of a qualified mortgage, the underwriting process for a fixed-rate or adjustable-rate loan must be based on "a payment schedule that fully amortizes the loan over the loan term and takes into account all applicable taxes, insurance, and assessments." For an adjustable-rate loan, the underwriting must be based on "the maximum rate permitted under the loan during the first 5 years."

Meeting the definition of a qualified mortgage is contingent, in part, on creditors meeting the following underwriting requirements:

- The creditor takes into account any mortgage-related obligations when underwriting the consumer's loan;
- The creditor must use the maximum interest rate that may apply during the first five years (61 months) after consummation; and
- The periodic payments of principal and interest repay either the outstanding principal balance over the remaining term of the loan as of the date the interest rate adjusts to the maximum interest rate that can occur during the first five years (61 months) after consummation, or the loan amount over the loan term.

Additionally, the creditor must underwrite the loan taking into account any mortgage-related obligations.

## QM – Maximum Interest Rate in 5 Years (61 months)

To be a qualified mortgage the creditor must underwrite the loan using the maximum interest rate that may apply during the first five years after consummation.

The CFPB interpreted the phrase "during the first 5 years" as requiring creditors to underwrite the loan based on the maximum interest rate that may apply during the first five years after the first regular periodic payment will be due. This equates to 61 months, not 60 months.

## QM – Loan Amount

A creditor must underwrite the loan using periodic payments of principal and interest that will repay either:

- the outstanding principal balance over the remaining term of the loan as of the date the interest rate adjusts to the maximum interest rate that occurs during the first five years (61 months) after consummation; or
- the loan amount over the loan term.

**QM – Verification of Income and Assets**

TILA provides that the income and financial resources relied upon to qualify the obligors on the residential mortgage loan are verified and documented. This requirement is consistent with requirement under the general ATR standard.

**QM – Debt and Other Obligations**

The creditor must consider and verify the consumer's current debt obligations, alimony, and child support, in accordance with Appendix Q and other portions of the regulation. For purposes of considering and verifying the consumer's current debt obligations, alimony, and child support, the creditor must consider and verify, at a minimum, any debt or liability specified in Appendix Q.

Appendix Q contains specific standards for defining "debt," to provide certainty to creditors as to whether a loan meets the requirements for a qualified mortgage.

**QM – DTI Ratio**

The CFPB has chosen a back end DTI of 43%.

# Section 16: Types of Qualified Mortgages

## *General Definition for a Qualified Mortgage (QM Type 1)*

The general definition was discussed in the previous section.

The final rule implements the statutory criteria, which generally prohibit loans with negative amortization, interest-only payments, balloon payments, or terms exceeding 30 years from being qualified mortgages. So-called "no-doc" loans where the creditor does not verify income or assets also cannot be qualified mortgages.

Additionally, a loan generally cannot be a qualified mortgage if the points and fees paid by the consumer exceed three percent of the total loan amount, although "bona fide discount points" are excluded for prime loans. The rule provides guidance on the calculation of points and fees and thresholds for smaller loans.

The rule establishes general underwriting criteria for qualified mortgages. The rule requires that monthly payments be calculated based on the highest payment that will apply in the first five years of the loan and that the consumer have a total (or "back-end") debt-to-income (DTI) ratio that is less than or equal to 43 percent.

The final rule also provides for a second, temporary category of qualified mortgages that have more flexible underwriting requirements as long as they satisfy the general product feature prerequisites for a qualified mortgage, and also satisfy the underwriting requirements of the GSEs (who have announced that they will follow Regulation Z exclusively); or the U.S. Department of Housing and Urban Development, Department of Veterans Affairs, or Department of Agriculture or Rural Housing Service.

This temporary provision will phase out over time as the various Federal agencies issue their own qualified mortgage rules. The regulation gives these other agencies seven years to accomplish the appropriate changes.

## *Alternative Qualified Mortgage Definition (QM Type 2)*

Under the general definition, qualified mortgages would be limited to loans that satisfy the qualified mortgage product feature criteria in the statute.

Under this temporary provision the final rule provides a second definition of qualified mortgage for loans that meet the prohibitions regarding risky loan features and the limitations on points and fees, and are eligible for purchase or guarantee by the GSEs (Freddie and Fannie), or eligible to be insured or guaranteed by the U.S. Department of Housing and Urban Development under the National Housing Act, the VA, the USDA, or the Rural Housing Service (RHS).

It has already been announced that Freddie Mac and Fannie Mae will follow the Regulation Z qualified mortgage definition (see QM Type 1 above).

The FHA, VA, USDA, and RHS have authority under the statute to define qualified mortgage standards for their own loans, so this exception will sunset once each agency promulgates its own qualified mortgage standards, and the rules take effect. The temporary qualified mortgage definition will expire seven years after the effective date of the rule (2021). The Bureau believes that this will provide an adequate period for economic, market, and regulatory conditions to stabilize.

Covered transactions that satisfy the requirements of this exception that are consummated before the sunset of the rule will retain their qualified mortgage status after the temporary definition expires.

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## *Rural Balloon-Payment Qualified Mortgages (QM Type 3)*

The rule implements a special provision in the Act that treats balloon-payment mortgages as qualified mortgages if:

- they are originated and held in portfolio
- by small creditors operating predominantly in rural or underserved areas.
- These loans are eligible if:
  - they have a term of at least five years,
  - have a fixed-interest rate,
  - meets the "points and fees" test
  - and meet certain basic underwriting standards; debt-to-income ratios must be considered but are not subject to the 43 percent general requirement.

This category of qualified mortgage follows the same standards as the escrow rule. Creditors are only eligible to make rural balloon-payment qualified mortgages if:

- they originate at least one of their first-lien mortgages in a county or area that is rural or underserved,
- have less than $2 billion in assets, and
- (along with their affiliates) originate no more than 2,000 first-lien mortgages per year.

Creditors must generally hold the loans on their portfolios for three years in order to maintain their "qualified mortgage" status.

## *Portfolio Qualified Mortgages (QM Type 5)*

The rule implements a special provision in the Act that treats balloon-payment mortgages as qualified mortgages if:

- they are originated and held in portfolio,
- meets the "points and fees" test,
- These loans are eligible if they meet certain basic underwriting standards; debt-to-income ratios must be considered but are not subject to the 43 percent general requirement.

Creditors are only eligible to make portfolio qualified mortgages if:

- they have less than $2 billion in assets, and
- (along with their affiliates) originate no more than 500 first-lien mortgages per year.

Creditors must generally hold the loans on their portfolios for three years in order to maintain their "qualified mortgage" status.

### Holding of Balloon-Payment Mortgages in Portfolio and Portfolio Mortgages

TILA requires that the lender keep these mortgages in portfolio. The only ability to sell these loans is as follows:

- Three years have passed.
- The buyer could have originated the loan as a qualified mortgage.

There are two exceptions:

  - The bank's regulator dictated an earlier sale for liquidity.
  - There is a merger or acquisition.

# Section 17: Other Provisions

## *Record Retention*

The Dodd-Frank Act revised TILA to extend the statute of limitations for civil liability for a violation of these new requirements to three years after the date a violation occurs. Existing language requires that creditors retain evidence of compliance with Regulation Z for two years after disclosures must be made or action must be taken. Due to the statute, retaining records that show compliance with this section for at least three years after consummation is now required.

TILA also provides that when a creditor, an assignee, other holder or their agent initiates a foreclosure action, a consumer may assert a violation of this TILA section "as a matter of defense by recoupment or setoff." There is no time limit on the use of this defense. Under the circumstances, retaining all ATR documentation for the life of the loan appears appropriate.

# Section 18: Repayment Ability [12 CFR § 1026.43]

## *Introduction*

TILA provides that no creditor may make a residential mortgage loan unless the creditor makes a reasonable and good faith determination, based on verified and documented information, that, at the time the loan is consummated, the consumer has a reasonable ability to repay the loan according to its terms and all applicable taxes, insurance, and assessments. TILA specifies factors that must be considered in determining a consumer's ability to repay and verification requirements for income and assets considered as part of that determination.

## *General Requirements*

### Basis for Determination

A creditor must consider specified factors as part of a determination of a consumer's ability to repay.

### Underwriting Techniques

In making the repayment ability determination, a creditor must consider a consumer's current income, reasonably expected income, and "financial resources" other than the consumer's equity in the dwelling or real property that secures loan repayment. A creditor may consider the seasonality or irregularity of a consumer's income in determining repayment ability.

### Employment Status

A creditor must consider a consumer's employment status in determining the consumer's repayment ability. A creditor need consider a consumer's employment status only if the creditor relies on income from the consumer's employment in determining repayment ability.

### Monthly Payment on Covered Transaction

A creditor must consider the consumer's monthly payment on the covered transaction, calculated in accordance with the regulation for purposes of determining the consumer's repayment ability.

### Monthly Payments and Simultaneous Loans

A creditor must consider "the consumer's monthly payment on any simultaneous loan that the creditor knows or has reason to know will be made, calculated in accordance with" the regulation for purposes of determining the consumer's repayment ability.

**Monthly Payment**

A creditor must consider and verify mortgage-related obligations as part of the ability-to-repay determination, including mortgage guarantee insurance and assessments."

**Current Debt Obligations**

A creditor must consider "current obligations" as part of an ATR determination. This includes debt obligations, as well as alimony and child support.

**Debt-to-Income and Residual Income**

TILA requires creditors to consider the consumer's monthly DTI ratio or residual income the consumer will have after paying non-mortgage debt and mortgage-related obligations, as part of the ATR determination.

**Credit History**

TILA requires creditors to consider credit history as part of the ability-to-repay determination. The regulation allows the Bank to establish its own standards for this portion of the decision.

**Verification Using Third-Party Records**

TILA requires that a creditor make a reasonable and good faith determination, based on "verified and documented information," that a consumer has a reasonable ability to repay the covered transaction.

**Verification of Income or Assets**

TILA requires that a creditor verify amounts of income or assets that a creditor relied upon to determine repayment ability. There are eight documents discussed in the regulation.

## *Payment Calculation*

TILA requires creditors to make uniform assumptions when calculating the payment obligation for purposes of determining the consumer's repayment ability for the covered transaction. When calculating the payment obligation that will be used to determine whether the consumer can repay the covered transaction, the creditor must use a fully amortizing payment schedule and assume that:

- the loan proceeds are fully disbursed on the date the loan is consummated;
- the loan is repaid in substantially equal, monthly amortizing payments for principal and interest over the entire term of the loan with no balloon payment; and

- the interest rate over the entire term of the loan is a fixed rate equal to the fully indexed rate at the time of the loan closing, without considering the introductory rate.
- The statute permits underwriting loans with balloon payments to differ depending on whether the loan's annual percentage rate exceeds the applicable loan pricing benchmark, or meets or falls below the applicable loan pricing benchmark; and
- The statute expressly addresses underwriting requirements for loans with interest-only payments or negative amortization.
- The fully indexed rate or introductory rate, whichever is greater. Banks must use the higher of these two interest rates to determine the maximum rate that could be charged on an ARM loan in the first 61 months.

## *Special Rules for Loans with a Balloon Payment, Interest-only Loans, and Negative Amortization Loans*

The proposal created exceptions to the general rule and provided special rules for loans with a balloon payment, interest-only loans, and negative amortization loans, respectively, for purposes of the repayment ability determination.

### Balloon Loan – Non HPML

For balloon-payment loans that are not higher-priced covered transactions, the statute provides that the payment calculation will be determined by regulation. The Board proposed that a creditor be required to make the repayment determination for "[t]he maximum payment scheduled during the first five years [61 months] after consummation . . . ."

### Balloon Loan – HPML

For a higher-priced covered transaction, the creditor must determine the consumer's ability to repay a loan with a balloon payment using the scheduled payments required under the terms of the loan including the balloon payment.

### Interest Only Loans

A creditor must determine the consumer's repayment ability using "the payment amount required to fully amortize the loan by its final maturity." For interest-only loans, the proposal provided that the creditor must determine the consumer's ability to repay the interest-only loan using:

- the fully indexed rate or any introductory rate, whichever is greater; and
- substantially equal, monthly payments of principal and interest that will repay the loan amount over the term of the loan remaining as of the date the loan is recast.

### Negative Amortization Loans

We believe that most attendees at this seminar do not participate in the negative amortization loan type. As a result, we have decided to omit any discussion on this point.

## *Payment Calculation for Simultaneous Loans*

### Simultaneous Loans

A creditor must consider a consumer's payment on a simultaneous loan that is a covered transaction by following the payment calculation rules for the covered transaction itself.

### Simultaneous Loans - HELOCs

For a simultaneous loan that is a HELOC, the consumer is generally not committed to using the entire credit line at consummation. To calculate the payment for the simultaneous HELOC, a creditor must base the calculation on the amount of funds to be drawn by the consumer at consummation of the covered transaction.

### Monthly debt-to-income ratio or residual income

TILA requires creditors to consider the DTI or residual income the consumer will have after paying non-mortgage debt and mortgage-related obligations, as part of the ATR determination.

# Section 19: Appendix Q to Part 1026:

## Standards for Determining Monthly Debt and Income

### *Introduction*

This section is a direct quote from the regulation. If you are underwriting a standard qualified mortgage under Regulation Z, or if you are underwriting a loan for sale to Freddie Mac or Fannie Mae, these rules must be followed to the letter. Some banks, in the interest of simplicity, will choose to follow these rules regardless of loan type. Make sure that you understand your bank's rules regarding the use of these standards.

### *Regulatory Text*

Section 1026.43(e)(2)(vi) provides that, to satisfy the requirements for a qualified mortgage under § 1026.43(e)(2), the ratio of the consumer's total monthly debt to total monthly income at the time of consummation cannot exceed 43 percent. Section 1026.43(e)(2)(vi)(A) requires the creditor to calculate the ratio of the consumer's total monthly debt to total monthly income using the following standards, with additional requirements for calculating debt and income appearing in § 1026.43(e)(2)(vi)(B).

### *I. Consumer Eligibility*

**A. Stability of Income.**

***1. Effective Income.*** Income may not be used in calculating the consumer's income ratios if it comes from any source that cannot be verified, is not stable, or will not continue.

***2. Verifying Employment History.***

a. The creditor must verify the consumer's employment for the most recent two full years, and the consumer must:

i. Explain any gaps in employment that span one or more months, and

ii. Indicate if he/she was in school or the military for the recent two full years, providing evidence supporting this claim, such as college transcripts, or discharge papers.

b. Allowances can be made for seasonal employment, typical for the building trades and agriculture, if documented by the creditor.

*Note:* A consumer with a 25 percent or greater ownership interest in a business is considered self-employed and will be evaluated as a self-employed consumer for underwriting purposes.

***3. Analyzing a Consumer's Employment Record.***

a. When analyzing the probability of continued employment, creditors must examine:

i. The consumer's past employment record;

ii. The employer's confirmation of continued employment.

b. Favorably consider a consumer for a mortgage if he/she changes jobs frequently within the same line of work, but continues to advance in income or benefits. In this analysis, income stability takes precedence over job stability.

***4. Consumers Returning to Work after an Extended Absence.*** A consumer's income may be considered effective and stable when recently returning to work after an extended absence if he/she:

a. Is employed in the current job for six months or longer; and

b. Can document a two year work history prior to an absence from employment using:

i. Traditional employment verifications; and/or

ii. Copies of IRS Form W-2s or pay stubs.

*Note:* An acceptable employment situation includes individuals who took several years off from employment to raise children, then returned to the workforce.

c. Important: Situations not meeting the criteria listed above may not be used in qualifying. Extended absence is defined as six months.

## B. Salary, Wage and Other Forms of Income.

***1. General Policy on Consumer Income Analysis.***

a. The income of each consumer who will be obligated for the mortgage debt must be analyzed to determine whether his/her income level can be reasonably expected to continue through at least the first three years of the mortgage loan.

b. In most cases, a consumer's income is limited to salaries or wages. Income from other sources can be considered as effective, when properly verified and documented by the creditor.

Notes:

i. Effective income for consumers planning to retire during the first three-year period must include the amount of:

a. Documented retirement benefits;

b. Social Security payments; or

c. Other payments expected to be received in retirement.

ii. Creditors must not ask the consumer about possible, future maternity leave.

***2. Overtime and Bonus Income.***

a. Overtime and bonus income can be used to qualify the consumer if he/she has received this income for the past two years, and it will likely continue. If the employment verification states that the overtime and bonus income is unlikely to continue, it may not be used in qualifying.

b. The creditor must develop an average of bonus or overtime income for the past two years. Periods of overtime and bonus income less than two years may be acceptable, provided the creditor can justify and document in writing the reason for using the income for qualifying purposes.

***3. Establishing an Overtime and Bonus Income Earning Trend.***

a. The creditor must establish and document an earnings trend for overtime and bonus income. If either type of income shows a continual decline, the creditor must document in writing a sound rationalization for including the income when qualifying the consumer.

b. A period of more than two years must be used in calculating the average overtime and bonus income if the income varies significantly from year to year.

***4. Qualifying Part-Time Income.***

a. Part-time and seasonal income can be used to qualify the consumer if the creditor documents that the consumer has worked the part-time job uninterrupted for the past two years, and plans to continue. Many low and moderate income families rely on part-time and seasonal income for day to day needs, and creditors should not restrict consideration of such income when qualifying these consumers.

b. Part-time income received for less than two years may be included as effective income, provided that the creditor justifies and documents that the income is likely to continue.

c. Part-time income not meeting the qualifying requirements may not be used in qualifying.

*Note:* For qualifying purposes, "part-time" income refers to employment taken to supplement the consumer's income from regular employment; part-time employment is not a primary job and it is worked less than 40 hours.

***5. Income from Seasonal Employment.***

a. Seasonal income is considered uninterrupted, and may be used to qualify the consumer, if the creditor documents that the consumer:

i. Has worked the same job for the past two years, and

ii. Expects to be rehired the next season.

b. Seasonal employment includes:

i. Umpiring baseball games in the summer; or

ii. Working at a department store during the holiday shopping season.

***6. Primary Employment Less Than 40 Hour Work Week.***

a. When a consumer's primary employment is less than a typical 40-hour work week, the creditor should evaluate the stability of that income as regular, on-going primary employment.

b. Example: A registered nurse may have worked 24 hours per week for the last year. Although this job is less than the 40-hour work week, it is the consumer's primary employment, and should be considered effective income.

***7. Commission Income.***

a. Commission income must be averaged over the previous two years. To qualify commission income, the consumer must provide:

i. Copies of signed tax returns for the last two years; and

ii. The most recent pay stub.

b. Consumers whose commission income was received for more than one year, but less than two years may be considered favorably if the underwriter can:

i. Document the likelihood that the income will continue, and

ii. Soundly rationalize accepting the commission income.

*Notes:*

i. Unreimbursed business expenses must be subtracted from gross income.

ii. A commissioned consumer is one who receives more than 25 percent of his/her annual income from commissions.

iii. A tax transcript obtained directly from the IRS may be used in lieu of signed tax returns, and the cost of the transcript may be charged to the consumer.

***8. Qualifying Commission Income Earned for Less Than One Year.***

a. Commission income earned for less than one year is not considered effective income. Exceptions may be made for situations in which the consumer's compensation was changed from salary to commission within a similar position with the same employer.

b. A consumer may also qualify when the portion of earnings not attributed to commissions would be sufficient to qualify the consumer for the mortgage.

***9. Employer Differential Payments.*** If the employer subsidizes a consumer's mortgage payment through direct payments, the amount of the payments:

a. Is considered gross income, and

b. Cannot be used to offset the mortgage payment directly, even if the employer pays the servicing creditor directly.

***10. Retirement Income.*** Retirement income must be verified from the former employer, or from Federal tax returns. If any retirement income, such as employer pensions or 401(k)'s, will cease within the first full three years of the mortgage loan, such income may not be used in qualifying.

***11. Social Security Income.*** Social Security income must be verified by the Social Security Administration or on Federal tax returns. If any benefits expire within the first full three years of the loan, the income source may not be used in qualifying.

*Notes:*

i. The creditor must obtain a complete copy of the current awards letter.

ii. Not all Social Security income is for retirement-aged recipients; therefore, documented continuation is required.

iii. Some portion of Social Security income may be "grossed up" if deemed nontaxable by the IRS.

***12. Automobile Allowances and Expense Account Payments.***

a. Only the amount by which the consumer's automobile allowance or expense account payments exceed actual expenditures may be considered income.

b. To establish the amount to add to gross income, the consumer must provide the following:

i. IRS Form 2106, Employee Business Expenses, for the previous two years; and

ii. Employer verification that the payments will continue.

c. If the consumer uses the standard per-mile rate in calculating automobile expenses, as opposed to the actual cost method, the portion that the IRS considers depreciation may be added back to income.

d. Expenses that must be treated as recurring debt include:

i. The consumer's monthly car payment; and

ii. Any loss resulting from the calculation of the difference between the actual expenditures and the expense account allowance.

## C. Consumers Employed by a Family Owned Business.

### *1. Income Documentation Requirement.*

In addition to normal employment verification, a consumer employed by a family owned business is required to provide evidence that he/she is not an owner of the business, which may include:

a. Copies of signed personal tax returns, or

b. A signed copy of the corporate tax return showing ownership percentage.

*Note:* A tax transcript obtained directly from the IRS may be used in lieu of signed tax returns, and the cost of the transcript may be charged to the consumer.

## D. General Information on Self-Employed Consumers and Income Analysis.

***1. Definition: Self Employed Consumer.*** A consumer with a 25 percent or greater ownership interest in a business is considered self-employed.

***2. Types of Business Structures.*** There are four basic types of business structures. They include:

a. Sole proprietorships;

b. Corporations;

c. Limited liability or "S" corporations; and

d.Partnerships.

***3. Minimum Length of Self Employment.***

a. Income from self-employment is considered stable, and effective, if the consumer has been self-employed for two or more years.

b. Due to the high probability of failure during the first few years of a business, the requirements described in the table below are necessary for consumers who have been self-employed for less than two years.

| **If the period of self-employment is:** | **Then:** |
|---|---|
| Between one and two years | To be eligible for a mortgage loan, the individual must have at least two years of documented previous successful employment in the line of work in which the individual is self-employed, or in a related occupation.<br><br>Note: A combination of one year of employment and formal education or training in the line of work in which the individual is self-employed or in a related occupation is also acceptable. |
| Less than one year | The income from the consumer may not be considered effective income. |

***4. General Documentation Requirements for Self Employed Consumers.*** Self-employed consumers must provide the following documentation:

a. Signed, dated individual tax returns, with all applicable tax schedules for the most recent two years;

b. For a corporation, "S" corporation, or partnership, signed copies of Federal business income tax returns for the last two years, with all applicable tax schedules;

c. Year to date profit and loss (P&L) statement and balance sheet.

***5. Establishing a Consumer's Earnings Trend.***

a. When qualifying a consumer for a mortgage loan, the creditor must establish the consumer's earnings trend from the previous two years using the consumer's tax returns.

b. If a consumer:

i. Provides quarterly tax returns, the income analysis may include income through the period covered by the tax filings, or

ii. Is not subject to quarterly tax returns, or does not file them, then the income shown on the P&L statement may be included in the analysis, provided the income stream based on the P&L is consistent with the previous years' earnings.

c. If the P&L statements submitted for the current year show an income stream considerably greater than what is supported by the previous year's tax returns, the creditor must base the income analysis solely on the income verified through the tax returns.

d. If the consumer's earnings trend for the previous two years is downward and the most recent tax return or P&L is less than the prior year's tax return, the consumer's most recent year's tax return or P&L must be used to calculate his/her income.

***6. Analyzing the Business's Financial Strength:***

a. To determine if the business is expected to generate sufficient income for the consumer's needs, the creditor must carefully analyze the business's financial strength, including the:

i. Source of the business's income;

ii. General economic outlook for similar businesses in the area.

b. Annual earnings that are stable or increasing are acceptable, while businesses that show a significant decline in income over the analysis period are not acceptable.

**E. Income Analysis: Individual Tax Returns (IRS Form 1040).**

***1. General Policy on Adjusting Income Based on a Review of IRS Form 1040.*** The amount shown on a consumer's IRS Form 1040 as adjusted gross income must either be increased or decreased based on the creditor's analysis of the individual tax return and any related tax schedules.

***2. Guidelines for Analyzing IRS Form 1040.*** The table on the next page contains guidelines for analyzing IRS Form 1040:

| IRS Form 1040 heading | Description |
| --- | --- |
| Wages, Salaries and Tips | An amount shown under this heading may indicate that the individual:<br>• Is a salaried employee of a corporation, or<br>• Has other sources of income.<br>This section may also indicate that the spouse is employed, in which case the spouse's income must be subtracted from the consumer's adjusted gross income. |
| Business Income and Loss (from Schedule C) | Sole proprietorship income calculated on Schedule C is business income.<br>Depreciation or depletion may be added back to the adjusted gross income. |
| Rents, Royalties, Partnerships (from Schedule E) | Any income received from rental properties or royalties may be used as income, after adding back any depreciation shown on Schedule E. |
| Capital Gain and Losses (from Schedule D) | Capital gains or losses generally occur only one time, and should not be considered when determining effective income.<br>However, if the individual has a constant turnover of assets resulting in gains or losses, the capital gain or loss must be considered when determining the income. Three years' tax returns are required to evaluate an earning trend. If the trend:<br>• Results in a gain, it may be added as effective income, or<br>• Consistently shows a loss, it must be deducted from the total income.<br>Creditor must document anticipated continuation of income through verified assets.<br>*Example:* A creditor can consider the capital gains for an individual who purchases old houses, remodels them, and sells them for profit. |
| Interest and Dividend Income (from Schedule B) | This taxable/tax-exempt income may be added back to the adjusted gross income only if it:<br>• Has been received for the past two years; and<br>• Is expected to continue.<br>If the interest-bearing asset will be liquidated as a source of the cash investment, the creditor must appropriately adjust the amount. |
| Farm Income or Loss (from Schedule F) | Any depreciation shown on Schedule F may be added back to the adjusted gross income. |
| IRA Distributions, Pensions, Annuities, and Social Security Benefits | The non-taxable portion of these items may be added back to the adjusted gross income, if the income is expected to continue for the first three years of the mortgage. |
| Adjustments to Income | Adjustments to income may be added back to the adjusted gross income if they are:<br>• IRA and Keogh retirement deductions;<br>• Penalties on early withdrawal of savings;<br>• Health insurance deductions; and<br>• Alimony payments. |
| Employee Business Expenses | Employee business expenses are actual cash expenses that must be deducted from the adjusted gross income. |

## F. Income Analysis: Corporate Tax Returns (IRS Form 1120).

***1. Description:*** Corporation. A corporation is a State-chartered business owned by its stockholders.

***2. Need To Obtain Consumer Percentage of Ownership Information.***

a. Corporate compensation to the officers, generally in proportion to the percentage of ownership, is shown on the:

i. Corporate tax return IRS Form 1120; and

ii. Individual tax returns.

b. When a consumer's percentage of ownership does not appear on the tax returns, the creditor must obtain the information from the corporation's accountant, along with evidence that the consumer has the right to any compensation.

***3. Analyzing Corporate Tax Returns.***

a. In order to determine a consumer's self-employed income from a corporation the adjusted business income must:

i. Be determined; and

ii. Multiplied by the consumer's percentage of ownership in the business.

b. The table below describes the items found on IRS Form 1120 for which an adjustment must be made in order to determine adjusted business income.

| Adjustment item | Description of adjustment |
|---|---|
| Depreciation and Depletion | Add the corporation's depreciation and depletion back to the after-tax income. |
| Taxable Income | Taxable income is the corporation's net income before Federal taxes. Reduce taxable income by the tax liability. |
| Fiscal Year vs. Calendar Year | If the corporation operates on a fiscal year that is different from the calendar year, an adjustment must be made to relate corporate income to the individual tax return. |
| Cash Withdrawals | The consumer's withdrawal of cash from the corporation may have a severe negative impact on the corporation's ability to continue operating. |

## G. Income Analysis: "S" Corporation Tax Returns (IRS Form 1120S).

***1. Description: "S" Corporation.***

a. An "S" corporation is generally a small, start-up business, with gains and losses passed to stockholders in proportion to each stockholder's percentage of business ownership.

b. Income for owners of "S" corporations comes from IRS Form W-2 wages, and is taxed at the individual rate. The IRS Form 1120S, Compensation of Officers line item is transferred to the consumer's individual IRS Form 1040.

***2. Analyzing "S" Corporation Tax Returns.***

a. "S" corporation depreciation and depletion may be added back to income in proportion to the consumer's share of the corporation's income.

b. In addition, the income must also be reduced proportionately by the total obligations payable by the corporation in less than one year.

c. Important: The consumer's withdrawal of cash from the corporation may have a severe negative impact on the corporation's ability to continue operating, and must be considered in the income analysis.

### H. Income Analysis: Partnership Tax Returns (IRS Form 1065).

***1. Description: Partnership.***

a. A partnership is formed when two or more individuals form a business, and share in profits, losses, and responsibility for running the company.

b. Each partner pays taxes on his/her proportionate share of the partnership's net income.

***2. Analyzing Partnership Tax Returns.***

a. Both general and limited partnerships report income on IRS Form 1065, and the partners' share of income is carried over to Schedule E of IRS Form 1040.

b. The creditor must review IRS Form 1065 to assess the viability of the business. Both depreciation and depletion may be added back to the income in proportion to the consumer's share of income.

c. Income must also be reduced proportionately by the total obligations payable by the partnership in less than one year.

d. Important: Cash withdrawals from the partnership may have a severe negative impact on the partnership's ability to continue operating, and must be considered in the income analysis.

## *II. Non-Employment Related Consumer Income*

### A. Alimony, Child Support, and Maintenance Income Criteria.

Alimony, child support, or maintenance income may be considered effective, if:

1. Payments are likely to be received consistently for the first three years of the mortgage;
2. The consumer provides the required documentation, which includes a copy of the:

    i. Final divorce decree;

    ii. Legal separation agreement;

    iii. Court order; or

iv. Voluntary payment agreement; and

3. The consumer can provide acceptable evidence that payments have been received during the last 12 months, such as:

i. Cancelled checks;

ii. Deposit slips;

iii. Tax returns; or

iv. Court records.

*Notes:*

i. Periods less than 12 months may be acceptable, provided the creditor can adequately document the payer's ability and willingness to make timely payments.

ii. Child support may be "grossed up" under the same provisions as non-taxable income sources.

## B. Investment and Trust Income.

### *1. Analyzing Interest and Dividends.*

a. Interest and dividend income may be used as long as tax returns or account statements support a two-year receipt history. This income must be averaged over the two years.

b. Subtract any funds that are derived from these sources, and are required for the cash investment, before calculating the projected interest or dividend income.

### *2. Trust Income.*

a. Income from trusts may be used if guaranteed, constant payments will continue for at least the first three years of the mortgage term.

b. Required trust income documentation includes a copy of the Trust Agreement or other trustee statement, confirming the:

i. Amount of the trust;

ii. Frequency of distribution; and

iii. Duration of payments.

c. Trust account funds may be used for the required cash investment if the consumer provides adequate documentation that the withdrawal of funds will not negatively affect income. The consumer may use funds from the trust account for the required cash investment, but the trust income used to determine repayment ability cannot be affected negatively by its use.

### *3. Notes Receivable Income.*

a. In order to include notes receivable income to qualify a consumer, he/she must provide:

i. A copy of the note to establish the amount and length of payment, and

ii. Evidence that these payments have been consistently received for the last 12 months through deposit slips, cancelled checks, or tax returns.

b. If the consumer is not the original payee on the note, the creditor must establish that the consumer is now a holder in due course, and able to enforce the note.

***4. Eligible Investment Properties.***

Follow the steps in the table below to calculate an investment property's income or loss if the property to be subject to a mortgage is an eligible investment property.

| | |
|---|---|
| 1 | Subtract the monthly payment (PITI) from the monthly net rental income of the subject property.<br><br>Note: Calculate the monthly net rental by taking the gross rents, and subtracting the 25 percent reduction for vacancies and repairs. |
| 2 | Does the calculation in Step 1 yield a positive number?<br><br>• If *yes,* add the number to the consumer's monthly gross income.<br>• If *no,* and the calculation yields a negative number, consider it a recurring monthly obligation. |

**C. Military, Government Agency, and Assistance Program Income.**

***1. Military Income.***

a. Military personnel not only receive base pay, but often times are entitled to additional forms of pay, such as:

i. Income from variable housing allowances;

ii. Clothing allowances;

iii. Flight or hazard pay;

iv. Rations; and

v. Proficiency pay.

b. These types of additional pay are acceptable when analyzing a consumer's income as long as the probability of such pay to continue is verified in writing.

*Note:* The tax-exempt nature of some of the above payments should also be considered.

***2. VA Benefits.***

a. Direct compensation for service-related disabilities from the Department of Veterans Affairs (VA) is acceptable, provided the creditor receives documentation from the VA.

b. Education benefits used to offset education expenses are not acceptable.

***3. Government Assistance Programs.***

a. Income received from government assistance programs is acceptable as long as the paying agency provides documentation indicating that the income is expected to continue for at least three years.

b. If the income from government assistance programs will not be received for at least three years, it may not be used in qualifying.

c. Unemployment income must be documented for two years, and there must be reasonable assurance that this income will continue. This requirement may apply to seasonal employment.

***4. Mortgage Credit Certificates.***

a. If a government entity subsidizes the mortgage payments either through direct payments or tax rebates, these payments may be considered as acceptable income.

b. Either type of subsidy may be added to gross income, or used directly to offset the mortgage payment, before calculating the qualifying ratios.

***5. Homeownership Subsidies.***

a. A monthly subsidy may be treated as income, if a consumer is receiving subsidies under the housing choice voucher home ownership option from a public housing agency (PHA). Although continuation of the homeownership voucher subsidy beyond the first year is subject to Congressional appropriation, for the purposes of underwriting, the subsidy will be assumed to continue for at least three years.

b. If the consumer is receiving the subsidy directly, the amount received is treated as income. The amount received may also be treated as nontaxable income and be “grossed up” by 25 percent, which means that the amount of the subsidy, plus 25 percent of that subsidy may be added to the consumer’s income from employment and/or other sources.

c. Creditors may treat this subsidy as an “offset” to the monthly mortgage payment (that is, reduce the monthly mortgage payment by the amount of the home ownership assistance payment before dividing by the monthly income to determine the payment-to-income and debt-to-income ratios). The subsidy payment must not pass through the consumer’s hands.

d. The assistance payment must be:

i. Paid directly to the servicing creditor; or

ii. Placed in an account that only the servicing creditor may access.

*Note:* Assistance payments made directly to the consumer must be treated as income.

**D. Rental Income.**

***1. Analyzing the Stability of Rental Income.***

a. Rent received for properties owned by the consumer is acceptable as long as the creditor can document the stability of the rental income through:

i. A current lease;

ii. An agreement to lease, or

iii. A rental history over the previous 24 months that is free of unexplained gaps greater than three months (such gaps could be explained by student, seasonal, or military renters, or property rehabilitation).

b. A separate schedule of real estate is not required for rental properties as long as all properties are documented on the Uniform Residential Loan Application.

*Note:* The underwriting analysis may not consider rental income from any property being vacated by the consumer, except under the circumstances described below.

***2. Rental Income from Consumer Occupied Property.***

a. The rent for multiple unit property where the consumer resides in one or more units and charges rent to tenants of other units may be used for qualifying purposes.

b. Projected rent for the tenant-occupied units only may:

i. Be considered gross income, only after deducting vacancy and maintenance factors, and

ii. Not be used as a direct offset to the mortgage payment.

***3. Income from Roommates in a Single Family Property.***

a. Income from roommates in a single family property occupied as the consumer's primary residence is not acceptable. Rental income from boarders however, is acceptable, if the boarders are related by blood, marriage, or law.

b. The rental income may be considered effective, if shown on the consumer's tax return. If not on the tax return, rental income paid by the boarder may not be used in qualifying.

***4. Documentation Required To Verify Rental Income.*** Analysis of the following required documentation is necessary to verify all consumer rental income:

a. IRS Form 1040 Schedule E; and

b. Current leases/rental agreements.

***5. Analyzing IRS Form 1040 Schedule E.***

a. The IRS Form 1040 Schedule E is required to verify all rental income. Depreciation shown on Schedule E may be added back to the net income or loss.

b. Positive rental income is considered gross income for qualifying purposes, while negative income must be treated as a recurring liability.

c. The creditor must confirm that the consumer still owns each property listed, by comparing Schedule E with the real estate owned section of the URLA.

***6. Using Current Leases To Analyze Rental Income.***

a. The consumer can provide a current signed lease or other rental agreement for a property that was acquired since the last income tax filing, and is not shown on Schedule E.

b. In order to calculate the rental income:

i. Reduce the gross rental amount by 25 percent for vacancies and maintenance;

ii. Subtract PITI and any homeowners association dues; and

iii. Apply the resulting amount to income, if positive, or recurring debts, if negative.

***7. Exclusion of Rental Income From Property Being Vacated by the Consumer.***

Underwriters may not consider any rental income from a consumer's principal residence that is being vacated in favor of another principal residence, except under the conditions described below:

*Notes:*

i. This policy assures that a consumer either has sufficient income to make both mortgage payments without any rental income, or has an equity position not likely to result in defaulting on the mortgage on the property being vacated.

ii. This applies solely to a principal residence being vacated in favor of another principal residence. It does not apply to existing rental properties disclosed on the loan application and confirmed by tax returns (Schedule E of form IRS 1040).

***8. Policy Exceptions Regarding the Exclusion of Rental Income From a Principal Residence Being Vacated by a Consumer.***

When a consumer vacates a principal residence in favor of another principal residence, the rental income, reduced by the appropriate vacancy factor, may be considered in the underwriting analysis under the circumstances listed in the table below.

| Exception | Description |
|---|---|
| Relocations | The consumer is relocating with a new employer, or being transferred by the current employer to an area not within reasonable and locally-recognized commuting distance.<br><br>A properly executed lease agreement (that is, a lease signed by the consumer and the lessee) of at least one year's duration after the loan is closed is required.<br><br>Note: Underwriters should also obtain evidence of the security deposit and/or evidence the first month's rent was paid to the homeowner. |
| Sufficient Equity in Vacated Property | The consumer has a loan-to-value ratio of 75 percent or less, as determined either by:<br>• A current (no more than six months old) residential appraisal, or<br>• Comparing the unpaid principal balance to the original sales price of the property.<br><br>Note: The appraisal, in addition to using forms Fannie Mae1004/Freddie Mac 70, may be an exterior-only appraisal using form Fannie Mae/Freddie Mac 2055, and for condominium units, form Fannie Mae 1075/Freddie Mac 466. |

## E. Non Taxable and Projected Income.

### *1. Types of Non Taxable Income.*

Certain types of regular income may not be subject to Federal tax. Such types of nontaxable income include:

a. Some portion of Social Security, some Federal government employee retirement income, Railroad Retirement Benefits, and some State government retirement income:

b. Certain types of disability and public assistance payments;

c. Child support;

d. Military allowances; and

e. Other income that is documented as being exempt from Federal income taxes.

### *2. Adding Non Taxable Income to a Consumer's Gross Income.*

a. The amount of continuing tax savings attributed to regular income not subject to Federal taxes may be added to the consumer's gross income.

b. The percentage of non-taxable income that may be added cannot exceed the appropriate tax rate for the income amount. Additional allowances for dependents are not acceptable.

c. The creditor:

i. Must document and support the amount of income grossed up for any non-taxable income source, and

ii. Should use the tax rate used to calculate the consumer's last year's income tax.

*Note:* If the consumer is not required to file a Federal tax return, the tax rate to use is 25 percent.

***3. Analyzing Projected Income.***

a. Projected or hypothetical income is not acceptable for qualifying purposes. However, exceptions are permitted for income from the following sources:

i. Cost-of-living adjustments;

ii. Performance raises; and

iii. Bonuses.

b. For the above exceptions to apply, the income must be:

i. Verified in writing by the employer; and

ii. Scheduled to begin within 60 days of loan closing.

***4. Projected Income for New Job.***

a. Projected income is acceptable for qualifying purposes for a consumer scheduled to start a new job within 60 days of loan closing if there is a guaranteed, non-revocable contract for employment.

b. The creditor must verify that the consumer will have sufficient income or cash reserves to support the mortgage payment and any other obligations between loan closing and the start of employment. Examples of this type of scenario are teachers whose contracts begin with the new school year, or physicians beginning a residency after the loan closes fall under this category.

c. The loan is not eligible for endorsement if the loan closes more than 60 days before the consumer starts the new job. To be eligible for endorsement, the creditor must obtain from the consumer a pay stub or other acceptable evidence indicating that he/she has started the new job.

## *III. Consumer Liabilities: Recurring Obligations*

***1. Types of Recurring Obligation. Recurring obligations include:***

a. All installment loans;

b. Revolving charge accounts;

c. Real estate loans;

d. Alimony;

e. Child support; and

f. Other continuing obligations.

***2. Debt to Income Ratio Computation for Recurring Obligations.***

a. The creditor must include the following when computing the debt to income ratios for recurring obligations:

i. Monthly housing expense; and

ii. Additional recurring charges extending ten months or more, such as

a. Payments on installment accounts;

b. Child support or separate maintenance payments;

c. Revolving accounts; and

d. Alimony.

b. Debts lasting less than ten months must be included if the amount of the debt affects the consumer's ability to pay the mortgage during the months immediately after loan closing, especially if the consumer will have limited or no cash assets after loan closing.

*Note:* Monthly payments on revolving or open-ended accounts, regardless of the balance, are counted as a liability for qualifying purposes even if the account appears likely to be paid off within 10 months or less.

***3. Revolving Account Monthly Payment Calculation.*** If the credit report shows any revolving accounts with an outstanding balance but no specific minimum monthly payment, the payment must be calculated as the greater of:

a. 5 percent of the balance; or

b. $10.

*Note:* If the actual monthly payment is documented from the creditor or the creditor obtains a copy of the current statement reflecting the monthly payment, that amount may be used for qualifying purposes.

***4. Reduction of Alimony Payment for Qualifying Ratio Calculation.*** Since there are tax consequences of alimony payments, the creditor may choose to treat the monthly alimony obligation as a reduction from the consumer's gross income when calculating qualifying ratios, rather than treating it as a monthly obligation.

# *IV. Consumer Liabilities: Contingent Liability*

***1. Definition: Contingent Liability.*** A contingent liability exists when an individual is held responsible for payment of a debt if another party, jointly or severally obligated, defaults on the payment.

***2. Application of Contingent Liability Policies.*** The contingent liability policies described in this topic apply unless the consumer can provide conclusive evidence from the debt holder that there is no possibility that the debt holder will pursue debt collection against him/her should the other party default.

***3. Contingent Liability on Mortgage Assumptions.*** Contingent liability must be considered when the consumer remains obligated on an outstanding FHA-insured, VA-guaranteed, or conventional mortgage secured by property that:

a. Has been sold or traded within the last 12 months without a release of liability, or

b. Is to be sold on assumption without a release of liability being obtained.

***4. Exemption From Contingent Liability Policy on Mortgage Assumptions.*** When a mortgage is assumed, contingent liabilities need not be considered if the:

a. Originating creditor of the mortgage being underwritten obtains, from the servicer of the assumed loan, a payment history showing that the mortgage has been current during the previous 12 months, or

b. Value of the property, as established by an appraisal or the sales price on the HUD-1 Settlement Statement from the sale of the property, results in a loan-to-value (LTV) ratio of 75 percent or less.

***5. Contingent Liability on Cosigned Obligations.***

a. Contingent liability applies, and the debt must be included in the underwriting analysis, if an individual applying for a mortgage is a cosigner/co-obligor on:

i. A car loan;

ii. A student loan;

iii. A mortgage; or

iv. Any other obligation.

b. If the creditor obtains documented proof that the primary obligor has been making regular payments during the previous 12 months, and does not have a history of delinquent payments on the loan during that time, the payment does not have to be included in the consumer's monthly obligations.

## *V. Consumer Liabilities: Projected Obligations and Obligations Not Considered Debt*

***1. Projected Obligations.***

a. Debt payments, such as a student loan or balloon-payment note scheduled to begin or come due within 12 months of the mortgage loan closing, must be included by the creditor as anticipated monthly obligations during the underwriting analysis.

b. Debt payments do not have to be classified as projected obligations if the consumer provides written evidence that the debt will be deferred to a period outside the 12-month timeframe.

c. Balloon-payment notes that come due within one year of loan closing must be considered in the underwriting analysis.

***2. Obligations Not Considered Debt.*** Obligations not considered debt, and therefore not subtracted from gross income, include:

a. Federal, State, and local taxes;

b. Federal Insurance Contributions Act (FICA) or other retirement contributions, such as 401(k) accounts (including repayment of debt secured by these funds):

c. Commuting costs;

d. Union dues;

e. Open accounts with zero balances;

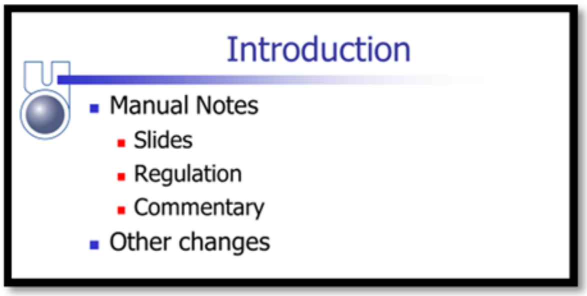
f. Automatic deductions to savings accounts;

g. Child care; and

h. Voluntary deductions.

# Timing Disclosures

## *Manual Notes*




**"Regulation"** is the regulatory text. Items in **bold** are included to assist the read in finding items on the page. **Bold** has no other implication.

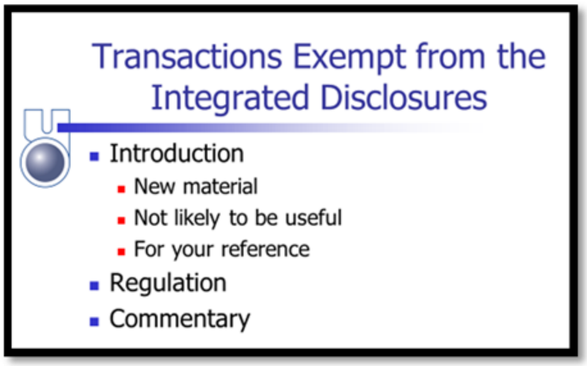
**"Commentary"** is the commentary text from the regulation.

The slides are included within the text below.

## *Other Changes*

There are other changes that are effective as of August 1, 2015. They are beyond the scope of what we can accomplish today. These additional changes are available on the web page for this seminar.

# Section 2: Transactions Exempt from the Integrated Disclosures 12CFR § 1026.3(h)




### *Introduction*

The material presented here is entirely new, and represents new exemptions. The reality is that the types of loans that are covered by this exemptions are usually not originated by attendees. This is included in the manual for your reference.

## *Regulation*

**§ 1026.3 Exempt transactions.**

The following transactions are not subject to this part or, if the exemption is limited to specified provisions of this part, are not subject to those provisions:

* * * * *

(h) ***Partial exemption for certain mortgage loans.*** The special disclosure requirements in § 1026.19(e), (f), and (g) do not apply to a transaction that satisfies all of the following criteria:

(1) The transaction is secured by a subordinate lien;

(2) The transaction is for the purpose of:

(i) Downpayment, closing costs, or other similar home buyer assistance, such as principal or interest subsidies;

(ii) Property rehabilitation assistance;

(iii) Energy efficiency assistance; or

(iv) Foreclosure avoidance or prevention;

(3) The credit contract does not require the payment of interest;

(4) The credit contract provides that repayment of the amount of credit extended is:

(i) Forgiven either incrementally or in whole, at a date certain, and subject only to specified ownership and occupancy conditions, such as a requirement that the consumer maintain the property as the consumer's principal dwelling for five years;

(ii) Deferred for a minimum of 20 years after consummation of the transaction;

(iii) Deferred until sale of the property securing the transaction; or

(iv) Deferred until the property securing the transaction is no longer the principal dwelling of the consumer;

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

(i) Fees for recordation of security instruments, deeds, and similar documents;

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

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

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

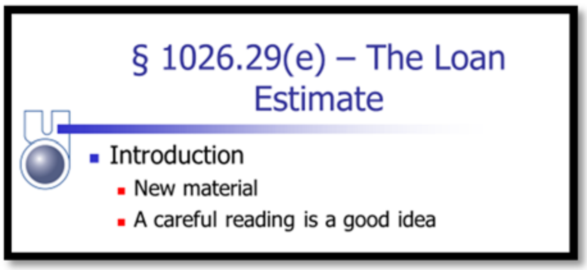
## *Commentary*

1. ***Partial exemption***. Section 1026.3(h) exempts certain transactions from only the disclosures required by § 1026.19(e), (f), and (g), and not from any of the other applicable requirements of this part. As provided by § 1026.3(h)(6), creditors must comply with all other applicable requirements of this part. In addition, the creditor must provide the disclosures required by § 1026.18, even if the creditor would not otherwise be subject to the disclosure requirements of § 1026.18. The consumer also has the right to rescind the transaction under § 1026.23, to the extent that provision is applicable.

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

# Section 3: Subpart C—Closed End Credit
# Certain Mortgage and Variable Rate Transactions
# 12CFR § 1026.19(e)

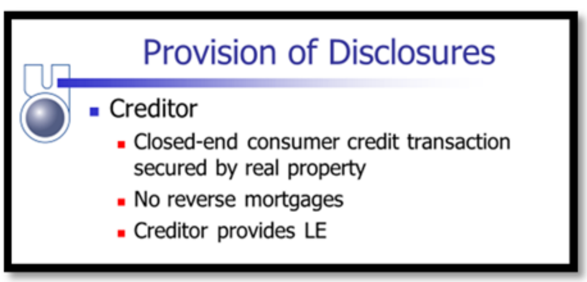
## *Introduction*



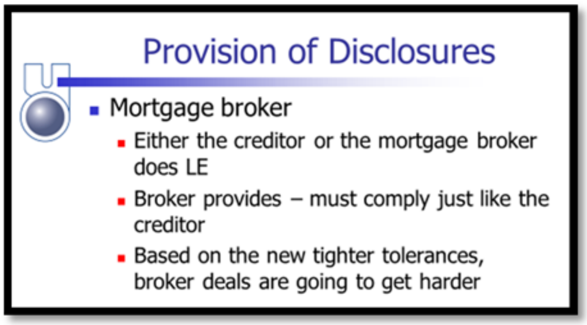

This is a brand new section of the regulation.

## *(e) Mortgage loans secured by real property—early disclosures.*

## *§ 1026.37(e)(1) Provision of disclosures.*



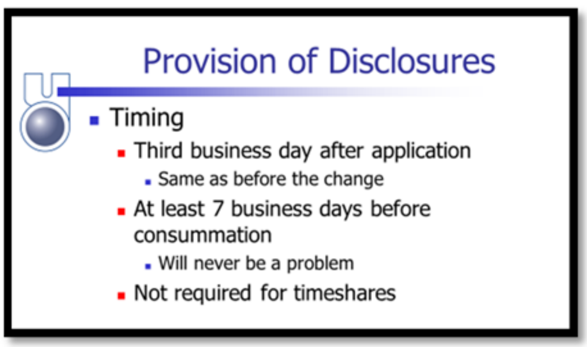

(i) ***Creditor.*** In a closed-end consumer credit transaction secured by real property, other than a reverse mortgage subject to § 1026.33, the creditor shall provide the consumer with good faith estimates of the disclosures in § 1026.37.




(ii) ***Mortgage broker.***

(A) If a mortgage broker receives a consumer's application, either the creditor or the mortgage broker shall provide a consumer with the disclosures required under paragraph (e)(1)(i) of this section in accordance with paragraph (e)(1)(iii) of this section. If the mortgage broker provides the required disclosures, the mortgage broker shall comply with all relevant requirements of this paragraph (e). The creditor shall ensure that such disclosures are provided in accordance with all requirements of this paragraph (e). Disclosures provided by a mortgage broker in accordance with the requirements of this paragraph (e) satisfy the creditor's obligation under this paragraph (e).

(B) If a mortgage broker provides any disclosure under § 1026.19(e), the mortgage broker shall also comply with the requirements of § 1026.25(c).

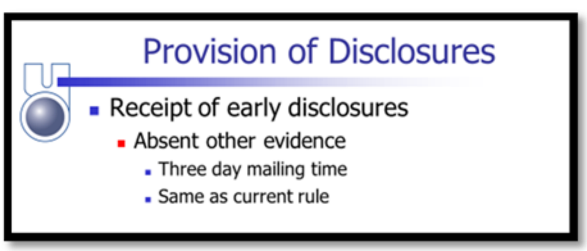



(iii) ***Timing.***

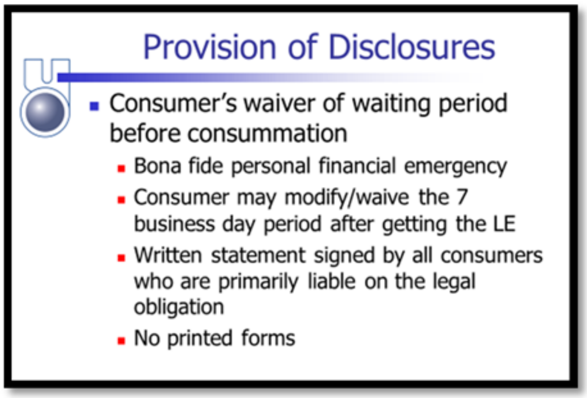
(A) The creditor shall deliver or place in the mail the disclosures required under paragraph (e)(1)(i) of this section not later than the third business day after the creditor receives the consumer's application, as defined in § 1026.2(a)(3).

(B) Except as set forth in paragraph (e)(1)(iii)(C) of this section, the creditor shall deliver or place in the mail the disclosures required under paragraph (e)(1)(i) of this section not later than the seventh business day before consummation of the transaction.

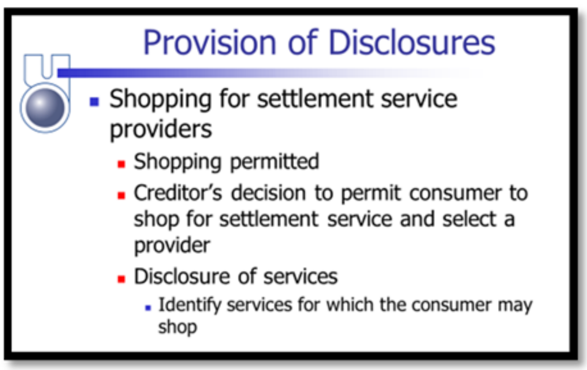
(C) For a transaction secured by a consumer's interest in a timeshare plan described in 11 U.S.C. 101(53D), paragraph (e)(1)(iii)(B) of this section does not apply.




(iv) ***Receipt of early disclosures.*** If any disclosures required under paragraph (e)(1)(i) of this section are not provided to the consumer in person, the consumer is considered to have received the disclosures three business days after they are delivered or placed in the mail.



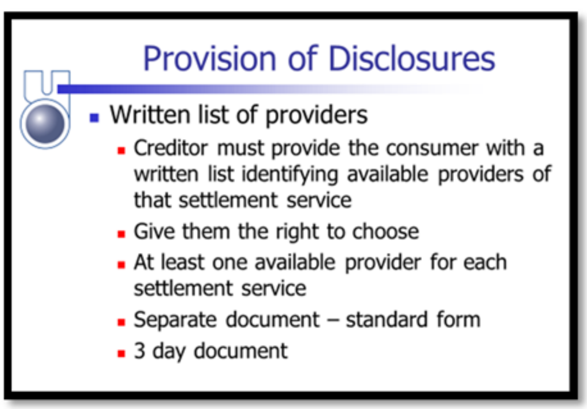

(v) ***Consumer's waiver of waiting period before consummation***. If the consumer determines that the extension of credit is needed to meet a bona fide personal financial emergency, the consumer may modify or waive the seven-business-day waiting period for early disclosures required under paragraph (e)(1)(iii)(B) of this section, after receiving the disclosures required under paragraph (e)(1)(i) of this section. To modify or waive the waiting period, the consumer shall give the creditor a dated written statement that describes the emergency, specifically modifies or waives the waiting period, and bears the signature of all the consumers who are primarily liable on the legal obligation. Printed forms for this purpose are prohibited.



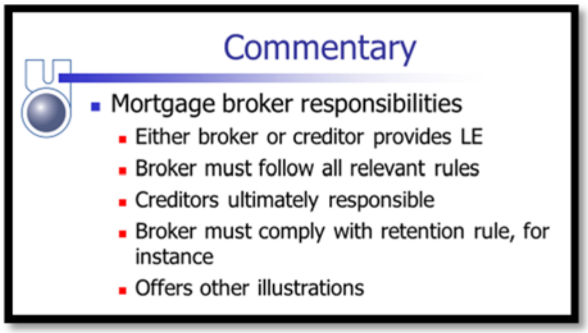

(vi) ***Shopping for settlement service providers.***

(A) ***Shopping permitted.*** A creditor permits a consumer to shop for a settlement service if the creditor permits the consumer to select the provider of that service, subject to reasonable requirements.

(B) ***Disclosure of services.*** The creditor shall identify the settlement services for which the consumer is permitted to shop in the disclosures required under paragraph (e)(1)(i) of this section.




(C) ***Written list of providers.*** If the consumer is permitted to shop for a settlement service, the creditor shall provide the consumer with a written list identifying available providers of that settlement service and stating that the consumer may choose a different provider for that service. The creditor must identify at least one available provider for each settlement service for which the consumer is permitted to shop. The creditor shall provide this written list of settlement service providers separately from the disclosures required by paragraph (e)(1)(i) of this section but in accordance with the timing requirements in paragraph (e)(1)(iii) of this section.

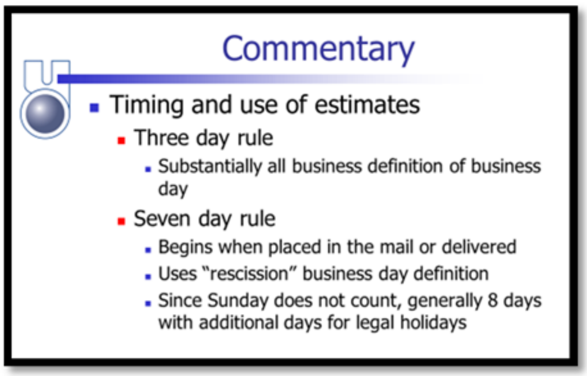



**Commentary**

**19(e)(1)(ii) Mortgage broker.**

1. ***Mortgage broker responsibilities.*** Section 1026.19(e)(1)(ii)(A) provides that if a mortgage broker receives a consumer's application, either the creditor or the mortgage broker must provide the consumer with the disclosures required under § 1026.19(e)(1)(i) in accordance with § 1026.19(e)(1)(iii). Section 1026.19(e)(1)(ii)(A) also provides that if the mortgage broker provides the required disclosures, it must comply with all relevant requirements of § 1026.19(e). This means that "mortgage broker" should be read in the place of "creditor" for all provisions of § 1026.19(e), except to the extent that such a reading would create responsibility for mortgage brokers under § 1026.19(f). To illustrate, comment 19(e)(4)(ii)-1 states that creditors comply with the requirements of § 1026.19(e)(4) if the revised disclosures are reflected in the disclosures required by § 1026.19(f)(1)(i). "Mortgage broker" could not be read in place of "creditor" in comment 19(e)(4)(ii)-1 because mortgage brokers are not responsible for the disclosures required under § 1026.19(f)(1)(i). In addition, § 1026.19(e)(1)(ii)(A) provides that the creditor must ensure that disclosures provided by mortgage brokers comply with all requirements of § 1026.19(e), and that disclosures provided by mortgage brokers that do comply with all such requirements satisfy the creditor's obligation under § 1026.19(e). The term "mortgage broker," as used in § 1026.19(e)(1)(ii), has the same meaning as in § 1026.36(a)(2). *See also* comment 36(a)-2. Section 1026.19(e)(1)(ii)(B) provides that if a mortgage broker provides any disclosure required under § 1026.19(e), the mortgage broker must also comply with the requirements of § 1026.25(c). For example, if a mortgage broker provides the disclosures required under § 1026.19(e)(1)(i), it must maintain records for three years, in compliance with § 1026.25(c)(1)(i).

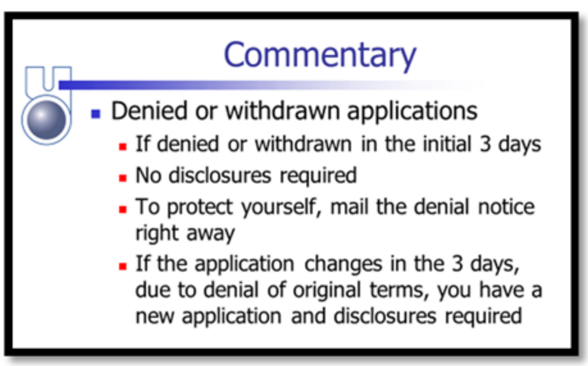
2. ***Creditor responsibilities.*** If a mortgage broker issues any disclosure required under § 1026.19(e) in the creditor's place, the creditor remains responsible under § 1026.19(e) for ensuring that the requirements of § 1026.19(e) have been satisfied. For example, if a mortgage broker receives a consumer's application and provides the consumer with the disclosures required under § 1026.19(e)(1)(i), the creditor does not satisfy the requirements of § 1026.19(e)(1)(i) if it provides duplicative disclosures to the consumer. In the same example, even if the broker provides an erroneous disclosure, the creditor is responsible and may not issue a revised disclosure correcting the error. The creditor is expected to maintain communication with the broker to ensure that the broker is acting in place of the creditor.




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

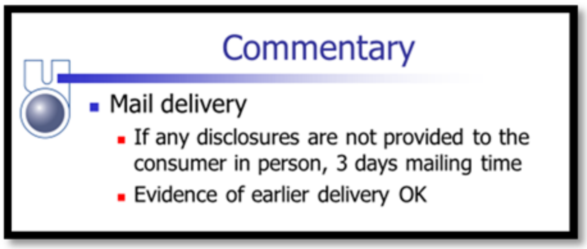
1. ***Timing and use of estimates.*** The disclosures required by § 1026.19(e)(1)(i) must be delivered not later than three business days after the creditor receives the consumer's application. For example, if an application is received on Monday, the creditor satisfies this requirement by either hand delivering the disclosures on or before Thursday, or placing them in the mail on or before Thursday, assuming each weekday is a business day. For purposes of § 1026.19(e)(1)(iii)(A), the term "business day" means a day on which the creditor's offices are open to the public for carrying out substantially all of its business functions. *See* § 1026.2(a)(6).

2. ***Waiting period.*** The seven-business-day waiting period begins when the creditor delivers the disclosures or places them in the mail, not when the consumer receives or is considered to have received the disclosures. For example, if a creditor delivers the early disclosures to the consumer in person or places them in the mail on Monday, June 1, consummation may occur on or after Tuesday, June 9, the seventh business day following delivery or mailing of the early disclosures, because, for the purposes of § 1026.19(e)(1)(iii)(B), Saturday is a business day, pursuant to § 1026.2(a)(6).



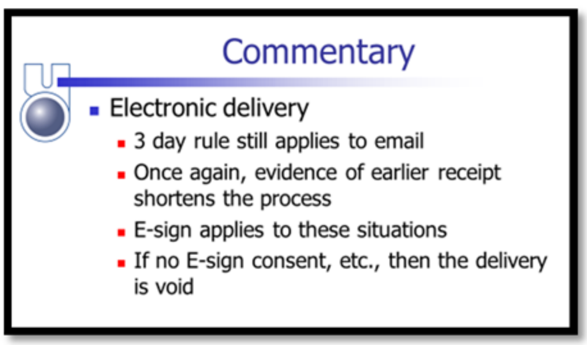

3. ***Denied or withdrawn applications.*** The creditor may determine within the three business-day period that the application will not or cannot be approved on the terms requested, such as when a consumer's credit score is lower than the minimum score required for the terms the consumer applied for, or the consumer applies for a type or amount of credit that the creditor does not offer. In that case, or if the consumer withdraws the application within the three business-day period by, for instance, informing the creditor that he intends to take out a loan from another creditor within the three-business-day period, the creditor need not make the disclosures required under § 1026.19(e)(1)(i). If the creditor fails to provide early disclosures and the transaction is later consummated on the terms originally applied for, then the creditor does not comply with § 1026.19(e)(1)(i). If, however, the consumer amends the application because of the creditor's unwillingness to approve it on the terms originally applied for, no violation occurs for not providing disclosures based on those original terms. But the amended application is a new application subject to § 1026.19(e)(1)(i).


4. ***Timeshares.*** If consummation occurs within three business days after a creditor's receipt of an application for a transaction that is secured by a consumer's interest in a timeshare plan described in 11 U.S.C. 101(53D), a creditor complies with § 1026.19(e)(1)(iii) by providing the disclosures required under § 1026.19(f)(1)(i) instead of the disclosures required under § 1026.19(e)(1)(i).

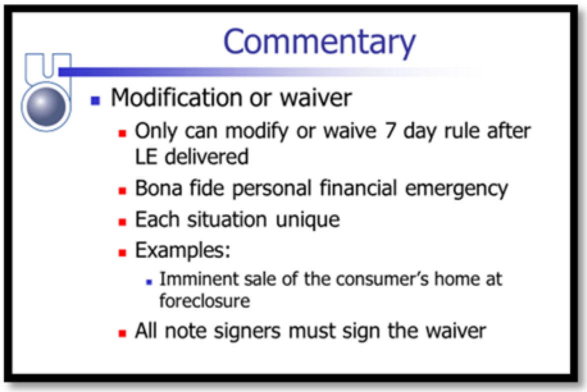



**19(e)(1)(iv) Receipt of early disclosures.**

1. ***Mail delivery.*** Section 1026.19(e)(1)(iv) provides that, if any disclosures required under § 1026.19(e)(1)(i) are not provided to the consumer in person, the consumer is considered to have received the disclosures three business days after they are delivered or placed in the mail. The creditor may, alternatively, rely on evidence that the consumer received the disclosures earlier than three business days. For example, if the creditor sends the disclosures via overnight mail on Monday, and the consumer signs for receipt of the overnight delivery on Tuesday, the creditor could demonstrate that the disclosures were received on Tuesday.

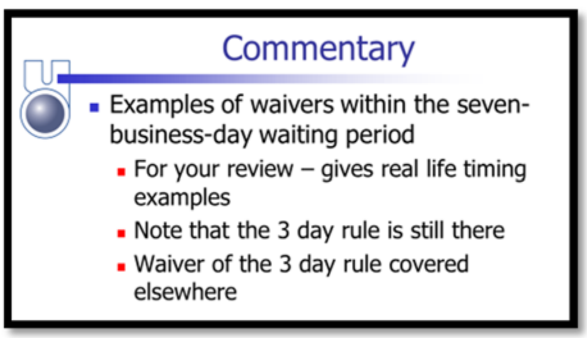



2. ***Electronic delivery.*** The three-business-day period provided in § 1026.19(e)(1)(iv) applies to methods of electronic delivery, such as email. For example, if a creditor sends the disclosures required under § 1026.19(e) via email on Monday, pursuant to § 1026.19(e)(1)(iv) the consumer is considered to have received the disclosures on Thursday, three business days later. The creditor may, alternatively, rely on evidence that the consumer received the emailed disclosures earlier. For example, if the creditor emails the disclosures at 1 p.m. on Tuesday, the consumer emails the creditor with an acknowledgement of receipt of the disclosures at 5 p.m. on the same day, the creditor could demonstrate that the disclosures were received on the same day. Creditors using electronic delivery methods, such as email, must also comply with § 1026.37(o)(3)(iii), which provides that the disclosures in § 1026.37 may be provided to the consumer in electronic form, subject to compliance with the consumer consent and other applicable provisions of the E-Sign Act. For example, if a creditor delivers the disclosures required under § 1026.19(e)(1)(i) to a consumer via email, but the creditor did not obtain the consumer's consent to receive disclosures via email prior to delivering the disclosures, then the creditor does not comply with § 1026.37(o)(3)(iii), and the creditor does not comply with § 1026.19(e)(1)(i), assuming the disclosures were not provided in a different manner in accordance with the timing requirements of § 1026.19(e)(1)(iii).

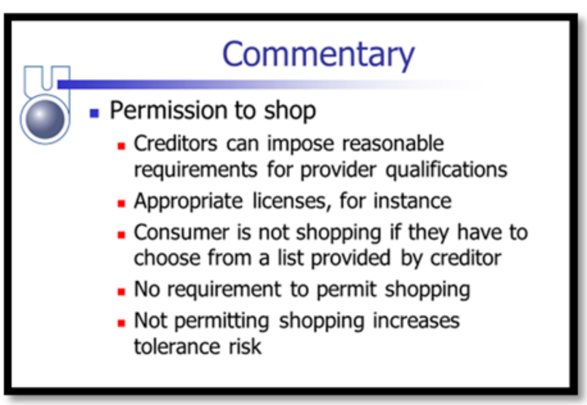



**19(e)(1)(v) Consumer's waiver of waiting period before consummation.**

1. ***Modification or waiver.*** A consumer may modify or waive the right to the seven business-day waiting period required by § 1026.19(e)(1)(iii) only after the creditor makes the disclosures required by § 1026.19(e)(1)(i). The consumer must have a bona fide personal financial emergency that necessitates consummating the credit transaction before the end of the waiting period. Whether these conditions are met is determined by the circumstances of the individual situation. The imminent sale of the consumer's home at foreclosure, where the foreclosure sale will proceed unless loan proceeds are made available to the consumer during the waiting period, is one example of a bona fide personal financial emergency. Each consumer who is primarily liable on the legal obligation must sign the written statement for the waiver to be effective.

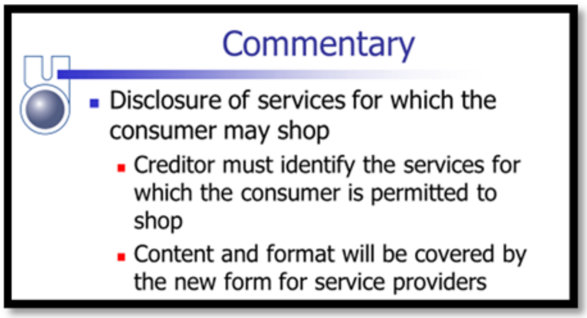



2. ***Examples of waivers within the seven-business-day waiting period.*** If the early disclosures are delivered to the consumer in person on Monday, June 1, the seven-business-day waiting period ends on Tuesday, June 9. If on Monday, June 1, the consumer executes a waiver of the seven-business-day waiting period, the final disclosures required by § 1026.19(f)(1)(i) could then be delivered three business days before consummation, as required by § 1026.19(f)(1)(ii), on Tuesday, June 2, and the loan could be consummated on Friday, June 5. See § 1026.19(f)(1)(iv) for waiver of the three-business-day waiting period under § 1026.19(f).

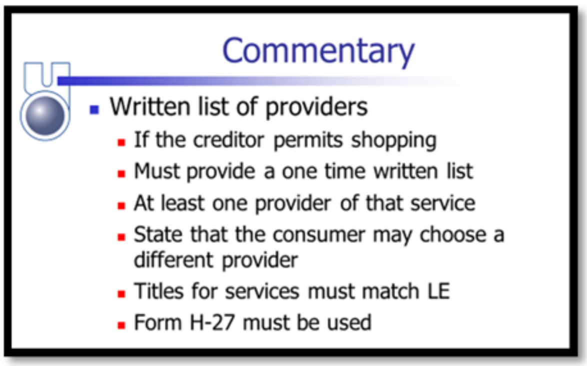



**19(e)(1)(vi) Shopping for settlement service providers.**

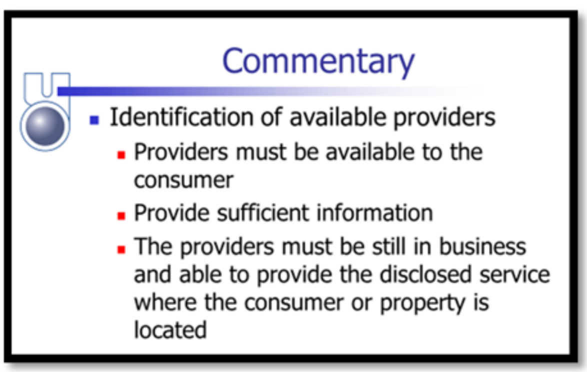
1. ***Permission to shop.*** Section 1026.19(e)(1)(vi)(A) permits creditors to impose reasonable requirements regarding the qualifications of the provider. For example, the creditor may require that a settlement agent chosen by the consumer must be appropriately licensed in the relevant jurisdiction. In contrast, a creditor does not permit a consumer to shop for purposes of § 1026.19(e)(1)(vi) if the creditor requires the consumer to choose a provider from a list provided by creditor. The requirements of § 1026.19(e)(1)(vi)(B) and (C) do not apply if the creditor does not permit the consumer to shop consistent with § 1026.19(e)(1)(vi)(A).



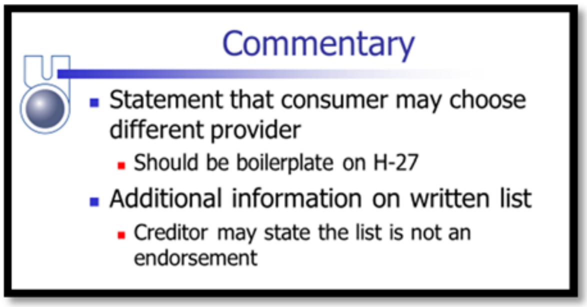

2. ***Disclosure of services for which the consumer may shop.*** Section 1026.19(e)(1)(vi)(B) requires the creditor to identify the services for which the consumer is permitted to shop in the disclosures provided pursuant to § 1026.19(e)(1)(i). See § 1026.37(f)(3) regarding the content and format for disclosure of services for which the consumer may shop.




3. ***Written list of providers.*** If the creditor permits the consumer to shop for a settlement service, § 1026.19(e)(1)(vi)(C) requires the creditor to provide the consumer with a written list identifying at least one available provider of that service and stating that the consumer may choose a different provider for that service. The settlement service providers identified on the written list required by § 1026.19(e)(vi)(C) must correspond to the settlement services for which the consumer may shop, disclosed pursuant to § 1026.37(f)(3). See form H-27 of appendix H to this part for a model list.

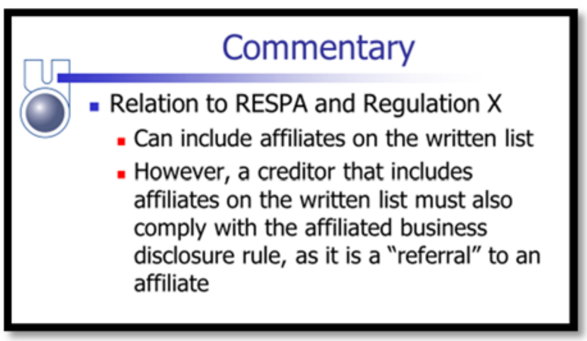



4. ***Identification of available providers.*** Section 1026.19(e)(1)(vi)(C) provides that the creditor must identify settlement service providers that are available to the consumer. A creditor does not comply with the identification requirement in § 1026.19(e)(1)(vi)(C) unless it provides sufficient information to allow the consumer to contact the provider, such as the name under which the provider does business and the provider's address and telephone number. Similarly, a creditor does not comply with the availability requirement in § 1026.19(e)(1)(vi)(C) if it provides a written list consisting of only settlement service providers that are no longer in business or that do not provide services where the consumer or property is located.



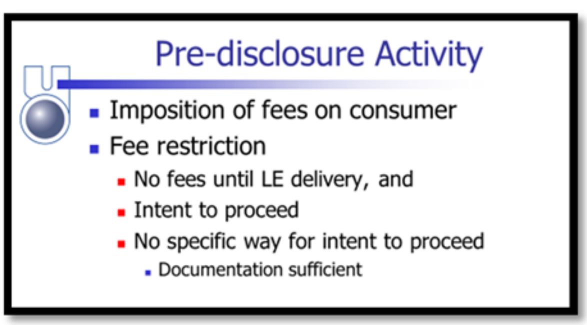

5. ***Statement that consumer may choose different provider.*** Section 1026.19(e)(1)(vi)(C) requires the creditor to include on the written list a statement that the consumer may choose a provider that is not included on that list. *See* form H-27 of appendix H to this part for a model of such a statement.

6. ***Additional information on written list.*** The creditor may include a statement on the written list that the listing of a settlement service provider does not constitute an endorsement of that service provider. The creditor may also identify on the written list providers of services for which the consumer is not permitted to shop, provided that the creditor clearly and conspicuously distinguishes those services from the services for which the consumer is permitted to shop. This may be accomplished by placing the services under different headings. For example, if the list provided pursuant to § 1026.19(e)(1)(vi)(C) identifies providers of pest inspections and surveys, but the consumer may select a provider, other than those identified on the list, for only the survey, then the list must specifically inform the consumer that the consumer is permitted to select a provider, other than a provider identified on the list, for only the survey.



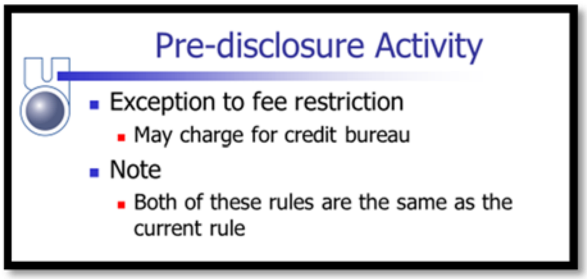

7. ***Relation to RESPA and Regulation X***. Section 1026.19 does not prohibit creditors from including affiliates on the written list required under § 1026.19(e)(1)(vi)(C). However, a creditor that includes affiliates on the written list must also comply with 12 CFR 1024.15. Furthermore, the written list is a "referral" under 12 CFR 1024.14(f).

## *§ 1026.19(e)(2) Predisclosure activity.*

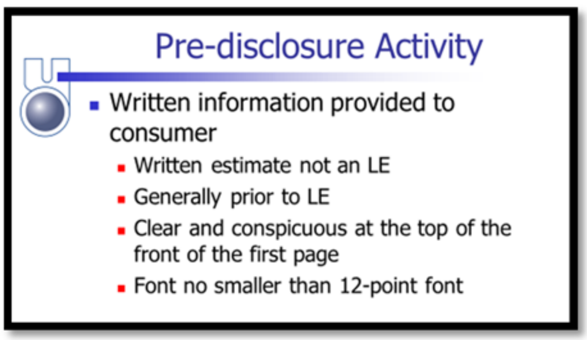



(i) ***Imposition of fees on consumer.***

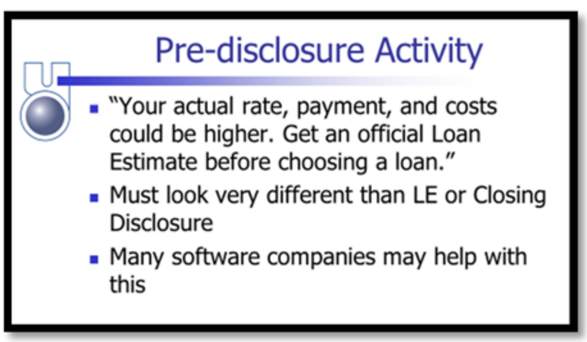
(A) ***Fee restriction.*** Except as provided in paragraph (e)(2)(i)(B) of this section, neither a creditor nor any other person may impose a fee on a consumer in connection with the consumer's application for a mortgage transaction subject to paragraph (e)(1)(i) of this section before the consumer has received the disclosures required under paragraph (e)(1)(i) of this section and indicated to the creditor an intent to proceed with the transaction described by those disclosures. A consumer may indicate an intent to proceed with a transaction in any manner the consumer chooses, unless a particular manner of communication is required by the creditor. The creditor must document this communication to satisfy the requirements of § 1026.25.



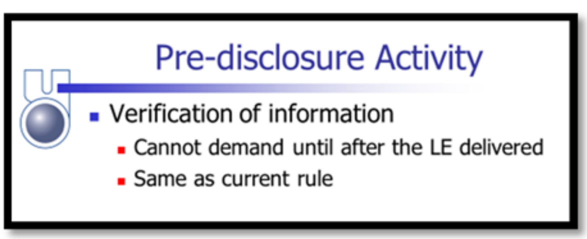

(B) ***Exception to fee restriction.*** A creditor or other person may impose a bona fide and reasonable fee for obtaining the consumer's credit report before the consumer has received the disclosures required under paragraph (e)(1)(i) of this section.




(ii) ***Written information provided to consumer.*** If a creditor or other person provides a consumer with a written estimate of terms or costs specific to that consumer before the consumer receives the disclosures required under paragraph (e)(1)(i) of this section, the creditor or such person shall clearly and conspicuously state at the top of the front of the first page of the estimate in a font size that is no smaller than 12-point font:…

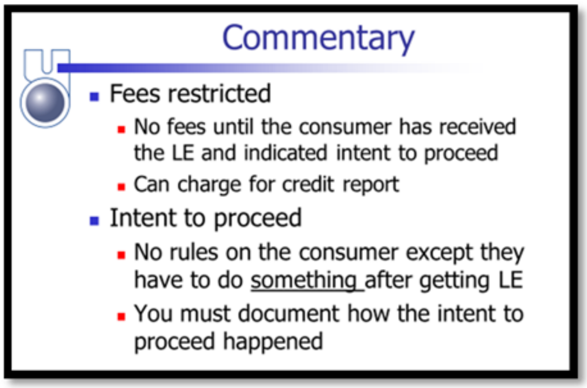



… **"Your actual rate, payment, and costs could be higher. Get an official Loan Estimate before choosing a loan."** The written estimate of terms or costs may not be made with headings, content, and format substantially similar to form H-24 or H-25 of appendix H to this part.



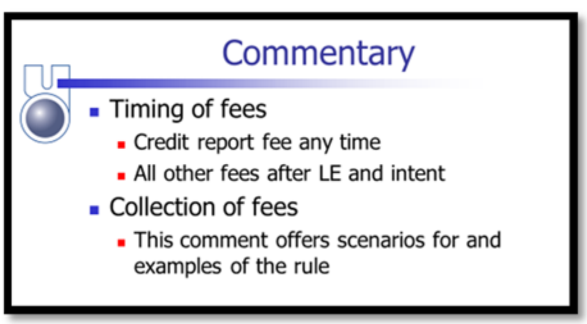

(iii) ***Verification of information.*** The creditor or other person shall not require a consumer to submit documents verifying information related to the consumer's application before providing the disclosures required by paragraph (e)(1)(i) of this section.

**19(e)(2)(i)(A) Fee restriction.**




1. ***Fees restricted.*** A creditor or other person may not impose any fee, such as for an application, appraisal, or underwriting, until the consumer has received the disclosures required by § 1026.19(e)(1)(i) and indicated an intent to proceed with the transaction. The only exception to the fee restriction allows the creditor or other person to impose a bona fide and reasonable fee for obtaining a consumer's credit report, pursuant to § 1026.19(e)(2)(i)(B).

2. ***Intent to proceed.*** Section 1026.19(e)(2)(i)(A) provides that a consumer may indicate an intent to proceed with a transaction in any manner the consumer chooses, unless a particular manner of communication is required by the creditor. The creditor must document this communication to satisfy the requirements of § 1026.25. For example, oral communication in person immediately upon delivery of the disclosures required by § 1026.19(e)(1)(i) is sufficiently indicative of intent. Oral communication over the phone, written communication via email, or signing a pre-printed form are also sufficiently indicative of intent if such actions occur after receipt of the disclosures required by § 1026.19(e)(1)(i). However, a consumer's silence is not indicative of intent because it cannot be documented to satisfy the requirements of § 1026.25. For example, a creditor or third party may not deliver the disclosures, wait for some period of time for the consumer to respond, and then charge the consumer a fee for an appraisal if the consumer does not respond, even if the creditor or third party disclosed that it would do so.



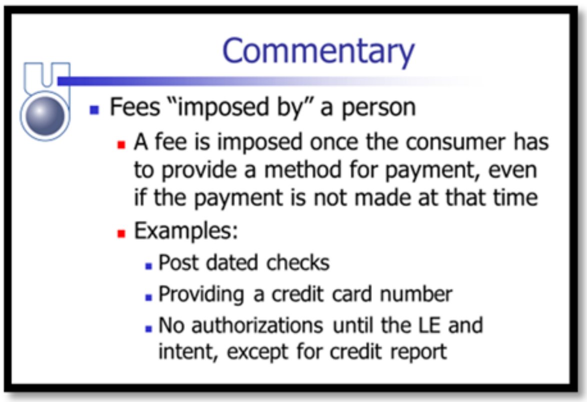

3. ***Timing of fees.*** At any time prior to delivery of the disclosures required under § 1026.19(e)(1)(i), a creditor or other person may impose a credit report fee in connection with the consumer's application for a mortgage loan that is subject to § 1026.19(e)(1)(i) as provided in § 1026.19(e)(2)(i)(B). The consumer must have received the disclosures required under § 1026.19(e)(1)(i) and indicated an intent to proceed with the transaction described by those disclosures before paying or incurring any other fee imposed by a creditor or other person in connection with the consumer's application for a mortgage loan that is subject to § 1026.19(e)(1)(i).

4. ***Collection of fees.*** A creditor or other person complies with § 1026.19(e)(2)(i)(A) if:

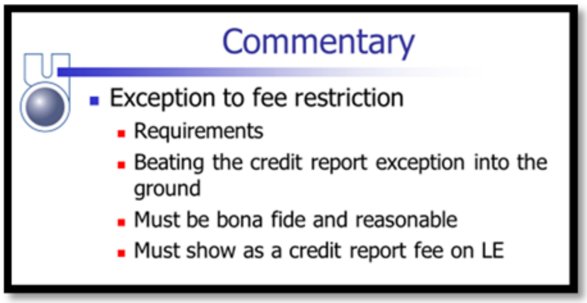
i. A creditor receives a consumer's application directly from the consumer and does not impose any fee, other than a bona fide and reasonable fee for obtaining a consumer's credit report, until the consumer receives the disclosures required under § 1026.19(e)(1)(i) and indicates an intent to proceed with the transaction described by those disclosures.

ii. A third party submits a consumer's application to a creditor and neither the creditor nor the third party imposes any fee, other than a bona fide and reasonable fee for obtaining a consumer's credit report, until the consumer receives the disclosures required under § 1026.19(e)(1)(i) and indicates an intent to proceed with the transaction described by those disclosures.

iii. A third party submits a consumer's application to a creditor following a different creditor's denial of the consumer's application (or following the consumer's withdrawal of that application), and if a fee already has been assessed for obtaining the credit report, the new creditor or third party does not impose any additional fee until the consumer receives disclosures required under § 1026.19(e)(1)(i) from the new creditor and indicates an intent to proceed with the transaction described by those disclosures.




5. ***Fees "imposed by" a person.*** For purposes of § 1026.19(e), a fee is **"imposed by"** a person if the person requires a consumer to provide a method for payment, even if the payment is not made at that time. For example, if a creditor or other person requires the consumer to provide a $500 check to pay for a "processing fee" before the consumer receives the disclosures required by § 1026.19(e)(1)(i), the creditor or other person does not comply with § 1026.19(e)(2)(i), even if the creditor or other person had stated that the check will not be cashed until after the disclosures required by § 1026.19(e)(1)(i) are received by the consumer and waited until after the consumer subsequently indicated an intent to proceed to cash the check. Similarly, a creditor or other person does not comply with the requirements of § 1026.19(e)(2)(i) if the creditor or other person requires the consumer to provide a credit card number before the consumer receives the disclosures required by § 1026.19(e)(1)(i), even if the creditor or other person had promised not to charge the consumer's credit card for the $500 processing fee until after the disclosures required by § 1026.19(e)(1)(i) are received by the consumer and waited until after the consumer subsequently indicated an intent to proceed. In contrast, a creditor or other person complies with § 1026.19(e)(2)(i) if the creditor or other person requires the consumer to provide a credit card number before the consumer receives the disclosures required by § 1026.19(e)(1)(i) and subsequently indicates an intent to proceed, provided that the consumer's authorization is only to pay for the cost of a credit report and the creditor or other person only charges a reasonable and bona fide fee for obtaining the consumer's credit report. This is so even if the creditor or other person maintains the consumer's credit card number on file and charges the consumer a $500 processing fee after the disclosures required by § 1026.19(e)(1)(i) are received and the consumer subsequently indicates an intent to proceed with the transaction described by those disclosures, provided that the creditor or other person requested and received a separate authorization from the consumer for the processing fee after the consumer received the disclosures required by § 1026.19(e)(1)(i) and indicated an intent to proceed with the transaction described by those disclosures.

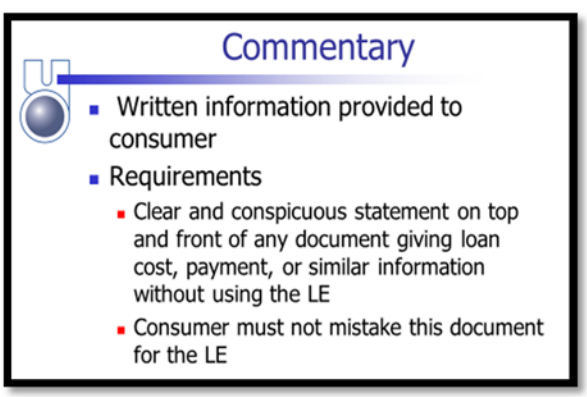



**19(e)(2)(i)(B) Exception to fee restriction.**

1. ***Requirements.*** A creditor or other person may impose a fee before the consumer receives the required disclosures if the fee is for purchasing a credit report on the consumer. The fee also must be bona fide and reasonable in amount. For example, a creditor or other person may collect a fee for obtaining a credit report if it is in the creditor's or other person's ordinary course of business to obtain a credit report. If the criteria in § 1026.19(e)(2)(i)(B) are met, the creditor or other person must accurately describe or refer to this fee, for example, as a **"credit report fee."**

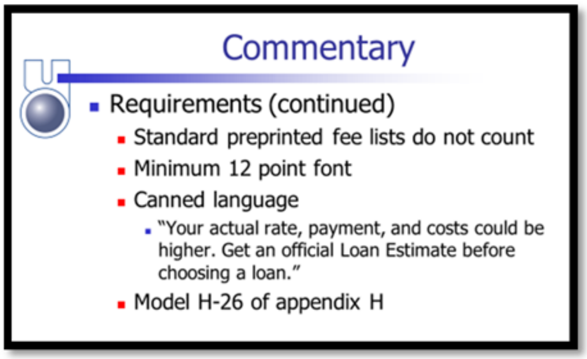
**19(e)(2)(ii) Written information provided to consumer.**

1. ***Requirements.*** Section 1026.19(e)(2)(ii) requires the creditor or other person to include a clear and conspicuous statement on the top of the front of the first page of a written estimate of terms or costs specific to the consumer if it is provided to the consumer before the consumer receives the disclosures required by § 1026.19(e)(1)(i). For example, if the creditor provides a document showing the estimated monthly payment for a mortgage loan, and the estimate was based on the estimated loan amount and the consumer's estimated credit score, then the creditor must include the statement on the document. In contrast, if the creditor provides the consumer with a preprinted list of closing costs common in the consumer's area, the creditor need not include the statement. Similarly, the statement would not be required on a preprinted list of available rates for different loan products. This requirement does not apply to an advertisement, as defined in § 1026.2(a)(2). Section 1026.19(e)(2)(ii) requires that the notice must be in a font size that is no smaller than 12-point font, and must state: "Your actual rate, payment, and costs could be higher. Get an official Loan Estimate before choosing a loan." *See* form H-26 of appendix H to this part for a model statement. Section 1026.19(e)(2)(ii) also prohibits the creditor or other person from making these written estimates with headings, content, and format substantially similar to form H-24 or H-25 of appendix H to this part.

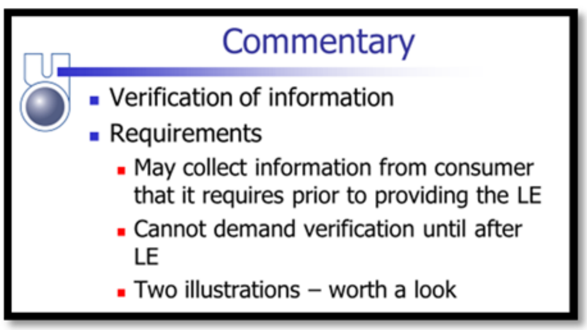



***19(e)(2)(ii) Written information provided to consumer.***

1. ***Requirements.*** Section 1026.19(e)(2)(ii) requires the creditor or other person to include a clear and conspicuous statement on the top of the front of the first page of a written estimate of terms or costs specific to the consumer if it is provided to the consumer before the consumer receives the disclosures required by § 1026.19(e)(1)(i). For example, if the creditor provides a document showing the estimated monthly payment for a mortgage loan, and the estimate was based on the estimated loan amount and the consumer's estimated credit score, then the creditor must include the statement on the document…

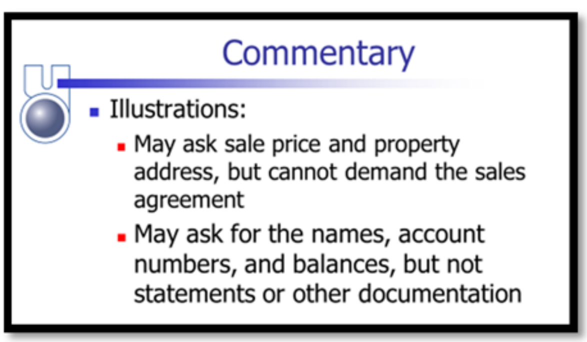



…In contrast, if the creditor provides the consumer with a preprinted list of closing costs common in the consumer's area, the creditor need not include the statement. Similarly, the statement would not be required on a preprinted list of available rates for different loan products. This requirement does not apply to an advertisement, as defined in § 1026.2(a)(2). Section 1026.19(e)(2)(ii) requires that the notice must be in a font size that is no smaller than 12-point font, and must state: "Your actual rate, payment, and costs could be higher. Get an official Loan Estimate before choosing a loan." *See* form H-26 of appendix H to this part for a model statement. Section 1026.19(e)(2)(ii) also prohibits the creditor or other person from making these written estimates with headings, content, and format substantially similar to form H-24 or H-25 of appendix H to this part.




***19(e)(2)(iii) Verification of information.***

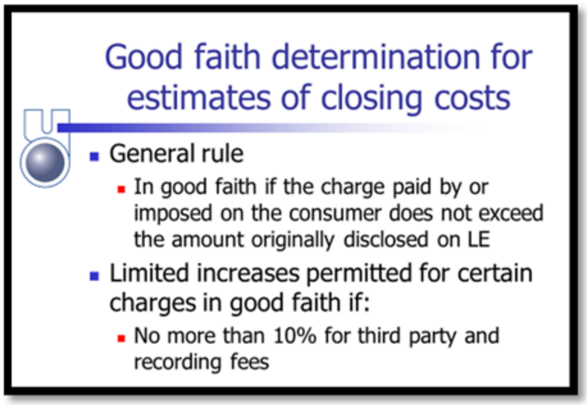
1. ***Requirements.*** The creditor or other person may collect from the consumer any information that it requires prior to providing the early disclosures before or at the same time as collecting the information listed in § 1026.2(a)(3)(ii). However, the creditor or other person is not permitted to require, before providing the disclosures required by § 1026.19(e)(1)(i), that the consumer submit documentation to verify the information collected from the consumer. See also § 1026.2(a)(3) and the related commentary regarding the definition of application. To illustrate:




i. A creditor may ask for the sale price and address of the property, but the creditor may not require the consumer to provide a purchase and sale agreement to support the information the consumer provides orally before the creditor provides the disclosures required by § 1026.19(e)(1)(i).

ii. A mortgage broker may ask for the names, account numbers, and balances of the consumer's checking and savings accounts, but the mortgage broker may not require the consumer to provide bank statements, or similar documentation, to support the information the consumer provides orally before the mortgage broker provides the disclosures required by § 1026.19(e)(1)(i).

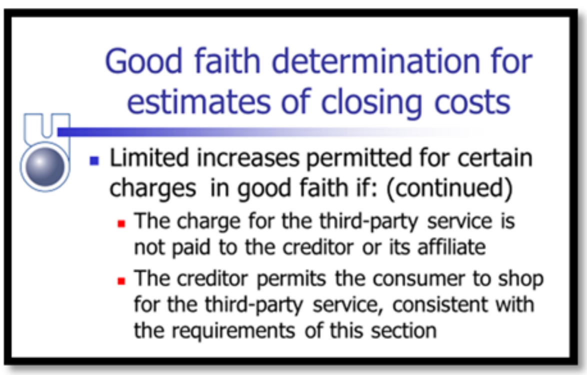
## § 1026.19(e)(3) Good faith determination for estimates of closing costs.




(i) ***General rule.*** An estimated closing cost disclosed pursuant to paragraph (e) of this section is in good faith if the charge paid by or imposed on the consumer does not exceed the amount originally disclosed under paragraph (e)(1)(i) of this section, except as otherwise provided in paragraphs (e)(3)(ii) through (iv) of this section.

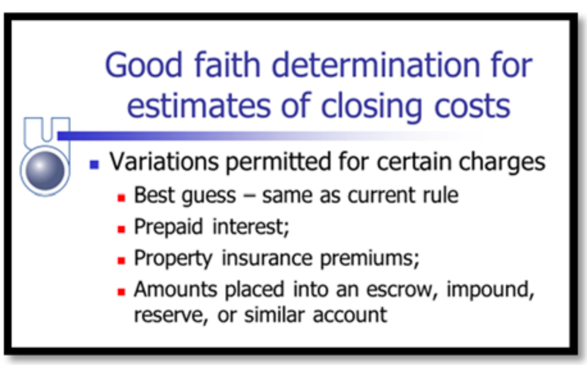
(ii) ***Limited increases permitted for certain charges.*** An estimate of a charge for a third party service or a recording fee is in good faith if:

(A) The aggregate amount of charges for third-party services and recording fees paid by or imposed on the consumer does not exceed the aggregate amount of such charges disclosed under paragraph (e)(1)(i) of this section by more than 10 percent;




(B) The charge for the third-party service is not paid to the creditor or an affiliate of the creditor; and

(C) The creditor permits the consumer to shop for the third-party service, consistent with paragraph (e)(1)(vi) of this section.

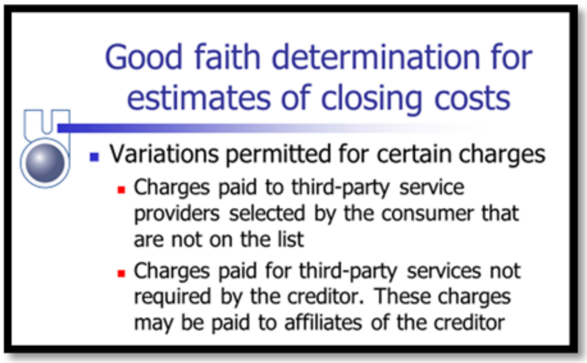



(iii) ***Variations permitted for certain charges.*** An estimate of the following charges is in good faith if it is consistent with the best information reasonably available to the creditor at the time it is disclosed, regardless of whether the amount paid by the consumer exceeds the amount disclosed under paragraph (e)(1)(i) of this section:

(A) Prepaid interest;

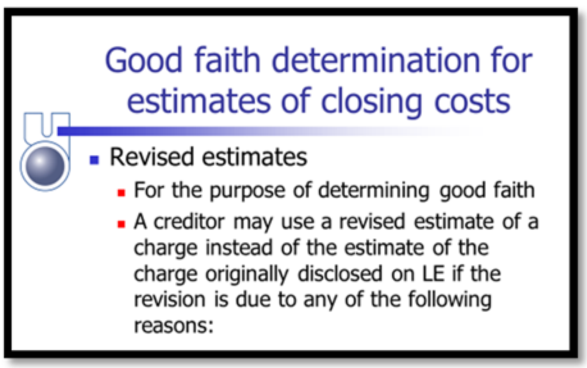
(B) Property insurance premiums;

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

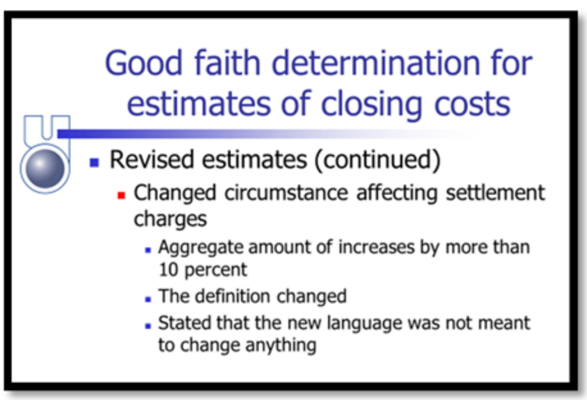



(D) Charges paid to third-party service providers selected by the consumer consistent with paragraph (e)(1)(vi)(A) of this section that are not on the list provided pursuant to paragraph (e)(1)(vi)(C) of this section; and

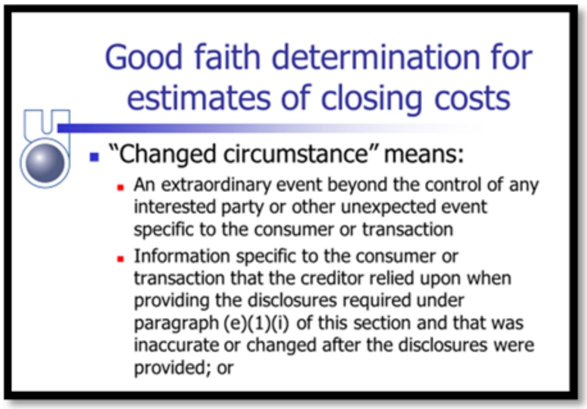
(E) Charges paid for third-party services not required by the creditor. These charges may be paid to affiliates of the creditor.




(iv) ***Revised estimates.*** For the purpose of determining good faith under paragraph (e)(3)(i) and (ii) of this section, a creditor may use a revised estimate of a charge instead of the estimate of the charge originally disclosed under paragraph (e)(1)(i) of this section if the revision is due to any of the following reasons:

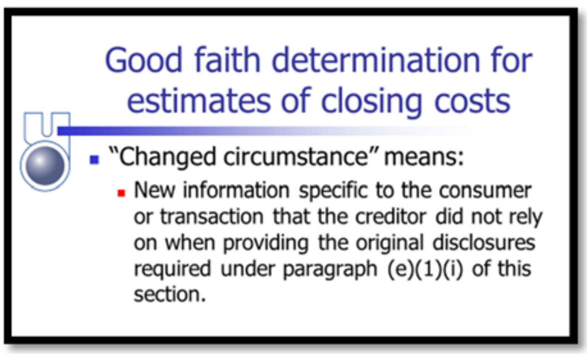



(A) ***Changed circumstance affecting settlement charges.*** Changed circumstances cause the estimated charges to increase or, in the case of estimated charges identified in paragraph (e)(3)(ii) of this section, cause the aggregate amount of such charges to increase by more than 10 percent. For purposes of this paragraph, "changed circumstance" means:

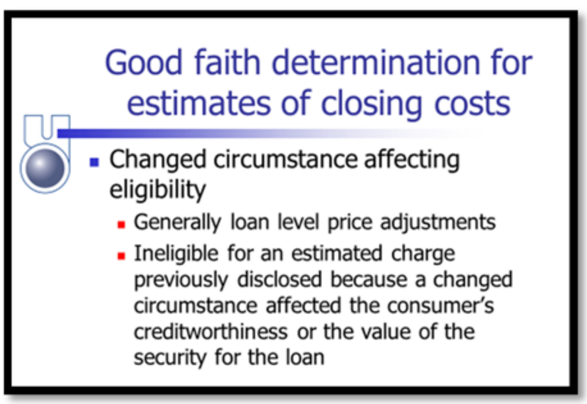



(*1*) An extraordinary event beyond the control of any interested party or other unexpected event specific to the consumer or transaction;

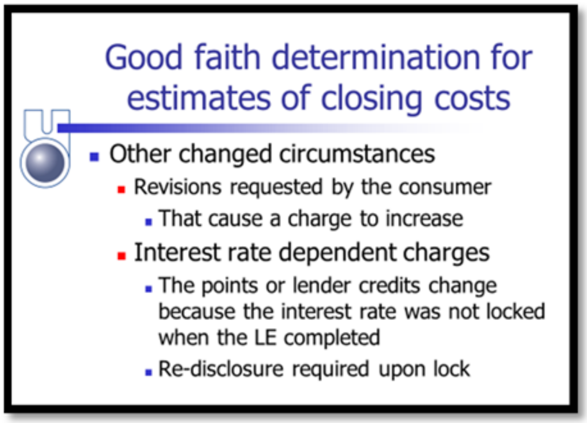
(*2*) Information specific to the consumer or transaction that the creditor relied upon when providing the disclosures required under paragraph (e)(1)(i) of this section and that was inaccurate or changed after the disclosures were provided; or




(*3*) New information specific to the consumer or transaction that the creditor did not rely on when providing the original disclosures required under paragraph (e)(1)(i) of this section.

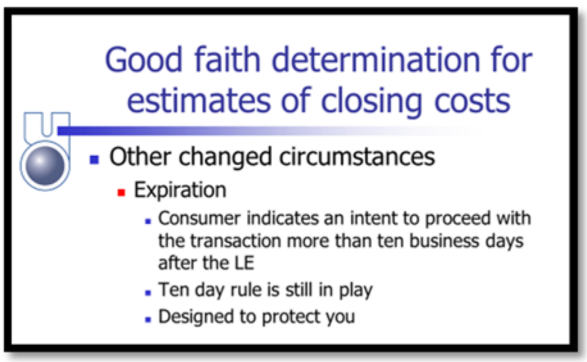



(B)***Changed circumstance affecting eligibility.*** The consumer is ineligible for an estimated charge previously disclosed because a changed circumstance, as defined under paragraph (e)(3)(iv)(A) of this section, affected the consumer's creditworthiness or the value of the security for the loan.

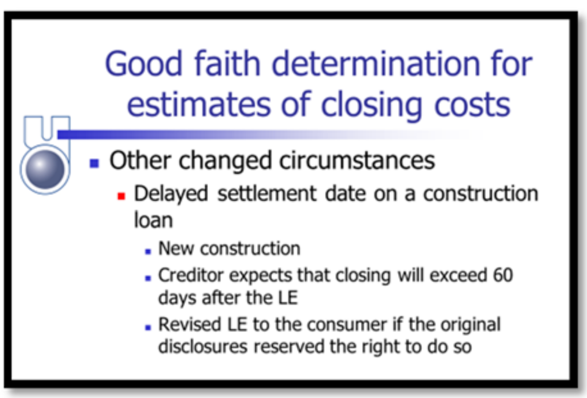



(C) ***Revisions requested by the consumer.*** The consumer requests revisions to the credit terms or the settlement that cause an estimated charge to increase.

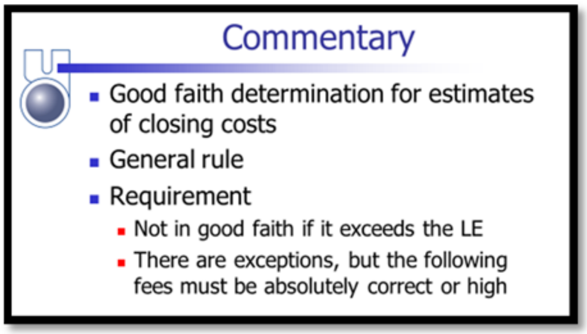
(D) ***Interest rate dependent charges.*** The points or lender credits change because the interest rate was not locked when the disclosures required under paragraph (e)(1)(i) of this section were provided. On the date the interest rate is locked, the creditor shall provide a revised version of the disclosures required under paragraph (e)(1)(i) of this section to the consumer with the revised interest rate, the points disclosed pursuant to § 1026.37(f)(1), lender credits, and any other interest rate dependent charges and terms.




(E) ***Expiration.*** The consumer indicates an intent to proceed with the transaction more than ten business days after the disclosures required under paragraph (e)(1)(i) of this section are provided pursuant to paragraph (e)(1)(iii) of this section.

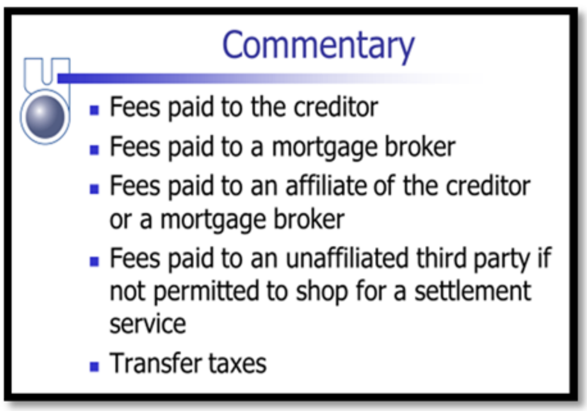



(F) ***Delayed settlement date on a construction loan.*** In transactions involving new construction, where the creditor reasonably expects that settlement will occur more than 60 days after the disclosures required under paragraph (e)(1)(i) of this section are provided pursuant to paragraph (e)(1)(iii) of this section, the creditor may provide revised disclosures to the consumer if the original disclosures required under paragraph (e)(1)(i) of this section state clearly and conspicuously that at any time prior to 60 days before consummation, the creditor may issue revised disclosures. If no such statement is provided, the creditor may not issue revised disclosures, except as otherwise provided in paragraph (f) of this section.




***19(e)(3) Good faith determination for estimates of closing costs.***
***19(e)(3)(i) General rule.***

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



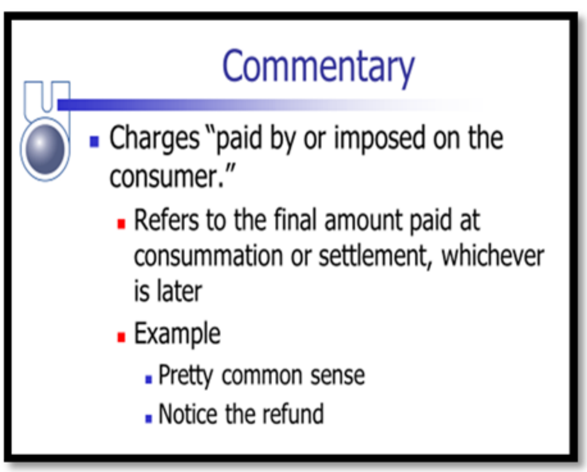

i. Fees paid to the creditor.

ii. Fees paid to a mortgage broker.

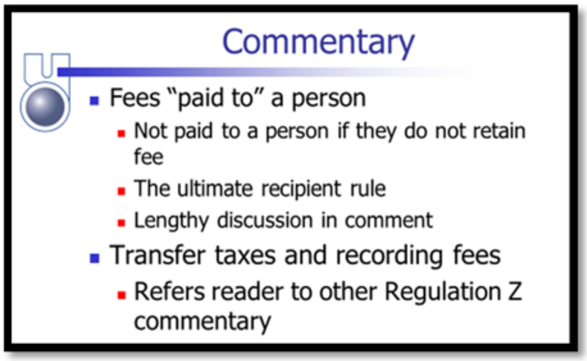
iii. Fees paid to an affiliate of the creditor or a mortgage broker.

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

v. Transfer taxes.

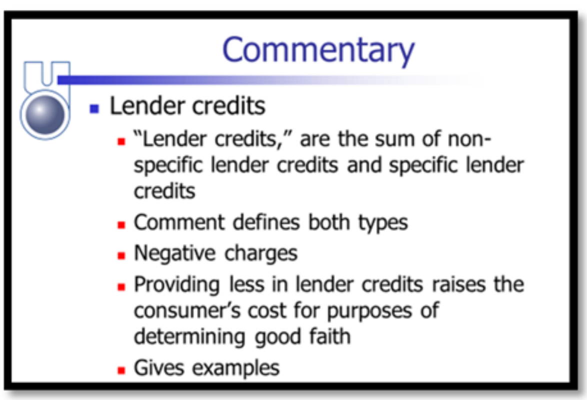



2. ***Charges "paid by or imposed on the consumer."*** For purposes of § 1026.19(e), a charge "paid by or imposed on the consumer" refers to the final amount for the charge paid by or imposed on the consumer at consummation or settlement, whichever is later. "Consummation" is defined in § 1026.2(a)(13). "Settlement" is defined in Regulation X, 12 CFR 1024.2(b). For example, at consummation, the consumer pays the creditor $100 for recording fees. Settlement of the transaction concludes five days after consummation, and the actual recording fees are $70. The creditor refunds the consumer $30 immediately after recording. The recording fee paid by the consumer is $70.

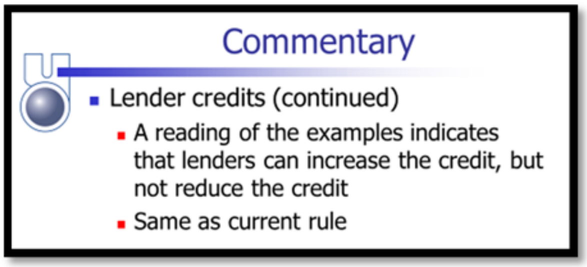



3. ***Fees "paid to" a person***. For purposes of § 1026.19(e), a fee is not considered "paid to" a person if the person does not retain the fee. For example, if a consumer pays the creditor transfer taxes and recording fees at the real estate closing and the creditor subsequently uses those funds to pay the county that imposed these charges, then the transfer taxes and recording fees are not "paid to" the creditor for purposes of § 1026.19(e). Similarly, if a consumer pays the creditor an appraisal fee in advance of the real estate closing and the creditor subsequently uses those funds to pay another party for an appraisal, then the appraisal fee is not "paid to" the creditor for the purposes of § 1026.19(e). A fee is also not considered "paid to" a person, for purposes of § 1026.19(e), if the person retains the fee as reimbursement for an amount it has already paid to another party. If a creditor pays for an appraisal in advance of the real estate closing and the consumer pays the creditor an appraisal fee at the real estate closing, then the fee is not "paid to" the creditor for the purposes of § 1026.19(e), even though the creditor retains the fee, because the payment is a reimbursement for an amount already paid.

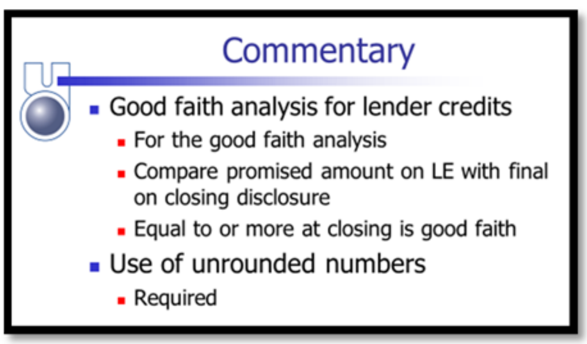
4. ***Transfer taxes and recording fees.*** See comments 37(g)(1)-1, -2, and -3 for a discussion of the difference between transfer taxes and recording fees.




5. ***Lender credits***. The disclosure of "lender credits," as identified in § 1026.37(g)(6)(ii), is required by § 1026.19(e)(1)(i). "Lender credits," as identified in § 1026.37(g)(6)(ii), represents the sum of non-specific lender credits and specific lender credits. Non-specific lender credits are generalized payments from the creditor to the consumer that do not pay for a particular fee on the disclosures provided pursuant to § 1026.19(e)(1). Specific lender credits are specific payments, such as a credit, rebate, or reimbursement, from a creditor to the consumer to pay for a specific fee. Non-specific lender credits and specific lender credits are negative charges to the consumer. The actual total amount of lender credits, whether specific or nonspecific, provided by the creditor that is less than the estimated "lender credits" identified in § 1026.37(g)(6)(ii) and disclosed pursuant to § 1026.19(e) is an increased charge to the consumer for purposes of determining good faith under § 1026.19(e)(3)(i)…

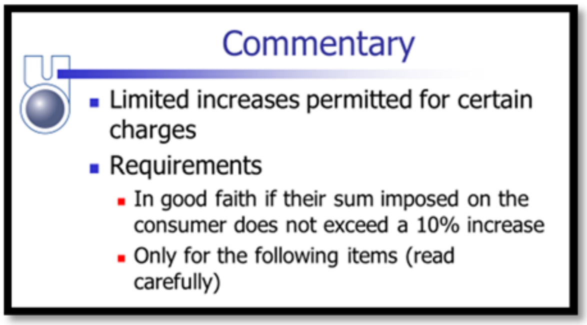



…For example, if the creditor discloses a $750 estimate for "lender credits" pursuant to § 1026.19(e), but only $500 of lender credits is actually provided to the consumer, the creditor has not complied with § 1026.19(e)(3)(i) because the actual amount of lender credits provided is less than the estimated "lender credits" disclosed pursuant to § 1026.19(e), and is therefore, an increased charge to the consumer for purposes of determining good faith under § 1026.19(e)(3)(i). However, if the creditor discloses a $750 estimate for "lender credits" identified in § 1026.37(g)(6)(ii) to cover the cost of a $750 appraisal fee, and the appraisal fee subsequently increases by $150, and the creditor increases the amount of the lender credit by $150 to pay for the increase, the credit is not being revised in a way that violates the requirements of § 1026.19(e)(3)(i) because, although the credit increased from the amount disclosed, the amount paid by the consumer did not. However, if the creditor discloses a $750 estimate for "lender credits" to cover the cost of a $750 appraisal fee, but subsequently reduces the credit by $50 because the appraisal fee decreased by $50, then the requirements of § 1026.19(e)(3)(i) have been violated because, although the amount of the appraisal fee decreased, the amount of the lender credit decreased. See also § 1026.19(e)(3)(iv)(D) and comment 19(e)(3)(iv)(D)-1 for a discussion of lender credits in the context of interest rate dependent charges.



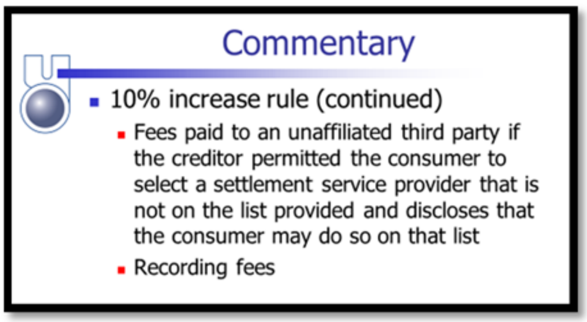

6. ***Good faith analysis for lender credits.*** For purposes of conducting the good faith analysis required under § 1026.19(e)(3)(i) for lender credits, the total amount of lender credits, whether specific or non-specific, actually provided to the consumer is compared to the amount of the "lender credits" identified in § 1026.37(g)(6)(ii). The total amount of lender credits actually provided to the consumer is determined by aggregating the amount of the "lender credits" identified in § 1026.38(h)(3) with the amounts paid by the creditor that are attributable to a specific loan cost or other cost, disclosed pursuant to § 1026.38(f) and (g).

7. ***Use of unrounded numbers.*** Sections 1026.37(o)(4) and 1026.38(t)(4) require that the dollar amounts of certain charges disclosed on the Loan Estimate and Closing Disclosure, respectively, to be rounded to the nearest whole dollar. However, to conduct the good faith analysis required under § 1026.19(e)(3)(i) and (ii), the creditor should use unrounded numbers to compare the actual charge paid by or imposed on the consumer for a settlement service with the estimated cost of the service.



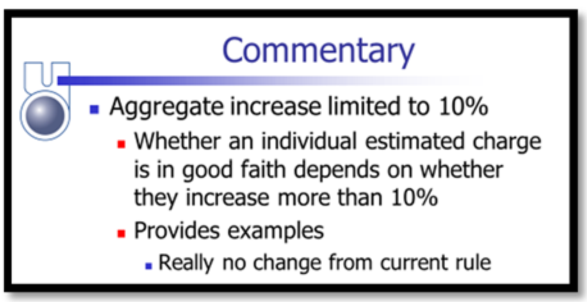

***19(e)(3)(ii) Limited increases permitted for certain charges.***

1. ***Requirements.*** Section 1026.19(e)(3)(ii) provides that certain estimated charges are in good faith if the sum of all such charges paid by or imposed on the consumer does not exceed the sum of all such charges disclosed pursuant to § 1026.19(e) by more than 10 percent. Section 1026.19(e)(3)(ii) permits this limited increase for only the following items:

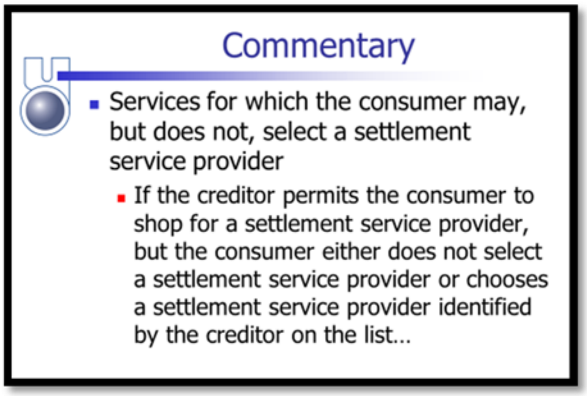



i. Fees paid to an unaffiliated third party if the creditor permitted the consumer to select a settlement service provider that is not on the list provided pursuant to § 1026.19(e)(1)(vi) and discloses that the consumer may do so on that list.

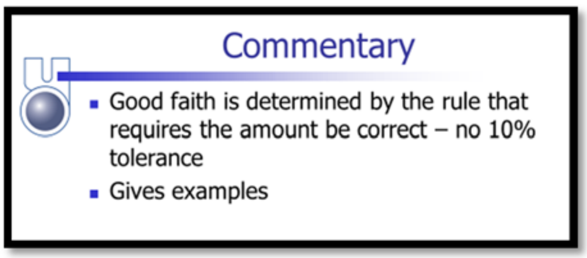
ii. Recording fees.



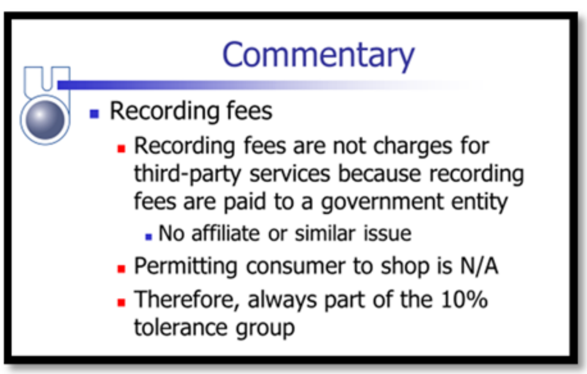

2. ***Aggregate increase limited to ten percent.*** Pursuant to § 1026.19(e)(3)(ii), whether an individual estimated charge subject to § 1026.19(e)(3)(ii) is in good faith depends on whether the sum of all charges subject to § 1026.19(e)(3)(ii) increases by more than 10 percent, even if a particular charge does not increase by more than 10 percent. For example, if, in the disclosures provided pursuant to § 1026.19(e)(1)(i), the creditor includes a $300 estimated fee for a settlement agent, the settlement agent fee is included in the category of charges subject to § 1026.19(e)(3)(ii), and the sum of all charges subject to § 1026.19(e)(3)(ii) (including the settlement agent fee) equals $1,000 then the creditor does not violate § 1026.19(e)(3)(ii) if the actual settlement agent fee exceeds 10 percent (*i.e.*, exceeds $330), provided that the sum of all such charges does not exceed 10 percent (*i.e.*, $1,100). Section 1026.19(e)(3)(ii) also provides flexibility in disclosing individual fees by focusing on aggregate amounts. For example, assume that, in the disclosures provided pursuant to § 1026.19(e)(1)(i), the sum of all estimated charges subject to § 1026.19(e)(3)(ii) equals $1,000. If the creditor does not include an estimated charge for a notary fee but a $10 notary fee is charged to the consumer, and the notary fee is subject to § 1026.19(e)(3)(ii), then the creditor does not violate § 1026.19(e)(1)(i) if the sum of all amounts charged to the consumer subject to § 1026.19(e)(3)(ii) does not exceed $1,100, even though an individual notary fee was not included in the estimated disclosures provided pursuant to § 1026.19(e)(1)(i).



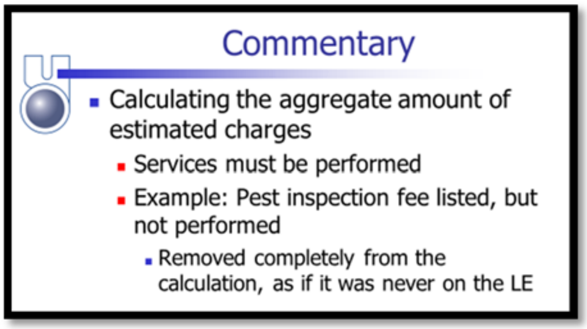

3. ***Services for which the consumer may, but does not, select a settlement service provider***. Good faith is determined pursuant to § 1026.19(e)(3)(ii), instead of § 1026.19(e)(3)(i), if the creditor permits the consumer to shop for a settlement service provider, consistent with § 1026.19(e)(1)(vi)(A). Section 1026.19(e)(3)(ii) provides that if the creditor requires a service in connection with the mortgage loan transaction, and permits the consumer to shop for that service consistent with § 1026.19(e)(1)(vi),…



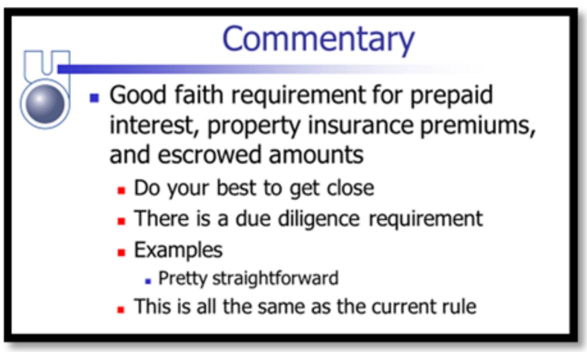

…but the consumer either does not select a settlement service provider or chooses a settlement service provider identified by the creditor on the list, then good faith is determined pursuant to § 1026.19(e)(3)(ii), instead of § 1026.19(e)(3)(i). For example, if, in the disclosures provided pursuant to §§ 1026.19(e)(1)(i) and 1026.37(f)(3), a creditor discloses an estimated fee for an unaffiliated settlement agent and permits the consumer to shop for that service, but the consumer either does not choose a provider, or chooses a provider identified by the creditor on the written list provided pursuant to § 1026.19(e)(1)(vi)(C), then the estimated settlement agent fee is included with the fees that may, in aggregate, increase by no more than 10 percent for the purposes of § 1026.19(e)(3)(ii). If, however, the consumer chooses a provider that is not on the written list, then good faith is determined according to § 1026.19(e)(3)(iii).




4. ***Recording fees.*** Section 1026.19(e)(3)(ii) provides that an estimate of a charge for a third-party service or recording fees is in good faith if the conditions specified in § 1026.19(e)(3)(ii)(A), (B), and (C) are satisfied. Recording fees are not charges for third-party services because recording fees are paid to the applicable government entity where the documents related to the mortgage transaction are recorded, and thus, the condition specified in § 1026.19(e)(3)(ii)(B) that the charge for third-party service not be paid to an affiliate of the creditor is inapplicable for recording fees. The condition specified in § 1026.19(e)(3)(ii)(C), that the creditor permits the consumer to shop for the third-party service, is similarly inapplicable. Therefore, estimates of recording fees need only satisfy the condition specified in § 1026.19(e)(3)(ii)(A) to meet the requirements of § 1026.19(e)(3)(ii).

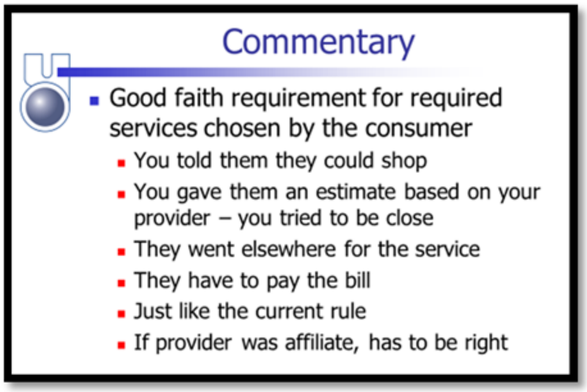



5. ***Calculating the aggregate amount of estimated charges.*** In calculating the aggregate amount of estimated charges for purposes of conducting the good faith analysis pursuant to § 1026.19(e)(3)(ii), the aggregate amount of estimated charges must reflect charges for services that are actually performed. For example, assume that the creditor included a $100 estimated fee for a pest inspection in the disclosures provided pursuant to § 1026.19(e)(1)(i), and the fee is included in the category of charges subject to § 1026.19(e)(3)(ii), but a pest inspection was not obtained in connection with the transaction, then for purposes of the good faith analysis required under § 1026.19(e)(3)(ii), the sum of all charges subject to § 1026.19(e)(3)(ii) paid by or imposed on the consumer is compared to the sum of all such charges disclosed pursuant to § 1026.19(e), minus the $100 estimated pest inspection fee.

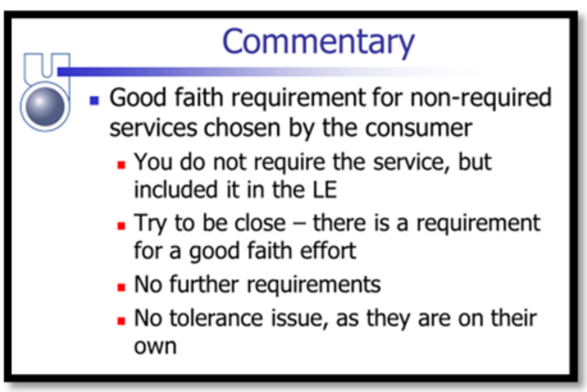



***19(e)(3)(iii) Variations permitted for certain charges.***

1. ***Good faith requirement for prepaid interest, property insurance premiums, and escrowed amounts.*** Estimates of prepaid interest, property insurance premiums, and amounts placed into an escrow, impound, reserve or similar account must be consistent with the best information reasonably available to the creditor at the time the disclosures are provided. Differences between the amounts of such charges disclosed under § 1026.19(e)(1)(i) and the amounts of such charges paid by or imposed on the consumer do not constitute a lack of good faith, so long as the original estimated charge, or lack of an estimated charge for a particular service, was based on the best information reasonably available to the creditor at the time the disclosure was provided. This means that the estimate disclosed under § 1026.19(e)(1)(i) was obtained by the creditor through due diligence, acting in good faith. *See* comments 17(c)(2)(i)-1 and 19(e)(1)(i)-1. For example, if the creditor requires homeowner's insurance but fails to include a homeowner's insurance premium on the estimates provided pursuant to § 1026.19(e)(1)(i), then the creditor's failure to disclose does not comply with § 1026.19(e)(3)(iii). However, if the creditor does not require flood insurance and the subject property is located in an area where floods frequently occur, but not specifically located in a zone where flood insurance is required, failure to include flood insurance on the original estimates provided pursuant to § 1026.19(e)(1)(i) does not constitute a lack of good faith under § 1026.19(e)(3)(iii). Or, if the creditor knows that the loan must close on the 15th of the month but estimates prepaid interest to be paid from the 30th of that month, then the under-disclosure does not comply with § 1026.19(e)(3)(iii). If, however, the creditor estimates consistent with the best information reasonably available that the loan will close on the 30th of the month and bases the estimate of prepaid interest accordingly, but the loan actually closed on the 1st of the next month instead, the creditor complies with § 1026.19(e)(3)(iii).

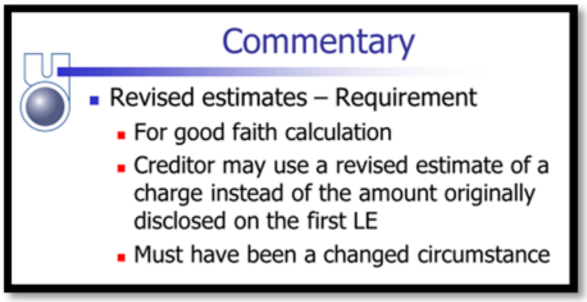



2. ***Good faith requirement for required services chosen by the consumer.*** If a service is required by the creditor, the creditor permits the consumer to shop for that service consistent with § 1026.19(e)(1)(vi)(A), the creditor provides the list required by § 1026.19(e)(1)(vi)(C), and the consumer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



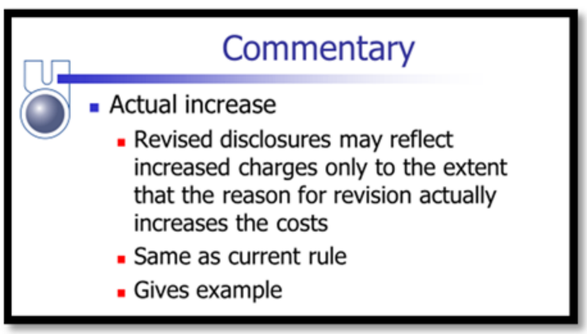

3. ***Good faith requirement for non-required services chosen by the consumer.*** Differences between the amounts of estimated charges for services not required by the creditor disclosed pursuant to § 1026.19(e)(1)(i) and the amounts of such charges paid by or imposed on the consumer do not constitute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

1026.19(e)(1)(i), then the creditor's failure to disclose, or under-estimation, does not comply with § 1026.19(e)(3)(iii).

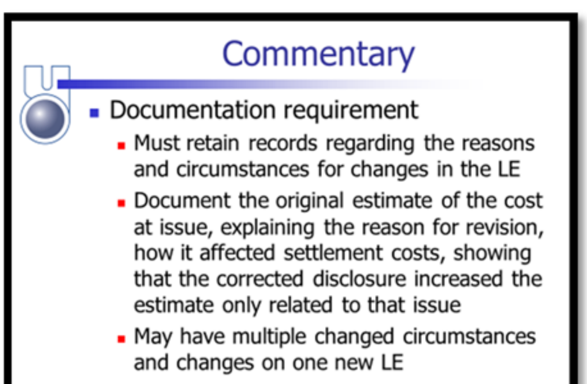



***19(e)(3)(iv) Revised estimates.***

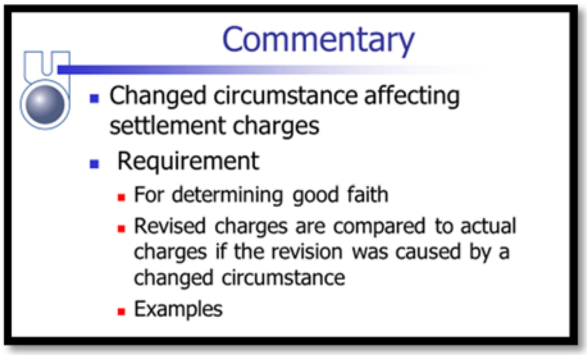
1. ***Requirement.*** Pursuant to § 1026.19(e)(3)(i) and (ii), good faith is determined by calculating the difference between the estimated charges originally provided pursuant to § 1026.19(e)(1)(i) and the actual charges paid by or imposed on the consumer. Section 1026.19(e)(3)(iv) provides the exception to this rule. Pursuant to § 1026.19(e)(3)(iv), for purposes of determining good faith under § 1026.19(e)(3)(i) and (ii), the creditor may use a revised estimate of a charge instead of the amount originally disclosed under § 1026.19(e)(1)(i) if the revision is due to one of the reasons set forth in § 1026.19(e)(3)(iv)(A) through (F).




2. ***Actual increase.*** The revised disclosures may reflect increased charges only to the extent that the reason for revision, as identified in § 1026.19(e)(3)(iv)(A) through (F), actually increased the particular charge. For example, if a consumer requests a rate lock extension, then the revised disclosures may reflect a new rate lock extension fee, but the fee may be no more than the rate lock extension fee charged by the creditor in its usual course of business, and other charges unrelated to the rate lock extension may not change.

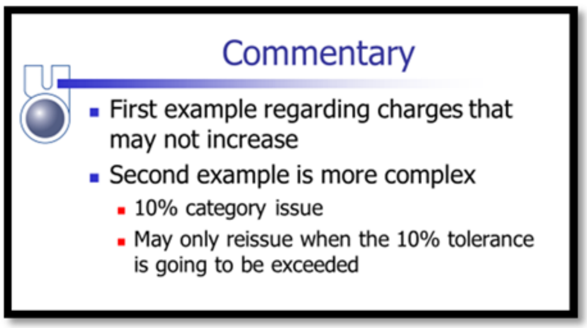



3. ***Documentation requirement.*** In order to comply with § 1026.25, creditors must retain records demonstrating compliance with the requirements of § 1026.19(e). For example, if revised disclosures are provided because of a changed circumstance under § 1026.19(e)(3)(iv)(A) affecting settlement costs, the creditor must be able to show compliance with § 1026.19(e) by documenting the original estimate of the cost at issue, explaining the reason for revision and how it affected settlement costs, showing that the corrected disclosure increased the estimate only to the extent that the reason for revision actually increased the cost, and showing that the timing requirements of § 1026.19(e)(4) were satisfied. However, the documentation requirement does not require separate corrected disclosures for each change. A creditor may provide corrected disclosures reflecting multiple changed circumstances, provided that the creditor's documentation demonstrates that each correction complies with the requirements of § 1026.19(e).



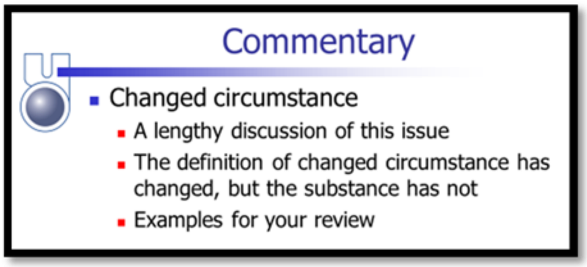

***19(e)(3)(iv)(A) Changed circumstance affecting settlement charges.***

1. ***Requirement.*** For the purpose of determining good faith under § 1026.19(e)(3)(i) and (ii), revised charges are compared to actual charges if the revision was caused by a changed circumstance. See also comment 19(e)(3)(iv)(A)-2 regarding the definition of a changed circumstance. The following examples illustrate the application of this provision:

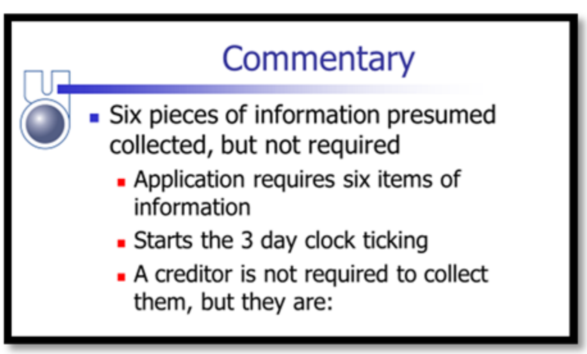



i. ***Charges subject to the zero percent tolerance category***. Assume a creditor provides a $200 estimated appraisal fee pursuant to § 1026.19(e)(1)(i), which will be paid to an affiliated appraiser and therefore may not increase for purposes of determining good faith under § 1026.19(e)(3)(i), except as provided in § 1026.19(e)(3)(iv). The estimate was based on information provided by the consumer at application, which included information indicating that the subject property was a single-family dwelling. Upon arrival at the subject property, the appraiser discovers that the property is actually a single-family dwelling located on a farm. A different schedule of appraisal fees applies to residences located on farms. A changed circumstance has occurred (*i.e.*, information provided by the consumer is found to be inaccurate after the disclosures required under § 1026.19(e)(1)(i) were provided), which caused an increase in the cost of the appraisal. Therefore, if the creditor issues revised disclosures with the corrected appraisal fee, the actual appraisal fee of $400 paid at the real estate closing by the consumer will be compared to the revised appraisal fee of $400 to determine if the actual fee has increased above the estimated fee. However, if the creditor failed to provide revised disclosures, then the actual appraisal fee of $400 must be compared to the originally disclosed estimated appraisal fee of $200.

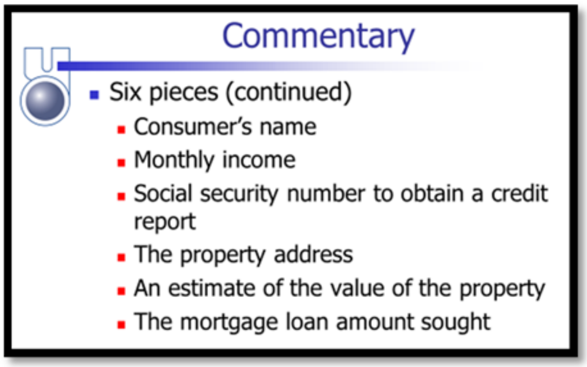
ii. ***Charges subject to the ten percent tolerance category.*** Assume a creditor provides a $400 estimate of title fees, which are included in the category of fees which may not increase by more than 10 percent for the purposes of determining good faith under § 1026.19(e)(3)(ii), except as provided in § 1026.19(e)(3)(iv). An unreleased lien is discovered and the title company must perform additional work to release the lien. However, the additional costs amount to only a five percent increase over the sum of all fees included in the category of fees which may not increase by more than 10 percent. A changed circumstance has occurred (*i.e.*, new information), but the sum of all costs subject to the 10 percent tolerance category has not increased by more than 10 percent. Section 1026.19(e)(3)(iv) does not prohibit the creditor from issuing revised disclosures, but if the creditor issues revised disclosures in this scenario, when the disclosures required by § 1026.19(f)(1)(i) are delivered, the actual title fees of $500 may not be compared to the revised title fees of $500; they must be compared to the originally estimated title fees of $400 because the changed circumstance did not cause the sum of all costs subject to the 10 percent tolerance category to increase by more than 10 percent.



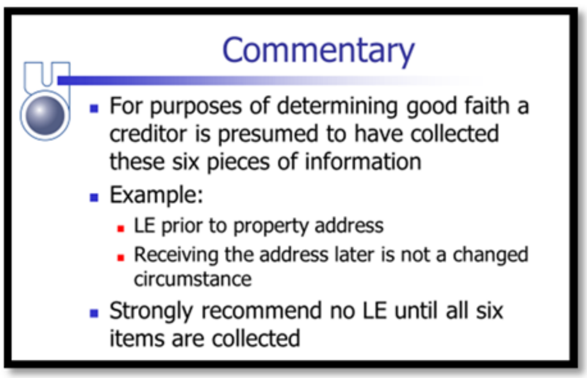

2. ***Changed circumstance.*** A changed circumstance may be an extraordinary event beyond the control of any interested party. For example, a war or a natural disaster would be an extraordinary event beyond the control of an interested party. A changed circumstance may also be an unexpected event specific to the consumer or the transaction. For example, if the creditor provided an estimate of title insurance on the disclosures required under § 1026.19(e)(1)(i), but the title insurer goes out of business during underwriting, then this unexpected event specific to the transaction is a changed circumstance. A changed circumstance may also be information specific to the consumer or transaction that the creditor relied upon when providing the disclosures required under § 1026.19(e)(1)(i) and that was inaccurate or changed after the disclosures were provided. For example, if the creditor relied on the consumer's income when providing the disclosures required under § 1026.19(e)(1)(i), and the consumer represented to the creditor that the consumer had an annual income of $90,000, but underwriting determines that the consumer's annual income is only $80,000, then this inaccuracy in information relied upon is a changed circumstance. Or, assume two co-applicants applied for a mortgage loan. One applicant's income was $30,000, while the other applicant's income was $50,000. If the creditor relied on the combined income of $80,000 when providing the disclosures required under § 1026.19(e)(1)(i), but the applicant earning $30,000 becomes unemployed during underwriting, thereby reducing the combined income to $50,000, then this change in information relied upon is a changed circumstance. A changed circumstance may also be the discovery of new information specific to the consumer or transaction that the creditor did not rely on when providing the original disclosures required under § 1026.19(e)(1)(i). For example, if the creditor relied upon the value of the property in providing the disclosures required under § 1026.19(e)(1)(i), but during underwriting a neighbor of the seller, upon learning of the impending sale of the property, files a claim contesting the boundary of the property to be sold, then this new information specific to the transaction is a changed circumstance.



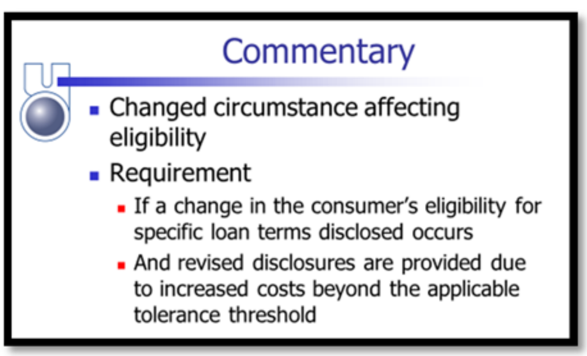

3. ***Six pieces of information presumed collected, but not required.*** Section 1026.19(e)(1)(iii) requires creditors to deliver the disclosures not later than the third business day after the creditor receives the consumer's application, which consists of the six pieces of information identified in § 1026.2(a)(3)(ii). A creditor is not required to collect…




…the consumer's name, monthly income, social security number to obtain a credit report, the property address, an estimate of the value of the property, or the mortgage loan amount sought…

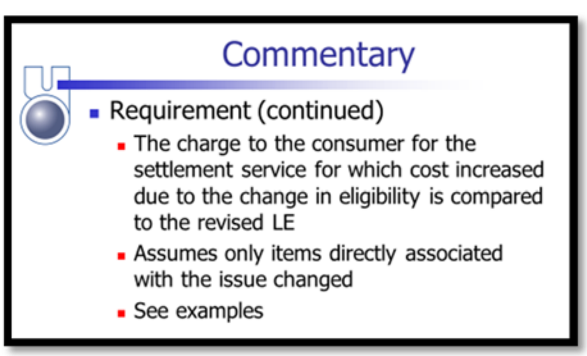



…However, for purposes of determining whether an estimate is provided in good faith under § 1026.19(e)(1)(i), a creditor is presumed to have collected these six pieces of information. For example, if a creditor provides the disclosures required by § 1026.19(e)(1)(i) prior to receiving the property address from the consumer, the creditor cannot subsequently claim that the receipt of the property address is a changed circumstance pursuant to § 1026.19(e)(3)(iv)(A) or (B).

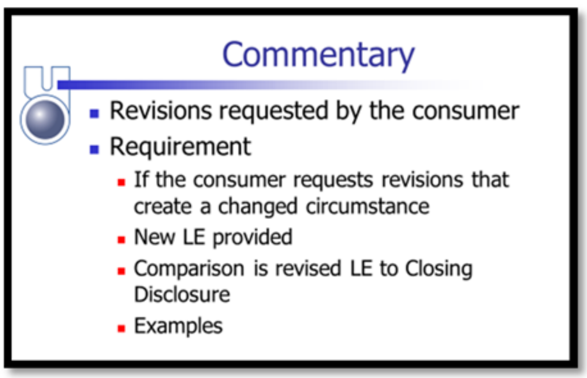



***19(e)(3)(iv)(B) Changed circumstance affecting eligibility.***

1. ***Requirement***. If changed circumstances cause a change in the consumer's eligibility for specific loan terms disclosed pursuant to § 1026.19(e)(1)(i) and revised disclosures are provided because the change in eligibility resulted in increased cost for a settlement service beyond the applicable tolerance threshold,…

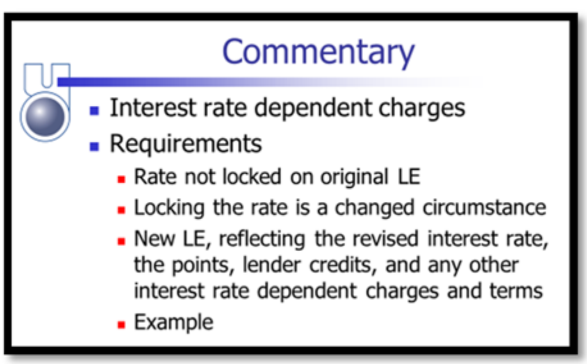



…the charge paid by or imposed on the consumer for the settlement service for which cost increased due to the change in eligibility is compared to the revised estimated cost for the settlement service to determine if the actual fee has increased above the estimated fee. For example, assume that, prior to providing the disclosures required by § 1026.19(e)(1)(i), the creditor believed that the consumer was eligible for a loan program that did not require an appraisal. The creditor then provides the estimated disclosures required by § 1026.19(e)(1)(i), which do not include an estimated charge for an appraisal. During underwriting it is discovered that the consumer was delinquent on mortgage loan payments in the past, making the consumer ineligible for the loan program originally identified on the estimated disclosures, but the consumer remains eligible for a different program that requires an appraisal. If the creditor provides revised disclosures reflecting the new program and including the appraisal fee, then the actual appraisal fee will be compared to the appraisal fee included in the revised disclosures to determine if the actual fee has increased above the estimated fee. However, if the revised disclosures also include increased estimates for title fees, the actual title fees must be compared to the original estimates assuming that the increased title fees do not stem from the change in eligibility or any other change warranting a revised disclosure. See also § 1026.19(e)(3)(iv)(A) and comment 19(e)(3)(iv)(A)-2 regarding the definition of changed circumstances.




***19(e)(3)(iv)(C) Revisions requested by the consumer.***

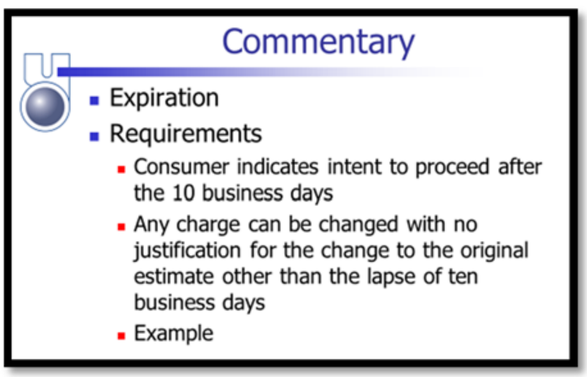
1. ***Requirement***. If the consumer requests revisions to the transaction that affect items disclosed pursuant to § 1026.19(e)(1)(i), and the creditor provides revised disclosures reflecting the consumer's requested changes, the final disclosures are compared to the revised disclosures to determine whether the actual fee has increased above the estimated fee. For example, assume that the consumer decides to grant a power of attorney authorizing a family member to consummate the transaction on the consumer's behalf after the disclosures required under § 1026.19(e)(1)(i) are provided. If the creditor provides revised disclosures reflecting the fee to record the power of attorney, then the actual charges will be compared to the revised charges to determine if the fees have increased.




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

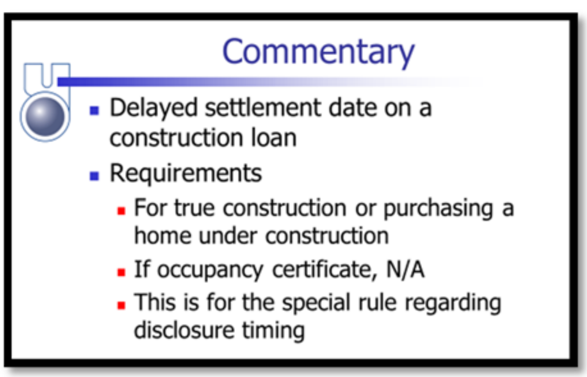
1. ***Requirements.*** If the interest rate is not locked when the disclosures required by § 1026.19(e)(1)(i) are provided, a valid reason for revision exists when the interest rate is subsequently locked. On the date the interest rate is locked, § 1026.19(e)(3)(iv)(D) requires the creditor to provide a revised version of the disclosures required under § 1026.19(e)(1)(i) reflecting the revised interest rate, the points disclosed pursuant to § 1026.37(f)(1), lender credits, and any other interest rate dependent charges and terms. The following examples illustrate this requirement:

i. Assume a creditor sets the interest rate by executing a rate lock agreement with the consumer. If such an agreement exists when the original disclosures required under § 1026.19(e)(1)(i) are provided, then the actual points and lender credits are compared to the estimated points disclosed pursuant to § 1026.37(f)(1) and lender credits included in the original disclosures provided under § 1026.19(e)(1)(i) for the purpose of determining good faith pursuant to § 1026.19(e)(3)(i). If the consumer enters into a rate lock agreement with the creditor after the disclosures required under § 1026.19(e)(1)(i) were provided, then § 1026.19(e)(3)(iv)(D) requires the creditor to provide, on the date that the consumer and the creditor enters into a rate lock agreement, a revised version of the disclosures required under § 1026.19(e)(1)(i) reflecting the revised interest rate, the points disclosed pursuant to § 1026.37(f)(1), lender credits, and any other interest rate dependent charges and terms. Provided that the revised version of the disclosures required under § 1026.19(e)(1)(i) reflect any revised points disclosed pursuant to § 1026.37(f)(1) and lender credits, the actual points and lender credits are compared to the revised points and lender credits for the purpose of determining good faith pursuant to § 1026.19(e)(3)(i).




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

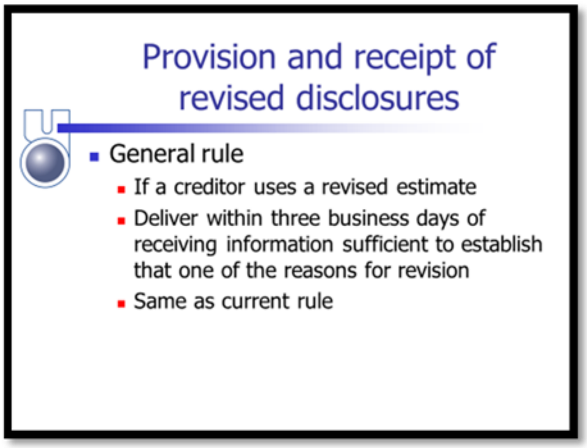
1. ***Requirements.*** If the consumer indicates an intent to proceed with the transaction more than ten business days after the disclosures were originally provided pursuant to § 1026.19(e)(1)(iii), for the purpose of determining good faith under § 1026.19(e)(3)(i) and (ii), a creditor may use a revised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



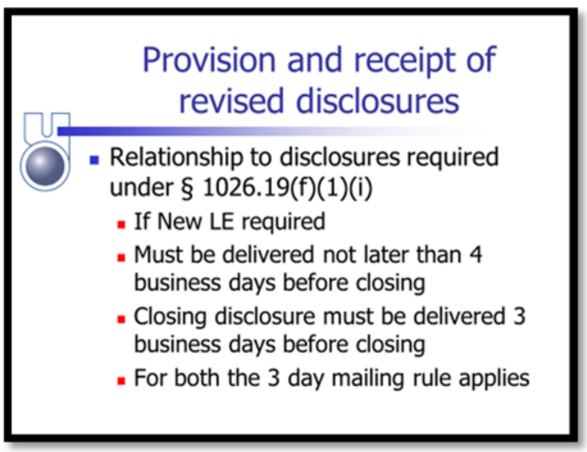

***19(e)(3)(iv)(F) Delayed settlement date on a construction loan.***

1. ***Requirements.*** A loan for the purchase of a home that has yet to be constructed, or a loan to purchase a home under construction (*i.e.*, construction is currently underway), is a construction loan to build a home for the purposes of § 1026.19(e)(3)(iv)(F). However, if a use and occupancy permit has been issued for the home prior to the issuance of the disclosures required under § 1026.19(e)(1)(i), then the home is not considered to be under construction and the transaction would not be a construction loan to build a home for the purposes of § 1026.19(e)(3)(iv)(F).

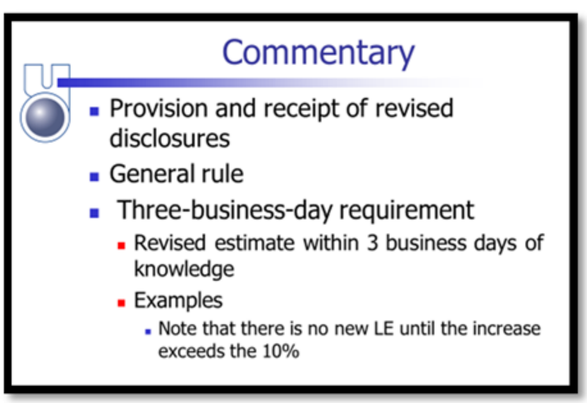
## *§ 1026.19(e)(4) Provision and receipt of revised disclosures.*




(i) ***General rule.*** Subject to the requirements of paragraph (e)(4)(ii) of this section, if a creditor uses a revised estimate pursuant to paragraph (e)(3)(iv) of this section for the purpose of determining good faith under paragraphs (e)(3)(i) and (ii) of this section, the creditor shall provide a revised version of the disclosures required under paragraph (e)(1)(i) of this section reflecting the revised estimate within three business days of receiving information sufficient to establish that one of the reasons for revision provided under paragraphs (e)(3)(iv)(A) through (C), (E) and (F) of this section applies.




(ii) ***Relationship to disclosures required under § 1026.19(f)(1)(i).*** The creditor shall not provide a revised version of the disclosures required under paragraph (e)(1)(i) of this section on or after the date on which the creditor provides the disclosures required under paragraph (f)(1)(i) of this section. The consumer must receive a revised version of the disclosures required under paragraph (e)(1)(i) of this section not later than four business days prior to consummation. If the revised version of the disclosures required under paragraph (e)(1)(i) of this section is not provided to the consumer in person, the consumer is considered to have received such version three business days after the creditor delivers or places such version in the mail.




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

***19(e)(4)(i) General rule.***

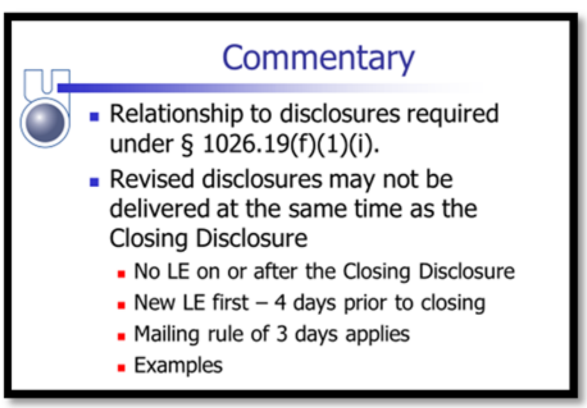
1. ***Three-business-day requirement.*** Section 1026.19(e)(4)(i) provides that subject to the requirements of § 1026.19(e)(4)(ii), if a creditor uses a revised estimate pursuant to § 1026.19(e)(3)(iv) for the purpose of determining good faith under § 1026.19(e)(3)(i) and (ii), the creditor shall provide a revised version of the disclosures required under § 1026.19(e)(1)(i) reflecting the revised estimate within three business days of receiving information

sufficient to establish that one of the reasons for revision provided under § 1026.19(e)(3)(iv)(A) through (C), (E) and (F) has occurred. The following examples illustrate these requirements:

i. Assume a creditor requires a pest inspection. The unaffiliated pest inspection company informs the creditor on Monday that the subject property contains evidence of termite damage, requiring a further inspection, the cost of which will cause an increase in estimated settlement charges subject to § 1026.19(e)(3)(ii) by more than 10 percent. The creditor must provide revised disclosures by Thursday to comply with § 1026.19(e)(4)(i).

ii. Assume a creditor receives information on Monday that, because of a changed circumstance under § 1026.19(e)(3)(iv)(A), the title fees will increase by an amount totaling six percent of the originally estimated settlement charges subject to § 1026.19(e)(3)(ii). The creditor had received information three weeks before that, because of a changed circumstance under § 1026.19(e)(3)(iv)(A), the pest inspection fees increased by an amount totaling five percent of the originally estimated settlement charges subject to § 1026.19(e)(3)(ii). Thus, on Monday, the creditor has received sufficient information to establish a valid reason for revision and must provide revised disclosures reflecting the 11 percent increase by Thursday to comply with § 1026.19(e)(4)(i).

iii. Assume a creditor requires an appraisal. The creditor receives the appraisal report, which indicates that the value of the home is significantly lower than expected. However, the creditor has reason to doubt the validity of the appraisal report. A reason for revision has not been established because the creditor reasonably believes that the appraisal report is incorrect. The creditor then chooses to send a different appraiser for a second opinion, but the second appraiser returns a similar report. At this point, the creditor has received information sufficient to establish that a reason for revision has, in fact, occurred, and must provide corrected disclosures within three business days of receiving the second appraisal report. In this example, in order to comply with § 1026.19(e)(3)(iv) and § 1026.25, the creditor must maintain records documenting the creditor's doubts regarding the validity of the appraisal to demonstrate that the reason for revision did not occur upon receipt of the first appraisal report.




***19(e)(4)(ii) Relationship to disclosures required under § 1026.19(f)(1)(i).***

1. ***Revised disclosures may not be delivered at the same time as the Closing Disclosure.*** Section 1026.19(e)(4)(ii) prohibits a creditor from providing a revised version of the disclosures required under § 1026.19(e)(1)(i) on or after the date on which the creditor provides the disclosures required under § 1026.19(f)(1)(i). Section 1026.19(e)(4)(ii) also requires that the consumer must receive a revised version of the disclosures required under § 1026.19(e)(1)(i) no later than four business days prior to consummation, and provides that if the revised version of the disclosures are not provided to the consumer in person, the consumer is considered to have received the revised version of the disclosures three business days after the creditor delivers or places in the mail the revised version of the disclosures. *See also* comments

19(e)(1)(iv)-1 and -2. If, however, there are less than four business days between the time the revised version of the disclosures is required to be provided pursuant to § 1026.19(e)(4)(i) and consummation, creditors comply with the requirements of § 1026.19(e)(4) if the revised disclosures are reflected in the disclosures required by § 1026.19(f)(1)(i). See below for illustrative examples:

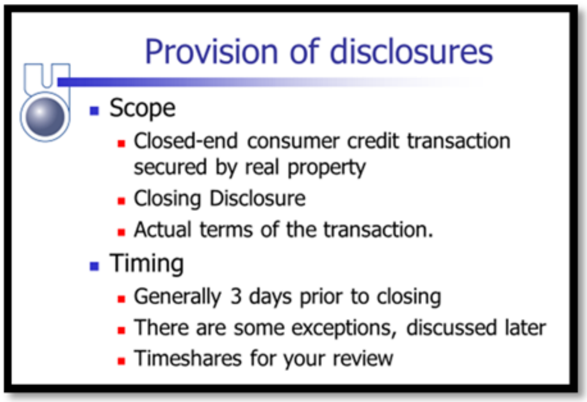
i. If the creditor is scheduled to meet with the consumer and provide the disclosures required by § 1026.19(f)(1)(i) on Wednesday, and the APR becomes inaccurate on Tuesday, the creditor complies with the requirements of § 1026.19(e)(4) by providing the disclosures required under § 1026.19(f)(1)(i) reflecting the revised APR on Wednesday. However, the creditor does not comply with the requirements of § 1026.19(e)(4) if it provided both a revised version of the disclosures required under § 1026.19(e)(1)(i) reflecting the revised APR on Wednesday, and also provides the disclosures required under § 1026.19(f)(1)(i) on Wednesday.

ii. If the creditor is scheduled to email the disclosures required under § 1026.19(f)(1)(i) to the consumer on Wednesday, and the consumer requests a change to the loan that would result in revised disclosures pursuant to § 1026.19(e)(3)(iv)(C) on Tuesday, the creditor complies with the requirements of § 1026.19(e)(4) by providing the disclosures required under § 1026.19(f)(1)(i) reflecting the consumer-requested changes on Wednesday. However, the creditor does not comply if it provides both the revised version of the disclosures required under § 1026.19(e)(1)(i) reflecting consumer requested changes, and also the disclosures required under § 1026.19(f)(1)(i) on Wednesday.

# Section 4: Subpart C—Closed End Credit
# Certain Mortgage and Variable Rate Transactions
# 12CFR § 1026.19(f)

## *(f) Mortgage loans secured by real property—final disclosures.*

## *§ 1026.38(f)(1) Provision of disclosures.*

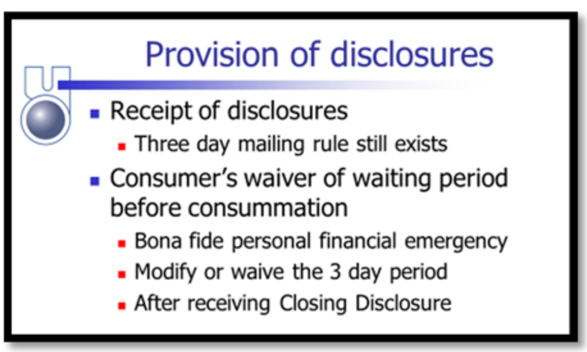



(i) ***Scope.*** In a closed-end consumer credit transaction secured by real property, other than a reverse mortgage subject to § 1026.33, the creditor shall provide the consumer with the disclosures in § 1026.38 reflecting the actual terms of the transaction.

(ii) ***Timing.***

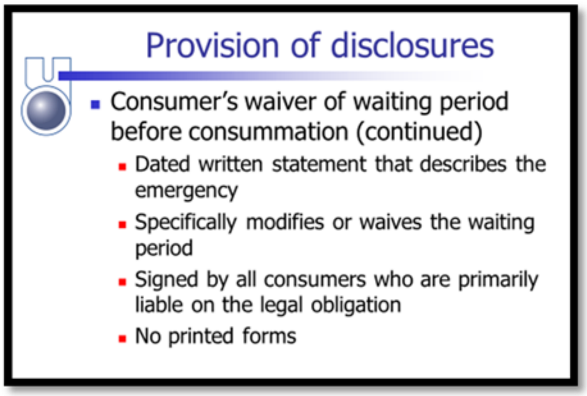
(A) ***In general.*** Except as provided in paragraphs (f)(1)(ii)(B), (f)(2)(i), (f)(2)(iii), (f)(2)(iv), and (f)(2)(v) of this section, the creditor shall ensure that the consumer receives the disclosures required under paragraph (f)(1)(i) of this section no later than three business days before consummation.

(B) ***Timeshares.*** For transactions secured by a consumer's interest in a timeshare plan described in 11 U.S.C. 101(53D), the creditor shall ensure that the consumer receives the disclosures required under paragraph (f)(1)(i) of this section no later than consummation.

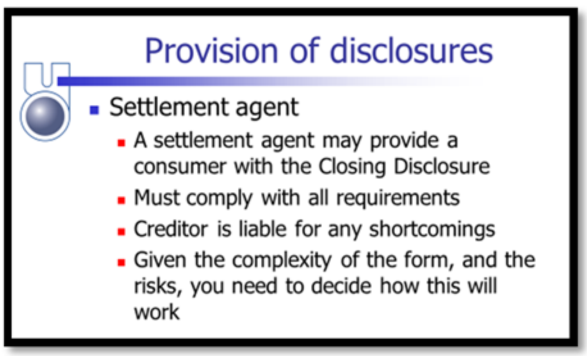



(iii) ***Receipt of disclosures.*** If any disclosures required under paragraph (f)(1)(i) of this section are not provided to the consumer in person, the consumer is considered to have received the disclosures three business days after they are delivered or placed in the mail.

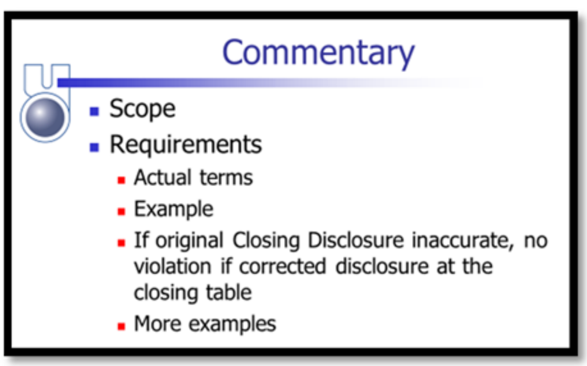
(iv) ***Consumer's waiver of waiting period before consummation***. If the consumer determines that the extension of credit is needed to meet a bona fide personal financial emergency, the consumer may modify or waive the three-business-day waiting period under paragraph (f)(1)(ii)(A) or (f)(2)(ii) of this section, after receiving the disclosures required under paragraph (f)(1)(i) of this section…




…To modify or waive the waiting period, the consumer shall give the creditor a dated written statement that describes the emergency, specifically modifies or waives the waiting period, and bears the signature of all consumers who are primarily liable on the legal obligation. Printed forms for this purpose are prohibited.

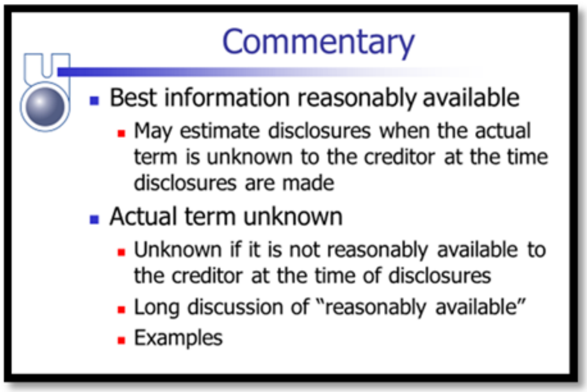



(v) ***Settlement agent.*** A settlement agent may provide a consumer with the disclosures required under paragraph (f)(1)(i) of this section, provided the settlement agent complies with all relevant requirements of this paragraph (f). The creditor shall ensure that such disclosures are provided in accordance with all requirements of this paragraph (f). Disclosures provided by a settlement agent in accordance with the requirements of this paragraph (f) satisfy the creditor's obligation under this paragraph (f).




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

1. ***Requirements.*** Section 1026.19(f)(1)(i) requires disclosure of the actual terms of the credit transaction, and the actual costs associated with the settlement of that transaction, for closed-end credit transactions that are secured by real property, other than reverse mortgages subject to § 1026.33. For example, if the creditor requires the consumer to pay money into a reserve account for the future payment of taxes, the creditor must disclose to the consumer the exact amount that the consumer is required to pay into the reserve account. If the disclosures provided pursuant to § 1026.19(f)(1)(i) do not contain the actual terms of the transaction, the creditor does not violate § 1026.19(f)(1)(i) if the creditor provides corrected disclosures that contain the actual terms of the transaction and complies with the other requirements of § 1026.19(f), including the timing requirements in § 1026.19(f)(1)(ii) and (f)(2). For example, if the creditor provides the disclosures required by § 1026.19(f)(1)(i) on Monday, June 1, but the consumer adds a mobile notary service to the terms of the transaction on Tuesday, June 2, the creditor complies with § 1026.19(f)(1)(i) if it provides disclosures reflecting the revised terms of the transaction on or after Tuesday, June 2, assuming that the corrected disclosures are also provided at or before consummation, pursuant to § 1026.19(f)(2)(i).

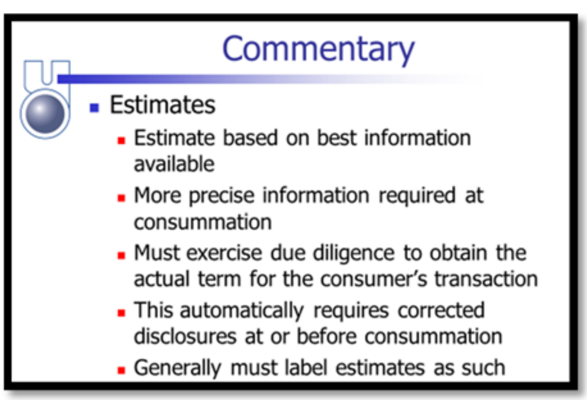



2. ***Best information reasonably available***. Creditors may estimate disclosures provided under § 1026.19(f)(1)(ii)(A) and (f)(2)(ii) using the best information reasonably available when the actual term is unknown to the creditor at the time disclosures are made, consistent with § 1026.17(c)(2)(i).

i. ***Actual term unknown.*** An actual term is unknown if it is not reasonably available to the creditor at the time the disclosures are made. The "reasonably available" standard requires that the creditor, acting in good faith, exercise due diligence in obtaining the information. For example, the creditor must at a minimum utilize generally accepted calculation tools, but need not invest in the most sophisticated computer program to make a particular type of calculation. The creditor normally may rely on the representations of other parties in obtaining information. For example, the creditor might look to the consumer for the time of consummation, to insurance companies for the cost of insurance, to realtors for taxes and escrow fees, or to a settlement agent for homeowner's association dues or other information in connection with a real estate settlement. The following examples illustrate the reasonably available standard for purposes of § 1026.19(f)(1)(i).

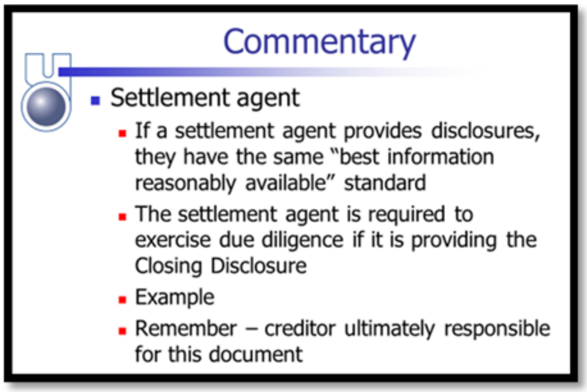
A. Assume a creditor provides the disclosure under § 1026.19(f)(1)(ii)(A) for a transaction in which the title insurance company that is providing the title insurance policies is acting as the settlement agent in connection with the transaction, but the creditor does not request the actual cost of the lender's title insurance policy that the consumer is purchasing from the title insurance company and instead discloses an estimate based on information from a different transaction. The creditor has not exercised due diligence in obtaining the information about the cost of the lender's title insurance policy required under the "reasonably available" standard in connection with the estimate disclosed for the lender's title insurance policy.

B. Assume that in the prior example the creditor obtained information about the terms of the consumer's transaction from the settlement agent regarding the amounts disclosed under § 1026.38(j) and (k). The creditor has exercised due diligence in obtaining the information about the costs under § 1026.38(j) and (k) for purposes of the "reasonably available" standard in connection with such disclosures under § 1026.38(j) and (k).

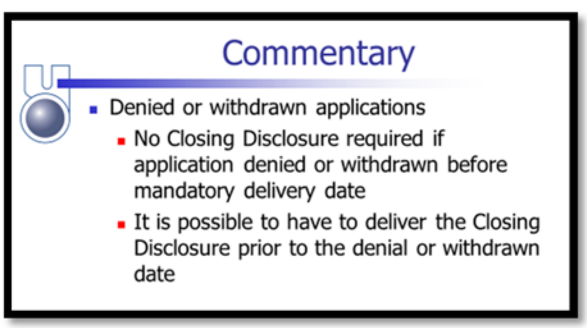



ii. ***Estimates.*** If an actual term is unknown, the creditor may utilize estimates using the best information reasonably available in making disclosures even though the creditor knows that more precise information will be available at or before consummation. However, the creditor may not utilize an estimate without exercising due diligence to obtain the actual term for the consumer's transaction. *See* comment 19(f)(1)(i)-2.i. The creditor is required to provide corrected disclosures containing the actual terms of the transaction at or before consummation under §

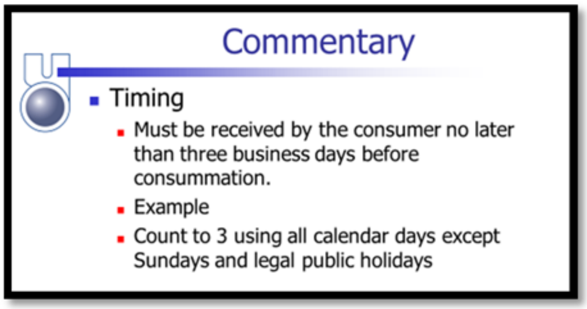
1026.19(f)(2), subject to the exceptions provided for in that paragraph. Disclosures under § 1026.19(f) are subject to the labeling rules set forth in § 1026.38. See comment 17(c)(2)(i)-2 for guidance on labeling estimates.




iii. ***Settlement agent***. If a settlement agent provides disclosures required by § 1026.19(f)(1)(i) three business days before consummation pursuant to § 1026.19(f)(1)(v), the "best information reasonably available" standard applies to terms for which the actual term is unknown to the settlement agent at the time the disclosures are provided. The settlement agent normally may rely on the representations of other parties in obtaining information, but if information about actual terms is not reasonably available, the settlement agent also must satisfy the "best information reasonably available" standard. Accordingly, the settlement agent is required to exercise due diligence to obtain information if it is providing the Closing Disclosure pursuant to § 1026.19(f)(1)(v). For example, for the loan terms table required to be disclosed under § 1026.38(b), the settlement agent would be considered to have exercised due diligence if it obtained such information from the creditor. Because the creditor remains responsible under § 1026.19(f)(1)(v) for ensuring that the Closing Disclosure is provided in accordance with § 1026.19(f), the creditor is expected to maintain communication with the settlement agent to ensure that the settlement agent is acting in place of the creditor. See comment 19(f)(1)(v)-3 for guidance on a creditor's responsibilities where a settlement agent provides disclosures.

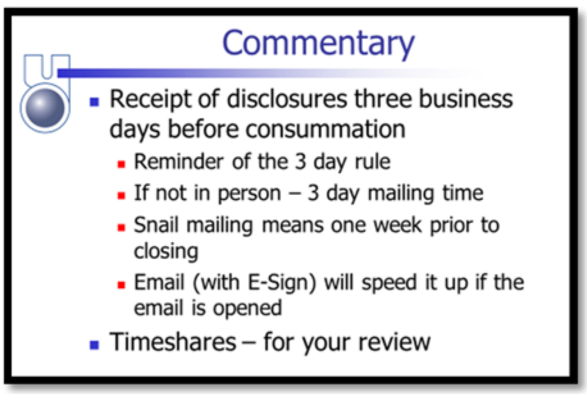



3. ***Denied or withdrawn applications***. The creditor is not required to provide the disclosures required under § 1026.19(f)(1)(i) if, before the time the creditor is required to provide the disclosures under § 1026.19(f), the creditor determines the consumer's application will not or cannot be approved on the terms requested, or the consumer has withdrawn the application, and, as such, the transaction will not be consummated. For transactions covered by § 1026.19(f)(1)(i), the creditor may rely on comment 19(e)(1)(iii)-3 in determining that disclosures are not required by § 1026.19(f)(1)(i) because the consumer's application will not or cannot be approved on the terms requested or the consumer has withdrawn the application.




***19(f)(1)(ii) Timing.***

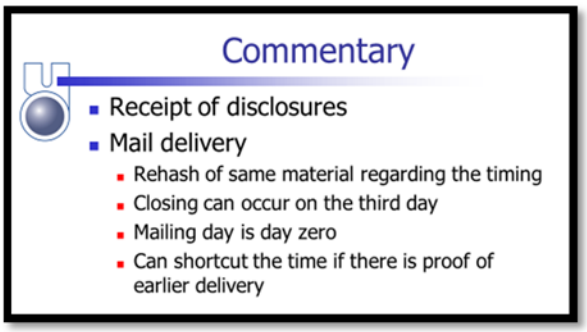
1. ***Timing.*** Except as provided in § 1026.19(f)(1)(ii)(B), (f)(2)(i), (f)(2)(iii), (f)(2)(iv), and (f)(2)(v), the disclosures required by § 1026.19(f)(1)(i) must be received by the consumer no later than three business days before consummation. For example, if consummation is scheduled for Thursday, the creditor satisfies this requirement by hand delivering the disclosures on Monday, assuming each weekday is a business day. For purposes of § 1026.19(f)(1)(ii), the term "business day" means all calendar days except Sundays and legal public holidays referred to in § 1026.2(a)(6). *See* comment 2(a)(6)-2.




2. ***Receipt of disclosures three business days before consummation.*** Section 1026.19(f)(1)(ii)(A) provides that the consumer must receive the disclosures no later than three business days before consummation. To comply with this requirement, the creditor must arrange for delivery accordingly. Section 1026.19(f)(1)(iii) provides that, if any disclosures required under § 1026.19(f)(1)(i) are not provided to the consumer in person, the consumer is considered to have received the disclosures three business days after they are delivered or placed in the mail. Thus, for example, if consummation is scheduled for Thursday, a creditor would satisfy the requirements of § 1026.19(f)(1)(ii)(A) if the creditor places the disclosures in the mail on Thursday of the previous week, because, for the purposes of § 1026.19(f)(1)(ii), Saturday is a business day, pursuant to § 1026.2(a)(6), and, pursuant to § 1026.19(f)(1)(iii), the consumer would be considered to have received the disclosures on the Monday before consummation is scheduled. *See* comment 19(f)(1)(iii)-1. A creditor would not satisfy the requirements of § 1026.19(f)(1)(ii)(A) in this example if the creditor places the disclosures in the mail on the Monday before consummation. However, the creditor in this example could satisfy the requirements of § 1026.19(f)(1)(ii)(A) by delivering the disclosures on Monday, for instance, by way of electronic mail, provided the requirements of § 1026.38(t)(3)(iii) relating to disclosures in electronic form are satisfied and assuming that each weekday is a business day, and provided that the creditor obtains evidence that the consumer received the emailed disclosures on Monday. *See* comment 19(f)(1)(iii)-2.

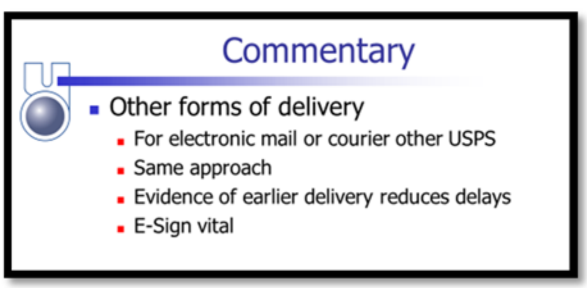
3. ***Timeshares.*** For transactions secured by a consumer's interest in a timeshare plan described in 11 U.S.C. 101(53D), § 1026.19(f)(1)(ii)(B) requires a creditor to ensure that the consumer receives the disclosures required under § 1026.19(f)(1)(i) no later than consummation. Timeshare transactions covered by § 1026.19(f)(1)(ii)(B) may be consummated at the time or any time after the disclosures required by § 1026.19(f)(1)(i) are received by the consumer. For example, if a consumer provides the creditor with an application, as defined by § 1026.2(a)(3), for a mortgage loan secured by a timeshare on Monday, June 1, and consummation of the timeshare transaction is scheduled for Friday, June 5, the creditor complies with § 1026.19(f)(1)(ii)(B) by ensuring that the consumer receives the disclosures required by § 1026.19(f)(1)(i) no later than consummation

on Friday, June 5. If a consumer provides the creditor with an application for a mortgage loan secured by a timeshare on Monday, June 1 and consummation of the timeshare transaction is scheduled for Tuesday, June 2, then the creditor complies with § 1026.19(f)(1)(ii)(B) by ensuring that the consumer receives the disclosures required by § 1026.19(f)(1)(i) no later than consummation on Tuesday, June 2. In some cases, a Loan Estimate must be provided under § 1026.19(e) before provision of the Closing Disclosure. See comment 19(e)(1)(iii)-4 for guidance on providing the Loan Estimate for transactions secured by a consumer's interest in a timeshare plan.

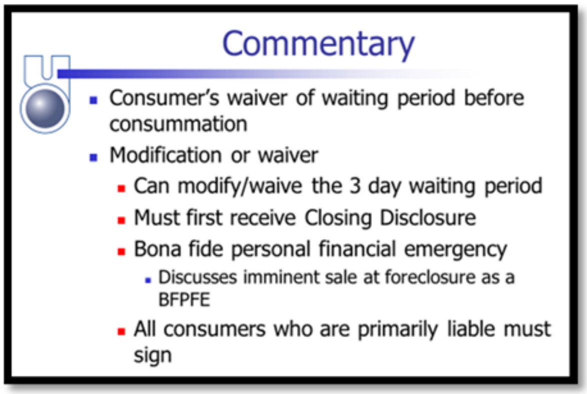



***19(f)(1)(iii) Receipt of disclosures.***

1. ***Mail delivery.*** Section 1026.19(f)(1)(iii) provides that, if any disclosures required under § 1026.19(f)(1)(i) are not provided to the consumer in person, the consumer is considered to have received the disclosures three business days after they are delivered or placed in the mail. If the creditor delivers the disclosures required under § 1026.19(f)(1)(i) in person, consummation may occur any time on the third business day following delivery. If the creditor provides the disclosures by mail, the consumer is considered to have received them three business days after they are placed in the mail, for purposes of determining when the three-business-day waiting period required under § 1026.19(f)(1)(ii)(A) begins. The creditor may, alternatively, rely on evidence that the consumer received the disclosures earlier than three business days after mailing. See comment 19(e)(1)(iv)-1 for an example in which the creditor sends disclosures via overnight mail.

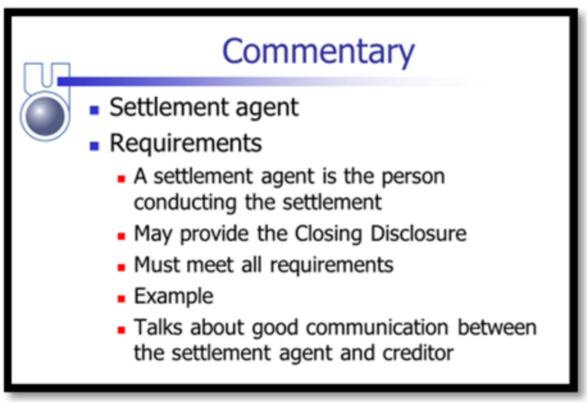



2. ***Other forms of delivery.*** Creditors that use electronic mail or a courier other than the United States Postal Service also may follow the approach for disclosures provided by mail described in comment 19(f)(1)(iii)-1. For example, if a creditor sends a disclosure required under § 1026.19(f) via email on Monday, pursuant to § 1026.19(f)(1)(iii) the consumer is considered to have received the disclosure on Thursday, three business days later. The creditor may, alternatively, rely on evidence that the consumer received the emailed disclosures earlier after delivery. See comment 19(e)(1)(iv)-2 for an example in which the creditor emails disclosures and receives an acknowledgment from the consumer on the same day. Creditors using electronic delivery methods, such as email, must also comply with § 1026.38(t)(3)(iii). For example, if a creditor delivers the disclosures required by § 1026.19(f)(1)(i) to a consumer via email, but the creditor did not obtain the consumer's consent to receive disclosures via email prior to delivering the disclosures, then the creditor does not comply with § 1026.38(t)(3)(iii), and the creditor does not comply with § 1026.19(f)(1)(i), assuming the disclosures were not provided in a different manner in accordance with the timing requirements of § 1026.19(f)(1)(ii).



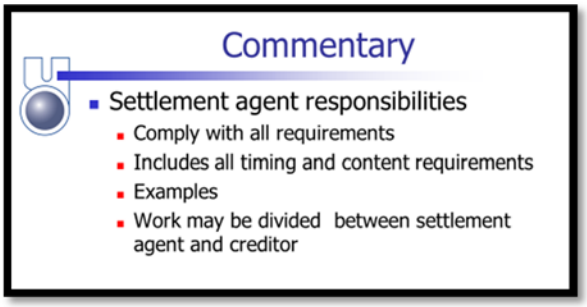

***19(f)(1)(iv) Consumer's waiver of waiting period before consummation.***

1. ***Modification or waiver.*** A consumer may modify or waive the right to the three business- day waiting periods required by § 1026.19(f)(1)(ii)(A) or (f)(2)(ii) only after the creditor makes the disclosures required by § 1026.19(f)(1)(i). The consumer must have a bona fide personal financial emergency that necessitates consummating the credit transaction before the end of the waiting period. Whether these conditions are met is determined by the facts surrounding individual situations. The imminent sale of the consumer's home at foreclosure, where the foreclosure sale will proceed unless loan proceeds are made available to the consumer during the waiting period, is one example of a bona fide personal financial emergency. Each consumer who is primarily liable on the legal obligation must sign the written statement for the waiver to be effective.

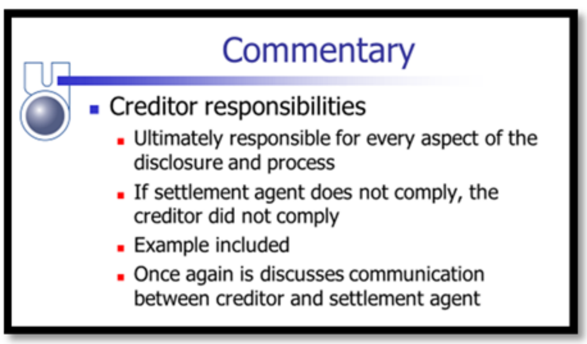



***19(f)(1)(v) Settlement agent.***

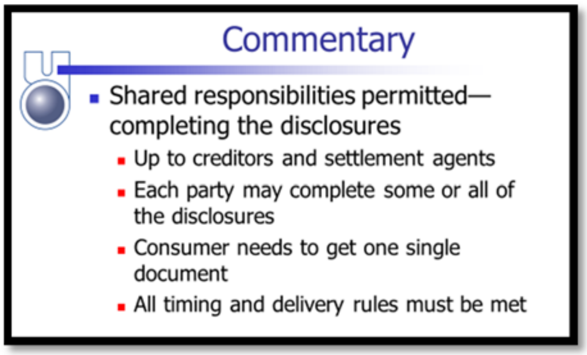
1. ***Requirements.*** For purposes of § 1026.19(f), a settlement agent is the person conducting the settlement. A settlement agent may provide the disclosures required under § 1026.19(f)(1)(i) instead of the creditor. By assuming this responsibility, the settlement agent becomes responsible for complying with all of the relevant requirements of § 1026.19(f), meaning that "settlement agent" should be read in the place of "creditor" for all the relevant provisions of § 1026.19(f), except where such a reading would create responsibility for settlement agents under § 1026.19(e). For example, comment 19(f)(1)(ii)-3 explains that, in some cases involving transactions secured by a consumer's interest in a timeshare plan, a Loan Estimate must be provided under § 1026.19(e). "Settlement agent" could not be read in place of "creditor" in comment 19(f)(1)(ii)-3 because settlement agents are not responsible for the disclosures required by § 1026.19(e)(1)(i). To ensure timely and accurate compliance with the requirements of § 1026.19(f)(1)(v), the creditor and settlement agent need to communicate effectively.




2. ***Settlement agent responsibilities***. If a settlement agent provides any disclosure under § 1026.19(f), the settlement agent must comply with the relevant requirements of § 1026.19(f). For example, if the creditor and settlement agent agree that the creditor will deliver the disclosures required under § 1026.19(f)(1)(i) to be received by the consumer three business days before consummation, pursuant to § 1026.19(f)(1)(ii)(A), and that the settlement agent will deliver any corrected disclosures at or before consummation, including disclosures provided so that they are received by the consumer three business days before consummation under § 1026.19(f)(2)(ii), and will permit the consumer to inspect the disclosures during the business day before consummation, the settlement agent must ensure that the consumer receives the disclosures required under § 1026.19(f)(1)(i) at or before consummation and is able to inspect the disclosures during the business day before consummation, if the consumer so requests, in accordance with § 1026.19(f)(2)(i). See comment 19(f)(1)(v)-3 below for additional guidance regarding the creditor's responsibilities where the settlement agent provides disclosures. The settlement agent may assume the responsibility to provide some or all of the disclosures required by § 1026.19(f). See comment 19(f)(1)(v)-4 for guidance on how creditors and settlement agents may divide responsibilities for completing the disclosures.

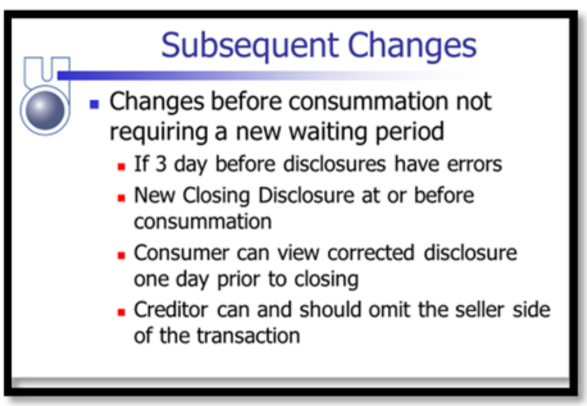



3. ***Creditor responsibilities***. If a settlement agent provides disclosures required under § 1026.19(f) in the creditor's place, the creditor remains responsible under § 1026.19(f) for ensuring that the requirements of § 1026.19(f) have been satisfied. For example, if the settlement agent assumes the responsibility for providing all of the disclosures required under § 1026.19(f)(1)(i), the creditor does not comply with § 1026.19(f) if the settlement agent does not provide these disclosures at all, or if the consumer receives the disclosures later than three business days before consummation, as required by § 1026.19(f)(1)(ii)(A) and, as applicable, (f)(2)(ii). The creditor does not satisfy the requirements of § 1026.19(f) if it provides duplicative disclosures. For example, a creditor does not satisfy its obligation by issuing disclosures required under § 1026.19(f) that mirror ones already issued by the settlement agent for the purpose of demonstrating that the consumer received timely disclosures. The creditor is expected to maintain communication with the settlement agent to ensure that the settlement agent is acting in place of the creditor. Disclosures provided by a settlement agent in accordance with § 1026.19(f)(1)(v) satisfy the creditor's obligation under § 1026.19(f)(1)(i).



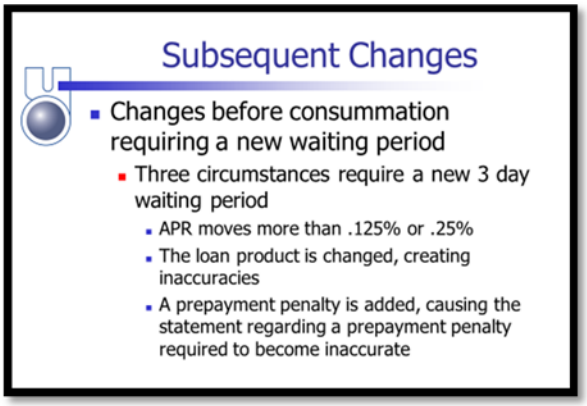

4. ***Shared responsibilities permitted—completing the disclosures.*** Creditors and settlement agents may agree to divide responsibility with respect to completing any of the disclosures under § 1026.38 for the disclosures provided under § 1026.19(f)(1)(i). The settlement agent may assume the responsibility to complete some or all of the disclosures required by § 1026.19(f). For example, the creditor complies with the requirements of § 1026.19(f)(1)(i) and the settlement agent complies with the requirements of § 1026.19(f)(1)(v) if the settlement agent agrees to complete only the portion of the disclosures required by § 1026.19(f)(1)(i) related to closing costs for taxes, title fees, and insurance premiums, and the creditor agrees to complete the remainder of the disclosures required by § 1026.19(f)(1)(i), and either the settlement agent or the creditor provides the consumer with one single disclosure form containing all of the information required to be disclosed pursuant to § 1026.19(f)(1)(i), in accordance with the other requirements in § 1026.19(f), such as requirements related to timing and delivery.

## *§ 1026.38(f)(2) Subsequent Changes*




(2) ***Subsequent changes.***

(i) ***Changes before consummation not requiring a new waiting period.*** Except as provided in paragraph (f)(2)(ii), if the disclosures provided under paragraph (f)(1)(i) of this section become inaccurate before consummation, the creditor shall provide corrected disclosures reflecting any changed terms to the consumer so that the consumer receives the corrected disclosures at or before consummation. Notwithstanding the requirement to provide corrected disclosures at or before consummation, the creditor shall permit the consumer to inspect the disclosures provided under this paragraph, completed to set forth those items that are known to the creditor at the time of inspection, during the business day immediately preceding consummation, but the creditor may omit from inspection items related only to the seller's transaction.

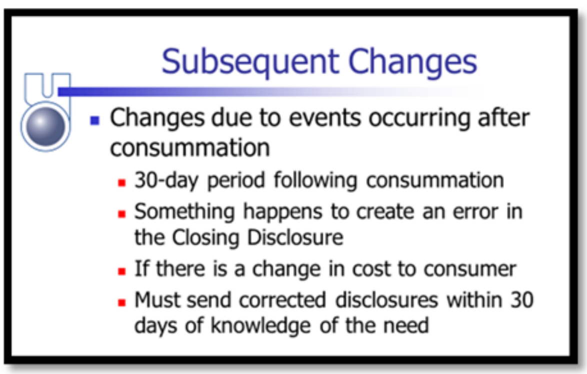



(ii) ***Changes before consummation requiring a new waiting period.*** If one of the following disclosures provided under paragraph (f)(1)(i) of this section becomes inaccurate in the following manner before consummation, the creditor shall ensure that the consumer receives corrected disclosures containing all changed terms in accordance with the requirements of paragraph (f)(1)(ii)(A) of this section:

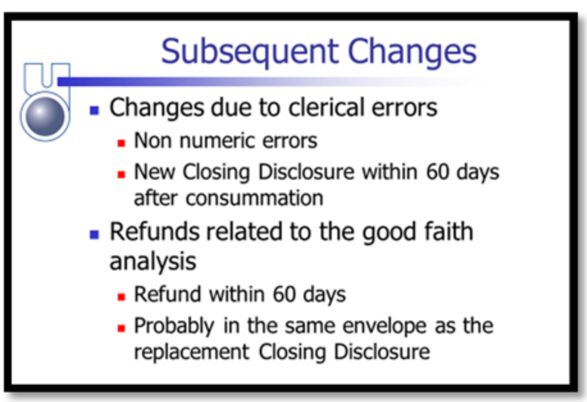
(A) The annual percentage rate disclosed under § 1026.38(o)(4) becomes inaccurate, as defined in § 1026.22.

(B) The loan product is changed, causing the information disclosed under § 1026.38(a)(5)(iii) to become inaccurate.

(C) A prepayment penalty is added, causing the statement regarding a prepayment penalty required under § 1026.38(b) to become inaccurate.

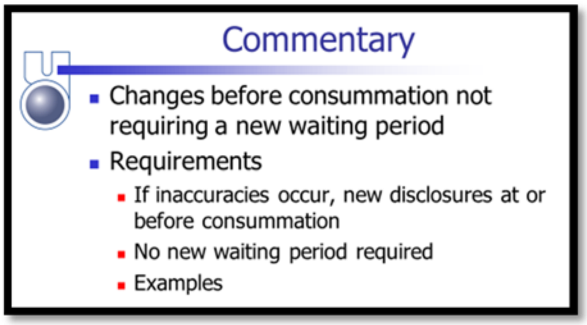



(iii) ***Changes due to events occurring after consummation.*** If during the 30-day period following consummation, an event in connection with the settlement of the transaction occurs that causes the disclosures required under paragraph (f)(1)(i) of this section to become inaccurate, and such inaccuracy results in a change to an amount actually paid by the consumer from that amount disclosed under paragraph (f)(1)(i) of this section, the creditor shall deliver or place in the mail corrected disclosures not later than 30 days after receiving information sufficient to establish that such event has occurred.




(iv) ***Changes due to clerical errors.*** A creditor does not violate paragraph (f)(1)(i) of this section if the disclosures provided under paragraph (f)(1)(i) contain non-numeric clerical errors, provided the creditor delivers or places in the mail corrected disclosures no later than 60 days after consummation.

(v) ***Refunds related to the good faith analysis.*** If amounts paid by the consumer exceed the amounts specified under paragraph (e)(3)(i) or (ii) of this section, the creditor complies with paragraph (e)(1)(i) of this section if the creditor refunds the excess to the consumer no later than 60 days after consummation, and the creditor complies with paragraph (f)(1)(i) of this section if the creditor delivers or places in the mail corrected disclosures that reflect such refund no later than 60 days after consummation.



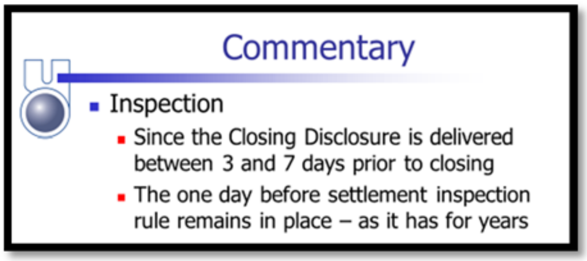

***19(f)(2) Subsequent changes.***
***19(f)(2)(i) Changes before consummation not requiring a new waiting period.***

1. ***Requirements.*** Under § 1026.19(f)(2)(i), if the disclosures provided under § 1026.19(f)(1)(i) become inaccurate before consummation, other than as provided under § 1026.19(f)(2)(ii), the creditor shall provide corrected disclosures reflecting any changed terms to the consumer so that the consumer receives the corrected disclosures at or before consummation. The creditor need not comply with the timing requirements in § 1026.19(f)(1)(ii) if an event other than one identified in § 1026.19(f)(2)(ii) occurs, and such changes occur after the creditor provides the consumer with the disclosures required by § 1026.19(f)(1)(i). For example:

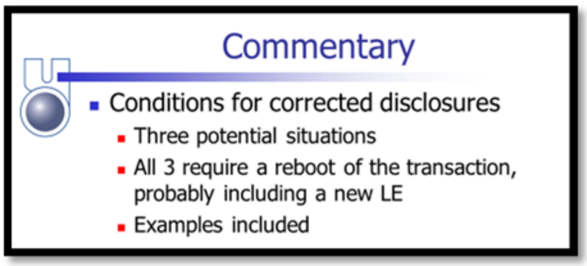
i. Assume consummation is scheduled for Thursday, the consumer received the disclosures required under § 1026.19(f)(1)(i) on Monday, and a walk-through inspection occurs on Wednesday morning. During the walk-through the consumer discovers damage to the dishwasher. The seller agrees to credit the consumer $500 towards a new dishwasher. The creditor complies with the requirements of § 1026.19(f) if the creditor provides corrected disclosures so that the consumer receives them at or before consummation on Thursday.

ii. Assume consummation is scheduled for Friday and on Monday morning the creditor sends the disclosures via overnight delivery to the consumer, ensuring that the consumer receives the disclosures on Tuesday. On Monday night, the seller agrees to sell certain household furnishings to the consumer for an additional $1,000, to be paid at the real estate closing, and the consumer immediately informs the creditor of the change. The creditor must provide corrected disclosures so that the consumer receives them at or before consummation. The creditor does not violate § 1026.19(f) because the change to the transaction resulting from negotiations between the seller and consumer occurred after the creditor provided the final disclosures, regardless of the fact that the change occurred before the consumer had received the final disclosures.

iii. Assume consummation is scheduled for Thursday, the consumer received the disclosures required under § 1026.19(f)(1)(i) on Monday, and a walk-through inspection occurs on Wednesday morning. As a result of consumer and seller negotiations, the total amount due from the buyer increases by $500. Also on Wednesday, the creditor discovers that the homeowner's insurance premium that was disclosed as $800 is actually $850. The new $500 amount due and the $50 insurance premium understatements are not violations of § 1026.19(f)(1)(i), and the creditor complies with § 1026.19(f)(1)(i) by providing corrected disclosures reflecting the $550 increase so that the consumer receives them at or before consummation, pursuant to § 1026.19(f)(2)(ii).




2. ***Inspection.*** A settlement agent may satisfy the requirement to permit the consumer to inspect the disclosures under § 1026.19(f)(2)(i), subject to § 1026.19(f)(1)(v).




***19(f)(2)(ii) Changes before consummation requiring a new waiting period.***

1. ***Conditions for corrected disclosures.*** Pursuant to § 1026.19(f)(2)(ii), if, at the time of consummation, the annual percentage rate becomes inaccurate, the loan product changes, or a prepayment penalty is added to the transaction, the creditor must provide corrected disclosures with all changed terms so that the consumer receives them not later than the third business day before consummation. Requirements for annual percentage rate disclosures are set forth in § 1026.38(o)(4), and requirements determining whether an annual percentage rate is accurate are set forth in § 1026.22. Requirements for loan product disclosures are set forth in § 1026.38(a)(5)(iii) and § 1026.37(a)(10). Requirements for prepayment penalty disclosures are set forth in § 1026.38(b) and § 1026.37(b)(4).

i. ***Example—APR becomes inaccurate.*** Assume consummation is scheduled for Thursday, June 11 and the disclosure for a regular mortgage transaction received by the consumer on Monday, June 8 under § 1026.19(f)(1)(i) discloses an annual percentage rate of 7.00 percent:

A. On Thursday, June 11, the annual percentage rate will be 7.10 percent. The creditor is not required to delay consummation to provide corrected disclosures under § 1026.19(f)(2)(ii) because the annual percentage rate is accurate pursuant to § 1026.22, but the creditor is required under § 1026.19(f)(2)(i) to provide corrected disclosures, including any other changed terms, so that the consumer receives them on or before Thursday, June 11.

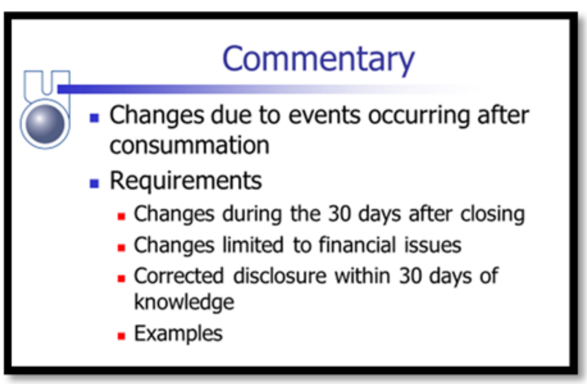
B. On Thursday, June 11, the annual percentage rate will be 7.15 percent and corrected disclosures were not received by the consumer on or before Monday, June 8 because the annual percentage rate is inaccurate pursuant to § 1026.22. The creditor is required to delay consummation and provide corrected disclosures, including any other changed terms, so that the consumer receives them at least three business days before consummation under § 1026.19(f)(2)(ii).

ii. ***Example—loan product changes.*** Assume consummation is scheduled for Thursday, June 11 and the disclosures provided under § 1026.19(f)(1)(i) disclose a product required to be disclosed as a "Fixed Rate" that contains no features that may change the periodic payment.

A. On Thursday, June 11, the loan product required to be disclosed changes to a "5/1 Adjustable Rate." The creditor is required to provide corrected disclosures and delay consummation until the consumer has received the corrected disclosures provided under § 1026.19(f)(1)(i) reflecting the change in the product disclosure, and any other changed terms, at least three business days before consummation. If, after the corrected disclosures in this example are provided, the loan product subsequently changes before consummation to a "3/1 Adjustable Rate," the creditor is required to provide additional corrected disclosures and again delay consummation until the consumer has received the corrected disclosures provided under § 1026.19(f)(1)(i) reflecting the change in the product disclosure, and any other changed terms, at least three business days before consummation.

B. On Thursday, June 11, the loan product required to be disclosed has changed to a "Fixed Rate" with a "Negative Amortization" feature. The creditor is required to provide corrected disclosures and delay consummation until the consumer has received the corrected disclosures provided under § 1026.19(f)(1)(i) reflecting the change in the product disclosure, and any other changed terms, at least three business days before consummation.

iii. ***Example—prepayment penalty is added.*** Assume consummation is scheduled for Thursday, June 11 and the disclosure provided under § 1026.19(f)(1)(i) did not disclose a prepayment penalty. On Wednesday, June 10, a prepayment penalty is added to the transaction such that the disclosure required by § 1026.38(b) becomes inaccurate. The creditor is required to provide corrected disclosures and delay consummation until the consumer has received the corrected disclosures provided under § 1026.19(f)(1)(i) reflecting the change in the disclosure of the loan terms, and any other changed terms, at least three business days before consummation. If, after the revised disclosures in this example are provided but before consummation, the prepayment penalty is removed such that the description of the prepayment penalty again becomes inaccurate, and no other changes to the transaction occur, the creditor is required to provide corrected disclosures so that the consumer receives them at or before consummation under §1026.19(f)(2)(i), but the creditor is not required to delay consummation because § 1026.19(f)(2)(ii)(C) applies only when a prepayment penalty is added.




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

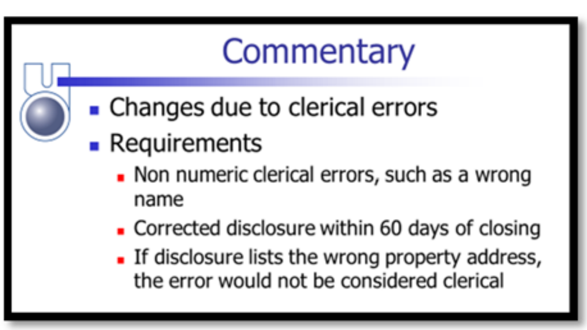
1. ***Requirements***. Under § 1026.19(f)(2)(iii), if during the 30-day period following consummation, an event in connection with the settlement of the transaction occurs that causes the disclosures to become inaccurate, and such inaccuracy results in a change to an amount actually paid by the consumer from that amount disclosed under § 1026.19(f)(1)(i), the creditor shall deliver or place in the mail corrected disclosures not later than 30 days after receiving information sufficient to establish that such event has occurred. The following examples illustrate this requirement. (See also comment 19(e)(4)(i)-1 for further guidance on when sufficient information has been received to establish an event has occurred.)

i. Assume consummation occurs on a Monday and the security instrument is recorded on Tuesday, the day after consummation. If the creditor learns on Tuesday that the fee charged by the recorder's office differs from that previously disclosed pursuant to § 1026.19(f)(1)(i), and the changed fee results in a change in the amount actually paid by the consumer, the creditor complies with § 1026.19(f)(1)(i) and (f)(2)(iii) by revising the disclosures accordingly and delivering or placing them in the mail no later than 30 days after Tuesday.

ii. Assume consummation occurs on a Tuesday, October 1 and the security instrument is not recorded until 15 days after October 1 on Thursday, October 16. The creditor learns on Monday, November 4 that the transfer taxes owed to the State differ from those previously disclosed pursuant to § 1026.19(f)(1)(i), resulting in an increase in the amount actually paid by the consumer. The creditor complies with § 1026.19(f)(1)(i) and § 1026.19(f)(2)(iii) by revising the disclosures accordingly and delivering or placing them in the mail no later than 30 days after Monday, November 4. Assume further that the increase in transfer taxes paid by the consumer also exceeds the amount originally disclosed under § 1026.19(e)(1)(i) above the limitations prescribed by § 1026.19(e)(3)(i). Pursuant to § 1026.19(f)(2)(v), the creditor does not violate § 1026.19(e)(1)(i) if the creditor refunds the excess to the consumer no later than 60 days after consummation, and the creditor does not violate § 1026.19(f)(1)(i) if the creditor delivers disclosures corrected to reflect the refund of such excess no later than 60 days after consummation. The creditor satisfies these requirements under § 1026.19(f)(2)(v) if it revises the disclosures accordingly and delivers or places them in the mail by November 30.

iii. Assume consummation occurs on a Monday and the security instrument is recorded on Tuesday, the day after consummation. During the recording process on Tuesday the settlement agent and the creditor discover that the property is subject to an unpaid $500 nuisance abatement assessment, which was not disclosed pursuant to § 1026.19(f)(1)(i), and learns that pursuant to an agreement with the seller, the $500 assessment will be paid by the seller rather than the consumer. Because the $500 assessment does not result in a change to an amount actually paid by the consumer, the creditor is not required to provide a corrected disclosure pursuant to § 1026.19(f)(2)(iii). However, the assessment will result in a change to an amount actually paid by the seller from the amount disclosed under § 1026.19(f)(4)(i). Pursuant to § 1026.19(f)(4)(ii), the settlement agent must deliver or place in the mail corrected disclosures to the seller no later than 30 days after Tuesday and provide a copy to the creditor pursuant to § 1026.19(f)(4)(iv).

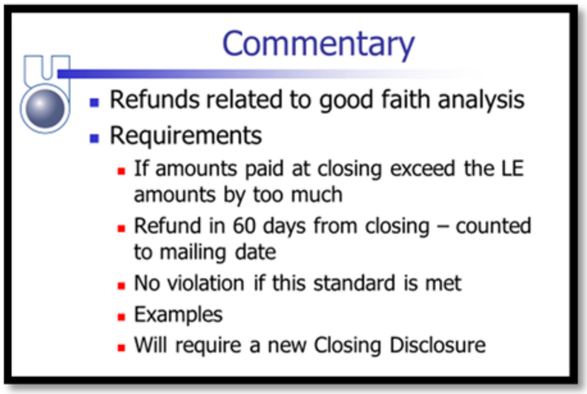
iv. Assume consummation occurs on a Monday and the security instrument is recorded on Tuesday, the day after consummation. Assume further that ten days after consummation the municipality in which the property is located raises property tax rates effective after the date on which settlement concludes. Section 1026.19(f)(2)(iii) does not require the creditor to provide the consumer with corrected disclosures because the increase in property tax rates is not in connection with the settlement of the transaction.




***19(f)(2)(iv) Changes due to clerical errors.***

1. ***Requirements***. Section 1026.19(f)(2)(iv) requires the creditor to deliver or place in the mail corrected disclosures if the disclosures provided pursuant to § 1026.19(f)(1)(i) contain nonnumeric clerical errors. An error is considered clerical if it does not affect a numerical disclosure and does not affect requirements imposed by § 1026.19(e) or (f). For example, if the disclosure identifies the incorrect

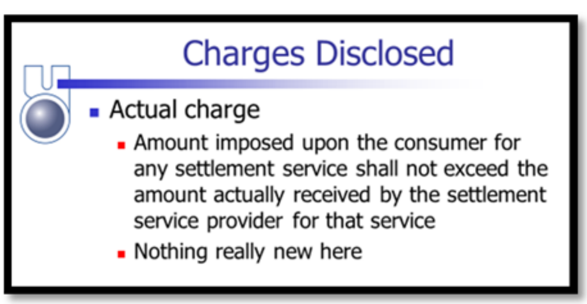
settlement service provider as the recipient of a payment, then § 1026.19(f)(2)(iv) requires the creditor to deliver or place in the mail corrected disclosures reflecting the corrected non-numeric disclosure no later than 60 days after consummation. However, if, for example, the disclosure lists the wrong property address, which affects the delivery requirement imposed by § 1026.19(e) or (f), the error would not be considered clerical.



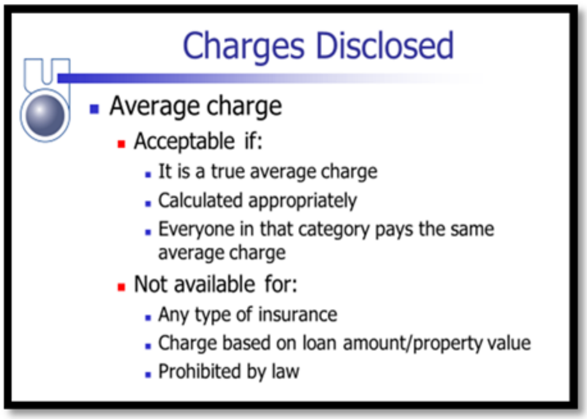

***19(f)(2)(v) Refunds related to the good faith analysis.***

1. ***Requirements.*** Section 1026.19(f)(2)(v) provides that, if amounts paid at closing exceed the amounts specified under § 1026.19(e)(3)(i) or (ii), the creditor does not violate § 1026.19(e)(1)(i) if the creditor refunds the excess to the consumer no later than 60 days after consummation, and the creditor does not violate § 1026.19(f)(1)(i) if the creditor delivers or places in the mail disclosures corrected to reflect the refund of such excess no later than 60 days after consummation. For example, assume that at consummation the consumer must pay four itemized charges that are subject to the good faith determination under § 1026.19(e)(3)(i). If the actual amounts paid by the consumer for the four itemized charges subject to § 1026.19(e)(3)(i) exceeded their respective estimates on the disclosures required under § 1026.19(e)(1)(i) by $30, $25, $25, and $10, then there would be a $90 excess amount above the limitations prescribed by § 1026.19(e)(3)(i). If, further, the amounts paid by the consumer for services that are subject to the good faith determination under § 1026.19(e)(3)(ii) totaled $1,190, but the respective estimates on the disclosures required under § 1026.19(e)(1)(i) totaled only $1,000, then there would be a $90 excess amount above the limitations prescribed by § 1026.19(e)(3)(ii). The creditor does not violate § 1026.19(e)(1)(i) if the creditor refunds the excess to the consumer no later than 60 days after consummation. The creditor does not violate § 1026.19(f)(1)(i) if the creditor delivers or places in the mail corrected disclosures reflecting the $180 refund of the excess amount collected no later than 60 days after consummation. See comment 38(h)(3)-2 for additional guidance on disclosing refunds such as these.

## *§ 1026.38(3) Charges disclosed.*




(i) ***Actual charge.*** The amount imposed upon the consumer for any settlement service shall not exceed the amount actually received by the settlement service provider for that service, except as otherwise provided in paragraph (f)(3)(ii) of this section.




(ii) ***Average charge.*** A creditor or settlement service provider may charge a consumer or seller the average charge for a settlement service if the following conditions are satisfied:

(A) The average charge is no more than the average amount paid for that service by or on behalf of all consumers and sellers for a class of transactions;

(B) The creditor or settlement service provider defines the class of transactions based on an appropriate period of time, geographic area, and type of loan;

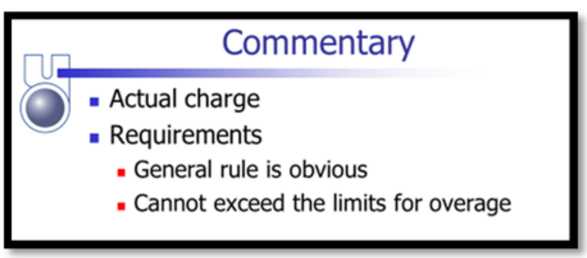
(C) The creditor or settlement service provider uses the same average charge for every transaction within the defined class; and

(D) The creditor or settlement service provider does not use an average charge:

(*1*) For any type of insurance;

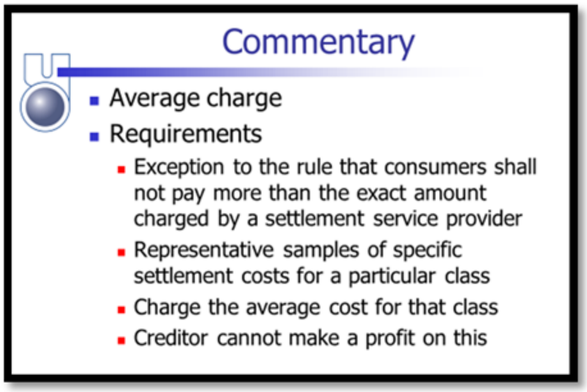
(*2*) For any charge based on the loan amount or property value; or

(*3*) If doing so is otherwise prohibited by law.



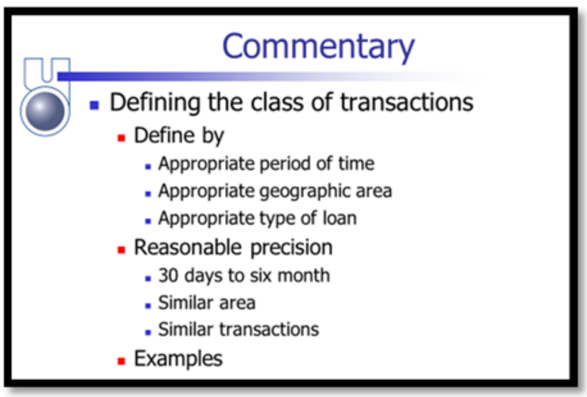

***19(f)(3) Charges disclosed.***
***19(f)(3)(i) Actual charge.***

1. ***Requirements.*** Section 1026.19(f)(3)(i) provides the general rule that the amount imposed on the consumer for any settlement service shall not exceed the amount actually received by the settlement service provider for that service. Except as otherwise provided in § 1026.19(f)(3)(ii), a creditor violates § 1026.19(f)(3)(i) if the amount imposed upon the consumer exceeds the amount actually received by the service provider for that service.




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

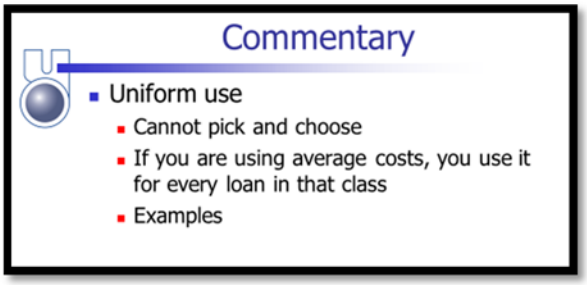
1. ***Requirements.*** Average-charge pricing is the exception to the rule in § 1026.19(f)(3)(i) that consumers shall not pay more than the exact amount charged by a settlement service provider for the performance of that service. *See* comment 19(f)(3)(i)-1. If the creditor develops representative samples of specific settlement costs for a particular class of transactions, the creditor may charge the average cost for that settlement service instead of the actual cost for such transactions. An average-charge program may not be used in a way that inflates the cost for settlement services overall.




2. ***Defining the class of transactions.*** Section 1026.19(f)(3)(ii)(B) requires a creditor to use an appropriate period of time, appropriate geographic area, and appropriate type of loan to define a particular class of transactions. For purposes of § 1026.19(f)(3)(ii)(B), a period of time is appropriate if the sample size is sufficient to calculate average costs with reasonable precision, provided that the period of time is not less than 30 days and not more than six months. For purposes of § 1026.19(f)(3)(ii)(B), a geographic area and loan type are appropriate if the sample size is sufficient to calculate average costs with reasonable precision, provided that the area and loan type are not defined in a way that pools costs between dissimilar populations. For example:

i. Assume a creditor defines a geographic area that contains two subdivisions, one with a median appraisal cost of $200, and the other with a median appraisal cost of $1,000. This geographic area would not satisfy the requirements of § 1026.19(f)(3)(ii) because the cost characteristics of the two populations are dissimilar. However, a geographic area would be appropriately defined if both subdivisions had a relatively normal distribution of appraisal costs, even if the distribution for each subdivision ranges from below $200 to above $1,000.

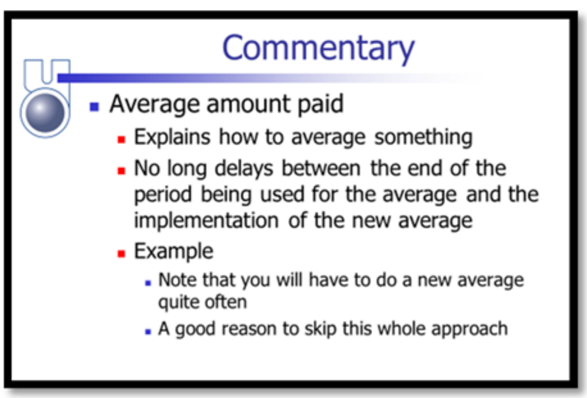
ii. Assume a creditor defines a type of loan that includes two distinct rate products. The median recording fee for one product is $80, while the median recording fee for the other product is $130. This definition of loan type would not satisfy the requirements of § 1026.19(f)(3)(ii) because the cost characteristics of the two products are dissimilar. However, a type of loan would be appropriately defined if both products had a relatively normal distribution of recording fees, even if the distribution for each product ranges from below $80 to above $130.



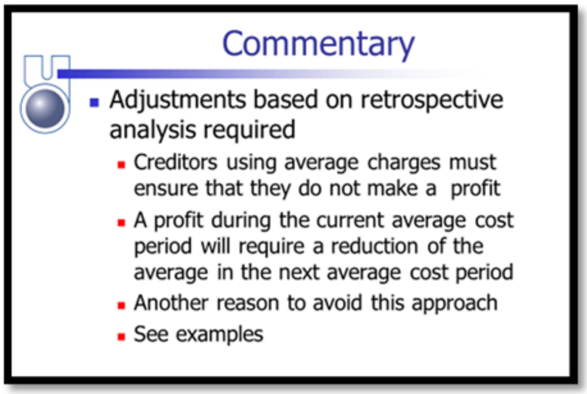

3. ***Uniform use.*** If a creditor chooses to use an average charge for a settlement service for a particular loan within a class, § 1026.19(f)(3)(ii)(C) requires the creditor to use that average charge for that service on all loans within the class. For example:

i. Assume a creditor elects to use an average charge for appraisal fees. The creditor defines a class of transactions as all fixed rate loans originated between January 1 and April 30 secured by real property located within a particular metropolitan statistical area. The creditor must then charge the average appraisal charge to all consumers obtaining fixed rate loans originated between May 1 and August 30 secured by real property located within the same metropolitan statistical area.

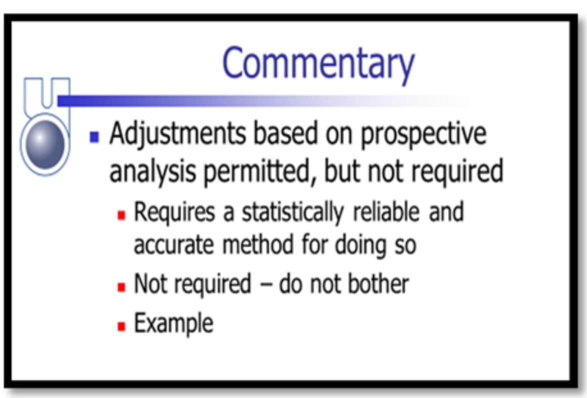
ii. The example in paragraph i of this comment assumes that a consumer would not be required to pay the average appraisal charge unless an appraisal was required on that particular loan. Using the example above, if a consumer applies for a loan within the defined class, but already has an appraisal report acceptable to the creditor from a prior loan application, the creditor may not charge the consumer the average appraisal fee because an acceptable appraisal report has already been obtained for the consumer's application. Similarly, although the creditor defined the class broadly to include all fixed rate loans, the creditor may not require the consumer to pay the average appraisal charge if the particular fixed rate loan program the consumer applied for does not require an appraisal.




4. ***Average amount paid.*** The average charge must correspond to the average amount paid by or imposed on consumers and sellers during the prior defined time period. For example, assume a creditor calculates an average tax certification fee based on four-month periods starting January 1 of each year. The tax certification fees charged to a consumer on May 20 may not exceed the average tax certification fee paid from January 1 through April 30. A creditor may delay the period by a reasonable amount of time if such delay is needed to perform the necessary analysis and update the affected systems, provided that each subsequent period is scheduled accordingly. For example, a creditor may define a four-month period from January 1 to April 30 and begin using the average charge from that period on May 15, provided the average charge is used until September 15, at which time the average charge for the period from May 1 to August 31 becomes effective.

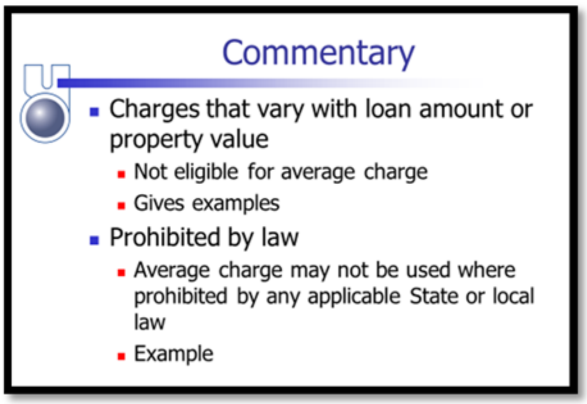



5. ***Adjustments based on retrospective analysis required.*** Creditors using average charges must ensure that the total amount paid by or imposed on consumers for a service does not exceed the total amount paid to the providers of that service for the particular class of transactions. A creditor may find that, even though it developed an average-cost pricing program in accordance with the requirements of § 1026.19(f)(3)(ii), over time it has collected more from consumers than it has paid to settlement service providers. For example, assume a creditor defines a class of transactions and uses that class to develop an average charge of $135 for pest inspections. The creditor then charges $135 per transaction for 100 transactions from January 1 through April 30, but the actual average cost to the creditor of pest inspections during this period is $115. The creditor then decreases the average charge for the May to August period to account for the lower average cost during the January to April period. At this point, the creditor has collected $2,000 more than it has paid to settlement service providers for pest inspections. The creditor then charges $115 per transaction for 70 transactions from May 1 to August 30, but the actual average cost to the creditor of pest inspections during this period is $125. Based on the average cost to the creditor from the May to August period, the average charge to the consumer for the September to December period should be $125. However, while the creditor spent $700 more than it collected during the May to August period, it collected $1,300 more than it spent from January to August. In cases such as these, the creditor remains responsible for ensuring that the amount collected from consumers does not exceed the total amounts paid for the corresponding settlement services over time. The creditor may develop a variety of methods that achieve this outcome. For example, the creditor may choose to refund the proportional overage paid to the affected consumers. Or the creditor may choose to factor in the excess amount collected to decrease the average charge for an upcoming period. Although any method may comply with this requirement, a creditor is deemed to have complied if it defines a six-month time period and establishes a rolling monthly period of reevaluation. For example, assume a creditor defines a six-month time period from January 1 to June 30 and the creditor uses the average charge starting July 1. If, at the end of July, the creditor recalculates the average cost from February 1 to July 31, and then uses the recalculated average cost for transactions starting August 1, the creditor complies with the requirements of § 1026.19(f)(3)(ii), even if the creditor actually collected more from consumers than was paid to providers over time.



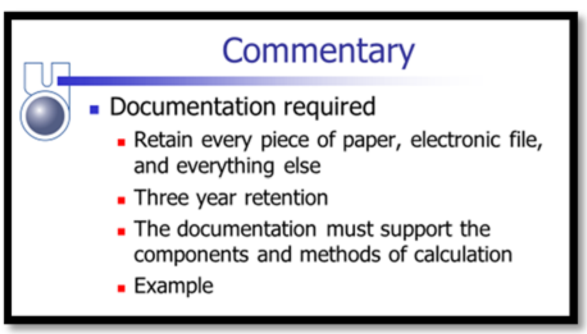

6. ***Adjustments based on prospective analysis permitted, but not required.*** A creditor may prospectively adjust average charges if it develops a statistically reliable and accurate method for doing so. For example, assume a creditor calculates average charges based on two time periods: winter (October 1 to March 31), and summer (April 1 to September 30). If the creditor can demonstrate that the average cost of a particular settlement service is always at least 15 percent more expensive during the winter period than the summer period, the

creditor may increase the average charge for the next winter period by 15 percent over the average cost for the current summer period, provided, however, that the creditor performs retrospective periodic adjustments, as explained in comment 19(f)(3)(ii)-5.



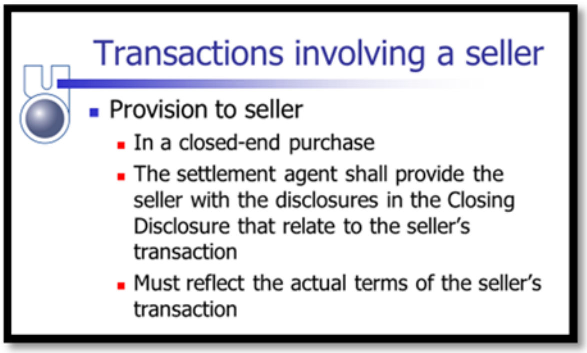

7. ***Charges that vary with loan amount or property value.*** An average charge may not be used for any charge that varies according to the loan amount or property value. For example, an average charge may not be used for a transfer tax if the transfer tax is calculated as a percentage of the loan amount or property value. Average charges also may not be used for any insurance premium. For example, average charges may not be used for title insurance or for either the upfront premium or initial escrow deposit for hazard insurance.

8. ***Prohibited by law.*** An average charge may not be used where prohibited by any applicable State or local law. For example, a creditor may not impose an average charge for an appraisal if applicable law prohibits creditors from collecting any amount in excess of the actual cost of the appraisal.

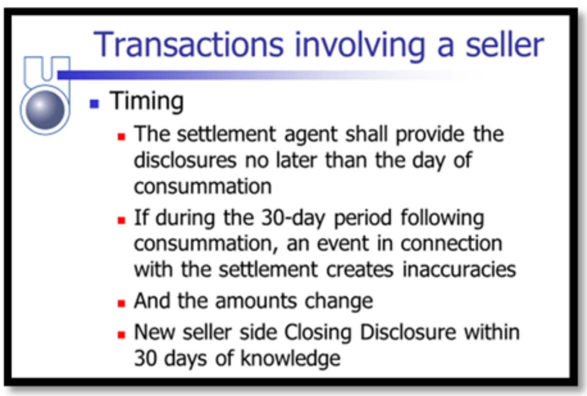



9. ***Documentation required.*** To comply with § 1026.25, a creditor must retain all documentation used to calculate the average charge for a particular class of transactions for at least three years after any settlement for which that average charge was used. The documentation must support the components and methods of calculation. For example, if a creditor calculates an average charge for a particular county recording fee by simply averaging all of the relevant fees paid in the prior month, the creditor need only retain the receipts for the individual recording fees, a ledger demonstrating that the total amount received did not exceed the total amount paid over time, and a document detailing the calculation. However, if a creditor develops complex algorithms for determining averages, not only must the creditor maintain the underlying receipts and ledgers, but the creditor must maintain documentation sufficiently detailed to allow an examiner to verify the accuracy of the calculations.

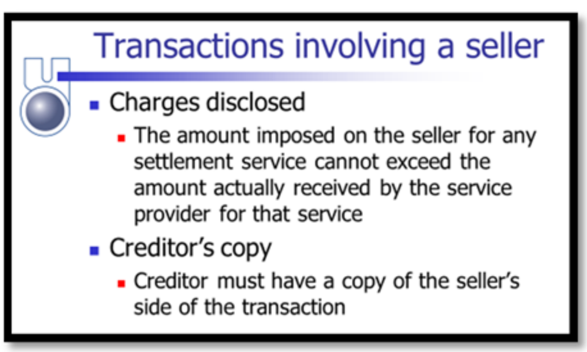
## *(4) Transactions involving a seller.*




(i) ***Provision to seller.*** In a closed-end consumer credit transaction secured by real property that involves a seller, other than a reverse mortgage subject to § 1026.33, the settlement agent shall provide the seller with the disclosures in § 1026.38 that relate to the seller's transaction reflecting the actual terms of the seller's transaction.

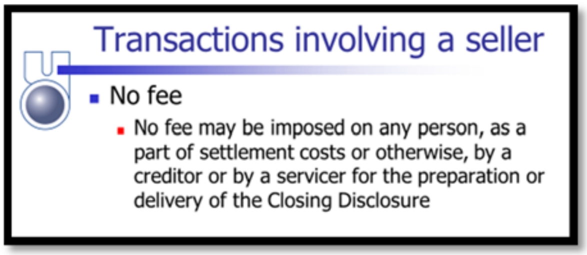



(ii) ***Timing.*** The settlement agent shall provide the disclosures required under paragraph (f)(4)(i) of this section no later than the day of consummation. If during the 30-day period following consummation, an event in connection with the settlement of the transaction occurs that causes disclosures required under paragraph (f)(4)(i) of this section to become inaccurate, and such inaccuracy results in a change to the amount actually paid by the seller from that amount disclosed under paragraph (f)(4)(i) of this section, the settlement agent shall deliver or place in the mail corrected disclosures not later than 30 days after receiving information sufficient to establish that such event has occurred.

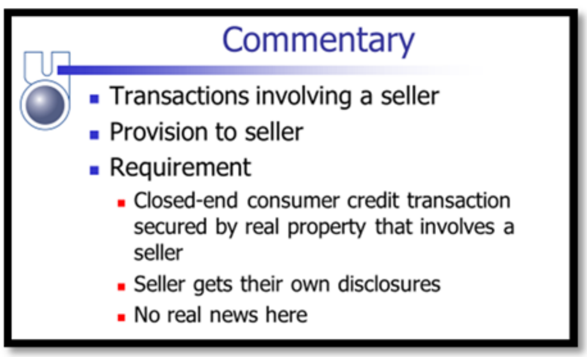



(iii) ***Charges disclosed.*** The amount imposed on the seller for any settlement service shall not exceed the amount actually received by the service provider for that service, except as otherwise provided in paragraph (f)(3)(ii) of this section.

(iv) ***Creditor's copy.*** When the consumer's and seller's disclosures under this paragraph (f) are provided on separate documents, as permitted under § 1026.38(t)(5), the settlement agent shall provide to the creditor (if the creditor is not the settlement agent) a copy of the disclosures provided to the seller under paragraph (f)(4)(i) of this section.

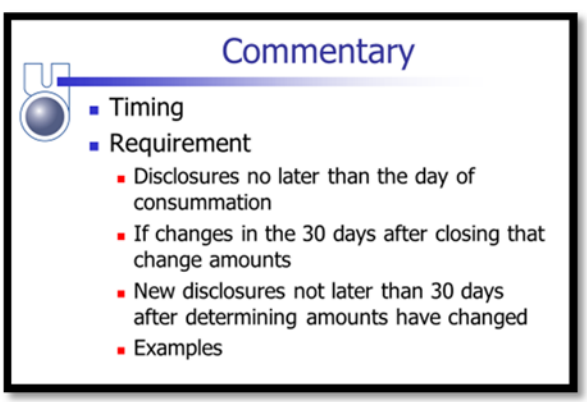



(5) ***No fee.*** No fee may be imposed on any person, as a part of settlement costs or otherwise, by a creditor or by a servicer (as that term is defined under 12 U.S.C. 2605(i)(2)) for the preparation or delivery of the disclosures required under paragraph (f)(1)(i) of this section.




***19(f)(4) Transactions involving a seller.***
***19(f)(4)(i) Provision to seller.***

1. ***Requirement.*** Section 1026.19(f)(4)(i) provides that, in a closed-end consumer credit transaction secured by real property that involves a seller, other than a reverse mortgage subject to § 1026.33, the settlement agent shall provide the seller with the disclosures in § 1026.38 that relate to the seller's transaction reflecting the actual terms of the seller's transaction. The settlement agent complies with this provision by providing a copy of the Closing Disclosure provided to the consumer, if it also contains the information under § 1026.38 relating to the seller's transaction, or alternatively providing the disclosures under § 1026.38(t)(5)(v) or (vi), as applicable.



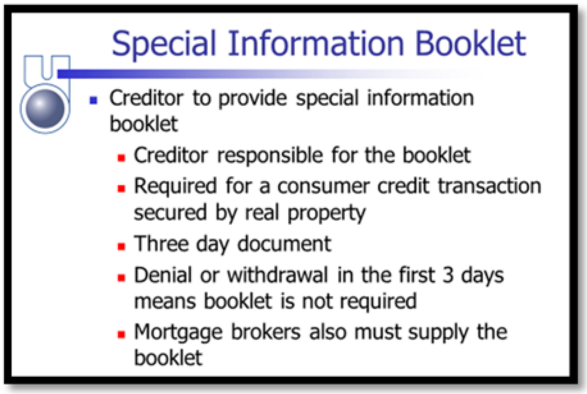

***19(f)(4)(ii) Timing.***

1. ***Requirement.*** Section 1026.19(f)(4)(ii) provides that the settlement agent shall provide the disclosures required under § 1026.19(f)(4)(i) no later than the day of consummation. If during the 30-day period following consummation, an event in connection with the settlement of the transaction occurs that causes such disclosures to become inaccurate and such inaccuracy results in a change to the amount actually paid by the seller from that amount disclosed under § 1026.19(f)(4)(i), the settlement agent shall deliver or place in the mail corrected disclosures not later than 30 days after receiving information sufficient to establish that such event has occurred. Section 1026.19(f)(4)(i) requires disclosure of the items that relate to the seller's transaction. Thus, the settlement agent need only redisclose if an item related to the seller's transaction becomes inaccurate and such inaccuracy results in a change to the amount actually paid by the seller. For example, assume a transaction where the seller pays the transfer tax, the consummation occurs on Monday, and the security instrument is recorded on Tuesday, the day after consummation. If the settlement agent receives information on Tuesday sufficient to establish that transfer taxes

owed to the State differ from those disclosed pursuant to § 1026.19(f)(4)(i), the settlement agent complies with § 1026.19(f)(4)(ii) by revising the disclosures accordingly and delivering or placing them in the mail not later than 30 days after Tuesday. See comment 19(e)(4)(i)-1 for guidance on when sufficient information has been received to establish an event has occurred. See also comment 19(f)(2)(iii)-1.iii for another example in which corrected disclosures must be provided to the seller.

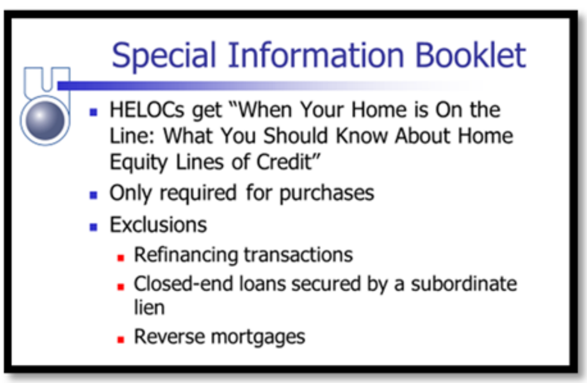
# Special Information Booklet 12CFR § 1026.19(g)

## *(g) Special information booklet at time of application.*




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

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



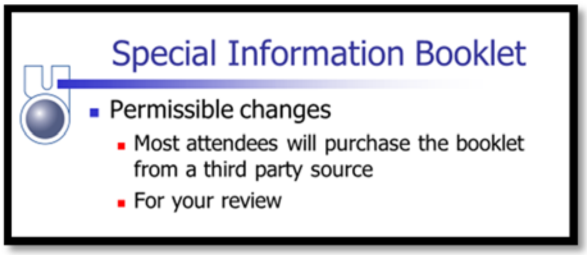

(ii) In the case of a home equity line of credit subject to § 1026.40, a creditor or mortgage broker that provides the consumer with a copy of the brochure entitled "When Your Home is On the Line: What You Should Know About Home Equity Lines of Credit," or any successor brochure issued by the Bureau,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

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

(A) Refinancing transactions;

(B) Closed-end loans secured by a subordinate lien; and

(C) Reverse mortgages.



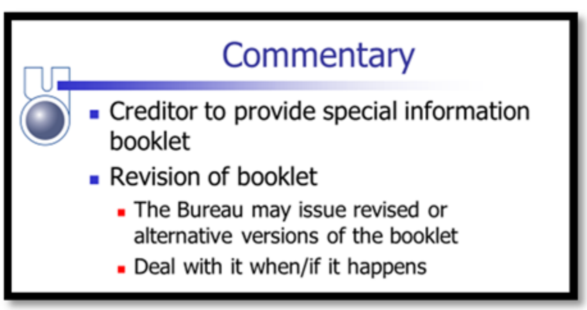

(2) ***Permissible changes.*** Creditors may not make changes to, deletions from, or additions to the special information booklet other than the changes specified in paragraphs (g)(2)(i) through (iv) of this section.

(i) In the "Complaints" section of the booklet, "the Bureau of Consumer Financial Protection" may be substituted for "HUD's Office of RESPA" and "the RESPA office." (ii) In the "Avoiding Foreclosure" section of the booklet, it is permissible to inform homeowners that they may find information on and assistance in avoiding foreclosures at http://www.consumerfinance.gov. The reference to the HUD Web site, http://www.hud.gov/foreclosure/, in the "Avoiding Foreclosure" section of the booklet shall not
be deleted.

(iii) In the "No Discrimination" section of the appendix to the booklet, "the Bureau of Consumer Financial Protection" may be substituted for the reference to the "Board of Governors of the Federal Reserve System." In the Contact Information section of the appendix to the booklet, the following contact information for the Bureau may be added: "Bureau of Consumer Financial Protection, 1700 G Street NW, Washington, DC 20552; www.consumerfinance.gov/learnmore."

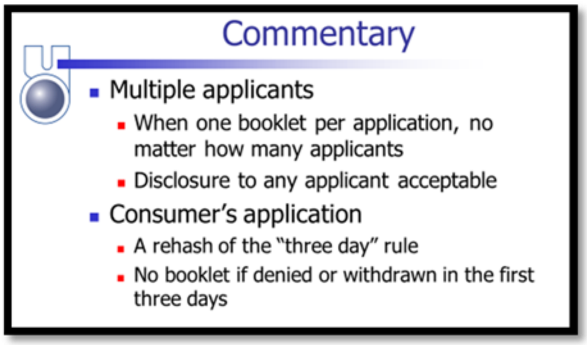
The contact information for HUD's Office of RESPA and Interstate Land Sales may be removed from the "Contact Information" section of the appendix to the booklet.

(iv) The cover of the booklet may be in any form and may contain any drawings, pictures or artwork, provided that the title appearing on the cover shall not be changed. Names, addresses, and telephone numbers of the creditor or others and similar information may appear on the cover, but no discussion of the matters covered in the booklet shall appear on the cover. References to HUD on the cover of the booklet may be changed to references to the Bureau.




***19(g)(1) Creditor to provide special information booklet.***

1. ***Revision of booklet.*** The Bureau may, from time to time, issue revised or alternative versions of the special information booklet that addresses transactions subject to § 1026.19(g) by publishing a notice in the *Federal Register*. The Bureau also may choose to permit the forms or booklets of other Federal agencies to be used by creditors. In such an event, the availability of the booklet or alternate materials for these transactions will be set forth in a notice in the *Federal Register*. The current version of the booklet can be accessed on the Bureau's Web site, www.consumerfinance.gov/learnmore.




2. ***Multiple applicants.*** When two or more persons apply together for a loan, the creditor complies with § 1026.19(g) if the creditor provides a copy of the booklet to one of the persons applying.

3. ***Consumer's application.*** Section 1026.19(g)(1)(i) requires that the creditor deliver or place in the mail the special information booklet not later than three business days after the consumer's application is received. "Application" is defined in § 1026.2(a)(3)(ii). The creditor need not provide the booklet under § 1026.19(g)(1)(i) when it denies an application or if the consumer withdraws the application before the end of the three-business-day period under § 1026.19(e)(1)(iii)(A). See comment 19(e)(1)(iii)-3 for additional guidance on denied or withdrawn applications.


***19(g)(2) Permissible changes.***

1. ***Reproduction***. The special information booklet may be reproduced in any form, provided that no changes are made, except as otherwise provided under § 1026.19(g)(2). *See also* comment 19(g)(2)-3. Provision of the special information booklet as a part of a larger document does not satisfy the requirements of § 1026.19(g). Any color, size and quality of paper, type of print, and method of reproduction may be used so long as the booklet is clearly legible.

2. ***Other permissible changes***. The special information booklet may be translated into languages other than English. Changes to the booklet other than those specified in § 1026.19(g)(2)(i) through (iv) and comment 19(g)(2)-3 do not comply with § 1026.19(g).

3. ***Permissible changes to title of booklets in use before August 1, 2015.*** Section 1026.19(g)(2)(iv) provides that the title appearing on the cover of the booklet shall not be changed. Comment 19(g)(1)-1 states that the Bureau may, from time to time, issue revised or alternative versions of the special information booklet that address transactions subject to § 1026.19(g) by publishing a notice in the *Federal Register*. Until the Bureau issues a version of the special information booklet relating to the Loan Estimate and Closing Disclosure under §§ 1026.37 and 1026.38, for applications that are received on or after August 1, 2015, a creditor may change the title appearing on the cover of the version of the special information booklet in use before August 1, 2015, provided the words "settlement costs" are used in the title. See comment 1(d)(5)-1 for guidance regarding compliance with § 1026.19(g) for applications received on or after August 1, 2015.